



**EnergyAustralia**

30 April 2013

Senior Manager, Post trading and OTC Derivatives  
Financial Market Infrastructure  
Australian Securities and Investments Commission (ASIC)

By email: [OTCD@asic.gov.au](mailto:OTCD@asic.gov.au)

EnergyAustralia Pty Ltd  
ABN 99 086 014 968

Level 33  
385 Bourke Street  
Melbourne Victoria 3000

Phone +61 3 8628 1000  
Facsimile +61 3 8628 1050

[enq@energyaustralia.com.au](mailto:enq@energyaustralia.com.au)  
[energyaustralia.com.au](http://energyaustralia.com.au)

### **CP205 Derivative transaction reporting**

EnergyAustralia welcomes the opportunity to comment on ASIC's consultation paper 205 'derivative transaction reporting' (*the consultation paper*).

EnergyAustralia is one of Australia's largest energy companies providing gas and electricity to over 2.7 million household customers. We own and operate an integrated portfolio of energy generation and storage facilities across Australia. We employ a range of risk management strategies to provide efficient solutions for our customers and effectively manage exposure to market risk, including the use of OTC and exchange traded electricity derivatives.

We note and support the Government's position that no decisions will be made in respect to electricity derivatives until after completion of the Australian Energy Market Commission's (AEMC) national electricity market (NEM) financial market resilience review. The regulation of electricity derivatives needs to be considered within the context of their essential contribution to the efficient operation of Australia's electricity markets.

Consideration of the likely impact on the efficiency of the underlying commodity market should be undertaken before applying a derivative transaction rule (DTR) to any commodity to ensure the impact is proportional to the problem and that the expected benefits outweigh the costs. The case has not been made to support the imposition of mandatory reporting or other DTRs to commodities generally, and further consultation and detailed impact assessment should be undertaken before imposing DTRs in relation to energy commodities.

We understand that under section 901B(3)(iii) of the Corporations Act, the Minister will have regard to the expected impact on underlying commodity markets affected by a determination under section 901B(2). However, this assessment will necessarily be at a high level and will need to be supported by more detailed assessment before imposing specific DTRs on specific commodities. The Minister has not yet made a determination, so unfortunately we do not have the benefit of knowing the scope of any such determination or the regulatory impact assessment underlying it. We believe it would be appropriate for ASIC to consult further once a determination is made if it includes commodities.

In general, the timeframes in the consultation paper are inadequate to facilitate a robust regulatory impact assessment, and the implementation schedule is unnecessarily rushed (at least as it applies to commodity derivatives). Three weeks is not sufficient time for stakeholders to consider the implications of the complex and detailed proposals contained in CP205.

More specific comments on relevant sections of the consultation paper are provided below.

### **General reporting obligation**

- We support the proposal that reporting entities be able to delegate reporting obligations to a third party to increase efficiency and avoid duplication.
- We do not support a broad, catch all definition of derivatives to be reported. While a high level principles based definition of 'derivative' may be appropriate in the Act, this does not provide sufficient precision and clarity to support the imposition of regulatory obligations. More precise definitions of the classes and classifications of derivatives that must be reported, and the rules that will apply to each, should be developed. If the Minister determines that derivative rules may be made for Commodities as a class, then ASIC should consider the impact on the efficiency of the relevant commodity markets and Australian consumers independently for each major commodity before applying DTRs.
- Mandatory trade reporting will impose significant costs and regulatory burden. To date, no clear problem, objective or benefit has been defined to justify the inclusion of non financial organisations and/or commodity derivatives. This should be addressed in the regulatory impact assessment.
- Assisting Australian entities to efficiently comply with their obligations in foreign jurisdictions is a worthy goal; however it is not a sufficient rationale to impose costs on other Australian markets and participants. It is not necessary to impose mandatory reporting obligations on all participants in order to allow some participants to meet their overseas obligations. As identified in the implementation schedule, it is possible to allow participants to opt into mandatory reporting requirements, and if necessary deem consent from counterparties.
- Further analysis is required to support the proposal for near real time reporting, within one day of the execution, amendment, termination or assignment of OTC contracts (T+1). Further consideration should be given to aligning the reporting timeframe with more measured reconciliation and reporting periods, such as end of week, month or quarter. A T+1 requirement will increase the cost and complexity of compliance; however it is not apparent that it would add commensurate value to the regulator. The costs and benefits associated with different reporting periods for different derivative classes and reporting entities should be examined in the regulatory impact assessment.

## **Information to be reported to trade repositories**

- We do not think it is not reasonable to expect stakeholders to undertake a review of a complex new reporting schema<sup>1</sup> and provide detailed comment within three weeks. Many of key fields, including the unique transaction identifier and unique product identifier, do not even appear to have standard definitions and are subject to complex international negotiations.
- The proposal represents a new and onerous regulatory obligation and there will be significant implementation costs to develop, implement and integrate business systems to comply with the proposed requirements.
- The absence of agreed standards for reporting key fields in the proposed schema suggests that it may be more efficient for Australia to delay implementation until international agreement is reached on key standards and definitions (at least outside the financial sector).
- The application of mandatory reporting to end use corporations for commodity derivatives is unlikely to provide meaningful insight into the health or risks of these markets as derivative positions will be divorced from the underlying physical positions. Analysing data on commodity derivatives separate from the participants underlying natural positions is more likely to mislead than inform policy makers and regulators.

## **Implementation of reporting**

- No case has been made for the urgent implementation of trade reporting for commodity derivatives. The proposed implementation schedule is unnecessarily rushed and this appears to be limiting proper consideration of options.
- We understand that the aggressive implementation schedule is primarily driven by the desire to implement reporting for some financial derivatives (interest rate and foreign exchange) and for financial industry participants active in US markets.
- We support a phased implementation that focuses on the most urgent priorities and welcome ASIC's recognition that further consultation is required before the implementation of phase three that extends obligations to non-financial institutions. The implementation schedule for phase three should not be determined until after further consultation on the nature of the obligation and the de minimus threshold.

## **Regulatory and financial impact**

- We strongly support the need to undertake a rigorous regulatory impact assessment prior to determining the extent and nature of derivative reporting rules. From the perspective of a non-financial institution, the process to date has been characterised by great haste, vague objectives and lack of clarity. At each stage we are assured that once the high level framework is

---

<sup>1</sup> The schema includes 75 separate fields for a commodity derivative (Part S 2.2, derivative transaction reporting information)

established there will be a rigorous consideration of specific issues, costs and benefits for different commodities/industries.

- CP205 represents the last step in the detailed regulatory design of mandatory trade reporting, with the exception of electricity derivatives, and consistent with the Australian Government's best practise regulation handbook we believe it is now incumbent on ASIC to rigorously assess the costs and benefits associated with the application of mandatory trade reporting to each class and sub-class of derivatives. In relation to commodities this needs to include a clear articulation of the:
  - the problem or issues that give rise to the need to action;
  - the desired objectives;
  - existing regulatory environment at National and State level and demonstration these do not adequately address the problem;
  - range of options, including non-regulatory; and
  - assessment of the impact (costs and benefits) of the proposal.

## **Conclusion**

We welcome the opportunity to comment on the consultation paper, and we support the Government's commitment to undertake separate and more detailed analysis before making any decisions in relation to electricity derivatives. We will actively engage with the AEMC and ASIC to help define the nature of the issues and options in relation to electricity and gas derivatives.

The imposition of DTRs represents a significant new regulatory burden and a rigorous regulatory impact assessment is required. In relation to energy commodities more broadly we believe further detail is required to articulate the nature of the problem and the costs and benefits of the options.

For any questions regarding this submission, please contact me on 03 8628 1034.

Yours sincerely

Signed for email

**Ralph Griffiths**  
Wholesale Regulation Manager