

Article Information

Author: Andrea Beatty

Service: Banking & Finance, Foreign Investment & Trade, Funds Management

Sector: Financial Services

ASIC consults on new foreign AFS licencing regime which all foreign financial services providers should know about

ASIC has requested further consultation regarding a new foreign AFS licensing regime.

On 3 July 2019, ASIC released Consultation Paper 315 – Foreign financial services providers: Further consultation ([CP 315](#)). ASIC has requested public consultation regarding the proposal to introduce Australian financial services (AFS) licensing relief for foreign financial service providers (FFSPs). CP 315 introduces the proposed ‘funds management’ relief which will allow FFSPs to provide their services to professional investors in Australia.

CP 315 was released as a result of the responses received for Consultation Paper 301 – Foreign financial services providers ([CP 301](#)) which sought to repeal the sufficient equivalence and limited connection relief and implement a modified AFS licensing regime that would enable eligible FFSPs to apply for and maintain a modified form of AFS licence (foreign AFS licence).

CP 315 discusses four main proposals:

1. Foreign AFSL Regime

Currently FFSPs do not require an AFS Licence as they fall within Class Orders which provide them with ‘relief’. The different Class Orders available can be found in Information Sheet – Foreign financial services providers – practical guidance ([INFO 157](#)). The two ‘reliefs’ or exemptions available to FFSPs are the sufficient equivalence relief and limited connection relief.^[1] However, ASIC proposes to repeal these allowances and impose obligations which will require FFSPs to obtain a modified AFS licence.^[2] The feedback received for CP 301 has formed ASIC’s response requiring FFSPs that rely on sufficient equivalence relief to obtain a modified AFS licence, extending the transitional period proposed in CP 301 from 12 months to two years. This extended time period would ensure compliance with the new foreign AFS licensing regime.

2. Fund Management Relief

ASIC proposes to provide ‘funds management’ relief to FFSPs from the requirement to hold a foreign AFS Licence. This will allow for the provision of financial services regarding funds management activities to professional investors in Australia,^[3] subject to a:

- cap on the scale of those activities:^[4]

ASIC proposes that FFSPs will only have the benefit of the funds management relief if less than 10% of its annual aggregated consolidated gross revenue, including the aggregated consolidated gross revenue of entities within its corporate group is generated from the provision of funds management financial services in Australia.

- conditions that apply to operation of the relief (specified in Section B)

ASIC listed the following conditions which need to be met for FFSPs to benefit from the funds management relief:

- (a) the FFSP must not be carrying on a business in Australia;
- (b) the FFSP has appointed a local agent who is authorised to accept, on the FFSP’s behalf, service of process and notices;

(c) the FFSP must enter into a deed submitting to the non-exclusive jurisdiction of the Australian courts in relation to action by ASIC and other Australian government entities, and lodge it with ASIC;

(d) the FFSP must notify ASIC of the types of funds management financial services it intends to provide to professional investors in Australia;

(e) the FFSP must maintain adequate proof of its compliance with the proposed 10% aggregated revenue cap (see proposal B3);

(f) the FFSP must comply with directions from ASIC to provide a statement (similar to s912C of the *Corporations Act 2001*);

(g) the FFSP must provide reasonable assistance to ASIC during surveillance checks (similar to s912E of the *Corporations Act 2001*);

(h) the financial services must be provided only to clients in Australia who meet the definition of professional investor or, in the case of portfolio management services, only to clients who meet the definition of eligible Australian user; and

(i) the FFSP cannot rely on the relief if ASIC has notified the FFSP, or its agent, that the FFSP is excluded from relying on the relief, and ASIC has not withdrawn the notice. [5]

CP 315 proposes that funds management relief will be available to eligible FFSPs from 1 April 2020, with a six-month transitional period to 30 September 2020 to facilitate compliance with the conditions of the funds management relief.

3. Repealing the limited connection relief

Currently, the limited connection relief allows FFSPs to have a lack of visibility in regards to three issues:

1. the types and number of entities relying on the relief;
2. the types of financial services and financial products being provided under the relief; and
3. the scale of activities being conducted in Australia under the relief.[6]

Due to these issues, ASIC proposes to repeal the limited connection relief and instead implement the funds management relief and rely on the exemption outlined in reg 7.6.02AG of the *Corporations Act 2001*. [7] ASIC believes that the combination of the proposed funds management relief and legislative exemption will allow FFSPs to have a balanced approach to cross-border facilitation, market integrity and investor protection. [8]

ASIC does not propose to provide AFS licensing relief to a FFSP that provides financial services to a professional investor who has made an initial application or inquiry for financial services from the FFSP (reverse solicitation). [9] This is due to ASIC's concern about adequately monitoring the conduct of FFSPs on a reverse solicitation basis. [10]

4. Updated guidance in Regulatory Guide 176 (RG 176)

ASIC intends to update Regulatory Guide 176 – Foreign financial services providers (RG 176) to provide guidance for FFSPs on the foreign AFS licensing regime as proposed in CP 301 (specified in Section D). [11] This update to RG 176 would include further information regarding the foreign AFS licensing regime and how ASIC would apply the proposed funds management relief and withdraw INFO 157 when RG 167 is released. [12]

Attached to CP 315 is a drafted updated Regulatory Guide 176 and draft ASIC Corporations (Foreign Financial Services Providers – Funds Management Financial Services) Instrument, both of which can be accessed [here](#).

[1] ASIC, 'Consultation Paper 315 – Foreign financial services providers: Further consultation', consultation paper, 3 July 2019, <https://download.asic.gov.au/media/5191721/cp315-published-3-july-2019.pdf>, [7].

[2] CP 315, [10].

[3] CP 315, [10]-[11].

[4] CP 315, [18].

[\[5\]](#) CP 315, [21].

[\[6\]](#) CP 315, [26].

[\[7\]](#) CP 315, [27].

[\[8\]](#) Ibid.

[\[9\]](#) Ibid.

[\[10\]](#) Ibid.

[\[11\]](#) CP 315, [31]

[\[12\]](#) Ibid.