



Elmer Funke Kupper
Managing Director and CEO

ASX Limited
Exchange Centre
20 Bridge Street
Sydney NSW 2000

Telephone +61 2 9227 0501
Email elmer.funkekupper@asx.com.au
www.asx.com.au

11 May 2012

Mr Daniel McAuliffe
Manager
Financial Markets Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr McAuliffe,

The Australian Securities Exchange (ASX) would like to thank the Australian Government for the opportunity to comment on the advice provided by the Council of Financial Regulators (CoFR) on the Review of Financial Market Infrastructure (FMI) Regulation. While ASX strongly supports CoFR's proposal for greater powers to impose FMI location requirements, we consider that the location requirements, as currently proposed, are insufficient to properly address Australian systemic stability needs. ASX believes that clearer direction is immediately required on the application of location requirements in order for the Australian Government to provide the level of certainty necessary to support investment in Australia's financial market infrastructure. This is particularly relevant in the context of providing certainty to support the development of central clearing for OTC derivatives.

ASX has the following key concerns with the current CoFR proposal:

- The application of a "proportional and graduated policy" approach
 - This approach does not provide the financial market with timely certainty on the applicable licensing and location requirements and as a result will likely impact necessary financial market infrastructure investment decisions.
- Access to the appropriate tools to efficiently and effectively manage systemic stability and determine or influence outcomes in crisis situations.
 - In order to have the required tools to adequately manage financial market instability, ASX believes that where FMIs operate in systemically important financial markets, regulators should require FMI capital, default funds, collateral, systems and people to be located in Australia. Financial market activities where this will be necessary should be clarified as soon as possible. It is inconsistent with the stated aims of the proposed FMI regulation reforms for Australian regulators to rely on the compatibility of overseas regulation, enforcement and legal systems to manage, in a crisis situation, an FMI serving systemically important Australian markets.
 - ASX is aware of regulatory settings imposed by overseas regulatory authorities to ensure that clearing of systemically important financial markets or classes of OTC derivatives takes place within the jurisdictional oversight of those authorities. Asian regulators have achieved this by explicit mandate or communication of their expectation about the location of clearing. In the eurozone, the location policy announced by the European Central Bank in July 2011 is that FMIs clearing and settling sizeable amounts of euro-denominated securities and derivatives should be legally incorporated in the euro area with full managerial and operational control and responsibility over all

core functions, exercised from within the euro area. In the USA certain large fund managers have driven this outcome by making it a condition of awarding their business that their OTC derivatives are cleared within a US located clearing house. This has been to ensure that any regulatory or crisis intervention is controlled by US regulators and conducted in accordance with US law.

- ASX is concerned that once default funds, collateral, key staff and operations move offshore it will be extremely difficult for Australian regulators to require these to be relocated back to Australia.
- Australia's ability to become a regional financial hub
 - In the absence of specifying location and licensing requirements, the CoFR proposal is likely to lead to critical components of our financial markets being located overseas, resulting in a hollowing out of infrastructure, business and jobs in Australia.
 - If Australian regulators are comfortable with critical infrastructure being located in other "equivalently regulated" jurisdictions then this principle must be applied to all – in particular it should apply to ASX infrastructure. If this becomes the Australian regulatory regime then, it is likely that, ASX would need to consider opportunities to locate activities currently conducted in Australia overseas.
 - If critical infrastructure is located overseas product innovation will be determined by the priorities of other markets. It is likely that investment will be directed towards major markets and the opportunity for Australian customers to influence product development will be limited.

While the approach outlined by CoFR gives policymakers 'flexibility', ASX urges CoFR to clarify this uncertainty now, recognising that business is today engaged in making significant investment decisions.

The final decisions that are taken on the FMI reforms will have a significant impact on the central clearing of OTC derivatives (subject to a separate CoFR review) and whether they are undertaken in Australia or not. This will impact the long term structure and relative strengths of Australia's financial markets compared to other jurisdictions. The ability of Australian regulators to influence the direction of these developments is affected by the FMI reforms.

ASX is not advocating a fortress Australia approach; we must be an active part of global markets. We have advocated to the Federal Government's Australian in the Asian Century white paper process that greater integration with Asia is important for our national future.

This ambition must be balanced with the requirement that the stability of the Australian financial system is managed by Australian authorities in a manner that provides sufficient protections to Australia's national interest. Australian authorities are ultimately accountable to the Australian Parliament. "Compatible" overseas regulators are not.

It is in our national interest to maintain a world-class regulatory system that is able to deliver financial stability, provide Australian authorities with power to act, and give the best possible protection to investors.

We would once again like to thank the Australian Government for the opportunity to comment on the CoFR proposals. If you would like to discuss further detail on our submission please contact:

Alan Bardwell
Chief Risk Officer
Email: alan.bardwell@asx.com.au
Telephone: 02 9227 0948

Amanda Harkness
Group General Counsel & Company Secretary
Email: amanda.harkness@asx.com.au
Telephone: 02 9227 0765

Yours sincerely,



Elmer Funke Kupper
Managing Director and CEO