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Australian Securities and Investments Commission  
Level 5, 100 Market Street,  
Sydney NSW 2000

**Attention:** Brooke Stewart (brooke.stewart@asic.gov.au)

Dear Sir

**Consultation Paper 254 Providing digital financial product advice to retail clients**

We refer to your Consultation Paper 254 (**CP 254**) and accompanying Draft Regulatory Guide (**Draft RG**) published in March 2016. Thank you for the opportunity to provide comments on the Draft RG.

We adopt the questions set out in CP 254 and comment as follows.

**A1Q1 Overall, is the proposed guidance helpful? If not, why not?**

The proposed guidance appears to be of limited utility. The Draft RG states that its objective is to be “a convenient starting point for those seeking to understand their regulatory obligations in relation to providing digital advice” (paragraph 7). Whilst the Draft RG is likely to accomplish that objective, it does not address many specific issues encountered only by digital advice providers arising from their regulatory obligations.

Although it is helpful that ASIC has offered to provide consultation on a case by case basis, it is likely to be more helpful – both to digital advice providers and ASIC – if the Draft RG were to canvass a broader set of issues that arise in connection with providing robo advice and if it were to provide more specific guidance on a range of issues, including by providing more specific examples pertaining to digital advice.

**A1Q2 Is our proposed guidance (in Section D of the draft regulatory guide) helpful in assisting digital advice providers to provide scaled advice that is in the best interests of clients? If not, why not?**

We acknowledge that the law may be blind to whether advice is being provided by a computer, a human or a combination of the two, but the practical steps that a licensee will take in order to satisfy their legal obligations will differ depending on whether the advice is being provided by way of a computer or in a more traditional manner by face to face communication with an individual.

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The usefulness of this part of the Draft RG could be enhanced by the inclusion of some examples that address at least some of the issues that arise in providing scaled advice and complying with the best interests duty in the digital advice context.

Consider paragraph 92 of the Draft RG which states that “if you are a digital advice provider offering scaled advice, you should think very carefully about the way you communicate with clients”. While this is irrefutable, some examples of where communications are likely to be particularly important or sensitive would be useful.

An obvious context where communications made by the digital advice provider are likely to be particularly important is compliance with the safe harbour requirements in section 961B of the Corporations Act 2001. If a digital advice provider sought to rely on these safe harbour provisions, it would need to “prove” that the digital advice provider did a number of things, many of which are stated to occur at the initiation of the client; for example, identify (i) the subject matter of the advice that *has been sought by the client* (whether explicitly or implicitly) and (ii) the objectives, financial situation and needs of the client that would reasonably be considered as relevant to *advice sought* on that subject matter. In the context of advice being provided digitally, communications made by the digital advice provider will need to be phrased so that the digital advice provider can prove that the client sought advice. Drafting communications with a view to proving other matters required by section 961B of the Corporations Act 2001 in the digital advice context is likely to be even more difficult, and examples of statements that could/could not be used to satisfy the safe harbour requirements in the digital advice context could be useful.

The Draft RG does not address all issues that digital advice providers have already encountered and of which, we understand, ASIC is aware. For example, the Draft RG does not set out ASIC’s policy on the circumstances where the digital advice provider may have information, or could be deemed to have information, about the client that it obtained from a source other than the computer programme that is generating the advice. This could occur where a digital advice provider is a member of a larger financial services group and receives information about a client from another member of the group, not through the computer program that is formulating the advice. As a result, the computer would not take into account the additional information when formulating the advice, but it would, nevertheless, be in possession of this additional information. It would be beneficial to have ASIC’s view and guidance on dealing with information in these circumstances and whether digital advice providers can ensure that they do not have additional information about a client other than information that is submitted through the computer program providing the advice.

Given that so much of the success of the communication depends on the context and appearance, it would also be useful if the examples were not simply set out in a regulatory guide, but offered by way of interactive online example. The online calculators offered by ASIC, for example, are useful in determining how licensees can provide compliant online calculators to their clients.

Finally, the examples set out in RG 175 and RG 244 are of limited utility to digital advice providers. The mode of delivering the advice by computer will, to a large extent, mean that many of the points illustrated in these examples do not address the particular issues that arise in the context of providing advice by way of a computer or other digital means.

## **B1 – Responsible Managers of digital advice providers**

We agree with the proposal to require a digital advice licensee to have at least one responsible manager who meets the minimum training competence standards for advisers. However, six months is a relatively short transition period, particularly if the proposed changes in the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 become

law. A transition period of at least 12 months seems like a more reasonable time to enable existing digital advice providers to comply with the requirements.

**C1 – Monitoring and testing digital advice algorithms**

We agree that, given the other normative requirements set out in the Draft RG, the additional burden imposed by a self-certification requirement is not warranted by a corresponding regulatory benefit.

Please contact Shelley Hemmings or Austin Bell at the details noted above if you wish to discuss.

