



**ASIC**

Australian Securities & Investments Commission

# OTC derivatives reforms: The state of play

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## **CHECK AGAINST DELIVERY**

### **Introduction**

Thank you to Kevin Gould for your kind introduction.

I'd like to spend a few minutes today talking about:

- how the current wave of regulation in the over-the-counter (OTC) derivative space came about;
- Australia's implementation of OTC derivatives reforms in the areas of:
  - trade reporting;
  - mandatory clearing
  - mandatory trading; and
  - margining requirements; and
- work to address the cross-border implications of OTC derivative reform in the areas of:
  - international standard setting; and
  - implementation, surveillance and enforcement.

### **How did this current wave of regulation come about?**

You will all remember that, as a result of concerns arising from the global financial crisis, the G20 leaders committed to greater use of centralised infrastructure in OTC derivatives markets to improve market transparency, reduce systemic risk and reduce market abuse in OTC derivatives markets.

ASIC has worked closely with the Australian Government, the Australian Prudential Regulation Authority (APRA) and the Reserve Bank to implement these reforms:

- cooperatively;
- on a timely basis; and
- taking into account the particular needs of the Australian market.

### **Implementation of reforms in Australia**

I'd like to talk briefly about the status of initiatives on:

- trade reporting;
- mandatory clearing;
- mandatory trading; and
- margining requirements.

## Trade reporting

First, on trade reporting.

In 2013, we made rules to implement mandatory trade reporting of OTC derivative transactions to trade repositories. The major Australian banks started reporting their trades in late 2013 with implementation phased in over two years.

ASIC has also issued 10 individual or class exemptions to provide transitional relief to assist in implementation. The cost savings of these exemptions is estimated to be in the tens of millions.

Last month, ASIC also licensed its first trade repository, DTCC Data Repository Singapore (DDRS). As part of this we also entered into a world-first trade repository direct data sharing agreement with the Monetary Authority of Singapore (MAS).

Recognising the value of trade data and the need for smooth implementation, we have worked closely with reporting entities to ensure that our requirements are as consistent with those in other jurisdictions as practicable. This includes ensuring that reporting entities are able to rely on third-party confirmation systems to minimise the cost of reporting these trades.

We have also granted a number of pieces of transitional relief to reporting entities. This has been to more closely align our requirements with other reporting requirements in the region and around the world.

As a result of these developments, data on OTC derivatives positions has started to flow to financial regulators and gives us a clearer picture of activity in these key markets.

Importantly, we are also setting up a framework to share relevant data with other global regulators. This sits alongside the work the Financial Stability Board (FSB) is doing to facilitate data sharing.

## Mandatory clearing

Let me now turn to the second area, mandatory clearing.

As you will be aware, Australian regulators have recommended to the Australian Government that we proceed with a mandatory clearing requirement for trades between internationally active dealers in OTC interest rate derivatives denominated in:

- Australian dollars;
- British pounds;
- the Euro;

- Japanese yen; and
- US dollars.

Should the Government decide to accept this recommendation, ASIC will consult on rules implementing these requirements.

### **Mandatory trading**

On the third point, mandatory trading—Australian regulators have not yet recommended any mandatory obligations be put in place for the execution of trades on organised trading venues.

We will look to developments in other jurisdictions—such as the European Union—in deciding whether a mandatory trading obligation would be appropriate.

We expect to again look at this question in 2015 as part of our next OTC market assessment.

### **Margining requirements**

Next, I want to touch on our thinking about how we progress work on margin requirements for non-centrally cleared derivatives.

Government and Australian regulators are currently considering the most appropriate way to implement the principles developed in this area by the International Organization of Securities Commissions (IOSCO) and the Basel Committee in 2013.<sup>1</sup>

Again, Australian regulators will look to developments in other jurisdictions before framing our regulatory proposals.

## **Addressing the cross-border implications of OTC derivative reforms**

I'd now like to turn to how the challenge of reform in this area is being addressed at a global level.

The key to addressing these challenges the global market is regulatory cooperation and coordination. We are doing this in two ways:

- developing international standards; and
- co-ordination and co-operation between regulators in implementation, surveillance and enforcement.

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<sup>1</sup> Basel Committee on Banking Supervision and the Board of IOSCO, *Margin requirements for non-centrally cleared derivatives* (IOSCOPD423), framework, September 2013, Bank of International Settlements (BIS) and IOSCO.

## International standard setting

Firstly, international standard setting.

International standards promote harmonised rule making and equivalent regulatory outcomes across jurisdictions. IOSCO has played a key role in developing international standards related to OTC derivatives reforms.

We've developed standards for consultation between regulators on mandatory clearing and on agreed characteristics for organised trading platforms.

With the Committee on Payments and Market Infrastructures,<sup>2</sup> IOSCO has developed principles:

- for financial market infrastructures;<sup>3</sup> and
- on trade reporting and authorities' access to trade repository data.<sup>4</sup>

We are now working on harmonising data requirements for reporting to trade repositories—a critical step towards greater global aggregation of trade data.

Lastly, work has also been done on recovery and resolution of financial market infrastructures. Recently, guidance was published by IOSCO and the FSB regarding recovery and resolution for financial market infrastructures.<sup>5, 6</sup>

The FSB has also published guidance on:

- information sharing in resolutions; and
- resolution for institutions that hold client assets.

But there is still a long way to go. Further consultation is underway to address the cross-border challenges posed by resolutions.

## Implementation, surveillance and enforcement

The second aspect to addressing the cross-border implications of OTC derivatives reforms is coordination and cooperation in implementation, surveillance and enforcement.

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<sup>2</sup> The Committee on Payments and Market Infrastructures was previously known as the Committee on Payment and Settlement Systems (CPSS).

<sup>3</sup> CPSS and the Technical Committee of IOSCO, *Principles for financial market infrastructures*, framework, April 2012, BIS and IOSCO, [www.bis.org/cpmi/publ/d101a.pdf](http://www.bis.org/cpmi/publ/d101a.pdf).

<sup>4</sup> CPSS and the Board of IOSCO, *Authorities' access to trade repository data*, framework, August 2013, BIS and IOSCO, [www.bis.org/cpmi/publ/d110.pdf](http://www.bis.org/cpmi/publ/d110.pdf).

<sup>5</sup> Committee on Payments and Market Infrastructures and the Board of IOSCO, *Recovery of financial market infrastructures*, framework, October 2014, BIS and IOSCO, [www.bis.org/cpmi/publ/d121.pdf](http://www.bis.org/cpmi/publ/d121.pdf).

<sup>6</sup> FSB, *Key attributes of effective resolution regimes for financial institutions*, report, 15 October 2014, BIS, [www.financialstabilityboard.org/publications/r\\_141015.pdf](http://www.financialstabilityboard.org/publications/r_141015.pdf).

This has two elements:

- coordination in implementing standards; and
- coordination and cooperation on surveillance and enforcement.

There has been a hive of activity in both of these areas.

On coordination of implementation—the principals of 12 leading OTC derivatives regulators have been working together through the last three years in an informal grouping to better coordinate implementation measures.

This group—the OTC Derivatives Regulators Group (ODRG)—has been working towards agreeing to consistent approaches to regulation in a number of areas. It is reporting through the FSB to the G20 on its progress and will send a report to the G20 leaders ahead of their summit in Brisbane.

A key outcome of the work of the ODRG to date has been a commitment to considering equivalence or recognition arrangements by applying a flexible, outcomes-based approach.

The cooperation we have seen through the ODRG is also bearing fruit at a domestic level. In the last year a number of equivalence determinations have been made. For instance:

- in relation to the United States:
  - First, the Australian regulatory regime for Australian swap dealers has been deemed by the Commodity Futures Trading Commission (CFTC) to be equivalent to that in Dodd–Frank<sup>7</sup> in some key areas. This means that Australian swap dealers can use their compliance with Australian requirements to comply with some of their CFTC requirements.
  - Second, ASX obtained no-action relief from the requirement to register as a derivatives clearing organisation for their OTC derivatives clearing service, meaning they can offer their service to US persons.
  - Third, Yieldbroker has been granted no-action relief to allow it to provide services to US persons. Last month the CFTC broadened this relief to swaps traded on any financial markets licensed in Australia that meet certain criteria.
  - And fourth, ASIC also granted a number of no-action positions to US swap execution facilities, to allow them to operate in Australia and provide services to Australian clients.

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<sup>7</sup> *Dodd–Frank Wall Street Reform and Consumer Protection Act 2010* (US).

- In relation to the European Union:
  - Our discussions with the European Securities and Markets Authority (ESMA) have resulted in recommendations to the European Commission that the Australian regime for central counterparties, trade repositories and trade reporting be considered equivalent to the rules in European Market Infrastructure Regulation (EMIR).
  - If these recommendations are adopted by the European Commission, Australian market participants and infrastructure providers operating in the European Union will be able to rely on Australian rules instead of needing to comply with the requirements in EMIR.
  - The European Commission has indicated that Australia will be in the first set of jurisdictions for whom they will make central counterparty equivalence findings, which will ensure Australian central counterparties continue to have access to EU clearing members.

ASIC has also licensed the first trade repository in Australia, which is a trade repository established and licensed in Singapore—a very practical example of deference to rules in foreign jurisdictions.

All of this indicates the good progress being made by ASIC, at the right pace, and points to progress being made to ensure our market participants continue to have access to global markets.

Now, I'd like to very briefly turn to cooperation and coordination on surveillance and enforcement. Here, memoranda of understanding (MOUs) and arrangements with other regulators are key.

At a domestic level, we have entered into MOUs on supervisory cooperation with the CFTC and trade repository information sharing with MAS, and are negotiating similar agreements with ESMA.

## Conclusion

I'd like to conclude by noting that while there is still work to be done, I believe the progress we have made both domestically and globally to implement OTC derivatives rules around the world has been substantial.

The building blocks are increasingly in place to deliver the benefits originally foreshadowed by the G20, of improved transparency, stability and market integrity.

Thank you.