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**By email**

Richard McMahon  
Acting Senior Manager  
Deposit-takers, Credit and Insurers  
Australian Securities and Investments Commission  
Levels 5, 100 Market Street  
Sydney NSW 2000  
**Email: [InnovationHub@asic.gov.au](mailto:InnovationHub@asic.gov.au)**

**Consultation Paper 260: Further measures to facilitate innovation in financial services**

We refer to the request by the Australian Securities and Investments Commission (**ASIC**) for submissions on *Consultation Paper 260: Further measures to facilitate innovation in financial services (CP 260)*. We appreciate the opportunity to make this contribution to the consultation process. Our submission is comprised of responses to two questions in CP 260 and some general comments. These are set out below.

**1 C1Q2 – Do you agree the regulatory sandbox exemption should only apply to new Australian business?**

1.1 We believe that the application of the regulatory sandbox exemption to new Australian businesses is very beneficial. We also believe that there could be a good case for extending the exemption to existing Australian financial service licensees (**AFS licensees**) that also wish to experiment with fintech ideas. The rationale for extending the exemption to AFS licensees is similar to that which applies to new Australian business as an extended exemption could:

- (a) allow AFS licensees to test a proposed fintech idea before incurring compliance costs;
- (b) facilitate rapid development and business model changes by AFS licensees in respect of implementing the proposed fintech idea; and
- (c) remove barriers an AFS licensee would face to introducing the new fintech solution into the financial services market and foster increased competition, which would be expected to ultimately benefit consumers.

1.2 Extending the regulatory sandbox exemption could result in significant benefits for the Australian market because AFS licensees have a depth of experience in delivering financial services from which they may consider applying new fintech ideas to deliver these services (for instance, exploring automated options to fulfil various disclosure requirements). If the exemption were to

be extended to existing AFS licensees, the conditions of play that are proposed to apply to new businesses could also apply to AFS licensees, with the additional condition that an AFS licensee is required to make clear that the relevant offering is made available through the regulatory sandbox exemption, and not under its AFS licence.

**2 C2Q1 Our industry-wide proposal only covers giving financial advice and arranging for other persons to deal in a financial product. Do you believe there are other financial services that should be covered by the licensing exemption? If so, what risks would a wider exemption create and how could these risks be mitigated?**

2.1 We consider that the regulatory sandbox proposal could be extended to other types of financial services to allow a broader array of fintech businesses an opportunity to benefit from the exemption. For instance, we note that peer-to-peer lenders which use a model that would be regarded as operating a managed investment scheme would not be able to take advantage of the proposed exemption to trial their business. We believe that the risks of extending the exemption to other financial services could be mitigated by imposing the same conditions of play (and the same limitations on the types of financial products that can be offered) on these other financial services.

**Other comments**

We are supportive of ASIC's proposal to provide a regulatory sandbox exemption as this is a tangible way in which the design and delivery of innovative financial products and services can be supported in the Australian market. We agree that it is important that the exemption is finely calibrated to strike the right balance between being facilitative and containing the right consumer protection mechanisms. This ensures that the exemption results in benefits to the Australian market overall. To this end, we believe that the reputation of the regulatory sandbox would be strengthened by the collaboration with the other Australian regulators. To this end, we note the Australian Government's statements of support for ASIC and other regulators on the development of a "regulatory sandbox" and other facilitative measures that will help position Australia as a leading market for fintech innovation and investment in Asia<sup>1</sup>. We hope that continuing dialogue between Government and the Council of Financial Regulators on the experiences in the regulatory sandbox will form part of the broader canvas of the Government's FinTech program.

Lastly, the sandbox exemption is an exciting new regulatory tool in the Australian market. In light of the innovative aspect of this tool, ASIC might consider utilising Australian fintech ideas to administer the regulatory sandbox. For instance, ASIC could explore the ability of distributed ledger technology (with appropriate permissions and privacy settings) to record information provided by testing businesses in connection with their participation in the regulatory sandbox. Amongst other things, this would be an opportunity to develop the Australian knowledge about the benefits, risks and experience of utilising fintech ideas, using the regulatory sandbox itself as a test case.

We welcome the opportunity to discuss this submission and other issues in connection with CP 260 with you. Please contact Scott Farrell (+61 2 9296 2142, [scott.farrell@au.kwm.com](mailto:scott.farrell@au.kwm.com)), Kate Jackson-Maynes (+61 2 9296 2358, [kate.jackson-maynes@au.kwm.com](mailto:kate.jackson-maynes@au.kwm.com)) or Roslyn Hinchliffe (+61 2 9296 2065, [roslyn.hinchliffe@au.kwm.com](mailto:roslyn.hinchliffe@au.kwm.com)) of our offices if we may be of further assistance.

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<sup>1</sup> "Backing Australian Fintech", a publication released by the Australian Government on 20 March 2016.

Yours faithfully

A stylized, handwritten signature in black ink. The signature consists of the letters 'K' and 'W' joined together, with a large, sweeping flourish underneath that extends to the right and then curves back down.