

May 1, 2013

Senior Manager
Post-Trade and OTC Derivatives
Financial Markets Infrastructure
Australian Securities and Investment Commission
Level 5
100 Market Street
Sydney NSW 2000
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Re: Consultation Paper 205- Derivative Trade Reporting (the "Proposal")

Dear Sir or Madam,

On behalf of The Depository Trust & Clearing Corporation ("DTCC"), we appreciate the opportunity to comment on the Proposal issued by the Australian Securities & Investments Commission ("ASIC"). As an organization that is looking to seek designation of one or more of its existing or future trade repositories as Overseas Trade Repositories in Australia, we would like to share our thoughts on certain aspects of the Proposal related to trade reporting. Please view these comments in collaboration with our previously submitted comments to Consultation Paper 201.

We look forward to the opportunity to discuss our responses with ASIC if it so desires.

Yours sincerely,



Stewart Macbeth

President & CEO

DTCC Deriv/SERV LLC

ASIC Consultation CP 205

General Comments

DTCC commends ASIC's approach to leveraging current global initiatives and harmonizing trade reporting requirements where possible. Such efforts will help to ensure that market participants can utilize existing infrastructures, such as DTCC's global trade repository, to report once and meet multiple reporting obligations thereby reducing costs and complexity.

DTCC would request that ASIC consider timing of implementation in adoption of such regulation as another important factor in aligning with global efforts and reducing regulatory burden. The current regulatory landscape suggests that several jurisdictions will look to implement reporting requirements by the end of the year, either planned or due to slippage, which affects market participants who have to report in multiple jurisdictions. ESMA's timeline appears to have already slipped as it did not approve any trade repository in the twenty working day window following March 15th when registration opened. Therefore, it appears at present the earliest time when reporting may commence for Credit and Interest Rate derivatives is likely to be no earlier than November 2013. HKMA's reporting timeline begins on November 5th and Monetary Authority of Singapore is also looking to implement during this time. There are aspects of onboarding to a new jurisdiction that should be considered as often these efforts are sequential: (1) legal agreements and onboarding forms for the particular reporting service (approx. 2 weeks) and (2) user acceptance testing of reporting data fields for specified jurisdictions (six to eight weeks). DTCC would recommend that ASIC closely observe progress in other jurisdictions and encourage appropriate sequencing of implementation dates to ensure sufficient time is allocated for successful launch of service in each jurisdiction.

Specific Comments (DTCC Comments in Red)

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.

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?

DTCC agrees with ASIC's rationale for dual reporting as a means of simplifying compliance and ensuring the completeness of the data set. Such dual reporting should require the parties to agree the unique transaction identifier and include such identifier in its submission to the trade repository to enable effective and efficient reconciliation.

DTCC believes that while both counterparties to a transaction should report, either party must be allowed to delegate the act of reporting to the other or to a third party. Where reporting is delegated, the decision about which party will report should be made at the time of or prior to, execution. This will enable efficient reporting methods to be developed, and reduce the burden on parties whose counterparties have high automation levels.

Whilst a reporting counterparty may utilize a third party to assist with its reporting obligation, the selection of a TR venue should remain the responsibility of the reporting counterparty given the fact that this counterparty retains the obligation to report and is ultimately the service user, so it must be satisfied with both the service and data security level provided by the TR, as well as the cost of the TR service.

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?

If there were to be only one reporting party there would have to be a hierarchy based upon the ability of the Australian regulators to capture the information it requires and enforce the reporting obligation as well as the relative sophistication of the parties. DTCC would encourage ASIC to leave this to the market in general to determine the most efficient reporting mechanisms.

B1Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Dual party reporting may add cost for smaller counterparties to submit, however, one party reporting would require a customer to reconcile data submitted against it, which itself may be less efficient.

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).

B2Q1 Do you agree with the proposed four categories of OTC derivative transaction that are a reportable transaction?

DTCC agrees that a primary concern for Australian regulators should be oversight of Australian entities' activities. DTCC believes that with appropriate data sharing agreements, not all trades should need direct reporting under Australian rules and rather the regulatory model should allow for recognition or forms of substituted compliance. In the case of foreign subsidiaries particularly, the parent company may have no direct financial exposure to these activities, and no requirement to provide any further capital to that subsidiary in the event of losses. Also any foreign operations may be subject to duplicate requirements, with potential for conflict in law, notably with respect to privacy law.

B2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

DTCC sees no serious impact to the cost of compliance or competition as this proposal is not more burdensome than those being implemented in other jurisdictions.

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.

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

DTCC supports limiting the reporting obligation to OTC derivative transactions in accordance with the international agreements forged at the Pittsburgh Summit of the G20 in 2009, as the first priority.

B3Q2 Do you agree with the proposed definition of OTC derivative transaction?

DTCC agrees with the definition provided however as stated in B3Q1, ASIC may want to consider narrowing the requirement for the exchange traded derivatives, notably for short dated highly liquid instrumentst that do not have the same risk profile as OTC derivative products .

B3Q3 Do you agree that both centrally cleared and non-centrally cleared OTC derivative transactions should be required to be reported?

DTCC believes that requiring both centrally cleared and non-centrally cleared transactions to be reported is a good approach as it provides regulators with the full view of the OTC derivative market necessary for effective regulation. In future, with increased use of clearing and bilateral collateral arrangements, clients will use a few clearing members to support bilateral activity and that with multiple CCPs.. Exposures and margin will be managed by the clearing member across the full client portfolio, i.e. across all CCPs as well as bilateral , and clearing members may face greater liquidity burdens that need to be viewed in the aggregate. CCPs will offer greater netting, but the nature of the risks will be similar as both cleared and uncleared will be fully collateralized portfolios, and may need to be closed out simultaneously, potentially with cleared products having become off-the-run and non-standard.

B3Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Expanding the scope of reported transactions to include overseas exchange traded derivatives would dramatically impact the scope of reporting by Australian entities of their derivative trading and potentially increase the cost of reporting.

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').

B4Q1 Do you agree with the proposed timing of reporting?

DTCC agrees with the T+1 approach. This approach aligns with most other jurisdictions and would seem to provide regulators with information in a sufficiently timely enough fashion to regulate effectively.

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)?

ASIC should allow for quicker reporting but not mandate it. If T+1 serves its regulatory purpose, that should be the standard with the option for firms to report sooner if they are technically able to do so or have to in another jurisdiction. We anticipate that firms reporting through DTCC in multiple jurisdictions will in fact be reporting those multiple jurisdictional trades to DTCC in accordance with the requirements of the jurisdiction having the shortest allowable period.

B4Q3 Do you think a longer deadline is needed for reportable transactions executed outside Australia?

DTCC believes the T+1 standard rolling off the place of execution should be sufficient to allow for any time difficulty which could be caused by time differences.

B4Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)

DTCC believes allowing for a flexible approach to reporting timing will decrease the cost of compliance. DTCC does not see any impact on competition from such requirements.

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).**

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

DTCC agrees with the approach to allow foreign companies to utilize alternative reporting regimes. ASIC's approach will serve to ease the burden on foreign companies while not decreasing ASIC's access to the data it requires.

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.)

DTCC requests ASIC consider expanding the scope to include domestic Australian companies as well, as these companies may also have foreign reporting requirements. DTCC in general cautions against any limitations to mutual recognition of reporting, as they may be met with reciprocal restrictions that ultimately lead to additional cost and complexity burdens for firms to comply with the rules and for regulators to aggregate data accurately. DTCC believes it will be more efficient for the regulators to work collectively towards common standards in reporting across jurisdictions.

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

DTCC believes allowing for alternative reporting will decrease compliance costs by allowing firms to reduce their reporting burdens and ease aggregation..

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.

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?

DTCC partially agrees with the framework. DTCC agrees fully with (b) above as it is essential to allow ASIC to be able to both rely upon and have access to the necessary data. DTCC would suggest that (a) be modified to remove the requirement that the reporting have to be only to satisfy an overseas compliance obligation. If ASIC is willing to utilize the recognition regime contemplated for some transactions we believe it should be willing to utilize it for all transactions. The most important aspect is that ASIC must be able to ensure that the data is properly reported to a satisfactory TR and that ASIC has the necessary access to the data.

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

By bifurcating the reporting to allow for some transactions to be foreign TR reported and others to be only domestically reported, ASIC may create fragmented data sets which will require ASIC to have to aggregate the data from multiple TRs for any particular reporting entity. Such data fragmentation will be costly to ASIC and potentially drive up the costs of compliance while driving down the reliability of the data.

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).

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?

We have some comments with respect to particular data fields as stated below. These comments reflect requirements in other jurisdictions that market participants are currently complying with.

Common Data

1. UTI – Should always be required and DTCC suggests usage of the following in this order of priority if more than one exists:

1. The universal transaction identifier for the transaction
2. The single transaction identifier used by the counterparties which they agree to use for the Transaction
3. The electronic trading venue trade identifier on which the transaction was executed
4. The internal trade identifier in use by the submitter

2. UPI – We suggest that in lieu of a UPI the existing ISDA taxonomy be used until such time as a UPI can be generated by the industry.

3. Contract Type – not needed if the ISDA taxonomy is used as this is included in the taxonomy

6,7 Legal Names – The legal name of the reporting party can always be provided by the reporting party. We would suggest that the legal name of the counterparty be derived from the LEI.

34. Counterparty side (buy/sell) – This is too ambiguous as not all trades have a explicit buyer and seller. We would suggest a notation as to what each side pays.

58. Hedging transaction – The description should be clarified to indicate this is true at execution. If this is a recurring indication that should be made clear.

59. Other material terms matched by the counterparties in verifying the derivative - This is too ambiguous and needs to be clarified.

Equity and Credit

2. Name of counterparty purchasing protection - Not all OTC Equity derivatives have a protection buyer

5. Information identifying the reference entity – LEI is not used for this. RED codes are routinely used for this.

Interest Rates

Generally, it would be better to ask for Side 1 Payer and Side 2 Payer information as not every trade is a fixed vs. float trade.

7. Name of payer (fixed payer) – Not every trade has a fixed rate payer. It would be better to ask for side 1 and side 2 payers.

12. Direction – Not relevant for every rates trade.

D1Q2 What is the likely impact of our proposals? (Please see page 4 for information required.)

In general, divergence from the international standard, as reflected in the comments above, increases costs of compliance.

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).**

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)?

DTCC strongly supports the usage of the three data standards listed in D2. Usage of these standards is necessary to allow for global data aggregation. Rather than only requiring its use where available, DTCC encourages ASIC to require market participants required to report and their counterparties to register for an LEI by a date certain and require its use in all trade reporting

D2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

DTCC believes adherence to these international standards drives down compliance costs by allowing the re-use of pre-existing development. The use of a single standard will also serve to improve the usability of data across reporting regimes and thus allow for better aggregation and statistical analysis.

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).**

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

DTCC agrees with the proposals for mark-to-market valuations and collateral as they largely align with global standards. It should be noted that collateral for OTC derivative transactions is generally posted on a portfolio basis and ASIC should take into consideration the ESMA standards for portfolio reporting.

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

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.

E1Q1 Do you have any comments on the proposed timetable for the implementation of the reporting obligation for different categories of reporting entity?

DTCC believes the proposed timetable for implementation is appropriate in that it seeks compliance from the potentially most sophisticated and active users first in line with the approach being taken in other jurisdictions. DTCC agrees with the approach to delay decisions on timing and application of the rules to end users until after more is understood about the impact of reporting in Australia.

E1Q2 Do you believe the interim reporting phase will be helpful to your entity, and are you likely to opt in to this phase?

DTCC thinks the interim reporting scheme may be helpful to firms with reporting obligations overseas to allow them to address privacy and data confidentiality issues.

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?

No comment

E1Q4 Do you agree with the proposed phased implementation by asset class?

DTCC agrees with the asset class phasing as it aligns with the approach taken in other jurisdictions.

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.

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

DTCC agrees with the approach being contemplated for back loading of transactions. The approach allows ASIC to set a baseline and yet gives firms time to comply which can reduce their compliance burden.

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?

There may be some challenges in reporting data for historical trades if firms do not have all the necessary field information for previously executed trades. This issue can be alleviated by allowing for a best efforts compliance after reporting the basic fields that are necessary for the booking of any trade.

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

No comment