



COMMENTS RE: CP260 FURTHER MEASURES TO FACILITATE INNOVATION IN FINANCIAL SERVICES

Darren Lelliott to: InnovationHub

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COMMENTS RE: CP260 FURTHER MEASURES TO FACILITATE INNOVATION IN FINANCIAL SERVICES

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To:<InnovationHub@asic.gov.au>

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Hello Richard,

I have two suggestions to assist the pursuit to facilitate innovation in financial services.

1. That a category of Inactive AFSL be created; and
2. That persons having completed any banning order with ASIC should be removed from ASIC's database of such in a reasonable timeframe after completion of such ban.

INACTIVE AFSL

Elcano is a startup financial services technology company, of the kind the government is so keen to encourage and support. Because our board has considerable financial services background and is away of the compliance regime we sought and were granted an AFSL of a kind that would be necessary to operate the business we were developing.

We thought it important to first have the AFSL before investing too heavily in the technology because we would not be able to operate the business without one and it would be necessary, or beneficial, to demonstrate to seed capital investors that we are familiar with and have prepared for the compliance regime in which we will operate.

However, there has been no intention to utilise that AFSL until our development was at an advanced stage. Unfortunately, because of the financial drain in meeting the compliance regime requirements first we were left with inadequate funds to advance the technology and therefore gain the necessary seed capital investment. Limping along in our development we have had the double injury of annual reporting and compliance costs for an inactive AFSL.

This, I expect, is the catch-22 scenario the "sandbox" idea is meant to overcome. However, it would be more beneficial in preparing for and understanding the compliance regime if the business sought and gained an AFSL but without the ongoing compliance burden and costs during its inactive phase.

Having the AFSL is one of the aspects investors should be confirming and an inactive one primed for quick activation is a far better investment proposition than having to start the lengthy process after gaining investment.

I do not think an Inactive AFSL would pose any greater risk of misrepresentation than that of a completely unlicensed party, indeed it should be lower risk because the inactive AFSL is already identified to ASIC and therefore can be on a simple electronic watchlist.

Such an Inactive AFSL structure would have been ideal for Elcano, regrettably we instead are now resigning our AFSL because the compliance costs are an unnecessary drain that continues to hold back our development.

BANNED ADVISER LIST

In the same way the government has recognised that bankruptcy should be a temporary rather than permanent drag on a person, thus the intended changes to the bankruptcy laws, so too should an ASIC Banning order.

Indeed there is far greater support of this argument because the ASIC Act under which a banning order is made clearly states that such a banning order is not meant to be a legal impediment beyond the banning period applied in accordance with that Act. However, ASIC's online database of Banned Advisers continues to carry details of individuals indefinitely, clearly an ongoing legal impediment. I, for example, received the shortest banning order in ASIC history in 2009 (9 months) for a purely technical breach of the Deceptive and Misleading provisions of the Corps Act. However I have since gone on to again be the sole and key person listed on an AFSL, the one in question above. It makes a mockery of ASIC that a person can find me listed as both a licensee but also a Banned Adviser.

If it was the Bankruptcy Register all reference to me would have dropped off by now, or soon, but ASIC does not have the same obligation and being bloody minded every day that register innappropriately has the potential to cause me further harm. I am trying to lead innovation in financial services but that register does not facilitate such.

Regards,

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Director

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