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3 July 2015

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

Email: financialmarkets@treasury.gov.au

Dear Sirs and Madams

Consultation on OTC Derivatives Central Clearing and Single-Sided Trade Reporting (“Consultation”)

On behalf of the membership of the Futures Industry Association Asia (“**FIA Asia**”) we welcome the opportunity to respond to the Consultation and specifically the draft Ministerial Determination and Corporations Regulations. FIA Asia will only be responding to those aspects of the Consultation relating to the proposed central clearing mandate.

FIA Asia represents a diverse group of participants in the exchange traded and centrally cleared derivatives industry. Our members include banking organisations, futures exchanges, clearinghouses, brokers, vendors and trading participants. FIA Asia is affiliated with FIA and FIA Europe. The alliance of our three associations, known as FIA Global, is the primary global industry association for centrally cleared futures, options and swaps.

Some of our members may have their own independent views on different aspects of the Consultation and may provide their comments to Treasury independently. Unless otherwise defined, capitalised terms used in this letter will bear the same meanings ascribed to them in the Consultation.

1. Ministerial Determination

The Treasury is proposing to apply the proposed central clearing mandate to interest rate derivatives denominated in the following currencies: Australian dollars, US dollars, Euros, British Pounds and Japanese Yen.

We support the Treasury’s proposed scope of the central clearing mandate which is broadly consistent with central clearing obligations implemented in other jurisdictions. We support the Treasury’s proposed approach to allow the detailed list of products that are subject to the central clearing mandate to be specified by ASIC in its central clearing derivative transaction rules (subject to public consultation). We look forward to commenting on ASIC’s draft proposals.

2. Corporations Regulations

Clearing entities subject to mandatory central clearing

We support the Treasury’s broad proposal to limit the central clearing mandate to major domestic and foreign dealers in the Australian OTC derivatives market at this time and that less frequent users of derivatives and corporate end users will not be affected.

We also support the Treasury's general proposal to limit the extraterritorial impact to only those foreign entities that are active in the Australian OTC derivatives market and to allow for Australian regulated financial institutions to meet their clearing obligations under foreign rules in Australia (eg under substituted compliance). It is therefore vital that the implementing rules proposed by ASIC are effective in limiting scope consistent with policy intent and approaches taken in other jurisdictions and is not inappropriately or unnecessarily extra-territorial in application.

We support the Treasury's proposed definitions of 'Australian clearing entity' and 'foreign clearing entity' to limit the central clearing mandate to those entities who hold total gross notional outstanding positions in OTC derivatives transactions above a threshold of A\$100 billion (other than in a representative capacity) at this stage. We understand this reflects many industry discussions conducted with ASIC and Treasury to date.

Whilst we understand that ASIC has set out further detailed proposals on the application of these definitions for public consultation, we wish to highlight that our members do have concerns on the wide extra-territorial scope of the ASIC proposals. The strong view is that the clearing mandate should only apply to those derivatives that are 'booked in' Australia and should not have wider application. Limiting scope will assist in minimising unnecessary complexity, mitigate against duplicative and potentially conflicting rules and minimise costs and burdens on market participants.

In other jurisdictions (eg. in the US and EU), mandatory clearing obligations are or are proposed to extend beyond the major dealer community. Some of our members are of the view that there are other institutions that may warrant inclusion within the Australian clearing mandate at some stage in the future. Therefore they request that authority be given to expand the scope of the coverage of clearing entities subject to the clearing mandate if necessary and appropriate. This will assist with harmonising the Australian clearing mandate with clearing obligations in other jurisdictions if required for any third country comparability and equivalence assessments.

Central Counterparties

We understand that it is Treasury's proposal to allow central clearing to occur through all central counterparties ("CCPs") licensed in Australia and overseas CCPs which are 'prescribed' by ASIC. We strongly support and encourage substituted compliance and regulatory recognition and 'equivalence' determinations where possible to facilitate affected parties being able to clear through CCPs they are already using and providing them with a choice of CCPs to clear through. We welcome the proposal that will allow ASIC to 'prescribe' CCPs in certain circumstances including where the foreign jurisdiction's regulatory regime has substantially implemented the CPSS-IOSCO Principles.

In the interests of transparency and to assist with market readiness, we would encourage ASIC to make it clear which CCPs they are considering to be 'prescribed' and update when they are 'prescribed'. This will assist in planning, minimising costs and streamlining operations and processes for market participants who will need to comply with clearing obligations in various jurisdictions.

CCPs form the foundation of a healthy clearing system. We are aware that CCPs have become subject to increased scrutiny from regulators and market participants. In this regard, we wish to highlight a position paper that FIA Global has published recently ([FIA Global CCP Risk Position Paper](https://fia.org/sites/default/files/content_attachments/FIAGLOBAL_CCP_RISK_POSITION_PAPER.pdf))¹ which makes recommendations for assessing and managing risks arising from clearing. The paper was written from the perspective of FIA Global's clearing member membership and their clients. We hope the paper is helpful and provides useful guidance.

3. Commencement of clearing obligations

In relation to the proposed timing and commencement of the Australian central clearing obligations, the strong view is that it would be preferable for Treasury and ASIC to continue to monitor the commencement date of clearing obligations in other jurisdictions (eg Europe) and to align appropriately if there are time delays in other jurisdictions.

¹ https://fia.org/sites/default/files/content_attachments/FIAGLOBAL_CCP_RISK_POSITION_PAPER.pdf

4. Conclusion

Thank you for your consideration of our comments.

We would be happy to meet with Treasury to discuss our comments and provide further information if required. Please contact Phuong Trinh at ptrinh@fiaasia.org or telephone: +65 6549 7335.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Bill Herder', written in a cursive style.

Bill Herder
President, FIA Asia