15 February 2022

Policy Submissions
Australian Securities and Investments Commission

Email policy.submissions@asic.gov.au

Dear Sir/Madam

Submission on Consultation Paper 357: Remaking relief for business introduction services

1 We act for Investment Markets (Aust) Pty Ltd ACN 634 057 248 (**IMA**) and make this submission on IMA's behalf.

Background to IMA

2 IMA holds AFSL 527875 and has developed, and is in the process of launching, an online platform which will act as a digital meeting place for investors and investment opportunities where entities seeking to raise capital (**listees**) can promote their offers to prospective investors. IMA is not a crowd sourced funding (**CSF**) intermediary and its platform is not a CSF platform.

3 Listees will include companies and responsible entities of registered managed investment schemes undertaking regulated capital raisings, and companies and operators of unregistered managed investment schemes undertaking unregulated capital raisings (such as offers which are restricted to sophisticated investors or wholesale clients only).

4 IMA has also identified that entities undertaking unregulated capital raisings may include issuers which intend to rely on the business introduction services relief to, usually in conjunction with an offer to sophisticated investors/wholesale clients, raise up to $5 million from a maximum of 20 retail clients in any 12 month period (subject to the continuation of, and compliance with, ASIC's relief).

Outline of submission on Consultation Paper 357 (CP 357)

5 As IMA is proposing, as part of its offering (and subject to ASIC's continuation of the relief), to operate a business introduction service, rather than being an existing operator, a number of the proposal questions in CP 357 are not applicable for IMA. Accordingly, IMA has made submissions on those matters on which it is able to comment or which are relevant to it.

[redacted]

Allowing the relief for Ch 6D securities to expire

Proposal	Submission
C1Q1 Do you agree with our proposal to allow the relief in relation to Ch 2L and Ch 6D to sunset? Why or why not?	IMA does not agree with ASIC's proposal and submits that the existing business introduction services relief in Ch 2L and Ch 6D should continue. For the reasons explained below, IMA disagrees with ASIC's contention, and justification for the proposed cessation of the relief, namely that the business introduction services relief is no longer necessary as a result of the CSF regime. IMA submits that the business introduction services relief attracts a different segment of the issuer market compared to the CSF regime and cessation of the relief will not increase the utilisation of the CSF regime (which has had limited take up to date). Further, the business introduction services relief has been successfully operating for over 20 years and IMA is not aware of any significant consumer harm or regulatory concerns which justify the cessation of such relief. In addition, while Class Order 02/273 requires operators to notify ASIC of publications, IMA is concerned that uncertainty with the application of, and likely circumstances of non-compliance with, this requirement has probably resulted in ASIC having incomplete information regarding the extent of offers relying on the business introduction services relief. Accordingly, IMA recommends the extension of the relief for companies, with entities relying on relief required to provide usage information to ASIC (as per ASIC's proposal for schemes). This will provide ASIC with accurate information as to the extent of companies relying on the relief and enable ASIC to better assess the effectiveness and prevalence of the business introduction service relief.
C1Q3 Will our proposal significantly impede the ability of companies to raise funds? If so, please explain why the CSF regime is not an appropriate alternative for raising funds	IMA considers the cessation of the business introduction services relief will significantly impede the ability of some companies to raise funds. IMA's analysis indicates a company seeking to raise capital from retail investors under the business introduction services relief will also be seeking to raise capital from sophisticated investors under the same offer via the same offer document. In contrast to the business introduction services relief, the CSF regime is restrictive and a large number of companies are unable to satisfy the various conditions imposed on CSF offers or find such conditions impede the successful raising of capital, such as the following conditions: (a) investment companies being ineligible to participate in the CSF regime;

Proposal	Submission
	(b) CSF offers being limited to ordinary shares only; (c) companies must have less than $25 million in consolidated assets and annual revenue; (d) retail investors being subject to an investment cap of $10,000 per annum in any 12 month period; and (e) the audit requirement which applies where more than $3 million is raised through CSF offers. Further, the prescriptive content of a CFS offer document and the inclusions of amounts raised from sophisticated investors under a CSF offer in the CSF issuer cap, means the CSF regime is not conducive to raising capital from sophisticated investors (where an issuer seeks to maximise the capital raised from retail investors). Accordingly, a company seeking to raise funds from sophisticated investors, as well as from retail investors under a CSF offer, will need to prepare separate offer documents which increase the cost of raising capital. Similarly, the significant expense of complying with the various conditions and requirements of the CSF regime means the cost of raising capital under the CSF regime is considerably higher than raising capital under the business introduction services relief. IMA's research indicates the typical cost to an issuer of a CSF offer is 6% of capital raised plus establishment fee of $5,000 - $10,000, compared to the fee charged by business introductions services relief operators of approximately $10,000. Assuming a capital raising of say $2 million this would be (if successful) a price saving of $120,000 under the business introduction services relief scenario. In addition, the considerable upfront and ongoing costs of being a CSF intermediary will preclude business introduction service operators from converting to the CSF regime. Rather the outcome of ceasing the business introduction services relief will be that most business introduction operators will restrict their activities to assisting companies to raise funds from sophisticated investors (resulting in the loss of a valuable avenue for companies raising funds from a limited number of retail investors to the detriment of retail investors who wish to participate in such offers).
C1Q4 Will our proposal have a significant impact on the ability of persons to sell securities in reliance on the relief	Yes. As ASIC's proposal is to cease the business introduction services relief for companies, companies will not be able to raise capital in reliance on the relief as there will be no relief and the CSF regime may not comfortably accommodate these particular companies.

Proposal	Submission
C1Q4 If the relief for Ch 6D securities is extended (which is not our current proposal), should it only be available for companies or offers that are not eligible to rely on the CSF regime? Please provide reasons for your response	IMA supports the extension of the business introduction services relief for companies. IMA submits the business introduction services relief has provided a successful, valuable and low cost avenue for raising capital from retail investors for over 20 years with minimal, if any, instances of consumer harm. IMA proposes the relief should initially be subject to review by ASIC after 3 to 5 years, by which time ASIC should have accurate data as to the extent of offers undertaken under the relief. This will enable ASIC to assess the effectiveness and continued need for the relief and either continue the relief on an ongoing basis or cease the relief. IMA does not support an extension of the business introduction services relief only to those companies not eligible to rely on the CSF regime. It is not clear how this restriction would operate given most of the requirements or conditions of the CSF regime can be complied with by a company (i.e. $10,000 cap, audit requirement, ordinary shares, director place of residence, etc), there is just a considerable cost or administrative burden in doing so. If ASIC's proposal is that an extended business introduction services relief would only apply to investment companies or companies with an assets and annual revenue caps of more than $25 million, IMA submits this would be too limited and render the business introduction services relief largely ineffective. IMA submits that the business introduction services relief should be available to any company which satisfies the requirement of the relief.

Extending the relief for scheme interests

Proposal	Submission
C2Q1 Do you agree with this proposal? Why or why not	IMA agrees with ASIC's proposal to extend the business introduction services relief for schemes. However, IMA submits that such relief should not permanently expire after three years. Rather, the relief should continue for 3 to 5 years, by which time ASIC should have accurate data as to the extent of offers undertaken under the relief. This will enable ASIC to determine the effectiveness and continued need for the relief and either continue the relief on an ongoing basis or cease the relief. While IMA considers a majority of capital raisings in reliance on the business introduction services relief are undertaken by companies rather than schemes, IMA's research demonstrates an increasing number of schemes are relying on the relief. Therefore, the

Proposal	Submission
	continuation of the relief for schemes is necessary and warranted. Further, as the business introduction services relief has been operating effectively for over 20 years and provides a valuable source of capital raising, IMA considers there is no justification for ASIC's proposal to cease the relief in 2025. In relation to ASIC's proposal for, from 1 April 2022, all people relying on the relief to provide usage information to ASIC, IMA notes that ASIC has not articulated what 'usage information' is referring to. For business introduction operators and publishers, IMA proposes that, from 1 April 2022, they advise ASIC of their existence and, on an annual basis, they provide ASIC with information of how many business introduction services relief offers they facilitated or published for the previous year and whether the offer was undertaken by a company or scheme. This information can be cross-referenced by ASIC with the notifications made by issuers who are relying on the relief. This information would assist ASIC with future policy development and to monitor the prevalence and effectiveness of the business introduction services relief. Conversely, if ASIC's intention is that a business introduction operator should advise ASIC each time it assists a scheme (or company) make an offer pursuant to the relief, IMA does not support such proposal. IMA submits that such requirement would be administratively burdensome and also unnecessary and duplicitous as the issuer relying on the relief would also be notifying ASIC. IMA also agrees with ASIC's proposal to revise the relief instrument to correct drafting errors and update legislative references. In conjunction with updating the relief instrument, IMA proposes that ASIC also update Regulatory Guide 129 as it has ceased to provide effective guidance as the content is outdated.

Clarifying that the design and distribution obligations apply

Proposal	Submission
C3Q1 Do you agree with this proposal? Why or why not	IMA does not agree with ASIC's proposal. Conversely, IMA submits that ASIC should clarify that the design and distribution obligations do not apply to offers made under the relief. The business introduction services relief provides relief for companies and scheme operators from various provisions in Ch 2L, Ch 6D and Part 7.9 including the requirements to prepare regulated fundraising documents such as a prospectus or PDS. This relief was granted to enable issuers to raise a limited amount of capital from a limited number of

Proposal	Submission
	retail investors in a cost effective manner without the administrative and regulatory burden and expense which would apply if the relief did not exist and issuers had to comply with these provisions. IMA submits that requiring issuers, operators and publishers (where engaging in retail product distribution conduct) to comply with the design and distribution obligations for offers under the business introduction services relief is contrary to the purpose of the relief which seeks to facilitate such activity without the regulatory and cost burden that would otherwise apply (and subject to the conditions of the relief). IMA considers applying the design and distribution obligations to business introduction service offers would impose an unreasonable administrative and cost burden on issuers, operators and publishers which significantly outweighs any potential consumer benefit, having regard to the limited scope of offers permitted by the relief, specifically, that an issuer is limited to issuing interests to a maximum of 20 retail investors in any 12 month period. IMA notes the design and distribution obligations do not apply to most offers of fully-paid ordinary shares. In the event ASIC does not agree with IMA's proposal that the design and distribution obligations not apply to offers under the business introduction services relief, IMA recommends that ASIC confirm that offers of fully-paid ordinary shares (excluding by investment companies or ordinary shares which will convert to preference shares) under the business introduction services relief are not subject to design and distribution obligations, which reflects the current legislative position.

We appreciate ASIC's consideration of IMA's submission.

Yours faithfully

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McCullough Robertson