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February 8, 2024

**VIA ELECTRONIC TRANSMISSION**

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Treasury  
Langton Cres  
Parkes ACT 2600

**RE: Consultation on financial market infrastructure regulatory reforms**

Dear Treasurer, the Hon. Jim Chalmers MP,

The Depository Trust & Clearing Corporation (“DTCC”) welcomes the opportunity to comment on the consultation prepared by the Treasury of the Australian Government (the “Government”) entitled “Financial market infrastructure regulatory reforms,” which sets out to strengthen regulatory arrangements for Australia’s financial market infrastructure, including licensed clearing and settlement facilities (“CS facilities”) and derivative trade repositories.

**Introduction**

DTCC is the parent company of the Depository Trust Company (“DTC”), the Fixed Income Clearing Corporation (“FICC”), and the National Securities Clearing Corporation (“NSCC”). DTC is a registered clearing agency and the U.S. central securities depository (“CSD”), providing settlement services for virtually all equity, corporate and municipal debt trades and money market instruments in the United States. FICC and NSCC are registered clearing agencies and central counterparties (“CCPs”) providing clearing, settlement, risk management and CCP services for trades in the U.S. cash securities markets, including U.S. equities, corporate and municipal bonds, and government and mortgage-backed securities.

Each registered clearing agency has been designated as a systemically important financial market utility (“SIFMU”) by the U.S. Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010<sup>1</sup> (“Dodd-Frank Act”). Under this framework, the U.S. Securities and Exchange Commission (the “SEC”) is the supervisory agency for DTC, FICC, and NSCC, and the FDIC is the Title II resolution authority. In addition, each of the DTCC clearing agencies is a covered clearing agency that is required to maintain a recovery and orderly wind-down plan (“RWPs”) pursuant to SEC regulations<sup>2</sup>.

DTCC’s Global Trade Repository (“GTR”) service, through locally registered, licensed, or designated trade repositories in seven jurisdictions globally, provides transaction reporting services for over-the-counter (“OTC”) derivatives, processing over 14 billion messages annually. DTCC Data Repository (Singapore) Pte. Ltd. (“DDRS”) is one of the trade repositories that make up DTCC’s GTR service. As a trade repository, DDRS collects, records and reports OTC derivatives transactions pursuant to the laws of Singapore, in which it is licensed, registered, and designated. As a trade repository licensed in Singapore and Australia, DDRS is subject to the regulatory oversight of the Monetary Authority of Singapore (“MAS”) and the Australian Securities & Investments Commission

<sup>1</sup> 12 U.S.C. § 5464 (Dodd-Frank Act §§ 805, 803(8)).

<sup>2</sup> DTC, FICC and NSCC are registered clearing agencies under the Section 17A of Securities and Exchange Act of 1934, as amended, and are also self-regulatory organizations under that same statute.

("ASIC"), and its activities will comply with any regulations, guidelines or notices issued by and concomitantly subject to licensing conditions and exemptions imposed by MAS and ASIC respectively.

### **Executive Summary**

We recognize that the draft legislation introduces powers in relation to Australia's financial market infrastructures ("FMIs") generally, but our response focuses specifically on powers related to CS facilities and derivative trade repositories.

With respect to CS facilities, we truly welcome the clarity provided in these draft regulations regarding the Reserve Bank of Australia's ("RBA") role in assisting, if requested by an overseas regulator, an overseas supervisor and regulator resolving a crisis at an overseas CS facility that provides services in Australia. We further emphasize that the recognition of the primacy of and deference to the home jurisdictions' regulatory authority is of great importance.

In addition, we note that it is not explicit that the other sections of the draft legislation under consultation only apply in the event of a crisis affecting a domestic CS facility. Given the importance of the recognition of the home jurisdictions' regulatory authority, we recommend that the Government makes it explicit in legislation that the crisis management powers set out therein are only relevant for domestic CS facilities.

In codifying the current approach for determining whether an overseas CS facility falls within the Australian regulatory regime and therefore should be licensed as such, a new two-step test is proposed and includes the consideration of "materiality" of a connection to Australia, which is generally headed in the direction of a proportionate approach. We respectfully recommend incorporating additional considerations, with respect to deference to the home jurisdiction's primary supervisory authority and proportionality, in line with standards recommended by international standard setting bodies such as the International Organization of Securities Commissions' ("IOSCO") good practices on processes for deference<sup>3</sup>.

We further recommend that ASIC clarifies that the factors listed in the second step of the test would be evaluated holistically along with other considerations, and that one single factor that has been determined to be material would not automatically meet the threshold of a material connection.

With respect to derivative trade repositories, DTCC notes that ASIC allows DDRS to be deemed to be in compliance with certain provisions of its rules as long as it complies with the equivalent MAS rules, and this unique position has been recognized by ASIC, incorporating details of exemptions granted in the ASIC Corporations (Derivative Trade Repository Rules—DDRS) Instrument 2023/725 and ASIC Instrument [14/0911] ("Exemption Instrument"). For clarity and transparency, DTCC seeks the Government's specific acknowledgement of this unique position of DDRS as recognized by ASIC, and clarification by ASIC that the relevant Exemption Instruments would continue to apply under the regulations proposed.

### **Discussion of specific comments**

#### ***Establishing a crisis management regime in Australia***

Given the importance to the marketplace of central clearing, DTCC appreciates the Government's objectives to ensure financial stability and introduce a crisis management regime, by providing the RBA with powers to step in and resolve a crisis at a licensed CS facility. We believe central clearing is critical for financial stability purposes and that resolution planning should not undermine the benefits central clearing brings to the markets, either by creating disincentives for participants or otherwise increasing costs and burdens to the detriment of market liquidity and effective risk

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<sup>3</sup> FR06/2020 Good Practices on Processes for Deference (iosco.org)

management. To note, the SEC also underlined the benefits of central clearing in its proposal to expand central clearing for the U.S. Treasury markets,<sup>4</sup> which was recently adopted.

As the Government considers the effects of introducing a resolution regime for licensed CS facilities with new tools and requirements, DTCC recommends an approach that seeks to ensure that the systemic risk benefits central clearing provides on an ongoing basis to markets are not undermined by the costs of implementing prescriptive measures across all CS facilities to address crisis resolution. In practice, such an approach should protect against resolution measures diluting or otherwise harming the systemic benefits central clearing provides to the markets.

We note in paragraph 1.69 of the explanatory materials to the exposure draft that “the crisis regime is intended to operate differently for overseas CS facility licensees compared to domestic CS facility licenses.” We welcome the distinction, which aligns with the framework under Part 7.3 of the Act that stipulates overseas CS facility licensees are primarily regulated by the overseas regulator. Consistent with this approach, the home regulator will primarily be responsible for resolving a distressed CS facility, with the RBA supporting the home regulators’ actions when requested.”

As discussed above, DTCC welcomes the clarity provided in these draft regulations regarding the RBA’s role in assisting an overseas regulator resolving a crisis at an overseas CS facility providing services in Australia, in the event where the overseas regulator has requested for support from the RBA. We further reiterate that the recognition of the home jurisdictions’ regulatory authority is extremely important.

However, we note that the other sections of the draft legislation under consultation, do not explicitly distinguish between domestic and overseas CS facilities with regards to crisis management provisions. While it is clear that Section 848A recognizes the primacy of a foreign regulator’s action in the event of an overseas CS facility in crisis, it is not explicit that the other sections under consultation also would only apply in the event of a crisis affecting a domestic CS facility. Given the importance of the recognition of the home jurisdictions’ regulatory authority and desire for clarity, we recommend that the Government makes it explicit in the legislation that the crisis management powers set out therein are only relevant for domestic CS facilities.

### ***Enhancing and streamlining ASIC’s licensing and supervisory powers***

#### ***Amendments relating to CS facilities***

We further note that the proposed amendments under Schedule 2 would introduce a new two-step test for ASIC to declare whether an overseas CS facility has a material connection with Australia when deciding whether an overseas CS facility falls within the Australian licensing regime.

The stated intent of the amendments is to codify the current approach for determining whether an overseas CS facility falls within the Australian regulatory regime and therefore should be licensed as such. We appreciate that the proposed new two-step test includes the consideration of “materiality” of a connection to Australia, which is generally headed in the direction of a proportionate approach. We respectfully recommend incorporating additional considerations, with respect to deference to the home jurisdiction’s primary supervisory authority and proportionality: (1) to consider implementing a deference regime, (2) to engage with the CS facility’s home supervisory authority, as appropriate, and (3) to consider the nature and degree of risk that entities from another jurisdiction may pose to their markets and/or market participants/investors. We believe these to be consistent with standards recommended by international standard setting bodies such as the IOSCO’s good practices on processes for deference<sup>5</sup>.

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<sup>4</sup> “Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities,” 87 Fed. Reg. 64610 (proposed Oct. 25, 2022).

<sup>5</sup> FR06/2020 Good Practices on Processes for Deference (iosco.org)

We further recommend that ASIC clarifies that the factors listed in the second step of the test would be evaluated holistically along with other considerations, and that one single factor that has been determined to be material would not automatically meet the threshold of a material connection.

### ***Amendments relating to derivative trade repositories***

DDRS operates in two jurisdictions, Singapore and Australia, and does so under strict licensing and regulatory rules. The robust Singaporean and Australian legal frameworks for a licensed trade repository provide legal certainty for DDRS' activities in Singapore and Australia and also set out specific obligations applicable to a licensed trade repository with respect to the material aspects of its activities, such as recordkeeping and reporting requirements and the rights of stakeholders with respect to access, confidentiality, and disclosure of data.

The legal framework governing the licensing and associated obligations of DDRS in its capacity as a licensed trade repository in Singapore is set out in the Securities and Futures Act (the "SFA") and the regulations promulgated thereunder, including the Securities and Futures (Trade Repository) Regulations 2013 (the "SFTRR"), as amended from time to time, as well as any applicable notices and guidelines issued by the MAS from time to time.

The legal framework governing the licensing and legal obligations of DDRS in its capacity as a foreign trade repository in Australia is set out the Corporation Act 2001 and ASIC Derivatives Trade Repository Rules 2013 ("DTRR"), as modified by conditions and exemptions granted by ASIC. DDRS also has on its Board a representative of a participant who is an Australian Deposit-taking Institution ("ADI"), that has its principal place of business in Australia and who is an Australian citizen, to provide for the specific Australian representation.

DTCC appreciates the MAS' and ASIC's common objectives in supervising market activity, improving risk management, and enhancing transparency in the derivatives markets. Furthermore, these regulatory authorities put increased emphasis on the creation and use of industry data standards without which it will be difficult to achieve consistency in the information collected. In DDRS' experience, the MAS and ASIC would cooperate to seek efficiencies in the operation of the trade repository in both jurisdictions. In the event that a conflict should arise, DDRS would first seek to resolve it through discussions with its regulators and seek an exemption, if necessary.

DTCC emphasizes that ASIC allows DDRS to be deemed to be in compliance with certain provisions of its rules as long as it complies with the equivalent MAS rules, with a condition of the Australian license that DDRS submit to the jurisdiction of Australian Courts for matters related to its operation as a Derivative Trade Repository and comply with any order of an Australian Court in related matters. This unique position has been recognized by ASIC, incorporating details of exemptions granted in the ASIC Corporations (Derivative Trade Repository Rules—DDRS) Instrument 2023/725 and ASIC Instrument [14/0911].

For clarity and transparency, DTCC seeks the Government's specific acknowledgement of the unique position of DDRS as recognized by ASIC, and clarification by ASIC that the Exemption Instruments would continue to apply under the regulations proposed.

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## **Conclusion**

DTCC appreciates the opportunity to respond to the consultation and would welcome the Australian Government's consideration of the views expressed in this letter. We welcome the opportunity to provide further detail on any of the matters discussed herein. If you have any questions or need further information, please contact us at [bsteale@dtcc.com](mailto:bsteale@dtcc.com) for matters relating to clearing and settlement facilities and [cchilds@dtcc.com](mailto:cchilds@dtcc.com) for matters relating to derivative trade repositories.

Sincerely,

A handwritten signature in black ink, appearing to read 'B Steele', with a long horizontal stroke extending to the right.

Brian Steele  
Managing Director, President, Clearing & Securities Services  
DTCC

A handwritten signature in blue ink, appearing to read 'C Childs', with a long horizontal stroke extending to the right.

Chris Childs  
Managing Director, Head of Repository & Derivatives Services  
DTCC