



Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

Sent by email to otcd@asic.gov.au

Date 15 May 2013

Dear Sirs,

Derivative transaction reporting

This paper provides the response of the LCH.Clearnet Group ("LCH.Clearnet") to ASIC's Consultation Paper on Derivative transaction reporting (CP 205).

LCH.Clearnet is the world's leading clearing house group, serving a range of OTC markets as well as major international exchanges and platforms. It clears a broad range of asset classes including interest rate swaps, credit default swaps, FX derivatives, cash equities, exchange traded derivatives, commodities, energy, freight, and bonds and repos and works closely with market participants and exchanges to identify and develop clearing services for new asset classes. As you know, LCH.Clearnet was recently granted an Australian Clearing and Settlement facility licence to clear and settle contracts traded on the FEX market, and plans to apply for a variation of this licence that would enable Australian banks to clear OTC interest rate swaps as members of its SwapClear service.

We welcome the opportunity to comment and also the overall approach that ASIC has taken in this area. To step back from the detail and consider the purpose of such reporting, it appears to us that a trade repository ("TR") should be able to compile summary risk and position information for a reporting entity - by product or market, and by individual proprietary or client account. This would clearly be sensitive data and must be made available only to properly competent authorities. This is quite separate from some of the transparency reporting sought for example under the Dodd-Frank Act where individual bargains may be publicised shortly after trading, though it is possible that a TR may offer this service too. However providing a TR with a wide range of data may defeat its primary purpose and be a futile exercise if easy access to aggregate positional, and risk, information is the regulatory requirement. With this overarching goal in mind we have the following comments on the proposals.

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REPORTING OBLIGATION

PROPOSAL FROM ASIC

- “(a) Any counterparty subject to the reporting obligation (i.e. a ‘reporting entity’, which includes central counterparties for cleared transactions) must:
- (i) Report the details of OTC derivatives to a trade repository, if the transaction is a ‘reportable transaction’ and
 - (ii) Report the modification, termination or assignment of OTC derivatives;
- (b) A reporting entity may optionally delegate the reporting so that a third person reports on its behalf (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) 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.”

FEEDBACK FROM LCH.CLEARNET

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

We support the fact that both the clearing of a reportable transaction and the “de-clear” (termination of a cleared trade) should be reported in order for the trade repository to have an exact picture of the OTC derivatives positions of each Reporting Entity. The rule should however stipulate that the reporting of any post-trade event (modification, termination or assignment) is mandatory only for transactions whose creation has previously been reported.

If reporting entities were mandated to report post-trade events, such as terminations, occurring on all transactions, including theoretically eligible transactions traded or cleared before the reporting obligation comes into force, this would be counter-productive as this would add confusion instead of increasing transparency.

This is an important precision to be added to the rule and moreover is consistent with the requirements in the US on a DCO under the Dodd-Frank Act.

It should be clarified whether the reporting of historic transactions (i.e. derivatives cleared previously to the start date of the reporting) is required, or just the new transactions cleared post implementation date.

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 question the merit of both parties having to report identical data. Reporting from both entities implies a data reconciliation to be performed by the trade repository. Such a reconciliation would become even more challenging if both reporting entities are able to report to separate trade repositories.

B1Q3 If only one reporting entity was 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?

We would support a rule where a CCP would have to report to a trade repository the details of the totality of the reportable transactions it clears irrespective of the reporting obligations of the counterparty of each cleared trade. We do not support a regulation where a CCP's reporting obligation would be dependent on the identity and requirements of its counterparties as this would add complexity and introduce the risk of misreporting.

The above view is specific to cleared transactions: for a cleared transaction, the central counterparty holds the "golden record" and the CCP should as a result be the only party obligated to report.

For non-cleared transactions or transactions pre-clearing (bilateral transactions), rules as exist under the Dodd-Frank Act should be implemented to determine the identity of the reporting counterparty. An alternative is to let counterparties of bilateral transactions determine which one will fulfil the reporting obligation at the time of trade execution.

B1Q4 what is the likely impact of our proposals?

We do not have sufficient information to answer this question.

CATEGORIES OF REPORTABLE TRANSACTIONS

PROPOSAL FROM ASIC

“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');
- (b) Entered into by a foreign subsidiary of an Australian entity referred to in (a);
- (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; or
- (d) Executed in Australia by a foreign ADI.”

FEEDBACK FROM LCH.CLEARNET

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

We would like to raise our concerns over the uncertainty in the draft rules regarding the reporting requirements applicable to a foreign central counterparty. We understand that the intention of the above draft rule is that all Clearing and Settlement facility licensees would be subjected to reporting obligations, which LCH.Clearnet supports. More widely, particularly as a central counterparty may seek to report on behalf of its participants, we suggest that there should be a public register of both those entities who are subject to the requirements and of the TRs to which reporting can be made; similar to the CFTC's SDR and FCM lists. This would be the simplest way to ensure that all parties can clearly understand the interpretation of the classification, and the status of a potential reporting entity.

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

We do not have sufficient information to answer this question.

DERIVATIVE TRANSACTIONS REQUIRED TO BE REPORTED

PROPOSAL FROM ASIC

"We propose to:

- limit the reporting obligation to OTC derivative transactions;
- 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;
- Require both centrally cleared and non-centrally cleared OTC derivative transactions to be reported to trade repositories."

FEEDBACK FROM LCH.CLEARNET

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

Agreed.

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

We do not comment, but expect that the obligation would apply to all OTC derivatives that LCH.Clearnet would seek to clear for Australian entities should it be granted the licence it is currently seeking.

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

We agree that centrally cleared OTC derivatives should be reported, but do not comment on non-centrally cleared derivatives.

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

We do not have sufficient information to answer this question.

DEADLINE FOR REPORTING OF REPORTABLE TRANSACTIONS

PROPOSAL FROM ASIC

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 this execution, amendment, termination or assignment took place (commonly known as 'T+1').

FEEDBACK FROM LCH.CLEARNET

B4Q1 Do you agree with the proposed timing of reporting?

Agreed. This timing is feasible.

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)?

See below.

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

We encourage collaboration between regulators to ensure a consistent set of reporting requirements between different jurisdictions. Variations between different regulatory regimes introduce unnecessary complexity and cost. However the timeliness of reporting should be considered in the context of how the data will be used; as stated on our preamble, there is a separation between position/risk information and transactional data. Those regulatory regimes that have shorter reporting deadlines have specific obligations, i.e. public dissemination, which require and justify such deadlines.

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

We do not have sufficient information to answer this question.

ALTERNATIVE REPORTING

PROPOSAL FROM ASIC

“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).”

FEEDBACK FROM LCH.CLEARNET

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

We strongly agree that this would be helpful, the ability to report to a foreign TR effectively enabling substituted compliance.

For example, LCH.Clearnet Ltd is subject to trade reporting obligations under both the Dodd-Frank Act in the US and the EMIR Regulation in Europe. Should LCH.Clearnet be granted a licence to clear OTC derivatives in Australia, LCH.Clearnet would under this rule (it is now a foreign company registered under Div 2 of Pt 5B.2) not need to report separately to an Australian Trade Repository in order to be compliant with Australian law.

However we encourage ASIC to clarify how such consideration would impact a central counterparty's obligations and to provide confirmation if this alternative reporting might apply to all trade reporting, mark-to-market reporting and collateral reporting, or only to trade details reporting.

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.)

Agreed.

We seek confirmation that these foreign companies include foreign central counterparties.

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

We do not have sufficient information to answer this question.

CONDITIONS FOR ACCESSING ALTERNATIVE REPORTING

PROPOSAL FROM ASIC

“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.”

FEEDBACK FROM LCH.CLEARNET

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?

Agreed. However we are not sure that the conditions for such substitution will actually be achievable within the timelines that the obligations carry. We hope that other regulators will be able to work with ASIC to make this happen expeditiously. Without it, clearly, the burden of the requirements is significantly greater.

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

We do not have sufficient information to answer this question.

DATA REQUIRED TO BE REPORTED

PROPOSAL FROM ASIC

“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).”

FEEDBACK FROM LCH.CLEARNET

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?

It would be useful to provide for each field its importance, i.e. if it is a “Required” field, an “Optional” field or a “Conditional” field. Not all fields are applicable to all transactions.

In addition, regarding fields 31 to 33 of Table 1 of Part S2.1 of Schedule 2 relating to Mark-to-market, it should be noted that if a Reporting Entity reports its OTC derivative transactions in real-time to the trade repository, the mark-to-market cannot be provided in the same reporting message as the creation or modification of the trade.

Instead, a solution already used for the reporting of mark-to-markets in other jurisdictions could be considered i.e. a daily reporting post end-of-day valuation of all the mark-to-markets of the OTC transactions reported to the trade repository and which have not expired.

As a CCP, we would expect to receive the Unique Transaction Identifier as part of the original trade message from the trade source. The act of clearing would then create two new trades which would have their own UTIs (which we would create). We would report these new UTIs to the TR, the trade source and also the counterparties. This is the model operates successfully in the US.

Lastly, Table 5 of Part S2.1 of Schedule 2 listing the fields to be additionally reported to an Australian trade repository mentions the notional amount for both leg 1 and leg 2 of the transaction. Given that no other fields relate to notional amounts, there is doubt about how the reporting of swaps with a variable notional can be done.

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

We do not have sufficient information to answer this question.

COMPLYING WITH INTERNATIONAL DATA STANDARDS

PROPOSAL FROM ASIC

“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).”

FEEDBACK FROM LCH.CLEARNET

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 fully support the use of such standards and of the three identifiers to identify respectively a party, a transaction and a product as they are already used to report to existing trade repositories in other jurisdictions (under the Dodd-Frank and EMIR requirements).

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

We do not have sufficient information to answer this question.

REPORTING OF MARK-TO-MARKET VALUATIONS AND COLLATERAL INFORMATION

PROPOSAL FROM ASIC

"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)."

FEEDBACK FROM LCH.CLEARNET

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

For cleared transactions, it is not possible to report this for individual trades, but only for the entire account. We interpret the rule as meaning that a CCP would be compliant by providing end-of-day valuations for the population of trades previously reported to the trade repository. These are already reported daily to the US trade repository as per Dodd-Frank requirements.

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

We do not have sufficient information to answer this question.

IMPLEMENTATION OF THE REPORTING OBLIGATION

PROPOSAL FROM ASIC

"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."

FEEDBACK FROM LCH.CLEARNET

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

The proposed timetable follows a similar approach to other jurisdictions.

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

Based on the understanding that interim reporting could be achieved via the alternative reporting route this approach is likely to assist the goal of an earlier reporting date. Whilst reporting has been under way for some months under Dodd-Frank, the effective timetable for other jurisdictions remains uncertain, so we would therefore encourage the ASIC to ensure that the final rules recognise some of these uncertainties to facilitate effective planning and delivery of reporting obligations.

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?

The "Opt-in" approach could be problematic for a CCP when considering that the reporting obligation exists even where the counterparty to a transaction is a non-reporting entity. In such circumstances a more legally certain obligation would help negate such considerations.

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



We agree with the proposed phasing.

REQUIREMENT FOR DERIVATIVE POSITION INFORMATION

PROPOSAL FROM ASIC

“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.”

FEEDBACK FROM LCH.CLEARNET

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

We agree that in order to be effective the Trade repository should have a full picture of the derivative positions outstanding from the time when the obligation takes effect

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?

Given that other jurisdictions have similar reporting obligations there are no specific challenges unique to this proposal.

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

Based on an assumption that our obligations would be met by an alternative reporting arrangement then the impact of these proposals would be low.

We hope that you find these comments useful. We are ready to discuss these further with ASIC on order to reach a satisfactory conclusion.

Should you have any questions or issues arising from this response please contact Rory Cunningham, Director Public Affairs,

Yours faithfully



Ian Axe

Chief Executive Officer