

20 May 2016

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Subject: ASIC Consultation Paper 254 – Regulating Digital Advice

Dear Ms Stewart,

The Financial Services Council (FSC) thanks the Australian Securities and Investments Commission (ASIC) for the opportunity to provide feedback on Consultation Paper 254-Regulating Digital Advice.

The Financial Services Council (FSC) has over 115 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The industry is responsible for investing more than \$2.6 trillion on behalf of 11.5 million Australians. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

We welcome the consultation paper on regulating digital advice. As identified in the regulatory guide digital advice has the potential to offer low cost convenient advice to consumers who may not otherwise seek advice. We also hold the view that digital advice is a valuable tool for clients who already seek advice, with digital advice being incorporated into the advice process or supplementing human delivered advice. Guidance should therefore be flexible and allow for a diverse range of digital advice models, such as combined models where digital and human generated/delivered advice are both used, stand alone digital advice offerings and so on.

To ensure the integrity and consumer protections when receiving advice, the FSC supports the view that the advice obligations are equivalent irrespective of whether advice is provided digitally or in a traditional advice context. This ensures that advice is not any less beneficial or less protected from a client perspective. The advice delivery method (e.g. face to face, human delivery, or digital advice) does however present a unique set of circumstances that is relevant to the provision of advice, as is identified in the proposed guide. This submission provides feedback relevant to the digital advice context, as well as setting out our responses in relation to the questions raised in the consultation paper.

We welcome the opportunity to discuss the contents of this submission further. Please contact me on 02 9299 3022 if you would like to discuss.

Yours sincerely

BIANCA RICHARDSON
SENIOR POLICY MANAGER

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

Yes the proposed guidance is helpful. It would also be of assistance to provide further clarity in relation to some existing obligations and how they can be met in a digital advice context. The Financial Services Council's (FSC) feedback to the consultation paper provides suggestions where additional feedback would be of assistance.

Flexibility to accommodate different kinds of devices and user interface options

We ask ASIC to ensure that its expectations of licensees:

- are practical when applied across all the different kinds of devices a customer may use to access these digital advice tools (and in particular, results in clear and effective communication on the small screens or a hand held device).
- Recognise that different kinds of user interface options can be used for effective communication through a digital medium – for example pop up messaging, layered architecture (like links), text on screen, interactive charts or tables, even gaming.

We therefore request the guidance in the proposed Regulatory Guide (particularly at para 000.94) focus on principles rather than prescription.

We suggest that the overriding principle should be that the Digital Advice Provider (DAP)¹ must ensure that each piece of information (required to be communicated) is communicated appropriately. Appropriate communication for a particular piece of information will depend on:

1. the relative importance of that piece of information (in the overall communication with that customer).

For example, information about dispute resolution processes that are available is likely to be initially less important to a customer than information about the key limitations of the digital advice tool.

Hence, a DAP may choose to communicate the dispute resolution processes under a general "Important Information/Disclaimer" link or through the Financial Services Guide but choose to communicate the key tool limitations prominently on the user interface – e.g. as text on the screen or through pop up boxes on the screen. Some information is already required to be disclosed in other regulated documents – such as in FSGs and SOAs. The fact that the information is disclosed to the customer in another regulated document may be taken into account by a DAP in determining what needs to be disclosed and how and when that disclosure should occur through the tool;

2. the complexity (or simplicity) of the digital advice tool;

The user interface option chosen/available for this digital tool (and as technology evolves, the new options that become available for that digital tool).

¹ The Digital Advice Provider for the purposes of the submission refers to an AFS Licensee providing financial product advice to retail clients in a digital format.

3. what the DAP knows about this customer (or, at least, the attributes of a typical customer that would use this tool).

For example, a licensee may offer a digital advice tool (with specific features best suited to higher income earners) only to customers where the licensee's administration platform shows an income of more than a certain threshold.

This can be done by only attaching the link to the tool to the member account screens of those higher income customers. Some information may be more or less important to that group of customers because of that attribute – higher income. And the less important information may be communicated differently for that customer group.

For example, information about the 'Low Income Superannuation Tax Offset' may be deeper in the layering of the user interface than for digital advice tool for use by low income earners.

Where the tool doesn't access it or take it into account information that the Licensee, or any related body corporate already holds about the client, there should be no need to make further enquiry or take it into account for the advice requested and given through the tool. This should be subject to warnings about limitations of the tool (i.e. it relies on and uses the input the client provides at that particular time unless it says otherwise); and

4. the particular digital channel/s through which the tool is offered.

Each channel may have different opportunities and constraints. A DAP will need to adjust the communication of that piece of information to be appropriately communicated through each of the channels chosen. Sometimes a DAP may therefore communicate the same piece of information in different ways for different channels.

The desirability of the principles based approach is reinforced by the rapid evolution of both user interface options/platforms and the devices on which customers choose to access that information. A principles based approach is better able to accommodate advances in technology and so supports innovation.

Filtering

Proposed paragraph 000.100 includes "A digital advice model that results in all clients receiving advice would raise serious concerns and would prompt close scrutiny from ASIC".

We ask that the proposed Regulatory Guide recognise that filtering out clients can happen outside the digital advice tool. For example, a tool that cannot accommodate defined benefits may simply not be offered to those customers with defined benefits (because the link to the tool is only attached to member accounts that are purely accumulation).

Similarly, a tool that cannot consider a 'Low Income Superannuation Tax Offset' ("LISTO") may only be offered to customers whose salaries on the licensee's administration platform are higher than the threshold for LISTO to apply (\$37k).

Reconstructing changes to the tool

Proposed paragraph 000.69 includes ASIC's expectation that DAPs will "be able to control, monitor and reconstruct any changes to algorithms over a seven-year timeframe" [emphasis added].

We support that all licensees must (directly, or through their service providers) keep records that describe any changes made to the algorithm with a particular focus on the output produced by the tool. Those records must explain the effect of that change on the output produced.

We ask ASIC to clarify that it is not expecting licensees to be able to "reconstruct" a former version of an algorithm (in the sense of replicating the output that would have been produced before the change). We understand that this is not ASIC's intention but ask ASIC to clarify this in the regulatory guide to avoid confusion.

Reconstruction (in the sense of replicating the output that would have been produced before the change) would be difficult in some circumstances. For example, a change may be made to an algorithm because of a change in a data feed to that algorithm – e.g. the administrator changes its administration platform resulting in information about members being captured and held in a different way. Once that change to the administrator's platform has been made, it will not be possible to 'reconstruct' the digital advice tool (in the sense of replicating the output that would have been produced before the change) because even using a version of the algorithm from before the change, it will not generate the output that would have been generated before the change.

We suggest that to 'record' rather than 'reconstruct' any changes would be more appropriate so that the correctly identified algorithms from previous years can be considered alongside the decision rules and test strategy referred to in bullet point 1 and 2 in RG 000.69.

Disclosing the algorithm

Many DAPs will acquire digital advice capability for their products by licencing the tool from the developer of the tool. The commercial value of the tool is almost entirely in the unique algorithm powering the tool. The algorithm developer will have spent considerable time and resources developing, testing and refining that algorithm to produce a unique experience that can be sold to licensees.

Therefore, the algorithm is highly confidential, highly valuable intellectual property.

We fully support the proposition that each licensee must understand the purpose scope and design of the algorithm and have documented test and rectification strategies for the output of the digital advice tool. However, we ask that ASIC express its expectations of licensees in the proposed regulatory guide to be clear that the full algorithm is not required to be disclosed. Instead, a licensee would meet ASIC's expectations (for example at paragraph 000.69) by robust terms in a licensing agreement that require the developer to take appropriate steps to describe the operation of /change to the algorithm and conduct appropriate testing (with detailed results reviewed by the licensee) but do not require the full algorithm to be disclosed.

Cyber risks and information security

Rep 429 outlines the importance of assessing cyber and information risks appropriate to AFS licensees amongst ASIC's other regulated population. We understand that the measures listed in RG

000 in relation to cyber risks and information security are largely in line with the measures listed in Rep 429.

However, we note a discrepancy in compliance measures in relation to cloud technology. In RG 000.75, adequate security compliance measures in relation to cloud technology is expected from all AFS licensees such as *Cloud computing security for tenants* published by the Australian Cyber Security Centre; nevertheless, this was not referenced in Rep 429. We believe that unless Rep 429 is updated, an additional compliance measure listed external to Rep 429 but that applies to ALL AFS licensees including those that do not provide digital advice is also imposed which would create much confusion for AFS licensees who currently do not provide digital advice and hence would not consider reviewing RG 000 for guidance.

We suggest that RG000.75 be amended such that it reads “we expect all AFS licensees [providing digital advice] – particularly those who rely heavily on digital storage....” etc.

Flexibility to accommodate diverse advice models

Digital advice can be used in a range of contexts and may be incorporated into the combined models where digital and human delivered advice re both used. For example, the client could receive guidance during the process through live chat.

We note our opening comments that guidance should be flexible and allow for a diverse range of digital advice models, such as combined models where digital and human generated/delivered advice are both used.

Should ASIC have a view that there are different expectations where combined advice models are utilised, it would be helpful for ASIC to provide further guidance on what its expectations are in such circumstances.

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?

In our submission, there are a number of key principles that are essential to the functionality of the application of existing law to digital advice. It is important, therefore, that there be a clear common understanding of these principles.

It is also important to recognise that in digital advice there are particular consequences of the application of the FOFA regime which are particular to digital advice. We point these out below.

A key driver of the principles set out below is to ensure that we strike the right balance between facilitating innovation that enhances the user experience and ensuring that consumers are adequately protected.

In seeking to strike this balance, it is important to ensure that the regulatory framework provides a level playing field for the different types of digital advice offerings. Having regard to local and overseas developments, these may range from simple calculator type tools to comprehensive holistic advice.

At the outset, there is a common feature of digital advice offerings that needs to be highlighted and which is recognised by ASIC’s proposed regulatory guide. It relates to the fact that where advice is provided through a digital medium, the ability to scope the subject matter of the digital advice will

be subject to the limitations of the computer program that delivers it and it will be rigid beyond those limitations.

This is particularly important for digital advice models that offer narrowly scoped advice. The narrower the scope, the greater the need for clarity about the application of the statutory best interests and related obligations to the scoping of that advice.

Our submission on the key principles that should govern the scoping of that digital advice is set out below.

1. Scoping

It is clear that the ambit of the personal advice given by an adviser to a client can be scoped.

Section 961B(2) of the Corporations Act 2001 (Cth) (Corporations Act) contemplates that the ambit of advice will be determined in the first instance by input from the client (viz section 961B(2)(a), reference to instructions of the client, section 961B(2)(b), subject matter of advice sought by the client).

It is equally clear that the ambit of the advice can be determined by an interaction between the adviser and the client, in terms of an agreement as to the subject matter of the advice. This occurs through a contractual model of a meeting of the minds of a client and an adviser (having regard to their best interests obligation). This is recognised in ASIC's regulatory guide.

In digital advice, the contractual model operates a little differently. The digital tool sets up the subject matter of the advice as effectively an offer and the client accepts that offer by engaging with the tool. This reflects the rigidity of the offer made through the digital medium (as explained above).

Scoping assumes particular importance in the context of digital advice given the rigidity of the scoping process in the digital medium.

In the context of digital advice:

- a) the subject matter of the advice is essentially set up by the digital tool's focus (e.g. superannuation, investment, risk etc.);
- b) instructions of the client are mainly responsive to the fact find initiated by the digital tool.

This means that, whilst the concepts of instructing and subject matter of advice are clearly relevant, they work in different ways.

In particular, scoping of subject matter is essentially a pre-determined field. The client must make an initial decision as to whether they are interested in that scoped subject matter (i.e. is it relevant to their goals, which in technical terms translates to meeting their objectives, financial situations and needs). If not, there is a threshold decision, which needs to be taken by the client as to whether he or she engages with the digital tool. At the same time, the digital tool effectively assumes responsibility for seeking input from the client in terms of information that is relevant to, and necessary for, the scoped subject matter. Again, it is important to recognise that the ambit of this fact finding is predetermined and limited by the computer algorithm.

It follows from this background that the statutory advice obligations of advisers under the Corporations Act, including the obligations attaching to a digital tool must be determined and assessed by reference to the way in which the scoping of advice is undertaken in a digital medium.

The subject matter of digital tools may be scoped:

Type 1: by reference to a particular need or goal, e.g. saving for retirement (which equates to advice in relation to a class of financial product); or

Type 2: by reference to advice about specific financial products (e.g. managed funds or ETFs of a particular provider).

But equally, digital tools will be diverse in their focus and a digital tool may be an extension of calculator type tool or provide advice on particular types of strategies more generally. A critical point is to appreciate that where the subject matter of advice is scoped, the objectives under the best interests obligation are shaped by that scoping, as illustrated below.

The main impacts of such scoping on the statutory obligations of the digital advice provider are that their obligations are tailored to the scoped subject matter, as explained below:

- the adviser will be able to advise on the objectives, financial situation and needs of the client that are reasonably considered to be relevant to that scoped subject matter (viz section 961B(2)(b)(ii));
- the adviser will be able to collect and process information which relate to the client's circumstances, being circumstances which are relevant to the scope of subject matter (viz section 961B(2)(c));
- the adviser will be able to assess whether they have the expertise required to provide the advice, relevant to the scoped subject matter (viz section 961B(d));
- the adviser can conduct a financial investigation into financial products which might achieve the client's objectives and needs which would reasonably be considered to be relevant to advice on the scoped subject matter (section 961B(2)(e));
- the adviser can base all their judgments on the circumstances relevant to the scoped subject matter (section 961B(2)(f));
- the adviser can take any other step that would be regarded as in the best interests of the client given the circumstances relevant to the scoped subject matter (section 961B(2)(g)).

Similarly, the duty to give appropriate advice (section 961G), the duty where advice is based on incomplete or inaccurate information (section 961H) and the duty to give priority to the client's interests will all be shaped by the scoped subject matter.

In particular, for example, what is appropriate advice must be considered with reference to the scoped subject matter (see below).

2. Specific Application to Digital Advice

Type 1 Scoping:

Where scoping relates to a particular goal or need (for example, saving for retirement, i.e. advice relating to superannuation), it follows from the above that:

- the adviser would not be required to advise on other goals or needs (e.g. insurance cover) except in the very limited circumstance where he or she could not give appropriate advice on the goal or need without advising on the other goal or need;
- the adviser would only have to take account of the objectives, financial situation and needs of the client relevant to that area (i.e. the relevant class of financial product relevant to that goal or need);
- the adviser would only be required to take into account circumstances of the client relevant to that goal or need;
- what is appropriate advice would be determined with reference to that goal or need (i.e. to the scoped subject matter).

Type 2 Scoping:

Where the scoped subject matter refers to specific financial products or classes of financial product issued by a product issuer or issuers, it follows from the above that:

- the adviser need not provide advice on other financial products where advice on the financial products within the scoped subject matter can discharge the adviser's duty to properly address the client's objectives, financial situation and needs and the circumstances of the client and give appropriate advice (eg of course, type 2 scoping will pre-suppose that the subject matter of the advice is limited to the type or types of financial product represented by those specific financial products.)

To elaborate further on the application of these obligations to the scoping of the subject matter of advice through the digital medium:

- the subject matter of the advice sought equates to the scoped subject matter because of the rigidity of the digital medium;
- the fact find works within the parameters of the scoped subject matter;
- the scoped subject matter (being the subject matter of the advice sought) equates in a digital tool to the subject matter offered by the tool and accepted by the client.

As canvassed below, where advice is given on scoped subject matter, the advice need only deal with that subject matter and can exclude other subject matter and the needs, objectives and financial situation and other circumstances of the client except if to give appropriate advice on the scoped subject matter necessitates having regard to other subject matter. This will not be a common occurrence.

3. Exclusion of other subject matter

It follows from the above, that scoped subject matter means that:

- consideration of other subject matter is excluded;
- consideration of objectives, financial situation, needs of the client is limited to those that are relevant to the scoped subject matter;
- consideration is not given to other client circumstances except where advice on the scoped subject matter would not be able to achieve the client's relevant objectives, financial objectives and needs without crossing over into another area.
- In this last situation, the digital tool would need to have the functionality to not provide the advice. The options include (without limitation):
 - not making any express or implied recommendation or statement of opinion;
 - referring the client to another advice channel;
 - telling the client that any advice will not be appropriate to their circumstances and they should consider getting specific advice before making any decision;
 - using other disclaimers, warnings and filtering out methods (see paragraph 4 below).

In other situations, the fact that the client may achieve a better outcome through the use of another financial product which is not the subject of the scoped advice would not mean that the advice is not appropriate or in the best interests of the client. It may, however, require the tool to provide a suitable disclaimer. (see below).

4. Other required steps

Section 961B(2)(g) requires an adviser to take other steps when the advice is provided if they would reasonably be regarded as in the interests of the client.

Given the rigidity that applies to the scoping of advice in a digital medium (as outlined above), additional steps may need to be built into digital advice models in order to enable the DAP to discharge their best interests obligation. A key issue in this context is to identify the types of additional steps that may be specifically relevant to digital advice. The industry has an imperative for certainty in this regard as understandably the digital tool needs to be set up correctly and comprehensively from inception.

Examples of steps that seem applicable and which are raised in the draft ASIC regulatory guide are:

- a) appropriate disclosure as to limitations in the advice due to the use of scoped subject matter (for example, 'We have not considered any type of financial product that might meet your needs other than superannuation products on our approved product list.');
- b) appropriate disclosure as to limitations in the advice due to the use of the digital tool (for example, 'This advice engine relies on your responses to the various inputs requested and does not and cannot take into account information that does not fit with any of the inputs requested.')

It would be helpful to the industry if ASIC provided further guidance as to the types of additional steps that may be effective in meeting the best interest obligation in the digital context. In this regard, it would be helpful if ASIC acknowledged that the additional steps could involve (without limitation):

- only allowing access to certain types of customers;
- filtering out based on answers to questions as part of the fact find;
- warnings using graphics and pop ups and animation as well as any other form of media or technology (rather than worded disclosures and disclaimers);
- the flexibility to adapt the steps and use different types of steps, media and technological functionality for different devices.

5. Interaction with general advice and personal advice

Many of the digital advice tools will not seek to provide personal advice but only general advice (as indicated above).

Accordingly, it is relevant to make some observation about the borders between general and personal advice.

It is acknowledged elsewhere by ASIC that not all advice situations where personal information is collected will constitute personal advice. It is submitted that scoping of subject matter can itself lead to a result that the advice is not, and should not be seen, as personal advice.

For example, if the scoped subject matter relates to general suitability of a class of products in the same way as a financial calculator provides advice on general suitability.

Other items

Paragraph 000.94 sets out ASIC's minimum expectations for digital advice providers offering scaled advice. This includes informing the client about limitations and potential consequences of the scope of the advice at key points in the advice process. Informing the clients does not include using wordy disclaimers or fine print.

Where a limited scope of advice is sought, we believe that ASIC should provide some guidance that s.961B(2)(g) may require providers to warn of some of the main potential adverse consequences of limiting the scope of advice in this way and that there may be other adverse consequences as well which we may not be aware of given the scope of advice and associated enquiries are limited. The ASIC guidance should make it clear that it is not necessary to warn of every possible adverse consequence as a result of limited scope of advice as this is not practical for providers to do or will not assist consumers (they will not want to read warnings of every possible adverse scenario and may not get read it all if the list is too long). Further, concerns exist around the use of the word 'inform' in the context of ASIC's comments that wordy disclaimers are not sufficient. If other requirements are needed to assess how 'informed' a client is, this would involve significant expenses. The right balance needs to be struck between the limited scope warning, effectiveness of the disclosure and the significant benefits in offering affordable limited scope of advice.

We also believe ASIC guidance should make it clear that the best interest duty should be assessed by reference to the limited scope of advice and not the customer's broader position if this was not investigated or disclosed (provided reasonable warnings were given and reasonable investigations relevant to the limited scope of advice made).

B1 We propose to require that a digital advice licensee has at least one responsible manager who meets the minimum training and competence standards for advisers. To assist existing AFS licensees that may not have a responsible manager who meets these standards, we propose a transition period of six months. Note: See RG 000.44–RG 000.51 of the draft regulatory guide for more details

B1Q1 Do you agree with this proposal? Please provide supporting arguments.

We support high competence, experience and education requirements being applied to DAPs and the appointment of a responsible manager. The proposed requirements as they current stand are however inconsistent with those set out in RG 105. Please refer to the next question for proposed requirements for Responsible Managers (RM).

These standards should be applied with a level of consistency across licensees.

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 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)?

We understand that the effect of the above proposal is that a licensee who provides digital advice must have at least one RM who is a practising financial adviser. In our view, this is inconsistent with ASIC's general approach to the regulation of digital advice.

We understand that ASIC's general approach is to apply financial services laws consistently to providers of both digital advice and other forms of financial product advice. However, ASIC's

proposal relating to RMs moves away from this general approach and imposes a different and heavier burden on providers of digital advice.

If ASIC's general approach was applied consistently to the operation of s912A(1)(e) of the Corporations Act 2001, the focus should be on ensuring that the DAP maintains organisational competence and has the requisite expertise to develop, test and maintain digital advice algorithms to provide advice that complies with financial services laws.

To comply with this organisational competence obligation, we do not consider that an RM needs to be a practising financial adviser (as proposed in **B1Q2**).

For example, neither professional experience, nor examination in financial planning may provide all of the skillsets required to ensure a digital advice proposition is operating effectively. It may require a range of different skillsets. In most cases the responsible manager would need to rely on specialists within the organisation or outsourced to external experts to fulfil a range of activities involved to provide assurances of compliance.

Competencies may exist across a range of specialist roles such as risk, compliance, legal, technical, IT architecture and testing. As an example, where the RM is a General Manager of a licensee, their responsibility is to leverage practical business acumen to ensure the appropriate competencies have been used in defining the frameworks for developing, testing and maintaining digital advice algorithms. In this case, requiring that individual to take on a professional year, for example, would do little to improve the competency standards leveraged across the enterprise.

The key objective is to ensure the digital advice provided meets financial services laws which can be achieved by using a range of specialists to test, develop and deliver digital advice. The extent of the requirements/resources will depend on the nature, scale and complexity of the digital advice being provided, as well as the extent of resources available to the business.

We propose that a DAP be able to demonstrate that:

- a) they have an RM qualified under the same standards set out in RG 105
- b) They have access to a set of competencies within the organisation (or via outsourcing) that can develop, test and maintain digital advice algorithms to provide digital advice that complies with financial services laws.

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?

See above.

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?

Where the requirements relate to an organisation demonstrating that:

- a) they have an RM qualified under the same standards set out in RG 105; and
- b) they have access to a set of competencies within the organisation (or via outsourcing) that can develop, test and maintain digital advice algorithms,

then a 6 month transition would be sufficient.

Should ASIC apply an education standard requirement that was higher than the requirements in RG 105 it is likely a greater transition period would be needed to enable the requisite requirements to be met.

B1Q5 Please provide feedback on any costs or benefits that may apply to your business under the proposal.

Members have been unable to articulate a cost/benefit analysis in the time provided.

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?

The FSC supports ASIC's expectation that DAPs have robust compliance arrangements in place to monitor and test the quality of advice provided to clients. The proposal in paragraph RG000.70 and RG000.101 is that the digital advice should be reviewed by a human adviser for compliance with the law. Similarly to the feedback provided under question B1Q2, the key objective is to ensure the digital advice provided meets financial services laws. This can be achieved using a range of individuals who have the requisite expertise to review the digital advice – for example those working in compliance, an audit or even a legal function. This role does not need to be performed by a financial adviser.

This objective can be met so long as the person has the requisite expertise to review the digital advice based on duties and obligations under financial services law including the ability to understand the interplay between the decision rules that underpin the algorithms and the output of an algorithm and whether or not the testing of the algorithms has been conducted in accordance to the test strategy etc.

We resubmit that the focus should be on the DAP being reviewed by someone with the requisite expertise and submit that this need not be a financial planner, but can be someone with the relevant expertise as determined by the licensee.

We believe it may be helpful to define the word 'algorithm'. Without a definition, a number of processes could inadvertently fall within the scope of the RG guide in relation to what is to be monitored and tested. A definition would also provide guidance to licensees who are dealing with business systems in a way that is different to the norm across the industry.

C1Q2 Please provide feedback on any costs or savings to your business as a result of this proposed guidance.

If, as proposed, the self-certification proposal is not introduced as a requirement, then the proposed monitoring and testing requirements will not introduce a material increase to operational costs.

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?

The proposed guidance sets out additional information on the obligations to have adequate financial, technological and human resources to provide the financial services, carry out supervisory arrangements and establish and maintain adequate risk management systems and how these obligations may be met in a digital advice context.

We support the need to ensure licensees have adequate resources to ensure that people within the business have an understanding of the technology and algorithms used to provide and review the digital advice (RG 000.57), sufficient technology resources and adequate risk management systems in place as identified in the proposed guidance. We consider that a licensee can fulfil these obligations using outsourced expertise wherein it adheres to the normal standard for appointing appropriate third party service providers.

Having the right resources, systems and processes in place to ensure the DAP is meeting relevant obligations is key.

In this context, we agree with ASIC's proposal not to introduce a self-certification requirement for the DAPs. We agree that self-certification will increase the administrative burden on DAPs, as well as adding unnecessary operational overhead and cost.

Should ASIC decide to introduce a self-certification requirement in the future, further consultation would be required. Specifically, there would be questions that relate to:

- Guidance on disclosure levels on self-certification depending on the nature, scale and complexity of the digital advice provided.
- Details on a prescribed model or format for self-certification reporting.

C1Q4 Should we require independent third-party monitoring and testing of algorithms? If so, in what circumstances would this be warranted?

The Corporations Act does not mandate auditing requirements by independent third parties. We believe the same principle should be applied in relation to algorithms used by DAPs. The key objective is to ensure the DAP has the requisite expertise, resources, systems and processes to be able to provide digital advice that meets relevant obligations. The DAP will need to determine business requirements based on the nature, scale and complexity of the digital advice provided.

Similarly to a traditional advice context, accountability and responsibility for the digital advice also sits with the licensee and the RM's of that licensee (RG105).

Introducing a requirement for third party monitoring and testing of algorithms would introduce unnecessary cost to the process and, as a general principle, we consider that such a requirement is unnecessary where it is not a requirement of the existing law.