

**MEMO# 31257**

June 22, 2018

# Australia Proposes Modifications to Licensing Regime for Foreign Financial Service Providers; Member Calls Scheduled

[31257]

June 22, 2018 TO: ICI Global Pacific Chapter  
ICI Global Regulated Funds Committee RE: Australia Proposes Modifications to Licensing Regime for Foreign Financial Service Providers; Member Calls Scheduled

The Australian Securities & Investments Commission (ASIC) published a consultation (CP 301) proposing to modify the existing licensing regime for foreign financial service providers (FFSP) carrying on a financial services business in Australia with wholesale clients.<sup>[1]</sup> The responses are due **31 July 2018**.

To discuss the impact of the proposal on our members and our consultation response, we are hosting two member calls. **Please register for an applicable call by emailing Anna Driggs at [adriggs@ici.org](mailto:adriggs@ici.org).**

## Call Information

**27 June, 10 a.m. EST = 15:00 BST (for US/EU-based members)**

**27 June, 9 p.m. EST = 28 June 9 a.m. Hong Kong and Singapore/ 28 June, 11 a.m. Sydney**

### Call numbers:

**USA: 866-692-3582**

**HK: 800-933-921**

**UK: 0808-238-6019**

**All other jurisdictions: 1-517-466-2232**

**Call Pin: 2373925**

## Brief Overview of the Proposal

ASIC proposes the change because “the current relief framework for FFSPs no longer strikes the appropriate balance between cross-border investment facilitation, market integrity and investor protection.” (CP, 12). ASIC also believes the changes are in line with global

regulatory developments.

The new licensing requirement would replace two regimes under which the FFSPs currently operate in Australia:

- Sufficient equivalence relief (Instrument 2016/396) (sometimes referred to as the “passporting exemption”). This relief is based on the ASIC’s assessment that the overseas regulation of the foreign entity achieves similar regulatory outcomes as the relevant Australian regulatory requirements. This relief, provided through class orders (or individual relief issued by ASIC on similar terms), applies to FFSPs regulated in the United Kingdom, the United States, Singapore, Hong Kong, Germany and Luxembourg.
- Limited connection relief (Instrument 2017/182), which exempts FFSPs that are physically located outside Australia and that are only engaged in inducing, or intending to induce, a person in Australia to use its financial services. This exemption does not require any application or notification of ASIC.

The new licensing regime would effectively apply from 30 September 2020.

## **Additional Background**

### **Current Requirements**

Many key provisions of the Corporations Act applicable to the Australian Financial Services (AFS) Licensees do not apply to the FFSPs, such as:

- Breach reporting requirements.
- The requirement to cooperate with an ASIC surveillance, and
- Key conduct obligations (set out in section 912A(1) of the Corporations Act).

ASIC believes that these exclusions limit its ability to address possible misconduct by FFSPs in Australia. Further, ASIC found non-compliance with the sufficient equivalence relief. For the limited connection relief, ASIC is concerned because it may not be aware whether and how an entity is using the relief, as there is no notice requirement to ASIC.

### **Proposed New Foreign AFS Licensing Regime**

FFSPs will need to apply for a modified form of an AFS license, which would explicitly require a foreign AFS licensee to comply with certain obligations under the Corporations Act.

*Appendix 2 to CP* sets out provisions that would apply to a foreign AFS licensee under the proposal. By way of example only, the following would apply:

- Obligation to act efficiently, honestly and fairly.
- Obligations to have in place adequate arrangements to manage conflicts of interest and have adequate risk management systems.
- Obligation to notify ASIC of certain matters.
- Surveillance checks by ASIC.
- Obligations and authorisations of authorised representatives.
- Restrictions on use of certain terminology.
- Banned remuneration, and

- Obligation to keep financial records.

*Appendix 1 to CP* sets out provisions that would not apply to a foreign AFS licensee. As an example only, these would include:

- Requirement to have adequate resources.
- Ensuring proper training for representatives.
- Minimum standards for providers of custodial or depositary services, and
- Client money and client property requirements.

We welcome your comments on the proposal and look forward to discussing your input on our calls so that we can incorporate it in our comment letter.

Anna Driggs  
Associate Chief Counsel, Retirement Policy>

#### **endnotes**

[1] The consultation is *available at* <https://download.asic.gov.au/media/4752740/cp301-published-1-june-2018.pdf>. ASIC previously consulted on the FFSP Relief in 2016 in Consultation Paper 268 and summarized its findings in Report 519.

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.