MinterEllison

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Email: policy.submissions@asic.gov.au

Mr Alan Worsley
Senior Specialist, Strategic Policy
Australian Securities and Investments Commission
Level 5, 100 Market Street,
Sydney NSW 2000

Dear Sir

Submission on ASIC Consultation Paper 301: Foreign financial services providers (CP 301)

We appreciate the opportunity to respond to ASIC's proposals in CP 301.

We continue to strongly support the continuation of both the limited connection relief and the current sufficient equivalence relief for the reasons set out in our submission on ASIC Consultation Paper 268: *Licensing relief for foreign financial services providers with a limited connection to Australia* (**CP 268**) dated 5 December 2016 (copy **enclosed**).

MinterEllison is a full service commercial law firm. We advise major financial institutions, including banks, insurance companies and superannuation funds, as well as specialist fund managers, financial advice firms, stockbrokers and other financial intermediaries in Australia and overseas.

We note however that the views expressed in our submission are ours alone and do not necessarily reflect the views of our clients.

Summary of our submission

1. We strongly support the continued need for the current sufficient equivalence relief, limited connection relief and individual relief (**relief regime**). We believe that ASIC should continue these forms of relief in their current form for the following reasons:

    (a) The relief regime includes important exemptions which reduce barriers to trade in services, facilitate competition for financial services in Australia and enable Australia's financial service market to operate in the same manner as other wholesale markets by permitting overseas providers to engage with Australian financial institutions and other wholesale clients without unnecessary layers of regulation.

    (b) The proposals set out in CP 301 (**proposed regime**) are likely to affect the decisions of foreign financial service providers (**FFSPs**) to commit resources to enter into or increase their investment in the Australian market, which can only have a negative impact on competition in the Australian market. Further, the increase in regulatory costs which will likely be caused by the implementation of the proposed regime may lead to FFSPs which have a smaller Australian operation exiting the Australian market.

    (c) The proposal to introduce a foreign AFS licensing regime is disproportionately burdensome for FFSPs which are currently able operate under an equivalence class order, given the exemptions apply to firms which are already authorised in a jurisdiction which ASIC has determined has a regulatory regime which is sufficiently equivalent to the Australian regulatory regime.

    (d) ASIC proposals are inconsistent with the policy approach and principles of the Asia Region Funds Passport, a major international initiative endorsed by the Federal Government and Parliament.

2. We do not believe that there are sufficiently competing reasons to remove the limited connection relief or to introduce a 'foreign AFS licence' regime for the following reasons:

   (a) There has not been any widespread or significant non-compliance with either the sufficient equivalence or limited connection relief. Nor is there any evidence of any negative impact of the relief on:

      (i) decision making by consumers of financial products and services in Australia;

      (ii) efficiency, flexibility and innovation in the provision of financial products or services;

      (iii) fairness, honesty and professionalism by those who provide financial services;

      (iv) fair, orderly and transparent markets for financial products;

      (v) systemic risk; or

      (vi) the provision of fair and effective services by clearing and settlement facilities.

      These are the objects of Chapter 7 of the Corporations Act (section 760A). Rather than being inconsistent with these objects, we believe that the limited connection and sufficient equivalence relief facilitate them. Noting that the current relief is confined to the wholesale market, it facilitates these objects by making it easier for participants in the Australian financial services sector to access the skills, services and capabilities of the global market. This in turn enhances the financial services able to delivered to retail clients in Australia through licensed financial service providers.

      We note that ASIC has provided examples of non-compliance with the sufficient equivalence relief by JP Morgan and Barclays. However, we submit that they are isolated examples and no examples of concerns relating to the limited connection relief have been provided. In our experience, overseas entities relying on the relief take compliance with the requirements of the relief and the general requirements of financial services and commercial laws very seriously.

   (b) The supervisory and enforcement concerns set out at CP 301.43-49 can be addressed by increasing reporting obligations under the current relief regime. It is not necessary to require foreign providers to hold an Australian financial services (**AFS**) licence or the proposed 'foreign AFS licence'.

   (c) Most overseas jurisdictions do not require foreign providers who do not carry on business in the jurisdiction to hold a licence if financial services are only provided to wholesale or institutional clients. For example, the UK has a specific exclusion which enables overseas firms which do not have a place of business in the UK to provide services to wholesale clients in the UK and to meet with them in the UK without needing a UK licence. In Singapore, foreign entities are not regulated for providing services to a person regulated in Singapore. In Hong Kong, a licence is generally only required where the provider actively markets to the Hong Kong public.

      The extended definition of financial product advice and the inducing test in section 911D means that the current relief is required to ensure that the regime Australia is broadly equivalent to the approach taken by other similar jurisdictions. This is the main reason for a lack of equivalent passporting relief for Australian licensees overseas – because it is not generally required.

3. If, despite our submissions, ASIC decides to implement the proposed regime, we believe that any 'foreign AFS licence' regime should only impose limited obligations on licensees licensed outside Australia and the process of applying for and obtaining a 'foreign AFS licence' should be simple and streamlined.

4. We note that when explaining the original rationale for the sufficient equivalence and limited connection relief, ASIC stated:

   (a) 'ASIC will recognise overseas regulatory regimes to promote the global provision of financial services…in order to remain at the forefront of global financial services regulation, ASIC

must produce sensible and facilitative policy that reflects the globalisation of financial services.' (IR 03-22)

(b) 'The relief has been provided in response to [concerns regarding]…the degree of duplication of obligations under the [financial services reform] regime where a service provider is sufficiently regulated in another jurisdiction.' (IR 03-28)

5. We are concerned that in its current form the proposed regime would not achieve these objectives.

6. However, we acknowledge the concerns expressed by ASIC about its ability to monitor overseas providers relying on the relief and to enforce obligations arising under overseas regulatory regimes. We believe that these concerns can be addressed by a judicious increase in the notification obligations of overseas providers relying on the relief and by empowering ASIC to enforce equivalent foreign regulatory standards on FFSPs with respect to their Australian operations. This approach would remove the need for the duplication of Australian and foreign obligations and therefore greatly reduce both compliance costs for foreign providers and regulatory costs for ASIC.

Response to proposals and questions

7. In this section of our submission, we have responded to the questions in CP 301 which we are able to make submissions on.

C1Q1 Do you agree with our proposal to repeal the sufficient equivalence relief and individual relief for FFSPs? If not, why not?

8. We do not agree with ASIC's proposal. We submit that the relief regime should be extended with appropriate amendment. We believe the relief regime continues to achieve its original goals of 'attract[ing] additional investment and liquidity to Australian markets by addressing the duplicated regulatory burden arising from compliance with Australia's regulatory regime where FFSPs were already subject to sufficiently equivalent regimes in their home jurisdictions' (CP 268.21).

9. The relief regime also performs a significant role of facilitating competition in the wholesale financial services market which ultimately benefits consumers by providing access, through retail financial institutions using the services of FFSPs relying on the relief, to a greater range of services and innovation. The relief regime also removes trade barriers and enhances Australia's ability to compete in the global market.

10. We believe that the relief regime appropriately balances competition benefits with the need for appropriately regulatory oversight of financial service providers by requiring FFSPs to be subject to equivalent regulatory oversight as that applying to AFS licence holders. It also provides certainty to FFSPs by recognising specific regulatory regimes which ASIC has identified as being sufficiently equivalent to Australia.

11. Unfortunately ASIC's proposals, when considered in conjunction with other developments, such as the introduction of the Operational Due Diligence (ODD) requirement relating to investment managers as recommended by the Australian Superannuation Institute of Trustees and the new ASIC levy for licensees, has given rise to considerable uncertainty and regulatory risk for FFSPs. These developments are likely to increase the risk that FFSPs will turn away from the Australian market, reducing competition and therefore efficiency and innovation.

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?

12. While we do not agree with ASIC's proposal to require FFSPs to hold a 'foreign AFS licence', we agree that if it is implemented the AFS licensing regime should be modified appropriately. We make the following submissions in relation to the modifications proposed by ASIC:

(a) The licensing obligations proposed by ASIC should only apply to the services provided by the FFSP under its 'foreign AFS licence'.

(b) We do not believe that 'foreign AFS licence' holders (**foreign licensees**) should be required to comply with s912A(1)(aa) regarding management of conflicts of interest obligations or

s912(1)(h) regarding risk management obligations. See our submissions in paragraph 15 for more detail.

(c) We do not agree with the proposal that foreign licensees should be limited in their ability to appoint representatives (see our submission in paragraph 29).

(d) We agree with the imposition of the other tailored conditions set out in Proposal C8.

(e) The application process for a foreign AFS licence should not be similar to that for the ordinary AFS licence. The process should be streamlined and similar to that of the current notification process under the relief regime. See our submissions in paragraphs 31 to 34 0 for more detail.

13. We agree that foreign licensees should be subject to:

(a) ASIC's directions power (s912C);

(b) breach reporting requirements (s912D);

(c) the requirement to give ASIC reasonable assistance during surveillance checks (s912E); and

(d) other remedies and penalties available to ASIC against AFS licensees, including:

(i) imposing or varying conditions on a licence (s914A); and

(ii) varying, suspending or cancelling a licence (s915A and 915B).

14. However, we do not believe that FFSPs need to hold a licence to be subject to these measures. They could be simply introduced as conditions to the relief instrument. Failure to comply with any requirement would give ASIC the ability to revoke the ability of the FFSP to rely on the relief which would require the FFSP to apply for a full AFS licence or cease providing services to Australian clients, particularly if ASIC also revoked the ability of the FFSP to rely on the limited connection relief. ASIC should therefore have the ability to impose specific conditions on FFSPs relying on the relief.

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?

15. We agree that it is reasonable to require foreign licensees to do all things necessary to ensure that it provides financial services to Australian clients efficiently, honestly and fairly and to comply licence conditions and financial services laws and take reasonable steps to ensure that its representatives comply with the financial services laws. However, we do not believe it is appropriate to require foreign licensees to comply with s912A(1)(aa) regarding management of conflicts of interest obligations or s912(1)(h) regarding risk management obligations.

16. These obligations impose additional regulatory burdens which should not be necessary where ASIC has assessed the FFSP as being subject to a sufficiently equivalent overseas regime. The manner in which FFSPs address conflicts of interest and risk management should be determined by the regulatory regime they are subject to in their home jurisdiction, otherwise FFSPs will be subject to inconsistent requirements imposing additional cost for no benefit.

17. We acknowledge ASIC's concerns about the ability of home regulators to enforce the equivalent obligations in respect of FFSPs' foreign operations (i.e. the FFSPs' Australian operations). However, we believe that can be addressed by giving ASIC the ability to enforce home jurisdiction obligations in respect of services provided to Australian clients.

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?

18. We agree with the proposal to exempt foreign licensees from the general obligations in s912A(1)(d)–(f) and (j) as it minimises the imposition of unnecessary obligations on FFSPs.

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?

19. We agree with this proposal as this would prevent duplication of obligations for FFSPs sufficiently regulated in another jurisdiction.

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?

20. We believe the proposed considerations are appropriate.

21. We do however have following concerns about the list of provisions that ASIC has indicated in Appendix 2 will apply to foreign licensees:

(a) ***Restrictions on use of terminology:*** ss 923A and 923B – ASIC states that these provisions are necessary for the protection of wholesale clients in Australia. However, we submit that these provisions are more intended to provide protection for retail clients and wholesale clients have the capacity to judge whether a service provider is in fact independent or a broker. Where an FFSP is able to use that terminology in their home jurisdiction, it will add cost for no significant benefit to prevent them using it in Australia. This is particularly the case where the FFSP uses restricted terminology in its name or brand. We do not therefore believe it is necessary for these provisions to apply to foreign licensees.

(b) ***Financial records:*** Part 7.8, Division 6 – Again, ASIC states that these provisions are necessary to protect wholesale clients. However, we submit that wholesale clients have the knowledge and ability to insist that FFSPs keep appropriate records relevant to the services they receive. The application of these obligations is likely to overlap with home jurisdiction requirements and we submit is unnecessary given ASIC will have assessed the home jurisdiction has having equivalent requirements and protections.

An example of a particular problem caused by ASIC's proposal is the requirement to maintain records in English under s988C. While this is unlikely to cause a problem where the home jurisdiction is an English speaking country, it discriminates against FFSPs based in non-English speaking countries.

(c) ***Other rules about conduct:*** Part 7.8, Division 7 – We do not believe that these provisions are necessary to protect wholesale clients and creates a compliance burden to maintain procedures and records specific to compliance with ASIC requirements. Firms will need to set up separate procedures and policies for their Australian business whether or not they operate directly in Australia. This is an additional cost and a barrier to entry.

(d) ***Title and transfer***: Part 7.11 – These provisions only apply to companies registered under the Australian Corporations Act and to registered schemes. They do not impose obligations on financial service providers. There is therefore no need for them to apply to FFSPs and we believe it is confusing to provide that they will apply. It will require FFSPs to investigate what they need to do to comply with obligations that have no application to their activities. The imposes cost for no benefit. We acknowledge that ASIC does not have the power to exempt FFSPs from these provisions. However, it should be made clear that FFSPs do not need to do anything to comply with them.

C6Q2 Do you think we should include any other considerations when determining which provisions should not apply to sufficient equivalence FFSPs?

22. We do not believe that there are any other relevant considerations.

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)?

23. We do not believe that there are any other requirements that should not apply to foreign licensees.

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?

24. We agree with that the provisions in Appendix 1 should not apply to foreign licensees.

C7Q1 Do you agree with our proposal to conditionally exempt foreign AFS licensees from complying with the client money and client property requirements and the proposed conditions of exemption? If not, why not?

25. We agree that foreign licensees should be exempt from Australian client money and client property requirements. However, we do not believe that the exemption should be conditional on the application of overseas client money and property obligations. The equivalence regime only permits FFSPs to provide services to wholesale clients. We submit that wholesale clients are able to make their own inquiries regarding the client money and property requirements that apply to the FFSP and to negotiate to ensure that appropriate requirements apply to funds and property held by the FFSP. is appropriate as it avoids unnecessary duplication of obligations. Further, we submit that with respect to wholesale markets the enforcement of the equivalent obligations should be undertaken by the foreign regulator to the extent they are willing and able. However, ASIC may regulate a FFSP's Australian operations (in respect of the equivalent foreign obligations) to the extent that the foreign regulator is not willing and able.

C7Q2 Are there any provisions of Divs 2 and 3 of Pt 7.8 from which you consider an FFSP should not be exempted?

26. No, for the reasons stated above.

C7Q3 Are there any sufficiently equivalent jurisdictions in relation to which proposal C7 should not apply?

27. We are not aware of any.

C8Q1 Do you agree with the licence conditions we are proposing to impose on foreign AFS licensees? If not, why not?

28. We make the following submissions regarding the proposed conditions:

    (a) It has not been made clear whether the financial requirements that apply to full AFS licensees will apply to foreign licensees. We assume that they will not be imposed given ASIC proposes that foreign licensees will not be subject to the requirement to have adequate resources, including financial resources, and will not be subject to audit requirements. However, this should be made clear. If financial requirements do apply, they should be confined to the Australian business of foreign licensees. They should not apply to business carried on with clients outside Australia.

    (b) It is also not clear whether foreign licensees would be required to appoint any responsible managers. Again, we assume that this will not be required given ASIC proposes that foreign licensees will not be subject to the requirement to maintain the competence to provide financial services in s912A(1)(e) and the responsible manager requirement relates to that obligation. However, again this needs to be clarified, given the potential cost and impact for FFSPs.

    (c) Foreign licensees should be able to appoint any person as a representative. See our submission in paragraph 29 for more detail.

C8Q2 Would you prefer to have the option of allowing sufficient equivalence FFSPs to appoint any person as a representative?

29. We believe that foreign licensees should have capacity to appoint any person as a representative. We do not believe that that makes it necessary to impose an obligation to ensure that its representatives are trained and competent for the same reasons that it is not necessary to impose that obligation in relation to group employees and directors. That is, obligations relating to training and competence should derive from home jurisdiction requirements.

C8Q3 Are there any other conditions that you think we should impose on foreign AFS licensees, and why?

30. We do not believe any additional conditions need to be imposed.

C9Q1 Do you agree with our proposal that core and additional proofs must be provided to support an application for a foreign AFS licence?

31. We do not agree with this proposal. We submit that a simplified process should be available for applications for a 'foreign AFS licence', similar to the current process for relying on the equivalence relief.

32. Implementation of the proposed regime in its current form would create a powerful disincentive for FFSPs both currently in the Australian market and those considering entering the Australian market from providing financial services in Australia. This disincentive arises from both the costs of applying for a licence and the delay caused by the application process.

33. We submit that the process should involve simply notifying ASIC of the licence application and providing evidence of regulation in the home jurisdiction, rather than being required to provide core and additional proofs. Providing evidence that a FFSP is regulated in its home jurisdiction has proved a successful approach under the relief regime and there is no reason to impose additional regulatory burdens. There is a perception that Australia is now subject to regulatory risk for FFSPs which is likely to affect decisions whether to commit resources to enter the Australian market or increase investment in the Australian market. A simplified process will mitigate the perception that Australia is a regulatory risk and encourage FFSPs to supply services in Australia.

34. Further, we submit that if foreign licensees are required to provide information to ASIC on request, as ASIC has proposed, then ASIC can obtain the information that would be provided in licensing proofs if ASIC determines that such information is necessary in the circumstances. This approach would simultaneously greatly reduce the time spent on applications and compliance costs for the majority of FFSPs, while ensuring that ASIC has the ability to obtain more information should the situation require.

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)?

35. We do not believe that any further information is required for the reasons stated above.

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?

36. We do not believe that any further information is required for the reasons stated above.

D1Q1 Do you agree with our proposal to repeal the limited connection relief? If not, why not?

37. We do not agree with this proposal. We believe that it is imperative that the limited connection relief is retained. The relief plays an important role for many FFSPs which do not have any presence in Australia and for whom none of the existing regulatory exemptions applies and none of the existing class order relief is available. It enables them to provide financial services to Australian financial institutions and other wholesale clients without needing to obtain an AFS licence. This has a significant impact on the competitiveness, efficiency and innovation of the Australian financial system and markets.

38. We note that ASIC states that:

    (a) '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.' (CP 301.11)

(b) '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.' (CP 301.14) Of course, mass marketing campaigns are generally directed to the retail market rather than the wholesale market and are not therefore particularly relevant to relief which only applies to services provided to wholesale clients.

39. The problem with section 911D when applied to the wholesale market is that it means that any activity of a FFSP could result in it being required to hold an AFSL if it could be seen as encouraging prospective or current Australian wholesale clients to use or continue to use the FFSP's services. Consequently, an FFSP could be caught by Australia's regime even when a wholesale client approaches the FFSP without any intended inducement by the FFSP because in the course of any ongoing provision of services by the FFSP there is likely to be some inducement by the FFSP for the wholesale client to continue to use the FFSPs services.

40. We also note that ASIC has previously stated that:

(a) '[CO 03/824] should be repealed because the major types of financial services that it applies to are now substantially covered by the AFS licensing exemption for those financial services contained in s911A(2E).' (CP 268.12)

(b) 'the exemption in s911A(2E) applies to the major types of financial services involving those financial products where we understand the relief is most needed, such as dealings with overseas counterparties in derivatives.' (CP 268.14)

41. However, as ASIC acknowledges, section 911A(2E) as inserted by regulation 7.6.02AG only applies to:

(a) dealing in derivatives or foreign exchange contracts;

(b) providing advice on derivatives or foreign exchange contracts;

(c) making a market in derivatives or foreign exchange contracts.'

42. ASIC Instrument 2017/182 is however relied on in a much wider range of circumstances, including:

(a) foreign banks providing banking services to Australian wholesale clients;

(b) foreign funds with Australian wholesale investors;

(c) foreign fund managers with Australian wholesale clients; and

(d) derivative and foreign exchange providers promoting their services to Australian wholesale clients which are not professional investors.

43. We therefore submit that ASIC should renew ASIC Instrument 2017/182 in its current form as it forms an important part of Australia's financial services regime and protects and enhances Australia's competitive financial services market and the ability of Australian firms to compete internationally.

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?

44. We believe that it would be appropriate to impose additional requirements to facilitate supervision of entities relying on the relief by ASIC. Regarding the three conditions proposed by ASIC in D1Q5:

(a) As noted in our previous submission, we believe that notification of reliance would undermine the purpose of the relief. However, if notification is required, we submit the notification requirement should be straightforward. It should be sufficient to notify ASIC of an intention to commence and cease operations in Australia. ASIC may acquire any further information by exercising its information gathering power.

(b) We agree that it would be appropriate for ASIC to have an information gathering power in relation to the limited connection relief.

(c) We believe that requiring relying entities to have a local agent should be sufficient to allow ASIC to enforce Australian requirements.

(d) Requiring FFSPs to notify ASIC of reliance on the relief should be sufficient to enable ASIC to monitor businesses relying on the relief, in combination with ASIC's power to request information.

(e) There should not be any need to provide a copy of the entity's constitution or articles of association or an executed agreement with an Australian local agent. We submit that this would impose an unnecessary burden. If ASIC has a specific need for these documents, it can require the entity to provide it.

D1Q6 If we repeal the limited connection relief, do you expect to apply to rely on another exemption to continue to provide financial services?

45. For the reasons discussed above, we believe that most businesses currently relying on the limited connection relief will find it difficult to rely on other exemptions.

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?

46. We believe that if the effect of ASIC's proposals is that there is a two year transition period, this should be sufficient for business to comply with any new requirements. However, this would require ASIC to settle and publish its position by the end of September 2018.

47. If the current relief regime is revoked, there is likely to be a significant number of licence applications to ASIC (for both ordinary and foreign AFS licences). Further, we note ASIC's service charter was amended recently so that applying for and varying an AFS licence is 150 days from receipt of a complete application (with a target of 70%) and decide 90% of applications within 240 days. This indicates that a12 month transition period would not be realistic - a 24 month period is more appropriate.

48. It is also important for the transition period continue to apply to any organisation that has been relying on the Instrument provided it lodges a licence application before the end of the transition period, i.e. the transition period should continue until the entity's AFS licence application is granted or refused. This will also reduce the pressure on ASIC to have to complete the processing of all licence applications by the end of the transition period and reduce the risk for entities relying on the relief currently.

E2Q1 Do you agree with our approach to not undertake a further sufficient equivalence assessment?

49. We agree that for the jurisdictions which ASIC has already assessed sufficiently equivalent it should not be necessary to re-assess those jurisdictions.

E3Q1 Do you agree with the proposed 12-month transitional period for limited connection FFSPs and new FFSPs operating from a sufficiently equivalent jurisdiction?

50. See our response to E1Q1.

E4Q1 Do you agree with our approach to permit FFSPs from jurisdictions that we have not assessed as being sufficiently equivalent seek such an assessment during the transition period?

51. We agree with this approach.

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?

52. We suspect that this will not be sufficient time for ASIC to undertake these assessments and ASIC should therefore consider extending this period. If the current relief regime is revoked then it is likely ASIC will receive a number of requests for sufficient equivalence assessment at the same time as

receiving a high number of foreign AFS licence applications. It may be therefore be difficult for ASIC to undertake process all such sufficient equivalence requests in the proposed 12-month transitional period.

E5Q1 Do you agree with our proposal of a scaled-back assessment of sufficient equivalence for the new foreign AFS licensing regime?

53. We believe that ASIC's proposal of a scaled-back assessment of sufficient equivalence for the proposed regime is appropriate.

Please call Richard Batten on 02 9921 4712 if you would like to discuss any aspect of our submission.

Yours faithfully
MinterEllison

Richard Batten
Partner

Contact: Richard Batten T: +61 2 9921 4712
F: +61 2 9921 8036 richard.batten@minterellison.com