



EnergyAustralia

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Manager
Banking and Capital Markets Regulation Unit
Financial Systems and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 33
385 Bourke Street
Melbourne Victoria 3000

Phone +61 3 8628 1000
Facsimile +61 3 8628 1050

enq@energyaustralia.com.au
energyaustralia.com.au

Attention Mr Michael Lim

Lodged email: financialmarkets@treasury.gov.au

Dear Mr Lim,

OTC Derivatives Central Clearing and Single-Sided Trade Reporting – Draft Regulations

EnergyAustralia welcomes the opportunity to make a submission on the provision of relief to energy sector businesses from trade reporting for commodity OTCs (gas, oil, carbon and green schemes).

EnergyAustralia is one of the country's leading retailers, providing gas and electricity to more than 2.6 million customers. We own and operate a range of generation and storage facilities, including coal, gas and wind assets, in NSW, Victoria and South Australia.

Treasury is currently consulting on the Government's commitment to provide relief to certain businesses from trade reporting, by relying on single-sided reporting. This commitment was announced by the Minister for Finance on 12 December 2014¹. As part of this press release the Government also committed to permanently exempt end users from the regulatory framework, on the basis that:

end users, in particular non-financial corporates, do not play a systemically significant role in over the counter derivatives markets in Australia...

This permanent exemption provides certainty for end users that they can continue to use over the counter derivatives to hedge their business risks without incurring unnecessary compliance costs.

A compliance requirement under the Corporations Act for participants in the National Energy Market that want to issue or make a market for derivatives is to hold an Australian Financial Services Licence. If energy sector businesses did not have an AFSL for this purpose they would likely be covered by the end user exemption for their commodity OTCs (gas, oil, carbon and green schemes).

¹ Press Release: Senator the Hon Mathias Cormann, Minister for Finance, *Making over-the-counter derivatives markets safer*, 12 December 2014.

EnergyAustralia Pty Ltd is a Phase 3B entity and holds an Australian Financial Services Licence (AFSL 284426). We understand that as presently drafted the single-sided reporting end user exemption will not provide relief from reporting where we are an end user because we hold an AFSL.

We understand that in considering derivative transaction rules - regard must be had to *the likely impact of the proposed rule on any Australian market or markets on which the commodities concerned may be traded*;

After assessing whether electricity OTCs should be subject to the G20 reforms the Australian Energy Market Commission (AEMC) concluded that:

*transaction-level trade reporting would place significant costs and regulatory burdens on electricity participants' OTC derivatives activities while the benefits of such a measure as a tool to analyse risks to financial system stability are less clear.*²

The AEMC was concerned that G20 reforms would adversely affect risk management in the NEM. They noted that:

*risk management in the NEM involves a continuous trade-off between various sources of risk, of which counterparty risk is only one. The G20 reforms are primarily focussed on addressing counterparty risk under OTC derivatives contracts. Accordingly, they may have the unintended effect of discouraging participants from using OTC derivative instruments in favour of, say, taking more spot market exposure. The reforms could result in participants changing their risk management practices so that they become less exposed to credit risk, but are more exposed to other types of risk.*³

Given it was accepted that electricity OTCs should be exempt from reporting, and other energy is a fraction of the size, it does not appear that the public policy case for applying reporting requirements has been made out for gas, oil and other commodity OTCs for Phase 3B classes.

We would be happy to work with the department and other industry regulators including the AEMC to find a way to achieve the exemption of gas, oil, carbon and green scheme derivatives that is consistent with the exemption of electricity OTCs.

If you any have further questions please contact me on (03) 8628 1403 or at Ronniet Milliken@EnergyAustralia.com.au.

Regards



Ronniet Milliken

Regulatory & Compliance Analyst

Wholesale Regulation

² AEMC, *NEM financial resilience – Final Report*, 6 March 2015.

³ Ibid.