



18 July 2016

Mr Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street NW
Washington DC 20581

Submitted online: <http://comments.cftc.gov>

Dear Secretary Kirkpatrick

**Clearing Requirement Determination under Section 2(h) of the CEA for Interest Rate Swaps
RIN 3038-AE20**

ASX Clear (Futures) Pty Limited (**ASX**) thanks the Commission for the opportunity to comment on the draft clearing requirement determination (**Draft Determination**) published on 16 June 2016.

In this submission we seek to explain ASX's interest in the Draft Determination and make some comments regarding the Commission's proposed implementation schedule.

Background

ASX is one of three derivatives clearing organisations which provide central clearing services to the Australian dollar (AUD) interest rate swap market. ASX is incorporated in Australia and regulated by the Australian Securities and Investments Commission (**ASIC**) and the Reserve Bank of Australia. The Commission granted ASX an exemption from the requirement to register as a Derivatives Clearing Organisation in August 2015.

ASX commenced clearing operations for AUD-denominated interest rate swaps in 2013. The participants in ASX's clearing service for interest rate swaps comprise local branches or subsidiaries of Australian and international (including U.S.) banks. Most of the participants are (provisionally) registered swap dealers.

In April 2016, ASIC introduced a clearing requirement for certain interest rate swaps denominated in AUD and G4 currencies, applicable to dealers only.

Implementation schedule

In our opinion Implementation Scenario II (Alternative Compliance Dates to Coordinate Implementation with Non-U.S. Jurisdictions) should be adopted, with one relatively minor modification (discussed below), to minimise the potential disruption caused by differences in clearing requirements across jurisdictions. Under this scenario, the compliance date for the Commission's clearing requirement would take place on the earlier of:

- the date 60 days after the effective date of an analogous clearing requirement that has been adopted by a regulator in a non-U.S. jurisdiction, provided that any such date for any swap covered by the final rule shall not be earlier than the date which is 60 days after the Commission's final rule is published; or
- the date two years after the Commission's final rule is published in the Federal Register.

There are two key differences between ASIC's clearing requirement for AUD-denominated interest rate swaps and the Commission's proposed clearing requirement for those swaps, which in our view make the internationally co-ordinated approach of Implementation Scenario II essential. We outline these differences below.

1. ASIC's clearing requirement will not apply to AUD-denominated FRAs until April 2018

ASIC originally proposed to require four types of interest rate swaps to be subject to the clearing requirement (i.e. fixed-to-floating swaps, basis swaps, forward rate agreements and overnight index swaps). Industry feedback was that there is limited availability of clearing facilities that can centrally clear AUD-denominated FRAs. In response to this feedback, ASIC postponed for two years, until April 2018, the commencement of the clearing requirement for AUD-denominated FRAs.¹

In our opinion, the industry feedback referenced above is supported by the clearing data contained in the Commission's Notice of Proposed Rulemaking. Tables 10.1 and 10.2 of the Notice show nil open interest as of 17 July 2015, and nil aggregate notional amounts cleared for the second quarter of 2015, in AUD-denominated FRAs at CME Clearing. ASX and LCH.Clearnet currently do not offer central clearing for AUD-denominated FRAs. ASX has observed a general trend in the Australian domestic market away from FRAs towards single period swaps.

If the Commission were to implement its clearing requirement for all products in the Draft Determination at the same time (Implementation Scenario I), then the Commission's clearing requirement for AUD-denominated FRAs would be likely to take effect ahead of ASIC's clearing requirement for the same type of instrument by a considerable period of time. This would tend to reverse the postponement decision taken by ASIC late last year in response to industry feedback, noting that a large number of the internationally active dealers in AUD interest rate swaps are (provisionally) registered swap dealers.

2. ASIC's clearing requirement applies to 'internationally active dealers' only

ASIC's clearing requirement applies to 'internationally active dealers' only. These are financial institutions with at least AUD 100 billion gross notional outstanding positions on a rolling basis.² ASIC deliberately set a high threshold in recognition that, for AUD-denominated interest rate swaps, the systemic risk reduction benefits to the Australian financial economy of extending the clearing requirement beyond the dealer community would be outweighed by the overall costs to market participants.³

If the Commission were to implement its clearing requirement according to Implementation Scenario II, the compliance date for AUD-denominated fixed-to-floating, basis and OIS swaps would be 60 days after the publication of the final rule in the Federal Register because ASIC's clearing requirement already applies to these swaps. However, this would fail to take account of the fact that non-dealers are not subject to ASIC's clearing requirement, and may need a significant lead time to prepare themselves to comply with the Commission's clearing requirement if they wish to deal with U.S. swap dealers. Stated another way, it cannot be assumed that market participants in a non-U.S. jurisdiction are generally ready for central clearing simply because there is a clearing requirement in force in the jurisdiction, as clearing requirements across jurisdictions can apply to the same classes of swaps but different classes of counterparties.

¹ [ASIC Report 460: Response to submissions on Consultation Paper 231 Mandatory central clearing of OTC interest rate derivative transactions](#), Australian Securities and Investments Commission (December 2015), page 7. Contrary to the statements in Section IV of the Notice of Proposed Rulemaking, ASIC's clearing requirement for AUD-denominated FRAs had not become effective at the date of the proposal.

² ASIC Derivative Transaction Rules (Clearing) 2015, Rule 1.2.7.

³ [Report on the Australian OTC Derivatives Market](#), Council of Financial Regulators (April 2014), page 47.

We therefore submit that in assessing whether a clearing requirement adopted by a regulator in a non-U.S. jurisdiction is 'analogous' to the Commission's clearing requirement, the Commission should take into account not only the *type of interest rate swaps* covered by the non-U.S. clearing requirement but also the *classes of counterparties* subject to the clearing requirement. With this relatively minor modification, the Commission would achieve both a reasonable lead time for non-dealers in Australia to prepare for the Commission's clearing requirement, and certainty for the Commission that its clearing requirement will take effect in no more than two years. If ASIC chose to broaden the classes of counterparties to which its clearing requirement applies in the meantime, so that the clearing requirements of ASIC and the Commission became 'analogous', then the Commission's clearing requirement would take effect at the same time.

We conclude that the Commission's Implementation Scenario II, with the relatively minor modification outlined above, would best serve cross-border harmonisation, and maximise flexibility and certainty for the affected parties in relation to AUD-denominated interest rate swaps.

If you have any questions regarding this submission, please contact the writer or Helen Lofthouse, Executive General Manager, Derivatives and OTC Markets on +61 2 9227 0223 or helen.lofthouse@asx.com.au.

Yours sincerely,

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