

MinterEllison

9 August 2019

BY EMAIL: policy.submissions@asic.gov.au

Alan Worsley
Senior Specialist
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

Dear Mr Worsley

Submission on ASIC Consultation Paper 315 - Foreign Financial Services Providers: Further Consultation (CP 315)

We appreciate the opportunity to respond to ASIC's proposals in CP 315.

We welcome ASIC's proposal to provide relief to foreign financial services providers (**FFSPs**) that provide funds management financial services and in this submission we are providing feedback in relation to certain aspects of that proposal, including the proposed cap on the scale of activities. We are also providing feedback in relation to guidance for FFSPs for the foreign Australian financial services (**AFS**) licensing regime and the proposed reverse solicitation relief.

We continue to support the continuation of the Limited Connection Relief for the reasons set out in our previous submissions on ASIC Consultation Papers 268 and 301 (copies **enclosed**).

MinterEllison is a full service commercial law firm. We advise major financial institutions, including banks, fund managers, superannuation trustees, platform providers, insurance companies and other financial intermediaries in Australia and overseas.

The views expressed in our submission are ours alone and do not necessarily reflect the views of our clients.

1. Summary of our submission

- 1.1 We support the provision of relief for FFSPs providing funds management services to professional investors in Australia (**Funds Management Relief**) and the new foreign AFS licensing regime. However, we submit that the basis on which the Funds Management Relief is proposed to be provided (i.e. the revenue cap, conditions imposed and the limited definition of portfolio management services) is too restrictive is likely to inhibit the Australian financial services market. It may also lead to services currently available ceasing to be so.
- 1.2 We submit that repealing the relief under *ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182* (**Limited Connection Relief**) will be detrimental to the competition of the Australian financial services markets and would diminish access for emerging and innovative FFSPs to provide financial services in the wholesale market.
- 1.3 ASIC has not identified any material justification for repealing the Limited Connection Relief.
- 1.4 We believe that the proposed Funds Management Relief and reverse solicitation reliefs do not address all of the circumstances in which the Limited Connection Relief is appropriately used.

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- 1.5 On draft Regulatory Guide 176, we submit that further guidance is required in relation to applications to extend the new foreign AFS licensing regime to new jurisdictions and regulators. Clarification is also required on the process for FFSPs who are currently relying on the current sufficient equivalence relief to apply for the new foreign AFS licence.
- 1.6 Please refer to further details below and our response to ASIC's proposals and questions in Attachment A.

Response to ASIC Key Proposals

2. Funds Management Relief – Revenue Cap

- 2.1 ASIC's proposed revenue cap of 10% of annual aggregated consolidated gross revenue as a condition for an FFSP's reliance on the Funds Management Relief (**Revenue Cap**) poses challenges for larger FFSPs which operate their funds management activities through different entities globally. We believe that the requirement to continually monitor and calculate each subsidiary's funds management financial services revenue at a group level imposes compliance burdens which is likely to dissuade larger FFSPs from accepting Australian investors.
- 2.2 It is in the interests of Australian investment market and economy for professional investors to be able to proactively seek high quality investment capabilities globally. Imposing compliance burdens and regulatory friction is likely to restrict the availability of these services for professional investors. We are aware of estimates that the increase in costs for a FFSP relying on the Funds Management Relief will be in the order of \$250,000 per annum.
- 2.3 The proposed Revenue Cap is likely to be even more burdensome and operationally challenging to calculate where the group owns a number of different funds management businesses which operate independently of each other. The proposal could result in subsidiaries well below the 10% revenue cap on a standalone basis being excluded from the Funds Management Relief due to their common equity ownership. We are also concerned that calculating gross revenue from Australia will be difficult where income is not tracked client-by-client at the holding company level.
- 2.4 ASIC is required to consider the effect of the exercise of its powers will have on competition in the financial system.¹ The Funds Management Relief is only available for professional investors who are large and in many cases highly regulated institutions which do not require the protection of ASIC regulation in their choices for professional advisers and fund managers. We therefore submit that the cap is not necessary and should not be included in the final form of the Funds Management Relief.
- 2.5 If a percentage based revenue cap is to be imposed, we submit that a higher cap will reduce the risk that it is breached and therefore reduce the compliance costs associated with frequent checking whether it is being approached.
- 2.6 We also submit that an alternative dollar amount based revenue cap would be an easier model to administer and the Revenue Cap should only apply to revenue generated from activities which rely on the Funds Management Relief. It should not apply to revenue generated by related companies which hold an AFS licence, whether that is a foreign or full AFS licence. Furthermore, it should not include revenue where another exemption is relied on to provide financial services to Australian clients such as the exemption for dealings arranged by an Australian licensee or resulting from reverse solicitation.
- 2.7 Finally, we submit that ongoing monitoring of the Revenue Cap should not be required. Firms should only be required to confirm they meet the Revenue Cap when they first take on a client and then at least once a year. This will help minimise the regulatory burden.

3. Funds Management Relief – Restriction on activities

- 3.1 There are some anomalies in the proposed Funds Management Relief.
- 3.2 The relief only applies to a foreign company that is carrying on a financial services business in Australia only because of the operation of section 911D. This means that the relief cannot apply to a foreign company that engages in any activities in Australia because in that case the company

¹ Section 1(2A) of the ASIC Act.

would be carrying on a financial services business without regard to section 911D. This contradicts the definition of 'funds management financial services' which is defined to include providing certain financial services in Australia.

- 3.3 The relief is therefore significantly narrower than the current sufficient equivalence relief which permits FFSPs to provide financial services in Australia. This is important for fund managers as it not only permits them to establish a trading desk in Australia (bringing activities onshore therefore benefiting the Australian economy) but also to visit wholesale clients in Australia to promote and report on the services they provide. Restricting the Funds Management Relief to activities carried on outside Australia would significantly limit the ability of fund managers to meet with clients and prospects in Australia or to set up a representative office for the purpose of marketing the fund manager's services. It is likely that client meetings will involve fund managers expressing opinions and making recommendations that could affect investment decisions of wholesale clients and would therefore amount to financial product advice. Under the Funds Management Relief in its proposed form, fund manager representatives would be very limited in what they could say or do while in Australia.
- 3.4 Another issue is the definition of 'portfolio management services' which applies to the management of assets located outside Australia. It is not clear what the phrase 'assets located outside Australia' is intended to mean. For example, is it intended to exclude shares in foreign companies listed on an Australian financial market? Furthermore, it appears to exclude any global mandate which includes Australian securities. This is a very different approach to that taken by the Ontario Securities Commission (**OSC**) which we understand only excludes foreign fund managers from relying on the equivalent OSC relief in relation to Canadian-specific mandates and not mandates which include Canadian investments in a broader strategy.
- 3.5 There is also a disconnect between the offshore fund activities which include financial product advice and portfolio management services which do not. This means that:
- (a) no financial product advice can be given in relation to offshore portfolio management activities – however, as noted above, it is likely that dealings with Australian clients will involve the provision of financial product advice incidentally to the investment management activities; and
 - (b) the exemption will not apply to advice mandates where the fund manager does not provide investment management services but only makes recommendations to the Australian client or their asset consultant – we submit that the relief should extend to advice mandates.
- 3.6 Further there is uncertainty whether the definition of 'funds management financial services' covers non-discretionary investment advisers, consultants and research providers providing advice on complex assets to professional investors which often will be fund-related but may not necessarily always be advising a fund or scheme. This means that:
- (a) such advice may be treated differently, for example where similar services are provided to funds as compared to other institutions; and
 - (b) different outcomes would apply between financial advice and other financial services, for example advice as compared to investment management services for a fund.
- 3.7 These restrictions will make it difficult to rely on the Funds Management Relief and mean that arbitrary distinctions exist for which services are within the relief's ambit notwithstanding there is a clear connection to 'funds' or substantively the same service being supplied to another form for professional investor, and therefore the Funds Management Relief will not meet ASIC's objectives of facilitating access to global funds management expertise and capability.
- 3.8 In addition to abolishing or changing the Revenue Cap as discussed above, we therefore recommend that the following change is made to clause 5 of the draft Funds Management Relief instrument:

A foreign company that is carrying on a financial services business in this jurisdiction only because of the operation of section 911D of the Act in relation to funds management financial services provided by the foreign company does not have to comply with subsection 911A(1) of the Act for the provision of funds management financial services.

- 3.9 The most straightforward approach to the portfolio management services issue would be to delete the reference to assets located outside Australia from the definition of 'portfolio management services'. We submit that this would be an appropriate outcome to facilitate access to the limited class of professional investors referred to in the definition to global funds management capability and would benefit competition in the financial system.
- 3.10 However, if ASIC believes (contrary to our views) that it is appropriate to restrict the ability of a FFSP to rely on the Funds Management Relief in relation to Australian mandates without having a significant impact on broader mandates, we suggest the following changes be considered to clarify the concept of 'assets located in this jurisdiction' in the introductory words of the definition of portfolio management services:

"portfolio management service means a financial service provided by a person in relation to a portfolio of assets in relation to which the value of all of the following assets that are not cash or cash equivalents are not more than 50% of the total value of the portfolio:

- (a) assets listed on a prescribed financial market; and
- (b) securities in Australian companies;
- (c) debts owed by Australian residents;
- (d) derivatives relating to any of the assets referred to in paragraph (a) to (c);
- (e) other types of financial products issued in Australia; and
- (f) other types of assets located in Australia.

~~that is the management of assets located outside this jurisdiction on behalf of any of the following..."~~

4. Limited Connection Relief

- 4.1 In our previous submissions, we strongly advocated for the continued need for the Limited Connection Relief. This support was on the grounds that the Limited Connection Relief provides significant benefits for the competitiveness, efficiency and innovation of the Australian financial system and markets. Our opinion on this matter has not changed.
- 4.2 We maintain our view that ASIC should not repeal the Limited Connection Relief and should renew it in its current form as it forms an important part of Australia's financial services regime and protects and enhances Australia's position as a competitive global financial services market.
- 4.3 In our view, the Funds Management Relief will not diminish the necessity or value of the Limited Connection Relief for FFSPs that:
- (a) do not meet the prescribed conditions for the Funds Management Relief; or
 - (b) do not meet the Revenue Cap for the Funds Management Relief; or
 - (c) provide financial services other than funds management services.
- 4.4 We believe that there are a significant number of such FFSPs that would be affected by the repeal of the Limited Connection Relief and who would not be able to rely on alternative exemptions. This applies as much to funds management sector as to other parts of the industry.
- 4.5 Many of our clients currently rely on the Limited Connection Relief to market, usually from offshore, a range of offshore funds to Australian wholesale clients which are usually large institutional investors. The funds may be corporate vehicles or collective investment vehicles. While technically the Funds Management Relief may apply to such funds, ASIC's proposals require each such fund to lodge various documents with ASIC. This will inevitably have a significant impact on the availability of offshore funds. It will take time to have the required documents prepared and lodged with ASIC. This will make some funds unwilling to accept Australian investors and in other cases

mean that investments are delayed or do not proceed because a fund has not previously prepared and lodged the documents with ASIC. It will also impose an unnecessary administrative burden on ASIC to receive these documents from multiple offshore entities.

- 4.6 We submit that it is important to retain the Limited Connection Relief even if the Funds Management Relief is introduced. It should be sufficient that the fund manager registers under the Funds Management Relief. Funds should not be required to do so and should be able to continue to rely on the Limited Connection Relief.
- 4.7 As we have noted in our previous submissions, the difficulty with collecting reliable and quantitative data to determine the need for the relief includes the fact that those relying on the relief are entities with only limited engagement with Australia, as reflected in the purpose of the relief. These entities are not represented by an industry body in Australia and are unlikely to be aware of ASIC's proposal to repeal the relief.
- 4.8 We submit that the underlying purpose of the Limited Connection Relief remains valid and was to avoid the unintended effect that section 911D would otherwise have in the wholesale market by catching businesses that do not have any presence in Australia when providing services to wholesale clients, consistently with the way that other financial services regulatory regimes generally operate globally.
- 4.9 Our clients included a range of businesses including foreign banks, FinTech companies, insurance companies, specialist fund managers, financial advice firms, stockbrokers and other foreign financial intermediaries. The activities were not therefore limited to FFSPs that only provided funds management services.
- 4.10 In our view, the relief regime performs a significant role of facilitating competition in the wholesale financial services market to a wide range of services and innovation. Its repeal will therefore have a detrimental impact on competition and innovation in Australia. For example, the repeal of the Limited Connection Relief is inconsistent with the Australian Government's move towards alternative payment platforms. This is reflected in the Treasury's recent decision to phase in Open Banking with all major banks following the 2014 Financial System Inquiry which acknowledged the development of alternative business models and products and services to improve consumer outcomes in financial services. This view is consistent with the findings from the review into Open Banking that the potential of the development of innovation such as digital payment platforms is understood in other overseas regulatory regimes which Australia is slowly moving toward. We consider that the repeal of the Limited Connection Relief would go against these developments and inhibit Australia's ability to compete in the emergence of new technologies and forms of financial services in the global market.
- 4.11 While we have previously advocated that to require a notification requirement would be against the purpose of the Limited Connection Relief in addressing the limitation of section 911D of the Corporations Act, we submit that as a solution to ASIC's concerns of limited visibility of the current relief, a notification requirement would be a superior alternative than repealing the relief in its entirety. The one-off notification would allow ASIC to monitor and gather data relating to those FFSPs relying on the relief.

5. New foreign AFS licensing regime

- 5.1 We welcome the proposed streamlined application process for eligible FFSPs under the new foreign AFS licensing regime. We also support the exemption from specified provisions in Chapter 7 of the Corporations Act on the grounds that the FFSPs are subject to sufficiently equivalent overseas regulatory regimes in respect of similar regulatory outcomes and enforcement action.

Process of recognising equivalence

- 5.2 However, we submit that ASIC should review the process for extending the sufficient equivalent regime relief. The current model (outlined in Draft Regulatory Guide 176) of relying on impacted individual FFSPs to lodge applications to have their country or regulator recognised as having an equivalent regulatory regime is disproportionately burdensome to applicants compared to other FFSPs able to rely on the relief once their regime is recognised as equivalent by ASIC.
- 5.3 ASIC should consider proactively reviewing all jurisdictions for sufficient equivalence that are also members of International Organization of Securities Commissions (**IOSCO**). Alternatively, ASIC

should at a minimum proactively review countries that it has effective cooperation agreements with. If ASIC is unable to do this, we submit that it would be appropriate for ASIC to take advantage of the high regard it is held in by global financial regulators to lobby for IOSCO to develop a methodology for recognising regulatory regimes which meet an appropriate standard to enable ASIC to take advantage of this recognition to identify regulated entities that should be able to apply for a foreign AFS licence.

- 5.4 In any case, there should be greater transparency about the overseas regulatory regimes which ASIC is currently reviewing or has previously reviewed for 'sufficiently equivalent' relief.

Conflicts and risk management

- 5.5 As outlined in our previous submission, we do not believe it is appropriate to require foreign licensees to comply with s912A(1)(aa) regarding management of conflicts of interest obligations or s912(1)(h) regarding risk management obligations. These obligations impose additional regulatory burdens which should not be necessary where ASIC has assessed the FFSP as being subject to a sufficiently equivalent overseas regime. The manner in which FFSPs address conflicts of interest and risk management should be determined by the regulatory regime they are subject to in their home jurisdiction, otherwise FFSPs will be subject to inconsistent requirements imposing additional cost for no benefit.

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

Yours faithfully
MinterEllison

A handwritten signature in black ink, appearing to read 'R Batten', with a long, sweeping underline that extends to the right.

Richard Batten
Partner

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Response to proposals and questions

1. In this section of our submission, we have responded to the questions in CP 315 to the extent we are able to.

B1Q1 Do you agree with our proposal to provide AFS licensing relief to permit FFSPs to provide funds management financial services to professional investors (subject to the cap in proposal B3 and the conditions in proposal B4)? If not, why not? Please be specific in your response.

2. We support the provision of relief for FFSPs providing funds management services to professional investors in Australia. We have set out our on specific aspects of the proposal in sections 2 and 3 of our submission.

B1Q2 Do you agree with our proposal to not provide relief in relation to the provision of a custodial or depository service on the basis that it is covered by reg 7.6.01(1)(k)? If not, why? Please be specific in your response.

3. We believe that custodial and depository services should be included in the Funds Management Relief as it will be required whenever funds are held on trust or in a custodial arrangement for or in any other way on behalf of Australian clients. The sub-custody exemption will not be relevant because the Australian client is unlikely to be a custodian.

B2Q2 Do you agree with our proposed definition of ‘portfolio management services’? If not, why not? Please be specific in your response.

4. We refer to our comments in paragraphs 3.4, 3.5 and 3.9 above.

B2Q3 Do you agree with our proposed definition of ‘eligible Australian users’ of portfolio management services? If not, why not? Please be specific in your response.

5. We do not agree that portfolio management services should only be provided to a limited category of professional investors. While we acknowledge that the categories identified reflect most of the entities requiring portfolio management services, it does not include some important categories, such as investment companies or special purpose vehicles established by any of the categories of permitted investors (whether established in Australia or elsewhere). We do not believe that there is any reason to exclude other categories such as banks, general insurance companies, holders of an AFS licence (for example asset consultants), listed entities or investors that control at least \$A10 million. Furthermore, the list should be extended to corporate collective investment vehicles when the Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill becomes law.

B3Q1 Do you agree with our proposal to apply an aggregated revenue cap to ensure that the financial services provided by FFSPs under the funds management relief are provided on a limited basis? If not, why not?

6. We refer to our comments in section 2 above.

B3Q2 What systems and processes will you need to implement to monitor your compliance with the aggregated revenue cap? Please be specific in your response.

7. We refer to our comments in paragraphs 2.1 to 2.3 above.

B3Q3 What are the costs associated with implementing the systems and processes to monitor compliance with the aggregated revenue cap? Please be specific in your response.

8. We refer to our comments in section 2 above.

B3Q4 Are there any other caps that we should consider as an alternative (see Table 3 for other caps we have considered)? What are the costs associated with monitoring compliance with your alternative cap? Please be specific in your response.

9. We do not believe that it would be practical to administer the 'service-specific' caps ASIC has contemplated as it would be difficult to allocate revenue between the categories contemplated.
10. A cap based on number of clients may be more practical provided clients are counted on an aggregated basis, i.e. related clients and funds managed by the group would be counted as a single client. If adopted, we believe that the number of clients should be higher than contemplated by ASIC. We submit that 10 clients would be a more suitable limit before a fund manager should be required to obtain an AFS licence.
11. It may also be more practical to set the cap by reference to an indexed dollar amount of revenue generated from Australian clients. This would at least mean that complex calculations at group level would not be required, except to the extent of identifying revenue relating to Australian clients where the Funds Management Relief is relied on (as discussed in paragraph 2.6), we submit that the cap should not include revenue generated by related companies which hold an AFS licence or where another exemption is relied on.

B3Q5 Is the proposed aggregated revenue cap able to be applied to all the types of financial services that you may provide to professional investors in Australia (e.g. providing financial product advice)? Please be specific in your response.

12. Provided a separate cap does not apply to different types of services (see paragraph 9), we believe it can be applied to all types of services provided under the relief, subject to our comments in section 2 of our submission.

B3Q6 If you currently have the benefit of the limited connection relief and intend to reduce the size of your activities in Australia to have the benefit of the proposed funds management relief, how long would it take to do so? What are the costs associated with this? Please be specific in your response.

13. Given the compliance costs associated with the proposed regime it is likely that companies will need to review business sales and models and implement changes that may include consolidating entities dealing with Australian clients, all of which are time-consuming and costly. It will be a complex process for global companies to map every financial service they provide internationally across groups, and to determine whether there is any Australian touch point for that service. We therefore submit that a longer transition period should be provided. We submit that it should be at least one year.

B4Q1 Do you agree with our proposal to impose these conditions on the funds management relief? If not, why not? Please be specific in your response.

14. We refer to our comments in section 2 of our submission..
15. In relation to the proposed requirements of clauses 6(g) and (h) of the draft instrument, we note that it is important that there should not be any requirement for ASIC to approve a person's ability to rely on the Funds Management Relief or the documents lodged with ASIC. It should be made clear in the relief and guidance that a person can immediately rely on the relief on lodgement of the documents with ASIC.

B4Q2 Are there any other conditions that you think we should impose on FFSPs? Please be specific in your response.

16. No.

B4Q3 Are there any conditions that you think we should not impose on FFSPs? Please be specific in your response.

17. We refer to our comments in section 2 of our submission..

- B4Q4** Should the provider of the funds management financial services be subject to an additional condition that it be regulated by a regulatory authority that is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMOU) or the IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO Enhanced MMOU)? How would this additional condition affect the provision of funds management financial services to professional investors in Australia? Please be specific in your response.
18. As the purpose of the Funds Management Relief is to provide a partial replacement for the Limited Connection Relief, we do not believe it is appropriate to impose any additional conditions of this nature..
- B4Q5** What are the costs associated with complying with these conditions? Please be specific in your response.
19. We refer to our comments in paragraph 2.2 above.
- B4Q6** Do you agree with our proposal to use our powers to require an FFSP to provide information about the services the FFSP provides to professional investors in Australia, as well as its compliance with the proposed aggregated revenue cap? Please be specific in your response.
20. We believe that ASIC's proposal is appropriate in this regard, subject to our comments about the difficulty of complying with the Revenue Cap.
- B4Q7** If you disagree with the proposal to use our powers, would you prefer that we impose the requirement to provide an annual declaration about the activities the FFSP conducts in Australia as an explicit condition on the relief? Please be specific in your response.
21. We do not support the requirement for an annual declaration. We submit that it should be up to individual FFSPs to ensure compliance with the requirement of the relief and that ASIC should only exercise its powers to require information about how an FFSP complies with the relief if ASIC has cause to be concerned about its compliance with the relief.
- B5Q1** Do you agree with the proposed transitional period? If not, do you think it should be longer or shorter?
22. We agree with the proposed transitional period for the Funds Management Relief. As noted in paragraph 13 above, we believe the transitional period for the Limited Connection Relief should be longer.
- C1Q1** Are there any significant reasons why ASIC should provide an AFS licensing exemption based on reverse solicitation, given our proposed funds management relief in Section B and the licensing exemptions available in reg 7.602AG? Please be specific in your response.
23. Rather than providing an AFS licensing exemption based on reverse solicitation, we strongly advocate for the continued need of the Limited Connection Relief.
24. We do not consider that the proposed Funds Management Relief or the licensing exemptions available in regulation 7.6.02AG are sufficient given their limited application.
- C1Q2** If you are an FFSP that may not be able to rely on the proposed new funds management relief or existing statutory licensing exemptions, please outline the specific financial services you wish to provide on a reverse solicitation basis? Please be specific in your response.
25. We do not advocate for the introduction of a new reverse solicitation exemption.

C1Q3 How significant is the volume of those specific financial services provided to Australian clients to your overall business? Please be specific in your response and include quantitative information.

26. We are unable to respond to this question.

C1Q4 If a strong case for reverse solicitation relief, as set out in the appendix to this paper, was established, do you agree with our approach to defining reverse solicitation and how it will operate with s911D, as set out in paragraphs 104 and 107–109 respectively? If not, why not? Please be specific in your response.

27. We consider that the issue with section 911D of the Corporations Act when applied to the wholesale market where reverse solicitation occurs is that an FFSP could still be inadvertently caught in Australia's AFS licensing as there is likely to be some later inducement from the FFSP for the wholesale client to continue services. We consider this goes against Parliament's original intention that ASIC would be able to grant exemptions for FFSPs and that ASIC would not require extensive regulatory powers in relation to those entities.

28. We submit that rather than introducing a new reverse solicitation relief, ASIC has the power to increase visibility and adequately supervise FFSPs engaging with Australian wholesale clients under the current Limited Connection Relief. We maintain our recommendation that ASIC's supervisory and enforcement concerns can be addressed by a judicious increase in the notification obligations of overseas providers relying on the current relief and by empowering ASIC to enforce equivalent foreign regulatory standards on FFSPs with respect to their Australian operations. This approach would remove the need for introducing a new reverse solicitation relief as well as the duplication of Australian and foreign obligations and therefore greatly reduce both compliance costs for foreign providers and regulatory costs for ASIC.

C1Q5 If we were to provide a form of reverse solicitation relief, as set out in the appendix to this paper, we consider conditions should apply to the FFSP providing financial services on a reverse solicitation basis. Do you agree with the conditions we set out in paragraph 105? If not, why not?

29. Please refer to our response in C1Q4. The current exemption model can be enhanced without the need to require entities to obtain apply for reverse solicitation relief – for example by adding additional conditions, enhanced breach reporting obligations, further requirements to comply with ASIC directions, and audit requirements. Given that the financial services global entities provide to Australian clients are only provided to wholesale clients, we believe that a form of regulation that is more proportionate to the risk presented is sufficient to achieve an appropriate level of investor protection for wholesale clients.

C1Q6 What are the costs associated with complying with the conditions set out in paragraph 105, including maintaining adequate records of proof of reverse solicitation and communications with the investor?

30. While this is difficult to determine, we consider that our recommendation of a one-off notification would result in lower compliance costs for both FFSPs and regulatory costs for ASIC.

C1Q7 If we were to provide a form of reverse solicitation relief, as set out in the appendix to this paper, are there any mechanisms that could be implemented by the FFSP or the professional investor in Australia to assist in monitoring the conduct of FFSPs to ensure that the engagement was on a reverse solicitation basis? If not, why not? Please be specific in your response.

31. Please refer to our response in C1Q5. If despite our recommendations the Limited Connection Relief is repealed, we believe that ASIC's conditions as set out in paragraph 105 of its Consultation Paper 315 are reasonable.

D1Q1 Do you think we have provided adequate guidance to FFSPs about how our proposed regulatory framework for FFSPs will apply? If not, why not? Please be specific in your response.

32. As noted above, we believe that ASIC should consider proactively reviewing all jurisdictions for sufficient equivalence that are also members of IOSCO. Failing this, ASIC should at a minimum proactively review all countries that they have effective cooperation agreements with. It would also be useful for ASIC to provide adequate guidance and/or public updates on which overseas regulatory regimes ASIC is currently reviewing or has previously reviewed for 'sufficiently equivalent' relief.