



(株)日本証券クリアリング機構
Japan Securities Clearing Corporation

May 1, 2015

Manager
Banking and Capital Markets Regulation Unit
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir / Madam,

Overseas Clearing and Settlement Facilities: The Australian Licensing Regime.

We refer to the Consultation Paper (CP) issued in March 2015 by the Australian Council of Financial Regulators (CFR) and have pleasure in submitting the responses of the Japan Securities Clearing Corporation (JSCC) to this CP.

Background

JSCC is a central counterparty for the Japanese securities market, established in July 2002 by Japanese market operators. Its clearing businesses include exchange-traded products, OTC Japanese government bonds, Credit Default Swaps (CDS), and Interest Rate Swaps (IRS). Each clearing business is operated according to its own business rules, which include a dedicated default waterfall for each business line. Its rules are published on its website and it maintains a regular dialogue with its participants regarding both current and future business requirements and operation. JSCC has recently benchmarked itself against the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMI) and published the results on its website.

JSCC operates its businesses in Japan under the supervision and regulation of the Financial Services Agency (JFSA) in accordance with the Financial Instruments and Exchange Act (FIEA).

The FIEA was amended in 2010 to include a clearing mandate for OTC derivatives, in response to which JSCC commenced its CDS clearing business in July 2011, followed by its IRS clearing business in October 2012. Shortly thereafter, the clearing mandate came into effect with limited scope. Entities and products covered by the Japanese clearing mandate have been gradually expanded since this date, and some further expansions are scheduled in the future.

The Consultation Paper

JSCC welcomes the opportunity to respond to the CP, in particular as Japan maintains important business links with Australian entities and businesses.

Individual responses are laid out in line with the specific feedback sought by the questions in Section 6 of the CP.

1. *Do you agree that the proposed circumstances that would constitute a domestic connection and the factors to be taken into consideration under the first component of the test – a CS facility's domestic connection – define the initial scope of the Australian CS facility licensing regime appropriately?*

JSCC agrees that the key aspects of the domestic connection test are appropriate.

- (a) *Are there other circumstances (such as indirect participation) or factors that should be considered under this component of the test?*

In JSCC's view, this type of construction (e.g. where a CCP has a direct non-Australian participant with a large Australian client) should not itself form part of the domestic connection test. We believe that provisions already exist to ensure that such relationships between Australian entities and their clearing participants are properly considered, and that any extension of the domestic connection criteria in this manner may in fact lead to opacity, rather than clarity.

- (b) *Are the circumstances that would constitute a domestic connection under this component likely to be sufficiently flexible to account for future changes in the nature of the provision of CS services or the nature of relationships between a CS facility, its participants and participants' clients?*

JSCC has no specific comment to offer on this question. The topic of flexibility is covered in our response to question 3, below.

2. *Do you agree that the proposed test of a material domestic connection provides additional clarity in determining whether a CS facility must be either licensed in Australia or exempted from the provisions of Part 7.3 of the Corporations Act, relative to the current test of 'operating in this jurisdiction'?*

JSCC considers that the proposals as outlined in the CP provide some degree of increased clarity for authorities, operators and the market in general when the requirement for either a CSF license or exemption must be determined. However, JSCC feels a greater degree of clarity, as discussed below, would be desirable.

3. *Do you have any comment on the proposed circumstances that would constitute a material domestic connection, and the proposed factors for consideration under this second component of the test?*

We are pleased to see that the criteria are in many ways qualitative and thus still leave some degree of freedom when a final determination must be made. While we believe this flexibility is vital to ensuring that the licensing regime only captures appropriate facilities, it is our opinion that the addition of a set of more quantitative criteria would enhance the ability of all concerned to a) establish a logical and appropriate decision point regarding their respective strategic business activities, and b) reduce further any uncertainty in Australian and other markets around the credentials of a CSF license or exemption holder. The form of these criteria is covered in the following question.

4. *Do you have any comment on the proposed approach for implementing the test of a material domestic connection, for example how the factors for consideration and circumstances set out under each component of the test could be specified in the Corporations Act, a legislative instrument and/or revised regulatory guidance?*

Referring to our response to Question 3 above, JSCC would suggest that rather than setting absolute thresholds in legislation, such criteria could take the form of guidance in order to maintain an adequate level of flexibility and responsiveness.

5. *Do you have any comment on the requirement for a CS facility that has a domestic connection to notify the regulators?*

JSCC's approach to regulation is one of openness and communication. With this in mind, we are always in support of keeping the appropriate authorities notified and provided with the relevant information to the extent permitted by the relevant laws of a CS facility's jurisdiction.

Again, in our view, the more quantitative criteria for the materiality test that are made available, the easier it is for CS facilities to identify both the requirement and the optimum timing for regulatory notification and subsequent discussion.

6. *Do you have any comment on the design that ASIC, in consultation with the RBA, will make a determination about whether a CS facility's activities are material?*

It is JSCC's understanding that the processes currently surrounding regulatory license decision-making in Australia provide for the necessary depth of analysis, with the advantages of a) range of expert knowledge application, b) recommendation submission to an independent level, and c) input from the central bank regarding systemic and/or currency issues.

For the purpose of efficiency and clarity, a single point of communication for overseas facilities to contact all relevant Australian regulators would be useful and mitigate potential confusion which could arise if potential candidates were required to contact each regulator separately.

Conclusion

In general, JSCC is in agreement that a higher degree of certainty would be desirable in determining whether a CSF license is required in any given case. It also concurs with the basic concept of the two element test in order to achieve this.

In the implementation of changes in legislation and regulation, JSCC believes proper consultation on timing and content with regulators in other key jurisdictions, including Japan, is vital to mitigating cross border regulatory conflict. Additionally, in our view, arrangements for regulation of potentially impacted entities (particularly CCPs and/or their participants) during any transitional period should be considered and well publicised.

We trust that the opinions expressed above will prove useful to the CFR and the individual authorities. We welcome any inquiries regarding this response to the contact specified below.

Yours sincerely



Hironaga Miyama
President & CEO
Japan Securities Clearing Corporation

[Contact]
Tetsuo Otashiro, Head, Strategic Planning
TEL: +81 3 3665 4073
e-mail : t-otashiro@jsc.co.jp