

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 Mr McMahon

Further measures to facilitate innovation in financial services

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide comments to the Australian Securities & Investments Commission (**ASIC**) on Consultation Paper 260: *Further measures to facilitate innovation in financial services* (**Consultation Paper**)

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Key remarks

Banks in Australia make a considerable contribution to the economy as leaders in technological innovation. Not only is bank innovation a key driver of efficiency, productivity and economic growth, it also ensures the financial system can continue to meet the needs of customers as those needs evolve.

Financial innovation in Australia has given customers access to a considerable number of products and services through the banking sector, credit unions, building societies and other providers. These products and services have all emerged within a stable and well-regulated financial system which contributes to a positive customer experience.

The banking industry supports initiatives to encourage further innovation provided they are accessible to all businesses, whether they be established financial institutions or new entrants. ABA members also believe the regulatory framework that applies to emerging products and business models should be carefully calibrated to protect the interests of consumers and investors as well as the stability of the financial system.

With these considerations in mind, ABA members broadly support the regulatory sandbox proposal outlined in the Consultation Paper. In addition to the high level comments provided here, the questions posed in the Consultation Paper are addressed in the Appendix.

Encouraging innovation by all businesses

The ABA believes the regulatory sandbox should be open to all financial innovators whether they are new entrants or existing financial institutions. By proposing sandbox eligibility for new entrants only, CP 260 indicates innovation by established financial institutions and their partners may be discouraged.



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All innovators, customers and investors are best served by a single set of clear and consistent regulations that are applied equally to new and existing firms. This avoids confusion and complexity for financial institutions, investors and customers around their rights and protections.

The ABA believes that all businesses would benefit from being able to test proposed services within the sandbox, and where necessary, adapt their services at a lower cost. Preventing access to the sandbox for existing Australian financial services (**AFS**) licensees could, in some cases, reduce their incentive to innovate, leading to less innovation overall and fewer choices for consumers.

For example, AFS licensees may be looking to test innovative services for which their current licence does not facilitate. Without access to the sandbox, testing such a service could impose onerous or uncertain regulatory impacts to its licence which could deter them from pursuing the innovation, and ultimately reducing the choices for customers.

The Consultation Paper has a heavy focus on new fintech companies exploring opportunities alone, but does not acknowledge the important and growing role of innovation partnerships between established financial institutions and new businesses. These partnerships enable new entrants to access the distribution networks of established firms and strengthen their access to capital. Limiting sandbox eligibility to new entrants only would discourage such partnerships with existing AFS licensees. By administering “case-by-case” exemptions for existing licensees, ASIC is likely to introduce unnecessary uncertainty around the viability of each potential partnership between existing financial institutions and new businesses.

In summary, many of the issues raised in the Appendix to this letter stem from the complexity that would arise from limiting the sandbox to new participants only. The ABA supports a sandbox regulatory approach that is applied to all new services, including those that established financial institutions are providing either through an in-house technical build or partnering with new fintech start-ups or more established third-party technology providers.

The ABA encourages ASIC to explore further ways the sandbox could encourage financial innovation. There could be further benefit for all if ASIC shared broad lessons gleaned from the regulatory sandbox environment by periodically reporting on the broad characteristics and performance of the sandbox participants.

Looking further ahead, subject to industry consultation, there could be scope to extend the sandbox beyond a limited licensing exemption to also take into account other appropriate and time-limited dispensations from ASIC regulation that balance innovation and consumer protection.

Ensuring a strong regulatory framework and positive consumer experience

The ABA also believes the regulatory sandbox should contain appropriate safeguards to ensure similar consumer protections apply to similar technologies, products and services irrespective of the provider or issuer.

Clarity is needed around how providers will transition from the six-month sandbox period to a full AFS licence while ensuring a positive customer experience. The transition, however, should not be an easier route to an AFS licence, and ASIC requirements should be applied as stringently as they are to applicant businesses that do not participate in the sandbox.

Rapidly evolving technologies can also raise risks, such as security risks. This is especially the case where participants will be offering a service related to an existing financial institution's products. The ABA believes that cyber security risk management must be a more prominent requirement of sandbox eligibility, as this has not been raised in the Consultation Paper.



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Thank you for the opportunity to comment on these proposals. If you would like to discuss any of the issues raised in this letter, please contact me on the number below.

Yours sincerely

Signed by

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Appendix: Response to ASIC's consultation questions

A Background to the proposals

Measures considered in this consultation paper

Proposal A1 In this proposal, we are seeking your general feedback on our approach to further facilitating innovation in financial services.

A1Q1. Do you agree that we should put in place additional measures to facilitate innovation, or maintain the status quo? Please provide reasons

The ABA welcomes the Government and ASIC's commitment to encouraging innovation in financial services. Successful innovation will expand choices for consumers and strengthen the competitiveness and efficiency of Australia's banking industry and financial services industry more broadly.

The ABA emphasises that any measures introduced to foster innovation should be offered to all, to encourage innovation by both established businesses and new entrants. Otherwise, limiting access to innovation policies for existing businesses will ultimately lead to fewer choices for consumers as it limits the possible pool of businesses, ideas and entrepreneurs.

A1Q2. What benefits do you consider will result from our proposed approach?

Beyond its role in intermediation and risk management, Australia's banking industry is a leader in development of technological innovation. A well-designed sandbox system that is open to both new and established players could help to solidify Australia's financial industry position as an international leader in financial innovation while providing consumers with an appropriate level of protection and access to new products.

The ABA also believes the additional guidance on responsible managers will assist new businesses and encourage innovation.

A1Q3. What disadvantages do you consider will result from our proposed approach?

Potential disadvantages could arise from limiting existing institutions from accessing the sandbox, thereby creating an uneven playing field that reduces the incentives for incumbents to innovate and could lead to less innovation overall. The regulatory sandbox proposal should be extended to *existing* Australian businesses to test new services in the same manner as *new* businesses.

AFS licensing requirements for those businesses that continue to operate after their six months in the sandbox should be equally as stringent as direct applicants. The sandbox must not be an easier route to an AFS licence.

The sandbox exemption must also carefully balance innovation with appropriate consumer protections which are discussed further below.



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A1Q4. Are there any other options we should consider to meet our regulatory objective of further facilitating innovation, while ensuring that appropriate protections apply to all financial consumers?

The ABA believes the Consultation Paper has limited its focus to encouraging new players, and does not fully recognise either the potential for existing licensees to innovate, or the importance of partnerships between established financial organisations with new fintech entrants. Collaboration between these players is an important part of the innovation ecosystem in Australia.

The ABA also encourages ASIC to consider opportunities where it can follow the lead of foreign regulators such as the Monetary Authority of Singapore in regularly engaging industry on issues that require industry-wide solutions such as blockchain, identity, payments, aspects of cyber-security, asset registers, open bank APIs and the further use of cloud technology. In some cases, it may be appropriate for ASIC to partner with other Australian regulators to convene these meetings.



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B Additional guidance and flexibility on organisational competence

Additional guidance on assessing knowledge and skills under Option 5 of RG 105

Proposal B1 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.

B1Q1. Do you agree with this proposal? Please give reasons for your answer.

The ABA supports providing prospective AFS licensees with additional guidance on the requirements of Option 5 of RG105.

Additional flexibility for small-scale, heavily automated businesses

Nominating responsible managers

Proposal B2 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.

B2Q1. Do you agree with this proposal? Please give reasons for your answer.

Broadly speaking the ABA agrees. Further clarification is needed on several areas. Firstly, will the responsible manager remain a partial responsible manager over time? Secondly, what are the roles and responsibilities of the third parties who provide sign off?



Requirements for third-party sign-off

Proposal B3 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.

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

Third-parties should lodge formal sign-off with ASIC that comprehensively covers the expected product use/take-up, change in function, consumer feedback, complaint volume (if appropriate) and compliance with obligations.

B3Q2. Is an annual sign-off appropriate?

The ABA does not believe annual sign-off to be appropriate in this environment. Our suggestion is more frequent sign-off, at a minimum of six monthly sign-off, and preferably every four months, which would be more appropriate given the anticipated frequency of change and progress in product development by the new business.

Conditions of eligibility for third-party sign-off

Proposal B4 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.

B4Q1. Do you agree with our proposed restrictions on the types of business eligible for this flexibility? For example, is a limit of 1,000 clients appropriate?

The ABA agrees that the proposed restrictions on services are appropriate as there is still a significant amount of flexibility.

The ABA believes the client threshold needs to be more deeply considered. A limit of 1,000 clients would be the maximum, but the knowledge, understanding and level of education provided to customers is more critical. Is there another threshold in addition to the maximum number of clients that can be added? One suggestion is credit scoring, another could be the amount of education provided by the product provider or maximum dollar amount that an individual customer can invest/use for purchase.



C AFS licensing exemption for limited service testing

Six months of unlicensed financial service testing with retail clients

Proposal C1 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.

C1Q1. Do you agree with this proposal? Please give reasons for your answer.

The ABA supports the proposal but not in its current form. Further discussion is provided below.

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?

Broadly speaking, the ABA supports the concept of a regulatory sandbox that could enable businesses to test products, services and business mode using emerging financial technologies with a time-limited reprieve from some regulation.

As currently proposed, only new businesses are eligible for the sandbox. This raises several issues.

Firstly, further clarification is needed around the definition of “new Australian businesses”. Is this defined by the business set up date, and would this mean a company that is yet to test its services with clients, but has been developing for three years, will be excluded?

The Consultation Paper notes that under the proposal, a person will only be able to rely on the exemption once, which is appropriate to limit the relief in this way to prevent continued ‘testing’ that is primarily intended to avoid compliance with the law. We believe that it may be appropriate for a business to use the sandbox environment more than once to test different services in the sandbox.

The ABA disagrees with the proposal to limit access to the regulatory sandbox to existing AFS licensees. Relief should be made available for any businesses exploring emerging financial technologies, be they established businesses, new businesses, or partnerships between the two. The ABA believes this is in the public interest as it ensures an equal playing field which encourages innovation by all players.

Where an established business is looking to provide a new service that may require onerous or uncertain regulatory impacts to its licence, the ABA proposes these players should also be eligible for a similar six-month sandbox exemption. This is the approach that the Monetary Authority of Singapore is taking at this time, which is important to consider given Singapore is a regional competitor.¹

¹ Monetary Authority of Singapore; *MAS Proposes a "Regulatory Sandbox" for FinTech Experiments*, 6 June 2016. Accessed at <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2016/MAS-Proposes-a-Regulatory-Sandbox-for-FinTech-Experiments.aspx> on 11 July 2016.



The ABA also highlights that many fintech innovations involve collaboration between fintech businesses partnering with established players, rather than competing against these established players. The ASIC proposal, which restricts industry-wide relief to existing AFS licensees, could have the detrimental impact of restricting fintech start-ups being able to access the distribution networks of established players. This could limit the gains from efficiency and innovation that could have taken place through such a collaboration.

ASIC's guidance that it will continue to consider access to the regulatory sandbox for existing licensees on a "case-by-case" basis introduces unnecessary uncertainty for established financial institutions and their partners relative to fintech start-ups. Limiting access to non-AFS licensees to access the sandbox to test new financial services introduces uncertainty around the ability of limited-scope AFS licence holders.

Specifically on the existing case-by-case exemption process that ASIC refers to in the Consultation Paper, the current process lacks agility, and so hampers innovation by existing licensees. In addition to granting access to the sandbox licensing exemption to existing licensees, could ASIC consider ways in which the current case-by-case exemption process can be expedited so that industry can benefit from a more agile testing environment in which we can seek ASIC's views on innovation more quickly.

Six-month time period in the sandbox

The ABA also has several comments to make on the six-month period eligibility for the sandbox.

The ABA proposes that the six-month sandbox period should be followed by a transitional mechanism allowing the participant to apply for its AFS licence. The ABA understands that if there is no transition period there will be a gap between the end of a pilot test and the ability to provide that service on an ongoing basis under licence. This raises two issues: what happens to the business and its activities and what happens to its customers?

Such uncertainty could result in a poor customer experience. It is important that customers are motivated to trial new technologies, so ensuring they have a positive experience is a crucial step before the service/product can be launched more broadly.

The ABA proposes that ASIC explores possible transition arrangements to an AFS licence from the sandbox, or considers extending the time period. In either case, the ABA seeks clarity around what will happen to clients' money at the end of the six-month period.

One aspect of this is that the guidance should deal with arrangements for situations where the testing organisation chooses not to proceed with the tested service after the initial six month 'trial.' It will be important, particularly for consumers, to understand what will happen with their service in this event.

That said, the AFS licensing requirements for those businesses that continue to operate after the expiry of the sandbox trial should be as stringent as for those applicants that apply directly for a licence. The sandbox must not be an easier route to an AFS licence. The challenge will be ensuring that an appropriate balance is struck between facilitating innovation, protecting consumers and ensuring that sandbox participants are not given vastly reduced responsibility relative to AFS licence holders. Given this is a precursor to holding a full AFS licence, the sandbox should prepare the businesses to hold an AFS licence.

The ABA also notes that ASIC will require testing businesses to declare they have reasonable grounds to expect that they can operate their business for a period of six months. There are circumstances at the concept validation stage where six months may be too long for testing. The ABA encourages ASIC to adopt flexibility here as well. Businesses using the sandbox to test a product before commercial launch will find the six-month time period more appropriate.



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Scope of exemption

Service restrictions

Proposal C2 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.

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?

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

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?

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?

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?

The proposal indicates sandbox eligibility will be limited to services only (that is, advice or distribution) rather than products issued by a potential sandbox participant. The ABA believes that this is likely to limit the practical use of the sandbox.

The ABA understands that ASIC considers that payments products do not require sandbox eligibility because ASIC has already provided ongoing class order exemption for low-value arrangements. Further industry consultation is required to consider products that could be issued by a sandbox participant. These products may raise additional consumer protection issues that will need to be considered by ASIC and the industry.

The ABA recognises that services and products related to complex derivative products, superannuation and insurance are unlikely to be suitable for sandbox eligibility.

Existing AFS licensees

Proposal C3 We do not propose to provide industry-wide relief to existing AFS licensees. We will continue to consider requests for relief by existing licensees on a case-by-case basis.

C3Q1. Do you agree with this proposal? Please provide reasons for your answer.

As discussed in section C1, the ABA disagrees with the proposal to limit the sandbox to new businesses only. Relief should be made available for any businesses exploring emerging financial technologies, be they established businesses, new businesses, or partnerships between the two in order to promote competition and a level playing field.



ASIC's proposal to consider eligibility for the sandbox by existing AFS licensees on a "case-by-case" basis creates significant uncertainty. For example, it is not clear from the Consultation Paper if subsidiary companies would be eligible. The ABA encourages ASIC to open eligibility for all businesses.

C3Q2. Are there issues related to innovative services from existing licensees that could be dealt with on an industry-wide basis? If so, what are they?

The ABA's rationale for equal access to the regulatory sandbox for all players, which we believe is in the public interest, is for all issues related to innovative services offered by existing or new players be dealt with on an industry-wide basis. Both new and established players are best served through a single set of clear and consistent regulations that do not create perverse incentives/disincentives by favouring one group over another.

Conditions of exemption

Client and exposure limits

Proposal C4 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
- b) ensures the total exposure of all clients (wholesale and retail) is less than \$5 million.

C4Q1. Are the retail client exposure limits we have identified appropriate?

The ABA supports maintaining the distinction between wholesale and retail clients. However, ASIC's expectations for consumer safeguards with respect to innovation for wholesale clients could be made clearer.

For retail clients, the ABA supports the exposure limit of \$10,000 per retail client.

Further consultation with industry on the appropriateness of the client volume limit would be useful. The ABA questions if the 100 retail client limit is too low and would be looking to test new innovative services on a broader base than 100 retail customers before launching to a live audience. A more flexible approach is followed in Singapore, and this in turn may deter participants from using Australia's sandbox.

The total client exposure limit of \$5 million appears appropriate, although it must be noted at its extreme represents a \$5 million loss with no guarantee of financial compensation.

From an operational perspective, those banks whose products will be offered within a sandbox environment may not have controls to monitor the total volumes limits, or the ability to ensure a sandbox business is limited to 100 customers at establishment or ongoing as outlined.

C4Q2. An alternative approach would be for the exposure limit of retail clients to vary depending on each client's total net assets:

- a) How easy would it be to comply with a more graduated exposure limit?
- b) Would any benefits with this approach outweigh the resulting complexity for the testing business?
- c) Are there any risks with a graduated approach?



A graduated approach to limit exposures would be another mechanism for minimising risk to consumers of a loss or negative experience. It would also introduce more flexibility akin to Singapore's proposed sandbox. This should still be coupled with education from the business/service provider. The risk in an approach of this nature is the additional complexity of ensuring retail customers meet the asset requirements – this would slow down progress of innovation and speed to market.

Compensation arrangements

Proposal C5 We propose that the AFS licensing exemption in proposal C1 should only apply if the testing business maintains adequate compensation arrangements.

C5Q1. Do you believe that testing businesses will be able to obtain professional indemnity insurance to compensate retail client losses?

C5Q2. What other compensation arrangements could be used by testing businesses (e.g. group cover or mutual fund schemes)? What practical issues exist with other compensation arrangements?

The ABA believes it is important that appropriate consumer protections are in place. Professional indemnity insurance may be difficult for new fintechs to obtain. Further clarity is needed to ensure that insurance companies will provide insurance for these purposes and relevant insurance policies will cover activities for all parties involved.

Given the need to have adequate compensation arrangements during the sandbox, the ABA seeks clarification around how participants will be expected to cover compensation claims if they are not covered by professional indemnity insurance.

Other consumer protections

Proposal C6 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.

C6Q1. Are the compliance conditions we have identified—in relation to dispute resolution procedures, disclosure and conduct (i.e. best interests duty and conflicted remuneration)—appropriate? If not, please provide reasons.

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

The ABA believes these conditions are appropriate, but additional conditions should be imposed on sandbox participants such as cyber security. This is to ensure consumers have a good experience and are protected, and that there is no broader threat to the financial system.



The regulatory regime also needs to anticipate potential new risks arising from technology. All participants in the sandbox should be required to mitigate against cyber risks to maintain the safety and soundness of the financial system and customer confidence. This is especially pertinent given some participants will be advising and dealing with ABA members' products, and banks' own cyber security must be respected.

ASIC should also clarify that its dispensations do not also apply to rules administered by other regulators. In particular, it should be clear within the regulatory sandbox framework that any requirements such as anti-money laundering issues administered by AUSTRAC will still apply in the sandbox.

ASIC should consider imposing additional conditions on testing businesses around their financial sustainability. Specifically, ASIC should give close consideration to the business's proposed revenue models, cash flow and capital backing of the testing business. This would increase protection for consumers.

The ABA agrees with ASIC's view that testing businesses should clearly and prominently disclose that the financial services are being provided in a testing environment. There is a need for clear disclosure to clients that financial services are being provided in a testing environment, that companies do not necessarily comply with all the requirements of an AFS licence, that the service provided carries risk and that the business is new.

The ABA also supports the requirement that the AFS licensing exemption in proposal C1 will apply only if the testing business is a member of an ASIC-approved external dispute resolution scheme.

Sandbox sponsorship

Proposal C7 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.

C7Q1. Do you support the requirement for a testing business to be 'sponsored' by an industry organisation? Please give reasons for your answer.

C7Q2. What types of entities should ASIC approve as sandbox sponsors?

The ABA agrees that testing businesses should be sponsored, but propose that these "sponsoring organisations" should not be limited to not-for-profits or government recognised entities.

The ABA proposes that AFS licensees that are Authorised Deposit-taking Institutions (**ADIs**) be eligible to act as sandbox sponsors. The current proposal is limited and does not allow enough entities to act as sponsors. AFS licensees that are ADIs have significant financial services knowledge which they can impart to the next generation of Australian companies. For example, the ABA proposes that an established bank could play the role of a sponsor for a start-up or new fintech that it is partnering with.



Further, it would be helpful if ASIC could provide greater detail on what it envisages the ongoing role, responsibilities and liability of the sponsor would be.

C7Q3. How should ASIC ensure that a sandbox sponsor is only sponsoring appropriate testing businesses?

ASIC should consider criteria for sponsoring organisations so there is a sufficient level of understanding of the importance of the sponsoring organisations role, and responsibilities to consumers, the industry, ASIC and other regulators in sponsoring a testing business.

Integrity measures

Notifying ASIC

Proposal C8 We propose that a testing business will need to:

- a) notify ASIC that it intends to rely on the AFS licensing exemption in proposal C1 from a specified date;
- b) provide evidence of sponsorship from a sandbox sponsor (see proposal C7); and
- c) declare that it has reasonable grounds to expect that it can operate its business for a period of six months from the specified date.

We also propose to require that testing businesses give us a short report about their test following completion of the testing period.

C8Q1. Do you agree with this proposal? Please give reasons for your answer.

The ABA does not believe that compliance with RG 234: *Advertising financial products and advice services including credit: Good practice guidance*, should be mandated. Regulatory guides are ASIC's opinions of best practice only and are not law.

Class orders are delegated legislation and so have the force of law. If a regulatory guide is referred to, it effectively takes best practices and implements it as law, which may not be appropriate going forward, and is not the way that the Government intended, as a class order should be issued instead. Further, this goes beyond the requirements for current AFS licence holders.

Withdrawal of relief

Proposal C9 We propose that ASIC will have the power to withdraw the AFS licensing exemption in proposal C1.

C9Q1. When should we exercise our power to withdraw the licensing exemption?

The ABA believes ASIC should retain its wide powers to place conditions on, provide warnings to, vary or amend the extent of the exemption and withdraw the exemption if circumstances require it do so. This is similar to the current requirements applicable to AFS licence holders.