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Via Email to [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

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

Re: *Consultation Paper 301: Foreign Financial Services Providers*

Dear Mr. Worsley:

ICI Global<sup>1</sup> supports the objective of Consultation Paper 301<sup>2</sup> to ensure that the Australian Securities and Investments Commission (ASIC) has sufficient supervisory and enforcement powers over foreign financial services providers (FFSPs) that provide financial services to Australian wholesale clients.

To minimise significant negative effects on Australian wholesale clients that use financial services and products currently being provided by FFSPs,<sup>3</sup> we encourage ASIC to consider whether it can accomplish the desired regulatory objectives by imposing additional requirements to the existing “substantial equivalence” class order relief in lieu of the proposed licensing regime.

Should ASIC decide to proceed with a new licensing requirement, we request that ASIC formally consult on the details of the new licensing process for FFSPs. The lack of details in CP 301 regarding

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<sup>1</sup> [ICI Global](#) carries out the international work of the [Investment Company Institute](#), the leading association representing regulated funds globally, including in Australia. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US\$29.6 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors.

<sup>2</sup> See *Consultation Paper 301: Foreign Financial Services Providers* (CP 301), available at <https://download.asic.gov.au/media/4752740/cp301-published-1-june-2018.pdf>.

<sup>3</sup> Although CP 301 would modify the “substantial equivalence” class order relief and limited connection relief pursuant to which FFSPs provide financial services in Australia, our recommendations focus on the “substantial equivalence” relief.

the licensing processing for FFSPs and the resulting uncertainty may deter on-going provision of services to Australian wholesale clients and launching of new services and products.

### Background

Currently, FFSPs provide a range of financial services under the “sufficient equivalence” relief (approved FFSPs). For example, some FFSPs manage assets on a sub-advised basis for local Australian financial services licence (AFSL) holders. FFSPs also can be issuers of offshore products in which Australian wholesale clients invest. ASIC generally made the relief available based on its assessment that the overseas regulation of the FFSP achieves similar regulatory outcomes as the Australian regulatory requirements that apply to financial services providers in Australia.<sup>4</sup> The relief is available through ASIC class orders and instruments for FFSPs regulated in the following countries: Germany, Hong Kong, Luxembourg, United Kingdom, Singapore, and United States.<sup>5</sup>

ASIC proposes in CP 301 to repeal the sufficient equivalence relief on 30 September 2019 and require FFSPs to obtain a “foreign” Australian financial services licence (foreign AFSL).<sup>6</sup> ASIC also proposes in CP 301 to implement a 12-month transitional period – from 30 September 2019 to 30 September 2020 – to allow FFSPs to come into compliance with the requirements of the modified AFS licensing regime. The proposal would affect many of our members that provide various financial services to Australian wholesale clients under the “sufficient equivalence” relief, including sub-advisory services to their affiliates licensed in Australia and to Australian regulated funds.

For the reasons identified below, we believe that the sufficient equivalence relief should not be repealed but enhanced through the imposition of additional conditions.

### ASIC Should Consider Enhancing Exemptive Orders to Achieve its Regulatory Objectives

Dismantling the “sufficient equivalence” relief and replacing it with a new process will likely increase the costs of financial services and products available to Australian wholesale clients depending on the costs associated with the new licensing regime. Moreover, the disruption and the corresponding uncertainty may cause FFSPs to re-evaluate whether to continue to provide financial services in Australia and, if they do continue to provide financial services in Australia, the type of financial services that they will provide or may provide in the future to Australian wholesale clients. Thus, Australian wholesale clients may experience reduced availability of financial services and products available to them and possibly at higher prices.

Subjecting FFSPs to a new licensing regime may also have other consequences, including possibly subjecting FFSPs, among other things, to a requirement to register as a foreign company which would

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<sup>4</sup> See CP 301 at 6.

<sup>5</sup> See CP 301, Table 3 at 34.

<sup>6</sup> *Id.*

further increase compliance costs for FFSPs in relation to providing financial services to Australian wholesale clients.<sup>7</sup>

Given these potential unintended effects, we query whether ASIC could accomplish the same regulatory objectives by imposing additional requirements to the existing “substantial equivalence” relief in lieu of a new licensing regime. For example, ASIC can revise the class order relief to incorporate some of the provisions from Appendix 2 to CP 301 to enhance ASIC’s supervisory and enforcement powers (e.g., agreement to surveillance checks by ASIC or providing ASIC with power to make a banning order). We submit that this alternative may deliver an appropriate balance between cross-border investment facilitation, market integrity and investor protection, as required by Regulatory Guide 54 (*Principles for Cross-Border Financial Regulation*).

#### Alternative Approach – ASIC Should Formally Consult on the Details of the New Licensing Process for FFSPs

CP 301 would require FFSPs to undergo a modified AFS licensing regime and obtain a foreign AFS licence. The proposal in CP 301 states that ASIC will impose tailored conditions on a foreign AFS licensee and require a foreign AFS licence applicant to provide similar documents in support of its application as that required for an ordinary AFS licence. The proposal, however, does not provide further details on the licensing process including timing and process of assessment.

Given the lack of detail in the proposal, our members that have been relying on the “sufficient equivalence” relief are concerned that the application process may be overly burdensome and time-consuming, based on the experience of their Australian affiliates in obtaining an ordinary AFS licence and on the information provided in the AFS licensing kit. For example, we understand that the AFS licensing application process currently takes up to 8 months or longer, with requisitions being made and documents being requested throughout the assessment process. Our members are concerned about whether the length and process to apply for a foreign AFS licence would be disproportionate to the type and range of financial services they provide and propose to provide to Australian wholesale clients in the future.

We believe that to achieve the appropriate balance between ASIC’s objective of obtaining sufficient supervisory and regulatory oversight of FFSPs and the aim of attracting additional investment and liquidity to Australian financial markets, ASIC should further consult on a new licensing process for FFSPs. A consultation could shed light on the application process, including the length of time ASIC anticipates may be required to process FFSP applications and the supporting documentation that may reasonably be required. A consultation also would assist ASIC in implementing a licensing process that would be appropriately tailored for FFSPs.

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<sup>7</sup> See Regulatory Guide 121 (*Doing Financial Services Business in Australia*).

### Transition Period

To minimise significant disruptions in the provision of services to Australian wholesale clients by approved FFSPs, our members request an adequate transition period. For example, if an approved FFSP lodges an application for a foreign AFSL prior to the expiration of any transition period, the approved FFSP should be allowed to continue to provide financial services in Australia, even though a licence has not yet been approved.

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We appreciate ASIC's objective to ensure it has sufficient supervisory and enforcement powers over FFSPs and the opportunity to provide input on CP 301. We, however, urge ASIC to consider whether its objectives can be achieved by enhancing the existing exemptions under the class order relief or, in the alternative, to consult on the details of a new licensing regime for FFSPs. If you have any questions in relation to this letter, please feel free to contact Jennifer Choi, Chief Counsel, at [REDACTED], or Anna Driggs, Associate Chief Counsel, at [REDACTED].

Sincerely,

Dan Waters  
Managing Director  
ICI Global  
[REDACTED]