



Advancing Standards™

August 23, 2023

Via e-mail

FFSP@treasury.gov.au

Regulatory Powers and Accountability Unit
Financial System Division
The Treasury

Dear Sirs and Mesdames:

Re: Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Licensing exemptions for foreign financial services providers

OVERVIEW

The [Portfolio Management Association of Canada \(PMAC\)](#), through its International Committee, is pleased to have the opportunity to respond to the Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Licensing exemptions for foreign financial services providers (the **Bill**) issued by the Australian Treasury.

Capitalized terms used but not defined in this submission shall have the meaning given to such terms in the Bill.

PMAC represents over [310 investment management firms](#) registered to do business with the various members of the Canadian Securities Administrators (the **CSA**)¹ as portfolio managers. In addition to this primary registration, most of our members are also registered as investment fund managers and/or exempt market dealers. Collectively, our members manage total assets in excess of CAD \$3 trillion.

PMAC'S SUPPORT FOR THE BILL

PMAC supports the facilitation of cross-border financial services, while appreciating the need to ensure appropriate regulatory oversight of foreign financial services providers (**FFSPs**) that are active in the Australian markets through the inclusion of the Ontario Securities Commission (**OSC**) in the list of comparable regulators. We also support the proposed conditions for FFSPs to rely on the comparable regulator exemption and believe these strike the appropriate balance between investor and market protection and regulatory burden.

¹ Securities regulators from each of the 10 provinces and 3 territories in Canada form the [Canadian Securities Administrators](#).

KEY RECOMMENDATIONS

1. OSC:

We support the inclusion of the OSC as a “comparable regulator” at the commencement of the Bill on April 1, 2024; and

2. Include all Canadian Securities Administrator jurisdictions:

We strongly urge the additional inclusion of the other 12 members of the CSA as “comparable regulators” that have been assessed as sufficiently equivalent to the Australian regulatory regime for the regulation of financial services. PMAC makes this submission on the basis that the securities laws administered, overseen, and enforced by the OSC are materially the same across all of Canada. Failure to include all CSA jurisdictions would unfairly exclude numerous Canadian FFSPs from providing financial services in Australia. PMAC sees no policy, investor protection or market efficiency rationale exclude the rest of the CSA while including the OSC; or

In the alternative, if the Australian Securities Investment Commission (**ASIC**) is only empowered to add jurisdictions with which ASIC has a securities regulatory cooperation agreement, then we urge the addition of the Alberta Securities Commission (**ASC**), the British Columbia Securities Commission (**BCSC**) and the *Autorité des marchés financiers* (**AMF**) to the “comparable regulator” list.

3. Revised conditions to rely on comparable regulator exemption:

We support the revised conditions upon which an FFSP can rely on the comparable regulator exemption. PMAC applauds the balanced approach the Australian treasury has taken on these conditions and how they have evolved since the last consultation paper was published for stakeholder feedback.

INCLUSION OF ALL CSA JURISDICTIONS IN “COMPARABLE REGULATORS” LIST

The securities laws administered, overseen, and enforced by the OSC are materially the same across Canada.

Canada’s portfolio managers are highly regulated and well-placed to assist the Australian superannuation and retirement industry in accessing a broader range of investment markets, assets and/or capabilities, to achieve these Australian investors’ desired portfolio diversification.

Canada has a unique but **effective** securities regulatory framework where all 13 individual CSA members (10 provinces and 3 territories) work together under a national umbrella organization which works to develop, implement, and enforce harmonized rules, regulations, policies and guidance across the country.

For example, Canadian portfolio managers registered with one or more CSA securities regulators are subject to a common set of national securities laws, with National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103, a copy of which can be found [here](#)) being the primary instrument governing portfolio managers.

Importantly, NI 31-103 is a national instrument that applies across Canada and each member of the CSA exercises equally rigorous oversight over its registrants, with Canada-wide standards for each registrant. Compliance with NI 31-103 and other applicable securities laws is overseen by

each firm's principal regulator - the CSA member in the firm's home province or territory, with a system of cooperation between other, non-primary CSA jurisdictions in which the firm is registered.

For this reason, we believe that *all* CSA jurisdictions merit inclusion in the list of "comparable regulators" Failure to include all CSA jurisdictions would unfairly exclude numerous Canadian FFSPs from providing financial services in Australia without a corresponding investor protection, public policy, or market integrity rationale.

While PMAC's strong preference is to extend the exemptive relief to all CSA jurisdictions – and while we believe that there is no policy rationale not to do so – we acknowledge ASIC's past practice of only extending exemptions to jurisdictions with which ASIC has securities regulatory cooperation agreements. If there is a pressing policy reason dictating that ASIC continue with such practice going forward, then we encourage ASIC to extend the relief to FFSPs to those firms registered with the OSC, as well as with the ASC, BCSC and the AMF, all of whom we understand have cooperative agreements with ASIC.

Should you require any additional comfort or information about the national securities law regulatory regime in Canada, PMAC would be pleased to facilitate a conversation or connect you with any CSA members.

CONDITIONS FOR RELIANCE ON COMPARABLE REGULATOR EXEMPTION

We applaud the Australian Treasury for having been responsive to stakeholder feedback on the scope of conditions that should be required for an FFSP to be able to rely on the comparable regulator exemption. We believe that an appropriate balance has been struck between ensuring investor protection and market efficiency without imposing undue regulatory burden.

ADDITIONAL COMMENTS OF SUPPORT

PMAC supports the exemption for financial services provided to professional investors and believe this is in furtherance of Treasury's goal of allowing Australian professional investors to diversify their investment opportunities through reducing barriers to entry for FFSPs in the Australian market. The conditions precedent to relying on the professional investor exemption strike PMAC as reasonable.

Additionally, PMAC supports the exemption from the fit and proper person test for foreign firms that apply for an FFSP license where such firms are regulated by a comparable regulator. Both of these exemptions will increase the ability of PMAC's member firms to conduct business in Australia while reducing regulatory burden and fostering investor protection.

CONCLUSION

We appreciate the opportunity to comment on the Bill and believe that expanding the relief to all Canadian FFSPs registered with any member of the CSA, not solely with the OSC, would provide meaningful additional investment opportunities and capabilities to Australian wholesale investors to further serve their needs.

We would be pleased to discuss any of our comments with you at your convenience.

Sincerely,

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