

22 July 2016

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

By email: ***InnovationHub@asic.gov.au***

Dear Sir

**RE: SUBMISSION – CONSULTATION PAPER 260
FURTHER MEASURES TO FACILITATE INNOVATION IN FINANCIAL SERVICES**

1.0 EXECUTIVE SUMMARY

We refer to the abovementioned Consultation Paper (**Paper**) and hereby submit that we consider that the proposals contained within are short-sighted, and further, undermine the robust regulatory environment that ASIC presently oversees in the pursuit of harmony between effective financial markets and adequate protection for all investors.

Further, we contest that the proposals as drafted are seeking to solve problems that in reality do not exist. Rather, appear to be placating political pressure driven by self-interested, new participants to the financial services industry.

We would argue that relaxing any regulation that has been developed over many years in the alleged support of innovation, or any other reason for that matter, must be seriously questioned and, as per the invitation from ASIC, our submission also considers suitable alternatives that already exist to alleviate the alleged problems raised by various stakeholders.

Further, it is our direct experience that a large component of new financial service participants which have been loudly seeking regulatory relaxation are often new to entrepreneurial business, let alone financial services, and often the hurdles they face in getting new and innovative products to market are more to do with a lack of the experience and financial resources generally required by all financial service participants than issues with the time taken to 'get to market'.

Lastly, we consider the timing of legislation relaxation is of particular concern, in that it is proposed in the riskiest stage of a financial services business lifecycle, in fact any business' lifecycle, and that is in the first stage of its evolution, when every insurer will confirm is when the majority of problems occur as new principals seek to overcome a large array of issues such as the normal administrative burden of regulatory compliance.

2.0 BACKGROUND & DISCLOSURE

This submission is made on behalf of Melbourne Securities Corporation Ltd ACN 160 326 545, AFSL & ACL 4728289 (MSC).

MSC is a professional trustee firm. The company provides trustee services for arm's length fund managers who are independent of our firm and seek regulatory compliant oversight in respect of their fund management operations and a party which is able to represent the interests of investors independently of the fund manager itself.

In addition to providing an outsourced trustee solution to standard managed investment scheme and other more traditional capital raising structures, for more than 2 years MSC has been actively assisting new fintech businesses 'get to market'. In particular, that service might comprise:

- a) assisting navigation of regulations (with external lawyers and advisers) to design the most efficient, regulatory compliant product/service structure;
- b) fronting and managing the required regulatory approvals under our AFSL;
- c) appointing and monitoring the product/service provider as an authorised representative under our AFSL;
- d) performing a trustee and/or other regulatory oversight role in the provision of those products/services;
- e) reducing the lead time for launch of that product/service;
- f) reducing the administrative and regulatory compliance risk and burden on the product/service provider; and
- g) providing a value add solution to vastly improve investor protection and regulatory compliance.

We believe this submission benefits from:

- 1) MSC's extensive experience in engaging with new financial service participants and capital raising entrepreneurs;
- 2) MSC's specific experience in dealing with fintech clients, including platform structuring and dealing with associated regulatory requirements and commercial imperatives;
- 3) MSC's general experience as a professional trustee firm, providing outsourced regulatory compliance oversight independent of the capital managers.

3.0 ABOUT THE AUTHOR

Mr Matthew Fletcher is the Managing Director of Melbourne Securities Corporation Ltd.

He is an active participant in the financial service industry, with over 20 years' experience in investment banking and funds management.

Mr Fletcher is a Senior Fellow of FINSIA and a Mentor in the FINSIA mentor programme. He is also a member of funds management research committee with the Australian Centre of Financial Studies which comprises representatives of ASIC and APRA.

Mr Fletcher holds the following academic qualifications:

- MBA (London School of Business & Finance);
- Bachelor of Business (Banking & Finance);
- Post Graduate Diploma of Applied Finance & Investment;
- Diploma Property Development;
- Diploma Property Investment & Finance;
- Diploma Financial Services (Financial Planning);
- Diploma Financial Services (Finance/Mortgage Broking Management);
- Certificate IV in Property Services (Real Estate); and
- Accredited Credit Adviser with MFAA.

4.0 RESPONSES TO THE PAPER

4.1 Existing Financial Services Framework

MSC is a keen advocate of the inherent protection provided to investors under the existing Australian financial services regulatory framework.

In addition to providing the robust checks and balances to financial services and products offered in Australia, we also believe that the Australian regulatory framework plays an enormous role in our nation's competitiveness to attract capital from around the world. The importance of both these factors cannot be understated in terms of the ongoing performance of the Australian economy, particularly in times of enormous structural change around the world and the increased competition with sophisticated, highly mobile capital crossing borders and jurisdictions with exponential efficiency.

The fact is that the framework has been established over many years in response to challenges investors have faced over the years, unfortunately resulting in real loss of income and capital directly attributed to sub-standard financial service providers. The problems have not been limited to smaller financial service operators, however, far more penalties and financial services licence suspensions have been handed out to smaller to medium operators, who perhaps lack the experience and capital investment required to ensure regulatory compliant systems and processes are followed at all times in the provision of their services.

4.2 Requirements of Existing Financial Service Providers

MSC and other market participants do not consider the existing requirements of financial services providers under an Australian Financial Services (AFS) licenses as extreme or onerous. In the main, these are logical and entirely reasonable standards expected of participants who benefit from the reputation of our industry.

The ability to manage the money of other people, or provide advice about that money, is a privilege, not a right. The minimum standards are designed to protect investors, particularly retail investors, who may be considered vulnerable due to lack of in depth knowledge about the products or markets in which they seek to participate.

Investors are seeking to engage professional providers of financial services who meet minimum standards to counter that vulnerability, not to be taken advantage because of it.

The current standards seek Australian Financial Service Licence applicants to demonstrate minimum levels of professional experience, capital adequacy, compliance and risk management processes, financial reporting arrangements and disclosure. These are the standards which any investor would expect of a financial services participant. They are not onerous. They are not unreasonable. They are highly achievable. And they make sense.

Further our regulatory framework provides for:

- a) tailored AFS licenses and Australian Credit Licences with customised authorisations and conditionality;
- b) ability to operate as an Authorised Representative of an existing AFS or Australian Credit licensee;

- c) multiple methods for licence applicants to demonstrate necessary skills and experience under RG105 and additional discretion available to the regulator;
- d) informal assistance to fintech startups care of ASIC's Innovation Hub; and
- e) optional relief from regulatory requirements subject to ASIC approval.

These are real enhancements available to all new financial service participants and we believe provide flexibility not otherwise seen in jurisdictions around the world.

4.3 What Problems are we Trying to Fix?

ASIC is proposing an industry-wide licensing waiver for limited financial services to a small number of retail clients.

We are advised that this waiver will allow 'testing' of new financial service business models.

We understand that this has been lobbied by new fintech business principals, who are supported by politicians keen to see financial market innovation and maintaining of Australian financial service competitiveness in a global market rapidly embracing new technologies.

MSC is absolutely supportive of innovation and we recognise the need for our markets to implement and benefit from new technology. However, we do not understand why this cannot be achieved under the existing financial services regulatory framework.

New fintech business entrepreneurs argue that they find it difficult to meet existing regulatory requirements because:

- they are often new to financial services and cannot demonstrate requisite skills in compliance with RG105;
- they lack starting capital or ability to raise capital required to implement appropriate risk management, compliance and reporting systems;
- they are unable to raise capital until they can demonstrate viability of their business models with market 'testing'; and
- they do not believe there is flexibility in the existing regulatory framework to provide appropriate arrangements for the new technology their businesses bring to the market.

However, MSC would contend that these 'problems' are entirely manageable under the existing regulatory framework, for the following reasons:

- a) financial service businesses can be commenced under Authorised Representative status with the support of an existing AFS or Australian Credit licensee;
- b) financial services business are able to demonstrate requisite skills with considerable flexibility under RG105 guidance, particularly under Option 5, but also by ensuring key staff are hired with suitable experience capable of meeting Responsible Manager status as would be expected by all other financial service businesses;
- c) raising seed capital for any business is difficult, but always achievable by considering a wide range of capital structures and debt/equity raising options, such as joint ventures, redeemable shares, convertible notes, etc, the government already provides tax

incentives for new business equity and MSC does not consider it appropriate for the regulator to intervene in this process; and

- d) the system already provides for flexibility to accommodate new or unique financial services business models in the form of tailored licence authorisations and conditions and optional relief from regulatory requirements subject to ASIC approval.

4.4 Market Experience

In the provision of trustee and regulatory oversight services, MSC has had meaningful direct experience with a variety of fintech operators.

Our experience has been derived from:

- dealing with and consideration of a large number of enquiries for MSC to provide services to a diverse range of fintech business operatives;
- working with a wide range of legal and taxation consultants to develop regulatory compliance solutions for fintech businesses and structures;
- actual existing contractual services provided to the following fintech businesses:
 - PropertyShares (www.propertyshares.com.au);
 - CoAssets (www.coassets.com);
 - TruePillars (www.truepillars.com);
 - OurMoneyMarket (www.ourmoneymarket.com); and
 - Funding.com.au (www.funding.com.au).
- direct engagement with senior ASIC representatives, such as AFS Licensing (James Nott), Registration and Policy Exemptions (Michelle Reid), and Innovation Hub (Deborah Ralston); and
- attendance at a variety of fintech meetup seminars.

Whilst MSC has been aware of some reluctance from new fintech business operatives to engage with 'traditional' financial service businesses, our experience has been to the contrary, that such partnerships provide substantial value add opportunities specifically derived from an exciting combination of technology, innovation and experience.

In fact, our experience from engagement in the fintech sector has consistently revealed the following:

- a) a focus of operational attention to front end information technology at the expense of other requirements expected of financial service businesses;
- b) a lack of previous experience or current organisation expertise as financial services providers;
- c) a deficiency in understanding or awareness as to regulatory requirements applicable to the sector and their businesses;
- d) a reluctance to obtain appropriate legal and taxation advice often due to capital/cashflow limitations;

- e) a rush to 'get to market', often demonstrated by the establishment of internet and social media 'landing pages' or even full websites which are in direct non-compliance of regulations, including inappropriate language used and serious lack of disclosure backed by little or no legal advice;
- f) an absence of business planning, written or otherwise, considering all factors relevant to the successful operation of the business establishment and operation; and
- g) frequently limited previous entrepreneurial or business experience.

MSC has also canvassed opinions of insurers who have expressly stated:

- the riskiest stage of any financial service business is in the first years of operation when new principals are juggling capital restraints and a wide range of minimum operational and regulatory requirements;
- natural caution when it comes to any new financial service participants or businesses with limited previous experience;
- competition for provision of insurance to such arrangements are limited; and
- premiums are adjusted accordingly.

5.0 CONCLUSION

Innovation and new technology undeniably presents a fantastic opportunity for the Australian financial services industry.

MSC understands new fintech businesses face real challenges to get to market. However, we do not consider these challenges are impossible to navigate or dissimilar to those being faced by all businesses more generally.

From a regulatory standpoint, MSC believes solutions are offered within flexibility already inherent in the existing framework.

MSC would also maintain that 'shortcuts' to market as proposed by waivers proposed in respect of financial service regulations particularly when dealing with retail investors is accordingly and entirely inappropriate.

Yours sincerely



Matthew Fletcher
Managing Director