

Relief for Foreign Financial Service Providers

Regulation Impact Statement
The Commonwealth Treasury

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Executive Summary

A person who carries on a financial services business in Australia must hold an Australian Financial Services Licence (AFSL) unless an exemption applies.¹ Since 2003, licensing relief has been provided to Foreign Financial Service Providers (FFSPs) servicing wholesale clients, to minimise regulatory burdens where the FFSP is already regulated by a sufficiently equivalent regulatory regime or has only a limited connection to Australia.² This long-standing relief has facilitated cross-border financial services, provided Australians with access to more competitive pricing and increased the diversity of investments available.³

With effect from 31 March 2020, the Australian Securities and Investments Commission (ASIC) repealed and replaced this relief with two new forms of relief: the 'foreign AFSL regime' and 'funds management relief.' ASIC's primary concern was that the repealed relief did not provide sufficient regulatory oversight.⁴

In the 2021-22 Budget, the Government announced it would consult on options to restore the well-established relief and to fast-track licensing processes for FFSPs establishing more permanent operations in Australia. On 9 July 2021, Treasury released a public consultation paper on these options.⁵ Following stakeholder feedback, these options were further refined into the options considered in this paper.

Option 1 maintains ASIC's new relief, which does not address industry concerns that it could lead to significant disruption for FFSPs as transitional arrangements end. Option 2 restores the repealed relief, however, would not address concerns of ASIC regarding the lack of sufficient regulatory oversight. The preferred option, option 3, legislates new forms of relief that seek to better balance these concerns – minimising the regulatory burden on FFSPs while ensuring sufficient regulatory oversight to maintain confidence in the Australian financial system.

This option will introduce:

- the comparable regulator exemption, which exempts FFSPs authorised to provide financial services in a comparable regime from the requirement to be licensed in Australia when dealing with wholesale clients;
- the professional investor exemption, which exempts FFSPs that provide financial services from outside Australia to professional investors from the requirement to be licensed in Australia; and
- an exemption from the fit-and-proper person assessment to fast-track the licensing process for FFSPs authorised to provide financial services in a comparable regulatory regime when applying for an AFSL to deal with wholesale clients.

Option 3 is the culmination of considering stakeholder responses to the initial consultation paper and responses to the exposure draft legislation. The success of this reform will be measured by the engagement of FFSPs in the Australian market, which is expected to grow, and the continued confidence in the Australian financial system. This is expected to be the first tranche of reform to implement the Government's budget announcement, with further measures expected to be progressed in due course.

¹ *Corporations Act 2001*, s 911A(1).

² ASIC Class Order (CO) 03/824; CO 03/1099; CO 03/1100; CO 03/1101; CO 03/1102; CO 03/1103; CO 04/829; CO 04/1313.

³ Australian Financial Markets Association, submission to Treasury's consultation paper, 30 July 2021, pg 4.

⁴ ASIC, *RIS - Regulatory framework for foreign financial service providers*, 19 March 2020.

⁵ Treasury, *Relief to Foreign Financial Service Providers consultation paper*, 9 July 2021.

Key Terms

AFSL	Australian Financial Services Licence
ASIC	Australian Securities and Investments Commission
AFMA	Australian Financial Markets Association
CO	Class Order
FFSP	Foreign Financial Service Provider
IOSCO	International Organization of Securities Commissions
OBPR	Office of Best Practice Regulation
RIS	Regulation Impact Statement

All sections, divisions and parts are in reference to the Corporations Act 2001 unless otherwise specified.

Background

What is an Australian Financial Services Licence (AFSL)?

Financial services businesses that carry on their business in Australia must hold an Australian Financial Services Licence (AFSL) unless relief is granted by ASIC or an exemption in the law applies. The AFSL regime is designed to regulate financial services being provided within Australia and into Australia from overseas.

AFSL holders have legal obligations under the *Corporations Act 2001* (the Act)⁶ and their applicable AFSL conditions.⁷ These obligations apply to the provision of financial services to retail clients, wholesale clients, and professional investors.⁸

What is a Foreign Financial Service Provider (FFSP)?

FFSPs are financial service providers based in a foreign jurisdiction. FFSPs that carry on a financial services business in the Australian jurisdiction must have an AFSL, unless ASIC licensing relief or a legal exemption applies.

Australia has taken a broad approach to its licensing jurisdiction in respect of FFSPs. FFSPs are taken to be carrying on a financial services business in this jurisdiction if they engage in conduct that is intended to 'induce' people in Australia to use the financial services or products it provides.⁹ Conduct that amounts to inducing could include mass marketing campaigns.¹⁰

Many FFSPs already comply with similar regulatory obligations to the AFSL regime in their home jurisdiction. For these FFSPs, AFSL obligations would impose duplicate regulatory obligations. This can increase barriers to entry for FFSPs seeking to do business in Australia.

What is the fit-and-proper person assessment?

Currently, to obtain an AFSL, there is a requirement that ASIC must be satisfied that an applicant is a fit and proper person to provide the financial services covered by the licence.¹¹ This requirement is satisfied if ASIC has no reason to believe that any matters set out in the legislation in relation to the requirement, apply to the applicant.¹²

This requirement imposes significant documentation demands on applicants as a range of background documents and criminal records are required for all relevant persons. Relevant persons include any officers of a body corporate applicant, any partners or senior managers of a partnership applicant, any trustees or senior managers

⁶ *Corporations Act 2001*, ss 912A-912F

⁷ See ASIC Pro Forma 209 [Australian financial services licence conditions](#)

⁸ Industry refers to professional investors as institutional investors.

⁹ *Corporations Act 2001*, s 911D.

¹⁰ See ASIC Regulatory Guide 121 [Doing financial services business in Australia](#), RG 121.52.

¹¹ *Corporations Act* s 913B.

¹² *Corporations Act* s 913BA.

of a trust applicant, any controllers of the applicant – and if the controllers are corporations or partnerships, any senior managers, or partners of those controllers.¹³

In determining whether a person is fit-and-proper, ASIC must have regard to matters including relevant persons 10-year criminal history, bankruptcy, and any disqualification orders.¹⁴ To decide on these types of matters, ASIC requires applicants to provide relevant proof documents from all relevant persons. FFSPs may face additional difficulty collecting these proof documents due to the vagaries of their home regulatory systems, for example, some jurisdictions do not provide individuals with criminal record checks on application.

Previous ASIC relief

Since 2003, ASIC has provided two key forms of licensing relief to FFSPs. ‘Sufficient equivalence’ relief to avoid duplicative regulation of FFSPs providing services to wholesale clients and ‘limited connection’ relief where an FFSP was deemed to be carrying on a financial services business within Australian jurisdiction only because it was engaging in conduct intended to induce Australian wholesale clients.

Table 1: Summary of previous ASIC relief	
Sufficient Equivalence	<ul style="list-style-type: none"> • Exempts FFSPs from the requirement to hold an AFSL • Available to FFSPs regulated in a jurisdiction with a regulatory regime deemed by ASIC to be ‘sufficiently equivalent’ to Australia’s regime • Applies where FFSP regulated by certain regulators in the United Kingdom, the United States, Singapore, Hong Kong, Germany, and Luxembourg • Allows certain financial services and products (depending on jurisdiction) to be offered to wholesale clients in Australia (see Appendix C) • Requires compliance with conditions including assisting ASIC with information requests • Self-assessment of eligibility with ASIC notification required
Limited Connection	<ul style="list-style-type: none"> • Exempts FFSPs from the requirement to hold an AFSL • Available to FFSPs from any jurisdiction deemed to be ‘carrying on a financial services business’ in Australia only because the FFSP engages in conduct intended to induce Australian wholesale clients to use its financial services¹⁵ • Self-assessment of eligibility, no notification or compliance obligation requirements
AFSL application process	<ul style="list-style-type: none"> • No relief from fit-and-proper person assessments

Repeal of ASIC relief

From 31 March 2020, ASIC repealed the long-standing sufficient equivalence and limited connection relief, citing its concerns regarding insufficient supervisory and enforcement powers, improper relief use and unfair competition advantages for FFSPs. As ASIC explained in their regulation impact statement (RIS), in making this decision it considered the existing relief no longer struck the appropriate balance between access to the competitive global market and minimising regulatory burdens while maintaining confidence in the Australian financial system.¹⁶

¹³ *Corporations Act* s 913BA.

¹⁴ *Corporations Act* s 913BB.

¹⁵ *Corporations Act* s 911D.

¹⁶ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, para 2.

ASIC was concerned that while some FFSPs notified ASIC of their misconduct and compliance issues, there may be others that were not notifying ASIC. ASIC's ability to monitor and take appropriate enforcement action was limited when it came to addressing any misconduct with respect to FFSPs. By removing the relief and requiring FFSPs to hold an AFSL or use the narrower new relief, ASIC believed they would have better access to information to identify misconduct and have the enforcement tools needed to address any compliance concerns.¹⁷

ASIC considered that some FFSPs with a substantive presence in Australia may not exit the market, if required to hold an AFSL, however also asserted the cost of holding an AFSL was not a determinative factor in their decision to continue to operate in Australia. Further, ASIC considered to the extent some would leave, others were likely to step into the gap and provide the financial services those exiting FFSPs were providing the Australian market, including domestic financial service providers.¹⁸

ASIC also submitted that the previous relief offered to FFSPs was more generous than the relief offered to Australian financial service providers operating in comparable overseas jurisdictions, and requiring FFSPs to hold an AFSL would better align Australia to other jurisdictions. ASIC was concerned the repealed relief provided FFSPs with a competitive advantage.¹⁹

ASIC's new relief

To replace the repealed relief, ASIC introduced a 'foreign AFSL regime' and the 'funds management relief.' The foreign AFSL regime is a type of relief that allows FFSPs regulated by sufficiently equivalent regimes to apply for a modified form of a standard AFSL to provide its services to Australian wholesale clients. This provides more limited exemption, subjecting FFSPs to most of the licensing obligations of AFSL holders.²⁰ The prescribed regimes and the financial services which may be exempt under a foreign AFSL for each regime are outlined in [Appendix B](#).

Limited connection relief was replaced by the new funds' management relief, which narrows the relief in two key ways: Firstly, narrowing the activities covered by the scope of the relief to funds management services. The rationale for narrowing the scope was to address ASIC's concerns that some FFSPs were taking a broad interpretation of the activities within scope of the relief. Secondly, funds management relief was narrowed to eligible Australian users (certain professional investors) and would no longer apply to a broader set of wholesale investors. In addition, the funds management relief adds new conditions to ensure ASIC has regulatory oversight. For example, notification from FFSPs is a condition to using the relief and allows ASIC to be aware of who is relying on the relief.²¹

¹⁷ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, paras 67-69.

¹⁸ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, paras 74-75.

¹⁹ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, para 78.

²⁰ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, paras 39, 104.

²¹ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, para 127.

Table 2: Summary of new forms of ASIC relief

Foreign AFSL regime	<ul style="list-style-type: none"> • Requires an AFS licence for FFSPs, subjecting them to most AFSL obligations • Available to FFSPs regulated in a jurisdiction with a regulatory regime deemed by ASIC to be ‘sufficiently equivalent’ to Australia’s regime • Certain regulators in the United Kingdom, the United States, Singapore, Hong Kong, Germany, Luxembourg, France, Denmark, Sweden and Ontario, Canada are recognised under the exemption • Allows certain financial services and products (depending on jurisdiction) to be offered to wholesale clients in Australia (see Appendix B) • Must apply to ASIC for relief
Funds management relief	<ul style="list-style-type: none"> • Exempts FFSPs from the requirement to hold an AFSL • Restricted to ‘inducing conduct’ in relation to providing funds management financial services • Available to FFSPs regulated by an IOSCO board member deemed to be ‘carrying on a financial services business’ in Australia only because it is engaging in conduct that was intended to induce certain Australian professional investors • FFSPs must agree to comply with conditions to rely on the relief • ASIC notification required
AFSL application process	<ul style="list-style-type: none"> • No relief for fit-and-proper person assessments

Industry reaction and Government announcement to restore relief

In the wake of ASIC’s decision to repeal the previous relief, industry voiced strong concerns that the new regulatory settings would place significantly higher levels of regulatory burden on FFSPs. The requirement to apply for relief and extensive reporting obligations (such as breach reporting) were seen as particularly burdensome.

These groups, which included peak bodies representing FFSPs, law firms and global investment banks, warned that the increased regulatory burden of operating in Australia may deter FFSPs from entering Australian markets, or risk current FFSP entrants exiting altogether. This may decrease competition and lower the diversity of asset classes and services available to Australian investors.

Responding to industry concerns, as part of the 2021-22 Budget, the Government announced a Global Talent Attraction package that included a commitment to consult on options to: restore the previously well-established regulatory relief limited to dealing with wholesale clients or professional investors for FFSPs who are licensed and regulated in jurisdictions with comparable financial services regimes; and create a fast-tracked licensing process for FFSPs who wish to establish more permanent operations in Australia.

Transitional arrangements

Currently, ASIC has transitional arrangements in place for the sufficient equivalence and limited connection relief. These transitional arrangements allow FFSPs that currently rely on those forms of relief to continue relying on it until 31 March 2023. At the end of the transitional arrangements, the current law would require FFSPs to apply for either a foreign AFSL, a standard AFSL, or rely on the funds management relief, or another type of relief, if available.

1. What is the problem you are trying to solve?

Since 2003, Australia has provided licensing relief to FFSPs. This relief has facilitated cross-border financial services, increased market competition, lowered costs, and improved access to a greater diversity of investments and sources of financing for Australian businesses.²²

During this time, the Australian financial services market has grown to be valued at approximately \$10.9 trillion as at June 2021.²³ Australia has also accumulated the fourth largest pool of retirement savings in the world, with total assets of \$3.4 trillion as at the end of the September 2021 quarter.²⁴

With effect from 31 March 2020, ASIC repealed the long-standing relief with intention to replace it (after a transitional period) with new relief. This new relief increases regulatory burdens and may see FFSPs exiting the Australian market.²⁵ ASIC estimated the impact of repealing existing relief would be minor. However, industry warn of more significant impacts, noting Australia is not a major financial market and that many FFSPs will exit the market.²⁶

FFSPs provide access to niche markets, specialised advice, and greater investment diversity, which increases investor choice. Quantification of these benefits is not possible as it would require an assessment of which investment strategies are likely to be the best in the future for a wide set of different wholesale and professional investors. However, Australian businesses and investors are best placed to decide whether an FFSP's services will benefit them. Given the \$10.6 trillion size of the Australian financial services market, even exceedingly small reductions in financial performance would have a significant cost.²⁷

ASIC repealed the previous licensing relief and replaced it with the foreign AFSL and funds management relief primarily due to concerns there was insufficient regulatory oversight. The previous limited connection relief did not require any notification to ASIC and was being interpreted more broadly than ASIC had intended. The previous sufficient equivalence relief provided ASIC with insufficient tools, such as the power to require those relying on relief to give ASIC reasonable assistance.

While there is a case for a form of licensing relief that equips ASIC with a more expansive enforcement toolkit, there is little evidence to suggest a need for regulation to the level that has been introduced. Alternative options could provide for greater regulatory oversight while minimising regulatory burdens to minimise FFSPs exiting Australia.²⁸

Some FFSPs are already complying with regulatory requirements that are comparable to the AFSL regime in their home jurisdiction. For these FFSPs, the obligations of the new ASIC relief are considered overly burdensome and

²² Australian Private Equity & Venture Capital Association Limited, [Submission to consultation paper 301](#), 3 August 2018, pg 2.

²³ Roy Morgan, [Australian market for financial services grows 13.2% to nearly \\$10.9 trillion during 2020/21 financial year](#), 17 August 2021.

²⁴ The Association of Superannuation Funds of Australia Limited, [Superannuation Statistics](#), accessed 12/01//2022.

²⁵ As an example, the breach reporting requirements.

²⁶ Australian Financial Markets Association, [Submission to consultation paper 301](#), 3 August 2018, page 2

²⁷ Global Business and Talent Acquisition Taskforce, [Financial Services](#), accessed 26/03/2021.

²⁸ Based on statements made in the submissions to Treasury by: New Zealand Financial Markets Association, 28 July 2021; Australian Financial Markets Association, 30 July 2021; Minter Ellison, 30 July 2021; Piper Alderman, 30 July 2021; Herbert Smith Freehills, Law Council of Australia, 3 August 2021.

duplicative. Removing duplicative regulation through deference to regulators with comparable regulatory standards is recognised internationally as good practice.²⁹

In addition to restoring and improving licencing relief for FFSPs, there is also a need to consider ways to speed up the AFSL application process for those FFSPs that wish to hold an AFSL. Stakeholders report the average wait time to obtain an AFSL as nine months, with no guarantee that an AFSL can be obtained within 12 months.³⁰ Included in that time cost is the time associated with obtaining criminal history and bankruptcy checks, which are not readily available in some jurisdictions as they are in Australia.

For example, one stakeholder reports that in the United States, the individual must have its fingerprints read to have access to some of these required documents.³¹ Further, for FFSPs, the fit and proper person test extends to a significant number of persons within global structures. Relevant persons for FFSPs may have lived in many jurisdictions increasing the burden for obtaining the proof documents in each.³² Speeding up the AFSL application process for FFSPs will further reduce barriers for new entrants to Australia and help attract foreign talent that work with or are employed by FFSPs.

²⁹ International Organisation of Securities Commissions, *Good Practices on Processes for Deference*, June 2020.

³⁰ Based on statements made in the submissions to Treasury by: Ashurst, 29 July 2021; Australian Financial Markets Association, 30 July 2021.

³¹ The Alternative Investment Management Association, 29 July 2021.

³² The Alternative Investment Management Association, 29 July 2021.

2. Why is Government action needed?

Licensing relief

There is a compelling case for Government intervention on this issue to achieve a better balance between minimising regulatory burdens on FFSPs and ensuring sufficient regulatory oversight. These regulatory settings have the capacity to affect the diversity of investments available, the competitiveness of pricing for financial services, the performance of superannuation funds and foreign investment into Australia.³³

Government intervention will allow for relief that provides for greater regulatory oversight than the repealed ASIC relief, while also ensuring the relief is not so restrictive that it reduces the diversity of investments available, the competitiveness of pricing for financial services, and FFSP activity in Australia more generally.

Industry advises the increased burden of operating in Australia under ASIC's new relief has already discouraged significant FFSPs from continuing operations in the Australian market, including global investment banks, foreign market makers and other foreign deposit-taking institutions.³⁴

Government non-action would mean allowing a regulatory regime with far greater obligations than has been in place in Australia since 2003 to become the regulatory environment for FFSPs seeking to do business in Australia, following the end of the transitional arrangements. This would reduce FFSP offerings in Australia and access to FFSP services by Australian businesses and investors. The Government is well-placed to not only restore the accessibility of Australia's financial services market to the globe, but also implement reforms that enhance access while maintaining adequate regulatory oversight.

Fast-tracking the licensing process

The licensing process is largely dictated by the requirements of the Act. This includes the prescriptive statutory requirements for ASIC to conduct fit-and-proper person assessments. These assessments are onerous and seek to establish whether managers and controllers of the applicant for the AFSL are fit-and-proper, requiring documentation regarding criminal records for the previous 10 years and backgrounds of all the relevant persons.

Without Government intervention to relieve regulated FFSPs from the requirement to undergo fit and proper testing, ASIC will continue to make assessments as required under law even where the FFSP is regulated by a comparable regulatory regime and the services are being provided to wholesale clients. Providing the relevant documentation to satisfy ASIC can be a time intensive process and particularly difficult for FFSPs from jurisdictions which do not have perfectly analogous systems for processes such as criminal background checks.

It is important for these barriers to be reduced, particularly in circumstances where comparable regulators have assessed an FFSP to a similar fit and proper standard, so that FFSP permanency in Australia is encouraged.

³³ Minter Ellison, [Submission on ASIC consultation paper 301](#), 31 July 2018, sub-para 2(a).

³⁴ Based on statements made in the submissions to Treasury by: New Zealand Financial Markets Association, 28 July 2021; Australian Financial Markets Association, 30 July 2021; Minter Ellison, 30 July 2021; Piper Alderman, 30 July 2021; Herbert Smith Freehills; Law Council of Australia, 3 August 2021

3. Options considered

3.1 Option 1 – Maintain ASIC’s new relief

Under Option 1, ASIC’s new relief would be maintained. This option would leave the current arrangements in place, meaning FFSPs currently relying on sufficient equivalence and limited connection relief would need to apply for either a foreign AFSL, standard AFSL or rely on funds management relief from 1 April 2023 (the end of transitional arrangements).

Table 3: Summary of new forms of ASIC relief

Foreign AFSL regime	<ul style="list-style-type: none">• Issues an AFS licence for FFSPs, subjecting them to most AFSL obligations• Available to FFSPs regulated in a jurisdiction with a regulatory regime deemed by ASIC to be ‘sufficiently equivalent’ to Australia’s regime• Certain regulators in the United Kingdom, the United States, Singapore, Hong Kong, Germany, Luxembourg, France, Denmark, Sweden and Ontario, Canada are recognised under the regime• Allows certain financial services and products (depending on jurisdiction) to be offered to wholesale clients in Australia (see Appendix C)• Must apply to ASIC for relief
Funds management relief	<ul style="list-style-type: none">• Exempts FFSPs from the requirement to hold an AFSL• Restricted to ‘inducing conduct’ in relation to providing funds management financial services• Available to FFSPs regulated by an IOSCO board member deemed to be ‘carrying on a financial services business’ in Australia only because it is engaging in conduct that was intended to induce certain Australian professional investors• FFSPs must agree to comply with conditions to rely on the relief• ASIC notification required
AFSL application process	<ul style="list-style-type: none">• No relief for fit-and-proper person assessments

Fast-tracking the licence process

The licence process would not be altered under this option. All FFSPs applying for a standard AFSL would need to apply the existing law and have fit-and-proper person assessments conducted by ASIC.

3.2 Option 2 – Restore ASIC’s previous relief

Under Option 2, the new ASIC relief would be repealed, and the previous sufficient equivalence and limited connection reliefs would be introduced into the primary law and replicate the relevant ASIC instruments.

Table 4: Summary of repealed forms of ASIC relief

Sufficient Equivalence	<ul style="list-style-type: none"> • Exempts FFSPs from the requirement to hold an AFSL • Available to FFSPs regulated in a jurisdiction with a regulatory regime deemed by ASIC to be ‘sufficiently equivalent’ to Australia’s regime • Applies where regulated by certain regulators in the United Kingdom, the United States, Singapore, Hong Kong, Germany, and Luxembourg • Allows certain financial services and products (depending on jurisdiction) to be offered to wholesale clients in Australia (see Appendix C) • Requires compliance with conditions including assisting ASIC with information requests • Self-assessment of eligibility, with ASIC notification required
Limited Connection	<ul style="list-style-type: none"> • Exempts FFSPs from the requirement to hold an AFSL • Available to FFSPs from any jurisdiction deemed to be ‘carrying on a financial services business’ in Australia only because the FFSP engages in conduct intended to induce Australian wholesale clients to use its financial services³⁵ • Self-assessment of eligibility, no notification or compliance obligation requirements
AFSL application process	<ul style="list-style-type: none"> • No relief from fit-and-proper person assessments

Fast-tracking the licence process

The licence process would not be altered under this option. All FFSPs applying for a standard AFSL would need to apply the existing law and have fit-and-proper person assessments conducted by ASIC.

3.3 Option 3 – Legislate new relief including fast-tracking of licensing

Option 3 would amend the Act, regulations and create other legislative instruments to introduce:

- The comparable regulator exemption;
- The professional investor exemption; and
- The fit-and-proper person assessment exemption.

³⁵ *Corporations Act* s 911D.

Table 5: Summary of relief under option 3

Comparable regulator exemption	<ul style="list-style-type: none"> • Exempts FFSPs from the requirement to hold an AFSL • Allows FFSPs to offer all financial services they are authorised to offer in their home jurisdiction to wholesale clients in Australia • Available to FFSPs regulated by a regulator of a comparable regulator regime. Initially this will include certain regulators in the United Kingdom, the United States, Singapore, Hong Kong, Germany, Luxembourg, France, Denmark, Sweden and Ontario, Canada • Requires the FFSP to comply with conditions • Includes powers for ASIC to oversee and enforce compliance with the relief, including civil penalties for breaching conditions, the power to cancel reliance on the exemption or, alternatively, impose new conditions • Self-assessment of eligibility, with ASIC notification required
Professional investor exemption	<ul style="list-style-type: none"> • Exempts FFSPs from the requirement to hold an AFSL • Allows FFSPs, located in any jurisdiction, to offer all financial services from outside of Australia to professional investors • Requires the FFSP to reasonably believe that by providing the financial services they are not contravening any laws that apply in the jurisdiction of the FFSP's home office, principal place of business or where they are providing the services from • Requires the FFSP to comply with conditions • Includes powers for ASIC to oversee and enforce compliance with the relief, including civil penalties for breaching conditions, the power to cancel reliance on the exemption or, alternatively, impose new conditions • Self-assessment of eligibility, with ASIC notification required
Fit-and-proper person assessment exemption	<ul style="list-style-type: none"> • Exempts FFSPs from fit-and-proper assessments when applying for an AFSL to provide services to wholesale clients • Available to FFSPs regulated by regulators of comparable regulatory regimes, same as the comparable regulator exemption • Part of an AFSL application process

Comparable regulator exemption

The comparable regulator exemption is intended to provide licensing relief like the repealed sufficient equivalence relief. The relief applies to FFSPs that are authorised to provide financial services in a comparable regime when dealing with Australian wholesale clients.

The comparable regulator exemption differs from previous sufficient equivalence relief in the following ways:

- The relief will be situated in the primary law, rather than in subordinate instruments

- The power to decide which regulators are comparable will be vested in the Minister, rather than ASIC, with the Minister required to consider:
 - whether the regulatory regime produces comparable regulatory outcomes
 - whether the regulatory regime is clear, transparent, certain and adequately enforced
 - whether the regulatory regime is broadly consistent with the Objectives and Principles of Securities Regulation developed by IOSCO
 - whether the regulatory regime is adequately enforced
 - whether the regulatory regime is a signatory to the consultation and cooperation standards developed by IOSCO, or alternatively if it has an effective cooperation agreement with ASIC
 - any relevant advice (including any assessment) received from ASIC in relation to the regulatory regime
 - any relevant submissions from any entity in relation to that regulatory regime
- The Minister will be empowered to first consider those already assessed by ASIC as sufficient equivalent under its Foreign AFSL regime as comparable regulators. For a list of these regulators, see [Appendix B](#).
- FFSPs will be able to provide the same financial services they are authorised to provide in their home jurisdiction to Australian wholesale clients rather than having to limit their offering to particular financial services prescribed by ASIC depending on jurisdiction
- Nearly all the conditions imposed under sufficient equivalent relief have been carried through to the comparable regulator exemption. Further, to improve on sufficient equivalence, a new condition requiring the FFSP to give reasonable assistance to ASIC has been added to the comparable regulator exemption.
- ASIC’s enforcement powers will be strengthened in proportion to the relief through the inclusion of civil penalties for breaching conditions, the power to cancel reliance on the exemption or alternatively the imposition of new conditions.
 - ASIC will be able to use these powers where breaches of relevant obligations occur
 - Civil penalties can be imposed against the FFSP entity
 - Condition to notify ASIC of relevant investigations by the comparable regulator

This exemption was formulated with the benefit of consultation with both ASIC and industry following the release of Treasury’s consultation paper in July 2021. It is intended to strike an appropriate balance between minimising regulatory burdens to encourage FFSP entry into the Australian market while ensuring sufficient regulatory oversight to maintain the integrity of Australia’s financial system.

Professional Investor exemption

The professional investor exemption is intended to provide broad relief for FFSPs providing services to professional investors, from outside of Australia. The exemption recognises that Australian professional investors are equipped to protect their own commercial interests, regardless of whether these FFSPs are regulated or licensed overseas.

This exemption builds on the existing professional investor exemption, which provides relief to FFSPs providing certain financial services to professional investor clients.³⁶ During consultation, stakeholders raised the option of

³⁶ see reg 7.6.02AG, notional section 911A(2E) of the Corporations Regulations 2001.

broadening this relief to allow FFSPs to provide all financial services and products to professional investors without the requirement to hold an AFSL.

Broadly, it would allow FFSPs from any jurisdiction (comparably regulated or not) to provide financial services to professional investors where:

1. the FFSP provides the service from a place outside Australia;
2. the FFSP's head office and principal place of business is located at one or more places outside Australia; and
3. the FFSP, in providing the financial services in Australia, does not reasonably believe it is contravening any laws that apply in the FFSP's home office, principal place of business or where they are providing the services from

ASIC may exclude an FFSP from the relief or enforce civil penalties if the following conditions are not complied with:

- the FFSP must notify ASIC within 15 days of its first time using the relief that it is relying on the relief
- the FFSP must assist ASIC with reasonable information requests and comply with its directions
- the FFSP must agree to submit to the non-exclusive jurisdiction of Australian courts and comply with relevant court orders
- the FFSP must disclose to its Australian professional investor clients that it is relying on the exemption to provide the financial services

The exemption will allow for a regulation making power to exclude certain financial services or financial products from being available under this exemption, as well as particular kinds of professional investors.

Fit-and-proper person assessment exemption

Option 3 will exempt FFSPs when applying for an AFSL (or modifying an existing AFSL) from the fit-and-proper person test, if they are already licensed or otherwise authorised in a comparable regulatory regime, and if the AFSL is approved, it is restricted to providing financial services to wholesale investors.³⁷ The intention is to reduce the information FFSPs must provide when applying for an AFSL and encourage FFSPs to establish permanency in Australia.

³⁷ The list of comparable regulators is the same as under the comparable regulator exemption.

3.4 Summary of options considered

Option 1	Option 2	Option 3
<p>Foreign AFSL regime</p> <ul style="list-style-type: none"> Requires an AFS licence for FFSPs, subjecting them to most AFSL obligations Available to FFSPs regulated in a jurisdiction with a regulatory regime deemed by ASIC to be 'sufficiently equivalent' to Australia's regime Certain regulators in the United Kingdom, the United States, Singapore, Hong Kong, Germany, Luxembourg, France, Denmark, Sweden and Ontario, Canada are recognised under the regime Allows certain financial services and products (depending on jurisdiction) to be offered to wholesale clients in Australia (see Appendix C) Must apply to ASIC for relief 	<p>Sufficient equivalence relief</p> <ul style="list-style-type: none"> Exempts FFSPs from the requirement to hold an AFSL Available to FFSPs regulated in a jurisdiction with a regulatory regime deemed by ASIC to be 'sufficiently equivalent' to Australia's regime Applies where regulated by certain regulators in the United Kingdom, the United States, Singapore, Hong Kong, Germany, and Luxembourg Allows certain financial services and products (depending on jurisdiction) to be offered to wholesale clients in Australia (see Appendix B) Requires compliance with conditions including assisting ASIC with information requests Self-assessment with ASIC notification required 	<p>Comparable regulator exemption</p> <ul style="list-style-type: none"> Exempts FFSPs from the requirement to hold an AFSL Allows FFSPs to offer all financial services they are authorised to offer in their home jurisdiction to wholesale clients Available to FFSPs regulated by a regulator of a comparable regulator regime. Initially this will include certain regulators in the United Kingdom, the United States, Singapore, Hong Kong, Germany, Luxembourg, France, Denmark, Sweden and Ontario, Canada Requires the FFSP to comply with conditions Bolstered powers for ASIC to encourage compliance, including civil penalties for breaching conditions, the power to cancel reliance on the exemption or alternative impose new conditions Self-assessment with ASIC notification required
<p>Funds management relief</p> <ul style="list-style-type: none"> Exempts FFSPs from the requirement to hold an AFSL Restricted to 'inducing conduct' in relation to providing funds management financial services Available to FFSPs regulated by an IOSCO board member deemed to be 'carrying on a financial services business' in Australia only because it is engaging in conduct that was intended to induce certain Australian professional investors FFSPs must agree to comply with conditions to rely on the relief ASIC notification required 	<p>Limited connection relief</p> <ul style="list-style-type: none"> Exempts FFSPs from the requirement to hold an AFSL Available to FFSPs from any jurisdiction who were deemed to be 'carrying on a financial services business' in Australia only because the FFSP was engaging in conduct that was intended to induce Australian wholesale clients to use its financial services Self-assessment, no notification or compliance obligation requirements 	<p>Professional investor exemption</p> <ul style="list-style-type: none"> Exempts FFSPs from the requirement to hold an AFSL Allows FFSPs, located in any jurisdiction, to offer all financial services from outside of Australia to professional investors Requires the FFSP to reasonably believe that by providing the financial services they are not contravening any laws that apply in the FFSP's home office, principal place of business or where they are providing the services from Requires the FFSP to comply with conditions Bolstered powers for ASIC to encourage compliance, including civil penalties for breaching conditions, the power to cancel reliance on the exemption or alternative impose new conditions Self-assessment with ASIC notification required

Option 1	Option 2	Option 3
AFSL application process <ul style="list-style-type: none"> Fit-and-proper person assessment required. 	AFSL application process <ul style="list-style-type: none"> Fit-and-proper person assessment required. 	Fit-and-proper person assessment exemption <ul style="list-style-type: none"> Exempts FFSPs from fit-and-proper assessments when applying for an AFSL Available to FFSPs regulated by regulators of comparable regulatory regimes, same as the comparable regulator exemption Part of AFSL application process

3.5 Comparison of conditions imposed by the options

	Option 1			Option 2		Option 3	
	Domestic AFSL	Foreign AFSL ³⁸	Funds Management ³⁹	Sufficient equivalence ⁴⁰	Limited Connection ⁴¹	Comparable Regulator ⁴²	Professional investor ⁴³
Do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly (s912A(1)(a))	X	X					
Have adequate arrangements in place for managing conflicts of interest (s912A(1)(aa))	X	X					
Comply with the conditions on the licence (s912A(1)(b))	X	X ⁴⁴					
Comply with the financial services laws (s912A(1)(c))	X	X					
Take reasonable steps to ensure that representatives comply with the financial services laws (s912A(1)(ca))	X	X					
Comply with the ASIC Reference checking and information sharing protocol (ASIC protocol) in relation to prospective representatives who will act as financial advisers or mortgage brokers (s912A(1)(cc))	X						
Have adequate financial, technological and human resources to provide the financial services covered by the licence and to carry out supervisory arrangements (s912A(1)(d))	X						
Maintain the competence to provide the financial services covered by the licence (s912A(1)(e));	X						

³⁸ [ASIC Regulatory Guide 176 Foreign financial services providers](#) and [ASIC Corporations \(Foreign Financial Services Providers-Foreign AFS Licensees\) Instrument 2020/198](#)

³⁹ [ASIC Regulatory Guide 176 Foreign financial services providers](#) and [ASIC Corporations \(Foreign Financial Services Providers-Funds Management Financial Services\) Instrument 2020/199](#)

⁴⁰ Contained in a number of ASIC class orders. See paragraph RG176.108 of [ASIC's Regulatory Guide 176](#). For the purposes of comparison, class order [\[CO 03/1099\] UK regulated financial services providers](#) has been used.

⁴¹ No conditions were applied to the Limited Connection policy

⁴² As per [exposure draft legislation: Relief for Foreign Financial Service Providers](#) published for consultation

⁴³ As per [exposure draft legislation: Relief for Foreign Financial Service Providers](#) published for consultation

⁴⁴ To the extent it requires compliance with reg 7.6.04(1)(a) and (d))

	Option 1							Option 2		Option 3	
	Domestic AFSL	Foreign AFSL ³⁸	Funds Management ³⁹	Sufficient equivalence ⁴⁰	Limited Connection ⁴¹	Comparable Regulator ⁴²	Professional investor ⁴³				
Ensure that representatives are adequately trained and competent to provide those financial services (s912A(1)(f));	X					X ⁴⁵					
Establish and maintain adequate risk management systems (s912A(1)(h)).	X	X									
Meet minimum standards for custodial or depository service providers (s912AAC) ⁴⁶	X										
Have agreements with sub-custodians to hold custodial property (s912AAD) ⁴⁷	X										
Have adequate financial resources for custodial or depository service providers (s912AC) ⁴⁸	X										
ASIC has power to direct a licensee to provide a written statement (s912C) ⁴⁹	X	X	X	X		X	X	X	X	X	X
Breach reporting requirements (s912D)	X	X						X ⁵⁰	X ⁵¹		
Requirement to give ASIC reasonable assistance during surveillance checks (s912E) ⁵²	X	X	X					X	X		
Obligations about handling client money and client property (subdivis A and B, Div 2 of Pt 7.8 and Div 3 of Pt 7.8)	X	53									
Obligation for certain financial reporting and record-keeping records (s988A)	X	Possible exemption ⁵⁴									
Obligations of licensees in relation to dealings with non-licensees (s991E)	X	55									
Dealings involving employees of licensees (s991F)	X	56									
Obligations about dealing with money received for a financial product (s1017E)	X	57									
Notifying ASIC when the FFSP is relying on the relief			X	X		X	X	X	X	X	X
Notifying ASIC of changes to the FFSP's details			X ⁵⁸					X	X	X	X

⁴⁵ The condition is similar to s912A by requiring the FFSP to maintain sufficient oversight of its representatives who provide the financial services; and ensure that its representatives who provide the financial services are adequately trained, and are competent, to provide the financial services.

⁴⁶ As notionally inserted by ASIC Class Order [CO 13/1410]

⁴⁷ As notionally inserted by ASIC Class Order [CO 13/1410]

⁴⁸ As notionally inserted by ASIC Class Order [CO 13/761]

⁴⁹ Or a condition that is similar to the requirements of this provision

⁵⁰ The condition is similar to s912D in that FFSPs will be required to provide full details to ASIC of a contravention of a condition for an exemption.

⁵¹ The condition is similar to s912D in that FFSPs will be required to provide full details to ASIC of a contravention of a condition for an exemption.

⁵² Or a condition that is similar to the requirements of this provision

⁵³ When the sufficiently equivalent protections in the overseas regulatory regime apply to client money paid to, and client property held by, the foreign AFS licensee from a wholesale client in Australia relating to the exempt financial service

⁵⁴ ASIC **RG 176** noted that FFSPs may also have the benefit of relief from certain financial reporting and record-keeping obligations under **ASIC Corporations (Financial Licensees and ADIs) Instrument 2016/186**. If an FFSP holds an AFSL they are exempted from lodging to ASIC audited financial statements. The FFSP will still have to lodge a certified copy of a balance sheet, cash flow statement and profit and loss statement (collectively the **documents**). The documents can be in a format acceptable by the home regulator. An auditor will need to review the documents and provide a certified statement that sets out the auditor's views of the documents. Require confirmation from the auditor that he/she reasonably believes the documents were audited in accordance with the requirements of the home jurisdiction

⁵⁵ To the extent the financial product transaction is entered into or arranged outside Australia

⁵⁶ If the foreign AFS licensee is only carrying on a financial services business in Australia because it carries on the business of providing eligible financial services under the instrument in Australia

⁵⁷ Before the product is issued when sufficiently equivalent protections in the overseas regulatory regime apply to the money received from wholesale clients in Australia relating to the exempt financial service

⁵⁸ Condition requires notice if the FFSP's home jurisdiction changes

	Domestic AFSL	Option 1		Option 2		Option 3	
		Foreign AFSL ³⁸	Funds Management ³⁹	Sufficient equivalence ⁴⁰	Limited Connection ⁴¹	Comparable Regulator ⁴²	Professional investor ⁴³
Submitting to the non-exclusive jurisdiction of Australian courts; complying with any order of a Court from such proceedings				X		X	X
Notifying clients when the FFSP is relying on the relief				X		X ⁵⁹	X ⁶⁰
Consenting to information sharing between ASIC and the FFSP's home jurisdiction regulator			X	X		X	
Notifying ASIC of investigations etc. in other jurisdictions		X ⁶¹		X ⁶²		X	
Appointing a local agent for the FFSP		X ⁶³	X	X		X	
Notifying ASIC of any changes to the name and address of its agent			X				
Notifying ASIC that the FFSP no longer wishes to rely on the instrument				X			
Notifying ASIC of a change to the FFSP relevant to the financial services provided or intended to provide		X ⁶⁴		X			
Notifying ASIC of significant particular exemption or other relief which the FFSP may obtain from the home regulator relevant to the financial services provided or intended to be provided in Australia		X		X			
Notifying ASIC of any significant change to the FFSP's authorisation relevant to the financial services provided or intended to be provided in Australia		X					

⁵⁹ Disclosure is required once only

⁶⁰ Disclosure is required once only

⁶¹ Each significant investigation, significant enforcement action and significant disciplinary action

⁶² Each significant investigation, significant enforcement action and significant disciplinary action

⁶³ Unless the eligible body is a company

⁶⁴ Condition requires notification to ASIC that the FFSP is ceasing to be a foreign financial service provider

4. What is the likely net benefit of each option?

4.1 Option 1 – Maintain ASIC’s new relief

Option 1 – Maintain ASIC’s new relief	\$0 – baseline
Option 2 – Restore previous relief	(\$22.5 million)
Option 3 – Legislate new relief	(\$19.2 million)

See [Appendix F](#) for further details

The key advantage of option 1 include:

- Increased regulatory supervisory and enforcement powers for ASIC ensures greater Australian investor protection
- Increasing ASIC’s ability to monitor any market integrity concerns

The key disadvantages of option 1 include:

- Highest regulatory obligations, which may reduce access to FFSPs for Australian investors

The primary benefit of option 1 is that ASIC’s supervisory and enforcement powers will be enhanced to allow for stronger regulation of FFSP activity in Australia. ASIC has indicated this will mitigate the risk of FFSPs circumventing supervision and taking advantage of Australian wholesale investors, which could have flow on effects for retail clients.⁶⁵

ASIC’s RIS noted that this new regime will also create a more level playing field domestically, where FFSPs operating in Australia will be treated substantively the same as domestic providers and in a non-discriminatory manner based on the level of financial services business carried out in Australia.⁶⁶ However, domestic financial service providers have some natural advantages, including close relationships within Australia with Australian investors. In consultation, industry warned the impact estimates provided in the ASIC RIS likely understate the true costs of ASIC’s new relief. Industry expects there will be a more significant withdrawal by FFSPs from the Australian market.⁶⁷

The cost that is of most concern is not the regulatory burden on FFSPs, but the opportunity costs imposed on Australian investors. FFSPs provide access to niche markets, specialised advice, and greater investment diversity, which increases investor choice. Quantification of these benefits is not possible as it would require an assessment of which investment strategies are likely to be the best in

⁶⁵ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, para 42.

⁶⁶ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, para 72.

⁶⁷ Based on statements made in the submissions to Treasury by: New Zealand Financial Markets Association, 28 July 2021; Australian Financial Markets Association, 30 July 2021; Minter Ellison, 30 July 2021; Piper Alderman, 30 July 2021; Herbert Smith Freehills, 30 July 2021, Law Council of Australia, 3 August 2021

the future for a wide set of different investors. However, wholesale and professional investors are best placed to decide whether an FFSP's services will benefit them.

The repealed relief was in place for 18 years and while there is some evidence to support an increase in ASICs supervisory and enforcement powers, industry is concerned that no affected stakeholder or ASIC (as relevant regulator) have provided any evidence of systemic issues of FFSP misconduct affecting the Australian market to warrant the measures imposed under option 1.

ASIC's RIS cite two examples of enforcement action taken against FFSPs misusing the sufficient equivalence relief. These examples provide support for additional regulatory obligations on FFSPs accessing relief compared with the prior relief. However, the two examples are not evidence of systemic investor harm caused by FFSPs and on balance the risk to industry from ASIC's proposed new relief such as possible negative growth resulting from limited access to alternative financial products should take precedence.⁶⁸

This paper has not conducted a comprehensive comparison of regulatory regimes to test ASIC's claim that the repealed regulatory regime is more generous than that offered by peer jurisdictions. However, industry note that Australia is not a major financial market but our need to access larger international markets to support significant asset pools such as superannuation, is vital for Australia's sustained growth.⁶⁹

Foreign AFSL

The Foreign AFSL regime may be particularly burdensome for FFSPs due to the application process, the need to comply with legal obligations, and extensive reporting obligations.

While the previous relief was self-assessment based, under the Foreign AFSL FFSPs are required to complete an application including 'proof' documents. Further, the foreign AFSL obliges FFSPs do all things necessary to ensure that the financial services covered by their licence are provided efficiently, honestly and fairly.⁷⁰ Industry expressed concerns that this would be duplicative as many sufficiently equivalent regimes impose a similar requirement.⁷¹ This principles-based obligation can create difficulties and inconsistencies in legal interpretation of this standard in different jurisdictions. Complying with this obligation would impose a requirement for FFSPs to seek specialist legal services to understand how this obligation has been interpreted in the Australian context.

In late 2021 a new breach reporting regime came into effect which deemed a wider range of breaches to be reportable than the previous reporting regime. The new breach reporting regime was the Government's response to address serious compliance issues involving AFSL holders identified by the Financial Services Royal Commission. The foreign AFSL obliges FFSPs to comply with the same breach reporting regime that currently applies to all AFSL holders.

⁶⁸ ASIC, *RIS - Regulatory framework for foreign financial service providers*, 19 March 2020, paras 54-65.

⁶⁹ Australian Financial Markets Association, submission to CP 301, 3 August 2018, pg 2.

⁷⁰ This obligation is consistent with an AFS licensee who must comply with s 912A(1)(a)

⁷¹ Based on statements made in the submissions to Treasury by: Ashurst, 29 July 2021; Australian Financial Markets Association, 30 July 2021; Allens, 30 July 2021; Australian Investment Council, 30 July 2021; King & Wood Mallesons, 30 July 2021; Minter Ellison, 30 July 2021; Piper Alderman, 30 July 2021; Portfolio Management Association of Canada, 30 July 2021; Herbert Smith Freehills, 30 July 2021; Financial Services Council, 3 August 2021; Law Council of Australia, 3 August 2021

Under the new regime, an FFSP would be required to report to ASIC a range of conduct that meets the standard of ‘reportable situations.’⁷² A breach report must be filed with ASIC within 30 days after the FFSP first know, or are reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen.⁷³ This is an objective standard requiring a submission to ASIC in a prescribed form describing the nature of the breach. There are civil and criminal penalties for failing to report to ASIC a reportable situation.

Industry advised that the breach reporting obligation imposes a significant regulatory burden for FFSPs.⁷⁴ Industry identified issues of whether the breach reporting would apply to an FFSP’s global activities or be limited to an Australian connection. FFSPs noted differences between breach reporting requirements in their home jurisdiction and under the Foreign AFSL regime where a breach report is required under the Foreign AFSL regime, but is not required under the home jurisdiction regime, or vice-versa.

Industry has indicated that FFSPs will incur costs to evaluate, design and implement compliance systems, policies, procedures and frameworks to support the foreign AFSL regime, which will deter FFSP entrants from doing business in Australia and potentially push current FFSPs out of the market.⁷⁵ ASIC estimated an exit of 10-15% of FFSPs that currently use sufficient equivalence relief,⁷⁶ but industry have indicated that this figure will likely be more.⁷⁷

FFSPs exiting the market may hinder competition and diversity in the Australian market, reduce opportunities for Australian clients and may affect significant industries like the superannuation industry.⁷⁸ FFSPs provide Australian investors and businesses with access to global financial advice which can include advice on niche matters not commonly advised on by domestic industry. Further, FFSPs may provide access to financial products from other jurisdictions that are not commonly serviced by Australian financial service providers. For example, an Australian investor may want to consider an investment in Singaporean securities, advice for which would be best provided by a Singaporean financial adviser, as opposed to an Australian financial adviser.

Funds management relief

While the intent and application of the funds management relief is clearer than its predecessor, industry is concerned that its narrow nature will force FFSPs from the Australian market.⁷⁹ Additionally, only certain professional investors would qualify. Investors who do not qualify as an ‘eligible Australian user’ (a subset of professional investors) will no longer be able to access any fund investment opportunities outside sufficiently equivalent jurisdictions. Those affected include persons, such as:

⁷² Reportable situations include: significant breaches or likely significant breaches of ‘core obligations’; investigations into whether there is a significant breach or likely breach of a ‘core obligation’ if the investigation continues for more than 30 days; the outcome of such an investigation if it discloses there is no significant breach or likely breach of a core obligation; conduct that constitutes gross negligence or series fraud; conduct of financial advisers and mortgage brokers who are representatives of other licences in certain prescribed circumstances. See [ASIC Regulatory Guide 78](#)

⁷³ See [ASIC Regulatory Guide 78](#) for interpretation

⁷⁴ Based on statements made in the submissions to Treasury by: Ashurst, 29 July 2021; Australian Financial Markets Association, 30 July 2021; Alternative Investment Management Association, 29 July 2021; Allens, 30 July 2021; Association of the Luxembourg fund industry, 30 July 2021; Minter Ellison, 30 July 2021; Piper Alderman, 30 July 2021; Herbert Smith Freehills, 30 July 2021; Financial Services Council, 3 August 2021; Law Council of Australia, 3 August 2021

⁷⁵ Law Council of Australia, submission to Treasury Consultation on Relief to Foreign Financial Service Providers, 3 August 2021

⁷⁶ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, para 131.

⁷⁷ For example, Minter Ellison, [Submission on ASIC consultation paper 301](#), 31 July 2018, para 1.

⁷⁸ ASIC, [Response to submissions on CP 301 and CP 315 on foreign financial service providers](#), 10 March 2020, para 11.

⁷⁹ Based on statements made in the submissions to Treasury by: Alternative Investment Management Association, 29 July 2021

- Large corporates
- Listed investment companies
- Family offices
- High net worth individuals

ASIC estimated that 200 (50%) of FFSPs using limited connection relief will stop providing services to Australian clients when transitional relief ends. However, as the limited connection relief was self-assessed and had no notification requirement, ASIC have no way of reliably estimating the reliance on limited connection relief.

4.2 Option 2 – Restore previous relief

Option 1 – Maintain ASIC’s new relief	\$0 – baseline
Option 2 – Restore previous relief	(\$22.5 million)
Option 3 – Legislate new relief	(\$19.2 million)

See [Appendix E](#) for further details

Option 2 would restore the previous relief, reversing the regulatory burdens introduced under option 1 and maintaining the same number of FFSP participants in Australia. Pursuing option 2 would avoid all the costs imposed by option 1 and is familiar to industry.

The key advantages of option 2 include:

- Familiar to stakeholders, no adoption costs to ASIC or Industry
- Available to FFSPs on a self-assessment basis, reducing time and cost for access
- Light-touch compliance conditions reduce regulatory barriers for FFSP access to Australian investors

The key disadvantages of option 2 include:

- Insufficient regulatory oversight and enforcement powers to address regulator concerns
- Application of limited connection relief uncertain, leading to a broad interpretation by industry not intended by ASIC

Sufficient equivalence relief

This option does not address the regulatory oversight and enforcement issues raised by ASIC. Under the sufficient equivalence relief, ASIC had no powers to require an FFSP’s response to its information requests. ASIC cited this as a hindrance to its ability to proactively monitor FFSP activity in Australia.⁸⁰ ASIC’s only enforcement tool under this relief was to cancel an FFSPs reliance on the relief.

⁸⁰ ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19/03/2020, para 67.

This lack of intermediary enforcement tools meant there was no ‘standard of behaviour’ that could be enforced under the sufficient equivalence relief.

Limited connection

There are differences of opinion between ASIC and industry about the scope of limited connection relief. Industry views the limited connection relief drafting as unclear and uncertain. Some stakeholders have taken a broad view to its application, facilitating Australian investors to access FFSPs from all over the globe. However, ASIC see limited connection as a form of limited relief that is not intended to have such broad application. Therefore, restoring the limited connection relief is likely to perpetuate this uncertainty.

4.3 Option 3 – Legislate new relief

Table 8: Average annual regulatory cost/(saving) estimate	
Option 1 – Maintain ASIC’s new relief	\$0 – baseline
Option 2 – Restore previous relief	(\$22.5 million)
Option 3 – Legislate new relief	(\$19.2 million)

See [Appendix F](#) for further details

Option 3 was developed in response to the submissions from the consultation paper that highlighted ASIC and industry concerns about options 1 and 2. It aims to balance these competing concerns – minimising the regulatory burden on FFSPs while ensuring there is sufficient regulatory oversight to maintain market integrity and investor protection.

The key advantages of option 3 include:

- introduces conditions that assist ASIC to conduct regulatory oversight of FFSPs and address non-compliance with appropriate regulatory enforcement tools
- legislates a ministerial power for recognising jurisdictions under the comparable regulator exemption
- modelled off previous forms of relief, retaining familiarity and ease of application
- operates on a self-assessment basis, reducing cost burdens on industry and preventing time-delays
- recognises the need for the law to cater for professional investors
- better ensures FFSPs remain in the Australian market, offering a greater diversity of financial products and services

The key disadvantages of option 3 include:

- does not require the same level of regulatory compliance as under option 1

- places a higher regulatory burden on FFSPs, through increased regulatory oversight, than under option 2

The conditions mandated under both exemptions will require more regulatory engagement from FFSPs than under option 2. However, the conditions were consulted with ASIC and industry stakeholders, to strike the appropriate balance between the need to enhance regulatory oversight while not burdening FFSPs with overregulation or duplicate regulation.

Option 3 is also effective in advancing the Government's objective to fast-track licensing requirements for FFSPs that are establishing more permanent operations in Australia. While the fit-and-proper person assessment is a relatively small burden compared with the totality of AFSL requirements, removing the requirement is intended to increase the speed of applications and provide the groundwork for further tranches of reform in this area.

All stakeholders that Treasury engaged with after the close of the consultation period indicated that a fast-tracking process of licensing would be less important to industry if licensing relief were broadly available. However, to the extent licensing relief is not available to an FFSP, exempting FFSPs from the fit-and-proper person assessment will provide some relief and encourage FFSPs to establish a permanent presence in Australia. This is intended to provide that even where an FFSP may not be covered by a licensing exemption they will have a lower burden to obtain an AFSL to continue operating in Australia, which will improve investor access to the services provided by FFSPs.

The professional investor exemption recognises that professional investor clients can protect their own commercial interests. Option 3 addresses the problems identified with options 1 and 2 and fast-tracks the AFSL application process for FFSPs.

4.4 Breach reporting under the options

The Foreign AFSL, like the domestic AFSL regime, imposed financial services law breach reporting requirements which were not applied under the former relief. In stakeholder feedback, FFSPs considered this one of the most demanding regulatory obligations under the new relief regime, particularly where the FFSP is already required to comply with a similar reporting regime in their home jurisdiction.

On 1 October 2021, strengthened breach reporting requirements came into effect in Australia, following the implementation of the recommendations of the Financial Services Royal Commission. The requirements expanded the kinds of situations that need to be reported and require licensees to lodge breach reports within 30 days. Specifically, the breach reporting regime requires mandatory reporting to ASIC for breaches of core obligations, as well as the requirement to report investigations into whether a significant breach has occurred or will occur if the investigation continues for more than 30 days.

Compliance with the Australian breach reporting obligations would therefore require FFSPs to implement significant systems changes and processes to ensure they are able to meet the requirements imposed under Australian law for reporting to ASIC, while potentially being also required to meet similar obligations under comparable home jurisdictions. FFSPs will be required to implement these systems and processes regardless of whether any breaches occur or are

likely to occur. Industry suggest that these duplicative regulations are likely to decrease access to FFSP offerings in Australia.

Option 3 provides ASIC with regulatory tools to deliver appropriate regulatory oversight outcomes, while minimising regulatory obligations to ensure continued access to FFSPs for Australians. Three relevant tools include:

- the requirement to notify ASIC if the FFSP contravenes a condition of the exemption (allows ASIC to monitor for non-compliance);
- the power to cancel reliance on the exemption; and
- the requirement to notify ASIC of investigations, enforcement action or disciplinary action taken against the FFSP by any regulator or government authority in any place outside of Australia (allows ASIC to identify and respond to any emerging threats, harms and trends)

5. Consultation

Treasury policy options consultation paper

On 9 July 2021, Treasury released a public consultation paper seeking feedback on three options to restore regulatory relief for FFSPs and three options to fast-track the standard licencing process for FFSPs. Consultation closed on 30 July 2021. The options consulted on are described in [Appendix D](#).

Stakeholders were also advised that feedback on additional options would be considered by Treasury when formulating the relief's final design. Treasury received 30 submissions from FFSPs, peak bodies representing FFSPs, financial associations, law firms, legal and taxation representative bodies, consultants, global investment banks, market makers, securities exchanges, and ASIC. Submissions were also received from associations representing interests in the US, Canada, New Zealand, the Netherlands, Luxembourg, Hong Kong, and Asia (generally).

Following formal submissions, Treasury engaged in bi-lateral consultation with key stakeholders, including ASIC, the Australian Office of Financial Management (AOFM), peak bodies representing FFSPs and law firms representing FFSPs to further address a range of issues that arose during the consultation.

Summary of feedback received

Stakeholder feedback indicated strong consensus for restoration of previous relief, but views diverged on how the relief should be restored. The consultation feedback also brought to light the uncertainty and differing interpretations on how the limited connection relief applied in practice.

Only one submission was received that was opposed to the reform, from a smaller domestic financial services provider. While this highlights that some domestic financial service providers may have concerns about competition, for the majority there does not appear to be a concern. This may suggest that foreign financial service providers and domestic financial service providers rarely directly compete – and instead have complementary roles.

A substantial portion of stakeholder feedback indicated support for restoring the repealed relief. Stakeholders said the relief worked well, particularly its availability on a self-assessment basis, that the minimal conditions encouraged FFSP activity, and that restoring previous relief would be familiar for industry. However, all stakeholders in favour of this option also indicated a strong preference for additional jurisdictions to be added to the list of countries recognised as sufficiently equivalent.

Those not in favour of a straight restoration of relief cited ambiguity in interpretation, the need for certainty by legislating the relief and a lack of flexibility in the mechanism adding jurisdictions to the list recognised as sufficiently equivalent. There was no support to retain ASIC's fund management relief given its restrictive application.

Most stakeholders were broadly keen to have the conditions for any relief reduced, as they were of the view that many of the conditions posed significant burdens and would be difficult to apply.

Application processes for relief and extensive reporting obligations (such as breach reporting) were seen as particularly burdensome.

Stakeholders said restoring a form of limited connection relief was imperative due to the 'extraterritorial' reach of the Act, particularly for professional investors. However, stakeholders simultaneously called for a clearer, bright-line test to determine access to the limited connection relief, as the current method was confusing and difficult to advise on.

Only a handful of stakeholders provided feedback on the options to fast-track the licensing process. All those submissions indicated a preference for amending the fit-and-proper person assessment. However, those same submissions noted that the long application turnaround times were owing to a lack of resourcing in ASIC, rather than the contents of the applications required to be collated by applicants.

All stakeholders that Treasury engaged with after the close of the consultation period indicated that a fast-tracking process of licensing would be less important to industry if licensing relief were broadly available.

Exposure draft legislation

On 20 December 2021, Treasury released exposure draft legislation seeking feedback on draft legislation to implement option 3. Consultation closed on 12 January 2022 with 18 submissions received.

Submissions from FFSPs and their advisors were highly supportive, with some suggestions for technical changes to improve clarity and expressions of a desire for the list of comparable regulators to be expanded to several jurisdictions including New Zealand and other Canadian regulators.

6. The best option

In summary, the three options considered have been:

Option 1: Maintain ASIC's new relief

Option 2: Restore the previous relief

Option 3: Legislate new relief including fast-tracking of licensing (the preferred option)

The best option will be that which, to the best extent possible, balances the competing interests between minimising the regulatory burden on FFSPs while ensuring there is sufficient regulatory oversight to maintain market integrity and investor protection.

Option 1 tips the scales mostly in favour of regulatory oversight and would add the most significant regulatory burden on FFSPs, seeing many exit the Australian market. Ultimately, ASIC's new relief is untested and risks significant impacts to Australian investors and businesses. Estimates of the potential impact vary with ASIC estimating 10 to 15 percent of FFSPs leaving the Australian market, while industry estimate a far greater impact.

Increased regulation to the extent envisioned by option 1 may be justifiable if there was significant and unequivocal evidence of systemic market integrity issues. However, despite 18 years of relief such evidence is not available. Regulatory oversight of relief could be improved without adding burdens that are likely to see FFSPs exit the market.

Option 2, unlike option 1, would see minimal regulatory impact on FFSPs and disruption to service offerings provided to Australian investors. However, option 2 would not address the regulatory concerns raised by ASIC in adopting the new relief provided under option 1.

Option 3 is the preferred option, as it balances the concerns of ASIC and industry, minimising the regulatory burden on FFSPs in comparison with option 1, while improving regulatory oversight compared with option 2. Following stakeholder feedback, it is also clear that option 3 would be supported by industry as the preferred option.

7. Implementation and evaluation of options

Changes to the Act, regulations and other legislative instruments are required to implement this proposal. Once the Government has made a final decision on how relief is to be provided, Treasury will progress the legislative changes for introduction into Parliament. Once the legislation passes, ASIC would be responsible for administering the new relief for FFSPs. ASIC may also need to introduce new regulatory guidance and amend existing regulatory guidance as part of this measure, to ensure there is no unnecessary overlap or inconsistency between their guidance and the new relief.

The success of the new FFSP relief will be assessed by continued levels of engagement of FFSPs in the Australian market. Another success indicator will be if regulatory oversight of FFSPs is increased compared with the previous relief and confidence in the Australian financial system is maintained.

ASIC will monitor the implementation of the new relief regime. Treasury will consider feedback from stakeholders to ensure the relief is continuing to meet its objectives. As the Government intends for this to be tranche one of licensing relief reform, there will also be opportunities in the future to consider further improvements building on the foundation of these initial reforms.

Treasury will continue to work with ASIC to identify any market integrity risks with the preferred option. Where these risks can be managed by ASIC, that will generally be the preferred method. However, Treasury will also seek to progress amendments where necessary to ensure the policy intent of these reforms is maintained.

ASIC and Treasury will both have a role in providing advice to the Minister regarding the regulators of comparable regulatory regimes, which provides access to both the comparable regulator exemption and the exemption from the fit-and-proper person assessment. Industry feedback regarding other comparable regimes will be considered as part of this process.

RIS status at each major decision point

A draft RIS was prepared to inform the Government's decisions in the context of the 2021-22 Budget measure. A final RIS has been prepared to inform the Government's decisions as to the final policy detail of the measure.

Appendix A:

Definitions

Term or phrase	Definition
Financial service	<p>A financial service is provided by a person if they:</p> <ul style="list-style-type: none"> • Provide financial product advice; • Deal in a financial product; • Make a market for a financial product; • Operate a registered scheme; • Provide a custodial or depository service; • Provide a crowd-funding service; • Provide a claims handling and settling service; • Provide a superannuation trustee service; or • Engage in conduct described in the regulations.
Financial product	<p>A financial product is a facility through which, or through the acquisition of which, a person makes a financial investment, manages financial risk or makes non-cash payments. Specific inclusions to the financial products definition include:</p> <ul style="list-style-type: none"> • a security; • interest in a registered scheme, managed investment scheme or a foreign passport fund; or a right or interest in such an interest; or an option to buy such; • a derivative; • an insurance contract (with exclusions); • a life policy or sinking fund policy (with exclusions); • a superannuation interest; • a retirement savings account; • any deposit-taking facility made available by an ADI • a debenture, stock or bond issued or proposed to be issued by a government; • a foreign exchange contract (with exclusions); • an Australian carbon credit unit; • an eligible international emissions unit; • a margin lending facility; or • anything included in the regulations.
Wholesale client	<p>a person is a wholesale client if:</p> <ul style="list-style-type: none"> • the price for the provision of the financial product, or the value of the financial product to which the financial service relates, is equal to, or greater than, \$500,000; • the financial product or service, is provided for use in connection with a business that is not a small business; – A "small business" is defined as a

Term or phrase	Definition
	<p>business that has less than 20 employees, or, if it is a manufacturing business, has less than 100 employees;</p> <ul style="list-style-type: none"> • the financial product or service is not provided for use in connection with a business, and the person acquiring the financial product or service provides a certificate from a qualified accountant that the person: – has net assets of at least \$2.5 million; or – has a gross income for each of the past two financial years of at least \$250,000; • the investor is a "professional investor" or a "sophisticated investor; or – ‘Professional investor’ is defined in section 9 of the Corporations Act. – ‘Sophisticated investor’ is described in section 761GA of the Corporations Act. • the person is controlled by a person who is a wholesale client.
Professional investor	<p>a professional investor:</p> <ul style="list-style-type: none"> • is an Australian financial services licence-holder; • is a body regulated by the Australian Prudential Regulatory Authority (other a than trustee within the meaning of the Superannuation Industry (Supervision) Act 1993); – This category generally includes banks, general insurance companies and credit unions etc. • is a registered entity within the meaning of the Financial Sector (Collection of Data) Act 2001; • is a trustee of certain superannuation trusts or schemes within the meaning of the Superannuation Industry (Supervision) Act 1993 that have assets of at least \$10 million; • has or controls gross assets of at least \$10 million (including any assets held by an associate or under a trust that the person manages); • is a listed entity or a related body corporate of a listed entity; • is an exempt public authority; • is an investment company that is a body corporate or unincorporated body that carries on a business of investment in financial products, interests in land or other investments or invests funds received following an offer or invitation to the public; or • is a foreign entity that, if established or incorporated in Australia, would be covered by one of these categories.
‘Eligible Australian User’ (specific term for Funds Management relief)	<p>An ‘eligible Australian user’ is a subset of professional investors, including APRA regulated entities, responsible entities of a registered scheme, super trustees, wholesale trustees and exempt public authorities (except local councils).</p>

Appendix B:

Prescribed regimes and financial services – Foreign AFSL

Sufficiently equivalent overseas regulatory regime	Financial services and/or products for which foreign AFS licensee relief is available
Denmark—if regulated by the Danish Financial Supervisory Authority	<p>The relief applies to providing financial advice, dealing, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stock or bonds issued by or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C.
France—if regulated by the Autorité des marchés financiers of France	<p>The relief applies to providing financial advice and dealing in respect of the following financial products:</p> <ul style="list-style-type: none"> • securities; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C
France—if regulated by the Autorité de contrôle prudentiel et de résolution of France	<p>The relief applies to providing financial advice, dealing, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • eligible deposit products; • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C; or • facilities through which a person makes non-cash payments.
Germany—if regulated by the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	<p>The relief applies to providing financial advice, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities;

Sufficiently equivalent overseas regulatory regime	Financial services and/or products for which foreign AFS licensee relief is available
	<ul style="list-style-type: none"> • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C; • deposit-taking facilities that are not deposit products—if the FFSP holds a German Banking Licence; or • facilities through which a person makes non-cash payments—if the FFSP holds a German Banking Licence
Hong Kong—if regulated by the Securities and Futures Commission	<p>The relief applies to providing financial advice, dealing or making a market in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C
Luxembourg—if regulated by the Commission de Surveillance du Secteur Financier	<p>The relief applies to providing financial advice, dealing, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • eligible deposit products; • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C; or • facilities through which a person makes non-cash payments—if the FFSP is a credit institution
Ontario, Canada—if regulated by the Ontario Securities Commission	<p>The relief applies to providing financial advice and dealing in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued by or proposed to be issued by a government;

Sufficiently equivalent overseas regulatory regime	Financial services and/or products for which foreign AFS licensee relief is available
	<ul style="list-style-type: none"> • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C
Singapore—if regulated by the Monetary Authority of Singapore	<p>The relief applies to providing financial advice, dealing, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C
Sweden—if regulated by the Finansinspektionen	<p>The relief applies to providing financial advice, dealing, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • eligible deposit products; • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued by or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C.
United Kingdom—if regulated by the Financial Conduct Authority	<p>The relief applies to providing financial advice, dealing, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • eligible deposit products; • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C

Sufficiently equivalent overseas regulatory regime	Financial services and/or products for which foreign AFS licensee relief is available
United States—if regulated by the Commodity Futures Trading Commission	<p>The relief applies to providing financial advice, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C
United States—if regulated by: the Federal Reserve; and the Office of the Comptroller of the Currency	<p>The relief applies to providing financial advice, dealing, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • any deposit-taking facility, including a deposit product; • derivatives; • foreign exchange contracts; • securities; • facilities for making non-cash payments; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C.
United States—if regulated by the US Securities and Exchange Commission	<p>The relief applies to providing financial advice, dealing, making a market or providing a custodial or depository service, in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued or proposed to be issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C

Appendix C:

Financial service activities permitted under sufficient equivalence relief

Sufficiently equivalent jurisdiction	ASIC instrument relief or individual relief	Financial service and/or product for which relief is available
Germany—where regulated by the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Class Order [CO 04/1313] <i>German BaFin regulated financial service providers</i> (relief temporarily extended by ASIC Corporations (Repeal and Transitional) Instrument 2016/396)	The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products: <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued by a government; • managed investment products; • interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act; • deposit-taking facilities that are not deposit products; or • facilities through which a person makes non-cash payments.
Hong Kong—where regulated by the Securities and Futures Commission	Class Order [CO 03/1103] <i>Hong Kong SFC regulated financial service providers</i> (relief temporarily extended by ASIC Corporations (Repeal and Transitional) Instrument 2016/396)	The relief applies to providing financial product advice, dealing in a financial product or making a market for a financial product in respect of the following financial products: <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued by a government; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.
Luxembourg—where regulated by the Commission de Surveillance du Secteur Financier United Kingdom—where regulated by the Financial Conduct Authority	For Luxembourg—ASIC Corporations (CSSF—Regulated Financial Services Providers) Instrument 2016/1109 For the United Kingdom—Class Order [CO 03/1099] <i>UK regulated financial service providers</i> (relief temporarily extended by ASIC Corporations (Repeal and Transitional) Instrument 2016/396)	The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products: <ul style="list-style-type: none"> • eligible deposit products; • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued by a government; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.

Sufficiently equivalent jurisdiction	ASIC instrument relief or individual relief	Financial service and/or product for which relief is available
<p>Singapore—where regulated by the Monetary Authority of Singapore</p> <p>United States—where regulated by the Securities Exchange Commission</p>	<p>For Singapore—Class Order [CO 03/1102] <i>Singapore MAS regulated financial service providers</i> (relief temporarily extended by ASIC Corporations (Repeal and Transitional) Instrument 2016/396)</p> <p>For the United States—Class Order [CO 03/1100] <i>US SEC regulated financial service providers</i> (relief temporarily extended by ASIC Corporations (Repeal and Transitional) Instrument 2016/396)</p>	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • securities; • debentures, stocks or bonds issued by a government; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.
<p>United States—where regulated by:</p> <ul style="list-style-type: none"> – the Federal Reserve; and – the Office of the Comptroller of Currency 	<p>Class Order [CO 03/1101] <i>US Federal Reserve and OCC regulated financial service providers</i> (relief temporarily extended by ASIC Corporations (Repeal and Transitional) Instrument 2016/396)</p>	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products:</p> <ul style="list-style-type: none"> • eligible deposit products; • derivatives; • foreign exchange contracts; • securities; • facilities for making non-cash payments; • debentures, stocks or bonds issued by a government; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.
<p>United States—where regulated by the Commodity Futures Trading Commission</p>	<p>Class Order [CO 04/829] <i>US CFTC regulated financial services providers</i> (relief temporarily extended by ASIC Corporations (Repeal and Transitional) Instrument 2016/396)</p>	<p>The relief applies to providing financial product advice, dealing in a financial product, making a market for a financial product or providing a custodial or depository service in respect of the following financial products:</p> <ul style="list-style-type: none"> • derivatives; • foreign exchange contracts; • managed investment products; or • interests in a managed investment scheme that is not required to be registered under Ch 5C of the Corporations Act.

Appendix D:

Consultation paper policy options

Option	Description
Licensing relief	
Option 1A	Restore the sufficient equivalence relief and limited connection relief as it applied before its repeal on 31 March 2020. ⁸¹
Option 1B	Restore the sufficient equivalence relief as it applied before it was repealed on 31 March 2020 and continue the funds management relief in place of the limited connection relief for eligible FFSPs.
Option 2	Provide FFSP relief for a broader set of countries but limit the types of financial services that can be provided to wholesale clients. Conditions to the relief would be added to give ASIC better visibility of FFSPs relying on the relief. ⁸²
Option 3	Similar to option 2 but relief would apply to all financial services and products.
Fast-tracking licensing process	
Option 1	Amend the law to provide ASIC with the discretion to determine whether a fit and proper person test is required for every relevant person listed in section 913BA of the Corporations Act. Allow ASIC to rely on similar assessments by other regulators.
Option 2	A modified licensing regime would apply to FFSPs that: are regulated by an overseas regulatory authority that is a signatory to the International Organisation of Securities Commission (IOSCO) Multilateral Memorandum of Understanding; and provide financial services to wholesale clients in Australia This option would exempt FFSPs from certain obligations under Chapter 7 of the Corporations Act.
Option 3	Grant an AFSL to FFSPs that provide appropriate evidence to demonstrate that the FFSP: is regulated by an IOSCO board member; holds an existing licence and is specifically authorised to provide the financial services intended to be provided in Australia; and will only provide financial service to wholesale clients in Australia. The FFSP would be subject to all conditions applying to a domestic AFSL holder.

⁸¹ Option 2 in this RIS.

⁸² Option 3 in this RIS.

Appendix E:

Regulatory Burden Measure

Data received by Treasury

In its consultation paper released in July 2021, Treasury requested feedback from industry on the compliance cost impacts for the following policy options:

1. Complying with all standard AFSL obligations;
2. Restoring ASIC's previous relief; and
3. Legislating a modified form of ASIC's previous relief with some conditions.

Treasury received 30 submissions from stakeholders, with five providing information regarding the costs of compliance with the different policy options. During subsequent bi-lateral consultation, Treasury received further cost estimates from a peak body representing FFSPs, informed by feedback from 11 of its members.

The variation in these estimates was significant, representing the wide variety in both size and complexity of FFSP activities in Australia. For example, one submission estimated an annual cost of an FFSP complying with the standard AFSL regime at \$100,000 while another submission estimated \$1.2 million.

ASIC's RIS estimates

ASIC's RIS was informed by the estimates it received through consultation and assumptions made by it relating to external professional advisory costs, internal compliance and monitoring costs and costs associated with development and maintenance of systems to aid in compliance.

During its consultation, ASIC requested feedback from industry on the compliance cost impacts for the following policy options:

1. Introducing the foreign AFSL regime;
2. Requiring FFSPs to obtain a standard AFSL; and
3. Implementing systems and processes to monitor compliance with conditions of the funds management relief.

To determine the number of entities relying on the former limited connection relief, ASIC relied on an internal register which found there were 800. In addition, as there was no notification requirement, ASIC made a qualitative assessment to find that 400 FFSPs were relying on the former limited connection relief – for a total population of 1,200 FFSPs.

Methodology

While industry suggest ASIC's RIS underestimated the regulatory cost impacts of ASIC's new relief, Treasury analysis accepts these estimates as being within a reasonable range of reliability for the purpose of undertaking the regulatory impact assessment for options 1 and 2 of this paper. However, the baseline has been adjusted to reflect that ASIC's new relief is the status quo.

For option 3, Treasury examined the qualitative differences between options 1, 2 and 3 based on the compliance and delay cost factors below. Treasury estimated based on these differences that option 3 represents a saving equal to 85 per cent the saving of option 2. Factors considered and cost estimates are provided in the table below.

Australian Government Regulatory Burden Measurement Framework	Standard AFSL	Option 1 – ASIC’s new relief		Option 2 – ASIC’s previous relief		Option 3
		Foreign AFSL	Funds management relief	Sufficient equivalence	Limited connection	
Compliance cost factors						
Administrative costs <i>costs incurred by regulated entities primarily to demonstrate compliance with regulation</i>	<ul style="list-style-type: none"> • Application costs <ul style="list-style-type: none"> – Collation and review of information to complete application Form FS01 – Collation of proof documentsⁱ including all fit & proper person proof documents – Professional advice fees (optional) • Adoption costs for implementing systems to ensure compliance with: <ul style="list-style-type: none"> – conduct obligations – supervision obligations – disclosure obligations 	<ul style="list-style-type: none"> • Application costs <ul style="list-style-type: none"> – Collation and review of information to complete application – Collation of proof documentsⁱⁱⁱ including most fit & proper person proof documents – Professional advice fees (optional) • Adoption costs for implementing systems to ensure compliance with: <ul style="list-style-type: none"> – conduct obligations – disclosure obligations – financial obligations 	<ul style="list-style-type: none"> • No application costs • Costs associated with notification requirements • Adoption costs for implementing systems and processes to monitor compliance with conditions • Drafting legal agreement costs 	<ul style="list-style-type: none"> • No application costs • Cost for collating and reviewing of information to notify ASIC of reliance • Professional advice fees (optional) • Adoption costs for implementing systems and processes to monitor compliance with conditions • Drafting legal agreement costs 	No costs	<ul style="list-style-type: none"> • No application costs • Cost for collating and reviewing of information to notify ASIC of reliance • Professional advice fees (optional) • Adoption costs for implementing systems and processes to monitor compliance with conditions • Drafting legal agreement costs • No costs associated with fit & proper test requirements for FFSPs applying for AFSL to service wholesale clients

Australian Government Regulatory Burden Measurement Framework	Standard AFSL	Option 1 – ASIC’s new relief		Option 2 – ASIC’s previous relief		Option 3
		Foreign AFSL	Funds management relief	Sufficient equivalence	Limited connection	
	<ul style="list-style-type: none"> – financial obligations – reporting to regulator obligations – reporting to client obligations <ul style="list-style-type: none"> • Drafting legal agreement costsⁱⁱ 	<ul style="list-style-type: none"> – reporting to regulator obligations – reporting to client obligations <ul style="list-style-type: none"> • Drafting legal agreement costs 				
<p>Substantive compliance costs</p> <p><i>Costs incurred to deliver the regulated outcomes being sought (usually purchase and maintenance costs)</i></p>	<ul style="list-style-type: none"> • Maintenance of systems to ensure compliance with all obligations (conduct, supervision, disclosure, financial, reporting) costs • Collation and review of information to complete ASIC forms, including any associated fees to lodge^v • Ongoing training costs • Ongoing professional 	<ul style="list-style-type: none"> • Maintenance of systems to ensure compliance with all obligations (conduct, disclosure, financial, reporting) costs • Collation and review of information to complete ASIC forms, including any associated fees to lodge • Ongoing professional advice costs (optional) 	<ul style="list-style-type: none"> • Maintenance of systems to ensure compliance with conditions 	<ul style="list-style-type: none"> • Appointment of local agent • Systems to ensure disclosure of reliance to clients and notification matters are reported to ASIC within the prescribed time • Ongoing professional advice costs (optional) 	nil	<ul style="list-style-type: none"> • Appointment of local agent • Systems to ensure representative oversight, disclosure of reliance on relief to clients, and notification matters are reported to ASIC within the prescribed time • Ongoing professional advice costs (optional)

Australian Government Regulatory Burden Measurement Framework	Standard AFSL	Option 1 – ASIC’s new relief		Option 2 – ASIC’s previous relief		Option 3
		Foreign AFSL	Funds management relief	Sufficient equivalence	Limited connection	
	advice costs (optional)					
Delay cost factors						
Expenses and loss of income incurred by a regulated entity through: An application delay or an approval delay	<ul style="list-style-type: none"> Application delay = 2 – 6 months Approval delay = 9 – 12 months *Estimates dependent on nature, scale and complexity of activity applied for	<ul style="list-style-type: none"> Application delay = 2 – 6 months Approval delay = 9 – 12 months *Estimates dependent on nature, scale and complexity of activity applied for	nil	nil	nil	nil
Average annual regulatory cost/(saving) estimate						
Business	\$32.4 million^v	\$0^{vi}		(\$22.5 million)^{vii}		(\$19.2 million)^{viii}
Community organisations	-	-		-		
Individuals	-	-		-		
Total costs	\$32.4 million	\$0		(\$22.5 million)		(\$19.2 million)

ⁱ Business Description, Fit and Proper People Proofs (personal information and bankruptcy & criminal history checks), Responsible Manager People Proofs (personal information, criminal history, bankruptcy, qualifications, business references), Proof of Organisational Competency, Financial Statements and Financial Resources and any additional non-core proofs that may apply to the application (such as a Derivatives Statement, Foreign Exchange Operating Statement, Scheme Operating Capacity Statement). During the 'draft licence' stage, an FFSP may also need to provide additional proof documents, such as professional indemnity insurance.

ⁱⁱ Costs incurred to draft legal agreements, as necessary to comply with corporation law requirements, and depending on the nature of the financial services provided, may include agreements for custodian services, handling client money, client property, privacy, disclosure, financial reporting, and auditing services

ⁱⁱⁱ Business Description, Fit and Proper People Proofs (as above), Responsible Manager People Proofs (limited to personal information and bankruptcy & criminal history checks) and any additional non-core proofs that may apply to the application.

^{iv} Costs incurred to complete ASIC forms which may include reportable situations (as determined by s.912DAA), change in licensee's particulars, authorised representatives, financial statements and audits, annual lodgement; see Lodgement requirements for AFS licensees.

^v ASIC, [RIS - Regulatory framework for foreign financial service providers](#), 19 March 2020, Table 15 and Table 13; table 15 less table 13 represents a saving compared with the baseline option 2.

^{vi} Baseline at \$0 as the status quo.

^{vii} ASIC, RIS - Regulatory framework for foreign financial service providers, 19 March 2020, Table 13; saving as option 2 is now baseline.

^{viii} 85 per cent of option 2, based on Treasury qualitative analysis.