CB(1)24/13-14(03)

On behalf of CME Group, I would like to thank the Bills Committee on the Securities and Futures (Amendment) Bill for the opportunity to speak.

1. TODAY'S FOCUS

CME Group would like to take the opportunity today to speak about 2 matters, the first being the absence of transitional and equivalency provisions in respect of the new ATS authorization requirements and the new mandatory clearing and trading requirements. I will speak more about this in a moment but CME Group is concerned that as presently drafted, the Bill may have a chilling effect on the availability of risk management tools in Hong Kong.

The second matter the CME Group would like to speak about is the statutory insolvency protection provisions.

2. STATUTORY INSOLVENCY

Statutory insolvency protection is important both to users and operators of clearing systems because it provides simple certainty. In the absence of such protection, operators and users of clearing systems must rely upon a complex and evolving set of common law principles.

The Bill recognizes the need for simple certainty and extends statutory insolvency protection to certain clearing systems for OTC derivatives. However, it extends statutory insolvency protection only to a subset of clearing systems. Clearing systems in the form of ATS must be designated and specified by the SFC to benefit from this protection.

All clearing systems pose systemic risks and should benefit from statutory insolvency protection, even if they are not designated by the SFC as a CCP and even if they have not been specified by the SFC as a designated CCP entitled to such protection.

3. TRANSITIONAL AND EQUIVALENCY PROVISIONS

I turn then to the absence of transitional and equivalency provisions. When the Bill comes into operation, no one will be authorized to provide electronic trading and clearing services in respect of OTC derivatives. Similarly, after the Bill comes into operation, no one will be designated to clear or trade classes of derivatives which, over time, may become subject to mandatory clearing or trading obligations.

The absence of transitional provisions means that no one can safely offer trading and clearing services in Hong Kong in respect of OTC derivatives. Anyone who carries on a business of offering such a service locally in Hong Kong runs the risk that that business will come to an end abruptly because the service in question is not authorized or designated at the time the authorization requirement or a mandatory obligation comes into operation. This is a real deterrent to offering such services locally in Hong Kong.

Separately, the Bill contains no provisions by which credible operators of trading and clearing systems outside of Hong Kong may be authorized as ATS or designated as CCPs in Hong Kong on a fast track basis. Such recognition is important because OTC derivatives trading occurs on a global cross-border basis.

First, it is not desirable for traders of OTC derivatives to work with entirely different trading and clearing systems in each jurisdiction. Subjecting operators of trading and clearing systems to requirements in Hong Kong different than those imposed internationally discourages those operators from making their systems available in Hong Kong and discourages the use of Hong Kong as a trading and clearing centre.

Secondly, fast track authorization and designation will likely increase the number of trading and clearing systems available in Hong Kong. This in turn will mean more options for risk reduction at a lower cost, particularly for local Hong Kong financial intermediaries.

Thirdly, fast track authorization and designation will reduce conflicts between requirements of different jurisdictions. Many of the organizations which have made submissions have already alluded to the risk of conflicting mandatory clearing and trading obligations in different jurisdictions. Fast track authorization and designation will likely increase the number of global systems available to meet these mandatory obligations. This, in turn, will decrease the risk that traders will be unable to meet mandatory obligations because these obligations require clearing or trading through different systems in different jurisdictions.

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