FSC FINANCIAL SERVICES COUNCIL

Monday, 1 September 2014

Mr Laurence White
Senior Manager, OTC Derivatives Reform
Financial Market Infrastructure
Australian Securities and Investments Commission

**By Email Only**: otcd@asic.gov.au
**Copy**: The Treasury, Mr Michael Lim

**Submission to ASIC Consultation Paper 221: *OTC derivatives reform: Proposed amendments to ASIC Derivative Transaction Rules (Reporting)***

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than $2.3 trillion on behalf of 11 million Australians.

Thank you for the opportunity to submit to ASIC Consultation Paper 221 *OTC derivatives reform: Proposed amendments to ASIC Derivative Transaction Rules (Reporting) 2013* (CP 221), and thank you for the extension to lodge our submission. As previously noted by FSC, we applaud ASIC for its engagement with the wealth management industry in relation to the OTC derivatives reforms.

FSC supports the reporting of OTC derivatives transactions and the objectives of the G20 OTC derivatives reforms. As ASIC is aware, FSC does not support the current two-sided reporting regime but supports a single sided- trade reporting regime (as in the US). In FSC's view, the two-sided reporting regime involves duplicated reporting and imposes considerable costs on Phase 3 entities, and duplication of costs given under single-sided reporting another entity reports, essentially, the same information. We acknowledge ASIC has set out its reasons for currently requiring two-sided reporting (in ASIC Report 357). **Appendix A** and **Appendix B** to this submission set out our arguments and some costings in support of ASIC refining the trade reporting regime so that it is a single-sided reporting regime. We have copied the Treasury in on this submission for information purposes and because we understand ASIC may be engaging with, and inputting to Treasury, on the trade reporting regime generally. We do not suggest or imply that ASIC or the Treasury has considered or made a decision on any possible refinements from the current two-sided reporting regime but we wish to ensure that both the Treasury and ASIC are aware of the views of the wealth management sector in relation to the current dual-sided reporting regime and the wealth management sector's advocacy for a single-sided reporting regime instead.

In relation to consultation on the trade reporting rules in CP 221, we wish to acknowledge and thank ASIC for engaging with the financial services industry (including the FSC) in relation to possible refinements to the trade reporting rules to assist with the transition to the reporting regime. We also welcome the approach of marking up the proposed changes.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163 | Level 24, 44 Market St Sydney NSW 2000 | T. +61 2 9299 3022 F. +61 2 9299 3198 | E. info@fsc.org.au W. fsc.org.au

We set out our comments on the proposals in CP 221 below. In some cases when we list ASIC's question (in CP 221) which we are responding to, we paraphrase ASIC's question for brevity.

## Detailed comments on Proposals in CP 221

### ASIC Proposal A1

***ASIC Question: A1Q1 Do you agree with our recommended option (Option 2)? If not, why not? (Option 2 relates to making specific amendments to the derivative transaction reporting rules.)***

1. Subject to our preference for a single-sided trade reporting regime, we support, in general terms, Option 2 except where otherwise indicated in this submission.

2. We do not support the requirement that foreign subsidiaries of Australian financial entities be required to report. It is our understanding that the EU/ESMA does not require foreign subsidiaries of European entities to report transactions. Further, for those jurisdictions which do extend some form of trade reporting to foreign subsidiaries, many do not require reporting on an unconditional basis – rather many jurisdictions only require reporting of the foreign subsidiary transactions where the parent explicitly guarantees the foreign subsidiary. Whereas ASIC proposes to require foreign subsidiaries of Australian financial entities to report transactions irrespective of the fact that they are a subsidiary (being a separate legal entity) without a contractually binding guarantee or other binding support being provided by the parent. Further detail is set out in our response to ASIC Proposal C *Reporting obligations for foreign subsidiaries of Australian financial* entities.

***ASIC Question: A1Q4 Do you think that we should adopt Option 1? Please give reasons for your answer. (Option 1 involves no change to the reporting rules)***

3. We do not support Option 1. See our comments above in support, in general terms, for Option 2.

***ASIC Question: A1Q5 Do you think that we should adopt Option 3? (Option 3 involves requiring all (not just some) foreign subsidiaries of Australian financial entities to report OTC derivative transactions. Please give reasons for your answer.***

4. We do not support Option 3. See our comments above in support, in general terms, for Option 2. However, we do not support the requirement that foreign subsidiaries of Australian financial entities be required to report. We note that the EU does not require this; and for those other jurisdictions that require reporting by foreign subsidiaries, this is often limited to foreign subsidiaries which are guaranteed or explicitly supported by the parent reporting entity.



YOUR FUTURE FIRST

Financial Services Council Ltd ABN 82 080 744 163 Level 24, 44 Market St Sydney NSW 2000 T. +61 2 9299 3022 F. +61 2 9299 3198 E. info@fsc.org.au W. fsc.org.au

***ASIC Question A1Q6 Are there any other options we should consider to meet our regulatory objective of minimising compliance costs while ensuring that trade data is comprehensive and complete?***

***Regime should be single-sided not two-sided***

5. Yes there are other options which should be considered to reduce compliance costs. The trade reporting regime should be a one-sided regime (as in the US) rather than a two-sided regime which involves duplication and disproportionate costs of compliance (compared to any incremental regulatory benefit) of the two-sided reporting regime.

6. We seek ASIC re-consideration of its decision to adopt a two-sided reporting regime for trade reporting. We acknowledge ASIC has set out previously its views for adopting a two-sided reporting regime. We think, based on the experience of the two-sided regime in Europe, some of the difficulties with the two-sided regime are becoming apparent, which may be avoided by adopting a single-sided regime. We acknowledge that the adoption of a single-sided regime would require an amendment to the Derivative Trade Reporting rules.

7. In **Appendix A** to this submission we set out detailed reasons for FSC's view that the trade reporting regime should be a single-sided, not a two-sided, reporting regime. Given that CP 221 is not consulting on whether the trade reporting regime should be single-sided or two-sided, and given that ASIC has previously consulted on the trade reporting regime (in CP 205) and set out its reasons for adopting a two-sided regime (in ASIC Report 357), we have included our reasons submitting for a change to a single-sided reporting regime, and some costing impacts of a two-sided regime, in **Appendix A** to this submission. The United States has a single-sided reporting regime. **Appendix B** contains a sample of high level costings from FSC members of the two-sided trade reporting regime. We have copied Treasury into this submission as we wish to ensure both ASIC and Treasury are aware of the views of the wealth management sector in support of a single-sided reporting regime.

8. Appendix A and Appendix B form part of this submission (and should be considered as such in response to ASIC's Question A1Q6) and **we request that ASIC and the Treasury consider amending the trade reporting regime from a two-sided regime to a single-sided regime**. We have copied Treasury on this submission. We refer to **Appendix A** and **Appendix B** for the reasons we seek ASIC re-consider its decision to adopt a two-sided reporting regime, including the high level indicative costs of a sample of FSC members, imposed on the wealth management sector by the two-sided regime, when ASIC could broadly access the same information (or essentially the same information) under a one-sided reporting regime. Parties to OTC transactions should be reconciling the transactions in any event. We request that ASIC, Treasury and industry hold a round-table to settle a form of one-sided reporting regime which meets any concerns ASIC may have with a one-sided reporting obligation (noting US have a one sided reporting obligation).

**FX derivatives for risk management purposes**

9. **FX derivatives for risk management purposes**) FSC understands that in the US, certain FX derivatives are not subject to transaction reporting. FSC requests consideration be given to



YOUR FUTURE FIRST

Financial Services Council Ltd ABN 82 080 744 163 Level 24, 44 Market St Sydney NSW 2000 T. +61 2 9299 3022 F. +61 2 9299 3198 E. info@fsc.org.au W. fsc.org.au

exempting from trade reporting FX derivatives used for risk management purposes, hedging or (see paragraph 10 below) the settlement of trades.

10. (**FX derivatives transactions related to foreign securities settlement or repatriation**) FSC understands that in the US, certain foreign exchange contracts are not subject to transaction reporting. FSC understands that European regulations are still to address this issue. FSC requests consideration be given to exempting from trade reporting, foreign exchange contracts greater than 3 business days where the transaction that is entered into is solely to effect the purchase or sale of a foreign security or to repatriate capital or income proceeds. This exemption from trade reporting for certain short term - in the nature of spot FX - transactions is requested in addition to an exemption for FX derivatives used for risk management purposes or hedging (see paragraph 9 above.)

11. FSC understands that Canada and the US exclude from the OTC transaction reporting requirements certain foreign exchange transactions related to securities settlements. FSC also understands that in Europe consideration (but no decision) is being given to excluding from trade reporting certain FX transactions concerning securities settlements.

12. **FSC submits that ASIC should amend the trade reporting rules to exclude FX derivatives used for risk management, hedging or to facilitate securities settlements**. FSC notes that other jurisdictions already exclude certain foreign exchange transactions from the trade reporting requirements and that others are considering doing so.

13. FSC also understands that Phase 1 and Phase 2 entities have applied for an exemption with ASIC to seek an exemption from trade reporting for certain FX transactions. FSC requests that on the assumption ASIC grants this exemption for Phase 1 and Phase 2 entities, that the same exemption be extended to Phase 3 (Phase 3A and Phase 3B) entities. Nonetheless, in addition to this exemption application, FSC requests ASIC exclude from trade reporting, on a permanent basis, FX derivatives used for risk management, hedging or to facilitate securities settlements.

**Snapshot reporting**

***ASIC Question B1Q1 Do you agree with this proposal (namely snapshot reporting)?***

14. Yes we support the alternative of snapshot reporting.

15. FSC members generally welcome ASIC Proposal B1 in CP221 to amend Rule 2.2.1 to allow reporting entities to meet their reporting obligations in relation to an OTC derivative by either lifecycle (i.e. intraday) reporting <u>or</u> snapshot (i.e. end of day) reporting as, overall, Phase 3 Reporting Entities are generally not large users of derivatives. The proposed amendment allows such entities flexibility in choice and use of systems for trade reporting as not all systems currently provide for life cycle reporting. It should also be noted that most asset managers, which form a large group within Phase 3, would usually hold the bought positions for longer than a day, and would not typically buy and sell the transaction in the same day. These Reporting Entities are more likely to be users of snapshot reporting.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

16. However, FSC members would like to seek clarity from ASIC as to how ASIC defines end of day reporting. For example, some FSC members regard a transaction as being open until settlement. Where a transaction is open and closed on the same day, with settlement occurring later (say T+1), how would ASIC classify this? Would settlement constitute another transaction to be reported?

17. FSC members also seek clarity from ASIC as to the purpose of the proposed exception set out at B1Q4. The proposed exception, if introduced into the Rules, would mean that Reporting Entities must report transactions on a lifecycle basis where they are open and closed leaving no net end of day position. Some of the larger Phase 3 Reporting Entities have indicated that their systems cannot support a positions driven approach currently and would therefore have to report all movements. Please also see our comments below from paragraph 20 (FSC members do not support an exception from the *alternative* of snapshot reporting for intra-day trades).

18. FSC members would also strongly prefer that the Rules be as consistent in approach as possible with those in place globally. In particular, the EMIR rules require the reporting of all relevant transactions but only on the basis of the final end of day position. This is especially significant for Phase 3 Reporting Entities that choose to delegate the reporting function to an agent (e.g. a European bank) which has systems set up to comply with the EMIR requirements. The proposed exception (if adopted by ASIC) set out at B1Q4 needs to take such issues of consistency into consideration. Nonetheless we do not support an exception from the *alternative* of snapshot reporting for intra-day trades (see paragraph 20 below).

19. In conclusion, FSC members welcome the proposal to have both types of reporting available as this gives Phase 3 Reporting Entities flexibility. It should avoid financial costs and resourcing issues of not having to buy/build a particular type of system. However, we seek clarity on interpretation and would call for consistency in the global approach to these issues.

***ASIC Question B1Q4 Do you support an exception to snapshot reporting being made for intraday trades?***

20. If by this question, ASIC is asking whether lifecycle reporting should be *required* for intraday trades, then no we do not support this proposal. If a trade is opened and closed intra-day, then the end of day "snapshot" would be a zero or nil position. To the extent ASIC is concerned about market manipulation matters, licensees are required to keep records of transactions (Section 988A Corporations Act 2001 (Cth)) and ASIC has notice powers to collect the information.

***ASIC Question B1Q5 Would you support a reversion to transaction-by-transaction reporting at some point in the future?***

21. No. We support snapshot reporting as an alternative. We do not support lifecycle transaction-by-transaction reporting as the sole manner of reporting (that is, we support retention of the *alternative* to report on a snapshot basis). If ASIC were to refine any decision on the Rules, this should be subject to consultation with reporting entities. However, we support snapshot reporting, and based on information known, we do not support a reversal of any decision to allow snapshot reporting.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

**Alternative reporting to prescribed trade repositories by foreign reporting entities**

***ASIC Proposal B2: ASIC propose to amend Rule 2.2.1(3) to allow foreign reporting entities that use alternative reporting under that rule to report to prescribed trade repositories in jurisdictions other than the jurisdiction in which the foreign reporting entity is incorporated or formed.***

***ASIC Question B2Q1 Do you agree with this proposal?***

22. Yes.

**"Tagging" of derivative trade data under alternative reporting**

***ASIC Proposal B3: We propose to amend Rule 2.2.1(3) to require foreign reporting entities that use alternative reporting under that rule to designate (or 'tag') the transactions as being reported under the derivative transaction rules (reporting)***

***ASIC Question B3Q1 Do you agree with this proposal?***

23. Yes, *provided* the prescribed repository facilitates tagging *and provided* the tagging requirement only applies in those jurisdictions where privacy or confidentiality laws do not prohibit tagging and where tagging would not result in a breach of contract because of the inability to obtain client consents. (Where consent is required and not provided this puts the reporting entity in an invidious position of tagging and breaching offshore law (e.g. offshore privacy law) or breaching a contract, or not tagging and breaching the Australian trade reporting requirements.)

***ASIC Question B3Q2 Do you anticipate any practical difficulties with implementing 'tagging'?***

24. Subject to the provisos set out in paragraph 23 above, we are not aware of any practical difficulties but tagging should only be required where the prescribed repository's systems can and do facilitate tagging and where to tag would not breach an offshore law or result in the reporting entity breaching a contract.

**Consistency of fields requested by ASIC versus fields required for alternative reporting**

25. We request ASIC align the fields that it requires to be reported to be consistent with the fields required by a prescribed repository for alternative reporting. We request that ASIC remove any fields it requires to be reported under the trade reporting rules, which are not required to be reported under alternative reporting to a prescribed trade repository. This will facilitate more efficient trade reporting where a reporting entity is reporting to a prescribed repository instead of to an Australian licenced repository.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

**Amended definition of 'regulated foreign market'**

***ASIC Proposal B4 ASIC propose to amend the definition of 'regulated foreign market' in Rule 1.2.4(3), and also in the proposed new Rule 1.2.4(2A), so that:***

***(a) 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'; and***

***(b) [ASIC] may determine that a foreign market, or a market within a particular class of foreign markets, is a 'regulated foreign market' where [ASIC] determine that the market is subject to regulation that is sufficiently equivalent to:***

> ***(i) a Pt 7.2A market under the Corporations Act; or***
> ***(ii) a market of a type described in proposal B4(a).***

***ASIC Question B4Q1 Do you agree with this proposal?***

***ASIC Question B4Q2 Are there any alternative proposals that may meet our regulatory objective of excluding exchange-traded derivatives from the derivative transaction reporting regime?***

26. The ASIC proposal to amend the definition of "regulated foreign market" will provide greater certainty to reporting entities by automatically including some classes of market as "regulated foreign market". It would be preferable if instead there was a definition to distinguish between exchange-traded, or exchange-traded like derivatives *on the one hand*, and over-the-counter derivatives *on the other*, with the later reportable and the former not reportable. The G20 OTC derivative reforms are only intended to capture OTC derivatives.

27. We believe that an amendment to Rule 1.2.4(3), and particularly to the definition of a 'regulated foreign market', is a welcome step in the right direction in ensuring that exchange traded derivatives are excluded from the reporting regime, and that the potential risks associated with a predetermined *list* of exempted exchanges that would change over time would be largely eliminated with ASIC's proposed amendment.

28. We consider that it would be even more useful to define what an exchange traded derivative is (albeit that is not a simple task) so that it may be excluded from the reporting regime altogether, rather than defining the exchanges on which these derivatives may be traded. Such a principles based definition of *exchange traded* could be used in addition to the prescriptive definition of 'regulated foreign market'. That is *exchange traded* would be any markets within the prescriptive ASIC definition (including a designated contract market in the US or a regulated market in the EU) as well as any markets falling within a principles based definition of *exchange traded* market (to be defined). Defining the excluded exchanges (per the ASIC proposal) still retains significant operational complexity, as there is the potential that such a definition will still not cover all foreign exchanges which are traded regularly by reporting entities, and consequently not all exchange traded derivatives would be exempt under ASIC's proposal, albeit ASIC's proposal is welcome and a significant improvement.



YOUR FUTURE FIRST

Financial Services Council Ltd ABN 82 080 744 163 | Level 24, 44 Market St Sydney NSW 2000 | T. +61 2 9299 3022 F. +61 2 9299 3198 | E. info@fsc.org.au W. fsc.org.au

29. We propose a definition for exchange traded derivatives, as distinct from OTC derivatives, be adopted by ASIC. A working definition which would of course need further consideration is:

    *Exchange Traded Derivatives are standardised derivative instruments that are traded over exchanges. The primary function of the exchange is to create rules, and centralise the communication of prices, information flows and clearing for the trading of such derivatives for all participants of the exchange. Exchange Traded Derivatives are distinct from Over The Counter (OTC) Derivatives because they are not bilaterally negotiated and traded*.

    If a principles based definition of *exchange traded* derivatives was to be used, we would suggest that such a definition be in addition to prescriptively stating (on an inclusive basis) that a designated contract market in the US or a regulated market in the EU would, for the avoidance of doubt, be treated as an exchange traded market under the trade reporting Rules.

30. To the extent a definition distinguishing OTC versus exchange traded definitions is not feasible in the short term, we are supportive of ASIC's proposal to amend the definition of regulated foreign market as set out in ASIC Proposal B4.

**Reporting to prescribed trade repositories**

***ASIC Proposal B5 – ASIC propose to amend Tables S1.1 and S1.2 in Schedule 1 to the derivative transaction rules (reporting) to require Australian reporting entities to report to a prescribed trade repository if a licensed trade repository in the relevant asset class is not available.***

***ASIC also propose consequential amendments to Rule 2.4.5 to require reporting entities to transfer, or 'port', their derivative transactions and positions to a licensed trade repository within six months from the licensing date.***

***ASIC question B5Q1 Do you agree with this proposal? If not, why not?***

31. We do not agree with ASIC Proposal B5. ASIC has asked for feedback on the proposal to make amendments to the Rules to require Reporting Entities to report to a Prescribed Repository if a Licensed Repository in the relevant asset class is not available, and then 'port' the relevant data to a Licensed Repository within six months from the licensing date. We understand that the purpose of this amendment is to ensure that the Rules can be complied with if it takes longer than expected for the first Australian derivative trade repository licence to be granted or if a Licensed Repository loses its Australian derivative trade repository licence.

32. In summary, given the implementation challenges and the additional costs that this amendment could incur, we do not consider it appropriate for the proposed amendment to apply to Phase 3 Reporting Entities, as they are in the process of setting up their systems and connections to a prospective Australian licenced trade repository. We maintain that Phase 3 Reporting Entities should only ever be required to start reporting when there is a trade repository licensed by ASIC.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

The risk of any delay by the licence applicant in meeting the requirements for an Australian TR licence is not a risk which should be "put on" to Phase 3 Reporting Entities. It is in the interests of the Australian TR licence applicant to work to obtain a licence and meet ASIC's requirements as soon as possible.

33. We consider that the most immediate effect of the amendment is to require Reporting Entities (including Phase 3 Reporting Entities) to bear the operational risks and costs of a Licensed Repository not being established in the near term. Such costs include connecting to the Prescribed Repository and then potentially having to transition to a Licensed Repository and 'port' its reported data accordingly. The unavailability of a Licensed Repository is not an issue which is able to be managed by, or controlled in any way by, the Reporting Entities. As such, imposing the consequential cost of this on the Reporting Entities (in particular the Phase 3 Reporting Entities, which are in the process of setting up its systems and connections to a trade repository) is, in our view, inappropriate.

34. We are aware that ASIC Class Order (CO 14/633) also requires Phase 3 Reporting Entities to report to a Prescribed Repository if there is no Licensed Repository available at the time it is required to start reporting under the extended timeframes (although no porting requirement applies). We request that this condition also be amended to only require Phase 3 Reporting Entities to start reporting when there is a trade repository licensed by ASIC.

**ABNs as entity identifiers**

***ASIC proposal B6: We propose to amend the tables in Schedule 2 to the derivative transaction rules (reporting) to remove Australian Business Numbers (ABNs) from the hierarchy of entity identifiers that reporting entities must report to trade repositories.***

***ASIC B6Q1 Do you agree with our proposal? If not, why not?***

35. Yes, we support the removal of the ABN field.

36. As set out in paragraph 25 above, we also request ASIC align the fields that it requires to be reported to be consistent with the fields required by a prescribed repository for alternative reporting. We request that ASIC remove any fields it requires to be reported under the trade reporting rules, which are not required to be reported under alternative reporting to a prescribed trade repository. This will facilitate more efficient trade reporting where a reporting entity is reporting to a prescribed repository instead of to an Australian licenced repository.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

**Reporting obligations for foreign subsidiaries of Australian financial entities**

***ASIC Proposal C1: We propose to amend Table S1.1 in Schedule 1 to the derivative transaction rules (reporting) to require transactions to be reported from 1 October 2015 for all interest rate and credit derivatives, and from 1 April 2016 for all other classes of derivatives, if the reporting entity:***

***(a) is a foreign subsidiary of an Australian ADI or AFS licensee;***

***(b) as at 30 June 2015, holds—either on its own or in combination with other foreign subsidiaries of the ADI or AFS licensee where these subsidiaries are incorporated or formed in the same jurisdiction—total gross notional outstanding OTC derivative positions of $5 billion or more; and***

***(c) is not required to report under Phase 1, 2, or 3.***

***We also propose to amend Table S1.2 in Schedule 1 to require these reporting entities to 'backload' their outstanding positions within six months from the transaction reporting date (i.e. by 1 April 2016 for all interest rate and credit derivatives, and by 1 October 2016 for all other classes of derivatives).***

37. FSC's response to ASIC Proposal C1 is set out in the table below, and the paragraphs following the table.

| ***Financial foreign subsidiary reporting*** | |
|---|---|
| **ASIC Question/Proposal** | **FSC response** |
| *C1Q1*<br><br>*Do you agree with our proposal?*<br><br>*If not, why not?* | The FSC does not agree with this proposal, for the following reasons:<br><br>• The Proposal represents an extra-territorial reach that is not consistent with the major foreign regulatory regimes. In particular, we note that the EU regulations do not cover subsidiaries as a consequence of any affiliation or shareholding and that the CFTC regulations only require subsidiaries to report where the parent provides explicit support for the obligations of the subsidiary. Whilst other jurisdictions may be proposing a broader extra-territorial reach, we believe consistency with the EU and US regulations to be of primary importance; and<br><br>• The Proposal will impose significant and ongoing costs on both reporting entities and the regulators. Whilst the proposed threshold will reduce this impact to some extent, we note that determining if reporting is required will be a significant burden in any case. |



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022
F. +61 2 9299 3198
E. info@fsc.org.au
W. fsc.org.au

| ***Financial foreign subsidiary reporting*** | |
|---|---|
| **ASIC Question/Proposal** | **FSC response** |
| *C1Q2*<br>*Is the proposed threshold of $5 billion appropriate?*<br>*If not, what threshold or trigger would be more appropriate?* | Given the above, the FSC believes (should the proposal be implemented) that a higher threshold should be applied. We would propose an initial threshold of $20 billion that could later be reduced (to say $10 billion and then $5 billion) should that be considered necessary. Such phasing would allow ASIC to better assess the benefits of the reporting and for reporting entities to have more time to implement the reporting whilst still capturing the most material exposures.<br>We would further propose that OTC derivative positions that are held for hedging purposes are excluded from the calculation of the threshold on the basis that such positions in fact represent risk reduction and should not be the primary concern of ASIC. |
| *C1Q3*<br>*If a foreign subsidiary starts (or ceases) to hold $5 billion in gross notional outstanding OTC derivative positions, should the foreign subsidiary be required to start (or be permitted to cease) reporting transactions?*<br>*If not, why not?* | The FSC supports a periodic assessment of the threshold, but believes that this should be done with low frequency to ease the burden of the costs associated with making this assessment. We would propose that the threshold be assessed on, at most, an annual basis, with reporting entities having the option of making the assessment on a more frequent basis. |
| *C1Q4*<br>*Is the proposed timeframe for implementing reporting obligations for foreign subsidiaries of Australian entities appropriate?*<br>*If not, what timeframe would be more appropriate?* | The FSC believes, should the proposal be introduced, that the timeframe should be pushed back by at least one year. We are concerned that the initial implementation date of 1 October 2015 overlaps with reporting obligations commencing for Phase 3B entities. We believe this will present a considerable and unnecessary burden for ASIC, trade repositories and Australian ADIs and AFS licensees that have both funds management operations and foreign subsidiaries. |



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

38. As set out above, FSC does not support the requirement that foreign subsidiaries of Australian financial entities be required to report. It is our understanding that the EU/ESMA does not require foreign subsidiaries to report transactions. Further, it is our understanding that in those jurisdictions where reporting by foreign subsidiaries is required, the scope of the foreign subsidiaries required to report is considerably narrower than what is proposed by ASIC. For example, ASIC proposes to require foreign subsidiaries of Australian financial entities to report transactions irrespective of the fact that they are a subsidiary (being a separate legal entity) without a contractually binding guarantee being provided by the parent. This can be compared with what we understand to be the approach (set out in the table below) of the following jurisdictions in relation whether, and if so, when, reporting is required of transactions undertaken by foreign subsidiaries of financial entities resident in the jurisdiction:

| **Jurisdiction** | **Is reporting required/extended to foreign subsidiaries of financial entities resident in the Jurisdiction?** |
|---|---|
| Australia | Yes, where the subsidiary or subsidiaries in the foreign jurisdiction hold in aggregate total gross notional outstanding OTC derivative positions of $5 billion of more. *ASIC applies this even though the subsidiary is a separate legal entity which is not subject to a guarantee or other form of legally binding explicit support by the parent Australian financial institution*. |
| EU | **No** |
| Japan | **No** |
| US | Yes *but only where explicit support is provided to the foreign subsidiary* |
| Canada | Yes, *but only if the liabilities of the foreign subsidiary are guaranteed* |
| Hong Kong | Yes, *but reporting of the foreign subsidiary transactions is only required on an exceptions basis*. |
| Singapore | Yes (however we observe that it is likely that the application to foreign subsidiaries may have less impact to Singapore banks than the application of ASIC's requirements, given the limited number of Singapore banks). |

39. Based on the table immediately above jurisdiction comparison, ASIC's Proposal to require reporting by foreign subsidiaries of Australian financial entities is inconsistent with other major markets and more extensive than most markets which extend reporting to foreign subsidiaries (in that ASIC requires reporting over the threshold for all foreign subsidiaries, whereas other jurisdictions only require foreign subsidiary reporting where there is a parent guarantee).



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

**A “safe harbour” for delegated reporting**

***ASIC Proposal D1: [ASIC] propose to amend Rules 2.2.6 and 2.2.7 in relation to delegated reporting to provide a ‘safe harbour’ from enforcement action if certain conditions are met—that is, a reporting entity is not responsible for a breach of the relevant rules for a reportable transaction or reportable position, provided that the reporting entity delegates the reporting obligation to another entity (the ‘delegate’), and:***

***(a)*** ***the terms of the delegate’s appointment and any related agreements or arrangements are documented in writing;***

***(b)*** ***the appointment, agreements and arrangements between the reporting entity and the delegate provide that the delegate will:***

> ***(i)*** ***report on behalf of the reporting entity in relation to the reportable transactions and reportable positions in accordance with Rules 2.2.1 to 2.2.5; and***
>
> ***(ii)*** ***take all reasonable steps to ensure that the information, and any changes to the information, reported on behalf of the reporting entity under Rules 2.2.1(1) and 2.2.2(1) in relation to the reportable transactions and reportable positions is and remains complete, accurate and up-to-date; and***

***(c)*** ***the reporting entity makes regular inquiries that are reasonably designed to determine whether the delegate is discharging its obligations under the terms of its appointment.***

***ASIC Question D1Q1*** ***Do you agree with this proposal? If not, why not?***

40. Before setting out our comments in relation to Proposal D1, we reiterate our members strong preference for a one-sided reporting regime applied to Phase 3 entities.

41. While not a substitute for one-sided reporting, we believe the introduction of a ‘safe harbour’ from enforcement action if certain conditions are met would encourage the use of delegated reporting.

42. While delegated reporting models (such as counterparty delegation and third party delegation) and the associated contractual agreements and arrangements are developing (and will continue to develop), it seems unlikely that any *delegate* would accept an obligation to take all reasonable steps to *ensure* that information (and any changes to information) reported on behalf of a Reporting Entity is and remains at all times complete, accurate and current.

43. To varying degrees, all *delegates* will be reliant to some extent upon the Reporting Entity to provide certain information in order to satisfy reporting obligations (in the case of third party delegates (that is, where the delegate is not the counterparty), the delegate may be entirely reliant on the information provided by the reporting entity). Where the *delegate* is the counterparty though,



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

these issues largely fall away (as the counterparty essentially has the same information as the other reporting entity would have to report) – hence another reason why two-sided reporting is duplicative and single-sided reporting is advocated for by FSC members.)

44. We expect delegates may be concerned about what type of action would be necessary to constitute "all reasonable steps" in those circumstances. While delegates may agree to submit data to the relevant trade repository by the relevant reporting deadline with reasonable care, the proposed amendments to Rule 2.2.7(1)(b)(i) and Rule 2.2.7(2)(b)(ii) impose an obligation upon *delegates* which may prove a disincentive to providing delegated reporting services where the delegate is not the counterparty. As a consequence, it may prove difficult for our members (as reporting entities) to negotiate and agree appointments, agreements and/or arrangements with a delegate (which is not a counterparty) which meet the requirements of Rule 2.2.7(2)(b)(ii) in order for the reporting entity to avail themselves of the 'safe harbour'.

45. An alternative to the ASIC Proposal in D1 which we think is more likely to be palatable to delegates is that the 'safe harbour' applies where the following conditions are met:

    (a) The terms of the delegate's appointment and any related agreements or arrangements are documented in writing; and

    (b) The *reporting entity* exercises reasonable care in the *selection* of a delegate in relation to the reporting by the delegate on behalf of the reporting entity of reportable transactions and reportable positions in accordance with Rules 2.2.1 to 2.2.5 to the extent such reporting is delegated by the reporting entity to the delegate; and

    (c) The *reporting entity* exercises reasonable care in *monitoring* the delegate with a view to determining whether the delegate is discharging its obligations under the terms of the appointment.

    The safe harbour from enforcement action for breach of the trade reporting rules should apply so long as the reporting entity has appointed the delegate in writing and exercised reasonable care in the selection and monitoring of the delegate. "Reasonable care" would be judged having regard to what would be expected of a reasonable reporting entity having regard to market practice. We note existing AFS licensee obligations under section 912A and ASIC RG 104 may well provide some guidance in that respect. In FSC's view, given that the form of delegation agreements and arrangements are still developing, we do not believe ASIC should provide any more prescription on the terms of any such appointment, agreement or arrangement which would take the benefit of the safe harbour.

46. We also believe the drafting of Rule 2.2.7(2) should take into account the fact that a Reporting Entity may appoint multiple Delegates and that the appointment of a Delegate will only constitute compliance with Rules 2.2.1 to 2.2.6 in relation to those Reportable Transactions and Reportable Positions which the Delegate has agreed to report on behalf of the Reporting Entity. We note that it is highly likely that a Reporting Entity which decides to delegate reporting, will need to undertake multiple delegations. For example, in the case of one FSC Member, there may be in the region of 25 individual delegations required.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

***ASIC Question D1Q2 Do you consider that this proposal will encourage the use of delegated reporting? If not, why not?***

47. We believe a 'safe harbour' in the amended form proposed by the FSC in paragraph 45 should encourage the use of delegated reporting compared to the current rules. In our view, prospective delegates would be unlikely to agree to the form of conditions set out in ASIC's proposed form of 'safe harbour' particularly the ASIC condition that the *delegate ensure* accurate reporting. FSC's suggested form of safe harbour is more likely to assist in a potential delegate being willing to accept a delegation from a reporting entity.

***ASIC Question D1Q3 Will a 'safe harbour' for delegated reporting reduce your costs of implementing transaction reporting? If so, please provide details.***

48. A 'safe harbour' for delegated reporting is expected to reduce members costs of implementing transaction reporting as compared to the potential cost of building a system to carry out reporting. However, there are limits to any cost reductions in two-sided reporting (compared to single-sided reporting). Two-sided reporting, even with delegation, does impose significant costs on wealth management reporting entities and we consider one-sided reporting by the sell-side/Phase 1/Phase 2 entities (with tie-breaker rules as in the US) is preferred.

49. The Safe Harbour will only reduce costs in a meaningful amount if reporting is accepted by all delegates. If a reporting entity (which chooses to do so) is not able to delegate all reporting (to one or more delegates), then the reporting entity will be in a situation of:

    (a) only being in a position to delegate to those organisations which agree to act as delegate;

    (b) and where a reporting entity is not able to delegate (because the potential delegate is not wiling or able to accept the delegation) the reporting entity will need to nonetheless undertake a significant system build (for significant costs) for the reporting entity to undertake reporting itself. Further, two-sided reporting will regardless of delegation give rise to significant costs in relation to reconciliations. We refer ASIC to **Appendix A** and **Appendix B** of this submission in relation to arguments and costings in support of a single-sided reporting regime for Phase 3 entities.

***ASIC Question D1Q4 Are there any other proposals that may meet our regulatory objective of encouraging the use of delegated reporting? If so, please provide details.***

50. Please see our response to ASIC Question D1Q1 above.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

Thank you for the opportunity to make this submission. If you have any questions on our submission, please contact Stephen Judge on (02) 9299 3022.

Yours sincerely

**STEPHEN JUDGE**
**General Counsel**



YOUR
FUTURE
FIRST

Financial Services Council Ltd
ABN 82 080 744 163
Level 24, 44 Market St
Sydney NSW 2000
T. +61 2 9299 3022
F. +61 2 9299 3198
E. info@fsc.org.au
W. fsc.org.au

***This Appendix forms part of FSC's response to ASIC Consultation Paper 221, specifically ASIC question A1Q6 asking for any other options ASIC should consider to meet its regulatory objective of minimising compliance costs while ensuring that trade data is comprehensive and complete***

## Arguments (and costings) in support of one-sided reporting regime for Phase 3 entities

1. We acknowledge ASIC has set out previously its views for adopting a two-sided reporting regime. We think, based on the experience of the two-sided regime in Europe, some of the difficulties with the two-sided regime are becoming apparent, which may be avoided by adopting a single-sided regime. We acknowledge that the adoption of a single-sided regime would require an amendment to the Derivative Trade Reporting rules, however for the reasons below we consider that consideration should be given to adopting a single-sided trade reporting regime.

2. **Appendix B** sets out some indicative cost estimates sourced from some FSC members in relation to the trade reporting regime.

3. We acknowledge that ASIC has consulted on the derivative trade reporting requirements (ASIC Consultation Paper 205). However, as the regime is new, we think that an ongoing review and refinement of the trade reporting regime is needed to ensure that any mandated requirement is not disproportionate to the costs or implications of trade reporting recognising the need to capture information of significance in relation to systemic risks.

### Difficulties evident overseas with two-sided reporting

4. We believe that there have been difficulties apparent with two-sided reporting under EMIR, and we note that the US CFTC adopts single-side reporting. We think there should be re-consideration of ASIC's decision to require two-sided reporting and consideration of the extent of AFSL entities captured by derivatives trade reporting. References to a ***non-dealer Phase 3 AFS Licensee*** means a Phase 3 Entity which is not an ADI.

5. We note that a large percentage of the volume of OTC derivatives trading executed by non-dealer Phase 3 AFS Licensees would be done with Phase 1 or Phase 2 entities (rather than with other Phase 3 entities) on the other side of the transaction. These Phase 1 or Phase 2 entities are required to report their side of these transactions in accordance with the Reporting Rules.[1]

6. There are unresolved practical difficulties under the European reporting regime (a key jurisdiction where two-sided reporting is implemented) in matching the data relating to the two sides of the same transaction. In our view, these difficulties compromise the regulatory objective of obtaining improved transparency of OTC derivatives trading in the market. We acknowledge the benefits ASIC wishes to obtain from having a two-sided reporting regime.[2] However, given the European

---

[1] As a consequence, we do not consider that the regulators would have any substantially less information on systemically important derivative trading in the Australian market.

[2] See ASIC Report 357, 'Response to submissions on CP 205 Derivative transaction reporting', July 2013 at [56].



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

experience to date, it appears that the Australian regulators can only expect to obtain very limited incremental benefit (if any at all) from a two-sided reporting requirement compared to the significant additional costs of two-sided reporting. We note that there is no standard practice for having two-sided reporting (for instance, the US reporting regime requires only one-sided reporting).

7. Given the lack of utility we expect regulators to derive from receiving reporting data from non-dealer Phase 3 AFS Licensees, it is our view that the compliance burden that would be imposed on non-dealer Phase 3 AFS Licensees in respect of the Reporting Rules would greatly outweigh any regulatory benefit which might be gained by regulators in compelling such entities to comply with the Reporting Rules. Accordingly, we request that ASIC change the trade reporting regime to a single-sided reporting regime, with the waterfall rules for determining which party must report the OTC transaction, being determined largely in accordance with the rules adopted by the US CTFC.

8. While the waterfall reporting rules for a single-sided regime would need further consideration, a possible waterfall reporting regime, for a single-sided regime could be as set out in the table below, so far as it impacts on a Phase 3 Reporting Entity. The table below is a high-level proposal only and FSC would be willing to engage further with ASIC to develop a more detailed proposal in relation to waterfall reporting rules for a single-sided reporting regime.

| **Waterfall reporting rules for a single-sided trade reporting regime** | | |
|---|---|---|
| **Counterparty 1** | **Counterparty 2** | **Who reports?** |
| Phase 1 or Phase 2 Reporting Entity | Phase 3 Reporting Entity | Counterparty 1 |
| Phase 3 Reporting Entity | Phase 3 Reporting Entity | Tie-breaker rules required:<br><br>(A): if one Phase 3 Entity is an ADI, and the other Phase 3 Entity is not an ADI, then the ADI must report;<br><br>(B): if both Phase 3 Entities are not an ADI, then the "price maker" (perhaps analogous to the "Calculation Agent" under ISDA agreements) to the transaction should have the obligation to report. (This obligation can be met via 'tagging' the transaction to ASIC if reported by the "price maker" under alternative foreign regulations.)<br><br>*(The reality is, other than intra-group transactions, there is unlikely to be a significant level of OTC transaction activity between two Phase 3 Reporting Entities neither of which are an ADI.)* |



YOUR FUTURE FIRST

Financial Services Council Ltd ABN 82 080 744 163 Level 24, 44 Market St Sydney NSW 2000 T. +61 2 9299 3022 F. +61 2 9299 3198 E. info@fsc.org.au W. fsc.org.au

The table above is a high level initial indication of how the waterfall may work for a single-sided reporting regime as it relates to Phase 3 Entities, and FSC would need the opportunity to consider the waterfall provisions in more detail if ASIC were minded to adopt single-sided reporting supported by the FSC.

9. The two-sided reporting regime will result in substantial time and resources being expended for the provision of trade reporting that is likely to be of little incremental value to regulators in assessing broader systemic risks. This is particularly given that single-sided reporting should be sufficient to capture the substantial majority of OTC transaction activity.

10. Single-sided reporting is supported for the following reasons:

    (a) non-dealer Phase 3 AFS Licensees are generally end-user purchasers of derivatives and do not make markets in derivatives.

    (b) non-dealer Phase 3 AFS Licensees trade with derivatives dealers who will already be reporting the trades and the addition of a tagging requirement to ASIC for foreign derivative dealers dealing with Phase 3 participants would be sufficient to capture the substantial majority of OTC transactions which might otherwise not be captured.

    (c) Any non-dealer AFS Licensees with *material* derivative exposures will already be reporting as Phase 2 entities.

    (d) If end users are permanently exempted from trade reporting, the perceived incremental benefits of two-sided reporting over one-sided reporting will be greatly diminished and this further supports the need for the efficient *single-sided* reporting (by Phase 1 and Phase 2 entities) instead of costly and duplicative *two-sided* reporting.

    (e) To the extent that non-dealer Phase 3 AFS Licensees delegate reporting to derivatives dealers, only one counterparty will be actively reporting (even though the non-dealer Phase 3 AFS Licensees will still be responsible for the data reported on its behalf). Preliminary discussions with FSC members indicate that a number of FSC members are considering delegating trade reporting to the counterparty to the transaction or to another third party (such as potentially delegating to investment managers, administration service providers, custodians, brokers or other third party service providers) and as such, any potential benefits of two-sided trade reporting are likely to be minimal.

    (f) If a non-dealer Phase 3 AFS Licensee does not delegate its reporting obligations, there are likely to be substantial costs associated with reporting to a trade repository, including the substantial investment involved in building the computing infrastructure capability to enable the non-dealer Phase 3 AFS Licensee to source, capture and collate the data and connect to the reporting repository. **Appendix A** sets out some indicative costs for some FSC members of trade reporting.

    (g) Whilst some non-dealer Phase 3 AFS Licensees may seek to delegate their trade reporting obligations to third parties, this will also involve considerable costs. The delegation



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

arrangements that will need to be put in place for this purpose will involve significant challenges for the industry. The agreed delegation arrangements will need to be negotiated, potentially across a number of third parties (such as investment managers, administration service providers, custodians, brokers or other third party service providers), and it is likely that some data will need to be provided to multiple third parties in any case and that collation arrangements will need to be co-ordinated (such as for example in relation to position reporting).

(h) The additional costs associated with trade reporting are likely to be significant and may be passed on to clients and investors or inhibit new investment activities being established in Australia. Alternatively, the trade reporting obligations might, for some users, disincentivise the use of OTC derivatives to hedge the interest rate or other risks in connection with the investment of client funds if the costs of building and connecting for trade reporting are considered significant. Significant operational and infrastructural compliance costs (both monetary, and from an opportunity cost perspective) are incurred in requiring non-dealer Phase 3 AFS Licensees to trade report when Phase 1 and Phase 2 entities (essentially the sell-side/market maker/Dealer) are already reporting the same transaction.

(i) Applying a single sided reporting regime as it applies to non-dealer Phase 3 AFS Licensees will reduce costs and increase value by ensuring more consistent reporting from derivative dealers, who are already subject to reporting obligations and so have the required data, systems and processes in place.

(j) This would create greater consistency with the US CFTC reporting regulations, which only require one-sided reporting. We observe that the two-sided reporting implemented in the EU has been problematic and we expect that there may be the prospect of a shift to single-sided reporting in other jurisdictions.

11. ASIC will still obtain a view of derivatives transactions in the market under one-sided reporting to enable it to meet its G20 commitments. ASIC's RG 251 (*Derivative transaction reporting*) at 251.3 indicates that the objectives of the derivatives reforms called for by the G20 following the global financial crisis, are to: (a) enhance the transparency of derivative transaction information available to relevant authorities and the public; (b) promote financial stability; and (c) support the detection and prevention of market abuse.

12. One-sided reporting, as implemented successfully in the U.S. under Dodd Frank, will provide ASIC with price and volume transparency of derivatives transactions in the market. ASIC will still receive under one-sided reporting, the vast collection of prescribed data including the counterparty to the trade and detailed information of the transaction, as set out in ASIC's derivatives reporting rules.

13. On this basis it is difficult to see why two-sided reporting by non-dealer Phase 3 AFS Licensees, which will cause a significant increase in regulatory and administrative burden, and a significant financial burden, is necessary from a net regulatory benefit perspective.

14. Additionally, from an EMIR perspective, the FSC has been informed that trade repositories have reported that since EMIR reporting has commenced this year, missing trades and identifiers mean



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

that a large percentage of derivatives trades reported under EMIR cannot be matched definitively. It appears then, based on the EMIR experience as reported to FSC, that two-sided reporting appears to have confused and not enhanced the expected transparency of the derivatives reporting regime in the EU.

15. **In summary, we believe that there are strong reasons for adopting a single-sided reporting regime and that achieving the G20 commitment to transparency can be achieved by single-sided reporting by significant dealers in derivatives (namely Phase 1 and Phase 2 entities).** This result would be consistent with the Government's stated objectives of reducing red tape to decrease the cost of doing business in Australia and not undermine Australia's commitment to the G-20.

16. We believe that one-sided reporting would be appropriate (and for the reporting to be completed by the sell-side). Again, this would be consistent with the US reporting requirements (although noting that the European regulations require two-sided reporting). Two-sided reporting leads to the unnecessary duplication of reporting for OTC derivatives transactions and also imposes mandatory trade reporting on a significantly greater number of entities. The costs of implementation are likely to be significant for each entity, and as a result, the initial and ongoing compliance costs that will be imposed on the wealth management industry as a whole will be far greater than if one-sided reporting obligations were to be introduced as is the case in the United States. In terms of which party should be required to report, in the buy-side context, if an ADI, bank or swap dealer is involved in the trade (a "**Dealer**"), we consider the Dealer to be the most appropriate counterparty to report. Dealers are better positioned to undertake the reporting and many will likely have to build far less additional infrastructure to comply with the obligation compared with buy-side firms (such as FSC's members).

**Some of the difficulties of the two-sided reporting regime under EMIR**

17. Two-sided reporting as required under EMIR aims to increase the accuracy of the information held by a Trade Repository (**TR**) and to ensure omissions and errors from one counterparty submission are highlighted and rapidly corrected. However, FSC has been informed that the experience of many market participants, is that the requirement has actually had the opposite effect in Europe. Matching rates for two-sided reported trades are reported as being low. FSC has been informed that matching rates across TRs (where counterparties to the same trade have reported to separate TRs) are even lower and are unlikely to improve significantly for some time to come. Reconciliation of accounts data is often difficult due to the noise created by the level of miss-matches, and in many cases TRs have been unable to provide the reports required for market participants to carry out reconciliations designed to ensure the accuracy of the information. The result of this is that material reporting errors may not be being picked up in a timely manner or may face lengthy periods of time to correct.

18. End users, who are ultimately responsible and liable for the accuracy of the data submitted but who in most cases delegate this to their investment manager, broker, custodian or administrator, are rightfully concerned about their compliance with the EMIR trade reporting regulation, but have little or no way of substantiating claims that their requirements are being met.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

19. In contrast, the US single sided reporting requirements under Dodd Frank has been implemented relatively seamlessly by the market and is providing accurate and timely information to the regulators.

20. Some of the main reasons for the difficulties encountered under two-sided reporting in Europe include:

    (a) UTI Generation: Two-sided reporting, where both counterparties have to generate a single UTI as close to trade execution as possible, introduces complexity and timing problems into the process. There is a lack of agreement across the market around who should generate a UTI. Most dealers are generating the UTI themselves but in some cases middle-ware providers such as affirmation platforms, will also generate the UTI and other (buy-side) market participants may also need to generate the UTI themselves where a counterparty will not or cannot facilitate its creation. Use of a UTI is also proving extremely problematic for many market participants. It seems likely then that many trades are being reported with different UTIs which will need to be amended by one party or the other at some point in the future before they match.

    (b) Delegation: Many buy-side market participants have opted to delegate reporting responsibility to a counterparty or third party. However, sell-side counterparties do not have a consistent support model for this delegation. Some offer delegated reporting only for specific asset classes whilst others are prepared to report across the spectrum. This means many market participants are forced to adopt a split model, delegating where they can and reporting themselves where they cannot. This adds material cost and uncertainty to many market participants ability to adhere to their requirements and limits their use of trading counterparties according to their ability to support the required delegated level of service and potentially increases counterparty concentration risk.

21. In light of these difficulties and the continuing problems experienced with the EMIR two-sided reporting requirements, we believe single sided reporting offers a more streamlined, efficient, accurate and cost effective method of regulatory oversight. Further, two-sided reporting is duplicative and imposes additional costs on industry compared to single-sided reporting. ASIC would be able to obtain the necessary information to meet G20 commitments via single-sided reporting.

**Cost impacts on Australian entities of two-sided reporting**

22. **Appendix B** sets out cost impacts of two-sided reporting on some FSC members. For some FSC members (based on a limited sample) the implementation costs of two-sided trade reporting are in the millions of dollars. It is possible that the high level cost estimates under-estimate the costings as members have not had sufficient time to fully cost out the implementation of the trade reporting requirements.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

**Appendix B – Cost impacts of reporting (obtained May/June 2014)– sample from 9 FSC Members. The members are of varying size hence the variations in estimates.**

| **Implementation costs** | **FSC Member 1#** | **FSC Member 2** | **FSC Member 3** | **FSC Member 4** | **FSC Member 5** |
|---|---|---|---|---|---|
| Staff | $600,000 | $95,000 | $300,000 | $250,000 | $100,000 |
| IT | $1,800,000 | $300,000 | | $400,000 | $75,000 |
| Costs of connection to a licenced trade repository (where not captured by any other costs above) | $260,000 | | | To be determined | |
| Other (e.g. external costs - legal, IT, printing etc.) | $50,000 | $75,000 | | | $150,000 (includes implementation costs not included above) |
| **Total Implementation Costs** | **$2,710,000** | **$470,000** | **$300,000** | **$650,000** | **$325,000** |
| | | | | | |
| **Ongoing costs** (estimate for first year of operation) | **FSC Member 1#** | **FSC Member 2** | **FSC Member 3** | **FSC Member 4** | **FSC Member 5** |
| Staff | $400k | $95,000 | $50,000 | $250k | $100,000 |
| IT | $96k | $20,000 | | $100k | $25,000 |
| Data Repository fees | Exceeding $200k | $90,000 | $10,000 | TBA | |
| Other (e.g. external costs - legal, IT, printing etc.) | | $5,000 | | | |
| **Total ongoing (annual) costs** | **$696,000 p.a.** | **$210,000 p.a.** | **$60,000 p.a.** | **$350,000 p.a.** | **$125,000 p.a.** |

**#Member 1: does not include all external manager costs.**



YOUR
FUTURE
FIRST

Financial Services Council Ltd
ABN 82 080 744 163
Level 24, 44 Market St
Sydney NSW 2000
T. +61 2 9299 3022
F. +61 2 9299 3198
E. info@fsc.org.au
W. fsc.org.au

## Appendix B – Cost impacts (May/June 2014) of reporting – sample from 9 FSC Members

| **Implementation costs** | **FSC Member 6** | **FSC Member 7** | **FSC Member 8** | **FSC Member 9** |
|---|---|---|---|---|
| Staff | $135,000 | $500,000 | $280,000 | Member 9 is yet to fully cost the implementation costs |
| IT | $90,000 if delegated, significantly higher if not delegated | $2,000,000 | $40,000 | Member 9 is yet to fully cost the implementation costs |
| Costs of connection to a licenced trade repository (where not captured by any other costs above) | To be determined | | | Member 9 is yet to fully cost the implementation costs |
| Other (e.g. external costs - legal, IT, printing etc.) | To be determined E.g. fee paid to sub-advisers who act as delegate. | $250,000 | $85,000 | Member 9 is yet to fully cost the implementation costs |
| **Total Implementation Costs** | **$225,000 (but not including unknown costs)** | **$2,750,000** | **$405,000** | Member 9 is yet to fully cost the implementation costs |
| | | | | |
| **Ongoing costs** (estimate for first year of operation) | **FSC Member 6** | **FSC Member 7** | **FSC Member 8** | **FSC Member 9##** |
| Staff | $45,000 | $250,000 | $180,000 | |
| IT | $0 | $400,000 | $20,000 | |
| Data Repository fees | *$86,000 (being annual cap amount of USD $80,000 per DTCC GTR model) | $75,000 | | $5,250 |
| Other (e.g. external costs - legal, IT, printing etc.) | To be determined (there will invariably be additional costs to those outlined already, for example a fee paid to sub-advisers who act as delegate, fees to service providers, fees to third party information providers.) | $25,000 | $30,000 | $850,000 ## |
| **Total ongoing (annual) costs** | **$131,000 p.a.** | **$750,000 p.a.** | **$230,000 p.a.** | **$855,250 p.a.** |

**##Member 9:** Based on the quote from custodian relating to per position per month and our current monthly positions in interest rate swaps, credit default swaps and FX forwards across our funds. This not only includes DTR but also trade reconciliation.



YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au