

AMP Centre
Level 27
50 Bridge Street
Sydney NSW 2000
Australia

P.O. Box R126
Royal Exchange NSW 1223
Australia

Tel: +61 2 9225 0200
Fax: +61 2 9225 1595
DX: 218 SYDNEY
www.bakermckenzie.com

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21 July 2016

Richard McMahon
Acting Senior Manager
Deposit-takers, Credit and Insurers
Australian Securities and Investments Commission
Level 5
100 Market Street
Sydney, NSW 2000

Dear Mr McMahon,

Submission in response to ASIC's proposals in Consultation Paper 260 - Further measures to facilitate innovation in financial services

Please see **enclosed** our comments in response to the Australian Securities and Investments Commission's proposals in Consultation Paper 260.

Yours faithfully,

Astrid Raetze
Partner
+61 2 8922 5199
Astrid.Raetze@bakermckenzie.com

Adrian Lawrence
Partner
+61 2 8922 5204
Adrian.Lawrence@bakermckenzie.com

Encl.

Commentary on ASIC's CP 260: Regulatory Sandbox

Introduction

We applaud ASIC's efforts to promote innovation in Australia and welcome the development of a regulatory sandbox. It will provide a number of start-up companies in the industry with the opportunity to take important first steps in the development and commercialisation of their new services and products without the need fully to comply with ASIC's highly developed regulatory system.

We would like to take this opportunity to respectfully suggest that ASIC consider the following five adjustments to the proposals it has made:

- (a) broaden the scope of products and services which are eligible to benefit from the "regulatory sandbox";
- (b) extend the time period during which an entity can benefit from the sandbox without an Australian financial services licence (AFSL) from 6 months to 12 months;
- (c) increase the number of clients an entity can test their new services or products on from 100 retail clients to 1000 retail clients;
- (d) increase the total exposure limit of \$5 million or eliminate it altogether (in line with other the FCA and MAS in the UK and Singapore respectively); and
- (e) provide relief for ongoing compliance.

Our aim is to expand the scope of the sandbox so as to ensure that FinTech start-ups can adequately test their products or services. ASIC's current formulation of the sandbox runs the risk of being too restrictive meaning that a product or service is at risk of not receiving proper testing/traction during the sandbox period, and therefore that it is more likely to fail (for example due to cost of regulatory burdens imposed once it comes out of the sandbox) at the end of the sandbox period. A longer, less constrained period would allow a FinTech start-up to properly test and validate products and services, and, importantly, mean that it is more likely to obtain funding at the end of the sandbox period to take it into "full" commercialisation, given that at that point it will have a significantly more mature product.

1) Broaden the scope of products and services eligible for the regulatory sandbox

At the moment, ASIC proposes to only provide an AFSL exemption to those start-ups which:

- (i) provide financial advice in relation to listed or quoted Australian securities, simple managed investment schemes (MIS) and deposit products; or
- (ii) arrange for other persons to deal in the products listed above.

Under this condition, issuers of products are unable to participate in the regulatory sandbox, which will only hinder not stimulate growth in the FinTech space. We opine that other products and services provided in the FinTech ecosystem also have a valid right to be supported by ASIC's regulatory sandbox.

We respectfully suggest that ASIC allow product issuers to also participate in the sandbox.

The current proposal does not acknowledge the importance of entities that provide the following services, and we recommend that those eligible for a license exemption should include:

- (A) Payment facilities;
- (B) Loan providers; and
- (C) Credit services

We also respectfully suggest that ASIC consider implementing another threshold (maybe a turnover threshold) to determine if a company is eligible to participate in the sandbox. This is because some entities may be relatively new but are corporate authorised representatives or recently acquired an AFSL because they were unaware of the development of the sandbox.

Finally, ASIC should clearly outline the criteria an entity has to satisfy, in order to be considered a FinTech start-up. For instance, ASIC should clarify whether it would be possible for new subsidiaries of established organisations to be considered as FinTech start-ups. Regardless of access to capital, consumers should not be exposed to a less regulated product or service which may be exactly the same as a product or service created by a new subsidiary of an established organisation.

2) Extended time period

Members of the FinTech industry are concerned that six months is unlikely in the ordinary course to be long enough for entrepreneurs to determine the estimated success of a new service or product. They believe that:

- (i) a typical product cycle requires at least 12 months before sensible judgments can be made as to whether services and products satisfy consumer demand;
- (ii) a 12-month period will afford ASIC with the opportunity to closely monitor the start-ups through a more substantial phase of product development and commercialisation, so as to identify any regulatory problems associated with the new service or product. This in turn will present ASIC with the chance to develop new or amended regulations which may be appropriate for the FinTech industry specifically; and

- (iii) a longer time period will encourage greater foreign investment in Australia. This is because the other regulatory sandboxes - for example the Monetary Authority of Singapore's (MAS) sandbox and the Financial Conduct Authority's (FCA) sandbox - only exempt entrepreneurs from having a financial services licence for a maximum of six months. If ASIC's sandbox has a longer exemption period, then FinTech start-ups (including businesses which are looking to expand to new jurisdictions from other locations such as the US, Israel or the EU) will be more likely to establish themselves in the Australian market because of this longer 'grace period'. This in turn will attract more investment in Australia.

If ASIC is concerned that start-up entities will develop and become mature too quickly, ASIC could consider one of the following two options:

- (a) a requirement that a start-up entity which becomes "mature" (a definition of maturity to be determined) must exit the sandbox and become compliant; or
- (b) provide only an initial 6 month period, with the ability to extend for a further 6 month period if a start-up continues to meet the other criteria for remaining in the sandbox.

3) Higher number of retail clients

It is the view of early stage FinTech companies that ASIC's restriction that the sandbox is only available to start-ups with 100 or less retail clients is too low. A sample customer base of 100 or less does not provide businesses with enough information on whether their product or service is likely to succeed. We consequently propose that:

- (i) FinTech start-ups are permitted to test their services or products with up to 1000 retail clients;
- (ii) the more clients start-ups can deal with, and the more tested and validated the product or service can become, the more likely start-ups are to attract significant investment, as investors will be more confident in their investment, having seen a broader range of consumers positively receive the new service or product;
- (iii) the more consumers exposed to the service or product, the more likely for ASIC to encounter problems customers may have with the product. This will present ASIC with the opportunity to recommend to product issuers and service providers how to remedy these issues during the testing stage, as opposed to after the start-up has officially rolled out the product or service; and
- (iv) we also recommend that if appropriate, start-ups should be entitled to test their products or services on up to 500 wholesale clients, in addition to 1000 retail clients. This will provide ASIC

with valuable insight on what regulations (if any) they should compile for wholesale investors looking to invest in this industry.

4) Eliminate the exposure limit

The exposure limit does not exist in the UK regulatory sandbox nor is it a proposal by the MAS for the Singaporean regulatory sandbox. The \$5 million total exposure limit (and a strict limit of \$10,000 per customer) will only hinder a start-up company's ability to truly understand the impact and success of their service or product. Presumably, this is why the UK and Singapore have not imposed such limits within their sandboxes. If ASIC believes that the complete elimination of the threshold limit would create regulatory problems, perhaps it can increase the threshold to a level where start-ups can test more of their product or services on consumers so as to truly comprehend and measure their success.

5) Ongoing compliance

A significant concern in the FinTech industry is the inability of new companies to satisfy ongoing compliance obligations. We recommend that even after the initial 12 month period, ASIC undertake the following actions to further encourage development in FinTech:

- (i) discounted license and registration fees;
- (ii) a smaller Product Disclosure Statement, satisfying fewer obligations in the Corporations Act 2001 and ASIC regulatory guides;
- (iii) consider a "lighter" compliance regime applying for the second 12 months of a FinTech start-up's life. For the purposes of this proposal, a start-up's life begins on the day it is allowed to be part of the sandbox; and
- (iv) introducing more exemptions for entities from holding and maintaining an AFSL (i.e. gift card facilities).

International comparison

If our suggestions are considered and implemented, then the ASIC sandbox will likely end up providing an advantage to Australia as a jurisdiction for FinTech start-ups and scale-ups to do business, in preference to the UK and Singapore. The FCA does not provide genuine start-ups with relief because they require the entity to have a licence and present a detailed explanation of their business model. Singapore, on the other hand, has significant time and exposure restrictions on those entities wanting to use their sandbox. A more favourable sandbox will not only be advantageous for FinTech start-ups looking to operate in Australia, but will be an advantage to ASIC as it will provide ASIC with greater regulatory oversight and a greater understanding of new technologies that will

influence and shape the financial services industry in the future, and how regulations should respond to those technologies. It will also benefit Australia more generally by stimulating both foreign and domestic investment in FinTech businesses.