

26 June 2015

By email: financialmarkets@treasury.gov.au

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

Dear Sir / Madam

Draft regulations: OTC Derivatives Central Clearing

CME Clearing Europe Limited (**CME Clearing Europe**) is grateful for the opportunity to comment on the draft regulations and Explanatory Guide in relation to OTC Derivatives Central Clearing (**Regulations** and **Explanatory Guide**, respectively).

CME Clearing Europe is listed in draft regulation 7.5A.63(2) as a prescribed facility in relation to all derivatives for the purposes of the clearing requirements and paragraph 901A(7)(b) of the Corporations Act (2001). CME Clearing Europe is a UK Recognised Central Counterparty and is authorised as a CCP under EU Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories (the **European Market Infrastructure Regulation** or **EMIR**), subject to the direct supervision of the Bank of England. This submission relates to the prescription of foreign clearing entities for the purposes of the Australian OTC Derivatives Central Clearing regime (**Clearing Regime**).

CME Clearing Europe welcomes the current proposal that market participants caught by the Clearing Regime may clear transactions required to be cleared through prescribed clearing facilities, rather than solely through licensed clearing facilities. This proposal recognises that the OTC derivatives market is a global market, and that Australian participants caught by the Clearing Regime may be entering into transactions which are required to be cleared by market participants in foreign jurisdictions who are subject to separate central clearing requirements. Those separate clearing requirements may also specify which clearing facilities may be used to satisfy an entity's clearing obligations, which may not be the same as the clearing facilities who are licensed in Australia.

We understand that 'prescribed facilities' do not benefit from concessions from the licensing regime for foreign clearing facilities under Australian law. However, this creates unique difficulties for prescribed facilities due to the complexity of Australia's licensing regime, which would otherwise prevent such a facility from providing services to Australian market participants located inside Australia and from soliciting Australian participants, even from outside of Australia, without obtaining a CS Facility Licence under the Corporations Act 2001 (Cth). It would also raise complex questions as to whether being prescribed would, in and of itself, constitute 'solicitation'.

There is therefore a risk that, in providing the very services contemplated by the 'prescribed facility' regime, a prescribed facility may breach Australian law by not becoming a licensed facility, or inadvertently end up needing to become a licensed CS facility, for which the obligations imposed are significant. This tension could impede the ability of prescribed clearing facilities to operate effectively within the Clearing Regime. In addition, as you would appreciate, due to the global nature of OTC derivatives transactions, a requirement to become a licensed facility in every jurisdiction within which our participants operate would result in extensive and onerous regulatory obligations on CME Clearing Europe, at great expense, and with little regulatory benefit.

CME Clearing Europe respectfully requests more clarity around the types and extent of activities which a 'prescribed facility' may undertake under the Clearing Regime without being required to become a licensed CS Facility. In addition, CME Clearing Europe would be grateful for confirmation that the mere provision of clearing services to market participants caught by the Clearing Regime would not, in and of itself, require a prescribed facility to become a CS facility licensee.

CME Clearing Europe welcomes the opportunity to discuss these matters, and other issues in connection with the Regulations and Explanatory Guide, with you. Please contact me or our Legal Counsel, William Ingram (will.ingram@cmegroup.com) if we may be of further assistance.

Thank you for your consideration.

Yours faithfully



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