



ASIC

Australian Securities & Investments Commission

27 September 2016

Ms Tanja Cvijanovic
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
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Andrew Fawcett
Senior Executive Leader, Strategic Policy

By email: tanja.cvijanovic@pmc.gov.au

Dear Ms Cvijanovic

ASIC class order relief for foreign financial services providers (FFSPs)

I am writing to the Office of Best Practice Regulation (**OBPR**) regarding the following Australian Securities and Investments Commission (**ASIC**) Class Orders:

- (a) [CO 03/1099] *UK regulated financial service providers*;
- (b) [CO 03/1100] *US SEC regulated financial service providers*;
- (c) [CO 03/1101] *US Federal Reserve and OCC regulated financial service providers*;
- (d) [CO 03/1102] *Singapore MAS regulated financial service providers*;
- (e) [CO 03/1103] *Hong Kong SFC regulated financial service providers*;
- (f) [CO 04/829] *US CFTC regulated financial services providers*; and
- (g) [CO 04/1313] *German BaFin regulated financial service providers* (collectively, **the FFSP Instruments**).

Effect and purpose of the FFSP instruments

The FFSP Instruments exempt certain FFSPs from the requirement to hold an Australian financial services licence when providing financial services to Australian wholesale clients.

The original policy rationale for the FFSP Instruments was to address the duplicated regulatory burden arising from compliance with Australia's regulatory regime where FFSPs were already subject to sufficiently equivalent regimes in their home jurisdictions, with the aim of attracting additional investment and liquidity to Australian markets.

Temporary extension of the FFSP Instruments

Per the *Legislative Instruments Act 2003*, the FFSP Instruments had been scheduled to sunset between 1 October 2016 and 1 April 2017. However, it has been decided that the FFSP Instruments are to be temporarily remade without significant amendment to temporarily extend the class order relief for 24 months. This decision has been made to ensure that ASIC has the opportunity to consider all relevant information that may shape our proposals – in

particular, the findings of the following external reviews and inquiries that have the potential to affect our current relief settings:

- the implementation of recommendations made by the Financial System Inquiry (Murray report) relating to competition, including the introduction of a competition mandate for ASIC and a review into the state of financial sector competition;
- the implementation of recommendations made by the ASIC Capability Review panel relating to ASIC's data analytics capabilities, including efforts to facilitate data collaboration among peer regulators; and
- any further findings to be made by the International Organization of Securities Commissions (IOSCO) Task-Force on Cross-Border Regulation to better facilitate cross-border regulation.

ASIC certifies that the FFSP instruments are operating effectively and efficiently, and that therefore a Regulation Impact Statement is not required for this regulation to be temporarily remade.

The certification has been informed by targeted consultation with stakeholders. The four stakeholder responses were supportive of our proposal to temporarily remake the FFSP Instruments on the understanding that ASIC would undertake comprehensive consultation on any proposals to amend the relief terms during the extension period.

I acknowledge that OBPR will publish this letter for transparency purposes.

If you have any queries about this advice, please contact Alan Worsley on (02) 9911 2085, or alan.worsley@asic.gov.au.

Yours sincerely,



Andrew Fawcett
Senior Executive Leader
Strategic Policy