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AIMA AUSTRALIA
SUBMISSION TO ASIC
Consultation Paper 301: Foreign financial service providers
August 2018

Background on AIMA members reliance on FFSP

Many of the AIMA members rely on one or more of the class orders. Members are relying on these class orders to manage portfolios pursuant to a discrete mandate including as an investment manager to Australian funds and in order to distribute offshore funds. The financial services being provided are predominately to Australian super fund trustees or responsible entities of registered schemes and other financial services licences. However, some members are also providing financial services to High Net Worth Individuals and Family Offices. Many AIMA members particularly those who are operating from offshore (namely they do not have a physical presence in Australia or any Australian employees) would not apply for a licence if required to continue to provide these services.

Executive summary

AIMA supports a regulatory framework for foreign financial service providers that will enable offshore asset managers to continue to manage the assets of Australian professional investors. Many AIMA members particularly those who are operating from offshore (namely they do not have a physical presence in Australia or any Australian employees) have indicated to AIMA that they would not apply for a licence if required to continue to provide these services because of the additional compliance burden and the size of the Australian clients did not justify this. The withdrawal of offshore asset managers from the market will reduce competition and lessen diversity which will not provide better outcomes to Australian investors.

Limited Connection Relief

We disagree with the proposal to repeal the limited connection relief. Given the breadth of the operation of section 911D of the Corporations Act, we consider that the limited

connection relief is an important component of ensuring that Australia's financial services framework is competitive and efficient, particularly for financial services entities whose operations are completely offshore.

Given the broad application of section 911D of the Corporations Act, and the lack of practical guidance on what constitutes 'inducement' for these purposes, there is the potential for foreign financial service providers to provide one-off or limited services to Australian clients in reliance on this exemption without being aware that this relief exists. Accordingly, the repeal of this relief without further exemptions being provided may result in inadvertent breaches of Australian law by some FFSPs with very limited connection to Australia.

Similar to our submission in relation to the potential repeal of the sufficient equivalence regime, we submit that, at the very least, the limited connection relief regime should be retained in the case of the provision of services to "professional investors" (as defined in the Corporations Act), being a subset of "wholesale clients". AIMA members providing investment management services to investors in Australia tend to provide these services predominantly to professional investors, such as superannuation funds, responsible entities of registered schemes and other licensees.

Given that that FFSPs who typically rely on this relief should have a very limited connection to Australia and would presumably not be providing financial services to Australian clients on a consistent basis, we do not consider it would be practicable to require such entities to notify AISC of commencement and cessation of reliance on this relief.

We also submit that ASIC should provide additional practical guidance on, the parameters of the deeming provision in section 911D so that offshore managers and funds have some additional certainty.

Proposed repeal of the sufficient equivalence regime

We submit that a licensing exemption for FFSPs should be retained at the very least in the case of the provision of investment management services to "professional investors" (as defined in the Corporations Act), being a subset of "wholesale clients". In our experience, FFSPs providing investment management services to investors in Australia tend to provide these services predominantly to professional investors, such as superannuation funds, responsible entities of registered schemes and other licensees.

We note that section 911A(2E) provides a licensing exemption for derivative counterparties entering into derivatives with professional investors in Australia while outside of Australia. There does not seem to be a persuasive policy rationale for providing relief for derivative counterparties dealing with professional investors compared to FFSPs providing investment management services (including marketing of offshore funds and discrete mandates). Although we submit that the FFSP exemption should not be limited to the provision of services by the FFSP from outside of Australia, even if it is restricted to provision of services from outside of Australia, this would be preferable to removal of the exemption altogether. We recognise that such relief should not apply to FFSP who have established a physical presence in Australia and/or have Australian based employees.

We recognise ASIC's concerns in relation to provision to transparency and provision of information. We note that if the FFSP exemption is limited as described above, it should be on par with the exemption for offshore derivative counterparties. However, recognising the potentially broader range of services a FFSP could provide, if necessary, the FFSP exemption could also be varied to require a periodic provision of information about the types of services being provided by the FFSP to investors in Australia.

Proposed transition period

If ASIC proceeds with its proposal to require FFSPs to obtain a limited AFS licence, we agree in-principle to a transition period for existing FFSPs to change from the current Class Order exemption regime to a foreign AFSL regime. We support the 12-month roll-over period proposed by ASIC (from 27 September 2018 to 30 September 2019). However, in our opinion, the 12-month transition period for FFSPs does not allow adequate time for transition, especially given that ASIC is currently taking at least 9 to 12 months to assess and approve AFSL applications.

In our opinion, given the large number of existing FFSPs that will need to transition to the new foreign AFSL regime, if ASIC is unable to process and grant foreign AFSLs within the prescribed 12-month transition period, we presume that the existing FFSPs will have to cease providing financial services in Australia until such time as their foreign AFSLs have been assessed, approved and granted by ASIC.

If this is the case, not only will this be unfair to existing FFSPs, but competition in the financial services industry will also be adversely affected. More importantly, if existing FFSPs cease business for this reason, there will be a significantly detrimental effect to Australian investors.

Therefore, we recommend that ASIC considers:

- Maintaining the initial 12-month roll-over period from 27 September 2018 to 30 September 2019 for ASIC to implement the new regime;

- Allowing a further 12-month transition period, following ASIC's release of procedures and guidance to industry, to allow existing FFSPs to put compliance measures in place; and

Implementing a grandfathering arrangement whereby an existing FFSP who is already providing financial services in Australia on the reliance of Class Order relief can still rely on that relief until such time as ASIC has assessed and/or granted its foreign AFSL (as long as it has submitted a foreign AFSL application during the second 12-month transition period and responded to any requisitions from ASIC within the timeframes requested by ASIC).

Response to consultation paper 301

We have attached a table which sets out our more detailed responses to the consultation paper.

Contact points

We would be happy to meet with ASIC to discuss any aspect of our submission or provide further information.

The AIMA contacts in respect of this Submission are:

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Managing Director[1]
Co-Head of APAC
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Nikki Bentley
Chair, Regulatory Committee
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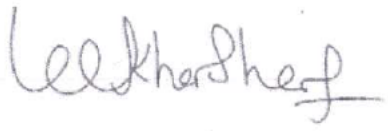
[redacted]

Yours faithfully



Lee Kher Sheng

Nikki Bentley

[1] AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than $2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 80 members that manage $500 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

List of proposals and questions

Proposal	Feedback	AIMA 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 goes 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. Many of our members have indicated that 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 they would not apply for a licence if required to continue to provide these services. 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 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)	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, we submit that a licensing exemption for FFSPs should be retained at the very least in the case of the provision of investment management services to "professional investors" (as defined in the Corporations Act), being a subset of "wholesale clients". In our experience, FFSPs providing investment management services to investors in Australia tend to provide these services predominantly to professional investors, such as superannuation funds, responsible entities of registered schemes and other licensees. We note that section 911A(2E) provides a licensing exemption for derivative counterparties entering into derivatives with professional investors in Australia while outside of Australia. There does not seem to be

Proposal	Feedback	AIMA Response
		a persuasive policy rationale for providing relief for derivative counterparties dealing with professional investors compared to FFSPs providing investment management services (including marketing of offshore funds and discrete mandates). Although we submit that the FFSP exemption should not be limited to the provision of services by the FFSP from outside of Australia, even if it is restricted to provision of services from outside of Australia, this would be preferable to removal of the exemption altogether. We recognise that such relief should not apply to FFSP who have established a physical presence in Australia and/or have Australian based employees. 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: ▪ 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

Proposal	Feedback	AIMA Response
		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 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.	In the event that ASIC decides to proceed with the foreign AFS licence, it is important to note that the application process is considered to be significant, with costs not only in terms of time and existing company resources, but also third party costs (law firms, professional services firms) assisting with the application. Members estimated these costs for application at between AUD $50k-75k. We do not have the data in relation to ongoing costs of maintaining a licence or any relevant entity-specific costs.
	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.	Our members' experience is that generally FFSPs are not required to be licensed in jurisdictions outside their home jurisdiction. This varies from jurisdiction to jurisdiction but some jurisdictions. We understand in Singapore, that FFSPs must notify MAS via CISNet (an electronic platform) of their intention to offer offshore funds targeted only to accredited investors. Another member that is SEC-regulated and operates in Europe, Middle East, Asia and Americas indicated that they are required to be licenced in US, Canada and China. In all other jurisdictions in which they operate (which covers Europe, Middle East, Asia and Americas) they were not required to have a licence. However, they are subject to different regulatory requirements in each jurisdictions such as product registrations or periodic filings.
	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	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.

Proposal	Feedback	AIMA Response
	specific in your response, and include an itemised breakdown of costs and/or savings. C2Q5 If you are a wholesale client of a sufficient equivalence FFSP in Australia, what impact would the repeal of the relief have on your business? Please give reasons for your preference.	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 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:	C3Q1 Do you agree with our proposal that general obligations under s912A(1)(a)–(ca) and (h) should apply to sufficient equivalence FFSPs applying for a foreign AFS licence? If not, why not? Please be specific in your response.	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 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

Proposal	Feedback	AIMA Response
		be required to apply for a foreign AFS licence. Many FFSPs are not currently 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:	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.
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	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	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.

Proposal	Feedback	AIMA Response
regulatory regime as they apply to the FFSP's business activities in Australia and the regulatory regime in the sufficient equivalence FFSP's home jurisdiction produces similar regulatory outcomes to the Australian regime.	specific in your response.	
	C6Q2 Do you think we should include any other considerations when determining which provisions should not apply to sufficient equivalence FFSPs? Please specify which other considerations in your response.	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 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 client property requirements in Divs 2 and 3 of Pt 7.8 of the Corporations Act,	C7Q1 Do you agree with our proposal and the proposed conditions of exemption? If not, why not?	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 client money and client property requirements in Divs 2 and 3 of Pt 7.8 of the Corporations Act.

Proposal	Feedback	AIMA Response
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.	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 restrict the appointment of representatives	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): 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 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.

Proposal	Feedback	AIMA Response
		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 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 resources.
	C9Q2 In addition to the requirements specified in RGs 1–3, what information do you believe you can	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

Proposal	Feedback	AIMA Response
	and should provide to us to demonstrate that you are not likely to contravene the obligation under s912A(1)(c) to comply with the additional conditions on a foreign AFS licensee (see proposal C8)? Please be specific in your response. C9Q3 In addition to the requirements specified in RGs 1–3, what information do you believe you can and should provide to us to demonstrate that you are not likely to contravene the obligation under s912A(1)(c) to comply with financial services laws subject to the modifications proposed in proposal C5? Please be specific in your response.	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. Please refer to our response to the above question.
D1 We propose to repeal the limited connection relief on 30 September 2019.	Do you agree with our proposal to repeal the limited connection relief? If not, why not? Please be specific in your response.	We disagree with the proposal to repeal the limited connection relief. Given the breadth of the operation of section 911D of the Corporations Act, we consider that the limited connection relief is an important component of ensuring that Australia's financial services framework is competitiveness and efficient, particularly for financial services entities whose operations are completely offshore. Given the broad application of section 911D of the Corporations Act, and the lack of practical guidance on constitutes 'inducement' for these purposes, there is the potential for foreign financial service providers to provide one-off or limited services to Australian clients in reliance on this exemption without being aware that this relief exists. Accordingly, the repeal of this relief without further exemptions being provided may result in inadvertent breaches of Australian law by some FFSPs with very limited connection to Australia. Similar to our submission in relation to the potential repeal of the sufficient equivalence regime, we submit that, at the very least, the limited connection relief regime should be retained in the case of the provision of services to "professional investors" (as defined in the Corporations Act), being a subset of "wholesale clients". AIMA members providing investment management services to investors in Australia tend to provide these services predominantly to professional investors, such as superannuation funds, responsible entities of registered schemes and other licensees.

Proposal	Feedback	AIMA Response
		Given that that FFSPs who typically rely on this relief should have a very limited connection to Australia and would presumably not be providing financial services to Australian clients on a consistent basis, we do not consider it would be practicable to require such entities to notify AISC of commencement and cessation of reliance on this relief. We also submit that ASIC should provide additional practical guidance on, the parameters of the deeming provision in section 911D so that offshore managers and funds have some additional certainty.
	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.	Please see response above.
	D1Q3 We understand from the limited engagement by service providers with CP 268 that a number of wholesale fund operators rely on the limited connection relief. If we repeal the limited connection relief: (a) What would be the impact on your business or your client's business? Please provide data on the types of activities for which you rely on the relief, and the volume and value of business you conduct under	Given the broad application of section 911D of the Corporations Act, and the lack of practical guidance on constitutes 'inducement' for these purposes, there is the potential for foreign financial service providers to provide one-off or limited services to Australian clients in reliance on this exemption without being aware that this relief exists. Accordingly, the repeal of this relief without further exemptions being provided may result in inadvertent breaches of Australian law by some FFSPs with very limited connection to Australia.

Proposal	Feedback	AIMA Response
	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.	Please see response above.
	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.	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 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.
	D1Q5 If you disagree with our proposal to repeal the limited connection relief, what (if any) enhanced conditions should be introduced to better facilitate supervision by ASIC? For example, what would be your view on the introduction of: (a) a requirement on FFSPs to notify ASIC of reliance on the limited connection relief at the outset and a further notification when the FFSP ceases to rely on that relief (the notification would be through an	We do not support the repeal of the limited connection relief. Given that that FFSPs who typically rely on this relief should have a very limited connection to Australia and would presumably not be providing financial services to Australian clients on a consistent basis, we do not consider it would be practicable to require such entities to notify AISC of commencement and cessation of reliance on this relief. 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

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	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?	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 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.	The limited connection class order relief has a different focus to other 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. For example the exemption in section 911A(2C) is limited in its utility because it does not apply to an AFSL holder acting as trustee or responsible entity or on behalf of someone else. The policy for this restriction is not entirely clear. We also note the exemption in section 911A(2D) is limited in its utility because it only applies to a product issuer. Typically the offshore fund manager or a distributor in its group (rather than the fund which is the product issuer) would deal directly with an Australian investor, including in relation to marketing activities.
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 agree in-principle to a transition period for existing FFSPs to change from the current Class Order exemption regime to a foreign AFSL regime. We support the 12-month roll-over period proposed by ASIC (from 27 September 2018 to 30 September 2019). However, in our opinion, the 12-month transition period for FFSPs does not allow adequate time for transition, especially given that ASIC is currently taking at least 9 to 12 months to assess and approve AFSL applications. In our opinion, given the large number of existing FFSPs that will need to transition to the new foreign AFSL regime, if ASIC is unable to process and grant foreign AFSLs within the prescribed 12-month transition period, we presume that the existing FFSPs will have to cease providing financial services in Australia until such time as their foreign AFSLs have been assessed, approved and granted by ASIC.

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		Therefore, we recommend that ASIC considers: • Maintaining the initial 12-month roll-over period from 27 September 2018 to 30 September 2019 for ASIC to implement the new regime; • Allowing a further 12-month transition period, following ASIC's release of procedures and guidance to industry, to allow existing FFSPs to put compliance measures in place; and • Implementing a grandfathering arrangement whereby an existing FFSP who is already providing financial services in Australia on the reliance of Class Order relief can still rely on that relief until such time as ASIC has assessed and/or granted its foreign AFSL (as long as it has submitted a foreign AFSL application during the second 12-month transition period and responded to any requisitions from ASIC within the timeframes requested by ASIC). . 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 AFS licence would make their Australian business unprofitable and force their exit from the Australian market to their clients' detriment.
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 regulatory obligations on FFSPs that are of negligible regulatory benefit.

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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?	In the event all other options have not been accepted and licensing (including the foreign AFSL) is considered the only way forward, then 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? Please give reasons for your view.	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.
E5 We propose that if we adopt the proposals in Section C on providing exemptions from some provisions of the Corporations Act, our assessment	E5Q1 Do you agree with our proposal of a scaled- back assessment of sufficient equivalence for the new foreign AFS licensing regime? Please	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

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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).	give reasons for your view.	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.