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Ms Anna Zajkowski
Senior Analyst
Financial Market Infrastructure
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2000

By email: anna.zajkowski@asic .gov.au

Dear Ms Zajkowski,

CP195 – Proposed amendments to ASIC market integrity rules: ASX24 and FEX markets

ASX welcomes the opportunity to provide comments on the proposed amendments to market integrity rules applying to licenced derivatives markets. The following comments follow the structure of the consultation paper.

Risk management

ASX supports the introduction of risk management requirements for participants trading on their own behalf through 'house accounts'. These appear to be sensible requirements aimed at ensuring participants have in place arrangements, including pre-determined trading and positions limits to ensure that the participant's activities do not pose a risk to orderly market trading.

ASIC has recognised that many of the trading trends (such as the growth of automated trading) that have emerged in cash equities trading are now emerging in derivatives markets. Over the longer term, it may make sense, to move towards a uniform approach to participant risk management requirements across the cash equities and derivatives markets.

Supervision policies and procedures

ASX supports the proposal for market participants to have appropriate supervisory policies and procedures to ensure compliance with the market integrity rules, market operating rules, and the Corporations Act.

While the introduction of such an obligation is unlikely to have a material impact on participants who hold an AFSL, the impact on participants operating without an AFSL may well be significant. We note that ASIC is proposing a three month transition period for existing market participants to comply with the obligation. We are not in a position to comment directly on whether that period is sufficient but would be guided by the views of the affected participants.

Minimum presence requirements

ASX supports ASIC having clear powers over foreign market participants. The proposal to require foreign market participants operating without an AFSL to enter into and maintain a deed that is for the benefit of, and enforceable by, ASIC is essentially an extension of a similar requirement that already applies to foreign participants of the ASX and Chi-X equity markets. Having a means of enforcing compliance with Australian regulatory requirements is a critical element of any effective regulatory regime.

We note that a three month transitional arrangement for existing participants is proposed and would expect that should be sufficient.

Disclosure in relation to clearing arrangements

The recent ASIC consultation paper *CP186: Clearing and settlement facilities: International principles and cross-border policy (update to RG 211)* dealt with a range of issues of direct relevance to the requirements for foreign clearing and settlement facilities.

As the earlier *CP149: Application for an Australian market licence: Financial and Energy Exchange Limited* noted it was proposed that LCH.Clearnet (LCH) would be the designated clearing house for the FEX market. *CP149* noted that the UK regulatory authorities (FSA and Bank of England) would remain the primary regulators of LCH which is a recognised UK clearing house and that LCH would be licensed in Australia under s824B(2) of the Corporations Act. *CP149* contemplated that the existing rules and procedures of LCH (complemented by some specific FEX related rules) would govern the clearing arrangement which would be provided through UK-based infrastructure and subject to English laws.

Clearing arrangements go directly to the issue of the protection of clients' assets. Accordingly, it is important that investors fully understand the different risks and potential outcomes they may face in the event of clearing participant or clearing house default.

The consultation paper proposes that a participant be required to disclose to its clients the differences between having their contracts cleared and settled by LCH and an Australian-based CS facility. While this is a necessary requirement, ASX does not believe it is sufficient. Not only should disclosure be required but there should be, at a minimum, an obligation on participants to get written confirmation from the client that they have received and understood the arrangements. As noted above, even such a measure may not ensure less sophisticated investors are fully cognisant of the complexities they may face.

Recent experience (such as the default of MF Global) has shown that, even sophisticated investors do not always fully understand the nature of post-trade processes and risks. Effective disclosure requires a prominent explanation of the detail of how rights and remedies differ.

The information that is disclosed to clients should extend beyond simply noting that there are different arrangements and obtaining a written confirmation from the client. ASX believes the disclosure needs to clearly set out the potentially different outcomes investors may face in the event of an insolvency of the participant or the foreign clearing house. If that explanation cannot be provided with clarity the question must be why such a clearing arrangement would be allowed.

ASX's views on the importance of ensuring investors fully appreciate the different outcomes they may experience if Australian regulators allow C&S activities to be conducted by an overseas facility are expanded on in ASX's submission to ASIC CP186.[1] These issues go to the question of under what circumstances a foreign clearing facility licence should be granted and the matters that are relevant to the minimum disclosure that should be required if such a licence is granted.

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[1] Available at: http://www.asxgroup.com.au/media/ASX_Submission_to_ASIC_CP_186_19Oct12.PDF

Roll business

ASX notes that ASIC is not proposing to proceed at the moment with amendments to clarify that market participants are prohibited from executing roll business using a block trade facility, pending the outcomes of the recent ASX consultation process[2].

ASX hopes to be in a position, following further market consultation early in 2013, to be able to report to ASIC on the outcomes of those consultations to help inform its thinking on the way to proceed.

If you would like to discuss further detail on our submission please contact: Gary Hobourn, Senior Policy Analyst, Regulatory and Public Policy (tel: 02 9227 0930; email: gary.hobourn@asx.com.au)

Yours sincerely

Amanda J. Harkness
Group General Counsel & Company Secretary

[2] Available at: http://www.asxgroup.com.au/media/ASX_3_and_10_Year_Treasury_Bond_Futures_Quarterly_Roll.pdf