

2 August 2021



Law Council  
OF AUSTRALIA

*Business Law Section*

Regulatory Powers and Accountability Unit  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [FFSP@treasury.gov.au](mailto:FFSP@treasury.gov.au)

### **Relief to Foreign Financial Service Providers**

We refer to Treasury's Consultation Paper on Relief to Foreign Financial Service Providers dated 9 July 2021 (**Consultation Paper**). The Financial Services Committee and the Corporations Committee of the Business Law Section of the Law Council support the proposal in the 2021-22 Budget to consult on options to restore the well-established regulatory relief for FFSPs to enable them to deal with wholesale clients, as well as proposals to create a fast track licensing process. We appreciate the opportunity to be involved in the consultation process. Unless expressly defined in this letter, terms defined in the Consultation Paper have the same meaning when used in this letter.

We believe that providing a clear pathway for Australian wholesale investors to access the services of FFSPs is important for promoting Australia's competitiveness in global markets and seeking to mitigate market fragmentation. This includes enabling Australian financial institutions and corporations to access global funding markets, investment opportunities and diversification of business. Such access is increasingly critical as Australia's economy "has continued to become more integrated with the global financial system via a growing stock of *gross* foreign assets and liabilities."<sup>1</sup>

The sufficient equivalence relief and limited connection relief (collectively, the **FFSP Instruments**) have enabled Australian wholesale investors to take advantage of integrated and global financial markets. Without them, Australian wholesale investors, including Australian superannuation funds, are likely to lose opportunities to which they may otherwise have had access, leaving them with a reduced pool of investment prospects, funding opportunities and increased costs of access, for example, through a requirement to acquire the services through some other form of structuring, like creating off-shore special purpose vehicles to receive the relevant financial services outside Australia.

We believe that the foreign AFSL regime proposed by ASIC, including withdrawal of the limited connection relief, would have imposed a significant barrier on the willingness of FFSPs to continue providing financial services and products to Australian wholesale investors, which would ultimately have been detrimental to Australian financial institutions, corporates and end consumers. There is also evidence to suggest that it was likely to lead to FFSPs withdrawing services and products to Australian wholesale clients. A report by the City of London Corporation noted the following:

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<sup>1</sup> David Jacobs, 'How Do Global Financial Conditions Affect Australia?' *Reserve Bank of Australia*, 12 December 2019 <[\*Telephone\* +61 2 6246 3737 • \*Fax\* +61 2 6248 0639 • \*Email\* \[jane.bacot-kilpatrick@lawcouncil.asn.au\]\(mailto:jane.bacot-kilpatrick@lawcouncil.asn.au\)  
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\[www.lawcouncil.asn.au\]\(http://www.lawcouncil.asn.au\)](https://www.rba.gov.au/publications/bulletin/2019/dec/how-do-global-financial-conditions-affect-australia.html#:~:text=While%20Australia%20has%20benefited%20from,shifts%20in%20global%20financial%20conditions.&text=In%20the%20first%20instance%2C%20Australian,of%20funding%20in%20those%20markets.></a>></p></div><div data-bbox=)

*Throughout interviews it has been highlighted that the new regime significantly increases the cost of providing financial services in Australia. This is through imposing new compliance burdens on foreign firms, for example in preparing applications – for which external advice may be required – and ongoing external audit costs...One of the key risks of the licensing regime is that compliance costs could become so disproportionate that FFSPs providing services to wholesale clients may decide to exit the Australian market, as provision of services to Australian clients would no longer be commercially viable.<sup>2</sup>*

The proposed foreign AFSL regime put forward by ASIC was complex, resulted in duplication of regulation for FFSPs and had the potential to make the service offering to Australian wholesale investors more expensive. It was also out-of-step with the approach adopted in other jurisdictions, including the major financial hubs in Asia.

While the FFSP Instruments have been effective for almost 20 years, we believe a clearer avenue should be available to FFSPs to allow them to service Australian wholesale investors from outside of Australia. We also consider that the rules should be clearly set out in the corporations legislation, as opposed to delegated instruments. This would help promote navigability of the law, which the Australian Law Reform Commission has recently identified as being a key concern of stakeholders as it relates to financial services regulation.<sup>3</sup>

In this respect, we support the following package of reforms:

1. **Extend notional section 911A(2E)<sup>4</sup>** to capture not only derivative instruments (as it currently does), but also all other financial services and financial products, such as, without limitation, shares, interests in a management investment scheme and debentures. This would be a natural extension of regulation 7.6.02AG of the *Corporations Regulations 2001* (Cth) and provide an unambiguous means for dealing with the most sophisticated category of investors in Australia, who would not reasonably be expected to require the same protection from the AFSL regime as retail investors. In addition to extending the scope of this notional section, we also recommend replacing the reference to “not in this jurisdiction” with “be provided from outside this jurisdiction” for further clarity.
2. Adopt **Option 3 – FFSP relief for all financial services** provided to wholesale clients who would not qualify as professional investors (**Australian relevant investors**). The conditions imposed should not apply substantive AFSL conditions to FFSPs. Instead, there should be appropriate recognition and reliance on the regulatory regime governing the FFSP in its home jurisdiction (on the basis that it has been assessed as sufficiently equivalent).
3. Retain the **limited connection relief** to enable FFSPs to service Australian wholesale investors in circumstances where the FFSP’s engagement with Australian wholesale clients is ad hoc and limited. This is important given the very broad reach of Australia’s licensing regime as established in section 911D. If Treasury has a concern about this relief being misapplied, then we consider it would be reasonable to impose conditions on its use, such as notification and submission to jurisdiction conditions.

We set out in the Annexure a response to each question raised in the Consultation Paper.

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<sup>2</sup> See The City of London Corporation, ‘UK cross-border trade in services with Australia: An analysis of market access for financial services firms (June 2020), 12 <<https://www.cityoflondon.gov.uk/assets/Business/UK-crossborder-trade-in-services-with-Australia.pdf>>. See also the response to question 16 (below).

<sup>3</sup> Australian Law Reform Commission, Background Paper FSL1, ‘Legislative Framework for Corporations and Financial Services Regulation: Initial Stakeholder Views’ (June 2021), FSL 1-1, <<https://www.alrc.gov.au/wp-content/uploads/2021/06/FSL1-Initial-Stakeholder-Views.pdf>>.

<sup>4</sup> A reference to a section is a reference to a section in the *Corporations Act 2001* (Cth) (**Corporations Act**), unless expressly stated otherwise.

If you have any questions, please do not hesitate to contact Pip Bell ([pbell@pmclegal-australia.com](mailto:pbell@pmclegal-australia.com)) or Jeremy Williams ([jeremy.williams@gs.com](mailto:jeremy.williams@gs.com)).

Yours faithfully

A handwritten signature in cursive script that reads "Greg Rodgers".

**Greg Rodgers**  
**Chair, Business Law Section**

## ANNEXURE – TABLE OF RESPONSES TO SPECIFIC QUESTIONS FROM TREASURY

Q.	TREASURY QUESTION	RESPONSE
<b>Options in establishing a framework for FFSPs</b>		
1	<b>What are the impacts or other considerations that may affect implementing each option?</b>	<p><b>Option 1A:</b> While we consider this a better alternative than the foreign AFSL regime, Option 1B or Option 2, it is not preferred for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The FFSP Instruments amount to delegated legislation, allowing ASIC significant discretion in their application. To promote certainty, transparency and encourage FFSPs to commit their services and products to the Australian market, any FFSP solution should be a legislative one.</li> <li>2. The jurisdictions captured by the sufficient equivalence relief are unnecessarily limited. We are not aware of any principled reason why jurisdictions such as New Zealand, Japan, Canada and other members of the European Union are not captured. To add other jurisdictions under the current sufficient equivalence relief is a time consuming and complex process.</li> <li>3. The sufficient equivalence relief does not apply uniformly to products and services, creating service offering restrictions based on where the FFSP is regulated. We are not aware of any principled reason for this outcome.</li> </ol> <p><b>Option 1B:</b> This option would not provide an adequate solution. The reasons are as follows:</p> <ol style="list-style-type: none"> <li>1. The funds management relief applies to a limited sub-set of investors, being “eligible Australian users” (as opposed to professional investors) and to a limited class of product.</li> <li>2. The funds management relief does not operate as a necessary substitute for the limited connection relief given its restrictiveness. As we discuss in our response to question 3, the limited connection relief is critically important given the broad extra-territorial application of section 911D.</li> </ol> <p><b>Option 2:</b> This option would also not provide an adequate solution. This is because:</p> <ol style="list-style-type: none"> <li>1. It is complex. This is due to the restrictions on products and services that may be offered. The narrowness of the jurisdictions potentially in-scope and the limitations on services that may be offered create similar issues to those that we have identified with the sufficient equivalence relief. Again, it is not clear why some jurisdictions have been excluded, such as Japan and New Zealand.</li> <li>2. The list of conditions potentially in-scope would impose similar burdens to those contemplated by the foreign AFSL regime, resulting in unnecessary, complex and costly regulatory duplication.</li> </ol> <p><b>Option 3:</b> As explained in our cover letter, we support this option, when implemented in conjunction with an amendment to notional section 911A(2E) and retention of the limited connection relief. This is on the basis that the conditions attached to this option would be limited to those that relate to ASIC’s supervision and give suitable recognition to the sufficiently equivalent regulatory regime of the FFSP’s home jurisdiction that it accepts.</p>
2	<b>Which of the proposed options would be most effective in providing relief to FFSPs and why?</b>	<p>We believe that a combination of expanding notional section 911A(2E) to capture any financial service or financial product offered to professional investors, in combination with Option 3 for Australian relevant investors and the limited connection relief provides an effective and proportionate solution.</p>

Q.	TREASURY QUESTION	RESPONSE
		<p>Notional section 911A(2E) currently applies where:</p> <ul style="list-style-type: none"> <li>• the provider of the financial service is “not in this jurisdiction”;</li> <li>• the recipient of the financial service is a professional investor; and</li> <li>• the service relates to dealing, providing advice or making a market in certain kinds of financial products (derivatives, foreign exchange contracts, carbon units, Australian carbon credit units or eligible international emissions units).</li> </ul>
3	<p><b>Is there a specific need for the limited connection relief if option 2 or 3 is adopted?</b></p>	<p>There continues to be a strong justification for limited connection relief if Option 2 or 3 is adopted. In particular, the broad extra-territorial reach of Australia’s financial licensing law necessitates its retention.</p> <p>Section 911D uses a broad concept of inducement to establish a territorial nexus with Australia. The concept of inducement extends beyond active solicitation. It potentially captures conduct that ought not be in-scope for Australia’s licensing regime, such as “reverse solicitation” type enquiries. The breadth of the section is confirmed in the Explanatory Memorandum to the <i>Select Legislative Instrument 2005 No 324</i>, which states that the ‘conduct described in subsection 911D(1) is broader than that contemplated by active solicitation.’ Given the wide drafting of section 911D it is difficult to envisage a scenario where engagement with an Australian client on behalf of an offshore client does not involve some form of inducement.</p> <p>Without this relief, FFSPs whose engagement with Australian wholesale clients is limited and ad hoc may infringe Australia’s licensing laws. This would be the case even if Option 1B, 2 or 3 were adopted and even in circumstances where a modified licensing regime was adopted.</p> <p>To the extent that Treasury has concerns about the misapplication of the limited connection relief, we consider that this could be addressed by:</p> <ol style="list-style-type: none"> <li>1. introducing a notification requirement and agreement to submit to the courts of this jurisdiction for those relying upon it; and</li> <li>2. imposing an obligation to assist ASIC in its enquiries.</li> </ol> <p>If Treasury does not propose to institute regulation that addresses the problems created by the extra-territorial reach of section 911D (and that has been historically addressed by the limited connection relief), we would urge that Treasury adopt regulation that would allow FFSPs who have relied upon that relief to provide financial services or issue financial products to continue to be able to do so for those services or products that have been and are being provided to Australian wholesale clients in reliance on it.</p>
4	<p><b>Are there other options for FFSP relief that should be considered?</b></p>	<p>Yes. As explained above, in addition to maintaining a form of limited connection relief and adopting Option 3 for Australian relevant investors (with appropriate conditions), we believe the expansion of notional section 911A(2E) should form part of the package of reforms. In drafting this reform, we think that Treasury should:</p> <ol style="list-style-type: none"> <li>1. extend the scope to all financial services and products; and</li> <li>2. revise the requirement that the FFSP is “not in this jurisdiction”. This is due to the uncertainty created by this terminology. For example, it is not clear whether an entity may be disentitled from relying on this regulation if they carry on business in this jurisdiction. An alternative formulation that would promote greater certainty is to specify that the financial service be “provided from outside this jurisdiction”.</li> </ol>

Q.	TREASURY QUESTION	RESPONSE												
5	<p><b>Is there any other FFSP relief offered in other jurisdictions that could serve as a model for Australia?</b></p>	<p>There is no particular model of relief that we would propose. This is because the Australian licensing regime is relatively unique having regard to the extent of its extra-territorial reach.</p> <p>We do, however, believe that the proposed foreign AFSL regime would have placed Australia in an unfortunate position internationally in the way it sought to actively regulate foreign firms already operating in highly regulated and sophisticated jurisdictions (and in circumstances where the jurisdiction had been deemed to be “sufficiently equivalent”). In this respect, we believe that the proposal would have been out-of-step with other major Asian financial centres such as Hong Kong, Japan and Singapore, as well as other major global financial hubs, such as (for example) the United Kingdom.<sup>5</sup></p>												
6	<p><b>What aspects of the sufficient equivalence relief, limited connection relief and funds management relief were effective and ineffective in providing relief to FFSPs and why?</b></p>	<p>Please refer to our response to question 1.</p>												
7	<p><b>Are there other overseas regulatory authorities that should be considered for addition to the list under options 2 or 3?</b></p>	<p>Yes. We believe that there are a number of other jurisdictions, such as Japan, New Zealand, member states within the European Union and Canada (other than Ontario).</p>												
8	<p><b>Which conditions in paragraph 34 should not be attached to FFSP relief and why?</b></p>	<p>We have considered each condition below and noted whether we agree or disagree with imposing each condition (and why or why not) in the table below.</p> <table border="1" data-bbox="651 1288 1394 1968"> <thead> <tr> <th data-bbox="651 1288 1002 1332">Condition</th> <th data-bbox="1002 1288 1394 1332">Response</th> </tr> </thead> <tbody> <tr> <td data-bbox="651 1332 1002 1489">a) Notifying ASIC when the FFSP is relying on the relief or ceases to use the relief.</td> <td data-bbox="1002 1332 1394 1489">Yes. This is a reasonable condition. The notification should be a one-off notification, not a separate notice for each specific product, service or transaction.</td> </tr> <tr> <td data-bbox="651 1489 1002 1668">b) Applying to ASIC for approval to use the relief.</td> <td data-bbox="1002 1489 1394 1668">No. This condition would likely create similar issues to that experienced with the foreign AFSL regime. We support a notification condition as set out in a).</td> </tr> <tr> <td data-bbox="651 1668 1002 1803">c) Consenting to information sharing between ASIC and the FFSP’s home jurisdiction regulator.</td> <td data-bbox="1002 1668 1394 1803">Yes. This is a reasonable condition.</td> </tr> <tr> <td data-bbox="651 1803 1002 1892">d) Assisting ASIC in any supervision or investigation matters.</td> <td data-bbox="1002 1803 1394 1892">Yes. This is a reasonable condition.</td> </tr> <tr> <td data-bbox="651 1892 1002 1968">e) Complying with directions from ASIC.</td> <td data-bbox="1002 1892 1394 1968">Yes. This is a reasonable condition.</td> </tr> </tbody> </table>	Condition	Response	a) Notifying ASIC when the FFSP is relying on the relief or ceases to use the relief.	Yes. This is a reasonable condition. The notification should be a one-off notification, not a separate notice for each specific product, service or transaction.	b) Applying to ASIC for approval to use the relief.	No. This condition would likely create similar issues to that experienced with the foreign AFSL regime. We support a notification condition as set out in a).	c) Consenting to information sharing between ASIC and the FFSP’s home jurisdiction regulator.	Yes. This is a reasonable condition.	d) Assisting ASIC in any supervision or investigation matters.	Yes. This is a reasonable condition.	e) Complying with directions from ASIC.	Yes. This is a reasonable condition.
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e) Complying with directions from ASIC.	Yes. This is a reasonable condition.													

<sup>5</sup> The City of London Corporation, above n 2.

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		<p>f) Complying with information requests from ASIC within the specified time.</p> <p>Yes. This is a reasonable condition. Any such condition should acknowledge that it may take longer for FFSPs than local entities to respond to such requests given the differences in time-zones.</p>
		<p>g) Not dealing with unauthorised or unlicensed entities.</p> <p>No. We do not consider this is reasonable. This would act as a significant barrier to doing business with Australian relevant investors. Nor, in our view, does it meaningfully assist in protecting Australian relevant investors.</p> <p>FFSPs should not be precluded from providing financial services to Australian relevant investors which have been exempted under Australian law from the requirement to hold an AFSL – for example certain Australian government owned entities or entities that rely on exemptions in legislation or ASIC legislated instruments.</p> <p>FFSPs should also not be precluded from providing financial services to Australian relevant investors which are unauthorised or unlicensed because they are not providing financial services – for example, a major listed Australian company in a non-financial services industry such as retail, property development or aviation which seeks to use bespoke financial products or services that are not offered by AFSL holders in Australia.</p>
		<p>h) Notifying ASIC of any changes to the FFSP or the home jurisdiction regulator that affect their eligibility for relief.</p> <p>Yes. This is a reasonable condition provided it is appropriately drafted to focus on significant changes that impact the ability of the FFSP to provide services to Australian relevant investors.</p> <p>We would welcome the provision in explanatory material of examples of the types of information that would, and would not, need to be provided to ASIC.</p>
		<p>i) Submitting to the jurisdiction of Australian courts.</p> <p>Yes. This is a reasonable condition.</p>
		<p>j) Comply with any orders of an Australian court.</p> <p>Yes. This is a reasonable condition.</p>
		<p>k) Complying with auditing and reporting</p> <p>No. This would result in unnecessary duplication with the</p>

Q.	TREASURY QUESTION	RESPONSE
		<p>requirements.</p> <p>requirements of the FFSP's primary and sufficiently equivalent jurisdiction. Reliance should be placed on the requirements that apply in that jurisdiction.</p> <p>l) Ensuring that financial services are provided efficiently, honestly and fairly.</p> <p>No. Refer to the reasons set out above in k).</p> <p>m) Applying protections for dealing with clients' money and property.</p> <p>No. Refer to the reasons set out above in k).</p> <p>n) Having adequate conflict of interest arrangements in place.</p> <p>No. Refer to the reasons set out above in k).</p> <p>o) Having adequate risk management systems in place.</p> <p>No. Refer to the reasons set out above in k).</p> <p>p) Notifying clients when the FFSP is relying on the relief.</p> <p>Yes. This is a reasonable condition. The obligation to notify should be able to be provided as a "standing notice" and separate notification should not be required on a product, service or transaction basis if it has otherwise been provided to the Australian relevant investor at the commencement of the business relationship between the investor and the FFSP.</p> <p>q) Appointing a local agent for the FFSP.</p> <p>Yes. This is a reasonable condition.</p> <p>r) Ensuring representatives are appropriated [sic]<sup>6</sup> trained.</p> <p>No. Refer to the reasons set out above in k).</p> <p>s) Providing periodical information to ASIC including (i) to (xv).</p> <p>Yes (in part). The periodical information requirements in v)-vi) and xiii) are reasonable. The remainder of the information ought not be required for the reasons set out above in k). Some of this information is not reported to ASIC by Australian regulated entities.</p> <p>To provide more meaningful feedback, we would also want to understand what is meant by "periodical" (for example, whether this means annually) and matters what the "annual compliance attestation" would cover.</p> <p>The permitted method/s for providing the periodical information to ASIC should be flexible and not impose an</p>

<sup>6</sup> We believe that the word intended here was "appropriately".



Q. TREASURY QUESTION		RESPONSE
		<p>unreasonable burden.</p> <p>t) Breach reporting obligations, similar to that of AFSL holders. No. Refer to the reasons set out above in k).</p> <p>u) Maintaining the relevant authorisation in the FFSP's home jurisdiction to provide the financial service they are providing in Australia. Yes. This is a reasonable condition.</p> <p>v) Providing each of the financial services in Australia in a manner which would comply, so far as is possible, with the home jurisdiction regulatory requirements if the financial service were provided in the home jurisdiction under like circumstances. No. As set out above in k).</p> <p>w) A condition that ASIC can notify the FFSP of any additional conditions it believes are necessary to address any concerns ASIC may have. No. This would afford significant discretion that may allow the regulation to be materially changed from that intended by the legislature.</p> <p>x) A condition that ASIC can exclude FFSPs from relying on the relief where it has concerns the FFSP is not fit to provide services to Australian clients, or where a provider is using relief in a manner the relief is not intended to be used. Yes. This is a reasonable condition. We recommend that the manner in which the relief is intended to be used be clearly communicated in explanatory material, with the inclusion of examples of situations which fall within, and outside, the scope of that intention.</p>
9	<b>Should there be other consequences to a breach of relief conditions other than the FFSP relief no longer being available?</b>	No. We do not believe that there should be other consequences. A failure to provide financial services without a licence or in reliance on an exemption within the Corporations Act is already an offence.
10	<b>What are the regulatory costs and benefits of each option proposed.</b>	<p>We make the following observations.</p> <p>1. In our view the bulk of the conditions under Options 2 and 3 would operate as a significant barrier for FFSPs. If the conditions include the broad suite of audit and reporting requirements, as well as general AFSL obligations, in addition to client money and property requirements, then they are likely to deter FFSPs from utilising the options and continuing to service Australian wholesale investors. This is because they would impose separate and distinct, and in a number of respects, inconsistent obligations above those that already apply in the FFSP's home jurisdiction which has been determined to be sufficiently equivalent. If a jurisdiction is considered to be genuinely sufficiently equivalent, then reliance</p>

Q.	TREASURY QUESTION	RESPONSE
		<p>should be placed on that jurisdiction's regulatory framework for these matters.</p> <p>2. Without ready access to international financial markets, Australian financial institutions and corporates are likely to find it more difficult to access funding and liquidity. Similarly, Australian corporates and businesses may find it harder to attract foreign investment and diversify their investment base. This may leave Australian firms and corporates in a worse position to compete both domestically and internationally.</p>
11	<p><b>If the conditions listed in paragraph 34 apply to FFSP relief under options 2 or 3, what would be the financial and regulatory impacts on FFSPs?</b></p>	<p>In our view, the requirement to adhere to audit and reporting requirements, general AFSL holder obligations and client money and property requirements would impose significant costs, duplication and disruption to FFSPs.</p> <p>The feedback from financial institutions who commenced preparation for the foreign AFSL regime supports this view. The cost to apply for licences, evaluate and design compliance systems, policies, procedures and frameworks was upwards of A\$1.5m for some international financial institutions. This did not include the time of business, compliance and other support function personnel in supporting the initiative. Many of the same obligations have again been suggested in connection with the paragraph 34 conditions.</p>
<p><b>Fast-track the licensing process for FFSPs</b></p>		
12	<p><b>Other than the fit and proper test, are there other requirements that may require amendments to fast-track the licensing process; what barriers to entry does these requirements pose?</b></p>	<p>We support the proposal to amend the fit and proper person test. The test as it is applied by ASIC is onerous. In particular, the approach adopted by ASIC does not allow for adequate reliance on comparable assessments already undertaken in other highly sophisticated and regulated jurisdictions, including the United States and Hong Kong.</p> <p>As a separate observation, feedback from practitioners as well as licensees suggests that the licensing process within ASIC for applicants seeking authorisation to provide financial services to wholesale clients only is too time consuming, complex and burdensome.</p>
13	<p><b>As requested in paragraph 42, please provide a list of provisions that should be exempted under a modified licensing regime and explain the basis for the exemption.</b></p>	<p>We do not support the modified licensing regime (i.e. a regime akin to the foreign AFSL regime proposed by ASIC) for the reasons set out in our cover letter.</p> <p>If Treasury is minded to pursue this option, then any proposal for a foreign licensing regime should give appropriate recognition to the obligations imposed under the relevant comparable jurisdiction and only impose additional obligations where strictly necessary. That is, the correct starting point is not to apply all the obligations of an AFSL holder (as was ASIC's starting point), but instead to identify which obligations should apply because comparable obligations do not exist in the FFSP's primary jurisdiction.</p>
14	<p><b>Should any additional conditions be required for an FFSP to apply for an automatic licence?</b></p>	<p>While an automatic licence will benefit a FFSP in removing the cost, time and administration associated with the application process, we do not believe that it would overall provide an adequate solution, for the following reasons.</p> <ol style="list-style-type: none"> <li>1. The FFSP will still be required to fully comply with AFSL requirements.</li> <li>2. There will be cost and time required to introduce a specific compliance framework, including policies, procedures, systems and requirements to comply with Australian regulation. This is regulation that may be duplicative of and/or inconsistent with that which applies in the FFSP's primary jurisdiction. An example of some of the rules that would result in inconsistency and</li> </ol>

Q.	TREASURY QUESTION	RESPONSE
		<p>burdensome duplication include the regulation concerning sell-side research, breach reporting and client money obligations.</p> <p>We do not consider that further conditions should be imposed. Imposing additional conditions would provide a further disincentive for FFSPs to utilise this option.</p>
15	<p><b>Are there other ways licences for FFSPs could be fast-tracked?</b></p>	<p>A licensing process that gives appropriate recognition to the sufficient equivalence regime and seeks information and imposes obligations only where a gap of between the Australian requirements and those in the FFSP's home jurisdiction which is material in nature has been identified would be an improvement. It would need to be materially different to that proposed by ASIC, which applied the full AFSL requirements and exempted limited obligations.</p> <p>We would also recommend an improvement to the resourcing and systems used at ASIC to assess and respond to licensing applications, as noted in our response to question 12.</p>
16	<p><b>Are there licensing processes used by other jurisdictions that could serve as a model for Australia?</b></p>	<p>No. Given the extra-territorial reach of Australian's licensing regime, we think the appropriate solution is as we have outlined in our cover letter.</p>
17	<p><b>What are the financial costs and regulatory impacts of comply with all the AFSL obligations under option 3?</b></p>	<p>We consider that the financial costs and regulatory impacts are material for the following reasons.</p> <ol style="list-style-type: none"> <li>1. Feedback from those who had commenced preparations to apply for a new ASIC foreign licence indicated that the cost of doing so for some large international institutions had exceeded A\$500,000 even prior to the point at which they had commenced the application drafting process and systems, policy and framework build-out. This is markedly different to the assumed cost of A\$110,000 anticipated to apply by ASIC in connection with external advisory costs and A\$50,000 with respect to compliance monitoring and system development (set up and ongoing maintenance).<sup>7</sup></li> <li>2. ASIC's Regulatory Impact Statement on the framework for foreign financial service providers confirmed a material impact on the number of FFSPs likely to service Australian wholesale investors following the reforms proposed in March 2020.<sup>8</sup> According to ASIC, the foreign AFSL regime was likely to result in a 13% reduction in the number of FFSPs servicing Australian wholesale investors relative to those firms who were relying on the sufficient equivalence relief.<sup>9</sup> For those firms relying on the limited connection relief, the reduction was expected to be in the order of 50%.<sup>10</sup> In all scenarios, the impact on competition in the provision of financial services to wholesale investors in the Australian market ought to be considered material.</li> </ol>

<sup>7</sup> Australian Securities and Investments Commission, 'Regulation Impact Statement: Regulatory framework for foreign financial services providers' (March 2020), [140].

<sup>8</sup> Ibid.

<sup>9</sup> Ibid, [132].

<sup>10</sup> Ibid.