ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 37

Foreign collective investment schemes

November 2002

Your comments

You are invited to comment on the proposals and issues for consideration in this paper. All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential.

Comments are due by Friday, 28 February 2003 and should be sent to:

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You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

What this policy proposal is about

1 This policy proposal paper sets out how we propose to exercise our general exemption and modification powers under the *Corporations Act 2001* (Corporations Act) in relation to operators of collective investment schemes that are authorised in other jurisdictions and wish to operate in Australia. In this paper, we refer to these schemes as "foreign collective investment schemes" (FCIS).

2 Collective investment schemes are generally known in Australia as "managed investment schemes" and are regulated by ASIC under the Corporations Act. The Corporations Act requires:

(a) certain managed investment schemes to be registered and to conform with certain structural and compliance requirements;

(b) responsible entities of registered schemes to be licensed; and

(c) certain disclosures to be made to retail investors in registered managed investment schemes.

Note 1: See "Related papers" for a list of ASIC policy statements that set out how we administer the provisions governing managed investment schemes.

Note 2: The term "managed investment schemes" does not include investment companies: see Schedule 1.

3 This policy proposal paper sets out:

(a) our general policy on relief from these Corporations Act requirements **(Section A)**;

(b) what specific relief is available **(Section B)**; and

(c) how to apply for relief **(Section C)**.

4 We have also included three Schedules that outline:

(a) what is a FCIS **(Schedule 1)**;

(b) additional questions about a FCIS operator's home regulatory regime **(Schedule 2)**; and

(c) what relief is available for registered schemes investing in a FCIS **(Schedule 3)**.

5 Our approach in this policy proposal paper is guided by a set of principles we have recently proposed in our paper *Principles for cross border financial services regulation: Making the regulatory regime work in a cross border environment*: see "Related papers".

6 This policy proposal paper in its final policy form will replace our existing Policy Statement 65 *Foreign collective investment schemes* [PS 65]. Until the new policy applies, we will grant interim relief under [PS 65] on a case-by-case basis until 1 July 2003: see our Information releases [IR 00/21] and [IR 02/09].

Important note: ASIC cannot provide legal advice or interpretations of the legislation. This policy proposal paper should not be treated as legal advice. ASIC cannot comment or provide guidance on specific commercial situations. We recommend that you obtain your own professional advice before making any decisions in relation to your particular situation.

Contents

Policy proposals

In this paper, there are three groups of policy proposals for foreign collective investment schemes. For each group, we set out the proposals and identify issues we would like you to comment on. When necessary, we have also included some explanations of our proposals.

Special note: There may be other issues that you consider important. *We are keen to hear from you on our general approach and what other issues you consider important, as well as your answers to our specific questions.*

Table 1: Summary of our proposals

The following table shows how the parts of this policy proposal paper relate to each other.

In summary, we will only exempt a foreign collective investment scheme operator from certain requirements, or modify the application of Australian requirements as they apply to the FCIS, if we find that the FCIS is subject to sufficiently equivalent regulation in its home jurisdiction for those matters.

For our proposals on "sufficiently equivalent", see Section A of this policy proposal paper. For details of our policy proposals generally, see Sections A, B and C.

Situation/activity	Summary of the law/ our policy proposals	Relevant relief power	Conditions on relief[1]
FCIS operator seeks to operate a scheme regulated by an equivalent foreign regulatory regime in Australia	Relief granted from registration requirement if FCIS operator is subject to equivalent regulatory regime, so Chapter 5C and related provisions do not apply: **see policy proposal paragraphs B3–B5 and Schedule 1**.	s601ED, 601QA	Standard conditions applying to all recipients of relief: **see A16–A19**. Specific conditions applying to all recipients of registration relief: **see B6**.
FCIS operator manages assets on behalf of Australian investors	Relief from s601ED (requirement to register a scheme) will also qualify FCIS operator for relief from AFS licence requirement in respect of this activity: **see B7–B9**.	s911A(2)(l)	Standard conditions applying to all recipients of relief: **see A16–A19**. Specific conditions applying to all recipients of registration relief: **see B6**.
FCIS operator holds Australian investors' funds on their behalf by providing a custodial or depository service	Relief from s601ED (requirement to register a scheme) will also qualify FCIS operator for relief from AFS licence requirement in respect of this activity: **see B7–B9**.	s911A(2)(l)	Standard conditions applying to all recipients of relief: **see A16–A19**. Specific conditions applying to all recipients of registration relief: **see B6**.

[1] *In addition to the standard and specific conditions listed, we may set tailored conditions for a particular FCIS operator or FCIS if the circumstances warrant it.*

Situation/activity	Summary of the law/ our policy proposals	Relevant relief power	Conditions on relief[1]
FCIS operator wishes to make offers to Australian investors by means of its original offer document	Relief from certain requirements governing preparation and giving of a Product Disclosure Statement (PDS) to retail investors if FCIS operator is subject to equivalent regulatory regime: **see B10–B12**.	s1020F	Standard conditions applying to all recipients of relief: **see A16–A19**. Specific conditions applying to all recipients of product disclosure relief: **see B13**.
FCIS operator has been given previous relief under [PS 65]	Interim relief available until 1 July 2003: **see Information releases [IR 00/21] and [IR 02/09]**. Jurisdictions from which current recipients of relief originate will be approved under this policy prior to its release: **see A8–A9**.	s601QA, 911A(2), 1020F	
Registered schemes investing in a FCIS:			
(a) Previous relief has been given under class order [CO 98/55] for registered schemes investing in FCIS	No immediate action required: **see Schedule 3**.	s601QA, 911A(2), 1020F	
(b) FCIS' home jurisdiction is: • USA • UK • Hong Kong • New Zealand • Isle of Man • Guernsey • Jersey	No action required if FCIS is regulated in an equivalent jurisdiction approved under this policy: **see Schedule 3**.		
(c) FCIS' home jurisdiction has not yet been approved under this policy	Apply for relief: **see Schedule 3**.		

A What relief is available?

Policy proposal

What is our approach to relief?

A1 We will give relief to a FCIS operator if:

(a) its home regulatory regime is, and continues to be, sufficiently equivalent to the Australian regulatory regime (see policy proposal paragraph A3);

(b) adequate rights and remedies are practically available to Australian investors if the FCIS operator breaches the relevant provisions of the home regulatory regime (see policy proposal paragraph A7); and

(c) we have effective cooperation arrangements with the FCIS operator's home regulator (see policy proposal paragraphs C14–C16).

A2 In general, we will assess the equivalence of a jurisdiction upon application by a FCIS operator from that jurisdiction.

Note 1: We will not require an application from an FCIS operator where the FCIS is already operating in Australia under [PS 65]: see policy proposal paragraphs A8–A9.

Note 2: Not all FCIS operators will need to comply with all the steps of the application process in order to apply for relief under this policy: see policy proposal paragraphs C1–C2.

Your feedback

Policy proposal	Your feedback
How will we assess equivalence?	
A3 We will only assess the home regulatory regime applying to a FCIS as sufficiently equivalent to the Australian regulatory regime if it: **(a)** is consistent with the IOSCO Objectives and Principles of Securities Regulation; **(b)** is clear, transparent and certain; **(c)** is adequately enforced in the home jurisdiction; and **(d)** achieves the regulatory outcomes for investor protection and market integrity that are achieved by the Australian regulatory regime for managed investment schemes. These criteria form our "equivalence test".	**A3Q1** Are there other criteria that we should include in our "equivalence test"? If so, what are they and why should they be included?
Regulatory outcomes	
A4 Our equivalence test in policy proposal paragraph A3 defines sufficient equivalence according to the regulatory outcomes achieved by the home regulatory regime. In applying this test, we will compare the outcomes of the Australian regulatory regime with the home regulatory regime. We will not specifically compare the regulatory mechanisms used to achieve those outcomes. Note: For a discussion of how we will assess the equivalence of the home regulatory regime, see policy proposal paragraphs C12–C13.	
A5 The relevant regulatory outcomes will vary according to the nature of relief sought. We consider that certain outcomes are achieved by our regulation of scheme registration and licensing, while other outcomes are achieved by our regulation of disclosure: see	

Policy proposal	Your feedback
Section B, particularly policy proposal paragraphs B5 (for registration relief) and B12 (for disclosure relief).	
A6 When we consider whether these regulatory outcomes are achieved, we will do so from the point of view of both home jurisdiction and Australian investors (including potential investors) in the FCIS.	**A6Q1** Is our approach to considering whether the outcomes of the home regulatory regime have been achieved appropriate? If not, why not? What might be an alternative approach?
How will we assess investor access to rights and remedies?	
A7 We consider that Australian investors buying interests in a FCIS should have practical access to rights and remedies that provide the same level of protection as the rights and remedies available to Australian investors buying interests in comparable Australian managed investment schemes. In assessing this, we will have regard to whether the Australian investor is retail or wholesale.	
Continuing relief and assessing new jurisdictions	
A8 We propose to streamline the assessment process for FCIS operators in the following categories: **(a)** FCIS operators currently operating FCIS in Australia who are relying on relief given under [PS 65] (see policy proposal paragraph A9); **(b)** FCIS operators from jurisdictions currently listed in [PS 65.47] (see policy proposal paragraphs A10–A11); **(c)** FCIS operators from jurisdictions:	

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(i) assessed as equivalent under this policy; and

(ii) from which other FCIS operators are relying on relief to operate a FCIS in Australia (see policy proposal paragraphs A12–A13);

(d) FCIS operators from jurisdictions:

(i) assessed as equivalent under this policy; and

(ii) with no FCIS operators relying on relief to operate a FCIS in Australia (see policy proposal paragraphs A14–A15).

Note: For our general approach to the assessment process (including the process for those FCIS operators not included in the above categories), see Section C.

Relief under [PS 65] — FCIS currently operating in Australia

A9 If a FCIS operator is currently relying on relief under [PS 65] from Australian managed investment regulation and is operating in Australia, we will allow it to transfer to the new relief given under this policy without assessing the equivalence of its regulatory regime. The transfer of relief is subject to the FCIS operator meeting the conditions on relief set by this policy: see policy proposal paragraphs A16–A19.

Note: At the time of issue of this policy proposal paper, only FCIS operators from the USA and New Zealand are relying on relief under [PS 65].

Your feedback

A9Q1 How would the needs of FCIS operators relying on relief under [PS 65] best be accommodated under the new policy?

A9Q2 Are there any significant practical issues ASIC should consider when allowing a FCIS operator to move from relief under [PS 65] to relief under the new policy?

Policy proposal	Your feedback
Jurisdictions currently listed in [PS 65.47] — no FCIS operating in Australia	
A10 We have made a preliminary assessment that, at this time, the jurisdictions currently listed in [PS 65.47] meet our requirements for equivalence in policy proposal paragraph A3. Jurisdictions listed in [PS 65.47] with no FCIS currently operating in Australia are: **(a)** Hong Kong; **(b)** the United Kingdom; **(c)** Guernsey; **(d)** the Isle of Man; and **(e)** Jersey. Note: See also policy proposal paragraph A14.	
A11 On receiving an application from a FCIS operator from one of these jurisdictions, we will require the applicant to provide us with information about any significant changes to the home regulatory regime since we last assessed it. We seek this information to confirm our assessment that the regime is equivalent. Note: For our interpretation of "significant change", see policy proposal paragraph A21.	**A11Q1** Is our approach to FCIS operators from these jurisdictions appropriate? If not, why not? What might be an alternative approach? **A11Q2** Are there any specific matters we should take into account in making our final assessment of the regulatory equivalence of these jurisdictions? If so, what are they and why should we take them into account?
Assessed jurisdictions — FCIS operating in Australia	
A12 After this policy commences, we will assess the equivalence of other jurisdictions and add them to our list of jurisdictions we consider to be sufficiently equivalent. This	**A12Q1** Is our approach to these FCIS operators appropriate? If not, why not? What might be an

Policy proposal	Your feedback
will streamline our process for considering an application from a FCIS operator principally regulated in a jurisdiction on that list. Note 1: Generally, we will add new jurisdictions to this list after applications from relevant FCIS operators pass our assessment process. For details of our proposals for developing and publicising this list, see policy proposal paragraphs C7–C8. Note 2: We intend to treat the USA and New Zealand as jurisdictions previously assessed under this proposed approach: see paragraph 5 of the Explanation in this section. **A13** We will maintain this approach unless: **(a)** significant changes have occurred since we assessed a regime to make it no longer equivalent; or **(b)** we do not have current information about the regulatory regime, for instance because no FCIS from that jurisdiction is currently operating in Australia. Note: For our interpretation of "significant change", see policy proposal paragraph A21. ***Assessed jurisdictions — no FCIS operating in Australia*** **A14** If no FCIS from a particular jurisdiction we have previously assessed to be equivalent is currently operating in Australia, we will no longer assume that regulatory regime to be equivalent because we are unlikely to have current information about its regulatory equivalence. Note: This proposal does not apply to those jurisdictions listed in policy proposal paragraph A10. **A15** However, if a FCIS operator from a jurisdiction we have previously assessed	alternative approach? **A14Q1** Is our approach to FCIS operators from these jurisdictions appropriate? If not, why not? What might be an alternative approach?

Policy proposal

wishes to operate in Australia and wishes to apply for relief under this policy, we will take into account any previous assessment we have made of the equivalence of that regulatory regime in dealing with the application.

Conditions on relief

A16 Any relief we grant will be subject to conditions, of which there are three types. These are:

(a) standard conditions that apply to all recipients of relief (see policy proposal paragraphs A17–A19);

(b) specific conditions that will apply to recipients of specific types of relief (see Section B); and

(c) tailored conditions that may apply to an applicant in particular circumstances, for example:

(i) if a FCIS operator seeks to operate a number of schemes in Australia, we may impose tailored conditions that are appropriate to one type of scheme, but not for another scheme; or

(ii) if a foreign regulatory regime falls marginally short of certain Australian requirements, that shortfall may be made up through the use of tailored conditions imposed on the FCIS operator.

Standard conditions

A17 The standard conditions on any relief that we give to a FCIS operator from provisions of the Corporations Act will apply regardless of the scope of that relief. These standard conditions will cover:

Your feedback

A16Q1 In what circumstances should ASIC consider imposing tailored conditions on different types of schemes: see subparagraph (c)(i)?

A16Q2 Do you agree that we should impose conditions designed to overcome marginal deficiencies in the equivalence of a home regulatory regime: see subparagraph (c)(ii)? If not, why not?

Policy proposal	Your feedback
(a) regulatory issues (see policy proposal paragraph A18); and **(b)** investor protection (see policy proposal paragraph A19).	
Standard regulatory conditions	
A18 We propose to impose the following regulatory conditions: **(a)** if the FCIS operator is registrable as a foreign company, it must be registered as a foreign company under Part 5B.2 of the Corporations Act, including appointing a local agent under s601CF; **(b)** if the FCIS operator is not registrable as a foreign company, it must appoint a Australian domiciled agent who will be jointly liable for doing all things that the FCIS operator must do under the Corporations Act and be liable to any penalty imposed on the FCIS operator; **(c)** the FCIS operator must submit to the non-exclusive jurisdiction of the Australian courts; **(d)** the FCIS operator must comply with any lawful direction of ASIC or an Australian court; **(e)** relief will continue only for so long as the FCIS operator is authorised under its home regulatory regime and that regime remains equivalent to the Australian regulatory regime; and Note 1: For our interpretation of "authorised", see policy proposal paragraph A20. Note 2: If a FCIS operator becomes authorised in another regulatory regime that is also equivalent to the Australian regime, we will consider varying this condition for that FCIS operator. **(f)** the FCIS operator must notify us:	**A18Q1** Are there any situations in which such conditions could not be reasonably complied with? If so, give details and other means of ensuring effective supervision and compliance monitoring.

Policy proposal	Your feedback
(i) if the FCIS operator ceases to be authorised under its home regulatory regime; **(ii)** if the FCIS operator begins to be authorised under another regulatory regime; **(iii)** of any significant change to the FCIS operator's home regulatory regime; Note: For our interpretation of "significant change", see policy proposal paragraph A21. **(iv)** of any events leading to disciplinary or enforcement action by a regulator against the FCIS operator in relation to any regulatory regime under which the FCIS operator is authorised; and **(v)** of a change in location of the FCIS operator's principal place of business to a new jurisdiction.	
Standard investor protection conditions	
A19 We propose to impose the following investor protection conditions: **(a)** the FCIS operator must maintain a register of investors in which Australian investors and their contact details are identifiable; **(b)** the FCIS must not: **(i)** principally target Australian investors; and **(ii)** source a substantial proportion (eg over 30%) of the funds under management from Australian investors; **(c)** the FCIS operator must be a member of an Australian external dispute resolution	**A19Q1** Does the test in subparagraph (b)(i) on "principally targeting Australian investors" inadvertently capture offerings that are not principally targeting Australian investors? If so, what would be a more appropriate test? **A19Q2** Does the test in subparagraph (b)(ii) on "substantial proportion" inadvertently capture offerings that are not principally targeting Australian investors? If

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scheme (EDRS);

Note: We will accept membership of a foreign EDRS in some limited circumstances: see paragraph 26 of the Explanation in this section.

(d) the FCIS operator must prominently display the following disclosures in its offer document or Product Disclosure Statement (PDS) to any Australian retail investors to which its products are marketed or issued:

(i) that the FCIS is regulated by the laws of a foreign jurisdiction, and those laws differ from Australian laws;

(ii) that the rights and remedies available to Australian investors who buy interests in the FCIS may differ from those of Australian investors buying interests in Australian managed investment schemes;

(iii) a brief description of the rights and remedies available to Australian investors under the foreign regulatory scheme and how these rights and remedies can be accessed;

(iv) the nature of any special risks associated with cross border investing, such as risks arising from foreign taxation requirements, foreign currency or time differences; and

(v) significant differences in the regulatory regime; and

Note: If a FCIS operator is applying for specific relief from the product disclosure requirements, additional disclosures are required under the specific conditions for this relief: see subparagraph (d) of policy proposal

Your feedback

Australian investors? If so, what would be a more appropriate test?

A19Q3 What practical problems might arise in implementing the proposal in subparagraph (c) on membership of an Australian EDRS? What alternative arrangements are available or could be developed?

A19Q4 Do any practical problems arise in requiring the disclosures in subparagraph (d) to be made? If so, what are they?

A19Q5 Is the requirement in subparagraph (d)(v) to disclose significant differences too onerous or uncertain? If so, please explain why.

A19Q6 As an alternative to subparagraph (d)(v), would it be more appropriate to require a FCIS operator to disclose all differences that are likely to either or both:

(a) have a material affect on the price or value or interests in the FCIS;

(b) influence investors in deciding whether to acquire, hold or dispose of interests in

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paragraph B13.

(e) the FCIS operator must make available to Australian investors any publicly available information about the FCIS that has been produced by, or on behalf of, the FCIS, which is not otherwise available in Australia. Such information must be provided in English and without additional charge.

What do we mean by "authorised"?

A20 We consider a FCIS operator to be authorised to operate a FCIS if it:

(a) has undergone an active process of obtaining permission from its home regulator to operate a FCIS;

(b) is subject to continuing regulatory oversight by the home regulator in relation to how it operates the FCIS; and

(c) is positively authorised to operate a FICS and is not merely permitted to operate a FCIS because it is exempt under its home regulatory regime from requiring a licence or other regulatory permission to operate the FCIS.

What is a "significant change"?

A21 In subparagraph (f)(iii) of policy proposal paragraph A18, we set out a condition requiring FCIS operators to notify us of significant changes to the FCIS operator's home regulatory regime. We consider that a change is significant if it may affect our previous assessment that the home regulatory regime is equivalent to the Australian regulatory regime.

Your feedback

dispose of interests in the FCIS?

If so, please explain why.

A19Q7 Do any practical problems arise in requiring the disclosures in subparagraph (e) to be made? If so, what are they?

A20Q1 Does this definition of "authorised" capture all the relevant circumstances under which a FCIS operator is permitted to operate a FCIS in its home jurisdiction? If not, please give details.

A21Q1 Does this approach cause practical difficulties with compliance? If so, what are they and how might they be addressed?

A21Q2 As an alternative, would it be more appropriate to require a FCIS operator to disclose all changes that

Policy proposal	Your feedback
Note 1: For a discussion of how we will assess equivalence, see policy proposal paragraphs C12–C13. Note 2: This definition of significant change applies to policy proposal paragraphs A11 and A13.	are likely to either or both: (a) have a material affect on the price or value or interests in the FCIS; (b) influence investors in deciding whether to acquire, hold or dispose of interests in the FCIS? If so, please explain why.
"Corporate-based" FCIS	
A22 Foreign collective investment structures established as companies (such as investment companies in the USA) may apply for relief on a case-by-case basis under our policy proposals. The relief sought would be similar to that for a FCIS operator and would give the corporate-based FCIS relief from Australian financial services licensing and product disclosure regimes, as they apply to investment companies under the Corporations Act: see paragraph 27 of the Explanation in this section.	**A22Q1** Are there practical problems in applying the proposals in this policy to "corporate-based" FCIS? If so, what are they and how might they be addressed by variations on the proposals in this paper?

Explanation

What is our approach to relief?

Guiding principles

1 Our approach to giving relief from the Corporations Act provisions to a FCIS is guided by a set of principles we have recently proposed for our approach to cross border financial services regulation, *Principles for cross border financial services regulation: Making the regulatory regime work in a cross border environment* (November 2002): see paragraphs 9–19 of this Explanation.

2 These principles have been developed, in part, with a view to:

(a) facilitating the entry of foreign products and services to Australia to enhance competition and innovation in the financial services industry and increase Australian investors' access to investment opportunities;

(b) ensuring that Australian investors accessing such foreign products are adequately protected;

(c) ensuring that Australian market integrity is adequately protected; and

(d) dealing consistently with the regulatory issues arising from foreign products and services becoming more freely available in Australia.

Streamlining applications

3 We propose to shift from our approach to FCIS in [PS 65] to assessment of individual applications from FCIS operators on a case-by-case basis.

4 However, we wish to facilitate speedier processing of applications from regulatory regimes that we have previously assessed and found to be sufficiently equivalent to the Australian regulatory regime. To this end, we propose to compile a list of jurisdictions that are equivalent to the Australian regulatory regime and provide a more streamlined application process for FCIS operators primarily regulated in the jurisdictions on the list. This list will consist of jurisdictions:

(a) that we have assessed as equivalent; and

(b) from which an FCIS operator is currently operating in Australia.

5 To facilitate transition between [PS 65] and this policy, we will give special standing to those jurisdictions currently listed in [PS 65.47]. We have made a preliminary assessment that, at this time, these jurisdictions meet our requirements for equivalence in policy proposal paragraph A3. For those jurisdictions listed in [PS 65.47] with FCIS currently operating in Australia (New Zealand and the United States), we will:

(a) allow the FCIS operators themselves to transfer to the new relief without having to apply under this policy; and

(b) for the purposes of applications from any new FICS operators from those jurisdictions, treat the jurisdiction as a jurisdiction previously assessed under policy proposal paragraph A12.

6 The jurisdictions listed in [PS 65.47] without FCIS currently operating in Australia are:

(a) Hong Kong;

(b) the United Kingdom;

(c) Guernsey;

(d) the Isle of Man; and

(e) Jersey.

For new FCIS operators from these jurisdictions, we will require the applicant to provide us with information about any significant changes to the foreign regulatory regime since we last assessed it, in order to confirm our assessment that it is equivalent.

Note: For our interpretation of "significant change", see policy proposal paragraph A21.

7 Unlike our previous approach to recognising regulatory regimes for FCIS in [PS 65], we will monitor whether an equivalent regulatory regime continues to be equivalent so that we can have confidence that any FCIS regulated in that jurisdiction is regulated to an appropriate standard at the time it applies for relief from Australian regulation and thereafter. We will do so through the use of conditions requiring FCIS operators to notify us of significant changes to their home regulatory regime and also through our own efforts in monitoring the continued equivalence of regimes we have recognised as equivalent to our own. We will remove a jurisdiction from the list if no FCIS regulated in that jurisdiction is currently operating in Australia, as we will not be able to easily monitor the continuing equivalence of the jurisdiction to the Australian regime.

8 We anticipate that occasionally a FCIS operator from a jurisdiction which was previously considered equivalent, but which is no longer on our list of recognised regimes because we have not been able to monitor its continued equivalence, may apply for relief. It will be open to such an applicant to make a case for its application for relief to be given the benefit of our previous assessment of the equivalence of the law governing similar schemes in its home jurisdiction.

How will we assess equivalence?

9 We have derived our outcomes-based test for equivalence from Principle 1 of our *Principles for cross border financial services regulation*: see "Related papers". In so doing, we consider equivalence largely from the point of view of protection of Australian investors, the integrity of Australian markets and reduction of systemic risk in the Australian financial system. We do not, for instance, require that the Australian and home regulatory regimes impose comparable regulatory burdens on a FCIS.

10 The test aims to be flexible, as the outcomes of the Australian regulatory regime and the home regulatory regime may not be identical. In emphasising outcomes, we have been influenced by the approach of IOSCO as well as by the approach of other regulatory regimes.

11 As a minimum, we state that the home regulatory regime, to satisfy the equivalence test, must:

(a) be consistent with the IOSCO Objectives and Principles of Securities Regulation (see paragraphs 12–13 of this Explanation);

(b) be clear, transparent and certain (see paragraphs 14–15 of this Explanation);

(c) be adequately enforced in the home jurisdiction (see paragraphs 16–19 of this Explanation); and

(d) achieve the investor protection and market integrity outcomes achieved by the Australian regulatory regime for managed investment schemes (see also the Explanation in Section B, specifically paragraph 3 (for registration relief) and paragraph 20 (for product disclosure relief)).

Consistent with IOSCO Objectives and Principles of Securities Regulation

12 A regulatory regime is consistent with the IOSCO Objectives and Principles of Securities Regulation if the relevant regulator:

(a) assesses its regulatory regime against those objectives and principles; and

(b) reasonably determines that its regulatory regime is broadly compliant with those objectives and principles.

13 The aims, purposes and outcomes of the Australian regulatory regime for financial markets are consistent with the IOSCO Objectives and Principles of Securities Regulation. Therefore, consistency by the home regulatory regime with the IOSCO Objectives and Principles of Securities Regulation indicates that the Australian and home regulatory regimes:

(a) share a similar regulatory philosophy; and

(b) are, at least at a high level, equivalent.

Clear, transparent and certain

14 A "clear" regulatory regime is one that is clearly articulated and can be easily understood by Australians. A "transparent" regulatory regime is one whose rules, policies and practices are readily available to and known by all relevant persons. A "certain" regulatory regime is one that is consistently applied and not subject to indiscriminate change. At a minimum, this principle means that the relevant parts of the FCIS' home regulatory regime must be in written form, available in English and not subject to arbitrary discretions.

15 We consider that a FCIS operator's home regulatory regime that does not meet these minimum conditions will not be sufficiently equivalent to the Australian regulatory regime because:

(a) the home regulatory regime may not be consistently or reliably applied or enforced;

(b) Australian investors may not be able to understand their rights and remedies under the home regulatory regime; and

(c) we may not be able to obtain sufficient knowledge of how the home regulatory regime works in practice to assess the regime.

Adequately enforced

16 A regulatory regime is adequately enforced if the regulator (or other responsible body):

(a) has sufficient powers of investigation and enforcement;

(b) has sufficient resources to use those powers; and

(c) uses those powers and resources to promote compliance with the regulatory regime.

17 Additionally, the legal system within which the regulatory regime operates should be independent and have a reputation for integrity.

18 In assessing whether the FCIS operator's home regulatory regime is adequately enforced, we will rely on matters such as:

(a) the international reputation of that regulatory regime;

(b) self-assessments by the home regulator; and

(c) assessments by international financial institutions and other international organisations.

19 A regulatory regime that is inadequately enforced in its own jurisdiction will not be sufficiently equivalent to the Australian regulatory regime because it is likely to be frequently ignored and, consequently, it will not reliably achieve its intended regulatory outcomes.

How will we assess investor access to rights and remedies?

20 When determining what constitutes adequate rights and remedies, we will give effect to the policy of the Corporations Act, which is that retail investors should generally have access to non-judicial remedies. Under s912A(2) and 912B, retail users of financial services have access to both non-judicial compensation arrangements, and internal and external dispute resolution processes. Retail investors who use financial markets licensed under s795B(1), through licensed participants, may also make a claim under the markets' compensation arrangements: see s881A and 888A, and the regulations made under s888A. On the other hand, under the Corporations Act, wholesale investors are generally only entitled to pursue their rights through private litigation. Therefore, we will generally treat the ability to pursue rights against FCIS operators through private judicial action as adequate for wholesale investors.

Note: The Commonwealth Department of the Treasury recently published an issues paper on compensation arrangements in the financial services industry: see *Compensation for Loss in the Financial Services Sector — Issues and Options*, Treasury, 2002. We will monitor any relevant developments.

21 High costs, the problems associated with briefing foreign lawyers, and other practical matters are likely to be a significant impediments to any attempt by an Australian retail investor to obtain remedies through private judicial action in another jurisdiction. Therefore, a right or remedy may not be practically accessible to Australian retail investors if it can only be pursued through private action in the FCIS operator's home jurisdiction. On the other hand, the ability to enforce rights against a foreign provider through private litigation in a foreign court is more likely to be practically accessible to wholesale investors, who can be assumed to be better resourced.

22 In many circumstances, a FCIS operator's home regulatory regime will not give Australian retail investors practical access to rights and remedies that provide the same level of protection as the rights and remedies that are available to Australian retail investors who use comparable Australian facilities, services and products. In these circumstances, we will require the FCIS operator to comply with a modified version of those parts of the Australian regime that relate to remedies. For example, we will generally require FCIS operators to join an Australian external dispute resolution scheme: see paragraph 26 of this explanation.

Conditions on relief

23 All relief will be subject to conditions, including standard conditions, specific conditions for particular types of relief, and in some cases, tailored conditions for a particular FCIS: see policy proposal paragraph A16. Our approach to these conditions is guided by our *Principles for cross border financial services regulation*. The standard conditions are intended to:

(a) give us sufficient information to enable us to ensure that the FCIS operator is complying with the conditions of its authorisation in its home jurisdiction;

(b) enable Australian investors to enforce their legal rights; and

(c) enable us to enforce the law and also our conditions on relief, both under our own powers and also in cooperation with the FCIS operator's home regulator.

24 In subparagraph (f) of policy proposal paragraph A18, we require notification of certain events which may have an impact on

whether the home regulatory regime continues to be equivalent to our own, or whether the FCIS continues to be primarily regulated in an equivalent regulatory regime. The loss of authorisation to operate as a collective investment scheme in the home jurisdiction will ordinarily lead to the cancellation of relief under this policy. A similar loss of relief will usually follow if the home regulatory regime ceases to be equivalent to the Australian regime in important respects.

25 We will impose an anti-avoidance condition that the FCIS must not principally target Australian investors: see subparagraph (b) of policy proposal paragraph A19. In imposing this condition, we recognise that a FCIS may, on occasion, create a class of interests to be marketed exclusively to Australian investors, even though the FCIS may not be principally targeting Australian investors. An example is where different classes of interests are marketed to different countries and the aim of differentiating the classes of interest is not to circumvent local regulation. In applying our policy, we will be flexible in our interpretation of such arrangements.

26 In subparagraph (c) of policy proposal paragraph A19, we require a FCIS operator to be a member of an external dispute resolution scheme (EDRS). Generally, we expect a FCIS operator to join an Australian EDRS. However, in some cases, we may accept membership of a foreign EDRS for this purpose. We would only accept membership of a foreign EDRS for this purpose where it is:

(a) easily accessible to Australian investors from Australia (eg internet access, call centre available during Australian business hours);

(b) able to communicate with Australian investors in English; and

(c) no more costly to access (other than in telephone or postage costs) than an Australian EDRS.

"Corporate-based" FCIS

27 A body corporate such as an investment company is by definition not a FCIS: see Schedule 1. This type of company is excluded from the definition of a managed investment scheme (upon which the definition of a FCIS is based), so it is not subject to the Chapter 5C obligations that apply to FCIS operators and thus not eligible for relief under this policy. We are therefore proposing to provide separate relief for "corporate-based" FCIS on a case-by-case basis: see Table 1 and Schedule 1.

B What specific relief is available?

Policy proposal

B1 We propose to offer relief upon application by a FCIS operator from:

(a) the requirement for a FCIS to be registered in Australia (s601ED) (see policy proposal paragraphs B3–B6);

(b) the requirement for a FCIS operator to hold an Australian financial services (AFS) licence in respect of certain activities (s911A(1)) (see policy proposal paragraphs B7–B9); and

(c) the requirement to prepare and give to retail investors a Product Disclosure Statement (PDS) (Part 7.9) (see policy proposal paragraphs B10–B13).

Note: For details of how to apply for relief, see Section C.

B2 Any specific relief we grant will be subject to the standard conditions in Section A in addition to specific conditions described in this Section that will apply to recipients of specific types of relief.

Note: For details of the specific conditions that will apply, see policy proposal paragraphs B6 (for registration relief) and B13 (for product disclosure relief).

Registration relief

B3 We will give relief from s601ED (which requires a scheme to be registered in Australia) if the home regulatory regime of the FCIS is sufficiently equivalent to the Australian regulatory regime for registered schemes.

Note: See policy proposal paragraph B5 for our proposal on the key relevant regulatory outcomes.

Your feedback

Policy proposal

B4 If a FCIS operator is given relief from compliance with s601ED, it will not have to comply with Chapter 5C or the accompanying requirements for registered schemes operating in Australia, for example:

(a) provisions relating to the register of members in Chapter 2C; and

(b) financial reporting requirements in Chapter 2M.

Regulatory outcomes for registration relief

B5 We will measure equivalence against the following regulatory outcomes when assessing the FCIS operator's home regulatory regime for the purposes of giving relief from s601ED. The home regulatory regime must, to the greatest extent possible:

(a) ensure scheme operators and promoters, and their representatives, act efficiently, honestly and fairly;

(b) ensure scheme operators and promoters, and their representatives, act with due care and skill, and in the best interest of investors;

(c) ensure scheme operators and their representatives are competent;

(d) ensure scheme operators have sufficient financial and other resources to operate the scheme;

(e) ensure investors understand the nature of their interests in the scheme and their legal rights;

(f) protect client assets from the risk of loss and insolvency of the scheme; and

(g) ensure investors are provided with sufficient information to enable them to assess performance over time.

Your feedback

B5Q1 Are there any additional outcomes that should be achieved by the home regulatory regime in this area? If so, what are they?

Policy proposal

Conditions on registration relief

B6 Registration relief will be subject to the standard conditions set out in policy proposal paragraphs A16–A19. In addition, as specific conditions on this type of relief, the local agent for a FCIS (see subparagraph (a) and (b) of policy proposal paragraph A18) must:

(a) lodge with us the annual financial statements of each FCIS with which it is associated; and

(b) maintain in Australia a current copy of the register of members of each FCIS with which it is associated.

Licensing relief

IMPORTANT NOTE: A FCIS operator may be able to take advantage of a number of legislative exemptions from the AFS licensing regime in s911A(2)(b), 911A(2)(k), 911A(2)(h) and 766B(1). For a discussion of these exemptions, see paragraph 6 of the Explanation in this section.

B7 We will use our power in s911A(2)(l) to give relief to a FCIS operator from the requirement to hold an Australian financial services (AFS) licence only:

(a) if we have also given it relief from the s601ED registration requirement; and

(b) for the following activities:

(i) dealing in financial products by managing fund assets on behalf of its Australian investors;

(ii) dealing in derivatives or foreign exchange contracts for the purpose of managing a financial risk that arises in the course of operating the FCIS; and

(iii) holding FCIS assets (ie providing a custodial or depository service).

Your feedback

B6Q1 Should the local agent bear the responsibility for lodging financial statements of each FCIS with ASIC as proposed in subparagraph (a), or should this be the responsibility of the FCIS operator? Please you're your reasons.

B7Q1 Should any other activities be given an exemption from s911A(1) (eg in relation to direct debit facilities, cheques or electronic payment arrangements)? If so, on what basis?

Policy proposal	Your feedback
B8 We will also use our power in s911A(2)(l) to give relief from AFS licence requirements to a FCIS operator who has been given relief from certain product disclosure requirements, allowing it to use its original offer document in Australia: see policy proposal paragraphs B10–B13. We will give such licensing relief where the provision of the offer document involves general advice about interests in the FCIS.	
B9 We do not propose to offer any further relief for any other financial services. In relation to these other activities, a FCIS operator must be licensed under the AFS licensing regime.	**B9Q1** Are there any practical problems with restricting the scope of relief offered from the AFS licensing regime as proposed (eg in relation to giving general advice)? If so, what are those problems?
Product disclosure relief	
B10 We will give product disclosure relief if we are satisfied that the regulatory regime governing the FCIS' offer document achieves sufficiently equivalent outcomes for Australian retail investors as are achieved under Part 7.9.	
B11 However, we will not give relief from the following legislative provisions in Part 7.9: **(a)** s1017G (internal and external dispute resolution); **(b)** s1018A (advertising); and **(c)** s1020E (ASIC's power to issue a stop order).	**B11Q1** Are any of these provisions impractical to comply with? If so, why?

Policy proposal	Your feedback
Regulatory outcomes for product disclosure relief	
B12 We will measure equivalence against the following regulatory outcomes when assessing the FCIS operator's home regulatory regime for the purposes of giving relief from Part 7.9. The home regulatory regime must, to the greatest extent possible: **(a)** promote confident and informed decisions by investors about the suitability of a financial product for them; and **(b)** ensure that investors are provided with all the information they reasonably require to make a decision about whether to buy, sell or hold a financial product.	**B12Q1** Are there any additional outcomes that the home regulatory regime governing a FCIS' product disclosure should achieve? If so, what are they?
Conditions on product disclosure relief	
B13 Relief from Part 7.9 will be subject to the standard conditions set out in policy proposal paragraphs A16–A19, in addition to the following specific conditions on this type of relief: **(a)** the FCIS operator must give the offer document to Australian retail investors in the same circumstances in which an obligation to give a PDS would arise for registered schemes under s1012A, 1012B and 1012C; **(b)** the FCIS operator must: **(i)** notify us that the offer document is in use within 5 business days after a copy of the offer document is first given to an Australian retail investor;	**B13Q1** Is a 7-year retention period proposed in subparagraph (b)(ii) impractical to comply with? If so, what would be the right period of time? **B13Q2** Do any of the required disclosures proposed in subparagraph (d) present a practical difficulty for a FCIS operator to comply with? If so, why?

Policy proposal	Your feedback
(ii) keep a copy of the offer document for 7 years; and **(iii)** make a copy of the offer document available to us if we ask for it within that period; **(c)** the offer document must fully comply with the home regulatory regime; **(d)** the offer document must prominently disclose: **(i)** information about the FCIS operator's dispute resolution system covering complaints by investors and how that system may be accessed; **(ii)** information about the external dispute resolution scheme (EDRS) which the FCIS operator has joined, and how that scheme may be accessed; **(iii)** general information about any significant Australian taxation implications of interests of this kind; and **(iv)** information about whether a cooling-off regime applies for acquisitions of interests in the scheme (and whether the regime is provided for by law or otherwise). Note: In addition to these disclosures, the offer document must also prominently display the disclosures required under our standard conditions on relief: see subparagraph (d) of policy proposal paragraph A19.	

Explanation

Registration relief

1 ASIC has the power under s601QA to exempt from the application of Chapter 5C. We can therefore exempt a FCIS from the statutory requirement to be registered which otherwise applies to schemes meeting the definition of a managed investment scheme in s9.

2 We do not consider it necessary for a FCIS to be registered under Chapter 5C of the Corporations Act, with the constitutional, structural and specific compliance requirements that such registration entails, if its home regulatory regime achieves sufficiently equivalent outcomes to the Corporations Act.

3 The outcomes we have identified as relevant to registration relief (see policy proposal paragraph B5) incorporate the underlying aims of the managed investments regime in the Corporations Act (including the dealing and custodial aspects of Part 7.6), as set out in the Explanatory Memorandum to the *Managed Investments Bill 1997*. We have also had reference to the relevant principles in the IOSCO Objectives and Principles of Securities Regulation.

4 Although relief from the requirements of Chapter 5C and associated requirements (such as those in Part 7.6) will be broad, it will also be conditional in order to protect Australian investors and the integrity of Australian markets. FCIS operators will need to comply with the standard conditions set out in policy proposal paragraphs A16–A19 as well as the specific conditions on relief from registration requirements in policy proposal paragraph B6. The basic rationales behind these conditions are that:

(a) ASIC must be able to enforce the Australian laws that apply to foreign facilities, services and products; and

(b) adequate rights and remedies must be practically available to Australian investors who access foreign facilities, services or products in Australia.

Licensing relief

5 Under Australian law, if a managed investment scheme is registered, its operator must be licensed to operate a registered scheme under Part 7.6. If the scheme is not registered, the operator may still require an Australian financial service (AFS) licence to operate a custodial or depository service. In addition, in the course

of operating a managed investment scheme whether or not registered, the operator may require an AFS licence to:

(a) deal in the interests in the scheme;

(b) deal in any financial products they deal in on behalf of members of the scheme (ie the scheme assets); or

(c) provide financial product advice.

6 A FCIS operator may be eligible for exemptions under the Corporations Act and regulations for the following activities:

(a) marketing interests in the FCIS to Australian investors through a licensed Australian intermediary (see s911A(2)(b) — issuing, varying or disposing of a financial product pursuant to an arrangement between the "product provider" and a financial services licensee pursuant to an "intermediary authorisation");

(b) giving general advice to Australian retail investors by means of a PDS (see s766B(1), 766B(9) and reg 7.1.08A(1));

(c) giving advice to Australian investors by means of certain advertisements (see s911A(2)(k) and reg 7.6.01(1)(o)); and

(d) providing a financial service to Australian wholesale investors where the FCIS operator is regulated by an ASIC-approved overseas regulator in respect of that service (see s911A(2)(h)).

7 We propose to give a limited form of relief from the AFS licensing regime to FCIS operators to put them on an even footing with Australian operators of registered managed investment schemes. Three financial service activities conducted by managed investment schemes in Australia are linked to the operation of a scheme:

(a) dealing in financial products by managing fund assets on behalf of investors;

(b) dealing in derivatives or foreign exchange contracts for the purpose of managing a financial risk that arises in the course of operating the FCIS; and

(c) holding investors' funds on their behalf (ie custodial or depository services).

Dealing in financial products

8 In managing scheme assets that are financial products on behalf of Australian investors, FCIS operators may become subject to the

requirement to hold an AFS licence authorising them to deal in a financial product, even if those assets are not located in Australia: see s911D, 766A(1) and 766C.

9 When considering whether the home regulatory regime is equivalent in this context, we will focus on whether the home regulatory regime for such activities achieves the outcomes we identify in policy proposal paragraph B5. This is because under Australian law, this activity is so integral to the operation of a managed investment scheme that we could not register a managed investment scheme without also licensing the responsible entity operating the scheme to manage the scheme's assets. The relevant outcomes for scheme registration will therefore also be relevant to an AFS licence to deal in financial products when that comprises managing scheme assets.

10 If the home regulatory regime is equivalent in this respect, then we consider that the FCIS operator should also be given relief from the requirement to hold an AFS licence to deal, where the dealing is in scheme assets and is only on behalf of the members of the scheme.

11 Under Australian law, some responsible entities are licensed to deal in derivatives, foreign exchange contracts or both. This is because the responsible entity deals in these financial products in the course of acquiring and disposing of scheme assets and managing risks associated with scheme assets. We expect that some FCIS operators will deal in one or both of derivatives or foreign exchange contracts in the course of operating their FCIS for similar reasons. We are proposing to grant relief for such dealing where it is merely for the purpose of managing financial risks inherent in the operation of the FCIS.

> Note: The form of this relief is likely to be based on the exemption in reg 7.6.01(1)(m).

Custodial or depository services

12 In holding financial products or a beneficial interest in financial products on behalf of Australian investors, a FCIS operator is generally subject to the requirement to hold an AFS licence, as the service is taken to be carried on in this jurisdiction (see s911D) and it is a financial service attracting the licence requirement: see s766A(1), 766E and 911A(1). It is our policy, when considering applications to be licensed to provide custodial or depository services under Part 7.6 of the Corporations Act, to consider similar criteria to those applicable to the custodial functions to be

performed under an AFS licence to operate a registered scheme. We consider the two activities to be linked, because holding scheme property on trust is an integral part of the operation of a registered scheme.

13 The regulatory outcomes that are relevant to our consideration of whether the FCIS operator's home regulatory regime is equivalent to the Australian regime will therefore be the same for both registration and the limited form of licensing relief we propose to offer under this policy.

14 We consider that if a FCIS operator is subject to an equivalent regulatory regime in respect of the outcomes in policy proposal paragraph B5, then the FCIS operator should similarly be exempted from the requirement to hold an AFS licence to provide custodial or depository services. This reflects the statutory exemption under which holding financial products in the operation of a registered scheme is not regarded as requiring an AFS licence to operate a custodial or depository service: s766E(3)(b).

Other financial services

15 We consider that if the FCIS operator wishes to provide any financial services not covered by a legislative exemption or by the limited specific relief described above, the FCIS operator must have an AFS licence to offer its financial services or products in Australia. Examples of activities that will require a licence are:

(a) the provision of general financial advice to retail investors; or

(b) the marketing of financial products by the FCIS operator directly to Australian investors.

16 Although we recognise that FCIS operators will often be subject to another regulatory regime in respect of such financial services, we consider that the necessity to promote adequate investor protection and market integrity under Australian law will usually merit the imposition of the Australian licensing regime in respect of such financial services.

General advice in offer documents

17 We recognise that some FCIS operators applying for relief from the AFS licensing regime will also apply for relief from the product disclosure regime, so the exemption relating to a PDS (see subparagraph (b) of paragraph 6 above) will not be relevant to them. For this reason, we propose an additional exemption to cover FCIS operators who do not offer advice except through their equivalently regulated offer document: see policy proposal paragraph B8.

Wholesale investors

18 FCIS operators should also note that in the first half of 2003, we intend to issue a separate policy on our approach to exemptions for providers of wholesale financial services regulated overseas by an ASIC approved regulatory authority.

> Note: We intend to issue a policy proposal paper on this topic in December 2002. For more information, see also our FAQ "What is ASIC's policy on approving overseas regulatory authorities for the purposes of s911A(2)(h)?" on our website (www.asic.gov.au).

Product disclosure relief

19 We are able to grant exemptions from or modify the operation of Part 7.9 of the Corporations Act, which governs product disclosure to retail investors: s1020F. We are prepared to offer broad relief from Part 7.9 if the FCIS operator must prepare its offer document for retail investors under an equivalent regulatory regime. The regulatory outcomes we consider essential in this context are set out in policy proposal paragraph B12.

20 We have derived these regulatory outcomes from our *Principles for cross border financial services regulation*, in which we set out an approach to how we will assess equivalence in a range of circumstances, including disclosure to retail investors.

21 Although the relief we offer from Part 7.9 is broad, we will not offer substantive relief from the following provisions:

(a) s1017G (internal and external dispute resolution);

(b) s1018A (advertising); and

(c) s1020E (ASIC's power to issue a stop order).

> Note 1: This paper does not discuss or propose relief in relation to the requirements of s1012IA (treatment of arrangements under which a person can instruct another

person to acquire a financial product). These arrangements are additional to the operator of a FCIS.

Note 2: We will make technical modification to these provisions where necessary so that references in them to a PDS will refer instead to the offer document in use by the FCIS operator.

Internal and external dispute resolution

22 We require FCIS operators to have adequate internal dispute resolution systems as well as joining an Australian external dispute resolution scheme (EDRS) as we consider this essential to the protection of Australian retail investors: s1017G. FCIS operators are required to join an Australian EDRS as a standard condition of any relief: see subparagraph (c) of policy proposal paragraph A19 and paragraph 26 of the Explanation in Section A.

Advertising

23 We consider that the restrictions on advertising in s1018A will not affect advertising of FCIS products outside Australia, if the advertising does not target persons in Australia. Consistent with Policy Statement 141 *Offers of securities on the internet* [PS 141] (which applies to financial products generally), we consider that an offer document or advertisement is targeting persons in Australia if it:

(a) is published, distributed or made available in ways or locations which are calculated to draw it to the attention of persons in Australia;

(b) contains material which is specifically relevant to persons in Australia; or

(c) relates to an offer made in Australia by any other means, unless it relates to an advertisement in a foreign publication that has incidental circulation in Australia.

Stop orders

24 The provisions relating to our stop order power are preserved to enable us to enforce Australian laws. However, the provisions in Part 7.9 relating to civil remedies and criminal penalties will not apply on the basis that the home regulatory regime should provide for equivalent means of enforcement.

C How to apply for relief

Policy proposal

What must you include with your application?

C1 Applicants from all jurisdictions, including those previously assessed by us to be equivalent (see policy proposal paragraphs A8–A15), must provide documentation demonstrating that the regulation of the FCIS operator in its home jurisdiction is such that it is entitled to relief.

C2 This documentation should include:

(a) written confirmation from the home regulator that the scheme is authorised to operate in that jurisdiction;

Note: We may be willing to rely on a publicly available register maintained by the home regulator in lieu of written confirmation.

(b) relevant extracts from the laws of the home jurisdiction;

Note: An applicant from a jurisdiction we have assessed to be equivalent (see policy proposal paragraphs A8–A15) will not need to provide this documentation.

(c) if we request it, an explanation of the home regulatory regime by an independent expert, provided at the applicant's cost;

Note: An applicant from a jurisdiction we have assessed to be equivalent (see policy proposal paragraphs A8–A15) will not need to provide this documentation.

(d) a copy of the FCIS offer document and any associated documentation (for example, the governing rules of the FCIS); and

Your feedback

C1Q1 Is there any other information that we should require to assess an application? Please give details.

C2Q1 Is any of this information impractical to provide with an application? If so, why?

Policy proposal	Your feedback
(e) the most recently audited financial statements of any FCIS proposed to be operated in Australia, and any subsequent related ongoing disclosures. Note: Some examples of questions that we propose to ask applicants are set out in Schedule 2.	
C3 Additionally, we require the FCIS operator to include documentation in its application describing how it intends to operate the FCIS in Australia. For example: **(a)** a description of how the FCIS operator will plan for, monitor and assess its compliance with the conditions of its relief and any Australian laws to which it will be subject; **(b)** a description of its intended financial services activities in Australia; and **(c)** information about its intended products and Australian client base.	**C3Q1** Will a FCIS operator encounter any practical difficulties with meeting this requirement? If so, what are the difficulties and how might they be addressed?
C4 We may request other documentation if we require it in order to consider the application.	
C5 All information and documents provided with the application must be in English.	**C5Q1** Does this requirement present any practical difficulties? If so, what are the difficulties and how might they be addressed?
C6 We will expect an officer of the applicant, with the capacity to bind it, to declare that they: **(a)** have taken reasonable steps to ensure that, to the best of their knowledge, the information supplied in, and with, the application is complete and accurate; and **(b)** acknowledge that we may take action to verify that the statements and certifications made in the application are	

Policy proposal

not false or misleading.

Note: It is an offence to make a false or misleading statement in connection with the provision of financial services in this jurisdiction: s1041E-1041H.

List of assessed jurisdictions

C7 We will maintain a list on our website (www.asic.gov.au) indicating:

(a) which jurisdictions we have previously assessed for equivalence with the Australian regime for the purposes of an application for relief under this policy;

(b) when that assessment was conducted; and

(c) the types of FCIS to which the assessment may be relevant.

If a jurisdiction we have previously assessed to be equivalent is no longer represented by any FCIS operators in Australia, it will be removed from the list. However, we will have regard to the previous assessment if we receive any subsequent application for relief by a FCIS operator from that jurisdiction.

Note: For details of our proposals for such jurisdictions, see policy proposal paragraphs A14–A15.

C8 However, we reserve the right to assess any application on its merits, regardless of whether there has previously been a successful applicant from that jurisdiction.

Your feedback

How will we deal with your application?

C9 The time it takes us to decide whether to give relief will depend on the complexity of the application and the difficulty of assessing the equivalence of the Australian and home regulatory regimes.

In the case of an application by a FCIS operator from a jurisdiction we have not previously assessed to be equivalent, we will aim to complete the process within 16 weeks of receiving all the information and documents required.

It may take us longer to deal with your application if:

(a) the application is particularly complex;

(b) we have to negotiate cooperation arrangements with the home regulator;

(c) we experience delays in obtaining the information we require from the home regulator; or

(d) we are waiting for a response to a request for clarification.

Generally, we anticipate that an application from a FCIS operator from a jurisdiction we have already assessed as equivalent will take much less time to process.

C10 We may request clarification or explanation of the information or documents provided by an applicant.

C9Q1 Does this present any practical difficulties? If so, what are the difficulties and how might they be addressed?

What will we look at when dealing with your application?

C11 We will normally look at the following matters when dealing with an application by a FCIS operator to offer interests here:

C11Q1 Is there anything else we should consider? If so, why?

(a) whether the regulatory outcomes of the home jurisdiction are sufficiently equivalent to the Australian regime in relation to the degree of investor protection and market integrity they achieve;

(b) any previous assessment we have made of the equivalence of that home regulatory regime in the context of previous applications by FCIS operators from that jurisdiction;

(c) the nature of the FCIS and how it will operate in Australia;

(d) whether cooperation arrangements between ASIC and the FCIS operator's home regulator are effective; and

(e) what additional tailored conditions (if any) might need to be attached to relief (see subparagraph (c) of policy proposal paragraph A16).

How will we assess the equivalence of the home regulatory regime?

C12 We will assess the equivalence of the home regulatory regime against the regulatory outcomes in Section B: see policy proposal paragraphs B5 (for registration relief) and B12 (for product disclosure relief).

C13 In order to assess the equivalence of an applicant's home regulatory regime against these outcomes, we will:

(a) use information provided by the applicant:

(i) under policy proposal paragraph C2; and

(ii) in response to the questions about the home regulatory regime in Schedule 2;

(b) draw on our available resources to

C13Q1 Are there other means we could use in our assessment of the equivalence of the foreign regulatory regime? If so, what are they?

analyse the equivalence of the regulatory regime where necessary to supplement the information provided by the applicant. Such resources may include information provided to IOSCO about how collective investment scheme regulation in that jurisdiction complies with the IOSCO Objectives and Principles of Securities Regulation; and

Note: We will seek an update to this information from the regulator, if necessary.

(c) consider any supplementary information provided by an independent expert to confirm certain details or fill gaps in our knowledge, if required, at the applicant's expense.

What cooperation arrangements will we require with the home regulator?

C14 We regard effective cooperation arrangements with the home regulator as essential in granting relief under this policy.

C15 We would consider an essential component of such effective cooperation arrangements to be formal cooperation arrangements, such as a Memorandum of Understanding (MOU).

C16 We would expect effective cooperation arrangements to cover supervision, investigation and enforcement, for example:

(a) timely sharing information about the FCIS;

(b) timely cooperation in relation to:

(i) supervision of, and investigation of activities in relation to the FCIS; and

(ii) enforcement actions involving the overseas market.

C16Q1 Are there any other matters the arrangements should cover? If so, what are they?

Explanation

What must you include with your application?

1 An applicant must provide us with information and documents necessary to establish that the applicant qualifies for the relief sought, as set out under this policy. However, we will require less information for applicants from jurisdictions that we consider to be equivalent on the basis of a previous assessment: see subparagraphs (b) and (c) of policy proposal paragraph C2.

> Note: There is no application form for relief from Corporations Act provisions for FCIS operators. However, some examples of proposed questions that we will ask applicants are set out in Schedule 2.

2 We may request an independent expert's explanation of the home regulatory regime, to be provided at the applicant's cost: see subparagraph (c) of policy proposal paragraph C2. Apart from specific documentation we require to be included with your application, we will seek most of the information we need to assess equivalence from the applicant's home regulator. However, we may need to obtain further information about the regime to supplement information we obtain from the home regulator, and we consider that an independent expert will be the best source for such additional information.

3 An applicant from a jurisdiction we have already assessed to be equivalent will not need to provide all documents: see subparagraphs (b) and (c) policy proposal paragraph C2. However, we will require some documentation from such an applicant, as evidence that it complies with its home regulatory regime.

How will we assess the equivalence of the home regulatory regime?

4 We have provided some guidance on how we will approach our assessment of equivalence for the principal areas of relief (registration, licensing and product disclosure): see policy proposal paragraphs C12–C13. Our *Principles for cross border financial services regulation* provide a more general explanation of our approach to assessing equivalence: see paragraphs 9–19 of the Explanation in Section A, and "Related papers".

5 To assist us in assessing the equivalence of regulatory regimes, we will seek information at first instance from an applicant's home regulator. One valuable source of information will be the home

regulator's responses to questions contained in a survey issued in March 2002 by IOSCO about the implementation by member jurisdictions of the principles relating to collective investment schemes in the IOSCO Objectives and Principles of Securities Regulation, and we will seek this information from the home regulator. However, we recognise that these questions are not entirely comprehensive for our purposes and will supplement them with additional questions: see Schedule 2.

6 Applicants should note that the information received in answers to the IOSCO survey and our additional questions are not intended as a test of equivalence, but rather as a means of eliciting sufficiently detailed information about the regulatory processes and mechanisms operating in the applicant's home regulatory regime to make our assessment.

What cooperation arrangements will we require with the home regulator?

7 Our approach to cooperation arrangements with the home regulatory has been influenced by our *Principles for cross border financial services regulation*: see paragraphs 9–19 of the Explanation in Section A, and "Related papers". We will not give relief to a FCIS operator unless we have adequate cooperation arrangements with its home regulator. This is because, in order to protect Australian investors and market integrity, we may need to:

(a) access information in relation to the FCIS operator and the FCIS that is only available from the home regulator; or

(b) ask the home regulator to:

  (i) supervise or investigate activities relating to the FCIS; or

  (ii) take enforcement action in relation to the FCIS.

8 We consider that, particularly in the area of supervision of the FCIS, adequate cooperation arrangements will mean that we have access to direct and continuing contact with the relevant officers of the home regulator, so as to enable prompt exchanges of information and effective cooperation: see paragraph 3.19 of our *Principles for cross border financial services regulation*.

Schedule 1: What is a FCIS?

The table in this Schedule sets out ASIC's interpretation of the Corporations Act as it applies to foreign collective investment schemes, in particular:

(a) what is a foreign collective investment scheme (FCIS)?

(b) what is a managed investment scheme?

(c) when must a managed investment scheme be registered?

(d) what about a "corporate-based" FCIS?

An explanation follows the table.

Table S1: What is a FCIS?

What is a foreign collective investment scheme (FCIS)?	We consider a collective investment scheme to be a foreign collective investment scheme if it: (a) meets the definition of a managed investment scheme in s9 of the Corporations Act; (b) has its principal place of business in a foreign jurisdiction and is regulated in that jurisdiction; (c) does not principally target Australian investors; and (d) its membership does not predominantly comprise Australian investors. Note: We have defined a FCIS widely with a view to capturing all forms of collective investment scheme, regardless of how they are structured. For instance, a non-corporate based mutual fund or undertaking for collective investments in transferable securities (UCITS) is a FCIS.
What is a managed investment scheme?	A managed investment scheme is defined in the Corporations Act as having certain specific features: (a) people contribute monetary consideration to acquire interests in the scheme (such interests can be prospective or contingent and may be enforceable or not); (b) any of the contributions are pooled or used in a common enterprise, for the benefit of members holding interests in the scheme; and (c) the members do not have day-to-day control over the scheme's operation. Time-sharing schemes are also managed investment schemes under the Corporations Act. A number of exceptions to this definition exist: see s9.
When must a managed investment scheme be registered?	Unless exempted, a managed investment scheme operating in Australia must be registered under Chapter 5C if it: (a) has more than 20 members; (b) has been promoted by a person (or associate) then in the business of promoting managed investment scheme; or (c) is related to any other schemes and the total of members of the combined schemes exceeds 20. Members in foreign jurisdictions count towards the total of 20 members: see s601ED(5) (which states that a managed investment scheme comes within the jurisdictional scope of the Corporations Act if it operates in this jurisdiction).

What about a "corporate-based" FCIS?	The definition of managed investment scheme in s9 excludes bodies corporate (other than a body corporate that operates as a time-sharing scheme). Therefore, a FCIS based on a company structure (eg foreign investment companies) will not need to apply for relief from registration under Chapter 5C. However, such a scheme may still apply for relief under this policy in relation to other Corporations Act obligations applying to the "corporate-based" FCIS: see policy proposal paragraph A20. That is because such a scheme will generally need an AFS licence to issue its securities (fundraising) and deal in its underlying investments: s766C.

Explanation

1 ASIC regulates managed investment schemes (as collective investment schemes are known in Australia) under the Corporations Act.

2 ASIC's responsibilities in regulating managed investment schemes include:

(a) licensing scheme operators (known as "responsible entities");

(b) registering schemes;

(c) conducting surveillance activities;

(d) taking enforcement action;

(e) granting relief from the law;

(f) issuing policy guidance for industry;

(g) providing information to investors and assessing their complaints; and

(h) acting as a statutory register for scheme documentation.

3 We have issued a series of policy statements since 1998 that set out how we administer the Corporations Act provisions governing managed investment schemes in Australia.

> Note: These policy statements are collected together in the *ASIC Managed Investments Handbook*. For details of how to subscribe to this handbook, go to "Publications" on our website at www.asic.gov.au.

4 The Corporations Act provisions governing licensing as an Australian financial services provider are also relevant to managed investment schemes operating in Australia, as are a number of policy statements issued in association with the Financial Services Reform (FSR) regime, which commenced on 11 March 2002.

> Note: The FSR policy statements are collected together in the *ASIC Financial Services Policy Handbook*. For details of how to subscribe to this handbook, go to "Publications" on our website at www.asic.gov.au. For a list of policy statements relevant to managed investment schemes, see "Related Papers".

5 Our powers in relation to these matters include broad powers to make exemption and modification orders: see, for example, s601QA, 911A(2)(h), 911A(2)(l), 992B and 1020F.

Schedule 2: Additional questions about a FCIS' home regulatory regime

The table in this Schedule sets out the proposed types of additional questions ASIC may ask an applicant about its home regulatory regime. The questions cover:

(a) licensing and registration requirements;

(b) conduct and disclosure requirements;

(c) extraterritorial operation of the home regulatory regime;

(d) rights and remedies available to foreign investors under local laws; and

(e) how the home regulatory regime is enforced.

Generally, we anticipate that answers will be no longer than 1 to 2 paragraphs for each question. Obviously, some questions will require more detailed answers than others.

Your feedback

S2Q1 Is there any other information that we should require to assess an application? If so, please describe and give reasons.

S2Q2 Is any of this information impractical to include in an application? If so, why?

Table S2: Additional questions about a FCIS operator's home regulatory regime

Constitution and structure	**1** What are the requirements (if any) in your jurisdiction as to the legal form and structure of a collective investment scheme (CIS)? **2** What are the requirements (if any) to disclose the legal form and structure of the CIS to investors? **3** Are there any requirements in relation to the number of members of the board or governing body of the CIS that should be independent of the operator (and its advisers), underwriter or custodian? If yes, what are the requirements and what are the special rights or duties (if any) of these independent members? **4** Is the operator of a CIS required to report to the home regulator in relation to material changes to its management, constitution or structure?
Registration or licensing	**1** What form of licence or registration (if any) does a CIS require to operate in your jurisdiction? **2** What are the eligibility standards/criteria against which proposed operators of collective investment scheme in your jurisdiction are assessed? **3** Where are the relevant requirements or criteria set out, and which regulator(s) are responsible for ensuring compliance with the licensing or registration requirements? **4** To what extent are each of the following relevant to determining whether an operator is eligible to operate a CIS in your jurisdiction: (a) honesty and integrity of the operator; (b) ability to carry out the functions and duties of a scheme operator (eg appropriate staff and resources); (c) financial capacity; (d) internal management procedures; and (e) capacity to carry out specific powers and duties of an operator? **5** Please describe any other criteria (if any) that are considered when assessing whether an operator is eligible to operate a CIS in your jurisdiction. **6** In assessing the eligibility of an operator to operate a CIS, to what extent are each of the following matters considered in relation to the key officers or employees of the operator: (a) previous education and experience; (b) continuing education; and (c) fitness, honesty and integrity?
Supervision by home regulator	**1** What monitoring does the home regulator undertake in relation to conduct of a CIS operator during the life of the scheme, including compliance with licensing and registration requirements (eg inspections or external audits;

Table S2: Additional questions about a FCIS operator's home regulatory regime

	reliance on independent trustees, compliance committees or independent board of directors)? **2** What are the powers of the home regulator to investigate suspected breaches by CIS operators? **3** What are the powers of the home regulator to take action (statutory or otherwise) in the event of a breach or default by a CIS operator or person authorised to market CIS interests? **4** What sanctions may be imposed on CIS operators, persons authorised to market CIS interests or persons responsible for on-going monitoring of the CIS (eg auditors or trustees) for any non-compliance or breaches of the relevant requirements?
Agents and representatives	**1** Are the agents or representatives of a CIS operator required to comply with regulatory requirements applying to the CIS operator? If not, what are the exceptions? **2** Are the agents or representatives jointly liable with the CIS operator for anything they are authorised to do on behalf of the CIS operator? If not, how does the home regulator ensure that the activities carried out by agents or representatives are being conducted in a proper manner and in accordance with the regulatory requirements (eg holding the CIS operator responsible for the actions of their agents and representatives)?
Members' rights	**1** What requirements (if any) are there that the rights of the investors in a CIS must be clearly disclosed? **2** What measures (if any) are there to ensure that members are able to redeem their interests in the CIS? Is there a set time period? **3** What requirements (if any) governing entry and exit fees (ie fees when purchasing or disposing of interests in the CIS)? Must they be disclosed in the offer document? **4** Where changes to investors' rights need not be given prior approval, what requirements (if any) are there that notice of changes be given to investors before they take effect?
Valuation and pricing	**1** What requirements (if any) apply to the valuation of CIS assets and the pricing (upon redemption) of interests in a CIS? Who is responsible for this pricing and valuation? **2** Who is responsible for valuation and pricing, and how often is this required to be done? To what extent do auditors check this?

	3 What requirements (if any) are there that the price of interests in the CIS be published regularly? **4** What requirements (if any) are there for pricing controls (eg reconciliations and audits) to identify any errors, omissions or misplacement of assets? **5** In what circumstances (if at all) may routine valuation, pricing and redemption be suspended or deferred? What limitations or requirements apply (eg approval of the regulator)?
Internal management	**1** What measures (if any) exist to restrict conduct that may lead to a conflict of interest between the CIS and its operator (and its associates), such as: (a) principal transactions between the CIS and operator; (b) transactions in which the CIS and operator jointly participate; (c) receipt of monetary and non-monetary benefits by associates of the operator; (d) lending and borrowing to or from associates of the operator; (e) purchase of securities or other investment products from associates of the operator; (f) use of brokers who are associates of the operator; (g) employees of the operator transacting on their own accounts; and (h) other related party transactions? **2** What requirements (if any) are there to disclose transactions with related parties or associates to the home regulator? **3** What requirements (if any) are there in relation to the separation of CIS assets from the assets of the operator (or its associates) and other schemes? Who is responsible for ensuring compliance with these requirements? **4** What requirements (if any) are there in relation to safekeeping or custody of CIS assets (eg appointment of an independent custodian)? What measures (if any) are taken to protect CIS assets from loss? **5** What are the eligibility requirements (if any) in relation to the entity holding CIS assets (eg competence, service agreements and financial capacity)?
Books and records	**1** What requirements (if any) are there for keeping books and records in relation to transactions involving CIS assets and transactions involving interests (units or shares) in the CIS itself? **2** What requirements (if any) are there for maintaining a register of holders of interests (units or shares) in the CIS? **3** What (internal or external) audit requirements (if any) are there in relation to the assets of the CIS?

	4 What requirements (if any) are there for auditors to report to the home regulator if they have reasonable grounds to suspect a contravention has occurred (other than contraventions adequately disclosed in the audit report or other documents lodged with the home regulator)? **5** What requirements (if any) are there to ensure the competence and independence of auditors of the CIS? **6** What requirements (if any) are there for the accounts of a CIS that are provided to the regulator or investors to be prepared in according with relevant accounting standards? Which accounting standards are prescribed?
Disclosure documents	**1** In relation to a public offering of interests in a CIS, is an offer document (eg prospectus) required? **2** What requirements (if any) are there for the CIS offer document to include all material information that investors would reasonably require and expect for them to make an informed investment decision? **3** What requirements (if any) are there in relation to the language, format and clarity of the CIS offer document? **4** What requirements (if any) are there for the CIS offer document to include the following information: (a) the date of the issue of the CIS offer document; (b) a description of the constitution or governing rules of the CIS; (c) the rights of investors in the CIS; (d) pending material legal proceedings involving the CIS; (e) procedures for purchase, redemption and pricing of units; (f) relevant financial information about the CIS; (g) the investment policy of the CIS (including the markets and assets in which investments are made) and information on the risks involved in implementing the policy; (h) external administrators, investment managers or advisers who have a significant role in relation to the CIS; (i) costs, fees and charges; and (j) regulators, auditors and other relevant independent third parties and their roles in relation to the CIS? **5** If any other documents (eg brochures or advertising material) are permitted in marketing the CIS, are they subject to the same requirements as CIS offer documents? If not, what requirements apply to marketing material and do the requirements depend on the type of material (eg mass media, internet, other)?

	6 What requirements (if any) are there that prospective investors must be given a copy of the CIS offer document (or a similar document) prior to completing an application form or agreeing to acquire interests in the CIS? What exceptions (if any) are there to these requirements? **7** What requirements (if any) are there that the CIS offer document be kept up to date? **8** Does the home regulator have the power to hold back or suspend the offering of interests in a CIS if the offer document is unsatisfactory? **9** What powers and sanctions are available (if any) where an offer document is inaccurate, misleading or false, or does not satisfy the disclosure requirements?
Reporting requirements	**1** What requirements (if any) are there for a report to be published on the CIS' activities on a periodic basis? Who does the report have to be given to (eg the home regulator or investors)? **2** What requirements (if any) are there in relation to the timing of reports referred to in question 1 (eg within a set period after the end of an accounting period)? **3** What requirements (if any) are there for continuous disclosure to investors of significant events (eg restructuring, suspension of dealings, termination of the CIS, changes of fees etc)?
Extraterritorial operation	**1** To what extent do the regulatory requirements governing the operator of a CIS apply to their conduct overseas (eg in Australia)? **2** To what extent is the home regulator able to investigate and (if necessary) take action in relation to a breach of the regulatory requirements where the relevant incident occurred overseas (eg in Australia)?
Rights and remedies available to foreign investors	**1** What compensation arrangements, internal and/or external dispute resolution arrangements will Australian investors have access to in relation to the CIS? **2** Describe how this access will be provided (eg direct contact with CIS operator, through a local agent, through an external dispute resolution scheme)? **3** How are the rights and remedies available to Australian investors different to those of investors from the CIS' jurisdiction?

Schedule 3: Relief for registered schemes investing in a FCIS

The table in this Schedule summarises the relief available for registered schemes that invest in a FCIS. An explanation follows the table.

Table S3: Relief for registered schemes investing in a FCIS

FCIS principally operating in the United States, United Kingdom, Hong Kong, New Zealand, Guernsey and Jersey	We will continue to provide relief from s601FC(4) on similar terms to those stated in Class Order [CO 98/55].
FCIS principally regulated in another jurisdiction and given relief under this policy	We will give relief from s601FC(4) as stated above.
FCIS principally regulated in a jurisdiction: (a) not listed in policy proposal paragraphs C7–C8; or (b) not yet assessed to be equivalent under this policy	Registered schemes may approach us for relief, to be considered on a case-by-case basis. We will consider adding other jurisdictions to the list of equivalent jurisdictions for the purposes of relief under s601FC(4), where the applicant can show why that jurisdiction should be added.

Explanation

1 We are prepared to adopt a more liberal policy for approving jurisdictions as equivalent for the purposes of permitting registered schemes to invest in FCIS originating from those jurisdictions, than our policy for giving relief to FCIS seeking to operate here. We consider that Australian retail investors are directly protected by the compliance of the registered scheme with the Corporations Act and our direct supervision of registered schemes.

2 We do not propose to vary or withdraw relief from those registered schemes already given such relief under [CO 98/55]. Additionally, we will allow registered schemes to take advantage of any previous assessments involving home jurisdictions of FCIS seeking to operate.

3 We also propose to allow registered schemes to approach us for individual relief where the home jurisdiction of the FCIS in which they wish to invest has not yet been assessed as equivalent. Such cases will be assessed on their individual merits. We will apply a similar test to the equivalence test described in policy proposal paragraph A3, but on the basis that the operator of the managed investment scheme as a wholesale client is more easily able to assess the interests in the FCIS and assert their rights than a retail client.

Regulatory and financial impact

We have considered the likely regulatory and financial impact of the policy proposals in this paper. Based on the information that we currently have, we believe that our proposals strike an appropriate balance between facilitating financial services activity and investor protection. To ensure that we have achieved an appropriate balance, we are also developing a Regulatory and Financial Impact Statement (RIS). The RIS will address the following eight key elements:

1 Issue/problem

The RIS will discuss the nature and magnitude of the issues raised by our review of Policy Statement 65 *Foreign collective investment schemes* [PS 65].

2 Objective(s)/analysis of the problem

The RIS will identify all the alternative options that could achieve the objective(s) stated above for dealing with the issue being considered (eg no specific action; ASIC policy proposal; media release; information statement; self regulation/quasi regulation; codes of conduct; and co-regulation, compliance and enforcement strategies).

3 Options/solutions

The RIS will identify all the alternative options that could achieve the objective(s) stated above for dealing with the issue being considered (eg no specific action; ASIC policy proposal; media release; information statement; self regulation/quasi regulation; codes of conduct; and co-regulation, compliance and enforcement strategies).

4 Impact analysis (costs and benefits) of each option

Impact analysis will include:

(a) analysis of the benefits and costs of the options, including any restriction on competition for different persons affected;

(b) identification of persons or bodies affected by the problem; and those that will be affected by the solutions or options identified (ie applicant/proponent of issue; other interested parties, consumers, business and government);

(c) a consideration of how each of the proposed options will affect existing Act, regulations or policies;

(d) identification and categorisation of the expected impacts of the proposed options as likely benefits or likely costs against each of the person/bodies identified as likely to be affected.

We will try to quantify these effects where possible (for example, will there be any restriction on competition as a result of the proposed regulation?).

Costs to businesses affected by a regulatory initiative might include: administrative costs; complying with new regulatory standards; licence fees; delays etc.

Costs to consumers affected could also include higher prices for goods and services; reduced utility of goods and services; delays and more difficult or expensive options for seeking redress;

(e) benefits of the options will also be identified (even where they are not quantifiable); and

(f) the data sources used and assumptions made in making these assessments will be identified.

5 Consultation

The consultation undertaken in the policy process will be detailed.

6 Conclusions and recommended option

The preferred option(s) will be given, and reasons why.

7 Implementation and review

The RIS will discuss how the proposed option will be administered, implemented, or enforced (eg instrument of relief, policy statement, practice note, no action letter).

8 Important details sought from you

In order for us to fully assess the financial and regulatory impact of our proposals, we invite you to consider possible options that would achieve our objectives, comment on the impact that these policy proposals might have, and in particular, consider the costs and benefits of these proposals. Where possible, we are seeking both quantitative and qualitative data.

Any comments that we receive will be taken into account when preparing our final RIS.

Development of policy proposal

We have developed this policy proposal paper by considering:

(a) legislative requirements for the regulation of managed investment schemes and financial services activity under the Corporations Act;

(b) a review of existing ASIC policies and practices relevant to the regulation of foreign collective investment schemes under the Corporations Act; and

(c) our paper on *Principles for cross border financial services regulation*: see "Related papers".

Key terms

In this policy proposal paper:

"AFS licence" means an Australian financial services licence under s913B that authorises a person who carries our a financial services business to provide financial services

Note: This is a definition contained in s761A.

"ASIC" means the Australian Securities and Investments Commission

"associate" has the meaning given in s10–17 of the Corporations Act.

"CIS" means a collective investment scheme

"Corporations Act" means the *Corporations Act 2001* and includes regulations made for the purposes of that Act

"EDRS" means an external dispute resolution scheme

"equivalence test" means the criteria set out in policy proposal paragraph A3 by which we will assess the equivalence of a FCIS operator's home regulatory regime to the Australian regulatory regime

"FCIS" or "foreign collective investment scheme" means a foreign collective investment scheme as described in Schedule 1

"FCIS operator" means an operator of a FCIS

"home jurisdiction" means the jurisdiction from which the FCIS operator originates and is regulated

"home regulator" means the relevant regulator of the FCIS operator in the home jurisdiction

"home regulatory regime" means the regulatory regime in the home jurisdiction

"IOSCO" means the International Organization of Securities Commissions

"IOSCO Objectives and Principles of Securities Regulation" means the *Objectives and Principles of Securities Regulation*, originally

adopted by IOSCO in September 1998, as amended from time to time

"Part 7.9" (for example) means a Part of the Corporations Act (in this example numbered 7.9)

"PDS" or "Product Disclosure Statement" means a document that must be given to a retail investor in relation to the offer or issue of a financial product in accordance with Div 2 of Part 7.9

"PDS requirements" means the requirements set out in Div 2 of Part 7.9 and related regulations

"*Principles for cross border financial services regulation*" means the principles set out in our paper *Principles for cross border financial services regulation: Making the regulatory regime work in a cross border environment* (November 2002): see "Related papers"

"[PS 65]" means ASIC Policy Statement 65 *Foreign collective investment schemes* [PS 65]

"[PS 133]" (for example) means an ASIC policy statement (in this example numbered 133)

"registered scheme" means a registered managed investment scheme as defined in s9

"regulatory regime" means the rules that govern a financial facility, service or product and includes legislation, the rules, policies and practices of a regulator, and the rules, policies and practices of a self-regulatory organisation, such as a financial market operator

"responsible entity" means the company named in ASIC's record of the scheme's registration as the responsible entity or temporary responsible entity of a registered scheme

Note: This definition is contained in s9

"retail investor" means a retail client as defined in s761G

"s601ED" (for example) means a section of the Corporations Act (in this example numbered 601ED)

"wholesale investor" means a wholesale client as defined in s761G.

What will happen next?

Stage 1

November 2002	ASIC policy proposal paper released

Stage 2

28 February 2003	Comments due on the policy proposal
First half 2003	Drafting of policy statement
	Analysing equivalence of pre-assessed jurisdictions

Stage 3

June 2003	Policy statement released

Your comments

You are invited to comment on the proposals and issues for consideration in this paper. All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential.

Comments are due by Friday, 28 February 2003 and should be sent to:

Erica Gray
Regulatory Policy Branch
Australian Securities & Investments Commission
GPO Box 9827
Sydney NSW 2001
email: erica.gray@asic.gov.au

You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

Related papers

Principles for cross border financial services regulation: Making the regulatory regime work in a cross border environment (November 2002)

Policy Statement 65 *Foreign collective investment schemes* [PS 65]

Policy Statement 130 *Managed investments: Licensing* [PS 130]

Policy Statement 132 *Managed investments: Compliance plans* [PS 132]

Policy Statement 133 *Managed investments: Scheme property arrangements* [PS 133]

Policy Statement 134 *Managed investments: Constitutions* [PS 134]

Policy Statement 146 *Licensing: Training of financial product advisers* [PS 146]

Policy Statement 164 *Licensing: Organisational capacities* [PS 164]

Policy Statement 165 *Licensing: Internal and external dispute resolution* [PS 165]

Policy Statement 166 *Licensing: Financial requirements* [PS 166]

Policy Statement 167 *Licensing: Discretionary powers and transition* [PS 167]

Policy Statement 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* [PS 168]

Policy Statement 169 *Disclosure: Discretionary powers and transition* [PS 169]

Building the FSRB Administrative Framework — Policy to implement the Financial Services Reform Bill 2001 (April 2001) and *Supplement* (September 2001)

Licensing and disclosure: Making the transition to the FSR regime — An ASIC guide (October 2001, updated November 2002)

Licensing: The scope of the licensing regime: Financial product advice and dealing — An ASIC guide (November 2001, updated November 2002)

The hawking prohibitions — An ASIC guide (July 2002, updated October 2002)

Copies of papers

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