



Regulating digital financial product advice

**KPMG's submission to ASIC
Consultation Paper 254**

May 2016



Ms Brooke Stewart
Senior Analyst
Financial Advisers
Australian Securities and Investments Commission

Submission by email: brooke.stewart@asic.gov.au

Subject: ASIC Consultation Paper 254 – Regulating digital financial product advice

Dear Ms Stewart,

KPMG strives to contribute in a meaningful way to the debate, regulation and proposed guidance which shape and support the financial services industry. To this end we welcome ASIC's proposed Regulatory Guide – Providing digital financial product advice to retail clients ("Guide") and thank ASIC for the opportunity to provide feedback on Consultation Paper 254-Regulating digital financial product advice.

Increasingly complex Australian superannuation, tax laws and social security, coupled with low financial literacy and the general complexities of every day work and life, means that more and more Australians are making important decisions without advice and guidance. Whilst we strongly support the need for robust regulations to ensure that Australian consumers are protected particularly where there is information dissymmetry, a balanced approach is required to support the growth of an innovative market that can assist in the delivery of affordable and assessable quality financial advice to more Australians.

KPMG acknowledges the Corporations Act Amendments (FoFA) which facilitates digital advice is technology neutral and welcomes ASIC's confirmation of the legislative intent. We believe, as ASIC does, that it is important for the Guide to support the development of a healthy and robust digital advice market in Australia rather than impede innovation. Given the legislative framework is technology neutral, it is our view that the Guide is more useful for new entrants than existing participants given the legal obligations are identical (regardless of the delivery mechanism of the advice being provided – be it by a human or non-human).

We define digital or robo-advice broadly as algorithm driven financial advice – most likely delivered via online tools, calculators and/or apps. There are a wide range of forms this may take. Early forms of robo-advice applications are geared towards portfolio allocation and rebalancing. Whilst next-generation robo-advice incorporates rule engines and cognitive learning to consider the clients situation, what the client is trying to achieve and conduct comparisons to generate actual advice. We suggest that ASIC in completing the Guide be cognisant that we are in early stages of this innovative market. The guidance therefore needs to be clear on what scope and application the Guide provides today, without limiting future and evolving innovation in design, application and business model. Our submission makes a few recommendations for ASIC's consideration to enhance the proposed Guide.

Scope and application of the Guide

It is our view that a healthy and robust digital advice market is aided and enabled if the regulatory environment facilitates innovation and remains business model neutral. We believe the Guide strikes a good balance between guidance and prescription regarding the obligations providers must and should consider. Our interpretation of the Guide is that it provides useful guidance for existing or traditional Licensees and also for new entrants to the market such as Fintech start-up businesses (AFSL holders) wanting to provide digital advice to retail clients (defined at RG 000.1). We support ASIC's view and guidance that any provider of advice to retail clients should comply with the law as the Guide explains.

However, care should be taken in ensuring the definition of 'digital advice' is not too narrow as to inhibit innovation or narrow providers to one model only (replicating traditional providers). For example, the Guide does not address, what obligations must be met, if any, for alternative business models such as Fintech start-up businesses (may be an AFSL holder) which are technology/algorithm only/service providers enabling other advice Licensees to provide digital advice to retail clients other than in the outsource sections at RG 000.62 - 000.63.

Recommendation

Given the number of new entrants to this market, and the desire to facilitate innovation, we believe clear statements in *Part A - Overview* (under scope of this regulatory guide) and *Part B –Digital Advice and the AFS licensing regime* (under meeting organisational competence obligations), are required to:

- Explain the definition of 'digital advice' and clarify that various models are permitted within the Australian legal framework; and
- Document the obligations of a Fintech start-up or established technology business which is a technology/service provider to other advice Licensees, who will ultimately be the provider of the digital advice to retail clients, which in our view is distinct from those who are the providers of the digital advice to the retail client; or
- Confirm that the guide focuses on those who will provide digital (financial product) advice direct to retail clients; and
- Inclusion of a table listing all the relevant Regulatory Guides a new entrant should consider (eg RG 246, table 1 page 8).
- Further, it is our view that Fintech start-ups¹ who are technology/algorithm only/service providers should not have to meet the same competency as a financial planner – where they are not providing digital advice to retail clients directly.

Competency and professional standards

KPMG strongly supports the Government's proposed higher competency and training standards as proposed in the Corporations Amendment (Professional Standards for Financial Planners) Bill 2015 (with some practical amendments). We believe the higher standards will provide consumers with greater confidence in the advice they receive, deliver them better quality advice and raise the educational competency in the advice profession.

¹ Albeit not limited to Fintech start-ups.

However, we query the approach proposed in the Guide (the need for a Responsible Manager to meet the same competency as a financial planner), which is inconsistent with ASIC's stated approach to regulating digital advice (neutral treatment, enable innovation). We are concerned the heavier obligation on digital advice providers and in particular with regards to the Fintech start-ups (AFSL holder) who are merely technology/service providers to advice licensees, who provide digital advice services to retail clients, may impede innovation and supply of digital services.

Recommendation

With regards to Proposal B1, we contend that the focus should centre on maintaining organisational competency and compliance with financial services laws. In place of requiring a responsible manager to meet the same minimum training and competency standards for advisers, we suggest the obligation should require that the relationship manager meet the standards and obligations set out in Regulatory Guide 105 or that the organisation have competency to develop, test and maintain digital advice algorithms to provide digital advice that complies with financial services laws – or access those competencies by outsourcing to providers to support and/or deliver those competencies.

Monitoring and testing digital advice algorithms

Regardless of the means in which advice is provided (whether it be delivered by a qualified financial adviser or a digital solution), safe guards in the design, development, implementation/execution, communication and delivery are all critical to ensure that the advice Australians receive meets quality hurdles and complies with the law.

Recommendation

We make the following recommendations to the Regulatory Guide *Part C – General Obligations applying to digital advice* (RG 000.68 - 000.75) and the questions raised in Part C of the Consultation Paper.

- We query ASIC's proposal to limit advice reviews to a human financial adviser (RG 000.101), a term which may be legislated and would then apply to a narrow subset of experts. We recommend that ASIC consider amending the word 'adviser' in RG 000.70 or adding examples of advisers who are acceptable to ASIC and qualified to conduct advice reviews, such as para planners, lawyers, advisory consultants, independent reviewers etc.
- We note and support ASIC's observations regarding self-certification at paragraph 38 and 39. We believe the market will look for means such as employing expert and sufficient resources and/or outsource to experts to demonstrate they are meeting legal obligations and addressing the market and consumer's concerns.
- We believe the Guide could benefit from further guidance where white labelling or licensing of digital advice tools are used by an Advice Licensee to provide digital advice to retail clients. Specifically in relation to the obligations in RG 000.69 which each party must or is expected to meet. For example, does ASIC expect both parties to meet the requirements, does one party (the one ultimately providing the tool/digital advice to the retail client) carry high expectations? We would expect that the parties can contract who is responsible for what and in our view the Licensee who the client believes they are engaging with carries greater obligation. Clarity in terms of the regulator's expectation would aide new entrants in particular.

KPMG would be pleased to provide further information and/or clarification to assist ASIC in the development of this regulatory guide. Should you require further information or have any questions, please contact Cecilia Storniolo on +61 2 9335 8274 or cstorniolo@kpmg.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Cecilia Storniolo', with a large, stylized flourish at the end.

Cecilia Storniolo

Director, Advisory

KPMG



Contact us

John Teer

Wealth Management Sector Leader

+61 2 9335 7569

jteer@kpmg.com.au

Cecilia Storniolo

Director, Advisory

+61 2 9335 8274

+61 420 998 960

cstorniolo@kpmg.com.au

kpmg.com.au