



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 301

# Foreign financial services providers

June 2018

## About this paper

This consultation paper is for foreign financial services providers (FFSPs) and other relevant stakeholders, such as users of the services provided by FFSPs.

It provides an update on the results of our comprehensive review of our relief for FFSPs—following the temporary extension of the relief for a further two years—from the requirement to hold an Australian financial services (AFS) licence when providing financial services to wholesale clients in Australia.

This consultation paper seeks feedback on our proposals to:

- repeal [ASIC Corporations \(Repeal and Transitional\) Instrument 2016/396](#) and [ASIC Corporations \(Foreign Financial Services Providers—Limited Connection\) Instrument 2017/182](#), with a 12-month transitional period; and
- implement a modified AFS licensing regime for FFSPs to enable FFSPs to apply for and maintain a modified form of AFS licence (foreign AFS licence).

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 1 June 2018 and is based on the Corporations Act as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on relief for foreign financial services providers. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section F, 'Regulatory and financial impact'.

### Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at [www.asic.gov.au/privacy](http://www.asic.gov.au/privacy) for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 31 July 2018 to:

Alan Worsley  
Senior Specialist, Strategic Policy  
Australian Securities and Investments Commission  
Level 5, 100 Market Street, Sydney 2000  
facsimile: 02 9911 2414  
email: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

**What will happen next?**

<b>Stage 1</b>	1 June 2018	ASIC consultation paper released
<b>Stage 2</b>	31 July 2018	Comments due on the consultation paper
<b>Stage 3</b>	By September 2018	Current legislative instruments rolled over for a further 12 months
<b>Stage 4</b>	September 2019	New legislative instruments reflecting proposals and updated regulatory guide released

## A Overview

### Key points

A person who carries on a financial services business in Australia must hold an Australian financial services (AFS) licence unless relief is granted by ASIC or an exemption applies.

We have given two types of relief to foreign financial services providers (FFSPs) that provide financial services to wholesale clients in Australia:

- ‘sufficient equivalence relief’, which is based on our assessment of the overseas regulation of the foreign entity as achieving similar regulatory outcomes as the Australian regulatory requirements that apply to financial services providers in Australia; and
- ‘limited connection relief’, which exempts FFSPs that are only engaged in inducing, or intending to induce, a person in Australia to use its financial services.

This is our second consultation paper seeking feedback on the relief we have given to FFSPs.

### The current relief framework for FFSPs

- 1 If you carry on a financial services business in Australia, you must hold an AFS licence, unless relief is granted or an exemption applies. You will also need to consider whether you have to register as a foreign company.

Note: See [Regulatory Guide 121](#) *Doing financial services business in Australia* (RG 121) for further information about when you need to be a registered foreign company in Australia.

- 2 Under s911A(2)(h) of the *Corporations Act 2001* (Corporations Act), ASIC can exempt an FFSP from the requirement to hold an AFS licence if it meets certain requirements.
- 3 We have given two types of ASIC instrument relief to FFSPs providing financial services to wholesale clients in Australia:
  - (a) sufficient equivalence relief (see paragraphs 5–8); and
  - (b) limited connection relief (see paragraphs 9–15).

Note: In this paper, we refer to these two types of relief collectively as ‘the FFSP relief’.

- 4 We have also issued individual relief on similar terms to the sufficient equivalence relief to FFSPs providing financial services to wholesale clients in Australia if they are not covered under the sufficient equivalence instrument. Such relief, however, is often for a more limited range of financial services.

## Sufficient equivalence relief

5 In 2003 and 2004, we made ASIC instruments that conditionally exempted FFSPs from the requirement to hold an AFS licence when providing specified financial services when:

- (a) the financial services are provided to wholesale clients only;
- (b) the provision of the financial services by the FFSP is regulated by an overseas regulatory authority;
- (c) the regulatory regime overseen by the overseas regulatory authority is sufficiently equivalent to the Australian regulatory regime;
- (d) there are effective cooperation arrangements in place between the overseas regulatory authority and ASIC; and
- (e) the FFSP meets all the relevant conditions of relief contained in the relevant instruments.

Note: See [Regulatory Guide 176](#) *Foreign financial services providers* (RG 176) for further guidance.

6 This relief is known as the ‘sufficient equivalence relief’. Until recently, it was contained in seven different ASIC class orders:

- (a) [CO 03/1099] *UK regulated financial service providers*;
- (b) [CO 03/1100] *US SEC regulated financial service providers*;
- (c) [CO 03/1101] *US Federal Reserve and OCC regulated financial service providers*;
- (d) [CO 03/1102] *Singapore MAS regulated financial service providers*;
- (e) [CO 03/1103] *Hong Kong SFC regulated financial service providers*;
- (f) [CO 04/829] *US CFTC regulated financial services providers*; and
- (g) [CO 04/1313] *German BaFin regulated financial service providers*.

7 These instruments were made with the aim of attracting additional investment and liquidity to Australian markets by addressing the potential duplicated regulatory burden arising from compliance with Australia’s regulatory regime where FFSPs were already subject to sufficiently equivalent regimes to the Australian regime in their home jurisdictions.

8 In September 2016, we made [ASIC Corporations \(Repeal and Transitional\) Instrument 2016/396](#), which temporarily extended the sufficient equivalence relief for FFSPs for a further two years (until 27 September 2018) to allow us time to review the policy settings underlying the relief.

Note: In 2016, we also made [ASIC Corporations \(CSSF-Regulated Financial Services Providers\) Instrument 2016/1109](#), which granted sufficient equivalence relief for a limited term to entities regulated in Luxembourg.

## Limited connection relief

- 9 In 2003, we issued Class Order [CO 03/824] *Licensing relief for financial services providers with limited connection to Australia dealing with wholesale clients* to provide relief from the requirement to hold an AFS licence where the person providing the financial services is:
- (a) not in this jurisdiction;
  - (b) dealing only with wholesale clients; and
  - (c) carrying on a financial services business only by engaging in conduct that is intended to induce people in this jurisdiction to use the financial services it provides, or is likely to have that effect (see s911D(1)).
- 10 This relief is known as ‘limited connection relief’. The relief was granted to ensure an FFSP transacting with wholesale clients in Australia would not require an AFS licence when there is a limited connection between the overseas financial services provider and Australia.
- 11 The relief was largely made due to concerns that overseas counterparties to derivatives, foreign exchange transactions and providers of investment management services may be engaging in ‘inducing’ activities under s911D when inducing wholesale clients in Australia to use their financial services. Without the limited connection relief, they would be required to hold an AFS licence when engaging in inducing activity even when they are not otherwise carrying on a financial services business in Australia.
- 12 Section 911D of the Corporations Act states that a person is considered to be carrying on a financial services business in this jurisdiction if, in the course of the person carrying on the business, the person engages in conduct that is:
- (a) intended to induce people in this jurisdiction to use the financial services the person provides; or
  - (b) likely to have that effect, whether or not the conduct is intended, or is likely, to have that effect in other places as well.
- 13 [RG 121](#) provides further guidance on what activities constitute ‘inducing’ people in Australia to use a financial service.
- 14 Under RG 121.52, conduct that amounts to inducing includes attempts to persuade, influence or encourage a particular person to become a client. It could, for example, include mass marketing campaigns. Table 2 in RG 121 provides some examples of what may or may not constitute ‘inducing’.
- 15 After consulting with industry, we made [ASIC Corporations \(Foreign Financial Services Providers—Limited Connection\) Instrument 2017/182](#), which temporarily extended the effect of [CO 03/824] to 27 September 2018.



## Relationship between sufficient equivalence relief and limited connection relief

- 16 We understand from our engagement with industry over the years that, in some cases, FFSPs rely on the limited connection relief because they do not qualify for our sufficient equivalence relief.
- 17 In addition, unlike the sufficient equivalence relief, which only applies to FFSPs from jurisdictions that we have assessed as being sufficiently equivalent, FFSPs that rely on the limited connection relief are not required under the ASIC instrument to:
- (a) notify ASIC of their reliance on the relief;
  - (b) submit to the non-exclusive jurisdiction of the Australian courts in legal proceedings; or
  - (c) comply with a written notice from us directing the FFSP to provide ASIC with specific information about the financial services business operated by the person in Australia.
- 18 We have seen that some FFSPs have taken a broad interpretation of the operation of the limited connection relief, particularly in circumstances where other exemptions from the AFS licensing requirements (e.g. under s911A(2A), 911A(2B), 911A(2C), 911A(2D) and 911A(2E)) were unavailable to them.

Note: See Table 1 for further information on other exemptions from the AFS licensing requirements.

## Our proposals

- 19 Our comprehensive review of our relief for FFSPs has identified supervisory and regulatory concerns about the current operation of the FFSP relief, as well as some changes in international regulation that apply to wholesale financial services providers that suggest that the policy reflected in the FFSP relief may no longer be appropriate: see Section B.
- 20 We will extend the current FFSP relief for 12 months, until 30 September 2019, to allow time for industry to engage with the proposals in this paper.
- 21 This paper seeks feedback on our proposals to:
- (a) repeal the sufficient equivalence relief on 30 September 2019 and allow FFSPs to apply for a ‘foreign AFS licence’ (see Section C); and
- Note: See Appendices 1 and 2 for a summary of the Corporations Act requirements that we propose would apply, and would not apply, to foreign AFS licensees.
- (b) repeal the limited connection relief on 30 September 2019 to allow FFSPs to apply for a foreign AFS licence (see Section D).

- 22 We are also seeking feedback on a proposed further 12-month transitional period—from 30 September 2019 to 30 September 2020—for FFSPs to comply with the requirements of the modified AFS licensing regime: see Section E.

## Who the proposals apply to

- 23 The proposals in this paper apply to three categories of FFSP:
- (a) ‘sufficient equivalence FFSPs’ that are currently exempt from the requirement to hold an AFS licence under [ASIC Corporations \(Repeal and Transitional\) Instrument 2016/396](#), or under any other individual relief issued on similar terms. To rely on the relief, each FFSP would have already notified ASIC of its intention to rely on the sufficient equivalence relief;  
  
Note: See Table 3 for a list of sufficient equivalence jurisdictions and the relevant financial services that have the benefit of our relief under [ASIC Corporations \(Repeal and Transitional\) Instrument 2016/396](#).
  - (b) ‘limited connection FFSPs’ that are currently exempt from the requirement to hold an AFS licence under [ASIC Corporations \(Foreign Financial Services Providers—Limited Connection\) Instrument 2017/182](#); and
  - (c) FFSPs that currently do not have the benefit of either the sufficient equivalence relief or the limited connection relief, but would like to offer financial services to Australian wholesale clients in the future.

## B Comprehensive review of the FFSP relief

### Key points

This section outlines the results of our comprehensive review of the policy settings underpinning the FFSP relief.

We have identified supervisory and regulatory concerns about the current operation of the FFSP relief.

There have also been some changes in international regulation that apply to wholesale financial services providers suggesting that the policy reflected in the FFSP relief may no longer be appropriate.

## Background

24 In September 2016, we announced the temporary extension of the sufficient equivalence relief to 27 September 2018. We indicated that this was to allow us to comprehensively review and consult on the policy settings underlying the sufficient equivalence relief.

Note: See [Media Release \(16-328MR\)](#) *ASIC extends foreign financial service provider class orders for two years and consults on related class order* (28 September 2016) for further information.

25 At the same time, we released [Consultation Paper 268](#) *Licensing relief for foreign financial services providers with a limited connection to Australia* (CP 268). In CP 268, we sought feedback on our proposal to repeal the limited connection relief on the basis that its substantive effect is now covered by s911A(2E) of the Corporations Act.

26 Section 911A(2E) provides that a person (person 1) is exempt from the requirement to hold an AFS licence for a financial service they provide to a person (person 2) in the following circumstances:

- (a) person 1 is not in this jurisdiction;
- (b) person 2 is a professional investor; and
- (c) the service consists of any or all of the following:
  - (i) dealing in derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units;
  - (ii) providing advice on derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units; and

- (iii) making a market in derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units.

27 Respondents to CP 268 supported the continuation of the limited connection relief. Many respondents expressed the view that the exemption in s911A(2E) does not replicate the limited connection relief due to the subsection's limited scope. They submitted that, in the absence of the limited connection relief, there would be no viable alternatives that would allow entities relying on the limited connection relief to continue their Australian activities without an AFS licence. Further, the submissions illustrated that, in practice, the limited connection relief was used by some FFSPs to provide financial services to wholesale clients in Australia as a precursor to an entity applying for and relying on the sufficient equivalence relief.

Note: See [Report 519](#) *Response to submissions on CP 268 Licensing relief for FFSPs with a limited connection to Australia* (REP 519) for further information.

28 In CP 268, we also sought details of:

- (a) the type of entities that rely on the limited connection relief;
- (b) the type of activities for which entities rely on the relief; and
- (c) the volume of business for entities that rely on the relief.

29 We did not receive any detailed information from industry in response to this request.

30 Based on the feedback received, we temporarily extended the limited connection relief until 27 September 2018, in [ASIC Corporations \(Foreign Financial Services Providers—Limited Connection\) 2017/182](#), to allow us to conduct a comprehensive review of our limited connection relief in conjunction with our review of the sufficient equivalence relief.

### **Our review of the FFSP relief**

31 During the temporary extension period for the FFSP relief, we have conducted a comprehensive review of the underlying policy settings for the relief.

32 The FFSP relief is based on our current guidance in [Regulatory Guide 54 Principles for cross-border financial regulation](#) (RG 54): see paragraphs 35–40 below. Our policy in RG 54 seeks to strike an appropriate balance between cross-border investment facilitation, market integrity and investor protection.

33 We are now concerned that the current relief framework for FFSPs no longer strikes the appropriate balance between cross-border investment facilitation, market integrity and investor protection. In arriving at this view, we have considered:

- (a) non-compliance with the relief by FFSPs (see paragraphs 41–42);
- (b) our supervisory and enforcement concerns with the activities of FFSPs providing financial services to wholesale clients in Australia (see paragraphs 43–56);
- (c) how our approach to cross-border regulation of financial services compares with the approaches taken by key overseas regulators, including the extent to which regulators in ‘sufficiently equivalent’ jurisdictions have historically provided mutual recognition to Australian financial services providers operating in their jurisdictions (see paragraphs 57–67);
- (d) developments in cross-border financial regulation and the recent focus by the International Organization of Securities Commissions (IOSCO) on misconduct in wholesale financial markets (see paragraphs 68–72); and
- (e) the ongoing availability of other AFS licensing exemptions and relief to FFSPs providing financial services to wholesale clients in Australia.

Note: In this paper, we have not discussed other AFS licensing exemptions available to FFSPs; however, further information can be found in [RG 121](#) (see also Table 1 in this paper). For other relief applicable to foreign entities, see [ASIC Corporations \(Foreign Licensees and ADIs\) Instrument 2016/186](#).

- 34 We recognise that the Financial System Inquiry, and reports such as the Australian Financial Centre Forum’s report, [Australia as a financial centre: Building on our strengths](#) (November 2009), are focused on promoting growth in funds management and other financial services exports by facilitating Australian access to overseas markets. Our FFSP relief is directed at facilitating the import of financial services to Australia.

Note: See paragraphs 57–62 where we set out our approach to facilitating cross-border financial services recognition.

## Application of principles in RG 54 to the FFSP relief

- 35 [RG 54](#) sets out our approach to recognising overseas regulatory regimes for the purposes of facilitating cross-border financial regulation.
- 36 The principles in RG 54 guide the decisions we make on, among other things, whether to exercise a specific statutory discretion to recognise an overseas regulatory regime, and grant relief to an FFSP from certain Australian regulatory requirements. One key principle is that the FFSP is subject to a sufficiently equivalent overseas regulatory regime.
- 37 General Principles 1 and 2 indicate that we will give the fullest possible recognition to ‘sufficiently equivalent’ regulatory regimes in other jurisdictions, while General Principles 3, 4, 5 and 6 promote maintaining market integrity and ensuring adequate investor protections are in place.

- 38 Relevantly, General Principles 3 and 4 provide that:
- (a) we must have ‘effective cooperation arrangements’ with the relevant overseas regulatory authorities regulating foreign facilities, services, and products available in Australia; and
  - (b) we will be able to enforce the Australian laws that apply to FFSPs.
- 39 In the course of our policy review, we identified supervisory and enforcement concerns with the activities of FFSPs in Australia that may not have fully met General Principles 3 and 4.
- 40 In particular, there are challenges in practice that limit each overseas regulator’s ability to be able to take action to monitor and supervise the conduct of FFSPs in Australia, which hinder our ability to meet General Principle 3. We also have concerns about our ability to supervise and enforce the conduct of FFSPs in Australia.

Note: See paragraphs 43–56 for further information on our supervisory and enforcement concerns.

## Non-compliance with the FFSP relief

- 41 Importantly, we have encountered non-compliance with the sufficient equivalence relief by FFSPs providing investment banking services. For example, in 2015 and 2017 respectively, we accepted enforceable undertakings from three JP Morgan FFSPs and three Barclays FFSPs following concerns about significant and repeated failures to comply with the conditions of the sufficient equivalence relief.

Note: See [Media Release \(15-339MR\)](#) ASIC accepts enforceable undertaking from JP Morgan entities (19 November 2015) and [Media Release \(17-077MR\)](#) ASIC accepts enforceable undertaking from Barclays entities (23 March 2017). The three JP Morgan FFSPs are Morgan Securities plc, JP Morgan Securities (Asia Pacific) Ltd, and JP Morgan Securities LLC. The three Barclays FFSPs are Barclays Capital Inc., Barclays Capital Asia Limited, and Barclays Capital Securities Limited.

- 42 Further, our concerns are heightened for FFSPs relying on the limited connection relief because, as mentioned in paragraph 17, FFSPs relying on the limited connection relief are not required to:
- (a) notify ASIC of their reliance on the relief;
  - (b) submit to the non-exclusive jurisdiction of the Australian courts in legal proceedings; or
  - (c) comply with a written notice from ASIC directing the FFSP to provide ASIC with specified information about the financial services business operated by the person in this jurisdiction.

## Supervisory and enforcement concerns

43 In addition to encountering non-compliance by FFSPs with the FFSP relief, we have identified a number of supervisory and enforcement concerns when dealing with entities that have the benefit of the relief.

### Restricted monitoring and supervision arrangements

44 In RG 54.50, we observe that our ability to conduct compulsory supervision or investigations outside Australia may be restricted without assistance from the relevant overseas regulatory authority. It is important that effective cooperation arrangements are in place between ASIC and the overseas regulatory authority.

45 Effective cooperation arrangements may be bilateral or multilateral. They will generally be in the form of a memorandum of understanding (MOU), or some other documented arrangement.

46 We have entered into non-binding, bilateral cooperation arrangements with a range of regulators in some key jurisdictions: see our [Memoranda of understanding and other international agreements](#). However, we have observed a number of practical challenges that limit each overseas regulator's ability to monitor and supervise the conduct of FFSPs in Australia, operating from their home jurisdiction, and our ability to monitor and supervise the conduct of FFSPs in Australia.

47 We have also observed some limitations such as prioritisation, risk decisions and application of law issues that overseas regulators face like ASIC, which suggest that in some cases they may look to ASIC to more extensively monitor and supervise the conduct of FFSPs in Australia.

48 We consider that the nature of the relief we provide to FFSPs may in some cases be broader when compared to other jurisdictions that recognise Australian entities providing services to clients based in those jurisdictions: see paragraphs 63–67 for further information.

49 We have also identified that in some cases we have limited supervisory and enforcement powers under the relief to regulate the activities of the FFSP in Australia. Further, our powers may not reflect the degree to which wholesale clients in Australia and overseas regulators expect us to be monitoring and supervising the conduct of FFSPs in Australia.

### Limitations on enforcing overseas regulatory requirements

50 Under Schedule C, item 1 of the original sufficient equivalence class orders, it is stated that:

The [foreign] body must provide each of the financial services in this jurisdiction in a manner which would comply, so far as is possible, with the

[foreign jurisdiction's] regulatory requirements if the financial services were provided in the [foreign jurisdiction] in like circumstances (the substituted compliance condition).

- 51 In practice, it is challenging for ASIC to enforce this substituted compliance condition without substantial knowledge of the overseas regulatory regime in the 'sufficiently equivalent' jurisdiction.
- 52 It would also be unreasonable to expect an overseas regulator to enforce such a condition on our behalf in their home jurisdiction.

### **Key provisions in the Corporations Act do not apply**

- 53 Fundamental supervisory and enforcement provisions in the Corporations Act applicable to AFS licensees—such as the breach reporting requirements (in s912D) and the requirement to cooperate with an ASIC surveillance (in s912E)—do not apply to FFSPs relying on the relief.
- 54 In addition, key conduct obligations applicable to AFS licensees (set out in s912A(1) of the Corporations Act) do not apply to FFSPs relying on the relief for their activities with wholesale clients in Australia.
- 55 As a result, we do not have the full range of supervisory and enforcement tools currently available to us in the Corporations Act when seeking to address possible misconduct in Australia by FFSPs.
- 56 FFSPs that rely on the limited connection relief to provide financial services to wholesale clients in Australia are not required to notify ASIC of their reliance on the relief. This means we have no information on who is relying on that relief, where they are located, or how the relief is being used to provide services to clients in Australia, impeding our ability to supervise their activities involving clients in Australia.

## **Comparison of regulatory approaches**

### **Our approach**

- 57 Under [RG 54](#), we state that we will use two frameworks—unilateral recognition and mutual recognition—to facilitate cross-border financial recognition.
- 58 In RG 54.13, we define unilateral recognition as our recognition of an overseas regulatory regime for the purpose of facilitating access by foreign providers to Australian markets without reciprocal recognition of Australia's regulatory regime.



- 59 In RG 54.19, we define mutual recognition as an arrangement where two or more authorities agree to recognise each other's regulatory regimes. This enables agreed classes of entities from jurisdictions party to the mutual recognition arrangement to operate in the other jurisdiction(s) on agreed terms, on the basis of compliance with the regulatory framework of their home jurisdiction.
- 60 RG 54 also specifies that in assessing applications for unilateral recognition, we will consider whether it might be more appropriate to pursue a mutual recognition arrangement with the jurisdiction concerned. In other words, we will apply our approach to unilateral recognition against a background of maximising opportunities for mutual recognition where possible.
- 61 To date, we have a limited number of mutual recognition arrangements. These are not associated with FFSP relief.
- 62 During the same period, we have granted unilateral recognition—in the form of the sufficient equivalence relief—to numerous separate jurisdictions by ASIC instrument and by individual relief: see Table 3.

### **Other regulators' approaches**

- 63 We have considered how overseas regulators in some key overseas jurisdictions approach the cross-border regulation of financial services.
- 64 Our inquiries suggest that our approach to AFS licensing relief for FFSPs may be broader than those of our peers in other major jurisdictions, including the United Kingdom, the United States, Germany, Hong Kong, Singapore, New Zealand and Japan, particularly looking at the range of services that our relief applies to.
- 65 Australian providers of financial services to wholesale clients in the above jurisdictions must comply with both Australian financial services laws and the financial services laws of the relevant jurisdiction in relation to those cross-border services, subject to some limited exemptions. None of the regulators in the above-mentioned countries would appear to offer Australian entities licensing relief as broad as the sufficient equivalence relief or the limited connection relief.
- 66 We recognise that, in some jurisdictions, conduct that will require a person to hold a licence or be authorised may not extend to the 'inducing' activities covered by s911D. In those jurisdictions, it would not be necessary for there to be analogous relief to our limited connection relief.
- 67 It follows that the current relief framework may be lowering compliance costs for FFSPs relying on the relief to provide financial services in Australia, without AFS licensees obtaining a comparative reduction in compliance costs for the financial services they provide in key overseas markets. We are concerned that the predominantly unilateral nature of the

current relief framework may place AFS licensees at some possible competitive disadvantage in the global marketplace. This is of particular importance for wholesale markets that may involve a significant degree of cross-border activity.

## Recent regulatory developments

- 68 Our policy review comes at a time when global standard setters have recognised the need for strengthened regulatory responses to the risks and challenges posed by globalisation and advances in technology, and the need for regulation to evolve with financial services to prevent harm to consumers, while promoting competition, innovation and market integrity, including in wholesale markets.
- 69 One such response includes the development of the [IOSCO enhanced multilateral memorandum of understanding concerning consultation and cooperation and the exchange of information](#) (EMMoU), a concerted effort by members of IOSCO to enhance the global benchmark for international enforcement cooperation and information sharing to better address misconduct matters.
- 70 Other examples, as recognised by the Financial Stability Board in its reports to G20 leaders, include IOSCO's ongoing work on financial benchmarks to help improve market structures and practices, and an IOSCO report directed at authorities' capacity to address misconduct risk.
- 71 In June 2017, IOSCO released the [IOSCO task force report on wholesale market conduct](#), which:
- (a) highlights the risks of wholesale markets, such as a decentralised market structure, opacity, conflicts of interest involving size and organisational complexity of market participants, and increasing automation; and
  - (b) emphasises the importance of regulators possessing a range of supervisory and enforcement tools to address the risks of wholesale markets and ensure that market participants continue to comply with IOSCO's expectations.
- 72 We are concerned that the issues experienced with the current relief framework from a supervisory and enforcement perspective (paragraphs 43–56)—as well as IOSCO's recent emphasis on addressing misconduct in wholesale markets—suggest reform is required to ensure our approach to FFSPs remains consistent with IOSCO's guidance on minimising risks in wholesale markets.

## C Proposal to repeal the sufficient equivalence relief and allow FFSPs to apply for a foreign AFS licence

### Key points

We are proposing to:

- repeal the sufficient equivalence relief and any individual relief issued on similar terms (with a 12-month transitional period from 1 October 2019 to 30 September 2020); and
- implement a modified AFS licensing regime for sufficient equivalence FFSPs, such that eligible FFSPs can apply for and maintain a modified form of AFS licence (foreign AFS licence).

We will also roll over the sufficient equivalence relief and any individual relief issued on similar terms for a further 12 months, until 30 September 2019, to allow time for industry to engage with this proposal.

## Repeal of the sufficient equivalence relief

### Proposal

- c1 We propose to repeal the sufficient equivalence relief on 30 September 2019, as well as any individual relief issued on similar terms.

Note: We are proposing a 12-month transitional period (until 30 September 2020): see Section E.

### Your feedback

- C1Q1 Do you agree with our proposal to repeal the sufficient equivalence relief and individual relief for FFSPs? If not, why not? Please be specific in your response.

### Rationale

- 73 We consider that the sufficient equivalence relief (and any individual relief issued on similar terms) should be repealed because such relief may no longer strike the appropriate balance between cross-border investment facilitation, market integrity and investor protection envisaged in [RG 54](#): see paragraphs 43–72.

## Overview of new foreign AFS licensing regime

### Proposal

- c2 We propose to implement a modified AFS licensing regime for FFSPs to enable them to apply for and maintain a modified form of AFS licence (foreign AFS licence), which would:
- (a) require a foreign AFS licensee to comply with the general obligations under s912A(1)(a)–(ca) and (h) of the Corporations Act (see proposal C3), but not the general obligations in s912A(1)(d)–(f) and (j) (see proposal C4);
  - (b) exempt a foreign AFS licensee from the application of particular provisions of Ch 7 of the Corporations Act and the Corporations Regulations 2001 (Corporations Regulations) where we consider the overseas regulatory requirements achieve similar regulatory outcomes to the Australian requirements (see proposals C5–C7 and Appendix 1);
  - (c) impose tailored conditions on a foreign AFS licensee, including some additional obligations by legislative instrument (see proposal C8); and
  - (d) require a foreign AFS licence applicant to provide similar documentation in support of their application as that required for an ordinary AFS licence (see proposal C9).

### Your feedback

- C2Q1 Do you agree with our proposal to implement a modified AFS licensing regime by modifying the application of certain legislative requirements to sufficient equivalence FFSPs? If not, why not? Please be specific in your response.
- C2Q2 If you are a sufficient equivalence FFSP, what would be the impact of introducing this modified AFS licensing regime on your business activities in Australia? Please be specific in your response, and include an itemised breakdown of:
- (a) projected costs (per annum) for applying for and maintaining an ordinary AFS licence;
  - (b) projected costs (per annum) for applying for and maintaining the proposed foreign AFS licence; and
  - (c) any relevant costs at the entity-specific level.
- C2Q3 If you are a sufficient equivalence FFSP, how does your entity conduct its cross-border activities in other jurisdictions? Does your entity hold licences in jurisdictions other than your home jurisdiction? Please be specific in your response.

C2Q4 If you are a domestic AFS licensee, what would be the impact of introducing this modified AFS licensing regime on your business activities in Australia? Please be specific in your response, and include an itemised breakdown of costs and/or savings.

C2Q5 If you are a wholesale client of a sufficient equivalence FFSP in Australia, what impact would the repeal of the relief have on your business? Please give reasons for your preference.

## Rationale

- 74 We consider that repealing the sufficient equivalence relief and requiring FFSPs that do not qualify for another exemption to apply for and maintain a foreign AFS licence to continue to carry on financial services businesses in Australia may address the issues we identified in paragraphs 43–72.
- 75 We consider that the modified AFS licensing regime provides us with a fuller range of supervisory and enforcement tools to address misconduct by FFSPs. For example, FFSPs would be subject to:
- (a) our directions power (s912C);
  - (b) breach reporting requirements (s912D);
  - (c) the requirement to give us reasonable assistance during surveillance checks (s912E); and
  - (d) the remedies and penalties available to us against AFS licensees, such as the powers to:
    - (i) impose or vary conditions on a licence (s914A);
    - (ii) vary, suspend or cancel a licence (s915A and 915B);
    - (iii) seek injunctions (although we can also seek injunctions against other persons as well); and
    - (iv) impose penalties for certain offences (s1311(1)).
- 76 These supervisory and enforcement tools should allow us to more adequately and effectively monitor and supervise the conduct of FFSPs in Australia.
- 77 Further, we consider that the modified AFS licensing regime and the supervisory and enforcement tools that ASIC may use for an AFS licence will bring us into step with the regulatory approaches taken by our major peer regulators for equivalent types of financial services providers.

## Application of general obligations under s912A

### General obligations that will apply

#### Proposal

- c3** We propose that the general obligations under s912A(1)(a)–(ca) and (h) would apply to sufficient equivalence FFSPs applying for a foreign AFS licence. Specifically, a foreign AFS licensee would be required to:
- (a) do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly (s912A(1)(a));
  - (b) have in place adequate arrangements for managing conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative (s912A(1)(aa));
  - (c) comply with the conditions on the licence (s912A(1)(b));
  - (d) comply with the financial services laws (s912A(1)(c)), subject to the modifications to the Corporations Act that are proposed under proposals C4–C8;
  - (e) take reasonable steps to ensure that representatives comply with the financial services law (s912A(1)(ca)); and
  - (f) have adequate risk management systems (s912A(1)(h)).

#### *Your feedback*

C3Q1 Do you agree with our proposal that general obligations under s912A(1)(a)–(ca) and (h) should apply to sufficient equivalence FFSPs applying for a foreign AFS licence? If not, why not? Please be specific in your response.

### General obligations that will not apply

#### Proposal

- c4** We propose to exempt sufficient equivalence FFSPs from the application of general obligations under s912A(1)(d)–(f) and (j). Specifically, a foreign AFS licensee would not be required to:
- (a) have adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements (s912A(1)(d));
  - (b) maintain the competence to provide those financial services (s912A(1)(e));
  - (c) ensure that its representatives are adequately trained, and are competent, to provide those financial services (s912A(1)(f)); and

- (d) comply with any other obligations that are prescribed by regulations made for the purposes of s912A(1) (s912A(1)(j)).

*Your feedback*

C4Q1 Do you agree with our proposal to exempt sufficient equivalence FFSPs from the general obligations in s912A(1)(d)–(f) and (j)? If not, why not? Please be specific in your response.

**Rationale**

- 78 As a result of our engagement with FFSPs, we think that it is important for FFSPs to adhere to certain fundamental conduct obligations that are directly relevant to how the foreign AFS licensee engages with wholesale clients in Australia. The licensee obligations that we think should continue to apply reflect matters where we have identified concerns about the conduct of FFSPs, particularly as they may affect wholesale clients in Australia.
- 79 Many of the obligations that we are proposing not to apply to the sufficient equivalence FFSP are equivalent to requirements that exist in the sufficient equivalence FFSP's home jurisdiction and we are satisfied that compliance by FFSPs in their home jurisdiction would translate to the activities of the FFSP in Australia.

## Exemptions from particular legislative provisions

### Proposal

- c5 We propose to exempt sufficient equivalence FFSPs from the application of certain provisions of the Corporations Act and Corporations Regulations where we consider that the overseas regulatory regime achieves similar regulatory outcomes to the Corporations Act.

*Your feedback*

C5Q1 Do you agree with our proposal to exempt sufficient equivalence FFSPs from the application of certain provisions of the Corporations Act and Corporations Regulations where the overseas regulatory regime achieves similar regulatory outcomes to the Corporations Act? Please be specific in your response.

### Proposal

- c6 We propose to exempt foreign AFS licensees from requirements in the Corporations Act and the Corporations Regulations where the relevant overseas regulator will monitor or enforce the sufficient equivalence FFSP's compliance with the overseas regulatory regime as they apply to the FFSP's business activities in Australia *and* the regulatory regime

in the sufficient equivalence FFSP's home jurisdiction produces similar regulatory outcomes to the Australian regime. In addition, we will have regard to one of the following considerations:

- (a) whether any regulatory detriment of granting an exemption from the Australian requirement is minimal and is clearly outweighed by the resulting commercial benefit of not requiring compliance with the Australian requirement; and
- (b) whether the burden placed on ASIC and/or the sufficient equivalence FFSP by duplicating the requirement is not warranted because we consider that the risk posed to Australian financial markets and wholesale clients is minor.

Appendix 1 contains an indicative list of the provisions we propose will not apply to sufficient equivalence FFSPs.

See also Appendix 2 which contains an indicative list of provisions we propose will apply to sufficient equivalence FFSPs.

#### *Your feedback*

- C6Q1 Do you agree with the considerations we should have regard to when determining which Corporations Act and Corporations Regulations provisions should not apply to sufficient equivalence FFSPs? If not, why not? Please be specific in your response.
- C6Q2 Do you think we should include any other considerations when determining which provisions should not apply to sufficient equivalence FFSPs? Please specify which other considerations in your response.
- C6Q3 Do you think there are other Australian requirements that should be included in Appendix 1 (i.e. requirements that should not apply to foreign AFS licensees)? If so, why should those additional requirements not apply to foreign AFS licensees? Please be specific in your response.
- C6Q4 Do you think there are provisions in the Corporations Act or Corporations Regulations that we have included in Appendix 1 that should apply to foreign AFS licensees? If so, why should those requirements apply to foreign AFS licensees? Please be specific in your response.

#### **Proposal**

- c7** We propose to conditionally exempt foreign AFS licensees from complying with the client money and client property requirements in Divs 2 and 3 of Pt 7.8 of the Corporations Act, provided that the client money and client property protections under the overseas regulatory regime apply to client money paid to, and client property held by, the foreign AFS licensee from a wholesale client in Australia relating to the exempt financial service.



*Your feedback*

- C7Q1 Do you agree with our proposal and the proposed conditions of exemption? If not, why not?
- C7Q2 Are there any provisions of Divs 2 and 3 of Pt 7.8 from which you consider an FFSP should not be exempted? If so, please be specific in your response.
- C7Q3 Are there any sufficiently equivalent jurisdictions in relation to which proposal C7 should not apply? Please be specific in your response.

**Rationale**

80 The considerations we have proposed to determine which Australian provisions should apply are designed to ensure that the foreign AFS licence achieves an appropriate balance between cross-border investment facilitation, market integrity and investor protection in Australia.

Note: There are provisions in the Corporations Act that apply only to financial services providers that provide services to retail clients. As FFSPs relying on these proposals will only be able to provide financial services to wholesale clients in Australia, we consider there is no need for FFSPs to have relief from those provisions.

81 We consider that this approach allows us to give the fullest possible recognition to sufficiently equivalent regimes (in line with General Principles 1 and 2 of [RG 54](#)). It also addresses the regulatory concerns we have identified in paragraphs 43–72 and gives appropriate consideration to General Principles 3 and 4 of RG 54.

82 Under General Principles 1–4 of RG 54:

- (a) the overseas regulatory regime must be sufficiently equivalent to the Australian regulatory regime in terms of investor protection, market integrity and reduction of systemic risk (Principle 1);
- (b) ASIC will give the fullest possible recognition to a sufficiently equivalent overseas regulatory regime (Principle 2);
- (c) ASIC must have effective cooperation arrangements with the overseas regulatory authority (Principle 3); and
- (d) ASIC must be able to enforce applicable Australian laws (Principle 4).

83 We have included a specific proposal about client money and client property requirements to ensure that client money or client property from an Australian-based client that is held outside Australia will always be subject to adequate protection from the Australian client's perspective.

**Conditions on a foreign AFS licensee**

84 [Pro Forma 209](#) *Australian financial services licence conditions* (PF 209) sets out the standard AFS licence conditions which, subject to individual

circumstances, will usually be applied to ordinary AFS licences authorising a person to provide financial services under a licence. The prescribed conditions under reg 7.6.04 of the Corporations Regulations also apply in addition to the conditions in PF 209.

## Proposal

- c8** We propose to impose the conditions set out in PF 209 that apply to financial services and products provided only to wholesale clients, as well as the following conditions (imposed by legislative instrument):
- (a) the foreign AFS licensee is not permitted to appoint representatives other than representatives that are:
    - (i) employees or directors of the foreign AFS licensee;
    - (ii) authorised representatives that are wholly owned bodies corporate of the foreign AFS licensee; or
    - (iii) employees or directors of wholly owned bodies corporate of the foreign AFS licensee;
  - (b) the foreign AFS licensee must notify ASIC, as soon as practicable and in any event within 15 business days after the licensee becomes aware or should reasonably have become aware, and in such form if any as ASIC may from time to time specify in writing, of the details of:
    - (i) each significant change to, including the termination of, the relevant registration or authorisation in the licensee's home jurisdiction applying to the financial services the licensee is authorised to provide in this jurisdiction;
    - (ii) each significant exemption or other relief which the licensee obtains from the regulatory requirements in the licensee's home jurisdiction applying to the financial services the licensee is authorised to provide in this jurisdiction; and
    - (iii) each significant enforcement action, significant disciplinary action and/or significant investigation undertaken by any overseas regulatory authority against the licensee in a foreign jurisdiction in relation to financial services provided by the licensee in that jurisdiction; and
  - (c) if the foreign AFS licensee has appointed a local agent, the licensee must notify ASIC, as soon as practicable and in any event within one month after the change, of each change to the local agent's name, phone number, email address and office address ('notifiable change in contact details').

### *Your feedback*

C8Q1 Do you agree with the conditions we are proposing to impose on foreign AFS licensees? If not, why not? Please be specific in your response.

C8Q2 Would you prefer to have the option of allowing sufficient equivalence FFSPs to appoint any person as a representative? Note that in this case the general obligation under s912A(1)(f) of the Corporations Act would apply to the foreign AFS licensee.

C8Q3 Are there any other conditions that you think we should impose on foreign AFS licensees, and why? Please be specific in your response.

## Rationale

85 Each of the proposed conditions is designed to ensure that the foreign AFS licence achieves an appropriate balance between cross-border investment facilitation, market integrity and investor protection, as envisaged in [RG 54](#).

## Representatives

86 The condition in proposal C8(a) places a limitation on the types of representatives that can be appointed by foreign AFS licensees because we are proposing to exempt foreign AFS licensees from the general obligations to ensure that the licensee's representatives are adequately trained, and are competent, to provide those financial services (in s912A(1)(f)).

87 We consider this limitation is necessary for investor protection because it minimises the risk of non-compliant, poorly trained or incompetent unrelated bodies corporate being appointed as representatives of foreign AFS licensees.

88 We have limited the ability to appoint related entities as representatives to wholly owned bodies corporate held by the FFSPs so that the sufficient equivalence FFSP continues to have more direct ongoing involvement and oversight of the representatives that it may appoint.

## Enforcement actions in home jurisdiction

89 The condition in proposal C8(b) mirrors a requirement in the sufficient equivalence relief that is designed to ensure we are made aware of any significant changes in the regulatory status of an FFSP in its home jurisdiction. We consider this condition is necessary for investor protection to monitor the status of the regulatory equivalence of the overseas regime.

## Changes in contact details of local agents

90 The condition in proposal C8(c) is based on a requirement in the sufficient equivalence relief. This requirement is designed to ensure that we can readily contact and/or serve documents on the local agents of foreign AFS licensees. To this end, we have expanded on the requirement in reg 7.6.03B(2) of the Corporations Regulations to notify ASIC of the name or address of the agent by also requiring an up-to-date phone number and

email address for any local agent. We consider this condition necessary for investor protection because local agents are our only domestic point of contact for foreign AFS licensees.

## Documents in support of a foreign AFS licence application

- 91 ASIC's [AFS licensing kit](#) (Regulatory Guides 1–3) sets out the application process for an ordinary AFS licence, including guidance on the preparation and submission of 'core' and additional supporting proof documents to support the application.

### Proposal

- c9 We propose to require similar core and additional supporting proof documents to support an FFSP's application for a foreign AFS licence as that required for an ordinary AFS licence.

#### *Your feedback*

- C9Q1 Do you agree with our proposal that core and additional proofs must be provided to support an application for a foreign AFS licence?
- C9Q2 In addition to the requirements specified in RGs 1–3, what information do you believe you can and should provide to us to demonstrate that you are not likely to contravene the obligation under s912A(1)(c) to comply with the additional conditions on a foreign AFS licensee (see proposal C8)? Please be specific in your response.
- C9Q3 In addition to the requirements specified in RGs 1–3, what information do you believe you can and should provide to us to demonstrate that you are not likely to contravene the obligation under s912A(1)(c) to comply with financial services laws subject to the modifications proposed in proposal C5? Please be specific in your response.

### Rationale

- 92 Our proposed approach is consistent with our licensing process for an ordinary AFS licence. Our existing guidance for ordinary AFS licences should assist FFSPs that are unfamiliar with ASIC's licensing process in their application for a foreign AFS licence.
- 93 Further, we consider that this approach will assist with timely assessments of applications for a foreign AFS licence.

## D Proposal to repeal the limited connection relief

### Key points

In [CP 268](#), we invited entities relying on the limited connection relief to identify themselves, and to provide information on the types of activities and volume of business for which they rely on that relief.

We did not receive any detailed information in response to CP 268. In light of this response and the results of our policy review, we are proposing to repeal the limited connection relief. We will roll over the limited connection relief for a further 12 months, until 30 September 2019, to allow industry time to engage with the proposals in this paper.

We are also proposing a further a 12-month transitional period to 30 September 2020 allowing entities currently relying on the limited connection relief to obtain an AFS licence (whether an ordinary AFS licence or a foreign AFS licence as proposed in this paper, if they can meet the requirements for such a licence) if they wish to continue to provide financial services to wholesale clients in Australia.

## Repeal of the limited connection relief

### Proposal

- D1 We propose to repeal the limited connection relief on 30 September 2019.

Note: We are proposing a 12-month transitional period (until 30 September 2020): see Section E.

### Your feedback

- D1Q1 Do you agree with our proposal to repeal the limited connection relief? If not, why not? Please be specific in your response.
- D1Q2 If we repeal the limited connection relief, what would be the compliance costs associated with applying for an ordinary AFS licence, or a foreign AFS licence, and maintaining your entity's compliance with the Corporations Act? Please provide an itemised breakdown of:
- (a) your entity's projected costs to apply for and maintain an ordinary AFS licence;
  - (b) your entity's projected costs to apply for and maintain the proposed foreign AFS licence; and
  - (c) any other relevant costs.
- D1Q3 We understand from the limited engagement by service providers with CP 268 that a number of wholesale fund

operators rely on the limited connection relief. If we repeal the limited connection relief:

- (a) What would be the impact on your business or your client's business? Please provide data on the types of activities for which you rely on the relief, and the volume and value of business you conduct under the relief.
- (b) How does your entity address this issue with respect to activities that you conduct in jurisdictions other than your home jurisdiction? Please be specific in your response.

D1Q4 If you rely on our limited connection relief, do you rely on licences or exemptions relating to your activities that affect places other than your home jurisdiction? Please be specific in your response.

D1Q5 If you disagree with our proposal to repeal the limited connection relief, what (if any) enhanced conditions should be introduced to better facilitate supervision by ASIC? For example, what would be your view on the introduction of:

- (a) a requirement on FFSPs to notify ASIC of reliance on the limited connection relief at the outset and a further notification when the FFSP ceases to rely on that relief (the notification would be through an online form requesting a detailed description of the intended business activity (i.e. account of specific transaction procedures, intended market presence in Australia and client groups targeted), a copy of the FFSP's constitution or articles of association, and an executed agreement with an Australian local agent);
- (b) an express information-gathering power for ASIC; and
- (c) a mechanism for ASIC to monitor and take action in relation to your activities?

D1Q6 If we repeal the limited connection relief, do you expect to apply to rely on another exemption to continue to provide financial services? If not, why not? Please be specific in your response.

## Rationale

94 We consider that the limited connection relief should be repealed because on the information we currently have it appears that such relief no longer strikes the appropriate balance between cross-border investment facilitation, market integrity and investor protection envisaged in [RG 54](#), for the reasons set out in paragraphs 43–72.

95 The reason for the limited connection relief was concern about the operation of s911D, which widens what activities involve carrying on a financial services business in Australia by including 'inducing' conduct. The

Government has limited the breadth of the operation of the provision by amending s911A, as inserted by reg 7.6.02AG, to specific cases outlined in Table 1.

Note: See the [Explanatory Statement](#) to the Corporations Amendment Regulations 2005 (No. 5) for further information.

**Table 1: Exemptions from holding an AFS licence under s911A**

Conduct for which a foreign person or company does not need to hold a licence	Relevant provision
Where a person or company located outside Australia provides a financial service from outside Australia to a client in Australia and does not induce people in Australia to use the service	s911A(2A), as inserted by reg 7.6.02AG
Where a person or company located outside Australia trades on a licensed Australian financial market for a client and the foreign person or company believes on reasonable grounds that the client is an overseas client	s911A(2B), as inserted by reg 7.6.02AG
Where a person or company located outside Australia provides a financial service from outside Australia to a client in Australia who holds an ordinary AFS licence or is exempt from holding a licence under s911A(2)(h) and the client is not, in relation to the service: <ul style="list-style-type: none"> <li>(a) acting as a trustee;</li> <li>(b) acting as a responsible entity of a registered managed investment scheme; or</li> <li>(c) otherwise acting on someone else's behalf.</li> </ul>	s911A(2C), as inserted by reg 7.6.02AG
Where a person or company located outside Australia provides a financial service to a client in Australia relating to a financial product: <ul style="list-style-type: none"> <li>(a) issued to the Australian client upon that client's instigation;</li> <li>(b) issued to the Australian client while that client was not in Australia; or</li> <li>(c) that supplements or is similar to and substitutes a financial product mentioned in (a) or (b).</li> </ul> For the exemption to apply, the person or company cannot induce people in Australia to use the service.	s911A(2D), as inserted by reg 7.6.02AG
Where a person or company located outside Australia provides a financial service to a professional investor and the service consists of any or all of the following: <ul style="list-style-type: none"> <li>(a) dealing in derivatives or foreign exchange contracts;</li> <li>(b) providing advice on derivatives or foreign exchange contracts; and/or</li> <li>(c) making a market in derivatives or foreign exchange contracts.</li> </ul>	s911A(2E), as inserted by reg 7.6.02AG

Source: Table 3 in [RG 121](#).

96 In some other jurisdictions an entity is generally required at a minimum to indicate to the relevant foreign regulator that they are engaging in activities with a person who is a resident in that jurisdiction. For example, in one jurisdiction an FFSP must notify the regulator in the form of a letter of an entity's activities. This involves providing a detailed description of the intended business activity (i.e. an account of specific transaction procedures, intended market presence in the country, and client groups targeted), a copy

of the FFSP's constitution or articles of association, and an executed agreement with a local agent.

97 We are concerned that, unlike the sufficient equivalence relief, the limited connection relief does not involve any assessment of the regulatory regime in the jurisdiction that the FFSP is operating from. We have little to no visibility of the entities relying on the limited connection relief, as well as having very limited powers to adequately supervise the activities of such persons when engaging with clients in Australia.

98 Another concern we have with the current limited connection relief is that we have seen some entities that purport to rely on the limited connection relief do so based on a broad interpretation of the operation of the relief, particularly in circumstances where other exemptions from the AFS licensing requirements (e.g. under s911A(2A), 911A(2B), 911A(2C) 911A(2D) and 911A(2E)) were unavailable to them.

Note: See Table 1 for further information.

99 On balance, we think it is appropriate that FFSPs relying on the limited connection relief wanting to continue to operate in Australia should obtain an AFS licence. Such an FFSP may apply for an ordinary AFS licence, or a foreign AFS licence, if it is able to satisfy us that the home regulatory regime in which it operates is a sufficiently equivalent regime: see paragraph 106.

100 Although we are proposing to repeal the limited connection relief, this does not preclude us from issuing individual relief on receipt of an application by an entity that may have concerns about engaging in particular activities that might fall under the definition of 'inducing conduct' in s911D and which do not otherwise come within the scope of an existing AFS licensing exemption.

Note: See [RG 121](#) for further information on what activities may constitute inducing conduct.



## E Proposals on implementation of the new regime

### Key points

We are proposing a 12-month transitional period to 30 September 2020 for the implementation of the proposed new foreign AFS licensing regime for FFSPs, in addition to rolling over current relief to 30 September 2019. We consider this is sufficient time for FFSPs to ensure they comply with the applicable Corporations Act requirements and the foreign AFS licence conditions.

## Overview

### Proposal

E1 We propose that a 12-month transitional period will be sufficient to facilitate compliance with the Corporations Act as modified in accordance with our other proposals in Section C: see Table 2.

#### Your feedback

E1Q1 If we repeal the sufficient equivalence relief and individual relief, do you think that a 12-month transitional period gives sufficient time to comply with the applicable Corporations Act requirements and foreign AFS licence conditions? Please give reasons for your view.

**Table 2: Transitional arrangements**

Date	Sufficient equivalence FFSPs	Limited connection FFSPs
27 September 2018 to 30 September 2019 (roll-over period)	ASIC will roll over the sufficient equivalence relief for a further 12 months and implement a 12-month transitional period.	ASIC will roll over the limited connection relief for a further 12 months and implement a 12-month transitional period.
30 September 2019 to 30 September 2020 (transitional period)	You can apply for a foreign AFS licence during the transitional period.	<p>If you are from a sufficiently equivalent jurisdiction, you can apply for a foreign AFS licence.</p> <p>If you are not from a sufficiently equivalent jurisdiction and we have not conducted an assessment of sufficient equivalence of your jurisdiction, you can apply for sufficient equivalence and, if eligible, apply for a foreign AFS licence. Alternatively, you can apply for an ordinary AFS licence.</p> <p>Note: See paragraphs 106–117 for further guidance, including how we may undertake a sufficient equivalence assessment of jurisdictions that we have not yet assessed.</p>
1 October 2020	The foreign AFS licensing regime begins.	The foreign AFS licensing regime begins.

## Rationale

- 101 We anticipate that we will receive a significant number of applications for foreign AFS licences. The 12-month transitional period should allow FFSPs to implement the necessary compliance arrangements to meet the applicable legislative requirements and the proposed foreign AFS licence conditions.

## Transition for sufficient equivalence FFSPs

- 102 Sufficient equivalence FFSPs that have notified ASIC of their reliance on the relief will be eligible to apply for a foreign AFS licence from the commencement of the transitional period. This includes FFSPs that are relying on individual relief issued on similar terms.

Note: See [RG 176](#) for further information on how to notify ASIC of an intention to rely on the sufficient equivalence relief.

- 103 Table 3 lists the foreign jurisdictions that we have assessed as ‘sufficiently equivalent’ to the Australian financial services regime, as well as the relevant financial services involving the financial product that the relevant relief applies to.

**Table 3: Sufficiently equivalent jurisdictions**

Sufficiently equivalent jurisdiction	ASIC instrument relief or individual relief	Financial service and/or product for which relief is available
<b>Germany</b> —where regulated by the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	<a href="#">Class Order [CO 04/1313]</a> <i>German BaFin regulated financial service providers</i> (relief temporarily extended by <a href="#">ASIC Corporations (Repeal and Transitional) Instrument 2016/396</a> )	The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products: <ul style="list-style-type: none"> <li>• derivatives;</li> <li>• foreign exchange contracts;</li> <li>• securities;</li> <li>• debentures, stocks or bonds issued by a government;</li> <li>• managed investment products;</li> <li>• interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act;</li> <li>• deposit-taking facilities that are not deposit products; or</li> <li>• facilities through which a person makes non-cash payments.</li> </ul>

Sufficiently equivalent jurisdiction	ASIC instrument relief or individual relief	Financial service and/or product for which relief is available
<p><b>Hong Kong</b>—where regulated by the Securities and Futures Commission</p>	<p><a href="#">Class Order [CO 03/1103]</a> <i>Hong Kong SFC regulated financial service providers</i> (relief temporarily extended by <a href="#">ASIC Corporations (Repeal and Transitional) Instrument 2016/396</a>)</p>	<p>The relief applies to providing financial product advice, dealing in a financial product or making a market for a financial product in respect of the following financial products:</p> <ul style="list-style-type: none"> <li>• derivatives;</li> <li>• foreign exchange contracts;</li> <li>• securities;</li> <li>• debentures, stocks or bonds issued by a government;</li> <li>• managed investment products; or</li> <li>• interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.</li> </ul>
<p><b>Luxembourg</b>—where regulated by the Commission de Surveillance du Secteur Financier</p>	<p>For Luxembourg—<a href="#">ASIC Corporations (CSSF–Regulated Financial Services Providers) Instrument 2016/1109</a></p>	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products:</p>
<p><b>United Kingdom</b>—where regulated by the Financial Conduct Authority</p>	<p>For the United Kingdom—<a href="#">Class Order [CO 03/1099]</a> <i>UK regulated financial service providers</i> (relief temporarily extended by <a href="#">ASIC Corporations (Repeal and Transitional) Instrument 2016/396</a>)</p>	<p>• eligible deposit products;</p> <p>• derivatives;</p> <p>• foreign exchange contracts;</p> <p>• securities;</p> <p>• debentures, stocks or bonds issued by a government;</p> <p>• managed investment products; or</p> <p>• interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.</p>
<p><b>Singapore</b>—where regulated by the Monetary Authority of Singapore</p>	<p>For Singapore—<a href="#">Class Order [CO 03/1102]</a> <i>Singapore MAS regulated financial service providers</i> (relief temporarily extended by <a href="#">ASIC Corporations (Repeal and Transitional) Instrument 2016/396</a>)</p>	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products:</p>
<p><b>United States</b>—where regulated by the Securities Exchange Commission</p>	<p>For the United States—<a href="#">Class Order [CO 03/1100]</a> <i>US SEC regulated financial service providers</i> (relief temporarily extended by <a href="#">ASIC Corporations (Repeal and Transitional) Instrument 2016/396</a>)</p>	<p>• derivatives;</p> <p>• foreign exchange contracts;</p> <p>• securities;</p> <p>• debentures, stocks or bonds issued by a government;</p> <p>• managed investment products; or</p> <p>• interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.</p>

Sufficiently equivalent jurisdiction	ASIC instrument relief or individual relief	Financial service and/or product for which relief is available
<p><b>United States</b>—where regulated by:</p> <ul style="list-style-type: none"> <li>– the Federal Reserve; and</li> <li>– the Office of the Comptroller of Currency</li> </ul>	<p><a href="#">Class Order [CO 03/1101]</a> <i>US Federal Reserve and OCC regulated financial service providers</i> (relief temporarily extended by <a href="#">ASIC Corporations (Repeal and Transitional) Instrument 2016/396</a>)</p>	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products:</p> <ul style="list-style-type: none"> <li>• eligible deposit products;</li> <li>• derivatives;</li> <li>• foreign exchange contracts;</li> <li>• securities;</li> <li>• facilities for making non-cash payments;</li> <li>• debentures, stocks or bonds issued by a government;</li> <li>• managed investment products; or</li> <li>• interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.</li> </ul>
<p><b>United States</b>—where regulated by the Commodity Futures Trading Commission</p>	<p><a href="#">Class Order [CO 04/829]</a> <i>US CFTC regulated financial services providers</i> (relief temporarily extended by <a href="#">ASIC Corporations (Repeal and Transitional) Instrument 2016/396</a>)</p>	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products:</p> <ul style="list-style-type: none"> <li>• derivatives;</li> <li>• foreign exchange contracts;</li> <li>• managed investment products; or</li> <li>• interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.</li> </ul>
<p><b>Denmark</b></p> <p><b>Sweden</b>, assessed as similar to the relief given to Luxembourg</p> <p><b>France</b></p> <p><b>Brazil</b></p>	<p>Individual relief</p>	<p>The relief is tailored for the individual applicant.</p>

## Proposal

- E2** We propose to not undertake a further sufficient equivalence assessment of the relevant regime for sufficient equivalence FFSPs referred to in Table 3 for those financial services involving the financial products the relevant sufficient equivalent relief currently applies to.

### Your feedback

- E2Q1 Do you agree with our approach? Please give reasons for your view.

## Rationale

- 104 To assist with the transition, if we receive an application for a foreign AFS licence from an FFSP in a jurisdiction that we have already assessed as being ‘sufficiently equivalent’, we will not undertake a new sufficient equivalence assessment for that jurisdiction. This is because we completed the assessment when we initially gave the relief and we have not received any significant new information since making the original equivalence assessment that has altered our view about the sufficient equivalence of that regime.
- 105 We will take the same approach with FFSPs relying on individual relief from those jurisdictions where we have already assessed sufficient equivalence. We will not undertake a new sufficient equivalence assessment in relation to that specific financial service or financial product.

## Transition for limited connection FFSPs and new FFSPs

### Transitional arrangements: Sufficiently equivalent jurisdictions

- 106 Limited connection FFSPs and new FFSPs that are licensed or authorised (as applicable) and operating in a jurisdiction that ASIC has recognised as sufficiently equivalent to Australia’s financial services regime will be eligible to apply for a foreign AFS licence during the transitional period.

Note: See Table 3 for a list of foreign jurisdictions that we have assessed as ‘sufficiently equivalent’ to the Australian financial services regime, as well as the relevant financial services involving the financial product that the relevant relief applies to.

### Proposal

- E3 We propose that a 12-month transitional period is adequate to allow limited connection FFSPs and new FFSPs operating from a sufficiently equivalent jurisdiction to facilitate compliance with the Corporations Act, as modified in accordance with our other proposals in Section C.

#### *Your feedback*

- E3Q1 Do you agree with the proposed transitional period? If not, do you think it should be longer or shorter?

### Rationale

- 107 For the reason set out in paragraph 104, if the FFSP relying on the limited connection relief is in a ‘sufficiently equivalent’ jurisdiction we will not undertake a new sufficient equivalence assessment for that jurisdiction.

## Transitional arrangements: Jurisdictions not assessed for sufficient equivalence

- 108 Limited connection FFSPs and new FFSPs operating from a jurisdiction that we have *not* currently assessed as sufficiently equivalent to the Australian financial services regime *may* be eligible to apply for a foreign AFS licence.
- 109 To be eligible to apply for a foreign AFS licence, an FFSP must:
- (a) be licensed or authorised (as applicable) in its home jurisdiction to provide the financial service it is proposing to provide to clients in Australia; and
  - (b) engage with ASIC about ASIC undertaking a sufficient equivalence assessment.

### Proposal

- E4** We propose that FFSPs from jurisdictions that we have not assessed as being sufficiently equivalent may engage with ASIC about obtaining a sufficient equivalence assessment of their home regulatory regime to be eligible to apply for a foreign AFS licence during the transitional period, as detailed in proposal E5.

#### *Your feedback*

- E4Q1 Do you agree with our approach? Please give reasons for your view.
- E4Q2 Do you think that the proposed 12-month transitional period is sufficient for FFSPs to engage with ASIC for us to undertake a sufficient equivalence assessment of their home regulatory regime and apply for a foreign AFS licence? If not, do you think it should be longer or shorter? Please give reasons for your view.

### Proposal

- E5** We propose that if we adopt the proposals in Section C on providing exemptions from some provisions of the Corporations Act, our assessment of sufficient equivalence will only involve assessing whether the outcomes of the requirements in the overseas regime are similar to those outcomes produced by the requirements in the Corporations Act that we propose to exempt a foreign AFS licensee from (scaled-back assessment).

#### *Your feedback*

- E5Q1 Do you agree with our proposal of a scaled-back assessment of sufficient equivalence for the new foreign AFS licensing regime? Please give reasons for your view.
- E5Q2 Do you think other questions should be excluded on the scaled-back assessment? Please be specific in your response.

E5Q3 Are there any measures relevant to ASIC's assessment of sufficient equivalence that you think we could adopt to assist FFSPs to obtain such an assessment without creating significant burdens for them arising from such an assessment? Please be specific in your response.

### Rationale

110 FFSPs can apply for a sufficient equivalence assessment before we decide whether to adopt our proposals in this paper. However, such an application for a sufficient equivalence assessment would involve an assessment against all the regulatory outcomes in Ch 7 of the Corporations Act. In other words, we would not apply the scaled-back assessment of sufficient equivalence.

Note: See [Information Sheet 157](#) *Foreign financial services providers: Practical guidance* (INFO 157) for information on the requisite documentation to notify ASIC.

111 To assist with the transition, we are considering whether we may carry out scaled-back assessments of overseas regulatory regimes in jurisdictions not listed in Table 3. We encourage FFSPs from jurisdictions not yet assessed as equivalent, who want to apply for a foreign AFS licence, to engage with us so that we may conduct a scaled-back assessment of their home regulatory regime once we have settled our approach to conducting such an assessment.

112 In identifying such non-sufficiently equivalent jurisdictions, we may look at overseas regulatory regimes where we have had a close and ongoing relationship with the overseas regulator and where we have a sound understanding of the operation of that regime. We would focus on non-sufficiently equivalent jurisdictions that regulate a significant number of FFSPs operating in Australia.

113 Additionally, we may also engage with industry to help us identify other overseas regulatory regimes we should approach to assist us with this scaled-back assessment.

114 In approaching such an assessment, the information we would take into account would include:

- (a) material from recent reviews of relevant overseas regulatory regimes undertaken by other regulatory bodies such as the Financial Sector Assessment Program undertaken by the International Monetary Fund;
- (b) material we obtain about the overseas regime through our relationships with international bodies such as the IOSCO;
- (c) material we receive from the relevant overseas regulator; and
- (d) material we seek from relevant industry associations to assist us with streamlining the assessment process for a particular jurisdiction.

115 If we are of the view that the overseas regulatory regime achieves sufficiently equivalent regulatory outcomes to our regulatory regime, then

the FFSP may immediately apply for a foreign AFS licence at the beginning of the transitional period.

- 116 However, if we are of the view that the overseas regulatory regime is not sufficiently equivalent to the Australian financial services regime, the FFSP will need to obtain an ordinary AFS licence before the end of the transitional period to continue providing financial services in Australia, unless it can rely on another licensing exemption.
- 117 Our proposed timing for commencing the sufficient equivalence assessment should help FFSPs to continue providing financial services to wholesale clients in Australia with minimal disruption.

## Implementation of foreign AFS licensing regime

- 118 To implement our proposed foreign AFS licensing regime for FFSPs, we would modify the application of certain licensing requirements of the Corporations Act by way of a s926A declaration under a legislative instrument.
- 119 Under our proposal, FFSPs would be required to apply for and maintain a foreign AFS licence to continue to provide financial services to wholesale clients in Australia provided that the FFSP currently holds a licence or is authorised (as applicable) in their 'sufficiently equivalent' home jurisdiction to provide financial services.
- 120 The foreign AFS licence would authorise the FFSP to provide the same financial service it is authorised to provide in its 'sufficiently equivalent' home jurisdiction to wholesale clients in Australia.

## Foreign AFS licence application process

- 121 We are currently updating the process for lodging applications for all AFS licences. When this is sufficiently advanced, and if we decide to adopt the proposals in this paper, we intend to issue specific guidance about the process for lodging applications for a foreign AFS licence.

## Additional guidance for FFSPs

- 122 If we decide to adopt the proposals in this paper, we anticipate issuing additional guidance for industry about the foreign AFS licence and the exemptions that we would issue as part of implementing the foreign AFS licensing regime. This would include a revised [RG 176](#).



## F Regulatory and financial impact

123 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- (a) facilitating access to foreign financial services and relevant foreign markets for wholesale clients in Australia;
- (b) ensuring that the providers of financial services to wholesale clients in Australia do not adversely affect the integrity of Australian financial markets or create systemic risks in the Australian financial system;
- (c) ensuring that ASIC can administer and enforce the Australian laws that apply to foreign financial services;
- (d) ensuring that Australian investors who access foreign facilities, services and products are adequately protected; and
- (e) reflecting the current international regulatory approach to regulating cross-border activities.

124 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

125 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

126 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

## Appendix 1: Provisions that would not apply to a foreign AFS licensee under our proposals

- 127 This appendix seeks to assist industry to understand how the Corporations Act would operate for a foreign AFS licensee. There are two indicative lists that together contain all the provisions in Ch 7 of the Corporations Act and the associated regulations to help you understand how the regime may apply under the proposed exemptions.
- 128 If we proceed with our proposal for a modified AFS licensing regime, the Corporations Act provisions set out in Table 4 would not apply to a foreign AFS licensee. We have compiled Table 4 based on our current assessment of the regulatory outcomes of an overseas regulatory regime that we have determined as sufficiently equivalent to the Australian requirements.
- 129 Table 5 sets out the provisions of the Corporations Regulations that would not apply to a foreign AFS licensee based on our current assessment of the regulatory outcomes of an overseas regulatory regime that we have determined as sufficiently equivalent to the Australian requirements.

**Table 4: Corporations Act provisions that would not apply to foreign AFS licensees**

Provision	Obligation	Reason for not applying the Corporations Act provision
<b>Pt 7.6, Div 3—Obligations of providers of financial services</b>		
s912A(1)(d)	Have adequate resources	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
s912A(1)(e)	Maintain the competence to provide those financial services	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
s912A(1)(f)	Ensure representatives are appropriately trained	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
s912A(1)(j)	Comply with other obligations prescribed by regulations	Not applicable
s912AA	Adequate financial resources for responsible entities and investor directed portfolio service (IDPS) operators: <a href="#">Class Order [CO 13/760]</a> <a href="#">Financial requirements for responsible entities and operators of investor directed portfolio services</a>	The regulator in the home jurisdiction would adequately monitor and enforce an equivalent obligation in the foreign law
s912AAA	Notice of reliance	Not applicable

Provision	Obligation	Reason for not applying the Corporations Act provision
s912AAC	Minimum standards for providers of custodial or depository services: <a href="#">Class Order [CO 13/1410] Holding assets: Standards for providers of custodial and depository services</a>	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
s912AAD	Agreements with sub-custodians to hold custodial property: [CO 13/1410]	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
s912AC	Adequate financial resources for custodial or depository services providers: <a href="#">Class Order [CO 13/761] Financial requirements for custodial or depository service providers</a>	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
s912F	Cite licence number in documents	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
<b>Pt 7.6, Div 11—Agreement with unlicensed persons relating to provision of financial services</b>		
s924A–925I	Protections for people dealing with unlicensed financial services providers	Not applicable to an FFSP that holds an AFS licence for relevant financial services that is licensed
<b>Pt 7.8, Div 2—Dealing with client’s money</b>		
s981A–983E	Obligations in Div 2 apply when dealing with client money as defined in s981A and the primary obligation to hold such money on trust (s981H)	The exemption would only apply where the client money protections in the FFSP’s home jurisdiction apply to the Australian client’s money
	Obligations about loans to financial services licence holders by clients in s982A–983E	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law
<b>Pt 7.8, Div 3—Dealing with other property of clients</b>		
s984A–984B	Obligations in Div 3 apply when dealing with client property as defined in s984A	The exemption would only apply where the client money protections in the FFSP’s home jurisdiction apply to the Australian client’s property  The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law

Provision	Obligation	Reason for not applying the Corporations Act provision
<b>Pt 7.8, Div 4—Special provisions relating to insurance</b>		
s985D	Not to deal in insurance with unauthorised insurers	The regulatory detriment of granting an exemption from the Australian requirement is minimal and is clearly outweighed by the resulting commercial benefit
<b>Pt 7.8, Div 5—Obligation to report</b>		
s986A	Reporting in relation to money to which Subdiv A or B of Div 2 applies or property to which Div 3 applies	<p>The exemption would only apply where the client money or client property protections in the FFSP's home jurisdiction apply to the Australian client's money or property</p> <p>The regulator in the home jurisdiction would adequately monitor and enforce this obligation in the foreign law</p>
s986B	Reporting on dealings in derivatives	The regulatory detriment of granting an exemption from the Australian requirement is minimal and is clearly outweighed by the resulting commercial benefit
<b>Pt 7.8, Div 6—Financial records, statements and audit</b>		
All provisions, except s987A, 988A, 988C, 988D(b), 988E and 988G	Record keeping and relevant financial statements	Relief otherwise available under <a href="#">ASIC Corporations (Financial Licensees and ADIs) Instrument 2016/186</a>
<p>Note: We are proposing that a foreign AFS licensee should not have to comply with s988A(1)(b) to the extent that it requires it to keep financial records in accordance with s988B, 988D(a) and 988F.</p>		
<b>Pt 7.8, Div 7—Other rules about conduct</b>		
s991E	Obligations of licensees in relation to dealings with non-licensees	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law
s991F	Dealings involving employees of licensees	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law

Provision	Obligation	Reason for not applying the Corporations Act provision
<b>Pt 7.8, Div 9—Enforcement</b>		
s993A–993C	Offences for failing to hold client money, deal with loans from clients and client property in accordance with the Corporations Act	The exemption would only apply where the client money protections in the FFSP's home jurisdiction apply to the Australian client's money
<b>Pt 7.9—Financial product disclosure</b>		
s1017E	Dealing with money received for financial product before the product is issued	<p>The exemption would only apply where the application money protections in the FFSP's home jurisdiction apply to the Australian client's money</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>

**Table 5: Corporations Regulations that would not apply to foreign AFS licensees**

Regulation	Obligation	Reason for not applying the regulation
<b>Pt 7.6—Licensing of providers of financial services</b>		
reg 7.6.01BA	Modification of s912A	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
reg 7.6.04(d)	Condition on licence requiring the maintenance of records of training	Dual compliance obligation is not warranted as the risk posed to Australian financial markets and wholesale clients is minor.
<b>Part 7.8—Other provisions relating to conduct connected with financial products and financial services, other than financial product disclosure</b>		
reg 7.8.01A	Wholesale client money	<p>The exemption would only apply where the client money protections in the FFSP's home jurisdiction apply to the Australian client's money</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>
reg 7.8.01	Obligation to pay money into an account	<p>The exemption would only apply where the client money protections in the FFSP's home jurisdiction apply to the Australian client's money</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>

Regulation	Obligation	Reason for not applying the regulation
reg 7.8.02	Accounts maintained for s981B— withdrawals from account	<p>The exemption would only apply where the client money protections in the FFSP's home jurisdiction apply to the Australian client's money</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>
reg 7.8.02A	Accounts maintained for the purposes of s981B—special rules for retail clients	<p>The exemption would only apply where the client money protections in the FFSP's home jurisdiction apply to the Australian client's money</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>
reg 7.8.03	How money to be dealt with if licensee ceases to be licensed	<p>The exemption would only apply where the client money protections in the FFSP's home jurisdiction apply to the Australian client's money</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>
reg 7.8.04	Money to which Subdiv A of Div 2 of Pt 7.8 applies taken to be held in trust: breach of financial services law	<p>The exemption would only apply where the client money protections in the FFSP's home jurisdiction apply to the Australian client's money</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>
reg 7.8.05	Money to which Subdiv A of Div 2 of Pt 7.8 applies taken to be held in trust: risk accepted by insurer	<p>The exemption would only apply where the client money protections in the FFSP's home jurisdiction apply to the Australian client's money</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>
reg 7.8.06	Statement setting out terms of loan	<p>The exemption would only apply where the client money protections in the FFSP's home jurisdiction apply to the Australian client's money</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>

Regulation	Obligation	Reason for not applying the regulation
reg 7.8.06A	Property exempt from Div 3 of Pt 7.8	<p>The exemption would only apply where the client property protections in the FFSP's home jurisdiction apply to the Australian client's property</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>
reg 7.8.06B	Wholesale client property	<p>The exemption would only apply where the client property protections in the FFSP's home jurisdiction apply to the Australian client's property</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>
reg 7.8.07	How property to which Div 3 of Pt 7.8 is to be dealt with	<p>The exemption would only apply where the client property protections in the FFSP's home jurisdiction apply to the Australian client's property</p> <p>The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law</p>
reg 7.8.12	Requirements in relation to financial records of licensees	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law
reg 7.8.12A	Modification of s989B	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law
reg 7.8.13	Auditor's report with annual profit and loss statement and balance sheet	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law
reg 7.8.13A	Compliance certificate with profit and loss statement and balance sheet	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law
reg 7.8.14	Contents of annual profit and loss statement	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law
reg 7.8.14A	Lodgement of annual profit and loss statement and balance sheet	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law
reg 7.8.14B	Modification of s990B	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law

<b>Regulation</b>	<b>Obligation</b>	<b>Reason for not applying the regulation</b>
reg 7.8.15	Appointment of auditor by licensee	The regulator in the home jurisdiction would adequately monitor and enforce this obligation in the foreign law
reg 7.8.16	When person is ineligible to act as auditor of licensee	The regulator in the home jurisdiction would monitor and enforce this obligation in the foreign law
reg 7.8.20	Dealing with non-licensees	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
reg 7.8.20A	Dealings with employees of licensee	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law
reg 7.8.21	Dealings involving employees of licensees	The regulator in the home jurisdiction would monitor and enforce an equivalent obligation in the foreign law



## Appendix 2: Provisions that would apply to a foreign AFS licensee under our proposals

130 If we proceed with our proposal for a modified AFS licensing regime, the Corporations Act provisions set out in Table 6 would apply to a foreign AFS licensee. Table 7 sets out the provisions of the Corporations Regulations that would apply.

**Table 6: Corporations Act requirements that would apply to foreign AFS licensees**

Provision	Obligation	Reason for applying the Corporations Act requirements
<b>Pt 7.6, Div 3—Obligations of providers of financial services</b>		
s912A(1)(a)	Provide financial services efficiently, honestly and fairly	This is a fundamental conduct obligation that is directly relevant to how foreign AFS licensees engage with wholesale clients in Australia
s912A(1)(aa)	Have in place adequate arrangements for management of conflicts of interest	This is a fundamental conduct obligation that is directly relevant to how foreign AFS licensees engage with wholesale clients in Australia
s912A(1)(b)	Comply with the conditions on the licence	This is a fundamental conduct obligation that is directly relevant to how foreign AFS licensees engage with wholesale clients in Australia
s912A(1)(c)	Comply with the financial services laws (subject to the modifications to the Corporations Act proposed in proposals C5–C8)	This is a fundamental conduct obligation that is directly relevant to how foreign AFS licensees engage with wholesale clients in Australia
s912A(1)(ca)	Take reasonable steps to ensure that representatives comply with the financial services law	This is a fundamental conduct obligation that is necessary to protect wholesale clients in Australia
s912A(1)(h)	Have adequate risk management systems	This is a fundamental conduct obligation that is necessary to protect wholesale clients in Australia
s912C	Direction to provide a statement	This is a key supervisory provision that is necessary for the protection of wholesale clients in Australia
s912CA	Regulations may require information to be provided	This is a key supervisory provision that is necessary for the protection of wholesale clients in Australia
s912D	Obligation to notify ASIC of certain matters	This is a key enforcement provision that is necessary to enable ASIC to address possible misconduct by foreign AFS licensees

Provision	Obligation	Reason for applying the Corporations Act requirements
s912E	Surveillance checks by ASIC	This is a key supervisory provision that is necessary for the protection of wholesale clients in Australia
<b>Pt 7.6, Div 4—AFS licences</b>		
s913A–916	Licence applications, conditions, variations, suspensions or cancellations	These provisions would directly relate to the foreign AFS licence
<b>Pt 7.6, Div 5—Authorised representatives</b>		
s916A–917	Obligations and authorisations of an authorised representative	These provisions are necessary for the protection of wholesale clients in Australia
<b>Pt 7.6, Div 6—Liability of AFS licensees for representatives</b>		
s917A–917F	Liability of licensees for representatives' conduct	These provisions are necessary for the protection of wholesale clients in Australia
<b>Pt 7.6, Div 8—Banning or disqualification of persons from providing financial services</b>		
s920A–922	ASIC's power to make a banning order	These enforcement provisions are necessary to enable ASIC to address misconduct by foreign AFS licensees
<b>Pt 7.6, Div 10—Restrictions on use of terminology</b>		
s923A	Restrictions on use of certain words or expressions	This provision is necessary for the protection of wholesale clients in Australia
s923B	Restriction on use of certain words or expressions unless authorised in licence conditions	This provision is necessary for the protection of wholesale clients in Australia
<b>Pt 7.7A, Div 5—Other banned remuneration</b>		
s964	Application	This provision is necessary for the protection of wholesale clients in Australia
s964A	Platform operator must not accept volume-based shelf-space fees	This provision is necessary for the protection of wholesale clients in Australia
<b>Pt 7.7A, Div 6—Anti-avoidance</b>		
s965	Anti-avoidance	This provision is necessary for the protection of wholesale clients in Australia
<b>Pt 7.8, Div 1—Preliminary</b>		
s980A–980B	General approach to offence provisions	These provisions are necessary for the protection of wholesale clients in Australia

Provision	Obligation	Reason for applying the Corporations Act requirements
<b>Pt 7.8, Div 6—Financial records, statements and audit</b>		
s987A	Application	This provision is necessary for the protection of wholesale clients in Australia
s988A Note: We are proposing that a foreign AFS licensee should not have to comply with s988A(1)(b) to the extent that it requires it to keep financial records in accordance with s988B, 988D(a) and 988F.	Obligation to keep financial records	This provision is necessary for the protection of wholesale clients in Australia
s988C	Language of records	This provision is necessary for the protection of wholesale clients in Australia
s988D(b)	Produce records if required by ASIC	This provision is necessary for the protection of wholesale clients in Australia
s988E	Categories of information to be shown in records	This provision is necessary for the protection of wholesale clients in Australia
s988G	Records taken to be made with licensee's authority	This provision is necessary for the protection of wholesale clients in Australia
<b>Pt 7.8, Div 7—Other rules about conduct</b>		
s991A	Licensee not to engage in unconscionable conduct	This provision is necessary for the protection of wholesale clients in Australia
s991B	Licensee to give priority to clients' orders	This provision is necessary for the protection of wholesale clients in Australia
s991C	Regulations may deal with various matters relating to instructions to deal through licensed markets	This provision is necessary for the protection of wholesale clients in Australia
s991D	Regulations may require records to be kept in relation to instructions to deal on licensed markets and foreign markets	This provision is necessary for the protection of wholesale clients in Australia
<b>Pt 7.9, Div 5A—Unsolicited offers to purchase financial products off-market</b>		
s1019C–1019K	Disclosure obligations relating to unsolicited offers to purchase financial products off-market	These provisions are necessary for the protection of wholesale clients in Australia

Provision	Obligation	Reason for applying the Corporations Act requirements
<b>Pt 7.9, Div 5B—Disclosure in relation to short sales covered by securities lending arrangement of listed s1020B products</b>		
s1020AA–1020AF	Disclosure obligations on short-selling	These provisions are necessary for the protection of wholesale clients in Australia
<b>Pt 7.9, Div 6—Miscellaneous</b>		
s1020A–1020G	Miscellaneous provisions relating to disclosure in the event of issue, sale and purchase of financial product	These provisions are necessary for the protection of wholesale clients in Australia
<b>Pt 7.10—Market misconduct and other prohibited conduct relating to financial products and financial services</b>		
s1040A–1045A	Various kinds of prohibited conduct other than insider trading	These provisions are necessary to ensure market integrity and for the protection of wholesale clients in Australia
<b>Pt 7.11—Title and transfer</b>		
s1070A–1070D	Title and transfer of certain securities, financial products and applicable exemptions and modifications	No exclusions apply
<b>Pt 7.12—Miscellaneous</b>		
s1100A–1101J	Miscellaneous provisions on privilege and other matters	No exclusions apply

**Table 7: Corporations Regulations that would apply to foreign AFS licensees**

Regulation	Obligation	Reason for applying the regulation
<b>Pt 7.6—Licensing of providers of financial services</b>		
reg 7.6.02A	Obligation to notify ASIC of certain matters	This is a key enforcement provision that is necessary to enable ASIC to address possible misconduct by foreign AFS licensees
reg 7.6.03	Applying for a licence	This provision would directly relate to the foreign AFS licence
reg 7.6.03A	Requirements for a foreign entity to appoint local agent	This is a key enforcement provision that is necessary for the protection of wholesale clients in Australia
reg 7.6.03B	Foreign entity must continue to have local agent	This is a key enforcement provision that is necessary for the protection of wholesale clients in Australia

Regulation	Obligation	Reason for applying the regulation
reg 7.6.04 (except reg 7.6.04(d))	Conditions on licence	This provision is necessary for the protection of wholesale clients in Australia
reg 7.6.04AA	Time limits for notification of authorised representatives (modification of s916F)	This provision is necessary for the protection of wholesale clients in Australia
reg 7.6.04A	Exemptions to notification of authorised representatives	This provision is necessary for the protection of wholesale clients in Australia
<b>Pt 7.6A—Authorised representatives</b>		
reg 7.6.08	Appointment of authorised representatives	This provision is necessary for the protection of wholesale clients in Australia
<b>Pt 7.6B—Provision of information to APRA about contracts of insurance</b>		
regs 7.6.08A–7.6.08E	Requirement to provide information about general insurance products	No exemption in relation to insurance products Information may be relevant to the Australian Prudential Regulation Authority (APRA)
<b>Pt 7.8—Other provisions relating to conduct other than financial product disclosure</b>		
reg 7.8.08	Debts of licensee in relation to, for example, premiums	This provision is necessary for the protection of wholesale clients in Australia
reg 7.8.11	Particular categories of information to be shown in records	This provision is necessary for the protection of wholesale clients in Australia
reg 7.8.11A	Particular categories of information to be shown in records: records of non-monetary benefit that is not conflicted remuneration	This provision is necessary for the protection of wholesale clients in Australia
reg 7.8.17	Priority to clients' orders	This provision is necessary for the protection of wholesale clients in Australia
reg 7.8.18	Instructions to deal through licensed markets	This provision is necessary for the protection of wholesale clients in Australia
reg 7.8.19	Records of instructions to deal on licensed markets and foreign markets	This provision is necessary for the protection of wholesale clients in Australia
<b>Pt 7.9, Div 8—Other requirements</b>		
reg 7.9.80B	Short-selling of certain warrants	This provision is necessary for the protection of wholesale clients in Australia

Regulation	Obligation	Reason for applying the regulation
<b>Pt 7.9, Div 13—Unsolicited offers to purchase financial products off market</b>		
regs 7.9.96–7.9.97A	Market value of a product, off-market trading by professional investors and information in offer documents	These provisions are necessary for the protection of wholesale clients in Australia
<b>Pt 7.9, Div 15—Disclosure in relation to short sales covered by securities lending arrangement of listed s1020B products</b>		
regs 7.9.99–7.9.102	Disclosure by seller, licensee and public disclosure of information	These provisions are necessary for the protection of wholesale clients in Australia
<b>Pt 7.10—Market misconduct and other prohibited conduct relating to financial products and services</b>		
regs 7.10.01–7.10.03	Div 3 financial products, professional standard schemes and exemptions of qualifying gas trading exchange	These provisions are necessary to ensure market integrity and for the protection of wholesale clients in Australia
<b>Pt 7.11—Title and transfer</b>		
regs 7.11.01–7.11.43	Title and transfer of certain securities, financial products and applicable exemptions and modifications	No exclusions apply
<b>Pt 7.12—Miscellaneous</b>		
reg 7.12.01	Destruction of records by ASIC	No exclusions apply

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
[CO 14/26] (for example)	An ASIC class order (in this example numbered 14/26)  Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
FFSP relief	The 'sufficient equivalence relief' and the 'limited connection relief'
foreign financial services provider (FFSP)	A provider of financial services that is regulated by an overseas regulatory authority and relies on either: <ul style="list-style-type: none"> <li>• the sufficient equivalence relief; or</li> <li>• the limited connection relief.</li> </ul>
home jurisdiction	The jurisdiction from which the FFSP originates and in which it is regulated
limited connection relief	Relief from the requirement to hold an AFS licence where the person providing the financial services is: <ul style="list-style-type: none"> <li>• not in this jurisdiction;</li> <li>• dealing only with wholesale clients; and</li> <li>• carrying on a financial services business only by engaging in conduct that is intended to induce people in this jurisdiction to use the financial services it provides, or is likely to have that effect (see s911D(1))</li> </ul> Note: This relief is currently in <a href="#">ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182</a> .
overseas regulatory authority	The relevant regulatory authority of the FFSP in its home jurisdiction
overseas regulatory regime	The regulatory regime administered by the relevant regulatory authority of the FFSP in its home jurisdiction
professional investor	Has the meaning given in s9 of the Corporations Act

Term	Meaning in this document
reg 7.6.02AG (for example)	A regulation of the Corporations Regulations (in this example numbered reg 7.6.02AG)
RG 54 (for example)	An ASIC regulatory guide (in this example numbered 54)
roll-over period	The period between 27 September 2018 and 30 September 2019 when we will be engaging with industry about the proposals in this paper
s25 (for example)	A section of the Corporations Act (in this example numbered 25)
scaled-back assessment	An assessment of sufficient equivalence that involves assessing whether the outcomes of the requirements in the overseas regulatory regime are similar to the outcomes produced by those requirements in the Corporations Act that would not apply to a foreign AFS licensee if the proposals in Section C are adopted
sufficient equivalence relief	Relief from the requirement to hold an AFS licence when providing specified financial services where: <ul style="list-style-type: none"> <li>• the financial services are provided to wholesale clients only;</li> <li>• the provision of the financial services by the FFSP is regulated by an overseas regulatory authority;</li> <li>• the regulatory regime overseen by the overseas regulatory authority is sufficiently equivalent to the Australian regulatory regime;</li> <li>• there are effective cooperation arrangements in place between the overseas regulatory authority and ASIC; and</li> <li>• the FFSP meets all the relevant conditions of relief contained in the relevant instruments.</li> </ul> <p>Note: This relief is currently in <a href="#">ASIC Corporations (Repeal and Transitional) Instrument 2016/346</a>.</p>
sunsetting	The practice of specifying a date at which a given regulation or legislative instrument will cease to have effect
transitional arrangements	The transitional arrangements that will apply for existing FFSPs between 30 September 2019 and 30 September 2020
transitional period	The period between 30 September 2019 and 30 September 2020 in which FFSPs would be able to apply for a foreign AFS licence
wholesale client	A client who is not a retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations



## List of proposals and questions

Proposal	Your feedback
<p>C1 We propose to repeal the sufficient equivalence relief on 30 September 2019, as well as any individual relief issued on similar terms.</p> <p>Note: We are proposing a 12-month transitional period (until 30 September 2020): see Section E.</p>	<p>C1Q1 Do you agree with our proposal to repeal the sufficient equivalence relief and individual relief for FFSPs? If not, why not? Please be specific in your response.</p>
<p>C2 We propose to implement a modified AFS licensing regime for FFSPs to enable them to apply for and maintain a modified form of AFS licence (foreign AFS licence), which would:</p> <ul style="list-style-type: none"> <li>(a) require a foreign AFS licensee to comply with the general obligations under s912A(1)(a)–(ca) and (h) of the Corporations Act (see proposal C3), but not the general obligations in s912A(1)(d)–(f) and (j) (see proposal C4);</li> <li>(b) exempt a foreign AFS licensee from the application of particular provisions of Ch 7 of the Corporations Act and the Corporations Regulations 2001 (Corporations Regulations) where we consider the overseas regulatory requirements achieve similar regulatory outcomes to the Australian requirements (see proposals C5–C7 and Appendix 1);</li> <li>(c) impose tailored conditions on a foreign AFS licensee, including some additional obligations by legislative instrument (see proposal C8); and</li> <li>(d) require a foreign AFS licence applicant to provide similar documentation in support of their application as that required for an ordinary AFS licence (see proposal C9).</li> </ul>	<p>C2Q1 Do you agree with our proposal to implement a modified AFS licensing regime by modifying the application of certain legislative requirements to sufficient equivalence FFSPs? If not, why not? Please be specific in your response.</p> <p>C2Q2 If you are a sufficient equivalence FFSP, what would be the impact of introducing this modified AFS licensing regime on your business activities in Australia? Please be specific in your response, and include an itemised breakdown of:</p> <ul style="list-style-type: none"> <li>(a) projected costs (per annum) for applying for and maintaining an ordinary AFS licence;</li> <li>(b) projected costs (per annum) for applying for and maintaining the proposed foreign AFS licence; and</li> <li>(c) any relevant costs at the entity-specific level.</li> </ul> <p>C2Q3 If you are a sufficient equivalence FFSP, how does your entity conduct its cross-border activities in other jurisdictions? Does your entity hold licences in jurisdictions other than your home jurisdiction? Please be specific in your response.</p> <p>C2Q4 If you are a domestic AFS licensee, what would be the impact of introducing this modified AFS licensing regime on your business activities in Australia? Please be specific in your response, and include an itemised breakdown of costs and/or savings.</p> <p>C2Q5 If you are a wholesale client of a sufficient equivalence FFSP in Australia, what impact would the repeal of the relief have on your business? Please give reasons for your preference.</p>

Proposal	Your feedback
<p>C3 We propose that the general obligations under s912A(1)(a)–(ca) and (h) would apply to sufficient equivalence FFSPs applying for a foreign AFS licence. Specifically, a foreign AFS licensee would be required to:</p> <ul style="list-style-type: none"> <li>(a) do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly (s912A(1)(a));</li> <li>(b) have in place adequate arrangements for managing conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative (s912A(1)(aa));</li> <li>(c) comply with the conditions on the licence (s912A(1)(b));</li> <li>(d) comply with the financial services laws (s912A(1)(c)), subject to the modifications to the Corporations Act that are proposed under proposals C4–C8;</li> <li>(e) take reasonable steps to ensure that representatives comply with the financial services law (s912A(1)(ca)); and</li> <li>(f) have adequate risk management systems (s912A(1)(h)).</li> </ul>	<p>C3Q1 Do you agree with our proposal that general obligations under s912A(1)(a)–(ca) and (h) should apply to sufficient equivalence FFSPs applying for a foreign AFS licence? If not, why not? Please be specific in your response.</p>
<p>C4 We propose to exempt sufficient equivalence FFSPs from the application of general obligations under s912A(1)(d)–(f) and (j). Specifically, a foreign AFS licensee would not be required to:</p> <ul style="list-style-type: none"> <li>(a) have adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements (s912A(1)(d));</li> <li>(b) maintain the competence to provide those financial services (s912A(1)(e));</li> <li>(c) ensure that its representatives are adequately trained, and are competent, to provide those financial services (s912A(1)(f)); and</li> <li>(d) comply with any other obligations that are prescribed by regulations made for the purposes of s912A(1) (s912A(1)(j)).</li> </ul>	<p>C4Q1 Do you agree with our proposal to exempt sufficient equivalence FFSPs from the general obligations in s912A(1)(d)–(f) and (j)? If not, why not? Please be specific in your response.</p>

Proposal	Your feedback
<p>C5 We propose to exempt sufficient equivalence FFSPs from the application of certain provisions of the Corporations Act and Corporations Regulations where we consider that the overseas regulatory regime achieves similar regulatory outcomes to the Corporations Act.</p>	<p>C5Q1 Do you agree with our proposal to exempt sufficient equivalence FFSPs from the application of certain provisions of the Corporations Act and Corporations Regulations where the overseas regulatory regime achieves similar regulatory outcomes to the Corporations Act? Please be specific in your response.</p>
<p>C6 We propose to exempt foreign AFS licensees from requirements in the Corporations Act and the Corporations Regulations where the relevant overseas regulator will monitor or enforce the sufficient equivalence FFSP's compliance with the overseas regulatory regime as they apply to the FFSP's business activities in Australia and the regulatory regime in the sufficient equivalence FFSP's home jurisdiction produces similar regulatory outcomes to the Australian regime. In addition, we will have regard to one of the following considerations:</p> <p>(a) whether any regulatory detriment of granting an exemption from the Australian requirement is minimal and is clearly outweighed by the resulting commercial benefit of not requiring compliance with the Australian requirement; and</p> <p>(b) whether the burden placed on ASIC and/or the sufficient equivalence FFSP by duplicating the requirement is not warranted because we consider that the risk posed to Australian financial markets and wholesale clients is minor.</p> <p>Appendix 1 contains an indicative list of the provisions we propose will not apply to sufficient equivalence FFSPs.</p> <p>See also Appendix 2 which contains an indicative list of provisions we propose will apply to sufficient equivalence FFSPs.</p>	<p>C6Q1 Do you agree with the considerations we should have regard to when determining which Corporations Act and Corporations Regulations provisions should not apply to sufficient equivalence FFSPs? If not, why not? Please be specific in your response.</p> <p>C6Q2 Do you think we should include any other considerations when determining which provisions should not apply to sufficient equivalence FFSPs? Please specify which other considerations in your response.</p> <p>C6Q3 Do you think there are other Australian requirements that should be included in Appendix 1 (i.e. requirements that should not apply to foreign AFS licensees)? If so, why should those additional requirements not apply to foreign AFS licensees? Please be specific in your response.</p> <p>C6Q4 Do you think there are provisions in the Corporations Act or Corporations Regulations that we have included in Appendix 1 that should apply to foreign AFS licensees? If so, why should those requirements apply to foreign AFS licensees? Please be specific in your response.</p>
<p>C7 We propose to conditionally exempt foreign AFS licensees from complying with the client money and client property requirements in Divs 2 and 3 of Pt 7.8 of the Corporations Act, provided that the client money and client property protections under the overseas regulatory regime apply to client money paid to, and client property held by, the foreign AFS licensee from a wholesale client in Australia relating to the exempt financial service.</p>	<p>C7Q1 Do you agree with our proposal and the proposed conditions of exemption? If not, why not?</p> <p>C7Q2 Are there any provisions of Divs 2 and 3 of Pt 7.8 from which you consider an FFSP should not be exempted? If so, please be specific in your response.</p> <p>C7Q3 Are there any sufficiently equivalent jurisdictions in relation to which proposal C7 should not apply? Please be specific in your response.</p>

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- C8 We propose to impose the conditions set out in PF 209 that apply to financial services and products provided only to wholesale clients, as well as the following conditions (imposed by legislative instrument):
- (a) the foreign AFS licensee is not permitted to appoint representatives other than representatives that are:
    - (i) employees or directors of the foreign AFS licensee;
    - (ii) authorised representatives that are wholly owned bodies corporate of the foreign AFS licensee; or
    - (iii) employees or directors of wholly owned bodies corporate of the foreign AFS licensee;
  - (b) the foreign AFS licensee must notify ASIC, as soon as practicable and in any event within 15 business days after the licensee becomes aware or should reasonably have become aware, and in such form if any as ASIC may from time to time specify in writing, of the details of:
    - (i) each significant change to, including the termination of, the relevant registration or authorisation in the licensee's home jurisdiction applying to the financial services the licensee is authorised to provide in this jurisdiction;
    - (ii) each significant exemption or other relief which the licensee obtains from the regulatory requirements in the licensee's home jurisdiction applying to the financial services the licensee is authorised to provide in this jurisdiction; and
    - (iii) each significant enforcement action, significant disciplinary action and/or significant investigation undertaken by any overseas regulatory authority against the licensee in a foreign jurisdiction in relation to financial services provided by the licensee in that jurisdiction; and
  - (c) if the foreign AFS licensee has appointed a local agent, the licensee must notify ASIC, as soon as practicable and in any event within one month after the change, of each change to the local agent's name, phone number, email address and office address ('notifiable change in contact details').
- C8Q1 Do you agree with the conditions we are proposing to impose on foreign AFS licensees? If not, why not? Please be specific in your response.
- C8Q2 Would you prefer to have the option of allowing sufficient equivalence FFSPs to appoint any person as a representative? Note that in this case the general obligation under s912A(1)(f) of the Corporations Act would apply to the foreign AFS licensee.
- C8Q3 Are there any other conditions that you think we should impose on foreign AFS licensees, and why? Please be specific in your response.
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Proposal	Your feedback
<p>C9 We propose to require similar core and additional supporting proof documents to support an FFSP's application for a foreign AFS licence as that required for an ordinary AFS licence.</p>	<p>C9Q1 Do you agree with our proposal that core and additional proofs must be provided to support an application for a foreign AFS licence?</p> <p>C9Q2 In addition to the requirements specified in RGs 1–3, what information do you believe you can and should provide to us to demonstrate that you are not likely to contravene the obligation under s912A(1)(c) to comply with the additional conditions on a foreign AFS licensee (see proposal C8)? Please be specific in your response.</p> <p>C9Q3 In addition to the requirements specified in RGs 1–3, what information do you believe you can and should provide to us to demonstrate that you are not likely to contravene the obligation under s912A(1)(c) to comply with financial services laws subject to the modifications proposed in proposal C5? Please be specific in your response.</p>
<p>D1 We propose to repeal the limited connection relief on 30 September 2019.</p> <p>Note: We are proposing a 12-month transitional period (until 30 September 2020): see Section E.</p>	<p>Do you agree with our proposal to repeal the limited connection relief? If not, why not? Please be specific in your response.</p> <p>D1Q2 If we repeal the limited connection relief, what would be the compliance costs associated with applying for an ordinary AFS licence, or a foreign AFS licence, and maintaining your entity's compliance with the Corporations Act? Please provide an itemised breakdown of:</p> <ul style="list-style-type: none"> <li>(a) your entity's projected costs to apply for and maintain an ordinary AFS licence;</li> <li>(b) your entity's projected costs to apply for and maintain the proposed foreign AFS licence; and</li> <li>(c) any other relevant costs.</li> </ul>

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*Proposal D1—continued*

- D1Q3 We understand from the limited engagement by service providers with CP 268 that a number of wholesale fund operators rely on the limited connection relief. If we repeal the limited connection relief:
- (a) What would be the impact on your business or your client's business? Please provide data on the types of activities for which you rely on the relief, and the volume and value of business you conduct under the relief.
  - (b) How does your entity address this issue with respect to activities that you conduct in jurisdictions other than your home jurisdiction? Please be specific in your response.
- D1Q4 If you rely on our limited connection relief, do you rely on licences or exemptions relating to your activities that affect places other than your home jurisdiction? Please be specific in your response.
- D1Q5 If you disagree with our proposal to repeal the limited connection relief, what (if any) enhanced conditions should be introduced to better facilitate supervision by ASIC? For example, what would be your view on the introduction of:
- (a) a requirement on FFSPs to notify ASIC of reliance on the limited connection relief at the outset and a further notification when the FFSP ceases to rely on that relief (the notification would be through an online form requesting a detailed description of the intended business activity (i.e. account of specific transaction procedures, intended market presence in Australia and client groups targeted), a copy of the FFSP's constitution or articles of association, and an executed agreement with an Australian local agent);
  - (b) an express information-gathering power for ASIC; and
  - (c) a mechanism for ASIC to monitor and take action in relation to your activities?
- D1Q6 If we repeal the limited connection relief, do you expect to apply to rely on another exemption to continue to provide financial services? If not, why not? Please be specific in your response.
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Proposal	Your feedback
<p>E1 We propose that a 12-month transitional period will be sufficient to facilitate compliance with the Corporations Act as modified in accordance with our other proposals in Section C: see Table 2.</p>	<p>E1Q1 If we repeal the sufficient equivalence relief and individual relief, do you think that a 12-month transitional period gives sufficient time to comply with the applicable Corporations Act requirements and foreign AFS licence conditions? Please give reasons for your view.</p>
<p>E2 We propose to not undertake a further sufficient equivalence assessment of the relevant regime for sufficient equivalence FFSPs referred to in Table 3 for those financial services involving the financial products the relevant sufficient equivalent relief currently applies to.</p>	<p>E2Q1 Do you agree with our approach? Please give reasons for your view.</p>
<p>E3 We propose that a 12-month transitional period is adequate to allow limited connection FFSPs and new FFSPs operating from a sufficiently equivalent jurisdiction to facilitate compliance with the Corporations Act, as modified in accordance with our other proposals in Section C.</p>	<p>E3Q1 Do you agree with the proposed transitional period? If not, do you think it should be longer or shorter?</p>
<p>E4 We propose that FFSPs from jurisdictions that we have not assessed as being sufficiently equivalent may engage with ASIC about obtaining a sufficient equivalence assessment of their home regulatory regime to be eligible to apply for a foreign AFS licence during the transitional period, as detailed in proposal E5.</p>	<p>E4Q1 Do you agree with our approach? Please give reasons for your view.</p> <p>E4Q2 Do you think that the proposed 12-month transitional period is sufficient for FFSPs to engage with ASIC for us to undertake a sufficient equivalence assessment of their home regulatory regime and apply for a foreign AFS licence? If not, do you think it should be longer or shorter? Please give reasons for your view.</p>
<p>E5 We propose that if we adopt the proposals in Section C on providing exemptions from some provisions of the Corporations Act, our assessment of sufficient equivalence will only involve assessing whether the outcomes of the requirements in the overseas regime are similar to those outcomes produced by the requirements in the Corporations Act that we propose to exempt a foreign AFS licensee from (scaled-back assessment).</p>	<p>E5Q1 Do you agree with our proposal of a scaled-back assessment of sufficient equivalence for the new foreign AFS licensing regime? Please give reasons for your view.</p> <p>E5Q2 Do you think other questions should be excluded on the scaled-back assessment? Please be specific in your response.</p> <p>E5Q3 Are there any measures relevant to ASIC's assessment of sufficient equivalence that you think we could adopt to assist FFSPs to obtain such an assessment without creating significant burdens for them arising from such an assessment? Please be specific in your response.</p>