

Confidential

Email

23 June 2017

Australian Securities and Investments Commission

Applications@asic.gov.au

To whom it may concern,

Application for ASIC Foreign Financial Service Provider individual relief for Allianz Global Investors GmbH - relief similar to the exemption set out in ASIC Class Order [CO 04/1313] (German BaFin Exemption) for Allianz Global Investors GmbH

1. Introduction - Application for Individual Relief

- 1.1 We act for Allianz Global Investors GmbH (**AllianzGI**).
- 1.2 We write to apply for individual relief exemption from the Australian Securities and Investments Commission (**ASIC**) for a regulated foreign financial service provider (**FFSP**), AllianzGI.
- 1.3 AllianzGI is seeking relief on the same terms as the existing Class Order [CO 04/1313] relief for German BaFin regulated financial service providers, which for the reasons outlined below does not technically apply in its current form.

2. Legal Basis for Application

- 2.1 AllianzGI is a company with limited liability (*Gesellschaft mit beschränkter Haftung*) incorporated under German laws and having its registered office at Bockenheimer Landstrasse 42 – 44, D-60323 Frankfurt am Main, Germany, registered with the commercial register of the local court of Frankfurt am Main under number HRB 9340. The Manager is a capital investment company within the meaning of section 1 subsection 14 of the *German Capital Investment Act (Kapitalanlagegesetzbuch - KAGB)* authorised and regulated by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin*) for the conduct of its investment services and engaged in the business of managing assets belonging to clients and giving advice in relation thereto. The current ASIC Class Order [CO 04/1313] has effect pursuant to section 911A(2)(h) of the *Corporations Act 2001* (Cth) and the *ASIC Corporations (Repeal and Transitional) Instrument 2016/396*. AllianzGI is able to meet the conditions of this legislative instrument but for the first provision of Schedule A that is:

- (a) "the body holds a German Banking Licence;".

Class Order [CO 04/1313] defines a German Banking Licence to be a licence granted by BaFin under section 32 of the *German Banking Act* or deemed to be so granted under section 61 of section 64e of the *German Banking Act*.

- 2.2 German law differentiates between banks/financial service providers (*Banken/Finanzdienstleistungsgesellschaften - KWG Institutions*) and Asset Management companies (*Kapitalverwaltungsgesellschaften - KVGs*). While KWG Institutions are subject to the German Banking Act (*Kreditwesengesetz - KWG*) Asset Managers are subject to the KAGB. KWG Institutions as well as KVGs must apply for a licence from BaFin in order to conduct business and are subject to ongoing BaFin supervision. Until 2008, KWG Institutions

and KVGs were both subject to the KWG and there was no specific law for Asset Managers. Therefore, in Germany, the KAGB regime is available to eligible providers as a licensing substitute for the previous banking licence regime under the KWG.

2.3 AllianzGI has a current BaFin licence pursuant to the KAGB regime. The KAGB regime came into force on 22 July 2013.

2.4 Please refer to the attached letter from AllianzGI's German senior legal counsel **s 22** **(Appendix 5)** which explains the change to the new KAGB licensing regime and explains that the new regime is similar to the German Banking Act regime and still provides for regulation and oversight by BaFin of investment managers. The new KAGB regime places licence holders, such as AllianzGI, under similar controls and regulations as the previous German Banking Act regime.

2.5 Ultimately, if this relief application is successful, AllianzGI intends to provide financial services to wholesale/institutional clients in Australia in reliance on ASIC's exemption for FFSP individual relief.

3. **Regulatory issue for ASIC consideration**

3.1 AllianzGI is incorporated in Germany and holds a licence under the German KAGB regime granted by BaFin. Although the current class order does not extend to this form of banking licence, we request consideration as AllianzGI does satisfy the other requirements expected of a regulated FFSP relying on an ASIC Class Order exemption.

3.2 This new KAGB licensing regime has replaced the previous *German Banking Act* licensing regime in Germany for German asset management companies and the new regime is similar and more specific to the asset management industry in effect to the previous licensing regime. German asset management entities holding a KAGB licence from BaFin require the same level of supervision as they did under the KWG regime.

3.3 BaFin has expressed that a Memorandum of Understanding (**MoU**) is a prerequisite for conducting cross-border business with third countries upon entry into force of the KAGB. ASIC entered into a MoU with BaFin in relation to the cooperation between the two supervisory authorities under this new regime on 10 December 2015. It follows that ASIC is familiar with the regulatory framework overseeing the KAGB regime in Germany.

4. **Legal and cost/benefit analysis for relief**

4.1 It is submitted that, on the basis that the regulatory regime applicable to AllianzGI is sufficiently equivalent to the Australian regulatory regime for investment managers, the costs of requiring AllianzGI to obtain an Australian financial services licence in addition to its KAGB licence would outweigh the regulatory benefits. This is the basis on which relief is granted for BaFin regulated providers under Class Order [CO 04/1313] and, it is submitted, should also apply to BaFin regulated providers licensed under KAGB.

5. **Provision of Financial Services**

5.1 Allianz Global Investors Group consists of various companies throughout Europe and worldwide, carrying on investment management activities for clients across the globe. Its parent company is Allianz SE, one of the major financial service providers worldwide.

5.2 On a worldwide basis, AllianzGI services clients from pension funds, large and small, to blue-chip multinationals. The company employs more than 600 investment professionals

ASIC application for individual relief - Allianz GI

23 June 2017

worldwide, including over 350 in Europe. Further, AllianzGI's investment teams manage over 469 billion euros in assets for institutional and retail international clients.

- 5.3 We have set out below some background information on the planned merger of Rogge Global Partners Limited (**Rogge**) into AllianzGI (**the Merger**) which establishes the urgency for this application.

6. **Urgency of application**

- 6.1 AllianzGI acquired Rogge on 1 June 2016. Following this acquisition, as part of a corporate reorganisation to achieve cross border synergies and to facilitate and harmonise governance structures, AllianzGI is planning to merge with Rogge on or around 30 June 2017.

- 6.2 Under the Merger, as a matter of German law, AllianzGI will assume all of Rogge's assets and liabilities on the date of the Merger, and Rogge will cease to exist. This means that on the date of the Merger, AllianzGI will inherit all of Rogge's clients.

- 6.3 Rogge has a single Australian client, which is an institutional client that we understand is a wholesale client for Corporations Act purposes.

- 6.4 Allianz GI intends to carry on Rogge's business involving providing financial services to the Australian-based client.

7. **Consultation with ASIC**

- 7.1 We have consulted with s 22 from your Corporations team in relation to this application.

8. **Affected third parties**

- 8.1 As noted above, AllianzGI is expecting to inherit a single wholesale client in Australia as a result of the Merger.

- 8.2 Please refer to a communications letter from Rogge to Macquarie in relation to the Merger as attached as **Appendix 4**.

9. **Questions for Applicants (Table 3 of INFO 157)**

- 9.1 Further information in response to the Table 3 questions in ASIC Information Sheet 157 are set out in **Appendix 1**.

Should you have any questions in relation to the above, please do not hesitate to contact us. I would be happy to provide you with additional information concerning our application for ASIC FFSP individual relief.

Yours sincerely

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@claytonutz.com

Partner