



21 March 2014

Mr Oliver Harvey
Senior Executive Leader
Financial Market Infrastructure
Australian Securities and Investments Commission
Level 5 100 Market Street
SYDNEY NSW 2000

Cc: Mr Laurence White, Senior Manager, Post-trading and OTC Derivatives

By email: OTCD@asic.gov.au

Dear Mr Harvey

Draft Class Exemption Instrument – Phase 2 Trade Reporting Entities

The Australian Financial Markets Association (AFMA) appreciates the opportunity to comment on the draft class exemption instrument affecting reporting entities under Phase 2 of the ASIC Derivative Transactions Rules (Reporting) 2013 (the Rules). Our members have provided the below comments for the Commission's consideration.

Exemption 1 (Exchange-traded derivatives)

As requested, further information about the additional financial markets that we have requested to be prescribed as a Relevant Financial Market is provided here.

Boston Options Exchange

The Boston Options Exchange (BOX) is an electronic equity options market operated by the TMX Group in the United States. BOX was founded in February 2002 by Boston Stock Exchange, Bourse de Montréal, and Interactive Brokers. In August 2008 BOX began operations as a subsidiary of the Montreal Exchange, after the technical operator increased its ownership position to the maximum 53.2 per cent. The exchange offers options derivatives on approximately 1,500 different securities. All options traded on BOX are cleared by the Options Clearing Corporation (OCC). BOX was approved by the Securities and Exchange Commission (SEC) in April 2012 to act as its own self-regulatory organization.

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Electronic Liquidity Exchange

The Electronic Liquidity Exchange (ELX) delivers clearable swaps to LCH, ICE and other swap clearing DCOs in the United States. ELX was approved as a “DCM” (Designated Contract Market) by the Commodity Futures Trading Commission (CFTC) in 2009 and self-certified its first swaps contracts in September 2013. Clearing services for ELX are provided by the OCC. The National Futures Association (NFA) provides ELX with trade practice and market surveillance, other compliance services, and arbitration disputes. The NFA is the independent self-regulatory organisation for the US futures industry and has no ties with any specific marketplace.

Hong Kong Exchanges & Clearing Ltd

Hong Kong Exchanges and Clearing Limited (HKEx) operates the only recognised stock market and futures market in Hong Kong through its wholly-owned subsidiaries, the Stock Exchange and Hong Kong Futures Exchange Limited. HKEx also operates four clearing houses, which are the only recognised clearing houses in Hong Kong: Hong Kong Securities Clearing Company Limited (HKSCC); HKFE Clearing Corporation Limited (HKCC); the SEHK Options Clearing House Limited (SECHK); and OTC Clearing Hong Kong Limited (OTC Clear). The making of, and changes to, the rules of HKEx, the Stock Exchange and Futures Exchange and their related clearing houses require the approval of the Securities and Futures Commission.

Montreal Exchange

The Montréal Exchange (MX) is an electronic and the sole financial derivatives exchange in Canada. It is owned by TMX Group and trades futures contracts and options on equities, indices, currencies, ETFs, energy and interest rates. TMX Group also owns the Toronto Stock Exchange. MX is recognised as a self-regulatory organisation by the Autorité des marchés financiers (AMF).

OneChicago

OneChicago is an equity finance exchange providing a marketplace for trading security futures including single stock futures (SSFs). It is owned jointly by IB Exchange Group (IB), Chicago Board Options Exchange (CBOE), and CME Group. OneChicago is regulated by both the Securities and Exchange Commission and the Commodity Futures Trading Commission. OneChicago offers approximately 2,272 SSF products with all trading cleared through OCC. OneChicago currently operates the only US-based securities futures marketplace.

In relation to the clarification sought on the need to separately list the below markets as Relevant Financial Markets, our preference would be for the separate listing to be maintained.

- Bursa Malaysia Derivatives (as well as Bursa Malaysia referred to in the Phase 1 exemption instrument);
- LSE Derivatives Market (in addition to London Stock Exchange on the Regulated Foreign Markets Determination);
- Russian Trading System (in addition to Moscow Stock Exchange)
- Singapore Commodity Exchange (in addition to SGX-DT on the Regulated Foreign Markets Determination)

The separate listing of these markets is requested, as the related markets may operate under separate licensing or regulatory frameworks. It is not possible in the available time for AFMA to establish what the regulatory arrangements are in relation to these markets. The separate listing will provide reporting entities with certainty that a derivative traded on these markets will not be captured by the trade reporting regime.

Exemption 4 (Intra-day modification reporting)

Rule 2.2.1(1) provides the circumstances where a reporting obligation arises and addresses circumstances where there is a “modification” to an OTC Derivative. Rule 2.2.6 requires a firm to take “all reasonable steps to ensure... that information... is and remains at all times complete, accurate and current.” In the situation where a reporting entity identifies an error, this will not be a modification to an OTC Derivative but a modification to what was reported. Rule 2.2.6 can be interpreted to mean that a reporting entity would be required to correct the error if it was possible to re-run the report and file the snapshot again intra-day. As the purpose of the relief in exemption 4 is to allow snapshot reporting until 1 October, errors would currently appear to fall outside of the relief as currently drafted.

The Rules provide no scope for a firm to determine whether the required amendment to correct the error is ‘de minimus’ as the obligation in 2.2.6 is an absolute requirement for all information to satisfy the complete, accurate and current test. Whilst a view can be taken that lifecycle events on a trade will be covered under the proposed exemption, we do not believe this extends to errors; whether they are inadvertent or otherwise. The key issue is for firms to have a process to bring the reporting up to date and have an obligation to correct any information that has been reported in a timely manner; but no earlier than would otherwise be required for reporting lifecycle events.

We submit that the relief should reflect an obligation for a reporting entity to update the information on the next available reporting window which will mean the next business day until 1 October 2014 when the relief expires.

We have sought additional material from other jurisdictions to assist ASIC in considering this issue on error correction:

- i. US (CFTC Part 45)

45.14 Reporting of errors and omissions in previously reported data.

Each registered entity and swap counterparty required by this part to report swap data to a swap data repository, to any other registered entity or swap counterparty, or to the Commission shall report any errors and omissions in the data so reported. Corrections of errors or omissions shall be reported as soon as technologically practicable after discovery of any such error or omission. With respect to swaps for which required swap continuation data is reported using the snapshot reporting method, reporting counterparties fulfill the requirement to report errors or omissions in state data previously reported by making appropriate corrections **in their next daily report of state data** as required by this part.

ii. Canada (Ontario Securities Commission Rule 91-506)

Part 3 Data Reporting, Section 26 Duty to Report (Compliance date July 2, 2014)

(7) A reporting counterparty must report an error or omission in the derivatives data as soon as technologically practicable upon discovery of the error or omission, and **in no event later than the end of the business day following the day of discovery of the error or omission.**

iii. Singapore (Securities and Futures Act Chapter 289)

Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013

No language on timing of error correction. (Note Third Schedule Part II states that “Any amendment, modification, variation or change, to any information [must be reported] within 2 business days after the amendment, modification, variation or change”)

We suggest that the draft relief instrument should be amended by inserting the following paragraph:

The Phase 2 Reporting Entity is permitted to report any errors or omissions identified in the information about a Reportable Transaction that has been reported to a Trade Repository (the Reported Information), in accordance with the paragraphs 2.2.1(1)(a) and (c) of the Rules (as amended by this Exemption 4) provided that such error or omission in the Reported Information is reported no later than the end of the next Business Day following the discovery of the error or omission. Errors or omissions reported in accordance with this paragraph will satisfy the requirements of paragraph 2.2.6 of the Rules.

Exemption 5 (Trade identifiers)

We appreciate the relief the Commission is willing to extend to phase 2 reporting entities, as requested in our application for relief, from the requirement to report a ‘universal transaction identifier’ or a ‘single transaction identifier’ under Item 1 of Table 2 of S2.1(2) of the Reporting Rules, for the period 1 April 2014 to 30 September 2014. We note that there has been no commitment made by the prescribed trade repositories

to support the relevant fields by the time that this relief expires. We note the need for ongoing dialogue between the industry and the Commission during the relief period to ensure that there is sufficient confidence that the systems development by third party vendors required progress at a sufficient pace to enable reporting entities to meet their reporting obligations when the relief expires.

Exemption 6 (Nexus transactions)

Exemption 6 provides an exception from reporting obligations in relation to the “entered into” limb of a Nexus Transaction. The Phase 2 reporting entities will continue to report in accordance with their obligations under the “profit and loss account” limb of a Nexus Transaction. We note that paragraph 22 (c) of Exemption 6 requires that Phase 2 reporting entities must by 1 July 2014 commence designating information with an ASIC indicator (“tagging”) to their prescribed repository.

We request an amendment to relief conditions set out in paragraph 22 (c) to align the suggested date from 1 July 2014 to 1 October 2014 so as to recognise some practical and logistical aspects of reporting entities complying with their reporting obligations. These include the following:

- *Consistency across multiple jurisdictions* – The CFTC has issued a time-limited no-action letter¹ that extends relief to swap dealers registered with the CFTC that are established under the laws of jurisdictions other than the US (non-US SDs) from certain transactional-level requirements under the Commodity Exchange Act. We request that the condition in paragraph 22 (c) be aligned with the CFTC’s no-action letter to be around 1 October 2014.
- *IT and operational build out* – Tagging transactions is equivalent to building infrastructure systems to report transaction information. The build out times in Australia, and the resulting cost and resource allocation, will be significantly greater if there is an interim milestone of 1 July 2014, as opposed to a 1 October 2014 implementation date. The 1 July implementation date leads to a diversion of already constrained resource allocation to build an interim infrastructure system.
- *Service providers* – We are aware that DTCC is working towards implementing system changes to be fully operational by 1 October. It will be difficult, if not impossible, to have a tagging condition introduced at this late stage for commencement on 1 July, 2014.

We would suggest that paragraph 22(c) be amended as follows:

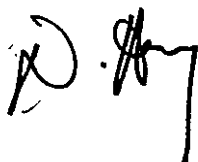
(c) where a Phase 2 Reporting Entity is required to report information about a Reportable Transaction ~~that is entered into~~ on or after 1 ~~July~~ **October** 2014 or a Reportable Position in an OTC Derivative that is booked to the profit or loss account of a branch of the Phase 2 Reporting Entity located in this jurisdiction, the Phase 2 Reporting Entity must, commencing on 1 ~~July~~ **October** 2014, designate that information as being able to be provided to ASIC by the Trade Repository to which that information is reported.

¹ <http://www.cftc.gov/PressRoom/PressReleases/pr6818-14>

In relation to tagging, it may be of assistance to share our understanding of how we see data being provided to ASIC. The Reporting Entity would continue to report to the Prescribed Repository in the foreign jurisdiction (i.e. CFTC or ESMA) and an additional indicator would be added to the transaction. This indicator or flag would allow ASIC to request the Trade Repository (or Regulator) of that jurisdiction to share the relevant “tagged” trades with ASIC. This process would avoid any duplicated reporting to another Trade Repository (i.e. DDRS).

Thank you for the opportunity to comment on the draft class exemption instrument. Please contact me for further information at dhang@afma.com.au or (02) 9776 7994 if required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Hang', with a vertical line extending downwards from the end of the signature.

Denise Hang
Director, Policy