

Ms Xenia Quinn
Lawyer
Financial Advisers
Australian Securities and Investments Commission
Level 7, 120 Collins Street
Melbourne VIC 2000

26 February 2016

Dear Ms Quinn,

Re: Proposed requirements for client review and remediation programs

We appreciate the opportunity to respond to the Consultation Paper 247: *Client review and remediation programs and update to record-keeping requirements* ("CP 247"). We acknowledge that CP 247 sets out ASIC's proposed guidance on client review and remediation programs that may be conducted by Australian financial services licensees to remediate clients who have suffered losses due to the decisions or behaviours of advice licensees or their advisers. CP 247 also proposes to update the record-keeping requirements by amending Class Order 14/923, so that licensees not only have to maintain client records for seven years, but must also have access to those records during this period.

We note that ASIC is looking for a response to the specific proposals and questions in relation to client review and remediation programs, and to also describe any alternative approaches which may achieve the objectives.

We acknowledge that the principles outlined in the paper are intended to apply regardless of the size of the licensee, size of the remediation program, or nature of the issue requiring remediation. To the extent relevant, the principles are also intended to apply to programs conducted to remediate retail clients for losses suffered in areas such as superannuation or credit, or programs conducted by advice licensees not relating to personal advice.

We are broadly supportive of the proposed guidance for client review and remediation programs and the update to record-keeping requirements. In particular we would like to highlight our views on the following to you and our proposed alternative solutions:

Your feedback reference	Deloitte response
B2Q1 Have we appropriately defined a 'systemic issue' for the purposes of this guidance? If not, please give details. Please also provide alternatives.	<p>We believe that the definition of 'systemic issue' requires further clarification including consideration of alignment with existing significance tests in common usage and breach reporting obligations.</p> <p>We suggest a tailored approach whereby licensees be required to assess the potential for a review and remediation program</p>

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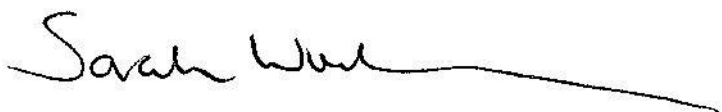
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Your feedback reference	Deloitte response
	<p>where groups of clients have or are likely to have suffered financial detriment, and to demonstrate their conclusions to those charged with governance and how this meets their obligations as a licensee.</p>
<p>D1Q3 Do you agree that advice licensees should review advice as far back as the licensee has retained records? If not, what is a reasonable timeframe?</p>	<p>ASIC expects an advice licensee to review advice as far back as the licensee has retained records. This includes where a licensee has retained records for longer than the seven year requirement for record retention. We believe this will lead to inconsistencies in response depending on licensees' record retention policies.</p> <p>We believe that a principle of 7 years is sensible as it aligns with current record keeping requirements. We recognise licensees may choose to look further back where there are particularly egregious instances of misconduct or vulnerable client groups.</p>
<p>E3Q1 Is it reasonable for advice licensees to make a decision on whether to remediate a client within 90 days of the client being notified that they are within the scope of the program? If not, what other timeframe would be appropriate? If a timeframe is not appropriate, are there other ways to ensure advice is reviewed in a timely way (e.g. regular reporting to the public)?</p>	<p>Depending on the nature, scale and complexity of the program, the aim should be to conduct the program so that it achieves quality outcomes and does not have to be repeated. This need for quality takes precedence over the time taken to respond.</p> <p>However we believe clients should receive regular communication so they are aware of the status of their case, and have the opportunity to provide information at any time.</p>

We have also prepared the attached document which outlines our interpretation of the key themes from CP 247 and five pillars which we believe are essential to a successful review and remediation program.

If you have any queries in relation to this submission please do not hesitate to contact me via email at sawoodhouse@deloitte.com.au or on 02 9322 7510.

Yours faithfully



S C Woodhouse
Partner
Deloitte Touche Tohmatsu



A framework for a better future

Response to ASIC Consultation Paper 247
on Review and Remediation Programs

The context

In December 2015, the Australian Securities and Investment Commission (ASIC) released Consultation Paper 247 (CP 247) *Client review and remediation programs and update to recordkeeping requirements*.

CP 247 sets out ASIC's proposed guidance on client review and remediation programs that:

- are conducted by Australian financial services licensees who provide personal advice to retail clients (advice licensees)
- remediate clients who have suffered loss as a result of the decisions and behaviour of the advice licensee, or an individual adviser or advisers, in relation to the provision of personal advice.

The principles in CP 247 are intended to apply regardless of the size of the licensee, size of the remediation program, or nature of the issue requiring remediation.

To the extent relevant, the principles are also intended to apply to programs conducted to remediate retail clients for losses suffered in areas such as superannuation or credit, or programs conducted by advice licensees not relating to personal advice.

Key considerations include:

- when to establish a review and remediation program
- the scope of the program
- designing a comprehensive and effective program
- communicating effectively with clients
- ensuring access to the external review of decisions.

CP 247 also proposes to update the recordkeeping requirements by amending class order 14/923, so that licensees not only have to maintain client records for seven years, but must also have access to those records during this period.

In developing the proposed guidance, ASIC has been informed by its recent experiences in negotiating a number of review and remediation programs conducted by advice licensees.

We are broadly supportive of the proposed guidance and believe that, once consultation is complete, it will provide the framework for a better future.



A proper review and remediation program builds public trust and confidence

The four key themes of the ASIC consultation paper are:



Build public trust and confidence in financial services

Clients should have confidence that a program is conducted to lead to fair and consistent outcomes.

- A principles based approach to remediation will increase consistency across industry participants, while allowing for flexibility given the nature, scale and complexity of the issue in question
- Independent oversight by an internal or external party, sufficiently skilled and competent to conduct the oversight role, will provide confidence in the quality and fairness of the program outcome
- Clients should be provided with sufficient detail about their own situation, so they can make an informed decision as to any action required
- Public reporting will generally provide transparency around overall program outcomes for clients
- In principle we concur that guidance is helpful for all client remediation programs. However CP 247 will require tailoring to the specifics of banking, insurance and superannuation remediation programs.



Achieve quality outcomes

Licensees must maintain quality at all times which may inhibit the desire to achieve a fast response.

- It is important to set up and design a review and remediation program with adequate resourcing, a customer centric culture, and robust governance, in order to achieve quality outcomes
- The consultation paper suggests advice licensees should decide whether to remediate an affected client within 90 days of notifying the client they are within scope. Depending on the nature, scale and complexity of the program, the aim should be to conduct the program so that it achieves quality outcomes and does not have to be repeated. This need for quality takes precedence over the time to respond
- Clients should receive regular communication so they are aware of the status of their case, and have the opportunity to provide information at any time
- A review and remediation program should include root cause analysis so that lessons learned can be used to enhance business as usual practices, including product, business process, control or reward design.



Address systemic issues

Existing business as usual practices for identifying, rectifying and reporting issues, and for compensating clients, will be strengthened.

- Licensees generally aim to do the right thing by their clients, and to put things right when issues have been identified
- The consultation paper states a review and remediation program is generally appropriate where a systemic issue has been identified. A systemic issue is defined as an issue that may have implications beyond the immediate rights of the parties to a complaint or dispute, or that may have implications for more than one client. This definition requires further clarification including alignment with existing significance tests and breach reporting obligations
- We suggest a tailored approach whereby licensees are required to assess the potential for a review and remediation program where groups of clients have, or are likely to have, suffered financial detriment, and to demonstrate their conclusions to those charged with governance and how this meets their obligations as a licensee.



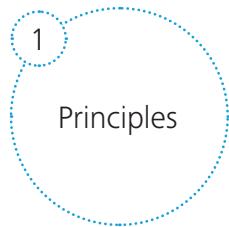
Respond to historical issues

Clients should be treated fairly and consistently. A seven year period aligns with record keeping requirements.

- Clients who wish to complain about products and services can use existing internal and external dispute resolution schemes
- The consultation paper is designed for licensees to proactively address the need for client financial compensation where there has been actual or potential client detriment. ASIC expects an advice licensee to review advice as far back as the licensee has retained records. This includes where a licensee has retained records for longer than the seven years statutory requirement for record retention. Unfortunately this will lead to inconsistencies depending on licensees' record retention policies
- We believe that a principle of seven years is sensible given it aligns with current record keeping requirements. We recognise licensees may choose to look further back where there are particularly egregious instances of misconduct or vulnerable client groups. Digitisation of all client records will assist with this.

Key pillars of a remediation program

Based on our experience of remediation, we have identified five pillars essential to a successful remediation program.



A program should:

- Have a client focused output
- Meet regulatory expectations
- Achieve a 'one time review' i.e. no further remediation required
- Transfer 'lessons learned' into business as usual operations
- Be conducted in a controlled environment, retaining clear, demonstrable audit trails and provide timely and accurate management information.



Develop and share consistent policies and procedures across remediation programs and complaints handling teams to:

- Communicate with clients (frequency and type, dealing with non contacts)
- Handle priority cases (emotional and financial hardships)
- Compensation principles including interest, alternate portfolios and fee reimbursements
- Set up policy and procedural approvals.



Steps to take include:

- Review processes including:
 - Databases
 - Management Information reporting
- Develop tools such as:
 - Workflow
 - Compensation calculators
- Allocate dedicated, qualified resources
- Create appropriate infrastructure to enable:
 - Designated location(s) to undertake the work
 - Mobilisation processes for scaling and flexing operational capacity
 - Pilot scheme implementation and assessment.

Key pillars of a remediation program

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Establish a governance framework with:

- Steering committee structure
- Operational review check points
- Financial management and provision framework
- Change control and change governance
- Communications strategy
- Operational and business risk framework
- Quality assurance framework
- Central planning and management information function.



Design an approach which errs in favour of the client by:

- Implementing a contact strategy which uses behavioural insights
- Providing clients with adequate information of any decisions made and the reasons behind those decisions
- Giving clients the opportunity to provide additional information
- Offering access to internal and external dispute resolution schemes
- Promoting a culture of continual improvement to deliver the most effective client outcomes.



Deloitte has recently issued a publication called **The Advice Based World** which provides a working hypothesis of the future of the financial advice industry.

Click [here](#) if you would like to find out more.

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