

James McLean Dreyfus
Manager, Policy Framework Unit
Treasury
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Filed electronically: FIRBStakeholders@treasury.gov.au

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Re: Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 (Exposure Draft Regulations) and the Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Exposure Draft Fees Regulation)

Dear Mr. McLean Dreyfus,

ICI Global¹ appreciates the opportunity to provide feedback on the Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 (Exposure Draft Regulations) and the Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Exposure Draft Fees Regulation). Managers of global regulated funds,² such as our member firms, generally are very interested in the Australian securities market, and, as you've recognized in the Explanatory Material, such foreign investment provides significant economic benefits to Australia. Depending on the funds' investment objectives or the clients' investment mandate, global asset managers may invest significantly in Australia, which may result in triggering of the threshold for review by the Foreign Investment Review Board (FIRB). These managers invest on behalf of regulated funds and other clients that are not seeking to control or secure board positions of the companies in which they invest. For this reason, we urge the Australian Government to craft the final rules, regulations, and any related guidance implementing the revised foreign investment framework in a manner that addresses Australia's legitimate national security concerns without unduly discouraging foreign investment in Australia.

We raise below a few recommendations that we request the Government consider as it proceeds with finalizing the revised foreign investment framework.

¹ ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US\$34.7 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.

² The term "regulated funds" includes US funds, which are comprehensively regulated under the Investment Company Act of 1940 (Investment Company Act), and non-US funds, that are organized or formed outside the US and substantively regulated to make them eligible for sale to retail investors (e.g., funds domiciled in the European Union and qualified under the UCITS Directive (UCITS)).

Consult Further on Exemption Certificates

We appreciate that the Government has recognized that certain investors do not pose a risk to national security, therefore permitting them to apply for a time-limited investor-specific exemption that would allow them to make eligible acquisitions without a case-by-case screening. The Exposure Draft Regulations address exemption certificates for actions that would otherwise be notifiable national security actions (section 43BA) and actions that would otherwise be reviewable national security actions (section 43BB), and the Explanatory Material contains a high-level description of the exemptions certificates, along with two examples. Critically important details regarding the operation of the certificates, however, is not provided. For example, various aspects of how the certificates would operate, such as how the exemption could apply to a broad set of investments, are not clear. For this reason, it is not possible for us, as well as other industry participants, to evaluate whether the exemption certificate process will be practically workable and provide the relief for certain investors that we believe the Government intends to provide.

We therefore recommend that, prior to finalizing the provisions, the Government issue a consultation on any proposed guidance note and/or form of exemption certificate specifying the details of the exemption certificate process so that interested parties could provide constructive feedback. An effective and workable exemption certificate process would benefit both foreign investors and the Government by providing certainty to investors and reducing their compliance burden, while addressing the Government's national security concerns.

Exempt Substantial Shareholders from the Register of Foreign Interests and Revise Reporting Period

As part of the revised foreign investment framework, the Government is proposing to establish a new Register of Foreign Ownership that will (1) require a foreign person to register certain events, including an event relating to an exemption certificate, and (2) require notification, within 30 days, when a foreign person changes its interest upon holding five percent or more interest. We understand the importance of the Government having access to accurate information regarding investments by foreign persons, but request that the Government consider our recommendations below so as not to unduly burden existing and prospective foreign investors.

First, we recommend that foreign persons that are subject to existing reporting and disclosure requirements of substantial shareholding of companies under the Corporations Act be exempt from registering those foreign interests in the register. The substantial shareholder filing regime already requires shareholders who acquire more than 5% of ASX listed securities to report their holdings and to further report each 1% movement in their holdings soon as practicable. The proposed notifications by foreign persons would be, in effect, duplicative and unnecessary.

Second, we request that the time period provided for a foreign person to register an interest or provide notice of a change of interest be revised. Certain fund managers may trade Australian securities regularly and may therefore trigger a requirement to make a notification frequently. Requiring these fund managers to make such filings within 30 days on a rolling basis would create a significant compliance burden. We recommend that a longer reporting period be provided so that foreign persons can report such transactions on a net basis, such as at the end of a financial reporting period.

We appreciate your consideration of our concerns. Please contact Jennifer Choi, Chief Counsel, at +1 (202) 326-5876 or jennifer.choi@ici.org; or Eva Mykolenko, Associate Chief Counsel, ICI Global, at +1 (202) 326-5837 or emykolenko@ici.org, with any questions.

Yours sincerely,

/s/ Jennifer S. Choi

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