



25 May 2015

Manager
Banking and Capital Markets Regulation Unit
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: financialmarkets@treasury.gov.au

Dear Mr McAuliffe

**Overseas Clearing and Settlement Facilities:
The Australian Licensing Regime**

The Australian Financial Markets Association (AFMA) welcomes the opportunity to comment on the Council of Financial Regulators consultation paper on Overseas Clearing and Settlement Facilities: The Australian Licensing Regime.

AFMA has considered the proposals in this consultation paper in the context of the consultations and reform proposals currently being considered by the Government. The current law in this area is considered to be working effectively and the case for reform is not in our view made out by the consultation paper. Given that there are other important financial sector reforms competing for scarce policy and legislative reform resources at the present time we believe that higher priority should be assigned to such other reforms.

The clearing and settlement business is one dependent upon economies of scale. It is a complex business which demands a high level of resources and expertise. It represents a large long term investment which needs to be prudently managed. As has been discussed in the recent consultation on competition in the clearing of Australian cash equities the economics of the business make the entry of a competitor unlikely for the foreseeable future. Other markets which have traditionally been traded OTC in much smaller volumes because the transactions involve high value, complex longer term financial instruments such as interest rate swaps where counterparty credit risk management is a major factor make it a costly business service to offer. For this reason market participants favour those

clearers who can offer economies of scale resulting in lower fees as well as broad netting benefits that flow from being in a large pool of transactions with a larger number of counterparties. In relation to the clearing of some Australian traded financial instruments it may only make commercial sense to extend a global operation into Australia in order to offer a viable and realistically priced service.

It is desirable to provide an environment in which well resourced, competent and experienced clearing and settlement (CS) facility providers are attracted to provide their services in Australia so that more financial instruments may be centrally cleared and competitive discipline may apply. It is difficult to foresee all the circumstances by which variously configured CS facility providers may seek to enter the Australian market or interconnect with developing regional infrastructure.

Feedback from members indicates that the Australian regime is considered to be flexible. Through the current combination of statutory licensing requirements, ASIC's guidance in Regulatory Guide 211 – Clearing and Settlement Facilities: Australian and Overseas Operators (RG 211) and the Council's guidance through the Regulatory Influence Framework for Cross-border Central Counterparties (the Regulatory Influence Framework) the current regime is perceived to be functioning effectively. The Australian regulators are well regarded and approachable. Dialogue with the regulators is considered to be open and enables appropriate arrangements to be considered and tailored to the individual circumstances of the CS facility on a reasonable basis.

The proposals outlined in the consultation paper in attempting to provide additional clarity would appear to introduce additional rigidity and complexity without an identifiable benefit flowing from either a systemic stability or market integrity standpoint.

Accordingly, there does not appear to be a case established for reform of the law in this area, on the basis of any inadequacy with the current law or calls from the industry for greater clarity.

AFMA would be pleased to provide further comment if desired. Please contact David Love either on 02 9776 7995 or by email dlove@afma.com.au if further clarification or elaboration is desired.

Yours sincerely



David Love
General Counsel & International Adviser