



**ASIC**

Australian Securities & Investments Commission

**REGULATION IMPACT STATEMENT**

**OTC derivatives reform:  
Amendments to ASIC  
Derivative Transaction Rules  
(Reporting) 2013**

February 2015

**About this Regulation Impact Statement**

This Regulation Impact Statement addresses ASIC's proposals to amend the ASIC Derivative Transaction Rules (Reporting) 2013 to reduce compliance costs for reporting entities and ensure that regulators obtain comprehensive and complete derivative trade data.

## What this Regulation Impact Statement is about

- 1 This Regulation Impact Statement (RIS) addresses ASIC's proposed amendments to the ASIC Derivative Transaction Rules (Reporting) 2013 to reduce compliance costs for reporting entities and ensure that ASIC, along with the Reserve Bank of Australia (RBA) and the Australian Prudential Regulation Authority (APRA) (together, the Australian regulators) obtain comprehensive and complete derivative trade data.
- 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:
  - (a) ensuring fair and efficient capital markets, in-line with ASIC's key priorities;
  - (b) maintaining, facilitating and improving the performance of the financial system, and the entities in it;
  - (c) administering the law effectively and with minimal procedural requirements;
  - (d) strengthening market conduct and prudential oversight, strengthening the transparency of transaction information available to relevant authorities and the public, and providing transaction information for relevant authorities to make decisions;
  - (e) improving risk management and reducing systemic risk in the financial industry to promote financial stability;
  - (f) supporting the detection and prevention of market abuse and promoting market integrity;
  - (g) facilitating market participants and market infrastructures to obtain equivalence and substituted compliance determinations from overseas regulators—to reduce the compliance burden associated with duplicative or conflicting regulation; and
  - (h) reinforcing international cooperation.
- 3 This RIS sets out ASIC's assessment of the regulatory and financial impacts of our proposed policy and our achievement of this balance. It deals with:
  - (a) the likely compliance costs and savings;
  - (b) our consideration of industry feedback on our proposals; and
  - (c) the benefits from obtaining a complete data set of over-the-counter (OTC) derivative trading activities of reporting entities, to allow the Australian regulators to meet their respective regulatory mandates.

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## A Executive summary

### What is the problem ASIC is trying to solve?

- 4 In 2008, the global financial crisis (GFC) highlighted structural deficiencies in the global OTC derivatives market and the systemic risks that those deficiencies can pose for wider financial markets and the real economy. In many countries, 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 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 derivatives 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 The stated objectives of these reforms are to:
- (a) enhance the transparency of transaction information available to relevant authorities and the public;
  - (b) promote financial stability; and
  - (c) support the detection and prevention of market abuse.
- 7 Consistent with the G20 reform objectives, we have also adopted a broader policy objective of implementing the rule framework in a manner that enables the Australian regulators to collect adequate information to facilitate appropriate and timely regulatory oversight of the financial markets, while balancing the need to minimise compliance costs for industry.
- 8 On 9 July 2013, ASIC made the ASIC Derivative Transaction Rules (Reporting) 2013 (derivative transaction rules (reporting)) which implemented the mandatory OTC derivative transaction reporting reforms

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<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 as a centralised registry that maintains a database of records of transactions and disseminates the information, including to regulators and the public.

and allowed for the implementation of reporting obligations in three phases for different types of reporting entities.

- 9 In the lead-up to the commencement of the trade reporting obligations, we engaged extensively with industry to ensure the smooth implementation of the reporting obligations. We did this by establishing working groups with representatives of industry associations and relevant reporting entities.
- 10 Through our engagement with industry, we identified a number of implementation issues. In some cases, these issues were addressed by giving time-limited relief in the form of waivers. The relief was justified and given within the policy guidelines set out in Regulatory Guide 51 *Applications for Relief* (RG 51).
- 11 Since implementing the derivative transaction rules (reporting), we have identified a number of issues where the rules have either:
- (a) imposed compliance costs on reporting entities that are disproportionate to the regulatory benefits gained from obtaining the relevant data; or
  - (b) led to undesirable gaps in reporting, where regulators and the market do not have access to comprehensive and complete information that is relevant to Australian financial markets and which impacts fair and efficient market operations.
- 12 The issues we have identified relate to areas of the derivative transaction rules (reporting) that we believe are overly burdensome to industry, or do not allow the Australian regulators to obtain all information that the rules were originally designed to capture. The problem we are trying to resolve is to reduce the regulatory burden, where possible, and ensure the Australian regulators continue to have access to all relevant information.
- 13 By consulting on and proposing to amend the derivative transaction rules (reporting), we have aimed to solve this problem in a manner that reduces the compliance burden on industry.

## Why ASIC action is needed

- 14 In some cases, these issues have been temporarily addressed by giving time-limited relief in the form of waivers. However, the issues that we are seeking to address are issues that we believe would best be addressed by making permanent amendments to the derivative transaction rules (reporting)—to ensure industry certainty regarding their obligations.
- 15 In the absence of changes to address these issues, ASIC and other Australian financial regulators would miss out on important data, and businesses would incur unnecessarily high compliance costs. This outcome would not align with our regulatory objectives.

## Policy options considered by ASIC

16 To address the implementation issues that we identified during our engagement with industry, we consulted on three options in Consultation Paper 221 *Proposed amendments to the ASIC Derivative Transaction Rules (Reporting) 2013* (CP 221).

### Option 1

17 Under Option 1 (not recommended), we proposed to maintain the derivatives transaction rules (reporting) as they are, without amendment.

18 We do not recommend Option 1 because it does not address the current issues of compliance costs (which are unnecessarily high) or data gaps. Leaving the derivatives transaction rules (reporting) as they are would mean that reporting entities will continue to bear higher compliance costs than if Options 2 or 3 were implemented. Option 1 would also leave the Australian regulators unable to access comprehensive and complete derivative trade data.

### Option 2

19 Under Option 2 (recommended), we proposed to amend the derivative transaction rules (reporting) to help minimise compliance costs and to ensure that derivative trade data is comprehensive and complete.

20 Our proposals in Option 2 were designed to address the issues we have identified under the current derivative transaction rules (reporting) that either impose unnecessary compliance costs on reporting entities or cause gaps in derivative trade data reported to regulators.

21 We proposed to make the following technical and specific amendments to the derivative transaction rules (reporting):

- (a) incorporate ‘snapshot reporting’ as a permanent reporting option;
- (b) allow foreign entities to report to prescribed trade repositories in jurisdictions other than the jurisdiction in which they are incorporated;
- (c) require foreign entities that use alternative reporting arrangements to ‘tag’ transactions as being reported under the derivative transaction rules (reporting);
- (d) amend the definition of ‘regulated foreign market’;
- (e) require Australian reporting entities to report to a prescribed trade repository if a licensed trade repository is not available;
- (f) remove Australian Business Numbers (ABNs) from the hierarchy of entity identifiers that must be reported by reporting entities if a global Legal Entity Identifier (LEI) is not available; and

- (g) amend the derivative transaction rules (reporting) for delegated reporting to provide a 'safe harbour' from enforcement action if certain conditions are met.

### Option 3

- 22 Under Option 3 (not recommended), we proposed to make the same changes to the derivative transaction rules (reporting) as set out in Option 2 above. However, in relation to reporting by foreign subsidiaries, Option 3 proposed to amend the derivative transaction rules (reporting) to require *all* (and not just some) foreign subsidiaries of Australian financial entities to report OTC derivative transactions.
- 23 The rationale for Option 3 was that any foreign subsidiary of an Australian financial entity can have an impact on the financial position of the Australian entity and, therefore, it is important for regulators to have access to this information.

### What is the likely net benefit of each option?

- 24 Option 1 proposes to maintain the status quo, that is, it proposes to maintain the derivative transaction rules (reporting) as they currently are. Therefore, any costs and/or benefits of the current rules would remain unchanged. Maintaining the derivative transaction rules (reporting) as they currently are provides certainty to the industry. However, the industry has been operating under exemptive relief in relation to many of the proposed changes to the derivative transaction rules (reporting) and many reporting entities have built their reporting systems in anticipation of the changes consulted on in CP 221.
- 25 We have calculated the cost savings to industry of implementing Option 2 as \$4,926,880. We believe Option 2 enables the Australian regulators to obtain all of the information that would be obtained under Option 1, while reducing the compliance burden on reporting entities.
- 26 Option 3 would include the same costs saving as Option 2. However, it would also involve additional requirements on foreign subsidiaries of Australian financial entities, and provide the Australian regulators with more derivative trade data. While we have not calculated the cost of these additional requirements, industry has submitted they would be substantial. We therefore believe the proposed changes under Option 3 would result in an overall cost increase to industry.

## **ASIC consultation on the options**

27 CP 221 was open for submissions from 25 July 2014 to 29 August 2014. We received 16 submissions in response to CP 221 (including four confidential submissions).

28 We have engaged extensively with stakeholders following the formal consultation period in relation to delegated reporting—where we took on board industry concern about the standard of responsibility and transfer of risk to delegates.

29 We have also held multiple meetings with stakeholders to discuss a range of issues, including snapshot reporting and the identifier hierarchy, in the context of the most recent time-limited relief granted from the derivative transaction rules (reporting).

## **The recommended option**

30 We believe the best option is Option 2. Option 2 provides a substantial deregulatory benefit to industry, while ensuring the Australian regulators obtain access to relevant information about OTC derivative transactions.

31 Option 2 will reduce the compliance burden on industry while ensuring the Australian regulators are able to obtain access to all relevant information. The changes will also provide certainty to industry in relation to their obligations under the derivatives transaction rules (reporting) on an ongoing basis.

## **Implementation and evaluation of the recommended option**

32 We will seek the Minister's consent to amend the derivative transaction rules (reporting). Should we obtain the Minister's consent to make the changes, we will do so. We will then communicate the changes to stakeholders by publishing the amended derivative transaction rules (reporting) and organising events with stakeholders to inform them of the impact of the changes.

33 We will keep the derivative transaction rules (reporting) under review and evaluate their effectiveness on an ongoing basis through constant communication and dialogue with stakeholders within the market.

34 The Australian regulators also periodically examine trends in OTC derivative markets and publish their assessment of market developments in a market assessment report.



## B Introduction

### Background

- 35 In 2009, in response to the GFC, the leaders of the G20 (including Australia) agreed to a range of reforms to OTC derivatives markets at the 2009 Pittsburgh summit. Part of the reforms included mandatory reporting of OTC derivative transactions to trade repositories.
- 36 The stated objectives of these reforms are to:
- (a) enhance the transparency of transaction information available to relevant authorities and the public;
  - (b) promote financial stability; and
  - (c) support the detection and prevention of market abuse.
- 37 Consistent with the G20 reform objectives, we have also adopted a broader policy objective of implementing the derivative transaction rules (reporting) in a manner that enables the Australian regulators to collect adequate information to facilitate appropriate and timely regulatory oversight of financial markets, while balancing the need to minimise compliance costs for industry.
- 38 ASIC is responsible for administering this regime and supervising any trade repositories licensed under the regime, as well as making and enforcing derivative transaction rules that establish mandatory requirements that apply to reporting, clearing and execution of derivative transactions.
- 39 On 9 July 2013, ASIC made the derivative transaction rules (reporting) which implemented the mandatory OTC derivative transaction reporting reform and allowed for the implementation of reporting obligations in three phases for different types of reporting entities. The reporting phases are:
- (a) Phase 1—consisting of the large Australian banks that are provisionally registered as swap dealers with the US Commodity Futures Trading Commission;
  - (b) Phase 2—consisting of a number of large Australian banks and global banks with operations in Australia; and
  - (c) Phase 3—consisting of all other Australian financial entities, that is, entities that are an Australian financial services (AFS) licensee, an authorised deposit-taking institution (ADI), a clearing and settlement (CS) facility licensee, or a foreign entity operating under an exemption from the requirements to hold an AFS licence. Phase 3 is divided into two sub-phases:

- (i) Phase 3A—consisting of those entities that hold between \$5 billion and \$50 billion in gross notional OTC derivatives outstanding; and
- (ii) Phase 3B—consisting of those entities that hold less than \$5 billion in gross notional OTC derivatives outstanding.

40 The derivative transaction rules (reporting) establish a financial market framework where Phase 1, Phase 2 and Phase 3 reporting entities must report their OTC derivative transactions to a licensed or prescribed trade repository.

41 A trade repository is a facility that collects and maintains information about derivative transactions that are reported to it. The reason for establishing and regulating trade repositories is to increase the transparency, integrity and stability of OTC derivatives markets. ASIC has responsibility for licensing and supervising trade repositories, including the granting of Australian derivative trade repository (ADTR) licences. Trade repositories can also be prescribed by the Australian Government through regulation (prescribed trade repositories). The use of prescribed trade repositories provides flexibility to enable non-licensed trade repositories to be utilised, particularly for foreign entities required to report under the derivative transaction rules (reporting).

42 The Australian regulators are provided with derivative trade data relevant to Australian trade repositories. One of the ways that trade repositories (as global infrastructure used for compliance with trade reporting requirements in many jurisdictions) are able to identify a trade as needing to be provided to the Australian regulators is when a trade is nominated by a reporting entity (i.e. ‘tagged’) as relevant to Australia. Therefore, one of the amendments to the derivative transaction rules (reporting) is to require tagging of trades to facilitate greater access to data relevant to Australia.

43 The obligation to comply with the reporting requirements in the derivative transaction rules (reporting) falls on reporting entities, unless a reporting entity appoints a delegate (e.g. a counterparty, a central counterparty, a service provider or another third party) to report on its behalf. Under the existing derivative transaction rules (reporting), a reporting entity that appoints another person to report on its behalf remains responsible for complying with the rules. The amendment in relation to the ‘safe harbour’ for delegated reporting intends to make the delegate responsible for complying with the rules, subject to the reporting entity complying with certain conditions: see paragraphs 150–176.

44 The first two phases of reporting entities are already reporting data and the Australian regulators now have access to that data. In the lead-up to the commencement of the first two phases of trade reporting, we engaged extensively with industry to facilitate the smooth implementation of the reporting obligations. Through our engagement with industry, we identified a number of implementation issues. In some cases, those issues were

addressed by giving time-limited exemptive relief (i.e. individual relief and class orders).

- 45 We also identified some issues where the derivative transaction rules (reporting) imposed compliance costs on reporting entities that were disproportionate to the regulatory benefits gained from obtaining the relevant data—or, conversely, led to undesirable gaps in reporting.
- 46 Through our ongoing and regular engagement with industry, we identified several implementation issues with the derivative transaction rules (reporting). We proposed revisions to the derivative transaction rules in CP 221 on 25 July 2014—which outlined the regulatory options for amending the derivative transaction rules (reporting).
- 47 In response to CP 221, we received 16 submissions over the course of the consultation period, which ended on 29 August 2014. Since the close of consultation we have engaged in further targeted consultation on particular issues, including reporting by foreign subsidiaries and delegated reporting.
- 48 The amendments to the derivative transaction rules (reporting) proposed in CP 221 were designed to ensure that Australian regulators can access complete and comprehensive trade data and, where possible, minimise trade reporting compliance costs to industry—with the goal of implementing Australia’s G20 commitment to trade reporting of OTC derivatives transactions.

## Assessing the problem

- 49 The derivative transaction rules (reporting) seek to address the lack of transparency in global OTC derivatives markets, which contributed to the difficulties regulators and market participants faced in managing the problems that arose during the GFC. This lack of transparency was one of the systemic issues within OTC derivatives markets which added to the severity and duration of the GFC. This led to the G20 leaders committing to a number of reforms of OTC derivatives markets in 2009: see paragraph 2. These reforms were designed to address a lack of transparency in OTC derivatives markets, particularly for regulators.
- 50 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. Specifically, regulators were unable to determine the extent to which each entity that transacts in OTC derivatives is exposed to the potential failure of other entities in these markets—and the potential flow-on impacts where the failure of one entity could result in losses being incurred by, and the possible failure of, other entities.

- 51 At the time of the GFC, the market, regulators and governments did not have a clear picture of which institutions were exposed (and the extent of that exposure) to troubled financial firms such as Lehman Brothers and AIG. In the absence of clear information, market participants were increasingly reluctant to lend to counterparties that 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. These capital markets are essential to ensure both financial and non-financial firms are able to meet their day-to-day funding needs.
- 52 The lack of transparency in OTC derivatives markets inhibits regulators' ability to form a clear picture in a timely fashion of the extent to which OTC derivatives 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.
- 53 Asymmetric information hampers governments' efforts to stabilise markets. If a government has complete information about a market that is not operating properly, it can choose the best course of action, including the best timing for intervention to minimise disruption and moral hazard. However, without complete information, 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.
- 54 Since implementing the derivative transaction rules (reporting), we have monitored how well the rules have achieved the overarching policy objectives of the G20 reforms. We have identified a number of issues where the rules have either:
- (a) imposed compliance costs on reporting entities that are disproportionate to the regulatory benefits gained from obtaining the relevant data; or
  - (b) led to undesirable gaps in reporting—where regulators and the market do not have access to comprehensive and complete information that is relevant to the Australian financial markets—affecting the fair and efficient operation of markets and preventing the objectives of the G20 OTC derivative reforms from being met.
- 55 The majority of the rule amendments have been proposed to address areas where we believe the derivative transaction rules (reporting) are overly burdensome to industry, and to provide clarity in certain areas. Addressing the disproportionate compliance cost of each deregulatory issue in turn:
- (a) the prescribed trade repository amendment facilitates reporting in the unlikely, but significant, event that the single ADTR licensee in Australia ceases to be licensed;

- (b) the snapshot reporting amendment provides an option for end-of-day reporting, which is an alternative to the currently required and, for some reporting entities, more onerous lifecycle reporting;
- (c) the amendment to the definition of ‘regulated foreign market’ provides certainty that derivatives traded on certain overseas markets are not required to be reported under the derivative transaction rules (reporting);
- (d) the delegated reporting ‘safe harbour’ amendment enables the efficient and effective use of existing trade reporting infrastructure under delegation arrangements;
- (e) the alternative reporting amendment enables the efficient and effective use of existing trade reporting infrastructure used in overseas reporting regimes for reporting in compliance with substantially equivalent reporting regimes; and
- (f) the removal of ABNs and substitution of AVOX entity identifiers as counterparty identifiers brings Australia into alignment with international reporting of counterparty identifiers.

56 The tagging amendment for trades reported under substantially equivalent overseas regimes is an important addition to the derivative transaction rules (reporting) to enable the Australian regulators to obtain all of the information that the rules were originally designed to capture and address the risks which arise from a lack of transparency. We identified a number of these issues in submissions from industry, through applications for relief from industry and through feedback from CP 221.

57 By consulting on and amending the derivative transaction rules (reporting), we would solve the problem in a manner that reduces the compliance burden on industry.

58 Without making these changes, we believe the derivative transaction rules (reporting) would not align with our regulatory objective of administering the law effectively, with minimal procedural requirement—balanced against our market oversight objectives of ensuring fair and efficient markets, strengthening market conduct, improving risk management, preventing market abuse and strengthening the transparency of OTC derivative transaction information available to regulators in implementing the G20 reforms.

59 While we have granted transitional exemptive relief to a number of reporting entities to reduce the compliance burden, we believe that the use of exemptive relief on an ongoing basis creates additional complexity for industry in understanding which derivative transaction rules (reporting) apply to them. Further, it creates uncertainty around what provisions will apply once the exemptive relief expires. We therefore believe that to solve

the problem permanently, amendments to the derivative transaction rules (reporting) are necessary.

## Why is Government action needed?

- 60 We believe permanently amending the derivative transaction rules (reporting) is the most appropriate way to ensure there is certainty for industry as to what their obligations will be on an ongoing basis. Most of the changes proposed are deregulatory and are supported by industry. We expect that in the absence of making these changes, industry will continue to seek exemptive relief to facilitate compliance with the derivative transaction rules (reporting).
- 61 We also believe these changes to the derivative transaction rules (reporting) are essential to allow ASIC and other Australian financial regulators (particularly the RBA and APRA) to obtain important data on OTC derivative transactions entered into by reporting entities. Without including a requirement for foreign reporting entities to ‘tag’ the OTC derivative trades that they report to trade repositories, the Australian regulators do not have the ability to obtain information about trades reported by these entities.
- 62 Without this amendment, we would need to require foreign entities to report trades directly under the derivative transaction rules (reporting) to ensure the Australian regulators receive information about these trades, which would result in an even greater cost for reporting entities. Alternatively, Australian regulators would not obtain information about those trades, which would undermine the reason for requiring these trades to be reported in the first place.
- 63 Without these amendments to the derivative transaction rules (reporting), the industry will likely continue to seek to operate under exemptive relief instruments, which is undesirable for both the credibility and enforcement of the OTC derivative trade reporting regime. We do not consider extension of the numerous relief instruments to be a viable option because of the reliance that many reporting entities currently place on relief. Doing so would result in an exponential increase in the number of applications for case-by-case relief which would significantly increase the costs to industry and reporting entities, and be a significant and unnecessary resource drain on ASIC.

## C Overview of the options in CP 221

### Background

64 To address the implementation issues that we identified with the commencement of Phase 1 and Phase 2 reporting entities, and in consideration of feedback from industry on CP 221, we presented three regulatory options to address these issues.

### Option 1

65 Under Option 1 (not recommended), ASIC would maintain the derivatives transaction rules (reporting) as they are, without amendment.

#### Rationale

66 We do not recommend Option 1 because it does not address the current issues of excessive compliance costs or data gaps. The main compliance cost that would occur by maintaining the status quo is having to separately report all trades entered into, closed and modified when the event happens (i.e. lifecycle reporting), which we estimate to cost an additional \$2.688 million per year across all reporting entities.

67 Leaving the derivative transaction rules (reporting) as they are would mean that reporting entities would continue to bear higher compliance costs than if Options 2 or 3 were implemented. It would also leave regulators unable to access comprehensive and complete derivative trade data.

68 We believe that this option would not effectively reduce the risks identified in paragraphs 49–59. This is particularly because the Australian regulators would have reduced ability to obtain information from trade repositories about trades done by foreign financial entities in Australia. The lack of transparency about these transactions limits the ability of the Australian regulators to identify and monitor risks arising from trades made by these entities in Australia. Therefore, we consider this option would not be in-line with the overarching objectives of the G20 reform.

69 In other respects, this option would either reduce the quality of the data that has been received or, where we have determined that changes can be made that do not impact the transparency of information we receive, result in unnecessary costs being incurred by reporting entities.

## Option 2

- 70 Under Option 2 (recommended), ASIC proposes to amend the derivative transaction rules (reporting) to help minimise compliance costs and ensure that derivative trade data is comprehensive and complete.
- 71 We propose to make the following amendments to the derivative transaction rules (reporting):
- (a) incorporate ‘snapshot reporting’ as a permanent reporting option;
  - (b) allow foreign entities to report to prescribed trade repositories in jurisdictions other than the jurisdiction in which they are incorporated;
  - (c) require foreign entities that use alternative reporting arrangements to ‘tag’ transactions as being reported under the derivative transaction rules (reporting);
  - (d) amend the definition of ‘regulated foreign market’;
  - (e) require Australian reporting entities to report to a prescribed trade repository if a licensed trade repository is not available;
  - (f) remove ABNs from the hierarchy of entity identifiers that must be reported by reporting entities if a global LEI is not available;
  - (g) require foreign subsidiaries of Australian financial entities to report OTC derivative transactions, if the subsidiary meets a materiality threshold; and
  - (h) amend the derivative transaction rules (reporting) for delegated reporting to provide a ‘safe harbour’ from enforcement action if certain conditions are met.

### Rationale

- 72 Section D contains a detailed analysis of and rationale for each of the elements in Option 2.

## Option 3

- 73 Under Option 3 (not recommended), ASIC would to make the same amendments to the derivative transaction rules (reporting) as set out in Option 2. However, in addition to these amendments, Option 3 would amend the derivative transaction rules (reporting) to require all foreign subsidiaries of Australian financial entities to report OTC derivative transactions.

### Rationale

- 74 It was important to consider this option because any foreign subsidiary of an Australian financial entity can have an impact on the financial position of the



- Australian entity. This is because, typically, foreign subsidiaries have financial links back to the parent company and the parent company may have a liability exposure to losses (and profits) from derivative transactions entered into by a foreign subsidiary. Losses in foreign subsidiaries can also create a risk for the parent entity—in the event that a loss incurred by a foreign subsidiary results in a loss of confidence in the parent entity.
- 75 Under Option 3, the affected group of entities would be limited to subsidiaries in jurisdictions that do not have substantially equivalent reporting requirements. This is because the derivative transaction rules (reporting) already exempt foreign subsidiaries of Australian financial entities that report under foreign laws that are substantially equivalent to the derivative transaction rules (reporting), from having to report under the derivative transaction rules (reporting).
- 76 In CP 221, we proposed that foreign subsidiaries of Australian ADIs and AFS licensees be required to report OTC derivatives to trade repositories. This was a re-consultation of a proposal we included in our consultation on the draft derivative transaction rules (reporting) in early-2013: see Consultation Paper 205 *Derivative transaction reporting* (CP 205).
- 77 Under the proposal in CP 221, foreign subsidiaries of ADIs and AFS licensees would have been required to start reporting transactions in OTC derivatives globally, where their gross notional outstanding in a jurisdiction (either alone or in combination with other subsidiaries of the Australian entity) was \$5 billion or more. The proposed threshold was intended to minimise compliance costs by requiring reporting of transactions that could reasonably transfer material risk to the Australian financial system. In CP 221, we also consulted on an alternative option which would require all foreign subsidiaries of ADIs and AFS licensees to start reporting transactions in OTC derivatives globally.
- 78 Currently, we do not have power to require most foreign subsidiaries to report their OTC derivative transactions under the derivative trade reporting regime. Only a limited number of foreign subsidiaries of Australian financial entities are currently required to report, where those subsidiaries also have operations in Australia. The limitation of ASIC's power in this area has been made through the Corporations Regulations 2001.
- 79 Importantly, the proposal was that such foreign subsidiaries would be able to access alternative reporting through substantially equivalent foreign reporting regimes as long as they tagged the reports as reportable under the derivative transaction rules (reporting).
- 80 This proposal was intended to fill the information gap in trades made by foreign subsidiaries of Australian ADIs and AFS licensees that would

otherwise exist—and help ensure completeness and availability of Australian OTC derivative data of potential interest to Australian financial regulators.

- 81 There was, however, substantial industry objection to the proposed requirement for foreign subsidiary reporting. The industry was strongly opposed to the proposal, claiming that it:
- (a) takes an extra-territorial approach that is too expansive and is not aligned with the regimes of foreign regulators;
  - (b) imposes significant and ongoing costs and complexity to industry and ASIC;
  - (c) presents a barrier to certain offshore investments;
  - (d) presents costs and hurdles not sufficiently removed by ‘alternative reporting’ or the proposed threshold; and
  - (e) is inconsistent with the Australian Government’s deregulatory agenda and ASIC’s intention to adopt a risk-based approach to its regulatory oversight.

82 We have considered the strength of opposition from industry, the current data needs of the Australian regulators in overseeing this regime, and ASIC’s rule making powers. On balance, we do not recommend Option 3.

83 In making this decision, we have carefully considered the risks that could arise from transactions undertaken by foreign subsidiaries of Australian financial entities, and whether requiring these entities to report would align with the overarching objectives of the G20 reforms. We believe that requiring these trades to be reported would materially increase the transparency to the Australian regulators of potential risks incurred by these foreign subsidiaries, which could result in risk flowing up to their Australian parent entities. Therefore, we believe that requiring these entities to report would help Australia meet the objectives of the G20 reforms to increase transparency and reduce systemic risk.

84 We have also considered existing mitigating factors to this increase in risk, for example:

- (a) certain information is already available to the Australian regulators through other forms of reporting (i.e. reports provided by APRA-supervised entities to APRA on a regular basis); and
- (b) at this stage the Australian regulators have not identified particular foreign subsidiaries from which there is an immediate need for detailed derivative transaction information.

85 We also recognise that while requiring this information to be reported would create some reduction in risk, this reduction in risk may not outweigh the costs that would be incurred by industry.

86 Instead of proceeding with the proposal at this time, we propose to re-visit this issue at a later date. One possible mechanism for review is through the periodic OTC market assessments which ASIC conducts with the Australian regulators, the next of which is due to be conducted this year.

87 At such a time, the Australian regulators could review the data to ensure that risk positions in foreign subsidiaries are not so large as to present major threats to the integrity or usefulness of trade repository data. We will also monitor whether this option is feasible under a more robust threshold model for materiality, if appropriate.

### Cost impact estimate of Option 3

88 Although we consulted on the option of requiring some or all foreign subsidiaries to report their trades to trade repositories, none of the submissions provided an estimate of the cost to implement that option.

89 Therefore, we have estimated the financial impact of Option 3 based on our understanding of the financial markets, the cost of implementing trade reporting for similar-sized firms and our own internal analysis.

90 The RIS for the making of the derivative transaction rules (reporting) estimated that the average annualised cost per reporting entity of implementing the trade reporting requirements is approximately US\$72,000. This average was calculated across all ADIs, AFS licensees, CS facilities and foreign entities operating under an exemption from the requirement to hold an AFS licence that we expected to be subject to the derivative transaction rules (reporting). The cost was estimated across all of these types of entities. However, we recognise that these costs will vary and, for larger reporting entities, will be substantially more than this estimated average.

91 Based on submissions from industry, we estimate that there are approximately 100 foreign subsidiaries that would be required to report if Option 3 was implemented. Most of these entities would be subsidiaries of large Australian banks. While we believe there would be a small number of large foreign subsidiaries, most of the affected entities would be small-sized entities. We estimate that 100 foreign subsidiaries would incur, on average, costs similar to those incurred by the Australian financial entities that trade OTC derivatives. We therefore believe an average annualised cost of US\$72,000 (or A\$87,646)<sup>2</sup> per foreign subsidiary is an appropriate estimate for the cost of implementing this option.

92 Therefore the annualised costs to implement Option 3 across these 100 reporting entities would be approximately \$8.764 million. This cost would

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<sup>2</sup> Based on the US\$/A\$ exchange rate as at 15 December 2014.

be offset by the deregulatory savings of approximately \$4.9 million from the package of amendments in Option 2. Therefore, we estimate that the net industry annualised cost of implementing Option 3 would be \$3.864 million.

## D Impact analysis of the recommended option (Option 2)

### Assumptions used in the impact analysis

- 93 Based on the current data we are receiving from the licensed trade repository (see paragraph 106)—and our knowledge of the derivatives market in Australia, ADIs and AFS licence holders—we estimate that there are 500 reporting entities relevant to the Australian market.
- 94 Some of the proposed amendments to the derivative transaction rules (reporting) will affect entities depending on whether they:
- (a) are a domestic or foreign entity; and
  - (b) will directly report trades to a trade repository or delegate their trades to another entity that will report the trades on their behalf.
- 95 Of the 500 affected entities, we estimate 40 are foreign entities and 460 are domestic entities. We expect all 40 foreign entities to report trades directly to trade repositories. Of the 460 domestic entities, we estimate that 360 are entities likely to use delegated reporting and 100 are entities that have or will build the capability to report themselves.
- 96 We expect that the costs or savings from these changes will depend on the systems each entity has in place, how many trades they need to report and how far they have progressed with their systems build so far.
- 97 Therefore, for each category of affected entities, we have estimated an average cost for a typical larger entity, and an average cost for a typical smaller entity. Specifically, we estimate that:
- (a) Of the 40 foreign entities, 10 are large foreign entities and 30 are small foreign entities. This is based on the 10 foreign entities (approximately) that have been required to report in the first two phases of trade reporting, which has been focussed on larger reporting entities.
  - (b) Of the 100 domestic entities that will report directly, we have estimated 10 are large domestic reporting entities and 90 are small domestic reporting entities. Again, this is based on the 10 domestic reporting entities that have been required to report in the first two phases of trade reporting.
  - (c) Of the 360 domestic entities that we expect to delegate their obligation, we have estimated 100 are larger domestic indirect reporting entities and 260 are smaller domestic indirect reporting entities. This is based on the maximum number of entities we expect to report in the next

phase of trade reporting (Phase 3A), which we expect to be no more than 100.

- (d) All other entities are expected to fall into the smallest category of reporting entities, Phase 3B.

## Changes imposing regulatory costs

### Tagging trades

#### Status quo

- 98 Under the current derivative transaction rules (reporting), foreign reporting entities are allowed to use alternative reporting, which is where a foreign reporting entity can comply with the derivative transaction rules (reporting) by reporting a trade to an offshore trade repository under a sufficiently equivalent overseas regime.
- 99 However, where a foreign reporting entity reports to an offshore trade repository under the current derivative transaction rules (reporting), the trade repository has no way of knowing that these trades relate to Australia and that information about the trades should be sent to the Australian regulators.
- 100 This means the Australian regulators are unable to get an accurate picture of the overall derivative trades affecting Australia. There is a risk that, without this information, ASIC and the Australian regulators would not have the ability to see a build-up of systemic risk, or of possible market abuse, in Australian financial markets.
- 101 Alternative reporting benefits foreign reporting entities because it minimises the regulatory burden on them imposed by needing to report under overlapping reporting requirements in several jurisdictions.

#### Proposed change

- 102 In order to have oversight of those trades, ASIC needs to be able to identify those trades that are reported under the derivative transaction rules (reporting). We therefore propose to amend the derivative transaction rules (reporting) to require foreign entities that rely on the benefit of alternative reporting (see 177–188) to designate (or ‘tag’) trades reported to a trade repository as being reportable to ASIC.
- 103 Tagging is a mechanism that certain overseas trade repositories (including the ADTR licensee, see paragraph 106) use to identify which OTC derivative transactions should be sent to which regulator. This process relies on reporting entities designating (or ‘tagging’) their OTC derivative transactions as being relevant to particular regulators or jurisdictions. Trades

tagged as relevant to Australia will then be sent to the Australian regulators by the trade repository.

104 Without reporting entities tagging trades as relevant to Australia, trade repositories are unable to determine which trades were reported under the derivative transaction rules (reporting) and, consequently, the Australian regulators would not receive important information enabling them to have appropriate and timely regulatory oversight of Australian entities and financial markets. This would limit the ability of the Australian regulators to ensure the overarching objectives of the OTC derivative reforms are met.

105 The main cost imposition on reporting entities that use alternative reporting is the reporting transaction cost imposed by the trade repository to which they report. This is because trade repositories typically charge per transaction (i.e. tagging a trade would be considered a separate transaction for billing purposes).

#### **Feedback from industry**

106 We recognise that this proposal will cause additional trade reporting costs for foreign reporting entities, and that compliance with the trade reporting regime has become more expensive since the introduction of the regime. We also recognise that this proposal imposes costs in addition to recent price increases imposed by the trade repository servicing Australian reporting entities, DTCC Data Repository (Singapore) Pty Ltd (DDRS) (ASIC does not regulate prices charged by DDRS). Nevertheless, we believe the regulatory need to obtain this information justifies this cost.

107 We have considered feedback from industry, which was overall opposed to the requirement to tag information reported to offshore trade repositories. The main reason for this opposition was the increased cost of reporting these trades.

108 Based on the latest DDRS fee schedule and our understanding of likely systems-build costs, the estimated cost of implementing this requirement will be well under \$1 million per year in aggregate for the estimated 40 foreign reporting entities that would be impacted by this requirement.

109 It should be noted that tagging was imposed as a condition of a waiver for Phase 2 reporting entities reporting 'nexus' trades. Nexus trades are trades made by foreign reporting entities that are not booked in Australia but are entered into in Australia and, therefore, reportable under the derivative transaction rules (reporting). For example, an investment bank may be established and headquartered in the United Kingdom, but have an office in Australia. The office in Australia may enter into OTC derivative transactions with Australian counterparties, but the legal entity entering into the transactions is the UK legal entity. Therefore, nexus trades are those where the legal entity is located outside Australia, but because of the activities by

employees of the entity in Australia these trades have a sufficient connection to Australia and are, therefore, required to be reported under the derivative transaction rules (reporting).

110 Entities were given until 2 February 2015 to start reporting such trades and, as a condition, were required to tag ‘booked in’ trades from 1 October 2014 and nexus trades from 2 February 2015.

111 Despite the inclusion of the tagging condition, the waiver (incorporating a few different transitional elements) generated cost savings estimated at \$21 million. However, because the tagging requirement was granted through a waiver it is only temporary and, to ensure all relevant trades are tagged on an ongoing basis, the derivative transaction rules (reporting) will need to be amended.

112 As an alternative to imposing the tagging requirement, industry proposed that international regulators cooperate to share data in trade repositories. However, this alternative recommendation has not been substantiated by reference to any data-sharing or international co-operation models. We believe that this approach is not practically workable due to difficulties with obtaining data from other international regulators on an ongoing basis. Specifically, concerns raised by reporting entities globally have led to trade repositories limiting their access to data to only those regulators that the reporting entity has tagged. While we continue to work with foreign regulators to access data reported under foreign regimes, we believe that tagging is, at present, the only effective way to ensure the Australian regulators have access to information about all trades that are required to be reported under the derivative transaction rules (reporting).

### **Analysis**

113 The rationale behind the requirement for foreign reporting entities to ‘tag’ trades is that:

- (a) daily transaction data sharing through cooperative arrangements with foreign regulators is not possible because access through regulators is ad hoc and inquiries-based only—due to constraints with data-handling channels and data security among regulators;
- (b) in practice, tagging is the only way for trade repositories to know which regulators have the consent of the reporting entities to share data. Without tagging, offshore trade repositories would be unwilling to share data with the Australian regulators under foreign law, subject to certain conditions. In many cases this would require ASIC to identify relevant entities or transactions using numerical identifiers—which we are not in a position to do, as we do not maintain the relevant data;



- (c) tagging ensures that ASIC and the Australian regulators are able to obtain ongoing access to data reported to prescribed off-shore trade repositories; and
- (d) tagging facilitates the benefit of alternative reporting. Without alternative reporting, entities would be required to build multiple systems to meet derivative transaction reporting requirements in multiple jurisdictions. Australia is one of only a few jurisdictions that offers alternative reporting.

114 Adding a tagging requirement to the alternative reporting regime is consistent with the original objectives of the G20 reforms, in particular, the objective to enhance the transparency of transaction information available to relevant authorities and the public. This will also ensure that where reporting entities are subject to reporting obligations under both the derivative transaction rules (reporting) and under foreign reporting requirements, duplicate reporting obligations can be avoided—by ensuring the Australian regulators can obtain information about OTC derivative transactions that are required to be reported under the derivative transaction rules (reporting). However, we will continue to allow reporting entities to report in accordance with foreign reporting requirements, as long as the trades are tagged appropriately so the Australian regulators can get information about the transactions.

115 For the reasons outlined in paragraph 113 we consider tagging to be the only way to ensure that the Australian regulators can reliably obtain direct access to data reported to prescribed trade repositories by foreign entities.

116 This amendment to the derivative transaction rules (reporting) will solve the regulatory problem of undesirable gaps in reporting and ensure that the Australian regulators will have access to comprehensive and complete information that is relevant to Australian financial markets.

117 An alternative approach—which would ensure the Australian regulators continue to get access to relevant information—is to remove the benefit of alternative reporting under substantially equivalent foreign reporting regimes and, instead, require all reporting entities to report to a licensed ADTR in accordance with the derivative transaction rules (reporting). This would result in substantially increased costs to industry because foreign reporting entities would need to build new reporting systems to ensure they are reporting ASIC fields, rather than using their existing reporting systems to report under alternative reporting using fields they already report in their home jurisdiction.

118 We do not believe either alternative (i.e. no tagging or removing alternative reporting altogether) achieves a satisfactory result for ASIC or industry. We consider the proposed amendments to the derivative transaction rules

(reporting) regarding tagging strikes a balanced position by allowing alternative reporting on the condition of tagging trades.

#### *Estimated costs*

**Table 1: Costs of ‘tagging’**

Entity	One-off cost	Ongoing annual cost
Large foreign entity	\$200,000	\$27,500
Small foreign entity	\$40,000	\$5,500
Industry annualised cost (over 10 years)	N/A*	\$760,000

\* Not applicable

119 We believe all foreign reporting entities are likely to utilise alternative reporting. Based on our understanding of the relative size of reporting entities in the market—of the 40 foreign entities, we estimate there will be 10 large foreign entities and 30 small foreign entities. Based on the larger scale and volume of trades traded by large entities, we estimate that small entities will incur five times less cost than large entities.

120 We estimate that—based on our understanding of the IT-build cost for other aspects of the derivative reporting regime—there will be a one-off system build and testing-related cost of \$200,000 for each large foreign entity. Based on the DDRS fee schedule, we also estimate that the additional transactional cost per entity will be \$27,500 per year.

## **Reporting to a prescribed trade repository**

### **Status quo**

121 Under the current derivative transaction rules (reporting), reporting entities must report derivative information to a trade repository that has been licensed by ASIC.

### **Proposed change**

122 We propose to amend the derivative transaction rules (reporting) to specify that reporting entities may report to a prescribed trade repository where no licensed trade repository is available.

123 Australia currently has one licensed trade repository, DDRS, available for trade reporting. This technical amendment ensures that in the event that DDRS ceases to be licensed in Australia, reporting entities could continue to meet their reporting obligations by reporting to a prescribed trade repository.

**Feedback from industry**

- 124 Industry was almost unanimously supportive of the proposal to specify that Australian reporting entities may report to a prescribed trade repository where no licensed trade repository is available—to cover the possibility of DDRS not achieving licensing by 1 October 2014, which was the deadline set within the derivative transaction rules (reporting) for when reporting entities must begin reporting to an ADTR.

**Analysis**

- 125 There is an extremely low probability of DDRS becoming unlicensed, but the proposal will implement an important risk-mitigation strategy for the Australian regulators. Overall, the likely impact on industry will be immaterial because reporting entities will continue to report to DDRS.
- 126 This amendment is consistent with, and necessary to facilitate, the original objectives of the G20 reforms because it ensures that the objective of ensuring the regulators are able to obtain information about OTC derivative transactions can still be met—in the event that DDRS were to cease to hold an ADTR licence.

*Cost estimate*

- 127 Nil. There is no cost to industry for this amendment of the derivative transaction rules (reporting).

**Changes with a deregulatory impact****Snapshot reporting****Status quo**

- 128 Under the current derivative transaction rules (reporting), reporting entities are required to report all derivative information, including the separate reporting of entry and close positions, and any changes to the derivative position throughout the day (i.e. lifecycle reporting). This requirement differs from the requirement in other jurisdictions, which means implementing lifecycle reporting can require a different technology build than what is required in other jurisdictions. For banks that trade derivatives which have frequent intraday changes, this requirement is also costly from an IT and resource perspective because a large number of OTC derivative transactions might be required to be reported.
- 129 An alternative approach has been implemented in some jurisdiction known as ‘snapshot reporting’. Under snapshot reporting, a reporting entity can

report information for each derivative transaction that is open at the end of each business day (i.e. snapshot reporting), rather than reporting all changes in the derivative separately (lifecycle reporting). Using this approach, reporting entities would only report the end-of-day position for all open OTC contracts (i.e. even if there have been modifications during the day). Some jurisdictions that allow the option of snapshot reporting include the United States and Canada.

### **Proposed change**

130 We propose to amend the derivative transaction rules (reporting) to give reporting entities the option of using snapshot reporting instead of lifecycle reporting. However, there will be an exception from snapshot reporting that would allow ASIC to require the reporting of intraday transactions for certain instruments (e.g. contracts for difference (CFDs) and margin foreign exchange (FX) derivatives) where they are opened and closed on a single day.

131 This exception is necessary to ensure ASIC has appropriate information about certain types of OTC derivative transactions that can be used for market abuse (e.g. CFDs and margin FX derivatives). This exception would ensure that if ASIC considers it necessary, it could receive information about these transactions, even where they are opened and closed in the same day (which is very common for these types of OTC derivative products).

132 This measure is intended to provide compliance cost savings for reporting entities, many of which have built reporting systems that allow for snapshot reporting under overseas regimes such as the United States.

### **Feedback from industry**

133 The feedback we received from industry stakeholders was very positive. Specifically, we received feedback that daily open position reporting (snapshot reporting) is simpler and more cost effective to administer than lifecycle reporting.

134 We also consulted on whether industry would support an exception to snapshot reporting being made for intraday trades and a reversion to lifecycle reporting in the future. The feedback we received was strongly against this proposition because of the large costs needed to build the required technology to support reporting and identify the trades. A large sector of the industry has systems in place to support the accurate recording of transactions to facilitate investigations by financial regulators in the absence of transaction-by-transaction reporting.

## Analysis

- 135 The derivative transaction rules (reporting) currently impose the more onerous lifecycle reporting requirement. Our proposal is deregulatory because it allows (but does not require) the option for reporting entities to report on a daily ‘snapshot’ basis. Typically, OTC derivatives tend to be long-term contracts (several days) and are not opened and closed in one day. Daily snapshot reporting (rather than less frequent weekly reporting) is necessary to allow regulators to detect and investigate trading trends, analyse whether there is a build-up of systemic risk, and support the G20 objective of enhanced transaction transparency. Any form of less frequent reporting would not provide regulators with sufficient information to analyse and investigate anomalies in the market.
- 136 This also aligns with other jurisdictions, such as the United States, and will allow entities to rely on systems they have already built for foreign reporting regimes. The exception for CFD intraday reporting is a necessary precaution to facilitate our enforcement and market conduct surveillance work.
- 137 Even though the derivative transaction rules (reporting) were originally intended to capture more information under lifecycle reporting, we believe that the original G20 objectives will still be supported by including the option of snapshot reporting. In particular, the objective of enhanced transaction information would still be supported because most derivative trades are not opened and closed on the same day.
- 138 Where ASIC has a concern and believes lifecycle transaction information about particular types of derivatives is necessary, ASIC will retain the power to make a determination excluding such derivatives from the snapshot reporting option and those trades would need to be reported on a lifecycle basis. However, ASIC has not yet made such a determination and, therefore, all reporting entities will be able to use snapshot reporting for all their OTC derivative transactions at the point the derivative transaction rules (reporting) are amended.
- 139 Given that the OTC reform objectives can be achieved using snapshot reporting at little detriment to ASIC’s data analysis—while providing substantial cost savings to the industry—we intend to make the proposed change to make snapshot reporting available.

### *Estimated savings*

**Table 2: Cost savings of snapshot reporting**

Entity	Ongoing annual cost savings
Large domestic direct reporting entity	\$96,000

Entity	Ongoing annual cost savings
Small domestic direct reporting entity	\$19,200
Industry annualised saving (over 10 years)	\$2,688,000

140 We believe all domestic direct reporting entities that would have needed to build systems to report intraday trades, will no longer need to as a result of the amendment to the derivative transaction rules (reporting) to allow snapshot reporting. Based on the larger scale and volume of trades made by large entities, we estimate that small entities will incur five times less cost than large entities. Based on an industry application from large domestic direct reporting entities seeking a waiver from compliance with lifecycle reporting (to permit snapshot reporting), the savings were estimated to be \$96,000 per large entity.

## Regulated foreign markets

### Status quo

141 Under the current derivative transaction rules (reporting), a ‘regulated foreign market’ is narrowly defined as a financial market as determined by ASIC from time-to-time, if the financial market meets certain conditions. The determination process is applied on an as-needs basis.

### Proposed change

142 We propose to amend the derivative transaction rules (reporting) to clarify which trades will be considered ‘over-the-counter’ (and therefore reportable), and which are considered to be traded on a ‘regulated foreign market’ (and therefore not reportable).

### Feedback from industry

143 The industry response indicated that the proposed definition is still difficult to administer and requires considerable resources to be able to determine whether new exchanges should be added to the definition of ‘regulated foreign market’.

144 Many submissions also considered that the proposal merely identifies exchanges and does not go far enough in resolving the problem of carving out standardised derivatives traded on exchange trading platforms, known as exchange-traded derivatives. Industry submissions proposed that it should be possible to define an exchange-traded derivative and neatly exclude such derivatives from the reporting requirement. The difficulties with this approach are in reaching a workable definition of an ‘exchange’, and a sufficiently specific definition of ‘exchange-traded derivative’ which

includes platform trading systems such as US swap execution facilities and EU-organised trading platforms and multilateral trading facilities.

### **Analysis**

145 Under this approach, the industry would have certainty that regulated markets in the United States or European Union would automatically be deemed as ‘regulated foreign markets’ and, therefore, trades done on these markets would not be required to be reported. This amendment to the derivative transaction rules (reporting) reflects well-established industry understanding. In addition, ASIC’s determination power as to which market or class of markets is a ‘regulated foreign market’ would be expanded so that more trades could then be excluded from the trade reporting regime.

146 In relation to the industry’s suggestion to explicitly carve out exchange-traded derivatives from the derivative trade reporting regime, we see the usefulness in defining exchange-traded derivatives but note the difficulties in formulating a workable definition. We propose to clarify this issue in Regulatory Guide 251 *Derivative transaction reporting* (RG 251), which explains the derivative transaction reporting regulatory regime and gives guidance on particular areas where we consider reporting entities would benefit from guidance on the derivative transaction rules (reporting). RG 251 could set out characteristics of exchange-traded derivatives that ASIC will consider for transactions where it is unclear whether they are required to be reported.

147 We believe an incremental deregulatory approach is best adopted by making the proposed amendments to the derivative transaction rules (reporting) and providing guidance to the industry on this issue in RG 251.

148 Although the proposed amendment is deregulatory, we believe that the original objectives of the G20 reforms are still supported because the amendment provides clarity in the derivatives transaction rules (reporting) about which OTC derivative transactions are required to be reported. Providing certainty as to which OTC derivative transactions need to be reported would help ensure we meet the objectives of the G20 reforms by giving reporting entities a clearer idea of which transactions will be reportable, and which will not be.

### ***Estimated savings***

149 We have not been provided with any industry estimates as to the deregulatory value and savings available. We submit that this amendment to the derivative transaction rules (reporting) has a deregulatory impact for all reporting entities because it brings clarity for building trade reporting logic systems and trade reporting decision making, however, we expect the actual saving to industry to be minimal.

## Delegated reporting

### Status quo

- 150 Under the current derivative transaction rules (reporting), delegated reporting is an available option for all reporting entities.
- 151 The delegated reporting option is intended to assist smaller reporting entities that would largely fall into the Phase 3 category of reporting entities. However, to put in place a delegation agreement there is an administrative burden on reporting entities to undergo contract negotiation between the delegator and delegate, and significant investment in risk and legal analysis of the reporting obligation.
- 152 Under the current derivative transaction rules (reporting), the delegator remains responsible for ensuring that it meets its trade reporting obligations even if it delegates the trade reporting obligation. We believe that the administrative burden on reporting entities may reduce the take-up of delegated reporting when Phase 3 reporting entities begin to report in 2015. We therefore propose to amend the derivative transaction rules (reporting) to:
- (a) make delegated reporting a more attractive option;
  - (b) facilitate a high level of reporting by small reporting entities; and
  - (c) reduce the compliance burden for small reporting entities.

### Proposed change

- 153 Although delegated reporting is an available option under the current derivative transaction rules (reporting), we believe a ‘safe harbour’ provision for delegated reporting—which deems a reporting entity to have complied with their reporting obligations upon meeting certain conditions—would go further in assisting smaller reporting entities in the industry.
- 154 The delegated reporting safe harbour regime is intended to encourage the take-up of delegated reporting by small reporting entities, such as Phase 3 entities, which are a large subgroup of the overall industry. Delegated reporting under the new safe harbour regime transfers the reporting obligation to the delegate if certain conditions are met—rather than remaining with the reporting entity under the current derivative transaction rules (reporting).
- 155 Delegated reporting under the new safe harbour regime reduces the compliance burden for Phase 3 entities by allowing those entities to delegate their reporting obligation to a delegate (e.g. a counterparty or a company offering delegated trade reporting services). This removes the need for reporting entities from otherwise needing to invest significant capital in



building the technology infrastructure, and devoting ongoing resources to manage trade reporting.

156 It also means there is certainty for both reporting entities, and the parties who report on their behalf, regarding what conditions need to be met to allow the reporting entity to have set up an effective delegation agreement—and, therefore, to know that it has complied with its obligations under the derivative transaction rules (reporting). We are making this change because we are aware that the overhead set-up costs for trade reporting are high and that Phase 3 reporting entities would report a comparatively smaller number of trades than Phase 1 and Phase 2 reporting entities.

157 The safe harbour protection only applies if the conditions outlined in paragraph 158 are met. If they are met, then the reporting entity is deemed to have met its reporting obligations.

158 We propose to amend the derivative transaction rules (reporting), in relation to delegated reporting, to provide the option of a safe harbour from enforcement, where:

- (a) the reporting entity may appoint one or more persons to report on its behalf in accordance with the reporting obligations under the derivative transaction rules (reporting);
- (b) the reporting entity is taken to have complied with those derivative transaction rules (reporting) if:
  - (i) the terms of the appointment and any related agreements are in writing; and
  - (ii) the reporting entity makes regular enquiries reasonably designed to determine whether the delegate is discharging its obligations under the terms of its appointment; and
- (c) the reporting entity must continue to take all reasonable steps to ensure that information reported for it remains complete, accurate and current.

### **Feedback from industry**

159 The feedback we received was mixed in relation to support for this amendment with most of the sell-side entities (i.e. those entities most likely to offer the delegated reporting service) (and some of the buy-side entities) opposed to the change, while most of the buy-side welcomed the introduction of a safe harbour.

160 The main concern raised by the sell-side entities was that the proposed delegated reporting regime imposed a very high standard of responsibility on the delegate. It was also asserted that delegated reporting will increase the cost for dealers. Industry feedback proposed a number of technical changes to the drafting of the provision. We considered these changes and amended the derivative transaction rules (reporting)—from what we originally

consulted on in CP 221—and conducted two further rounds of informal consultation with stakeholders.

161 Of note, a large majority of the industry suggested an alternative approach, allowing single-sided reporting to ease the compliance burden on Phase 3 reporting entities—rather than introducing the safe harbour option for Phase 3 reporting entities to allow delegation of their trade reporting obligation. Single-sided reporting only requires one counterparty to a trade to report the transaction.

162 The derivative transaction rules (reporting) currently require all trades to be reported by both counterparties (i.e. double-sided reporting). ASIC considered the industry alternative of single-sided reporting for Phase 3 entities. However, the decision on single-sided reporting is a decision to be made by the Australian Government.

### **Analysis**

163 We have had a number of discussions with industry about this amendment and we believe we have developed a position that ensures the safe harbour is effective for entities seeking to delegate their reporting, while ensuring they still need to take steps to ensure that trades are being reported accurately on their behalf.

164 In soft soundings after submissions for CP 221 closed, we consulted with industry participants who responded on this issue and proposed removing the requirement (as proposed in CP 221) that the delegation agreement must provide that the delegate take all reasonable steps to ensure that the information reported on behalf of the reporting entity remains complete, accurate and current.

165 We amended the derivative transaction rules (reporting) in response to the feedback we received on CP 221 in acknowledgment of the need for industry cooperation in operationalising delegated reporting (particularly by the larger entities who are likely to take on the role of delegate) and to leave the contents of the delegation agreement open for parties to negotiate.

166 Several major buy-side entities supported the changes to the proposed requirements for the delegation agreement. In contrast, some major banks were much more reticent in supporting the re-drafted safe harbour provision. These banks suggested that ASIC should minimise its regulatory intervention by removing, altogether, the prescribed elements of the delegation agreement so that the industry could privately, and in an unfettered manner, negotiate the terms. They also suggested removing the obligation on the reporting entity to make regular enquiries of the delegate's performance.

- 167 We acknowledge the response from these banks that industry participants should be free to assign liability in the delegation agreement, however, we believe that the obligation on the reporting entity to make regular inquiries about the delegate's performance should remain as part of the safe harbour provision.
- 168 Based on our soft soundings with industry participants we believe the re-drafted provision offers a compromise that would be acceptable to both the sell-side and the buy-side. It would leave the parties free to negotiate the details of the agreement of delegation *inter se*. We also believe our objectives of facilitating the take-up of delegated reporting and providing more clarity to the parties would be met.
- 169 Under this proposal, there will be a safe harbour for derivative transaction reporting under which delegator entities would not be residually liable for a delegate's breach of the derivative transaction rules (reporting). It is expected that smaller reporting entities (e.g. corporate entities) whose core business is not derivative trading may decide to use the safe harbour option. It is also expected that larger reporting entities (e.g. financial, sell-side entities) would offer the delegation reporting service.
- 170 This proposal takes into account industry feedback and extensive post-consultation engagement with industry on the construction of the safe harbour option for delegated reporting. These reporting entities agreed that the proposal strikes an appropriate compromise, and appreciate that it will be left to industry participants to bilaterally negotiate the transfer of risk and liability for the delegated reporting service.
- 171 As discussed above, this amendment broadens the scope of the existing delegated reporting provision by introducing a safe harbour regime. We believe that the original objectives of the G20 reforms will continue to be advanced by this amendment because the safe harbour regime facilitates a cost effective and efficient means of trade reporting for smaller entities that prefer to delegate their reporting obligation rather than invest significant capital in building their own trade reporting systems, and whose core business is not derivatives trading.
- 172 The safe harbour regime facilitates a cost effective and efficient means of using existing trade reporting infrastructure built by large reporting entities. The regime supports the objectives of:
- (a) transparent access to transaction information by regulators for decision making purposes;
  - (b) financial stability—by facilitating reporting by a wider scope of relevant entities in the financial market; and
  - (c) detection and prevention of market abuse.

*Estimated savings***Table 3: Cost savings of the 'safe harbour' amendment**

Entity	One-off cost savings	Ongoing annual cost savings
Large domestic indirect reporting entity	\$10,400	\$10,400
Small domestic indirect reporting entity	\$2,080	\$2,080
Industry annualised savings (over 10 years)	N/A*	\$1,738,880

\* Not applicable

- 173 We assume there will be 360 entities that will use the delegated reporting service.
- 174 Based on an industry application from large domestic indirect reporting entities seeking a waiver from compliance with trade reporting to allow single-sided reporting, the savings were estimated to be \$20,800 per year.
- 175 We have used this industry estimate and modified it by apportioning 50% in one-off savings (i.e. not having to build the IT capability to report derivative information) and 50% in ongoing savings (i.e. not having to apply human decision-making and compliance resources).
- 176 This modification is based on our understanding that reporting changes typically require one-off and ongoing compliance resources for implementation. We believe our proposed changes will make it much more likely that entities will offer to report on behalf of other entities, which will realise these savings for these entities. Based on the larger scale and volume of trades traded by large entities, we estimate that small entities will incur five times less cost than large entities.

**Alternative reporting****Status quo**

- 177 Under the current derivative transaction rules (reporting), there is a specific and ongoing exception from the reporting requirements for foreign reporting entities who may report to a prescribed trade repository in another jurisdiction in compliance with the reporting requirements in that foreign jurisdiction.
- 178 The alternative reporting exception was designed to ensure that foreign reporting entities are not subject to duplicate reporting requirements where

they are subject to a substantially equivalent reporting obligation in another jurisdiction. Domestic regulatory oversight in these circumstances can be achieved through regulatory ‘deference’. Deference to substantially equivalent overseas regimes is where international regulators recognise that although overseas rules may differ in detail, the overall outcome of the requirements in the different jurisdictions is the same. Through the ‘deference’ approach, regulatory gaps, duplication, conflicts and inconsistencies—which can lead to regulatory arbitrage and market fragmentation—are limited.

179 The ‘deference’ approach which underpins alternative reporting is supported by the G20. The G20 Leaders have agreed—and the G20 Finance Ministers and Central Bank Governors—have affirmed, that:

jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulatory regimes.<sup>3</sup>

#### **Proposed change**

180 We propose to amend the derivative transaction rules (reporting) to expand the alternative reporting regime. The amendments will allow foreign reporting entities in a foreign jurisdiction that are subject to substantially equivalent reporting requirements to be exempt from complying with the derivative transaction rules (reporting) where the reporting entity has reported in compliance with at least one foreign jurisdiction and tagged that information as an ASIC-related trade.

#### **Feedback from industry**

181 The industry welcomed this change to build systems and report in accordance with one regulatory reporting regime. This will be much more cost effective than having to build two different reporting systems.

#### **Analysis**

182 We intend to amend the derivative transaction rules (reporting) so that reporting entities in a foreign jurisdiction that are subject to reporting requirements that are substantially equivalent are exempt from complying with the rules where the reporting entity has reported in compliance with at least one foreign jurisdiction and tagged that information.

183 This form of drafting clarifies the alternative reporting regime for foreign reporting entities.

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<sup>3</sup> Group of Twenty, [G20 Leaders’ Declaration](#), Saint Petersburg, G20, September 2013; and Group of Twenty, [Communiqué: Meeting of Finance Ministers and Central Bank Governors](#), Sydney, G20, 22-23 February 2014.

184 The purpose of the alternative reporting amendments is to allow foreign reporting entities to report to a prescribed trade repository that is not in the reporting entity's home jurisdiction, where the foreign reporting entity reports in accordance with the reporting requirements in a foreign jurisdiction that is not the foreign reporting entity's home jurisdiction. For example, this may be the case where a reporting entity is located outside the United States, but is registered as a swap dealer in the United States and is therefore subject to the reporting requirements under the *Dodd–Frank Wall Street Reform and Consumer Protection Act* (US).

185 Under the current derivative transaction rules (reporting), the alternative reporting provision only applied where the foreign reporting entity was reporting a prescribed repository in its home jurisdiction in accordance with its home jurisdiction reporting regime. We believe that the expansion of alternative reporting, combined with the tagging requirement, continues to support the objectives of the G20 reform because it facilitates greater access to alternative reporting by foreign reporting entities reporting to a prescribed repository in accordance with substantially equivalent reporting requirements in a foreign jurisdiction, and facilitates reporting of those trades to the Australian regulators.

#### *Estimated savings*

**Table 4: Cost savings of alternative reporting**

Entity	One-off cost savings
Large entity	\$3,500,000
Small entity	\$700,000
Industry annualised saving (over 10 years)	\$420,000 per year

186 We are aware of two entities likely to benefit from the change in alternative reporting. Of the two entities, we believe there is one large entity and one small entity. Based on the larger scale and volume of trades made by the large entity, we estimate that the small entity will incur five times less cost than the large entity.

187 Based on an application by a major global bank seeking a waiver for a similarly expanded version of alternative reporting, the estimated saving was between \$3.5 and \$5 million in one-off costs. To be conservative, we have used the lower level of estimated savings.

188 This amendment to the derivative transaction rules (reporting) has a deregulatory impact because it relieves relevant entities from being subject to overlapping reporting requirements, including where the reporting entity

is required or permitted by its home jurisdiction to report to a trade repository in another jurisdiction.

## **ABNs as counterparty identifiers**

### **Status quo**

189 Under the current derivative transaction rules (reporting), reporting entities are required to report a counterparty entity identifier from a hierarchy of identifiers, of which an ABN is one. This requirement imposed a regulatory burden because other jurisdictions and trade repositories do not allow the use of an ABN. This has meant that banks have had to develop workaround solutions to report an ABN, where necessary.

### **Proposed change**

190 We propose to amend the derivative transaction rules (reporting) to remove the reference to an ABN in the hierarchy of counterparty identifiers that reporting entities must report to trade repositories—because it is not and will not be supported by DDRS in the future. The ABN reference will be replaced by an AVOX entity identifier, which is a unique business identifier assigned by Avox Limited—which reporting entities can easily report to, and the licensed trade repository can accept, to facilitate the easy identification of trading counterparties.

### **Feedback from industry**

191 The industry was supportive of removing the reference to ABNs in the counterparty identifier hierarchy. Many respondents suggested replacing the entire hierarchy with a model developed by the International Swaps and Derivatives Association (ISDA) (ISDA identifier waterfall) to bring Australia in-line with international standards and reduce implementation costs for reporting entities by permitting a cross-regime technology build and avoid ASIC-specific work.

### **Analysis**

192 We are not proposing to adopt the ISDA identifier waterfall because that hierarchy would put the business identifier code (BIC) branch identifier on the same level in the hierarchy as the AVOX entity identifier. The suggestion would compromise the data quality available to the Australian regulators because data quality is much higher when reporting entities report an AVOX entity identifier rather than a BIC identifier.

193 We therefore intend to remove the reference to an ABN in the hierarchy of counterparty identifiers and replace that reference to an AVOX entity identifier to facilitate the easy identification of trading counterparties.

194 This technical change to the derivative transaction rules (reporting) improves the quality of data being reported to trade repositories and ensures that the data being reported under the derivative transaction rules (reporting) uses the same standards as data reported under the rules of other jurisdictions. This is important because it reduces the cost of complying with multiple reporting requirements and improves the ability of regulators to aggregate the data reported under different regulatory regimes to see the cross-border positions of reporting entities.

195 Further, if transaction information was requested of ASIC by another international regulator, the trading counterparties could be easily identified by the international regulator through the use of international entity identifiers used in the derivative transaction rules (reporting), including the AVOX entity identifier. The easy identification of counterparties also supports the G20 objective of detection and prevention of market abuse.

*Estimated savings*

**Table 5: Cost savings of removing the ABN identifier**

Entity	One-off cost savings	Annual cost savings
Large domestic direct reporting entity	\$200,000	\$10,000
Small domestic direct reporting entity	\$40,000	\$2,000
Industry annualised saving (over 10 years)	N/A*	\$840,000

\* Not applicable.

196 We believe all domestic direct reporting entities would have needed to build systems to support an ABN, however, as a result of this amendment they will no longer need do so. Based on the larger scale and volume of trades traded by large entities, we estimate that small entities will incur five times less cost than large entities.

197 Based on an industry application from large domestic direct reporting entities seeking a waiver from having to report the ABN identifier, the savings are estimated to be a one-off saving of \$200,000 per entity. We also estimate, based on the ongoing nature of the trade reporting obligation, that there will be an ongoing savings of \$10,000 per large entity per year.



## Impact on industry

- 198 The proposed changes to the derivative transaction rules (reporting) aim to strike an appropriate balance between:
- (a) minimising compliance costs to business; and
  - (b) ensuring that regulators have access to comprehensive and complete information about OTC derivative transactions in the Australian market.
- 199 The majority of the proposed amendments to the derivative transaction rules (reporting) are minor amendments which either impose no cost to entities or reduce their compliance burden. However, the tagging requirement is expected to produce a relatively minor cost to industry in comparison to the regulatory benefit to be gained from the reporting of data.
- 200 Overall, these changes to the derivative transaction rules (reporting) are expected to produce a positive net impact to industry. The amendments will help ensure regulators can access complete and comprehensive trade data while minimising compliance costs associated with implementing Australia's G20 commitment to trade reporting of OTC derivatives transactions. The impact to industry of each proposed amendment to the derivative transaction rules (reporting) is set out in Table 6.

## Individuals and households

- 201 The information required to be reported under the derivative transaction rules (reporting) relate to OTC derivatives that are traded by market participants and institutional investors. Therefore, these changes will not have an impact on individuals or retail investors.

## Competition considerations

- 202 The proposed changes apply to all reporting entities that are subject to the derivative transaction rules (reporting). Therefore, these changes will not have an unequal impact on competition in the Australian derivatives trading industry.

## Summary of deregulatory impact of Option 2

- 203 In the original RIS for the derivative transaction rules (reporting), we estimated that approximately 1,200 entities could be directly or indirectly affected by the rules. To provide context to the scale of the financial impact of the amendments, in the original RIS we estimated the cost per entity would be the Australian dollar equivalent of US\$292,771 for one-off set-up costs and US\$42,759 in ongoing costs.

**Table 6: Summary of the cost impact of Option 2**

Type of costs/savings	One-off costs	Ongoing costs	Annualised costs (over 10 years)
Anticipated total cost to industry in 2013 RIS	\$351,325,200	\$51,310,800	\$86,443,320
Anticipated costs from regulatory measures	\$3,200,000	\$440,000	\$760,000
Anticipated savings from deregulatory measures	-\$11,380,800	-\$4,548,800	-\$5,686,880
Net deregulatory benefit as a percentage of originally anticipated costs	2.33%	8%	N/A*
Anticipated overall savings from Option 2			\$4,926,880

\* Not applicable.

## E Consultation

- 204 CP 221 was open for submissions from 25 July 2014 to 29 August 2014, which allowed a month for stakeholders to respond. Consultation canvassed the various options and focused in detail on Option 2. Our review indicated that Option 2 would provide the most benefit to industry (e.g. banks and fund managers), while continuing to address our objective of ensuring that the derivative transaction rules (reporting) adequately implement the OTC derivatives trade reporting obligations.
- 205 We received 16 written submissions in response to CP 221 (including four confidential submissions), from ASX-listed banks, industry trade associations, global banks and global fund managers. We conducted soft soundings with a number of stakeholders where we proposed to change the derivative transaction rules (reporting) in a manner different from what we consulted on in CP 221. We considered further submissions from those stakeholders where they made a further written response on those issues.
- 206 We have engaged extensively with stakeholders following the formal consultation period and, in particular, in relation to delegated reporting—where we took on-board industry concern about the standard of responsibility and transfer of risk to delegates.
- 207 We have also held multiple meetings with stakeholders to discuss a range of issues, including snapshot reporting and the identifier hierarchy, in the context of the most recent time-limited relief granted from the derivative transaction rules (reporting). We outline below the feedback received from industry submissions on CP 221.

### ‘Tagging’ trades

- 208 The feedback indicated that industry was generally opposed to the requirement to tag information reported to offshore trade repositories. The main reason was the increased cost of reporting these trades.
- 209 Based on the latest DDRS fee schedule and our understanding of likely systems-build costs, the likely cost of implementing this requirement will be well under \$1 million per year in aggregate for the estimated 40 foreign reporting entities that would be impacted by this requirement.
- 210 As an alternative to imposing the tagging requirement, industry proposed that international regulators cooperate to share data in trade repositories. However, this alternative recommendation has not been substantiated by reference to any data-sharing or international cooperation models. We

believe that this approach is not practically workable due to difficulties with obtaining data from other international regulators on an ongoing basis.

## Reporting to a prescribed trade repository

- 211 The industry was almost unanimously supportive of the proposal to allow Australian reporting entities to report to a prescribed trade repository where no licensed trade repository is available, if DDRS did not become a licensed ADTR by 1 October 2014 (the deadline in the derivative transaction rules (reporting) for when reporting entities must report to a licensed trade repository).

## Snapshot reporting

- 212 The feedback we received from industry stakeholders on our proposal to introduce snapshot reporting as a permanent reporting option was very positive. More specifically, we received feedback that daily open position reporting (i.e. snapshot reporting) is simpler and more cost effective to administer than lifecycle reporting.
- 213 We also consulted on whether industry would support an exception to snapshot reporting for intraday trades and a reversion to lifecycle reporting in the future. The feedback we received was strongly against this proposal because of the large cost imposition to build technology to support lifecycle reporting and to identify trades. A large sector of the industry has systems in place to support the accurate recording of transactions to facilitate investigations by financial regulators in the absence of transaction-by-transaction reporting.

## Regulated foreign markets

- 214 The industry response was that the proposed definition would be difficult to administer and require considerable resources to determine whether new exchanges should be added to the definition of 'regulated foreign markets'.
- 215 Many submissions also argued that the proposal merely identifies exchanges and does not go far enough to resolve the problem of carving out exchange-traded derivatives. Industry submitted that it should be possible to define an exchange-traded derivative and neatly exclude such derivatives from the reporting requirement. The difficulties with this approach are in reaching a workable definition of an 'exchange' and a sufficiently specific definition of an 'exchange-traded derivative' (which includes platform trading systems).

## Delegated reporting

- 216 The feedback we received was mixed in relation to support for this proposal, with most of the sell-side entities (i.e. those entities most likely to offer the delegated reporting service) (and some of the buy-side entities) opposed to the change, while most of the buy-side entities welcomed the introduction of a safe harbour.
- 217 The main concern raised by the sell-side entities was that the proposed delegated reporting regime imposed a very high standard of responsibility on the delegate. It was also asserted that delegated reporting will increase the cost for dealers. Large sell-side entities proposed a number of technical changes to the drafting of the provision which we have considered and largely implemented.
- 218 Of note, a large majority of the industry suggested an alternative approach allowing single-sided reporting to reduce the compliance burden on Phase 3 reporting entities, of which most would be buy-side entities. The issue of single-sided reporting is a decision to be made by the Australian Government.

## Alternative reporting

- 219 The industry welcomed the proposal to build and report in accordance with one regulatory reporting regime. This will be much more cost effective than having to build two different reporting systems.

## ABNs as counterparty identifiers

- 220 The industry was supportive of removing the reference to ABNs in the counterparty identifier hierarchy. Many respondents suggested replacing the entire hierarchy with a model developed by ISDA (ISDA identifier waterfall) to bring Australia in-line with international standards and reduce implementation costs for reporting entities by permitting a cross-regime technology build and avoid ASIC-specific work.

## F Recommendations

**Table 7: Recommendations**

Recommendation	Details
1	Proceed with Option 2
	We recommend implementing Option 2.
Changes imposing regulatory costs	
2	Tagging
	We recommend requiring the tagging of trades by foreign entities utilising alternative reporting to prescribed trade repositories.
Changes with no impact	
3	Reporting to a prescribed trade repository
	We recommend including a requirement that Australian reporting entities report to a prescribed trade repository if there is no licensed trade repository available for the relevant asset class.
Changes with a deregulatory benefit	
4	Snapshot reporting
	We recommend making end-of-day or snapshot reporting a permanent reporting option under the derivative transaction rules (reporting).
5	Definition of 'regulated foreign market'
	We recommend amending the definition of 'regulated foreign market' so that any market that is a designated contract market in the United States, or a regulated market in the European Union, is deemed to be a regulated foreign market.
	We also recommend expanding the scope of markets which ASIC can determine as being 'sufficiently equivalent'.
6	Delegated reporting
	We recommend amending the delegated reporting regime to introduce a safe harbour, where the reporting entity: <ul style="list-style-type: none"> <li>• may appoint one or more persons to report on its behalf in accordance with Rules 2.2.1 to 2.2.5 (Reporting);</li> <li>• is taken to have complied with Rules 2.2.1 to 2.2.5 (Reporting) if the: <ul style="list-style-type: none"> <li>– terms of the appointment and any related agreements are in writing; and</li> <li>– reporting entity makes regular inquiries reasonably designed to determine whether the delegate is discharging its obligations under the terms of its appointment; and</li> </ul> </li> <li>• must continue to take all reasonable steps to ensure that the information reported remains complete, accurate and current.</li> </ul>
7	Alternative reporting
	We recommend allowing foreign entities to report to prescribed trade repositories in jurisdictions other than the one in which they are incorporated, under certain conditions.
8	Removal of ABN Identifier
	We recommend removing ABNs from the hierarchy of counterparty identifiers that must be reported by reporting entities and replacing it with an AVOX entity identifier, if a global legal entity identifier is not available.

## G Regulatory burden and cost offset estimate tables

**Table 8: Average annual compliance costs of implementing Option 1**

Costs	Business	Community organisations	Individuals	Total cost
Total by sector	\$nil	\$nil	\$nil	\$nil
Cost offset	Business	Community organisations	Individuals	Total by source
Agency	N/A*	N/A	N/A	N/A
Within portfolio	N/A	N/A	N/A	N/A
Outside portfolio	N/A	N/A	N/A	N/A
Total by sector	N/A	N/A	N/A	N/A
Proposal is cost neutral?	No			
Proposal is deregulatory?	No			
Balance of cost offsets	\$nil			

\* Not applicable.

**Table 9: Average annual compliance costs of implementing Option 2**

Costs	Business	Community organisations	Individuals	Total cost
Total by sector	-\$4,926,880	\$nil	\$nil	-\$4,926,880
Cost offset	Business	Community organisations	Individuals	Total by source
Agency	N/A*	N/A	N/A	N/A
Within portfolio	N/A	N/A	N/A	N/A
Outside portfolio	N/A	N/A	N/A	N/A
Total by sector	N/A	N/A	N/A	N/A
Proposal is cost neutral?	No			
Proposal is deregulatory?	Yes			
Balance of cost offsets	\$4,926,880			

\* Not applicable.

**Table 10: Average annual compliance costs of implementing Option 3**

<b>Costs</b>	<b>Business</b>	<b>Community organisations</b>	<b>Individuals</b>	<b>Total cost</b>
Total by sector	\$3,864,000	\$nil	\$nil	\$3,864,000
<b>Cost offset</b>	<b>Business</b>	<b>Community organisations</b>	<b>Individuals</b>	<b>Total by source</b>
Agency	N/A*	N/A	N/A	N/A
Within portfolio	N/A	N/A	N/A	N/A
Outside portfolio	N/A	N/A	N/A	N/A
Total by sector	N/A	N/A	N/A	N/A
Proposal is cost neutral?	No			
Proposal is deregulatory?	No			
Balance of cost imposition	\$3,864,000			

\* Not applicable.