



ASIC

Australian Securities & Investments Commission

REPORT 508

Response to submissions on CP 260 Further measures to facilitate innovation in financial services

December 2016

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 260 *Further measures to facilitate innovation in financial services* (CP 260) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see Regulatory Guide 257 *Testing fintech products and services without holding an AFS or credit licence* (RG 257).

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A Overview

- 1 Australia has witnessed recent growth in the development and provision of innovative financial products and services. Unlike some other industries, innovators in the financial services industry are faced with regulatory obligations and barriers before they can offer their products and services to the public.
- 2 ASIC is committed to encouraging innovation in financial services that is likely to produce good outcomes for investors and financial consumers.
- 3 Accordingly, we have taken a number of steps to better understand the financial technology (fintech) industry and to facilitate innovation, including establishing an Innovation Hub to help new businesses to navigate the regulatory framework. Since the Innovation Hub was set up in March 2015, we have provided informal assistance to 104 entities. This experience has proved beneficial for fintech start-up businesses and has informed our understanding of the key issues facing these businesses.
- 4 We have also engaged with stakeholders to discuss the challenges faced by new entrants into the financial services markets, and options for how these might be addressed while still maintaining the key objectives of the regulatory regime.
- 5 In June 2016, we consulted on options and measures to further facilitate innovation in financial services.

Consultation process

- 6 In [Consultation Paper 260](#) *Further measures to facilitate innovation in financial services* (CP 260), we consulted on three distinct proposals to address specific barriers faced by new innovative businesses:
 - (a) issuing additional guidance about how we assess whether a responsible manager has the appropriate knowledge and skills under Option 5 of [Regulatory Guide 105](#) *Licensing: Organisational competence* (RG 105) (including what we may consider to be appropriate knowledge and skills, as well as indicative examples);
 - (b) amending RG 105 to allow small-scale, heavily automated businesses to nominate as responsible managers appropriately regulated and experienced professional third parties that will provide compliance sign-off (i.e. to address ‘gaps’ in the experience of the other ‘traditional’ responsible managers nominated); and

(c) providing a conditional, industry-wide licensing exemption to allow six months of limited service testing and concept validation (also referred to as the 'regulatory sandbox exemption').

7 This report highlights the key issues that arose out of the submissions received on CP 260 and our responses to those issues.

8 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 260. We have limited this report to the key issues.

Responses to consultation

9 We received four confidential and 25 non-confidential responses to CP 260 from AFS licensees, authorised representatives, professional bodies, law firms, consumer groups and individuals. We are grateful to respondents for taking the time to send us their comments.

10 We also met with industry both during and after the formal consultation period to obtain more detailed feedback on some of the proposals.

11 Sections B–D of this report set out the key issues raised during our consultation, and our response to the feedback received.

12 Following consultation, we have:

- (a) made two ASIC instruments that allow some fintech businesses to test services without a licence: ASIC Credit (Concept Validation Licensing Exemption) 2016/1175 and ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1176;
- (b) issued new guidance in Regulatory Guide 257 *Testing fintech products and services without holding an AFS or credit licence* (RG 257); and
- (c) updated our guidance on organisational competence in RG 105 and [Regulatory Guide 206](#) *Credit licensing: Competence and training* (RG 206).

13 For a list of the non-confidential respondents to CP 260, see the appendix. Copies of these submissions are currently on the ASIC website at www.asic.gov.au/cp under CP 260.

B Additional guidance on demonstrating organisational competence

Key points

This section outlines the responses we received in relation to Proposal B1, as outlined in CP 260, and our approach to those responses.

It covers feedback on whether we should update our regulatory guidance in relation to organisational competence and specifically whether we should provide additional guidance on how we assess submissions about a responsible manager's knowledge and skills under Option 5 of RG 105.

Updated regulatory guidance in RG 105

- 14 In CP 260, we proposed to provide additional guidance on how we assess submissions about a responsible manager's knowledge and skills under Option 5 of RG 105. We sought feedback on the usefulness of the proposed guidance.
- 15 The submissions received were largely supportive of this proposal. Some respondents felt that more examples could be provided.
- 16 Some submissions also requested that we provide additional commentary to explain the principles underpinning ASIC's decision about whether or not we will approve a responsible manager under Option 5.

ASIC's response

We have implemented this proposal and provided additional guidance about Option 5 of RG 105.

The additional guidance will assist new businesses to improve the quality of their AFS licence applications and better identify the prospects of a responsible manager being approved under Option 5.

As requested, we have updated RG 105 to include six specific examples (rather than the four examples proposed in CP 260) of situations where ASIC may, or may not, accept a responsible manager under Option 5. In response to the feedback received, we have also included additional commentary in these examples.

C Organisational competence for small-scale, heavily automated businesses

Key points

This section outlines the responses we received in relation to Proposals B2 to B4, as outlined in CP 260, and our approach to those responses.

It covers feedback on our proposed changes to the requirements for small-scale, heavily automated businesses when nominating responsible managers, and the requirements and conditions of eligibility for third-party sign-off.

Nominating responsible managers

- 17 In CP 260, we proposed that small-scale, heavily automated businesses would be able to meet their organisational competence requirements by nominating responsible managers in the following categories:
- (a) a responsible manager (as per RG 105) who has some knowledge and skills required to manage the business; and
 - (b) a registered and experienced third party who will sign off on the remaining aspects of the business's financial services.
- 18 We received 15 submissions in response to this aspect of CP 260, of which 12 were supportive and three opposed the proposals. A common theme was that the third party's knowledge and skills were more relevant to their suitability for providing sign-off than their professional qualifications.
- 19 It was noted that proposed responsible managers, such as accountants or auditors, may lack the technical experience and expertise necessary to confirm whether the business is meeting its obligations.
- 20 Some respondents raised the issue that automated businesses reliant on algorithms may require more constant monitoring because of the possibility of technology generating unintended output. It was suggested that we should distinguish between heavily automated firms and genuinely innovative ones.

ASIC's response

In refining our proposal, we considered the feedback in relation to how the nomination of a third party providing sign-off would align with how we assess the suitability of responsible managers who have day-to-day involvement in the relevant business.

In response to the feedback we received, we have changed the professional qualification requirement. As outlined at RG 105.28, applicants must now demonstrate that the sign-off person has a sufficient level of knowledge and skills to support their role, with reference to the five options in RG 105. As a result, a person providing sign-off will now be a responsible manager.

We recognise that, where licensees have a heavily automated business model and a small client base, responsibility for decisions about their financial services may not require significant day-to-day involvement from their responsible managers in all cases. However, involvement is required:

- at the initial set-up;
- when adjustments are necessary because of changes in compliance requirements; and
- for regular maintenance checks.

The amendments at RG 105.26–RG 105.33 allow greater flexibility for small-scale, heavily automated businesses, while still ensuring that those businesses can satisfy their organisational competence obligation.

Requirements for third-party sign-off

- 21 As proposed in CP 260, the nominated third party would be required to sign off that the AFS licensee is materially compliant with ASIC-administered legislation. This sign-off would be required every 12 months, or more frequently, if there were significant changes to the licensee’s business. The sign-off would need to be lodged with ASIC.
- 22 Many respondents, including both those who agreed and those who disagreed with our proposal, suggested that annual sign-off may be too infrequent. Instead, quarterly or biannual sign-offs were commonly recommended.
- 23 A common theme was the possible cost of the sign-offs to be lodged with ASIC. It was suggested that the third-party sign-offs had the potential to be commoditised and to incur prohibitive costs. However, this issue was not usually put forward as a reason not to proceed with the proposal.

ASIC’s response

After considering the feedback received, we have amended our guidance in RG 105, as set out at RG 105.29, to require responsible managers providing sign-off to do so every six months for the first year of operation, every 12 months after that, and otherwise on an as-needed basis.

We have also included a requirement that the licensee nominate a director with day-to-day involvement in the business who is responsible for ensuring that the responsible manager is consulted with and engaged as needed. We believe that this requirement, together with other refinements to our proposal, removes the need for sign-offs to be lodged with ASIC.

We have updated RG 105 to include guidance on our expectations about the engagement of responsible managers without day-to-day involvement in the business.

Conditions of eligibility for third-party sign-off

- 24 In CP 260, we explained that our proposed changes to the requirements for small-scale, heavily automated businesses when nominating responsible managers would only apply to AFS licensees who have no more than 1,000 retail clients and who give advice about, or arrange for another person to deal in, liquid financial products, non-cash payment facilities, and products issued by prudentially regulated businesses.
- 25 Most responses did not have concerns with the proposed conditions of eligibility. However, some submissions noted that many fintech businesses have high volumes of low margin, online customers, and suggested that the cap of 1,000 customers be extended.
- 26 Two submissions mentioned that this proposal gave small-scale, heavily automated businesses a competitive advantage. They suggested that this proposal should be extended to include all firms in the industry.

ASIC's response

The aim of the original proposal was to provide new start-up businesses with additional flexibility in how they demonstrate their organisational competence.

We believe that larger-scale businesses operating without a person with appropriate knowledge and skills involved on a day-to-day basis may not satisfy their statutory requirement to maintain organisational competence, even if a third party provides sign-off.

For that reason, we have not altered the eligibility criteria for this proposal.

D AFS licensing exemption

Key points

This section outlines the responses we received in relation to Proposals C1 to C9, as outlined in CP 260, and our approach to those responses.

It covers feedback on our proposal to grant conditional, industry-wide relief to allow new Australian businesses to test specific financial services for six months without needing to obtain an AFS licence.

We also summarise the feedback received on our proposed conditions and restrictions on this licensing exemption, including:

- the specified financial products and services that a business would be allowed to test;
- that the exemption would not be applicable to existing AFS licensees;
- the suggested client and exposure limits of 100 retail clients and a total exposure of \$5 million;
- the requirement for the testing business to:
 - maintain adequate compensation arrangements (e.g. professional indemnity insurance);
 - have in place other consumer protections, including membership of an approved external dispute resolution scheme;
 - have a ‘sandbox sponsor’; and
 - supply certain notifications to ASIC; and
- that ASIC would have the power to withdraw the exemption in certain situations.

Six months of unlicensed financial service testing with retail clients

- 27 In CP 260, we proposed that we would grant conditional, industry-wide relief to allow new Australian businesses to test specified financial services for six months without needing to obtain an AFS licence. We would still consider individual applications for an exemption by businesses that did not fit within the scope of the relief.
- 28 We consulted on the proposal, including who else should be eligible for the licensing relief. We also requested estimates of cost savings for businesses and any estimates of potential cost changes for consumers.
- 29 We received mixed responses to this proposal. Five respondents were unresponsive to the proposed licensing exemption. However, some responses strongly recommended that the proposal be widened.

- 30 Those who did not support the proposal were concerned that the industry-wide relief could undermine the regulatory framework. Consumer groups were particularly concerned about the risk of poor conduct and the potential for poor consumer outcomes. There were also concerns that an industry-wide exemption could create an uneven playing field.
- 31 Many respondents believed that six months was not enough time to properly test a business concept. One respondent proposed an initial testing period of 12 months, with the potential for extensions on application. They also requested further clarity about what would happen to a business at the end of the testing period.

ASIC's response

The purpose of the licensing exemption proposal is to promote innovation by allowing fintech businesses to test product and service offerings without a licence for a specified period.

However, this objective must be balanced with promoting consumer trust and confidence, consistent with the intent of the regulatory regime.

This licensing exemption is designed to allow fintech businesses to validate the concepts and viability of their services and not to undermine the fundamental principles of ASIC's licensing frameworks. We believe there are sufficient service restrictions, exposure caps and consumer protection arrangements to minimise the risk of poor conduct and poor outcomes for consumers.

We note that there is already considerable existing flexibility in the law, including previous class-wide exemptions. Where a business does not meet the eligibility criteria of the licensing exemption, ASIC will continue to consider applications for individual relief on a case-by-case basis.

After considering the feedback, we have extended the testing period to 12 months. Experience to date suggests that this will be sufficient time for testing businesses to apply for, and obtain, a licence before their testing period ends. We encourage businesses to apply for a licence early in the testing period, as this will greatly reduce the possibility that they will need to cease operations.

We have provided clarity about what happens at the end of the testing period. In RG 257, we outline what happens at the end of the testing period (see RG 257.73–RG 257.75), and how testing businesses can apply for an extension to the testing period (see Section F of RG 257). However, we generally consider 12 months to be sufficient time for testing.

We will review our policy position on the licensing exemption in due course to consider whether the exemption is operating as intended and whether it should be broadened or changed in any other way.

Scope of exemption

Service restrictions

- 32 We proposed that the 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 another person to deal in the above products.
- 33 We consulted on the proposed service restrictions and whether there were any other financial services that should be covered by the licensing exemption.
- 34 Many respondents felt that only a small number of businesses would be eligible for the licensing exemption and many fintech businesses, such as ‘digital wallet’ providers and insurance service providers, would not be eligible.
- 35 Five submissions suggested that services for certain products should be excluded from the relief because of a high chance of consumer risk and reputation risk to the industry. In contrast, 12 submissions supported the inclusion of additional products and services such as insurance, payment products, quoted foreign securities and personal loans.
- 36 Some consumer and industry groups specifically opposed a licensing exemption in relation to personal advice. The issue was also raised that the excluded products would infringe on an adviser’s ability to comply with the best interests duty. One respondent specifically requested the inclusion of superannuation—at least for the creation of an investment strategy—as this could be a component of more comprehensive financial advice.
- 37 It was noted that innovative services relating to insurance are growing in overseas jurisdictions and are emerging in Australia. Feedback also raised the possibility of the client exposure cap being based on the premiums payable rather than the amount of cover.
- 38 Some respondents suggested that the exemption should be broadened to include payment products, because these are generally viewed to be simple products that are well understood by consumers.
- 39 Respondents asked for foreign securities to be included as there was no reason to distinguish these from Australian securities. It was also requested that personal loans be included, with separate exposure limits for secured and unsecured loans.

ASIC's response

We have considered the feedback and have widened the scope of the licensing exemption. The exemption now applies to credit services (other than providing credit) and some financial services in relation to insurance and payment products.

Further detail about the scope of the fintech licensing exemption can be found at RG 257.56–RG 257.64.

However, in widening the scope of the exemption, we continue to consider that unlicensed testing is not appropriate for all financial services or credit businesses. We note that the licensing exemption is only for concept validation, and some products and services are incompatible with this goal. As a result, the licensing exemption does not apply to:

- products or services with ongoing obligations; or
- services relating to complex or long-term products.

Existing AFS licensees

40 In CP 260, we proposed that the licensing exemption would not be available to existing AFS licensees where they were not currently authorised to provide the services they wished to test.

41 We consulted on the support for this proposal and whether there were any issues relating to innovative services from existing licensees that could potentially be resolved on an industry-wide basis.

42 This proposal received minimal responses, although a number of respondents suggested that the exemption could be broadened to include existing licensees. Two respondents supported our proposal that the exemption be limited to start-up businesses.

43 Respondents also raised the issue that an exemption would give small, new Australian businesses a competitive advantage—in particular, because this proposal did not encourage all types of innovation, or cultivate Australia's position as a regional hub for innovation.

44 The issue was also raised that existing AFS licensees may establish or use subsidiaries to receive the benefit of the exemption.

ASIC's response

The purpose of the licensing exemption is to remove the barriers faced by start-up businesses by allowing limited concept testing, without the time and costs associated with obtaining an AFS or credit licence.

This exemption is not available to existing licensees, or their related bodies, as we believe they already have their existing resources and structures, which means they do not face the same barriers as start-up businesses when it comes to validating concepts for new products and services.

We will continue to consider individual applications for relief on a case-by-case basis, including applications from existing licensees. Based on the feedback received, we have extended the licensing exemption to businesses incorporated outside Australia if they register as a foreign company in this jurisdiction.

Conditions of exemption

Client and exposure limits

- 45 In CP 260, we proposed a client limit of 100 retail clients. We also suggested that the exposure to an individual retail client be limited to \$10,000, and that the total exposure to all clients be restricted to \$5 million.
- 46 We consulted on the appropriateness of these exposure limits. We also welcomed feedback on a possible alternative approach of varying the exposure limit of retail clients based on their total net assets.
- 47 There were varied responses to the exposure limits, with some responses supportive of the proposal while some requested higher caps.
- 48 Some submissions noted that other jurisdictions do not have exposure limits for their respective measures to facilitate innovation. Two professional associations suggested a virtual testing environment could limit the risk of poor consumer outcomes.
- 49 One submission noted that a limit on the number of clients may not be required in light of individual and total exposure caps. The same submission also increasing the individual and total exposure caps, as well as extending the products covered under the exemption.
- 50 Respondents generally noted that a graduated approach to capping the exposure to individual customers would be complex and that small start-up businesses would be unlikely to have the resources to measure the threshold level for each individual client.

ASIC's response

In finalising the licensing exemption, we are mindful that we are enabling fintech businesses to test the viability of their business models by reducing the barriers to innovation. However, we are also balancing this objective with the risk of poor consumer outcomes and the intent of the licensing framework.

We have considered the feedback received and believe that a business concept can be validated with a small number of retail clients. Increasing the client limit may increase the risk of poor conduct affecting a wider number of consumers, and create

competitive neutrality problems between licensed and unlicensed businesses. For these reasons, we have retained a limit of 100 retail clients. We have published guidance in RG 257 on factors we will consider if a business asks for an increase to the client limit.

We note that our licensing regime is a modular framework that is significantly different to those in other jurisdictions. There is already significant flexibility in our licensing framework.

In finalising the client and exposure limits, we considered the impact any increases might have on professional indemnity (PI) insurance premiums. Feedback during the consultation process identified the cost of PI insurance as a significant concern. Increasing client and exposure limits could increase PI insurance costs and reduce the effectiveness of the fintech licensing exemption.

Based on these considerations and the feedback received, we have settled on the following exposure limits:

- \$10,000 for liquid financial products and non-cash payment facilities;
- \$25,000 for credit assistance (i.e. services can relate to contracts with a maximum credit amount of \$25,000); and
- \$50,000 for general insurance (i.e. advice and dealing in relation to contracts with a maximum sum insured of \$50,000)

In setting exposure limits above \$10,000 for consumer credit and general insurance, we also considered:

- the general features of these markets;
- the different risk profiles of these products, including the lack of 'market risk' associated with services being tested; and
- other protections that apply to consumers, such as the responsible lending obligations.

Compensation arrangements

- 51 We proposed that the licensing exemption should only apply if the testing business maintains adequate compensation arrangements. These arrangements are outlined in [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126), and are generally met through acquiring professional indemnity (PI) insurance.
- 52 We consulted on the likelihood of the applicable businesses being able to access PI insurance, as well as any other suggestions for acceptable compensation arrangements.
- 53 The majority of the feedback centred on the risk of testing businesses being unable to access or afford adequate insurance. However, it was broadly acknowledged that adequate compensation requirements could assist in maintaining the integrity of the market. Some consumer groups also noted

that compensation arrangements were required to ensure that the external dispute resolution (EDR) requirement had substance.

- 54 One respondent was concerned that insurers would not insure innovative start-up businesses as they did not adequately understand the industry. There were also significant concerns about the potentially prohibitive cost of PI insurance for a testing business. One respondent noted that a testing business was more likely to be able to obtain PI insurance if the testing period was extended to 12 months.

ASIC's response

Adequate compensation is a fundamental consumer protection.

In considering the feedback received, we have also consulted with the insurance industry. Based on these discussions, and the submissions received, we consider that the proposed condition is generally workable.

One insurer noted that, in providing insurance, it would take into account:

- the conditions of relief and, therefore, the low levels of risk for the business; and
- the potential for testing businesses to coordinate a market pool for more efficient group insurance pricing.

RG 126 notes that the adequate level of PI insurance depends on the volume and scope of the business. Given the client and exposure limits, we have finalised, at RG 257.99, that the minimum level of cover required by testing businesses is \$1 million.

We have extended the testing period to 12 months and we anticipate that this will also assist testing businesses in acquiring PI insurance.

Other consumer protections

- 55 In CP 260, we outlined other consumer protections that a testing business must have in place to rely on the licensing exemption. These protections include:

- (a) membership of an EDR scheme;
- (b) compliance with modified disclosure requirements; and
- (c) compliance with the best interests duty and conflicted remuneration provisions.

- 56 We consulted on the appropriateness of the identified compliance conditions and welcomed suggestions for other applicable consumer protections.

- 57 Submissions on this topic generally agreed on the importance of dispute resolution arrangements, particularly membership of an EDR scheme.
- 58 A recurring theme raised by respondents was the need for mandatory disclosure standards regarding the consumer protection arrangements organised by testing businesses. Other feedback recommended that the mandatory disclosure standards should also include information on the business's strategy for existing customers if the business did not continue past the testing period.

ASIC's response

This proposal was intended to ensure that consumers had available recourse in the event of any dispute.

We note that membership of an EDR scheme is a condition of relief and businesses will fail to comply with this condition if appropriate membership is not maintained.

While we will not be undertaking a detailed assessment of the testing business's proposed services, the business is required to provide confirmation of EDR membership to ASIC before it can rely on the licensing exemption.

We will place information about testing businesses on our website. We believe that this will promote transparency. Businesses and consumers can also raise instances of poor conduct with ASIC.

We have also outlined, at RG 257.105, that testing businesses are required to maintain membership of the nominated EDR scheme for a run-off period of 12 months.

These protections, and others, will also apply to the additional services covered by the licensing exemption beyond those proposed in CP 260.

Sandbox sponsorship

- 59 We proposed that the licensing exemption only apply to testing businesses 'sponsored' by an organisation recognised by ASIC. We suggested that sponsors could be not-for-profit industry associations or other government-recognised entities. The sandbox sponsor would be required to confirm that a 'fit and proper' person operated the testing business, and conduct a preliminary assessment of the business's testing model.
- 60 Among other considerations, we consulted on the support for sandbox sponsorship, suggestions for sandbox sponsors and the costs associated with obtaining sponsorship.
- 61 Before CP 260, industry consultation had suggested that sandbox sponsors could play a gatekeeper role and reduce the risk of potential misconduct

- during any testing. There were 11 responses to this question, which were mixed and raised a range of potential issues.
- 62 Some potential sponsors indicated that they would not sponsor testing businesses because of liability and reputation risks. Some professional associations suggested that authorised deposit-taking institutions (ADIs) or professional associations could be sandbox sponsors. Other respondents proposed that existing AFS licensees, not-for-profit associations or ASIC should be the sandbox sponsors.
- 63 Many respondents indicated they did not support sponsors being held liable for the conduct of testing businesses. They feared that this would deter sponsors or lead to prohibitively large fees. Some respondents' support for the proposal was conditional on the elimination of liability for sponsors, or on ASIC ensuring that the fees for sponsorship would be reasonable.
- 64 Feedback also raised the potential for conflicts of interest to occur for sponsorships firms. One respondent was concerned that sponsors, such as larger banks, could use their position as sponsor to steal the testing business's ideas.

ASIC's response

After considering the feedback received, we have decided not to require sponsorship as a condition of relief.

We consider that a sponsorship requirement without business model assessments has the potential to confuse consumers about the role of a 'sponsor' and the status of the testing business. Feedback also indicated that the sponsorship role could lead to additional costs and competition concerns.

We believe there are sufficient consumer protection conditions for the licensing exemption.

We will maintain a supervisory role over businesses relying on the fintech licensing exemption. We also reserve the right to withdraw the exemption for a particular business if the need arises.

Integrity measures

Notifying ASIC

- 65 In CP 260, we proposed that a testing business would need to notify ASIC that it intended to rely on the licensing exemption from a specified date, provide evidence of sponsorship from a sandbox sponsor and declare that it had reasonable grounds to expect that it could operate the business for six months from the specified date. The business would also be asked to provide a short report detailing its testing experience.

- 66 This proposal was generally positively received. No issues were raised with businesses reporting on their testing experience. One industry body questioned what would happen to the business after the expiry of its six-month testing period.

ASIC's response

As explained at RG 257.110–RG 257.116, testing businesses must provide ASIC with specified information before they can rely on the licensing exemption. We anticipate that this information will allow us to increase our understanding about users of the exemption, as well as its effectiveness.

The notifications provided to ASIC will assist us to confirm whether the business is eligible to rely on the licensing exemption. The notifications may also assist us to detect poor conduct during a business's testing period.

In response to feedback, we have extended the testing period to 12 months. We anticipate that this will be sufficient time for a business to validate its concept.

We will ask for a short report at the end of each business's testing period on a voluntary basis.

Withdrawal of relief

- 67 In CP 260, we proposed that ASIC would have the power to withdraw the licensing exemption, and consulted on when we should exercise our power to do so.
- 68 There were minimal responses to this proposal, although all agreed that ASIC should maintain the power to withdraw the exemption. Most suggested that the relief should be withdrawn when a testing business did not comply with the conditions of the exemption, or if there were adverse effects for consumers in the financial services system.
- 69 One submission also suggested that we should withdraw the licensing exemption when consumers were exposed to excessive risk or when the original information provided was materially inaccurate or misleading.

ASIC's response

After considering the feedback received, we have decided to maintain the right for ASIC to withdraw the exemption. We believe this is essential to ensuring that consumer protections are maintained.

Appendix: List of non-confidential respondents

- Association of Financial Planners
 - Australian Bankers' Association (ABA)
 - Baker & McKenzie
 - Bishop, Robert
 - Choice
 - CPA Australia
 - Cuscal
 - Elcano Group
 - Financial Planning Association (FPA)
 - Financial Services Council (FSC)
 - Fintech Australia
 - Gadens Lawyers
 - Governance Institute of Australia
 - Insurance Council of Australia
 - K&L Gates
 - King and Wood Mallesons
 - Melbourne Securities Corporation (MSC)
 - MIntegrity
 - National Insurance Brokers of Australia
 - PriceWaterhouseCoopers (PWC)
 - Squire Patton Boggs and Hemisphere Legal
 - Stockbrokers Association
 - The Currency Shop
 - Tyro FinTech Hub
 - Tyro Payments
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Note: ASIC received four confidential submissions.