LCH The Markets' Partner

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Dear Ashley,

Consultation Document: Crisis Management Powers for Systemically Important Financial Market Infrastructures

This letter provides the submission of LCH.Clearnet Limited ("LCH") to the Reserve Bank of New Zealand ("RBNZ") on the consultation document on Crisis Management Powers For Systemically Important Financial Market Infrastructures.

LCH is a leading multi-asset class and international clearing house, which services major international exchanges and platforms, as well as a range of OTC markets. It clears a broad range of asset classes including cash equities, exchange traded derivatives, commodities, energy, freight, interest rate swaps, credit default swaps, bonds, repos, and foreign exchange derivatives. LCH is majority owned by the London Stock Exchange Group ("LSEG"), a diversified international exchange group that sits at the heart of the world's financial community.

LCH is a recognised clearing house in the United Kingdom and authorised as a central counterparty ("CCP") to offer services and activities in the European Union in accordance with the European Markets Infrastructure Regulation ("EMIR"). LCH's home regulator is the Bank of England. LCH is also regulated in the US, Australia, Quebec, Ontario, Norway, Singapore and Japan, and have applied for recognition or licensing in a number of other jurisdictions.

The RBNZ, in its recent consultation on oversight of designated financial market infrastructures dated April 2015, indicated that LCH might be of systemic importance to New Zealand, noting that the largest four New Zealand banks are clearing substantial and increasing amount of their trades in New Zealand dollar-denominated interest rate swaps through LCH's SwapClear service. This is likely to mean that LCH will need to be designated under the proposed enhanced designation regime.

As a multi-asset class and international clearing house, LCH has an interest in the policy frameworks for CCP business continuity, recovery, and resolution that exist or are under development. We welcome the RBNZ's consultation on crisis management for FMIs and have provided responses below to those questions most relevant to our business.

Q1. Do you agree with our general approach to the design of a crisis management framework for FMIs? Are there other matters we should be considering?

We agree with the general approach described, and its alignment with the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions. We strongly support alignment with key international standards across jurisdictions. We have not identified additional matters that should be considered.

Q2. Do you agree with the proposed objectives of the crisis management framework? Are there other objectives we should be considering?

We agree with the proposed objectives, and have not identified additional objectives that should be considered.

Q3. Do you agree with the proposed two tier approach to the crisis management framework? If this approach is adopted are there detailed aspects of the framework you would change?

We agree with the proposed two tier approach and we fully support the RBNZ's view that this framework should apply differently to FMIs based on their level of New Zealand presence. Please refer to our comments under question 6 in relation to this point.

Q4. If the proposed framework is adopted, do you agree with our description of how it should apply in different crisis situations?

We would suggest clarifications in relation to a foreign FMI, which typically will be subject primarily, or exclusively, to the crisis management framework established in its home jurisdiction. In the event of a failure of a participant with a significant connection to New Zealand, or of the FMI itself, there should be agreed ex ante crisis management arrangements in place between the RBNZ and the FMI's home regulator and/or resolution authority – and potentially other foreign authorities – in order to take due account of the potential impact in New Zealand.

Q5. If the proposed framework is adopted, do you agree with our description of how it should apply to FMIs with these two basic types of legal form?

We do not comment on this question.

Q6. If the proposed framework is adopted, do you agree with our description of how it should apply to FMIs with different levels of New Zealand presence?

We strongly support that the proposed framework apply differently to FMIs based on their level of New Zealand presence, noting the three levels of presence identified in the consultation paper as an FMI and its operator: (1) based in New Zealand; (2) have a presence in New Zealand and one or more other jurisdictions; and (3) have no New Zealand presence. As stated above in question 4, we strongly support agreed ex ante crisis management in place between the RBNZ and a foreign FMI's home regulator and/or resolution authority.

What constitutes a presence in New Zealand

While we note that the consultation document provides some examples of when an FMI operator would have a corporate presence in New Zealand (e.g. company registration, physical infrastructure, assets and staff), we strongly suggest that the legislation more specifically define what would constitute an FMI operator having a "New Zealand presence". Our view is that the fact alone that a FMI is considered to be systemically important to New Zealand and therefore, a designated FMI, should not automatically constitute such a presence in New Zealand.

We also suggest that the RBNZ clearly communicate with the specific FMIs that they consider to fall into each of the categories. This would provide FMIs and the market with a greater level of certainty of their obligations as well as what to expect in a resolution scenario. It is important that this is all made clear well ahead of a crisis situation.

Specific requirements

We support the general requirements for FMIs to have a business continuity plan, and recovery and orderly wind down plan, and in particular that the required contents of these plans closely align with the approach taken in the FMI's home jurisdiction. We provide further comment on this below in question 9. We note that LCH is subject to such requirements under EMIR and the Financial Services and Markets Act 2000 (Recognition Requirements) Regulations 2001 ("Recognition Requirements").

For any foreign FMI, we strongly support that any power of the RBNZ to issue directions to the operator of the FMI be exercised only after consideration of how the FMI operator is regulated in its home jurisdiction, and also after consultation with the FMI's home regulator. We consider that in the event of a resolution of a foreign FMI, it is appropriate that the RBNZ focus on supporting the resolution of the FMI by the home country regulator.

Q7. Are there potentially "associated entities" of FMIs that are not operators or critical service providers, but are nonetheless essential to the operation of an FMI and its ability to provide essential services?

We do not comment on this question.

Q8. Do you agree with the proposed power to require operators to ensure that their FMIs have business continuity plans, and recovery and orderly wind down plans?

As stated above in question 6, we support the requirements for FMIs to have a business continuity plan, and recovery and orderly wind down plans, and in particular that the required contents of these plans closely align with the approach taken in the FMI's home jurisdiction. We note that LCH is subject to such requirements under EMIR and Recognition Requirements.

Q9. Do you agree with our proposed lists of matters that must be included in business continuity plans, and recovery and orderly wind down plans? Are there matters that you would add to, or remove from, these lists?

For foreign FMIs, we support that the required contents of these plans closely align with the approach taken in the FMI's home jurisdiction and also that the responsibility of their review of adequacy lie

primarily with the FMI's home regulator and/or resolution authority as the authority most familiar with the day-to-day operations of the FMI.

At a minimum, we suggest that the proposed list of matters be provided as guidance rather than strict requirements to provide flexibility for the New Zealand regulators to consider whether the plans of foreign FMIs align with the FMI's home jurisdiction requirements. As applicable to LCH, we note that the requirements under EMIR and the Recognition Requirements differ slightly from the proposed list of matters to be included in the recovery and orderly wind down plans.

We would also like to mention the ongoing international workstreams led by CPMI, IOSCO and the FSB to define recovery and resolution frameworks for CCPs. We would recommend that the New Zealand regulators take into account the outcome of these international workstreams, expected by the end of 2016, when considering recovery and orderly wind down plans for FMIs. Indeed, a harmonised approach between regulators is essential to ensuring the markets continue to operate efficiently, and avoiding potential regulatory arbitrage.

Q10. Do you agree with the proposed role of joint regulators in assessing business continuity plans, and recovery and orderly wind down plans? If not, what role (if any) do you consider joint regulators should have in assessing these plans?

In respect of FMIs that are not incorporated in New Zealand, and therefore subject to regulatory requirements in its home jurisdiction and possibly others as well, while we consider it appropriate that the joint regulators would require operators to provide their business continuity plans and recovery and orderly wind down plans, we encourage the New Zealand regulators to place greater focus on having cooperative oversight arrangements with the foreign FMI's home regulator and to place greater reliance on that home regulator, provided that the FMI is based in a jurisdiction assessed to be equivalent to New Zealand.

At a minimum, we strongly suggest that the New Zealand regulators take into consideration any equivalent planning requirements in an FMI's home jurisdiction and to communicate directly with a foreign FMI's home regulator before directing that FMI to change these plans. This would minimise the risk of a situation where the New Zealand regulators required a foreign FMI to make certain changes to these plans that conflicted with the requirements of an FMI's home regulator.

Q11. Do you agree with the proposed direction power and its scope? Are there any changes you consider should be made to this power?

We do not comment on this question.

Q12. Do you agree with the proposed power to appoint or remove directors? Are there any changes you consider should be made to this power?

We do not comment on this question.

Q13. Do you think joint regulators should have a power to direct participants in a limited range of circumstances? If so, do you agree with our description of how this power could be framed, and in what circumstances do you consider it could be used?

We do not comment on this question.

Q14. Do you agree with our description of how statutory management could be applied to an FMI or its operator? If not, how do you consider that it could be applied to an FMI and its operator?

We do not comment on this question.

Q15. How practical would it be to sever the FMI business of the operator from the rest of the operators business? What costs might be involved in pre-positioning the ability to do this?

We do not comment on this question.

Q16. Do you agree with our proposed trigger for when joint regulators could recommend statutory management? If not, what changes would you make to this trigger?

We do not comment on this question.

Q17. Do you agree with the proposed objectives and considerations that would influence the exercise of powers in a statutory management by the statutory manager and joint regulators? Are there any changes you consider should be made to these objectives and considerations?

We do not comment on this question.

Q18. Do you agree with the core powers of the statutory manager that are being proposed? Are there any changes you consider should be made to these powers?

We do not comment on this question.

Q19. Do you agree with the proposed moratorium and the resolution powers? Are there any changes you consider should be made to these?

We do not comment on this question.

Q20. Do you agree with our proposals relating to miscellaneous matters connected to the proposed statutory management regime? Are there any changes you consider should be made to these proposals?

We do not comment on this question.

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We hope that RBNZ finds this submission useful and we look forward to engaging further as policies are developed. Should you have any questions on the response or wish to discuss it in detail, please do not hesitate to contact me at Corentine.Poilvet-Clediere@lch.com or my colleagues Juliet Lee (Juliet.Lee@lch.com), Natalie Caldwell (Natalie.Caldwell@lch.com) or Jean-Philippe Collin (Jean-Philippe.Collin@lch.com).

Yours sincerely,

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