



Submission by Chicago Mercantile Exchange Inc. (CME) in response to the Australian Securities and Investments Commission's consultation on the proposed mandatory central clearing of OTC interest rate derivative transactions

10 July 2015

Senior Manager, OTC Derivatives Reform  
Financial Market Infrastructure  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000  
Email: [OTCD@asic.gov.au](mailto:OTCD@asic.gov.au)

**Re: Submission in Response to the Australian Securities and Investments  
Commission's Consultation Paper on Mandatory Central Clearing of OTC Interest Rate  
Derivative Transactions**

Dear Ms. Luo:

On behalf of CME Group Inc. (CME Group) and its wholly-owned subsidiary Chicago Mercantile Exchange Inc. (CME), we thank Australian Securities and Investments Commission (ASIC) for the opportunity to provide this submission concerning ASIC's consultation paper entitled *Mandatory Central Clearing of OTC Interest Rate Derivative Transactions* ('Consultation Paper').<sup>1</sup>

CME is registered with the U.S. Commodity Futures Trading Commission (CFTC) as a derivatives clearing organization and its clearing house division (CME Clearing) is one of the largest central counterparty (CCP) clearing services for derivatives contracts. CME Clearing offers clearing and settlement services for exchange-traded and over-the-counter (OTC) derivatives transactions, including interest rate swaps (IRS), credit default swaps, agricultural swaps, and other OTC contracts. In October 2014, the Australian Treasury licensed CME as a clearing and settlement facility (CS facility) in Australia for OTC IRS and exchange-traded interest rate contracts eligible for portfolio margining with IRS.<sup>2</sup>

CME supports ASIC's stated goal of implementing the proposed Ministerial determination to prescribe AUD and G4 interest rate derivatives as a class of instrument subject to mandatory central clearing.<sup>3</sup> We also acknowledge the challenges faced in adopting and implementing a regulatory regime to meet this goal. With these considerations in mind, CME respectfully submits the following notes for your consideration.

## **GENERAL OBSERVATIONS**

### **1. CME notes that identification of the counterparty and providing information to a counterparty or prospective counterparty may be difficult in the context of anonymous trading on trade execution platforms**

We note that the Consultation Paper appears to proceed on the basis that a clearing entity will know whether each of its counterparties is, or is not, a clearing entity.<sup>4</sup> However, we would draw your attention to some types of trading on trade execution platforms (for example, on certain swap execution facilities or

---

<sup>1</sup> ASIC, *Consultation Paper 231: Mandatory Central Clearing of OTC Interest Rate Derivative Transactions* (issued May 2015), available at <http://download.asic.gov.au/media/3252197/cp231-published-28-may-2015.pdf>.

<sup>2</sup> Futures positions and associated collateral may be commingled with cleared swaps positions and associated collateral pursuant to CFTC authorization under Section 4d of the Commodity Exchange Act. See 7 U.S.C. § 6d.

<sup>3</sup> See Consultation Paper, *supra* note 1, at 10.

<sup>4</sup> See Consultation Paper, *supra* note 1, at 40.

single-dealer platforms in the United States) which may occur anonymously. In respect of anonymous trading on a trade execution platform, the clearing entity may not know the identity of its counterparty and therefore may not know whether its counterparty is an Australian clearing entity or foreign clearing entity. We consider that this may be an issue in respect of certain notification and record-keeping requirements proposed under the Rules.

The identification of the nature of the counterparty is fundamental to determining whether the clearing entity is required to clear the clearing derivative under Australian law. However, where a clearing entity executes mandated derivatives anonymously on a trade execution platform, it may need to clear all derivatives it enters into because it will not be able to identify the nature of its counterparty. This could be the case, for example, where a "foreign clearing entity" (including a foreign internationally active dealer which falls within that definition, even if the dealer is not licensed or otherwise registered in Australia, or a foreign AFS licensee) enters into an AUD IRS trade on a U.S. trade platform that supports anonymous execution. While we support the implementation of clearing AUD IRS, it is not clear to us whether it was the policy intention that this provision effectively impose the Australian clearing mandate on global market participants that may not otherwise be subject to a clearing mandate in Australia or elsewhere, potentially even reaching AUD IRS transactions entered into by two U.S. counterparties on a U.S. trade execution platform.

In providing this comment, we refer to your request for feedback in respect of the questions F1Q1 to F1Q4.

## **CONCLUSION**

CME thanks the Australian Government for the opportunity to provide these comments. If you have any comments or questions regarding this submission, please feel free to contact Mr. Sunil Cutinho, President, CME Clearing

Sincerely,

Mr. Sunil Cutinho  
Senior Managing Director & President, CME Clearing  
Chicago Mercantile Exchange Inc.  
20 South Wacker Drive  
Chicago, Illinois 60606