

25 August 2022

The Manager
Diversity, Localism and Accessibility Section
Australian Communications and Media Authority
PO Box Q500
Queen Victoria Building
Sydney NSW 1230

Re: Foreign Ownership of Australian Media Assets: Review of Legislative Requirements, Consultation Paper, July 2022

Dear Sir or Madam,

DFA Australia Limited (“Dimensional Australia”) appreciates the opportunity to respond to the July 2022 Consultation Paper¹ issued by the Australian Communications and Media Authority (“ACMA”) on its review of the foreign ownership of Australian media assets framework (the “FOMA Framework”). Dimensional Australia is an investment manager holding an Australian Financial Services License and is a wholly owned subsidiary of US-based Dimensional Fund Advisors LP (“Dimensional US”, and together with its affiliates, “Dimensional”). Dimensional Australia was established in 1994 and began offering investment solutions to Australian investors with the launch of the first Dimensional Wholesale Trusts in 1999. Dimensional offers broadly diversified investment strategies designed for long-term investors, certain of which seek to provide broad exposure to Australian equities. As at 30 June 2022, Dimensional managed A\$832 billion in commingled funds and separate accounts for investors around the world, and over A\$21 billion of Dimensional’s assets under management were invested in Australian listed equities, including directly and indirectly in Australian media companies (“AMCs”).

Because Dimensional invests in AMCs on behalf of its clients (directly or under the application of the relevant fractional tracing method), Dimensional US has been required to make notifications to ACMA under the Broadcasting Services Act 1992 (the “BSA”). Complying with the FOMA Framework has been challenging and diverts time and resources away from our ability to pursue other initiatives that could benefit Australian investors. We strongly urge ACMA to consider whether the costs and burdens imposed on foreign stakeholders—particularly when many of the foreign stakeholders subject to the FOMA Framework are international investment managers who manage funds on behalf of Australian retail investors—are justified. In our view, a simpler framework could equally achieve ACMA’s policy objectives.

I. Foreign stakeholders face significant costs in complying with the FOMA Framework.

Under Division 10A of Part 5 to the BSA (“Division 10A”), a foreign person who has company interests of 2.5% or more in an AMC is considered a “foreign stakeholder” and must notify ACMA about its interests when it becomes or ceases to be a foreign stakeholder and on an annual basis. These notifications must include the amount of company interests held, which requires foreign stakeholders to trace ownership directly and using the fractional tracing method under clause 8 of Schedule 1 to the BSA. The requirement to trace ownership means that a foreign stakeholder must understand the internal corporate structure of a group that has AMC subsidiaries (direct or indirect, public or private) and determine the percentage ownership of each AMC subsidiary. This information is often not publicly and/or readily available and sometimes requires extensive due diligence and research to uncover.

¹ Australian Communications and Media Authority, *Foreign Ownership of Australian Media Assets: Review of Legislative Requirements, Consultation Paper* (July 2022) (the “Consultation Paper”).

Foreign stakeholders also face significant challenges in monitoring changes in ownership of AMCs. As suggested by ACMA, Dimensional utilises a company alert system maintained by the Australian Securities and Investments Commission (“ASIC”) to monitor Australian listed companies in which Dimensional holds near or at 2.5% and that we have identified (through the laborious process described above) as having an AMC in its corporate structure. ASIC’s system notifies us by email when one of these companies lodges documents, such as lodgments relating to change in shareholdings, which we must then review to determine whether it relates to a change in control of an AMC that would trigger a notification to ACMA under the FOMA Framework. This method of monitoring is labour intensive and also flawed. For example, if Dimensional owns 2.5% of an Australian listed company that does not currently have any AMCs in its corporate structure, then we would not set alerts to monitor that entity through ASIC’s system, and accordingly, we would not be notified if that entity subsequently acquired an AMC. Short of monitoring *every* Australian listed company for lodgments relating to changes in control, we are not aware of any other way to be notified when an Australian listed company acquires an AMC. We are also not aware of a way to be notified if a company listed outside of Australia were to acquire an AMC.

Because of these challenges, preparing the required notifications to ACMA takes significant time and resources, which reduces our ability to pursue other initiatives, such as developing or improving products and services that could benefit Australian investors. According to the Consultation Paper, the landing page of the Register of Foreign Owners of Media Assets (the “FOMA Register”) has averaged approximately one unique page view per day, and ACMA has not received any enquiries about the FOMA Register since it commenced in March 2019.² To us, this suggests that the Australian public makes very little use of the information on the FOMA Register, and that the amount of time and effort spent by Dimensional and other foreign stakeholders to report under the FOMA Framework is vastly disproportionate to the public benefits of the FOMA Register. We strongly urge ACMA to consider whether the costs and burdens imposed on foreign stakeholders—particularly when many of the foreign stakeholders subject to the FOMA Framework are international investment managers who manage funds on behalf of Australian retail investors—are justified.

II. A simpler framework could equally achieve the policy objectives for Division 10A.

As noted in the Consultation Paper, Division 10A aims to improve transparency about the levels and sources of foreign investment in AMCs, and the FOMA Register is intended to allow the Australian public to easily access information about the levels and sources of foreign investment in mainstream media outlets.³ We believe these policy objectives could be achieved through other means.

In our view, the best approach would be for ACMA to enhance its existing registers, instead of maintaining a separate FOMA Register. For instance, ACMA could enhance its media control registers by requiring lodging parties—*i.e.*, persons that have acquired more than 15% of a commercial television broadcasting licence, a commercial radio broadcasting licence, or an associated newspaper—to indicate whether they are foreign persons when they make their required notifications to ACMA. We recognise that this would result in a higher threshold for reporting foreign ownership than currently required under the FOMA Framework, however we believe a higher threshold would be appropriate. ACMA itself acknowledges that the current 2.5% threshold has triggered a significant number of notifications, particularly for foreign investment fund managers who typically invest at lower levels and frequently adjust levels of exposures.⁴ Increasing the threshold to 15%, or to a percentage that aligns with one of the other reporting regimes described in the Consultation Paper, would reduce the number of

² Consultation Paper at 5.

³ Consultation Paper at 4.

⁴ Consultation Paper at 8.

notifications provided to ACMA, and would still provide transparency about foreign investment in AMCs.

If ACMA determines that a separate FOMA Register is indispensable, we suggest allowing foreign stakeholders to report their ownership at the media group level, instead of requiring foreign stakeholders to trace their ownership of all AMC subsidiaries within a group. If foreign stakeholders must continue to report ownership of subsidiaries within a media group, the media group itself—which is in the best position to provide corporate structure and ownership information—should be required to publicly identify its AMC subsidiaries and its relevant ownership of each. ACMA should also allow foreign stakeholders to rely conclusively on the information provided by the media group. In the event of any change in ownership within the media group, such as a change in control of an AMC, foreign stakeholders should be given sufficient time to make the requisite filing with ACMA after the media group has made the information publicly available. Such changes would alleviate some of the challenges faced by foreign stakeholders when complying with the current FOMA Framework.

Finally, we encourage ACMA to consider that there could be unintended consequences of the existing FOMA Framework. If compliance with the FOMA Framework continues to be as time consuming, costly, and burdensome as it is today, we believe it is possible that some international investment managers may decide to limit their exposure to AMCs to avoid crossing the 2.5% reporting threshold, because the costs of complying with the FOMA Framework outweigh the benefits of investing in AMCs. For managers that do not currently invest in Australian equities, the costs and burdens of complying with the FOMA Framework could deter such managers from doing so. We believe these would be unfortunate unintended consequences of the FOMA Framework that could affect Australian retail investors.

* * *

We appreciate that ACMA is reviewing the FOMA Framework and its effectiveness in achieving its policy objectives, and we urge ACMA to keep in mind the burdens and costs imposed on foreign stakeholders—including international investment managers that invest on behalf of Australian retail investors—as it considers alternatives. Dimensional thanks ACMA for considering our comments and recommendations and will gladly make ourselves available for further discussion or to answer any questions concerning this submission.

Sincerely,



J. Glenn Crane
CEO, Dimensional Australia