CME Group

February 9, 2024

VIA ELECTRONIC SUBMISSION

Treasury
Langton Cres
Parkes ACT 2600
FMIConsultation@treasury.gov.au

Re: Financial market infrastructure regulatory reforms

To Whom It May Concern:

CME Group Inc. ("CME Group")[1] appreciates the opportunity to comment on the Australian Department of the Treasury's ("Treasury") consultation on the draft legislation ("Draft Legislation") and accompanying explanatory materials ("Explanatory Materials") regarding the financial market infrastructure regulatory reforms.[2]

Chicago Mercantile Exchange Inc. ("CME") is a wholly-owned subsidiary of CME Group. CME is registered with the Commodity Futures Trading Commission ("CFTC") as a derivatives clearing organization ("DCO") ("CME Clearing" or the "Clearing House"). CME Clearing offers clearing and settlement services for listed futures and options on futures contracts, including those listed on CME Group's CFTC-registered designated contract markets ("DCMs"), and cleared swaps derivatives transactions, including interest rate swaps ("IRS") products. These DCMs are CME, Board of Trade of the City of Chicago, Inc. ("CBOT"), New York Mercantile Exchange, Inc. ("NYMEX"), and the Commodity Exchange, Inc. ("COMEX") (collectively, the "CME Group Exchanges"). On July 18, 2012, the Financial Stability Oversight Council designated CME as a systemically important financial market utility ("SIFMU") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As a SIFMU, CME is also a systemically important DCO ("SIDCO").

CME Group also owns non-Australian subsidiaries which are regulated in the U.S., by the CFTC and the Securities Exchange Commission; in the United Kingdom, by the UK Financial Conduct Authority; and in the Netherlands, by the Netherlands Authority for the Financial Markets, amongst others, to operate financial markets for OTC cash financial products. Some of these entities and the DCMs each have Australian Market Licenses in relation to the financial markets they operate and CME has a Clearing and Settlement ("CS") Facility Licenses in relation to certain of its clearing services.

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[1] As a leading and diverse derivatives marketplace, CME Group enables clients to trade in futures, cash and over-the-counter markets, optimize portfolios, and analyze data – empowering market participants worldwide to efficiently manage risk and capture opportunities. CME Group's exchanges offer the widest range of global benchmark products across all major asset classes based on interest rates, equity indexes, foreign exchange, energy, agricultural products, and metals. CME Group offers futures trading through the CME Globex platform, fixed income trading via BrokerTec, foreign exchange trading on the EBS platform.

[2] Australian Department of the Treasury, Consultation, Draft legislation and accompanying explanatory material regarding the financial market infrastructure regulatory reforms [hereafter, "*Draft Legislation*" and "*Explanatory Materials*", respectively] (Dec. 2023), *available at* https://treasury.gov.au/consultation/c2023-475211.

CME Group

I. INTRODUCTION

CME Group acknowledges that the Draft Legislation aims to implement the recommendations made by the Council of Financial Regulators ("CFR") in 2020, by granting the Reserve Bank of Australia ("RBA") crisis management powers, and by strengthening and streamlining the existing powers of the Australian Securities and Investments Commission ("ASIC") and RBA in relation to financial market infrastructures ("FMIs"). In 2019, CME Group provided comments to the CFR on its consultation on *Financial Market Infrastructure Regulatory Reforms*[3] reaffirming its view on the importance of mutual regulatory deference, consistent with the Group of 20 ("G-20") leaders' commitment in 2013.[4] We reiterate these views in our letter today.

II. GENERAL COMMENTS

A. Mutual deference is important for effective cross-border operations and CME Group welcomes the recognition of the primacy of the home jurisdictions crisis management powers but urges the Treasury to explicitly exclude overseas CS facilities from crisis management powers.

Mutual deference is a core tenet for well-functioning cross-border FMI regulatory regimes. A lack of mutual deference can result in uncertainty and conflicting requirements applicable to a single FMI, particularly troubling during a crisis management event. In contrast, mutual deference supports robust markets by deepening liquidity, encouraging efficient price discovery, and reducing market fragmentation, all to the benefit of financial stability.

Mutual deference is a long established and recognized principle in the U.S.[5] where, for example, the CFTC has long permitted offshore markets and clearing houses to offer U.S. futures participants access to their local futures markets without being subject to direct CFTC supervision or oversight. Mutual deference is also at the cornerstone of international standard setting bodies principles. In September 2013, G-20 leaders affirmed 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."[6]

CME Group has long supported and advocated for mutual deference[7] and appreciates that the Explanatory Materials outline that the intention is to apply mutual deference with respect to crisis management powers

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[3] CME Group, Letter to the Council of Financial Regulators on the consultation Financial Market Infrastructure Regulatory Reforms [hereafter, "2019 CFR Comment Letter"] (Dec. 2019), *available at* https://www.cfr.gov.au/publications/consultations/2019/consultation-on-financial-market-infrastructure-regulatory-reforms/submissions/cme-group.pdf.

[4] Group of 20 Leaders' Declaration, Saint Petersburg Summit at pg. 17 (Sept. 2013), *available at* https://www.fsb.org/wp-content/uploads/g20_leaders_declaration_saint_petersburg_2013.pdf.

[5] *See* 2019 CFTC Comment Letter at pg. 1.

[6] Group of 20 Leaders' Declaration, Saint Petersburg Summit at pg. 17 (Sept. 2013), *available at* https://www.fsb.org/wp-content/uploads/g20_leaders_declaration_saint_petersburg_2013.pdf

[7] *See* 2019 CFR Comment Letter at pg. 4.

for overseas CS facilities.[8] In particular, we appreciate that under Subsection 848A of the Draft Legislation, the RBA's proposed crisis management powers with respect to overseas CS facilities are limited to recognizing requests from a given overseas CS facility's primary regulator for support.[9] However, it is not clear throughout the Draft Legislation that mutual deference has been applied with respect to the proposed crisis regime for overseas CS facilities. In particular, the proposed crisis resolution powers in Part 7.3B of the Draft Legislation are expressed as broadly applying to a "CS facility licensee" without distinction between a domestic and overseas licensee, except in the case of Subsection 848A.[10] We assume this was not the intent and thus recommend that the Draft Legislation be amended to explicitly exclude overseas CS facility licensees from the application of the crisis regime powers intended for Australian CS facility licensees (i.e., Divisions 2 through 8 of the Draft Legislation). We believe it critical that deference is clearly given effect in the Draft Legislation to allow crisis events to be managed effectively and with certainty.

B. The determination of a materiality connection for an overseas CS facility and overseas financial market should be based on quantitative thresholds that make clear a direct nexus to Australia and that given entity's services are fundamental to the stability of the broader Australian financial system

Consistent with CME Group's prior comments, the rules should provide adequate certainty regarding the circumstances in which overseas CS facilities and overseas financial markets may be required to obtain a license outside of their home country.[11] Further, where the requirement to license an overseas CS facility or overseas financial market is triggered, deference to the licensee's primary home country authority must be prioritized.

The Draft Legislation would be enhanced if it provided clarity regarding the circumstances for determining whether an overseas CS facility and overseas financial market falls within the Australian regulatory regime and thus, is required to be licensed.[12] The Draft Legislation proposes a two-step process to determine whether an overseas CS facility or overseas financial market first has a connection with Australia and second whether that connection is material. While CME Group acknowledges that the Draft Legislation defines elements to assess in determining a potential licensee's nexus to Australia, it fails to provide clear quantitative standards to determine the materiality of these elements. For example, ASIC

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[8] *Explanatory Materials* at pg. 15 (noting, "1.70 The crisis regime is intended to operate differently for overseas CS facility licensees compared to domestic CS facility licenses. The distinction aligns with the framework under Part 7.3 of the Act that stipulates overseas CS facility licensees are primarily regulated by the overseas regulator. Consistent with this approach, the home regulator will primarily be responsible for resolving a distressed body corporate where the RBA supports the home regulators' actions when requested.").

[9] *Draft Legislation* at Schedule 1, item 14, subsection 848A(2).

[10] *See, e.g., Draft Legislation* at Schedule 1, item 14, subsections 831A on crisis resolution conditions, subsection 832A on statutory manager appointment, 837A on compulsory transfer of shares, 837B on compulsory transfer of business, 844A on direction to manage or respond to crisis, 846A on funding for crisis resolution, and 849A relative to RBA application to court to wind up licensee, and Schedule 1, item 30, subsection 827DA on determining resolvability standard.

[11] *See* 2019 CFR Comment Letter.

[12] *Draft Legislation* at Schedule 2, item 140, subsections 820D and 820E and Schedule 2, item 139, subsections 791D and 791E.

should consider whether the clearing services provided by the overseas CS facility for products denominated in Australian Dollar is material to the local financial markets based on a clear quantitative standard. CME Group recommends that the conditions for requiring an overseas CS facility or overseas financial market to be licensed apply clear quantitative standards that establish a direct and material nexus to Australia (i.e., in the case of overseas CS facility, clearing services provided directly for Australian-based market participants and/or Australian-denominated financial products) as a threshold for licensing.

III. CONCLUSION

CME Group respectfully reiterates the importance of mutual deference with respect to CS facility licensees and financial market licensees providing services on a cross-border basis. CME Group thanks the Treasury for the opportunity to comment on this matter. If you have any comments or questions, please feel free to contact Emily Hendrix at Emily.Hendrix@cmegroup.com and/or Joe Condina at Joe.Condina@cmegroup.com.

Sincerely,

DocuSigned by:
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Tim Elliott
Managing Director,
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