



FMI Regulatory Reforms
Consultation Submissions,
FMI Section,
Payments Policy Department,
Reserve Bank of Australia,
GPO Box 3947, Sydney, NSW, 2001

18th December 2019

Email: FMIconsultation@cfr.gov.au

Dear Sirs,

CONSULTATION PAPER – FINANCIAL MARKET INFRASTRUCTURE REGULATORY REFORMS

Yieldbroker welcomes the opportunity to provide comment on the Consultation Paper – Financial Market Infrastructure Regulatory Reforms.

Yieldbroker is broadly supportive of the proposals that pertain to market operators, provided however that they are accompanied by the appropriate levels of transparency and have limited scope for arbitrary discretion.

Notwithstanding the above, Yieldbroker has considered the paper and summarised below its response to those proposals which apply directly to market operators.

If you would like to discuss any of the comments relating to the consultation paper, please do not hesitate to contact me on the number below.

Yours sincerely,

A handwritten signature in black ink that reads "Fiona Breen".

Fiona Breen
Head of Corporate & Company Secretary
Yieldbroker Pty Limited
Tel: (02) 9994 2894

YIELDBROKER RESPONSE

(A) Section 2.3 Transfer of licensing powers from Minister to the Regulators

Yieldbroker understands the efficiency gains that this would seek to achieve, for example by removing the additional time and process involved in having to refer licence changes and operating rule changes to the Minister.

As mentioned in the Consultation Paper, currently, "*ASIC staff exercise the delegated powers in accordance with Ministerial guidelines*". In the spirit of transparency, Yieldbroker believes that it would be beneficial for the Regulators to make transparent any guidelines it would be required to follow if these powers were transferred to them.

(B) Section 2.4 Suspension or cancellation of a licence in certain circumstances

Yieldbroker understands that this ability to suspend or cancel will be made with respect to a licence rather than with respect to individual authorisations or products covered by a licence. It would be important for this position to be clarified in any draft legislation / regulations.

(C) Section 2.5 Empowering ASIC to declare prescribed financial markets

The Consultation paper states that "*The concept of a 'prescribed financial market' allows for the selective application of some provisions in the Corporations Act in relation to certain financial markets*".

Yieldbroker would like to understand how this proposal will align with the risk-based, two-tiered market licensing regime introduced in May 2018. Under this two tiered system, an operator of a Tier 1 market is generally subject to all of the regulatory obligations as a market licensee, whereas an operator of a Tier 2 market is subject to a tailored subset of these obligations. RG 172 states that "in limited circumstances, we may expect a particular type of market venue to be a tier 1 market venue (e.g. if a market venue is a prescribed financial market under the Corporations Act)."

How will the tailoring of obligations of a Tier 2 licensee operate in conjunction with the selective application of provisions in the Corporations Act? Is this potentially a duplication of power?

(D) Section 3.3 Fit and Proper Standard

Whilst Yieldbroker is supportive of this proposal in principle, Yieldbroker considers it important for the Regulators to provide more clarity and transparency (whether in legislation, explanatory material or regulatory guidance) with respect to the minimum requirements for market operators in determining the fitness and propriety required of individuals to hold positions of responsibility. It would be helpful to have some further clarity on the detail of this requirement at this stage too (as part of the consultation process).

(E) Section 3.4 ASIC's consent will be required for holding more than 15 per cent voting power in a Licensed Entity

Yieldbroker understands that the intended proposal is to permit ASIC to review the potential effect on the market operator and its ability to meet its obligations that could occur as a result of the change in control. Yieldbroker would like more clarity provided on how ASIC will conduct this review and what factors ASIC will take into account.

(F) Section 3.6 Regulator's power to obtain an independent expert's report on specified matters and provide information

Yieldbroker is concerned that this proposal could result in unquantified costs for market operators. Yieldbroker believes that the Regulators should provide more transparency and clarity about the controls which will be put in place to ensure that a request by the Regulators to obtain an independent report will be reasonable and justified. Yieldbroker also queries what level of involvement market operators will have in selecting the independent experts.