24 January 2022

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Dear Adriana

ASIC Consultation Paper 353: Proposed Amendments to the
***ASIC Derivative Transaction Rules (Clearing) 2015* (CP 353)**

The Australian Financial Markets Association (AFMA) and the International Swaps and Derivatives Association (ISDA) (the Associations) welcome the opportunity to respond to CP 353.

Our members are broadly supportive of ASIC's proposals, as outlined in paragraph 30 of CP 353, to adapt the *ASIC Derivative Transaction Rules (Clearing) 2015* (Clearing Rules) in the context of the ongoing interest rate benchmark reforms, and acknowledge the benefits of central clearing, as demonstrated by the current clearing rates for swaps new referencing risk-free rates (RFRs) as well as recent proposals for, and implementations of, similar clearing obligations for RFR swaps in other jurisdictions.

We also welcome ASIC's statement that it continues to monitor international regulatory developments to maintain, as far as possible, overall consistency with the approach taken by home regulators for each currency and, more broadly, international alignment. CP 353's proposed changes and the Australian central clearing framework more generally have an international dimension due to the inclusion of foreign currencies and benchmarks, and it is therefore critical that there is international convergence where appropriate, in order to prevent disruption to cross-border derivative markets and to avoid an unlevel playing field.

The Associations also take this opportunity to highlight three substantive points for consideration in the context of CP 353, as detailed below.

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International Alignment

The Associations note that CP 353's proposal in the context of the Euro Short-Term Rate (€STR) is to require clearing of overnight index swaps (OIS) referencing this benchmark with a termination date range of between 7 days and 2 years. This is slightly different to the maturity range of 7 days to 3 years set out in the Final Report on Draft RTS on the Clearing and Derivative Trading Obligations in View of the Benchmark Transition to Risk Free Rates[1], as published by the European Securities and Markets Authority (ESMA) on 18 November 2021. The Associations further note that in September 2021, the Bank of England published a policy statement [2] confirming the same maturity date range as ESMA for €STR OIS.

The Associations encourage ASIC to give further consideration to the potential benefits of aligning its proposed termination date ranges for OIS referencing new RFRs with those of the home jurisdictions (and other relevant jurisdictions) of the underlying RFRs. Doing so would result in a more simple and efficient clearing regime in terms of monitoring and compliance, particularly given the fact that most entities subject to the Australian clearing regime will also have mandatory clearing obligations in those home jurisdictions. Alternately, if ASIC chooses to remain with a maximum termination date of 2 years for ESTR OIS under the Australian mandatory clearing regime, members would benefit from understanding ASIC's rationale for doing so.

Implementation Timing

CP 353 does not explicitly set out ASIC's intended timing for implementing the proposed changes to the Clearing Rules. The Associations have discussed this issue with their members, and would suggest that ASIC consider an implementation period of a minimum of 3 months, with the effect that market participants are only required to comply with any new clearing obligations for transactions executed from the end of this period. The Associations also strongly support ASIC's "fast follower" approach. We however propose that ASIC does not enforce a clearing obligation for a RFR earlier than the home jurisdiction, especially for €STR and the Secured Overnight Funding Rate (SOFR) in the US.

There a number of practical steps which members need to undertake in preparation for these new requirements, some of which can only be added to books of work or completed once the updated Clearing Rules are available, including:

- counterparty communications;
- updates and amendments to internal systems and controls to ensure that all transactions that fall under the new clearing obligation will be cleared;
- changes to and testing of other internal systems (such as those for pricing, reporting and margining);
- adapting middleware, which may include liaising with external suppliers which might impose their own notice periods;
- coordination with relevant clearinghouses and trading venues; and
- internal compliance steps (including staff training and updating relevant policies and procedures).

The Associations note that there is already an indisputable international market trend to clear new RFR-linked products (even without a clearing mandate enforcement in some jurisdictions), and therefore do not consider that an implementation period for the new clearing obligations would have any negative impacts on financial stability or the success of benchmark transition efforts.

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[1] https://www.esma.europa.eu/sites/default/files/library/esma70-156-4953_final_report_on_the_co_and_dto_re_benchmark_transition.pdf

[2] Derivatives clearing obligation – modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205 | Bank of England

Transactions Resulting From Post-Trade Risk Reduction (PTRR) Exercises

We also consider that transactions stemming from PTRR exercises, which are a key tool in managing LIBOR transition and risk in uncleared portfolios, should be exempt from the Clearing Rules, to enable market participants to manage the risk in their uncleared portfolios.

PTRR exercises include processes such as multilateral risk rebalancing cycles, which reduce uncleared counterparty credit risk and/or shift existing risk from the uncleared space to clearinghouses. With the extension of the clearing obligations to RFR swaps, such risk management practices, currently undertaken by many large dealer banks, could be impaired, as overnight indexed swaps as a tradeable instrument for both cleared and uncleared interest rate risk would no longer be available. Reducing risk in uncleared portfolios is very beneficial in volatile markets, such as those experienced in March 2020. Large market moves will cause large liquidity requirements for market participants if they are not able to manage the risk in their bilateral portfolios.

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The Associations thank ASIC for its consideration of these points. Should you wish to discuss these matters further, please do not hesitate to contact Rishi Kapoor at AFMA (rkapoor@afma.com.au, +612 9776 7917) or Ulrich Karl (UKarl@isda.org, +44(0)20 3808 9720) and Jing Gu (JGu@isda.org, +65 6653 4173) at ISDA.

Yours sincerely

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