



8 September 2023

Capital Markets and Financial Regulators Branch
Financial System Division
Treasury
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By email to FFSP@treasury.gov.au

EXPOSURE DRAFT LEGISLATION - LICENSING EXEMPTIONS FOR FOREIGN FINANCIAL SERVICES PROVIDERS

ASX appreciates the opportunity to provide a submission on the exposure draft of Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Licensing exemptions for foreign financial providers (**FFSPs**) (the **draft Bill**). As expressed in previous submissions to Treasury, ASX supports provision of licensing relief to FFSPs to promote diversified investment opportunities for Australian investors, and attract investment and liquidity into Australian markets.

Market maker exemption

ASX welcomes the inclusion of a specific exemption for market makers in the draft Bill. Market makers have an important role in ensuring that buyers and sellers can transact in markets. They provide liquidity to the ASX markets by providing quotes during the trading day and updating their prices to reflect changes in the underlying markets. As previously submitted, ASX is becoming increasingly reliant on foreign market makers as a matter of necessity as less Australian investment banks are able or willing to undertake market making obligations. The exemption for market makers from the ASFL regime will support market makers' entry into the Australian market without reducing investor protections.

ASX notes that the market maker exemption will apply to derivatives that are able to be traded on a licensed market prescribed by regulations made for the purposes of the new provisions. The explanatory memorandum, at paragraph 1.115, notes that the intention is for this exemption to apply to exchange traded futures and therefore the relevant licensed markets for these financial products will be specified in the regulations.

The effective implantation of the changes contained in the draft Bill requires passage of the legislation and creation of the regulations before the expiration of ASIC's licensing relief. As such, ASX seeks clarity regarding the timing for making the regulations. ASX also supports a public consultation process on draft regulations prior to finalisation, to ensure that the regulations capture the appropriate licenced markets.

New Zealand as a jurisdiction with a comparable regulator

ASX notes that the regulatory authorities deemed to be comparable for the purposes of the FSSP licensing exemption will be set out by the Minister in a legislative instrument. The explanatory memorandum to the draft Bill provides that it is expected that the regulatory authorities currently listed in *ASIC Corporations (Foreign Financial Service Providers – Foreign AFS Licensees) Instrument 2020/198* will be listed in the instrument. In making the legislative instrument, ASX understands that the Minister will not be limited to the regulatory authorities currently listed in the ASIC instrument, and encourages the consideration of authorities currently not listed, in particular New Zealand's Financial Markets Authority.

ASX has previously submitted that New Zealand's Financial Markets Authority should be included in the list of regulators that administer broadly comparable regulatory regimes. While our key concern (that ASX may not be able to retain market makers in the ASX NZ electricity derivatives market) has been addressed with the creation of the market maker exemption, the arguments in favour of adding New Zealand remain valid.

In making the Minister's legislative instrument, ASX encourages Treasury and the Minister to consider including New Zealand's Financial Markets Authority as a comparable regulator. New Zealand and Australia's economic relationship is recognised as one of the closest, broadest and most mutually compatible in the world, with close ties including more than 60 of New Zealand's top companies being currently listed on ASX and ASX offering futures over New Zealand financial products (in addition to the electricity derivatives mentioned above). Including New Zealand as a comparable regulatory regime would be consistent with the policy intent of reducing barriers for FFSPS while maintaining domestic market integrity and investor protection.

Relevant evidence for consideration under section 911X(2) of the draft Bill includes, but is not limited to:

- > A memorandum of understanding exists between ASIC and the New Zealand's Financial Market Authority in relation to assistance and mutual cooperation;
- > New Zealand's Financial Market Authority is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information;
- > ASX 24 holds a licence for the market it currently operates in New Zealand subject to the *Financial Markets Conduct Act 2013* which it obtained on the basis of ASX oversight by ASIC and the similarity of regulatory regimes;
- > The ASX group, including ASX Clear (Futures) and ASX Clearing Corporation hold various recognitions in New Zealand and have New Zealand based participants. These recognitions were obtained based on the similarity of Australian and NZ regulatory regimes.

ASX welcomes the opportunity to discuss the matters raised in this submission in more detail. If you have any questions, please contact Shelby Brinkley, Senior Policy Analyst [REDACTED] or myself on the details below.

Kind regards

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