



**ASIC**

Australian Securities & Investments Commission

## REGULATION IMPACT STATEMENT

# G20 OTC derivatives transaction reporting regime

July 2013

### About this Regulation Impact Statement

This Regulation Impact Statement (RIS) addresses ASIC's proposals for implementing a derivative transaction reporting regime under Pt 7.5A of the *Corporations Act 2001* (Corporations Act).

## What this Regulation Impact Statement is about

- 1 This Regulation Impact Statement (RIS) addresses ASIC's proposals for implementing a derivative transaction reporting regime under Pt 7.5A of the *Corporations Act 2001* (Corporations Act).
- 2 In developing our final position, we have considered the regulatory and financial impact of our proposals. We are aiming to strike an appropriate balance between:
  - maintaining, facilitating and improving the performance of the financial system and entities in it;
  - promoting confident and informed participation by investors and consumers in the financial system; and
  - administering the law effectively and with minimal procedural requirements.
- 3 This RIS sets out our assessment of the regulatory and financial impacts of our proposed policy and our achievement of this balance. It deals with:
  - the likely compliance costs;
  - the likely effect on competition; and
  - other impacts, costs and benefits.

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## A Introduction

### Background

- 4 The global financial crisis (GFC) in 2008 highlighted structural deficiencies in the global over-the-counter (OTC) derivatives market and the systemic risks that those deficiencies can pose for wider financial markets and the real economy. In many countries, those structural deficiencies contributed to the build-up of large, inappropriately risk-managed counterparty exposures between some market participants in advance of the GFC, and also contributed to the lack of transparency about those exposures for market participants and regulators.
- 5 At the 2009 Group of Twenty (G20) Pittsburgh Summit, following the GFC, the Australian Government joined other jurisdictions in committing to substantial reforms to practices in OTC derivative markets. These commitments aim to bring transparency to these markets and improve risk management practices. Specifically, they committed to three key ‘mandates’:  
  - (a) *transaction reporting*: all OTC derivative transactions should be reported to trade repositories;<sup>1</sup>
  - (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.
- 6 This Regulatory Impact Statement (RIS) relates to the making of the *Derivative Transaction Rules 2013* (derivative transaction rules (reporting)) by the Australian Investments and Securities Commission (ASIC) to implement transaction reporting and are designed to improve transparency in Australian OTC derivative markets.

### Australian legislation

- 7 The Australian legislative framework commenced in January 2013, when the new Pt 7.5A of the *Corporations Act 2001* (the Corporations Act) became effective.<sup>2</sup> This regime provides for a flexible framework that allows for the implementation of reforms in graduated measures, which respond proportionately in managing risks within Australian OTC markets.<sup>3</sup> It allows for mandates to be determined by the Minister based on advice, regular

<sup>1</sup> 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.

<sup>2</sup> *Corporations Legislation Amendment (Derivatives Transaction) Act 2012*.

<sup>3</sup> *Corporations Legislation Amendment (Derivative Transactions) Bill*, Explanatory Memorandum p 4.

consideration of domestic market developments and in coordination with other economies.

- 8 Under the legislation, the Minister has the power to prescribe certain classes of derivatives as being subject to an ASIC rule-making power in relation to mandatory reporting to a derivative trade repository, mandatory clearing by a central counterparty (CCP), or mandatory execution on a trading platform. A decision by the Minister prescribing a class of derivatives under the framework will be based on advice from ASIC, the Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia (RBA) (the ‘Agencies’).
- 9 The Agencies have indicated that advice would normally be provided through ongoing regulator assessments of the derivatives market.<sup>4</sup> The Agencies may also make urgent recommendations in response to unexpected international or domestic developments that occur in between regular assessments—for example, to deal with foreign rule-making with extraterritorial application to Australia.

### **Recommendations on derivative transaction reporting**

- 10 Consistent with this advisory role, the Agencies released the *Report on the Australian OTC Derivatives Market* in October 2012 (the Regulators’ Report).<sup>5</sup> The Regulators’ Report was the culmination of a wide-ranging survey of key participants in the Australian OTC derivatives market undertaken during July 2012, and examined the risk management practices of market participants, with a particular focus on how market participants are using centralised infrastructure, and the prospects for increased usage.
- 11 The Regulators’ Report concluded that there were strong in-principle benefits from participants in the domestic OTC derivatives market making greater use of centralised infrastructure, such as trade repositories, CCPs and trading platforms.
- 12 The main recommendations of the Regulators’ Report were that:
  - (a) the Australian Government consider a broad-ranging mandatory transaction reporting obligation for OTC derivatives; and
  - (b) a mandatory clearing obligation is not necessary for any derivative at this time, but may become necessary in the future.

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<sup>4</sup> *Australian Regulators’ Statement on Assessing the Case for Mandatory Clearing Obligations*, Council of Financial Regulators, May 2013.

<sup>5</sup> The Reserve Bank of Australia, *Report on the Australian OTC Derivatives Market*, RBA, October 2012, <http://www.rba.gov.au/payments-system/clearing-settlement/otc-derivatives/201210-otc-der-mkt-rep-au/index.html>

### **Treasurer's determination—transaction reporting**

- 13 A determination by the Treasurer which mandates the reporting of transactions in five asset classes (interest rates, credit, equity, foreign exchange (FX) and commodity derivatives that are not electricity derivatives) to derivative trade repositories was made on 2 May 2013 (the Determination).
- 14 Transaction reporting refers to the reporting of specified information regarding OTC 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)**

- 15 To give effect to the Treasurer's determination under Pt 7.5A of the Corporations Act, ASIC is tasked with developing derivative transaction rules (reporting). These rules will clarify 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. Derivative transaction rules (reporting) need not be made in relation to all derivatives covered by a determination; and rules may provide exceptions to the application of any requirement. Subject to urgency provisions, ASIC is required to engage in public consultation and consult with both APRA and the RBA before issuing any derivative transaction rules (reporting).

### **International developments**

- 16 Australia is implementing the G20 commitments to OTC derivative reforms in close coordination with peer jurisdictions. Transaction reporting regimes are being developed concurrently by regulators overseas, including the US Commodity Futures Trading Commission (CFTC), the European Securities and Markets Authority (ESMA), the Japanese Financial Services Agency (JFSA), the Hong Kong Securities and Futures Commission (HK SFC) and the Monetary Authority of Singapore (MAS), for their respective jurisdictions.
- 17 Similar rules are being concurrently put in place in other G20 jurisdictions in line with the G20 commitments, reflecting that OTC derivative transactions often occur between counterparties in different jurisdictions and the underlying reference asset may be in a third jurisdiction.
- 18 The cross-border nature of OTC derivative trading means that there is a possibility of overlapping reporting requirements in different jurisdictions. To address potential gaps and overlaps, jurisdictions may allow for a system of recognition, or substituted compliance. ASIC is currently involved in

discussions with a number of foreign authorities, as those authorities assess whether the Australian transaction reporting regime is comparable to their own regimes.

- 19 A positive comparability assessment would mean that Australian reporting entities may report under the Australian regime in satisfaction of the requirements of these overseas regimes, reducing the reporting burden on these reporting entities.

### **Complementary regulatory impact statements**

- 20 The Determination and ASIC's rule-making are two necessary and complementary measures. For this reason, a certain degree of overlap exists between the Determination RIS and the derivative transaction rules (reporting) RIS. The Treasury has separately submitted a RIS in relation to the Determination to the Office of Best Practice Regulation (OBPR).
- 21 The subject of this RIS is the regulatory impact of the derivative transaction rules (reporting) themselves, and the associated costs and benefits. The impacts of the OTC derivative reforms can be ascribed to both the Determination and the rule-making. The process of rule-making goes beyond the Determination in that it assesses the most efficient and effective implementation of the G20 commitments.

## **Assessing the problem**

- 22 There are three main problems to address. These are:
- (a) implementing a derivative transaction reporting regime that achieves the stated objectives of the OTC derivative reforms and addresses the underlying transparency issues in OTC derivative markets identified in the GFC;
  - (b) giving effect to the Australian Government's G20 commitments to implement derivative transaction reporting; and
  - (c) ensuring any transaction reporting regime implemented is internationally consistent and there is regulatory parity, to facilitate Australia's continued integration into global financial markets.
- 23 While the new Pt 7.5A of the Corporations Act creates the framework for a derivative transaction reporting regime, it does not actually impose any reporting obligations. Rather, once the Treasurer makes his determination, under Pt 7.5A, ASIC has the discretion to make rules setting out the specific reporting obligations. As a result, without derivative transaction rules (reporting) made by ASIC, there would be no reporting obligations.

- 24 The GFC highlighted major issues around the lack of transparency in OTC derivative markets; for instance, the market and regulators were unable to form a clear picture of the interconnectedness of transactions and counterparties. If ASIC does not implement a rule framework that addresses these issues and the objectives of the OTC reforms, the lack of transparency in Australian OTC derivative markets will not be rectified.
- 25 Finally, OTC derivative markets operate on a global basis. Failure to implement a regime that is internationally consistent may negatively impact Australia's regulatory reputation, and may result in additional costs and risks to market participants. For example:
- (a) G20 jurisdictions may not recognise Australia's regulatory regime as equivalent for recognition or substituted compliance purposes; and/or
  - (b) Australia may suffer a lessening of its influence in G20 and/or multilateral negotiations, such as within the International Organisation of Securities Commissions (IOSCO), in the absence of action to implement existing G20 commitments to reform OTC derivative markets.

### **The derivative transaction reporting rule framework**

- 26 Systemic issues within OTC derivative markets contributed to the severity of the GFC. Among these systemic issues was a lack of information about exposures across entities, contributing to an inability on the part of regulators and market participants to assess the real degree of counterparty risk or the consequences of a default or regulatory intervention.
- 27 In response, the G20 called for reforms in these markets. One of the key areas of reform is the mandatory reporting of OTC derivative transactions to trade repositories, with the stated objectives of these reforms being:
- (a) enhancing the transparency of transaction information available to relevant authorities and the public;
  - (b) promoting financial stability; and
  - (c) supporting the detection and prevention of market abuse.
- 28 The first and second problems raised in paragraph 22(a)–22(b) relate to the fact that while the Treasurer's determination enables ASIC's rule-making ability, no rules currently exist setting out the detailed requirements for transaction reporting, meaning that the Government has not given effect to its commitment to regulate OTC derivatives. ASIC needs to consider whether new rules are necessary to:
- (a) give effect to the Treasurer's determination and implement Australia's G20 commitments;
  - (b) address the issues identified during the GFC; and



(c) achieve the objectives of the OTC derivative reforms.

- 29 Transaction reporting provides greater transparency to OTC derivative markets, providing transaction information to the public and market authorities. Through publication of aggregated statistical data by trade repositories, both market participants and the wider public will be able to access more reliable data about OTC market activity and the nature of that activity. Greater transparency also assists regulators in the management of financial stability and the detection and prevention of market abuse, by providing data about the volume and nature of activity in OTC markets, as well as transaction information about the activity and position of particular systemically-important participants and in relation to particular asset classes.

### **Lack of transparency**

- 30 The transaction reporting rule framework seeks to address the lack of transparency in global OTC derivative markets, which contributed to the difficulties regulators and also market participants faced in managing the problems that arose during the GFC. This lack of transparency was one of the systemic issues within the OTC derivatives market which added to the severity and duration of the 2008 GFC.
- 31 During the GFC, the opacity of the OTC derivatives market made it increasingly difficult for regulators and market participants to assess counterparty risk and the degree of interconnectedness in the market. At the time of the GFC, neither the market, regulators nor governments had a clear picture of which institutions were exposed (and the extent of that exposure) to troubled financial firms such as Lehman Brothers and AIG, for instance. In the absence of clear information, market participants were increasingly reluctant to lend to counterparties who might be insolvent. This inability to assess counterparty risk during the height of the GFC contributed to a rise in mutual distrust, reflected in a sharp increase in the cost of funding, and in some cases led to a freeze in some capital markets.

### *Effects on regulators*

- 32 The lack of transparency in OTC derivative markets inhibits regulators' ability to form a clear picture in a timely fashion of the extent to which OTC derivative trading plays a role in, or contributes to, a crisis in the financial system. It is also difficult for regulators to establish a clear picture of the potential consequences of any action they may take, if they are to intervene in markets to guarantee systemic stability.
- 33 Asymmetric information hampers governments' efforts to stabilise the markets. If a government has full information about a market that is not operating properly, it can choose a range of less intrusive measures and the best timing for intervention, to minimise disruption and moral hazard.

However without full information, this preventative monitoring is more difficult. Intervention will only be called for or justified after the crisis has escalated and the stabilisation costs have greatly increased.<sup>6</sup>

- 34 ASIC and APRA have information-gathering powers enabling them to obtain information about the OTC activities of participants in these markets,<sup>7</sup> and both engage in ongoing supervision and surveillance of the financial market activities of these institutions. APRA, in particular, engages in ongoing prudential supervision of Australian authorised deposit-taking institutions (ADIs), applying a detailed prudential supervision framework to these entities. There is also ongoing financial reporting required of entities that are registered to conduct business in Australia and the RBA has access to a range of statistical data, as well as data collected by the other agencies, through various information-sharing arrangements.
- 35 These arrangements already provide regulators with a level of information and oversight through which their respective regulated populations and the financial market can be monitored. There is not, however, any ongoing obligation on entities to report details of all OTC derivative transactions, their market value or the value of any collateral held on a 'real-time' basis, particularly to the level of detail currently proposed by the global reforms to enhance the transparency of these markets. Such reporting, as is being proposed by ASIC, may assist the Agencies to identify emerging and potential risks, particularly where they may change the risk profile of these institutions, and may assist in financial analysis. Such information would also be of use to the RBA in respect of its mandate to promote financial stability, and its role in managing crisis situations with other agencies.
- 36 The Council of Financial Regulators (the 'Council') notes:
- Reporting to trade repositories should facilitate the maintenance of a reliable and comprehensive source of information on participant trading activity, which would be useful to many regulators in performing their respective functions. It is expected that this increased transparency will assist authorities in identifying vulnerabilities in the financial system and, more broadly, to develop well-informed policies to promote financial stability. Information from trade repositories will be particularly useful in times of financial distress, where rapid and reliable access to accurate data may assist prudential and systemic regulators in their functions.<sup>8</sup>

### *Effects on market participants and the market*

- 37 The OTC derivative market operates on a bilateral basis and with bespoke contracts. Each participant holds full information about their own exposures

<sup>6</sup> The Long Term Capital Management episode (1998), the GFC (2008), the European debt crisis (2010) are just a few examples that financial markets are not self-stabilising and intervention is often necessary.

<sup>7</sup> For instance s30 and 33 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

<sup>8</sup> Council of Financial Regulators, *OTC Derivatives Market Reform Considerations, A report by the Council of Financial Regulators*, March 2012.

only, and no whole-of-market mapping of interconnectedness is available. The absence of a clear whole-of-market picture and the ability to accurately assess entities' interconnectedness affects the ability of market participants to assess with certainty the impact of the failure of a large participant. The failure of a significant participant—such as Lehman Brothers in 2008—to meet its immediate obligations can result in liquidity crises for other participants.

- 38 The opacity of the OTC derivatives market means that it is difficult or impossible to know which counterparties will be affected by the failure of a significant participant. Consequently, under adverse selection, the rational reaction of a typical participant would be to withdraw from the market indiscriminately. This is the mechanism that froze capital markets in a number of developed countries and exacerbated the GFC.
- 39 Opacity also means that regulators do not have a clear picture of the extent of any liquidity crisis nor the consequences, if they are to intervene in markets to guarantee systemic stability.
- 40 The lack of transparency may negatively affect the market and could cause substantial disruptions during times of financial stress. While there has been no institutional failure in Australia as a direct result of the lack of transparency in OTC derivative markets, the GFC meant that Australian institutions were unable to access capital markets which caused firms to face financial distress or failure. The lack of counterparty transparency made it difficult during the GFC for market participants to assess the impacts of certain institutional collapses or near-collapses, affecting their ability to assess real counterparty risk at that time, which contributed to the freezing of credit markets. Any measures to address the lack of transparency may assist in avoiding the issues that it caused, including the problems that were encountered by the market and regulators in trying to deal with the GFC.
- 41 The implementation of transaction reporting would assist in providing better information about OTC derivatives market activity, potentially enhancing systemic risk management by regulators and counterparties—in that the regulators (government) will have detailed information on the market and have the power to intervene early and be better informed if a crisis eventuates. Participants will know that the information is available to regulators for systemic risk assessments and informed intervention.

### **Transparency and standardisation as public goods**

- 42 To improve the stability of the system, OTC derivative markets need to operate with less opacity. Derivative transaction reporting will allow regulators access to information and assist in the assessment of risks, market surveillance, monitoring of systemic risk and prudential supervision. It will

also provide greater transparency and aggregate information for market participants and the public.

- 43 Without an external mandate (government intervention), the information asymmetry could be mitigated if markets voluntarily published relevant and comprehensive data to all participants. However, this solution cannot be expected to come from the market itself, because of severe first-mover disadvantages. The first participants to publish their exposures in the interest of market-wide transparency could be preyed upon by other participants.
- 44 Transparency must be established as a (non-rivalrous, non-excludable) public good. Transparency, to the extent that it affects visibility to regulators only, will benefit all market participants. Transparency to regulators only will mitigate the adverse selection problem by improving confidence, as all participants will be aware that a better informed and impartial party (government) is monitoring system-wide risks.

### **International consistency and harmonisation**

- 45 The third problem is that given the global nature of OTC derivative markets and the cross-border nature of transactions between participants, if ASIC does not establish a rule framework that is internationally consistent and harmonised with the implementation of derivative transaction reporting regimes in other jurisdictions, this will negatively impact Australia's regulatory reputation and result in additional compliance costs for its participants, by risking the possibility of:
- (a) duplicative obligations on participants, which adds undue administrative burden;
  - (b) conflicting obligations on participants, which gives rise to legal and regulatory uncertainty;
  - (c) Australia's regulatory regime not being mutually recognised, or considered sufficiently equivalent, by other G20 jurisdictions; and
  - (d) reducing the potential scope of cooperation between Australia's regulatory agencies and those in other G20 jurisdictions.
- 46 In the absence of an internationally-consistent derivative transaction reporting regulatory regime, we are of the view that the proper functioning of the Australian OTC derivatives market may be negatively affected, which may weaken investor confidence and detract from Australia's reputation as a well-regulated financial market. The issues discussed above could generate loss of activity in local markets, as domestic market participants migrate to overseas jurisdictions that have implemented the G20 commitments in full.

## The precautionary nature of the reforms

- 47 The discussion above shows how the opacity of the OTC derivatives market contributed to the GFC. Therefore, ASIC's proposals to address this opacity also contain a precautionary component, in that a transaction reporting framework would provide transparency that would potentially help contain the adverse selection and contagion effects that became evident during the GFC, in a future financial crisis. Regulators and governments would also be better equipped to determine resolution and recovery steps if armed with comprehensive and up-to-date information about mutual OTC derivative exposures of market participants.

## Regulatory objectives

- 48 The first objective is for ASIC to ensure that the derivative transaction rules (reporting) address the systemic issues within OTC derivative markets, by requiring transparency through reporting of OTC derivative trading activity to trade repositories. It is also directed at achieving the stated objectives of the derivatives market reforms.
- 49 The second objective of creating the derivative transaction rules (reporting) is to ensure that the Australian Government's policy to implement its G20 commitment to transaction reporting is realised, through the establishment of a derivative transaction reporting rule framework which assists in regulating OTC derivative trading activity and minimises risks to the Australian economy.
- 50 The third objective is for ASIC to establish this transaction reporting rule framework in a manner that:
- (a) enables the Australian regime to be judged sufficiently equivalent to other international G20 transaction reporting regimes, which facilitates mutual recognition and substituted compliance by other G20 jurisdictions and regulators;
  - (b) minimises conflicting and/or duplicative rules across jurisdictions, which eases the implementation and compliance burden and minimises regulatory and legal uncertainty for participants when transacting cross-border; and
  - (c) facilitates information-sharing and coordination among G20 regulators.

## B Options and impact analysis

### Options

- 51 We consider the following options to meet the regulatory objectives:
- (a) Option 1: implement the derivative transaction rules (reporting) proposed in ASIC Consultation Paper 205 *Derivative transaction reporting* (CP 205), with adjustments made, and additional guidance provided, in response to consultation feedback (preferred option);
  - (b) Option 2: implement the derivative transaction rules (reporting) proposed in CP 205 without adjustments or additional guidance (unpreferred option); or
  - (c) Option 3: do not implement the transaction reporting rule framework proposed in CP 205, but rather allow the industry to self-regulate (status quo).

### Impact analysis

#### **Option 1 (preferred option)—implement the derivative transaction rules (reporting) proposed in CP 205, with adjustments made, and additional guidance provided, in response to consultation feedback**

##### **Description of option**

- 52 Option 1 reflects the rules consulted on in CP 205, with adjustments made to certain aspects of the framework and additional guidance provided, to take account of feedback from stakeholders on the intended policy approach.
- 53 CP 205 contains rules that define reporting entities, the products that form reportable transactions and the events in a transaction life cycle which are required to be reported. It also sets out the geographic scope of the reporting obligation, and applies the reporting obligation to reporting entities in phases, based on their size and regulatory status. It will ultimately require both counterparties to report the transaction where both counterparties are reporting entities, however it also permits a reporting entity to delegate its reporting to a third party.
- 54 Further, Option 1 permits alternative reporting to a foreign trade repository under a foreign reporting obligation for certain entities, and sets out the conditions which must have been met in order for eligible entities to take advantage of alternative reporting.

- 55 Option 1 also requires a set of data fields to be included in each transaction report, including entity, transaction and product identifiers and mark-to-market and collateral information. It requires certain asset classes (interest rate and credit derivatives) to be reported first, with a six month delay for the remaining asset classes (equity, FX and commodity derivatives). It also requires reporting entities to report position data for a particular asset class as at the date the obligation took effect for the entity in that asset class.
- 56 Table 1 summarises the derivative transaction rules (reporting) we propose to implement under the new regulatory framework. CP 205 provides detailed discussion about the preliminary proposed derivative transaction rules (reporting), the rationale behind each proposal, and an explanation of the options that were considered.

**Table 1: Summary of proposed derivative transaction rules (reporting)**

Issue	Proposed new derivative transaction rules (reporting)
Who the reporting obligation applies to	<p data-bbox="507 904 1382 965">We are proposing that the following entities are defined as reporting entities under the derivative transaction rules (reporting):</p> <ul data-bbox="507 976 1382 1218" style="list-style-type: none"> <li>• Australian entities and the foreign subsidiaries of Australian ADIs and Australian financial services (AFS) licence holders;</li> <li>• a foreign ADI that has a branch located in this jurisdiction;</li> <li>• a foreign company that is required to be registered under Div 2 of Pt 5B.2 of the Corporations Act; and</li> <li>• exempt foreign licensees that are not otherwise captured in the above categories.</li> </ul> <p data-bbox="507 1240 1270 1330">We also propose that reporting entities (which include CCPs for cleared transactions) must report the arrangement, modification, termination or assignment of reportable transactions to a trade repository.</p> <p data-bbox="507 1352 1358 1476">We further propose that a reporting entity may delegate its reporting to a third party agent (including the other counterparty to the transaction), however the reporting entity remains responsible for ensuring that the information reported is accurate.</p> <p data-bbox="507 1498 1370 1711">We also propose an interim position that where both counterparties to a transaction are reporting entities, only one reporting entity must report the details of the transaction to a trade repository. We then propose to move to two-sided reporting, such that where both counterparties are reporting entities, both must report (noting that one reporting entity may optionally delegate its reporting to the other reporting entity). This phased approach is to take into account feedback received during consultation favouring a one-sided approach.</p>



Issue	Proposed new derivative transaction rules (reporting)
Categories of reportable transaction	<p>Reportable transactions are proposed to be defined under the derivative transaction rules (reporting) as specifically listed OTC derivatives that are:</p> <ul style="list-style-type: none"> <li>• entered into by Australian entities and the foreign subsidiaries of Australian ADIs and AFS licence holders;</li> <li>• booked to the profit and loss account of an Australian branch of a foreign authorised ADI or an Australian branch of a foreign company registered under Div 2 of Pt 5B.2; or</li> <li>• executed in Australia by a foreign ADI or a foreign company registered under Div 2 of Pt 5B.2 or a foreign exempt licensee.</li> </ul>
Derivative transactions to be reported	<p>OTC derivatives are defined as derivatives (as defined in s761D) prescribed by the Minister under s901B, unless:</p> <ul style="list-style-type: none"> <li>• the derivative is able to be traded on a Pt 7.2A market, and the entry of the arrangement of that derivative takes place on, or is reported to the operator of, a Pt 7.2A market; or</li> <li>• the derivative transaction is undertaken on an overseas market that is equivalent to a Pt 7.2A market (ASIC will list the markets that it considers to meet this criterion on its website).</li> </ul> <p>This includes both centrally-cleared and non-centrally cleared transactions.</p>
Deadline for reporting of reportable transactions	<p>We propose that reporting entities must report the execution, amendment, termination or assignment of a reportable transaction to a trade repository by no later than the business day following the day on which the execution, amendment, termination or assignment of the reportable transaction took place (known as T+1 reporting).</p>
Who can access alternative reporting	<p>We propose that alternative reporting be available to the following reporting entities in relation to their reportable transactions:</p> <ul style="list-style-type: none"> <li>• foreign ADIs that have a branch located in this jurisdiction;</li> <li>• foreign companies registered under Div 2 of Pt 5B.2;</li> <li>• foreign subsidiaries of Australian ADIs and Australian financial services (AFS) licence holders; and</li> <li>• foreign exempt licensees that are not otherwise captured in the above categories.</li> </ul>
Conditions for accessing alternative reporting	<p>We propose that a reporting entity will only be able to access alternative reporting if it has complied with an overseas transaction reporting requirement that is substantially equivalent to the corresponding Australian reporting obligation, with regard to what is reported, the scope of reporting and the timeliness of reporting.</p>
Data required to be reported	<p>We have proposed a set of common data fields that would be required to be reported to a trade repository, along with an additional set of data fields to be reported, specific to the derivative asset class to which the transaction belongs (interest rate, credit, equity, commodity or FX)</p>



Issue	Proposed new derivative transaction rules (reporting)
Complying with international data standards	<p>While we are not proposing to generally specify data standards or formats, there are three international standards we consider essential for a reporting entity to use, where they are available for a reportable transaction:</p> <ul style="list-style-type: none"> <li>• Legal Entity Identifiers (LEIs);</li> <li>• Universal Transaction Identifiers (UTIs); and</li> <li>• Universal Product Identifiers (UPIs).</li> </ul>
Reporting of mark-to-market valuations and collateral	<p>We propose that a reporting entity must:</p> <ul style="list-style-type: none"> <li>• 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 in any case, not be required to report this information more than once per day; and</li> <li>• 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, but not more than once per day.</li> </ul>

Issue	Proposed new derivative transaction rules (reporting)
Phased implementation	<p data-bbox="507 309 1374 459">We are proposing a phased implementation of reporting obligations in Australia, beginning with an 'opt-in reporting phase' and followed by three further phases (Phases 1, 2 and 3). In Phases 2 and 3, the reporting obligation would first apply to credit derivatives and interest rate derivatives, with reporting of the other asset classes to commence six months later.</p> <p data-bbox="507 481 655 504"><b>Opt-in phase</b></p> <p data-bbox="507 526 1374 654">We intend that the 'opt-in reporting phase' reporting obligation would be available to any entity from a date of their choosing, and in relation to a particular set of derivative products. The opt-in phase would commence not earlier than the making of the derivative transaction rules (reporting).</p> <p data-bbox="507 676 600 698"><b>Phase 1</b></p> <p data-bbox="507 721 1374 848">We have proposed that Phase 1 commence on 1 October 2013, applying to those Australian financial institutions that are registered or provisionally registered as Swap Dealers (SDs) with the CFTC. There are currently five Australian banks provisionally registered as SDs.</p> <p data-bbox="507 871 1374 1055">We understand that an earlier deadline for internationally-active major financial institutions may assist with achieving substituted compliance with CFTC transaction reporting rules. A mandatory obligation would also help ensure they are able to comply with a reporting obligation in another jurisdiction—for example, by removing potential barriers to reporting arising from privacy or confidentiality obligations that would otherwise apply.</p> <p data-bbox="507 1077 600 1099"><b>Phase 2</b></p> <p data-bbox="507 1122 1374 1406">We have proposed that Phase 2 commence on 1 April 2014, applying to major financial institutions—that is, a reporting entity that is an ADI, an AFS licensee, an exempt foreign licensee or a clearing and settlement (CS) facility licensee which has greater than A\$50 billion notional outstanding in OTC derivatives totalled across all OTC derivative asset classes, measured as at 31 December 2013. The A\$50 billion threshold does not include trades by subsidiaries or other related bodies corporate of reporting entities, nor trades of foreign entities that are not within the geographical scope of the regime. For funds and trusts, it is applied on a per fund or per trust basis, rather than a responsible entity or trustee basis.</p> <p data-bbox="507 1429 600 1451"><b>Phase 3</b></p> <p data-bbox="507 1473 1374 1601">Phase 3 is proposed to apply to all remaining financial institutions—that is, all remaining ADIs, AFS licensees or exempt foreign licensees not covered in the opt-in reporting phase or Phases 1 or 2. Phase 3 is proposed to commence from 1 October 2014.</p>
Requirements for derivative position information (backloading)	<p data-bbox="507 1635 1374 1785">We propose that a reporting entity must report its derivative position information for OTC derivatives outstanding in a particular asset class to a trade repository, using a proposed set of data fields (known as backloading) between 1 April 2014 and 1 October 2015, depending on the phase that the reporting entity falls under and the particular asset class.</p>
Requirements for record-keeping	<p data-bbox="507 1825 1374 1919">Reporting entities will need to keep records that enable them to demonstrate compliance with the rules for a minimum of five years, unless the reporting entity has access to those records within a trade repository.</p>

- 57 The core elements of the proposed derivative transaction rules (reporting) are interlinked and should be considered as a package rather than in isolation.

### **Impact on industry**

- 58 The main benefit to industry of implementing the derivative transaction rules (reporting) as recommended by the G20 is the preservation of the OTC derivative market linkages between Australia and other jurisdictions. Another important benefit is the avoidance of the economic and reputational costs for not engaging with the reforms driven by the G20.
- 59 These benefits would accrue to industry and investors mainly in the form of the preservation of their access to international markets and the cost savings related to the consistency between Australian and G20 regulatory frameworks (businesses would not need to have one completely different compliance framework for their Australian operations and another for their foreign dealings).
- 60 The proposed reporting regime will also provide greater transparency to the public in respect of activity and volumes in OTC derivative markets. Under the rules, aggregate data about volumes, notional outstandings and other statistical data will be made publicly available on a weekly basis free of charge. This will benefit market participants and the wider public—for instance, institutional investors and market analysts in their assessment of the market or particular asset classes, and economists in their view on the economy, interest rate markets and FX. In addition, the application of new reporting disciplines on market participants may assist them in their own internal risk management, with more centralised information about their derivatives trading activity.
- 61 For the market as a whole, the benefit of a centralised repository of transaction information was evident during the resolution of the Lehman Brothers failure in 2008, in the context of credit derivatives. Due to the well-entrenched reporting of credit derivative transactions, trade repositories were able to provide valuable information about positions in this asset class which facilitated resolution, making the process more efficient for the market, as well as regulators.
- 62 Lack of transparency in the OTC derivatives market was one of the factors that contributed to the severity of the GFC. Naturally, it is impossible to apportion the economic costs of the GFC to each of its multiple contributing causes.<sup>9</sup> However, it is clear that the GFC had a severe negative impact on the global and local economies, and every reasonable effort should be

<sup>9</sup> A statement by Andrew G Haldane, Executive Director for Financial Stability at the Bank of England estimated the worldwide costs of the GFC in terms of lost output at between \$60 trillion–\$200 trillion. (17 Code of Federal Regulations (US) Pt 45 - Commodity Futures Trading Commission, 13 Jan 2012, p. 2,179).

exerted to avoid similar incidents in the future. Addressing the opacity in which OTC derivative markets operate is a necessary (even if not sufficient) step towards avoiding similar future disruptions.

- 63 Investment in compliance with the transaction reporting rule framework is likely to contribute to the long-term performance of the Australian market. By complying with the framework, which will be put in place globally, Australian firms will preserve access to foreign clients, counterparties and markets. Failure to implement the proposed rules in Australia could isolate the local market and increase the cost of hedging and the cost of capital—suppressing asset prices and economic growth.
- 64 The finalisation of these rules will also improve the likelihood of Australia being judged sufficiently equivalent by other jurisdictions for substituted compliance purposes, providing Australian institutions with a way in which to manage any overlapping and/or duplicative requirements that they may be subject to in different jurisdictions, particularly in relation to transaction reporting obligations.
- 65 We also expect that larger internationally-active entities, and in particular those with subject to foreign reporting obligations, will be able to leverage existing investment in transaction reporting systems and infrastructure to comply with Australian transaction reporting obligations. Relatively smaller, domestically-focused financial institutions preparing for compliance with a transaction reporting obligation for the first time may incur greater investment expenditure in systems and infrastructure.
- 66 Although Australia is finalising its derivative transaction reporting requirements sooner than some other jurisdictions, it is by no means the first jurisdiction to move, as reporting under the CFTC rules has commenced and other jurisdictions, including the European Union, Hong Kong, Canada and Singapore, as well as the United States, have finalised or are close to finalising their requirements. ASIC has sought, where possible, to align its rules with the requirements of the United States, European Union and other peer jurisdictions, and more generally to follow international standards. This is to facilitate consistency among the regulatory regimes of markets that Australian entities may be most active in, even where those rules may still be under development.
- 67 ASIC has also sought to incorporate a level of flexibility into its rules by providing for further consultation on some issues—for example, such as how the regime should apply to end-users. In addition, there will be regulatory guidance provided for stakeholders to assist in the implementation of the new regime.
- 68 A number of foreign ADIs, and other foreign firms are active in the OTC derivatives market in Australia. A recent survey of OTC derivative usage in

Australia conducted by the Council in February 2013 showed that the gross amount outstanding from survey participants at the end of that month was A\$24.7 trillion.<sup>10</sup> Of this, around A\$13 trillion involved a foreign-based counterparty. Therefore, approximately 53% of the Australian OTC derivatives market respondent activity reflects a direct interaction between local and overseas participants.

- 69 These foreign firms will be subject to the Australian regime, and will be required to report on their Australian activities. Where an entity is already subject to a reporting obligation in another jurisdiction, there is the potential for duplication or overlap in regulatory requirements.
- 70 To address this issue, ASIC has proposed a regime of alternative reporting. Where a foreign firm is subject to Australian reporting requirements and substantially equivalent reporting requirements in another jurisdiction, the entity may seek to take the benefit of alternative reporting. Specifically, where they are reporting the same, or substantially the same, information to an overseas trade repository that has been prescribed in Australia by regulation, the foreign entity may rely on this reporting for the purposes of meeting the Australian requirements.
- 71 In this way, ASIC seeks to take account of the global nature of OTC derivative activity and the resulting transaction reporting, and recognise those jurisdictions that follow international standards and have implemented substantially equivalent regimes.

#### *Stakeholders*

- 72 We expect that the proposed derivative transaction rules (reporting) will impose a range of additional direct (one-off and ongoing) costs on reporting entities and a range of infrastructures and providers supporting their trading (referred to as ‘supporting stakeholders’). Reporting entities may include:
- (a) Internationally-active investment banks;
  - (b) domestic banks and other financial institutions (e.g. insurers); and
  - (c) responsible entities of managed investment schemes, AFS licence holders and trustees.
- 73 Supporting stakeholders, offering agency reporting and related services, may include, but not be limited to:
- (a) trading platforms;
  - (b) CCPs; and
  - (c) middleware and third party solution providers.

<sup>10</sup> Gross notional outstanding refers to the aggregate face value of derivative contracts without netting out short and long positions. These figures are based on participant responses to the survey, and have not been adjusted for any double counting that may arise from both counterparties to the same trade reporting the trade.

*Competition between supporting stakeholders as reporting agents*

- 74 Due to the availability of agency reporting, a number of supporting stakeholders may emerge to provide an agency reporting service to reporting entities on a competitive basis, including price. We expect that these supporting stakeholders' fee structures will include a fixed initial one-off cost for connectivity, and a per-reportable transaction charge for each individual transaction report. It is possible that a majority of domestically-focused reporting entities will take advantage of agency reporting, saving on direct investment in reporting systems and connectivity to trade repositories themselves.
- 75 If multiple supporting stakeholders offering agency reporting services emerge, the competitive nature between these supporting stakeholders may bring benefits for reporting entities, primarily in the form of lower costs (i.e. initial one-off connectivity costs and lower per-reportable transaction costs).

*Phasing*

- 76 A phased implementation is being proposed, as outlined in Table 1. This would mean that internationally-active participants who may already be subject to certain offshore reporting requirements would be required to comply first, followed by large domestically-active financial institutions, financial institutions and lastly end-users. Prior to end-user implementation, there would be further consultation.
- 77 This phased approach allows for those entities with international experience to report first, so that the industry can gradually build on its experience in the regime.
- 78 Table 2 indicates the possible impacts of the proposed regulatory framework on reporting entities and supporting stakeholders in relation to technology, human resources and compliance policies and procedures. Table 7 (in Appendix 1) further sets out the possible impacts of the derivative transaction rules (reporting) on industry and the associated benefits for the market and regulators.

**Table 2: Possible impacts of the proposed regulatory framework on reporting entities and surrounding stakeholders**

Area	Possible impacts— reporting entities	Possible impacts—supporting stakeholders
Technology	<p>Reporting entities will need systems to:</p> <ul style="list-style-type: none"> <li>• identify reportable transactions;</li> <li>• connect to trade repositories for reporting;</li> <li>• capture the required data fields for reportable transactions from single or multiple in-house transaction management systems;</li> <li>• allocate identifiers for a transaction, including using the same LEI between both counterparties where both reporting entities are required to report under two-sided reporting;</li> <li>• report collateral amounts for collateralised transactions; and</li> <li>• aggregate position data for an asset class for the purpose of reporting position information.</li> </ul>	<p>Supporting stakeholders will need systems to:</p> <ul style="list-style-type: none"> <li>• capture the required data fields for reportable transactions and/or position information from reporting entity in-house systems;</li> <li>• connect to trade repositories for reporting; and</li> <li>• allocate identifiers for a trade, including using the same LEI between both counterparties where both reporting entities are required to report under two-sided reporting.</li> </ul>
Human resources	<p>Reporting entities will need staff to:</p> <ul style="list-style-type: none"> <li>• consider the impact of the proposals, including the impact on technology, in-house systems and conventions;</li> <li>• comply with the reporting requirements;</li> <li>• monitor compliance with the rules;</li> <li>• create, test and maintain system connections to agency reporting providers;</li> <li>• identify and investigate missed, incomplete or late trade reports;</li> <li>• stay abreast of market developments, including with respect to the development of identifiers; and</li> <li>• provide training to other staff.</li> </ul>	<p>Supporting stakeholders will need staff to:</p> <ul style="list-style-type: none"> <li>• consider the impact of the proposals, including the impact on technology and conventions;</li> <li>• monitor compliance with the rules;</li> <li>• create, test and maintain system connections to reporting entities;</li> <li>• identify and investigate missed, incomplete or late trade reports;</li> <li>• stay abreast of market developments, including with respect to the development of identifiers; and</li> <li>• provide training to other staff.</li> </ul>

Area	Possible impacts— reporting entities	Possible impacts—supporting stakeholders
Compliance policies and procedures	<p>Reporting entities will need to:</p> <ul style="list-style-type: none"> <li>• create policies and procedures to monitor compliance with their obligations;</li> <li>• create procedures for identifying reportable transactions;</li> <li>• create procedures to identify which asset class a transaction should be classified under;</li> <li>• create standardised conventions for populating data fields, or follow market conventions as they develop;</li> <li>• create procedures for assigning identifiers to each new transaction;</li> <li>• create policies and procedures to manage their reporting and ensure all required data is accurately captured and reported within the required timeframe;</li> <li>• create procedures for investigating and reporting any breaches of the derivative transaction rules (reporting);</li> <li>• decide if they intend to take advantage of alternative reporting if they are a foreign entity, and if so, ensure that the necessary conditions have been met; and</li> <li>• decide if they intend to delegate their reporting responsibility to an agent.</li> </ul>	<p>Supporting stakeholders will need to:</p> <ul style="list-style-type: none"> <li>• create procedures for identifying reportable transactions of reporting entities;</li> <li>• create policies and procedures to manage their reporting and ensure all required data is accurately captured and reported within the required timeframe;</li> <li>• create procedures for assigning identifiers to each new transaction;</li> <li>• create standardised conventions for populating data fields, or follow market conventions as they develop; and</li> <li>• create procedures for investigating and reporting any breaches of the derivative transaction rules (reporting).</li> </ul>

### *Costs for industry*

- 79 The implementation of new reporting rules will naturally impart costs. In the main, these costs comprise compliance costs. Some of these costs may be immediately identifiable, in terms of investment in additional IT and staffing requirements; others will take the form of additional management or supervisory resources.
- 80 Although the various compliance costs arising for these reporting entities and supporting stakeholders can, in principle, be quantified, they will likely vary significantly across the parties. In particular, costs will vary depending on the nature and size of business activity undertaken by reporting entities and supporting stakeholders, the extent to which they have already adopted the proposed requirements (many of which reflect requirements or proposed requirements in other jurisdictions), and other factors. These costs would not put Australian businesses at a competitive disadvantage because all other G20 jurisdictions are stipulating substantially equivalent rules. For the same



reason, these costs are not expected to affect Australia's standing as a regional financial centre.<sup>11</sup>

*International costs as a proxy*

- 81 As part of ASIC's consultation process, we sought feedback about the likely impact of the proposed obligations. On the whole, respondents did not provide detailed information on the likely costs associated with implementing the proposed derivative transaction rules (reporting). Where these costs were provided, we have reflected the likely costs in formulating the expected impact on industry. However, we have also drawn on implementation of similar rules in overseas jurisdictions to use as a proxy for any impact in Australia.
- 82 Lack of cost estimates is a difficulty also faced by overseas regulators.<sup>12</sup> For this reason, the discussion below draws on figures estimated by the CFTC and ESMA.<sup>13</sup>
- 83 The CFTC requested comment on the consideration of costs and benefits, and specifically invited commentators to submit any data or other information they may have to quantify or qualify the costs and benefits. As public comment letters did not provide quantitative data regarding the costs and benefits associated with the proposed rules, the CFTC endeavoured to quantify the costs and benefits of their transaction reporting rules through research and with consultation with in-house technological staff.
- 84 ESMA asked respondents to provide data to support their cost-benefit analysis. Only a few respondents provided information, and it was not sufficient to perform a quantitative cost-benefit analysis. ESMA performed its own quantitative assessment to justify its policy choices.
- 85 The cost figures estimated by these two agencies are broadly representative of the costs faced in the Australian scenario because:
- (a) the OTC derivatives market is a global industry. A trade repository or data management system with costs substantially out of line with international practice would be undercut by competitors;
  - (b) some of the potential trade repositories and data management systems to be used by Australian entities are based in the United States or Europe; and

<sup>11</sup> The Financial Stability Board reports that the regional financial centers in the Asia-Pacific area (Japan, Hong Kong, Korea, Singapore, and China India) as well as the European Union and the United States are currently all on track – like Australia – to implementing the rules concerning reporting OTC derivative trades to a central depository. (*OTC derivatives market reforms – fifth progress report on implementation*, FSB, 15 April 2013.)

<sup>12</sup> Both the CFTC and ESMA requested cost estimates from industry unsuccessfully.

<sup>13</sup> 17 *Code of Federal Regulations* (US) Pt 45 - Commodity Futures Trading Commission, 13 Jan 2012, p. 2,177, *Annex VIII of the Final report on draft Regulatory and Implementing Technical Standards on Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories*, ESMA, 27 September 2012, p. 3.

- (c) while the some jurisdictions may impose idiosyncratic requirements affecting costs and implementation procedures, the substance of the G20 recommendations is the same for all members.

86 The CFTC estimated costs of reporting to a trade repository in Pt 43 of the *Code of Federal Regulations* (US) and the increased record-keeping burden in Pt 45 on industry participants.<sup>14</sup>

87 The CFTC notes that costs will include non-recurring investments in technology and personnel, as well as recurring expenses associated with maintenance, support and compliance (Table 3 and Table 4). It anticipates reporting would largely be automatically completed by electronic computer systems, and has calculated burden hours necessary to oversee, maintain and utilise the reporting functionality. It has assumed a non-financial end-user lacking the technical capability and other infrastructure to comply with the Pt 43 requirements of the *Code of Federal Regulations* (US) as the reference point for its cost burden estimates (i.e. a new market entrant with no prior swap market participation or infrastructure).

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<sup>14</sup> 17 *Code of Federal Regulations* (US) Pt 43 and 17 *Code of Federal Regulations* (US) Pt 45 develop rules and regulations that will be imposed on US market participants that are similar to the regulations contained in the trade repository RIS. The CFTC estimated costs of reporting to a trade repository in Pt 43 and the increased recordkeeping burden in 17 *Code of Federal Regulations* (US) Pt 45 on industry participants. 17 *Code of Federal Regulations* (US) Pt 43 prescribes the rules for the method and timing of reporting swap transaction data to a Swap Data Repository from market participants. It outlines the entities responsible for reporting data; the entities responsible for public disseminating such data; the data fields to be reported; time delays and minimum size for reporting block trades; and the proposed effective date and implementation schedule. 17 *Code of Federal Regulations* (US) Pt 45 contains provisions governing recordkeeping requirements; swap data reporting requirements for registered entities and counterparties for swap creation and continuation; requirements on unique swap identifiers (USI); requirements on legal entity identifiers (LEI); requirements on unique product identifiers (UPI); determination of which counterparty is responsible for reporting each swap established; third-party facilitation of swap data reporting; requirements for reporting to a single swap data repository (SDR); reporting swaps in a swap asset not accepted by an SDR; required data standards for swap data reporting; and requirements for reporting errors and omissions in previously reported swap data.

**Table 3: CFTC cost burden hours and infrastructure for Pt 43 of the Code of Federal Regulations (US) (annual, per entity)<sup>15</sup>**

Requirement	Non-SD/MSP	SEFs, DCMs, DCOs, SDs, MSPs and SDRs <sup>16</sup>
Pt 43 (Reporting and public dissemination)	<p><b>Initial cost:</b></p> <p>Costs for non-financial end-user that does not contract will incur costs, totalling US\$56,369, to;</p> <ul style="list-style-type: none"> <li>• develop an order management system (OMS);</li> <li>• establish connectivity to an SDR;</li> <li>• develop policies and procedures for compliance; and</li> <li>• comply with error correction procedures.<sup>17</sup></li> </ul> <p>The CFTC estimates that if a non-SD/MSP utilises a third party for reporting, initial non-recurring costs would be US\$2,063.</p> <p><b>Recurring cost:</b></p> <p>Aggregated costs for 250 non-financial end-users at a cost of US\$45,159,000 (or US\$180,636 each) that do not use a third party.<sup>18</sup></p> <p>For 750 non-SD/MSP that utilise a third party in reporting real-time swap transaction and pricing, the CFTC estimates a cost of US\$2,056,500 (or US\$2,742 each). The CFTC recognises this may vary with the level of swap activity.</p>	<p><b>Initial cost:</b></p> <p>US\$300,000</p> <p>CFTC estimates that 'annualised over a useful life of six years, and accounting for the total operational cost per year associated with these initial non-recurring costs, the annual total cost of these initial non-recurring costs will be US\$200,000.'<sup>19</sup></p> <p><b>Recurring cost:</b></p> <p>2,080 hours (for 1 FTE)</p>

<sup>15</sup> Pt 45 of the Code of Federal Regulations (US) Final Rules.

<sup>16</sup> Swap execution facilities (SEF), designated contract markets (DCM), derivatives clearing organization (DCO), swap dealer (SD), major swap participant (MSP) and swap data repository (SDR).

<sup>17</sup> See footnote 460 in 17 Code of Federal Regulations (US) Pt 43, p. 1,231.

<sup>18</sup> See footnote 465 in 17 Code of Federal Regulations (US) Pt 43 for cost breakdown.

<sup>19</sup> The capital and start-up costs for Pt 43 of the Code of Federal Regulations (US) reporting requirements for high activity respondents is estimated as 5% of the entity's estimated average total capital and start-up cost of US\$6 million. 17 Code of Federal Regulations (US) Pt 43, p1,231.

Requirement	Non-SD/MSP	SEFs, DCMs, DCOs, SDs, MSPs and SDRs <sup>16</sup>
Pt 43 (Recordkeeping costs)	Do not have recordkeeping obligations	<b>Total non-recurring and recurring costs:</b> <ul style="list-style-type: none"> <li>• US\$93,855 for 15 SDRs (US\$6,257 each)</li> <li>• US\$328,000 for 125 SDs/MSPs (US\$2,624 each)</li> <li>• US\$157,440 for 40 SEFs. (US\$3,936 each)</li> <li>• US\$70,848 for 18 DCMs. (US\$3,936 each)</li> </ul>

**Table 4: CFTC cost burden hours and infrastructure for Pt 45 of the Code of Federal Regulations (US) (annual, per entity)<sup>20</sup>**

Requirement	Non-SD/MSP	SEFs, DCMs, DCOs, SDs, MSPs and SDRs
S45.2 (Recordkeeping)	<b>Initial cost:</b> 480 hours at a cost of US\$32,820 Technology infrastructure costs of US\$50,000 <b>Recurring cost:</b> 75 hours	<b>Initial cost:</b> 1,560 hours at a cost of US\$111,917 per SEF, DCO and DCM. <b>Recurring cost:</b> 2,080 hours (1 FTE)
S45.2 (Recordkeeping—retrieval costs)	<b>Initial cost:</b> 310 hours at a cost of US\$25,534 <b>Recurring cost:</b> 115 hours at a cost of US\$9,510	<b>Initial cost:</b> 350 hours at a cost of US\$28,745 per SEF, DCO, DCM, SD or MSP. <b>Recurring cost:</b> 175 hours at a cost of US\$14,373 per SEF, DCO, DCM, SD or MSP.
S45.3 & S45.4 (Swap transaction reporting to an SDR captured in Pt 43 of the Code of Federal Regulations (US)).	<b>Initial cost:</b> 350 hours at a cost of US\$28,745 <b>Recurring cost:</b> 175 hours at a cost of US\$14,373	<b>Recurring costs</b> Approximately 2,080 hours per year per entity (no quantification in dollar terms)

<sup>20</sup> Pt 45 of the Code of Federal Regulations (US) Final Rules.

Requirement	Non-SD/MSP	SEFs, DCMs, DCOs, SDs, MSPs and SDRs
S45.3 & S45.4 (Order Management System and associated compliance and support)	<b>Initial cost:</b> 350 hours per reporting entity at a cost of US\$28,745  <b>Recurring cost:</b> 175 hours per entity at a cost of US\$14,373	<b>Initial cost:</b> 350 hours per reporting entity at a cost of US\$28,745  <b>Recurring cost:</b> 175 hours per entity at a cost of US\$14,373
S45.5 (Create and report unique swap identifier)	One-sided transaction reporting, assumed non-SD/MSP would only create unique identifiers when transaction is non-SD/MSP to non-SD/MSP.	<b>Initial costs:</b> 1,000 hours per SEF, DCO, DCM, at a cost of US\$81,869  750 hours per SD or MSP at a cost of US\$61,402  500 hours per SDR at a cost of US\$40,935 for swaps between non-SD/MSP counterparties.  <b>Recurring costs:</b> 470 hours per SEF, DCO, DCM, at a cost of US\$37,741  353 hours per SDs or MSP at a cost of US\$28,386  235 hours per SDR at a cost of US\$18,871 for swaps between non-SD/MSP counterparties.
S45.6 (Legal entity identifier)	<b>Initial cost:</b> 0–8 hours per non-SD/MSP counterparty depending on creating an LEI or updating.	<b>Initial cost:</b> 0–8 hours per SD and MSP counterparty depending on creating an LEI or updating.  500 hours per SDR at a cost of US\$40,935  <b>Recurring cost:</b> 235 hours per SDR at a cost of US\$18,871

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The CFTC estimates that total non-recurring costs will be US\$193,468 and ongoing costs will be US\$204,519 for a non-SD/MSP that does not utilise a third party, while for a non-SD/MSP that does use a third party provider, initial costs will be US\$139,162 and ongoing costs will be US\$26,625. An SEF is expected to incur initial costs of US\$426,217 and recurring costs of US\$52,114, a DCM is expected to incur initial costs of US\$42,647 and recurring costs of US\$52,114, a DCO is expected to incur initial costs of US\$422,531 and recurring costs of US\$52,114, an SD is expected to incur

initial costs of US\$292,771 and recurring costs of US\$42,759, an MSP is expected to incur initial costs of US\$292,771 and recurring costs of US\$42,759 and an SDR is expected to incur initial costs of US\$288,127 and recurring costs of US\$37,742.

- 89 ESMA estimated the cost burden on market participants of compliance costs relating to the additional time taken to collect and transmit the extra data: see Figure 1. Additional costs include time taken to process and store the extra data, as well as responding to requests from authorised bodies. Counterparties must ensure they can provide data in the format required by ESMA and may need to modify existing systems, imposing some one-off and ongoing costs. ESMA based the following costs on past experiences.

**Figure 1: ESMA cost estimates of transaction reporting rules**

	Low	High
Average one-off costs per firm (IT development costs)	€8,696	€17,390
Average one-off cost relates to	4 weeks IT time per firm	8 weeks IT time per firm
Average on-going costs per firm	€3,478	€6,957
Average on-going cost relates to	40% of one-off cost	40% of one-off cost
Number of CCPs	18	18
Total one-off costs	€157,000	€313,000
Total annual on-going costs	€63,000	€125,000

*Source: data obtained by ESMA from external consultants (i.e. Europe Economics)*

**Table 5: Costs to CCPs of the draft RTS on record keeping – General requirements**

**Records required (transaction, position and business)**

The proposed records required by ESMA are summarised in the table below:

Record type	Transaction records	Position records	Business records
Approximate number of fields	24	12	427
Frequency of updates required	Any time a change is made to a trade	Daily	Ad hoc (approximated for number per year)

**Table 6: Reporting Requirements Proposed by ESMA for Different Areas**

Source: ESMA, Annex VIII of the Final report on draft Regulatory and Implementing Technical Standards on Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories, P59.

- 90 We have estimated that around 1,200 entities could be directly or indirectly affected by the proposed changes to local OTC derivative markets. However, this is an upper boundary, as the figure was calculated using data on AFS licences. AFS licence data allows for the identification of entities licensed to operate in OTC derivatives, whether or not they actually do on a regular basis.

- 91 A more accurate estimation of the number of larger entities that could be materially affected by the proposed changes can be gauged by the figures used in market surveys conducted on behalf of the Council. In mid-2012, the Council sent surveys to 65 institutions known to be active in the market (37 responses were received).<sup>21</sup>
- 92 In Australia, these main reporting entities would most likely be firms similar to what the CFTC labels SDs and Major Swap Participants (MSPs). Therefore, using the CFTC estimates, we believe that the Australian dollar equivalent to US\$292,771 is a reasonable approximation for (one-off) set up costs, and that the Australian dollar equivalent to US\$42,759 is a reasonable approximation for ongoing costs for a typical Australian participant.
- 93 Any swap data repository (SDR) operating in Australia, or operating for Australian entities, is likely to function on (at least) a cost recovery basis. As such, the SDR costs of US\$288,127 (one-off) and US\$37,742 (ongoing) are likely to be recovered from industry (shared among participants) in the form of fees.<sup>22</sup>
- 94 The size of the industry can also be assessed indirectly. The Bank for International Settlements estimated that as at end-2011, there was around US\$11 trillion in Australian-dollar denominated OTC derivatives outstanding.
- Note: This is not a completely accurate assessment of the size of the local industry, as it includes contracts between two foreign-domiciled entities. Moreover, even when one or both counterparties are located in Australia, it is possible for a foreign-domiciled counterparty to record the transaction on the books of its overseas entity.
- 95 ESMA's cost estimations are higher than the CFTC's, but this is in part a result of the difference in the design of the regulatory changes across the two jurisdictions, and partly due to the complexities of European markets, where multiple national markets intermesh.
- 96 ASIC believes that the CFTC costs are an acceptable estimate of the order of magnitude of the costs of the similar proposals in Australia.

### **Impact on consumers**

- 97 Given that the derivative transaction rules (reporting) will not apply to individual retail investors, we expect a minimal impact of the new rule framework on consumers. Retail investors will not be required to implement any changes to systems or processes to facilitate the proposed new regulatory framework. However, the public would have access to more

<sup>21</sup> Report 309 *Report on the Australian OTC derivatives market* (REP 309), APRA, ASIC and the RBA, October 2012.

<sup>22</sup> If the SDR is situated overseas, the exchange rate conversion would not be needed, as Australian entities would be invoiced in foreign currency.



aggregated information about OTC derivative markets, as some of the data collected will be made publicly available in an aggregated form.

## **Impact on government**

### *Benefits to regulators*

- 98 The GFC demonstrated an absence of transparency in OTC derivative markets and the risks that this presents. Transaction reporting is designed to address some of these risks, improve transparency, and provide regulators with the tools to monitor and manage systemic risks and investigate market abuse in OTC markets.
- 99 The rule framework will deliver the most benefits to regulators, including ASIC and other Council agencies. In particular, it will enable the Agencies to meet the stated objectives of the reforms to OTC derivative market practices committed to at the 2009 G20 Pittsburgh Summit, which are:
- (a) to enhance the transparency of transaction information available to relevant authorities and the public;
  - (b) to promote financial stability; and
  - (c) to support the detection and prevention of market abuse.<sup>23</sup>
- 100 More specifically, trade repositories, as warehouses of transaction information, will be valuable sources of OTC derivative market and trading data. Regulators have not previously had access to this data, given the opaque nature of the global OTC derivatives market.
- 101 This new set of data will provide more information to assist the Agencies to:
- (a) assess systemic risk (including firm position sizes, concentrations, interconnectedness and structure);
  - (b) conduct market surveillance and enforcement across both OTC and exchange-traded derivative markets;
  - (c) prudentially supervise financial institutions to further understand the OTC derivative exposures of supervised entities;
  - (d) evaluate derivatives for any mandatory clearing determination to be imposed in Australia in the future and monitor compliance with such determinations;
  - (e) evaluate derivatives for any mandatory trading determination to be imposed in Australia in the future and monitor compliance with such determinations; and

<sup>23</sup> See CPSS–IOSCO *Principles for financial market infrastructures* (CPSS–IOSCO Principles), April 2012, p. 9, [www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf).



- (f) protect against and identify market abuse in Australia through transactions undertaken on OTC derivative markets.<sup>24</sup>

- 102 Regulators will have access to additional tools to perform these functions and assessments, as the transaction reporting regime should ultimately provide transparency in relation to a range of areas.
- 103 Regulators will have a better view of the interconnectedness between counterparties and between asset classes. Greater transparency of interconnectedness (being the nature, scale and scope of obligations between participants, both within asset classes and across asset classes) will assist regulators in understanding the degree to which individual participants are exposed to common shocks, and is crucial in assessing the likelihood and extent of contagion in the financial system.
- 104 Supervisors of market participants may gain a better understanding of the risk-taking practices of these participants, the type of activities that they undertake, and the OTC trading that they engage in. This information should also assist in surveillance activities of business conduct and regulatory compliance. A better information base will also assist in developing targeted risk-based surveillance approaches to industry and specific participants.
- 105 For prudential supervisors such as APRA, and those with systemic risk responsibilities such as the RBA, the additional information will ultimately provide assistance in the performance of their functions. Importantly, the additional information could assist in developing a better understanding of any position risk-building, particularly in domestic, systemically-important entities, and any increasing concentration levels in various markets. Looking across institutions and markets may assist also to identify common exposures to particular risk factors.
- 106 From a systemic risk perspective, information on the size of position exposures, concentrations and interconnectedness between participants and counterparties assists in performance of the systemic stability mandate. Both position-level and transaction-level data will assist in this process. In normal market situations position-level information will be relied upon more often, but transaction-level data is valuable for certain types of analysis, and particularly during crisis periods. Armed with accurate and timely data on OTC derivative transactions and exposures, regulators will be able to assess more promptly and correctly:
- (a) the aggregate level of systemic risk in the market; and
  - (b) the exposures and liabilities of systemically-important institutions.

<sup>24</sup> See CPSS–IOSCO *Authorities' access to trade repository data*, Consultative Report, April 2013, s 6.2.

- 107 This would improve the effectiveness of regulatory interventions—if such interventions are warranted—at times of severe financial distress. This would reduce the risks associated with financial turmoil for market participants and the wider public.
- 108 The Agencies would also benefit from the additional information in performing their role of financial system oversight.
- 109 Data that will become available will assist with better economic analysis in developing regulatory knowledge of market structure and in understanding more readily market mechanics, which will inform market structure policy development and market surveillance.
- 110 Another objective of the reforms is the detection and prevention of market abuse, which may include:
- manipulation or abusive trading that distorts prices or attempts to do so...disrupts trading or the physical delivery or cash settlement of contracts, or otherwise interferes with the transparent, efficient operation of the market.<sup>25</sup>
- 111 Implementation of the transaction reporting mandate will assist in the detection of market abuse in Australia, by enabling the Agencies to:
- identify and detect unusual or improper trading activities, to analyse trading patterns, and to monitor transactions for abnormal price and volume movements... For example, detection of insider trading will typically require the identification of a series of transactions by a particular entity or entities on a particular underlier or underliers [being the asset, commodity, currency that the derivative contracts references] for the suspect time period.<sup>26</sup>
- 112 ASIC will benefit from this information in the performance of its functions, such as the investigation of market abuse. A risk-based surveillance model benefits from the additional market and participant transparency that will be provided by the new reporting regime. Understanding links and patterns between synthetic and underlying markets will assist in detection of market abuse, as will the additional overall transparency. ASIC may be better able to identify and detect unusual or improper trading activity, analyse trading patterns and monitor transactions for abnormal price and volume movements. Cumulative transaction-level data over a period of time for particular underliers, or particular participants, should be of assistance.
- 113 The detection and prevention of market abuse is also a key reason for the inclusion of local branches of foreign ADIs and other locally-active foreign entities within the Australian reporting regime. These entities incorporate the local operations of global investment banks and other global financial conglomerates. These entities comprise a significant portion of the OTC

<sup>25</sup> See CPSS–IOSCO *Authorities' access to trade repository data*, Consultative Report, April 2013, s 3.2.3.

<sup>26</sup> Ibid.

derivatives market activity undertaken in Australia and, as such, are significant. As noted in paragraph 68, approximately 53% of the Australian OTC market survey respondent activity reflects a direct interaction between local and overseas participants.

114 To provide comprehensive coverage of OTC activity in Australia for the purposes of the detection and prevention of market abuse, it is important that the activities of these foreign entities are incorporated within the Australian regime, to provide the required transparency for the Agencies.

115 Given the volume of activity undertaken by foreign entities and the potential level of interconnectedness to domestic entities this may signify, it is important to include these foreign entities in the scope of the reporting regime, to better understand the risks to the financial stability of the Australian market, or to significant domestic entities.

116 Incorporating foreign entities does raise the potential for duplication or overlapping coverage of these entities between the Australian regime and foreign reporting regimes. ASIC's proposals provide for a system of alternative reporting that should, in appropriate circumstances, avoid such duplication: see paragraph 70.

#### *Other impacts on government*

117 Given that the Agencies will access transaction reporting data from trade repositories, a key impact on the Australian Government of the rule framework relates to system connectivity between the Agencies and trade repositories and data analysis tools. In particular, the Agencies will need to establish arrangements to access reportable transaction data held within trade repositories, both in Australia and offshore.

118 The existence of multiple trade repositories means that a reporting entity may use different trade repositories for reporting different asset classes. In addition, the move to a two-sided reporting obligation also means that the two transaction reports for each side of a reportable transaction may be reported to separate trade repositories. As such, the Agencies will also need to aggregate data held in the various trade repositories and combine it into a single data set, to obtain a complete picture of a reporting entity's trading activity in OTC derivatives.

119 Aggregating data from various trade repositories will require investment in new systems, connectivity and infrastructure. Due to the T+1 deadline for reporting of a reportable transaction, at this stage the Agencies do not propose to invest in systems that would receive a real-time feed of trading activity from each trade repository which stores data relevant to the Australian regime. Instead, the Agencies propose to rely on the ability of trade repositories to provide targeted reporting services to regulators on a post-trade basis, through:

- (a) regulator dashboards;
- (b) standardised reports; and
- (c) customised reports (at the transaction and entity levels).

120 ASIC and the Agencies will also need to utilise additional resources to continue development of the new framework, examine the new stream of OTC derivatives data that trade repositories will provide, and enforce the new derivative transaction rules (reporting). This will involve:

- (a) hiring new staff;
- (b) engaging in training;
- (c) creating policies and procedures;
- (d) liaising with trade repository operators about customised reporting services; and
- (e) cooperating and sharing data among teams and across the Agencies.

121 ASIC will also need to evaluate the equivalence of foreign reporting regimes for the purpose of assessing whether the conditions for alternative reporting have been met. In particular, ASIC will need to put in place arrangements to evaluate:

- (a) whether a foreign trade repository is subject to regulatory requirements which are consistent with the Committee on Payment and Settlement Systems (CPSS) and IOSCO *Principles for financial market infrastructures* (CPSS–IOSCO Principles) and whether those requirements are effectively monitored and enforced;
- (b) whether it has appropriate cooperation arrangements with the home supervisor of an overseas trade repository; and
- (c) whether it is able to readily access data from an overseas trade repository for the transactions subject to an Australian requirement.

#### **Other impacts**

122 Implementation of the regulatory framework will demonstrate the Australian Government's commitment to implement its G20 commitment to transaction reporting. Implementing the regime in an internationally-consistent manner will also have the following broader impacts:

- (a) enabling the Australian regime to be judged sufficiently equivalent to other international G20 transaction reporting regimes, which facilitates mutual recognition and substituted compliance by other G20 jurisdictions and regulators;
- (b) minimising conflicting, overlapping and/or duplicative rules across jurisdictions, which eases the implementation and compliance burden and minimises regulatory and legal uncertainty for participants when transacting cross-border; and

- (c) facilitating information-sharing and coordination among G20 regulators.

123 An appropriate regulatory framework for transaction reporting is likely to enhance Australia's reputation as a financial services centre. It is likely to increase confidence in the Australian OTC derivatives market and its competitiveness compared to international markets.

## **Option 2 – implement the transaction reporting rule framework proposed in CP 205 without adjustments or additional guidance (unpreferred option)**

### **Description of option**

124 Option 2 reflects the rule framework consulted on in CP 205, without adjustments made or additional guidance given to take account of feedback from stakeholders on the intended policy approach in relation to certain elements of the rule framework.

Note: Option 1 reflects the rule framework consulted on in CP 205, with adjustments and additional guidance.

125 Table 2 summarises the feedback that was received to certain elements of the rule framework, and sets out the key incremental differences between Options 1 and 2 in relation to these elements. A brief discussion of each of the substantive issues also follows below.

### **Two-sided versus one-sided reporting**

126 In CP 205, ASIC proposed a two-sided reporting regime where both counterparties to a derivative transaction that are reporting entities would be required to report the transaction. We sought feedback on whether the industry preference was for two-sided, or one-sided reporting (which is more similar to the CFTC's transaction reporting regime). Of those responses that addressed the question, the majority preference was for one-sided reporting.

127 ASIC and the other Agencies consider that there is significant benefit in a two-sided reporting approach because of the additional verification that two-sided reporting provides, as well the additional data that is able to be collected. It also aligns with the approach being taken by ESMA in the European Union.

128 We do recognise that some industry participants may have built one-sided reporting systems in order to comply with the CFTC's regime, and will not need to address two-sided reporting until the EU regime is live. As our preferred option we have proposed a phased approach to two-sided reporting, with an initial phase in period of one-sided reporting, later moving to a two-sided approach. In respect of end-users we propose to consult

further as to whether one-sided reporting would be sufficient for regulatory purposes.

### **Geographic scope**

129 In CP 205, we proposed that the foreign subsidiaries of Australian entities be included in the definition of reporting entity under the derivative transaction rules (reporting).

130 The difference between this proposal and the preferred option is that foreign subsidiaries of Australian entities that are not ADIs or AFS licensees are excluded from the reporting requirements in our preferred option.

### **Transactions on Foreign Markets**

131 Our consultation in CP 205 included reporting derivative transactions undertaken on all overseas markets. Our preferred option excludes reporting for any transactions that are undertaken on overseas markets that are equivalent to a Pt 7.2A market. ASIC will list the markets that it considers to meet this criterion on its website.

### **Derivative transactions that are required to be reported**

132 We proposed in consultation that the reporting obligation would be based on the definition of derivatives contained in s761D of the Corporations Act. We received a number of submissions on this point, given the breadth of the definition in the Corporations Act, and the range of transactions that it would capture which were not captured in other jurisdictions.

### **Privacy issues**

133 A number of participants raised concerns about potential privacy issues that might arise due to incompatible regulatory regimes where counterparties are based in another jurisdiction. Where reporting entities raise particular privacy-related issues with ASIC, we will consider these on a case-by-case basis.

### **Opt-in Reporting Phase**

134 CP 205 proposed an opt-in reporting phase where an institution could opt-in to the reporting regime between the date the derivative transaction rules (reporting) become effective until the reporting obligation would otherwise commence for that institution, and could select the specific reporting requirements that would apply to them. Major financial institutions submitted that they did not consider this would give them substituted compliance from the CFTC, and would be of limited benefit otherwise.

135 In our preferred option we have brought the commencement of Phase 1 forward for major financial institutions, and therefore we do not expect these institutions will elect to opt-in to the earlier opt-in phase. However, we still consider that there may be institutions subject to reporting obligations in overseas jurisdictions who may consider that the opt-in reporting arrangement will be of use in giving them the protection of Australian privacy laws when reporting confidential information under that overseas reporting obligation.

136 **Implementation Date**

We proposed in CP 205 that the implementation date for Phase 1 of the reporting regime would be 31 December 2013. We received a number of submissions that this was not an appropriate date, as it created issues regarding a combination of IT freeze dates, staff holidays and conflicts with implementation dates for other jurisdictions. Therefore the recommended approach adopts a 1 October 2013 Phase 1 commencement date for a small number of banks, and a 1 April 2014 commencement date for the remaining entities that would had to report from 31 December 2013, based on the proposal in CP 205.

**Impact on industry**

137 To the extent that the rules under Options 1 and 2 differ, Option 2 would have a larger cumulative impact on industry, for the reasons discussed below.

*Increased costs*

138 Industry submitted that the scope of the reporting obligation was larger than expected and more onerous than what other jurisdictions were proposing under their reporting frameworks, due to the inclusion of:

- (a) foreign subsidiaries;
- (b) the majority of overseas exchange-traded derivatives (i.e. transactions undertaken on a foreign market that is not subject to ASIC supervision under Pt 7.2A of the Corporations Act); and
- (c) all transactions within the definition of derivative as per s761D of the Corporations Act.

139 This wider scope of Option 2, as compared to Option 1, would significantly expand the range of reportable transactions that a reporting entity would be required to capture and report. Where reporting entities were captured by the rules in other jurisdictions (e.g. the United States), and had already built systems to comply with these other requirements, the differences in approach between Australian rules and other rules would result in added implementation and compliance costs. In particular, a reporting entity would



likely need to invest in additional systems, connections and processes to identify and report the additional transactions which would be reportable transactions under the wider scope. Some of these transactions may not have had previous reporting frameworks and systems set up for them, requiring potentially significant and lengthy system builds before any reporting could take place.

140 Similarly, reporting entities intending to use an agency reporting service provider to report their transactions may expect to be charged a higher per-transaction report amount due to the higher number of transactions being reported under the wider scope, and potentially also a higher one-off initial cost to compensate for potential additional connectivity to ensure that the full set of reportable transactions is captured.

141 To the extent the additional scope added to the number of transactions reported by a reporting entity, it is likely that the additional reports would result in additional charges by trade repositories.

142 Additionally, reporting entities would need to hire additional IT and compliance staff, to both build transaction reporting systems for the additional reportable transactions, and monitor the effectiveness of those systems on an ongoing basis.

#### *Operational inefficiencies*

143 The rule framework under Option 2 would also create operational inefficiencies for industry in ensuring compliance with the rules—For example, industry indicated that foreign subsidiaries of Australian entities may be based in countries where a reporting obligation is not currently being considered or well-developed. As such, alternative reporting to a foreign regulator for that subsidiary would not be available to reduce the cost and administrative burden at the parent level, creating additional operational costs by requiring the foreign subsidiary to create systems, connectivity and processes for reporting to the Australian regime.

144 The alternative reporting proposal itself in the interim phase of reporting in CP 205 was also seen to be a source of operational inefficiency. Major financial institutions submitted that they did not consider that the alternative reporting proposal during this phase would give them substituted compliance from CFTC transaction reporting obligations, and would actually result in increased operational complexity by forcing them to comply with CFTC requirements until Phase 1 commenced approximately six months later, after which they would become eligible for substituted compliance by virtue of being subject to a reporting obligation in Australia.

145 The major financial institutions were concerned that this would require them to incur sunk costs (in terms of systems, connectivity, procedures, ongoing compliance monitoring and amendments to business operations) to comply



with CFTC rules for six months, after which they would be required to incur a second round of implementation and compliance costs for compliance with the Australian regime.

- 146 Participants also cited operational issues associated with reporting exchange-traded derivative transactions, as most trade repositories are currently not able to receive exchange-traded derivative reports. This could have the effect of requiring reporting entities to create separate and additional reporting mechanisms for exchange-traded derivatives, and incur the additional costs associated with this.

#### *Concentration of operational risk*

- 147 The proposals in Option 2 may also lead to increased operational risk for reporting entities. We have taken account of feedback on the potential impact of imposing a start date of 31 December 2013 for Phase 1. Industry contended that due to IT change freezes, budget lock-downs and staff holidays around December each year, an end-December start date would create additional and avoidable risk for reporting entities in implementation and go-live deployment of technology, systems, connectivity and processes, especially if deployment did not go smoothly and decisions needed to be made by key decision-makers who were absent.

- 148 Industry also cited concerns about a potential concentration of operational risk due to similar rules being simultaneously put in place in other G20 jurisdictions in line with G20 commitments, particularly Singapore and Hong Kong. Participants were concerned that simultaneous implementations of different transaction reporting frameworks across jurisdictions may put extra strain on limited IT resources, and could have a contagion effect if implementation for one jurisdiction's transaction reporting did not go smoothly.

#### **Impact on consumers**

- 149 We would not expect any incremental impact related to Option 2 on consumers as compared to Option 1 or Option 3. Retail investors would not be required to implement any changes to systems or processes to facilitate the proposed new regulatory framework under this option.

#### **Impact on Government**

- 150 The amendments that ASIC has made to the derivative transaction rules (reporting) to take account of user feedback are expected to have only a minor impact on the Agencies' regulatory mandates. For example, the impact of changing the Phase 1 commencement date from 31 December 2013 to 1 October 2013 will have some impact on implementation timetables for industry, but may have a positive impact on Australia's prospects for

seeking equivalence with other jurisdictions' transaction reporting frameworks for substituted compliance purposes. This also reduces the scope for any operational risk impact in the implementation process by reporting entities, with no consequential impact on the Agencies.

- 151 The marginal benefit of seeking additional transaction reports under a wider scope of the transaction reporting obligation has also been considered by the Agencies. The proposals in Option 1 will result in a smaller set of reportable transaction data available to the Agencies, however given the focus of the G20 commitments on systemic risk and prudential regulation of ADIs and similar financial enterprises, the key corporate groups of importance to the transaction reporting regime are considered to be active, Australian financial market participants, trading in OTC interest rate, credit, equity, commodity and FX derivatives. Therefore, the marginal benefit to regulators from transaction reporting under a wider geographic scope is expected to be small.

### **Option 3 – do not implement the transaction reporting rule framework proposed in CP 205, but rather allow the industry to self-regulate (status quo)**

#### **Description of option**

- 152 Option 3 is the status quo under which there is no regulatory intervention to impose derivative transaction rules (reporting). This is the base that any regulatory change is measured against.
- 153 The Government has already committed to implementing the reforms to OTC derivative markets which were agreed among G20 nations at their summit in Pittsburgh in 2009. This has now been supplemented by the insertion of a new Pt 7.5A into the Corporations Act, which lays out the legislative framework to implement the commitments. In addition, the Treasurer has now also issued the Determination in relation to mandatory transaction reporting.
- 154 While the over-arching Determination enables ASIC's rule-making ability, no derivative transaction rules (reporting) currently exist to set out the detailed requirements for transaction reporting. Under this option, no derivative transaction rules (reporting) would be put in place. Rather, industry would be encouraged to self-regulate the reporting of its OTC derivatives trading activity.
- 155 This option would generate a range of economic and intangible costs, the most important of which are discussed below.

**Impact on industry**

156 The survey referred to in paragraph 68 showed that approximately 53% of the Australian OTC derivatives market survey respondent activity reflects a direct interaction between local and overseas participants.

157 It is unknown how much of this 53% is traded offshore, but an example using interest rate swaps (taken from the survey) suggests offshore activity is not trivial. In this market, survey respondents reported total gross notional outstanding in centrally-clearable swaps of around A\$10 trillion by early 2013. Of this, around A\$3.6 trillion took place between two locally-based firms and A\$6.4 trillion had the involvement of a foreign-based firm. The share of contracts in currencies other than the Australian dollar was small for transactions between local entities, but represented almost 20% (\$1.2 trillion) of outstandings when a foreign-based entity was involved.

**Table 5: Centrally clearable interest rate swaps – gross notional outstandings as at February 2013 – Council survey of OTC derivatives**

	Domestic – Domestic (\$ trillion)	Domestic – Foreign (\$ trillion)
Australian Dollar	3.5	5.2
Other currencies*	0.1	1.2
<b>Total</b>	<b>3.6</b>	<b>6.4</b>

\* Australian dollar equivalent

158 We do not propose that failure to implement the G20 framework would cause a decline in activity in local markets of the magnitude of 53% from current levels. However, this large proportion suggests that segregating Australia from the new global regulatory framework and obstructing the interaction between local and foreign participants could potentially have a large negative impact on the local market.

159 There are a number of potential consequences to local industry if Australia does not follow G20 commitments. First, turnover in local OTC derivative markets could decline, as foreign participants may perceive Australian institutions as non-compliant with international jurisdictions. They may substitute Australian counterparties for counterparties from compliant jurisdictions. This would bring about an increase in the cost of investing and hedging that would affect financial and non-financial firms in Australia.

160 Second, such an increase in the cost of investing and the cost of hedging would raise the perceived riskiness of local financial and non-financial

businesses. A possible result of this is a rise in the cost of capital and a reduction in competitiveness of Australian business.

161 In the financial sector in particular, the banking and funds management industries would be especially harmed. These Australian industries are large users of international derivative markets and could see substantial rises in their cost of doing business, should their supply of counterparties be severely reduced.

162 However, industry would not incur the costs otherwise associated with compliance with Australian reporting requirements, and any costs assumed to report transactions would be done so voluntarily.

### **Impact on consumers**

163 We would not expect any incremental impact related to Option 3 on consumers as compared to Option 1 or Option 2. Retail investors would not be required to implement any changes to systems or processes to facilitate the proposed new regulatory framework under this option.

### **Impact on Government**

164 Failure to establish a rule framework for derivative transaction reporting would jeopardise Australia's implementation of its G20 commitments to ensure that all OTC derivative transactions are reported to trade repositories, exacerbating the currently opaque nature of the OTC derivatives market, with no improvement in market transparency. This could damage Australia's standing in international fora and hamper efforts to gain international support in other matters. Australian regulators would also not have access to the additional information provided through derivative transaction reporting that would otherwise have assisted them in the performance of their functions and in the pursuit of the overall objectives of the OTC reforms.

165 In addition, failing to make the derivative transaction rules (reporting) when the Determination has already been issued may signal to local industry a certain degree of lack of coordination between the Australian Government and the Agencies. This could weaken industry confidence and make it harder to implement other policy measures.

### **Other impacts**

166 An appropriate regulatory framework for transaction reporting is likely to enhance Australia's reputation as a financial services centre. It may increase confidence in the Australian OTC derivatives market and its competitiveness compared to international markets. Failure to establish a rule framework for derivative transaction reporting would jeopardise Australia's implementation of its G20 commitment to ensure that all OTC derivative transactions are reported to trade repositories.

- 167      Slow or ineffective implementation of a transaction reporting mandate may mean that the Australian transaction reporting regime is subject to negative equivalence assessments against other international G20 transaction reporting regimes by foreign regulators, which could have the following broader impacts:
- (a) internationally-active Australian entities may not be able to rely on compliance with the Australian transaction reporting regime to discharge overseas reporting requirements under substituted compliance;
  - (b) conflicting and/or duplicative practices across jurisdictions, which increase the implementation and compliance burden and contribute to regulatory and legal uncertainty for participants when transacting cross-border;
  - (c) potential restriction of the ability of foreign entities to trade OTC derivatives with Australian entities;
  - (d) increased difficulty for the Agencies to access data from an overseas trade repository for the transactions subject to an Australian requirement; and
  - (e) sub-optimal information-sharing and coordination among G20 regulators generally.

## C Consultation

### Consultation concerning the Treasurer's determination, and the implementation of Australia's G20 OTC derivatives commitments

168 A proposals paper concerning the implementation of Australia's G20 OTC derivatives commitments (the Proposals Paper) was released by Treasury on 12 December 2012, with submissions due on 15 February 2013.<sup>27</sup> The proposed approach included the following elements:

- (a) for transaction reporting it was proposed that a broad-ranging determination be made in the first quarter of 2013 requiring the reporting of all five derivative asset classes (excluding electricity) to a licensed trade repository where one is available;
- (b) the transaction reporting regime should be in place by mid-2013;
- (c) the transaction reporting obligation should be phased in over two years;
- (d) in line with earlier commitments, no decision on any mandate relating to electricity derivatives should be taken until after the completion of the Australian Electricity Market Commission's (AEMC) financial resilience review; and
- (e) no decision should be taken on mandatory clearing and trade execution at this stage.

169 Overall 23 formal submissions were received, comprising 20 public submissions and three confidential submissions. Stakeholders were broadly supportive of the Government's approach and agreed with the importance of the commitments being implemented in a globally-coordinated, least-cost manner.

#### Key messages from consultation

170 With the exception of the energy sector, most respondents agreed that mandatory transaction reporting would be beneficial, and that the costs could be effectively mitigated if international reporting requirements were aligned, duplicative reporting was minimised through one-sided reporting by financial institutions with the highest level of registration, and the scope of transactions required to be reported was made clear. Some argued that retail counterparties, end-users (such as non-financial corporations) and intra-group transactions should be out-of-scope.

171 Most respondents were amenable to mandating a broad range of derivatives, subject to phase-in and the exceptions outlined in the Proposals Paper. The

<sup>27</sup> <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/G20-OTC-derivatives-commitments>

great majority of respondents expressed a preference for a phased approach to ASIC rule-making based on thresholds of activity, rather than legal status or size proxies, as opposed to a more prescriptive approach, and generally supported the proposed timetable for the implementation of the transaction reporting obligation.

- 172 When developing its consultation package on derivative transaction reporting in CP 205, ASIC took into account the feedback received by Treasury on its consultation.

## Consultation on derivative transaction reporting

- 173 On 28 March 2013, ASIC released a consultation package outlining proposals to implement a derivative transaction reporting regime under Pt 7.5A of the Corporations Act, with submissions due by 1 May 2013. The consultation package included the following:<sup>28</sup>
- (a) a consultation paper (CP 205) setting out the proposed rationale, proposals and considerations; and
  - (b) the draft derivative transaction rules (reporting) setting out our proposed requirements for the reporting of OTC derivative transactions to licensed derivative trade repositories or prescribed derivative trade repositories, including the details of transactions that will need to be reported.
- 174 The draft derivative transaction rules (reporting) specified the details of the requirement to report OTC derivative transactions to trade repositories, including:
- (a) who is required to report and how this can be done;
  - (b) the scope and timing of the reporting obligation;
  - (c) who would be able to access alternative reporting and the proposed conditions to be met;
  - (d) the data that needs to be reported and when it must be updated;
  - (e) the proposed timing for the phasing-in of the reporting obligation; and
  - (f) record-keeping requirements.
- 175 The draft derivative transaction rules (reporting) were drafted to promote consistency with overseas regimes, which will help ensure equivalence between the respective regimes and reduce compliance costs for reporting entities.

<sup>28</sup> <https://www.asic.gov.au/asic/asic.nsf/byHeadline/13-066MR%20ASIC%20consults%20on%20trade%20reporting%20obligations%20for%20OTC%20derivatives?opendocument>

- 176 Additionally, the draft derivative transaction rules (reporting) aimed to comply with internationally-agreed standards on derivative transaction reporting, including the joint reports by the IOSCO and the CPSS.<sup>29</sup>
- 177 A number of internal and external stakeholders were engaged prior to the release of the consultation package to comment on the suitability of the proposed framework. These stakeholders included:
- (a) the Council, through a key decision-making body, the Council of Financial Regulators Data User Group (established December 2012);
  - (b) key industry associations including the Australian Bankers Association (ABA), the Australian Financial Markets Association (AFMA) and the Finance and Treasury Association (FTA); and
  - (c) other international regulators and standard-setting bodies.

### Key messages from consultation

- 178 Prior to receiving written submissions, a series of roundtable discussions was held with 17 key participants, including major Australian banks, financial institutions, financial and other professional service providers and other major market participants.
- 179 Overall 26 formal submissions were received. Respondents were generally supportive of the proposed derivative transaction reporting regime, with most being comfortable that the proposed derivative transaction rules (reporting) were broadly similar to overseas requirements. The specific thematic issues raised during these roundtable discussions are set out below.

### Scope of the reporting obligation

- 180 Respondents (**CSR, DTCC and the major Australian banks**)<sup>30</sup> noted that the geographic scope of the proposed reporting obligation, requiring foreign subsidiaries of Australian reporting entities to report, would place an unnecessary burden on stakeholders. They believed that this would impose an additional requirement that goes beyond that of other jurisdictions (including the United States and European Union). A related issue is that subsidiaries in some foreign jurisdictions may not have a reporting mandate in those jurisdictions, meaning that alternative reporting would not yet be available to them, effectively forcing them to make arrangements to report to Australian licensed or prescribed trade repositories.

<sup>29</sup> CPSS-IOSCO, *Considerations for trade repositories in OTC derivative markets*, consultation report, May 2010, [www.iosco.org/library/pubdocs/pdf/IOSCOPD321.pdf](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD321.pdf), *Report on OTC derivatives data reporting and aggregation requirements* (CPSS-IOSCO Data Report), consultation report, August 2011, [www.iosco.org/library/pubdocs/pdf/IOSCOPD366.pdf](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD366.pdf).

<sup>30</sup> A joint response to CP 205 was received from ANZ Global Markets, Commonwealth Bank of Australia Markets, Macquarie Bank Limited, National Australia Bank and Westpac Institutional Bank.



181 Respondents (**ABA, AFMA, DTCC and the major Australian banks**) noted that transactions undertaken on a foreign market that is not subject to ASIC supervision under Pt 7.2A of the Corporations Act would need to be reported, which would capture the majority of overseas exchange-traded derivatives. Stakeholders expressed concern with both the cost implications and the operational issues associated with reporting these transactions, as most trade repositories are currently not able to receive exchange-traded derivative reports.

182 Respondents (**AFMA, DTCC, Energy Australia, ISDA and the major Australian banks**) commented that the current high-level, principles-based definition of derivative in s761D of the Corporations Act does not provide sufficient precision and clarity to support the imposition of the proposed regulatory obligations. Given the broad scope of the definition, this would capture a wider range of instruments than most other jurisdictions, such as fishing rights and contracts for the sale of intellectual property. Respondents stated that they would like greater specificity with respect to the definition of derivative.

#### **Alternative reporting**

183 Some major financial institutions and their trade associations noted that it was unlikely that the proposed opt-in reporting phase would allow Australian banks to receive substituted compliance for their reporting obligations under the CFTC transaction reporting regime. They noted that institutions were unlikely to take up the opt-in arrangements (in order to receive protection from Australian privacy reporting laws) unless they received substituted compliance in respect of CFTC reporting requirements.

184 Respondents (**ABA, Alinta Energy and the major Australian banks**) commented that despite being protected from Australian privacy laws 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 counterparty from, a jurisdiction that does have privacy and/or confidentiality laws. They requested further clarification on what should be reported in the circumstances where complying with Australian reporting requirements could result in a breach of foreign law. Stakeholders suggested that an interim reporting measure that authorises the masking of participant identifiers may be an appropriate solution.

#### **Other issues**

185 The majority of respondents (**AFMA, CSR, DTCC, ISDA and the major Australian banks**) commented that it would be difficult to implement changes by the 31 December 2013 Phase 1 reporting obligation start date (for credit and interest rate derivatives) due to reporting obligations in overseas jurisdictions concurrently commencing around this time, in addition

to IT change freezes and staff holidays during the December period. It was suggested that the Asia–Pacific regulators should coordinate and stagger their respective reporting obligation start dates in order to make requirements less onerous for participants.

- 186 Most respondents (**Alinta Energy, DTCC, Markit and the major Australian banks**) advocated one-sided reporting. This was preferred as it would provide more accurate data, reduce unnecessary duplication, aid in data aggregation and reduce the regulatory cost to participants.
- 187 Energy sector respondents, as in previous submissions, further reiterated their support that mandatory reporting is not appropriate for electricity derivatives.
- 188 Considering the perceptions of specific stakeholders on the proposed reporting regime:
- (a) the **major Australian banks**, while supportive of the overall regime, were concerned that the broad definition of derivative would capture a number of unintended products including FX traded derivatives. Additionally, they noted that imposing a reporting obligation on foreign subsidiaries goes beyond the requirements of other regimes and would come at a significant cost to participants;
  - (b) **DTCC** commented that any divergence from international and global standards would significantly increase the cost of compliance. DTCC recommended that ASIC closely observe the progress in other jurisdictions and encouraged the appropriate sequencing of implementation dates to ensure sufficient time is allocated for a successful launch of reporting in each jurisdiction;
  - (c) **ISDA** commented that they would like further specificity and granularity with respect to the definition of derivative. They noted that apart from the HK SFC, no other jurisdiction captures such a wide range of products;
  - (d) the **AFMA** commented that the December 2013 deadline was not a sensible date from a practical point of view, with 2014 implementation date being more suitable; and
  - (e) the **FTA** commented that they were encouraged by agency reporting, finding it a fair balance between requiring complete information and imposing more onerous reporting requirements.

### Comparison of Option 1 against Option 2

- 189 In formulating the derivative transaction rules (reporting) framework under Option 1, we have taken account feedback to the consultation package received from the market on the above thematic issues. We have refined our proposals based on the responses to arrive at a framework which is more

internationally-aligned and will reduce the cost, implementation and compliance burden for reporting entities in the areas above.

- 190 In this RIS, Option 1 reflects the rule framework consulted on in CP 205, with adjustments made and regulatory guidance to be given, to take account of feedback from stakeholders on the intended policy approach. Option 2 reflects the rule framework consulted on in CP 205, without adjustments or regulatory guidance.
- 191 Table 6 summarises the key incremental differences between the two options.

**Table 6: Key incremental differences between Options 1 and 2**

Issue	Original CP 205 proposal (Option 2)	Intended rules under Option 1 (Option 2 plus stakeholder feedback)
Who the reporting obligation applies to	<p>We proposed that the following entities be defined as reporting entities under the derivative transaction rules (reporting):</p> <ul style="list-style-type: none"> <li>• Australian entities and their foreign subsidiaries;</li> <li>• a foreign ADI that has a branch located in this jurisdiction; and</li> <li>• a foreign company that is required to be registered under Div 2 of Pt 5B.2 of the Corporations Act.</li> </ul>	<p>Stakeholders voiced concern about the undue burden associated with requiring foreign subsidiaries of Australian entities to be subject to the reporting obligation. We have therefore refined the scope of reporting entities to de-scope foreign subsidiaries of Australian entities from the reporting obligation, except for foreign subsidiaries of an ADI or AFS licence holders.</p> <p>In response to whether two-sided or one-sided reporting was preferred, the majority of responses that addressed this issue preferred one-sided reporting. ASIC considers that there is significant regulatory benefit in two-sided reporting, but recognises that a transition period may be necessary. Therefore, the regime will commence with one-sided reporting, with two-sided reporting being phased in. We will engage in further consultation in respect of the approach for end-users.</p>
Categories of reportable transactions	<p>We proposed that OTC derivatives be defined as derivatives (as defined in s761D of the Corporations Act) prescribed by the Minister under s901B of the Corporations Act, unless the derivative is able to be traded on a Pt 7.2A market, and the entry of the arrangement of that derivative takes place on, or is reported to the operator of, a Pt 7.2A market.</p>	<p>Feedback from industry submitted that listed derivative transactions were generally not captured in other jurisdictions and were not consistent with the thrust of the G20 reforms being in relation to OTC transactions. It was also suggested there may be practical difficulties as trade repositories did not currently capture these transactions.</p> <p>We have proposed excluding derivative transactions undertaken on an overseas market that is equivalent to a Pt 7.2A market.</p>

Issue	Original CP 205 proposal (Option 2)	Intended rules under Option 1 (Option 2 plus stakeholder feedback)
Derivative transactions to be reported	We proposed to use the definition of derivative in s761D of the Corporations Act.	<p>We received considerable feedback that the definition of derivative in the Corporations Act, on which we proposed to base the reporting regime, is considerably broader than that in other jurisdictions and therefore our proposals captured a much wider range of products.</p> <p>Based on this feedback, we propose to include in regulatory guidance a list of derivatives based on the ISDA taxonomy as being included in the definition of reportable transactions. We would then review the scope of derivative transactions to be reported following the initial implementation.</p>
Phased implementation	Our proposal to allow alternative reporting was primarily designed to allow institutions who opt-in to the opt-in reporting phase to be able to report under foreign reporting obligations, without being in breach of any Australian privacy laws. The proposal did not contemplate those entities being able to be granted substituted compliance by overseas regulators with respect to their foreign reporting obligations on the basis that they were subject to an Australian reporting obligation.	<p>Feedback from industry indicated that the main focus was achieving substituted compliance to enable efficient transfer to the Australian regime for Australian clients on a substituted compliance basis, rather than comply with the CFTC regime for an interim period, then transfer these clients to the Australian regime.</p> <p>We have therefore proposed that Phase 1 commence on 1 October 2013, applying to those Australian financial institutions that are registered or provisionally registered as SDs with the CFTC. There are currently five major Australian banks provisionally registered as SDs.</p> <p>We understand that an earlier deadline for internationally active major financial institutions may assist with achieving substituted compliance with the CFTC rules. A mandatory obligation would also help ensure they are able to comply with a reporting obligation in another jurisdiction—for example, by removing potential barriers to reporting arising from privacy or confidentiality obligations that would otherwise apply.</p>

Issue	Original CP 205 proposal (Option 2)	Intended rules under Option 1 (Option 2 plus stakeholder feedback)
Substituted compliance and implementation date	We proposed in CP 205 that Phase 1 would commence from 31 December 2013.	<p>We understand that an earlier deadline (1 October 2013) for internationally-active major financial institutions may assist with achieving substituted compliance with CFTC transaction reporting rules. Phase 1 will therefore commence on this date.</p> <p>A mandatory obligation would also help ensure they are able to comply with a reporting obligation in another jurisdiction—for example, by removing potential barriers to reporting arising from privacy or confidentiality obligations that would otherwise apply.</p> <p>The change to the Phase 1 commencement date also takes into account stakeholder feedback on the operational unsuitability of a 31 December 2013 date due to IT change freezes and key person risk.</p>

## D Conclusion and recommended option

- 192 Option 3 is not suitable because it does not allow Australia to meet the commitments it made at the 2009 G20 Pittsburgh Summit to reform OTC derivative market practices, including introducing a transaction reporting requirement through the use of trade repositories. Option 3 does not enable ASIC to put a transaction reporting framework in place, when legislation has already been passed enabling the Treasurer to issue a determination requiring transaction reporting, and the Treasurer has issued that Determination. Option 3 would be inconsistent with Government objectives and actions to require ASIC to establish a transaction reporting framework.
- 193 Option 2 is not preferred as it does not reflect the market feedback to the proposals that ASIC put forth in CP 205. Implementing the CP 205 rule framework without adjustments would result in a sub-optimal outcome, including inefficiencies and added costs for industry in compliance. It is important that the regulatory framework established for transaction reporting takes account of sensible market feedback and proposed alternative suggestions to the proposals in CP 205, which Option 2 does not achieve.
- 194 Option 1 is preferred over Option 2, as it establishes a regulatory framework for Australia to meet its G20 OTC derivatives commitments in a manner which:
- (a) ensures that the Agencies are able to conduct market monitoring and surveillance based on sufficient, timely, accurate data;
  - (b) takes into account market feedback to refine and optimise the proposals set forth in CP 205;
  - (c) reduces compliance costs for industry to the extent possible;
  - (d) mitigates operational risk for reporting entities when implementing systems and compliance arrangements; and
  - (e) minimises duplicative requirements for OTC participants when transacting cross-border.
- 195 Option 1 allows ASIC to effectively regulate OTC derivative trading activity based on obtaining the required information under the derivative transaction rules (reporting), without imposing undue burden on industry. Option 1 is preferred because it recognises;
- (a) Australia's international commitments;
  - (b) the need to maintain access to foreign markets for Australian counterparties; and
  - (c) the growing recognition that centralised transaction reporting and market infrastructure will be critical to addressing systemic risk, market

integrity and financial stability concerns relating to OTC derivative markets.

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## E Implementation and review

- 196 We intend to implement our proposals through the derivative transaction rules (reporting), which are legislative instruments. ASIC received this rule-making power under the *Corporations Legislation Amendment (Derivative Transactions) Act 2012*. Under s901A of the Corporations Act, ASIC may make derivative transaction rules (reporting) once a determination has been issued by the Minister.
- 197 We expect that certain proposals that form part of the new regulatory framework will take time and investment to implement. We have provided the industry with additional implementation time for the following areas:
- (a) **phasing of the reporting obligation**—rather than applying the reporting obligation to all entities from the outset, we have staggered its application to first require major financial institutions to report in Phase 1, followed by domestic financial institutions in Phase 2, and end-users in Phase 3, subject to additional consultation.
  - (b) **reporting of certain asset classes first**—allowing reporting entities in Phases 2 and 3 to implement reporting frameworks for standardised asset classes which are easier to report first (i.e. interest rate and credit derivatives), with extra time for compliance with more bespoke products (i.e. equity, FX and commodity derivatives); and
  - (c) **position information**—allowing reporting entities additional time to comply with the position data reporting requirement, so that they have ample time to collect and aggregate position information.
- 198 We will keep the rules under review and evaluate their effectiveness on an ongoing basis through constant communication and dialogue with stakeholders within the market. External stakeholders have already raised a number of issues related to the derivative transaction rules (reporting) in the course of consultation through an ongoing bi-monthly forum between AFMA, its members and the Agencies. In addition, ASIC maintains an email inbox, through which stakeholders can contact ASIC to discuss any of the G20 OTC derivative mandates at any time.
- 199 The Agencies have also been engaged in the Council Data User Group, which meets monthly to:
- (a) consider the impact of the derivative transaction rules (reporting) on data needs;
  - (b) review how OTC derivatives data may best be utilised for supervision and monitoring purposes;
  - (c) clarify user goals and expectations with respect to collected data; and
  - (d) discuss protocols and developments in identifiers and data standards.

## **F** Appendix

200 Table 7 sets out the possible impacts of the derivative transaction rules (reporting) on industry and the associated benefits for the market and regulators: for a description of these areas see Table 1.

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**Table 7: Possible impacts of the derivative transaction rules (reporting) on industry, and the benefits to regulators and industry**

Derivative transaction rules (reporting)	Possible impact	Benefits
Who the reporting obligation applies to	<p>Reporting entities will need to decide whether to report themselves or delegate their reporting to an agent (such as a CCP or middleware provider).</p> <p>If reporting entities decide to report themselves, they will need to invest in systems and create processes to capture the required transaction information, as well as create system connectivity to trade repositories for reporting.</p> <p>Reporting agents (such as trading platforms, CCPs and middleware providers) may emerge in the market to provide trade capture and delegated reporting agency services on a competitive basis, including on price and service offering. These reporting agents will need to invest in systems and create processes to ensure the timely and accurate capture of the required transaction information from reporting entities, as well as create system connectivity to trade repositories for reporting.</p> <p>The move to two-sided reporting means that reporting entities and reporting agents will need to invest in systems and processes to ensure that the UTI and UPI used in both transaction reports relating to the same transaction are identical.</p> <p>Trade repositories will also emerge in the market, seeking to be licensed or prescribed by regulation under the Australian trade repository regime. These trade repositories will compete (including on price and service offering) to receive transaction reporting flow from reporting entities and reporting agents.</p>	<p>Two-sided reporting is simpler to define, as reporting entities do not need to establish arrangements for which side will report, as they are both required to. Reporting from two sides enhances accuracy as the two transaction reports are an independent check against the other.</p> <p>However, we recognise that some industry participants may have built one-sided reporting systems in order to comply with the CFTC's regime. As our preferred option we have proposed a phased approach to two-sided reporting, with an initial phase in period of one-sided reporting, later moving to a two-sided approach.</p> <p>One of the primary benefits of delegated reporting is expected to be the commencement of a contestable market for reporting entity report flow. In particular, we expect trading platforms, CCPs (for cleared transactions) and middleware providers to compete for report flow, on both price and service terms.</p> <p>The cost and economics of agency reporting will likely influence a reporting entity's decision as to whether to report themselves or delegate reporting to an agent. If a reporting entity uses an agent which offers the best price and service offering, it is likely to benefit from only incurring the cost of a single connection to the reporting agent, which will likely have connectivity to multiple trade repositories. This will save the reporting entity from investment in systems, connectivity and processes to report to multiple trade repositories themselves.</p> <p>Additionally, a reporting entity may be able to leverage its existing connection to a trading platform, CCP or middleware provider which intends to offer reporting agent services, to save on further investment in connectivity.</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
Categories of reportable transaction	<p>Under this rule, reporting entities and reporting agents will need to create systems and processes to distinguish between those transactions which are reportable transactions and those which are not, and only report reportable transactions.</p> <p>Given the geographic scope of the rule, foreign subsidiaries of Australian ADIs and AFS licensees, as well as Australian branches of foreign entities, will need to determine whether they intend to take advantage of alternative reporting, if an overseas transaction reporting requirement exists and the conditions for alternative reporting have been met.</p> <p>This may involve negotiations between the parent and the subsidiary or branch about protocols and procedures relating to alternative reporting arrangements, and liaison with ASIC on the equivalence of the overseas transaction reporting requirement to the Australian reporting obligation. Reporting entities will also need to seek clarification on whether the foreign trade repository being reported to meets the criteria set out in the conditions for alternative reporting.</p>	<p>The scope of transactions required to be reported are of immediate interest to Australian regulators. We consider the reporting of each of these categories will help achieve the goal of improving transparency in OTC derivative markets.</p> <p>In particular, requiring Australian entities and the foreign subsidiaries of ADIs and AFS licensees to report assists in mitigating systemic risk in Australia by developing regulatory understanding of the volume of derivative activity and interconnections resulting from OTC derivative contracts incurred by Australian entities or corporate groups. Greater financial stability from reduced systemic risks benefits all market participants, and the real economy.</p> <p>Requiring OTC derivative transactions that are booked to the profit or loss account of, or executed in Australia by, an Australian branch of a foreign ADI or company registered under Div 5B.2 of the Corporations Act, will also assist the goal of protecting against and identifying market abuse in Australia through transactions undertaken on OTC derivative markets. Measures such as these, directed at enhancing market integrity, benefit all participants in OTC and exchange markets.</p> <p>A benefit of the availability of delegated reporting is that reporting agents may offer a service in identification and capture of the entire set of an entity's reportable transactions under the Australian regime at group-level, regardless of the entity which traded them or where they were traded. This type of transaction capture and centralisation service may minimise system and compliance burdens for reporting entities themselves.</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
<p>Derivative transactions to be reported</p>	<p>Under the initial phase of this rule, reporting entities and reporting agents will need to create systems and processes to distinguish between those transactions which are reportable transactions under the Australian regime (i.e. transactions which are not on an overseas market that is equivalent to a Pt 7.2A market), and those which are not.</p> <p>Systems of both reporting entities and reporting agents would need to ensure the timely and accurate capture and reporting of only those transactions. System connectivity to trade repositories will also be required for reporting. This will also apply to trading platforms and CCPs, if they provide agency reporting services on behalf of reporting entities.</p> <p>To the extent that reporting entities adopt delegated agency reporting, this will reduce the cost and compliance impact on reporting entities themselves. This can be expected to be particularly evident for transactions which are executed on a trading platform or centrally cleared, where it is likely that those supporting stakeholders will offer a delegated agency reporting service.</p> <p>Additionally, the scope of the obligation means that licensed or prescribed overseas trade repositories for alternative reporting will need to be able to capture the subset of all transactions reported to them which are reported under Australian alternative reporting arrangements, in order for ASIC to be able to readily access this transaction data, as is required as a condition for alternative reporting.</p>	<p>The rules will allow Australian regulators to see an aggregated picture of an Australian firm's main OTC trading activity across domestic and overseas OTC markets, either through ASIC supervision of trading on a Pt 7.2A market, or through ASIC access to trade repository data. This will assist ASIC in its function as supervisor of the markets through a higher degree of market transparency, and a greater ability to examine an entity's cross-market trading, including improved detection of market abuse.</p> <p>The explicit requirement for both centrally-cleared and non-centrally cleared transactions to be reported will also allow ASIC to monitor entity position sizes and large concentration build-ups of reporting entities within a clearinghouse, which may result in an improved ability for ASIC to work with CCPs on identifying emerging risks and ensuring appropriate levels of risk are maintained.</p> <p>Requiring centrally-cleared transaction data to be reported will also assist the Agencies in qualitative and quantitative evaluations of whether an OTC derivative should be made subject to a mandatory central clearing requirement in the future.</p> <p>A benefit associated with the availability of delegated reporting is that reporting agents (such as trading platforms, CCPs and middleware providers) may emerge to offer a service in identification, capture and reporting of the set of an entity's reportable transactions under the Australian regime. This type of transaction capture and centralisation service will result in minimal system and compliance burden for reporting entities. In particular, we expect reporting agents to compete on both price and service terms.</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
Deadline for reporting of reportable transactions	<p>This will require reporting entities to create systems and processes to ensure transactions are reported to a trade repository within the T+1 deadline, and put processes in place to investigate transactions reported outside this timeframe. Reporting agents will also need to invest in systems and create processes to capture the required transaction information from reporting entities and report this information within the T+1 deadline to trade repositories, which necessarily requires system connectivity to trade repositories for this reporting. Reporting agents will similarly need to put processes in place to investigate transactions reported outside this timeframe.</p> <p>Trade repositories will also need to ensure that this information is made transparent to the market on a weekly aggregated post-trade basis. Given existing global trade repositories may already be making certain transactions transparent on a post-trade basis under requirements in overseas jurisdictions, we expect this to have only an incremental impact for those trade repositories.</p> <p>Reporting agents (such as trading platforms, CCPs and middleware providers) may also emerge in the market to provide trade capture and delegated reporting agency services on a competitive basis, including on price and service offering. These reporting agents will need to invest in systems and create processes to ensure the timely and accurate capture of the required transaction information from reporting entities, as well as create system connectivity to trade repositories for reporting.</p> <p>To the extent that reporting entities adopt delegated agency reporting, this will reduce the cost and compliance impact on reporting entities themselves.</p>	<p>We consider the primary benefit of a T+1 reporting timeframe is that it ensures timely reporting by reporting entities or reporting agents to trade repositories, without putting undue burden on them to submit transaction reports in real-time.</p> <p>A benefit associated with the availability of delegated reporting is that reporting agents may also emerge in the market to provide delegated reporting agency services on a competitive basis, including on price and service offering. This type of transaction capture and centralisation service will result in minimal system and compliance burden for reporting entities themselves.</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
Who can access alternative reporting and conditions for access	<p>Alternative reporting will enable a reporting entity to meet its Australian reporting obligation by reporting to an overseas trade repository in accordance with an overseas regime. Foreign subsidiaries of Australian entities, as well as Australian branches of foreign entities, will need to determine whether they intend to take advantage of alternative reporting, if an overseas transaction reporting requirement exists and the conditions for alternative reporting have been met.</p> <p>This may involve negotiations between the parent and the subsidiary or branch about protocols and procedures relating to alternative reporting arrangements, and liaison with ASIC on the substantial equivalence of the overseas transaction reporting requirement to the Australian reporting obligation. Reporting entities will also need to seek ASIC clarification on whether we are satisfied that the foreign trade repository being reported to meets the criteria set out in the conditions for alternative reporting.</p> <p>Additionally, the scope of the obligation means that licensed or prescribed overseas trade repositories for alternative reporting will need to be able to capture the subset of all transactions reported to them which are reportable transactions under the Australian regime, in order for ASIC to be able to readily access this transaction data, as is required as a condition for alternative reporting.</p>	<p>Alternative reporting strikes a reasonable balance between the benefits of ensuring that transaction data of most interest to Australian regulators is readily available in Australian licensed or prescribed trade repositories, and the operational and compliance benefits of entities being able to report to trade repositories that are not licensed in Australia, assuming ready access to that data by the Agencies.</p> <p>In particular, alternative reporting allows entities to leverage existing system connections and arrangements with overseas trade repositories used to meet an overseas reporting obligation that is substantially equivalent to an Australian reporting obligation, and avoids the duplicative cost of being required to connect to an Australian licensed or prescribed trade repository. This will ease the compliance and implementation burden for reporting entities in meeting the reporting obligation, and minimises instances of duplicative regulatory requirements across jurisdictions.</p> <p>As Australia's trade repository regime is largely modelled on existing international standards, ensuring that the overseas trade repository is also subject to requirements that are consistent with the CPSS–IOSCO Principles will ensure that the overseas trade repository used for alternative reporting meets equivalent regulatory equivalent standards to an Australian-licensed trade repository. Ensuring that we have ready access to data from the overseas trade repository for supervision and monitoring purposes also encourages greater regulatory cooperation and data-sharing between Australian and overseas regulators.</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
Data required to be reported	<p>Reporting entities and reporting agents will need to develop in-house systems to capture, centralise, validate and report all required data fields to a trade repository.</p> <p>Trade capture systems are likely to already exist for most reporting entities. However, centralising all required data fields, including those relating to trade life-cycle events, from discrete systems (e.g. relating to identifiers or mark-to-market and collateral valuations) into a single reporting engine may involve creating connectivity and data feeds between those systems, and/or development of new systems, which may involve significant cost.</p> <p>Reporting entities (and the market generally) will also need to create standardised conventions and procedures for determining which of the five asset classes a particular OTC derivative transaction belongs to, for the purpose of reporting the additional information required according to the asset class. We expect this to be a relatively simple process for frequently-traded, standardised derivatives, however more bespoke, exotic derivatives may be more difficult to categorise, and may require legal input or opinions.</p> <p>This may encourage market associations to develop market-wide conventions for how data fields are populated, and which asset class a particular type of derivative transaction may best be categorised as belonging to, in consultation with the market.</p>	<p>Over the long-term, centralising various transaction data from discrete internal systems into a single engine will encourage better trade data capture, centralisation, management and record-keeping for reporting entities, resulting in greater operational efficiencies.</p> <p>Centralisation of trade data capture systems may also reduce internal system costs for reporting entities, to the extent that redundant trade data capture systems can be retired and replaced with a centralised system. Being able to view all aspects of a transaction through a single data stream also benefits a reporting entity's general internal risk and compliance monitoring ability.</p> <p>This new set of data will enable the Agencies to:</p> <ul style="list-style-type: none"> <li>• assess systemic risk (including firm position sizes, concentrations, interconnectedness and structure);</li> <li>• conduct market surveillance and enforcement across both OTC and exchange-traded derivative markets;</li> <li>• prudentially supervise financial institutions to further understand the OTC derivative exposures of supervised entities;</li> <li>• evaluate derivatives for any mandatory clearing determination to be imposed in Australia in the future and monitor compliance with such determinations;</li> <li>• evaluate derivatives for any mandatory trading determination to be imposed in Australia in the future and monitor compliance with such determinations; and</li> <li>• protect against and identify market abuse in Australia through transactions undertaken on OTC derivative markets.<sup>31</sup></li> </ul>

<sup>31</sup> CPSS-IOSCO *Authorities' access to trade repository data*, consultative report, April 2013, s 6.2c



Derivative transaction rules (reporting)	Possible impact	Benefits
Data required to be reported (cont.)		<p>In specifying the data fields required to be reported, we have carefully considered the list of data fields that are being required to be reported to trade repositories in other jurisdictions, such as Canada, the European Union, Singapore and the United States. As far as possible, we have sought to achieve international consistency by requiring the reporting of data fields that are already required in those jurisdictions' reporting regimes. This will have the benefit of reducing compliance costs for reporting entities and reporting agents associated with system development to capture new data fields unique to the Australian regime.</p> <p>To the extent that market conventions for populating data fields and categorising exotic derivatives in an asset class develop, this will have the benefit of minimising discrepancies in which a data field is populated across the market, ensuring a higher degree of consistency in transaction reporting. This will have flow-on benefits to regulators, who will be able to monitor and supervise OTC derivative trading based on a more accurate and standardised set of transaction data.</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
Complying with international data standards	<p>Each reporting entity will need to register for and obtain an LEI, and use this identifier in each transaction report. Alternatively, reporting agencies may emerge to offer a service in LEI allocation, potentially competing on cost.</p> <p>Reporting entities and reporting agents will both need to establish procedures for determining what type of identifier should be used between the counterparties (e.g. if no LEI is available, the reporting entity's Australian Business Number must be used).</p> <p>When the market moves to two-sided reporting, reporting entities will also need to create processes to share the same identifiers across both transaction reports of the same transaction, to ensure that the identifier data fields within both transaction reports are identical.</p> <p>Given international standards for UPIs and UTIs have not been developed yet, a potential impact may be that market associations incrementally work toward creating globally-standardised conventions for allocating and reporting UPIs and UTIs. Reporting entities and reporting agents will need to invest resources in tracking developments in international data standards, and ensuring their effective implementation at the reporting entity level.</p>	<p>Use of the LEI will enable the Agencies to aggregate all data across multiple Australian and overseas trade repositories that is relevant to a particular reporting entity's trading. This is particularly important for market monitoring, including for position concentrations, exposures to another entity and overall size. This will allow the Agencies to better assess the systemic risk that a reporting entity represents relative to the overall market, which is a key objective of the G20 OTC derivative reforms.</p> <p>Given the transition to two-sided reporting, the use of the UTI will also enable the Agencies to identify and link both sides of a transaction that have been reported, whether they have been reported to the same trade repository, or to different trade repositories. This will ensure that transactions are not double-counted when the Agencies monitor the market for position concentrations, interconnectedness and structure.</p> <p>We also expect that reporting agents will emerge in the market to provide an identifier allocation service, both on a one-off basis for the LEI, and on an ongoing basis for UPIs and UTIs. These reporting agents are likely to compete on price and service offering, benefitting the market generally and minimising cost impacts for reporting entities who use these services.</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
Reporting of mark-to-market valuations and collateral	<p>Reporting entities are likely to have existing systems for capturing and monitoring mark-to-market and collateral valuations, at least at the portfolio level. However, reporting entities which currently allocate these valuations at the portfolio level will need to create systems and processes to report this valuation, as well as a portfolio code.</p> <p>Further, reporting entities and reporting agents will need to centralise all required data fields, including those relating to valuations, and develop systems to feed that data into a downstream single transaction reporting engine. They will also need to develop procedures for ensuring that the same unique identifiers (LEI, UPI, UTI) are used in transaction reports throughout the trade's life-cycle, including reports which update valuations.</p> <p>Centralisation of these data fields and ensuring the same identifiers are used throughout the trade life-cycle may involve creating connectivity and data feeds between those systems, and/or development of new systems, which may involve significant cost.</p>	<p>Being able to conduct market surveillance and supervision based on marked-to-market transactions and positions is critical for monitoring position concentrations, inter-entity exposures and overall size. This will allow the Agencies to better assess the systemic risk that a reporting entity represents relative to the overall market, which is a key objective of the G20 OTC derivative reforms.</p> <p>Requiring collateral information will also assist the Agencies in analysis of reporting entity collateral management practices, including identifying instances where insufficient collateral is being reported either on a one-off or ongoing basis by a particular reporting entity, and also enables the Agencies to easily view any uncollateralised transactions and positions, which represent a higher degree of risk to the market.</p> <p>Our rules requiring the reporting of collateral may also assist the internal risk management and control functions of reporting entities in identifying collateral shortages and breaches of internal collateral management policies. Better availability of collateral information may also support reporting entities' ongoing efforts to optimise their use of collateral.</p> <p>Over the long-term, centralising various transaction data from discrete internal systems into a single engine will encourage better trade data capture, centralisation, management and record-keeping for reporting entities, resulting in greater operational efficiencies. Being able to view all aspects of a transaction through a single data stream also benefits a reporting entity's general internal risk and compliance monitoring ability.</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
Phased implementation	Phased implementation of the reporting obligation will require all potential reporting entities to assess, or develop systems to assess, their gross notional outstanding in OTC derivatives on 31 December 2013, for the purpose of determining whether they are a reporting entity in Phase 2 of the reporting obligation.	<p>A phased approach to implementation of the reporting obligation provides clarity to industry on timing, and allows potential reporting entities adequate time to invest in resources and connectivity and put compliance arrangements in place for when they become subject to the reporting obligation.</p> <p>We also consider that a phased approach based on entity size (for Phase 2) and regulatory status (for Phase 3) provides smaller reporting entities (who represent less overall risk to the market by virtue of their size) with additional time to implement internal compliance systems, procedures and arrangements.</p> <p>The opt-in reporting phase also has the benefit of assisting internationally-active institutions in complying with overseas reporting requirements by opting-in to a mandatory Australian reporting obligation, which allows these institutions to report information required under an overseas transaction reporting requirement without being in breach of Australian privacy and confidentiality laws.</p> <p>The six month reporting delay for reporting of equity, FX and commodity derivatives under Phases 2 and 3 avoids the operational risk associated with a reporting entity implementing a reporting mechanism across all asset classes at one point in time. Rather, it allows them to report more standardised asset classes first which are operationally easier to report (i.e. interest rate and credit derivatives), with additional time for compliance with more bespoke products (i.e. equity, FX and commodity derivatives).</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
Requirements for derivative position information (backloading)	<p>Reporting entities and reporting agents will need to develop in-house systems to capture, centralise, validate, aggregate and report all required outstanding position information, including all required data fields, to a trade repository.</p> <p>Trade capture and aggregation systems are likely to already exist for most reporting entities. However, centralising all required data fields from discrete systems into a single outstanding position reporting engine may involve creating connectivity and data feeds between those systems, and/or development of new systems, which may involve significant cost.</p> <p>Reporting entities (and the market generally) will also need to create standardised conventions and procedures for determining which of the five asset classes a particular outstanding OTC derivative transaction belongs to, for the purpose of reporting the additional information required according to the asset class. We expect this to be a relatively simple process for frequently-traded, standardised derivatives, however more bespoke, exotic derivatives may be more difficult to categorise, and may require legal input or opinions.</p> <p>This may have the associated impact of encouraging market associations to develop market-wide conventions for how data fields are populated for backloading, and which asset class a particular type of derivative transaction may best be categorised as belonging to, in consultation with the market.</p>	<p>Position information will allow the Agencies to have baseline information about the outstanding position of a reporting entity following commencement of the reporting obligation, which assists regulators in understanding the overall position of a reporting entity at any point in time and allows time-series analyses to be conducted.</p> <p>We have allowed additional time from the date that the reporting obligation takes effect for a reporting entity in a particular asset class to recognise that aggregating this information may involve significant time and resources. It also avoids the operational risk associated with reporting outstanding position information across all asset classes at one point in time for reporting entities under Phases 2 and 3, which are unlikely to have been previously subject to a transaction reporting requirement. Rather, it allows them to report more standardised asset classes first which are operationally easier to report (i.e. interest rate and credit derivatives), with additional time for compliance with more bespoke products (i.e. equity, FX and commodity derivatives).</p> <p>We also expect that reporting agents will emerge to provide an outstanding position information reporting service. These reporting agents are likely to compete on price and service offering, benefitting the market generally and avoiding cost impacts associated with compiling and aggregating the required information, for reporting entities who use these services.</p>

Derivative transaction rules (reporting)	Possible impact	Benefits
Requirements for record-keeping	<p>Reporting entities will need to have systems and arrangements which enable them to demonstrate compliance with the rules for a minimum of five years, which may include retaining policies, procedures, verification processes and system records. They must also keep records of all transactions reported, unless they have access to those records within a trade repository.</p> <p>Given that trade repositories will be warehouses of transaction reporting data, we expect that most reporting entities will rely on their access to transaction information within these trade repositories to comply with this rule, to the extent that this information is not already kept by the reporting entity in its own internal records. We expect this to have a minimal impact on industry.</p>	<p>The record-keeping requirement will enable regulators to access data on a delayed basis for relevant monitoring and supervisory requirements, and may encourage reporting entities to improve record-keeping processes and arrangements.</p>