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

Delivery by email: policy.submissions@asic.gov.au

31 July 2018

Dear Strategic Policy team,

Submissions | Consultation Paper 301: Foreign financial services providers

1. Background

1.1 We refer to ASIC's *Consultation Paper 301: Foreign financial services providers* (**CP 301**) and your request for feedback by 31 July 2018.

1.2 PMC Legal are financial services lawyers specialising in managed funds. Within the Australian market place, we act for a range of responsible entities, trustees, investment managers and service providers to the funds industry including custodians and administrators. We also act for a number of foreign financial services providers (**FFSPs**). Please refer to **Annexure 1** for a summary of our expertise.

1.3 We welcome the opportunity to provide a response to CP 301. Our feedback is set out in table format in **Annexure 2**. Where practical we have adopted ASIC's defined terms used in CP 301.

1.4 We support ASIC's objective to ensure the current relief framework for FFSPs strikes the appropriate balance between cross-border investment facilitation, market integrity and investor protection. However, we consider the proposal to be a step too far. We do not agree with the proposal to require FFSPs to hold an AFS licence in circumstances where they are currently eligible for the sufficient equivalence relief or the limited connection relief and we would prefer for ASIC to maintain the status quo.

1.5 If the status quo cannot be maintained then we suggest as alternatives that:

(a) a review of the sufficient equivalence relief conditions currently imposed be amended and new limited connection relief conditions be introduced such that

11 Cairo Street
South Coogee NSW 2034 Australia
(02) 8556 7560
www.pmclegal-australia.com

PAULA McCABE
mob | 0414 422 491
e | pmccabe@pmclegal-australia.com

PIP BELL
mob | 0499 220 098
e | pbell@pmclegal-australia.com

JENNIE McQUEEN
mob | 0499 026 321
e | jmcqueen@pmclegal-australia.com

they required:

(i) increased reporting by the FFSP to ASIC (similar to the semi-annual reporting requirements that were initially imposed on FFSPs under the original sufficient equivalence relief). This could allow ASIC to determine what, if any, enforcement actions or investigatory proceedings the FFSP was involved in its home jurisdiction, what services were provided by the FFSP during a reporting period, what class or classes of Australian wholesale clients was or were the recipient of the FFSP's services, and whether the conditions of sufficient equivalence relief and/or limited connection were complied with;

(ii) the FFSP to respond to directions to provide information to ASIC (a similar concept to section 912C of the Corporations Act); and

(iii) the FFSP to provide reasonable assistance during ASIC's surveillance checks (a similar concept to section 912E of the Corporations Act); or

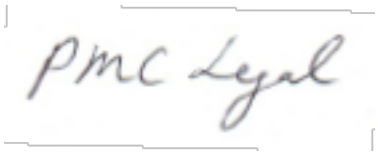
(b) (in so far as the sufficient equivalence relief is concerned) only those FFSPs who have a physical presence in Australia and who have appointed a local agent and registered as a foreign body corporate in Australia be required to apply for a foreign AFS licence. Many FFSPs currently do not have (and are not required to have) a local agent appointed in Australia and so are not required to register as a foreign body corporate in order to rely on the sufficient equivalence relief as they do not "carry on a business" in Australia. Instead, many FFSPs rely on the current sufficient equivalence relief with an appointed process agent only as they do not have the requisite degree of system, continuity and repetition to be deemed to be carrying on a business in Australia. Only those FFSPs with a high degree of connection to Australia (such as those with a local presence) should be required to apply for a foreign AFS licence; or

(c) ASIC could introduce a monetary Australian revenue threshold (for example, AU$15 million per annum) that would determine whether or not an FFSP would need to obtain a foreign AFS licence. That way ASIC could focus its regulatory attention on FFSPs whose activities in Australia are more significant.

1.6 We would be pleased to discuss any aspect of our submissions with your further. Please do not hesitate to contact Paula McCabe, Pip Bell or Jennie McQueen to discuss.

Yours faithfully,

PMC LEGAL



Paula McCabe, Legal Director
Pip Bell, Specialist Counsel
Jennie McQueen, Senior Associate

Annexure 1 | Expertise

PMC Legal is a boutique financial services law firm. Our lawyers collectively have over 40 years combined experience in the financial services sector, and in the managed funds space more particularly.

Our lawyers are all senior and highly qualified.

We advise responsible entities, investment managers, custodians, administrators, financial advisors and other key stakeholders in the managed funds industry.

Our advice covers a broad range of matters, including funds establishment and offerings (both Australian and offshore and wholesale and retail), investment management, outsourcing arrangements (including fund operation, fund administration, custody and distribution), fund restructures, managed discretionary accounts, Australian financial services licensing matters, regulatory and compliance issues (including interaction with ASIC) and general corporate and commercial law matters for both new market entrants and established businesses.

Annexure 2 | Responses

ASIC proposal	Feedback sought	Our response
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.	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.	We do not agree with the proposal or with the timing of the proposal. While we have some sympathy with ASIC's objective to ensure the current relief framework for FFSPs strikes the appropriate balance between cross-border investment facilitation, market integrity and investor protection, we consider the proposal to be a step too far. There will be significant compliance costs and limited regulatory benefit associated with requiring FFSPs who currently access the sufficient equivalence relief to hold an AFS licence in order to continue to provide the financial services they currently provide in Australia to wholesale clients without an AFS licence. Each impacted FFSP will need to assess the costs of complying with the Australian regulatory requirements against their current and potential Australian sourced revenue. We anticipate that, for some FFSPs, the costs of compliance will exceed the actual Australian sourced revenue they receive (or at least exceed the benefit of any Australian sourced revenue they receive), and will likely lead to those FFSPs making a commercial decision to withdraw their services from the Australian market. We are concerned that, should it be implemented, the proposal will adversely impact the level of competition among financial service providers in the Australian market. Increasing barriers to entry for FFSPs could reduce competition in the Australian market for the provision of financial services to wholesale clients, as it may cease to be economically viable for some FFSPs to service Australian wholesale clients. This is particularly the case for Australian product issuers (including complying superannuation trustees and responsible entities) who require the

ASIC proposal	Feedback sought	Our response
		expertise of global fund managers to manage mandates on their behalf.
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	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.	We do not agree with the proposal to require FFSPs to hold an AFS licence in circumstances where they are currently eligible for the sufficient equivalence relief and we would prefer to maintain the status quo. If it is not possible to maintain the status quo because the current conditions of the sufficient equivalence relief are deemed insufficient, then we would support a review of the sufficient equivalence relief conditions such that they required: ▪ increased reporting by the FFSP to ASIC (similar to the semi-annual reporting requirements that were initially imposed on FFSPs under the original class orders). This could allow ASIC to determine what, if any, enforcement actions or investigatory proceedings the FFSP was involved in its home jurisdiction, what services were provided by the FFSP during a reporting period, what class of Australian wholesale clients was the recipient of the foreign services, and whether the conditions of sufficient equivalence relief were complied with; ▪ the FFSP to respond to directions to provide information to ASIC (a similar concept to section 912C of the Corporations Act); and ▪ the FFSP to provide reasonable assistance during ASIC's surveillance checks (a similar concept to section 912E of the Corporations Act). If for some reason the above conditions could not be imposed, and if FFSPs were required to hold an AFS licence, then at a conceptual level we support an approach that avoids unnecessary duplication between the Australian requirements and the requirements imposed in the FFSP's home jurisdiction. However, in our view, ASIC should:

ASIC proposal	Feedback sought	Our response
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).		▪ begin with an intended set of specific regulatory outcomes; ▪ assess the extent to which those stated regulatory outcomes can be achieved through existing foreign laws; and ▪ only require compliance with additional AFS licence conditions and Australian laws where it is necessary to achieve the stated regulatory outcomes. We believe ASIC ought to consider the requirements FFSPs are subject to in their home jurisdiction in greater detail, to get a more informed perspective on equivalence, and that ASIC should only require compliance with Australian Corporations Act obligations, impose AFS licence conditions and require documentation to be submitted to ASIC where there are clear gaps and material inconsistencies between the Australian regulatory treatment and the regulatory treatment in the FFSPs' home jurisdiction. In our view, ASIC's proposal is likely to lead to a significant increase in regulatory and compliance costs for FFSPs without a corresponding demonstrable regulatory benefit. ASIC should seek to better understand overseas regulatory requirements and properly assess whether there are genuine substantive differences in approach which warrant subjecting FFSPs to Australian obligations in addition to those they face in their home jurisdiction before imposing a requirement that they meet Australian regulatory requirements.
	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	We refer you to the detailed submissions concerning costs as prepared by the Alternative Investment Managers Association (**AIMA**). AIMA's submissions are based on a broad survey of FFSPs.

ASIC proposal	Feedback sought	Our response
	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.	There are a broad range of regulatory approaches in different jurisdictions. An FFSP may provide the same financial service to wholesale clients in multiple jurisdictions. In one jurisdiction, they may need to be licensed, while in another, they may have the benefit of a licensing exemption while in another jurisdiction the law may not regulate the relevant activity in the first place. FFSPs generally won't be licensed in jurisdictions where there are no licensing requirements for their activities or they are able to rely on exemptions. Where there is a requirement to be licensed in a jurisdiction, FFSPs need to understand the regulatory regime and associated costs and weigh that up against the expected volume of business and revenue from their proposed activities in that jurisdiction before committing to do business there and become licensed.
	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	We do not consider the proposal will directly impact the regulation of domestic AFS licensees. However, for reasons noted elsewhere in this submission, the withdrawal of FFSPs from the Australian market may reduce the number of service providers and therefore the level of competition in the market for providing financial services to wholesale clients located in Australia. Less

ASIC proposal	Feedback sought	Our response
	breakdown of costs and/or savings.	competition may ultimately mean that wholesale clients pay higher fees and have less choice and quality as consumers of financial services. This may benefit domestic AFS licensees to the detriment of wholesale client customers. Some Australian product issuers (including complying superannuation trustees and responsible entities) who require the expertise of global fund managers to manage mandates on their behalf may lose access to the expertise of global managers as a result of ASIC's proposal which will be to the detriment of the end Australian consumer (i.e. members, many of whom will be retail clients). Further, if the requirement to obtain a foreign AFS licence is too great for FFSPs, it may increase the opportunities for domestic AFS licensees to enter into authorised representative arrangements with FFSPs, thereby creating a "shadow" authorised representative market.
	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.	In some cases, Australian wholesale clients rely on FFSPs to provide financial services which domestic AFS licensees do not offer or cannot offer with equivalent competence. The provision of these services to the Australian market could potentially disappear (or at least become more expensive) if the ASIC proposal is implemented and the AFS licence compliance costs result in the provision of such services in Australia ceasing to be economically viable. We do not consider this would be an optimal outcome for clients. Further, as noted above, those Australian product issuers (including complying superannuation trustees and responsible entities) who require the expertise of global fund managers to manage mandates on their behalf may lose access to the expertise of global managers as a result of ASIC's proposal which will be to the detriment of the end Australian consumer (i.e. members, many of whom will be wholesale clients).
C3 We propose that the general	C3Q1 Do you agree with our proposal	We do not agree with the proposal to require sufficient equivalence FFSPs

ASIC proposal	Feedback sought	Our response
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;	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.	to obtain an AFS licence if they only wish to provide financial services to wholesale clients in Australia. However, if ASIC decides to implement its proposals, then before ASIC imposes these obligations we encourage ASIC to conduct a thorough "gap analysis" between Australian financial services laws and the laws of other "sufficiently equivalent" jurisdictions to identify where there are genuine substantive differences such that the foreign jurisdiction produces a regulatory outcome that is less optimal than the Australian position. Where there is an adverse difference in outcome, it may be appropriate for ASIC to insist on compliance with the relevant Australian obligation with regard to the FFSP's dealings with clients in Australia. However, where there are no substantive differences in regulatory treatment, then it should be sufficient for the FFSP to comply with the relevant foreign laws in their dealings with Australian wholesale client customers. We also consider it appropriate for ASIC and foreign regulators to publish their views on where they have agreed that particular provisions of their respective laws produce equivalent outcomes. This would provide certainty to dual-regulated entities that if they meet a particular obligation in their home jurisdiction, they know that they will also have satisfied the corresponding Australian obligation. It would also be helpful for ASIC to clarify the extent of application of the Australian laws to the FFSP's activities. Australian laws should only apply to financial services provided to wholesale clients located *in Australia*. Further, as an alternative, we suggest that only those FFSPs who have a physical presence in Australia and who have appointed a local agent and registered as a foreign body corporate in Australia be required to apply for a foreign AFS licence. Many FFSPs currently do not have (and are not required to have) a local agent appointed in Australia and so are not

ASIC proposal	Feedback sought	Our response
(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)).		required to register as a foreign body corporate as they do not actually "carry on a business" in Australia. Instead, many FFSPs rely on the current sufficient equivalence relief with an appointed process agent only as they do not have the requisite degree of system, continuity and repetition to be deemed to be carrying on a business in Australia.
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	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.	We do not agree with the proposal to require sufficient equivalence FFSPs to obtain an AFS licence if they only wish to provide financial services to wholesale clients in Australia. However, if ASIC decides to implement its proposal, then before ASIC imposes any obligations (or determines to exempt any obligations) we encourage ASIC to conduct a thorough "gap analysis" between Australian financial services laws and the laws of other "sufficiently equivalent" jurisdictions to identify where there are genuine substantive differences such that the foreign jurisdiction produces a regulatory outcome that is less optimal than the Australian position. Where there is an adverse difference in outcome, it may be appropriate for ASIC to insist on compliance with the relevant Australian obligation with regard to the FFSP's dealings with clients in Australia. However, where there are no substantive differences in regulatory treatment, then it should be sufficient for the FFSP to comply with the relevant foreign laws in their dealings with Australian wholesale client customers. We are generally supportive of proposals which seek to reduce unnecessary regulatory duplication, and we consider that it is reasonable for ASIC to rely on foreign regulatory regime requirements and foreign regulators to enforce them.

ASIC proposal	Feedback sought	Our response
obligations that are prescribed by regulations made for the purposes of s912A(1) (s912A(1)(j)).		
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.	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.	We do not agree with the proposal to require sufficient equivalence FFSPs to obtain an AFS licence if they only wish to provide financial services to wholesale clients in Australia. However, if ASIC decides to implement its proposal, then FFSPs should only be subject to Australian regulatory requirements if the corresponding foreign laws produce a less optimal regulatory outcome. We strongly encourage ASIC to conduct a thorough "gap analysis" between Australian financial services laws and the laws of other "sufficiently equivalent" jurisdictions to identify where there are genuine substantive differences such that the foreign jurisdiction produces a regulatory outcome that is less optimal than the Australian position. Following this analysis, ASIC should only impose an additional compliance burden on FFSPs where there is a clear and demonstrable regulatory benefit.
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	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.	In principle we agree that, in deciding whether and how much to regulate FFSPs, ASIC should consider each of the regulatory detriment, resulting commercial benefit, risk to Australian financial markets and the end-customer impact.
	C6Q2 Do you think we should include any other considerations when determining which provisions should not apply to sufficient equivalence	Please refer to the submissions we have made above. In our view, ASIC should seek to minimise costs, duplication and disruption to FFSPs and only pursue substantive regulatory outcomes which cannot otherwise be achieved through existing foreign laws and co-operative arrangements

ASIC proposal	Feedback sought	Our response
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.	FFSPs? Please specify which other considerations in your response.	with foreign regulators.
	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.	No, for the reasons outlined elsewhere in these submissions, we do not agree that any of the provisions in Appendix 1 should apply to FFSPs.
	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.	No, for the reasons outlined elsewhere in these submissions, we do not agree that any of the provisions in Appendix 1 should apply to FFSPs. We therefore do not agree that any additional items should be added to Appendix 1.
C7 We propose to conditionally exempt foreign AFS licensees from complying with the client money and	C7Q1 Do you agree with our proposal and the proposed conditions of	For the reasons outlined earlier in these submissions, we do not believe that any of the provisions in Appendix 1 should apply to FFSPs. We therefore agree that FFSPs should be exemption from complying with the

ASIC proposal	Feedback sought	Our response
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.	exemption? If not, why not?	client money and client property requirements in Divs 2 and 3 of Pt 7.8 of the Corporations Act.
	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.	No.
	C7Q3 Are there any sufficiently equivalent jurisdictions in relation to which proposal C7 should not apply? Please be specific in your response.	ASIC is in the best position to form this view, but we encourage ASIC to consider at least the jurisdictions which are currently the subject of the sufficient equivalence relief (that is, the USA, the UK, Singapore, Hong Kong, Germany and Luxembourg).
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	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.	We do not agree with the proposal to require sufficient equivalence FFSPs to obtain an AFS licence if they only wish to provide financial services to wholesale clients in Australia. However, if ASIC decides to implement its proposal, then we comment as follows. Re (a): We consider this to be unnecessarily narrow and restrictive and it will significantly restrict the manner in which FFSPs are able to deliver financial services as compared with domestic AFS licensees. We do not consider there to be sufficient justification to treat foreign AFS licensees differently to domestic AFS licensees in this regard. The structure of financial services businesses and conglomerate groups can be complex and is often shaped by tax considerations. Employees and directors are therefore not necessarily housed within wholly owned subsidiaries of licensees (either domestic AFS licensees or foreign AFS licensees). In some cases, a related body corporate (not necessarily a subsidiary) may employ staff, and at a minimum licensed FFSPs should be

ASIC proposal	Feedback sought	Our response
(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		permitted to have representatives who are housed within the licensee's related bodies corporate. We also note that FFSPs may not necessarily be a "body corporate" by definition. For example, they could have a trust or a limited partnership structure, in which case the concepts of wholly owned subsidiary or related body corporate will not necessarily translate. We note that for some of the existing sufficient equivalence relief, the relief is available to both bodies corporate and partnerships. We encourage ASIC to bear this in mind in determining who can be representatives of licensed FFSPs. We also submit that if ASIC is concerned about being able to adequately monitor offshore representatives, then any restrictions on who can be a representative should only apply to representatives who are *not* located in Australia. The ability of licensed FFSPs to appoint representatives located within Australia should not be different to domestic AFS licensees. FFSPs should not be placed at an unnecessary competitive disadvantage as compared with domestic AFS licensees. Re (b): This replicates the existing obligation imposed on FFSPs currently relying on the sufficient equivalence relief and so we do not object to this condition. However, we note that ASIC may receive notifications about regulatory changes or exemptions which have no relevance to financial services that an FFSP provides in Australia, and to this end it may be appropriate to require the notifications to be given only where the FFSP reasonably considers that the relevant event could have a material impact on its provision of financial services to wholesale clients in Australia. Re (c): We note this corresponds to an existing obligation for FFSPs relying

ASIC proposal	Feedback sought	Our response
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').		on the sufficient equivalence relief and so do not object to this condition.
	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.	Please see our comments above in response to the preceding question.
	C8Q3 Are there any other conditions that you think we should impose on foreign AFS licensees, and why? Please be specific in your response.	No.
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.	C9Q1 Do you agree with our proposal that core and additional proofs must be provided to support an application for a foreign AFS licence?	We do not agree with the proposal to require sufficient equivalence FFSPs to obtain an AFS licence if they only wish to provide financial services to wholesale clients in Australia. However, if ASIC decides to implement its proposal, then we comment as follows. In determining what core proofs are required, ASIC should have regard to the modified regulatory regime that applies to FFSPs and the content of the core proofs should be tailored accordingly. ASIC should not require FFSPs to demonstrate how they will comply with obligations that they will be exempt from. ASIC Forms FS01 and FS03 will need to be adapted so that they seek only the information ASIC needs from the FFSPs. We anticipate this will require dedicated ASIC information technology

ASIC proposal	Feedback sought	Our response
		resources.
	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.	As per our response to the question above, FFSPs should not be required to respond to questions on forms or preparing documents that are not relevant to their situation and do not assist ASIC in carrying out its regulatory functions. We note that ASIC Forms FS01 and FS03 will likely need tailoring so that they are fit for this purpose. ASIC should otherwise adopt an approach to seeking information from FFSPs that is broadly consistent with how it obtains information from applicants who are based in Australia. We also note that ASIC is currently reviewing the licensing process for applications from domestic applicants and we recommend that any expansion of the licensing regime to FFSPs be incorporated into its current review.
	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.	Please refer to our response to the above question.
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):	D1Q1 Do you agree with our proposal to repeal the limited connection relief? If not, why not? Please be specific in your response.	We do not agree with the proposal or the timing. However, if the relief is repealed, we recommend a longer transition period. We recommend and prefer at least a **two year** transition period to mirror the two years that the domestic regulated population were given from the date of commencement of Chapter 7 of the Corporations

ASIC proposal	Feedback sought	Our response
see Section E.		Act. Also, FFSPs will have control over how quickly they can submit their AFSL application, but they will not have control over ASIC's timing to review and assess their application. Therefore, any hard deadline should be the date for lodgement of the AFSL application (which FFSPs can control) rather than the date of the AFSL being granted by ASIC (which is entirely outside of each FFSP's control). We respectfully note the service level charter standards and processing times of the ASIC Licensing department over the past 12-24 months. We acknowledge the lack of resource allocation afforded to the ASIC Licensing department and are fully aware of the detrimental impact on this very important gatekeeper function. Should ASIC implement its proposals, we anticipate the ASIC Licensing department will require a significant boost to its resources in order to efficiently process all FFSP AFS licence applications within a 12 month (or frankly, even 24 month) period. As well as a longer transition period, we recommend grandfathering so that existing activities carried out in reliance on the limited connection relief could continue (with the same conditions as current class order terms) for services that FFSPs have been providing to wholesale clients in Australia up until a transition date of say 30 September 2019. Under this model, the newer regime would only apply to financial services that FFSPs commenced to provide *after* the transition date. FFSPs could continue their current activities under current regulatory arrangements and would only need to obtain an AFSL if they engaged in new business activities (for example, servicing new clients in Australia or providing additional financial services not previously provided to existing clients in Australia). This would help avoid the situation we have raised elsewhere in these submissions – i.e. compliance with the obligations of a foreign

ASIC proposal	Feedback sought	Our response
		AFS licence would make their Australian business unprofitable and force their exit from the Australian market to their clients' detriment. Another potential approach ASIC could adopt is to introduce a monetary Australian revenue threshold (for example, AU$15 million per annum) that would determine whether or not an FFSP would need to obtain a foreign AFS licence. That way ASIC could focus its regulatory attention on FFSPs whose activities in Australia are more significant.
	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.	We refer you to the detailed submissions concerning costs as prepared by AIMA. AIMA's submissions are based on a broad survey of FFSPs.
	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	We have very few clients (if any) relying on the limited connection relief. This is because most of our FFSP clients do in fact enter the jurisdiction on an infrequent basis to conduct client care visits. However, we understand some foreign financial service providers do rely

ASIC proposal	Feedback sought	Our response
	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.	on the relief for the purposes of providing some prime broking relating services. If these entities are unable to continue to provide the prime broking relating services in reliance on the limited connection relief, then there may be reduced competition in the Australian market place for such services.
	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.	There are a broad ranges of regulatory approaches in different jurisdictions. An FFSP may provide the same financial service to wholesale clients in multiple jurisdictions. In one jurisdiction, they may need to be licensed, while in another, they may have the benefit of a licensing exemption while in another jurisdiction the law may not regulate the relevant activity in the first place. FFSPs generally won't be licensed in jurisdictions where there are no licensing requirements for their activities or they are able to rely on exemptions.
	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,	We do not support the repeal of the limited connection relief. We note that different regulatory regimes have different thresholds as to when a licence is required in the relevant jurisdiction. Some jurisdictions do not have the equivalent of section 911D and therefore some international providers of international financial services are unaware that

ASIC proposal	Feedback sought	Our response
	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?	the Australian concept of "carrying on a financial services business" extends to activities provided from offshore and which may be regarded as intending to induce clients in Australia to use their financial services – even where there is no onshore Australian presence. While ignorance of the law is not an excuse, to an extent the limited connection relief protects FFSPs who would otherwise inadvertently be carrying on a financial services business in Australia because of section 911D of the Corporations Act (which is not necessarily replicated in other jurisdictions) and therefore may not even consider the potential application of Australian laws to the services they provide to wholesale clients in Australia. If the relief is repealed or modified to include conditions, there is a risk of some inadvertent non-compliance due to a lack of familiarity with the Australian regulatory requirements. Nonetheless, we consider that the proposed enhanced conditions would be a more measured and appropriate regulatory response for limited connection FFSPs than the outright repeal of the longstanding class order relief. If ASIC were to begin with the notification requirement proposed in (a) as a condition, then over time ASIC might consider whether the additional powers and monitoring proposed in (b) and (c) were necessary to achieve the desired regulatory outcome and, if considered necessary, impose the obligation at a later date. Where ASIC is concerned about a potential broad interpretation of the limited connection relief, ASIC could publish its views, together with some examples of situations where ASIC considers the relief would be, or would not be, available. Clear guidance could help avoid any perceived differences of opinion and unintended regulatory outcomes.
	D1Q6 If we repeal the limited	The limited connection class order relief has a different focus to other

ASIC proposal	Feedback sought	Our response
	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.	exemptions for the provision of financial services to wholesale clients that may be available to FFSPs. For example, regulation 7.6.02AG of the Corporations Regulations was made subsequent to the limited connection class order relief. It deals with very specific sets of circumstances which we would not expect all FFSPs who currently rely on the limited connection relief to be able to fit within (see in particular regulation 7.6.02AG(2C)).
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.	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.	We do not agree with the proposal or the timing. However, if the current relief is repealed, we recommend a longer transition period. We recommend at least a **two year** transition period to mirror the two years that the domestic regulated population were given from the date of commencement of Chapter 7 of the Corporations Act. The response we have provided to proposal D1 regarding the limited connection relief applies equally to the sufficient equivalence relief.
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.	E2Q1 Do you agree with our approach? Please give reasons for your view.	As noted elsewhere in this submission, we strongly encourage ASIC to conduct a more proper and thorough "gap analysis" between Australian financial services laws and the laws of other "sufficiently equivalent" jurisdictions to identify where there are genuine substantive differences such that the foreign jurisdiction produces a regulatory outcome that is less optimal than the Australian position. Where there is an adverse difference in outcome, it may be appropriate for ASIC to insist on compliance with the relevant Australian obligation with regard to the FFSP's dealings with clients in Australia. Where there are no substantive differences in regulatory treatment, then it should be sufficient for the FFSP to comply with the relevant foreign laws in their dealings with Australian wholesale clients. ASIC should be fully informed as to what an FFSP's overseas regulatory obligations are in order to ensure that ASIC does not unnecessarily impose additional

ASIC proposal	Feedback sought	Our response
		regulatory obligations on FFSPs that are of negligible regulatory benefit.
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.	E3Q1 Do you agree with the proposed transitional period? If not, do you think it should be longer or shorter?	We do not regard a 12-month transition period as adequate and recommend the transition period be **at least 24 months**. As noted elsewhere in these submissions, imposing a cut-off date for making AFS licence applications rather than obtaining an AFS licence would be more reasonable for the affected FFSPs (who have no control over ASIC's decision timing) as well as more practical for ASIC. We also encourage ASIC to consider the options of grandfathering financial services that were provided before the ASIC policy changed and/or imposing a minimum Australian sourced revenue figure before the AFSL obligation applied. Such measures would help limit the potential withdrawal of services from the Australian market by FFSPs (which could adversely impact the level of competition in the market for the provision of financial services to wholesale clients in Australia).
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.	E4Q1 Do you agree with our approach? Please give reasons for your view.	We agree that ASIC should be open to considering whether any foreign jurisdiction is sufficiently equivalent and focus its regulatory attention on addressing gaps between regimes to prevent materially adverse regulatory outcomes that might otherwise compromise the protection or interests of Australian wholesale clients.
	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?	No. We strongly recommend a longer period (at least 24 months), with flexibility for ASIC to extend the period if necessary. We appreciate that if ASIC proceeds to implement any of the changes as proposed, this will be a significant project for ASIC. Given the resource pressures that ASIC currently faces – particularly in the ASIC Licensing department – we consider the risk of failing to meet a shorter transition period to be high.

ASIC proposal	Feedback sought	Our response
	Please give reasons for your view.	
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).	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.	As noted elsewhere in these submissions, we believe ASIC should obtain a thorough understanding of foreign regulatory requirements in the relevant jurisdictions to make an informed assessment of the degree to which regulatory outcomes overlap or deviate (as relevant). A scaled-back assessment may fail to detect similarities between Australian and foreign regulatory requirements, which could result in ASIC requiring compliance with Australian regulatory requirements in circumstances where this does not produce a clear and demonstrable regulatory benefit.
	E5Q2 Do you think other questions should be excluded on the scaled-back assessment? Please be specific in your response.	As noted elsewhere in these submissions, ASIC should focus on assessing whether there are any gaps between Australian and foreign laws whereby foreign laws produce a regulatory outcome that is materially different and adverse to wholesale clients as compared with the corresponding Australian laws. This would ensure that Australian regulatory obligations were only imposed where there was an associated clear and demonstrable regulatory benefit.
	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.	We consider ASIC to be best placed to co-operate with foreign regulators and make the required assessment. As noted elsewhere in these submissions, ASIC should focus on whether the foreign regime produces any regulatory outcomes that are materially different and adverse to wholesale clients compared with the corresponding Australian requirements. This will ensure that additional compliance burdens are not imposed at an unnecessary cost to FFSPs and at a potential detriment to competition in the Australian market place.