

12 April 2013

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

Email: OTCD@asic.gov.au

The Australian Securities and Investments Commission's Consultation Paper 201 on Derivatives Trade Repositories

The International Swaps and Derivatives Association, Inc. (“**ISDA**”)¹ welcomes the opportunity to provide comments on the Australian Securities and Investments Commission’s (“**ASIC**”) consultation paper on Derivatives Trade Repositories (“**Consultation Paper**”) released on 15 March 2013.

ISDA is actively engaged with providing input on regulatory proposals in the United States (“**US**”), Canada, the European Union (“**EU**”) and in Asia. Our response to the Consultation Paper is derived from these efforts and from consultation with ISDA members operating in Australia and Asia. Our response is drawn from this experience and dialogue. Individual members will have their own views on different aspects of the Consultation Paper, and may provide their comments to ASIC independently.

ISDA commends ASIC for aligning of the Australian regime with the Committee on Payments and Settlement Systems (“**CPSS**”) and the Technical Committee of the International Organization of Securities Commission (“**IOSCO**”) Principles for Financial Market Infrastructures (“**FMI**s”) (the “**Principles**”) ², the CPSS-IOSCO Disclosure Framework and Assessment Methodology (the “**Disclosure framework**”), the draft CPSS-IOSCO guidelines on access rights for regulators as well as for its consultation with stakeholders. We support a licensing regime of an Australian derivative trade repository (“**ADTR**”) that is consistent with other international regimes.

We have no major issues relating to the Consultation Paper, except for the conditions that may be imposed on the ADTR licensee, the access rights to the data in a trade repository (“**TR**”) and publication of data. We believe greater granularity is needed for RG 000.40, which list the

¹ ISDA’s mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivative market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers. For more information, visit www.isda.org.

² Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Principles for Financial Market Infrastructures*, April 2012.

matters ASIC must take into account when deciding whether to grant an applicant an ADTR license³. It would be helpful if ASIC could provide further detail and clarity on what level of compliance with these matters would be required in order for ASIC to grant an ADTR license. This would enable an applicant to determine if it meets these mandatory conditions.

Response to specific questions

The remainder of this letter sets out our comments in relation to the specific questions posed in the Consultation Paper. Our response is set out underneath each question. The headings used below correspond to the headings used in the Consultation Paper. We have only responded to questions that pertain to the licensing regime of an ADTR and in which we have a concern or comment.

QUESTIONS

Question B1Q1: Do you agree with the scope of the required information and documentation, having regard to our responsibility to monitor, assess and enforce an ADTR licensee's compliance with the derivatives trade repository rules?

We have no major issues with the scope of required information.

In RG 000.60, ASIC may request independent verification by a suitable third party about any matter of a TR application and the applicant will need to bear the cost of supplying such verification. We believe this should be subject to a reasonable test, i.e., if a TR is regulated and has performed the necessary due diligence for its home regulator, ASIC may wish to consider exempting this foreign TR from a third party verification process.

Question B2Q1: Do you agree with our approach to imposing ADTR license conditions and the proposed areas in which conditions may be imposed?

In RG 000.48(e), one of the conditions that may be applied to an ADTR license would be the establishment of a domestic operational presence. If such a condition were to be applied, we request that sufficient time is given to the foreign TR to setup its domestic operations. In the interim, grandfathering should be allowed to enable firms to continue reporting to that particular TR. If the foreign trade repository regime is deemed comparable, the need for establishing a domestic operational presence in Australian may not be needed.

Most jurisdictions require financial institutions to report their trades to a TR as part of the G-20 commitments. As you are aware, if a financial firm is able to report to one TR for all its transactions globally, this would allow economies of scale, reduction in set-up costs in an

³ Australian Securities & Investments Commission, *Derivative Trade Repositories*, Attachment 2 to CP 201: Draft Regulatory Guide, Regulatory Guide 000, March 2013, Page 12.

environment of increasing regulatory compliance costs. Such a TR provides a necessary service to the industry and the license conditions should not discourage or prevent a TR from applying for a TR license, particularly for a foreign domiciled TR.

Question B2Q2: Do you believe there should be other considerations applied in relation to determining any financial resource conditions?

No comments.

Question B3Q1: Do you agree with our proposed approach to granting exemptions?

We commend ASIC for considering the regulatory costs and the benefits of a provision and the flexibility in granting an exemption in such instance.

Question B3Q2: What is the likely impact of our proposals? (Please see page 4 for the information required.)

No comments.

Question B4Q1: Do you agree with the approach to overseas trade repositories?

Yes, we commend ASIC for recognizing a foreign country's supervisory regime or a cooperative arrangement.

Question B4Q2: Do you consider that any particular option is more effective or efficient than the other, while still achieving the appropriate regulatory outcomes?

The proposed approach allows for flexibility in achieving the appropriate regulatory outcomes. In determining which approach it will take, ASIC should clearly state which areas of the foreign country's regime provides for adequate supervision and which areas do not and will be reliant on the Australian regime.

Question B4Q3: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C1Q1: Do you agree with draft Rule 2.2.1?

Yes, we agree with Rule 2.2.1. We believe the need for clear legal basis would be beneficial to users and indirect participants.

Question C1Q2: Do you agree with our examples of material aspects of an ADTR licensee’s activities, as set out in draft RG 000.163 – RG 000.164?

Yes we agree. The provision of access to the TR for regulators should align with the international standards to be provided by the CPSS-IOSCO guidelines on data access amongst regulators with regards to powers to access information contained in a TR for supervisory purposes.

Question C2Q1: Do you agree with draft Rule 2.2.2?

Yes, we agree with Rule 2.2.2.

Question C2Q2: What is the likely impact of our proposals? (Please see page 4 for the information required.)

No comments.

Question C3Q1: Do you agree with draft Rule 2.2.3 and the associated guidance in draft RG 000.165 – RG 000.167?

We agree.

Question C3Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C4Q1: Do you agree with draft Rule 2.3.1?

While the ADTR licensee must accept all data for all classes of derivatives from participants and be able to maintain a continuous, reliable and secure connection between the licensee and participants. It may not be possible for the ADTR licensee to ensure the data it receives is accurate and current as it would not have access to this information for verification process. The ADTR licensee must ensure it has received the complete data set and should ascertain that the data is not stale by performing a check against the data received the previous day. It would not

be possible for the ADTR licensee to verify the accuracy of the data as the ADTR would not be a party to the trade.

Question C4Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C5Q1: Do you agree with draft Rules 2.3.2 and 2.3.3?

Yes, we agree with draft Rules 2.3.2 and 2.3.3. The retention, use and disclosure of data should be clearly specified in the ADTR licensee's rules to protect the confidentiality of the data being stored as well as the access rights to this data.

Question C5Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C6Q1: Do you agree with draft Rules 2.3.4?

The data being requested should comply with the CPSS-IOSCO guidelines on data access by regulators, particularly, if the TR is domiciled in another jurisdiction. The access the Australian regulators have to the data in the TR should not be a blanket access rights and should be based on the function within these regulatory bodies that are requesting that data based on their purpose for requesting that data and the function they serve. As different departments within the Australian regulators focus on different aspects of the Australian economy, there should be a tiered access rights for these various groups. For example: the treasury/ investment arm of the Reserve Bank of Australia (“RBA”) should not have blanket access to the TR's data as it is a player in the Australian OTC market. There should be controls in place on the use or disclosure of the data by the Australian regulators to ensure no misuse of information and to protect the confidentiality of the data provided.

Question C6Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C7Q1: Do you agree with draft Rules 2.3.5?

We request that the statistical data to be provided by the ADTR is published on an aggregate level. The published data should not adversely affect or disadvantage any entities in a particular market, particularly, if that market is small, illiquid and the only a small number of entities participate in that market.

Question C7Q2: Should ADTR licensees be subject to post-trade transparency obligations at the individual transaction level, rather than only at the aggregate data level?

The data that is public should be on an aggregate level and not on a transactional level. This would protect financial institutions executing large trade sizes from revealing their position and reducing their competitive advantage in pricing.

Question C7Q3: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C8Q1: Do you agree with draft Rules 2.3.6 and the associated guidance in draft RG 000.168 – RG 000.169?

No comments.

Question C8Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C9Q1: Do you agree with draft Rules 2.4.1 and the associated guidance in draft RG 000.171?

No comments.

Question C9Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C10Q1: Do you agree with draft Rules 2.4.2 and the associated guidance in draft RG 000.172 – RG 000.176?

In order to protect the data in a TR, we agree for the need to identify and managing conflicts of interests within a TR.

Question C10Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C11Q1: Do you agree with draft Rules 2.4.3 and the associated guidance in draft RG 000.177 – RG 000.178?

We agree with this as the data should be protected to prevent misuse of the data by personal in the TR.

Question C11Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C12Q1: Do you agree with draft Rules 2.4.4 and the associated guidance in draft RG 000.179 – RG 000.187?

No comments.

Question C12Q2: Do you agree that we should consider ancillary services and the risks posed in the way proposed?

We believe the risk mitigation method proposed by ASIC is agreeable if the ancillary services provided by the ADTR will affect the performance of its reporting services or its compliance with any relevant rules, laws and regulations.

Question C12Q3: Do you agree that we should consider linked providers and the risks posed in the way proposed?

Linkages to other FMIs may be necessary, particularly, if the Australian reporting regime requires exchange traded products to be reportable. Due to the potentially short timeframe provided to meet these reporting obligations, Australian entities may need an ADTR to create

these linkages to other FMIs to meet their reporting obligations. While we support the need for an ADTR to carefully assess the additional operational risks related to a linked arrangement with another FMI and to ensure the scalability and reliability of information technology and related resources, we believe some flexibility should be provided in such an instance.

Question C12Q4: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C13Q1: Do you agree with draft Rules 2.4.5, 2.4.6 and 2.4.7, and the associated guidance in draft RG 000.188 – RG 000.192?

No comments.

Question C13Q2: Do you agree that the minimum financial resource requirements in draft Rule 2.4.7 are an adequate minimum?

No comments.

Question C13Q3: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C14Q1: Do you agree with draft Rules 2.4.8 and the associated guidance in draft RG 000.193 – RG 000.194?

As the data provided to the TR has commercial value if used incorrectly, it is of vital importance that the TR's system integrity and security is constantly monitored and upgraded to prevent any unauthorized access to, use and disclosure, of data.

Question C14Q2: Are there any other requirements regarding data integrity and security that should be imposed on ADTR licensees?

There should be an assessment of the TR's integrity and security systems on a frequent basis to prevent any unauthorized access of data being held in the TR.

Question C14Q3: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C15Q1: Do you agree with draft Rules 2.4.9, 2.4.10 and 2.4.11, and the associated guidance in draft RG 000.195 – RG 000.197?

Participants will need to continually report their trades because of the trade reporting mandate, hence, it is important to ensure the continuation of the TR in the event of a disruption. The secondary site should be subject to all the conditions of the primary site, i.e., it should be safe, secure and will protect the data that will be reported into the secondary site.

Question C15Q2: Are there any other requirements regarding data security and integrity that should be imposed on ADTR licensees?

No comments.

Question C15Q3: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C16Q1: Do you agree with draft Rule 2.4.12?

No comments.

Question C16Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C17Q1: Do you agree with draft Rule 2.4.13?

We agree with draft Rule 2.4.13.

Question C17Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C18Q1: Do you agree with draft Rules 2.5.1 and 2.5.2, and the associated guidance in draft RG 000.198?

We agree with draft Rules 2.5.1 and 2.5.2 as disclosure will enable participants to make an informed decision when selecting a TR.

Question C18Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C19Q1: Do you agree with draft Rules 2.6.1 and the associated guidance in draft RG 000.199 – RG 000.201?

We agree with draft Rule 2.6.1.

Question C19Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C21Q1: Do you agree with draft Rule 2.6.2?

We agree with draft Rule 2.6.2.

Question C21Q1: Do you agree with draft Rule 2.6.3?

No comments.

Question C21Q2: Are there any other requirements on control that ASIC should impose? For example, would prohibition on acquisition of more than a certain percentage of control in an entity that is not a trade repository (including trade repositories in other jurisdictions) be appropriate?

No comments.

Question C22Q1: Do you agree with draft Rule 2.6.4?

We agree to draft Rule 2.6.4.

Question C22Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

No comments.

Question C23Q1: Do you agree with draft Rules 2.7.1, 2.7.2 and 2.7.3?

No comments.

Question C23Q2: What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)


No comments.

Question C24Q1: What are your views on an appropriate maximum penalty amount for each of the draft derivatives trade repository rules?

No comments.

Yours sincerely,

For the International Swaps and Derivatives Association, Inc.


Keith Noyes
Regional Director, Asia Pacific


Cindy Leiw
Director of Policy