FINANCIAL SERVICES COUNCIL

RELIEF TO FOREIGN FINANCIAL SERVICES PROVIDERS - TREASURY CONSULTATION PAPER 9 JULY 2021

Submission to Treasury

3 AUGUST 2021

About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our full members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our supporting members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost $3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

Background

A person who carries on a financial services business in Australia must hold an Australian Financial Service Licence (**AFSL**) unless an exemption applies. AFSL holders are required to meet obligations set out in the *Corporations Act 2001 Cth* (Corporations Act).

In the 2021-22 Budget, the Government announced that it will consult on options to restore the previously well-established regulatory relief provided for Foreign Financial Service Providers (FFSPs) who are licensed and regulated in jurisdictions with comparable financial service rules and obligations. The relief would be limited to FFSPs that deal with wholesale clients and professional investors.

The Government also announced that it would consult on options to create a fast-track licensing process for FFSPs who wish to establish more permanent operations in Australia.

On 31 March 2020, ASIC repealed the "sufficient equivalence relief" and "limited connection relief" and replaced them with a foreign AFSL regime and a narrower funds management relief.

We note the Treasury Consultation dated 9 July 2021 (**CP**) sets out 6 principal options to consider, 3 options in providing licensing relief to FFSPs and 3 options to fast-track the licensing process. The consultation also seeks views on any additional options that should be considered.

FSC submission to Treasury

We thank you for the opportunity for the FSC to make this submission regarding the CP which includes FSC's feedback on the 6 options outlined therein. Our comments and suggestions are made with a view to improving the new regime.

We would welcome the opportunity to discuss further any queries Treasury may have in connection with FSC's submissions.

Dated: 3 August 2021

Ashley Davies
Policy Manager (Legal)

FSC Submission on Treasury CP – Relief for Foreign Financial Services Providers.

Key points

The FSC is supportive of making FFSP licensing relief and the fast-track licensing process simpler, quicker, more accessible and transparent for FFSPs. In this submission we raise issues of concern and suggest changes to address these concerns with a view to making the new regime more practical, while at the same time enabling it to achieve its regulatory intent. In particular, it is important that the new regime not adversely impact the ability of FFSPs to manage primarily offshore assets for Australian professional investors, including to provide:

(a) greater selection and diversity of investment strategies and managers;
(b) access to world class investment management capabilities; and
(c) greater competition among fund managers, which drives multiple outcomes including amelioration of fees borne by superannuation fund members and innovation and efficiency of management operations.

The FSC advocates that a reformed FFSP regime should endeavour to:

1 address certain concerns previously expressed by ASIC in relation to effective supervision and regulation of FFSPs while not imposing unduly onerous conditions for relief or licensing;
2 expand the list of “substantially equivalent” jurisdictions;
3 modify limited connection relief to incorporate some limited notification and reporting obligations;
4 dispense with the concept of “eliglble Australian user”;
5 amend the current “fit and proper persons” test for FFSP license applications and introduce a practical, legislated test that reduces regulator discretion; and
6 introduce a modified licensing regime for fast-track licensing of IOSCO MMOU signatories with a reduced set of licensing obligations.

The following paragraphs set out our feedback in relation to some of the specified questions in the CP, as well as some general comments. The terminology used in this submission, other than as defined in this document, is consistent with the terms used in the CP.

Options in establishing a framework for FFSPs (relief)

Option 1 – restore the previous relief

Option 1A

This option would restore the **sufficient equivalence relief** and **limited connection relief** as it applied before it was repealed on 31 March 2020. The sufficient equivalence relief would apply to FFSPs regulated by the United Kingdom, United States, Hong Kong, Singapore, Germany and Luxembourg.

Option 1B

This option would 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 - FFSP relief for certain financial services provided to wholesale clients

This option would provide relief to FFSPs providing **certain financial services**[1] to **wholesale clients,**[2]provided they are regulated to provide those services in their home jurisdiction by a relevant authority in one of the following jurisdictions: Denmark, France, Germany, Hong Kong, Luxembourg, Canada, Singapore, Sweden, the UK and the US.

Option 3 – FFSP relief for all financial services provided to wholesale clients

This option would provide FFSP relief to **all financial services** provided to **wholesale clients**. This option requires FFSPs to be regulated by certain overseas regulatory authorities as outlined in Option 2. FFSPs would need to notify ASIC of their reliance on this relief and would need to comply with the specified conditions as outlined in paragraph 34 of the CP.

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[1] financial services that would be covered under this option are any of the following provided in relation to a financial product as defined in the CP, as long as the FFSP is licensed to do so in its home jurisdiction:

a) providing financial product advice;
b) dealing in a financial product;
c) making a market for a financial product; or
d) providing a custodial or depository service.

[2] Wholesale clients comprise those that:

a) invest or advise on a product that exceeds $500,000;
b) own net assets of $2.5 million or has a gross annual income of over $250,000 over two financial years as certified by an accountant;
c) cover a range of institutional investors with particular criteria;
d) owns a business with more than 20 employees, or more than 100 employees if the business manufactures goods;
e) an AFSL holder has determined to be experienced in using financial services; or
f) are professional investors.

A **professional investor** is a person who:

a) is an AFSL holder;
b) is a body regulated by APRA;
c) is a registered entity within the meaning of the Financial Sector (Collection of Data) Act 2001;
d) is a trustee within the meaning of the Superannuation Industry (Supervision) Act 1993 and the fund, trust or scheme has assets of at least $10 million;
e) controls at least $10 million in assets;
f) is a listed entity or a related body corporate of a listed entity;
g) is an exempt public authority;
h) is a body corporate or unincorporated body that carries on a business of investment in financial products or invests funds received following an offer or invitation to the public; or
i) is a foreign entity, either established or incorporated in Australia, and is covered by one of the previous items.

1. What are the impacts or other considerations that may affect implementing each option.

The FSC considers that Option 1A) ignores some concerns previously expressed by ASIC in relation to regulatory and enforcement limitations (see ASIC CP 301). We accept that ASIC wishes to know who is operating under limited connection relief and what they are doing, which is not information available to them under 1A). That said, limited connection relief is an important aspect of the current regime and some modified form of limited connection relief would be helpful. See below.

Elements of Option 1B) would have support as it is well understood and is low impact in regard to ongoing reporting. While continuation of funds management relief would address ASIC's previously expressed concerns around supervisory and enforcement limitations in relation to limited connection relief, we note that the scope of funds management relief is considered overly narrow by industry because of (amongst other things) the limitations around the concept of “eligible Australian user” and inability to accommodate one off or periodical physical visits to Australia for client maintenance or marketing purposes. This new definition is considered by many to be unnecessary and overly restrictive. The FSC recommends reverting to the more familiar definition of wholesale clients.

For both Options 1A and 1B, the FSC considers that the list of six “substantially equivalent” jurisdictions should be expanded to include the additional jurisdictions contemplated by Option 2/3, as well as Switzerland, Japan, Ireland and New Zealand.

Option 2 contemplates a list of "certain financial services" that should cover most, if not all, of the financial services that FFSP's seek to provide in the Australian market. The list of jurisdictions under Option 2 covers Denmark, France, Germany, HK, Luxembourg, Canada (Ontario), Singapore, Sweden, the UK and the US, which is the same as ASIC's foreign AFSL regime announced on 31 March 2020 and is more expansive than ASIC's previous sufficient equivalence/class order relief where Denmark, France, Canada (Ontario) and Sweden were not covered. Given this allows "certain financial services" but not all types of financial services, the FSC suggests that if adopted it should additionally give ASIC discretion to select specific types of financial services where Australian wholesale investors most need access to offshore managers. However, it is unclear what is to happen with the limited connection relief or funds management relief, in other words, it is unclear in the CP whether "certain financial services" would cover, in certain circumstances, the existing limited connection relief or funds management relief.

Option 3 contemplates “all financial services” and we note that other financial services not covered by "certain financial services" will include (1) operating a registered managed investment scheme and (2) providing traditional trustee company services. As with Option 2 it is also unclear what is to happen to limited connection relief or funds management relief.

For both Options 2 and 3, we recommend extending the recognised jurisdictions to include other jurisdictions, for example Switzerland, Japan, Ireland and New Zealand.

2. *Which of the proposed options would be most effective in providing relief to FFSPs and why?*

Option 1A), but with an expanded list of sufficiently equivalent jurisdictions and a modified form of limited connection relief (not funds management relief), would in our view have significant benefits.

Option 3, depending on the conditions that apply to it, would also be attractive given that it combines consumer protection and ensures that entities relying on relief: register with ASIC and commit to responding appropriately to ASIC requirements. It should be offered alongside a modified form of limited connection relief. However, we would recommend that Option 3 be modified to include more jurisdictions such as Switzerland, Japan, Ireland and New Zealand.

3. *Is there a specific need for the limited connection relief if option 2 or 3 is adopted?*

The FSC has received strong feedback that some form of limited connection relief should be maintained, recognising that FFSPs should be required to comply with notification requirements so that ASIC has visibility regarding when an FFSP is relying on the relief. The relief is important for a number of reasons:

- We have received high level information from our law firm members in which they all indicated awareness of a significant number of parties relying on limited connection relief, especially in the current climate of uncertainty. For example, one member estimated that in the last 5 years it would have provided advice to over 200 clients and in the last 2 years more than 50 offshore clients concerning limited connection relief. Similarly, another member estimated it had provided such advice to around 100 clients. We note that reliance on limited connection relief is difficult to identify and/or disclose and/or quantify due to confidentiality issues but our understanding is it is significant.
- It is foreseeable that some FFSPs that have relied on the limited connection relief in the past will choose neither to apply for the Option 2 or Option 3 relief, a Foreign AFSL nor to implement the funds management relief. This may be due to the FFSP not being regulated in a sufficiently equivalent jurisdiction or Australian sourced revenue does not justify the steps required to implement and comply with the relief. Existing Australian clients at the expiry of the limited connection relief may, however, receive on-going financial services. Investors in a non-corporate offshore fund would, for example, continue to receive a custodial or depository service, and a dealing service as the operator of the foreign fund trades fund investments, simply because the investor continues to hold their existing investment in the fund. In these circumstances, the only option for those FFSPs would be to terminate Australian clients, for example through compulsory redemption of interests in an offshore fund. This could result in significant detriment to those clients, and their underlying investors.
- We note that limited connection relief is not limited to specific jurisdictions, nor type of financial service, while Options 2 and 3 are. Accordingly, an FFSP that does not qualify for Options 2 and 3 on the basis of not being in one of the

included jurisdictions/providing a particular financial service may be able to rely on a form of limited connection relief if such relief is available and their connection to Australia is limited. Notably, limited connection relief in some form will provide access where the FFSP is not regulated by one of the recognised regulatory authorities in 'sufficiently equivalent' jurisdictions (consistent with the objective of the relief to provide access to diversified and competitive investment management services for Australian professional investors).

- We note also that some FFSPs rely on limited connection relief where a financial institution based in Australia approaches them of their own accord ("reverse solicitation").
- Some FFSPs particularly value the limited connection relief because it enables them to manage the 'deeming provision' in section 911D Corporations Act.
- Narrowing the scope of the limited connection relief to "professional investors", rather than the broader "wholesale client" concept may be a way forward, as would imposing some limited use notification and reporting obligations.

4. Are there other options for FFSP relief that should be considered?

See above regarding modifying scope of Options 1, 2 and 3.

5. Is there any other FFSP relief offered in other jurisdictions that could serve as a model for Australia?

In terms of availability of such FFSP equivalent relief by overseas financial service regulators, it is suggested that as part of your ongoing investigation it would be worthwhile to contact regulators in key countries for comparison, such as the USA and UK.

6. 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?

<u>Sufficient equivalence relief.</u>

Lack of clarity and lack of jurisdictional scope: the coverage of the sufficient equivalence and limited connection relief was not clear, such that common practices could be seen as having both apply (for instance a fund manager marketing and recommending an investment strategy to Australian cients, and then managing money under that strategy either in an offshore fund or via a separately managed account would probably need both forms of relief.) The list of eligible jurisdictions is too narrow.

<u>Limited connection relief</u>

See answer to question 3 above.

<u>Funds management relief</u>

Funds management relief is only available to FFSPs that are carrying on a financial services business in Australia only because of the operation of section 911D of the Corporations Act and are not registered as foreign companies under the Corporations Act. Further, an

offshore fund must not carry on business in Australia or be operated in Australia (as applicable). The FSC submits that these are significant and unnecessary limitations on the scope of the relief, for the following reasons:

- Australian case law is taking an increasingly broad view of the circumstances in which a foreign company is regarded as carrying on business in this jurisdiction, even when operating from outside Australia and with a very limited physical connection to Australia. The Courts are increasingly considering all the points of connection the foreign company has with Australia, which is a question of degree and very much turns on the particular facts. This trend will result in significant uncertainty concerning whether a particular FFSP that has implemented the relief is actually covered by the exemption, and it will unnecessarily and severely curtail the application of the relief;
- some FFSPs have taken a cautious approach for the above reason and registered as foreign companies, for example because they may visit clients in Australia for relationship management purposes from time to time. Such foreign companies would not be eligible for the funds management relief, which seems an unjustified penalty for taking a cautious approach to compliance with Australian law;
- the definition of “eligible Australian user” is overly narrow and instead the definition of wholesale client or "professional investor" (each already well understood) would be more sensible;
- the funds management relief includes other more certain conditions which are designed to ensure it is more transparent and appropriately targeted at offshore based FFSPs and offshore funds. For example, specific notifications to ASIC and conditions apply relating to formation outside Australia. This distinguishes the proposed relief from the limited connection relief, making the uncertain and factually dependent conditions related to not carrying on business/operating in Australia unnecessary; and
- a number of offshore entities may be providing financial services to Australian investors in the course of offering and operating an offshore fund. These could include the fund itself (if the fund is a legal entity in its own right), the operator of the offshore fund (eg a trustee or general partner) or the investment manager/adviser appointed by the operator of the fund. It is currently unclear which of these entities would be required to implement the funds management relief in respect of services related to the offshore fund. It is submitted that it would be logical for a single operator of the offshore fund to implement the relief, with the other entities involved in the operation of the fund also being covered by the relief.

7. Are there other overseas regulatory authorities that should be considered for addition to the list under options 2 or 3?

The FSC would recommend that more jurisdictions such as Switzerland, Japan, Ireland and New Zealand be included. Asia Region Funds Passport (**AFRP**) country members could also be considered, namely Japan, New Zealand, Republic of Korea and Thailand (noting that

AFRP focuses on retail client regulation). The FSC believes that widening the scope of the relief to IOSCO Board Members on an automatic basis would increase the risk of compromising the integrity of the Australian financial system.

8. Which conditions in paragraph 34 should not be attached to FFSP relief and why?

We have compared the proposed conditions to be attached to Options 2 and 3 against the current conditions imposed on FFSPs under ASIC RG 176 and ASIC INFO 157.

We note that the majority of the conditions and ongoing obligations are generally similar to those that were previously required under the existing sufficient equivalence relief and the specific obligations under the Corporations Act 2001.

With regard to the specific conditions, we refer to the Appendix to this letter for detailed comments.

9. Should there be other consequences to a breach of relief conditions other than the FFSP relief no longer being available?

The ability for ASIC to limit or set conditions to the relief. There should be graduated responses available to ASIC, although this may be covered by the ability for ASIC to give directions to the FSSP. This seems to be within the intent of paragraph 35 of the CP. Fines and remediation requirements could be considered, provided that it is consistent with the regime applied to AFSL holders.

10. What are the regulatory costs and benefits of each option proposed?

No Comment.

11. 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?

No comment.

Fast tracking the licensing process for FFSPs

Option 1: Amend the fit and proper person test

1. This option would 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.

Option 2: Modified licensing regime for FFSPs dealing with wholesale clients

2. A modified licensing regime would apply to FFSPs that:
   a) are regulated by an overseas regulatory authority that is a signatory to the IOSCO multilateral MOU; and
   b) provide financial services to wholesale clients in Australia.

   Under this option, FFSPs could be exempt from some provisions relating to the licensing process or obligations in Chapter 7 of the Corporations Act. The basis of these exemptions would be that it is duplicative to impose Australia's licensing requirements in addition to what is required in the home jurisdiction.

Option 3: Provide automatic licensing relying on an overseas licence held by the FFSP

3. This option would grant an AFSL to FFSPs that provide appropriate evidence to demonstrate that the FFSP:
   a) is regulated by an overseas regulatory authority that is an IOSCO board member;[3]
   b) holds an existing licence and is specifically authorised to provide the financial services intended to be provided in Australia; and
   c) will just provide financial services to wholesale clients in Australia.

   FFSPs would be subject to all obligations that apply to a holder of a standard AFSL and be subject to specified conditions as set out in the CP.

12. What 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?

The FSC considers that reducing the current requirements in obtaining “People Proofs” is to be welcomed, as each jurisdiction has its different protocols of police check and bankruptcy check. Currently, the time and costs of obtaining all these proofs is a significant barrier for FFSPs looking into entering the Australian financial market.

For FFSPs with global presence the fit and proper persons frequently have lived in many jurisdictions in the last 10 years so the People Proofs for each person is very onerous. We would suggest that the current requirements are unworkable, no matter what the scope of the fast track regime is. We note in particular the problem with differing practices in different jurisdictions: for example, police checks are often not available, or only issued by search agencies, not government agencies.

We would also advocate that the level of discretion ASIC has should be curtailed. The starting point in the law should be that ASIC has no reason to believe that a person is not fit and proper, and this should be a provision of the legislation.

13. 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.

The FSC notes the conditions attached to Fast-tracking Option 3 require that "FFSPs would be subject to all obligations that apply to a holder of a standard AFSL" and be subject to a list of other conditions of maintaining good practice in its home jurisdiction and a requirement to notify ASIC of any significant changes.

We foresee practical difficulties for FFSPs to comply with "all obligations that apply to a holder of a standard AFSL" as this would require extensive knowledge of Australian law. It is not something that FFSPs can readily accept and would also cause problems where the Australian law requirements are in conflict with their home jurisdiction requirements.

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[3] IOSCO, ‘IOSCO board’ <https://www.iosco.org/about/?subsection=display_committee&cmtid=11>

We think that with Fast-tracking Options 2 and 3, with so many countries included, Australian financial system integrity might be compromised without reporting and conduct obligations but requiring each entity to comply with all AFSL obligations as is proposed under Option 3 will be problematic (see issues in the Appendix raised in relation to breach reporting).

We also note with regard to Fast-tracking Option 2, more countries are included under the IOSCO Multilateral MOU (note that currently over 120 countries are signatories of the MOU) which should translate into more offshore managerial opportunities for Australian wholesale clients. However, providing streamlined licensing for managers from so many countries may ultimately compromise Australia's financial system integrity, and may unfairly favour foreign financial services providers over domestic financial services providers. There are arguments to support different levels of licensing requirements where countries do not have sufficiently equivalent regulatory regimes.

14. Should any additional conditions be required for an FFSP to apply for an automatic licence?

With regard to Fast-tracking Option 3 we note that 34 countries will be included (IOSCO board members), which is not as many as Option 2 but still a significant increase compared to the current scheme. This Option 3 is also quicker for FFSPs from these 34 countries to attract Australian wholesale clients but would carry a higher compliance burden and cost. However, as we also noted above, the quick and easy licensing approach may not be appropriate for countries which do not have sufficiently equivalent regulatory regime, and may unfairly favour foreign financial services providers over domestic financial services providers. We would caution against automatic licensing where ASIC is not confident that equivalent protection would be provided. We also consider that while the upfront licensing costs will be minimal for such FFSPs, the long term compliance costs, especially for FFSPs from jurisdictions which are not from sufficiently equivalent jurisdictions will be high and therefore, this option is unlikely to be attractive to those FFSPs.

15. Are there other ways licences for FFSPs could be fast-tracked?

See reply to question 12 above.

16. Are there licensing processes used by other jurisdictions that could serve as a model for Australia?

No comment.

17. What are the financial costs and regulatory impacts of complying with all the AFSL obligations under option 3?

No comment.

APPENDIX – CONDITIONS TO BE ATTACHED TO FFSP RELIEF OPTIONS 2 AND 3

Condition	FSC position
a) notifying ASIC when the FFSP is relying on the relief or ceases to use the relief;	Reasonable.
b) applying to ASIC for approval to use the relief;	OK if this is similar to using the substantial equivalence ("passporting") exemption, where one initial application is made and documents are lodged with ASIC and ASIC confirms nothing else is required.
c) consenting to information sharing between ASIC and the FFSP's home jurisdiction regulator;	Derives from passporting – not objectionable.
d) assisting ASIC in any supervision or investigation matters;	Not objectionable if clearly limited to potential breaches of conditions or applicable Australian financial services laws in connection with the provision of financial services to Australian clients.
e) complying with directions from ASIC;	Not objectionable if clearly limited to potential breaches of conditions or applicable Australian financial services laws in connection with the provision of financial services to Australian clients.
f) complying with information requests from ASIC within the specified time;	Not objectionable if clearly limited to potential breaches of conditions or applicable Australian financial services laws in connection with the provision of financial services to Australian clients.
g) not dealing with unauthorised or unlicensed entities;	We note this is not an obligation under the previous sufficient equivalence relief, nor an obligation for a standard AFSL holder. Lacking detailed interpretation and explanation on what amounts to "deal with" and

	"unauthorised", more detail needs to be provided on this obligation. It is not clear and we would expect an FSSP to "deal with" many unlicenced entities. However, there would be no objection if the understanding is that this condition is intended to stop FFSPs dealing with intermediaries in Australia who are providing financial services and who do not hold an AFSL and are not exempt from the requirement to hold an AFSL. Would need tighter drafting to make the meaning of this condition clearer.
h) notifying ASIC of any changes to the FFSP or the home jurisdiction regulator that affect their eligibility for relief;	Derives from passporting – not objectionable
i) submitting to the jurisdiction of Australian courts;	Derives from passporting – not objectionable
j) comply with any orders of an Australian court;	Derives from passporting – not objectionable
k) complying with auditing and reporting requirements;	Based on our understanding that this condition is intended to impose financial auditing and reporting obligations on the FFSP (not auditing the FFSP's compliance with its licence or exemption) this has the potential to result in a duplication/overlap for an offshore regulated FFSP particularly one which registers as a foreign entity with ASIC. More information is needed regarding whether this condition would be imposing home or Australian financial auditing and reporting obligations. We note thator several years industry have been lobbying ASIC for the ability to lodge foreign financial reports on a commercial in confidence basis, as is permitted in many other

	jurisdictions eg Canada. If this condition requires home jurisdiction financial reports to be lodged with ASIC then we would encourage Treasury to consider legislative change to permit foreign financial reports to be lodged on a commercial in confidence basis in Australia. We note that financial auditing and reporting obligations are exempt under the foreign AFSL regime.
l) ensuring that financial services are provided efficiently, honestly and fairly;	Potentially overlaps with obligations in home jurisdiction. This is a condition under the foreign AFSL regime but not under the passporting or the limited connection relief – it would mark a fairly significant change, given ASIC's use of this condition in relation to AFSL, especially if a breach of this condition would be a civil penalty provision.
m) applying protections for dealing with client's money and property; n) adequate conflicts of interest arrangements in place	Likely to overlap with obligations in home jurisdiction. Is exempt under the foreign AFSL regime.
o) having adequate risk management systems in place;	Likely to overlap with obligations in home jurisdiction. This is a condition under the foreign AFSL regime.
p) notifying clients when the FFSP is relying on the relief;	Derives from passporting – not objectionable
q) appointing a local agent for the FFSP;	Derives from passporting – not objectionable
r) ensuring representatives are appropriated trained;	Possible overlap with obligations in home jurisdiction, depending on the extent to which the representatives are required to comply with Australian financial services laws (and the extent

	to which the representatives are required to provide financial services to the standards that apply in their home jurisdiction, as is the case with passporting). Is exempt under the foreign AFSL regime.
s) providing periodical information to ASIC including: i. the FFSP's fund or business type; ii. detailed description of the intended business activity, market presence and client groups targeted in Australia; iii. copy of the FFSP's constitution and/or articles of association; iv. the FFSP's investment strategy; v. the number of Australian clients; vi. confirmation that financial services are only provided to wholesale clients or professional investors; vii. certain financial statements that cover the financial services provided in Australia; viii. assets under management (AUM) of Australian investors in funds; ix. increase/decrease in AUM from Australian investors from prior reporting period; x. dealings with derivatives; xi. name of foreign legal entity adviser promoting fund(s) in Australia, including name of onshore Australian licensee where relevant; xii. the agreement with a local agent; xiii. annual compliance attestation; xiv. liquidity terms of the fund; and	These are more appropriate for an initial notification of reliance or application rather than periodical disclosure. They are generally not even required for standard AFSL holders. Generally seems to assume that an FFSP is offering a fund – in practice there are different arrangements that could apply so the definition of fund, AUM, redemption information etc will need clarification. Is it intended that funds need registration or FFSP? The distinction between a fund manager and a fund offered by a fund manager does need to be clear, and this ambiguity is one reason the existing relief is ambiguous. 34(s)(viii) should be limited to Australian clients who have invested via the FFSP – it is a larger request to have the manager of an offshore fund review its records to find and identify all Australian investors (whoever that would be defined). Note that this overlaps existing CRS reporting required via ATO.

xv. for funds that offer liquidity, redemption information from the prior reporting period.	
t) breach reporting obligations, similar to that of AFSL holders;	A significant step up from the limited breach reporting currently required under the passporting exemption - particularly if the civil penalty liability provisions of section 912D would apply. Potentially manageable if clearly limited to breaches of conditions or applicable Australian financial services laws in connection with provision of financial services to Australian clients Considering the difference in operating under an FFSP relief and a standard AFSL and the foreign nature of an FFSP's business operation in Australia, we recommend adopting a less onerous breach reporting regime for FFSPs which should be limited to relevant FFSP conditions.
u) maintaining the relevant authorisation in the FFSP's home jurisdiction to provide the financial service they are providing in Australia;	Similar to the passporting obligation to notify ASIC of any changes to regulatory status. Not unreasonable.
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;	Derives from passporting – not objectionable. If this condition were to apply and FFSPs are required to comply with laws of their home jurisdiction rather than Aus financial services laws then the breach reporting condition above would be less relevant and should be limited to breaches of home jurisdiction laws under home jurisdiction breach reporting.
w) a condition that ASIC can notify the FFSP of any additional conditions it believes are	Provides broad powers to ASIC to potentially undermine the effect of the

necessary to address any concerns ASIC may have; and	exemption which results in significant ongoing uncertainty for FFSPs. We would instead suggest an obligation to notify ASIC of changes to regulatory status or non-compliance with conditions of exemption.
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.	Provides broad powers to ASIC to potentially undermine effect of the exemption which results in significant ongoing uncertainty for FFSPs. The FSC suggests a requirement to notify ASIC of changes to regulatory status or non-compliance with conditions of exemption and for ASIC's rights to exclude FFSPs from relying on the relief to be clearly defined and based on breaches of conditions or law (not ASIC's view of how an exception was intended to be used), to provide more certainty. 34(s)(x) may be a duplication of very detailed derivative reporting which is already required under global arrangements.