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River and Mercantile Asset Management LLP – Response to the Australian Securities and Investments Commission Consultation Paper 301 regarding foreign financial services providers

Introduction

River and Mercantile Asset Management LLP ('RAMAM') is authorised and regulated by the Financial Conduct Authority of the United Kingdom ('FCA') and since 1 August 2013 is operating under sufficient equivalence relief, class order 03/1099, as extended.

RAMAM recently registered as a foreign company in Australia under the Corporations Act 2001 in connection with a desire to increase RAMAM's activities and presence in Australia.

As at the date of this submission, RAMAM has over $1 billion assets under management in Australia and New Zealand, including a managed investment scheme, River and Mercantile Global High Alpha Fund, with registered number ARSN 625 572 910.

General comment on the proposal to repeal the sufficient equivalence relief and allow FFSPs to apply for a foreign AFS licence (the 'Proposals')

RAMAM is supportive of the Proposals and recognise the supervisory and enforcement concerns expressed by ASIC. However, RAMAM believes the Proposals may benefit from further disapplication of certain Corporations Act requirements and a longer transitional period given the likely increase in compliance obligations and associated costs with compliance. This increase in compliance obligations and additional costs may discourage smaller foreign financial services firms from actively competing in the Australian financial services market.

Whilst we recognise ASIC's concern that the current relief framework may place AFS licensees at a competitive disadvantage in the global marketplace due to reduced compliance costs for foreign financial services providers in Australia with no comparative reduction for AFS licensees overseas, we would note that the Proposals may restrict competition in the Australian marketplace. Our concern with the Proposals is that only those who can afford to be licenced will be able to participate in the financial

services market in Australia. Consumers of financial services in Australia would then be limited to a smaller pool of providers or issuers.

We hope that ASIC continue to work with the overseas regulators on the possible application of equivalent relief for AFS licensees in foreign financial services markets. We note in this regard that Article 72 the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 provides an exemption for foreign financial services firms to provide financial services in the United Kingdom without being authorised by the FCA if they are 'overseas persons'. That is, if the firm, among other things, is not physically based in the United Kingdom. We therefore believe that ASIC's statement in CP 301.64 is not correct in respect of United Kingdom given this exemption.

Questions as per consultation paper (please note that we have not commented on all questions)

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

We are certainly not opposed to the proposal to repeal the sufficient equivalence relief and appreciate that there a particular supervisory and enforcement concerns with the existing regime. However, we understand that a repeal will mean important changes to the way we do business in Australia. It will be key for us to understand in full what the new foreign AFS licence will really mean for a UK FCA and US SEC registered firm. We will likely need to dedicate significant resource to ensuring compliance with the new ASIC foreign AFS licence obligations. We are concerned that the proposed timeframe will not be sufficient for foreign financial services firms and suggest a longer transition period be granted.

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?

We support this proposal, particularly in respect of exempting a foreign AFS licensee from the application of particular provisions of the Corporations Act and Corporations Regulations. We support any proposal which seeks to limit the obligations on foreign financial services firms where their home regulator already imposes similar or equivalent obligations. We believe some of the legislative requirements could be further disapplied, for example the Corporations Act Pt. 7.10 on market misconduct; the United Kingdom already has in place robust rules on market conduct. However, understanding subtle differences in the market conduct rules in the United Kingdom and Australia will require time and resource to ensure compliance. It is our submission that ASIC should consider further disapplication of certain of the legislative requirements to foreign AFS licensees.

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

We agree, in part, with the proposal to apply the general obligations to AFS licensees, however some of the obligations may require further understanding to ensure compliance, particularly the obligation to comply with the financial services laws (s912A(1)(c)). We are already subject to the financial services laws in the United Kingdom and, to the extent applicable, the European Union. The addition of compliance

with Australian financial services laws will require time and resources to understand any differences in our current practices. For example, complying with the record keeping requirements in Australia may mean that we need to implement changes to our existing record keeping practices to ensure compliance. The differences in our obligations may be subtle, but will nonetheless require time and resource to ensure compliance with those differences.

It is our submission that whilst we agree with the Proposals, this particular obligation be disapplied or a longer transition period should be granted to help firms dedicate the appropriate resource and time to understanding the particular obligations and how to implement them with regards to undertaking business in Australia.

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

Yes, particularly to the extent that these conditions are largely similar to the existing class order exemption conditions and so firms should already be familiar with ongoing compliance in respect of these conditions. We also support the prohibition on appointing representatives other than representatives that are employees, directors or part of the same corporate group as the AFS licensee. There would otherwise be scope for participants in the Australian financial services market that are not known or more importantly not capable of being supervised by ASIC. In light of ASIC's supervisory concerns with regards to the existing regime, it would seem counterintuitive to permit third party representatives with no corporate link to the AFS licensee.

E1. 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?

Whilst we appreciate that the transitional arrangements being proposed include a 12 month rollover period with a further 12 month transitional period, we believe a longer transitional period would be appropriate and suggest at least 18 months.

Firms are likely to need to take advice on the implications of the Corporations Act requirements and the particular AFS licence conditions. Firms will then need to consider how best to comply with these new requirements and conditions, as well as ensuring the appropriate compliance systems and controls are in place. There are multiple regulatory and legislative changes that foreign firms are facing within the next two years, including Brexit which poses a very significant change for users of the sufficient equivalence relief. Organisations will already be considerably busy preparing for the implications of Brexit and so it is our submission that the transitional period be extended such that the foreign AFS licensing regime comes into effect on or after 1 April 2021.

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