

30 September 2026

Via email: Olivia.Fowler@asic.gov.au



Dear Olivier

AFMA Submission on Potential Class Relief for Common Global Operating Models under the Professional Investor Exemption

Thank you for ASIC's continued engagement with AFMA and industry regarding implementation of the new Foreign Financial Services Provider (FFSP) regime and, in particular, for considering the potential for class relief in respect of a condition of the Professional Investor Exemption that services be provided outside of Australia.

Following ASIC's request, AFMA undertook further consultation with members across a broad range of globally active financial institutions. We appreciate ASIC's willingness to engage openly with industry and receive feedback on its approach to potential conditions.

The feedback received confirms that the scenarios previously provided to ASIC are not isolated fact patterns. Rather, they are examples of common global operating models that support Australian professional investors' access to offshore products, services, expertise and liquidity. Having considered ASIC's proposed conditions and the feedback received from members, AFMA's view is that a principles-based class relief framework remains the most workable solution. Such a framework should be broad enough to accommodate legitimate global operating models, while incorporating conditions that provide ASIC with appropriate regulatory safeguards and oversight.

AFMA's views on the conditions outlined in ASIC's email are set out below.

1. Related Body Corporate Holding an AFSL

AFMA considers this is likely to be one of the most effective mechanisms available to appropriately constrain the scope of any class relief while preserving the flexibility required for modern global wholesale market structures.

ASIC indicated that it was seeking conditions that provide an appropriate connection to Australia and mitigate concerns regarding activities being undertaken by Australian-based personnel. Industry accepts that, if broad principles-based relief is to be available, an appropriate accountability mechanism is required.

In AFMA's view, the existence of an AFSL holder within the relevant corporate group provides a practical and proportionate solution. In many cases, Australian-based personnel participating in the operating models under discussion are already representatives of an AFSL holder and therefore operate within established governance, supervision, compliance and conduct frameworks.

The presence of an AFSL holder in respect of services provided for the FFSP entity onshore should provide ASIC with a clear domestic supervisory nexus while avoiding the need for highly prescriptive restrictions based on individual scenarios, activities or personnel numbers.

Accordingly, AFMA considers that relief could appropriately be limited to circumstances where the FFSP forms part of a corporate group that includes an AFSL holder.

2. Limits on Australian-Based Personnel

AFMA does not support numerical limits on Australian-based personnel.

Industry feedback was highly consistent that headcount-based limitations would be difficult to administer, require ongoing monitoring and compliance frameworks that would not provide net regulatory benefit having regard to the ongoing costs of complying with such a condition.

The number of Australian personnel involved in supporting an offshore business is often a function of business structure, client demand and operational requirements rather than regulatory risk. A numerical threshold may therefore encourage firms to relocate functions offshore or restructure teams without changing the substantive nature of the service being provided.

AFMA considers that the location of the business, risk, supervision and responsibility provides a more meaningful basis for determining whether relief should apply than the number of people involved.

3. Predominantly Offshore Services

AFMA considers that any class relief should be built around the principle that the relevant financial services business remains substantively offshore.

This received strong support from members and addresses the central policy issue identified during discussions with ASIC. Members consistently emphasised that the key question is not where every individual involved in the broader service delivery chain is physically located, but rather where responsibility for the service sits and where the substantive elements of the service are performed.

AFMA considers that relief could be available where the relevant service is provided predominantly outside Australia, having regard to factors such as:

- where transactions are booked;
- where risk is managed;
- where primary management and supervisory responsibility sits;
- where the client relationship is owned; and
- whether Australian-based activities are ancillary to a broader offshore service model.

No single factor should be determinative. Rather, the assessment should focus on the substance of the overall arrangement.

AFMA considers qualifying the relief to only apply where the FFSP entity's activities and businesses are predominantly offshore would provide a more effective and durable means of limiting relief than attempting to prescribe individual scenarios, business lines or personnel thresholds.

4. Limiting Relief to Particular Jurisdictions

AFMA does not support limiting relief to specified jurisdictions.

Members observed that the Professional Investor Exemption serves a different purpose to the Comparable Regulator Exemption and that global operating models frequently involve personnel, expertise and service delivery across multiple jurisdictions.

In practice, restricting relief to specified jurisdictions may significantly reduce the utility of the exemption and could create arbitrary outcomes where services are provided through integrated global structures involving personnel located in multiple jurisdictions. There is also the question of the overlap between any specified jurisdictions for the purposes of the Professional Investor Exemption, and those which are comparable jurisdictions under the Comparable Regulator Exemption. There is a genuine question as to the basis on which ASIC might consider certain jurisdictions acceptable under the Professional Investor Exemption but they are not comparable regulators.

5. Efficiently, Honestly and Fairly

AFMA supports the inclusion of a requirement that services undertaken within the scope of any relief continue to be provided efficiently, honestly and fairly.

Industry generally accepted this condition given equivalent obligations already apply under the new FFSP framework and many Australian-based personnel involved in the relevant operating models are already subject to similar obligations through their Australian licensed entities.

Accordingly, AFMA considers this forms an appropriate part of any relief framework.

Notification Process

AFMA appreciates ASIC's engagement with industry regarding the practical operation of the notification framework.

Industry feedback indicates strong support for a notification-based regime and recognises the benefits of a streamlined notification process compared with more extensive application or approval-based models.

The principal feedback received from members relates to the practical administration of notifications for large international groups. Members indicated that the number of entities potentially relying on the exemptions may range from approximately 13 to more than 25 entities within a single group.

Accordingly, industry's primary objective is to ensure that the notification process is operationally efficient and avoids unnecessary duplication. Members observed that much of the information likely to be required for notifications will be common across entities within the same corporate group.

AFMA therefore encourages ASIC to consider whether there are opportunities within the notification framework to:

- minimise duplication of information across entities within the same corporate group;
- streamline notification and update processes for large international groups;
- adopt a practical approach to ongoing updates and changes; and
- ensure that portal functionality supports efficient lodgement for firms with multiple entities relying on the exemptions.

Members also noted that implementation costs and administrative burden will be highly dependent on the detail of the notification process and would welcome continued engagement with ASIC as the framework and associated guidance are developed.

AFMA appreciates ASIC's indication that it is seeking to make the process as simple as possible and looks forward to providing further feedback once draft guidance and notification materials become available.

Regulatory Impact and Market Consequences

ASIC requested feedback regarding the practical consequences if relief is not available.

The feedback received was highly consistent.

Members identified a risk of:

- restructuring existing global operating models;
- duplication of governance, compliance and operational functions;
- increased licensing and implementation costs;
- relocation of functions outside Australia;
- reduced access to offshore expertise, products and liquidity;
- reduced competition in Australian wholesale markets; and
- diminished access to global investment opportunities for Australian institutional investors and superannuation funds.

Members consistently emphasised that the benefits of relief extend beyond the institutions relying upon it. The operating models under discussion support Australian professional investors' access to international capital markets, specialist expertise, offshore liquidity and global products and services.

Industry considers that a failure to address these issues may result in firms reassessing the commercial viability of certain cross-border activities, reducing Australian clients' access to global products, services and expertise. Members also highlighted the risk that functions and capability may migrate offshore over time if operating models become unnecessarily difficult to maintain within Australia.

AFMA considers these broader market impacts are highly relevant to the assessment of any proposed relief.

AFMA's Recommended Framework

Following consultation with industry, AFMA considers the most workable approach would be a principles-based class relief framework supported by regulatory guidance and worked examples.

AFMA's recommended framework would require:

- The FFSP to form part of a corporate group that includes an AFSL holder.
- The relevant financial services business to be conducted predominantly outside Australia, having regard to booking arrangements, risk management, management responsibility and the overall operating model.
- The FFSP to remain responsible for ensuring services are provided efficiently, honestly and fairly.

Taken together, these conditions would provide meaningful safeguards, a clear Australian regulatory nexus and an appropriate level of accountability, while preserving Australian professional investors' access to global markets through established operating models.

AFMA considers this approach would appropriately balance Parliament's policy objectives with ASIC's legitimate concerns regarding supervision, accountability and investor protection, while avoiding the need to prescribe specific scenarios that may evolve over time.

Thank you again for ASIC's continued engagement on these issues. AFMA would welcome the opportunity to discuss the feedback further and assist ASIC as its consideration progresses.

Yours sincerely,

Jodie Maurer

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