

ASIC EXTENDS CO 03/824 ... BUT NOT FOR LONG, IT'S ON PROBATION!

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Legal Briefings - By **Fiona Smedley**, **Steven Rice** and **Aaron Jones**

WHAT'S HAPPENED?

ASIC has extended the relief provided by Class Order [[CO 03/824](#)] (**CO 03/824**) in *ASIC Corporations (Foreign Financial Services Providers - Limited Connection) Instrument 2017/182*, but only for 18 months, while further consultation is undertaken.

CO 03/824 has been extended on its existing terms, without requiring additional notification to ASIC, so foreign financial service providers (**FFSPs**) using it don't have to change their practices for now.

WHAT IS CO 03/824?

CO 03/824 exempts a FFSP from the requirement to hold an Australian financial services licence (**AFSL**) where the FFSP only provides services to wholesale clients and has a limited connection to Australia.

WHAT HAPPENS NEXT?

CO 03/824 has been continued until 27 September 2018.

During that time ASIC will consult further in relation to repealing the relief or imposing new conditions, e.g. a requirement to notify ASIC when using the relief.

WHAT SUBMISSIONS ARE SOUGHT?

The submissions made in response to Consultation Paper 268 *Licensing relief for foreign financial services providers with limited connection to Australia* ([CP 268](#)), summarised in [Report 519](#):

- strongly supported the continuation of CO 03/824;
- noted that the exemption in section 911A(2E), (which is limited to dealing, advising and making a market in relation to derivatives, FX contracts, carbon units, Australian carbon credits, eligible international emissions units) is not a complete replacement for CO 03/824, which applies more broadly including to securities, debentures and managed investment products;
- acknowledged that other relief may not be available to FFSPs. The 'passporting' relief, which was extended for two years last September, and which was also the subject of CP 268, may not be extended and is only available to FFSPs who have a licence equivalent to an AFSL in a specified jurisdiction (see our previous [legal briefing](#)); and
- acknowledged the cost of seeking an AFSL would outweigh the benefits, which in the absence of other relief would likely result in FFSPs withdrawing from the Australian market.

ASIC now seeks additional information in order to determine whether the current relief settings should continue on a long-term basis including:

- the costs that a repeal of CO 03/824 would give rise to;
- industry views on the relationship between CO 03/824 and the 'passporting' relief;
- the types of products and services offered in reliance on CO 03/824; and
- the jurisdictions and number of clients that would be affected by a repeal of CO 03/824.

FFSPs wishing to rely on CO 03/824 from September 2018 should take note of ASIC's warning that if it does not receive this additional information over the next 18 months "the likely result is that CO 03/824 will be repealed".

ASIC also continues to be concerned about the lack of visibility on FFSPs relying on CO 03/824 and seeks additional information about the costs associated with imposing a notification requirement on FFSPs using CO 03/824.

Finally, Report 519 also noted that respondents unanimously noted that a one year transition period was too short and that most suggested a two year transition period. ASIC will consult further on an appropriate transition period.

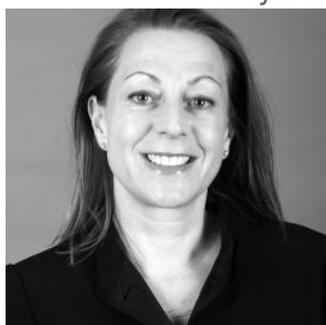
WHAT'S HAPPENING IN RELATION TO THE 'PASSPORTING' RELIEF?

ASIC did not receive the submissions it was hoping for in relation to the 'passporting' relief and will consult with industry later this year to get a better understanding of:

1. who relies on the 'passporting' relief;
2. the types of activities it is used for; and
3. the volume of business for entities that rely on it.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



FIONA SMEDLEY
PARTNER, SYDNEY

+61 2 9225 5828
Fiona.Smedley@hsf.com



STEVEN RICE
SPECIAL COUNSEL,
SYDNEY

+61 2 9225 5584
steven.rice@hsf.com

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