1 May 2013

Senior Manager, Post-trading and OTC Derivatives
Financial Market Infrastructure
Australian Securities and Investment Commission
Level 5, 100 Market Street
Sydney NSW 2000

Dear Sir/Madam

This letter contains Sucrogen's response to the **ASIC Consultation Paper 205, *Derivative transaction reporting***.

Sucrogen acknowledges that Consultation Paper 205 aims to improve the stability, transparency and robustness of the financial system, and supports efforts to ensure that the financial crisis that occurred in the USA and European markets does not reoccur. We are however unsure how the extension of reporting requirements to Non-Financial Corporate ("NFC") end users will assist in this objective in any meaningful way. In our view, these reporting measures:

- Impose most of the cost of achieving financial sector stability onto the non-financial corporate sector, and thereby further increase the cost to NFC of managing financial risk. Reducing the cost of managing risk would seem a better means of preventing the reoccurrence of the financial crisis seen in USA and Europe.
- Require greater system, reporting, and staffing costs that would reasonably be required, and inappropriate levels of system and operational complexity on the corporate sector. As an example, Sucrogen currently uses the eTC treasury system and this would be unable to meet these requirements without significant and costly alterations.
- Do not appreciate of the role and nature of financial risk management in NFC
- Fail to give due recognition to the need for confidentiality in business arrangements in the non-financial corporate sector.

By NFC in this context we refer to Australian corporations not in any way involved in financial intermediation. Subsidiaries of Financial Institutions and other legal structures used by banks, insurers, and brokers, to move business activities out of their main or regulated entities are not and should not be considered as non-financial corporates.

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The measures need to recognise the role and more limited impact of the activities of non-financial corporations on the stability of the financial sector. Of the critical issues of concern that arose during the GFC internationally and in Australia, the taking of derivative positions for the purposes of managing financial risk by non-financial corporations was not one that threatened the stability of the financial system.

It is important to acknowledge that **the appropriate use of derivatives by NFC decreases financial risk**. In our view, regulatory measures should support the corporate sector in managing risk, however these measures materially increase costs of compliance which directly opposes this endeavour.

There are virtually no "true" corporates in Australia of a scale whose failure would have a material adverse impact on the stability of the financial sector. In our view, reporting obligations of non-financial corporations should be removed or apply in limited circumstances where the scale of the activity has become material to the stability of the financial system – in Australia, this would mean speculative activity in excess of a pre-determined benchmark. Arguably, even in the global context, there are only a small number of price-making entities of a potentially market influencing scale.

The costs of this reporting requirement will be highly material to NFC. The scope of the required data outlined in Schedule 2 is extensive and excessive. A significant amount of this detail is not relevant to the day to day data requirements of a NFC treasury to manage corporate exposure and therefore is not contained in most corporate treasury systems; data may be contained in other systems, or may be held in paper files and not in a system at all. To expand a corporate treasury system to accommodate the requirements in schedule would entail a major system expansion project of material cost, and time.

It is difficult to be specific about the greater ongoing cost of this compliance burden for NFC, other than it would be material. Staffing would be greater than it otherwise would be, and there will, by definition, be additional ongoing maintenance costs.

The use of derivatives by NFC can only be understood in the context of the particular entity's business position. Most NFC's already disclose risk management information in annual financial reports and we believe this remains the best way to capture this information.

We are concerned about the potential for significant misunderstanding of out of context information. We would argue that concerns related to corporate exposure to financial counterparties could be better dealt with via annual reporting eg by publication of the value of transactions by rating category of counterparty.

We believe **the approach outlined in the Consultation Paper will diminish the opportunity for NFC to run a competitive process among counterparties** through excessive specific disclosure of information that should be commercial-in-confidence. We are opposed to the publication of the names of the counterparties with which we deal and the volumes allocated to each counterparty, and are opposed to the inclusion of data relating to our transactions and collateralisation in public registers. In our view, **confidentiality is critical to effectively managing our counterparty relationships, and data identifying NFC counterparties, should remain confidential and not be publicly available**.

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We enter into derivatives externally for the purposes of managing corporate and business exposures through the single parent entity, Sucrogen Limited, and then enter into offsetting hedging transactions with the subsidiary concerned where it relates to business exposures. **We are opposed to the inclusion of internal transactions in reporting requirements.**

Consistent with this perspective, our view is that one-sided (financial sector) reporting is the appropriate form to manage single financial entity and system-wide risks.

Our comments on the questions in the Consultation Paper appear below.

B1 Q1 Do you support the overall scope of the reporting obligation?

No, we do not support the scope of the reporting obligation. The scope should not involve Non-financial Corporations ("NFC"). We do not consider two sided reporting involving NFC will mitigate risks in the financial system. Risks associated with financial intermediation are best dealt with by regulation and through supervision of financial intermediaries and all aspects of their operations (however structured), together with appropriate capital requirements. There is precedent for the adoption of one sided reporting in other jurisdictions.

B1 Q2 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?

Only entities engaged in the business of financial transactions, together with their subsidiaries and other operating entities, such as commodity warehouses, however legally structured, should be obliged to report. Entities structured to avoid reporting and other rules should be 'recaptured' by appropriate regulation. If both entities are engaged in financial intermediation, it may create more system complexity and cost to eliminate one side.

B1 Q3 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?

Entities engaged in the business of financial transactions, and their subsidiaries (including operating entities), should be obliged to report.

B1 Q4 What is the likely impact of our proposals?

For NFC, and Sucrogen in particular, the costs of compliance would include:

- Expensive programming revisions to the treasury management system (TMS)
- Costs of additional data input/collection over and above that required to be contained in the TMS for business as usual
- Additional staffing in dealing, ongoing maintenance, and reporting over and above that required for business as usual.

It is not possible to estimate costs at this stage due to the need for discussions with the TMS vendor, but it is clear from past experience that costs would be material. Additional staffing allocated is a diversion of economic resources for the organisation.

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B2 Q1 Do you agree with the proposed four categories of OTC derivative transaction that are a reportable transaction?

As noted above, categories in our view should be limited to financial intermediaries and associated entities.

From the perspective of understanding NFC risk, derivatives transactions need to be understood in the context of the business.The value of the derivative trade whether positive or negative will be offset by the value of cash flows in the business itself. The net position of the publicly listed NFC is best understood by use of the extensive information already provided in the annual reports and financial statements. This ensures the use of derivatives by the NFC is reviewed in context.

In considering the objectives, transparency related to identifying and clarifying systemic risk relates to the impacts of financial intermediaries (broadly defined) and those entities of a size capable of influencing markets or substantially adversely impacting intermediaries to the point of endangering the financial system. There would only be a small handful of NFC globally that would fit that definition, none of which are domiciled in Australia.

B2 Q2 What is the likely impact of our proposals?

These reporting obligations would result in a material increase in the cost to the NFC of reducing risk.

B4 Q1 Do you agree with the proposed timing of reporting?

No, it is too tight. It can be impractical due to errors that appear in trade confirmations that take time to be corrected.

For NFC, tight timing will result in higher costs due to need to have reporting staff available to suit the timing of the reporting obligation. It will increase fixed costs if reporting work and associated tasks cannot be scheduled around business priorities.

If reporting by NFC's is required at all (which we continue to oppose), the reports should be required on the same timeframe as existing financial reports on an annual basis.

B4 Q2 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)?

Reporting containing errors adds little value to the analysis of systemic risk.

B4 Q3 Do you think a longer deadline is needed for reportable transactions executed outside Australia?

Yes. A longer deadline is required for all transactions by non-financial corporations and particularly with offshore operations. Sucrogen regularly hedges its Sugar exposures using the US based ICE exchange. It is not unusual that a transaction is not fully confirmed for 48 hours or more.
Time zone differences and the impact of different public holidays also delay confirmations, in addition to the issues related to errors in confirmations noted above.

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B4 Q4 What is the likely impact of our proposals?

As discussed above, higher costs are certain but difficult to ascertain at this stage.

D1 Q1 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?

The scope of the reporting outlined in Schedule 2 is significant and onerous, and apparently drafted from the perspective of systems utilised by financial institutions. Detailed counterparty static data information, timing aspects of dealing and confirmation, and underlying commodity exposures are typically outside the requirements of a NFC treasury management system. Sucrogen has invested heavily in its TMS and would certainly have among the better corporate systems in Australia, but notwithstanding that, there are many details not stored or required to be maintained in its TMS. Examples of the excessive data collection are :

Table 1: 2. unique product identifier; 4. Underlying; 5. Identifier of RE; 9. Trading Capacity; 10, 11, & 14; 22. form of confirmation; 23. time stamp of confirmation; 24. execution venue; 25. method of execution; 26. master agreement type; 27. master agreement date; 30. Delivery type; 31. Mark to market; 32. Currency used for MTM; 33. Valuation type; 38. Order entry time stamp; 39. execution time stamp; 40. submission for clearing time stamp; 41. clearing time stamp; 42. reporting time stamp; 43 collateralisation; 44 collateral portfolio; 45 collateral portfolio code; 46. Value of collateral; 47. Currency of collateral value; 54. Value for options; 59. "other material terms"?; 60. reporting log.

Table 2: 3. the grade of product being delivered; 8. Quantity frequency; 10. delivery point or zone; 11. delivery start date or time; 12. delivery end date and time; 15. "Any other relevant details".

D1 Q2 What is the likely impact of our proposals?

As noted above, material investment in the expansion of corporate treasury system data fields and maintenance will be required, with additional set up costs, and ongoing staffing for system maintenance and to scrutinise accuracy reporting.

E1 Q1 Do you have any comments on the proposed timetable for the implementation of the reporting obligation for different categories of reporting entity?

Australia would benefit by delaying the timetable for implementation until after the US and Europe have processes working smoothly - our dealings with offshore financial institutions as commodity counterparties indicate ill-defined processes lacking clarity. The benefits would not only include lower costs of set-up, but also better outcomes in the form of more reliable information and recognition for a process handled well.

As a Corporation potentially impacted by phase 3, in our view implementation of phase 3 should not proceed. We consider a lengthy delay in implementation will allow the value of objectives and activity to be thoroughly tested and reviewed before scarce resources are allocated to this activity.

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.

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?

NA

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

As noted above, we consider implementation of all phases should be delayed until the process is working smoothly in offshore jurisdictions. We believe phase 3 should either not proceed at all or be indefinitely delayed.

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

We consider the reporting requirements for transactions and positions should be edited and refined so there is only one form of reporting. In the case of NFC's we consider the requirements of Australian Accounting Standards meet these requirements.

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?

Sucrogen as a NFC has an inherent commodity exposure created through its sugar milling activities. Commodity and foreign exchange derivatives are used to hedge the exposures created through our physical assets. Derivative position reporting (if required at all for NFC's) will be distorted by the physical commodity exposures. If required at all, NFC reporting should be limited to reporting of net speculative derivative exposures. Alternatively the information already disclosed in annual financial reports already provides good reporting on net derivative positions

E2Q3 What is the likely impact of our proposals?

Costs as discussed above.

Yours sincerely

Paul Gregory
Head of Finance & Business Services

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