Macquarie Bank Limited

ABN 46 008 583 542

Commodities and Global Markets

50 Martin Place
Sydney NSW 2000
GPO Box 4294
Sydney NSW 1164

Telephone (61 2) 8232 8333
Facsimile (61 2) 8232 4540
Internet http://www.macquarie.com.au
SWIFT MACQAU2S

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

Dear Sir / Madam

Financial Market Infrastructure Regulatory Reforms, A Consultation Paper by the Council of Financial Regulators, November 2019

Thank you for the opportunity to comment on the paper referred to above (the **CFR paper**).

We wish to make submissions in relation to the following three matters raised by it.

1. *Regulatory burden on FMIs with a domestic connection*

   This comment relates to the section *Overseas entities – requirement to be licensed* in section 2.4 of the CFR paper.

   Macquarie is supportive of the information-gathering power, which provides ASIC with an appropriate means of assessing the connection of a foreign market or clearing / settlement facility (CSF) to Australia.

   However, we do not support the imposition of a reporting obligation on offshore CSFs and markets, or a notification obligation.

   This is because notification and reporting requirements constitute obligations on a potentially wide set of offshore financial market infrastructures (**FMIs**). While less onerous than a licensing obligation, these nonetheless constitute obligations that all such FMIs will have to create compliance frameworks to respond to, to avoid violating Australian regulation.

   Some examples of the width of the set of FMIs caught could include:

   1. a foreign securities exchange who agreed to list (i.e. dual-list) an Australian stock, or an Australian company's debt program;
   2. any foreign OTC market facilitating trading in derivatives that have an Australian entity, commodity or currency forming a component of an underlying. There are numerous offshore platforms that do this;
   3. futures or other exchanges that list contracts linked to Australian underlyings (e.g. Australian wheat, Newcastle coal, indices like the MSCI Australia 200 Index); and

4. settlement facilities offshore (e.g. Euroclear, Clearstream, DTCC).

Imposing even a minor regulatory obligation could contribute to an FMI's decision to avoid Australian products, underlyings and participants. This would work against Australia's efficient integration in global markets. It could also reduce liquidity in Australian financial markets, and impact end-users. While Australian regulatory supervision of foreign FMIs is critical, we believe it is important for this to take place, to the extent possible, without harming Australia's global financial connectedness. We believe that the information-gathering power will achieve the regulatory goal without harming markets.

2. *FMI location requirements*

This comment relates to the section *Location requirements* in section 2.4 of the CFR paper, and specifically the imposition of location requirements on a central counterparty (CCP) like LCH in relation to SwapClear.

Macquarie's view is that such location requirements are problematic because LCH SwapClear is a single CCP with integrated activity in multiple contracts. It would not be possible for SwapClear to move its global activity (i.e. all on foot derivatives, offshore regulatory authorisations, global members), or even just a subset (activity pertaining to AUD, offshore regulatory authorisations pertaining to those derivatives, Australian members) from its existing CCP to an Australian subsidiary. All that SwapClear could do in response to such a direction would be to 'de-board' Australian participants and discontinue AUD-denominated contracts from the CCP.

We suggest that it would be better that ASIC be given powers to impose requirements whose operation is clearly understood by all stakeholders, well ahead of the point of their use, as being a viable way for Australian regulators may strengthen their influence over the licensee when required.

3. *Resolution: the need for international consistency*

This comment relates to section 4 of the CFR paper (*Crisis management and resolution*).

We appreciate the importance of authorities having resolution powers in relation to FMIs such as CCPs, for reasons which include, among others, the importance of Australia complying with international standards.

Macquarie's view is that implementation within Australia of these international standards should be done consistently with those standards themselves. Any departures could have consequences which could harm Australian financial markets and / or Australian entities' ability to participate in international markets. We are concerned that legislation to implement the proposals in the CFR paper could inadvertently have this result.

As one example, section 4.12 of the paper proposes that the proposed stay regime would not follow the FSB requirement that stays "be strictly limited in time (for example, for a period not exceeding 2 business days)".

We request that more time be given to industry and CFR to assess potential implications of this. This might include consideration of whether this could result in a punitive regulatory capital requirement applying to an ASX24 clearing member (particularly members complying

with regulations of overseas prudential regulators), and what this might mean in terms of such member's ability to continue to offer clearing services on ASX24.

Similarly, implementing an FMI resolution framework should be done in a way which carefully avoids harm to other legislative frameworks which are critical to the functioning of the Australian financial system. We are particularly focused on the operation of the *Payment Systems and Netting Act 1998 (Cth)*. Macquarie asks that the submission on the CFR paper by the International Swaps and Derivatives Association (ISDA) be carefully considered by CFR, and that CFR engages closely with ISDA as Australia's FMI resolution framework is developed.

Thank you again for the opportunity to respond to the CFR paper. If you would like to discuss any of the above, please feel free to contact me (andrew.stewart@macquarie.com; 02 8232 3806) or Shannon Spriggs (shannon.spriggs@macquarie.com; 02 8232 1873).

Yours sincerely,

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Andrew Stewart
Head of Macquarie Futures I Executive Director
Commodities and Global Markets
Macquarie Group Limited