REST Industry Super Submission

May 2016

Response to: Consultation Paper 254
Regulating digital financial product advice

May 2016

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Background

On 21 March 2015, the Australian Securities & Investment Commission (ASIC) issued for public consultation, Consultation 254 Regulating digital financial product advice, with comments due by 16 May 2016.

This consultation paper sets out ASIC's proposed approach to the regulation of digital financial advice in Australia.

ASIC has sought the views of Australian financial services (AFS) licensees and their representatives who provide financial product advice to retail clients, and other interested parties.

Specifically, ASIC is seeking feedback on their proposals relating to:

- how the organisational competence obligation applies to AFS licensees in a digital advice context; and

- how AFS licensees should monitor and test the algorithms underpinning digital advice.

About REST

The Retail Employees Superannuation Trust (REST) was established in 1988. Open to all Australians, REST is amongst the largest funds by membership, with around 2 million members and over $37 billion in funds under management (as at 30 June 2015).

As a profit-to-members fund, we put our members first. Our fees are among the lowest of any superannuation fund. We offer our members:

- Low fees
- Investment choice
- Competitive long term performance
- Value for money insurance

REST is currently licensed for the provision of General Advice only, however is in the investigation phase of providing personal advice, and hence believes it is appropriate to comment on this consultation paper.

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REST's submission in detail

A. Background to the proposals

ASIC's proposed guidance to assist digital advice providers

Ref.	Consultation Question	REST Response

A1Q1	Overall, is the proposed guidance helpful? If not, why not?	The proposed guidance is helpful, for the following reasons:
		• Defining what is meant by 'digital' or 'robo' advice as there seems to be different interpretations as to what this actually means in the marketplace and the requirements that this entails
		• Clarification that there are no new regulatory concepts being introduced
		• Providing specific guidance on the capability and requirements of Responsible Managers for digital advice providers
		• Information on how digital advice providers can comply with best interests duty
		
		We recommend additional guidance be given on:
		• The specific requirements of licensees compared to software providers on the development, monitoring and updating of advice algorithms;
		• An explanation of what clear, concise and effective communication looks like in a digital advice context. This should address:
		    o the question and answers asked of program users
		    o the format and content of disclosures
		    o the format and content of advice issued
		
		We believe such an explanation is warranted as in a digital advice context there is a limited means of checking something is understood, there is an increased risk of misinterpretation and conciseness is a key issue, particularly due to the shorter timeframe of digital advice and user expectations of digital information.
		• An explanation of what "adequate arrangements" need to be in place to manage conflicts of interest": s912A(1)(aa). It is not clear in a digital advice context how this can be managed.
		We further recommend that ASIC provide

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		clarification on the legislative references used to support RG 000.52 – 000.70 as we consider that the guidance that has been offered is based on references that may not be applicable, considering ASIC's guidance on these references for traditional advice licensees.
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?	Overall, Part D does provide clarity and guidance on how digital advice providers can provide advice that is in the best interest of the client. One of the key criteria for effective scaled digital advice will be the ability of the digital platform to ensure advice can be scaled up or down, and further to this, what the entry and exit points are in the advice process to ensure that the consumer understands what advice they are receiving. Also, the client will need to be informed about the scope of the advice, and other financial planning requirements they may have that are not being addressed as part of this advice, and flow on impacts this advice may have on their broader financial position. The application of a digital advice model would appear to lend itself to more defined, scaled (single issue) pieces of advice, rather than a strategic full advice offering. The complexity of requirements around triage and filtering in a comprehensive advice model would make this a difficult proposition to satisfy the best interest duty. We may also benefit from guidance on whether digital advice requires any additional, reasonable steps to be taken to act in the best interests of the client: s961B, particularly given that in a digital advice context there may be a considerably shorter timeframe between seeking advice and implementation of a recommendation RG 000.100 advises that ASIC scrutiny may apply where all clients receive advice from a digital advice provider. This may not be straight forward as this may depend on the effectiveness of the scaling prior to the advice being provided, or even accessed. For example, an offer of investment choice advice within a superannuation fund could quite easily result in all clients entering the advice offering receiving advice, as the scaling would occur prior to the entry of the client into the advice offer, by making it clear what the advice will apply to (investment options within a super platform) and hence the main filter or triage point is very early on in the process where clients could opt out if they had other advice requirements.

B. Complying with the organisational competence obligation

ASIC's proposed requirements for responsible managers of digital advice licensees

Ref.	Consultation Question	REST Response
B1Q1	Do you agree with this proposal? Please provide supporting arguments.	We agree with the proposal to have at least one responsible manager who meets the minimum training and competence standards for advisers, provided there is no difference in the training/experience requirements of a responsible manager in a digital advice licensee as compared to a traditional advice licensee, as this is not specifically stated. We believe that in order to understand the provision of personal advice to retail clients, understanding needs to be maintained within the organisation regardless of the channel of delivery of personal advice. As advice is technology neutral, it should be treated the same as if personal face-to-face advice was being provided. We believe it is essential for a Responsible Manager to meet these obligations, as there is no other method by which to ensure that the AFSL is meeting its obligations in regards to the provision of the advice. The AFSL should be able to define the advice if required as would be the requirement for non-digital advice. One point to note will be that in larger licensees there may even be a requirement for more than one responsible manager to meet this requirement, to avoid the situation where licensees adopt this as a token exercise, or where there are more than five responsible managers for example, there may be a requirement to have two people meet this requirement given the potential application, client impact, and key person risk.
B1Q2	Do you agree that, if the changes proposed in the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 become law, at least one responsible manager should: (a) meet the new higher training and competence standards (i.e. have a degree or equivalent, pass an exam, complete a professional year and undertake continuing professional	With the obligations on Responsible managers contained in RG 105, we agree that at least one responsible manager should meet the higher training and competence standards, and comply with the proposed ethical standards. This will be especially important in the design and delivery of digital advice as the ethical framework of the licensee will need to be reflected in the digital advice offer.

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	development); and (b) comply with the proposed ethical standards (i.e. comply with a code of ethics and be covered by an approved compliance scheme)?	
B1Q3	Are there any aspects of the proposed higher training and competence standards in the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 that should *not* apply to at least one responsible manager of a digital advice licensee?	We do not believe there are any aspects of the proposed higher training and competence standards that should not apply to at least one Responsible Manager.
B1Q4	Is the proposed transition period of six months long enough for existing AFS licensees to comply with the requirement to have a responsible manager who meets the minimum training and competence standards? If not, why not?	We believe a transition period of 12 months may be more appropriate to enable smaller AFS licensees to comply with this requirement, as it will a lesser impact on many smaller licensees who are often involved in the business and have other advisory functions to perform.
B1Q5	Please provide feedback on any costs or benefits that may apply to your business under the proposal.	We see the only impact to be additional potential training costs.

C. Monitoring and testing digital advice algorithms

Our proposed requirements for monitoring and testing of algorithms by digital advice licensees

Ref.	Consultation Question	REST Response
C1Q1	Do you think we should be more detailed in our guidance on the ways in which we think digital advice licensees should monitor and test algorithms? If so, what additional guidance should we provide?	Yes, we may benefit from additional guidance in relation to RG 000.58 on the expectation of capability within the licensee, specifically whether additional advice or IT capability is required.
C1Q2	Please provide feedback on any costs or savings to your business as a result of this proposed guidance.	If additional requirements were put in place regarding algorithm testing beyond what is required at the moment, additional resources would have to be recruited to do this. These resources may be quite costly due to the specialist skill set required to be maintained within the business as opposed to outsourcing.
C1Q3	Do you think we should introduce a self-certification requirement which would require digital advice licensees to certify that their algorithms have been adequately monitored and tested?	We fail to see what advantage this would provide beyond the already existing requirements regarding the accuracy of the advice provided. We do not believe such a self-certification would add value beyond a tick-a-box requirement, as licensees would presumably pass this on to a software company to obtain this certification and reliance on it. We believe if such a requirement is to be considered, it should be done so for the provision of broader financial planning advice, and not just digital advice as the algorithms for the provision of digital advice may well be the same for alternate advice delivery methods.
C1Q4	Should we require independent third-party monitoring and testing of algorithms? If so, in what circumstances would this be warranted?	We could not see how this could be practically implemented given the different types of digital advice in existence from simple automated risk profiling analysis, to investment portfolio construction to complex financial strategy analysis around superannuation, gearing, Centrelink etc. This would add complexity and cost for limited value. Also, of importance is not just the algorithm, but the overall appropriateness of the advice for that client. An algorithm can work perfectly and be signed off, but if the client should not have received that advice, the value of this testing is limited.