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VIA ELECTRONIC SUBMISSION

FMI Regulatory Reforms Consultation Submissions
FMI Section, Payments Policy Department
Reserve Bank of Australia
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Re: Council of Financial Regulators: Consultation on Financial Market Infrastructure Regulatory Reforms (November 2019)

To Whom It May Concern:

CME Group Inc. ("CME Group") appreciates the opportunity to provide comments to the Council of Financial Regulators ("CFR") and express our concerns with several proposals in its consultation on Financial Market Infrastructure Regulatory Reforms ("Consultation").

Overview

In 2009, the Group of 20 ("G-20") leaders committed "to take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage."[1] In September 2013, G-20 leaders declared that "jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulatory regimes."[2] In recent years the United States ("U.S.") Department of the Treasury, Commodity Futures Trading Commission ("CFTC") and Financial Stability Oversight Council have renewed their commitment to these principles of international comity and mutual deference among comparable regulatory frameworks.[3]

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[1] Group of 20 Leaders' Statement, The Pittsburgh Summit at 2 (Sept. 2009), *available at* http://www.fsb.org/wp-content/uploads/g20_leaders_declaration_pittsburgh_2009.pdf.
[2] Group of 20 Leaders' Declaration, Saint Petersburg Summit at 17 (Sept. 2013), *available at* https://www.fsb.org/wp-content/uploads/g20_leaders_declaration_saint_petersburg_2013.pdf.
[3] *See e.g.*, U.S. Dep't. Treasury, A Financial System that Creates Economic Opportunities, Capital Markets; Report to President Donald J. Trump (Oct. 6, 2017) (proposing core principles for regulation to make it efficient, effective and appropriately tailored and to promote a level playing field internationally), *available at* https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf; Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap

In contrast, the Consultation signals that the CFR is considering an opposite direction. The proposals in the Consultation would permit extraterritorial application of Australian rules to offshore financial market infrastructures ("FMIs") in a broad range of circumstances and with no appreciable limits on the discretion of the Australian regulators. The Consultation proposes, in effect, to provide Australian regulators primary supervisory powers over non-Australian FMIs. We believe this approach is fundamentally flawed and urge the CFR to instead adopt an approach to cross-border regulation of FMIs that relies on mutual regulatory deference.[4]

In Sections II and III we discuss two sets of measures in the Consultation that we believe are overreaching and unwise: (1) the direct application of Australian fit and proper standards to persons involved in the management and operation of offshore FMIs and (2) primary supervision by Australian regulators, in effect, of offshore FMIs through the proposals that permit the Reserve Bank of Australia ("RBA") or Australian Securities and Investments Commission ("ASIC") to issue directions to, and revise a clearing and settlement facility licensee's ("CSFL's") rules, and require special reports from all Licensed Entities.[5] These powers would apply to offshore FMIs that are properly subject to comparable legal and regulatory standards in their home jurisdictions. While we strongly oppose any extraterritorial application of local regulations to such offshore FMIs, the proposed application of Australian standards is especially problematic where the regulators' discretion is not expressly, and narrowly, limited. In Section IV, we outline our views on the location policy and standards for determining when licenses may be required.

We are especially concerned with the possibility that standards, rules and procedures adopted by an offshore FMI pursuant to its home country legal framework may be revised or rendered unenforceable through application of the extraordinary powers proposed in the Consultation. The

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Participants; Notification of Determination, 82 Fed. Reg. 48394, 48396 (Oct. 18, 2017) (noting that "[i]nstead of demanding strict uniformity with the [CFTC's] margin requirements, the [CFTC] evaluates the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority."); Exemption From Derivatives Clearing Organization Registration [hereinafter, Exempt DCO Proposal], 83 Fed. Reg. 39923 (proposed Aug. 13, 2018) (proposing to codify exemption for non-systemically important offshore clearing houses based primarily on home regulatory framework's adherence to the PFMIs); Swap Execution Facilities and Trade Execution Requirement, 83 Fed. Reg. 61946, 61957 (proposed Nov. 30, 2018) (noting the CFTC's intent to achieve "additional comparability determinations with foreign regulators regarding their respective regulatory frameworks for swap trading venues located within their respective jurisdictions"); Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations [hereinafter, Alternative DCO Registration Proposal], 84 Fed. Reg. 34819 (proposed July 19, 2019) (proposing regulations that would allow non-systemically important offshore clearing houses "to register as a DCO and, in most instances, comply with the applicable legal requirements in its home country as an alternative means of complying with the DCO Core Principles [established in the Commodity Exchange Act]"); Exemption From Derivatives Clearing Organization Registration [hereinafter, Supplemental Exempt DCO Proposal], 84 Fed. Reg. 35456 (proposed July 23, 2019) (proposing a framework to exempt non-U.S. clearing houses from the requirement to register as a DCO when clearing swaps for U.S. customers); Financial Stability Oversight Council, 2019 Annual Report [hereinafter FSOC Report] 10 ("The [FSOC] encourages engagement by Treasury, CFTC, and SEC with foreign counterparts to address the potential for inconsistent regulatory requirements or supervision to pose risks to U.S. financial stability and encourages cooperation in the oversight and regulation of FMUs across jurisdictions"), *available at* https://home.treasury.gov/system/files/261/FSOC2019AnnualReport.pdf.

[4] *See e.g.*, FSOC Report at 106 ("Supervision of U.S. CCPs by multiple regulators has the potential to introduce inconsistent or incompatible regulation or supervision").

[5] Defined in the Consultation and covering, in relevant part with respect to CME Group entities, Australian Market License ("AML"), Australian Derivatives Trade Repository License ("ADTRL") and CSFL holders.

Consultation states its intent to promote market stability but the application of many of the proposed powers to offshore FMIs would have a destabilizing effect by precluding the deference and comity that is fundamental to the cross-border operation of FMIs. The application of such powers could also undermine or conflict with the rules and risk management measures determined to be appropriate by FMIs in accordance with their home country regulator.

Lastly, we note that U.S. government officials are on record that similar proposals by other regulatory authorities threaten to create systemic risk and are otherwise unacceptable.[6] The CFTC has proposed amendments to its Part 30 framework, which codified mutual deference decades ago,[7] to better ensure international comity is accounted for when it exercises exemptive authority.[8] And the Committee on Agriculture of the U.S. House of Representatives as well as members of the U.S. Senate[9] have adopted or introduced legislation, respectively, to direct the CFTC to review exemptions granted to foreign entities where their home country regulator attempts to exercise direct supervisory authority over a U.S. derivatives clearing organization ("DCO").[10] We agree with the sentiments expressed by the U.S. lawmakers and we implore the CFR to eliminate the extraterritorial aspects of the Consultation to avoid further escalation of the already fraught multi-lateral dialogue on cross-border regulation. Failing to adhere to the principles of international comity may result in restrictions on the ability of local market participants to access liquid markets outside of their jurisdiction where FMIs—whether in the U.S., Australia or elsewhere—cease to provide market and clearing access in jurisdictions outside of their domicile either by choice or by mandate.

I. The Role and Importance of Mutual Deference

CME Group acknowledges that the RBA and ASIC require appropriate powers to supervise Australian-domiciled FMIs. However, the International Monetary Fund ("IMF") recommendations

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[6] FSOC notes that "[s]upervision of U.S. CCPs by multiple regulators has the potential to introduce inconsistent or incompatible regulation or supervision" and "jurisdiction-to-jurisdiction inconsistencies could increase financial stability risk." *See* FSOC Report, *supra* note 3 at 106, 116.

[7] *See* 17 CFR Part 30 (establishing regulations designed to carry out Congress's intent that foreign futures and foreign options products offered or sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions), *available at* https://www.ecfr.gov/cgi-bin/text-idx?SID=5c12ab162f00d531e3d3b634745b016d&mc=true&tpl=/ecfrbrowse/Title17/17cfr30_main_02.tpl.

[8] Foreign Futures and Options Transactions; Notice of Proposed Rulemaking, 84 Fed. Reg. 32105, 32106 - 32107 (July 5, 2019) (codifying CFTC authority to terminate exemptive relief under Part 30 in certain circumstances, including "a lack of comity relating to the execution or clearing of any commodity interest subject to the Commission's exclusive jurisdiction").

[9] *See* Amendment to CFTC Reauthorization Act of 2019, H.R. 4895, 116th Cong. § 114 (2019); A Bill to Amend the Commodity Exchange Act to Require a Review of Current Exemptions Granted to Foreign Entities in Response to an Attempt by a Foreign Authority to Exercise Direct Supervisory Authority over a Domestic Derivatives Clearing Organization, S. 2933, 116th Cong. (2019), respectively.

[10] Please also refer to the statement of U.S. Senator John Boozman ("Our bill prompts the CFTC to use its existing tools to protect U.S. financial market regulation and safeguard our clearinghouses from duplicative and burdensome regulations. It is only appropriate that the CFTC uses its authority to review its relief, exemptions and approvals provided to foreign entities should foreign regulators in those jurisdictions attempt to impose new supervision standards for our clearinghouses"), *available at* https://www.boozman.senate.gov/public/index.cfm/2019/11/boozman-durbin-introduce-legislation-to-bolster-cftc-s-authority-to-review-exemptions-for-entities-in-foreign-jurisdictions-seeking-to-regulate-u-s-clearinghouses.

upon which numerous proposals in the Consultation appear to be based[11] do not distinguish between domestic and offshore FMIs. We believe this distinction is critical and that mutual deference between Australian regulators and an offshore FMI's home country regulator is necessary to avoid conflicting, inconsistent or duplicative requirements.

CME Group has long advocated that a policy of mutual deference is central to well-functioning cross-border regulatory regimes.[12] A lack of mutual deference can result in conflicting requirements applicable to a single FMI. Mutual deference reduces financial stability risk[13] and market fragmentation; whereas extraterritorial application of domestic regulations creates a disincentive to offshore FMI participation—which increases systemic risk and reduces market access and may altogether prevent access by participants domiciled outside of the FMI's home jurisdiction. In some instances, the proposals outlined in the Consultation could force offshore CSFLs to either comply with requirements that are incompatible with their domestic legal regimes, or cease offering their risk management services in Australia. If offshore CSFLs are unable to provide services to Australian customers for these reasons or forced to provide them in a less-optimal manner, it could lead to wider bid-ask spreads, weakened price discovery and reduced ability for Australian customers to manage their business risk. To protect against these negative outcomes, CME Group strongly supports an approach of mutual deference by regulators of FMIs across the globe.

For decades, a policy of mutual deference for comparable regulatory frameworks has allowed market participants worldwide to hedge their business risks via exchange-traded derivatives markets.[14] The CFTC has long permitted offshore markets and clearing houses to offer U.S. futures participants access without being subject to direct CFTC supervision or oversight. And the CFTC has proposed to extend its deferential approach to swaps markets and clearing houses as well.[15] At the same time, recognizing the importance of *mutual* deference, and as described above, U.S. lawmakers have proposed measures under which market participants and FMIs from

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[11] *See generally* Int'l. Monetary Fund, *FSAP Technical Note on Supervision, Oversight and Resolution Planning of Financial Market Infrastructures* at (2019), *available at* https://www.imf.org/en/Publications/CR/Issues/2019/02/13/Australia-Financial-Sector-Assessment-Program-Technical-Note-Supervision-Oversight-and-46609.

[12] *See, e.g.*, Letter from Sunil Cutinho, President CME Clearing, to Valdis Dombrovskis, Vice-President for the Euro & Social Dialogue, European Comm'n (Oct. 30, 2017) (responding to EMIR 2.2. proposal), *available at* https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-331/feedback/F7443_en?p_id=30988; *see also* Letter from Sunil Cutinho, President CME Clearing, to Christopher Kirkpatrick, Secretary of CFTC (Aug. 5, 2019) (responding to Foreign Futures and Options Transactions proposed rulemaking), *available at* https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62153&SearchText; Letter from Sunil Cutinho, President CME Clearing, to Christopher Kirkpatrick, Secretary of CFTC (Nov. 22, 2019) (responding to Supplemental Exempt DCO Proposal), *available at* https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62260&SearchText.

[13] See FSOC Report, *supra* note 3 at 116.

[14] *See* 17 CFR § 30.7 (permitting a foreign broker to clear derivatives listed on a foreign board of trade for U.S. customers via an FCM that has established an omnibus account with the foreign broker and where such broker is a clearing member of the foreign CCP clearing the contracts); 17 CFR § 30.10 (permitting persons located outside the U.S., who are subject to a comparable regulatory framework in the country in which they are located, to seek an exemption from CFTC regulations requiring FCM registration), *available at* https://www.ecfr.gov/cgi-bin/text-idx?SID=5c12ab162f00d531e3d3b634745b016d&mc=true&tpl=/ecfrbrowse/Title17/17cfr30_main_02.tpl.

[15] *See* Exempt DCO Proposal, Alternative DCO Registration Proposal & Supplemental Exempt DCO Proposal *supra*, note 2.

foreign jurisdictions may lose their current permission to access U.S. markets if foreign regulators seek to exercise direct supervisory authority over U.S. FMIs. Unfortunately, such measures are all but inevitable where a policy of mutual deference that has served global derivatives markets so well is eschewed in favor of the extraterritorial application of domestic standards.

Several proposals in the Consultation starkly contrast with the CFTC's deferential approach to cross-border regulation of FMIs and the principle of mutual deference that has underpinned the successful cross-border regulation of derivatives for decades. To that end, CME Group offers specific comments on the following proposals in the Consultation.

II. Australian Fit and Proper Standards Should Not Be Applied to Non-Domestic FMIs

The Consultation proposes to implement a fit and proper standard for directors, senior managers, secretaries and 15%-or-above shareholders of an AML, CSFL, BAL or ADTRL, or its holding company. The Consultation does not specify the extent of powers that ASIC and the RBA may ultimately have in this regard, but the newly proposed discretionary powers of ASIC or the RBA to direct compliance with local standards do not appear to preclude these agencies from ordering the removal or reassignment of persons involved in a non-domestic Licensed Entity or its holding company. CME Group and its Licensed Entities[16] are subject to robust governance fitness standards in the U.S. which, by law, are the controlling standards for CME Group personnel and will remain so notwithstanding the proposals in the Consultation.

The U.S. Commodity Exchange Act ("CEA") governs CME Group's U.S. exchanges and clearing house that hold Australian licenses and establishes governance fitness standards for these U.S.-regulated FMIs. The controlling CEA provisions respect the balance of state and federal supervision that is inherent in the U.S. federal system. The corporate governance-related proposal in the Consultation appears based on a different balance—one that is not supported in the U.S., where such matters are generally reserved to state (in the case of CME, Delaware), rather than national, authorities. **This distinction again emphasizes the importance of mutual deference as regulatory frameworks are developed in accordance with local legal and regulatory structures, and a foreign regulator's assertion of authority creates a significant risk of conflicting requirements for the offshore FMI.**

As a systemically important derivatives clearing organization ("SIDCO") in the U.S., the Board of Directors ("Board") of CME, and the Board of CME Group,[17] must comply with governance requirements established by the U.S. Congress in the CEA and by the CFTC in its regulations. CME Group's status as a company listed on the NASDAQ Global Select Market also subjects its Board to listing standards developed for public companies by the U.S. Securities and Exchange

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[16] Chicago Mercantile Exchange Inc. ("CME") holds an AML, CSFL and ADTRL; Board of Trade of the City of Chicago, Inc. ('CBOT'), New York Mercantile Exchange, Inc. ('NYMEX') and Commodity Exchange Inc. ('COMEX') each hold an AML; and EBS Service Company Limited holds an AML (Tier 2 Domestic) and an Australian Financial Services License.

[17] *See* Amended and Restated By-Laws of Chicago Mercantile Exchange Inc., Art. II. Section 2.1 ("[T]he Board of Directors shall at all times be comprised of the same Directors as those of CME Group Inc..."), *available at* https://www.cmegroup.com/rulebook/files/CME-Bylaws.pdf.

Commission ("SEC"). Independent of these regulatory requirements, CME Group has taken numerous additional steps that are designed to ensure that its directors, officers and employees are subject to the highest standards, including the adoption of policies, codes, bylaws and rules that were reviewed by Australian regulators prior to approving CME's CSFL application.

We also note that these proposals introduce a constraint on the governance rights of shareholders to elect members of an offshore FMI's Board. The commonly accepted basic rights of shareholders, as described by the Organisation for Economic Co-operation and Development ("OECD"), include the right to elect members of the management body. We encourage the CFR to reconsider these proposals given the constraints they will impose on the rights of shareholders of offshore FMIs.

Corporate governance and personnel decisions of an offshore FMI deserve the highest degree of regulatory deference. Otherwise, unnecessary barriers to market entry for new FMIs and the risk that existing FMIs will withdraw from the market will likely increase market fragmentation and impair local participants' ability to manage business risk, which could ultimately increase systemic risk. We respectfully suggest that an approach based on mutual regulatory deference would be superior to the extraterritorial approach proposed in the Consultation. Doing so will best foster efficient, liquid markets for the hedging and risk management needs of financial market stakeholders.

III. Australian Regulators Should Not Have Primary Supervisory Powers Over Offshore FMIs

The Consultation proposes that: (1) ASIC may make rules for CSFLs for the purpose of promoting the fair and effective provision of clearing and settlement facility services; (2) ASIC (in relation to Licensed Entities) and the RBA (in relation to CSFLs) be able to obtain a report from an independent expert on specified matters; (3) the RBA be able to direct a CSFL to provide information; (4) the RBA be able to give directions to a CSFL in relation to specific matters where the RBA reasonably considers action is required to support financial stability; and (5) removal of the "reasonably practicable" qualifier in Financial Stability Standards ("FSS") compliance obligation for CSFLs. Although CME Group has unique concerns regarding each these items, we address them together as they collectively reflect a significant regulatory overreach and unnecessarily increase the risk of regulatory conflicts if applied on an extraterritorial basis to offshore FMIs.

Together these proposals represent a considerable step toward direct regulation of offshore FMIs. Some powers are new, where others are delegated from the Minister. CME Group is concerned that the proposals to establish new powers and remove administrative safeguards tempering the application of existing powers—especially coupled with the near-unfettered discretion apparently reserved to ASIC and the RBA under the proposals—will greatly increase the risk of conflicting requirements under the Australian and home country regulatory regimes for offshore FMIs.

Regulatory authorities should not have any type of authority to impose change directly on an offshore FMI. If the Australian regulators are empowered to require that an offshore FMI change

its rules, business model or risk management practices to facilitate domestic considerations relevant to the Australian market, that authority could increase the uncertainty of the ability of that FMI to effectively manage future stress events and undermine the objectives of global financial stability. Empowering the Australian authorities as proposed would likely conflict with the authority granted to the home country regulator of the FMI, which must be able to adopt and apply appropriate regulations that take into account the home country legal regime, market structure and trading practices. Different jurisdictions will naturally have different requirements, but that does not mean that those requirements deviate from internationally agreed-upon standards. The rationale for the Committee on Payments and Market Infrastructures ("CPMI") and International Organization of Securities Commissions' ("IOSCO") *Principles for financial market infrastructures* ("PFMIs"),[18] which set out globally agreed upon standards for FMI risk management, is to allow policy-makers to tailor their regulatory frameworks to the unique characteristics of their markets.

The Consultation proposes to establish, delegate or expand the ability of Australian regulators to directly supervise offshore FMIs, including powers for the RBA to direct a CSFL in relation to specific matters where it reasonably considers action is necessary to support financial stability. An example of the form of directions includes amending the CSFL's rules or procedures. This proposal ignores the potential conflicts between the interests of Australian regulators and the interests of the FMI's home country regulator.[19] Each offshore FMI to which such powers would be applied is subject to its own regulatory requirements and standards for risk management. A DCO must establish clear and enforceable rules and procedures as a regulatory matter and develop protocols, rules and procedures that provide a high degree of certainty to market participants and regulators.[20]

The Consultation's proposal that ASIC and the RBA have powers to direct an offshore CSFL in a range of circumstances creates the potential for a dangerous and possibly irresolvable regulatory conflict. For example, where CME, in its capacity as a DCO, is managing a default in accordance with its rules, requirements of U.S. law and in coordination with its home country supervisory authorities, ASIC or the RBA may issue a direction to CME designed specifically to protect Australian market participants. Such a direction could contradict or undermine CME's default management protocols, the enforcement of its rules or U.S. legal requirements concerning

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[18] Committee on Payment and Settlement Systems (later renamed the Committee on Payments and Market Infrastructures) and Technical Committee of the International Organization of Securities Commissions, Principles for Financial Market Infrastructures (Apr. 2012), *available at* https://www.bis.org/cpmi/info_pfmi.htm. .

[19] *See* FSOC Report, *supra* note 3 at 116 ("[J]urisdictional variations in implementing the PFMI can pose challenges if conflicting expectations are applicable simultaneously to a single CCP. At times, inconsistencies among jurisdictions' implementation of the PFMI may be reconcilable by authorities, but some jurisdiction-to-jurisdiction inconsistencies could increase financial stability risk.").

[20] *See* 7 USC § 7a-1(c)(2)(R) ("Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the [DCO]"), *available at* https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title7-section7a-1&num=0&edition=prelim; 17 CFR § 39.27 (implementing Core Principle R and further requiring the aforementioned legal framework provide for netting arrangements, the DCO's interest in collateral, the steps a DCO would take to address a clearing member default, finality of settlement, and other significant aspects of the DCO's operations, risk management procedures and related requirements), *available at* https://www.ecfr.gov/cgi-bin/text-idx?SID=dc4e75187fdc742d288e1fefe8b86e5f&mc=true&node=pt17.1.39&rgn=div5#se17.1.39_127. Further, where a DCO offers clearing services outside the U.S. it must be able to demonstrate that "its rules, procedure, and contracts are enforceable in all relevant jurisdictions," *see id.*

customer funds. The non-exclusive powers proposed to be reserved to the RBA in this regard include the ability to amend a CSFL's rules, change its share or other capital, or exercise CSFL rights under third-party agreements. We note that the breadth and depth of such powers under the U.S. legal framework are much more akin to the powers of a resolution authority than the business-as-usual or even the extraordinary powers of the CFTC. And under the U.S. legal framework, such resolution powers are available only after clearing the exceedingly high procedural barriers designed specifically to limit their application. We do not believe such powers are appropriately reserved to or exercised by any non-primary regulator, whether such powers are subject to limitations.

The lack of any appreciable limit on regulators' discretion or a framework for its application only makes the creation of such powers that much more concerning. We believe that these powers should not be provided to ASIC or the RBA in the case of offshore Licensed Entities. To the extent ASIC or the RBA seek to influence the operations of an offshore Licensed Entity they should do so exclusively via the cooperation framework established with the home country regulator(s) of such entity, not directly as proposed in the Consultation.

IV. Licensing and Location Requirements Require Clarity

As CME Group noted in its March 2015 response to the Australian Government's Consultation Paper on the Proposed Resolution Regime for Financial Market Infrastructures, our view is that applicable rules should provide adequate certainty regarding the circumstances in which offshore FMIs may be required to obtain an offshore license or transition from an offshore to a domestic license. We continue to believe that additional clarity around the circumstances in which such authority may be utilized will ultimately benefit the Australian financial market and its participants by encouraging additional participation by offshore FMIs. And where regulatory standing is granted to an offshore FMI, deference to the primary supervisory authority of the home country regulator is critical to mitigate the potential for duplicative or conflicting requirements, as outlined above.

A. Licensing

CME Group cannot offer detailed comments on the reasonableness of the domestic connection and materiality tests without understanding the weighting of the factors used in such an evaluation. However, as a general matter of policy, CME Group believes that approaches for licensing of offshore FMIs and related obligations associated with the license should be conditioned on evidence of the potential significance of an FMI's direct nexus to the foreign jurisdiction, and that such nexus be based on quantitative standards. Compared with regulators in other jurisdictions we have examined, ASIC and the RBA already have far-reaching authority over offshore FMIs that hold local licenses. And in our experience this authority is not subject to clear, quantifiable limitations. CME Group reiterates its view that clear and narrow limits on such authority would enhance certainty for market participants and FMI operators with respect to their licensing obligations in Australia.

B. Location

It is unclear why a location requirement is necessary where an offshore AML holder is required to obtain a domestic license—our understanding is that ASIC has broad powers to impose conditions pursuant to a domestic AML. Imposing relocation on the holder of a domestic AML could fragment the international market where the AML holder is unlicensed in other jurisdictions, especially where Australia has not executed an equivalence agreement with those jurisdictions' regulators.[21] Such a requirement risks isolating Australian participants from overseas markets. And local incorporation introduces significant restructuring and relocation considerations, creating a disincentive for offshore FMIs to continue offering services in Australia.

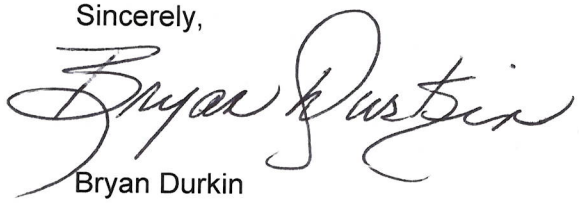
With respect to the location requirement of CSFLs, we again note our concern that the standards for domestic connection and systemic importance reserve significant qualitative discretion to the regulators, which creates uncertainty for offshore CSFLs.

Conclusion

CME Group respectfully opposes the proposals in the Consultation that contemplate Australian regulators' powers to directly regulate offshore FMIs. Such measures are unnecessary for many offshore FMIs, like those already subject to significant regulation in the U.S. The proposals will result in duplicative regulation and legal uncertainty. The proposals may further reduce cross-border market access, impair the ability of market participations to manage their business risk, and increase market fragmentation and systemic risk. These outcomes run counter to the stated intent of the Consultation. We encourage the CFR to reconsider its approach to the regulation of offshore FMIs and adhere to the spirit and principles of mutual deference and international comity.

CME Group thanks the CFR for the opportunity to comment on this matter. We would be happy to discuss any of these issues with CFR staff. If you have any comments or questions, please feel free to contact me at Bryan.Durkin@cmegroup.com. Alternatively, you can contact Sunil Cutinho, President of CME Clearing, at Sunil.Cutinho@cmegroup.com.

Sincerely,



Bryan Durkin
President, CME Group

[21] We note that, to date, Australian regulators have not signed equivalence agreements such as those agreed between the CFTC, the European Commission and the Monetary Authority of Singapore with respect to trading venues.