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The Australian Securities and Investments Commission's Consultation Paper 205 on Derivatives Trade Reporting

The International Swaps and Derivatives Association, Inc. (“**ISDA**”)¹ welcomes the opportunity to provide comments on the Australian Securities and Investments Commission's (“**ASIC**”) consultation paper on Derivatives Trade Reporting (“**Consultation Paper**”) released on 28 March 2013.

Our response to the Consultation Paper is derived from these efforts and from consultation with ISDA members operating in Australia and Asia. Individual members will have their own views on different aspects of the Consultation Paper, and may provide their comments to ASIC independently.

We commend ASIC for adopting a phase-in approach by asset class and participant type. This would assist market participants in meeting the trade reporting commencement deadline. We support and encourage continued dialogue between ASIC and the industry to work together to develop best practices and to address any implementation issues that may arise from trade reporting.

General comments

Before we address the questions in the Consultation Paper, we would like to make a few general comments.

Consistency with other jurisdictions

We commend ASIC for striving to be compatible with international principles and with the regulations being implemented in other jurisdictions. For the combined data from Australian-based trade repositories (“**TRs**”) and recognized third country TRs to work, it will only be

¹ ISDA's mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivative market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers. For more information, visit www.isda.org.

possible if this data is expressed in a consistent manner. The harmonization of reporting requirements across jurisdictions will reduce the differences in trade reporting requirements and allow market participants to leverage off existing infrastructure thereby lowering costs and increasing data quality. We commend ASIC for recognizing the reporting regimes of other jurisdictions. This will help mitigate against cost impacts of conflicting reporting requirements where the requirements are substantially equivalent but where full harmonization has not been possible.

As you may know the reporting requirements under the Dodd-Frank Act (“**DFA**”) in the United States (“**US**”) and the European Securities and Markets Authority (“**ESMA**”) technical standards for trade reporting as mandated by the European Market Infrastructure Regulation (“**EMIR**”) in the European Union (“**EU**”) differ significantly in a number of areas. This has led to different reporting obligations by market participants to meet these disparate reporting requirements and increased operational costs in implementing the EU and US trade reporting regime.

One such difference in reporting requirements is the reporting commencement deadline. Under the DFA, some market participants caught by the DFA requirements, have started reporting their transactions in April 2013 for products under the purview of the US Commodity Futures Trading Commission (“**CFTC**”). Products under the Securities and Exchange Commission (“**SEC**”) have yet to be reported as the SEC has yet to finalize its reporting requirements. In Europe, the current date indicated by ESMA is September 2013 for interest rate derivatives and credit derivatives. Due to the later implementation date for the EU, market participants have built the reporting infrastructure to meet the US reporting requirements while the reporting infrastructure and its associated operation issues have yet to be determined for the EU.

If ASIC adopts some of the reporting requirements as mandated under EMIR, such as the reporting of collateral, it should allow market participants sufficient time to build and develop the necessary reporting infrastructure as there is no existing reporting infrastructure at this time. The operational issues with implementing these “EU-like” reporting requirements will also not be as well-documented as the issues arising in the US because market participants have yet to start reporting. In instances where a trade reporting requirement or product type has yet to be implemented in either the US or EU, ASIC may wish to defer that particular reporting requirement or product type until it has been implemented in either the US or the EU.

Clarity in scope of reportable transactions

On Apr 16 2013, in a keynote address, the CFTC Commissioner Scott O’Malia, spoke about the CFTC’s struggle in managing and analyzing the data it has collected from trade reporting. Part of the reason for rendering this information unusable to the CFTC is the inconsistent reporting, variability in data, technology shortfalls and incongruent rules². For data to be usable, the scope of reportable transactions, the types of reportable transactions, the information required to be reported needs to be clear and defined. This would remove ambiguity and the possibility of

² <http://www.cftc.gov/PressRoom/SpeechesTestimony/opaomalia-24>, U.S. Commodity Futures Trading Commission, Commissioner Scott D. O’Malia, Keynote address *Making the CFTC’s Surveillance Work: Efficient Data Management and Clear Rule Implementation*, 16 April 2013.

differing interpretations of the reporting requirements. The current definition of "derivatives" as defined in the Corporations Act 2001 is principle-based. To provide full clarity and certainty for trade reporting, it is important that the reportable transactions are clearly defined despite the definition of "derivatives" being principle-based and having a broad definition. We believe additional clarity may be achieved through the publication of a list of reportable transactions, at the initial phase, followed by carve-outs and/or product guidance notes once the trade reporting regime has stabilized. This would allow regulators to retain flexibility in determining the scope of reportable transactions. As a starting point, ASIC may wish to consider publishing a list of reportable transaction types with reference to a specified product taxonomy to ensure consistent granularity and completeness. These transaction types should be commonly traded and should capture a large percentage of the market. Without a discrete list of reportable transaction types, implementation timelines may be jeopardized as a disproportionate amount of time and effort may be expended by both, the Reporting Entities and ASIC, in interpreting and clarifying the definition of "derivatives" that covers a small percentage of the market and affects only the "periphery" of product types that may be captured in the definition of a "derivative". Differences in interpretation of what is reportable and how it should be reported may affect the integrity, completeness and consistency of the data submitted to ASIC. This in turn, may affect ASIC's ability to effectively use the data submitted.

Underpinned by the principle-based definition of a "derivative" and a matured trade reporting regime, ASIC may choose to augment the list of reportable transaction types with appropriate carve-outs and/or product guidance notes for transaction types that are difficult to categorize. For example: physically settled forward commodity transactions are excluded from the reporting requirement. However, if these physically settled forward commodity transactions, for any particular reason are changed from being physically-settled to cash-settled; these transactions will be caught under the definition of a "derivative". To avoid capturing this product type, a product guidance note may be issued to assist market participants in determining if a particular product type will be reportable.

In conjunction with the need for clarity in the scope of reportable transactions and the trade reporting rules, there is a need to ensure the technology and infrastructure will be able to deliver the required information. If the technology and infrastructure are not in place, the data being reported may require manual intervention which may result in errors occurring, particularly when high volumes of transactions are involved or the market participant may simply be unable to provide the information required as it is unable to do so. For example: if a new reporting data field is required, this will require market participants and the TR to work together to develop and implement a technology build to populate and feed this data to a TR. Time will be required to implement such a technological change if manual intervention is to be avoided. If the trade reporting data fields are aligned to those currently being used, such as the US, this would reduce the implementation time as most market participants are reporting their transactions in the US. ASIC may wish to consider a phase-in approach which allows the trade reporting data fields, as required for the US trade reporting, to be implemented first. This will be followed by a second phase for any additional trade reporting data fields, such as collateral. This will allow for a "close follower" approach and appropriate risk management as only trade reporting data fields that have been discussed and agreed within the industry forums will be used.

It is important for regulators to have a clear objective when requesting information to be reportable. A clear and defined scope of the reportable transaction types, the information required and the reporting structure will ensure that the relevant and necessary data is being reported and the data can be used to meet their objectives. As the regulators may base a policy decision on the data provided to a TR, it is extremely important that the data provided is accurate. This can only be achieved if there is no ambiguity in the reporting rules with any possibility of differing interpretations on what should be reported. Currently, market participants reporting in the US base their reporting on a specific set of trade reporting data fields. Any additional trade reporting data fields beyond what is currently being used will require a technology build and time to test and feed the information of that particular data field to the TR. We urge ASIC to work with the industry to try and harmonize the trade reporting data fields with other trade reporting regimes such as Singapore, Hong Kong, US and the EU. Harmonization of trade reporting data fields will enable market participants to leverage their existing infrastructure and knowledge and reduce costs.

Timing of Implementation

As certain jurisdictions in Asia, such as Singapore and Hong Kong, are looking to implement their reporting regime this year, we request ASIC to take into account the trade reporting commencement dates in these jurisdictions. We are concerned with the potential operational risk that may arise if a market participant has to commence reporting to three different TRs in three different locations in close succession. We recommend at least a month between the commencement date for trade reporting in each jurisdiction to enable market participants to reduce their operation risk and to ensure they have sufficient operational capability to meet the respective trade reporting commencement date. Additionally, a TR will require some lead time from the date the final trade reporting rules are published to develop and implement any additional data fields outside the current scope of trade reporting data fields being used in the US trade reporting regime. The TR will require time to run the user-acceptance test (“UAT”) and will need to ensure it has a TR license in place prior to the trade reporting commencement date.

In addition, the expected commencement date for reporting of FX derivatives, equity derivatives and commodity derivatives in the EU is January 1, 2014. Resources will need to be dedicated to meet this commencement date for reporting in the EU. Some firms will be required to implement the EU reporting requirements across multiple jurisdictions and will face constraints in resources, both from an information technology (“IT”) perspective as well from a staffing perspective, if trade reporting in Australia were to begin on December 31, 2013. Consequently, we believe the reporting commencement date for Phase 1 should commence on January 31, 2014 instead of December 31, 2013 to avoid the operational risk of commencing reporting on two different TRs in two different locations within a short period of time. In addition, market participants face the additional constraint of an IT freeze at year end as well as a shortage of staff over the holiday period. We hope ASIC and the regulators in the EU and Asia will be agreeable to a staggered implementation timeline thereby avoiding conflicting trade reporting commencement dates. We would also like to suggest a no action period of 6 months from the trade reporting commencement date to allow market participants to correct and remedy any trade reporting issues.

Privacy Laws

As you may be aware, potential conflicts may arise when privacy laws in foreign jurisdictions prohibit the disclosure of trade data to a TR. The penalty for violating privacy laws range from damages, fines, loss of license to operate in that jurisdiction to criminal sanctions that may include imprisonment of staff. Market participants operating in a foreign jurisdiction with a reporting obligation to report in Australia will be faced with a contravention of either the Australian reporting obligation or the foreign jurisdiction's privacy law. If the market participant reports the transaction as per Australian reporting obligations, it will be in violation of the foreign regulation. If the market participant does not report the transaction to a TR, it will be a violation of Australian regulation. In such instances, we request ASIC to allow temporary and/or long-term actions to enable market participants to continue their reporting obligations in Australia without violating the privacy laws of other jurisdictions. We would like to suggest the masking of counterparty details to allow market participants to report their transactions in Australia without violating any privacy laws in other jurisdictions.

We urge the Australian regulators to work with regulators from other jurisdictions to facilitate the global sharing of trade reporting data amongst regulators.

Response to specific questions

The remainder of this letter sets out our comments in relation to the specific questions posed in the Consultation Paper. Our response is set out underneath each question. The headings used below correspond to the headings used in the Consultation Paper.

QUESTIONS

Question B1Q1: Do you support the overall scope of the reporting obligation?

Before the scope of a reporting obligation may be determined, it is important for the regulators to have a clear objective for the data they will be receiving. If the intent is to capture all risk in Australia then regulators should take into account the fragmentation of data across multiple TRs. In such a scenario, it will not be possible to capture the entire risk profile of Australian reporting entities in a single TR if data is fragmented across multiple TRs. It is vitally important that the data provided to the regulators be accurate, particularly if decisions will be made based on this information. As such, it is extremely important for both, regulators and market participants, to understand what they are reporting, the information required to be reported and all the trade reporting data fields. Ambiguity will result in differing data sets and different interpretations of scope of reportable transactions and information required for the various trade reporting data fields. We believe additional time is required to work out the implementation issues of trade reporting, particularly issues surrounding the scope of reportable transactions and the trade reporting data fields. We would like to request that the trade reporting data fields be finalized separately from the publication of the final trade reporting rules. We hope ASIC will continue working with the industry to resolve any implementation issues. We believe continued dialogue will benefit both parties greatly and achieve the best possible results.

We believe clarity regarding the scope of reportable transactions is essential. Clarity on the scope of reportable transaction will provide market participants with a clear idea of what needs to be reported and allow for consistent data sets to be reported. As mentioned earlier, as an initial stage, ASIC may wish to publish a list of reportable transaction types which are commonly traded. Subsequently, for the more difficult to define product types, ASIC may choose to augment the list of reportable transaction types with carve-outs and/or product guidance notes. For example: credit-linked notes or a structured product (for example: the structure product may be linked to the performance of an index or an underlying basket) may sometimes contain elements of a “security” (specifically a “debenture”) and a “derivative”. Classification of such products can be unclear as the definition of “derivatives” is very broad. In such instances, it is important that ASIC provides guidance on the characterization of such products for purposes of the trade reporting obligation. We believe that a securitized financial product should be excluded from the scope of reportable transactions.

The current definition of Derivatives includes exchanged traded futures and options which we believe should be carved out of the definition of Derivatives. To report listed derivatives requires a large amount of work, such as the need to identify the TR service providers; the need to design reporting workflows and common data stores; and the need to build-out technology solutions. All these will require significant lead time before market participants are able to begin reporting their listed derivatives transactions.

We strongly recommend a clearer definition of reportable transaction for a foreign authorized deposit institution (“**ADI**”). Item 3 under rule 1.2.5, states that reportable transactions are OTC derivatives transactions “(a) booked to the profit and loss account of a branch of the Reporting Entity located in this jurisdiction; or (b) entered into by the Reporting Entity in this jurisdiction”³. We believe limb (a) is sufficient and allows market participants to clearly identify transactions that should be within the trade reporting scope. We believe limb (b) should be excluded from the definition of a reportable transaction as the term “entered into” is fairly ambiguous. If limb (b) is included, we seek greater clarity on the definition of “entered into”. The definition of “entered into”, ideally, should be a bright line test that allows market participants to easily identify transactions that are within the scope of reportable transactions. We urge the regulators to consider the issues in Hong Kong regarding the definition of “originate and execute” and to avoid the same issues arising in Australia with the definition of “entered into”. Additionally, “entered into” in the definition of a reportable transaction will prove operationally challenging to implement. For example: when back-loading transactions based on the criteria “entered into”, market participants will face challenges in determining which transactions are “entered into”, particularly for transactions executed some time ago, which may not contain the necessary data such as the trader’s location.

We believe intra-group transactions (transactions between desks in the Australian branch of a foreign ADI) and inter-group transactions (transactions between branches of the same legal entity) should be carved out from the scope of reportable transactions. Intra-group transactions and inter-group transactions will contribute to double counting in position reporting and

³ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Rule 1.2.5, Page 7, March 2013.

transactional details and would provide no additional benefit as these parameters will be captured under the legal entity that will be reporting their position and transaction-level data. If intra-group and inter-group transactions are required to be reported, we would like to confirm whether these transactions will be subject to the same reporting requirements as client facing transactions.

We believe a foreign subsidiary of an Australian Entity should be excluded as a Reporting Entity. The foreign subsidiary will be subject to the host jurisdiction's reporting regime and may face conflicting trade reporting requirements if it is also subject to the Australian trade reporting requirements. In order to achieve harmonization of trade reporting frameworks across jurisdictions, regulators across the globe should recognize the trade reporting framework of other jurisdictions. This will help foster cooperation and promote the sharing of data among regulators.

We believe that masking of transactions should be allowed for transactions with counterparties located in a jurisdiction that has privacy laws preventing the reporting of transaction details to a TR.

Under rule 1.2.5 of the Consultation Paper, a Reportable Transaction includes an "assignment of some or all of the party's rights and obligations under the arrangement"⁴. As a result, a reporting entity is required to report the assigned transaction as stated in Rule 2.2.1 (c). In many standardized derivatives documentation, a party is usually prohibited from assigning its rights under an OTC Derivative without the knowledge of the Reporting Entity. However, in some circumstances, the Reporting Entity may potentially be in breach of Rule 2.2.1 (c) depending on the actions of its counterparty. In such cases, we believe the trade reporting obligation is considered breached only if the relevant Reporting Entity has actual knowledge of the assignment or the obligation to report occurs only when the relevant Reporting Entity has actual knowledge of the assignment.

We request ASIC, on a case-by-case basis, to consider the possibility of exemption from liability for breaches of Rules 2.2.1 (1)⁵ and 2.2.2 (1)⁶, if a Reporting Entity is able to establish to the satisfaction of ASIC that it had appointed an agent; it was not negligent in the selection of that agent and the failure to meet the trade reporting obligations rests solely with the agent. If a Reporting Entity has taken all reasonable steps to ensure the information it has reported to an agent is complete and accurate, its obligation under Rule 2.2.6⁷ should be considered satisfied if the Reporting Entity is able to establish to the satisfaction of ASIC that it had provide the agent with all the relevant information and that it did not have any reason to believe the agent would not report the information completely and accurately to meet its reporting obligations. Conversely, if the Reporting Entity did not provide accurate and complete information in a

⁴ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Rule 1.2.5 (iii), Page 6, March 2013

⁵ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Rule 2.1.1 (1), Page 8, March 2013

⁶ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Rule 2.2.2 (1), Page 9, March 2013

⁷ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Rule 2.2.6, Page 10, March 2013

timely manner to the agent, then in such an instance, the agent should not be held liable for the Reporting Entity's breach of its reporting obligation.

We support rule 2.2.1(2) which states that "a reporting entity is not required to comply with the requirements of subrule (1) that would otherwise apply to the Reporting Entity if, at the time the information is required to be reported, there is no Licensed Repository or Prescribed Repository that meets the criteria in Rule 1.2.6 in relation to the Reportable Transaction"⁸. If a Licensed Repository or Prescribed Repository applies and/or is prescribed a class of derivatives for trade reporting, we request a lead time of 90 days to enable market participants to ensure the trade reporting infrastructure is in place with this TR and the TR's functionality for trade reporting. This is particularly important if the TR is a new entrant to trade reporting and has no prior trade reporting relationships with market participants.

Question 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?

We believe reporting by one reporting entity (commonly known as "one-sided reporting") or reporting by both reporting entities (commonly known as "two-sided reporting") have different sets of issues. Different Reporting Entities for varying reasons will favor either "one-sided reporting" or "two-sided reporting" regime.

We support a "one-sided reporting" regime with the option for non-reporting parties to voluntarily report their transactions via a "two-sided reporting" regime. As alternative reporting is allowed, the data received by ASIC will contain transactions subject to either a "one-sided reporting" regime or a "two-sided reporting" regime depending on the trade reporting regime of the foreign jurisdiction. Hence, allowing both a "single-sided reporting" and "double-sided reporting" regimes will be consistent with the data ASIC will be receiving. For "one-sided reporting", it is essential that a hierarchy be developed. This enables market participants to determine which party to a transaction will be required to report the transaction. We believe the hierarchy used in the US may serve as the base for developing an Australian hierarchy.

Under a "two-sided reporting", if linking or matching of transactions is required, an inordinate amount of time and manual intervention is required to locate and link or match each transaction to the counterparty's transaction. When a large number of transactions are executed each day, this matching or linking process becomes extremely laborious to manage on a daily basis. This is further compounded if transactions are reported to multiple TRs. Data will then need to be pooled from multiple TRs, resulting in, increased costs and increased IT development before these transactions can be linked or matched. Another issue that arises under a "two-sided reporting" regime is the exception management when reconciliation is performed on the transactions in a TR. A large number of exceptions will be generated as a large number of transactions may have no corresponding transaction in the TR. As these transactions are cross-border transactions, one party to the transaction is located outside Australia and will not be

⁸ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Rule 2.2.1(2), Page 8, March 2013.

subject to the Australian trade reporting requirements. As the trade reporting requirement will be phased-in, transactions with Phase 2 or Phase 3 Reporting Entities will also create exceptions in the reconciliation process as these Reporting Entities will only begin reporting at a later date and will give a “false positive” result. Resources will need to be devoted on a daily basis to check the exception reports and to ensure transactions are actual missing transactions and not “false positive” transactions. End users will most likely lack the required trade reporting infrastructure and will most likely delegate their reporting obligation to the ADIs. This increases the operational risk for the ADIs as they will be submitting for both themselves and on behalf of their clients. Data accuracy, in such instances, cannot be verified unless the end user verifies the data and informs the ADI of any inaccuracies. In such an instance, the ADI acting as an agent should not be held liable for the information submitted on behalf of the end user.

If trade reporting begins without the availability of Universal Identifiers such as the unique trade identifier ("UTI"), it will be difficult to reconcile the transactions in a TR, particularly if the same transaction is reported to two different trade repositories. If transactions are reported to two trade repositories, we believe the reconciliation process should be done by the TRs. Parties will need to agree which reporting entity will be generating the UTI and will then need to provide the UTI to the other party of the transaction. If it is "two-sided reporting", reporting entities will need to use the same UTI, which will present challenges in being able to report by the following day, if the UTI cannot be exchanged in advance of the timeframe, particularly for paper confirmations. In such an instance, market participants may require additional time to meet the deadline for reporting transactions. Additionally, not all counterparties will have a UTI, particularly end users, thus linking reported transactions between two counterparties using a UTI may not always be possible. If “two-way reporting” is required, the dissemination of the UTI needs to be embedded within the existing business-as-usual (“BAU”) processes. For example: the existing confirmation processes allows for the transfer of UTI through Swift messages, paper confirmations etc.

Question 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?

In the "one-sided reporting" regime, which reporting entity is required to report will depend on a hierarchy. The hierarchy will dictate which entity will be required to report the transactions. For “one-sided reporting” to work, the hierarchy needs to be clearly defined to enable market participants to determine which of the parties to a transaction will be reporting the transactions. We suggest the hierarchy that has been proposed by the CFTC as a starting point to base the Australian hierarchy and customizing it to fit the Australian trade reporting framework. This allows market participants to leverage off their existing framework, particularly for market participants subject to the CFTC’s trade reporting requirements. The hierarchy should also take into account financial institutions acting on behalf of their clients and who will be reporting the transactions in such an instance. The hierarchy will also need to build in a tiebreaker logic that allows market participants to determine which of them will be the reporting party. For example: if there are two ADIs to a trade, the tiebreaker to determine the reporting party may be the party

that pays the fixed rate in the transaction. We encourage ASIC to engage the industry in the development of the hierarchy for the “one-sided reporting” regime.

"One-sided reporting" allows for a simplified work flow as it circumvents issues such as determination of UTI and matching or linking of transactions. A defined hierarchy of who submits and the rules governing the hierarchy will provide guidance to market participants and provide a clear indication of who will be the Reporting Entity under different circumstances for the “one-sided reporting” regime. Additionally, existing controls in the bilateral confirmation matching process enables market participants to identify and remediate erroneous submissions, even though only one side of the transaction is being reported.

The ability to filter based on this hierarchy will depend on a market participant’s booking or reporting system. Some market participants will face implementation issues such as system set-ups, identification of clients and assurance checking. As mentioned in B1Q2, there are advantages and disadvantages in using either a “single-sided reporting” regime or a “double-sided reporting” regime.

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

The scope of reportable transactions will allow market participants to determine the cost of implementing the trade reporting regime in Australia.

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

We have no objections to the proposed four categories of OTC derivative transactions as long as the scope of reportable transactions is clearly defined.

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

The scope of reportable transactions will allow market participants to determine the cost of implementing the trade reporting regime in Australia.

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

We do not have an issue with the definition of “derivative” as defined in section 761D of the Corporations Act 2001⁹ as it allows for a principle-based approach in defining a derivative. As

⁹ http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s761d.html, Corporations Act 2001, Section 761D.

mentioned earlier, as an initial stage, ASIC may wish to consider publishing a list of reportable transactions to provide clarity to the industry. The aim is to capture the bulk of the market whilst leaving the more difficult to classify products types to be reported at a later stage. As the trade reporting regime stabilizes and matures, these more “problematic” products types may then become reportable. For these “problematic” product types, we believe clarity may be achieved through appropriate carve-outs or product guidance notes as needed.

As mentioned earlier, we believe intra-group and inter-group transactions should be carved out from the reporting requirement. We also believe exchange traded listed derivatives and securitized financial products should be carved out from the reporting requirement. We would like to ensure that securitized financial products will not be considered a “derivative” and will be excluded from the reporting requirement.

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

Yes, we support the proposed definition of OTC derivative transaction as it is principle-based. However, we believe the scope of the OTC derivative transaction definition needs to be more specific and should be further defined through a list of reportable product types as an initial phase; followed by appropriate carve-outs and/or product guidance notes as appropriate.

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

We have no objections to both centrally cleared and non-centrally cleared OTC derivatives transactions being reportable. However, for centrally cleared transactions we seek clarification on whether the counterparty of the transaction should be the original counterparty to the transaction or the CCP. If the CCP, acting as agent, fails to report the transactions, for whatever reason, to a TR within the reporting timeframe, the market participant should not be penalized for this breach in reporting requirement as the failure to report resides with the agent. In such an instance, we believe ASIC may wish to assess the reporting breach on a case-by-case basis as the market participant may have a valid reason for being unable to report, such as a reporting system failure in the CCP.

As clearing member house positions can be reported by CCPs or exchanges, we seek clarification around client cleared transactions as these transactions are usually not reported by a CCP or exchange. We would like to confirm that a CCP may be selected as an agent by a Reporting Entity to report their cleared transactions to a TR. We request clarity on whether a Reporting Entity will need to report the valuation data for cleared transactions.

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

No comments.

Question B4Q1: Do you agree with the proposed timing of reporting?

We seek clarification that the proposed timing of reporting by the end of the next business day (also known as T+1 reporting) will correspond to the business day of the jurisdiction in which the transaction is booked to the profit and loss of that Reporting Entity. For example: if the New York branch of an Australian bank reports its transactions, it will need to report its transactions by the next New York business day.

We believe the proposed timing of reporting should be extended to T+2 due to the timing differences between Australia and other jurisdictions. As a market participant may be reporting to a TR located in another jurisdiction, such as New York, the end of day batch for that particular TR may occur at 4am EST. Consequently, due to the time zone differences between Australia and New York, it may not be possible to meet a T+1 reporting time under the trade reporting requirement.

If a T+2 business day reporting convention is adopted, we seek further clarity surrounding the valuation date and value for new transactions. For example: would new transactions be required to be valued on the date of execution or in-line with a T+2 reporting date?

Question 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)?

No comments.

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

Please refer to our response in B4Q1.

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

No comments.

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

We support the proposal allowing an alternative reporting regime. The alternative reporting regime will allow Reporting Entities that are already reporting their transactions to their home

regulators to utilize the same reporting regime in Australia. This would reduce time taken for compliance, implementation costs and technological builds. It will also promote international coordination and cooperation among trade reporting regimes through recognition of another jurisdiction's trade reporting regime.

We seek ASIC's position on whether "alternative reporting" is applicable, if there are differences between Australia's trade reporting data fields and/or its trade reporting rules and the other jurisdiction's trade reporting data fields and/or trade reporting rules.

Question 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.)

We request ASIC to provide clarity and further details on the process for accessing the alternative reporting regime and in determining equivalency. We support a holistic approach to assessment of an alternative reporting regime as opposed to a rules-based approach. It is unlikely an alternative reporting regime will be identical to the Australian reporting regime; consequently, it may simply be impossible to base an assessment on a rules-by-rules basis.

If there are inconsistencies, on a rules-by-rules basis, between two reporting regimes, will the reporting entity be required to comply with the Australian trade reporting regime instead of the alternative reporting regime? Will ASIC publish a list of reporting regimes it deems equivalent? Will a Reporting Entity be required to notify ASIC if it chooses an alternative reporting regime? Will ASIC notify Reporting Entities when it recognizes an overseas TR or an alternative reporting regime?

Question C1Q3: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

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

We agree with the criteria used to determine a TR under an alternative reporting framework. We commend ASIC for taking into account the reporting requirements of foreign entities in their jurisdiction. We support the global sharing of trade reporting data amongst regulators. We understand the need for the home and host regulators to discuss details of a cooperative agreement before an overseas TR is recognized and we recognize this may take some time before it is put into place. Market participants would like to request that the industry be given ample lead time for adopting the alternative reporting if a cooperative agreement cannot be setup prior to the trade reporting commencement date.

Question C2Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question 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 would like to request additional time be given to allow the industry to work with ASIC on developing a practicable and workable solution for the information required in the trade reporting data fields. We seek clarity on the information required to be reported in the trade reporting data fields and we do not believe all trade reporting data fields should be mandatory. We hope ASIC discusses these issues further with the industry prior to finalizing and determining all the trade reporting data fields, in Tables 1-5 of Schedule 2¹⁰ of the Consultation Paper.

We support the use of international standards such as the unique trade identifier (“**UTI**”), the unique product identifier (“**UPI**”) and the legal entity identifier (“**LEI**”) where possible.

We believe the hierarchy used for the identifier of a reporting counterparty and non-reporting counterparty should use a legal entity identifier (“**LEI**”) as the first step. If no LEI is available, we suggest that a reporting entity is allowed to use an interim entity identifier such as the interim identifier specified by the CFTC (otherwise known as CICI). The CICI will be used for a limited period until such time that the global LEI is ready for usage and is furthest along as an alternative entity identifier. If no LEI and no interim identifier are publicly available, we suggest using BIC codes where available. This would then be followed by an Australian Business Number or a client code. This allows maximum flexibility at the fall back level and ensures an easy transition from interim identifiers to LEIs once they are available. We would like to request for TRs to have a mapping table such that a BIC will map to the corresponding LEI/CICI identifier of a particular transaction. If “two-sided reporting” is required, the use of internal counterparty codes will pose issues if matching or linking is required and market participants should be encouraged to use the international standards as much as possible.

As a universal UPI has yet to be developed, we suggest using an interim solution such as the ISDA-defined taxonomy¹¹. This taxonomy was developed with input from a wide variety of market participants and is freely available on the ISDA website. Additionally, a governance document has been developed to provide transparency with regards to future changes to the taxonomy. This would allow market participants to use a standardized interim solution while a permanent harmonized solution is being developed and is currently being utilized for trade reporting in the US.

¹⁰ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Schedule 2, Tables 1-5, Pages 22-29, March 2013.

¹¹ <http://www2.isda.org/identifiers-and-otc-taxonomies/>

Some of the data fields listed in Table 1 of Schedule 2¹² of the Consultation Paper are not similar to the data fields being currently reported to DTCC to meet the US trade reporting requirements. The majority of these data fields relate to the reporting of collateral information. Reporting of collateral is part of the EU reporting requirement and not the US reporting requirement. As the EU reporting requirement for collateral will not start till 2014, there is no framework in place for reporting collateral to a TR. As such, developmental efforts will be required before collateral may be reported to a TR. ASIC may wish to defer the reporting of collateral until the EU has implemented collateral reporting. This would allow ASIC to leverage off any issues arising from the implementation in the EU prior to implementation in Australia.

Additionally, we request that flexibility be incorporated into the trade reporting data fields in Tables 1-5 of Schedule 2 by allowing some of these trade reporting data fields to be optional or conditional instead of mandatory. For example: hedging may be done on a portfolio level as opposed to a transaction level and requiring this to be reported on a transaction level may not be a workable solution. Also, from an operational perspective, a transaction is normally not flagged as a hedge for a particular transaction or a portfolio of transactions. Hence, it would be extremely difficult to locate a transaction that a trader or a client may have executed as a hedge. As collateral is usually reported on a portfolio basis, populating the trade reporting data fields (items 43, 44, 45, 46 and 47) would not be possible as that requires information on a transaction level as opposed to a portfolio level.

For simplicity, we have listed any comments and/or clarifications for the trade reporting data fields in Annex 1. Please note this applies to the trade reporting data fields in Schedule 2, Part S 2.2 of the Consultation Paper¹³ as they have the same issues as those listed in Schedule 2, Part S 2.1. We encourage dialogue between ASIC and the industry to address any implementation issues concerning the trade reporting data fields.

For life cycle trade reporting, we seek clarity on whether the life cycle event should be captured as an end-of-day (“**EOD**”) snapshot or a real-time snapshot. We suggest allowing market participants the flexibility of selecting either real-time or EOD reporting. If a transaction has two life cycle events in a day, we propose that the latest version of the transaction be acceptable. For any transactions with a trade date before the trade reporting commencement date, we propose that life cycle events not be reportable until 6 months after the trade reporting commencement date. We propose the latest transaction image, capturing the latest life cycle event of these historical trades be submitted to the TR 6 months after the trade reporting commencement date. As these transactions would only be reported into a TR 6 months after the trade reporting commencement date, reporting a life cycle event within those 6 months would not make much sense. The 6 months timeframe allows market participants to identify the appropriate transactions to be reported, to seek consent from the counterparties; to disclose this information; and to ensure the feed to a TR. If life cycle events are required to be reported within the 6 months timeframe, market participants may not have identified which transactions are reportable

¹² Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Schedule 2, Part S 2.1, Table 1: Common data, Pages 22-26, March 2013.

¹³ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Schedule 2, Part S 2.2, Table 1 – Table 5, Page 30-35, March 2013

under the Australian reporting regime as the expectation is to only report those transactions 6 months after the trade reporting commencement date.

We believe greater detail and clarity will be needed for the data fields in Table 1 to Table 5 of Schedule 2¹⁴ of the Consultation Paper. We urge ASIC to further consult with the industry on the data fields as the consultation period may be a little too short for market participants to fully absorb, analyze and understand the data required to populate these data fields.

Question D1Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question 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)?

Yes, we agree. Please refer to Question D1Q1.

Question D2Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

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

We support the reporting of collateral and mark-to-market valuations to a TR. However, collateral, threshold amounts, minimum transfer amounts and initial margin are typically reported on a portfolio level. As such, a market participant will not be able to provide this information on a transaction level. Reporting portfolio data such as collateral at a transaction level, would only seek to produce a hypothetical result, inconsistent from the legal framework of collateral being calculated on a netted basis, subject to an underlying collateral documentation. We seek further clarity on the requirements for collateral reporting on a portfolio level. We would also like to request a 180 days grace period for collateral reporting from trade reporting commencement date as market participants do not currently report collateral to TRs and will need time and resources to build the necessary reporting infrastructures.

¹⁴ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Schedule 2, Table 1: Common data, Table 1 – Table 5, Page 26-35, March 2013.

When a reporting entity acts as an agent, we would like to verify if the valuation and collateral information can be based on the reporting entity's valuation and collateral values or should they be based on the client's valuation and collateral values?

Question D3Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

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

As mentioned earlier, we believe December 31, 2013 is not a desirable date to start the reporting transactions for Phase 1 Reporting Entities. During the yearend, there are IT freezes that do not allow for any technological changes in any systems within a firm. In addition, there is usually a staffing issue due to the holiday period. On top of this, the commencement date for the reporting equity derivatives, FX derivatives and commodity derivatives, in the EU is slated to begin on January 1, 2014. Market participants are concerned with having to meet the trade reporting mandate under two different reporting regimes within a short period of time.

We would like to request at least a 6 months lead period from the finalization of the trade reporting rules to the trade reporting commencement date.

We seek confirmation that the threshold of \$50 billion for Phase 1 reporting entities will be based on the transactions booked into the Australian branch of a foreign ADI only and will not include any transactions booked in the other branches or the parent entity of the foreign ADI. We seek confirmation whether notification should be given to ASIC if a reporting entity exceeds the \$50 billion threshold and is subject to the Phase 1 deadline.

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

No comments.

Question 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?

Whether a Reporting Entity considers opting in to the interim reporting phase will depend on whether the Australian regime will be considered as substituted compliance with the US reporting regime. We hope the continued discussions between the US and Australian regulators

will result in the Australian reporting regime being considered as substituted compliance with the US reporting regime and we await ASIC's response on this issue. If substituted compliance with the US occurs, some of the Australian Entities will be interested in the "opt in" phase. In the absence of substituted compliance, we wish to highlight the potential impact on some end users such as Australian funds and corporates.

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

Yes, we agree to the proposed phased implementation by asset class.

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

As mentioned earlier, as transactions will be back-loaded 6 months after the trade reporting commencement date, if such a transaction is amended between the trade reporting commencement date and the position reporting commencement date, we propose market participants be allowed to report the latest transaction image on the position reporting commencement date.

Question 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?

As consent may be required for disclosure to a TR, there is a concern that market participants will be unable to attain consent from all their clients, particularly, for transactions in which a market participant no longer has a relationship with the client. In such instances, masking of counterparty details may be required for transactions between two Australian Entities. ASIC may wish to grant either exemptions or allow the masking of client details on a case-by-case basis.

Question E2Q3: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

ANNEX 1

The remainder of this Annex sets out our comments and/or clarifications in relation to the specific trade reporting data fields listed in Tables 1-5 in the Consultation Paper¹⁵. The item and label headings used below correspond to the headings used in the Consultation Paper.

Table 1: Common data

Item	Label	Comments
3	Contract type	For example: what transactions would be classified as a “swap”? How would exotic transactions such as variance swaps or volatility swaps be classified in the “contract type” data field?
4	Underlying	For certain product types, such as a fixed rate vs. fixed rate interest rate product, there is no “underlying” interest rate in the transaction. In such an instance, what would be the information needed to be populated in this trade reporting data field?
5	Identifier of Reporting Counterparty	As the current proposal in the Consultation Paper is for “double-sided reporting”, both parties to a transaction will be considered a reporting counterparty. In such an instance, how would the data field “identifier of reporting counterparty” be determined? We seek clarification on the information required to populate this trade reporting data field.
8	Name of Non-reporting Counterparty	For transactions in jurisdictions with privacy law issue, will masking of counterparty details be allowed?
11	Name of Beneficiary	If there is more than one beneficiary, would a list of beneficiaries be allowed?
15	Identity of broker	As a broker may not have a LEI, we would like to request an alternative identity code be provided for brokers. As some firms will using the alternative reporting regime an internationally recognized identity code would be preferable and will allow the same code to be used across multiple jurisdictions.

¹⁵ Australian Securities & Investment Commission, *Attachment to CP 205: Draft ASIC Derivatives Transaction Rules (Reporting) 2013*, Schedule 2, Tables 1-5, Pages 22-29, March 2013.

23	Confirmation timestamp	For transactions using an automated solution, such as FpML, if a new trade is transacted but the confirmation has not been matched, the confirmation timestamp would be left blank. If the transaction is matched a day after execution, would a market participant then need to send a “modify” message to indicate the timestamp of when the confirmation has been matched?
24	Execution venue	In the event the transaction is not executed on a trading venue, how would the data field be populated?
25	Method of execution	Most trading systems will not capture the execution method, hence it will be difficult to ascertain if a trade was transacted via voice; electronic or as a direct access.
27	Master agreement date	This data is not available in the trading systems and is not a data field that is easily populated. We would like to request for the rationale for requesting this information.
38	Submission of order entry timestamp	Trading systems are setup to capture the timestamps of transactions when they are booked into the trading system and not when these transactions were executed. If the transactions are not executed via a trading venue, please advise what should be populated in these fields.
39	Execution timestamp	Please refer to comments for item 38.
43	Collateralisation	We note that this follows the proposed trade reporting requirement under EMIR. As the reporting requirement under EMIR is expected to begin in March 2014, we urge ASIC to phase-in the above mentioned collateral fields 6 months after EMIR’s implementation date. This allows market participants to benefit from solutions to complexities anticipated in the classification and population of this data at a transaction level.
44	Collateral portfolio	Please refer to comments made in item 43.
45	Collateral portfolio code	Please refer to comments made in item 43.
46	Value of collateral	Please refer to comments made in item 43.
54	Value of options	We seek the rational and clarity on the information required in this data field. As valuation is required to be reported for transactions, we question the need for a separate option value as mark-to-market will be captured in the derivative position reporting. We believe this data field would not be

		necessary in such an instance.
55	Payout (digital, binary, barrier)	We seek clarity on how this data field should be populated, i.e., with the payout structure (digital, binary or barrier) or with the payment amount.
56	Barriers and type	We seek clarity in the information required to populate this data field as well as examples.
58	Hedging transaction	We seek further clarity on the rationale for including this data field as this is an additional requirement from other implemented trade reporting regimes and is currently not captured in the normal course of trading activity. We propose the remove of this trade reporting data field requirement as it is not a metric that can be easily populated, particularly for historical transactions. Additionally, the term is highly subjective and different firms may classify their “ordinary course of business” differently from what is considered “financial risk”.
59	Other material terms matched by the counterparties in verifying the derivative	We seek clarity in the information required to populate this data field.
60	Reporting log	We request further details on the allowable values for this data field as well as examples of this data field. If a transaction is an existing contract and is not a new contract or undergone a modification, novation, assignment, compression or termination, what would be used to populate this data field?


Table 3: Equity derivative and credit derivative data

Item	Label	Comments
10	Description of the payment stream of Reporting Counterparty	We seek clarity in the information required to populate these data fields.
11	Description of the payment stream of Non-reporting Counterparty	We seek clarity in the information required to populate these data fields.

12	Payment frequency	We seek clarity in the information required to populate these data fields.
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Yours faithfully

For the International Swaps and Derivatives Association, Inc.


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