

12 October, 2018

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

**Re: Exemption from Derivatives Clearing Organization Registration (RIN 3038-AE65)**

ASX Clear (Futures) Pty Ltd (“**ASXCF**”) welcomes the opportunity to provide its views to the U.S. Commodity Futures Trading Commission (“**CFTC**”) on the CFTC’s Notice of Proposed Rulemaking: Exemption from Derivatives Clearing Organization Registration (RIN 3038-AE65) (the “**Proposal**”).

**1. Introduction and Overview**

ASXCF provides multi-asset class central clearing for Futures and OTC Derivatives covering rates, commodities and equities. In financial year 2018, ASXCF cleared AUD 53 trillion notional value in exchange traded interest rate derivatives and a further AUD 6.6 trillion in OTC interest rate derivatives, representing approximately 15% market share in cleared AUD OTC interest rate derivatives globally.

In 2015, the CFTC exempted ASXCF from registration as a Derivatives Clearing Organization (“**DCO**”).<sup>1</sup> The exemption permits ASXCF to clear interest rate swaps denominated in U.S. dollars, Euros, Japanese yen, British pounds, Australian dollars and New Zealand dollars, for U.S. clearing members and their affiliates. ASXCF currently offers central clearing of OTC interest rate swaps denominated in Australian dollars (AUD) and New Zealand dollars (NZD). Further detail on ASXCF and its regulatory framework is set out in *Appendix 1*.

**2. Public consultation response**

**A) Clearing for U.S. customers – Should the CFTC consider permitting an exempt DCO to clear swaps for FCM customers?<sup>2</sup>**

**Yes. ASXCF supports the CFTC permitting exempt DCOs to clear swaps for U.S. person customers**

ASXCF believes that it would be beneficial to allow U.S. person customers to access the broadest possible range of central clearing facilities (“**CCPs**”) as this would provide U.S. person customers with flexibility and choice in accessing the best commercial solutions for the products they use subject to those CCPs meeting global QCCP standards under the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMIs).

The benefits of ASXCF’s OTC clearing service include:

- Central clearing in a broad range of AUD and NZD OTC interest rate derivatives products.
- Cross-product and cross-currency margin offsets between cleared AUD and NZD exchange traded derivatives and OTC interest rate derivatives.
- Safe clearing arrangements with ASXCF’s client protection model aligning with the PFMIs.

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<sup>1</sup> See the Amended Order of Exemption from Registration at [www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/asxclearamdorderdcoexemption.pdf](http://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/asxclearamdorderdcoexemption.pdf)

<sup>2</sup> The Proposal, IV. (‘Request for Comments’)

ASXCF supports the positions set out in Chairman Giancarlo's October 2018 white paper, Cross-Border Swaps Regulation version 2.0 that would permit U.S. persons to clear through non-U.S. clearing members of exempt DCOs.

As an alternative to U.S. persons accessing exempt DCOs via non-U.S. clearing members, the correspondent clearing structure could also be applied to swaps clearing. For example, U.S. customers could contract with a U.S. FCM who in turn, contracts as a client of a non-U.S. clearing member of the exempt DCO. *Appendix 2* provides a diagram outlining one of the ways in which the correspondent clearing structure could be implemented under ASXCF's Operating Rules.

**B) Proposed Regulation 39.6(c)(2)(iii) - Should an exempt DCO make the determination of whether a change to the home country regulatory regime constitutes a material change?<sup>3</sup>**

**Yes. ASXCF supports the proposal that an exempt DCO should make the determination of whether a change to the home country regulatory regime constitutes a material change.**

A regulatory change in the home country of an exempt DCO affecting the exempt DCO's continuing observance of the PFMI, any requirements set forth in proposed Regulation 39.6, or the CFTC's order of exemption, is likely to occur infrequently. Moreover, such regulatory changes are easily identifiable by exempt DCOs due to the familiarity of exempt DCOs with the legal and regulatory framework in their home countries. This means that an exempt DCO is best placed to determine whether a change is material and advise the CFTC accordingly.

**C) Automatic termination - Should any of the conditions imposed on an exempt DCO lead to an automatic termination of the exemption if the condition is not met?<sup>4</sup>**

**No. ASXCF does not support any automatic termination of the exempt DCO status.**

ASXCF does not support any automatic termination of the DCO exemption, as this could create significant market disruption for all market users and for U.S. persons clearing a significant portion of their activities through the exempt DCO.

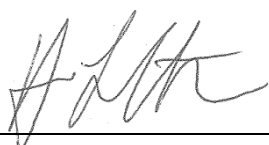
Alternatively, ASXCF proposes that the CFTC, the exempt DCO and the exempt DCO's primary regulator(s) should engage in good-faith to agree an approach and timeframe for resolution of any breach, leaving termination of the exemption as a last resort.

### **3. Conclusion**

Should you have any questions about this submission please do not hesitate to contact Helen Lofthouse, Executive General Manager, Derivatives & OTC Markets at +61 2 9227 0223 or [Helen.Lofthouse@asx.com.au](mailto:Helen.Lofthouse@asx.com.au)

Yours sincerely,

Helen Lofthouse  
Executive General Manager, Derivatives & OTC Markets, ASX Limited.



<sup>3</sup> The Proposal, Part II, C.3.a. ('General Reporting Requirements')

<sup>4</sup> The Proposal, IV. ('Request for Comments')

## **Appendix 1 – Overview of ASXCF’s regulatory framework**

### ***Australian regulatory framework***

ASXCF is an Australian Clearing and Settlement facility licensee (“**CS facility licensee**”) that operates in a highly regulated environment overseen by two independent government agencies – the Australian Securities and Investments Commission (“**ASIC**”) and the Reserve Bank of Australia (“**RBA**”). These government regulators have extensive powers to enforce the comprehensive laws and regulations that govern financial markets in Australia.

Under the *Corporations Act 2001* (Cth) (“**Corporations Act**”), the relevant Government Minister (“**the Minister**”) has primary responsibility for licensing CS facilities operating in Australia and has the power to disallow amendments to the operating rules of CS facilities. ASIC assesses each CS facility licensee on its compliance with its licence obligations under the Corporations Act.

Under the Corporations Act, as a CS facility licensee, ASXCF must (among other things), to the extent that it is reasonably practicable to do so:

- comply with the Financial Stability Standards (“**FSS**”) adopted by the RBA and do all other things necessary to reduce systemic risk. The FSS are aligned with the requirements of the CPMI-IOSCO Principles for financial market infrastructures (“**PFMIs**”). These standards address matters (including credit and liquidity risk, margining, acceptable collateral and financial resources) that promote the maintenance of a sound and efficient financial system and avoid the risk of significant damage arising from a Clearing Member failure. The RBA conducts an annual assessment of how well licensed CS facilities (including the facility operated by ASXCF) have complied with the RBA’s FSS and done all other things necessary to reduce systemic risk. The RBA publishes its findings on its website.
- do all things necessary to ensure that its services are provided in a fair and effective way and have adequate arrangements for supervising the facility including arrangements for handling conflicts of interest between its commercial interests and regulatory obligations. ASXCF’s transparent admission criteria (based on reasonable risk-related participation requirements), dedicated department for supervising and enforcing participant compliance with the operating rules, and arrangements for managing conflict and information handling, promote the integrity and effectiveness of the ASXCF CS facility and enhance the confidence of investors and other market participants.

### ***Protections provided by Payment Systems and Netting Act***

In the event that a Clearing Member in ASXCF’s CS facility enters into external administration, Part 5 of the *Payment Systems and Netting Act 1998* (Cth) (“**PSNA**”) protects:

- the termination, valuation and netting of obligations, and enforcement of security, by ASXCF (as an operator of an approved ‘netting market’); and
- the porting of client positions and collateral by ASXCF to a non-defaulting Clearing Member.

The PSNA protections apply under Australian law irrespective of the jurisdiction in which a Clearing Member in ASXCF may be incorporated.

### ***ASXCF’s Client Protection Model***

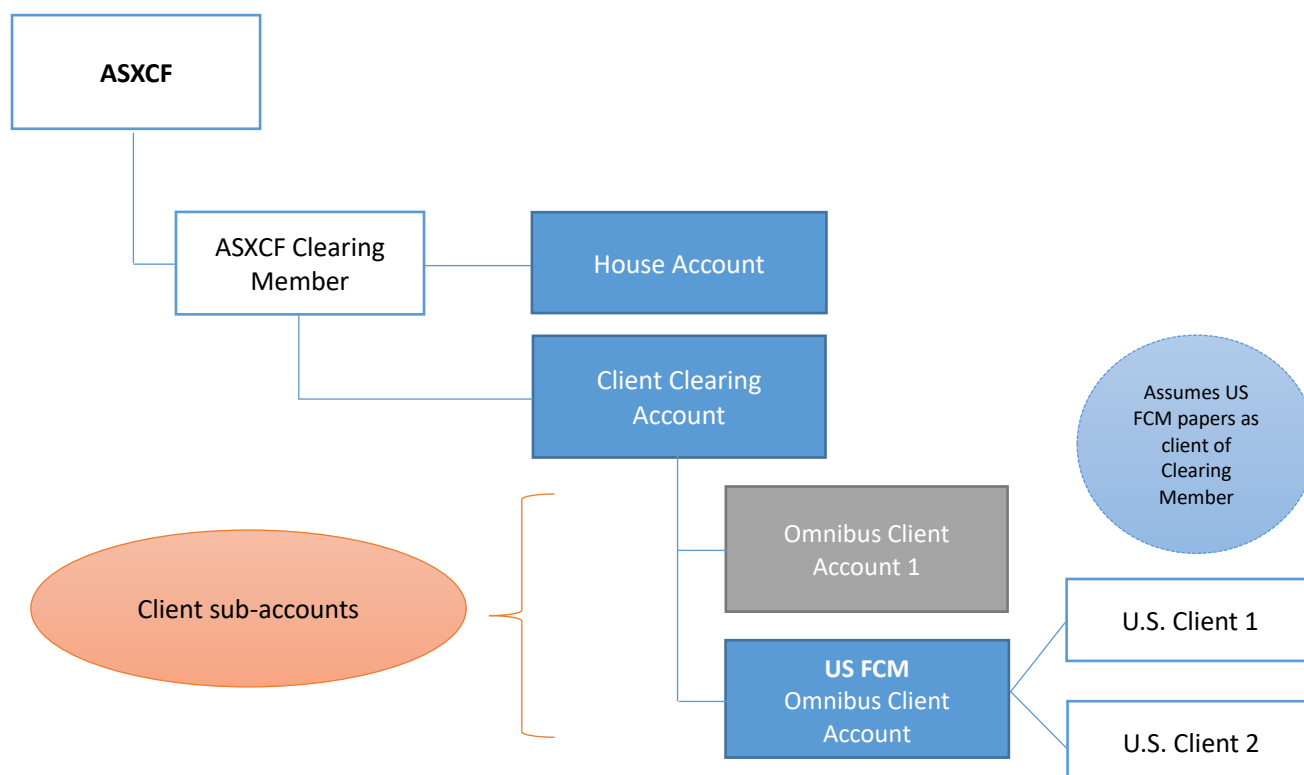
The ASXCF Client Protection Model establishes the framework which governs ASXCF client clearing,

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and the protection of client assets under the ASXCF Operating Rules. An overview of the ASXCF Client Protection Model is available [here](#).

Under the Client Protection Model, ASXCF offers both an Omnibus and ICA account structure. An overview of the key features of this account structure is available [here](#).

**Appendix 2 – Potential implementation of the correspondent clearing structure under ASXCF’s Operating Rules**



**Client positions:** Netted within each omnibus client account for the purpose of calculating initial margin with respect to the omnibus client account.

**Client collateral:** Client collateral is comingled in a single Clearing Member Client Clearing Account. However, margin is calculated and recorded separately for each omnibus client account (e.g. Omnibus Client Account 1, US FCM Omnibus Client Account).

**Collateral Value:** The Collateral Value of an omnibus client account is the amount which the CCP will transfer or return in respect of the account if the Clearing Member defaults. The Collateral Value for an omnibus client account is the value of initial margin calculated by ASXCF in respect of the omnibus account as at the last end-of day time at which the Clearing Member settled its initial margin obligations prior to its default.

**On a Clearing Member default:** The CCP may port the positions and Collateral Value of the US FCM Omnibus Client Account to a non-defaulting Clearing Member under alternate clearing arrangements. If the positions and Collateral Value of the US FCM cannot be ported, ASXCF will close-out the positions in the account and remit the Collateral Value (less the costs of close out) directly to the US FCM.

**On a default of the US FCM (Client):** The Clearing Member may manage the default of the US FCM by closing out the positions of the US FCM from either the Clearing Member’s House Account or the US FCM’s omnibus client account. The Clearing Member will remit the proceeds (following close-out) to the US FCM (or its administrator, if applicable).