29 March 2023

[redacted]
Analyst
Market Infrastructure
Australian Securities and Investments Commission
Brisbane QLD 4001

By email: otcd@asic.gov.au

CP 366 Proposed amendments to the ASIC Derivative Transaction Rules (Clearing) 2015: Second consultation & Draft DTR Instrument

Dear Ms [redacted]

This letter responds to invitations to make comment by ASIC on two matters:

I. ***CP 366 Proposed amendments to the ASIC Derivative Transaction Rules (Clearing) 2015: Second consultation***

II. ***Draft of the ASIC Corporations (Derivative Transaction Rules (Reporting) Exemptions – Amendment and Repeal) Instrument 2023/xxx***

The International Swaps and Derivatives Association (ISDA) and the Australian Financial Markets Association (AFMA) (Associations) welcome the opportunity to review the proposed changes and have sought the views of our members regarding them. In summary we have only one substantive comment to make on timing noted under B1Q3.

1. CP 366 Proposed amendments to the ASIC Derivative Transaction Rules (Clearing) 2015: Second consultation

ASIC is proposing to amend the ASIC Derivative Transaction Rules (Clearing) as follows:

a) remove AUD-denominated contracts from the Forward Rate Agreements (FRA class);

b) remove contracts referencing USD LIBOR from the basis swaps, fixed-to-floating swaps and FRA classes; and

c) replace the contracts referred to at (b) above with OIS contracts referencing SOFR with a termination date range of seven days to 50 years. An implementation period of three months for the introduction of this new clearing derivative class is proposed.

The Associations responses to the CP366 consultation questions are as follows.

B1Q1 Do you agree with the proposed amendments to the product scope of the clearing requirement? If not, please elaborate on alternative options.

Feedback

- Yes.
- The has been long advocacy for the need for exemptive relief for AUD-denominated contracts from the FRA from the clearing obligation as they do not meet the pre-conditions for the imposition of the obligation.
- The removal of contracts referencing USD LIBOR from the basis swaps, fixed-to floating swaps and FRA is supported as this is a necessary change flowing from the end of USD LIBOR is accordance with official policy and market reality.

B1Q2 Do you agree that proposals B1(a) and B1(b) should take effect immediately after the rules are registered?

Feedback:

- Yes. There is no current need for the central clearing of these contracts in question.

B1Q3 Do you agree with the proposed three-month implementation period for proposal B1(c) (the introduction of the new SOFR OIS class)?

Feedback:

- While we welcome the proposal of the proposed three-month implementation period, we would like to ask for a longer period of six months to allow clearing participants more sufficient time to prepare and make system and operational changes in an orderly fashion. We are mindful that shorter implementation period could impose additional costs on industry with higher implementation risk and no identified benefit.

2. Draft of the ASIC Corporations (Derivative Transaction Rules (Reporting) Exemptions – Amendment and Repeal) Instrument 2023/xxx

This part relates to the proposed *ASIC Corporations (Derivative Transaction Rules (Reporting) Exemptions – Amendment and Repeal) Instrument 2023/xxx*,

Consistent with our previous comments and written submissions the Associations support ASIC's work to extend various legislative instruments that provide exemptive for reporting entities from the current ASIC Derivative Transaction Rules (Reporting) 2022 until the commencement of the ASIC Derivative Transaction Rules (Reporting) 2024 on 21 October 2024 along with repeal of outdated exemption instruments.

No issues have been identified with the drafting of this instrument.

In addition, the Associations welcome the change in respect of the scope of the relief provided by Exemption 7 (Trade Identifiers) in the ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844.

The Associations support the intention behind the substantive change in the instrument to extend the scope of the current Exemption 7 (Trade Identifiers) to allow for reporting of unique transaction identifiers generated under the rules of any foreign jurisdiction and under the assumption that the reporting deadline in this jurisdiction (for the purposes of reporting the trade identifier) is T+2, to account for jurisdictions, such as the European Union, going live with their revised reporting requirements before ASIC.

Please contact Xiangjing Ng, ISDA [redacted] or David Love, AFMA [redacted] if you have any queries in relation to this response letter.

Yours sincerely

[redacted]

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[redacted]

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