

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2016 - 2017

Division/Agency: Australian Securities and Investment Commission

Question No: 221

Topic: Fintech - June 2016 consultation paper

Reference: Written

Senator: Ketter, Chris

Question:

ASIC released a consultative paper in June 2016 that sought feedback from stakeholders on “Adjusting ASIC’s policies to allow some small-scale, heavily automated businesses to rely, in part, on sign-off from an appropriately experienced third party in order to meet their organisational competence obligation” and “a conditional, industry-wide exemption to allow new Australian businesses to test certain financial services for six months without holding an AFS licence.”

- 1) Whilst ASIC looks at a range of measure to facilitate innovation in financial services, how is it making sure that consumers are protected when measures are developed?
- 2) If new financial advice businesses can operate for up to six months without a licence, will ASIC pay compensation for victims of companies who operate outside of the rules?
- 3) What stage is ASIC at in formulating regulation around blockchain technology and other ‘digital disruption’?
- 4) What steps has ASIC taken to ensure that it has sufficient in-house expertise to keep up with developments in ‘digital disruption’?

Answer:

- 1) ASIC's proposed regulatory sandbox exemption aims to minimise risks to consumers of services provided by entities that rely on the sandbox licensing exemption by:
 - a. Placing limits on the nature of services that can provided by exempted entities (e.g. product issuer services would be excluded from the sandbox);
 - b. The use of caps on the size of the service (e.g. ASIC proposed investment caps of \$10,000 for services provided to a limit of 100 retail clients); and
 - c. Applying consumer protection conditions on the exempted entity while they use the sandbox exemption that are generally similar to protections that apply for clients of Australian Financial Services (AFS) licensees. Some of the proposed consumer protection conditions relate to:
 - i. Disclosure to the consumer about the fact that the entity is utilising the sandbox and does not hold an AFS licence,
 - ii. The conduct of the entities utilising the sandbox;
 - iii. Internal and external dispute resolution mechanisms for the consumers to access in event of a dispute; and
 - iv. Adequate compensation arrangements.

ASIC is currently considering 29 submissions received in response to the consultation on the sandbox proposal. ASIC is working to finalise its policy position in relation to the sandbox by the

end of 2016. ASIC has stated that it will not compromise on the fundamental regulatory principles under the law in any final version of the sandbox exemption.

- 2) ASIC will not have a role in providing compensation to consumers of entities that rely on the proposed regulatory sandbox licensing exemption. Similarly, ASIC does not have a role in providing compensation to clients of people who have an AFS licence.

However, under the proposed regulatory sandbox exemption, ASIC intends to apply a compensation requirement as a condition of the exemption. Namely, exempt entities during the period they utilise the sandbox would be required to have adequate compensation arrangements. This is the same position as for people who have an AFS license.

ASIC's guidance under Regulatory Guide 126, *Compensation and insurance arrangements for AFS licensees*, will be relevant. We anticipate most, if not all, sandbox entities will rely on professional indemnity insurance to meet their adequate compensation obligation. This is also the way most AFS licensees meet this obligation.

- 3) Distributed Ledger Technology (DLT) providers do not require authorisation by ASIC to provide their services. However, ASIC is interested in how licensed entities and market providers make use of this technology in their business that is conducted under their AFS or financial market infrastructure licence. The nature of ASIC's interest will be informed having regard to a risk based approach.

The Australian Securities Exchange (ASX) is piloting potential use of DLT. ASIC and the Reserve Bank of Australia will provide relevant advice to the Minister depending on the final shape of ASX's proposed use of this technology. This may include advice on the clearing and settlement legal regime and/or the conditions on the licence on ASX.

ASIC is engaged with industry and peer regulators in discussing a range of potential applications and business models based on DLT. At this point in time, the Council of Financial Regulators (CoFR) agencies with the addition of AUSTRAC are working together to review and assess any potential gaps in our respective regulatory frameworks to be positioned to provide advice and guidance to businesses that seek to adopt business models based on DLT.

In relation to other 'digital disruptions, ASIC is engaging through its Innovation Hub initiative with entities have innovative business models, including marketplace lending operators, digital advisors and payment service providers. Two key objectives of our engage are:

- a) To provide informal assistance to these entities about the regulatory requirements that may apply to their businesses; and
- b) To better understand innovative developments and how these may benefit investors and have an impact on financial services sector more generally.

ASIC has already issued guidance about marketplace lending and digital financial product-advice that aims to assist providers of both of these technology based services understand the regulatory requirements that apply to their respective business models.

- 4) ASIC applies a capability framework generally to review its skills needs on an ongoing basis and put in place strategies to fill skills gaps. Through this process, ASIC has enhanced its skills in the use of technology and the provision of financial services. We continuously monitor our needs to allow us to adapt and improve our skills and technology as required. Under ASIC's Innovation

Hub initiative we bring together a team that includes a range of skills and experience from across the organisation. As part of the Innovation Hub initiative we also have an internal taskforce that is made up of senior executive leaders from across the organisation, that frequently considers the skills and experience required to engage and assist innovative businesses and to allow ASIC to monitor and regulate this developing sector.