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Australian Treasury Releases Consultation on Exemptions for Foreign Financial Services Providers

Background

On 7 August 2023, The Australian Treasury released an exposure draft, inviting stakeholders to provide their input through a consultation process on proposed exemptions for Australian Financial Services Licences ("**AFSL**") applicable to foreign financial services providers ("**FFSPs**"). This comes after a previous consultation, which lapsed in 2022 due to changes in government. The exposure draft legislation aims to introduce four new exemptions, replacing existing ones. It is intended to take effect on 1 April 2024.

Exemptions

Professional Investor Exemption

This exemption replaces the current exemptions for professional investors under s911A(2E) of the Corporations Act 2001. It will relieve FFSPs from holding an AFSL if they provide services exclusively to professional investors outside Australia, with the principal place of business located outside Australia.

Comparable Regulator Exemption

Foreign companies offering financial services to wholesale clients, authorised by a recognised foreign regulator, can be exempt from the AFSL requirement. To rely on this exemption, the service must be legally provided in a jurisdiction recognised by Australian authorities as offering a comparable level of investor protections.

Market Maker Exemption

This exemption relieves an FFSP from the requirement to hold an AFSL if they act as a market maker for derivatives traded on licensed markets. Several conditions must be met, i.e. the FFSP's derivatives being traded on a prescribed licensed market, and providing services outside Australia with the principal place of business located outside Australia.

Fit and Proper Person Assessment Exemption

The proposed Consultation suggests removing the 'fit and proper person' test requirement for AFSL applicants under certain conditions. This test would not apply to FFSPs solely providing services to wholesale clients, a foreign company and if it is regulated by a comparable regulator.

Next Steps

The Consultation closes on 8 September 2023. The exposure draft legislation suggests a relaxation of requirements for FFSPs. FFSPs that currently rely on exemptions or are considering entering the Australian market are encouraged to carefully review the proposals and the effect on their businesses.

For more information, and any guidance or advice, Cleveland & Co External in-house counsel™, your specialist outsourced legal team, are here to help.

If you need any help or further information, please contact Tanja Listar:

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