



OTC derivatives reform – trade reporting update

CFR/AFMA periodic meeting



ASIC

Australian Securities &
Investments Commission

**Laurence White and
Ben Cohn-Urbach**

OTC Derivatives Reform Unit
Financial Market Infrastructure

Overview

- CP221 rule amendments
 - Snapshot reporting
 - Tagging requirements
 - New requirements for foreign subsidiaries
 - Delegated reporting
 - Other changes
- Entered into waiver
- Further information



ASIC

Australian Securities &
Investments Commission

CP221 rule amendments

- Consultation Paper 221 *OTC derivatives reform: Proposed amendments to ASIC Derivative Transaction Rules (Reporting) 2013* sought feedback on a set of proposals to amend the ASIC Derivative Transaction Rules (Reporting) 2013.
- We received 16 submissions from firms and trade associations, of which 12 were non-confidential, regarding proposed rule amendments with respect to:
 - incorporating ‘snapshot reporting’ as a permanent reporting option
 - requiring foreign entities that use alternative reporting arrangements to ‘tag’ transactions as being reported under the rules
 - requiring certain foreign subsidiaries of Australian financial entities to report to TRs from 1 October 2015; and
 - introducing a ‘safe harbour’ for delegated reporting designed to improve the functioning of delegated reporting under the rules.



ASIC

Australian Securities &
Investments Commission

Snapshot reporting

- We are amending the rules to allow reporting entities to report their outstanding OTC derivative positions on an end-of-day basis (*snapshot reporting*) should they chose to.
- We consider it important however to retain the ability to require more granular lifecycle reporting for shorter-term trades that are opened and closed within a day, such as contracts for difference (CFDs).
- Therefore ASIC will have the power to determine that a derivative (or class of derivative) is an 'excluded derivative' and must be reported in accordance with lifecycle reporting.
 - At this stage, we are not proposing to require any intraday trades to be reported, but we will keep the matter under review.
 - Any such determination would be published on our website and take effect on the day specified in the determination, but no earlier than 90 days after the determination is published.



ASIC

Australian Securities &
Investments Commission

Delegated reporting



ASIC

Australian Securities &
Investments Commission

- In CP 221, we consulted on amending the delegated reporting provision in the rules to introduce a 'safe harbour' designed to make delegated reporting more attractive to potential users.
- The safe harbour provision will require the delegator to;
 - document the delegation agreement in writing, the content of which is bilaterally negotiated between industry participants;
 - and make regular enquiries reasonably designed to determine whether the delegate is discharging its obligations under the terms of its appointment.
- We have re-drafted the safe harbour provision compared to what we consulted on in CP 221 to remove the requirement for the delegate to take all reasonable steps to ensure the accuracy of the information reported and to remove the prescribed elements of the written delegation agreement.
- We will provide guidance on this in an updated RG 251.
- We would expect that the rules as amended, would be compatible with standard-form delegation agreements such as that developed by ISDA. We believe this approach strikes an appropriate balance in the regulation of the safe harbour option.

‘Tagging’ requirement for foreign entities

- We have amended the Rules to require foreign entities relying on alternative reporting to designate (or 'tag') trades reported to a TR as being able to be reported to ASIC.
- There will be a delay in the implementation of the tagging requirement, from the commencement of the amended rules to 13 April 2015, to allow industry time to adjust their reporting systems to implement tagging.



ASIC

Australian Securities &
Investments Commission

Foreign subsidiaries of Australian financial entities



ASIC

Australian Securities &
Investments Commission

- We consulted on a proposal that from October 2015, certain foreign subsidiaries of Australian financial entities would have to report OTC derivatives to TRs.
- Having considered the matter carefully, we concluded that the Australian regulators do not presently have an overriding need for the data from foreign subsidiaries that cannot be met through other means (e.g. through consolidated reporting or ad-hoc requests for information about exposures of foreign subsidiaries).
- We have therefore decided not to implement the proposal to bring foreign subsidiaries within the Australian reporting regime, at this time.

Other technical changes



ASIC

Australian Securities &
Investments Commission

- Availability of alternative reporting
 - extend the alternative reporting regime to allow for alternative reporting when the foreign reporting entity is required to report to a prescribed trade repository that is not incorporated in the same jurisdiction as the reporting entity
- Definition of 'regulated foreign markets'
 - amendment to the definition to provide certainty in relation to the reporting requirements for major markets in the United States and European Union
- Reporting to a prescribed trade repository
 - requiring reporting entities to report to a prescribed trade repository where no licensed ADTR is available
- Removal of ABNs as counterparty identifiers
 - ABN reference will be substituted with an AVID

Entered into waiver (nexus transactions)



ASIC

Australian Securities &
Investments Commission

- For foreign entities, the trade reporting rules require them to report trades that are booked in or entered into in Australia.
- Entered into has its contract law meaning: ASIC FAQ 4 (now moved to RG 251)
- On 2 February 2015, ASIC granted exemptive relief to foreign reporting entities: see ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015 and Explanatory Statement
- The relief allows foreign reporting entities to apply an alternative test in relation to reportable transactions and reportable positions 'entered into by the reporting entity in this jurisdiction'.
 - This alternative approach is based (in broad terms) upon whether the sales person or the trader concerned was located in Australia
- To gain the benefit of the relief, foreign entities within phase 2 should opt-in to use this alternative test by 25 February, with a requirement that these trades be tagged to start on 25 May.
- Phase 3A and Phase 3B entities may also take advantage of the relief with tagging to start according to the opt-in date they choose.

Phase 3 reporting update



ASIC

Australian Securities &
Investments Commission

Phase	Who covered	Transaction reporting start date	Position reporting start date	Reporting of mark-to-market and barrier information	Reporting of collateral information
1	CFTC registered swap dealers	1 October 2013	1 October 2014	1 October 2014	1 October 2015
2	Other major financial institutions holding \$50b or more gross notional outstanding as at 31 December 2013	1 April 2014 (rates, credit)	1 October 2014 (rates, credit)	1 October 2014 (rates, credit)	1 October 2015 (rates, credit)
		1 October 2014 (other*)	1 April 2015 (other*)	1 April 2015 (other*)	1 October 2015 (other*)
3A	Other financial entities holding \$5b or more gross notional outstanding as at 30 June 2014	13 April 2015 (rates, credit)	19 October 2015 (rates, credit)	2 November 2015 (rates, credit)	2 November 2015 (rates, credit)
		12 October 2015 (other*)	18 April 2016 (other*)	2 May 2016 (other*)	2 May 2016 (other*)
3B	All other financial entities	12 October 2015 (all asset classes)	18 April 2016 (all asset classes)	2 May 2016 (all asset classes)	2 May 2016 (all asset classes)

* equities, FX and commodities, excluding electricity derivatives

Phase 3B – one-sided reporting

- Dec 2014 - Government announced intention to make Phase 3B a one-sided reporting obligation
- ASIC is working with Treasury on the details of the relevant regulations



ASIC

Australian Securities &
Investments Commission

Further information

- Rules, FAQs, Explanatory Statements, Reg. Guide on TRs:
 - www.asic.gov.au > Regulatory resources > Markets tab > OTC derivatives reform
- Queries/comments etc.:
 - OTCD@asic.gov.au



ASIC

Australian Securities &
Investments Commission