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Australian Securities and Investments Commission
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Dear Brooke,

Regulating digital financial product advice – Consultation Paper 254

Background

On behalf of 65 not-for-profit super funds, Industry Super Australia (ISA) and Australian Institute of Superannuation Trustees (AIST) welcome the opportunity to comment on Consultation Paper 254 and the Draft Regulatory Guide 000.

Not-for-profit super funds have long recognised that advice is an important service that can significantly improve member outcomes. Historically, not-for-profit super funds delivered most personal advice face-to-face. However, more recently, many not-for-profit funds have invested significantly in digital platforms in response to increased demands from members for digitally provided advice. Industry super and other not-for-profit funds have led innovation in the delivery of scaled forms of advice (largely intra-fund advice) and advice delivered through digital formats.

ASIC has played an important role in supporting the delivery of advice by not-for-profit super funds, beginning with the original class order and regulatory guidance on intra-fund advice and continuing through ASIC's approach to implementing the Future of Financial Advice and Stronger Super reforms. ASIC's approach to each of these developments has been critical to the ability of the not-for-profit super sector to meet its members advice needs.

The Consultation Paper and draft guidance presents an important opportunity to more formally support the role of digitally delivered advice and the governance and related compliance standards that support this delivery mechanism. This consultation presents an important opportunity for personalised advice and digital advice providers to obtain clarity around their legal obligations and to ensure they deliver high quality advice, which in turn will mean that financial consumer trust and confidence is not compromised.

This submission provides a brief summary of the provision of digital advice by not-for-profit super funds, reflecting the presentation provided by ISA, Industry Fund Services (IFS) and several not-for-profit superannuation funds on 29 April 2016. The submission then addresses the questions for feedback that are relevant to our members.

Not-for-profit funds as providers of digital advice

Unlike retail providers, not-for-profit super funds do not offer advice services as a principal integrated sales and distribution channel for selling products. Rather, the overarching and guiding objective of their digital advice services is to encourage their members to engage in no/low cost, value-adding, advice as a way of improving their retirement outcomes and financial wellness more generally and not as a source of revenue and profit for the business.

Not-for-profit super funds, and especially industry super funds, typically have a younger member demographic and members typically have lower superannuation balances than retail super funds. These funds are therefore well placed to fill a gap in the advice market for members who are generally reluctant to seek holistic advice provided in a traditional face-to-face situation, and are more likely to seek out single issue, transactional-based advice which is often delivered online.

ISA and AIST's 2014 Advice Survey [1] highlighted increased investment in digital platforms by not-for-profit funds as well as a common strategic objective to transform member connectivity through enhanced digital advice.

The survey found:

- Over 130,000 members received personally delivered financial advice during 2013/2014.
- In addition, not-for-profit funds ran 17,830 workplace seminars and 15,949 general seminars and webinars.
- Not-for-profit funds offered a comprehensive spectrum of advice services including general advice, intra-fund advice and holistic superannuation advice.
- Three funds currently use web chat to deliver advice to members, and a further eight funds anticipate establishing or growing this channel in the next five years.
- Funds anticipate that in 2019, the sector will deliver almost 187,000 pieces of advice.
- Projected growth for intra-fund advice is stronger than for general advice.
- Not–for-profit funds anticipate that advice delivered through web-based calculators and retirement forecasts will grow strongly over the next five years.
- Many funds also reported that their members are wary of financial advice. This is not surprising given the succession of scandals that have plagued the retail financial advice industry. Intra-fund advice in particular, helps to restore member confidence in advice.

[1] In 2014 ISA and AIST undertook a joint survey of the provision of financial advice of 19 not-for-profit funds. The full report can be accessed here: http://www.industrysuperaustralia.com/assets/MediaRelease/ISA-AIST-2014-Advice-Survery-Meeting-Members-Advice-Needs.pdf

Regulatory Guide 000

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

A1Q1 Overall, is the proposed guidance helpful? If not, why not?

ISA and AIST support the introduction of guidance specific to digitally provided advice and in general support the measures within Regulatory Guide 000.

Not-for-profit funds have invested significant amounts in designing new tools to provide advice for an audience that includes members who prefer online channels to traditional advice delivered during business hours, and members for whom digital advice is the first step in their advice journey.

We support enhanced clarity of the legal framework for digitally provided advice. As this area is growing rapidly, it is essential that funds have a comprehensive understanding of their legal obligations and the benefit of regulatory guidance that provides specific examples to ensure that they are operating within the legal parameters.

In addition, ISA and AIST support the role that Regulatory Guide 000 can play in assisting the delivery of quality digital advice, ensuring that the scope of advice delivered through digital channels is in the best interests of clients and that consumers are effectively triaged out of digital channels when it is not suited to their circumstances.

A1Q2 Is our proposed guidance (in Section D of the draft regulatory guide) helpful in assisting digital advice providers to provide scaled advice that is in the best interests of clients? If not, why not?

ISA and AIST welcome ASIC's guidance in relation to scaled advice and the outline of its minimum expectations to assist providers of scaled advice to ensure that the advice is in the best interest of members.

However, we recommend that the guidance be expanded to include a number of additional issues.

Scaling advice

To strengthen consumer protection, we recommend that the guidance provides specific examples of providing intra-fund advice that *is*, and *is not*, in the members' best interest. Examples of scoping issues that arise in building online advice tools for superannuation include:

- An example that illustrates that the scope of switching advice cannot be limited to advice that recommends an in-house product without undertaking any analysis or comparison of the client's current super product.
- An example that illustrates that in particular circumstances the scope of advice cannot be limited to exclude topics such as cash flow, existing debt and expenses, to the potential benefit or convenience of the adviser.

Not-for-profit funds providing scaled advice to existing members through digital advice have, and continuously develop with improving technology, robust triage processes to determine whether a particular category of advice or advice topic or channel is suitable for a particular member. Each fund's triage process is different and is tailored to its membership and advice services.

Triage processes

ISA and AIST recommend that Section D could be strengthened by the inclusion of appropriate examples of where it would be expected or required that a triage process for intra-fund advice would comply, or not comply with the regulatory regime, and therefore considered good practice.

For example, a member using a digital advice tool for advice exceeding the scoped advice parameters should be triaged to a fund representative for a qualitative conversation detailing the member's broader financial objectives so that appropriate and more comprehensive advice can be arranged.

Another example may be where the objectives the member has asked the tool to advise on are outside the bounds of sensibility, for example, seeking to achieve an income in retirement that is very unlikely to be achieved based on the member's situation. In such cases, a quality digital advice tool's algorithms and simulations should determine and identify algorithmic probabilities; and where the resulting probabilities are outlying on a pre-determined scope or bell curve approach, the tool will triage the person to a more appropriate (human) resource for further investigation and discussion of their objectives.

ISA and AIST would be pleased to work with ASIC to develop examples on scaling and triage for the final guidance.

"**Bionic" advice**

The proposed guidance appears to draw a distinction between advice that is provided by a person on the one hand and advice that is generated by a digital tool underpinned by an algorithm on the other hand. In practice, however, many financial service providers actually blend the positive elements of both these channels to deliver an optimised member experience. This may consist of a member commencing to explore their options online using a tool, then graduating to a limited / scoped advice tool that often pre-populates the fact finding element with the member's data and relevant records held by the fund. Members may partially or fully complete this process, with or without the assistance of an adviser, or may request that the output from the tool be reviewed by a fund's adviser. This in turn can lead to the member engaging the adviser to explore with them their personal advice requirements more broadly. Given the blended nature of this delivery of advice, encompassing both digital and face-to-face or telephone advice, some industry participants are now referring to this as "bionic" advice.

ISA and AIST recommend that ASIC's advice should acknowledge this and explain how the regulatory regime administered by ASIC applies to bionic advice situations. This should include who is legally responsible for the advice and, for personal advice, how the best interests duty applies. The Statement of Advice should identify the person responsible for the delivery of the advice.

Hybrid providers

At this stage in the evolution of the digital segment of the advice industry, one prevalent business model is where a financial service provider partners with a digital advice provider, both of whom hold an Australian Financial Services Licence (AFSL). The proposed guidance does not acknowledge this AFSL partnering scenario.

ISA and AIST recommend that the draft guidance should also explain how the regulatory regime applies in this situation, including which licensee is responsible to clients for the advice. For instance, the guidance could make clear that contractual terms between the parties must clarify which licensee is responsible and accountable for the advice and ensure that this is clearly disclosed to the client.

Outsourcing IT

APRA imposes numerous prudential standards on superannuation trustees which affect how funds manage risks associated with IT. These include standards relating to business continuity management and, where relevant, outsourcing. The standards are designed to be appropriate to the size, business mix and complexity of business operations of APRA-regulated superannuation entities.

ISA and AIST recommend that given that IT is a critical business activity for all digital advice providers, ASIC should consider whether its guidance should include similar requirements for digital advice providers. This would help these providers understand their obligations to minimise the risk of and recover promptly from disruptions to IT systems. These obligations arise at the licensee level, under the general obligations of licensees under Part 7.6, Division 3 of the Corporations Act; including the obligations to do all things necessary to ensure that the financial services covered by the license are provided efficiently, honestly and fairly and the obligation to have adequate risk management systems.

We would also propose that the increased importance of IT in this process should be examined as part of the organisational competence of Australian Financial Services (AFS) licensees and addressed more specifically alongside existing standards relating to the provision of financial product advice. We accept however that this would require policy change that is beyond the scope of ASIC's role as a regulator.

Training requirements

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. To assist existing AFS licensees that may not have a responsible manager who meets these standards, we propose a transition period of six months.

B1Q1 Do you agree with this proposal? Please provide supporting arguments.

ISA and AIST support the introduction of minimum training and competence standards for the responsible manager of the digital advice licensee. As the digital market continues to expand, it is critical that digital advice licensees are equipped with the same level of skills and knowledge required by financial advisers.

Technical capabilities and expertise should also be a consideration for licensees when appointing the responsible manager. We recommend that ASIC's guidance reflect this.

B1Q2 Do you agree that, if the changes proposed in the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 become law, at least one responsible manager should:

(a) meet the new higher training and competence standards (i.e. have a degree or equivalent, pass an exam, complete a professional year and undertake continuing professional development); and
(b) comply with the proposed ethical standards (i.e. comply with a code of ethics and be covered by an approved compliance scheme)?

ISA and AIST are longstanding supporters of the need for higher educational standards for all advisers who give personal advice on superannuation and other complex products. We strongly support the proposal that the responsible manager should comply with the requirements of the *Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015* if the changes become law for the reasons outlined in B1Q1.

B1Q3 Are there any aspects of the proposed higher training and competence standards in the Corporations Amendment (Professional Standards of Financial Advisers) Bill 2015 that should not apply to at least one responsible manager of a digital advice licensee?

We do not believe that there are any aspects that the responsible manager should be exempt from.

B1Q4 Is the proposed transition period of six months long enough for existing AFS licensees to comply with the requirement to have a responsible manager who meets the minimum training and competence standards? If not, why not?

ISA and AIST support the proposed transition period.

B1Q5 Please provide feedback on any costs or benefits that may apply to your business under the proposal.

Many Responsible Managers employed by not-for-profit super funds already hold qualifications that meet or exceed the Government's proposed higher educational standards. ISA and AIST do not believe that it is likely that there will be a significant cost impact on member funds resulting from this requirements.

Monitoring and testing algorithms

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.

We support the development of guidance on how licensees should monitor and test algorithms. It is particularly important that providers have processes in place which require:

- regular testing of algorithms
- controls to suspend the provision of advice where a problem is detected, and
- sufficient resources (both human and technological) to monitor the performance of algorithms.

We also support such testing being subject to appropriate sign off and attestation by licenced actuaries or similarly trained and experienced professionals familiar with the complex parameters and workings of algorithmic calculators and the output these provide.

Not-for-profit super funds that offer digitally provided advice already undertake rigorous monitoring and testing of the algorithms that underpin the advice the fund provides.

C1Q1 Do you think we should be more detailed in our guidance on the ways in which we think digital advice licensees should monitor and test algorithms? If so, what additional guidance should we provide?

ISA/AIST support ASIC's proposal to provide high level, principles-based guidance. We recognise that because digital advice is a relatively recent development and there are different models of digital advice and it would not be feasible to provide prescriptive guidance that specifically targets each model and algorithm. We also recognise that were ASIC to prescribe standardised assumptions for use in algorithms, this could adversely impact on the ability of an industry that is in its infancy to further innovate and evolve.

However, there are also risks with this approach, including the risk that providers will use algorithms underpinned by very different assumptions which may not always be reasonable. One way to address this risk would be for ASIC to undertake surveillance of a range of different digital advice to test for this.

C1Q2 Please provide feedback on any costs or savings to your business as a result of this proposed guidance.

While we are unable to quantify the amount of cost savings resulting from the proposed guidance, as not-for-profit funds have robust processes in place for monitoring and testing algorithms it is our view that the cost impact would be minimal.

Please contact Ailsa Goodwin on (03) 9923 7172 to arrange a meeting or if you have any questions about this submission.

Yours sincerely

Robbie Campo
Deputy Chief Executive