

Senior Manager, OTC Derivatives Reform  
Financial Market Infrastructure  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000

July 10 2015

Dear Sirs,

### **CONSULTATION PAPER 231: MANDATORY CENTRAL CLEARING OF OTC INTEREST RATE DERIVATIVE TRANSACTIONS**

This letter provides the submission of LCH.Clearnet Ltd (“LCH.Clearnet”) to ASIC’s May 2015 Consultation Paper on mandatory central clearing of OTC interest rate derivative transactions.

The LCH.Clearnet Group is a leading multi-asset class and multi-national clearinghouse, serving major international exchanges and platforms as well as a range of OTC markets. It clears a broad range of asset classes including securities, exchange-traded derivatives, commodities, energy, freight, foreign exchange derivatives, interest rate swaps, credit default swaps, and euro and sterling denominated bonds and repos.

The LCH.Clearnet Group consists of three operating subsidiaries: LCH.Clearnet Ltd, LCH.Clearnet SA and LCH.Clearnet LLC.

- LCH.Clearnet Ltd is authorised by the Bank of England as a central counterparty to offer services and activities in the Union in accordance with the European Markets Infrastructure Regulation (EMIR). It is registered as a Derivatives Clearing Organization (DCO) with the Commodity Futures Trading Commission (CFTC) in the USA. It is also licenced/recognised by the Ontario Securities Commission, the Autorité des Marchés Financiers of Québec and the Australian Government.
- LCH.Clearnet SA is authorised by the French Authorities (L’Autorité des Marchés Financiers, l’Autorité de Contrôle Prudentiel et de Résolution, and Banque de France) as a central counterparty to offer services and activities in the European Union in accordance with EMIR. It is also regulated as a Credit Institution by the French Authorities and registered as a DCO with the CFTC.

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- LCH.Clearnet LLC is registered as a DCO with the CFTC and permitted to clear for Ontario-based clearing members pursuant to an Ontario Securities Commission Order granting exemption from the requirement to hold a Clearing Agency License. It has applied for recognition under EMIR as a third-country CCP.

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 over-the-counter interest rate swaps to a number of major Authorised Deposit-taking Institutions through its SwapClear service. LCH.Clearnet is also licensed in Australia to clear for the FEX commodities and energy exchange. LCH.Clearnet is supervised directly by both ASIC and the RBA.

We address certain of the paper's questions below.

*B4Q1 Do you agree with the proposed definitions of 'swap', 'fixed-to-floating swap', 'basis swap', 'forward rate agreement' and 'overnight index swap' in the draft derivative transaction rules (clearing) attached to this paper?*

We agree with the proposed definitions.

*B4Q2 Do you agree with the proposed asset class specifications in proposal B4(a) and Table 2?*

We agree with the proposed asset class specifications.

*B4Q3 Do you agree with our proposal that mandatory central clearing should only apply to the entry of an arrangement that is a derivative (other than in the circumstances outlined in proposal B7)?*

We appreciate the issues around pricing and clearing uncertainty that would arise from the application of any requirement to apply a mandate to clear derivatives that have already been entered into. We therefore understand and agree with the rationale behind proposing not to apply such a requirement.

*B4Q4 Do you agree with our proposal to mandate central clearing of AUD-denominated forward rate agreements? If not, why not?*

We do not agree with the proposal to mandate the clearing of AUD-denominated forward rate agreements at this stage. As ASIC notes, there is not yet a clearing and settlement facility clearing AUD-denominated forward rate agreements. In our view, a clearing mandate for a specific class of derivative should only be contemplated once clearing of that class has become established, liquidity in the cleared market has developed, end to end

operational and settlement workflow is proven, and there is adequate market access for all participants.

*B5Q1 Do you agree with our proposal to require clearing entities to clear each clearing transaction through a clearing facility?*

We agree with the proposal.

*B5Q2 Do you agree with the proposed definition of 'cleared through' a clearing facility in the draft derivative transaction rules (clearing) attached to this consultation paper. Do you agree with our proposal to allow direct, indirect or client clearing arrangements to be used?*

We agree with the proposal.

*B5Q3 Should the clearing requirements be subject to exceptions? For example, are there any circumstances where a derivative transaction cannot be centrally cleared and should, therefore, be exempt from the clearing requirements?*

We do not believe that in general the requirements should be subject to exceptions for specific transactions. However there should be a clear process whereby the authorities will review a decision not to impose a clearing obligation on a class or sub-class of OTC derivatives or conversely remove the clearing obligation on a class or sub-class of OTC derivatives, so that such removal can be completed with the appropriate level of urgency.

*B5Q4 Should the derivative transaction rules (clearing) impose a prohibition on derivative transactions being de-cleared after they have been centrally cleared? If so, are there any circumstances where a mandatorily-centrally cleared derivative transaction should be permitted to be de-cleared?*

We do not believe there are circumstances under which a mandatorily-centrally cleared derivative transaction should be permitted to be de-cleared except where it has been submitted and accepted in error.

*B5Q5 Do you agree with our proposal to that counterparties must have substantially no further rights and obligations arising under the derivative contract after it has been cleared through the clearing facility? Will there be circumstances in which the counterparties will have subsisting rights or obligations?*

We agree that there should be no further rights and obligations as between the original counterparties to the derivative contract. However, this does not detract from each counterparty's obligations to the CCP in relation to the cleared transaction, including those relating to provision of margin and default fund contributions, which must subsist as defined in the CCP's operating rules.



We hope that ASIC finds this submission useful and we look forward to engaging further as the proposals are implemented. Please do not hesitate to contact me at [\[redacted\]](#) 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**