



21 November 2017

Shellie Davis
Senior Adviser
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: sandbox@treasury.gov.au

Dear Madam,

SMSF ASSOCIATION SUBMISSION ON THE ENHANCED REGULATORY SANDBOX

The SMSF Association welcomes the opportunity to make a submission on the Enhanced Regulatory Sandbox.

We support the Government's move to introduce a legislative framework for an enhanced regulatory sandbox which will enable new financial technology (FinTech) products and services to be established in Australia. The regulatory sandbox will help overcome regulatory burden and the costs that may hinder providers in developing innovative offerings.

FinTech services will be able to use the sandbox to assist in bringing a whole range of benefits and information to the SMSF industry. This can be from bringing full financial pictures to consumers to the offering of innovative specific financial products to the use of distributed ledger technology. The provision of 'robo-advice' for example, will benefit from the sandbox to provide relevant services which will help consumers understand, manage and maximise their retirement savings.

Notwithstanding our support for the sandbox, the regulations must be balanced with consumer protection. It is important that consumers understand and know they are dealing with a FinTech that is acting without an Australian Financial Services License (AFSL) because it is innovating in a certain area of the industry. We strongly support the regulations that allow for consumer protection to continue in areas such as dispute resolution and consumer compensation arrangements.

Notification

Section 16 of the regulations dictate that a person relying on the exemption must notify clients their financial service is provided under an AFSL exemption to ensure there is an appropriate level of disclosure. The SMSFA agrees with the stipulations in the section but believe more needs to be done to ensure clients are clearly provided this notification and understand it. It is important that notification is not buried in lengthy financial service guides or offerings of service.



We propose that a standardised fact sheet be created which is to be distributed to all providers relying on the AFSL exemption. Its delivery would be legislated similar to the delivery of a Financial Services Guide. This must be provided to clients before providing an exempt financial service. The fact sheet should be simple, clear and easily explain the circumstances surrounding an AFSL exemption. Not only will this allow for clients to understand the sandbox it will also give them confidence that their rights are still aptly protected under the exemption. A prominent fact sheet could simply detail:

- What is an AFSL?
- Why do we not have an AFSL?
- What are my risks?
- What are my rights and protections?

Case Managers for sandbox participants

Based off the approach in the UK with the Financial Conduct Authority (FCA), ASIC should consider the implementation of case managers. Part of the goal of the sandbox is to ensure start-ups understand how the regulatory framework might apply to them in the wider market, and to avoid early mistakes in misjudging their regulatory burden. Therefore, start-ups are granted their own case officers from the FCA to guide them on how their innovative business models could eventually fit into the wider regulatory framework, which increases their likelihood of success and at the same time protects consumers.

Each firm's case officer works with them to develop, test, and facilitate engagement with subject matter experts from the FCA. Feedback given to the FCA in their final report has shown that the inclusion of a case manager is valuable to help providers understand how the regulatory framework applies to them.

The SMSFA believes if a version of a case manager was implemented by ASIC it would reduce the risks that exist with start-ups in the sandbox. This not only protects the consumer in the case of start-up failure or lack of successful transition to the wider market but also increases the health and prospects of the start-up.

Exit plan for sandbox participants

In addition, the regulations could prescribe that all providers must create and regularly update an 'exit plan' in case of financial or regulatory failure. Ensuring that providers must have an exit plan that can be initiated at any point helps protect consumers in the case that providers determine their financial service would not be successful outside the sandbox.

With the FCA report stating that only a third of firms in their sandbox launched into the wider market, it is essential ASIC work closely or regulations are in place to ensure there are sufficient measures to mitigate potential losses during and after the AFSL exemption period. A successful exit plan that protects consumer's interests and assets will ensure that consumers are in the best possible position if firms decide to not continue with their financial service.

Exit plans should also not be limited to just the discontinuing of a FinTech in the market. Exit plans should also detail how a FinTech will be scaled up to launch into the wider regulatory market. Given



the potential for start-ups to work effectively in a smaller environment and fail when leveraging into larger markets, it is important this is not overlooked. A prescribed exit plan will help FinTechs and ASIC consider all these issues regularly.

If you have any questions about our submission please do not hesitate in contacting us.

Yours sincerely,

A handwritten signature in black ink that reads 'John L. Maroney'.

John Maroney
Chief Executive Officer
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak professional body representing SMSF sector which is comprised of over 1.1 million SMSF members who have \$696 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.