



**ASIC**

Australian Securities & Investments Commission

## CONSULTATION PAPER 205

# Derivative transaction reporting

March 2013

### About this paper

This consultation paper seeks feedback on our proposals to implement a derivative transaction reporting regime under Pt 7.5A of the *Corporations Act 2001* (Corporations Act).

The draft ASIC Derivative Transaction Rules (Reporting) 2013 (derivative transaction rules (reporting)) attached to this paper set out our proposed requirements for the reporting of over-the-counter (OTC) derivative transactions to licensed derivative trade repositories or prescribed derivative trade repositories, including the details of transactions that will need to be reported.

Note: This paper should be read in conjunction with Consultation Paper 201 *Derivative trade repositories* (CP 201), which sets out our proposed requirements for Australian derivative trade repository (ADTR) licensees, and our approach to granting ADTR licences and our guidance on the draft ASIC Derivative Trade Repository Rules 2013 (derivative trade repository rules).

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 28 March 2013 and is based on the Corporations Act as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

This paper outlines our intended approach to the reporting of derivative transactions to trade repositories.

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy, as well as the derivative transaction rules (reporting) attached to this paper.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information, and identification of impacts. Please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing. We also seek information about the costs of not implementing the proposals (particularly in terms of market integrity or investor confidence). Please also provide feedback on any other issues you consider important.

In considering whether to make derivative transaction rules, we must have regard to the matters set out in s901H of the Corporations Act, including:

- the likely effect on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system; and
- the likely regulatory impact of the proposed rules.

We must also, under s901J, consult with the public about the proposed rules.

### Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential. Comments should be sent by 1 May 2013 to:

Senior Manager, Post-trading and OTC Derivatives  
Financial Market Infrastructure  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000  
email: [OTCD@asic.gov.au](mailto:OTCD@asic.gov.au)  
queries: Benjamin Cohn-Urbach 02 9911 2029

## What will happen next?

<b>Stage 1</b>	28 March 2013	ASIC consultation paper and draft derivative transaction rules (reporting) released
<b>Stage 2</b>	1 May 2013	Comments due on the consultation paper
<b>Stage 3</b>	July 2013	Final derivative transaction rules (reporting) made

## A Background to this consultation paper

### Key points

As a result of the global financial crisis in 2008, the Leaders of the Group of Twenty (G20) nations made a number of commitments to substantial reforms to over-the-counter (OTC) derivatives market practices in September 2009. These commitments included that all OTC derivative transactions should be reported to derivative trade repositories (trade repositories). These reforms are expected to improve transparency, mitigate systemic risk and protect against market abuse in the OTC derivatives markets.<sup>1</sup>

On 3 January 2013, legislation became effective that inserted a new Pt 7.5A in the *Corporations Act 2001* (Corporations Act) and provided a legislative framework to implement these G20 commitments in Australia.<sup>2</sup>

Part 7.5A of the Corporations Act did not impose any OTC derivative transaction reporting obligations. Rather, it created a mechanism by which such obligations may be implemented by supporting regulations and rules. Under the Corporations Act, ASIC may issue derivative transaction rules to establish a mandatory reporting obligation for participants transacting in a class of derivatives prescribed by the Minister.

This consultation paper and the draft ASIC Derivative Transaction Rules (Reporting) 2013 (derivative transaction rules (reporting)) attached to this paper outline our proposed approach to the reporting of OTC derivative transactions to licensed trade repositories or prescribed trade repositories, including the details of transactions that will need to be reported.

This paper should be read in conjunction with Consultation Paper 201 *Derivative trade repositories* (CP 201), which set out our proposed licensing framework for derivative trade repositories.

## OTC derivatives markets and the global financial crisis

- 1 Over the past decade, rapid growth in OTC derivatives markets has been accompanied by an increasing awareness of the systemic importance and risks inherent in these markets.
- 2 The magnitude of these risks was demonstrated during the financial crisis in 2008, particularly at the time of the collapse of the Lehman Brothers investment banking group and the threatened collapse of AIG insurance group.

<sup>1</sup> See [www.g20.utoronto.ca/2009/2009communique0925.html](http://www.g20.utoronto.ca/2009/2009communique0925.html).

<sup>2</sup> The *Corporations Legislation Amendment (Derivative Transactions) Act 2012*.

- 3 As a result of the issues identified during the crisis, the Leaders of the G20 pledged in September 2009 to strengthen the international financial regulatory system, and called for reforms to improve practices in OTC derivatives markets. These reforms included the mandatory reporting of OTC derivative transactions to trade repositories, which would in turn make information available about OTC derivative transactions to regulators and the broader market.
- 4 The stated objectives of these reforms are:
- (a) to enhance the transparency of transaction information available to relevant authorities and the public;
  - (b) to promote financial stability; and
  - (c) to support the detection and prevention of market abuse.<sup>3</sup>
- 5 A trade repository is defined in the Corporations Act as a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported (whether or not other information or data can also be reported to the facility). A trade repository acts as a centralised registry that maintains an electronic database of records of transactions. Trade information is submitted to a repository by one or both trade counterparties, and typically covers information such as transaction maturity, price, reference entity and counterparty.<sup>4</sup>

### The Australian response

- 6 In response to these developments, the agencies of the Council of Financial Regulators, including ASIC, have considered regulatory reform policy options for OTC derivatives markets and have engaged in extensive stakeholder consultation.
- 7 In March 2012, the Council of Financial Regulators released a report setting out its proposed policy approach, which included recommending that a legislative framework be introduced, including:
- (a) imposing a mandatory reporting requirement for certain products and participants to trade repositories; and
  - (b) adding a trade repository licensing regime to Ch 7 of the Corporations Act.<sup>5</sup>

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<sup>3</sup> See CPSS–IOSCO *Principles for financial market infrastructures* (CPSS–IOSCO Principles), April 2012, p. 9, [www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf).

<sup>4</sup> See *OTC derivatives market reform considerations: A report by the Council of Financial Regulators*, March 2012, p. 3, [www.treasury.gov.au/PublicationsAndMedia/Publications/2012/Council-of-Financial-Regulators-report-on-over-the-counter-derivatives](http://www.treasury.gov.au/PublicationsAndMedia/Publications/2012/Council-of-Financial-Regulators-report-on-over-the-counter-derivatives).

<sup>5</sup> See *OTC derivatives market reform considerations: A report by the Council of Financial Regulators*, March 2012, p. 3, [www.treasury.gov.au/PublicationsAndMedia/Publications/2012/Council-of-Financial-Regulators-report-on-over-the-counter-derivatives](http://www.treasury.gov.au/PublicationsAndMedia/Publications/2012/Council-of-Financial-Regulators-report-on-over-the-counter-derivatives).

Note: In this document, references to chapters (Chs), parts (Pts), divisions (Divs) or sections (s) are to the Corporations Act, unless otherwise specified.

- 8 The Council of Financial Regulators proposed that the trade repository licensing regime would be established at a high level in the amended Corporations Act, with supplementing regulations and rules made for the purposes of the legislation.
- 9 Effective from 3 January 2013, the *Corporations Legislation Amendment (Derivative Transactions) Act 2012* amended the Corporations Act by introducing a new Pt 7.5A, which empowers the Minister to determine that specified classes of OTC derivative can be made subject to mandatory reporting to trade repositories (reporting obligation). The framework further allows regulations and ASIC-made rules to be made to specify the details of the reporting obligation, and allows for the licensing and regulation of trade repositories.
- 10 The framework is intended to enable Australia to implement its commitments made at the Pittsburgh G20 Summit in September 2009.
- 11 Attached to this paper are draft derivative transaction rules (reporting) that will implement the reporting obligation. These rules have been drafted to promote consistency with overseas OTC derivative transaction reporting regimes, which will help ensure equivalence between the respective regimes, and reduce compliance costs for reporting entities.
- 12 The draft derivative transaction rules (reporting) also aim to comply with internationally agreed standards on derivative transaction reporting, including the joint reports by the International Organization of Securities Commissions (IOSCO) and the Committee on Payment and Settlement Systems (CPSS).<sup>6</sup>
- 13 This paper and the draft derivative transaction rules (reporting) should be read in conjunction with CP 201, which we published on 15 March 2013. CP 201 sets out our proposed requirements for Australian derivative trade repository (ADTR) licensees, and our approach to granting ADTR licences and our guidance on the draft ASIC Derivative Trade Repository Rules 2013 (derivative trade repository rules).

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<sup>6</sup> CPSS–IOSCO, *Considerations for trade repositories in OTC derivatives markets*, consultation report, May 2010, [www.iosco.org/library/pubdocs/pdf/IOSCOPD321.pdf](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD321.pdf), and CPSS–IOSCO, *Report on OTC derivatives data reporting and aggregation requirements* (CPSS–IOSCO Data Report), consultation report, August 2011, [www.iosco.org/library/pubdocs/pdf/IOSCOPD366.pdf](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD366.pdf).



## The derivative transaction rules (reporting)

- 14 Under s901A, ASIC may make derivative transaction rules that set requirements for information about derivative transactions, or about positions relating to derivative transactions, to be reported to a licensed trade repository or a prescribed trade repository.

Note: In this document, a reference to ‘trade repositories’ includes both trade repositories licensed under s761A, and trade repositories prescribed by the regulations as defined in s761A (subject to limitations of the use of particular types of trade repository outlined in Section C of this paper).

- 15 Under s901B, a reporting requirement can only be imposed by ASIC after the Minister makes a determination, by legislative instrument, of which classes of derivative will be covered by a reporting obligation (Ministerial determination).
- 16 In December 2012, in its proposals paper *Implementation of Australia’s G-20 over-the-counter derivatives commitments*, Treasury proposed that:
- ... a broad-ranging determination will be made in the first quarter of 2013 that will require the reporting of all five derivative classes (that is interest rate, foreign exchange, credit, equity and commodity) to a licensed trade repository where it is available. There would be no obligation to report where a licensed trade repository is not available.<sup>7</sup>
- 17 For electricity derivatives, Treasury noted that it will consider whether it would be appropriate to impose a mandatory obligation in relation to electricity derivatives following the completion of a financial resilience review by the Australian Energy Market Commission.
- 18 Treasury also proposed that the reporting obligation would be phased in and proposed a three-phase implementation timetable, beginning with major financial institutions, followed by domestically focused financial institutions and then finally end users. We have worked with Treasury on the implementation of this phased approach, and our proposed implementation in phases is outlined in Section E of this paper.
- 19 Under s901A, derivative transaction rules can deal with any of the following in respect of reporting requirements:
- (a) specifying the classes of derivative transaction to which particular requirements apply;
  - (b) specifying the trade repository (or the class of trade repository) to which information about derivative transactions, or positions, in a particular class must be reported;

<sup>7</sup> Treasury, *Implementation of Australia’s G-20 over-the-counter derivatives commitments*, proposals paper, December 2012, p. 11, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/G20-OTC-derivatives-commitments](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/G20-OTC-derivatives-commitments).

- (c) specifying the information that is required to be reported;
- (d) specifying the persons who are required to comply with requirements imposed by the rules;
- (e) the manner and form in which persons must comply with requirements imposed by the rules;
- (f) the circumstances in which persons are, or may be, relieved from complying with requirements in the rules that would otherwise apply to them;
- (g) the keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the rules;
- (h) any other matters that the provisions of the Corporations Act provide may be dealt with in the rules; and
- (i) any requirements that are incidental or related to the reporting requirements.

## Who the proposals apply to

- 20 The proposals in this paper apply to entities that trade in OTC derivatives, including financial institutions as well as end users, and the prospective operators of trade repositories. As there are not currently any operators of trade repositories in Australia, no existing operators will be affected. As outlined in Section E, ASIC's implementation of a reporting obligation for end users is subject to further public consultation in the second half of 2013.
- 21 We seek your feedback on the specific proposals outlined in this paper and also on the draft derivative transaction rules (reporting) attached to this paper.

## B General reporting obligation

### Key points

The proposals in this section relate to who the reporting obligation applies to, the categories of reportable transaction, the derivative transactions required to be reported and the deadline for reporting of reportable transactions.

### Who the reporting obligation applies to

- 22 Chapter 2 of the draft derivative transaction rules (reporting) sets out rules on the reporting requirements of reporting entities. Based on the proposed Ministerial determination that a broad range of derivative transactions should be reported to trade repositories, our draft rules outline which counterparties to an OTC derivative transaction will be required to report the details of a transaction to a trade repository, and how this obligation must be met. Section E outlines our proposed timing for the implementation of the reporting obligation for different types of reporting entity.

### Proposal

- B1** We propose that:
- (a) any counterparty subject to the reporting obligation (i.e. a 'reporting entity', as defined in draft Rule 1.2.5, and which includes central counterparties for cleared transactions) must:
    - (i) report the details of an arrangement that is an OTC derivative (as defined in draft Rule 1.2.4) to a trade repository, if the transaction is a 'reportable transaction' (draft rule 1.2.5 sets out which transactions are reportable, subject to the phased-in implementation proposed in Rule 2.2.1 and Part S1.1 of Schedule 1); and
    - (ii) report the modification, termination or assignment of an arrangement that is an OTC derivative (draft Rule 1.2.5(1)(b));
  - (b) a reporting entity may optionally delegate the reporting so that a third person reports on its behalf (draft Rule 2.2.7 provides that a reporting entity may use an agent to report derivative transaction information). The reporting agent could be any other person or entity, such as a central clearing counterparty, trading platform, confirmation service provider, or the other counterparty to the transaction;
  - (c) in the circumstances where the reporting entity delegates reporting to another person or entity, the reporting entity remains responsible

for ensuring the information reported to the trade repository is accurate, but would not need to report the transaction itself; and

- (d) where both reporting entities are required to report to a trade repository, each reporting entity must report the details of the transaction to a trade repository, although one reporting entity may delegate the reporting to the other reporting entity, or to another agent.

#### *Your feedback*

- B1Q1 Do you support the overall scope of the reporting obligation?
- B1Q2 Where both reporting entities entering into a reportable transaction are required to report the details of the transaction to a trade repository, should each reporting entity be required to report, or should only one reporting entity be required to report?
- B1Q3 If only one reporting entity were required to report the details of a reportable transaction to a trade repository, how should it be determined which reporting entity is required to report?
- B1Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)

## **Rationale**

- 23 We consider our proposed approach of requiring all reporting entities to report the details of a specific reportable transaction (often referred to as ‘two-sided reporting’) is preferable to the approach taken in some jurisdictions of requiring only one reporting entity to report the details of a specific reportable transaction (‘one-sided reporting’). We consider the proposed reporting obligation would be simpler to define, implement and monitor, and would ensure that all reportable transactions are reported. It would also ensure information is kept up-to-date as required by the rules (including mark-to-market and collateral information) and that all the information we are seeking would be reported.
- 24 Under this approach, if only one party to a derivative transaction is a reporting entity, then only that party will have a reporting obligation for that specific transaction.
- 25 This approach would still allow for a reporting entity to delegate the reporting to an agent, so that the reporting entity would not itself be required to report, although it would still be liable for any reporting done by its agent: see draft Rule 2.2.7. Therefore, the counterparty would still need to ensure the details reported to the trade repository on its behalf are accurate.
- 26 We will undertake further consultation before the implementation of a reporting obligation for Phase 3 entities (as outlined in Section E—

predominantly end users and non-financial entities). During this further consultation we will revisit whether requiring both reporting entities to report a reportable transaction would be appropriate for end users, as well as whether a *de minimis* threshold (e.g. calculated on aggregated gross notional outstanding in OTC derivatives totalled across all asset classes) should apply, below which end users will be exempt from reporting.

## Categories of reportable transaction

### Proposal

- B2** We propose that there should be four categories of OTC derivative transaction that are a reportable transaction. These are OTC derivative transactions that are:
- (a) entered into by an Australian entity, which would include OTC derivative transactions entered into anywhere by a reporting entity incorporated or formed in Australia ('Australian entity') (see item 1 in draft Rule 1.2.5);
  - (b) entered into by a foreign subsidiary of an Australian entity referred to in (a) (see item 2 in draft Rule 1.2.5);
  - (c) booked to the profit or loss account of an Australian branch of a foreign authorised deposit-taking institution (ADI) or an Australian branch of a foreign company registered under Div 2 of Pt 5B.2 (see items 3(a) and 4(a) in draft Rule 1.2.5); or
  - (d) executed in Australia by a foreign ADI or a company registered under Div 2 of Pt 5B.2 (see items 3(b) and 4(b) in draft Rule 1.2.5).

#### *Your feedback*

- B2Q1 Do you agree with the proposed four categories of OTC derivative transaction that are a reportable transaction?
- B2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

### Rationale

- 27 Under s900A, a derivative transaction rule can be broadly applied to:  
 ... derivatives, derivative transactions, facilities, persons, bodies and other matters located in or otherwise connected with:
- (a) a referring State [i.e. one of the six Australian states]; or
  - (b) the Northern Territory or the [Australian] Capital Territory; or
  - (c) a place outside Australia.
- 28 In considering which trades should be reported, we have considered the three stated objectives noted by the G20 in introducing a mandatory reporting regime for OTC derivatives—namely:

- (a) improving transparency;
- (b) mitigating systemic risk; and
- (c) protecting against market abuse in the OTC derivatives markets.

- 29 We consider there are four categories of OTC derivative transaction that are of immediate interest to Australian regulators and therefore should be a reportable transaction. We consider the reporting of each of these categories will help achieve the goal of improving transparency in OTC derivatives markets. The first two categories go primarily to mitigating systemic risk in Australia by understanding the volume of derivative activity and interconnections resulting from OTC derivative contracts and incurred by Australian entities or corporate groups. The last two categories will also assist the goal of protecting against and identifying market abuse in Australia through transactions undertaken on OTC derivatives markets.
- 30 We are conscious of the challenges for reporting entities to determine which transactions are reportable transactions, particularly where the trade was booked to or executed by a branch in Australia (i.e. proposals B2(c) and B2(d)). We therefore intend that these transactions are reportable transactions where they are executed in or booked to the Australian branch of the foreign reporting entity. We believe this is the clearest of the possible definitions and it should be relatively straightforward for foreign entities in Australia to determine if they are subject to a reporting obligation.
- 31 We outline in Section C a framework whereby in certain circumstances a reporting obligation can be met by reporting the trade to an overseas trade repository under its mandatory reporting obligation (alternative reporting).

## Derivative transactions required to be reported

### Proposal

- B3** We propose to:
- (a) limit the reporting obligation to OTC derivative transactions;
  - (b) define OTC derivative transaction as all derivative transactions other than those where the transaction is executed on, or is reported to the operator of, a Pt 7.2A market, in accordance with the operating rules of the relevant Pt 7.2A market; and
  - (c) require both centrally cleared and non-centrally cleared OTC derivative transactions to be reported to trade repositories.

#### *Your feedback*

- B3Q1** Do you agree with the proposal to limit the reporting obligation to OTC derivative transactions?

- B3Q2 Do you agree with the proposed definition of OTC derivative transaction?
- B3Q3 Do you agree that both centrally cleared and non-centrally cleared OTC derivative transactions should be required to be reported?
- B3Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)

## Rationale

- 32 We expect the Ministerial determination to require that details of all derivative contracts in the identified asset classes be reported to a trade repository. This would include:
- (a) credit derivatives;
  - (b) interest rate derivatives;
  - (c) foreign exchange derivatives;
  - (d) equity derivatives; and
  - (e) commodity derivatives (other than electricity derivatives).
- 33 In line with the scope of the G20 commitments, we intend to limit the reporting obligation to OTC derivative transactions. This is the basis of the recommendation agreed by ASIC, the Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia (RBA) in their *Report on the Australian OTC derivatives market* (October 2012):
- The regulators recommend that the Government consider a broad-based mandatory trade reporting obligation for OTC derivatives should the Derivative Transactions Bill be passed.
- 34 We intend to define OTC derivative transactions as all derivative transactions other than those where the transaction is executed on, or is reported to the operator of, a market subject to ASIC supervision under Pt 7.2A, in accordance with the operating rules of the relevant Pt 7.2A market: see draft Rule 1.2.5 for what constitutes a reportable transaction.
- 35 We consider this definition of OTC derivative transaction will ensure that all derivative transactions are transparent to the relevant Australian regulators either through our supervision of the Pt 7.2A market, or through the reporting of the OTC derivative transactions to a trade repository. In order to ensure there is appropriate visibility of all derivatives transactions to regulators in some form, we consider that the following should be reported to a trade repository:
- (a) transactions undertaken on a licensed financial market that is not subject to ASIC supervision under Pt 7.2A;
  - (b) transactions undertaken on a financial market that is exempt from the requirement to hold a licence; and

- (c) transactions entered into otherwise than on a licensed or exempt market, such as bilaterally negotiated transactions.

36 We intend to require that both centrally cleared and non-centrally cleared OTC derivative transactions be reported to trade repositories. This will be necessary to ensure we get full visibility of OTC derivative transactions (in particular, those that may be subject to mandates for clearing at some future time), and to allow us to get a full picture of the exposure of reporting entities to central counterparties and vice versa.

## Deadline for reporting of reportable transactions

### Proposal

- B4** We propose that reporting entities must report the execution, amendment, termination or assignment of an OTC derivative transaction to a trade repository by no later than the business day following the day on which the execution, amendment, termination or assignment of an OTC derivative transaction takes place (commonly known as 'T+1').

#### *Your feedback*

- B4Q1 Do you agree with the proposed timing of reporting?
- B4Q2 Should a shorter reporting deadline be set for those reporting entities that are subject to a shorter deadline for reporting to a trade repository under an overseas reporting obligation, or for particular types of reportable transaction (e.g. modifications or cancellations)?
- B4Q3 Do you think a longer deadline is needed for reportable transactions executed outside Australia?
- B4Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)

### Rationale

37 We have considered whether the deadline should be shorter to allow reporting to trade repositories to also be used for the purposes of making transaction information available to the public shortly following the trade (generally known as 'post-trade transparency' or 'real-time reporting'). We note that from the *Report on the Australian OTC derivatives market* (October 2012):

The regulators are of the view that should a mandatory reporting obligation be prescribed by the Minister, it could be useful for the wider market if aggregate market statistics were published on a relatively frequent basis. This would be consistent with public reporting proposals in other jurisdictions.



- 38 We accordingly consider that at this stage we would not use trade repository data for the purpose of making transaction details public in real-time or near real-time. We have proposed in CP 201 that statistical data must be disclosed by the operator of a licensed Australian derivative trade repository at least weekly and must be made available at no charge on a publicly available website.
- 39 In determining the appropriate deadline for the reporting of reportable transactions, we need to consider the purpose of the reporting obligation, the practicalities of reporting in a certain timeframe, and the equivalence of our regime to those in other jurisdictions. We consider on balance that a requirement to report by the end of the next business day (in the place in which the reportable transaction was entered into) following the day of entering into the transaction is most appropriate. We consider this will ensure timely reporting to trade repositories, while not being overly burdensome on reporting entities.

## C Reporting to overseas trade repositories (alternative reporting)

### Key points

We are proposing to allow certain reporting entities entering into reportable transactions to meet a reporting obligation by reporting to a trade repository outside Australia in accordance with an overseas regime ('alternative reporting'). This section outlines the circumstances in which reporting entities will be able to report to a trade repository not licensed in Australia to comply with a reporting obligation.

### Recognition of overseas trade repositories

- 40 Under s901A(6), where a reporting requirement is in place, the information about derivative transactions or derivative positions must be reported to either:
- (a) a trade repository licensed by ASIC; or
  - (b) a facility prescribed by the Corporations Regulations.
- 41 Under s907D, we may exempt a person or class of person from reporting the details of a derivative transaction to a trade repository.
- 42 We have outlined our proposed requirements for licensed trade repositories in CP 201. CP 201 included a description of our proposed approach to the licensing of overseas trade repositories, which may involve:
- (a) reliance on the regulatory regime in the operator's home jurisdiction in performing our supervisory function where we consider the overseas regulatory regime to be sufficiently equivalent with adequate supervision and cooperative arrangements; and/or
  - (b) exemptions from substantive parts of the Australian regime for operators of overseas trade repositories, which we will consider in accordance with our proposed policy on exemptions.
- 43 We understand the Government is considering prescribing by regulation one or more trade repositories under s901A(6)(b) to ensure reporting under a mandatory reporting obligation can commence in accordance with the timetable outlined in Section E. We expect this would be an interim measure until trade repositories can be licensed by ASIC in accordance with s905C(2).

- 44 Consideration is also being given to whether a category of trade repository should be identified on an ongoing basis that would allow for the recognition of overseas trade repositories for the reporting of trades by non-Australian reporting entities that enter into reportable transactions. We anticipate such repositories could be prescribed by regulation under s901A(6)(b).
- 45 We set out below our proposals on the reporting entities that would be able to access alternative reporting, and the conditions for accessing alternative reporting.

## Who should be able to access alternative reporting?

### Proposal

- c1 We propose that alternative reporting be available to the following reporting entities in relation to their reportable transactions (see proposal B2):
- (a) foreign ADIs that have a branch located in Australia;
  - (b) foreign companies registered under Div 2 of Pt 5B.2; and
  - (c) foreign subsidiaries of an Australian entity (see Table 1 in Rule S1.1.1).

#### *Your feedback*

C1Q1 Do you consider an alternative reporting regime would assist in allowing reporting entities to meet their reporting obligation?

C1Q2 Do you agree with the scope of entities that should be able to access alternative reporting, or do you consider it should be broader or narrower? (In responding to this question, please include any cost-benefit analysis of your suggested approach.)

C1Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)

### Rationale

- 46 We propose to allow foreign entities to use alternative reporting because they would be entering into reportable transactions but, being foreign entities, they are likely to fall within the scope of an overseas reporting obligation. To the extent they are foreign ADIs they are restricted in their operations in Australia and therefore have less direct impact on the objectives of Australian prudential regulation.
- 47 We consider this scope for the use of alternative reporting strikes a reasonable balance between the benefits of ensuring the data of most interest to Australian regulators is readily available in Australian-licensed trade

repositories, and the benefits available to entities being able to report to trade repositories that are not licensed in Australia. We have also considered the drivers of being licensed as a trade repository in Australia, and consider there may be a substantial disincentive to trade repositories seeking to be licensed in Australia if they are able to receive all or most reportable transactions without being licensed.

## Conditions for accessing alternative reporting

### Proposal

- c2 We propose the following conditions for a reporting entity that accesses alternative reporting:
- (a) the reporting entity must have reported the reportable transaction in compliance with an overseas transaction reporting requirement that is substantially equivalent to the corresponding Australian reporting obligation with regards to what is reported, the scope of reporting and the timeliness of reporting; and
  - (b) we must be satisfied that the relevant trade repository being reported to meets the following criteria:
    - (i) the trade repository is subject to regulatory requirements that are consistent with the CPSS–IOSCO Principles as they apply to trade repositories and those regulatory requirements are effectively enforced and monitored;
    - (ii) we have appropriate cooperation arrangements with the home supervisor of the overseas trade repository. The form of these arrangements may involve a bilateral Memorandum of Understanding (MOU), participation in cooperative supervisory arrangements, or at least would comprise the foreign regulator being a signatory of the IOSCO Multilateral MOU; and
    - (iii) we are able to readily access data from the overseas trade repository for the transactions subject to an Australian reporting requirement.

#### *Your feedback*

C2Q1 Do you agree with the criteria we are proposing be used to determine that a trade repository can be used for reporting under an alternative reporting framework?

C2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

### Rationale

- 48 If these conditions are in place, we can ensure that Australian regulators will have access to data that is operationally equivalent (if not necessarily identical) to the data that would have been provided if reported to an Australian-licensed trade repository.

- 49           The conditions for a trade repository to be acceptable to be used for alternative reporting will depend on the regulations made by the Government for this purpose. The criteria we have identified will ensure that a trade repository used for alternative reporting will meet equivalent standards to a licensed trade repository, and the Australian authorities are able to access the data from the trade repository.

## D Information to be reported to trade repositories

### Key points

The draft derivative transaction rules (reporting) specify the data fields that will need to be reported to trade repositories for a reporting entity to meet its reporting obligation. As far as possible, we have sought to achieve international consistency, while reducing compliance costs for market participants.

For most data fields, we are not proposing to specify the standard or format that needs to be used in reporting to trade repositories, but rather we expect reporting entities and trade repositories to use internationally accepted data standards.

## Data required to be reported

### Proposal

- D1 We propose a reporting entity must:
- (a) comply with the reporting requirement specified in Schedule 2 of the draft derivative transaction rules (reporting) for a reportable transaction; and
  - (b) where required, provide the data in Table 1 of Part S2.1 of Schedule 2 of the draft derivative transaction rules (reporting) for all reportable transactions, as well as additional data that will need to be reported for each particular asset class—namely:
    - (i) commodity derivatives (see Table 2 of Part S2.1 of Schedule 2);
    - (ii) credit derivatives and equity derivatives (see Table 3 of Part S2.1 of Schedule 2);
    - (iii) foreign exchange derivatives (see Table 4 of Part S2.1 of Schedule 2); and
    - (iv) interest rate derivatives (see Table 5 of Part S2.1 of Schedule 2).

### Your feedback

- D1Q1 Do you have any comments on the proposed data fields in Part S2.1 of Schedule 2 that will need to be reported to trade repositories? Are there any data fields that it will be particularly burdensome to report?
- D1Q2 What is the likely impact of our proposals? (Please see page 4 for information required.)

## Rationale

- 50 In developing the list of data fields, we have considered the potential regulatory uses of the data, and what information is needed to ensure regulators have sufficient information to be able to effectively monitor OTC derivative counterparties and markets. As noted in the CPSS–IOSCO Data Report, trade repositories can serve to:
- (a) enhance the transparency of information to relevant authorities and the public,
  - (b) promote financial stability; and
  - (c) assist in the detection and prevention of market abuse.
- 51 We have carefully considered the list of data fields that are being required to be reported to trade repositories in other jurisdictions, such as Canada, the European Union, Singapore and the United States. We have sought as far as possible to require the reporting of data fields that are the same as those fields being required to be reported in other jurisdictions.
- 52 Where we have not been able to require the reporting of identical data fields to those reported in other jurisdictions, this is generally due to either differences in the overall regulatory framework that make a particular field redundant such as some jurisdictions collecting fields for the purposes of real-time post-trade transparency requirements, or slight differences in the data being requested in different jurisdictions.

## Complying with international data standards

### Proposal

- D2 While we are not proposing to generally specify data standards or formats, we propose that, where available, for each reportable transaction, a reporting entity must use:
- (a) Legal Entity Identifiers (LEIs);
  - (b) Universal Transaction Identifiers (UTIs); and
  - (c) Universal Product Identifiers (UPIs).

#### *Your feedback*

- D2Q1 Do you agree with the data formats we are proposing to specify, and agree that the other data formats should not be specified in the derivative transaction rules (reporting)?
- D2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

## Rationale

- 53 We are not intending to generally specify the data standards or formats that are required to be reported to trade repositories. Trade repository licensees will need to be able to receive reports using applicable international or national standards to comply with the proposed derivative trade repository requirements.
- 54 There are however three international standards we consider essential to be used (i.e. LEIs, UTIs and UPIs), where they are available. These three standards were identified by the CPSS–IOSCO Data Report as being key to the aggregation of data within and across trade repositories.
- 55 While currently only the counterparty identifier (the LEI) is in the process of being established, we expect international standards to be developed for transaction and product identifiers, and we will expect these to be used once established.

## Reporting of mark-to-market valuations and collateral information

### Proposal

- D3 We propose that a reporting entity must:
- (a) report up-to-date mark-to-market valuations, but not be required to undertake any valuations beyond what it is required to do under other rules; and
  - (b) report on whether the transaction is collateralised and the value of the collateral that has been exchanged over an individual transaction or portfolio of transactions (see draft Rule 2.2.2).

#### *Your feedback*

D3Q1 Do you agree with the mechanism by which we are proposing to obtain information about mark-to-market valuations and collateral?

D3Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

## Rationale

- 56 To ensure the information in trade repositories is valuable to regulators, particularly with the goal of promoting financial stability, it is vital for information about valuations and collateral to be included in the details



reported to trade repositories. The CPSS–IOSCO Data Report noted the value of this information.<sup>8</sup>

- 57 We intend to require that reporting entities report up-to-date mark-to-market valuations when they are done, but we will not require reporting entities to undertake any additional valuations beyond what they are required to do under other rules. This means that a reporting entity will not need to undertake additional valuations in order to report an up-to-date valuation to the trade repository. Where a reporting entity undertakes a mark-to-market valuation more than once in a business day, it will be required to report the last mark-to-market valuation undertaken on that day.
- 58 We also intend to require the reporting of collateral information, which will provide regulators with valuable information to understand the extent of collateralised transactions and the amount of collateral being exchanged.

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<sup>8</sup> ‘Such data would help authorities assess the potential knock-on effects of financial distress at any one institution and identify concentrations of risk among groups of closely related institutions’ (p. 8).

## E Implementation of the reporting obligation

### Key points

We are proposing a phased implementation of reporting obligations in Australia, beginning with an 'interim reporting phase' and followed by three further phases (Phases 1, 2 and 3). We are planning to consult in the second half of 2013 on the implementation of the Phase 3 reporting obligation for end users and other non-financial entities, including a possible *de minimis* threshold.

We are also proposing a requirement for reporting on OTC derivative positions as they stand at the time the reporting obligation commences for each reporting entity ('backloading').

### Phased implementation

#### Proposal

- E1 We propose to implement the reporting obligation using the framework that Treasury outlined in its proposals paper (see Table 1), while incorporating feedback provided in response to Treasury's proposals paper (see Table 2). We propose that:
- (a) the reporting obligation would be implemented in the phases summarised in Table 2 (i.e. beginning with an 'interim reporting phase' and followed by three further phases);
  - (b) the reporting obligation would apply to any reporting entities that opt in to the 'interim reporting phase'; and
  - (c) in each of Phases 1, 2 and 3, the reporting obligation would first apply to credit derivatives and interest rate derivatives, with reporting of other asset classes (excluding electricity derivatives) to commence six months later.

#### Your feedback

- E1Q1 Do you have any comments on the proposed timetable for the implementation of the reporting obligation for different categories of reporting entity?
- E1Q2 Do you believe the interim reporting phase will be helpful to your entity, and are you likely to opt in to this phase?
- E1Q3 In the event your entity is considering opting in to the interim reporting phase, do you support the approach of applying a reporting obligation to these entities, or do you consider more legal certainty would be provided through a broad reporting obligation combined with a class order exemption?
- E1Q4 Do you agree with the proposed phased implementation by asset class?

**Table 1: Treasury's proposed timetable for implementation of the reporting obligation**

Phase	Commencement date	Reporting entities covered	Threshold determinant
1	By end Q4, 2013	Major financial institutions	Legal status, activity thresholds or other proxy of importance in financial sector
2	6 months after Phase 1, by end Q2, 2014	Domestically focused financial institutions	Activity thresholds or other size proxy
3	6 months after Phase 2, by end Q4, 2014	End users	Activity thresholds or other size proxy

Source: Treasury, *Implementation of Australia's G-20 over-the-counter derivatives commitments*, proposals paper, December 2012, pp. 12–13.

**Table 2: ASIC's proposed timetable for implementation of the reporting obligation**

Phase	Commencement date	Reporting entities covered	Threshold determinant
Interim reporting phase	1 July 2013 (opt-in basis)	Any entity seeking to have a mandatory reporting obligation placed on it in a particular class of derivative before the date the reporting obligation would otherwise take effect for it in relation to a class of derivative	Applied only on request of entity
1	31 December 2013 (credit derivatives/ interest rate derivatives)  30 June 2014 (other asset classes within the scope of the Ministerial determination)	Major financial institutions	A reporting entity that: <ul style="list-style-type: none"> <li>• is an ADI, an Australian financial services (AFS) licensee, an exempt foreign licensee or a clearing and settlement (CS) facility licensee; and</li> <li>• has greater than \$50 billion notional outstanding in OTC derivatives totalled across all OTC derivative asset classes, measured as at 30 September 2013</li> </ul>
2	30 June 2014 (credit derivatives/interest rate derivatives)  31 December 2014 (other asset classes within the scope of the Ministerial determination)	Other financial institutions	All remaining ADIs, AFS licensees or exempt foreign licensees not covered in the interim reporting phase or Phase 1

Phase	Commencement date	Reporting entities covered	Threshold determinant
3	31 December 2014 (credit derivatives/ interest rate derivatives)  30 June 2015 (other asset classes within the scope of the Ministerial determination)  Note: This phase is subject to further consultation.	All other entities trading in OTC derivatives, with any <i>de minimis</i> threshold to be determined following public consultation	A <i>de minimis</i> threshold of notional outstanding in OTC derivatives totalled across all asset classes as at 30 September 2014 (threshold to be determined after further consultation)

## Rationale

- 59 In its December 2012 proposals paper, Treasury proposed a phased-in approach to, and some exceptions from, the reporting obligation. The paper proposed two possible approaches to phasing in the reporting obligation:
- (a) the Government could make a regulation that restricts the timing of ASIC's rule-making; or
  - (b) the Government could leave the timing of implementation to ASIC to determine, in consultation with stakeholders and with regard to the technical challenges that emerge.<sup>9</sup>
- 60 Treasury also sought feedback on the general proposal to phase in the implementation of the reporting obligation. The closing date for submissions was 15 February 2013.
- 61 Our final derivative transaction rules (reporting) will depend on the outcome of Treasury's consultation and the Minister's subsequent determination and the accompanying regulations (if any). We have considered the feedback provided to Treasury's proposals paper on the timing of implementation in settling our final rules.
- 62 In response to Treasury's proposals paper, a number of Australian internationally active major financial institutions noted that they will be required to report details of trades (including counterparty identifiers) to trade repositories as early as 1 July 2013 in the European Union and by mid-July 2013 in the United States. They therefore noted that to the extent an earlier reporting deadline may reduce their overall regulatory burden, we should have the flexibility to consider an implementation date earlier than the fourth quarter in 2013.

<sup>9</sup> Treasury, *Implementation of Australia's G-20 over-the-counter derivatives commitments*, proposals paper, December 2012, p. 11, [www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/G20-OTC-derivatives-commitments](http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/G20-OTC-derivatives-commitments).

63 We also understand that an earlier deadline for these internationally active major financial institutions may help ensure they are able to comply with a reporting obligation in another jurisdiction—for example, by removing potential barriers to reporting arising from privacy or confidentiality obligations that would otherwise apply. It would also increase the likelihood that the Australian reporting regime will be deemed equivalent to the reporting regime in other jurisdictions, further reducing the regulatory burden for these entities.

64 As summarised in Table 2, our proposed timetable for the implementation of a reporting obligation is based on this feedback, beginning with an ‘interim reporting phase’ and followed by three further phases.

65 Each reporting entity will be subject to the reporting obligation from the commencement date noted in Table 2, even if the reportable transaction is with a non-reporting entity. However, the non-reporting entity is not required to report any transaction unless and until it falls within the scope of the regime.

#### **Interim reporting phase**

66 We intend that the interim reporting phase would apply to any entities seeking to have a reporting obligation apply to them early (e.g. to assist in their compliance with overseas reporting obligations). These entities would opt in to a mandatory obligation from a particular date and for a particular asset class or asset classes. We would then require these entities to comply with a reporting obligation in accordance with the opt-in.

67 We intend that the interim reporting phase would place a reporting obligation on entities opting in to this phase. Another option is to require all Phase 1 and 2 entities to report during the interim reporting phase and then issue a class order exemption for all entities other than those that seek to be in the interim reporting phase. We expect reporting in the interim reporting phase to be via alternative reporting.

#### **Phase 1**

68 Phase 1 would cover major financial institutions. Phase 1 would include those entities that are an ADI or that have an AFS licence, or are an exempt foreign licensee, with greater than \$50 billion notional outstanding in OTC derivatives totalled across all asset classes counting towards this threshold (with the position calculated per legal entity). This would be measured as at 30 September 2013. Asset classes counting towards the threshold would include instruments such as electricity derivatives, even if excluded from the scope of any reporting requirement. We anticipate this would cover between 10 and 15 globally active financial institutions in Australia.

**Phase 2**

69 Phase 2 would cover those financial institutions (i.e. those entities that are an ADI, have an AFS licence or are an exempt foreign licensee) that are not covered by Phase 1. This would include smaller Australian banks, insurers, funds, and a number of overseas banks with smaller operations established in Australia. There would be no size threshold for inclusion of those entities in this phase.

**Phase 3**

70 Phase 3 would cover all other entities that trade in OTC derivatives, with the exception of those that transact less than a *de minimis* threshold of OTC derivatives (which is still to be specified). We expect that a reporting obligation will commence for these remaining entities on 31 December 2014, but we will consult further on the details of the obligation, as well as the level of the *de minimis* threshold, before implementing the requirement. We are planning to undertake this further consultation in the second half of 2013.

**Phased implementation by asset class**

71 In each of Phases 1, 2 and 3, we are intending that the reporting obligation first be applied to credit derivatives and interest rate derivatives, with reporting of other asset classes (excluding electricity derivatives) to commence six months later. We are seeking to avoid a single implementation across all asset classes at one time. We are also aware that credit and interest rate derivatives are somewhat more standardised than the other asset classes, and so should be somewhat easier to report.

72 We are not proposing a *de minimis* threshold for individual transactions or for a volume of transactions in a particular asset class. We believe that obtaining details of each OTC derivative transaction of reporting entities within the scope of the obligation is important to understanding the total risk positions of the institutions and to get a full picture of their trading activities.

**Requirement for derivative position information****Proposal**

- E2** We propose that a reporting entity must:
- (a) report to a trade repository as set out below the derivative position information for OTC derivatives outstanding on the day that the reporting obligation commences for a particular asset class;
  - (b) report the derivative position information by providing the fields listed in Part S2.2 of Schedule 2 of the draft derivative transaction rules (reporting);

- (c) report that derivative position information within six months after the reporting obligation takes effect for a particular counterparty in a particular asset class; and
- (d) report the derivative position information as at the date the reporting obligation takes effect for a particular counterparty in a particular asset class.

#### *Your feedback*

E2Q1 Do you agree with the proposed requirements for derivative position information?

E2Q2 Are there particular challenges in reporting derivative position information as at the date the reporting obligation takes effect for a particular counterparty in a particular asset class?

E2Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)

### **Rationale**

73 Under s901A(8):

The derivative transaction rules ... cannot impose a reporting requirement on a person in relation to a derivative transaction entered into before the requirement started to apply to the person, or in relation to a position as it was at a time before the requirement started to apply to the person.

74 Given a key purpose of trade repository data is to understand the overall position of a reporting entity at each point in time, it is essential for regulators to have information about the outstanding position of a reporting entity following the commencement of the reporting obligation.

75 We consider that in order to get a full picture of derivative positions from the time the reporting obligation takes effect for a particular counterparty in a particular asset class, all OTC derivative positions outstanding at that time should be required to be reported. This will provide regulators with a baseline from which to calculate an entity's positions and allow us to start time-series analysis from the commencement of the reporting obligation. We are however intending to allow six months for this information to be reported. At this time, all those transactions that were open at the time the reporting obligation takes effect for a particular counterparty in a particular asset class will need to be reported, including where the transaction was terminated within six months of the time the reporting obligation took effect.

76 We have considered alternatively not requiring the reporting of OTC derivatives that were outstanding at the time the reporting obligation took effect for the reporting entity in that asset class but terminated in the six months following this date. This however would not give regulators a full view of the market during this six-month period, which would consequently reduce the value of the information over this period.

## F Regulatory and financial impact

- 77 In considering whether to make a derivative transaction rule, we must have regard to:
- (a) the likely effect of the proposed rule on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system;
  - (b) the likely regulatory impact of the proposed rule; and
  - (c) if the transaction to which the proposed rule relates includes transactions relating to commodity derivatives—the likely impact of the proposed rule on any Australian market or markets on which the commodities concerned may be traded.
- 78 Before settling on a final policy, we will comply with the Australian Government’s regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
  - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
  - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 79 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 80 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
  - (b) the likely effect on competition; and
  - (c) other impacts, costs and benefits.

See ‘The consultation process’, p. 4.



## Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution
ADTR licence	Australian derivative trade repository licence
ADTR licensee	Holder of an ADTR licence
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A of the Corporations Act.
alternative reporting	An arrangement available to certain reporting entities to report to certain overseas trade repositories in accordance with the proposals in Section C
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Australian derivative trade repository licence	Australian derivative trade repository licence granted under s905C of the Corporations Act that authorises a person to operate a trade repository
Australian entity	An entity (including a corporation, partnership or trust) that is incorporated or formed in Australia
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
Corporations Act	<i>Corporations Act 2001</i> , including any regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
CP 201 (for example)	An ASIC consultation paper (in this example numbered 201)
CPSS	Committee on Payment and Settlement Systems of the Bank of International Settlement
CPSS-IOSCO Data Report	CPSS–IOSCO, <i>Report on OTC derivatives data reporting and aggregation requirements</i> , consultation report, August 2011, available at <a href="http://www.iosco.org/library/pubdocs/pdf/IOSCOPD366.pdf">www.iosco.org/library/pubdocs/pdf/IOSCOPD366.pdf</a>

Term	Meaning in this document
CPSS–IOSCO Principles	CPSS–IOSCO <i>Principles for financial market infrastructures</i> , as revised from time to time, available at <a href="http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf">www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf</a>
derivative position information	Information about positions relating to derivative transactions that took place before the reporting obligation takes effect
derivative trade data	Means: <ul style="list-style-type: none"> <li>• information about derivative transactions, or about positions relating to derivative transactions; or</li> <li>• information (including statistical data) that is created or derived from the information referred to above</li> </ul>
derivative trade repository rules	ASIC Derivative Trade Repository Rules 2013—rules proposed to be made by ASIC under s903A of the Corporations Act that deal with the matters as permitted by this section  Note: See Attachment 1 to Consultation Paper 201 <i>Derivative trade repositories</i> (CP 201).
derivative transaction	Means: <ul style="list-style-type: none"> <li>• the entry into an arrangement that is a derivative;</li> <li>• the modification or termination of such an arrangement;</li> <li>• the assignment, by a party to such an arrangement, of some or all of the party's rights and obligations under the arrangement; or</li> <li>• any other transaction that relates to a derivative and that is in a class of transactions prescribed by the regulations</li> </ul>
derivative transaction rules (reporting)	ASIC Derivative Transaction Rules (Reporting) 2013—rules proposed to be made by ASIC under s901A of the Corporations Act that deal with reporting requirements and requirements that are incidental or related to the reporting requirement
exempt foreign licensee	A person who is exempt from the requirement to hold an AFS licence for a financial service they provide in the following circumstances: <ul style="list-style-type: none"> <li>• the person is regulated by an overseas regulatory authority; and</li> <li>• the service is provided only to wholesale clients as defined in s761G of the Corporations Act</li> </ul>
foreign ADI	Has the meaning given by s5 of the <i>Banking Act 1959</i>
G20	Group of finance ministers and central bank governors from 19 of the world's largest economies, and the European Union

Term	Meaning in this document
G20 commitments	Commitments made by the leadership of the G20 nations in September 2009 for the operation of OTC derivatives markets
IOSCO	International Organization of Securities Commissions
LEI	Legal Entity Identifier
licensed trade repository	A trade repository as defined in s761A of the Corporations Act and licensed by ASIC
market licensee	Holder of an Australian market licence
Ministerial determination	A legislative instrument made by the Minister under s901B of the Corporations Act that determines one or more classes of derivative to which reporting requirements may be imposed
OTC	Over the counter
OTC derivative transaction	An arrangement that is an OTC derivative under the draft derivative transaction rules (reporting)
Part 2.4 (for example)	A part of the derivative transaction rules (reporting) (in this example numbered 2.4), unless otherwise specified
Pt 7.5A (for example)	A part of the Corporations Act (in this example numbered 7.5A)
Pt 7.2A market	A financial market, the operator of which is licensed under s795B(1) of the Corporations Act, but does not include a financial market operated by an operator specified in reg 10.15.02 of the Corporations Regulations or a financial market ASIC otherwise does not have the function of supervising under s798F of the Corporations Act
prescribed trade repository	A trade repository that is a facility (or is in a class of facilities) prescribed by the Corporations Regulations for the purpose of s901A(6) of the Corporations Act
RBA	Reserve Bank of Australia
reportable transaction	As defined in draft Rule 1.2.5, an OTC derivative transaction that is entered into by a reporting entity under the circumstances outlined in draft Rule 1.2.5
reporting entity	An entity that is referred to in draft Rule 1.2.5 that may be subject to a reporting obligation
reporting obligation	As defined in draft Rule 2.2.1, the requirement for a reporting entity to report information about derivative transactions in accordance with the requirements of the draft derivative transaction rules (reporting)

Term	Meaning in this document
Rule 2.4.2 (for example)	A rule of the derivative transaction rules (reporting) (in this example numbered 2.4.2)
s903A (for example)	A section of the Corporations Act (in this example numbered 903A)
subsidiary	A body corporate that is a subsidiary of another body by virtue of Div 6 of the Corporations Act
trade repository	A derivative trade repository—a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported, which may be a derivative trade repository licensed under s761A of the Corporations Act, or a derivative trade repository prescribed by the Corporations Regulations as defined in s761A of the Corporations Act (subject to limitations of the use of particular types of derivative trade repository outlined in Section C of this paper)
UPI	Universal Product Identifier
UTI	Universal Transaction Identifier

## List of proposals and questions

Proposal	Your feedback
<p>B1 We propose that:</p> <ul style="list-style-type: none"> <li>(a) any counterparty subject to the reporting obligation (i.e. a 'reporting entity', as defined in draft Rule 1.2.5, and which includes central counterparties for cleared transactions) must:               <ul style="list-style-type: none"> <li>(i) report the details of an arrangement that is an OTC derivative (as defined in draft Rule 1.2.4) to a trade repository, if the transaction is a 'reportable transaction' (draft rule 1.2.5 sets out which transactions are reportable, subject to the phased-in implementation proposed in Rule 2.2.1 and Part S1.1 of Schedule 1); and</li> <li>(ii) report the modification, termination or assignment of an arrangement that is an OTC derivative (draft Rule 1.2.5(1)(b));</li> </ul> </li> <li>(b) a reporting entity may optionally delegate the reporting so that a third person reports on its behalf (draft Rule 2.2.7 provides that a reporting entity may use an agent to report derivative transaction information). The reporting agent could be any other person or entity, such as a central clearing counterparty, trading platform, confirmation service provider, or the other counterparty to the transaction;</li> <li>(c) in the circumstances where the reporting entity delegates reporting to another person or entity, the reporting entity remains responsible for ensuring the information reported to the trade repository is accurate, but would not need to report the transaction itself; and</li> <li>(d) where both reporting entities are required to report to a trade repository, each reporting entity must report the details of the transaction to a trade repository, although one reporting entity may delegate the reporting to the other reporting entity, or to another agent.</li> </ul>	<p>B1Q1 Do you support the overall scope of the reporting obligation?</p> <p>B1Q2 Where both reporting entities entering into a reportable transaction are required to report the details of the transaction to a trade repository, should each reporting entity be required to report, or should only one reporting entity be required to report?</p> <p>B1Q3 If only one reporting entity were required to report the details of a reportable transaction to a trade repository, how should it be determined which reporting entity is required to report?</p> <p>B1Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>B2 We propose that there should be four categories of OTC derivative transaction that are a reportable transaction. These are OTC derivative transactions that are:</p> <ul style="list-style-type: none"> <li>(a) entered into by an Australian entity, which would include OTC derivative transactions entered into anywhere by a reporting entity incorporated or formed in Australia ('Australian entity') (see item 1 in draft Rule 1.2.5);</li> <li>(b) entered into by a foreign subsidiary of an Australian entity referred to in (a) (see item 2 in draft Rule 1.2.5);</li> <li>(c) booked to the profit or loss account of an Australian branch of a foreign authorised deposit-taking institution (ADI) or an Australian branch of a foreign company registered under Div 2 of Pt 5B.2 (see items 3(a) and 4(a) in draft Rule 1.2.5); or</li> <li>(d) executed in Australia by a foreign ADI or a company registered under Div 2 of Pt 5B.2 (see items 3(b) and 4(b) in draft Rule 1.2.5).</li> </ul>	<p>B2Q1 Do you agree with the proposed four categories of OTC derivative transaction that are a reportable transaction?</p> <p>B2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>B3 We propose to:</p> <ul style="list-style-type: none"> <li>(a) limit the reporting obligation to OTC derivative transactions;</li> <li>(b) define OTC derivative transaction as all derivative transactions other than those where the transaction is executed on, or is reported to the operator of, a Pt 7.2A market, in accordance with the operating rules of the relevant Pt 7.2A market; and</li> <li>(c) require both centrally cleared and non-centrally cleared OTC derivative transactions to be reported to trade repositories.</li> </ul>	<p>B3Q1 Do you agree with the proposal to limit the reporting obligation to OTC derivative transactions?</p> <p>B3Q2 Do you agree with the proposed definition of OTC derivative transaction?</p> <p>B3Q3 Do you agree that both centrally cleared and non-centrally cleared OTC derivative transactions should be required to be reported?</p> <p>B3Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>B4 We propose that reporting entities must report the execution, amendment, termination or assignment of an OTC derivative transaction to a trade repository by no later than the business day following the day on which the execution, amendment, termination or assignment of an OTC derivative transaction takes place (commonly known as 'T+1').</p>	<p>B4Q1 Do you agree with the proposed timing of reporting?</p> <p>B4Q2 Should a shorter reporting deadline be set for those reporting entities that are subject to a shorter deadline for reporting to a trade repository under an overseas reporting obligation, or for particular types of reportable transaction (e.g. modifications or cancellations)?</p> <p>B4Q3 Do you think a longer deadline is needed for reportable transactions executed outside Australia?</p> <p>B4Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>C1 We propose that alternative reporting be available to the following reporting entities in relation to their reportable transactions (see proposal B2):</p> <ul style="list-style-type: none"> <li>(a) foreign ADIs that have a branch located in Australia;</li> <li>(b) foreign companies registered under Div 2 of Pt 5B.2; and</li> <li>(c) foreign subsidiaries of an Australian entity (see Table 1 in Rule S1.1.1).</li> </ul>	<p>C1Q1 Do you consider an alternative reporting regime would assist in allowing reporting entities to meet their reporting obligation?</p> <p>C1Q2 Do you agree with the scope of entities that should be able to access alternative reporting, or do you consider it should be broader or narrower? (In responding to this question, please include any cost–benefit analysis of your suggested approach.)</p> <p>C1Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C2 We propose the following conditions for a reporting entity that accesses alternative reporting:</p> <ul style="list-style-type: none"> <li>(a) the reporting entity must have reported the reportable transaction in compliance with an overseas transaction reporting requirement that is substantially equivalent to the corresponding Australian reporting obligation with regards to what is reported, the scope of reporting and the timeliness of reporting; and</li> <li>(b) we must be satisfied that the relevant trade repository being reported to meets the following criteria: <ul style="list-style-type: none"> <li>(i) the trade repository is subject to regulatory requirements that are consistent with the CPSS–IOSCO Principles as they apply to trade repositories and those regulatory requirements are effectively enforced and monitored;</li> <li>(ii) we have appropriate cooperation arrangements with the home supervisor of the overseas trade repository. The form of these arrangements may involve a bilateral Memorandum of Understanding (MOU), participation in cooperative supervisory arrangements, or at least would comprise the foreign regulator being a signatory of the IOSCO Multilateral MOU; and</li> <li>(iii) we are able to readily access data from the overseas trade repository for the transactions subject to an Australian reporting requirement.</li> </ul> </li> </ul>	<p>C2Q1 Do you agree with the criteria we are proposing be used to determine that a trade repository can be used for reporting under an alternative reporting framework?</p> <p>C2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>D1 We propose a reporting entity must:</p> <ul style="list-style-type: none"> <li>(a) comply with the reporting requirement specified in Schedule 2 of the draft derivative transaction rules (reporting) for a reportable transaction; and</li> <li>(b) where required, provide the data in Table 1 of Part S2.1 of Schedule 2 of the draft derivative transaction rules (reporting) for all reportable transactions, as well as additional data that will need to be reported for each particular asset class—namely: <ul style="list-style-type: none"> <li>(i) commodity derivatives (see Table 2 of Part S2.1 of Schedule 2);</li> <li>(ii) credit derivatives and equity derivatives (see Table 3 of Part S2.1 of Schedule 2);</li> <li>(iii) foreign exchange derivatives (see Table 4 of Part S2.1 of Schedule 2); and</li> <li>(iv) interest rate derivatives (see Table 5 of Part S2.1 of Schedule 2).</li> </ul> </li> </ul>	<p>D1Q1 Do you have any comments on the proposed data fields in Part S2.1 of Schedule 2 that will need to be reported to trade repositories? Are there any data fields that it will be particularly burdensome to report?</p> <p>D1Q2 What is the likely impact of our proposals? (Please see page 4 for information required.)</p>
<p>D2 While we are not proposing to generally specify data standards or formats, we propose that, where available, for each reportable transaction, a reporting entity must use:</p> <ul style="list-style-type: none"> <li>(a) Legal Entity Identifiers (LEIs);</li> <li>(b) Universal Transaction Identifiers (UTIs); and</li> <li>(c) Universal Product Identifiers (UPIs).</li> </ul>	<p>D2Q1 Do you agree with the data formats we are proposing to specify, and agree that the other data formats should not be specified in the derivative transaction rules (reporting)?</p> <p>D2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>D3 We propose that a reporting entity must:</p> <ul style="list-style-type: none"> <li>(a) report up-to-date mark-to-market valuations, but not be required to undertake any valuations beyond what it is required to do under other rules; and</li> <li>(b) report on whether the transaction is collateralised and the value of the collateral that has been exchanged over an individual transaction or portfolio of transactions (see draft Rule 2.2.2).</li> </ul>	<p>D3Q1 Do you agree with the mechanism by which we are proposing to obtain information about mark-to-market valuations and collateral?</p> <p>D3Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>



Proposal	Your feedback
<p>E1 We propose to implement the reporting obligation using the framework that Treasury outlined in its proposals paper (see Table 1), while incorporating feedback provided in response to Treasury's proposals paper (see Table 2). We propose that:</p> <ul style="list-style-type: none"> <li>(a) the reporting obligation would be implemented in the phases summarised in Table 2 (i.e. beginning with an 'interim reporting phase' and followed by three further phases);</li> <li>(b) the reporting obligation would apply to any reporting entities that opt in to the 'interim reporting phase'; and</li> <li>(c) in each of Phases 1, 2 and 3, the reporting obligation would first apply to credit derivatives and interest rate derivatives, with reporting of other asset classes (excluding electricity derivatives) to commence six months later.</li> </ul>	<p>E1Q1 Do you have any comments on the proposed timetable for the implementation of the reporting obligation for different categories of reporting entity?</p> <p>E1Q2 Do you believe the interim reporting phase will be helpful to your entity, and are you likely to opt in to this phase?</p> <p>E1Q3 In the event your entity is considering opting in to the interim reporting phase, do you support the approach of applying a reporting obligation to these entities, or do you consider more legal certainty would be provided through a broad reporting obligation combined with a class order exemption?</p> <p>E1Q4 Do you agree with the proposed phased implementation by asset class?</p>
<p>E2 We propose that a reporting entity must:</p> <ul style="list-style-type: none"> <li>(a) report to a trade repository as set out below the derivative position information for OTC derivatives outstanding on the day that the reporting obligation commences for a particular asset class;</li> <li>(b) report the derivative position information by providing the fields listed in Part S2.2 of Schedule 2 of the draft derivative transaction rules (reporting);</li> <li>(c) report that derivative position information within six months after the reporting obligation takes effect for a particular counterparty in a particular asset class; and</li> <li>(d) report the derivative position information as at the date the reporting obligation takes effect for a particular counterparty in a particular asset class.</li> </ul>	<p>E2Q1 Do you agree with the proposed requirements for derivative position information?</p> <p>E2Q2 Are there particular challenges in reporting derivative position information as at the date the reporting obligation takes effect for a particular counterparty in a particular asset class?</p> <p>E2Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>