



29 August 2014

Mr Laurence White
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Financial Market Infrastructure
Australian Securities and Investment Commission
GPO Box 9827
Melbourne VIC 3001

Submitted by e-mail: OCTD@asic.gov.au

Dear Mr White

CP 221 - Proposed amendments to Derivative Transaction Rules (Reporting) 2013

Origin Energy (Origin) appreciates the opportunity to provide comments to the Australian Securities and Investment Commission (ASIC) Consultation Paper 221 on proposed amendments to ASIC Derivative Transaction (Reporting) Rules 2013 as part of the broader process on implementing Australia's group-of-twenty (G20) over-the-counter (OTC) derivatives commitments.

Origin considers the ASIC derivative transaction rules should be aligned and consistent with the policy proposals of the Treasury following the process on implementing Australia's G20 derivative commitments and the Australian Energy Market Commission (AEMC) National Electricity Market (NEM) financial market resilience review. Origin considers ASIC has not taken a targeted approach to reporting requirements consistent with the Treasury and AEMC that could increase compliance costs for participants with negligible market benefit.

Origin recommends ASIC adopt a more targeted approach to derivative transactions rules including exempting a mandated reporting requirement for:

- Entities with a gross notional exposure below \$5 billion; and
- Entities that engage in OTC derivative transactions for the purposes of hedging an underlying exposure to a non-systemically important asset, for example, commodities.

These measures are likely to improve the effectiveness of the G20 reforms by having reporting requirements targeted to systemically important entities to the financial system that engage in significant cross-border activity in OTC derivatives.

Defining the problem

Origin currently considers there is a discrepancy between ASIC's proposed rules, Treasury's policy proposals and the AEMC's recommendations on the applicability of the G20 reforms following the review of financial resilience in the NEM. ASIC has recommended amendments to minimise compliance costs and ensure that derivative trade data is comprehensive and complete. Origin supports amendments that seek to minimise compliance costs but consider the approach of ASIC to ensure comprehensive and complete data is obtained could increase compliance costs without any commensurate reduction in systemic risk or market benefit.

Australian regulators have previously found that “with few exceptions, non-dealers’ activity in OTC derivatives is relatively limited and motivated primarily by hedging of underlying cash flows and exposures.”¹ Regulators are unlikely to gain a comprehensive and complete picture of an energy market participants’ position through OTC derivative data as the underlying exposure to, for example, retail load is partially offset through other hedges including generation and exchange traded products.

ASIC, as regulator for Australian Financial Service Licence holders, can achieve the G20 objectives of transparency, financial stability and detecting abuse. ASIC is able to audit participants’ and has subsequently reviewed the risk management practices of electricity participants and concluded the risk management policies and practices appeared appropriate to the nature, size and complexity of the financial services business they operate.² The cost and compliance burden of transaction reporting is clear while the benefit of analysing systemic risks is less clear.

Preferred solution

Treasury has previously indicated it would advise the Government on the appropriateness of imposing mandatory requirements in relation to electricity derivatives³ once the AEMC NEM financial market resilience review was completed. Under section 901B of the Derivatives Transaction Bill, legislated in 2012, ASIC is also able to advise the Industry Minister in relation to a determination that should be made. The Minister is accordingly able to make a determination based on different requirements described by referring to any matter (for example the purpose of the trading activity or exposure thresholds).

To ensure the ASIC derivative transaction rules are consistent with the recommendations of Treasury and the AEMC, Origin considers the following actions appropriate:

- Amend the definition of a reporting entity to focus on large financial entities;
- Amend the transaction requirements under table S1.1 derivative transaction rules such that the proposed Phase 3B is exempt from reporting; and
- Advise the Minister for Industry that where OTC derivative transactions are for non-financial entities with a gross notional exposure of less than \$5 billion and for hedging purposes, they should be exempt from a reporting requirement.

Should you have any questions or wish to discuss this information further, please contact Ashley Kemp on .

Yours sincerely,

Keith Robertson
Manager, Retail and Wholesale Regulatory Policy
Energy Risk Management

¹ The Treasury 2014, ‘Implementation of Australia’s G-20 over-the-counter commitments, Proposals Paper, July 2014. p. 4.

² ASIC 2014, ‘Report 390, Review of electricity derivative market participants’ risk management policies,’ April 2014. p. 4.

³ The Treasury, ‘Implementation of Australia’s G-20 over-the-counter derivatives, Proposals Paper, December 2012. pp. 13-14.