

Ms. Sarah Proudfoot  
Acting Chief Executive Officer  
Australian Energy Regulator

By email: RRO@aer.gov.au

Dear Ms Groves,

### **For consultation - Draft Interim Market Liquidity Obligation Guideline**

#### **FEX Global Pty Ltd (FEX Global) - Submissions**

FEX Global has the following comments in response to the Draft Interim Market Liquidity Obligation Guideline - Retailer Reliability Obligation Draft Rules Consultation April 2019 (Consultation).

In the following response, FEX Global makes reference to its previous submission dated 5 April 2019 in relation to the Retailer Reliability Obligation Draft Rules Consultation (Submission).

#### **Response**

##### **1. 4.1 MLO Products**

- A. FEX Global refers to the Submission on Rule 4A.G.22 which references the fact that all financial products are registered and approved with and by ASIC as the corporate and market regulator. FEX Global submitted that most if not all MLO Products will be financial products pursuant to the Act. FEX Global's ASIC-approved financial products are similarly compliant MLO Products.

FEX Global refers to the MLO products specified in the Interim Guideline:

- ASX Baseload futures;
- ASX Peak load futures; and
- ASX \$300 caps.

FEX Global similarly has financial products approved by ASIC which equally qualify as MLO products pursuant to Rule 4A.G.22. They are:

- FEX Base Load Power Quarterly futures
- FEX Peak Load Power Quarterly futures
- FEX \$300 Strike Cap Power Quarterly futures

FEX Global submits that these ASIC-approved financial products should be similarly specified in the Interim Guideline as MLO products.

##### **2. 4.2 The MLO exchange**

- A. FEX Global refers to the Submission on designated MLO exchange:

"FEX Global notes that clause 11.115.14 Designated MLO exchange provides that the ASX24 will be taken to be a MLO exchange from the commencement date.

FEX Global submits that FEX Global similarly should be accorded the same status as a designated MLO exchange deemed as such from the commencement date. FEX Global holds an AML to operate a futures exchange and has electricity derivatives financial products approved for trading on its exchange platform. FEX Power products are aligned with MLO products.

FEX Global submits that deeming ASX24 as the only designated MLO exchange is anti-competitive and contrary to the Australian National Competition Policy and COAG's implementation of the Competition and Infrastructure Reform Agreement.

FEX Global submits that clause 11.115.14 Designated MLO exchange be re-drafted as follows:

“Market operators and/or trading facilities who hold a current Australian Market Licence issued pursuant to the *Corporations Act* 2001 as at the commencement date will be taken to be a MLO exchange from the commencement date, unless and until the AER determines that it no longer satisfies the criteria set out in rule 4A.G.23.”

The proposed amendment to clause 11.115.14 will also necessitate an amendment to clause 11.115.1 by omitting the now redundant definition of “ASX24”.

FEX Global refers to the statement at 4.2: “The transitional Rules provide for the ASX24 to be designated as a *MLO exchange* from the commencement date unless the AER determines otherwise (11.115.14). To avoid any confusion, the ASX24 will be the *MLO exchange* when the RRO Rules commence.” and repeats the submission above.

FEX Global submits that the AER should similarly designate FEX Global Pty Ltd (AML holder) to be a *MLO exchange* when the RRO commences.

#### B. 4.2.1 Approval of MLO exchanges

FEX Global refers the AER also to the Submission:

“The Act provides a comprehensive process for the granting of AMLs and also the products that are permitted to be traded on such exchanges. In addition, the requirements of Chapter 7 of the Act also provide a rigid regime for compliance to foster efficient, fair and transparent markets, including annual regulatory reporting and constant monitoring by ASIC. Accordingly, an entity that is able to “facilitate the trading of MLO products” must, by its very nature, be an AML holder with financial product approvals that also match MLO products.

FEX Global wishes to make the following comments in response to the criteria:

- (a) FEX Global submits that the criteria can be simplified to avoid duplication with other regulations and regulators' guidelines. FEX Global refers to the Corporations Act 2001 and ASIC as the corporate and market regulator. The Act provides for the granting of AML to qualified applicants. The list of criteria to be satisfied in order to be granted an AML is stringent and includes some of the criteria listed in clause 4A.G.23(d), eg, criterion (4) that “the trading facility has appropriate credit and prudential arrangements”. FEX submits that this criterion (4) can be more specific to the Australian regulatory framework, which in turn will simplify AER's oversight obligations.
- (b) Clearing of futures and derivatives markets is an important aspect of financial markets to protect against systematic risk. Both approved electricity derivatives AML holders have as a requirement in their AML conditions that clearing and settlement arrangements may only be provided by a CS facility licensee as defined by section 761A of the Corporations Act 2001. FEX Global proposes a draft criterion, see below, which specifically addresses this important requirement.
- (c) Draft criteria 4A.G.23(d)(2), (5) and (6) on “volume of trading and diversity of participants”, “the costs and ease of trading”, and the “reasonable expectation that the relevant MLO products will be traded” are the subject of, and subject to, market forces, and irrelevant to the fitness of the trading facility to conduct trading of MLO products. Such restrictions may also have wider competition implications as they may conceivably restrict the ability of trading organisations to independently select where they wish to trade. FEX Global submits that draft criteria (2), (5) and (6) unnecessarily brings into play issues and scenarios that may have wider competition implications and potentially do not promote an efficient, fair and transparent market place for MLO products.

(d) Taking all the above into consideration, FEX Global proposes the following simplified criteria:

“(d) In deciding whether to approve a trading facility, the AER must consider the following criteria:

- a. the trading facility must hold a current Australian Market Licence issued pursuant to the Corporations Act 2001 to operate markets in energy derivatives with clearing and settlement arrangements for transactions effected through the market with a CS facility licensee as defined by section 761A of the Corporations Act 2001;
- b. one or more MLO products can be offered or bid on the trading facility;
- c. the rules of the trading facility include (or will include) appropriate rules to allow MLO generators to perform a liquidity obligation;
- d. the operator of the trading facility can provide relevant trading data to the AER when requested, for the purposes of monitoring compliance with clauses 4A.G4A.G.17-19, 21 Div 8 Liquidity obligation; and
- e. any other relevant criteria set out in the MLO Guidelines.”

#### C. 4.2.1 Approval of MLO exchanges

FEX Global refers to the following statement:

“Where the AER receives an application for a trading facility to be considered a MLO exchange, the AER may prepare a discussion paper and undertake a public consultation process to seek feedback from stakeholders on the above criteria.”

FEX Global submits that it is not appropriate to hold a public consultation on the satisfaction of the criteria for approval as a *MLO exchange*. Rule 4A.G.23 charges the AER with an administrative power to determine an application based on specific criteria, a duty which the AER has to discharge by itself as a statutory body.

FEX Global suggests the following may be substituted as a more suitable process:

“When an application is received, the AER will publish a notice on the website that the application has been received and is being considered as per Rule 4A.G.23(d). The AER may request additional information from the applicant in order to decide on the application.”

### 3. 5 Compliance

FEX Global refers to the Submission on MLO Exchange Obligations and Information Access. FEX Global repeats its submission including the following:

“FEX Global is ready to commit to working with MLO generators and/or their nominees to ensure contractual obligations between FEX Global and MLO generators and/or their nominees provide consent for FEX Global to pass MLO generators and/or their nominees trading data to AER upon request.”

FEX Global similarly seeks clarification from the AER that such steps by FEX Global will satisfy AER as to a trading facility’s ability to satisfy either Rule 4A.G.23(d).

### Conclusion

FEX Global is committed to work with the AER to enhance market liquidity and pricing transparency in retail and wholesale electricity markets. Competition in markets is vital to the success of the Retailer Reliability Obligation framework and recommendations in this submission address national competition matters for the AER to consider in finalising the Interim Market

Liquidity Obligation Guideline that will ensure a fair and open competition among regulated markets, ultimately leading to better outcomes for the industry.

If you have any questions regarding our submission or any issues raised, please do not hesitate to contact us. We look forward to any comments regarding our submission.

Yours sincerely,

A handwritten signature in black ink, appearing to be the name 'Brian Price', written in a cursive style.

Brian Price  
Chairman  
FEX Global Pty Limited