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Australian Securities and Investments Commission

By email: brooke.stewart@asic.gov.au

Dear Brooke,

Consultation paper (CP) 254 – Regulating digital financial product advice

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to ASIC's release of CP 254 including an invitation to comment on proposals and related questions.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system so people can live in retirement with increasing prosperity. We focus on the issues that affect the entire superannuation system. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90 per cent of the 14 million Australians with superannuation.

General comments

ASFA believes that its members will benefit from some additional ASIC guidance in the area of digital financial product advice and feedback has been sought from them in forming this response.

Regulators around the world have started to turn their minds to how existing regulatory frameworks apply to digital advice. In March 2016, the UK released the Financial Advice Market Review Final Report¹ with recommendations relating to robo-advice and in the same month, the Financial Industry Regulatory Authority (FINRA) in the US released its Report on Digital Investment Advice². In addition late last year the Joint Committee of the three European Supervisory Authorities' issued a Discussion Paper on Automation in Financial Advice³.

¹ Report accessible at: <https://www.fca.org.uk/static/fca/documents/famr-final-report.pdf>

² Report accessible at: <http://www.finra.org/sites/default/files/digital-investment-advice-report.pdf>

³ Paper accessible at: <http://www.esa.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/discussion-paper-on-automation-in-financial-advice>

The reality of the digital advice market presently operating in Australia is that there are very few stand-alone robo advice providers. The trend appears to be that automated advice will become an additional service offering of the incumbent advice and product providers, many of whom are superannuation funds and ASFA members.

The opportunity then for new fintech providers it seems, is to become a supplier and/or authorised representative of existing AFS licensees who remain responsible for the advice being delivered.

Our submission has been drafted in that context and focusses in the main on guidance that ASFA members will benefit from.

Specific feedback on proposals and questions

Proposal A1 - We propose to release draft Regulatory Guide (RG 000): Providing digital financial product advice to retail clients, to assist digital advice providers in complying with the law.

Some guidance in this area will be useful for members however ASFA is concerned that it may create further industry and consumer confusion in its current form. This draft RG may create the impression that digital financial product advice is a separate class of advice with different (potentially lesser) compliance obligations. Whilst we acknowledge that there is opportunity for participants to seek a limited AFS license in line with RG 000.40, those limitations are not consistent with the offerings evolving in the digital advice arena.

From a consumer perspective, the confusion over the difference between factual information (including access to generic digital calculators that are now commonplace), general advice and personal advice will no doubt increase as digital advice delivery expands. Interestingly, the government has agreed to Financial System Inquiry (FSI) recommendations to simplify the classes of financial product advice that exist⁴ so it may be worth clarifying this policy matter prior to such guidance being issued.

We are also concerned by the lack of clarity in the draft guidance relating to the involvement (or lack thereof) and responsibility of a “person” in a digital advice process. For example, the guidance does not cover situations where a degree of “human” intervention occurs, and if that occurs, who can it be done by. It is our view that, accountability and responsibility is not removed by automation, however like traditional advice delivery channels those that support an advice process may not be a personal advice authority holder themselves.

For the time being, an ASIC Information Sheet may be a more concise form of guidance and create less confusion, particularly for new entrants to the financial product advice market. Alternatively, reviewing and updating some existing regulatory guides: RG 104, 175, 221 and 244 as examples could be an option.

⁴ FSI recommendation 40: Rename general advice and require advisers and mortgage brokers to disclose ownership structures.

We found the scaled advice guidance, and in particular ASIC's minimum expectations, useful to some extent however Section D of the draft RG does not appear to add anything significantly new. This is especially the case for existing AFS licensees who already have to demonstrate that best interest duties have been satisfied regardless of how that advice is delivered. This could be improved by the guidance including some examples of how digital advice could meet the “best interest duty” and safe harbour provisions – particularly the 7th safe harbour step. Our members have indicated that the examples provided in RG 175 are not easily related to a digital advice situation.

Additional issues that may require addressing:

- Specifically in relation to a client’s personal circumstances, it would be helpful if the guide considered whether a digital advice provider could suggest goals to a client based on the facts input into the platform by the client.
- The guide has not considered whether digital advice providers are capable of providing services for all types of situations.
- The complexity of product comparison for some advice types is not addressed (this includes the need for the SOA to include all significant consequences of replacement products).
- Further recognition / guidance by ASIC around the complexity of the filtering process would be helpful (for example, by way of additional worked examples for common advice strategies).
- When do key advice documents (particularly an SoA) need to be provided in context of the user ‘playing around’ versus being ‘ready to buy’.

Proposal B1 - We propose to require that a digital advice licensee has at least one responsible manager who meets the minimum training and competence standards for advisers.

This is not a significant matter for ASFA members as in the main they are established market participants who already meet these conditions.

We do agree though that at least one responsible manager with a digital advice licensee should meet the minimum training and competence standards (currently outlined in RG 146). Such standards are appropriate to ensure that robo-advisers are competent to provide quality advice. Responsible managers are already the mechanism by which licensees demonstrate competence in the financial services that they provide and are directly responsible for significant day to day decisions about the ongoing provision of those financial services.

As for current AFS licensees, depending on the size and scale of the advisory service being offered, consideration also needs to be given to when any new digital advice providers will require more than one responsible manager.

In addition, we also agree that the responsible manager overseeing the provision of personal financial product advice to retail clients by digital delivery should also comply with the ethical element of any legislated professional standards for financial advisers.

ASFA has noted that the government is proposing a package of reforms to lift the professional and education standards of financial advisers and that legislation has been drafted⁵. We have also noted that a new commencement date for these reforms has been proposed as 1 January 2019 (revised from the prior 1 July 2017 date). This change means that the transitional time for this digital advice guidance is less relevant, especially for existing licensees.

It is envisaged that for superannuation funds, digital advice will most commonly be used to deliver “intra fund” advice, often at no cost to the member. Funds will absorb these costs in order to provide a member service and value-add in the context of having to compete in an environment increasingly becoming one of consumer choice. Funds are hoping that digital delivery of intra fund advice will provide a more effective means of engaging with members in a lower cost manner than they have in the past – face to face and/or over the phone. Similarly, they are expecting that digital advice will be a first port of call for members seeking advice, later being channelled into more comprehensive offerings that will attract charge.

Proposal C1 - We propose to issue guidance on the ways in which we think digital advice licensees should monitor and test the algorithms underpinning the digital advice being provided.

It seems that these general obligations don’t provide anything significantly new from RG 104: Licensing – meeting the general obligations. This is particularly the case for any superannuation funds that are exempted from some of these related obligations due to being regulated by APRA.

It should be remembered also that the use of automation to generate advice is not actually a new phenomenon. Advice providers have in fact been using like tools for decades and it could be argued that a framework requiring providers to monitor and test algorithms already exists.

Therefore, we think that any new measure relating to the monitoring and testing of algorithms should require self-certification only. It is important that the public is confident that the advice provided is of a high quality and based on reliable algorithms. Appropriate self-certification requirements may provide the market with an additional level of assurance that algorithms have been properly monitored and tested, and that digital advice providers have sufficient resources to manage them. Self-certification will also not necessarily, substantially increase the administrative burden on licensees depending on its form.

Self-certification similar to the annual declaration that an Australian credit licensee has to make regarding ongoing compliance with its licence obligations would be a conventional extension of the compliance framework.

Finally, we are unsure as to the benefit of requiring independent third party monitoring and testing of algorithms. Each licensee has a number of existing obligations under its AFSL and if providers were required to provide annual certification as described above then we query whether further third party testing is justified across the board.

⁵ Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015

However independent third-party monitoring and testing of algorithms should be required in circumstances similar to where independent third party reviews of financial advisers are required. Typically such testing/review is required as part of an Enforceable Undertaking when there has been a breach or suspected breach of financial services legislation.

If you have any queries or comments in relation to the content of our submission, please contact Senior Policy Adviser, Ken Whitton, on (02) 8079-0849 or by email kwhitton@superannuation.asn.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Glen McCrea', written in a cursive style.

Glen McCrea
Chief Policy Officer.