

Keys to the Kingdom (including Australia's superannuation honeypot): A Guide for Foreign Financial Services Providers (FFSP) providing, or considering to provide, financial services to the Australian wholesale client market

31 March 2020

By: Martin Jamieson | Timothy Lou

The Australian market's demand for financial products and services is driven by its wholesale clients, many of whom benefit from government policies such as Australia's compulsory superannuation guarantee regime. On 10 March 2020, the Australian Securities and Investments Commission (ASIC) set out its finalised position in relation to the foreign financial services provider (FFSP) reforms governing how foreign financial services providers can service the Australian wholesale client market.

1	INTRODUCTION	2
2	FINANCIAL SERVICES REGULATION IN AUSTRALIA.....	2
	2.1 Key Features	2
	2.2 Registration in Australia as a Foreign Company	3
	2.3 Key Financial Services Concepts.....	4
	2.4 Wholesale Clients and Retail Clients.....	6
	2.5 The Australian Financial Services Licensing Regime.	8
3	FOREIGN AFSL REGIME	11
	3.1 About the Regime	11
	3.2 Benefits of Regime	11
	3.3 Extending Equivalence	14
	3.4 Costs	15
	3.5 Application Process	16
4	FUNDS MANAGEMENT RELIEF	16
	4.1 About the Relief.....	16
	4.2 Benefits of Relief	17

4.3	Costs	20
4.4	Application Process	22
5	WHICH REGULATORY SOLUTION IS RIGHT FOR YOU?	23
5.1	Key considerations for the Foreign AFSL Regime.....	23
5.2	Key considerations for the Funds Management Relief.....	24
6	TRANSITIONAL ARRANGEMENTS	25
6.1	Sufficient Equivalence Relief obtained by 31 March 2020	25
6.2	No Grandfathering of Limited Connection Relief	25
6.3	No Transition Period (for Funds Management Relief)	25
6.4	Contractual Considerations.....	25
6.5	Transitional Timeline.....	26
7	SUMMARY OF CHANGES SINCE CP 315.....	26
7.1	Extension of Limited Connection Relief	27
7.2	Funds Management Relief	27
7.3	Foreign AFSL Regime.....	29
7.4	No New Reverse Solicitation Exemption	30
8	GLOSSARY	30

1 INTRODUCTION

The objective of this guide is to enable foreign financial services providers to efficiently and productively engage local Australian legal service providers to determine and obtain their optimum regulatory solution for operating in the Australian wholesale market. The guide is designed to assist you in deciding whether it would be suitable for your firm to apply for or rely on any of the relief that is available under Australian financial services law, a Foreign AFSL or alternatively to apply for a Standard AFSL. After a brief introduction to Australian financial services regulation, we set out the Funds Management Relief available as well as the Foreign AFSL Regime and the issues to be considered when instructing local counsel in Australia in relation to determining whether there is applicable relief to be relied on or whether a Foreign AFSL or Standard AFSL should be applied for.

2 FINANCIAL SERVICES REGULATION IN AUSTRALIA

2.1 Key Features

The regulation of financial services in Australia generally occurs at the federal level under the [Corporations Act 2001 \(Cth\)](#), [Corporations Regulations 2001 \(Cth\)](#) and the [Australian Securities and Investments Commission Act 2001 \(Cth\)](#). The corporate regulator in Australia

is the [Australian Securities and Investments Commission](#) (ASIC), which also has the power to make legally binding legislative instruments. The relief for foreign financial services providers under Australian law takes the form of legislative instruments made by ASIC namely:

- [ASIC Corporations \(Amendment\) Instrument 2020/200](#) (Instrument 2020/200);
- [ASIC Corporations \(Foreign Financial Services Providers – Funds Management Financial Services\) Instrument 2020/199](#) (Instrument 2020/199 or Funds Management Relief); and
- [ASIC Corporations \(Foreign Financial Services Providers – Foreign AFS Licensees\) Instrument 2020/198](#) (Instrument 2020/198 or Foreign AFSL Regime).

2.2 Registration in Australia as a Foreign Company

You do not necessarily need to be registered as a foreign company in Australia to qualify for relief under the Foreign AFSL Regime. Concepts of ‘carrying on a business in Australia’ and ‘carrying on a financial services business in Australia’ are nuanced and will depend on the specific facts that apply to your firm.

Under Division 2 of Part 5B.2 of the Corporations Act, a foreign company must not carry on business in Australia unless it is registered with ASIC. Section 21 of the Corporations Act provides that a foreign company will be deemed to be carrying on business in Australia if it:

- has a place of business in Australia;
- establishes or uses a share transfer office or share registration office in Australia; or
- administers, manages, or otherwise deals with, property situated in Australia as an agent, legal personal representative or trustee, whether by employees or agents or otherwise.

Section 21(3) of the Corporations Act provides that a foreign company will not be deemed to be carrying on a business in Australia *merely* because, in Australia, it:

- is or becomes a party to a proceeding or effects settlement of a proceeding or of a claim or dispute; or
- holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
- maintains a bank account; or
- effects a sale through an independent contractor; or
- creates evidence of a debt, or creates a security interest in property, including PPSA retention of title property of the body; or

- secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts; or
- conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
- invests any of its funds or holds any property.

Subject to these statutory provisions, the common law test of 'carrying on a business' will need to be applied to the activity. Australian courts stress that whether a body corporate's activities will constitute 'carrying on a business in Australia' depends on the factual circumstances. Cases indicate that the degree to which a body corporate's activities in Australia are conducted with *system, regularity* and *continuity* generally determines whether the activities can be characterised as 'carrying on a business in Australia'. ASIC have released guidance which notes that if the services you are providing in Australia are more than very minor (and, in particular, have elements of *system, regularity* and *continuity*) then it is likely you will be deemed to be carrying on a business in Australia and therefore need to be registered with ASIC. However, *system, regularity* and *continuity* are not essential. A one off transaction, if substantial, can be seen by the courts as carrying on a business in Australia.

2.3 Key Financial Services Concepts

The Corporations Act classifies various conduct as 'financial services'. In particular, the Foreign AFSL Regime and Funds Management Relief both apply in relation to:

- providing financial product advice;
- dealing in a financial product;
- making a market for financial products as a result of redeeming or buying back those financial products; and
- providing a custodial or depository service.

This guide does not comprehensively set out the law on these key concepts, which are subject to exemptions and the circumstances of the case. Obtain legal advice if you are unsure how your particular business operations may be classified.

2.3.1 Providing Financial Product Advice

Financial product advice is generally (subject to certain exemptions) a recommendation or a statement of opinion, or a report of either of those things, that is intended to influence a person or persons in making a decision about a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products, or could reasonably be regarded as being intended to have such an influence. This would include most marketing material because they would contain statements intended to influence a person in making a decision about a particular financial product.

2.3.2 Dealing

The following conduct constitutes dealing in a financial product (unless exempted):

- applying for or acquiring a financial product;
- issuing a financial product;
- for securities or managed investment schemes, underwriting the securities or interests;
- varying a financial product;
- disposing of a financial product; or
- arranging for a person to engage in conduct referred to above unless the actions amount to providing financial product advice or is exempt from the definition of dealing.

Of particular relevance is the concept of dealing by issuing. A financial product is issued to a person when it is first issued, granted or otherwise made available to a person. As a general rule of thumb, the issuing of a financial product refers to taking on the liabilities of the party providing the financial product in respect of the financial product issued. For instance, the trustee of a unit trust would be dealing by issuing units in the trust. As the trustee has certain obligations towards the unitholders of the trust under the trust deed, the trustee would be regarded as the 'issuer' of the units.

Also of relevance for the purposes of this guide is the concept of arranging. Arranging is a broad concept under the Corporations Act and its scope has not been fully determined by the courts. Arranging occurs when a person brings into effect the issue, variation, disposal or acquisition of, or application for, a financial product. Depending on the specific circumstances of the case, the following factors may indicate that dealing by arranging is occurring:

- a person plays an important role for the consumer in relation to the financial product and the transaction probably would not have proceeded without the person's involvement;
- the person adds value for one or more of the parties to the transaction;
- the person receives money and passes it on to the product issuer to pay for the acquisition of a financial product; or
- the person is paid by the product issuer if a consumer purchases a financial product.

These factors are not exhaustive and legal advice should be sought if you are unsure whether certain conduct may amount to dealing by arranging.

2.3.3 Making a Market

A person makes a market for a financial product if:

- either through a facility, at a place or otherwise, the person regularly states the prices at which they propose to acquire or dispose of financial products on their own behalf; and
- other persons have a reasonable expectation that they will be able to regularly effect transactions at the stated prices; and
- the actions of the person do not, or would not if they happened through a facility or at a place, constitute operating a financial market because of the exemption in the definition of financial market in s 767A(2)(a) of the Corporations Act.

The Funds Management Relief does not apply to specialist market makers.

2.3.4 Providing Custodial or Depository Services

A person (the provider) provides a custodial or depository service to another person (the client) if, under an arrangement between the provider and the client, or between the provider and another person with whom the client has an arrangement, (whether or not there are also other parties to any such arrangement), a financial product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client.

2.4 Wholesale Clients and Retail Clients

This guide does not comprehensively set out the law on the delineation of retail and wholesale clients, which are subject to exemptions and the circumstances of the case. Obtain legal advice if you are unsure how your target clients may be classified.

2.4.1 Retail Clients

A financial product or a financial service is provided to a person as a retail client unless they are classified as a wholesale client. The Foreign AFSL Regime, Funds Management Relief and Instrument 2020/200 do not apply to financial services provided by a foreign financial services provider directly to a retail client. You will need to obtain a Standard AFSL or fall under other licensing relief if you intend to provide financial services to retail clients in Australia.

2.4.2 Wholesale Clients

The Foreign AFSL Regime is only applicable to financial services provided to wholesale clients. The Funds Management Relief is only applicable to a subset of 'Professional Investors', itself being a subset of 'wholesale clients'. Below is a list of circumstances in determining whether a client is a wholesale client for Australia's Corporations Act purposes.

- Where the price for the provision of the financial product, or the value of the financial product to which the financial service relates, is AUD \$500,000 or more; or
- Where the financial product or the financial service is provided for use in connection with a business that is not a small business, that is, a business that employs more than 20 people; or

- Where the financial product, or the financial service, is not provided for use in connection with a business, and the person who acquires the product or service gives the provider, before the provision of the product or service, a copy of a certificate given within the preceding two years by a qualified accountant that states that the person:
 - a) has net assets of at least AUD \$2.5 million; or
 - b) has a gross income for each of the last 2 financial years of at least AUD \$250,000; or
- Where the financial product, or the financial service, is acquired by a company or trust controlled by a person who meets the requirements in the previous paragraph; or
- Where the person is a professional investor. A 'professional investor' is defined in the Australian Corporations Act to include the following:
 - a) an AFSL holder;
 - b) a body registered under the *Financial Corporations Act 1974 (Cth)*;
 - c) a trustee of a superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme, within the meaning of the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the fund, trust or scheme has net assets of at least AUD \$10 million;
 - d) a body regulated by APRA other than a trustee of a fund or trust under point c) with net assets less than AUD \$10 million;
 - e) a person who has or controls gross assets of at least AUD \$10 million (including any assets held by an associate or under a trust that the person manages);
 - f) a listed entity, or related body corporate of a listed entity;
 - g) an exempt public authority;
 - h) a body corporate or unincorporated body that carries on a business of investment in financial products, interests in land or other investments, and for those purposes invests funds received (directly or indirectly) following an offer or invitation to the public, the terms of which provided for the funds subscribed to be invested for those purposes; and
 - i) foreign entity that, if established or incorporated in Australia, would be covered by one of the above paragraphs in relation to a 'professional investor'.

We also note that if a financial product or financial service is or would be provided to a body corporate that is a wholesale client, a related body corporate of that client is also taken to be a wholesale client.

2.5 The Australian Financial Services Licensing Regime.

Generally, a person who carries on a financial services business in this jurisdiction must hold an Australian financial services licence (AFSL) covering the provision of the financial services. This guide outlines the basic licensing concepts relevant to a standard wholesale AFSL for the purpose of understanding the Foreign AFSL Regime, Funds Management Relief and Instrument 2020/200.

2.5.1 General Obligations

All financial services licensees must comply with the following general obligations. An Australian financial services licensee must:

- do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; and
- have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative; and
- comply with the conditions on the licence; and
- comply with the financial services laws; and
- take reasonable steps to ensure that its representatives comply with the financial services laws; and
- have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements; and
- maintain the competence to provide those financial services; and
- ensure that its representatives are adequately trained, and are competent, to provide those financial services; and
- have adequate risk management systems.

2.5.2 Responsible Managers

A responsible manager is a person who is directly responsible for significant day-to-day decisions about the ongoing provision of the licensee's financial services. Together, the responsible managers of a licensee must have the appropriate knowledge and skills to cover all the financial services and products authorised on the Standard AFSL. Responsible managers are required by a licensee because the licensee is required to comply with the requirement in s 912A(1)(e) to "maintain the competence to provide ... financial services".

There are no residency requirements for responsible managers however they will be required to demonstrate they have the relevant qualifications, training and experience. A licensee may need to consider engaging a responsible manager with the qualifications, training and experience covering the authorisations on its licence if its existing staff members do not have such qualifications, training and experience. Responsible Managers do not have to be employees and can be engaged on a contractual and on a part-time basis.

Licensees relying on the Foreign AFSL Regime holding a Foreign AFSL are exempted from the requirement to demonstrate competence to provide financial services. Further, as foreign financial services providers relying on the Funds Management Relief do not hold any licence (whether foreign or standard), they will not be required to have responsible managers.

2.5.3 Authorised Representatives

An authorised representative is authorised by the licensee to provide specified financial services on behalf of the licensee. Employees or directors of the licensee or of the licensee's related bodies corporate (that is, the licensee's holding company, subsidiaries and sister companies) are deemed to be representatives of the licensee. Authorised representative status is generally used to confer authority on third parties, contractors or in cases where the licensee is not structured as a body corporate, to confer authorisations on its related entities in order to provide specified financial services.

Licensees holding a Foreign AFSL will be permitted to appoint authorised representatives in respect of the authorisations on its Foreign AFSL. A licensee is responsible for the conduct of its representatives whether or not the representative's conduct is within authority.

Foreign financial services providers relying on the Funds Management Relief cannot appoint authorised representatives.

2.5.4 Intermediary Authorisation

The intermediary authorisation licensing exemption is set out in s 911A(2)(b) of the Corporations Act. This structure involves a product provider entering into an arrangement with an Australian financial services licensee under which the licensee may make offers to people to arrange for the issue, variation or disposal of financial products by the product provider. If such offers are accepted, the product provider is to issue, vary or dispose of the financial products in accordance with such offers. The offers made by the licensee must be covered by the licensee's Australian financial services licence.

2.5.5 Financial Requirements

A Standard AFSL holder must have available adequate financial resources to provide the financial services covered by its Standard AFSL and to carry out supervisory arrangements. Accordingly, licensees are required to meet certain financial requirements depending on their licence authorisations, operations and other circumstances. These requirements include but are not limited to keeping a certain quantity of assets as liquid assets, net tangible asset requirements and audit requirements. A summary of such requirements is set out in [RG 166](#).

Holders of the Foreign AFSL are exempt from these financial requirements. Further, as foreign financial services providers relying on the Funds Management Relief do not hold any

licence (whether foreign or standard), they also will not be required to meet the financial requirements.

2.5.6 Client Money

Licensees have obligations under Part 7.8 and 1017E of the Corporations Act prescribing how certain monies from wholesale clients are held and dealt with by the licensee. Part 7.8 of the Corporations Act concerns client money (being money paid to the licensee in connection with a financial service or product). Section 1017E of the Corporations Act concerns money paid to an issuer or seller for the acquisition of financial products before the financial products are issued or transferred.

Holders of the Foreign AFSL are exempted from the client money requirements in both Part 7.8 and in s 1017E. We also note that since the Foreign AFSL holder will be providing financial services to wholesale clients only, s 722 concerning the holding of money received from people applying for securities under a disclosure document does not apply since disclosure is not required in respect of wholesale clients.

3 FOREIGN AFSL REGIME

3.1 About the Regime

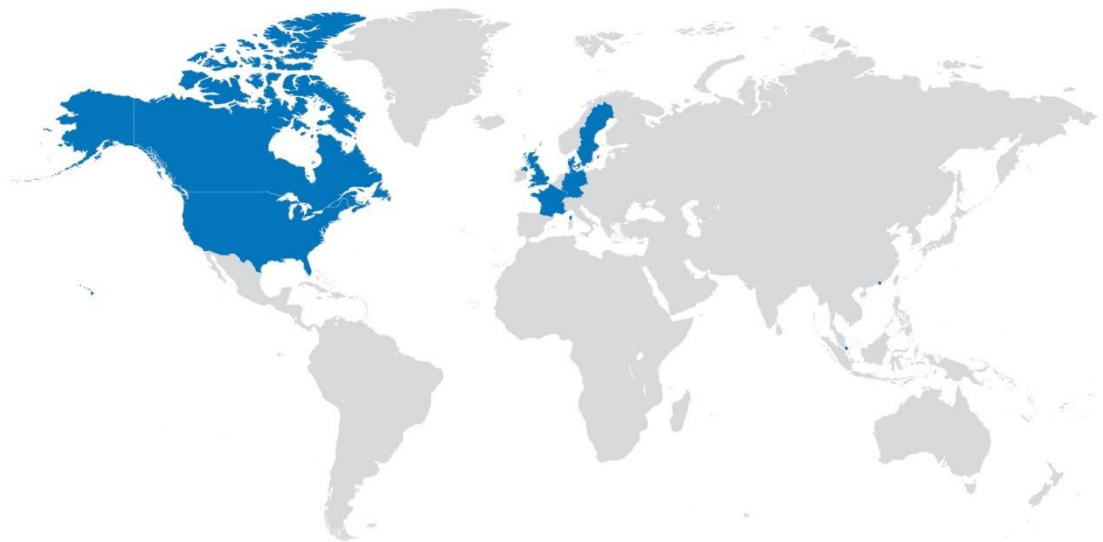
The Foreign AFSL Regime was enacted by legislative instrument [*ASIC Corporations \(Foreign Financial Services Providers – Foreign AFS Licensees\) Instrument 2020/198*](#), commencing on 1 April 2020.

The Foreign AFSL Regime is a modified Australian financial services licensing regime for foreign financial services providers that hold a relevant authorisation in a sufficiently equivalent overseas regulatory regime to provide financial services and who wish to provide those financial services to wholesale clients in Australia.

Reliance on the Foreign AFSL Regime requires the foreign financial services provider to hold a Foreign AFSL and comply with the various obligations attaching to the Foreign AFSL or an individual relief instrument provided on substantially the same terms.

3.2 Benefits of Regime

3.2.1 Scope of Jurisdictions



As at the date of this guide, the Foreign AFSL Regime has extended licensing relief to foreign financial services providers regulated under the jurisdiction of following sufficiently equivalent jurisdictions:

- SEC (US);
- US Federal Reserve (US);
- Office of the Comptroller of the Currency (US);
- CFTC (US);
- MAS (SG);
- SFC (HK);
- Ba Fin (GER);
- CSSF (LUX);
- FCA (UK);
- FSA (DK);
- FI (SE);
- AMF (FR);
- ACPR (FR); and
- OSC (Ontario, CAN).

3.2.2 Scope of Financial Services

The Foreign AFSL Regime only applies in relation to foreign financial services providers that hold the specified authorisations in the jurisdictions specified in Table 3 of Instrument 2020/198. While the specific authorisations to be held differs depending on the jurisdiction, the authorisations have been deemed by ASIC to be sufficiently equivalent to the Australian authorisations of:

- providing financial product advice;
- dealing;
- making a market; and
- providing custodial or depositary services.

The Foreign AFSL Regime does not extend to financial services other than those set out above.

3.2.3 Authorised Representatives

Licensees holding a Foreign AFSL may appoint authorised representatives in respect of the authorisations on its Foreign AFSL. A licensee is responsible for the conduct of its representatives whether or not the representative's conduct is within authority. The authorised representative mechanism could be used by a Foreign AFSL to allow other foreign financial services providers access to the Australian market without them having to apply for a Foreign AFSL themselves.

3.2.4 Intermediary Authorisations

The intermediary authorisation allows a third party to issue, vary or dispose of financial products through offers made by the Foreign AFSL holder in Australia. The structure involves the third party entering into an arrangement with the Foreign AFSL holder under which the Foreign AFSL holder may make offers to people to arrange for the issue, variation or disposal of financial products by the third party. If such offers are accepted, the third party is to issue, vary or dispose of the financial products in accordance with such offers. The offers made by the Foreign AFSL holder must be covered by their Foreign AFSL.

3.2.5 Relief from Ch 7 Corporations Act

Foreign AFSL holders will be exempt from certain provisions in the Corporations Act to the extent that the foreign financial services provider is subject to overseas regulatory requirements (and supervision and enforcement) that would achieve similar regulatory outcomes to the exempted provisions. A full list of Corporations Act exemptions applicable to Foreign AFSL holders is available in table 3 of [RG 176](#). For example, Foreign AFSL holders are generally exempt from training, resourcing and trust account obligations under Ch 7 of the Corporations Act. Further, Foreign AFSL holders are exempt from the requirement to maintain adequate competence to provide the financial services under its licence.

3.2.6 Lodgement of Financial Statements with ASIC

In [REP 656](#) responding to the submissions to [CP 315](#), ASIC confirmed that holders of Foreign AFSLs would also be subject to the relief in [ASIC Corporations \(Foreign Licensees and ADIs\) Instrument 2016/186](#). That is, a foreign company holding a Foreign AFSL may not have to comply with Australian record keeping, financial statement preparation and audit requirements in the Corporations Act. In order to fall under this exemption, the Foreign AFSL holder must be a 'foreign company' and lodge with ASIC once every calendar year a certified copy of:

- its balance sheet as at the end of the last financial year;
- its cash flow statement for its last financial year; and
- its profit and loss statement for its last financial year,

in such form and containing such particulars which it reasonably believes is required to be prepared by the law for the time being applicable to that foreign company in its place of origin.

The documents referred to above must be accompanied by a certified copy of a document setting out the views of the foreign company's auditor about the balance sheet, cash flow statement and profit and loss statement which it reasonably believes were audited in accordance with the requirements for the time being applicable to the foreign company in its place of origin.

We note *ASIC Corporations (Foreign Licensees and ADIs) Instrument 2016/186* only applies to a 'foreign company', which is defined as:

- a body corporate that is incorporated in an external territory, or outside Australia and the external territories, and is not:
 - a) a corporation sole; or
 - b) an exempt public authority; or
- an unincorporated body that:
 - a) is formed in an external territory or outside Australia and the external territories; and
 - b) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or an officer of the body duly appointed for that purpose; and
 - c) does not have its head office or principal place of business in Australia.

The relief in *ASIC Corporations (Foreign Licensees and ADIs) Instrument 2016/186* is also applicable to foreign companies holding a Standard AFSL.

3.3 Extending Equivalence

RG 176 sets out the process of extending sufficient equivalence to jurisdictions not featured in Instrument 2020/198. At a high level, the test for sufficient equivalence is that the overseas regulatory regime produces similar regulatory outcomes as the provisions from which a Foreign AFSL holder is exempted (rather than all the regulatory outcomes in Ch 7 of the Corporations Act). There is no prescribed application form for applying for sufficient equivalence. Applications are granted in the form of a legislative instrument applying to a class of foreign financial services providers. Individual relief will only occur on a rare and exceptional basis.

3.3.1 Criteria

When applying to extend sufficient equivalence to a new jurisdiction, you should consider whether there is an effective cooperation arrangement in place between the foreign regulator and ASIC. These usually take the form of a memorandum of understanding or other arrangement and are a matter for ASIC and the overseas regulator. For that reason, you should check for effective cooperation arrangements first, before applying to extend the sufficient equivalence to your jurisdiction.

When assessing whether a jurisdiction should be considered sufficiently equivalent, ASIC has outlined the following considerations it will take into account.

- Whether the jurisdiction achieves equivalent regulatory outcomes to the Australian regulatory regime for the regulation of wholesale financial services.
- Whether the jurisdiction is clear, transparent and certain.
- Whether the jurisdiction is consistent with IOSCO Objectives and Principles of Securities Regulation.
- Whether the regulatory regime is adequately enforced.

3.3.2 Timing

ASIC has not given any definite indication of the time it takes to process an application to extend sufficient equivalence.

3.4 Costs

3.4.1 Compliance with Corporations Act

Apart from the exemptions summarised in table 3 of RG 176, Foreign AFSL holders must comply with the Corporations Act, Corporations Regulations and the pro forma AFSL conditions, to the extent that they apply to wholesale clients. For example, this includes obligations such as breach reporting, conflict of interest obligations and general obligations to act 'efficiently, honestly and fairly' and comply with financial services laws.

Foreign AFSL holders will also be subject to ASIC's strengthened powers under the *Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2019 Measures)) Act 2020 (Cth)*, which received royal assent on 17 February 2020. A suite of exposure draft legislation was also subject to recent public consultation by the Commonwealth Treasury, including proposals to significantly increase breach reporting obligations. Under the Foreign AFSL Regime, foreign financial services providers would likely be subject to these proposals if they are passed into law.

3.4.2 Foreign AFSL Regime Conditions

Other conditions that must be satisfied in order to rely on the relief are as follows.

- The foreign financial services provider must carry on a business in the relevant foreign jurisdiction.
- Unless the foreign financial services provider is a company, it must appoint an agent that is a natural person or a company resident in Australia and (if the foreign financial services provider is not registered in Australia as a foreign company) that is authorised to accept on the foreign financial services provider's behalf, service of process and notices in Australia. The foreign financial services provider must have such an agent from the time the foreign financial services provider first purports to rely on the Foreign AFSL Regime and must not fail to have an agent for any consecutive period of 10 business days.

- The foreign financial services provider must reasonably believe that it would not contravene any laws of its home jurisdiction relating to the provision of financial services if it were to provide the wholesale financial service in its home jurisdiction.
- The foreign financial services provider must notify ASIC of certain matters involving its regulatory status in the relevant foreign jurisdiction (such as significant changes to its licence, registration, approval or authorisation, significant exemptions obtained in its home jurisdiction or significant investigations, enforcement actions or disciplinary actions taken in any overseas jurisdiction).

3.4.3 Fees

There are ASIC fees applicable for:

- registration as a foreign company, if applicable (as at the date of this guide, AUD \$495);
- annual lodgement of financial statements as a registered foreign company, if applicable (as at the date of this guide, AUD \$1,233);
- applying for a wholesale AFSL (as at the date of this guide, approximately AUD \$5,025);
- maintaining a Foreign AFSL - this will take the form of an annual levy however ASIC has not issued guidance on exactly how this levy is to be calculated. We will update this guide in due course.

3.5 Application Process

According to RG 176, applicants for the Foreign AFSL will not be required to submit proofs relating to the provisions that will not apply to Foreign AFS licensee, however they may be required by ASIC to provide additional proofs similarly to other Standard AFSL applicants. Exactly how many questions and proof documents will depend on the type and complexity of the financial services and products that the foreign financial services provider applies for.

ASIC states that it will update Regulatory Guide 1 *AFS Licensing Kit: Part 1 – Applying for and varying an AFS licence* and Regulatory Guide 2 *AFS Licensing Kit: Part 2 – Preparing your AFS licence application*, to include new guidance for eligible foreign financial services provider applicants. We will update this guide in due course.

4 FUNDS MANAGEMENT RELIEF

4.1 About the Relief

The Funds Management Relief was enacted by legislative instrument, [*ASIC Corporations \(Foreign Financial Services Providers – Funds Management Financial Services\) Instrument 2020/199*](#), commencing on 1 April 2022.

The Funds Management Relief may give relief to a foreign financial services provider from the requirement to hold an AFSL if the foreign financial services provider is only carrying on a financial services business in Australia because of the operation of s 911D of the Corporations Act in relation to the provision of ‘funds management financial services’ to certain types of professional investors in Australia.

Section 911D of the Corporations Act provides that a financial services business is taken to be carried on in Australia by a person if, in the course of carrying on the business, the person engages in conduct that is intended to, or will likely, induce people in Australia to use the financial services the person provides. Conduct that amounts to inducing includes attempts to persuade, influence or encourage a particular person to become a client. A person who carries on a financial services business in Australia must hold an AFSL, unless a relevant exemption applies.

In determining whether a foreign financial services provider is eligible for the Funds Management Relief, they should consider whether it is carrying on a financial services business in Australia other than because of inducing conduct. If so, the foreign financial services provider is not eligible for the relief. Naturally, this means that they cannot have a place of business in Australia, however RG 176.132 states that this does not prohibit foreign financial services providers from visiting Australia (eg for meetings with a client).

4.2 Benefits of Relief

4.2.1 Structures Covered by the Funds Management Relief

The Funds Management Relief is available to a ‘person’ rather than just to a ‘foreign company’ to catch a broader range of business structures such as partnerships, limited partnerships and other body corporates.

4.2.2 Scope of Jurisdictions

The concept of a ‘home jurisdiction’ for the purposes of the Funds Management Relief differs to the concept as referred to in the Foreign AFSL Regime. Unlike the Foreign AFSL Regime which defines ‘home jurisdiction’ according to the regulator that has jurisdiction over the foreign financial services provider, the Funds Management Relief determines ‘home jurisdiction’ as:

- the jurisdiction which the foreign financial services provider has its principal place of business (if any) in relation to the provision of its funds management financial services being provided to eligible Australian users; and
- otherwise, the jurisdiction in which the foreign financial services provider was incorporated or formed.

The Funds Management Relief extends to foreign financial services providers with a home jurisdiction in any signatory country of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information a list of which can be found here:

<https://www.iosco.org/about/?subSection=mmou&subSection1=signatories>

As at the date of this guide, there are 124 signatory countries on the list allowing the Funds Management Relief to be applied to far more jurisdictions than the Foreign AFSL Regime, which only currently applies to 10 different countries.

IOSCO MMoU



4.2.3 Scope of Financial Services and Products

The core concept delineating the scope of the Funds Management Relief is that of 'funds management financial service'. This refers to the provision of the following financial services to an 'eligible Australian user':

- dealing in financial products in, or issued by an offshore fund;
- providing financial product advice in relation to financial products in, or issued by an offshore fund;
- redeeming or buying back financial products in, or issued by an offshore fund, to the extent that those activities constitute making a market in relation to those financial products;
- portfolio management services; or
- providing a custodial or depository service in relation to interests in an offshore fund or a portfolio management services mandate.

We note the market making authorisation has been limited to ‘redeeming or buying back financial products in, or issued by’ an offshore fund or managed investment scheme. Consistent with ASIC’s policy of preventing the misuse of the Funds Management Relief, this wording limits the Funds Management Relief to applying to issuers redeeming their own financial products.

The inclusion of ‘providing a custodial or depositary service’ provides an alternative to reliance on the exemption in Corporations Regulation r 7.6.01(1)(k) which exempts a ‘sub-custodian’ from requiring an AFSL if they have an arrangement with a master-custodian holding an AFSL for custodial and depositary services and a beneficial interest in the financial product held by the sub-custodian is held by the master custodian on trust for a client. The inclusion of custodial and depositary services in the Funds Management Relief means that foreign financial services providers are no longer limited to dealing with only custodial and depositary service providers who hold AFSLs. As a result, the Funds Management Relief can now be relied on by foreign financial services providers who may not engage Australian licensed custodians.

We also note the finalised Funds Management Relief has been altered from only applying in relation to ‘interests in, or securities issued by’, to a broader, general class of ‘financial products’ which encompasses ‘interests in, or securities issued by’ as well as other financial products such as derivatives.

Similarly, another difference between the relief as proposed in CP 315 is that the definition of ‘portfolio management service’ is no longer conditional on the assets managed being located ‘outside this jurisdiction’. The Funds Management Relief as enacted recognizes that global managers often have global mandates under which the manager may hold financial products in Australia.

4.2.4 Scope of Eligible Australian Users

The Funds Management Relief also narrows down the class of investors that the foreign financial service can be provided to, from Professional Investors (as defined in the Corporations Act) down to what ASIC terms ‘eligible Australian users’.

The category of ‘eligible Australian users’ is a subset of the wider category of Professional Investors (which itself is a subset of the wider ‘wholesale clients’ category) who are more likely to require funds management financial services (to prevent misuse of the Funds Management Relief). ‘Eligible Australian users’ are also subject to certain requirements (eg regulation by APRA, AFSL obligations or a best interests duty under s 52(2)(c) of the *Superannuation Industry (Supervision) Act 1993 (Cth)*), which will provide an additional level of protection for the end client of the ‘eligible Australian user’.

‘Eligible Australian users’ include the following persons in this jurisdiction:

- a responsible entity of a registered scheme;
- a trustee of a superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993 (Cth)* where the fund, trust or scheme has net assets of at least AUD \$10 million;

- a trustee of an unregistered scheme where no interests in the scheme have been issued to a person as a retail client, who holds an AFSL (or would be required to hold an AFSL but for *ASIC Corporations (Wholesale Equity Scheme Trustees) Instrument 2017/849*;
- a body regulated by APRA other than a trustee of a superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme within the meaning of *the Superannuation Industry (Supervision) Act 1993 (Cth)* where the fund, trust or scheme has net assets of less than AUD \$10 million;
- an exempt public authority (other than a local council).

Materially, 'eligible Australian user' does not include a Professional Investor who 'controls at least \$10 million (including any amount held by an associate or under a trust that the person manages)', unless that person is an operator of a managed investment scheme or trustee of a superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme. This excludes many family offices as they may naturally control at least AUD \$10 million but are not structured as managed investment schemes or regulated by APRA.

The narrower scope of eligible Australian users also precludes financial services provided by foreign financial services providers to Australian financial service licensees and listed entities from the Funds Management Relief. In particular, this would exclude listed investment companies.

Similarly, wholesale clients who are not Professional Investors (such as, but not limited to those who only classify because they pass the product value threshold, those who pass the wealth threshold or are considered sophisticated investors), are excluded from the definition of eligible Australian user.

ASIC has stated it is willing to consider individual applications to extend the scope of Australian investors to whom this relief can apply to. Such applications will be assessed on a case-by-case basis.

4.3 Costs

4.3.1 ASIC Industry Levies

Reliance on the Funds Management Relief may attract ASIC industry levies payable annually. The specific fees can be accessed here: <https://asic.gov.au/about-asic/what-we-do/how-we-operate/asic-industry-funding/regulatory-costs-and-levies/>.

We are still awaiting ASIC guidance on whether the ASIC levies will be updated for foreign financial services providers relying on the Funds Management Relief, as well as whether there are any costs associated with lodging the written confirmations required under the Funds Management Relief to ASIC in order to rely on the Funds Management Relief.

We will update this guide in due course.

4.3.2 Other Conditions

Other conditions required to be complied with in order to rely on the Funds Management Relief are as follows.

- The foreign financial services provider has given ASIC a written confirmation that:
 - a) it intends to rely on the Funds Management Relief;
 - b) identifies its home jurisdiction and confirms that it would not contravene any laws of its home jurisdiction relating to the provision of financial services if the foreign financial services provider were to provide those funds management financial services in its home jurisdiction;
 - c) there is a regulator of the foreign financial services provider in its home jurisdiction and that the regulator is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information;
 - d) on written request by ASIC or the overseas regulator, the foreign financial services provider will give or vary consent to and take all other practicable steps to enable and assist the disclosure of any information or document that relates to the foreign financial services provider, to ASIC or its home regulator;
 - e) it will comply with written requests from ASIC to give a written statement containing specific information about the financial services provided by it in this jurisdiction;
 - f) it will give such assistance to ASIC as reasonably requested; and
 - g) the foreign financial services provider has appointed an agent for service from the time they first purport to rely on the Funds Management Relief and the name and address of the agent for service that is current as at the day the written confirmation is given.
- The foreign financial services provider must not have a place of business in Australia (although they can visit Australia to meet with clients).
- Where the foreign financial services provider's home jurisdiction has changed, notify ASIC with a new written confirmation only on and from 30 days after the day the home jurisdiction of the foreign financial services provider changes.
- Notify ASIC of:
 - a) details of any natural person ceasing or commencing to be its agent for service;
 - b) any change to the name or address of its agent for service,

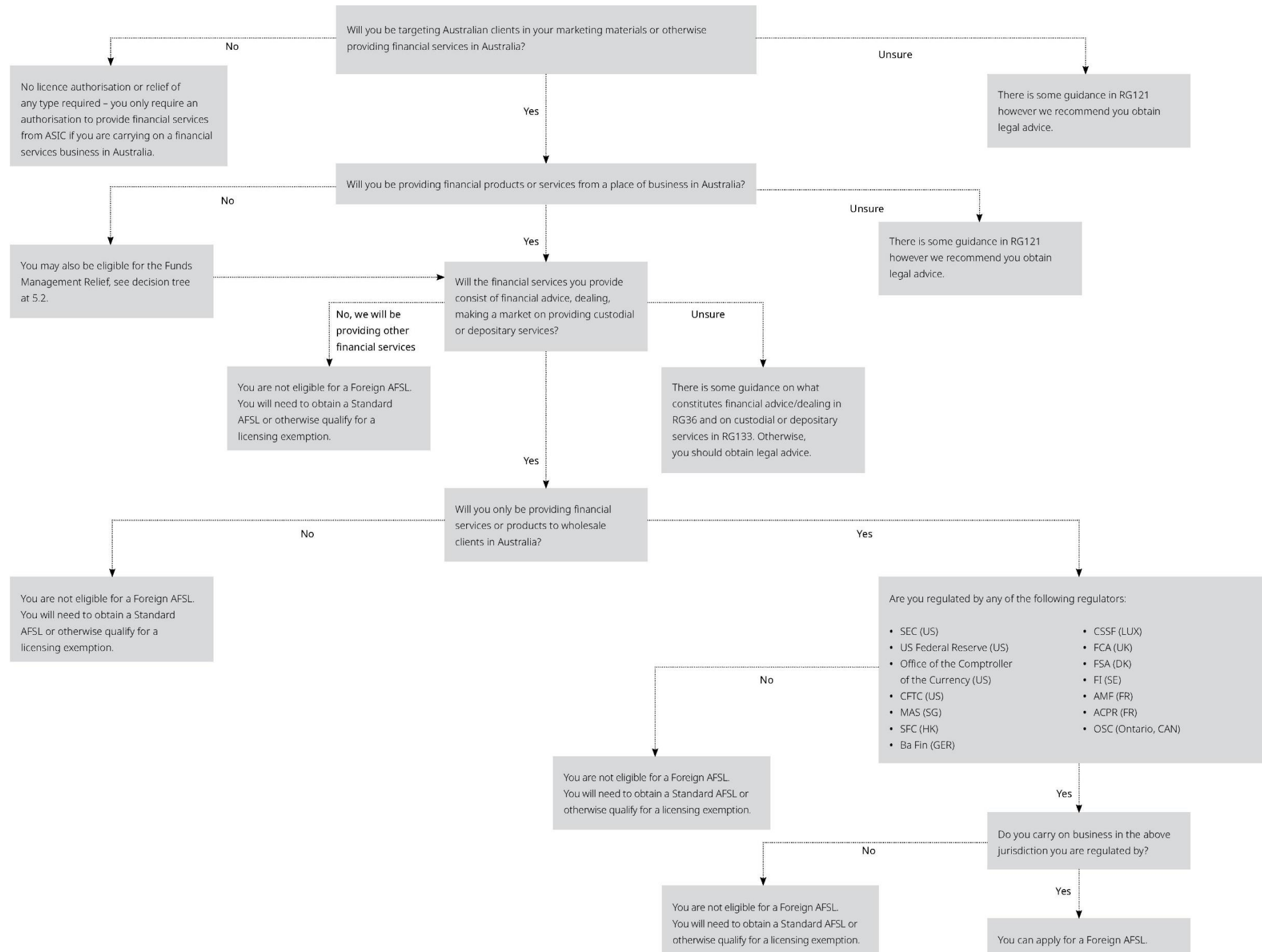
within 10 business days of the natural person so ceasing or commencing or of the change to the name or address.

4.4 Application Process

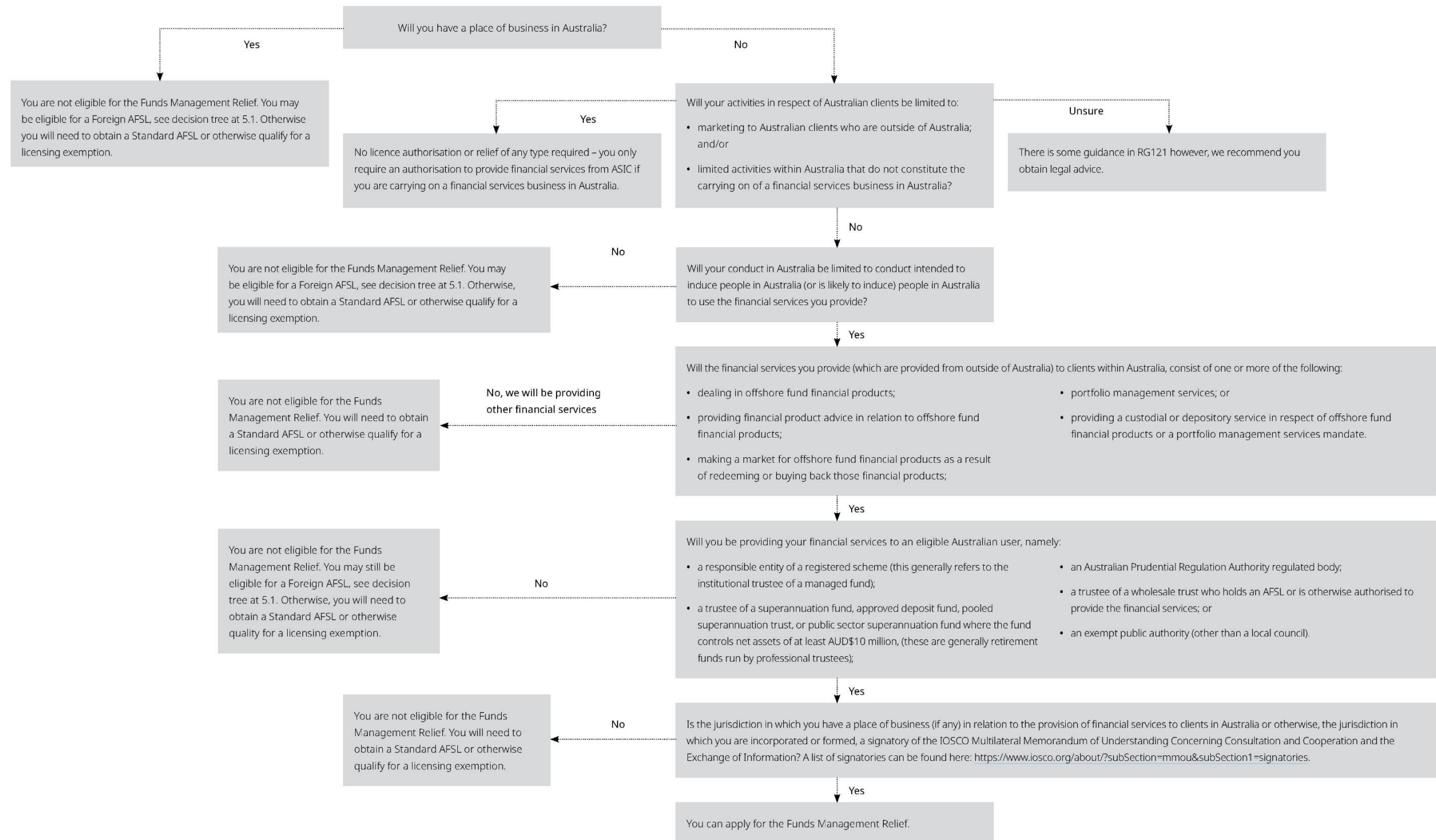
The written confirmation confirming the foreign financial services provider's reliance on the Funds Management Relief must be emailed to applications@asic.gov.au. Notifications required under the Funds management Relief should be lodged by email to FFSP@asic.gov.au.

5 WHICH REGULATORY SOLUTION IS RIGHT FOR YOU?

5.1 Key considerations for the Foreign AFSL Regime



5.2 Key considerations for the Funds Management Relief



6 TRANSITIONAL ARRANGEMENTS

6.1 Sufficient Equivalence Relief obtained by 31 March 2020

Foreign financial services providers who are able to rely on the Sufficient Equivalence Relief on 31 March 2020 will be eligible to rely on a transition period of 2 years to 31 March 2022 to comply with either the Foreign AFSL Regime, Funds Management Relief or the broader Corporations Act licensing requirements.

There is no action required for foreign financial services providers who are currently able to rely on the Sufficient Equivalence Relief.

ASIC may exclude a foreign financial services provider from reliance on the Sufficient Equivalence Relief, by notifying them in writing of:

- a date of exclusion, being the date on which the foreign financial services provider will no longer be able to rely on the Sufficient Equivalence Relief – this will allow a period between the lodgement of the documents and the date of exclusion where the foreign financial services provider will still be able to rely on the Sufficient Equivalence Relief; or
- a date of refusal indicating that the foreign financial services provider will not be entitled to rely on the Sufficient Equivalence Relief at all. This would be used in circumstances such as where the foreign financial services provider has failed to meet the terms or conditions of the Sufficient Equivalence Relief.

6.2 No Grandfathering of Limited Connection Relief

There will be no grandfathering of existing products and services under the Limited Connection Relief. This means that on 31 March 2022 once the Limited Connection Relief ceases, an offshore fund may breach the law if an Australian investor (that might be a wholesale client but not an ‘eligible Australian user’) continues to hold interests in that offshore fund and the offshore fund cannot rely on other exemptions.

6.3 No Transition Period (for Funds Management Relief)

Instrument 2020/200 has ceased the Limited Connection Relief on 31 March 2022, with the Funds Management Relief to commence on 1 April 2022. The 31 March 2022 Limited Connection Relief deadline appears to be a hard deadline with no transition period to the Funds Management Relief after 31 March 2022. Accordingly, the written confirmation required to be lodged with ASIC in order to be eligible for Funds Management Relief should be lodged well before 31 March 2022 or alternatively, other relief should be sought in place of the Limited Connection Relief well before 31 March 2020.

6.4 Contractual Considerations

Foreign financial services providers also need to consider their contractual obligations to Australian counterparties, where they have under contracts enforceable in Australia given

representations and warranties to the effect that they have all licenses or other authorisations to provide financial services to Australian clients.

6.5 Transitional Timeline

Timeline to the new FFSP regime



¹⁹¹ ASIC class orders 03/1099, 03/1100, 03/1101, 03/1102, 03/1103, 04/829 and 04/1313.

¹⁹² ASIC class orders 03/1099, 03/1100, 03/1101, 03/1102, 03/1103, 04/829 and 04/1313.

¹⁹³ ASIC class orders 03/1099, 03/1100, 03/1101, 03/1102, 03/1103, 04/829 and 04/1313.

7 SUMMARY OF CHANGES SINCE CP 315

You may recall we have previously covered the development of the foreign financial services provider regime when the first ASIC [Consultation Paper 301](#) (CP 301) was published and then subsequently when [Consultation Paper 315](#) (CP 315) was published on 3 July 2019. On 10 March 2020, ASIC enacted the following legislative instruments:

- [ASIC Corporations \(Amendment\) Instrument 2020/200](#) (Instrument 2020/200);
- [ASIC Corporations \(Foreign Financial Services Providers – Funds Management Financial Services\) Instrument 2020/199](#) (Instrument 2020/199 or Funds Management Relief); and
- [ASIC Corporations \(Foreign Financial Services Providers – Foreign AFS Licensees\) Instrument 2020/198](#) (Instrument 2020/198 or Foreign AFSL Regime).

In addition to these instruments, ASIC also published an updated regulatory guide 176 ([RG 176](#)) outlining the latest foreign financial services provider regime as now enacted into Australian law. We highlight the material changes from the foreign financial services provider regime as proposed on 3 July 2019 and the foreign financial services provider regime as enacted on 10 March 2020.

7.1 Extension of Limited Connection Relief

[*ASIC Corporations \(Foreign Financial Services Providers – Limited Connection\) Instrument 2017/182*](#) (the Limited Connection Relief) has traditionally been relied on by offshore providers who do not have a place of business in Australia and who are not able to rely on the sufficient equivalence exemptions contained in ASIC class orders.¹

When CP 315 was published on 3 July 2019, it proposed the repeal of the Limited Connection Relief on 31 March 2020 with a transition period spanning 1 April 2020 to 30 September 2020.

Instrument 2020/200 has now further extended the Limited Connection Relief by ceasing it on 31 March 2022. This means that an foreign financial services provider does not need to be currently relying on the Limited Connection Relief to have the benefit of the relief at any time until 31 March 2022.

7.2 Funds Management Relief

Instrument 2020/199 sets out the funds management relief. An foreign financial services provider is exempt from the requirement to hold an AFSL when only carrying on a financial services business in Australia because of s 911D of the Corporations Act. The relief only applies to conduct relating to the provision of ‘funds management financial services’ to certain types of professional investors in Australia. There has been a mixed reaction to the changes made to the Funds Management Relief since the draft version in CP 315. Some commentators consider the relief to still be too narrow while others have welcomed the broadening of the relief. The differences between Instrument 2020/199 and the draft version of the instrument as proposed in CP 315 are as follows.

7.2.1 Application to ‘Persons’, not ‘Foreign Companies’

The Funds Management Relief is available to a ‘person’ rather than just to a ‘foreign company’ to catch a broader range of business structures such as limited partnerships.

Furthermore, registration as a foreign company in Australia will no longer automatically disqualify a foreign financial services provider from relying on the Funds Management Relief – ASIC recognises that some foreign financial services providers may register as a foreign company in Australia as a precautionary measure but may not in fact be carrying on a business in Australia.

7.2.2 Relief Limited to IOSCO Signatories

¹ ASIC class orders 03/1099, 03/1100, 03/1101, 03/1102, 03/1103, 04/829 and 04/1313.

Instrument 2020/199 has limited the scope of the Funds Management Relief by requiring the foreign financial services provider give ASIC a written confirmation that its overseas regulator in its home jurisdiction is a signatory to the International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. If the foreign financial services provider does not have a signatory regulator in its home jurisdiction, it will not be able to rely on the Funds Management Relief.

There are currently 124 signatories of the memorandum of understanding. A list of the signatories is available here:

<https://www.iosco.org/about/?subSection=mmou&subSection1=signatories>

7.2.3 Funds Management Financial Services

The definition of 'funds management financial services' as proposed in the draft CP 315 has been changed in three main respects. First, the financial products in respect of which the funds management financial services relate to have been broadened from specific 'interests in, or securities issued by' and 'assets' to 'financial products'. This extends the Funds Management Relief to products such as derivatives or portfolios containing products such as derivatives.

Second, the category of products the Fund Management Relief applies to is also further broadened with the definition of 'portfolio management service' (which is a form of 'funds management financial service'). Instrument 2020/199 has removed the limitation on the relief applying in relation to portfolio management services provided in respect of assets 'located outside this jurisdiction'. Instrument 2020/199 has removed this limitation in recognition that global managers often have global mandates under which the manager may hold financial products in Australia.

Third, the definition of 'funds management financial services' has also been expanded to include 'providing a custodial or depositary service'. This amendment provides an alternative to reliance on the exemption in Corporations Regulation r 7.6.01(1)(k) which exempts a 'sub-custodian' from requiring an AFSL if they have an arrangement with a master-custodian holding an AFSL for custodial and depositary services and a beneficial interest in the financial product held by the sub-custodian is held by the master custodian on trust for a client. The inclusion of custodial and depositary services to the scope of the Funds Management Relief means foreign financial services providers are no longer limited to dealing with only custodial and depositary service providers who hold AFSLs. As a result, the Funds Management Relief can now be relied on by foreign financial services providers such as overseas funds who do not engage Australian custodians.

7.2.4 Eligible Australian Users

The draft Funds Management Relief in CP 315 was to apply to foreign financial services providers who provide 'funds management financial services' to a 'professional investor'. Instrument 2020/199 replaced the concept of 'professional investor' with the narrower 'eligible Australian user'. This class of 'eligible Australian user' refers to the subset of 'professional investors' who are more likely to require funds management financial services (to prevent misuse of the Funds Management Relief). 'Eligible Australian users' are also subject to certain requirements (eg regulation by APRA, AFSL obligations or a best interests duty under s 52(2)(c) of the *Superannuation Industry (Supervision) Act 1993 (Cth)*), which

will provide an additional level of protection for the end client of the ‘eligible Australian user’.

The following persons are excluded from the ‘eligible Australian user’ definition:

- entities in a listed group (including listed investment companies);
- AFSL holders;
- persons (other than superannuation, approved deposit fund, pooled superannuation trust or public sector superannuation scheme trustees) who control at least AUD \$10 million (such as corporate family offices); and
- high net worth individuals.

ASIC have indicated they are open to an application for individual relief if the foreign financial services provider wishes to induce other types of professional investors that are not within the definition of ‘eligible Australian users’.

7.2.5 No Revenue Cap

The Funds Management Relief as amended by Instrument 2020/199 no longer imposes any revenue cap for the scale of activities undertaken in Australia.

7.3 Foreign AFSL Regime

7.3.1 New Sufficiently Equivalent Jurisdictions

Instrument 2020/198 sets out the foreign Australian financial services licence regime. This allows a foreign financial services provider that is authorised by an overseas regulatory authority that regulates the foreign financial services provider under a ‘sufficiently equivalent’ regime to be eligible to apply for a Foreign AFSL to provide specified financial services to wholesale clients in Australia. There have been no major changes to this Instrument 2020/198 from its proposed draft form as set out in CP 315. We note some additional jurisdictions have been added to be within scope of the meaning of the foreign financial services provider’s ‘home jurisdiction’, namely:

- Denmark (Financial Supervisory Authority);
- Sweden (Finansinspektionen);
- France (Autorité des marchés financiers and Autorité de contrôle prudentiel et de résolution); and
- Ontario, Canada (Ontario Securities Commission).

7.3.2 Governing Law

Under the current sufficient equivalence exemption, foreign financial services providers must provide financial services in Australia ‘in a manner which would comply, as far as possible, with the [foreign] regulatory requirements if the financial service were provided in the

[foreign jurisdiction] in like circumstances'. Under the new Foreign AFSL Regime, a foreign financial services provider holding a Foreign AFSL will have to provide financial services in Australia in accordance with Australian laws.

7.4 No New Reverse Solicitation Exemption

In CP 315 ASIC indicated that it was considering whether a reverse solicitation exemption would be appropriate. No new exemption has been introduced in the package of instruments released by ASIC on 10 March 2020.

If you wish to discuss the implications of the changes for your financial services business, please do not hesitate to contact Martin Jamieson at Martin.Jamieson@dlapiper.com or + 61 2 9286 8059.

8 GLOSSARY

AFSL refers generally to an Australian financial services licence (whether a Foreign AFSL or a Standard AFSL or both, as the context may require) granted by ASIC pursuant to s 913B of the Corporations Act.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Corporations Regulations means the *Corporations Regulations 2001 (Cth)*.

CP 315 refers to Consultation Paper 315 Foreign financial services providers: Further consultation.

CP 301 refers to Consultation Paper 301 Foreign financial services providers.

FFSP means foreign financial services provider.

Foreign AFSL means an Australian financial services licence granted to a foreign financial services provider as contemplated in Instrument 2020/198.

Foreign AFSL Regime means *ASIC Corporations (Foreign Financial Services Providers – Foreign AFS Licensees) Instrument 2020/198*.

Funds Management Relief means *ASIC Corporations (Foreign Financial Services Providers – Funds Management Financial Services) Instrument 2020/199*.

INFO 157 refers to ASIC Information Sheet 157 Foreign financial services providers: Practical guidance on transitional arrangements, reissued March 2020.

Instrument 2020/198 means *ASIC Corporations (Foreign Financial Services Providers – Foreign AFS Licensees) Instrument 2020/198*.



Instrument 2020/199 means *ASIC Corporations (Foreign Financial Services Providers – Funds Management Financial Services) Instrument 2020/199*.

Instrument 2020/200 means *ASIC Corporations (Amendment) Instrument 2020/200*.

IOSCO means the International Organisation of Securities Commissions.

Limited Connection Relief means the licensing relief contained in *ASIC Corporations (Foreign Financial Services Providers – Limited Connection) Instrument 2017/182*.

RG 166 refers to ASIC Regulatory Guide 166 Licensing: Financial requirements.

RG 121 refers to ASIC Regulatory Guide 121 Doing financial services business in Australia.

RG 36 refers to ASIC Regulatory Guide 36 Licensing: Financial product advice and dealing.

RG 133 refers to ASIC Regulatory Guide 133 Funds management and custodial services: Holding assets.

RG 176 refers to the ASIC Regulatory Guide 176 Foreign financial services providers issued 10 March 2020, unless the context states otherwise.

REP 656 refers to REP 656 Response to submissions CP 301 and CP 315 on foreign financial services providers.

SIS Act means the *Superannuation Industry (Supervision) Act 1993 (Cth)*.

Standard AFSL means an Australian financial services licence that is not a Foreign AFSL.

Sufficient Equivalence Relief means the relief contained in ASIC class orders 03/1099, 03/1100, 03/1101, 03/1102, 03/1103, 04/829 and 04/1313 as extended.