

MEMO# 31308

August 1, 2018

ICI Global Comments on Proposal to Modify Licensing Regime for Foreign Financial Services Providers in Australia

[31308]

August 1, 2018 TO: ICI Global Pacific Chapter
ICI Global Regulated Funds Committee RE: ICI Global Comments on Proposal to Modify Licensing Regime for Foreign Financial Services Providers in Australia

ICI Global commented on a consultation (Consultation Paper 301) by the Australian Securities & Investments Commission (ASIC) that proposed to modify the existing licensing regime for foreign financial services providers (FFSP) carrying on a financial services business in Australia with wholesale clients.[\[1\]](#) The comment letter is attached.

Consultation Paper 301 (CP 301) and Current FFSP Regime

ASIC proposed to modify the current regime to strengthen its enforcement and supervisory powers over FFSPs and, in part, to align its rules with global regulatory developments.

Currently, FFSPs in Australia are exempt from the requirement to obtain an Australian financial services licence if they operate either under the “substantial equivalence” relief or limited connection relief (FFSP relief). ASIC generally made the “substantial equivalence” relief available based on its assessment that the overseas regulation of the FFSP achieves similar regulatory outcomes as the Australian regulatory requirements that apply to financial services providers in Australia.[\[2\]](#) The relief is available through ASIC class orders and instruments for FFSPs regulated in the following countries: Germany, Hong Kong, Luxembourg, United Kingdom, Singapore, and United States.[\[3\]](#)

ASIC proposed in CP 301 to repeal the FFSP relief out of concern that they may not have sufficient supervisory oversight over FFSPs. ASIC would require FFSPs to obtain a “foreign” Australian financial services licence (foreign AFSL), with details on the FFSP licensing process yet to come.[\[4\]](#) CP 301 proposed a 12-month transitional period – from 30 September 2019 to 30 September 2020 – to allow FFSPs to come into compliance with the requirements of the modified AFS licensing regime.

Our letter focused on the proposed changes to the “substantial equivalence” regime.

ICI Global Submission

Although we expressed support for ASIC's objective to ensure it has sufficient supervisory and enforcement powers over FFSPs that provide financial services to Australian wholesale clients, we questioned whether ASIC's objectives could be accomplished by enhancing the existing conditions for the "substantial equivalence" regime.

The rationale for our alternative proposal was to minimise significant negative effects on Australian wholesale clients that use financial services and products currently being provided by FFSPs. Due to likely increase in compliance costs for FFSPs and lack of clarity on how the licensing process may work, we observed that there may be reduction of available financial services and products to Australian wholesale clients – and thereby likely increase in their costs to clients resulting from the reduced competition – if ASIC proceeds as proposed.

Our letter also suggested that ASIC should consult on the details for the FFSP licensing process, because the proposal lacked details on the process timing and what documentation may be required. Lastly our letter requested an adequate transition period, observing that obtaining an AFS licence may take longer than the proposed transition period.

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[Attachment](#)

endnotes

[1] The consultation is *available at* <https://download.asic.gov.au/media/4752740/cp301-published-1-june-2018.pdf>. See [Memorandum No. 31257](#) to ICI Global Pacific Chapter, ICI Global Regulated Funds Committee, dated 22 June 2018.

[2] See CP 301 at 6.

[3] See CP 301, Table 3 at 34.

[4] *Id.*

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