

The Manager, Financial Markets Unit  
Corporations and Capital Markets Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Australia

11 May 2012

Dear Sirs

**Re: Review of Financial Market Infrastructure Regulation**

The LCH.Clearnet Group (“LCH.Clearnet”) is pleased to submit this comment letter in response to the Council of Financial Regulators’ (the “Council”) letter of advice to the Deputy Prime Minister and Treasurer, the Hon. Wayne Swan MP, dated 10 February 2012, regarding the Review of Financial Market Infrastructure Regulation in Australia.

LCH.Clearnet shares the Council’s goal of ensuring that the regulatory regime for financial market infrastructures (“FMIs”) in Australia continues to support financial stability, and appreciates the work undertaken by the Council during this consultation process.

*Location requirements*

In the Council’s letter of advice, the Council recommends that existing powers to impose licence conditions be clarified by giving ASIC and the Reserve Bank an explicit power to impose location requirements in key areas, such as financial and risk management and operational arrangements.

However, LCH.Clearnet would like to reinforce its view, as expressed in its response to the October 2011 Consultation Paper, that as international FMIs are likely to be systemically important in their home jurisdiction and therefore subject to a high degree of supervision by a local regulator, and given the increasing harmonisation of international standards for clearing and settlement FMIs under the G20 agreement and CPSS-IOSCO principles, there should be limited need for the Australian authorities to apply location requirements.

LCH.Clearnet is reassured by the Council’s commitment to apply such measures in a proportional and graduated fashion, taking into account the costs and benefits. However, LCH.Clearnet notes that the Council’s letter does not set out more specific proposals than those contained in the original Consultation Document, and looks forward to an opportunity to comment on the draft legislation, regulations and guidance in due course.

*Powers to regulate FMIs*

LCH.Clearnet notes the Council's recommendation that the obligation to comply with directions and licence conditions imposed by ASIC and the Reserve Bank overrides other duties owed by directors. LCH.Clearnet notes that within the October 2011 Consultation Paper, there were proposals to provide legislative protection for directors and managers who comply with directions that may, without protection, conflict with other obligations placed upon those officers. Whilst the approach proposed in the letter would give directors relief from other requirements under Australian law, LCH.Clearnet observes that individual directors and officers could nevertheless face conflicting demands from regulators in different jurisdictions, exposing to them to personal sanctions. LCH.Clearnet would respectfully ask the Council to consider explicitly including directors' and officers' liability to comply with obligations imposed on by an FMI's home state regulator into the legislative protection.

The Council also recommends the introduction of 'fit and proper' standards for key persons involved directly and indirectly in the management of the affairs of FMIs, consistent with those imposed on directors of Authorised Depository Institutions (ADIs). Again, whilst LCH.Clearnet agrees that it is important for FMIs to be run by appropriate persons, it considers that the application of ASIC's 'fit and proper' standards should generally apply only to directors and officers who are not subject to equivalent tests under the FMI's home regulatory regime.

LCH.Clearnet welcomes the clarification with the Council's letter that 'step-in' powers and the power to appoint a statutory manager will apply only to FMIs for which Australia is their principal place of business.

LCH.Clearnet also welcomes the Council's recommendation that ASIC and the Reserve Bank be given responsibility for determining the systemic importance of market operators and clearing and settlement facilities, respectively, by applying an approach and criteria aligned with those developed by CPSS-IOSCO. LCH.Clearnet agrees with the Council that this approach will ensure that the basis for assessment in Australia is consistent with other jurisdictions.

LCH.Clearnet, as the world's pioneering OTC derivatives CCP group, fully shares the Council's goals in ensuring a stable, safe and efficient global financial system and welcomes the Council's proactive engagement.

Yours faithfully

  
  
DP **Ian Axe**  
Chief Executive Officer