



ASIC

Australian Securities & Investments Commission

REPORT 357

Response to submissions on CP 205 Derivative transaction reporting

July 2013

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 205 *Derivative transaction reporting* (CP 205) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

- 1 On 28 March 2013, the Australian Securities and Investments Commission (ASIC) released Consultation Paper 205 *Derivative transaction reporting* (CP 205)¹ outlining our proposals to implement a derivative transaction reporting regime under Pt 7.5A of the *Corporations Act 2001* (Corporations Act).
- 2 The consultation paper included draft ASIC Derivative Transaction Rules (Reporting) 2013, which set out our proposed requirements for the reporting of over-the-counter (OTC) derivative transactions to licensed derivative trade repositories or prescribed derivative trade repositories, including the details of transactions that will need to be reported.

Note: In this document, ‘derivative transaction rules (reporting)’ refers to the ASIC Derivative Transaction Rules (Reporting) 2013.
- 3 This report discusses the key issues that arose out of those submissions received on CP 205 and our responses to those issues.
- 4 This report is not meant to be a comprehensive summary of all responses received. For a list of the non-confidential respondents to CP 205, see the appendix. Copies of the non-confidential submissions are on our website at www.asic.gov.au/cp under CP 205.

Background

Group of Twenty (G20) summit

- 5 The global financial crisis in 2008 highlighted structural deficiencies in the global OTC derivatives market and the systemic risks that those deficiencies can pose for wider financial markets and the real economy. In many countries, these structural deficiencies contributed to the build-up of large, inappropriately risk managed counterparty exposures between some market participants in advance of the global financial crisis—and to the lack of transparency about those exposures for market participants and regulators.
- 6 At the G20 summit in Pittsburgh in 2009, following the global financial crisis, the Australian Government joined other jurisdictions in committing to substantial reforms to practices in OTC derivatives markets. Specifically, they committed to three key ‘mandates’:

¹ Available under CP 205 at www.asic.gov.au/cp.

- (a) *trade reporting*: all OTC derivative transactions should be reported to trade repositories;²
- (b) *clearing*: all standardised OTC derivative transactions should be centrally cleared; and
- (c) *trading*: all standardised OTC derivative transactions should be traded on exchanges or trading platforms, where appropriate.

Australian legislation

- 7 The relevant Australian legislative framework was put in place in January 2013 when the new Pt 7.5A of the Corporations Act became effective.³ This regime provides for a flexible framework that allows for the implementation of reforms in graduated measures which respond proportionately in managing risks in Australian OTC markets.⁴
- 8 Under the legislation, the Minister has the power to prescribe certain classes of derivatives as being subject to an ASIC rule-making power for:
- (a) mandatory reporting to a derivative trade repository;
 - (b) mandatory clearing by a central counterparty; or
 - (c) mandatory execution on a trading platform.
- 9 ASIC also has power under Pt 7.5A to make rules for licensed derivative trade repositories. In Consultation Paper 201 *Derivative trade repositories* (CP 201), we published for comment draft ASIC Derivative Trade Repository Rules 2013.⁵ Report 356 *Response to submissions on CP 201 Derivative trade repositories* (REP 356) addresses feedback to CP 201.

Note: In this document, 'derivative trade repository rules' refers to the ASIC Derivative Trade Repository Rules (2013).

Ministerial determination: Transaction reporting

- 10 ASIC has power to make derivative transaction rules (reporting) under the Corporations Act. The Corporations (Derivatives) Determination 2013 (Ministerial determination), published in the Federal Register of Legislative Instruments (FRLI) on 22 May 2013, gave ASIC power to write derivative transaction rules (reporting) requiring reporting of trades in five asset classes:
- (a) equity derivatives;

² Trade repositories are facilities to which information about derivative transactions, or about positions relating to derivative transactions, can be reported. A derivative trade repository acts a centralised registry that maintains a database of records of transactions and disseminates the information, including to regulators and the public.

³ The *Corporations Legislation Amendment (Derivatives Transaction) Act 2012*.

⁴ The Corporations Legislation Amendment (Derivative Transactions) Bill, Explanatory Memorandum p 4.

⁵ Available under CP 201 at www.asic.gov.au/cp.

- (b) credit derivatives;
 - (c) interest rate derivatives;
 - (d) foreign exchange (FX) derivatives; and
 - (e) commodity derivatives other than electricity derivatives.
- 11 Transaction reporting refers to the reporting of specified information regarding derivative transactions to trade repositories. The reporting is generally done by, or on behalf of, counterparties to the transaction. Information typically covers transaction maturity, price, reference entity, counterparty and other key economic terms.

Derivative transaction rules (reporting)

- 12 To give effect to the Ministerial determination under Pt 7.5A, ASIC proposed a set of derivative transaction rules (reporting) in CP 205. These rules are designed to specify matters such as the institutional and product scope of the obligation, as well as details of how any relevant mandatory obligations can be complied with.
- 13 The proposed derivative transaction rules (reporting) specified the details of the requirement to report OTC derivative transactions to trade repositories, including:
- who is required to report and how this can be done;
 - the scope and timing of the reporting obligation;
 - who would be able to access alternative reporting and the proposed conditions to be met;
 - the data that needs to be reported and when it must be updated;
 - the proposed timing for the phasing-in of the reporting obligation; and
 - record-keeping requirements.
- 14 In proposing the derivative transaction rules (reporting), we were keen to ensure consistency with overseas regimes, which would assist in ensuring equivalence of the derivative transaction rules (reporting) with similar rules in other jurisdictions and reduce compliance costs for reporting entities.
- 15 We also sought to ensure the derivative transaction rules (reporting), as well as the derivative trade repository rules, are consistent with internationally agreed standards on transaction reporting and trade repositories, specifically those developed by the International Organization of Securities

Commissions (IOSCO) and the Committee on Payment and Settlement Systems (CPSS).⁶

Responses to consultation

- 16 We received 26 responses (including eight confidential responses) on CP 205. They included responses from major Australian banks, financial institutions, industry associations, stockbroking firms, financial and other professional service providers, legal practitioners and other market participants, including commodity and energy market participants.
- 17 We also held discussions with the major Australian banks, major industry associations and their members to discuss our proposed rules. We continued to engage with stakeholders after the close of the consultation period in finalising the design of our rules.
- 18 Overall, respondents were supportive of Australia's commitment to implementing the G20 reforms on OTC derivatives and its aim to increase transparency and reduce risk for investors and the global trading system as a whole.
- 19 Respondents broadly recognised that our proposed implementation of the reporting regime was similar to overseas requirements and follows global principles such as the CPSS–IOSCO *Principles for financial market infrastructures* (CPSS–IOSCO Principles). Submissions emphasised that consistency with international requirements would allow market participants to leverage off existing infrastructure and reduce the cost burden of the reporting regime.
- 20 Respondents were particularly supportive of our proposal to allow reporting of transactions by agents of the reporting entities. Respondents were also supportive of a phased-in approach to reporting obligation, by asset class and participant type.
- 21 The specific issues raised by respondents included:
- (a) it was unlikely that the proposed interim reporting phase, based on an opt-in mechanism, would allow participants to receive substituted compliance for their reporting obligations under the US trade reporting regime. They noted that institutions were unlikely to take up the opt-in arrangements unless they received substituted compliance in respect of US reporting requirements;

⁶ CPSS–IOSCO, *Considerations for trade repositories in OTC derivatives markets*, consultation report, May 2010, www.iosco.org/library/pubdocs/pdf/IOSCOPD321.pdf; CPSS–IOSCO *Report on OTC derivatives data reporting and aggregation requirements*, report, August 2011, www.iosco.org/library/pubdocs/pdf/IOSCOPD366.pdf.

- (b) it would be difficult to implement changes by the 31 December 2013 Phase 1 reporting obligation start date (for credit and interest rate derivatives);
- (c) reporting obligations imposed on them would be of limited benefit to regulators, relative to the regulatory impact;
- (d) the current principles-based definition of ‘derivative’, in s761D of the Corporations Act, did not provide sufficient precision and clarity to support the imposition of the proposed regulatory obligations;
- (e) transactions undertaken on a foreign market that is not subject to ASIC supervision under Pt 7.2A would need to be reported, which would capture the majority of overseas exchange-traded derivatives;
- (f) requiring foreign subsidiaries of Australian reporting entities to report would place an unnecessary burden on participants;
- (g) a one-sided reporting obligation would be more effective and simpler to implement than a two-sided obligation as proposed. This was stated by some to provide more accurate data, reduce unnecessary duplication, aid in data aggregation and reduce the regulatory cost to participants; and
- (h) despite being protected from Australian privacy and confidentiality laws for reporting under an Australian mandatory reporting obligation, a reporting entity may still potentially breach foreign privacy laws where the reporting entity is trading in, or with counterparties from, a jurisdiction that does have privacy and/or confidentiality restrictions on reporting.

- 22 We have taken the feedback to CP 205 into account in framing our final derivative transaction rules (reporting). We will also release a regulatory guide which will provide guidance and clarify aspects of the derivative transaction rules (reporting).
- 23 Some participants raised concerns with the amount of work and cost required to implement the proposed reporting regime, in particular the systems changes needed to comply with a reporting obligation.
- 24 We have set out in detail the expected regulatory impact and benefits of the derivative transaction rules (reporting) in Regulatory Impact Statement *G20 OTC derivatives transaction reporting regime* for the derivative transaction rules (reporting).⁷
- 25 A number of respondents argued that mandatory reporting should not apply to electricity derivatives, due to the low-risk nature of energy derivatives. If a reporting regime for electricity were considered appropriate, energy sector respondents requested that an extended implementation timeframe be applied. We note that the Ministerial determination in paragraph 10 excludes electricity derivatives from the scope of the reporting obligation.

⁷ Available at www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+guides?openDocument.

B Response to submissions on CP 205

Key points

This section outlines the key issues raised in the submissions on CP 205, and our responses to those issues. It covers:

- timing of the interim reporting phase and timing of remaining phases;
- arguments by end-users that they should not be covered by the obligation;
- the definition of derivative under s761D of the Corporations Act;
- transactions on foreign markets;
- the geographic scope of the reporting obligation;
- two-sided versus one-sided reporting; and
- restrictions to reporting due to foreign privacy constraints.

Implementation phases

- 26 In CP 205, we proposed an interim reporting phase commencing on 1 July 2013 on an opt-in basis. This would allow any entity to ‘opt-in’ to a mandatory reporting obligation for a particular class of derivative identified by the reporting entity, by filing an opt-in notice with ASIC.
- 27 We consider that the interim reporting phase may be helpful for entities seeking to have a reporting obligation apply to them ahead of when a mandatory reporting obligation would apply. We believe this approach may assist certain entities in ensuring they can comply with overseas reporting obligations, allowing them to report trades under foreign reporting obligations without being in breach of Australian privacy or confidentiality laws.
- 28 There were mixed views by respondents to the proposed interim reporting phase. Some respondents submitted that while the interim reporting phase could be helpful to Australian confidentiality and privacy laws, it would be of limited benefit if they would still be subject to a reporting obligation in another jurisdiction.
- 29 Some respondents proposed that the implementation timeline be amended to better facilitate equivalence or substituted compliance with other jurisdictions’ reporting requirements. They believe this could be done by implementing an earlier mandatory reporting phase for those reporting

entities who are or who will be subject to reporting obligations in other jurisdictions.

- 30 Other respondents were supportive of an interim reporting phase, seeing it as a helpful solution to address privacy and data confidentiality issues for firms with reporting obligations overseas.
- 31 There was general opposition to the proposed start date of the Phase 1 obligation on 31 December 2013. It was pointed out that December is normally a ‘freeze’ period for financial IT systems, and the holiday period would also make this date particularly challenging for firms.

ASIC's response

On the basis of feedback received, we have explicitly applied a reporting obligation from a set date to certain defined reporting entities. This will provide a clear, legally binding requirement on these firms, rather than the uncertainty that could be associated with an opt-in arrangement. The set of entities are those that are required to register as swap dealers with the US Commodity Futures Trading Commission (CFTC).

We are maintaining an interim reporting phase (renamed the opt-in reporting phase) for those entities that consider this phase may be of some benefit to them.

We have also responded to concerns about a December start date for the reporting obligation.

The following changes have being made in the derivative transaction rules (reporting) to reflect the new implementation timeline:

- a mandatory reporting requirement for those institutions registered with the CFTC as swap dealers will commence on 1 October 2013 (Phase 1);
- authorised deposit-taking institutions (ADIs), Australian financial services (AFS) licensees and exempt foreign licensees with more than \$50 billion notional OTC derivatives outstanding will be subject to a reporting obligation from 1 April 2014 (now Phase 2, formerly referred to as Phase 1); and
- a mandatory reporting phase for other ADIs, AFS licensees and exempt foreign licensees will commence on 1 October 2014 (now Phase 3, formerly referred to as Phase 2).

End-users

- 32 In CP 205, we intended to cover end-users as reporting entities in Phase 3, commencing in late 2014, subject to a *de minimis* reporting threshold to be consulted on.

- 33 End-users argued that reporting obligations imposed on them would be of limited benefit to regulators, relative to the regulatory impact.
- 34 We have adjusted the implementation phases indicated above. End-users are no longer part of the three phases we have made rules for. However, we will consult further on trade reporting obligations for end-users.

ASIC's response

We intend to consult on reporting obligations for end-users in late 2013–early 2014. The timing of the introduction of any such obligations is to be determined, but at this stage we would not expect obligations to commence for end-users until early 2015. We aim to make the rules significantly earlier than this date to give a sufficient lead-time to end-users.

When consulting on end-users, we may consult on whether there should be a *de minimis* reporting threshold and what the threshold should be. We may also consult on a number of related issues, including:

- whether trades between end-users and financial institutions should be subject to a one-sided or two-sided reporting obligation;
- whether end-user to end-user transactions should be reported, having regard to systemic risk issues;
- the extent to which foreign subsidiaries of Australian-based end-users should be required to report;
- whether intra-group and hedging transactions by end-users not part of a financial group should be exempt from reporting obligations; and
- the timing of the introduction of any such obligations.

Definition of derivative

- 35 In considering which derivative transactions should be required to be reported to a trade repository, CP 205 proposed to use the definition of derivative contained in s761D of the Corporations Act.
- 36 Respondents felt that further guidance was needed as to which products will be required to be reported to trade repositories, as the definition in the Corporations Act does not provide the level of precision or clarity needed to impose the regulatory obligation to report to trade repositories. Respondents argued that given the broad scope of this definition, it may capture a wider range of products than was intended, including a range of consumer and commercial products.
- 37 Some respondents argued that using the Corporations Act definition of derivative goes beyond the intended purpose of trade reporting as envisioned

under the Corporations Act. It was submitted that the functional definition in the Corporations Act, originally intended for the purposes of licensing, focuses on the commercial nature of derivatives rather than a more appropriate prescriptive definition that identifies each derivative product.

- 38 Suggestions made by respondents to clarify which derivative products need to be reported include:
- (a) making additional regulations;
 - (b) providing specific exemptions and/or guidance;
 - (c) publishing a list of reportable transactions (preferably based on the existing International Swaps and Derivatives Association (ISDA) taxonomy of OTC derivatives); and/or
 - (d) phasing-in the reporting of certain derivatives and data fields for those derivatives.

ASIC's response

We recognise the consensus among respondents that more detailed guidance is required as to which derivative transactions will need to be reported.

Taking into account the need for greater clarity and specificity of the definition of derivative, we have decided to provide guidance indicating the types of derivatives that we expect to be reported to trade repositories. We intend to separately publish a regulatory guide containing this information.

The derivatives we will expect to be reported are based on the ISDA taxonomy. The ISDA taxonomy was designed specifically for the implementation of the reporting obligation and in our view appropriately covers a similar range of derivatives as other jurisdictions.

We intend to continue to consult with industry and monitor developments as the reporting obligation is implemented to understand if any further regulatory action should be taken.

Transactions on foreign markets

- 39 In CP 205, we defined OTC derivative transactions as all derivative transactions⁸ 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 rule of the relevant Pt 7.2A market.
- 40 A number of respondents submitted that the wording of this requirement would effectively require the reporting to trade repositories of certain

⁸ As defined in s761D of the Corporations Act.

exchange-traded derivative transactions, specifically those transactions undertaken on foreign exchanges by Australian entities or their subsidiaries.

- 41 Respondents were concerned with costs and operational issues associated with reporting exchange-traded transactions, as most trade repositories are not yet able to receive reports on exchange-traded derivatives. It was also submitted that these transactions are not intended to be captured under a mandatory reporting regime, and as they are undertaken on markets equivalent to Australian licensed markets, they are already subject to sufficient oversight by the operator of that market and markets authority in that jurisdiction. It was also noted that exchange-traded derivatives tend to have a lower risk profile compared to other OTC derivative products.
- 42 A number of respondents argued that exchange-traded derivatives should be carved out of the definition of OTC derivative transactions.

ASIC's response

We recognise that exchange-traded derivatives are already subject to some level of transparency to the market, and, being centrally cleared, are less likely to result in substantial risks to reporting entities (though of course they are not without risk). We therefore consider this information may not be as necessary as that relating to other OTC derivative transactions.

On this basis, we have amended our rules to exclude markets that are subject to requirements and supervision that are sufficiently equivalent (in relation to market integrity and transparency) to what a Pt 7.2A market is subject to in this jurisdiction, even if the market is not licensed in Australia.

We believe that where trades are done on a foreign market equivalent to a Pt 7.2A market, there is limited benefit to be gained from the reporting of these trades to an Australian trade repository, given these transactions will be supervised in the jurisdiction where the market is licensed.

We will therefore develop a list of markets that meet this criteria, and publish this list on our website.

Geographic scope of the reporting obligation

- 43 In CP 205, we consulted on the geographic scope of the transaction reporting obligation, proposing in our rules to capture:
- (a) transactions entered into worldwide by reporting entities that are incorporated or formed in Australia;
 - (b) transactions entered into worldwide by foreign subsidiaries of Australian reporting entities;

- (c) transactions booked to the profit and loss account of Australian branches of foreign reporting entities; and
- (d) transactions entered into in Australia by foreign reporting entities.

44 We received substantial feedback on the requirement for foreign subsidiaries of Australian reporting entities to report derivative transactions. A number of respondents submitted that this requirement would place an unnecessary burden on stakeholders that goes beyond the requirements of other jurisdictions.

45 A related issue raised in a number of submissions was that subsidiaries of Australian entities in a number of foreign jurisdictions may not yet be subject to a reporting mandate in those jurisdictions. This would force these entities to make arrangements to report to Australian licensed or prescribed trade repositories in full accordance with Australian reporting requirements, as no alternative reporting arrangements are available.

46 Other submissions noted that a foreign subsidiary of an Australian entity that is subject to a reporting requirement in that foreign jurisdiction may face conflicting trade reporting requirements, if it is also subject to an Australian reporting requirement. A number of respondents also noted that by imposing obligations on foreign entities there is a risk of foreign privacy or confidentiality barriers preventing these entities from reporting all of the information they are required to report to an Australian licensed or prescribed trade repository.

47 A few respondents argued that requiring foreign subsidiaries of Australian entities to report is unnecessary, as their activities have a very small or no impact on commerce in Australia where those foreign entities are not guaranteed by the Australian parent. They argued that in these circumstances, risk in the subsidiary will only have an impact on the subsidiary itself, and cannot result in risk being transmitted to the Australian parent.

48 A minority of respondents submitted that subsidiaries located in emerging markets should be subject to different obligations than those located in developed markets. These respondents argued that subsidiaries based in emerging markets would face additional difficulties with respect to modernising emerging market systems in order to comply with their reporting obligations.

ASIC's response

In considering our decision, we note that overseas jurisdictions, many of which are still yet to finalise their rules, have adopted varying policy positions for foreign subsidiaries. We understand however that a number of jurisdictions including Canada and Hong Kong do intend to require foreign subsidiaries of locally based financial groups to report.

ASIC considers that regulators have a clear interest in capturing transactions by subsidiaries to develop a full picture of the risk position of the Australian parent entity. This is a particular concern when the subsidiary is guaranteed by the Australian parent entity, but even in the absence of a legal guarantee, there may still be risk of transmission to the Australian parent.

We do however recognise that requiring foreign subsidiaries to report may be difficult for some participants, particularly when subsidiaries are located in a jurisdiction that does not have a reporting obligation in place. For the purposes of reporting Phases 1, 2 and 3 we have limited the scope of the reporting obligation to capture only foreign subsidiaries of ADIs and AFS licensees.

This will ensure we are only requiring subsidiaries to report when there may be financial risk transmitted to an Australian regulated entity (subject either to Australian Prudential Regulation Authority (APRA) or ASIC supervision) through the non-Australian subsidiary.

As indicated above, we expect to consult further on whether to apply a reporting obligation to foreign subsidiaries of end-users in late 2013.

Two-sided versus one-sided reporting

- 49 In CP 205, we consulted on whether both reporting entities to a reportable transaction should be required to report the details of the transaction to a trade repository when entering the transaction (a two-sided obligation). We also asked that if one-sided reporting was to be permitted, which counterparty should be required to report.
- 50 We received substantial feedback on this issue, with the majority of respondents indicating a preference for one-sided reporting. In part, this response was a reflection of the number of major financial institutions that are at an advanced stage in their development of a one-sided system for reporting in accordance with CFTC reporting requirements.
- 51 One respondent submitted that the amount of time and manual intervention required to match transactions under a two-sided regime would result in increased costs. Other respondents argued that two-sided reporting would provide unnecessary information to the regulators, and would result in substantial changes to detect and avoid the double reporting of trades.
- 52 Submissions indicated that the key benefits of one-sided reporting include:
- (a) collection of more accurate data;
 - (b) a reduction in unnecessary duplication;
 - (c) easier data aggregation; and

(d) a reduction of the regulatory cost to participants.

- 53 A minority of submissions did support two-sided reporting as a means of simplifying compliance and ensuring the completeness of the data set provided to authorities.
- 54 In consulting on which party to a transaction should be required to report if a one-sided regime was adopted, a number of submissions argued that the price-maker (generally the dealer or major financial institution) should be required to report. These respondents argued that as most price-makers already have systems and infrastructure in place to record and report the transactions, this would ensure the vast majority of OTC derivatives trade undertaken on the Australian market will be captured.
- 55 Some submissions suggested that a reporting hierarchy similar to the US regime should be adopted, incorporating adequate tiebreaker logic for reporting counterparties at the same level.
- 56 A few respondents also noted that the reporting obligation would pose a significant burden to non-financial corporations and end-users.

ASIC's response

While we recognise that implementing two-sided reporting presents a number of challenges to reporting entities, we consider the data that will be available to regulators will be substantially more valuable under a two-sided reporting obligation.

There is important information that the regulators can only obtain under a two-sided arrangement. This includes:

- information from both counterparties of the valuation of a derivative;
- the value of the collateral exchanged;
- beneficiary information; and
- whether the trades are being executed for hedging purposes.

Among other things this data would allow discrepancies in valuations, and outliers of valuations and collateral, to be readily identified. This information is particularly useful as an indicator of financial stress.

While there may be additional costs that will be borne by reporting entities that are in the process of building systems under CFTC requirements, a two-sided reporting obligation would be consistent with the approaches taken in a number of key jurisdictions, including the European Union and Hong Kong.

On the basis of the feedback to CP 205, the following actions have been taken:

- we have amended the derivative transaction rules (reporting) to defer full two-sided reporting until the commencement of the Phase 2 reporting obligation on 1 October 2014 (during this phase-in period, reporting entities in Phase 1 and 2 will be able to report using one-sided reporting);
- during this transitional period, where reporting entities are trading with a counterparty in another jurisdiction that has implemented one-sided reporting and that counterparty has reported the trade to a prescribed trade repository, the reporting entity will not need to report the trade to a trade repository; and
- we will leave open the question of whether end-users would be subject to two-sided reporting until our consultation on end-user reporting (including the *de minimis* reporting threshold), scheduled for late 2013.

Restrictions to reporting due to foreign privacy constraints

- 57 Under the Corporations Act, where a report to a trade repository is made in good faith under an Australian mandatory reporting obligation, the reporting entity is protected from any civil or criminal proceedings.
- 58 A number of respondents raised concerns that while this provision would provide protection from breaches of Australian privacy laws, it will not provide protections from foreign privacy or confidentiality restrictions.
- 59 Some respondents argued that this could lead to a situation where a reporting entity may breach foreign privacy laws (including criminal provisions) where the reporting entity is trading in a jurisdiction, or with a counterparty from a jurisdiction, that has barriers to reporting or other privacy restrictions.
- 60 Some respondents suggested that these privacy issues may be overcome if ASIC granted exemptions, or allowed the masking of certain data fields (at least on an interim basis) for transactions with counterparties located in a jurisdiction that has privacy laws or other barriers preventing the reporting of transaction details to a trade repository.

ASIC's response

We will provide guidance outlining the circumstances in which ASIC may grant relief from the reporting of certain information or certain transactions, in accordance with our usual approach for considering applications for relief.

Appendix: List of non-confidential respondents

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|--|---|
| • Alinta Energy Finance Pty Limited | • IG Markets Limited |
| • ASX Limited | • InterGen (Australia) Pty Limited |
| • Australian Financial Markets Association | • International Swaps and Derivatives Association, Inc. |
| • CSR Limited | • LCH Clearnet Limited |
| • Depository Trust & Clearing Corporation | • Major Australian banks (joint submission) |
| • Energy Australia | • Markit Group Limited |
| • Financial Services Council | • Norton Rose Australia |
| • GDF Suez Australia Energy | • Origin Energy Limited |
| • Global Financial Markets Association | • Sucrogen Australia Pty Limited |
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