

Treasury
Langton Cres
Parkes ACT 2600

Email: FMIconsultation@treasury.gov.au

9th February 2024

Dear Treasury,

CONSULTATION PAPER – FINANCIAL MARKET INFRASTRUCTURE REGULATORY REFORMS

Tradeweb Australia Pty Ltd (formerly Yieldbroker Pty Ltd) welcomes the opportunity to provide comment on the Consultation Paper – Financial Market Infrastructure Regulatory Reforms on behalf of the Tradeweb group (“Tradeweb”).

Tradeweb holds the following domestic and overseas Australian Market Licences (AMLs):

- Tradeweb Australia Pty Ltd (formerly Yieldbroker Pty Limited) – Domestic AML
- Tradeweb Europe Limited – Overseas AML
- Tradeweb EU B.V. – Overseas AML
- TW SEF LLC – Overseas AML

As both a domestic and overseas market licensee, Tradeweb is broadly supportive of the proposals that pertain to market licensees, provided however that they are accompanied by the appropriate levels of transparency and have limited scope for arbitrary discretion.

Notwithstanding the above, Tradeweb has considered the paper, in particular Chapter 3 of the Exposure Draft Explanatory Materials and has summarised below its response to those proposals which apply both directly and indirectly to market licensees.

Tradeweb would be happy to discuss any of the comments relating to the consultation paper.

Yours sincerely,



Fiona Breen
Tradeweb Australia Pty Ltd

Comparison of key features of new law and current law

No	New law (in relation to the application of Schedule 2)	Current law	Tradeweb Comments
1	ASIC may grant an Australian CS facility licence to a body corporate registered under Chapter 2A, or a foreign body corporate operating overseas CS facilities	The Minister may grant an Australian CS facility licence to a body corporate, or a foreign body corporate operating overseas CS facilities	<i>No comment</i>
2	ASIC may immediately suspend or cancel the licence of a market licensee, CS facility licensee, derivative trade repository licensee or benchmark administrator licensee for lack of use	No equivalent	Many market licensees are licenced to offer more than one financial product under their market licence. The language included under paragraph 3.109 of the of the Exposure Draft Explanatory Materials below suggests that even if a market licensee ceases to accept bids or offers for the acquisition of only one of the financial products it is licenced to offer for a period of at least 12 months, ASIC would have the ability to immediately suspend or cancel its licence. Tradeweb assumes this is not the intention and suggests there is further clarity provided on this either through legislative amendments, explanatory materials or regulatory guidance.

			<ul style="list-style-type: none"> the licensee ceases, for a period of at least 12 months, accepting bids or offers for the acquisition or disposal of financial products to which the licence relates, providing CS facility services to which the licence relates, or ceased providing benchmark or repository services to which the licence relates; or
3	ASIC may declare a financial market to be a declared financial market and a body corporate to be widely held market body.	Corporations Regulations specify prescribed financial markets and widely held market bodies for the purposes of the Act.	Tradeweb understands the efficiency gains that this seeks to achieve by removing the additional time and process involved in having to prescribe markets through regulations.
4	The Minister may grant an application for approval lodged with ASIC to have voting power of more than 15% in a particular widely held market body (including the ASX Limited).	The Minister may grant an application for approval lodged with ASIC to have voting power of more than 15% in a particular widely held market body (other than the ASX Limited).	<i>No comment</i>

		The regulations may prescribe for a higher percentage than 15% of voting power in the ASX Limited.	
5	ASIC may grant an application for approval to have voting power of more than 15% in a body corporate registered under Chapter 2A that is a market licensee, a CS facility licensee, a derivative trade repository licensee or a benchmark administrator licensee (other than a widely held market body).	No equivalent.	<i>No comment</i>
6	ASIC may impose conditions or additional conditions or vary or	The Minister may impose conditions or additional	Tradeweb is supportive of this on the basis that the Minister's powers are already delegated under the <i>Ministerial Powers (ASIC) Delegations 2021</i> .

	<p>revoke conditions on an Australian market licence and a CS facility licence. The conditions may include limits on a licence.</p>	<p>conditions or vary or revoke conditions on an Australian market licence and a CS facility licence. The Minister's power is delegated to ASIC under the <i>Ministerial Powers (ASIC) Delegations 2021</i>.</p>	
7	<p>ASIC may make rules for the purposes of promoting the provision of fair and effective services by licensed CS facilities.</p>	<p>No equivalent.</p>	<p>Given the hierarchy outlined in paragraph 3.33 of the Exposure Draft Explanatory Materials below, it will be imperative that ASIC are cognisant in any rulemaking of the potential for unintended consequences on market licensees and compliance by participants with the Operating Rules of the licenced market.</p> <p><i>Inconsistency between rules</i></p> <p>3.33 In the event of any inconsistencies between the operating rules of a licensed CS facility or the operating rules of a financial market and the CS facility rules, the CS facility rules prevail over the operating rules to the extent of that inconsistency. <i>[Schedule 2, items 70 and 71, paragraphs 793B(2)(aa) and 822B(2)(aa) of the Act]</i></p>

8	<p>ASIC may give a direction to a market licensee, a CS facility licensee and derivative trade repository licensee. The period for which the direction has effect is not time limited.</p>	<p>ASIC may only give a direction to a market licensee, a CS facility licensee and derivative trade repository licensee if ASIC considers it appropriate after the licensee does not take actions after receiving ASIC's advice (and reasons) that ASIC is of the opinion that it is necessary, or in the public interest, to give a direction. The direction has effect for a period of up to 21 days.</p>	<p>It is unclear the circumstances under which ASIC can issue a direction as the language used includes "<i>if ASIC considers the direction to be necessary, or in the public interest....</i>". This coupled with the removal of the requirement for ASIC to first engage with a market licensee before issuing any such direction is of concern. Tradeweb suggests that more clarity around the criteria which ASIC will apply before issuing a direction should be provided through regulatory guidance or explanatory material.</p>
9	<p>ASIC is given the power to require a CS facility licensee or market licensee to give ASIC a special report.</p>	<p>The Minister's power to require a CS facility licensee or market licensee to give ASIC a special</p>	<p>While Tradeweb recognises that a similar power has already existed for the Minister to require a special report, the provision of additional power to ASIC to request an expert report is of concern. It is unclear what criteria ASIC must follow before requesting such a report to ensure it is reasonable, justified and necessary. In addition, the additional financial cost this will place on market licensees, over and</p>

	ASIC is also given the power to require a CS facility licensee, market licensee, derivative trade repository licensee and benchmark administrator licensee to give ASIC an expert report.	report including an audited special report is delegated to ASIC under the <i>Ministerial Powers (ASIC) Delegations 2021</i>	<p>above the industry funding model costs, could be considerable. Tradeweb's view is that ASIC should, in the first instance, be appropriately resourced so that any additional investigation into the activities of a market licensee will be resourced internally within ASIC.</p> <p>Tradeweb suggests that more clarity is provided through regulatory guidance or explanatory material on how ASIC will use these powers (for both special and export reports) so that there is additional clarity provided to market licensees that such use will be reasonable and justified and only triggered when absolutely necessary.</p>
10	ASIC may declare an individual who is involved in a market licensee, a CS facility licensee, a derivative trade repository licensee or a benchmark administrator licensee is disqualified taking into account such matters as the individual's fame, character and integrity. ASIC only needs to be satisfied that the	ASIC may declare an individual who is involved in a market licensee, a CS facility licensee, a derivative trade repository licensee or a benchmark administrator licensee is disqualified taking into account such matters as the individual's fame,	It would be helpful for more clarity and transparency to be provided through regulatory guidance or explanatory material with respect to the minimum requirements for market licensees in determining the fitness and propriety required of individuals to hold positions of responsibility.

	individual is unfit to be involved in the licensee.	character and integrity. ASIC may make such a declaration only if ASIC is satisfied that, because the individual is unfit to be involved in the licensee, there is a risk that the licensee or applicant will breach its obligations under Chapter 7 of the Act if the declaration is not made.	
11	A new general obligation on a market licensee, a CS facility licensee, a derivative trade repository licensee and a benchmark administrator licensee to ensure that individuals	No equivalent.	Tradeweb is supportive of this new general obligation in principle as competency in the role should be a key requirement. However, the language that ASIC “ <i>have reason to believe</i> ” as a criteria under parts of sections 853H for making an FMI banning order is ambiguous. Tradeweb suggest that more clarity is provided through regulatory guidance or explanatory material on how ASIC will use this power so that there is additional clarity provided to market licensees.

	performing certain roles are fit, proper and competent for that role. ASIC may make FMI banning orders if ASIC has reason to believe that an individual is not fit, proper and competent		
12	A financial market or CS facility is taken to be operated in this jurisdiction if it is operated by a body corporate that is registered under Chapter 2A or ASIC declares that it has a material connection with this jurisdiction.	A financial market or CS facility is taken to be operated in this jurisdiction if it is operated by a body corporate that is registered under Chapter 2A (but not limited to this circumstance).	<i>No comment</i>
13	ASIC is directly empowered to make decisions on the licensing of financial	Certain Ministerial powers under Chapter 7 of the Act are delegated to	No comment as this is already in place under the <i>Ministerial Powers (ASIC) Delegations 2021</i> .

	<p>markets and CS facilities, overseeing licensee compliance, and disallowing operating rule changes.</p>	<p>ASIC under the <i>Ministerial Powers (ASIC) Delegations 2021</i>. This includes powers over the licensing of financial markets and CS facilities, overseeing licensee compliance, disallowing operating rule changes.</p>	
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