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

By email: OTCD@asic.gov.au

Dear Mr White,

CP205 – Derivative transaction reporting

ASX welcomes the opportunity to provide comments on the proposals to implement a derivative transaction reporting regime under Pt 7.5A of the Corporations Act 2001.

ASX supports the derivative transaction framework proposed in the consultation paper. However, there are two areas of concern.

First, ASX submits that the reporting obligation should not apply directly to central counterparties (CCPs). ASX appreciates that ASIC requires centrally cleared OTC derivatives transactions to be reported to ensure there is visibility of OTC derivatives transactions and to provide a full picture of the exposure of reporting entities to central counterparties and vice versa. However, the parties to the transaction already have an obligation under the ASIC Derivative Transaction Rules (Reporting) 2013 to report this information. Requiring CCPs to report this information would be duplication and would result in significant costs for no regulatory benefit. If the rules do apply to CCPs they should be modified to clarify that the same requirements apply to Australian and foreign CCPs.

Second, ASX submits that alternative reporting should only be allowed in the limited circumstances identified in the consultation paper. ASIC's aim of ensuring that data of interest to Australian regulators is readily available in Australian licensed trade repositories will only be achieved if there is an obligation to report that data to Australian licensed trade repositories. Further, if transactions are able to be reported to overseas repositories (other than in limited circumstances) then there would be little commercial or strategic incentive for a trade repository to seek to be licensed in Australia.

These matters are discussed in more detail in the Appendix. If you would like to discuss our submission in further detail please contact me on (02) 9227 0920 or sally.palmer@asx.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Sally Palmer'.

Sally Palmer
General Manager, Legal

Appendix – Detailed Responses to ASIC Questions

Consultation Question	ASX Comments
<p>B1Q1. Do you support the overall scope of the reporting obligation.</p> <p>B1Q2. Where both reporting entities entering in to a reportable transaction are required to report the details of the transaction to a trade repository, should each reporting entity be required to report, or should only one reporting entity be required to report?</p> <p>B1Q3. If only one reporting entity were required to report the details of a reportable transaction to a trade repository, how should it be determined which reporting entity is required to report?</p> <p>B1Q4. What is the likely impact of our proposals?</p>	<p>Reporting obligation should not apply directly to central counterparties</p> <p>ASX submits that the reporting obligation should not apply directly to central counterparties (CCPs).</p> <p>It is proposed that any counterparty subject to a reporting obligation, which includes CCPs for cleared transactions, must report details of OTC derivatives transactions and any changes to those details. This results from the definition of a reportable transaction for Australian Entities as 'All OTC Derivatives to which the Reporting Entity is a counterparty, regardless of where the OTC Derivative is entered into.' (rule 1.2.5)</p> <p>ASX appreciates that ASIC requires centrally cleared OTC derivatives transactions to be reported to ensure that there is 'full visibility of OTC derivatives transactions (in particular, those that may be subject to mandates for clearing at some future time)' and to provide 'a full picture of the exposure of reporting entities to central counterparties and vice versa.' (CP 205:para 36)</p> <p>However, reporting by CCPs is not necessary to ensure that ASIC receives this information. The original parties to a derivatives transaction will have an obligation to report details of the transaction and modifications to those details under rules 1.2.5 and 2.2.1. This will include details in relation to the transaction being centrally cleared. Hence, the trade repository will receive all the information required to give visibility of OTC derivatives transactions and to provide a full picture of the exposure of reporting entities and CCPs.</p> <p>Requiring CCPs to report these details is duplication. It would result in the CCPs performing significant additional work for no regulatory benefit. The increased cost of this reporting would impact upon the cost of an OTC derivatives clearing service.</p> <p>The proposals paper released by Treasury in December 2012 on 'Implementation of Australia's G-20 over-the-counter derivatives commitments' does not suggest that the reporting obligation should apply to CCPs.</p> <p>If it would assist, CCPs could impose a requirement under their rules that participants clearing OTC transactions have already reported all the details of those transactions to a trade repository, as an additional measure to ensure that those transactions are reported. We note, however, that this requirement is already imposed under the ASIC rules, and backed by a substantial penalty for non-compliance. If there is to be a reporting requirement on CCPs ASX submits that it should be limited to any information not in the possession of the original parties to the transaction.</p> <p>Further, if there is to be a reporting requirement, it should apply consistently</p>

	<p>to Australian CCPs and any overseas CCPs who might clear OTC derivatives in Australia. Schedule 1 states that the reporting requirements apply to CS facility licensees. However, rule 1.2.5 could suggest that the reporting requirement on CCPs which are foreign companies is limited to OTC Derivatives 'entered into by the Reporting Entity in this jurisdiction.' On this basis, the requirement would be limited to transactions:</p> <ul style="list-style-type: none"> • entered into in this jurisdiction; and • entered into by the CCP, which could possibly be interpreted as excluding transactions novated to the CCP which did not enter into the original transaction. <p>Different requirements for Australian companies and registered foreign companies may be appropriate in some contexts. However, there is no basis for having different obligations for CCPs operating in Australia, depending upon whether the CCP is an Australian or registered foreign company. ASX submits that the rules should be modified to clarify that the same requirements apply to Australian and foreign CCPs.</p>
<p>C1Q2 Do you agree with the scope of entities that should be able to access alternative reporting, or do you consider it should be broader or narrower?</p>	<p>Alternative reporting should be limited</p> <p>ASX submits that alternative reporting should only be allowed in limited circumstances and not be extended to entities other than those identified in proposal C1 (foreign ADIs that have a branch located in Australia, foreign companies registered under Div 2 of Pt 5B.2 of the Corporations Act and foreign subsidiaries of an Australian entity).</p> <p>ASX recognises that in limited cases alternative reporting is beneficial to entities located overseas. However, ASX agrees with ASIC's comment that 'there may be a substantial disincentive to trade repositories seeking to be licensed in Australia if they are able to receive all or most reportable transactions without being licensed' (CP 204: para 47). ASIC's aim of ensuring that data of interest to Australian regulators is readily available in Australian licensed trade repositories will only be achieved if there is an obligation to report that data to Australian licensed trade repositories. Further, if transactions are able to be reported to overseas repositories (other than in limited circumstances) then there would be little commercial or strategic incentive for a trade repository to seek to be licensed in Australia.</p>