Categorisation

Each FSC member will fall under phase two.

Securities definition

The definition is very broad, essentially covering all derivatives other than those trades on Australian exchanges. In theory at least, this would mean we would have to report on foreign futures (not sure if that is the intention). It would also cover all FX forwards. We would support a response that the definition to be consistent with that used for the Dodd Frank regulations (which is narrower) in order to produce greater harmony of requirements.

Timing

With respect to the proposed timing for the implementation of the mandatory trade reporting rules (Rules), FSC would like to re-iterate the importance of there being at least a 12 month period between the date that the Rules are issued in final form and the commencement of the Rules. Furthermore, from an implementation perspective, it would also be prudent for there to be a sufficient lead in time between the licensing and establishment of a trade repository and the commencement of the Rules.

Two sided reporting

We believe that one-sided reporting would be appropriate (and for the reporting to be completed by the sell side). Again, this would be consistent with the US reporting requirements (although noting that the European regulations require two-sided reporting).

While it may be simpler to define, it leads to the unnecessary duplication of reporting for all OTC derivatives transactions and also imposes mandatory trade reporting on a significantly greater number of market participants. The costs of implementation are likely to be significant for each market participant, and as a result, the initial and ongoing compliance costs that will be imposed on the industry as a whole will be far, far greater than if one-sided reporting obligations were to be introduced as is the case in the United States, which only imposes trade reporting obligations on swap dealers.

FSC supports the imposition of one-sided reporting where one side of the trade is a swap dealer. While defining a swap dealer may not be a straightforward task, it is in the interests of the financial services industry as a whole to ensure that an appropriate definition can be arranged, as this will greatly reduce the compliance burden and costs associated with implementation. Swap dealers are more likely to be globally active financial institutions such as those included in Phase 1 – it makes more sense to impose the obligation of reporting on those entities that trade OTC derivatives on a regular and proprietary basis, rather than end-users who only trade with swap dealers (as opposed to swap dealers who will trade with a wide range of counterparties).

ASIC has stated in paragraph 23 of CP 205 that it prefers two-sided reporting as it makes trade reporting easier to monitor and ensures that all trades will be reported. To this end, we would query whether ASIC or a trade repository will actually have the ability to verify that both parties to a trade have reported identical terms. If two-sided reporting is retained as the preferred approach, then FSC supports the proposal for a reporting entity to be able to delegate the reporting obligation to a third party, which in practice for an end user is most likely to be the counterparty given that custodians will not always hold derivatives for their clients. We would note, however, that enabling a counterparty to report on behalf of the other counterparty may potentially undermine the monitoring benefits of two-sided reporting described above.

For similar reasons, FSC considers that a central clearing house should be responsible for reporting OTC derivatives that are centrally cleared rather than either counterparty to the trade.

Given that a number of OTC derivative transactions in Australia are governed by an ISDA Master Agreement and Investment Manager Supplement, we think it would be helpful if CP 205 could clarify whether the *investment manager* (the agent) or the *named client* (the principal) to a trade is regarded as the reporting entity in respect of a trade. While we are of the view that the reporting entity is most likely to be the principal, to reduce potential confusion, we believe this is a relatively straightforward issue that could be helpfully addressed in the final regulatory guide.

Reporting to Overseas Trade Repositories

As noted in our previous submissions to Treasury, we support the ability for reporting entities to report trades to overseas trade repositories that are subject to an equivalent reporting regime.

Information to be Reported to Trade Repositories

We do not support the reporting of daily mark-to-market valuations and collateral information. Reporting should only cover the material terms of the transaction, the identity of the counterparties and any subsequent amendment, novation or termination. The ongoing reporting of trade values and/or collateral posted for a trade is unduly burdensome and unlikely to provide relevant or helpful information to regulators to justify the significant cost to market participants of providing daily reporting.

A more practical measure, as is the case in the United States, is to impose an obligation on reporting entities (or end users and swap dealers) to reconcile valuations and to report to the trading repository any material differences that cannot be resolved within a short timeframe (two to three business days). Both the nature of the material differences and the timeframe for resolving any such differences would need to be defined by the reporting rules. We believe that this would be a much more efficient and effective way of identifying “problem” transactions.