

21 July, 2016

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Australian Securities and Investments Commission
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By email: InnovationHub@asic.gov.au

Dear Sir

**ASIC CONSULTATION PAPER CP 260 – FURTHER MEASURES TO FACILITATE
INNOVATION IN FINANCIAL SERVICES
COMMENTS BY STOCKBROKERS ASSOCIATION OF AUSTRALIA**

The Stockbrokers Association of Australia Limited (“the Stockbrokers Association”) appreciates the opportunity to provide these comments on ASIC’s Consultation Paper CP 260 “Further measures to facilitate innovation in financial services” (“the Consultation Paper”).

Before dealing with specific issues in the Consultation Paper, we set out some preliminary comments below which are important for consideration of the subject matter on an overarching basis.

PRELIMINARY COMMENTS

The Stockbrokers Association acknowledges the need for Australia to facilitate innovation in all areas of economic activity. There are no industries immune from the impact of technological change, and the stockbroking industry is no exception.

The Stockbroking sector has to date experienced a degree of change that is matched by few other industry sectors, and the prospects are for further and even more widespread technological change. Stockbrokers are aware more than anyone else of the need to adapt to change in order to remain competitive and to survive and grow.

The SAA supports innovation in financial services, but does so from **both established market participants and new entrants**.

The financial markets in Australia are also one of the more heavily regulated sectors of the economy. Much of this is for very good reason. Australia has benefited greatly from its high reputation and standing for market integrity, fairness and consumer protection, that are the result of prudent regulatory settings that have been established over time and as a result of market experience. All of the nation benefits, directly and indirectly, from this high reputation. This reputation fosters investor confidence in our markets, and helps companies to raise capital more efficiently and at a lesser cost.

The SAA acknowledges ASIC's various attempts to facilitate innovation in the financial sector, including through the proposals in this CP 260. It is essential that any proposals to encourage innovation must **do no harm** to Australia's hard-won reputation for integrity. There is a fine balance that must be struck by ASIC and by the Government between loosening restrictions in a measured way where this can be justified, and maintaining investor confidence.

There is another balance that must be struck also. There have already been a number of examples in various other industries where regulation has not kept pace with technological innovation, and where new forms of activity have been allowed to directly compete with incumbent operators on an uneven playing field.

It is essential that any relaxed frameworks that may be made available to start-ups in the financial sector do not similarly create an unfair playing field for existing participants, who are required to observe higher regulatory and compliance requirements, to the extent that existing participants suffer an unfair financial detriment as a consequence.

Finally, to the extent that ASIC relaxes the regulatory framework for new start-up businesses, it becomes imperative that ASIC closely monitor the way in which start-ups

operate within the new framework. ASIC will need to stand ready to intervene at short notice to protect the market and investors from any abuse of the relaxed framework that comes to ASIC's attention in connection with any new rules.

SPECIFIC QUESTIONS IN CONSULTATION PAPER

Section B – Additional Guidance and flexibility on organizational competence

We refer to our Preliminary Comments. Subject to these, SAA does not have any strong views on the proposals in CP 260 regarding assessing organizational competence.

The proposal to provide additional guidance does not raise any concerns, although the content of any guidance that is ultimately issued is of fundamental importance.

Section C 3 – AFS Licensing exemption for Limited service testing

The proposal to grant conditional, industry-wide relief to allow new Australian businesses to test certain financial services for six months without holding an AFS License is a measure that is not available to existing participants and entities in the market. We note the reasons given at paragraph 69 for limiting the availability of the relief in this way.

We reiterate our comments regarding the potential for this relief to provide an advantage to new entities over incumbents in the market.

We note that ASIC refers in CP 260 to the case-by-case exemption process that is available to existing licensees. The anecdotal feedback SAA has received is that the exemption process is not very nimble, and that a more agile testing environment in which licensees could seek ASIC's views and guidance more quickly on innovative ideas would be a great benefit.

Consideration should be given to either broadening the sandbox proposal to facilitate existing licensees, or expediting the existing "case by case" process, would facilitate innovation by existing businesses and ensure that the playing field remains level.

In the absence of any modification, the operation of this proposal as framed in C3 would need to be monitored closely to ensure that it is not being abused, and that it does not operate in a manner which is unfair to existing market participants.

The SAA supports the position that the relief will not be available to businesses located overseas. It is a prudent measure to ensure that those utilizing the relief have a reasonable and proximate connection with the Australian market to ensure that any issues arising from the start-up venture can be effectively managed by ASIC.

Section C 4 – Client and Exposure limits

We note the client and exposure limits that are proposed for the testing business under the proposals for licensing relief.

It is a difficult task to set the limits for such relief at the right level at the outset. There is bound to be an element of trial and error in the 100 retail clients/\$10000 per retail client/\$5 million maximum framework that is proposed.

In SAA's view, this is further reason for close monitoring of how the new framework will operate if adopted. Even at the levels proposed, there is the potential for a combined financial exposure that could act as an incentive for potential abuse and/or grounds for community concern in the event of a failure.

Section C 5 – Compensation Arrangements

Section C 6 – Other Consumer Protections

It follows from SAA's Preliminary Comments and those in previous sections that the Association places a high value on investor protection.

It follows that the proposed conditions attaching to the relief, namely the requirement for compensation arrangements and other consumer protections, are entirely appropriate.

There is no reason why the interests of consumers should be deferred to such an extent by waiving these requirements, even in the interests of fostering innovation.

Remaining Proposals

The Association does not offer any comment on the balance of the proposals in **C 7- C 9** regarding Sponsorship, Notifying ASIC and Withdrawal of Relief.

Final matter

On a final note, members have identified that there would be a significant benefit to industry as a whole if ASIC were to develop a mechanism for sharing the lessons learned from the operation of the sandbox exemption.

We would be happy to discuss any issues arising from our submissions on this issue. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email pstepek@stockbrokers.org.au

Yours sincerely,

A handwritten signature in black ink that reads "Andrew Green". The signature is written in a cursive style with a large initial 'A' and 'G'.

Andrew Green
Chief Executive