

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

08/05/2015

Dear sirs,

OVERSEAS CLEARING AND SETTLEMENT FACILITIES: THE AUSTRALIAN LICENSING REGIME

This letter provides the submission of LCH.Clearnet Ltd (“LCH.Clearnet”) to the CFR’s Consultation Paper: Overseas Clearing and Settlement Facilities: the Australian Licensing Regime.

LCH.Clearnet is a subsidiary of the LCH.Clearnet Group, the world’s leading clearing house group, which services major international exchanges and platforms, as well as a range of over-the-counter (“OTC”) markets. It clears a broad range of asset classes including cash equities, exchange traded derivatives, commodities, energy, freight, interest rate swaps, credit default swaps, bonds, repos, and foreign exchange derivatives. The Group’s central clearing counterparties (“CCPs”) have over 190 clearing members and over 600 clients across 22 countries.

LCH.Clearnet was the first non-Australian CCP to be granted an Australian Clearing and Settlement Facility Licence and is currently providing clearing services for OTC interest rate swaps to a number of major Authorised Deposit-taking Institutions through its SwapClear service. LCH.Clearnet is also licenced in Australia to clear for the FEX commodities and energy exchange. LCH.Clearnet is supervised directly by both ASIC and the RBA. In addition to its Australian licence, LCH.Clearnet Ltd is regulated in the EU, Norway, Switzerland, the US, Singapore, Quebec and Ontario. LCH.Clearnet SA is regulated in the EU and the US. LCH.Clearnet LLC is regulated in the US, and has applied for recognition in the EU.

Comments on the proposals

As a global multi-currency clearing house, LCH.Clearnet has an interest in the policy frameworks for CCP licensing that exist or are under development in each of the

jurisdictions in which we do or may operate. In Australia, our licence was granted in relation to the FEX market and was subsequently varied to include the clearing of interest rate swaps. Each application was subject to separate analysis and accompanied by specific conditions. LCH.Clearnet also provides clearing services to Australian clearing members where no other Australian connection has been determined¹ and where, therefore, no licence or exemption was necessary. We therefore have good experience of the current application of the licensing regime and have not found it to be in any way perverse or cumbersome. We therefore believe that the current situation is and can continue to be workable as it allows the regulators to make the appropriate judgements in a flexible and agile fashion. To enshrine the provisions in legislation risks introducing unnecessary rigidity and complexity into what is a dynamic area.

Where we would, however, welcome guidance is on how the policy could be enforced. It could happen that an overseas clearing facility wishes to offer clearing services where the regulators would, if notified, determine a material domestic connection, but it does not notify the regulators. What regulatory tools are available to Australian regulators; would they disincentivise or even prohibit regulated entities from participating in the facility? We recognise that this is a very unlikely scenario and it is hard to imagine any responsible CCP from doing such a thing, but it would we believe be helpful both to CCPs and to their potential participants to be fully aware of the commercial and reputational risks of such a course of action.

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We hope that the CFR finds this submission useful and we look forward to engaging further as policies are developed. Please do not hesitate to contact me at rory.cunningham@lchclearnet.com regarding any questions raised by this letter or to discuss these comments in greater detail.

Yours faithfully

A handwritten signature in black ink, appearing to read "Rory Cunningham".

Rory Cunningham
Director, Asia Pacific Compliance & Regulatory Affairs

¹ Global commodities and European repo and bond markets.