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

It is with pleasure that K&L Gates submits its comments on ASIC Consultation Paper 260: *Further measures to facilitate innovation in financial services* (**Consultation Paper 260**).

K&L Gates is a leading fully integrated global law firm with locations on five continents. Our international platform includes a specialist team of approximately 145 international lawyers who have vast experience in navigating the regulatory, policy and business issues surrounding the financial services and financial technology (**FinTech**) space. We represent a broad range of clients in the FinTech industry, including start-up and emerging growth companies, payment companies, retailers, transactions processors and software developers, mature technology companies, banking and financial services institutions, investors, P2P and crowdfunding platforms, wealth management and robo advisors and trading technologies.

We are recognised by our Australian and international FinTech clients for providing efficient legal solutions representative of the industry's constantly evolving platforms, services and technologies.

We are supportive of ASIC's, and more broadly the Australian Government's, initiatives to encourage and facilitate innovation in the Australian financial services space. In particular, we are pleased to note the proposals in Consultation Paper 260 aim to reduce barriers to innovation and increase speed and access to the market by FinTech start-ups. We are particularly supportive of the proposed 'regulatory sandbox exemption' which we believe, subject to some further modifications as identified in our submissions, would greatly assist Australian FinTech start-ups overcoming the significant regulatory barriers they face in establishing their businesses and getting their products to market. We applaud ASIC for this initiative and are of the strong view that this form of AFS licensing exemption is critical to foster innovation, development and investment in the Australian FinTech industry.

We have not made submissions on each question raised in Consultation Paper 260. Rather, we have focussed on issues where we have insights gained from working with our clients and which we believe are important to successfully implementing measures to facilitate innovation in the financial services and FinTech space in Australia. Our comments in relation to some of the specific questions raised in Consultation Paper 260 are attached to this letter.

If you have any questions about this submission, please contact either of us, using the details provided below.

Yours faithfully

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Consultation questions

1. Guidance and flexibility on organisational competence

1.1 Proposal B1 – additional guidance on assessing knowledge and skills under Option 5 of RG105

We propose to provide additional guidance on how we assess submissions about a responsible manager's knowledge and skills under Option 5 of RG 105. This will include:

(a) more detail about what we expect a prospective AFS licensee to include in its submission; and
(b) examples of situations where we generally would (or would not) consider that a responsible manager has the appropriate knowledge and skills (see Example 1 to Example 4 below).

Note: We are not proposing to change how we assess submissions under Option 5 of RG 105 in this proposal.

(a) B1Q1: Do you agree with this proposal?

We agree with ASIC's proposal to provide additional guidance on how ASIC assesses submissions about a responsible manager's knowledge and skills under Option 5 of RG105.

It has been our experience over many years of assisting clients with AFS licence applications that much time has been spent by applicants providing detail about an individual's knowledge and skills in anticipation of gaining approval from ASIC under Option 5. In a number of those instances approval was not forthcoming and additional guidance from ASIC up front will assist applicants sharpen their focus on who is likely and who is unlikely to be qualified in the FinTech space under Option 5.

(b) B1Q2: Do you think the examples provided below are helpful? If not, why not?

We are supportive of the examples however certain points require further clarification in light of RG105. We have set out our comments below for your consideration.

In relation to example 1 RG105 requires an RM to satisfy both a knowledge and skills component and accordingly, we think it may be helpful if ASIC provide individual commentary on why each of RM1 and RM2 do not meet the requirements for an RM under Appendix 2 and then add some commentary about how as a group their individual knowledge and skills satisfy the criteria under Appendix 2.

In relation to example 2 again we think it would be helpful for ASIC to provide individual commentary about how RM 1 meets the requirements of Option 3 under Appendix 2 and why RM 2 does not meet the requirements of any of Options 1 to 4 in Appendix 2.

The example indicates RM1 has less than three years' experience in advising on and dealing in securities. Accordingly, we query whether it is appropriate to state RM1 meets the requirements of Option 3 of RG105 and suggest clarifying this point in the commentary below by referring to Option 4 instead.

1.2 Proposal B2 – nominating responsible managers

We propose to amend RG 105 so that a small-scale, heavily automated business would be able to meet its organisational competence obligation by nominating responsible managers in the following two categories:

(a) responsible managers (as currently defined in RG 105) that have knowledge and skills that are relevant to some, but not all, aspects of the financial services the business will provide; and
(b) an appropriately regulated and experienced professional third party that will provide sign-off for the remaining aspects of the business's financial services.

To rely on B2, we propose that businesses will also need to meet the terms set out in proposals B3 and B4.

(a) B2Q1: Do you agree with this proposal?

Many existing AFS licence holders turn to outsourced third party responsible managers to supplement the knowledge and skills of their board or employees responsible managers. We have encountered a number of FinTech businesses where some of the key individuals behind those businesses do not have a traditional financial services background. While not possessing traditional financial services knowledge and skills many of these individuals do have extensive knowledge and skills in relation to the technical system driven components that form an essential part of the FinTech product or service. Accordingly we agree that there should be an alternative pathway to assist FinTech businesses which are heavily reliant on system driven, automated outcomes to have access to a modified organisational competence obligations test.

(b) B2Q2 What sort of professionals should ASIC accept as responsible managers that provide sign off.

In order to provide the sort of sign-off contemplated in B3 the third party responsible manager in our view would need to be an accountant or lawyer. We are not aware of other professionals governed by appropriate legislation and minimum conduct, educational and professional standards which would be able to provide the certifications contemplated by B3 and which would provide ASIC with the level of accountability it is looking to obtain.

(c) B2Q3: Are there any other situations where this type of flexibility should be available?

FinTechIt may be difficult to find appropriately qualified third party professional responsible managers to provide the sign-offs contemplated by B3 if this proposal is extended to businesses which are not small scale and heavily automated. In FinTech businesses involving large numbers of day to day decisions made by natural persons it may be difficult for a third party to provide a certification that the compliance arrangements within the business were adequate to ensure compliance with the Law in circumstances where there was only one other responsible manager. (see further below in response to B3).

(d) B2Q4 Are there any risks associated with this proposal?

We see risks were ASIC to accept sign-offs from inappropriately qualified third party responsible managers whose knowledge of the regulatory environment is insufficiently broad to provide the sign-off contemplated by B3. Our view is that such a sign-off is more comprehensive and searching than required of existing outsourced third party responsible managers.

In addition we are concerned that if ASIC's standard of accountability in connection with such a third party sign-off is too high then there may not be sufficient numbers of third party professionals who are willing to undertake the role. (see further below in B3)

1.3 Proposal B3 – requirements for third party sign-off

We propose that a professional third party responsible manager providing sign-off under proposal B2 would be required to examine all the relevant material and certify that the AFS licensee is materially compliant with ASIC-administered legislation.
We propose that:

(a) sign-off would be required every 12 months, or on significant changes to the AFS licensee's operations; and
(b) the AFS licensee would need to lodge a copy of the sign-off with ASIC. Responsible managers who provide a sign-off that contains false or misleading statements may commit an offence under s1308 of the Corporations Act.

(a) B3Q1: What sort of sign-off should a third party responsible manager be required to provide?

Third party responsible managers

It is suggested in paragraph 52 of CP 260 that ASIC would be looking at sign-off requirements based on that applicable to auditors of registered managed investment schemes and auditors of AFS licence holders.

These audit responsibilities are heavily focussed on whether the responsible entity or licensee has complied with the compliance plan or relevant financial services laws in the financial year just gone.

In the case of the proposal under B3, prior to granting a licence to a FinTech entity ASIC will be looking to obtain from the third party responsible manager certification that the compliance arrangements which the FinTech entity has in place in respect of its small scale and heavily automated business meets the requirements of the Act and contain adequate measures to ensure compliance with the Law.

It is suggested that this sort of forward looking certification could be provided by an accountant or a lawyer. Our firm has frequently been asked to prepare compliance documentation which addresses these issues and to provide sign-offs to the boards of AFS licence holders in this respect.

On an ongoing basis the certification contemplated is more focussed on a traditional examination of how the AFS licence holder complied with financial services laws in the previous financial year but again this sort of sign-off could be provided by a lawyer or an accountant.

We are of the view that there is a risk that if ASIC were looking to impose very high thresholds of accountability on such responsible managers this may deter third party professionals from providing the sort of sign-off proposed by B3. In this regard we note that ASIC expects that sign-offs that contain false or misleading statements may give rise to offences under the Act and this is appropriate. However imposing a required level of assurance in respect of a sign-off that is tantamount to a guarantee that compliance arrangements are effective to prevent compliance would be counterproductive.

In order for proposal B3 to work on a practical level, we suggest that any liability imposed on the third party providing sign-off should be limited to any fraud or negligence on the part of the third party in connection with the sign-off they provided, whether that be a responsible manager or an AFS licence holder, authorised assessor or legal or accounting firm as we suggest. We submit that any greater liability (for example, making the third party responsible for the financial services provided by the AFS licensee) would provide a disproportionate disincentive for third party professionals providing sign-off services to FinTech businesses which in turn would likely negatively impact the overall effectiveness of proposal B2.

(b) *B3Q2: Is an annual sign-off appropriate?*

We agree that an annual sign-off is appropriate provided that the sign-off is appropriately limited to a pre-determined set of objective criteria (as submitted in B3Q1 above) such that the costs of undertaking the sign-off and the liability of the third party responsible manager (or compliance, accounting or auditing firm) is appropriately limited. A further sign-off should be required in the event of material changes to the AFS licensee's activities or processes or an application for an amendment to the authorisations under the AFS licence.

1.4 Proposal B4 – eligibility for third party sign-off

We propose that proposal B2 will only apply to AFS licensees that:

(a) provide financial services to no more than 1,000 retail clients; and
(b) only give advice on, or arrange for another person to deal in, liquid financial products, non-cash payment facilities, and products issued by a prudentially regulated business.

(a) *B4Q1: Do you agree with our proposed restrictions on the types of business eligible for this flexibility?*

In our view ASIC should consider broadening the types of businesses eligible for the flexibility proposed in B2, and not restrict eligibility to businesses serving less than 1,000 retail clients.

We have submitted below that in respect of the regulatory sandbox exemption that the other limitations imposed on eligible new Australian FinTech businesses make the 1000 customer limit unnecessary.

In relation to the proposal in B2 we submit that a heavily automated FinTech business is just the sort of business which is likely to encounter 1000 internet delivered customers in a reasonably short time frame. As such a limit such as 1000 retail customers which ASIC has proposed in relation to businesses which may be eligible for an exemption from AFS licensing is not appropriate in respect of a FinTech business is seeking an AFS licence.

The heavily automated business limitation is the only limitation which should be imposed in relation to the proposals in B2

We submit that, to achieve the general policy objective of minimising regulatory barriers to facilitate innovation in financial services, eligibility for any proposed third party sign-off exemption should extend beyond giving advice on, or arranging for another person to deal in liquid financial products, non-cash payment facilities, and products issued by prudentially regulated business. From our observation and experience with our existing FinTech clients the vast majority of FinTech businesses would fall outside of those categories of financial products identified in proposal B4(b). The exclusion of these other FinTechs, such as marketplace lenders and digital wallet providers (and other payment system participants) would significantly limit the application of the B2 proposal.

We further submit that the significant body of financial services laws which all AFS licensees will be required to comply with combined with the existing limitation to heavily automated businesses would provide a sufficient level of protection in respect of a FinTech entity seeking to rely on the B2 proposal.

2. AFS licensing exemption for limited service testing (Sandbox Exemption)

2.1 Proposal C1 – six month sandbox exemption

We propose to give conditional, industry-wide relief to allow new Australian businesses to test certain financial services for one period of six months without needing to obtain an AFS licence. We refer to this as the 'regulatory sandbox exemption'.
We propose to place the restrictions and conditions outlined in proposals C2–C9 on the licensing exemption to ensure that:

(a) the risk of poor consumer outcomes is minimised; and
(b) activities carried out under the exemption are limited to early-stage testing (i.e. concept validation).

We will continue to consider requests for an individual exemption by businesses that do not meet the terms of the industry-wide relief.

(a) *C1Q1: Do you agree with this proposal?*

We strongly support ASIC's proposal to implement a limited industry-wide 'regulatory sandbox' exemption (**Sandbox Exemption**) to allow start-ups to test certain financial services. We agree that this initiative would assist with overcoming a significant regulatory barrier for start-ups by allowing new businesses to test their services and the viability of their business model in the market prior to incurring the large time and monetary expenses associated with applying for and holding an AFS licence during this initial period.

However, we submit that there are some limitations with the proposed exemption that in our view would significantly restrict its effectiveness and the accessibility of the Sandbox Exemption.

In particular, ASIC's proposal limits the use of the Sandbox Exemption for new businesses to 6 months only. We submit that a 6 month time frame does not provide sufficient time for a new business to properly validate its service, nor is it a sufficient length of time for a new

business to complete the process of preparing an application for, lodging and subsequently obtaining from ASIC an AFS licence. Based on client experience and feedback, a new business usually takes between 2 to 3 months to prepare an AFS application and another 12 to 18 months for an innovative financial services business to receive that AFS licence.

While we submit there is scope for ASIC to extend the 6 month exemption time frame, we acknowledge that the Sandbox Exemption should be temporary and that ultimately businesses relying on the Sandbox Exemption should apply for and obtain an AFS licence. As such, ASIC could consider the alternative Sandbox Exemption proposals set out below:

(i) **12 month Sandbox Exemption period:** We submit that in order for a new business to adequately assess and validate its services and business model in the market, ASIC should consider implementing a Sandbox Exemption that provides for an AFS licence exemption period of at least 12 months.

(ii) **Extension of Sandbox Exemption whilst processing AFS licence:** We propose that on lodgement of an AFS application, a new business should automatically be able to rely on the Sandbox Exemption until ASIC has processed and made a decision on the AFS licence application. This will ensure that new businesses (especially those which are operating successfully in the regulatory sandbox) can transition smoothly from the sandbox to the market and can maintain any traction gained whilst operating in the sandbox, thereby achieving the policy objective to enhance speed to market.

In addition to the proposals above, it would be useful if ASIC could clarify the options available to a new business if its AFS licence application is rejected whilst relying on the Sandbox Exemption.

(b) *C1Q2: Do you agree the exemption should only apply to new Australian businesses? If not, who else should be eligible, why and on what conditions?*

We agree that the Sandbox Exemption should only apply to new Australian businesses. This aligns with the policy objective of reducing barriers to existing FinTech start-ups and promoting Australia as a global leader in the FinTech space.

The current definition of new Australian business relates to those that have never held an AFS licence and those managed by persons who have never been an authorised representative of an AFS licence holder. In our view further clarification of the following would assist with industry understanding of eligibility under the Sandbox Exemption:

(i) Would an entity which holds an AFS licence with narrow authorisations (e.g. to provide services to wholesale clients only), which now seeks to provide broader services (e.g. to provide services to retail and wholesale clients) satisfy the definition of new Australian business? In our view, it should in support of the broader policy objective to facilitate innovation in Australia. Applying for a wholesale client only AFS licence is an established strategy for spreading the regulatory burden and the Sandbox Exemption should not discourage this.

(ii) Would an entity which is related to an AFS licence holder be excluded?

(iii) What are the requirements for international start-ups entering Australia? We submit that if part of the aim of the proposals in Consultation Paper 260 is to make

Australia a FinTech hub for the region, the Sandbox Exemption should be open to foreign companies that are registered in Australia.

2.2 Proposal C2 – service restrictions

We propose that the industry-wide AFS licensing exemption should only apply to:

(a) giving financial advice in relation to listed or quoted Australian securities, simple managed investment schemes and deposit products; or
(b) arranging for other persons to deal in the products in C2(a).

We will continue to consider requests for an individual exemption by businesses using a different business model.

(a) *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?*

We submit that the Sandbox Exemption as currently proposed will primarily assist roboadvisers but would not be available to the majority of FinTech businesses which offer other financial services. Some key FinTech sectors that could benefit from the relief, but which are excluded from the current proposals, are marketplace lenders and digital wallet providers (and other payment system participants).

We note that dealing in a financial product by way of issuing the product is not included in the Sandbox Exemption. This excludes two active areas of FinTech, being marketplace lending and digital wallet providers.

In respect of marketplace lending, their exclusion appears to be driven by a desire that sandbox products are easy to unwind after the sandbox period and do not have ramifications beyond that period. As marketplace lending platforms typically operate through a managed investment scheme structure, they will involve the issuing of interests in a managed investment scheme. We submit that the risks associated with operating a fund can also be managed, for the following reasons:

(i) being able to unwind a product after the sandbox period will not cure any issues which occurred during the sandbox period;

(ii) it is not necessary to unwind the product in order to compensate investors. A provider who has breached their duties (e.g. given inappropriate advice or made inappropriate investments) will be accountable to investors. Any compensation arrangements (e.g. PI insurance) should respond;

(iii) a product issuer could be required to have a plan for closing the product at the end of the sandbox period if they do not obtain an AFS licence (e.g. winding up a fund, appointing a replacement trustee or referring clients to another entity).

(iv) the appointment of a third party custodian could be compulsory for entities operating a fund under the Sandbox Exemption.

Similarly, non-cash payment facility providers (such as digital wallet providers) would be excluded by limiting the authorised services to financial product advice and arranging. While we are aware that ASIC has provided relief for low value payment facilities, the limits on this relief are restricted to $1,000 per person and $10 million in aggregate, which we submit are too low to accommodate many digital wallets. We suggest that issuing a non-cash payment facility be included in the Sandbox Exemption, with appropriate additional safeguards (e.g. all funds must be held in a trust account with an ADI). Alternatively, ASIC could consider raising the thresholds for the existing low value exemption.

(b) *C2Q2: Our industry-wide proposal only covers services that relate to listed or quoted Australian securities, simple managed investment schemes and deposit products:*

(i) Are there any other products that should be covered by the proposal, such as non-Australian listed or quoted securities or general insurance contracts? If so, why and on what basis?

(ii) Should the exemption cover services in relation to a wider range of products where the testing business only deals with wholesale clients? If so, what product classes should be included?

(iii) If you believe the exemption should be extended to less liquid or more long-term arrangements, how could any additional risk to consumers be mitigated?

ASIC should consider broadening the categories of financial products about which financial product advice and dealing services can be provided. We also refer to our comments about regarding the expansion of services to which the Sandbox Exemption could apply.

The rationale that only short term and liquid financial products are eligible for the sandbox heavily restricts many new businesses from relying on the Sandbox Exemption, particularly those providing services in life and general insurance and superannuation. We propose ASIC increase the scope to allow the following financial products for the following reasons:

(A) **International securities**

ASIC's suggestion to limit the proposal to Australian securities only is likely to restrict the advice sandbox participants can provide. Exclusions include investments such as international indices or 'blue chip' stocks which may be appropriate for some clients. Importantly, restricting services to Australian securities may compromise sandbox participants' ability to fulfil the 'best interest' duty to clients, as this imposes an automatic constraint on the types of investments the sandbox participant can recommend.

(B) **General and life insurance**

The exclusion of general and life insurance products excludes an area of active development for digital advice. Comparisons between insurance products are often easier than other financial product comparisons and the client's relevant circumstances more easily defined than for other advice subject matters. Furthermore, the risks posed by entities providing advice and dealing in insurance products are not materially different than the risks of advising on other financial products. As described above, these risks

are sufficiently mitigated by compliance with Chapter 7 and the requirement to have adequate dispute resolution and compensation arrangements. These remedies will respond in the event of inappropriate advice.

(C) **Superannuation**

Digital advice can also readily be directed towards providing superannuation advice.

The emphasis on highly liquid products appears to be the rationale for excluding superannuation, as it is seen as a long term product. The choice of fund requirements in the superannuation legislation, however, means that superannuation is highly portable and clients can easily switch to another fund.

As with other products, the dispute resolution and compensation arrangements would respond in the event of inappropriate advice.

2.3 Proposal C4 – client exposure limits

We propose that the AFS licensing exemption in proposal C1 should only apply where the testing business:

(a) provides services to no more than 100 retail clients, each with a maximum exposure limit of $10,000; and

(a) *C4Q1: Are the retail client exposures limits we have identified appropriate?*

We support this imposition of an overall exposure limit and an individual exposure limit for retail clients. However, we consider that a limit on the number of retail clients is not necessary. We do not have any comments on the proposed exposure limits.

If exposure limits are adopted, we recommend detailed guidance about how exposure would be measured for different types of FinTech business. Many digital advice offerings provide strategic advice about a client's circumstances and it may not be easy to identify the value of assets under advice.

(b) An alternative approach would be for the exposure limit of retail clients to vary depending on each client's total net assets:
How easy would it be to comply with a more graduated exposure limit? Would any benefits with this approach outweigh the resulting complexity for the testing business?
Are there any risks with a graduated approach?

We consider that a graduated approach to exposure limits would be difficult to implement and enforce in practice. It may also require a sandbox business to seek more detailed information about its clients' financial circumstances than the clients are willing to provide.

2.4 Proposal C6 – other considerations

We propose that the AFS licensing exemption in proposal C1 will apply only if the testing business:

(a) is a member of an ASIC-approved external dispute resolution scheme;
(b) complies with the modified disclosure requirements; and
(c) complies with the best interests duty and conflicted remuneration provisions as if the business were an AFS licensee.

(a) *C6Q2 Are there any other consumer protections that should apply to clients of testing businesses? If so, what are they?*

If the scope of eligible products is expanded to include product issuers (e.g. marketplace lending platform operators and non-cash payment facility issuers), it may be necessary to impose the existing client money obligations on sandbox entities in respect of retail clients.

It may also be appropriate to require entities operating a managed investment scheme to appoint a custodian and non-cash payment facility providers to hold all client moneys with an ADI.

2.5 Proposal C7 – sandbox sponsorship

We propose that the AFS licensing exemption in proposal C1 will apply only if the testing business is 'sponsored' by an organisation ('sandbox sponsor') recognised by ASIC.
We propose that sandbox sponsors will be not-for-profit industry associations or other Government-recognised entities. The ASIC-approved sponsors would be named in the licensing exemption (and could be updated from time to time).
We expect sandbox sponsors to only sponsor testing businesses if:

(a) that business is operated by fit and proper persons; and
(b) they have conducted a preliminary assessment that the testing business's proposed business model is reasonably sound and does not present significant risks of consumer detriment.

(a) *C7Q1: Do you support the requirement for a testing business to be 'sponsored' by an industry organisation?*

We agree that a sponsor requirement may play an important gatekeeper role and will likely provide an initial review of the testing businesses in the sandbox. However, ASIC would need to ensure either that there would be sufficient entities willing to sponsor the range of eligible sandbox businesses or that an alternative pathway existed for sandbox businesses which were not able to identify a sponsor (e.g. by the sandbox business applying directly to ASIC).

Based on our experience and client feedback, we submit that making a sponsor liable for the conduct of businesses they sponsor is likely to deter entities from acting as sponsors. A shortage of sponsors will result in increased difficulty for testing businesses to obtain sponsorship and subsequently decreased ability to rely on the Sandbox Exemption.

We suggest that ASIC should provide a clear overview of responsibilities, duties and obligations of the sponsor and testing business to ensure that each party fully understands the relationship in which they have entered and any potential liability for the sponsor.

We understand that the ASIC guidelines for sponsorship in C7 make reference to high level checking and assessments and suggest that sandbox sponsors ought to charge a nominal fee for sponsorship. Such commercial arrangements are appropriate where liability of sponsors is extremely limited and there is no suggestion that the sponsor is making any representation (to ASIC, potential customers or potential shareholders) that the sandbox business is sound.

C7 also suggests that the sponsor should assess that there are no risks of significant consumer detriment associated with testing. We are unsure as to what criteria is intended to be applied to such an assessment and are not confident that not for profit fintech hubs would wish to undertake this sort of assessment.

Careful description of responsibilities coupled with limitations on liability for sponsors will be required to ensure that sponsorship is attractive to the sorts of organisations ASIC is suggesting for the role.

(b) *C7Q2: What types of entities should ASIC approve as sandbox sponsors*

We submit that the ability to be a sandbox sponsor should not be limited to a specific type of legal entity such as ESVCLP's or not for profits. Regardless of the entity type, a sponsor will need to be an entity which, in ASIC's view, has sufficient experience with the financial services licensing, regulatory regime and technology. This will form the basis of a meaningful sponsor relationship and ensure that the sponsor can adequately assess potential sandbox participants.

If ASIC is looking for more responsibility and consequent potential liability from a sponsor then it may be that a not for profit fintech hub is not the appropriate party. In these circumstances it may be that ASIC should look to professional third parties to perform the role as they are more likely to possess the necessary skills to make more detailed assessments of the business model and the risks of significant consumer detriment. Such third parties could include accountants and lawyers who have extensive experience with AFS licensing issues and appropriately qualified AFS licence holders. In these circumstances such professional third parties would be expected to operate on a commercial basis. This may, however, lead to higher entry costs for startups which would limit the usefulness of the sandbox.

(c) *C7Q3: How should ASIC ensure that a sandbox sponsor is only sponsoring appropriate testing businesses?*

We refer to our comments in response to C7Q1 and C7Q2 above.

(d) *C7Q4: What circumstances should a sandbox sponsor take into account when sponsoring a testing business so that the business can rely on the licensing exemption?*

We refer to our comments in response to C7Q1 above.