

13/05/16

By email:

brooke.stewart@asic.gov.au

Brooke Stewart
Senior Analyst
Financial Advisers
Australian Securities and Investments Commission

Dear Brooke,

Re: AustralianSuper submission: ASIC Consultation Paper 254: Regulating digital financial product advice

AustralianSuper welcomes the opportunity to make a submission responding to ASIC Consultation Paper 254: Regulating digital financial product advice.

AustralianSuper is Australia's largest single superannuation fund and is run only to benefit members. We don't pay commissions to anyone to recommend us, nor do we pay dividends to shareholders. We have over 2 million members and manage over \$95 billion of members' assets. Our sole focus is to provide the best possible retirement outcomes for our members.

AustralianSuper fully supports a rigorous regime for the regulation of digital financial product advice. We do not think that consumers should receive either a lower standard of financial product advice, nor should licensed financial advisers be subject to reduced fiduciary duties owed to their clients, simply because the medium through which financial advice is provided is different, and may to some extent be automated.

Specific feedback on proposals and questions

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

The guidance is generally helpful as it seeks to confirm for those that are unaware, that the legal obligations relating to the provision of traditional financial product advice and digital advice are the same.

However, regulatory guidance around digital advice needs to contain some explicit acknowledgement that the types of digital advice offerings that many financial services

providers already offer contain a mix of digital advice and face to face or telephone advice. In this context, it is not helpful to seek to isolate digital advice as a separate offering and provide regulatory guidance on digital advice solely on this basis. It is perhaps more helpful to provide guidance on how digital advice mixes with advice provided using a different medium.

This issue is relevant to the provision of factual information, general advice, scaled personal advice and comprehensive personal advice, and where responsibility for that advice lies.

AustralianSuper supports the robust triaging process as envisaged in Section D, RG 000.95 to RG 000.100. Section D however, needs to provide *detailed* examples of how the scoping process in a digital environment can satisfy the best interests' duty. Further, the proposed guidance envisages the complete (albeit scaled down) advice process occurring in the digital space exclusively. If a client receiving scaled advice in a digital format is triaged for face to face advice, the guidance assumes that this must be a new advice arrangement. We question whether this always will be, or should be the case.

We think in order to be truly technologically neutral the concept of providing advice in a continuum across more than one medium needs to be considered. Regulatory guidance needs to be provided about the client experience of receiving advice from the same licensee, albeit with different individual advisers. Typical scenarios for this are shown below:

Scenario A: *Client seeking scaled personal advice using a calculator and interactive advice tool on a superannuation fund website is 'triaged' to a face to face adviser. The face to face adviser uses both automatically generated and manually input personal information about this client in satisfying their 'know your client' obligation. The 'adviser' standing behind the digital advice is an authorised representative of the licensee, a trustee of the relevant superannuation fund. The face to face adviser is also an authorised representative of the same licensee. The interactive tool has not provided personal advice as yet, as the client has been triaged to a face to face advisers. The final personal advice is provided taking into account personal financial circumstances of the client as disclosed via the interactive advice tool. The face to face adviser produces a statement of advice.*

Scenario B: *Client seeking to clarify information in their superannuation fund annual statement (which includes a retirement income projection) by telephoning an enquiries line for a superannuation fund. The annual statement may be provided in either hard or soft copy to the client.*

The retirement income projection may be providing personal financial advice as it has taken into account some personal financial circumstances of the client, and no statement of advice is produced consistent with regulatory relief.

The person who answers the enquiries from the client may provide factual information, general advice or even a level of scaled personal advice in response to the caller's queries.

The 'adviser' standing behind the digital advice is an authorised representative of the licensee, a trustee of the relevant superannuation fund. The enquiries line call centre person is also an authorised representative of the same licensee.

In both scenarios, AustralianSuper is of the view that the final provider of the advice must remain responsible for the obligation to observe the best interests duty to the client, and satisfy in full the 'know your client' rule despite relying in part on information that another authorised representative within the same licensee is responsible for. Whilst the provision of some personal client information from another authorised representative reduces time for the last adviser in this chain, it does not reduce or dilute their fiduciary responsibility for advice.

AustralianSuper submits that it would be helpful if regulatory guidance about digital advice specifically addresses this issue as it will likely apply to a range of offerings by financial services providers.

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.

AustralianSuper is fully supportive of this proposal as it replicates requirements for advice provided using other mediums.

We do not see why minimum training and competence standards should be reduced for digital advice and consider that consumers using digital advice have the same need for quality financial product advice as do those who use other mediums.

AustralianSuper submits that if the *Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015* should become law in the future, a responsible manager for the provision of digital advice should meet the new higher training and competence standards, and should also comply with the proposed ethical standards and be covered by an approved compliance scheme. As these reforms are delayed due to the calling of an election, and also have a new commencement date, the mooted six month transition period is less of a concern.

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.

AustralianSuper support the introduction of a self-certification requirement which would require digital advice licensees to certify that their algorithms have been adequately monitored and tested.

AustralianSuper is also supportive of the introduction of a requirement for independent third-party monitoring and testing of algorithms. We expect that this would be warranted in limited circumstances, such as follows:

- As part of an enforceable undertaking with the regulator
- As part of a complaints/reparation process with affected clients
- Where breaches of relevant financial services laws have occurred

AustralianSuper would appreciate the opportunity to discuss these issues with ASIC in more detail. With this in mind, and if you have any further queries on this matter, please do not hesitate to contact me on (03) 8648 3847.

Yours sincerely



Louise du Pre-Alba
Head of Policy