



Comments on Consultation Paper 254: Regulating Digital Financial Product Advice

Mark Setchell

to:

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From: Mark Setchell <mark@setchell.com.au>

To: brooke.stewart@asic.gov.au,

Dear Brooke,

Thank you for the opportunity to provide comment on the ASIC Consultation Paper 254: Regulating Digital Financial Product Advice.

My interest comes from being a founder of a fintech startup business which may require ASIC licensing.

My background is as a technology developer working for financial institutions.

I also have an understanding of ASIC licensing and compliance regimes.

Please see answers inline and feel free to contact me directly for any clarification.

Regards

- Mark

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A1 We propose to release draft Regulatory Guide 000 *Providing digital financial product advice to retail clients* (RG 000) to assist digital advice providers in complying with the law.

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

The proposed guidance is helpful.

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?

The proposed guidance is helpful, highlighting the complexities in providing scaled advice

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.

I do not agree with this proposal.

I agree that all digital advice licensees (a) need to comply with legislation and (b) manage risks appropriately and (c) be able to demonstrate compliance

I do not agree that having a 'responsible manager' with 'the minimum training and competence standards for advisers' achieves this.

This will be especially true in new technology driven businesses, where the business processes and risks involved can differ significantly from those present in traditional financial advice businesses.

In order to meet the minimum training and competence standards for advisers, advisers must have worked within the existing financial advice industry.

The existing financial advice industry has had visible lapses in compliance that have impacted the reputation of the financial advice providers.

It may be better to identify resources from outside the financial advice industry to ensure compliance, such as risk management professionals.

This is not an option if 'responsible managers' must have worked in the financial advice industry.

I would agree with a proposal to either:

(a) allow a responsible manager to meet professional and training standards without having to have work experience in financial advice industry, but being able demonstrate competence in some other manner.

or

(b) provide a process and/or risk based compliance regime that would enable a licensee to comply

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)?

Please see answer to B1Q1

As an example, the requirement to complete a professional year, would require someone who is looking to change and improve the financial advice industry, to first work in the existing industry.

This would result in the individual becoming accustomed to the norms and behaviours within the industry, presumably this is at least part of the reason for the requirement.

The view of many people I have talked to, including financial advisers, is that the norms and behaviours of the industry need to change significantly, so becoming accustomed to the norms and behaviours could be detrimental.

If there were not concerns over current industry behaviours, there wouldn't be a senate committee on the 'Scrutiny of Financial Advice'

http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Economics/Scrutiny_of_Financial_Advice

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?

The requirement to have worked in the financial advice industry.

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?

No view

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

The business would be required to hire a 'responsible manager' from a suitable background. This would be a compliance expense, and may not add value to the business given the potential difference between the skills of the incoming responsible manager and the skills required to manage the risks in the business.