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17 June 2009

Ms Michele Bullock
Head, Payments Policy Department
Reserve Bank of Australia
65 Martin Place
Sydney 2000

Dear Michele,

Consultation on Assessing Sufficient Equivalence

1.1 ASX's two central counterparty (CCP) clearing and settlement facilities - the Australian Clearing House (ACH) and SFE Clearing Corporation (SFECC) - welcome the opportunity to make a submission on the Reserve Bank's (RBA's) consultation on assessing sufficient equivalence.

1.2 In summary, ACH and SFECC are supportive of the RBA's proposed approach to establishing sufficient equivalence, with the exception of the issue addressed at paragraph 2.2 below. With that in mind, the remainder of this submission details the response of ACH and SFECC to the key issues for respondents before closing with a final general comment.

2. Key Issues for Respondents

1 The general approach proposed for assessing sufficient equivalence in relation to the degree of protection from systemic risk.

2.1 We agree that the degree of protection from systemic risk is the key measure under which sufficient equivalence should be assessed. Indeed, as noted in our submission to the prior consultation on "Variation of the Financial Stability Standard for Central Counterparties: Oversight of Overseas Facilities" ("our prior submission"), even major jurisdictions may not be "sufficiently equivalent, in relation to the degree of protection from systemic risk." Put another way, of the 'outcomes' envisaged by Section 4.13 of RG 54, the critical one is whether "*systemic and other risks relating to default are anticipated and appropriately dealt with."*

2.2 To that end, we were surprised by the use of the word "perhaps" in the footnote on page two of the consultation: our expectation would be that where an overseas applicant was seeking a licence to operate a facility to serve a particularly large or systemically important market in Australia, the exemption under the varied Financial Stability Standard for Central Counterparties ("the Standard") would never apply.

2 Practical issues in assessing the degree of overlap in the coverage of standards or principles underpinning the Australian and overseas regimes.

2.3 As noted in our prior submission, we agree that there are practical issues in assessing the overlap (or more critically, the underlap) of different principles-based regimes. We would therefore encourage the RBA to:

(a) as section 3.1 of the consultation implies, consider detailed guidance, rules and/or procedures as well as high-level principles in assessing whether the coverage of the regime of an overseas regulator is sufficiently equivalent; and

(b) err on the side of caution if there is any lack of clarity that a regime is sufficiently equivalent by either:

i. utilising a two stage process whereby the regime is deemed sufficiently equivalent for some measures of the Standard, but other measures are subject to direct oversight by the RBA; or

ii. ultimately, concluding that the regime is not sufficiently equivalent.

2.4 In coming to this conclusion, ACH and SFECC are of the view that where sufficient equivalence is not established, any regulatory burden relating to the alternative (the assessment of an overseas CCPs against the Standard in full or in part) is likely to be insignificant relative to any systemic risk concerns.

2.5 Specifically on the sufficient equivalence of the oversight process and the criteria for that outlined in the bullets on page 4 of the consultation document, we suggest that one of the key features of the Australian oversight process – in that it ensures that the systemic risk associated with CCPs is transparent – is the publication of the regulator's formal assessment against stability-related principles. We suggest therefore that this feature (the publication of a formal assessment) should be added as an additional criterion. In doing so, we acknowledge that some CCPs may publish self-assessments against CPSS-IOSCO recommendations for CCPs. Where these are formally reviewed by the CCP's regulator, these would seem to be an appropriate alternative and would therefore *prima facie* support that regime's equivalence.

3 Practical issues in assessing overall sufficient equivalence should a regime appear stronger in some respects (eg, a more intensive oversight process), but weaker in others (eg, a less formal assessment process, lack of legislative backing in enforcement, or more general principles/standards).

2.6 As noted in our prior submission, we agree that there are practical issues in assessing different principles-based regimes. We therefore encourage the RBA to err on the side of caution if there is any material weakness in any respect by: either, utilising a two stage process whereby the regime is deemed sufficiently equivalent for some measures of the Standard but other measures are subject to direct oversight by the RBA; or, ultimately, concluding that the regime is not sufficiently equivalent.

2.7 In coming to this conclusion, ACH and SFECC are of the view that where sufficient equivalence is not established, any regulatory burden relating to the alternative (the assessment of an overseas CCPs against the Standard in full or in part) is likely to be insignificant relative to any systemic risk concerns.

4 Practical issues in carrying out the outcomes test to gauge the sufficient equivalence of outcomes.

2.8 We agree that there are practical issues in assessing the sufficient equivalence of different outcomes. Nonetheless, ACH and SFECC fully support the proposed outcomes test. Our only comments would be that:

- The initial assessment by the RBA of the CS facility licence applicant against the measures underpinning the Standard should be made public, so that the systemic risk associated with the CCP applicant is transparent to users at that time and on an equivalent basis to domestic CCPs.

- The assessment of other CS facilities operating under the same overseas regime – which we agree is important – should make use of any information available from the overseas regulator(s) as well as publicly available information.

3. Other comment

3.1 ACH and SFECC continue to be of the view – notwithstanding potential sensitivities with overseas regulators – that the RBA's analysis of a regime's equivalence should be made public, in part so that the analysis of the legal and regulatory framework of the foreign jurisdiction is transparent to users. We believe that this, as with our previous points regarding transparency, is aligned with Principle 6 of RG54.

3.2 Finally, I should like to take advantage of your kind offer of the opportunity to discuss our views on this topic with you and look forward to meeting with you to do so.

Yours sincerely,

Anne T. Brown
Chief Risk Officer