



**ASIC**  
Australian Securities &  
Investments Commission

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17 September 2018

Ms Tanja Cvijanovic  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet  
1 National Circuit  
BARTON ACT 2600

By email: [tanja.cvijanovic@pmc.gov.au](mailto:tanja.cvijanovic@pmc.gov.au)

Dear Ms Cvijanovic

### **ASIC's licensing relief for foreign financial services providers**

I am writing to the Office of Best Practice Regulation (**OBPR**) about the following Australian Securities and Investments Commission (**ASIC**) legislative instruments in relation to Australian financial services (**AFS**) licensing relief for certain foreign providers of financial services (**FFSPs**) to wholesale clients:

- (a) ASIC Corporations (Repeal and Transitional) Instrument 2016/396;
- (b) ASIC Corporations (Foreign Financial Service Providers—Limited Connection) Instrument 2017/182; and
- (c) ASIC Corporations (CSSF—Regulated Financial Services Providers) Instrument 2016/1109 (collectively, the FFSP Relief Instruments).

The FFSP Relief Instruments are due to expire on 28 September 2018.

#### Extending the time for the expiring of each of the FFSP Relief Instruments

To assist ASIC engaging in further consultation on the FFSP instruments ASIC considers that each of the three FFSP instruments should be extended for 12 months. The extension of the period of the relief will allow ASIC to review industry and other relevant stakeholders' feedback on our proposal to repeal the FFSP Relief Instruments and require FFSPs to hold a modified AFS licence to continue to provide financial services to Australian wholesale clients contained in ASIC Consultation Paper 301 *Foreign financial services providers (CP 301)*. We received 36 submissions on CP 301. We also anticipate undertaking further engagement with stakeholders on the implications of our proposals based on the feedback we have received on CP 301.

ASIC certifies that each of the FFSP Relief Instruments is operating effectively and efficiently, and that therefore a Regulation Impact Statement (RIS) is not required for each of the FFSP Relief Instruments to be remade for a further 12 months. This certification is provided on the basis that extending the relief will allow ASIC time to further consult with industry and other relevant stakeholders on the detailed proposals it has released in CP 301.

ASIC anticipates that we will need to prepare a RIS if its proposals under CP 301 are adopted.

#### Effect and purpose of the FFSP Relief Instruments

ASIC Corporations (Repeal and Transitional) Instrument 2016/396 and ASIC Corporations (Foreign Financial Service Providers—Limited Connection) Instrument 2017/182 temporarily remade, for a period of 24 months until 28 September 2018, eight<sup>1</sup> separate class orders that exempted FFSPs from the requirement to apply for and hold an AFS licence to provide financial services to Australian wholesale clients. In 2016 and 2017, these class orders were temporarily extended without significant amendments to allow us to conduct a review of the settings underlying the relief and ensure that we had the opportunity to consider all relevant information that may shape our policy proposals.

ASIC Corporations (CSSF—Regulated Financial Services Providers) Instrument 2016/1109 (CSSF Instrument) provides a licensing exemption until 28 September 2018 similar to the exemption provided under ASIC Corporations (Repeal and Transitional) Instrument 2016/396, to FFSPs providing financial services to Australian wholesale clients where they are regulated by Commission de Surveillance du Secteur Financier (the Commission for the Supervision of the Financial Sector) of Luxembourg. When ASIC issued the CSSF Instrument this was on the basis that the relief would apply for the same period as the relief made by ASIC under Corporations (Repeal and Transitional) Instrument 2016/396.

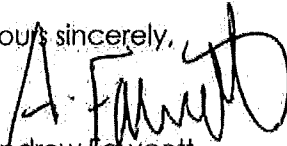
#### Previous temporary extension of the FFSP Relief Instruments

ASIC previously extended the expiry of the relief we provided under the eight separate class orders and issued the relief in the CSSF Instrument with an expiry date of 28 September 2018 to allow ASIC time to undertake consultation on the FFSP instruments. During the temporary extension period ASIC issued Consultation Paper 268 *Licensing relief for foreign financial service providers with a limited connection to Australia* (CP 268). Although ASIC received some submissions on the proposals in CP 268 we considered that we need more detailed information on the implications of the proposals for changes to the relief available to FFSPs. We engaged in further consultation on the FFSP relief in June – July 2018 on our proposals contained in CP 301.

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

If you have any queries about this advice, please contact [REDACTED], or [REDACTED].

Yours sincerely,

  
Andrew Fawcett  
Senior Executive Leader  
Strategic Policy

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<sup>1</sup> [CO 03/1099] *UK regulated financial service providers*; [CO 03/1100] *US SEC regulated financial service providers*; [CO 03/1101] *US Federal Reserve and OCC regulated financial service providers*; [CO 03/1102] *Singapore MAS regulated financial service providers*; [CO 03/1103] *Hong Kong SFC regulated financial service providers*; [CO 04/829] *US CFTC regulated financial services providers*; [CO 04/1313] *German BaFin regulated financial service providers*; and [CO 03/824] *Licensing relief for foreign entities with limited connection to Australian wholesale clients*.