



Corporations and Schemes Unit (CSU)
Financial System and Services Division
The Treasury
100 Market Street
Sydney
NSW 2000

October 8 2015

Dear sirs,

PROPOSED INDUSTRY FUNDING MODEL FOR THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

This letter provides the submission of LCH.Clearnet Ltd ("LCH.Clearnet") to the Government's Consultation Paper: Proposed Industry Funding Model for the Australian Securities and Investments Commission.

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.

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Comments on the proposals

We answer some specific questions below. Where we do not offer comment, the Government should assume we have no view on proposed alternatives or are content with the proposals.

International funding models

8. Are there any approaches to industry funding adopted by other regulators that you believe should be applied to an industry funding model for ASIC? If so, please describe and provide reasons why.

We understand that the Government has already come to the conclusion that an industry funding model for ASIC would bring benefits to the financial system and the economy as a whole. However we believe it would have been helpful to have described other relevant international comparators. In the case of regulators of Financial Market Infrastructures and in particular CCPs, these include the Reserve Bank of Australia, the Bank of England, and the US Commodity Futures Trading Commission. Each of these is publicly funded. In our view, public funding of systemically-important financial infrastructure regulation is a more appropriate model than industry funding. This is because such entities – including LCH.Clearnet – have a public mission (the security and resilience and efficiency of financial markets), regardless of their specific ownership or business model.

If the Government commits to industry funding, we would argue that market infrastructures should not incur the bulk of supervisory costs. Financial market infrastructures are not market participants, they do not introduce risk to markets; they contain, control and manage risk. We believe that it would better serve the government's aim to "ensure that the costs of the regulatory activities undertaken by ASIC are borne by those creating the need for regulation" for those costs to be borne directly by market participants.

The proposed industry funding model

10. Are there any activities proposed to be recovered through fees that you believe should be collected through annual levies? If so, which activity or activities and why?

See answer to question 57.

Phase-in arrangements and levy administration

22. Is it appropriate not to levy entities entering the market part way through the year? If not, how do you propose that these entities be treated?

This is an unusual approach and, without having more information on the volume of entities entering the market each year, and the administrative cost of calculating a pro-rata fee, it is hard to come to a conclusion. Nevertheless waiving the levy for an entrant's first year would have a pro-competitive effect, which we therefore support.

Funding Model for Market Infrastructure Providers

52. Are the proposed levy arrangements for MIPs appropriate? Why or why not?

As stated in our answer to question 8, we believe that it would be more appropriate for more of the cost of supervising MIPs to be provided either publicly or by market participants.

57. Should operating rule changes be funded by MIPs through annual levies or on a fee for service basis? Why or why not?

CCP clearing, particularly in the area of OTC derivatives, is the most dynamic MIP activity and one where authorities should, in our view, establish settings that do not deter MIPs from innovating to bring further security and efficiency to financial markets. It can be expected that there could be a considerable number of rule changes and licence variation applications in the coming year where CCPs are technically able to bring to Australia the benefits of service enhancements that are available in other jurisdictions *but where no fees are applied for rule changes or changes to authorisations*; with the result that such innovations are denied to Australia.

Our comments above state that as a general rule, the cost of MIP regulation should be borne by the public. Nevertheless, should the Government determine to proceed with its industry funding model, we would prefer rule changes to be funded through annual levies and not fees. This would reduce the cash-flow impact on MIPs as they decide to introduce service enhancements.

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We hope that the Government finds this submission useful and we look forward to engaging further as the proposals are refined. 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



Rory Cunningham
Director, Asia Pacific Compliance & Regulatory Affairs