



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 260

Further measures to facilitate innovation in financial services

June 2016

About this paper

This paper seeks feedback from financial technology businesses, financial services providers, consumers and consumer representatives, and other parties on our proposed approach to facilitating innovation in financial services:

We are seeking feedback on:

- additional guidance about when we consider a responsible manager has appropriate knowledge and skills;
- modifying our policies to allow some small-scale, heavily automated businesses to rely, in part, on sign-off from an appropriately experienced third party in order to meet their organisational competence obligation; and
- a conditional, industry-wide exemption to allow new Australian businesses to test certain financial services for six months without holding an AFS licence.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 8 June 2016 and is based on the Corporations Act as at that date.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on innovation in financial services. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section D, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 22 July 2016 to:

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Australian Securities and Investments Commission
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What will happen next?

Stage 1	8 June 2016	ASIC consultation paper released
Stage 2	22 July 2016	Comments due on the consultation paper
	September 2016	Drafting of regulatory guidance and/or licensing exemption
Stage 3	December 2016	Regulatory guidance and/or licensing exemption finalised

A Background to the proposals

Key points

ASIC is committed to facilitating innovation in financial services. Although we do not attempt to define ‘innovation’ or ‘innovative services’, we have established an Innovation Hub to help start-up financial technology (fintech) businesses to navigate the regulatory framework.

There is already significant flexibility in the financial services framework, including through modular licensing, the ability to act on behalf of an Australian financial services (AFS) licensee, and ASIC’s relief powers.

However, we wish to test whether further measures are appropriate. This paper seeks feedback on the proposals we have developed to facilitate innovation while maintaining appropriate consumer protections. We believe these proposals compare favourably with international developments.

ASIC’s commitment to innovation in financial services

- 1 ASIC is committed to encouraging innovation in financial services that has the potential to produce good outcomes for investors and financial consumers. We are equally committed to ensuring that:
 - (a) the regulation of new products and services is appropriate and effective, and promotes investor and financial consumer trust and confidence; and
 - (b) markets operate in a fair, orderly and transparent way.

- 2 We have established an Innovation Hub to help financial technology (fintech) start-up businesses navigate our regulatory framework. Our Innovation Hub comprises five elements:
 - (a) *engagement with other fintech initiatives*—including physical hubs and co-working spaces for start-ups. We have held over 120 meetings with stakeholders, including existing Australian financial services (AFS) licensees and credit licensees, and have presented at a range of industry events;
 - (b) *informal assistance to eligible start-ups*—eligible businesses can request guidance from us through our website. This guidance is intended to help new businesses consider the important issues early. We have worked with over 90 entities, including 67 that have requested our assistance;
 - (c) *a dedicated website*—the ‘Innovation Hub’ webpages provide tailored guidance and signposts for innovative businesses to access information and services targeted at them;

- (d) *coordination of workstreams*—we have established a senior internal taskforce to coordinate our work on new business models. The taskforce draws together dispersed knowledge and skills across ASIC. This taskforce is complemented by internal working groups on digital advice (i.e. automated financial product advice), marketplace lending and equity crowdfunding; and
- (e) *the Digital Finance Advisory Committee (DFAC)*—DFAC provides ASIC with advice on our efforts in this area. DFAC includes members from the fintech community, as well as academia and consumer backgrounds. Other financial regulators are observers on DFAC.¹

3 We have not attempted to define ‘innovation’ for the purposes of this initiative, or to limit our focus to particular products or services. Many of the sectors we regulate are experiencing digital disruption and increased competition from new or significantly different product or services, such as digital advice, marketplace lending and digital currencies.

4 Our Innovation Hub is one of many components of the existing framework that provide flexibility to innovative businesses. Other relevant components are outlined at paragraphs 5–17.

Existing flexibility in the financial services framework

Modular AFS licensing

5 When ASIC grants a potential business an AFS licence, the obligations the licensee has to comply with depend on:

- (a) the financial services offered;
- (b) the nature of the clients that will receive those services (wholesale or retail); and
- (c) the financial products the services relate to.

6 Businesses with a ‘narrow’ business model that involves only a small number of financial services may have reduced compliance obligations relative to an AFS licensee with numerous authorisations. We may also be able to make a quicker decision on AFS licence applications where the applicant has only requested a small number of authorisations.

¹ More information is available on our website through the [Innovation Hub webpages](#) and in [Media Release \(16-129MR\)](#) *Innovation Hub: Regulatory sandbox proposal* (4 May 2016).

The ability to act as a representative

- 7 A business may choose to obtain its own AFS licence or, in some instances, reach an arrangement with an AFS licensee to act on that licensee's behalf.² We do not have a preference about whether a business complies with its obligations by obtaining a licence or acting as a representative of a licensee.

ASIC's discretion in relation to organisational competence

- 8 AFS licensees must maintain the competence to provide the financial services covered by their AFS licence. We assess competence during the licensing process by looking at the knowledge and skills of the people (responsible managers) who have direct responsibility for significant day-to-day decisions about the business. We will only grant an AFS licence if the applicant's responsible managers have the appropriate knowledge and skills in relation to the proposed business: see [Regulatory Guide 105 Licensing: Organisational competence](#) (RG 105).³
- 9 In addition to four specific combinations of knowledge (demonstrated by the completion of relevant qualifications or training) and skills (demonstrated by the years of relevant experience), we allow a prospective licensee to provide submissions about why a responsible manager has appropriate knowledge and skills. This is known as Option 5 of RG 105.
- 10 Option 5 of RG 105 may be relevant to new businesses where the founders of that business:
- (a) do not have extensive financial services experience across all aspects of their proposed operations; and
 - (b) can satisfy us that they have the appropriate knowledge and skills for their role.
- 11 A summary of all five options in RG 105 is available at Appendix 2: Options for demonstrating a responsible manager's knowledge and skills.

Relief and no-action letters

- 12 We have powers to exempt persons or products from many of the laws we administer. We also have the power to modify how many of these laws apply. We have well-established policies for using these powers⁴ and we regularly assess requests for 'relief' from many of our laws. In 2014–15, we approved 1,473 relief applications (and refused 147).

² [Regulatory Guide 36 Licensing: Financial product advice and dealing](#) (RG 36) contains guidance on when a person can act as a representative of an AFS licensee.

³ [Consultation Paper 254 Regulating digital financial product advice](#) (CP 254) outlines our proposals for how the organisational competence obligation applies to AFS licensees in a digital advice context.

⁴ See [Regulatory Guide 51 Applications for relief](#) (RG 51).

- 13 We will generally grant relief from an obligation where there is a net regulatory benefit, or the regulatory detriment of relief is minimal and clearly outweighed by the commercial benefit.
- 14 In some situations, we issue ‘no-action letters’ which indicate that we will not take action in relation to a breach of the law. [Regulatory Guide 108 No-action letters](#) (RG 108) sets out when we will provide a no-action letter.

Industry-wide relief

- 15 Our powers to grant relief include the ability to modify the law on an industry-wide basis. Many of ASIC’s industry-wide relief instruments are relevant to innovative, technology-based businesses, such as those relating to:
- (a) generic financial calculators: see the [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) and [Regulatory Guide 167 Licensing: Discretionary powers](#) (RG 167);
 - (b) electronic disclosure: see the [ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647](#), [ASIC Corporations \(Removing Barriers to Electronic Disclosure\) Instrument 2015/649](#) and [Regulatory Guide 221 Facilitating digital financial services disclosures](#) (RG 221); and
 - (c) certain payment products: see the [ASIC Corporations \(Non-cash Payment Facilities\) Instrument 2016/211](#) and [Regulatory Guide 185 Non-cash payment facilities](#) (RG 185).

Assistance through the Innovation Hub

- 16 Since April 2015, we have provided informal assistance to eligible start-up businesses through our Innovation Hub. New businesses may request assistance through our website. If they satisfy some basic eligibility criteria, we meet with them to discuss their proposed business model and the important regulatory issues they should consider.
- 17 Since the Innovation Hub was set up, we have provided informal assistance to 67 entities.

Barriers to innovation

- 18 As part of our work on innovation, we have met with a range of stakeholders to discuss the barriers faced by new businesses seeking to enter the financial services market. Based on our experience and these discussions, our view is that—despite existing flexibility in the regulatory framework—innovative start-up businesses face three interconnected issues relating to:
- (a) speed to market;
 - (b) organisational competence; and
 - (c) access to capital.

Speed to market

- 19 The time and cost of taking a service to market to demonstrate consumer interest and viability can be a significant issue for new businesses with limited resources. Issues related to ‘speed to market’ and barriers to entry have been identified in industry submissions⁵ as well as other reports.⁶
- 20 Under the current regulatory framework, a new business that wishes to provide financial services must generally obtain an AFS licence from ASIC (or reach an arrangement with an AFS licensee to act as its representative) before it can test whether its products or services are viable or will attract investment. If changes to the business model are required, a business may need to spend more time and money before it can recommence operations—for instance, it may need to vary its AFS licence.
- 21 Our service charter states we will endeavour to make a decision on 70% of AFS licence applications within 60 days and 90% within 120 days. This compares well with other jurisdictions. However, our experience has been that businesses with innovative business models frequently lodge novel applications that may take additional time to process.

Organisational competence

- 22 Some founders of innovative businesses may have some experience in financial services, but do not fully comply with the specific organisational competence standards of qualifications, training and experience set out in Options 1–4 of RG 105.
- 23 These businesses currently need to:
- (a) hire a responsible manager before they can commence trading (potentially at significant expense including equity in the business); or
 - (b) prepare a submission under Option 5 of RG 105, without the benefit of detailed guidance or examples of what we look for when we assess competence under that option.
- 24 Additionally, some industry representatives have noted that, for businesses that rely heavily on technology and automation, legal sign-off may be an increasingly important part of their compliance with the regulatory framework.
- 25 We received 34 AFS licence applications from potentially innovative businesses between 1 July 2014 and early May 2016. Of these, 19 applicants

⁵ Fintech Australia, *Priorities for reform of the Australian financial services industry* (PDF 11.69 MB), 24 February 2016.

⁶ KPMG, *Unlocking the potential: The fintech opportunity for Sydney* (PDF 3.94 MB), report, October 2014.

attempted to rely on Option 5 of RG 105 for one or more responsible managers. Of these 19 applications:

- (a) 15 were successful, resulting in 25 responsible managers being accepted under Option 5 (we also rejected three responsible managers as they were unable to satisfy us that they had appropriate knowledge and skills for their role);
- (b) three are still under assessment; and
- (c) one was withdrawn.

26 Broadly speaking, we believe that Option 5 of RG 105 is working effectively. However, based on our experience, we consider that there may be scope to:

- (a) provide more information to prospective AFS licensees to assist them in more promptly preparing their submissions about the knowledge and skills of their responsible managers; and
- (b) in some circumstances, better recognise the important role played by third-party sign-off.

Access to capital

27 The options discussed in this paper are intended to address issues relating to speed to market and organisational competence. A separate but related overarching concern is the difficulty faced by start-up businesses in attracting investment or finance.

28 A recent Productivity Commission report found evidence to suggest that innovative new businesses experience greater difficulty accessing capital than other new businesses.⁷ A report by EY for the UK Government ranked Australia fifth out of seven jurisdictions for access to capital for fintech businesses.⁸

29 This lack of access to capital exacerbates the other two issues—that is:

- (a) speed to market—because it drives new businesses to proceed to market quickly to increase their chances of obtaining initial funding; and
- (b) organisational competence—because there are limited funds to pay for experienced responsible managers (and incentives to defer compliance costs where possible).

⁷ Australian Government Productivity Commission, [Business set-up, transfer and closure](#) (PDF 5.66 MB), Inquiry report, 30 September 2015, pp. 125–127.

⁸ EY, UK Government, [UK fintech on the cutting edge: An evaluation of the international fintech sector](#) (PDF 4.54 MB), 2015, p. 38.

- 30 We are not in a position to directly solve issues associated with access to capital. However:
- (a) we have provided relief to facilitate business introduction services in [Class Order \[CO 02/273\]](#) *Business introduction or matching services* and
 - (b) the proposals discussed in this paper may indirectly assist by increasing the appeal of investing in some fintech start-up businesses.

Measures considered in this consultation paper

- 31 In light of the barriers to innovation in financial services that we have identified, we are considering the following options:
- (a) *Option 1*—provide additional guidance about how we assess whether a responsible manager has the appropriate knowledge and skills under Option 5 of RG 105 (including what we may consider to be appropriate knowledge and skills);
 - (b) *Option 2*—modify our guidance under Option 5 of RG 105 to allow heavily automated (but small-scale) businesses to rely, in part, on sign-off from an appropriately experienced third party in order to meet their organisational competence obligation;
 - (c) *Option 3*—provide a conditional, industry-wide exemption to allow new Australian businesses to test certain financial services for six months without holding an AFS licence (also referred to as the ‘regulatory sandbox exemption’);
 - (d) *Option 4*—a combination of Options 1–3; and
 - (e) *Option 5*—maintain the status quo.

Proposal

A1 We are considering the options set out in paragraph 31. Our preferred option is Option 4 (i.e. a combination of Options 1–3).

In this proposal, we are seeking your general feedback on our approach to further facilitating innovation in financial services.

We are consulting in more detail on particular aspects of our proposals in Sections B and C.

Your feedback

A1Q1 Do you agree that we should put in place additional measures to facilitate innovation, or maintain the status quo? Please provide reasons.

A1Q2 What benefits do you consider will result from our proposed approach?

A1Q3 What disadvantages do you consider will result from our proposed approach?

A1Q4 Are there any other options we should consider to meet our regulatory objective of further facilitating innovation, while ensuring that appropriate protections apply to all financial consumers?

Rationale

- 32 Although there is significant flexibility within the current regulatory framework, we consider that the issues and challenges faced by innovative start-up businesses may warrant additional measures.
- 33 Our proposals in Options 1–3 are intended to address the difficulties we have identified in relation to the speed of bringing financial services to market, and the ability to demonstrate organisational competence. In particular:
- (a) Option 1 may help to address ‘speed to market’ issues by increasing clarity for industry and assisting new businesses to prepare submissions about the suitability of certain responsible managers;
 - (b) Option 2 may:
 - (i) assist with the ‘organisational competence’ issue by allowing some costs associated with hiring responsible managers to be deferred for a limited period of time; and
 - (ii) indirectly improve ‘speed to market’ because it could limit the need for discussions about the appropriateness of certain responsible managers; and
 - (c) Option 3 may:
 - (i) improve ‘speed to market’ by allowing limited testing and concept validation to occur without businesses needing to comply with all the usual regulatory obligations; and
 - (ii) assist with ‘organisational competence’ issues as businesses can gain certainty about their business model (and potentially attract investment) before they determine whether they need to hire a responsible manager.

Developments in overseas jurisdictions

- 34 Regulators in many other jurisdictions are considering, or have adopted, additional measures to facilitate innovation. Some of these measures are outlined in Appendix 1: International developments.
- 35 We believe that our proposals compare favourably with international developments. In particular, we note that:

- (a) many of the measures being considered by overseas regulators are already present in the Australian regulatory framework; and
- (b) if implemented, Option 3 would provide the additional benefit of allowing some businesses to commence limited service testing without a detailed assessment from ASIC—this is not a common feature of other regulatory frameworks.

Detail of proposals

36 Sections B and C set out our proposals in detail, as well as the rationale for each proposal. We are seeking feedback on each proposal. Depending on the feedback we receive, we may implement all, some or none of the proposals.

B Additional guidance and flexibility on organisational competence

Key points

We are proposing to provide additional guidance on how we assess organisational competence for responsible managers who cannot demonstrate one of the four specific combinations of qualifications, training and experience set out in Options 1–4 of RG 105: see proposal B1.

We are also proposing to amend our guidance to enable some small-scale, heavily automated businesses to meet their organisational competence obligation by nominating appropriately regulated and experienced professional third parties that will provide sign-off as a responsible manager: see proposals B2–B4.

Additional guidance on assessing knowledge and skills under Option 5 of RG 105

Proposal

B1 We propose to provide additional guidance on how we assess submissions about a responsible manager's knowledge and skills under Option 5 of RG 105. This will include:

- (a) more detail about what we expect a prospective AFS licensee to include in its submission; and
- (b) examples of situations where we generally would (or would not) consider that a responsible manager has the appropriate knowledge and skills (see Example 1 to Example 4 below).

Note: We are not proposing to change how we assess submissions under Option 5 of RG 105 in this proposal.

Your feedback

B1Q1 Do you agree with this proposal? Please give reasons for your answer.

B1Q2 Do you think the examples provided below are helpful? If not, why not?

B1Q3 Subject to the other proposals in this paper, is there anything else you think we should cover in our updated guidance on Option 5 of RG 105?

Rationale

- 37 We describe in RG 105 what we look for when we assess compliance with the requirement that AFS licensees maintain competence to provide the financial services covered by their licence: s912(1)(e). RG 105 provides guidance that an AFS licensee must demonstrate that:
- (a) each responsible manager meets one of the five options for demonstrating appropriate knowledge and skills; and
 - (b) together, the responsible managers have appropriate knowledge and skills to cover all the financial services and products offered by the licensee.
- 38 Each responsible manager must demonstrate that they have the appropriate knowledge and skills for their role through one of the five options in RG 105. Option 5 allows a prospective AFS licensee to provide submissions about why a responsible manager has appropriate knowledge and skills if they are unable to demonstrate the specific combinations of qualifications, training and experience set out in Options 1–4: see paragraphs 8–9 and RG 105.66. A summary of all five options in RG 105 is available at Appendix 2: Options for demonstrating a responsible manager’s knowledge and skills.
- 39 Our experience is that innovative start-up businesses frequently rely on Option 5 of RG 105 for one or more of their responsible managers: see paragraph 25. We believe that providing additional guidance on how we assess submissions about knowledge and skills under Option 5 will help us to more quickly assess these types of AFS licence applications.

Indicative examples

- 40 Whether or not we accept a responsible manager as having adequate knowledge and experience under Option 5 of RG 105 will depend on:
- (a) each applicant’s circumstances (based on the financial services or financial product authorisations sought); and
 - (b) the knowledge and experience of the particular responsible manager relative to the authorisations.
- 41 The proposed examples are meant to provide guidance. They are not strict threshold requirements for a particular AFS licence applicant. This means that we may still reject some responsible managers who have knowledge and experience that is similar to the following examples and, conversely, we may accept other responsible managers who do not correspond to any of these examples.

Examples where we may accept responsible managers under Option 5 of RG 105

Example 1: Digital advice business—Three responsible managers

Scenario

An AFS licence applicant proposes to provide personal advice to wholesale and retail clients across a range of financial products through a digital advice business model. The applicant nominates three responsible managers to demonstrate its organisational competence.

RM1 has a Bachelor of Economics, MBA and graduate diploma in applied finance and investment. RM1 has never provided financial advice to clients, but has six years experience at a senior level in a paraplanning division and supervised representatives providing financial planning advice to retail clients for one year.

RM2 has worked at an AFS licensee and provided financial product solutions to medium-to-large-sized organisations. RM2 has over six years of experience in financial product educational support services, development of investment mandates and portfolios, provision of client and custodial documentation, fund accounting and unit pricing.

RM3 satisfies Option 4 of RG 105 as they hold a Master of Applied Finance from an Australian university and have 10 years experience in the investment management industry.

Commentary

While RM1 has insufficient experience in considering retail clients' circumstances, the experience of RM2 and RM3 is relevant to the development of asset allocation alternatives. Taking into account the nature, scale and complexity of the applicant's proposed business, ASIC would be prepared to accept the collective knowledge and experience of the three responsible managers for the purposes of granting the AFS licence authorisations sought.

Example 2: Securities trading and advice via mobile application

Scenario

An AFS licence applicant proposes to provide advice to retail clients and to deal in securities in order to facilitate clients trading in securities via a mobile application.

RM1 has a university degree in computer science, economics and international business. They have less than three years experience in advising on and dealing in securities and have spent about two years developing the securities trading software.

RM2 has a non-financial markets degree from a foreign university, with six years regulated experience advising on and dealing in securities in the United Kingdom over the past 10 years. RM2 has also worked for a securities adviser in Australia for one year.

Both responsible managers have completed courses focused on educating responsible managers about Australian financial services laws and RG 146 training in providing advice to retail clients in relation to securities.

RM1 meets the requirements of Option 3 of RG 105.

Commentary

ASIC may be satisfied that RM2 has demonstrated sufficient relevant experience over the past 10 years under Option 5 of RG 105.

Examples where we may not accept responsible managers under Option 5 of RG 105

Example 3: Marketplace lending through securities

Scenario

An AFS licence applicant proposes to provide marketplace lending services to small-to-medium-sized enterprises funded by issuing securities.

The sole nominated responsible manager has 10 years experience in regulatory affairs/compliance and two years involving the provision of general advice and dealing services to wholesale clients in relation to deposit products.

Commentary

ASIC would not consider that this responsible manager has sufficient knowledge and skills under Option 5 because their experience is not relevant to the AFS licence authorisations being sought. The responsible manager's advice and dealing experience does not relate to the applicant's proposed business (i.e. the provision of advice and issue of securities associated with marketplace lending).

Example 4: Wholesale managed investment scheme

Scenario

An AFS licence applicant intends to operate a wholesale unregistered managed investment scheme as a marketplace lender. RG 105 requires the applicant to have:

- a responsible manager with knowledge and experience in relation to the operation of a managed investment scheme; and
- a responsible manager with knowledge and skills in relation to the type of assets under management: see RG 105.37.

RM1 has eight years experience in commercial lending, credit and risk management. RM2 has two years experience in financial accounting and five years in business advisory services.

Commentary

ASIC would be satisfied that RM1 has demonstrated the required knowledge and skills in relation to the assets under management.

We would not consider that RM2 has demonstrated the required knowledge and skills in relation to the operation of a managed investment scheme under Option 5.

We would not be satisfied that, when considered collectively, the responsible managers have the appropriate knowledge and skills for all of the AFS licence authorisations sought.

Additional flexibility for small-scale, heavily automated businesses

Nominating responsible managers

Proposal

B2 We propose to amend RG 105 so that a small-scale, heavily automated business would be able to meet its organisational competence obligation by nominating responsible managers in the following two categories:

- (a) responsible managers (as currently defined in RG 105) that have knowledge and skills that are relevant to some, but not all, aspects of the financial services the business will provide; and
- (b) an appropriately regulated and experienced professional third party that will provide sign-off for the remaining aspects of the business's financial services.

To rely on B2, we propose that businesses will also need to meet the terms set out in proposals B3 and B4.

Your feedback

B2Q1 Do you agree with this proposal? Please give reasons for your answer.

B2Q2 What sort of professionals should ASIC accept as responsible managers that provide sign-off?

B2Q3 Are there any other situations where this type of flexibility should be available?

B2Q4 Are there any risks associated with this proposal? If so, what are they?

B2Q5 Please estimate any cost savings that a new business would expect to realise from this proposal.

Rationale

42 RG 105 provides guidance that a responsible manager must have direct responsibility for significant day-to-day decisions about the AFS licensee's financial services: see RG 105.24–28.

43 If a business model relies heavily on technology and automation, we recognise that:

- (a) fewer day-to-day decisions may be made by natural persons in relation to the services provided; and
- (b) from a compliance perspective, decisions made at the initial stages of the business may be relatively more important than in less automated arrangements—for example, ensuring that an algorithm that provides financial advice is fully compliant before it is put into use.

44 We are proposing that a heavily automated (but small-scale) business may be able to rely, in part, on sign-off from a professional third party in order to comply with its organisational competence obligation under the Corporations Act. The third party would need to be appropriately regulated and experienced (e.g. an accountant or an auditor).

45 The additional flexibility in this proposal about the types of ‘responsible manager’ that may be nominated does not change the AFS licensee’s underlying obligations under the financial services laws. We are proposing that a licensee may, in some circumstances, be able to meet these obligations in a slightly different way.

Other responsible managers

46 Under this proposal, we consider that it is important for an AFS licensee to nominate at least one responsible manager with responsibility for significant day-to-day decisions. This reflects the fact that, even with a heavily automated businesses model, there will be some matters that are dealt with by the natural persons who operate the business.

47 We also consider that these responsible managers should comply with ASIC guidance or legal requirements. For instance, AFS licensees that provide digital advice to retail clients currently need to nominate at least one responsible manager who complies with the training standards in RG 146 and the competence requirements in RG 105.

48 This is consistent with our earlier proposals on digital advice: see [Consultation Paper 254 Regulating digital financial product advice \(CP 254\)](#). We are still considering submissions received in response to CP 254. This proposal does not constitute an adjustment to our proposals in that paper.

Requirements for third-party sign-off

Proposal

B3 We propose that a professional third-party responsible manager providing sign-off under proposal B2 would be required to examine all the relevant material and certify that the AFS licensee is materially compliant with ASIC-administered legislation.

We propose that:

- (a) sign-off would be required every 12 months, or on significant changes to the AFS licensee's operations; and
- (b) the AFS licensee would need to lodge a copy of the sign-off with ASIC. Responsible managers who provide a sign-off that contains false or misleading statements may commit an offence under s1308 of the Corporations Act.

Your feedback

B3Q1 What sort of sign-off should a third-party responsible manager be required to provide?

B3Q2 Is an annual sign-off appropriate?

Rationale

- 49 We propose that a professional third-party responsible manager providing sign-off would be required to examine all of the relevant material and certify that the AFS licensee is materially compliant with the laws we administer. To ensure that the licensee continues to comply with its obligations, we propose that a new sign-off should be required every 12 months (or more frequently if there are significant changes to the licensee's business).
- 50 It will be important for professional third-party responsible managers to be accountable for the sign-offs they provide. We propose that AFS licensees will need to provide these sign-offs to us.
- 51 Sign-offs that contain materially false or misleading statements may give rise to offences under s1308 of the Corporations Act (especially if the third-party responsible manager has not taken reasonable steps to ensure that the sign-offs do not contain false or misleading statements).
- 52 The sign-off requirements would be based on requirements that apply to auditors of registered managed investment schemes under s601HG(3) of the Corporations Act, as well as requirements that apply to auditors of AFS licensees under s989B of the Corporations Act and reg 7.8.13 of the Corporations Regulations. We welcome submissions on any practical issues associated with this approach.

Conditions of eligibility for third-party sign-off

Proposal

- B4** We propose that proposal B2 will only apply to AFS licensees that:
- (a) provide financial services to no more than 1,000 retail clients; and
 - (b) only give advice on, or arrange for another person to deal in, liquid financial products, non-cash payment facilities, and products issued by a prudentially regulated business.

Your feedback

B4Q1 Do you agree with our proposed restrictions on the types of business eligible for this flexibility? For example, is a limit of 1,000 clients appropriate?

B4Q2 Are other restrictions—such as an exposure limit on investment products—also warranted?

Rationale

- 53 We recognise that inappropriate reliance on third-party sign-off could increase the risk of poor conduct or non-compliance. Therefore, we are proposing that this safeguard relating to the scope and nature of the business provided by the AFS licensee should be a condition of eligibility for third-party sign-off.
- 54 We consider that proposal B2 is only appropriate for AFS licensees that:
- (a) provide financial services to a limited number of financial investors or consumers (i.e. less than 1,000 retail clients); and
 - (b) only provide advice or arrange for other persons to deal in:
 - (i) liquid financial products (e.g. listed and quoted Australian securities and simple managed investment schemes⁹);
 - (ii) non-cash payment facilities; and
 - (iii) products issued by a prudentially regulated business (e.g. deposit products, superannuation products and insurance contracts).
- Note: Guidance on advice and arranging services is available in RG 36.
- 55 We anticipate that proposal B2 will be of most use to potential new AFS licensees establishing their business. We expect that licensees that make use of this proposal will seek to appoint additional responsible managers as their business grows. If this occurs, we will remove any tailored conditions from that business's AFS licence.

⁹ A simple managed investment scheme is a registered scheme that invests at least 80% of its assets in a bank account where funds can be withdrawn within three months, or in arrangements where the investments can be realised at market value within 10 days.

C AFS licensing exemption for limited service testing

Key points

We propose to grant conditional, industry-wide relief to allow new Australian businesses to test certain financial services for six months without holding an AFS licence. We refer to this as the 'regulatory sandbox exemption'.

This exemption will be limited to giving financial advice about, or arranging for other persons to deal in, certain liquid products.

Testing businesses will also need to:

- comply with limits on the number of retail investors and their exposure;
- maintain consumer protections, such as dispute resolution and compensation arrangements and disclosure obligations;
- obtain 'sponsorship' from an ASIC-approved organisation; and
- notify us before they can commence testing.

Businesses that do not meet the terms of the industry-wide relief will be able to apply for individual, tailored exemptions under our existing policies.

Six months of unlicensed financial service testing with retail clients

Proposal

c1 We propose to give conditional, industry-wide relief to allow new Australian businesses to test certain financial services for one period of six months without needing to obtain an AFS licence. We refer to this as the 'regulatory sandbox exemption'.

We propose to place the restrictions and conditions outlined in proposals C2–C9 on the licensing exemption to ensure that:

- (a) the risk of poor consumer outcomes is minimised; and
- (b) activities carried out under the exemption are limited to early-stage testing (i.e. concept validation).

We will continue to consider requests for an individual exemption by businesses that do not meet the terms of the industry-wide relief.

Your feedback

C1Q1 Do you agree with this proposal? Please give reasons for your answer.

C1Q2 Do you agree the exemption should only apply to new Australian businesses? If not, who else should be eligible, why and on what conditions?

- C1Q3 Please estimate any cost savings that a new business would expect to realise from this change.
- C1Q4 Please estimate any additional costs or savings that consumers might be expected to incur as a result of this change.

Rationale

- 56 A limited, industry-wide AFS licensing exemption would allow new Australian businesses to test their proposed services without needing to fully comply with all of the usual obligations under the laws administered by ASIC. We believe that this will be particularly beneficial for start-up businesses with limited resources because it will:
- (a) allow businesses to attract investment before they begin negotiations with an AFS licensee about operating as an authorised representative (placing them in a stronger bargaining position) or incur compliance costs such as obtaining an AFS licence;
 - (b) facilitate rapid development and business model changes (i.e. if the testing suggests that the first business model is not viable, the business will be able to adjust its offering without incurring substantial costs); and
 - (c) remove barriers to entry into the financial services market and foster increased competition, which we expect to ultimately benefit consumers.
- 57 The proposal would facilitate fintech start-up businesses located in Australia. This would ensure that a business wanting to test its business service with retail clients has an established place of business in Australia (e.g. as a locally incorporated company). For this reason, the proposal does not extend to businesses located overseas.
- 58 This proposal has been informed by developments in other jurisdictions, such as the ‘regulatory sandbox’ established by the Financial Conduct Authority (FCA), and the Consumer Finance Protection Bureau’s (CFPB) no-action letter policy. We believe that this proposal compares favourably with international developments, especially as it removes the need for some testing businesses to separately negotiate testing conditions with us.
- 59 An exemption from the requirement to hold an AFS licence would, however, remove most of the usual consumer protections under the Corporations Act. These include:
- (a) the conduct and disclosure obligations in Pts 7.7–7.9;
 - (b) access to an external dispute resolution scheme and adequate compensation arrangements; and
 - (c) inherent restrictions, under the licensing requirements, on persons without appropriate knowledge and skills providing financial services.

60 For this reason, we propose to place some restrictions and conditions on the industry-wide AFS licensing exemption. The rationale for each of these restrictions and conditions is outlined in the relevant proposals below.

61 Businesses that cannot satisfy all of the conditions and limitations will be able to request an individual exemption tailored to their circumstances. We will assess these requests under our current policies: see RG 51.

Time period

62 At this stage, we propose to limit the AFS licensing exemption to one six-month period. This is consistent with our discussions with industry and the intent of the proposal to allow new businesses to validate their concept (rather than conduct wide-scale testing before a full launch).

63 We have made this distinction, and propose to limit the exemption to six months, because:

- (a) we believe the issues facing new businesses are most problematic at the proof-of-concept stage; and
- (b) it is reasonable to expect businesses to comply with the usual obligations for more wide-scale conduct.

64 We will not provide further relief to businesses who wish to test their services for an additional period. Testing businesses will need to consider how they intend to comply with the financial services laws after their six-month AFS licensing exemption expires (e.g. by applying for an AFS licence or acting as a representative of an existing AFS licensee). Testing businesses may need to cease operations for a period of time following the testing period until they can comply with the usual licensing obligations.

Scope of exemption

Service restrictions

Proposal

c2 We propose that the industry-wide AFS licensing exemption should only apply to:

- (a) giving financial advice in relation to listed or quoted Australian securities, simple managed investment schemes and deposit products; or
- (b) arranging for other persons to deal in the products in C2(a).

We will continue to consider requests for an individual exemption by businesses using a different business model.

Your feedback

- C2Q1 Our industry-wide proposal only covers giving financial advice and arranging for other persons to deal in a financial product. Do you believe there are other financial services that should be covered by the licensing exemption? If so, what risks would a wider exemption create and how could these risks be mitigated?
- C2Q2 Our industry-wide proposal only covers services that relate to listed or quoted Australian securities, simple managed investment schemes and deposit products:
- (a) Are there any other products that should be covered by the proposal, such as non-Australian listed or quoted securities or general insurance contracts? If so, why and on what basis?
 - (b) Should the exemption cover services in relation to a wider range of products where the testing business only deals with wholesale clients? If so, what product classes should be included?
 - (c) If you believe the exemption should be extended to less liquid or more long-term arrangements, how could any additional risk to consumers be mitigated?

Rationale

- 65 There are some financial products and services that are unlikely to be suitable for a six-month trial by an unlicensed business. For example, we would have concerns about services provided to retail clients that relate to:
- (a) complex products (e.g. derivatives);
 - (b) illiquid products or arrangements that cannot easily be reversed;
 - (c) products with a long-term focus (e.g. superannuation); and
 - (d) products with a risk management focus (e.g. general or life insurance).
- 66 Restricting the industry-wide AFS licensing exemption to services (e.g. advice or distribution), rather than products issued by the testing businesses:
- (a) would be more consistent with the concept of a test (considering that the testing business may cease operation for a period of time following the six-month trial); and
 - (b) may help to ensure that consumers have all the usual protections associated with their dealings with the product issuer.
- 67 For these reasons, our industry-wide proposal only covers advice and arranging services in relation to liquid products such as listed or quoted Australian securities, simple managed investment schemes and deposit products. Limiting the eligible products to Australian securities would mean they are more likely to be familiar to investors. We do not consider that the

exemption needs to cover payment products because ASIC has already provided ongoing exemptions for low-value arrangements.¹⁰

- 68 Exemptions to test other services could still be sought on a case-by-case basis. We would make decisions on individual relief for other services in line with our existing policies: see RG 51.

Existing AFS licensees

Proposal

- c3 We do not propose to provide industry-wide relief to existing AFS licensees. We will continue to consider requests for relief by existing licensees on a case-by-case basis.

Your feedback

- C3Q1 Do you agree with this proposal? Please provide reasons for your answer.
- C3Q2 Are there issues related to innovative services from existing licensees that could be dealt with on an industry-wide basis? If so, what are they?

Rationale

- 69 We recognise that established financial services businesses may also develop innovative products and services. However, we do not believe that these businesses face the same challenges as new businesses. In particular, existing AFS licensees (and their related bodies corporate):

- (a) do not face the same difficulties in relation to speed to market or barriers to entry as they are already authorised to provide financial services;
- (b) are unlikely to face challenges demonstrating organisational competence if they have an AFS licence that covers the provision of the innovative products or services; and
- (c) are more likely to have material resources to dedicate to compliance.

- 70 We therefore do not believe that there is the same need for licensing relief for product or service testing for existing AFS licensees.

- 71 Where innovative products or services provided by existing AFS licensees raise issues within the existing regulatory framework, these are more likely to be matters relating to product or service-specific obligations (rather than the general requirement to hold a licence). We believe that these issues are best resolved on a case-by-case basis.

¹⁰ See [ASIC Corporations \(Non-cash Payment Facilities\) Instrument 2016/211](#).

Conditions of exemption

Client and exposure limits

Proposal

- c4** We propose that the AFS licensing exemption in proposal C1 should only apply where the testing business:
- (a) provides services to no more than 100 retail clients, each with a maximum exposure limit of \$10,000; and
 - (b) ensures the total exposure of all clients (wholesale and retail) is less than \$5 million.

Your feedback

- C4Q1 Are the retail client exposure limits we have identified appropriate?
- C4Q2 An alternative approach would be for the exposure limit of retail clients to vary depending on each client's total net assets:
- (a) How easy would it be to comply with a more graduated exposure limit?
 - (b) Would any benefits with this approach outweigh the resulting complexity for the testing business?
 - (c) Are there any risks with a graduated approach?
- C4Q3 Are there other ways that we could facilitate innovation while limiting the risk of loss to any one individual?

Rationale

Retail client limit

- 72 Our view is that a limit of 100 retail clients provides a balance between:
- (a) the benefits associated with allowing new businesses to validate their concept in an environment of reduced obligations; and
 - (b) the risk of poor conduct affecting a large number of consumers.
- 73 If a testing business provides financial services to 100 clients before the six-month exemption expires, it can continue to provide services to these clients (but not to any other retail clients).

Exposure limits

- 74 A retail client limit does not address risk on an individual level. We therefore consider that an individual exposure limit should be applied to the financial services provided to each retail client. We propose a maximum exposure of \$10,000.

- 75 As an alternative, it may be possible to develop an individual exposure limit that varies depending on the individual client's net assets. This approach would require the testing business to obtain more information about its clients, but may allow:
- (a) services relating to larger investments to be provided to clients with relatively more assets; and
 - (b) risks for clients with relatively few assets to be mitigated.
- 76 At this stage, we consider that the additional complexity associated with a graduated exposure limit outweighs any benefits. We would welcome your feedback on this issue.
- 77 We do not believe an individual limit is necessary for wholesale or sophisticated clients. However, to mitigate against potential systemic concerns with poor conduct, we consider that a total client exposure limit of \$5 million is warranted.

Compensation arrangements

Proposal

- c5 We propose that the AFS licensing exemption in proposal C1 should only apply if the testing business maintains adequate compensation arrangements.

Your feedback

- C5Q1 Do you believe that testing businesses will be able to obtain professional indemnity insurance to compensate retail client losses?
- C5Q2 What other compensation arrangements could be used by testing businesses (e.g. group cover or mutual fund schemes)? What practical issues exist with other compensation arrangements?

Rationale

- 78 Our view is that adequate compensation arrangements for retail clients participating in financial service testing will provide a vital protection in the case of poor conduct or outcomes.
- 79 Most AFS licensees are required to maintain adequate compensation arrangements: see [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126). Generally, licensees meet this obligation by obtaining professional indemnity insurance.
- 80 We have received initial feedback from industry that new businesses may find it difficult to obtain professional indemnity insurance for the provision of limited financial services. We have also been advised that, where

insurance cover is available, it may be expensive for innovative start-up businesses, given their limited resources. We will discuss these issues in more detail with relevant stakeholders. We also anticipate that the submissions we receive will assist us to understand this issue.

81 We consider, however, that some form of compensation arrangements would mitigate any risk of consumer losses and increase consumers' confidence in using the testing services.

82 We welcome submissions about:

- (a) alternative forms of compensation arrangements that may be suited to the testing activities carried out under the exemption; and
- (b) how the costs associated with compensation arrangements can be minimised for new businesses with limited capital.

Other consumer protections

Proposal

c6 We propose that the AFS licensing exemption in proposal C1 will apply only if the testing business:

- (a) is a member of an ASIC-approved external dispute resolution scheme;
- (b) complies with the modified disclosure requirements; and
- (c) complies with the best interests duty and conflicted remuneration provisions as if the business were an AFS licensee.

Your feedback

C6Q1 Are the compliance conditions we have identified—in relation to dispute resolution procedures, disclosure and conduct (i.e. best interests duty and conflicted remuneration)—appropriate? If not, please provide reasons.

C6Q2 Are there any other consumer protections that should apply to clients of testing businesses? If so, what are they?

Rationale

Dispute resolution

83 We expect that businesses relying on the AFS licensing exemption will:

- (a) maintain internal dispute resolution procedures; and
- (b) obtain membership of an external dispute resolution scheme.

84 These protections will assist consumers using the testing services to be confident that:

- (a) they understand the arrangements; and
- (b) there is somewhere they can go in the event of a dispute.

85 We also believe that the compliance burden associated with these requirements is not material. Because dispute resolution procedures are mandatory for AFS licensees, establishing these arrangements upfront may help testing businesses prepare for becoming licensed after their testing is complete.

Disclosure

86 We expect testing businesses to clearly and prominently disclose that the financial services are being provided in a testing environment.

87 Disclosure is an important part of the financial services regulatory framework. Although we do not believe that a testing business needs to comply with all the usual obligations to achieve satisfactory outcomes, we do believe that consumers should receive some of the same information that is supplied by AFS licensees.

88 Under the proposal, we consider that testing businesses should provide their retail clients with some of the information typically included in a Financial Services Guide. This would include information about:

- (a) the kinds of services being provided;
- (b) who the testing business acts for;
- (c) any remuneration or other benefits the testing business receives; and
- (d) the dispute resolution systems available.

89 Where financial advice is given, we consider that the testing business should provide their retail clients with some of the information typically included in a Statement of Advice. This would include information about:

- (a) the advice provided (and the basis on which that advice is given);
- (b) any remuneration or other benefits the testing business receives that could influence the advice; and
- (c) any other interests or associations that could influence the advice.

Best interests duty and conflicted remuneration

90 We also consider that testing businesses should comply with the best interests duty and the conflicted remuneration provisions that apply to AFS licensees.

- 91 As a general summary, these provisions require that:
- (a) advice providers act in the best interests of their clients when providing personal advice: see s961B;
 - (b) the resulting advice given is appropriate to the client: s961G;
 - (c) the client's interests are prioritised over conflicting interests of the advice provider or their associates: see s961J; and
 - (d) licensees or their representatives do not accept remuneration that could reasonably be expected to influence the advice (or the choice of product recommended): see [Regulatory Guide 246](#) *Conflicted remuneration* (RG 246).
- 92 Industry representatives have indicated to us that compliance with these requirements is unlikely to be a significant burden.

Sandbox sponsorship

Proposal

- c7** We propose that the AFS licensing exemption in proposal C1 will apply only if the testing business is 'sponsored' by an organisation ('sandbox sponsor') recognised by ASIC.

We propose that sandbox sponsors will be not-for-profit industry associations or other Government-recognised entities. The ASIC-approved sponsors would be named in the licensing exemption (and could be updated from time to time).

We expect sandbox sponsors to only sponsor testing businesses if:

- (a) that business is operated by fit and proper persons; and
- (b) they have conducted a preliminary assessment that the testing business's proposed business model is reasonably sound and does not present significant risks of consumer detriment.

Your feedback

- C7Q1 Do you support the requirement for a testing business to be 'sponsored' by an industry organisation? Please give reasons for your answer.
- C7Q2 What types of entities should ASIC approve as sandbox sponsors?
- C7Q3 How should ASIC ensure that a sandbox sponsor is only sponsoring appropriate testing businesses?
- C7Q4 What circumstances should a sandbox sponsor take into account when sponsoring a testing business so that the business can rely on the licensing exemption?
- C7Q5 What costs, if any, would testing businesses incur in obtaining sponsorship?

Rationale

93 Industry has suggested that, before a testing business can rely on the AFS licensing exemption, it should be sponsored by a ‘sandbox sponsor’. Sandbox sponsors could include not-for-profit fintech hubs and co-working spaces or other entities recognised by Government (e.g. Early Stage Venture Capital Limited Partnerships).

94 Our view is that a sponsorship requirement may help to:

- (a) reduce risk—by sandbox sponsors declining to sponsor potential testing businesses that are more likely to engage in poor conduct; and
- (b) remove the need for case-by-case approval from ASIC before testing can be undertaken.

95 We agree that sandbox sponsors could play an important gatekeeper role as they would be sensitive to reputational risk associated with poor outcomes in the testing environment.

Sponsorship process

96 We think that, for the sponsorship requirement to be effective, sandbox sponsors should:

- (a) check that the testing business is operated by fit and proper persons (e.g. by requesting information such as police checks);
- (b) conduct a high-level, preliminary assessment of the testing business, and only certify businesses where they believe the business model is reasonably sound and there are no risks of significant consumer detriment associated with testing; and
- (c) provide written confirmation of the sponsorship, which the testing business would then provide to ASIC (see proposal C8).

97 We anticipate that sandbox sponsors may charge a nominal fee for sponsorship. This is still likely to be more cost effective for testing businesses than obtaining an AFS licence to validate their business model.

98 Some businesses do not wish to align themselves with industry associations, and may therefore have concerns with this approach. To address these concerns, we would expect sandbox sponsors to be willing to sponsor businesses with which they are not aligned on a fee-for-service basis.

Integrity measures

Notifying ASIC

Proposal

- c8** We propose that a testing business will need to:
- (a) notify ASIC that it intends to rely on the AFS licensing exemption in proposal C1 from a specified date;
 - (b) provide evidence of sponsorship from a sandbox sponsor (see proposal C7); and
 - (c) declare that it has reasonable grounds to expect that it can operate its business for a period of six months from the specified date.

We also propose to require that testing businesses give us a short report about their test following completion of the testing period.

Your feedback

C8Q1 Do you agree with this proposal? Please give reasons for your answer.

Rationale

- 99 We propose that testing businesses provide us with some information before they can rely on the AFS licensing exemption. This information will:
- (a) increase our understanding of the use and effectiveness of the licensing exemption;
 - (b) allow us to better detect poor conduct during the testing period; and
 - (c) enable us to withdraw the exemption in certain circumstances: see proposal C9.
- 100 After a test is complete, we will expect information from the testing business about their experience and the services they provided. Additional information of this nature will help us to review how the licensing exemption works in practice.

Withdrawal of relief

Proposal

- c9** We propose that ASIC will have the power to withdraw the AFS licensing exemption in proposal C1.

Your feedback

C9Q1 When should we exercise our power to withdraw the licensing exemption?

Rationale

- 101 We believe that it is important for ASIC to be able to ‘switch off’ the AFS licensing exemption if we have concerns about the testing business. Examples of situations where we would withdraw the exemption include where:
- (a) the testing business contravenes laws administered by other regulators;
 - (b) we have concerns about the advertising of the financial services (i.e. if the testing business does not comply with our guidance in [Regulatory Guide 234](#) *Advertising financial products and advice services including credit: Good practice guidance* (RG 234)); and
 - (c) the testing business mischaracterises the nature of the exemption to its clients.
- 102 Under our proposal, a person will only be able to rely on the exemption once. We consider that it is appropriate to limit the relief in this way to prevent continued ‘testing’ that is primarily intended to avoid compliance with the law.

D Regulatory and financial impact

103 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- (a) facilitating innovation in the financial services sector; and
- (b) ensuring that consumers who deal with financial services businesses have the benefit of appropriate protections.

104 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

105 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation.

106 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Appendix 1: International developments

- 107 Regulators in overseas jurisdictions have also considered additional measures that they can adopt to facilitate innovation within their own regulatory frameworks.

United Kingdom

- 108 The Financial Conduct Authority (FCA) has expanded its Project Innovate (the FCA's version of ASIC's Innovation Hub) to include a regulatory sandbox, or 'safe space', in which businesses can test innovative products, services, business models and delivery mechanisms in a live environment without immediately incurring all the usual regulatory obligations.
- 109 The FCA's sandbox will be available on application. Applications for the first group opened on 9 May 2016 and will close on 8 July 2016.
- 110 Unauthorised firms who wish to participate in the sandbox testing environment will go through a tailored, restricted authorisation process. This will allow firms to test their ideas while reducing the cost and time to get the trial up and running.
- 111 Authorised firms can request individual guidance, a waiver or a no-action letter from the FCA in relation to their test. These options align with arrangements that are already in place under the Australian regulatory framework.
- 112 The testing parameters and customer safeguards that apply to each participating firm will be settled on a case-by-case basis depending on the type of customers and the size, scale and risk of the trial.
- 113 The FCA has published some [default standards](#) which indicate the types of restrictions that are likely to be appropriate for sandbox testing. These include:
- (a) a test duration of three to six months;
 - (b) strict limits on the number of customers;
 - (c) requiring access for retail clients to dispute resolution and compensation;
 - (d) requiring informed consent from sophisticated consumers before they agree to limit their claims for compensation;
 - (e) additional safeguards, such as disclosure requirements, depending on the nature of the trial; and
 - (f) the creation of a testing plan.
- 114 These default standards align with some of the conditions we have proposed for the service testing licensing exemption.

Singapore

- 115 The Monetary Authority of Singapore (MAS) has announced that it will introduce a 'regulatory sandbox' to give financial institutions more confidence to experiment with and launch their innovative products or services within controlled boundaries.¹¹
- 116 MAS will release guidelines for public consultation on how the sandbox will operate.

United States

- 117 The Consumer Finance Protection Bureau (CFPB), the US consumer finance regulator, recently finalised its [no-action letter policy](#).
- 118 The new policy establishes a process whereby companies can apply for a statement from CFPB staff (i.e. a no-action letter) that would reduce regulatory uncertainty for a new product or service that offers the potential for significant consumer-friendly innovation.
- 119 ASIC also provides no-action letters: see RG 108.

¹¹ Ravi Menon, Managing Director, [Fintech: Harnessing its power, managing its risks](#), MAS, 2 April 2016.

Appendix 2: Options for demonstrating a responsible manager's knowledge and skills

120 Table 1 provides a summary of the five options set out in RG 105 for demonstrating that each responsible manager in a business has the appropriate knowledge and skills for their role.

Table 1: The five options

Option	Knowledge component (qualifications, training etc)	Skills component (experience)
Option 1 (See RG 105.50–RG 105.52)	Meet widely adopted and relevant industry standard or relevant standard set by the Australian Prudential Regulation Authority (APRA)	Three years relevant experience over past five years
Option 2 (See RG 105.53–RG 105.55)	Be individually assessed by an authorised assessor as having relevant knowledge equivalent to a diploma	Five years relevant experience over past eight years
Option 3 (See RG 105.56–RG 105.60)	Hold a university degree in a relevant discipline and complete a relevant short industry course	Three years relevant experience over past five years
Option 4 (See RG 105.61–RG 105.65)	Hold a relevant industry-specific or product-specific qualification equivalent to a diploma or higher	Three years relevant experience over past five years
Option 5 (See RG 105.66)	If not relying on Options 1–4, you need to provide a written submission that satisfies us that your responsible manager has appropriate knowledge and skills for their role. Your submission must cover all of the information in RG 105.66	

Source: Table 1, RG 105 (p. 14).

Key terms

Term	Meaning in this document
advice	Financial product advice
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
best interests duty and related obligations	The obligations in Div 2 of Pt 7.7A of the Corporations Act
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
client	A retail client (unless otherwise specified)—as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
conflicted remuneration provisions	The provisions on conflicted remuneration and other banned remuneration in Divs 4 and 5 of Pt 7.7A of the Corporations Act and in Div 4 of Pt 7.7A of the Corporations Regulations
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
digital advice	Also known as ‘robo-advice’ or ‘automated advice’—the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser
financial product	A facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.

Term	Meaning in this document
financial product advice	<p>A recommendation or a statement of opinion, or a report of either of these things, that:</p> <ul style="list-style-type: none"> is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document</p> <p>Note: This is the definition contained in s766B of the Corporations Act.</p>
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
fintech	Financial technology
general advice	<p>Financial product advice that is not personal advice</p> <p>Note: This is a definition contained in s766B(4) of the Corporations Act.</p>
licensee	An AFS licensee
Option 5 of RG 105	This option in our regulatory guide allows a prospective AFS licensee to provide submissions about why a responsible manager has appropriate knowledge and skills if they are unable to demonstrate the specific combinations of qualifications, training and experience set out in Options 1–4: see paragraphs 8–9 and RG 105.66
organisational competence obligation	The obligation in s912A(1)(e) of the Corporations Act
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or a reasonable person might expect the provider to have considered one or more of these matters <p>Note: This is the definition contained in s766B(3) of the Corporations Act.</p>
Pt 7.7 (for example)	A part of the Corporations Act (in this example numbered 7.7)
reg 7.1.33A (for example)	A regulation of the Corporations Regulations (in this example, numbered 7.1.33A)
regulatory sandbox exemption	A conditional, industry-wide exemption to allow new Australian businesses to test certain financial services for one period of six months without needing to obtain an AFS licence
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations

Term	Meaning in this document
RG 146 (for example)	An ASIC regulatory guide (in this example numbered 146)
s945A (for example)	A section of the Corporations Act (in this example numbered 945A), unless otherwise specified
sandbox sponsor	An industry organisation recognised by ASIC (e.g. not-for-profit industry associations or other Government-recognised entities) which agrees to sponsor an eligible business seeking to rely on the regulatory sandbox exemption
simple managed investment scheme	A registered managed investment scheme that invests at least 80% of its assets in a bank account where funds can be withdrawn within three months, or in arrangements where the investments can be realised at market value within 10 days
Statement of Advice	<p>A document that must be given to a client for the provision of personal advice under Subdiv C and D of Div 3 of Pt 7.7 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>

List of proposals and questions

Proposal	Your feedback
<p>A1 We are considering the options set out in paragraph 31. Our preferred option is Option 4 (i.e. a combination of Options 1–3).</p> <p>In this proposal, we are seeking your general feedback on our approach to further facilitating innovation in financial services.</p> <p>We are consulting in more detail on particular aspects of our proposals in Sections B and C.</p>	<p>A1Q1 Do you agree that we should put in place additional measures to facilitate innovation, or maintain the status quo? Please provide reasons.</p> <p>A1Q2 What benefits do you consider will result from our proposed approach?</p> <p>A1Q3 What disadvantages do you consider will result from our proposed approach?</p> <p>A1Q4 Are there any other options we should consider to meet our regulatory objective of further facilitating innovation, while ensuring that appropriate protections apply to all financial consumers?</p>
<p>B1 We propose to provide additional guidance on how we assess submissions about a responsible manager's knowledge and skills under Option 5 of RG 105. This will include:</p> <p>(a) more detail about what we expect a prospective AFS licensee to include in its submission; and</p> <p>(b) examples of situations where we generally would (or would not) consider that a responsible manager has the appropriate knowledge and skills (see Example 1 to Example 4 below).</p> <p>Note: We are not proposing to change how we assess submissions under Option 5 of RG 105 in this proposal.</p>	<p>B1Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B1Q2 Do you think the examples provided below are helpful? If not, why not?</p> <p>B1Q3 Subject to the other proposals in this paper, is there anything else you think we should cover in our updated guidance on Option 5 of RG 105?</p>
<p>B2 We propose to amend RG 105 so that a small-scale, heavily automated business would be able to meet its organisational competence obligation by nominating responsible managers in the following two categories:</p> <p>(a) responsible managers (as currently defined in RG 105) that have knowledge and skills that are relevant to some, but not all, aspects of the financial services the business will provide; and</p> <p>(b) an appropriately regulated and experienced professional third party that will provide sign-off for the remaining aspects of the business's financial services.</p> <p>To rely on B2, we propose that businesses will also need to meet the terms set out in proposals B3 and B4.</p>	<p>B2Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>B2Q2 What sort of professionals should ASIC accept as responsible managers that provide sign-off?</p> <p>B2Q3 Are there any other situations where this type of flexibility should be available?</p> <p>B2Q4 Are there any risks associated with this proposal? If so, what are they?</p> <p>B2Q5 Please estimate any cost savings that a new business would expect to realise from this proposal.</p>

Proposal	Your feedback
<p>B3 We propose that a professional third-party responsible manager providing sign-off under proposal B2 would be required to examine all the relevant material and certify that the AFS licensee is materially compliant with ASIC-administered legislation.</p> <p>We propose that:</p> <ul style="list-style-type: none"> (a) sign-off would be required every 12 months, or on significant changes to the AFS licensee’s operations; and (b) the AFS licensee would need to lodge a copy of the sign-off with ASIC. Responsible managers who provide a sign-off that contains false or misleading statements may commit an offence under s1308 of the Corporations Act. 	<p>B3Q1 What sort of sign-off should a third-party responsible manager be required to provide?</p> <p>B3Q2 Is an annual sign-off appropriate?</p>
<p>B4 We propose that proposal B2 will only apply to AFS licensees that:</p> <ul style="list-style-type: none"> (a) provide financial services to no more than 1,000 retail clients; and (b) only give advice on, or arrange for another person to deal in, liquid financial products, non-cash payment facilities, and products issued by a prudentially regulated business. 	<p>B4Q1 Do you agree with our proposed restrictions on the types of business eligible for this flexibility? For example, is a limit of 1,000 clients appropriate?</p> <p>B4Q2 Are other restrictions—such as an exposure limit on investment products—also warranted?</p>
<p>C1 We propose to give conditional, industry-wide relief to allow new Australian businesses to test certain financial services for one period of six months without needing to obtain an AFS licence. We refer to this as the ‘regulatory sandbox exemption’.</p> <p>We propose to place the restrictions and conditions outlined in proposals C2–C9 on the licensing exemption to ensure that:</p> <ul style="list-style-type: none"> (a) the risk of poor consumer outcomes is minimised; and (b) activities carried out under the exemption are limited to early-stage testing (i.e. concept validation). <p>We will continue to consider requests for an individual exemption by businesses that do not meet the terms of the industry-wide relief.</p>	<p>C1Q1 Do you agree with this proposal? Please give reasons for your answer.</p> <p>C1Q2 Do you agree the exemption should only apply to new Australian businesses? If not, who else should be eligible, why and on what conditions?</p> <p>C1Q3 Please estimate any cost savings that a new business would expect to realise from this change.</p> <p>C1Q4 Please estimate any additional costs or savings that consumers might be expected to incur as a result of this change.</p>

Proposal	Your feedback
<p>C2 We propose that the industry-wide AFS licensing exemption should only apply to:</p> <ul style="list-style-type: none"> (a) giving financial advice in relation to listed or quoted Australian securities, simple managed investment schemes and deposit products; or (b) arranging for other persons to deal in the products in C2(a). <p>We will continue to consider requests for an individual exemption by businesses using a different business model.</p>	<p>C2Q1 Our industry-wide proposal only covers giving financial advice and arranging for other persons to deal in a financial product. Do you believe there are other financial services that should be covered by the licensing exemption? If so, what risks would a wider exemption create and how could these risks be mitigated?</p> <p>C2Q2 Our industry-wide proposal only covers services that relate to listed or quoted Australian securities, simple managed investment schemes and deposit products:</p> <ul style="list-style-type: none"> (a) Are there any other products that should be covered by the proposal, such as non-Australian listed or quoted securities or general insurance contracts? If so, why and on what basis? (b) Should the exemption cover services in relation to a wider range of products where the testing business only deals with wholesale clients? If so, what product classes should be included? (c) If you believe the exemption should be extended to less liquid or more long-term arrangements, how could any additional risk to consumers be mitigated?
<p>C3 We do not propose to provide industry-wide relief to existing AFS licensees. We will continue to consider requests for relief by existing licensees on a case-by-case basis.</p>	<p>C3Q1 Do you agree with this proposal? Please provide reasons for your answer.</p> <p>C3Q2 Are there issues related to innovative services from existing licensees that could be dealt with on an industry-wide basis? If so, what are they?</p>
<p>C4 We propose that the AFS licensing exemption in proposal C1 should only apply where the testing business:</p> <ul style="list-style-type: none"> (a) provides services to no more than 100 retail clients, each with a maximum exposure limit of \$10,000; and (b) ensures the total exposure of all clients (wholesale and retail) is less than \$5 million. 	<p>C4Q1 Are the retail client exposure limits we have identified appropriate?</p> <p>C4Q2 An alternative approach would be for the exposure limit of retail clients to vary depending on each client's total net assets:</p> <ul style="list-style-type: none"> (a) How easy would it be to comply with a more graduated exposure limit? (b) Would any benefits with this approach outweigh the resulting complexity for the testing business? (c) Are there any risks with a graduated approach? <p>C4Q3 Are there other ways that we could facilitate innovation while limiting the risk of loss to any one individual?</p>

Proposal	Your feedback
<p>C5 We propose that the AFS licensing exemption in proposal C1 should only apply if the testing business maintains adequate compensation arrangements.</p>	<p>C5Q1 Do you believe that testing businesses will be able to obtain professional indemnity insurance to compensate retail client losses?</p> <p>C5Q2 What other compensation arrangements could be used by testing businesses (e.g. group cover or mutual fund schemes)? What practical issues exist with other compensation arrangements?</p>
<p>C6 We propose that the AFS licensing exemption in proposal C1 will apply only if the testing business:</p> <ul style="list-style-type: none"> (a) is a member of an ASIC-approved external dispute resolution scheme; (b) complies with the modified disclosure requirements; and (c) complies with the best interests duty and conflicted remuneration provisions as if the business were an AFS licensee. 	<p>C6Q1 Are the compliance conditions we have identified—in relation to dispute resolution procedures, disclosure and conduct (i.e. best interests duty and conflicted remuneration)—appropriate? If not, please provide reasons.</p> <p>C6Q2 Are there any other consumer protections that should apply to clients of testing businesses? If so, what are they?</p>
<p>C7 We propose that the AFS licensing exemption in proposal C1 will apply only if the testing business is 'sponsored' by an organisation ('sandbox sponsor') recognised by ASIC.</p> <p>We propose that sandbox sponsors will be not-for-profit industry associations or other Government-recognised entities. The ASIC-approved sponsors would be named in the licensing exemption (and could be updated from time to time).</p> <p>We expect sandbox sponsors to only sponsor testing businesses if:</p> <ul style="list-style-type: none"> (a) that business is operated by fit and proper persons; and (b) they have conducted a preliminary assessment that the testing business's proposed business model is reasonably sound and does not present significant risks of consumer detriment. 	<p>C7Q1 Do you support the requirement for a testing business to be 'sponsored' by an industry organisation? Please give reasons for your answer.</p> <p>C7Q2 What types of entities should ASIC approve as sandbox sponsors?</p> <p>C7Q3 How should ASIC ensure that a sandbox sponsor is only sponsoring appropriate testing businesses?</p> <p>C7Q4 What circumstances should a sandbox sponsor take into account when sponsoring a testing business so that the business can rely on the licensing exemption?</p> <p>C7Q5 What costs, if any, would testing businesses incur in obtaining sponsorship?</p>
<p>C8 We propose that a testing business will need to:</p> <ul style="list-style-type: none"> (a) notify ASIC that it intends to rely on the AFS licensing exemption in proposal C1 from a specified date; (b) provide evidence of sponsorship from a sandbox sponsor (see proposal C7); and (c) declare that it has reasonable grounds to expect that it can operate its business for a period of six months from the specified date. <p>We also propose to require that testing businesses give us a short report about their test following completion of the testing period.</p>	<p>C8Q1 Do you agree with this proposal? Please give reasons for your answer.</p>
<p>C9 We propose that ASIC will have the power to withdraw the AFS licensing exemption in proposal C1.</p>	<p>C9Q1 When should we exercise our power to withdraw the licensing exemption?</p>