

7 February 2020

Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Email: fintech.sen@aph.gov.au

Dear Select Committee on Financial Technology and Regulatory Technology (“**Select Committee**”),

**Re: Financial Technology and Regulatory Technology question on notice**

Pepperstone Group Limited (“**Pepperstone**”, “**we**”, “**us**” and “**our**”) welcomes the opportunity to provide further information to the Select Committee to assist it with its considerations.

The Select Committee asked us to consider how best to regulate Financial Technology (“**FinTech**”) products given their unique nature and how demand-driven regulation would work.

On consideration of the issues, we believe the answer may be relatively simple. ASIC requires the power to declare what is and what is not a financial product and service, or credit product or service, for the purposes of the *Corporations Act 2001* (Cth) and the *National Consumer Credit Protection Act 2009* (Cth).<sup>1</sup>

Australian financial service regulatory requirements are very robust and strong. The local financial services and credit services licensing regimes provide ample protections for investors in Australia regardless of the features of the product or service. In particular, the Australian financial services regime requires its license-holders, among other things, to:

- offer services in a way that is fair, honest and efficient;
- comply with financial services laws and take steps to ensure representatives comply with financial services laws;
- maintain competence to provide financial services;
- ensure representatives are adequately trained;
- have adequate financial, technological and human resources to provide financial services;
- have an adequate internal dispute resolution system;
- be a member of an adequate external dispute resolution system;

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<sup>1</sup> We note ASIC already has the power to declare something that is not a financial product under s725A *Corporations Act 2001*.

- ensure they adequately manage any conflicts of interest;
- have adequate risk management processes;
- provide detailed disclosure ensuring investors are adequately informed, including information about risks, conflicts, counterparties, fees and costs;
- ensure any disclosure made is not misleading or deceptive;
- provide detailed financial reporting and in some cases specialised reporting such as client money reconciliations and trade reporting;
- adhere to detailed record keeping requirements;
- have adequate PI Insurance;
- abide by hawking prohibitions which prevent pressure selling of financial products to retail clients and marketing techniques that may detract from retail clients' decision making;
- comply with prohibitions regarding conflicted remuneration;
- provide breach reporting to ASIC where there is a significant breach of obligations; and
- ensure products are designed and distributed appropriately and in accordance with detailed target market statements.<sup>2</sup>

There are similar requirements under the credit licensing regime.

Our view is that the broad nature of these requirements make them suitable and appropriate for most FinTech products that are created.

Another critical licensing requirement is that licensees must comply with all conditions on their licence.<sup>3</sup> In practice, this means that if a specific aspect of a FinTech product is so unique that it is not captured by existing regulatory protections, it is open to ASIC to require certain changes to the product to bring it within existing parameters as a condition of being licensed. ASIC also has the ability to add additional conditions to a licence once granted, where there is mutual agreement or where enforced in a process that is subject to an administrative hearing.<sup>4</sup> We note that ASIC currently uses this provision to impose key person requirements and independent expert reporting and oversight on licensees.

For completeness, ASIC has the ability to make minor and technical changes to multiple sections of the *Corporations Act* if there are sections that need tweaking in order to facilitate various products where there are hurdles.

We believe that the best way for ASIC to assist FinTech firms is by strengthening, upskilling and resourcing its licensing section. In our view, the licence application process provides the strongest front-line protection for investors and businesses. This is because it enables ASIC to assess the genuineness and viability of firms, and decide the checks and balances that need to be added to firms' licences as conditions to ensure they will operate appropriately in Australia, before those firms enter the market. The licence application process is also a useful means to educate firms about their ongoing obligations and regulatory expectations as Australian licence-holders.

Having said that, for the FinTech industry to continue to thrive in Australia, we believe that it is important to ensure that the regulatory requirements are not overly burdensome or expensive for firms (even at the licensing stage). Many FinTech firms are relatively small start-ups that have lean business models and the ability to operate anywhere in the world. While these firms

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<sup>2</sup> Under the new design and distribution obligations which will need to be complied with in April 2021.

<sup>3</sup> See s912a(1)(b) *Corporations Act 2001*.

<sup>4</sup> See s912A *Corporations Act 2001*.

are comfortable implementing regulatory standards to benefit and protect investors, there is a risk that if Australian regulatory requirements are too expensive or limiting, FinTech firms will move their operations to more open and affordable regulatory environments.

While ASIC has the ability to prevent fraudulent conduct and conduct that impacts vulnerable investors, which we support, our view is that it is for investors and markets to decide whether a product is a good product or meets investor needs. A product that is clearly harmful or takes advantage of investors will not have the support of investors or the public for long. The prevalence of the internet and social media has created broad, public ways for investors to review and complain about products and services, providing further checks on firms' conduct and expanding their accountability beyond traditional regulatory channels.

We support ASIC's current licensing process and existing regulatory powers and protections, which we believe provide a sound, effective means of assessing and overseeing the suitability of firms to provide financial services in Australia. However, we do not consider it appropriate for ASIC to intervene with and restrict particular products in ways that impact investor choice, except in the rarest of circumstances and where all other avenues have been exhausted.

We believe that, if further material changes need to be made to Australian legislation to address issues involving investor harm, any changes that materially impact industries should remain with Government and formal law reform processes.

Let us know if there is any additional information you require.

Yours Sincerely,

Tamas Szabo  
**Group CEO**  
**Pepperstone**