DTCC

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Manager, Financial Markets Unit
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The Treasury
Langton Crescent
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Email: financialmarkets@treasury.gov.au

Re: Consultation Paper on the "Implementation of a framework for Australia's G20 over-the-counter derivatives commitments" ("Consultation Paper")

Dear Sir or Madam:

On behalf of The Depository Trust & Clearing Corporation ("DTCC"), we appreciate the opportunity to comment on the Consultation Paper. DTCC is very pleased to offer its views based on its experience as a provider of derivative data repository services to the global derivatives community.

In furtherance of the G20 commitments made at the September 2009 Pittsburg Summit and the October 2010 Financial Stability Board report on OTC Derivatives Market Reform, DTCC was selected as the preferred trade repository service provider by the members of the International Swaps and Derivatives Association ("ISDA") and Global Financial Markets Association ("GFMA") to support firms' reporting obligations in all five OTC derivatives asset classes: Credit, Interest Rates, Foreign Exchange, Equity and Commodity Derivatives.

DTCC currently operates a multi-asset class Global Trade Repository service ("GTR") that supports reporting for Interest Rates, Credit, Equity, FX and Commodity derivatives. Currently, DTCC is operationally live for all asset classes except for FX which is currently in development with guidance from GFMA and its members. The current plan is to have the FX asset class live in the GTR service by October 2012. DTCC operates the Credit, Interest Rates and Equity reporting out of its UK entity, DTCC Derivatives Repository Limited ("DDRL"), currently regulated by the UK Financial Services Authority with FX to follow shortly. DTCC, in partnership with European Federation of Energy Traders (EFET), also recently launched in January 2012 the GTR service for commodities reporting operating under the DTCC legal entity--Global Trade Repository for Commodities B.V., a Netherlands based entity.

DTCC has begun to receive trade flows into its GTR service. For credit derivatives, the global market participants are leveraging DTCC's Trade Information Warehouse ("TIW") to send the GTR service copies of the records processed.[1] For interest rates, global market participants are reporting to DTCC's GTR service by directing trade submissions from MarkitSERV to the GTR service or reporting to the GTR service either through another third party agent or directly. Additionally, DTCC is live with its commodities and equities derivatives asset classes where firms can either submit data directly or through a third-party provider.

DTCC is also enhancing its portal service which will provide reporting entities and the global regulatory community with a single point of access to all underlying asset class repositories operated by the DTCC: CDS, Equities, Interest Rates, Commodities and FX. This allows reporting entities and regulators to leverage existing communication linkages and processes, easing the burden, cost and complexity of connecting to multiple repositories.

The *DTCC Responses* in the document attached hereto are focused primarily on the trade repository ("TR") questions from the consultation paper. We believe that ensuring transparency of derivative data for both the regulatory and market participant communities and the adoption of the industry recommendations with regards to standards are critical and we look forward to assisting Australian regulators in delivering an efficient and value-adding reporting framework.

Yours sincerely,

Stewart Macbeth

President and CEO, DTCC Deriv/SERV LLC & DTCC Derivatives Repository Ltd.

[1] The TIW, operational since 2006, is a wholly-owned U.S. subsidiary regulated by the Federal Reserve Bank of New York and the New York State Department of Financial Services, for credit derivative transactions. TIW provides both post-trade lifecycle processing and holds the legal records of the transactions for an estimated 98% of the global OTC credit derivative market

DTCC Responses

General Comments:

DTCC agrees with the points made in Section 4.2.1 of the Consultation: "*By centralising the collection, storage and dissemination of data, [TRs] can play an important role in providing information that supports risk reduction (including: assessing systemic risks; conducting market surveillance and enforcement; supervising market participants; and conducting resolution activities) and operational efficiencies for both individual entities and the market as a whole. . . For individual market participants, centralization of trade data may assist in understanding their own risks and exposures. Regulators are also likely to require aggregate statistics to be made publicly available on a regular basis. The resulting increase in transparency may enhance market functioning, and may be beneficial to confidence in times of market turmoil. Standardised reporting formats are evolving so that the use of trade repositories is also likely to encourage operational efficiencies in post-trade processing, either by the trade repository or by other service providers that use the data maintained by the trade repository. If trade information is submitted by both counterparties to a trade, data from the trade repository can be used to facilitate asset servicing and other trade life-cycle events.*"

DTCC believes that leveraging the GTR service is the most efficient means for the industry and regulators to achieve the goal of reporting compliance and oversight in an efficient manner as described in Section 4.2.1. To effectively monitor systemic risk, regulatory authorities must have access to both onshore and offshore activity for trades which have a nexus to Australia. Such trades may be transacted by foreign counterparties who would not otherwise have reporting obligations to Australia. Given this cross border activity, key data for authorities would not be captured in a local-based repository. Additionally, attempts to collect such cross-border data from other jurisdictions will prove challenging for the following reasons:

- Difficulty in ensuring complete and accurate data inventory. Duplicate trade reporting will occur when cross border activity is reported to multiple repositories. Further, there is no certainty as to what data inventory might be missing;
- Data standards may vary or evolve over time, making it difficult to aggregate data received from multiple repositories; and
- Heavy reliance on bilateral information sharing agreements with all other foreign regulators to ensure a complete data inventory. It is likely that some trades will be captured in jurisdictions where no information sharing agreements are in place.

In coordination with recognized information sharing guidelines, such as the OTC Derivatives Regulator's Forum ("ODRF") or CPSS-IOSCO, the GTR service can operate to provide such information to regulatory authorities in any manner prescribed by the regulator (e.g., web download access, direct data transmission or other means). This offers regulators (1) the ability to leverage existing connectivity to DTCC's GTR service to allow firms to meet reporting requirements in a timely manner; (2) receipt of full data inventory under statute or ODRF data access guidelines where trades have a nexus to Australia; and (3) access to data captured through existing confirmation platforms, such as MarkitSERV for Interest Rate derivatives, and single-sided trades directly submitted to the GTR service.

Reporting entities will benefit from the ability to leverage one reporting channel and build to one set of technology to meet global reporting requirements. This is of particular importance where banks are likely to take on the reporting requirements of their clients “as agents” necessitating compliance with regulations globally. The burden of building to numerous pipes and various message specifications will result in significant costs incurred, cause time delay and have an adverse implementation impact. A centralized reporting channel, such as the GTR service, will assist in alleviating these costs and implementation burdens, better ensuring compliance with internationally agreed upon data formats and identifiers.

Our specific responses to selected questions are given below.

1. Do you have any comments on the general form of the legislative framework?

DTCC agrees with the general form of the legislative framework with respect to TRs. DTCC supports the usage of a TR as an important part of Australia's OTC derivative regulatory program. The consultative approach being envisaged by Australia is the best approach to achieve regulations that serve to protect the system while at the same time not imposing excessive burden on regulated firms.

DTCC believes in the model of allowing foreign entities to be licensed pursuant to an alternative licensing framework if the TR is subject to sufficiently equivalent regulation in its home jurisdiction. DTCC also concurs with the idea that the regulatory regime for any Australian repository must be sufficiently equivalent to the regimes in major overseas jurisdictions to facilitate mutual recognition and therefore Australian facilities' access to TRs located in those jurisdictions.

2. Do you have any comments on the definition of 'transaction'?

With respect to TRs, DTCC recommends including in the definition all actions that are price forming and create a new position ("creation data") which would include new transactions, assignments and terminations as well as any modifications that change the economic terms of the contract, parties or reference entities. A TR is effective and valuable only if it has the most recent information about a trade including, but not limited to, the aforesaid actions.

3. Do you have any comments on the definition of 'party'?

DTCC agrees with the designation of a party generally. We would suggest some clarification or supplemental language regarding what would constitute "dealing in derivatives" and "perform[ing] an action within the Australian jurisdiction. . ."

4. Do you have any comments on the definition of 'eligible facility'?

DTCC agrees with the definition of 'eligible facility" generally.

DTCC believes the licensing of a TR should include a minimum financial stability requirement. DTCC also believes that to promote transparent and stable financial markets, registered trade repositories must be able to demonstrate an infrastructure which supports critical operational capabilities. Specifically, DTCC recommends that trade repositories operate on a 24/6.5 basis to reflect the global nature of the financial markets, process transactions in real-time and maintain multiple levels of operational redundancy and data security. Given the importance of systemic risk oversight of financial markets and the critical role trade repositories will play in providing market transparency, a failure to demonstrate robust resiliency, security and redundancy in operations should preclude an entity from serving as a global repository.

5. Do you agree that non-discriminatory access requirements should be imposed on eligible facilities?

DTCC's perspective is that access to data is a key issue relating to trade repositories. DTCC believes that "inbound" access to the repository should be as fair and nondiscriminatory as possible to allow for the most comprehensive collection of data. The trade repositories should be available to all participants with reporting obligations and their agents for submission of data. Open free data standards should be used by the trade repository. A non-discriminatory fee structure should be available for all users. There should be no tying or bundling to other services that require additional services to be bought as a condition to utilizing trade repository services.

DTCC also supports open access to data by other service providers, based on the consent of the parties for that provider to receive the data. DTCC believes this is an important principle for allowing development of automation and efficient operational processing in the market, while preserving the parties' control over confidential information. The DTCC trade repositories currently provide access to many vendors, including trade confirmation and trade messaging providers, central counterparties, portfolio reconciliation service providers, portfolio compression services, custodians, and outsource providers. Open access by its nature requires that trade repositories are free of conflicts in providing access to other providers.

6. Do you have any comments on the rule-making power that will be available to ASIC?

DTCC agrees with the consultative approach to the proposed legislative process as described in Section 3.5. Through consultation with market participants the legislation will best meet the requirements of regulator and the market participants.

DTCC agrees that some derivative rules will be applicable to all asset classes, and to the extent possible, should be consistent across asset classes mindful of the fact that there may be specialized rules for an asset class to account for unique qualities of trades within such asset class.

DTCC would like clarification on the concept of DTRs including a penalty amount. To whom would such penalties apply and when could they be imposed?

9. Although the possible counterparty scope is set broadly, should minimum thresholds for some or all types of counterparty be set by regulation, so that no rule that is made will ever apply to those counterparties (unless the regulation is subsequently changed)?

With respect to TRs, DTCC believes the focus should be on transactions versus counterparties. As stated in Section 4.2.1 of the Consultation, "the effectiveness of trade repository services is maximized when all transactions of all counterparties are recorded, and there may be a case for regulatory action to promote universal uptake of trade repositories for the collective benefit of market participants. For regulators, as complete an information set as possible enhances their understanding of the OTC derivatives market." Establishing thresholds may present data completeness issues as a reporting entity may fall under or above the threshold during a period of time and data reported will not reflect all transactions during that period unless that party's counterparts have reported those trades. A potential solution is to mandate a least one party to report to ensure a complete data set.

There are additional complications regarding the treatment to apply to the prior reported trades or if back loading would be required when a threshold is met. TRs function most efficiently when they contain all transactions executed within an asset class with a nexus to a jurisdiction thereby presenting the regulator with the most complete view of the market. If the purpose of a threshold is to reduce the reporting burden and costs to small end users, this can be accomplished by requiring TRs to provide simple interfaces such as web interface uploads in a spreadsheet format or allowing for the use of reporting agents.

10. From the point of view of your business and/or of your clients, do you have concerns around any 'back loading' requirements? For example, are there any problems with obligations applying to transactions that are outstanding at the time the rule is made?

DTCC agrees with the statement from the consultation that "in order for regulators to be able to obtain a complete picture of all exposures in a derivative class, as well as reporting transactions, it may also be necessary for DTRs to require participants to provide information on positions that were initiated prior to the commencement of the obligation."

DTCC does have concerns, however, with the scope and timing of back loading. Back loading of outstanding positions can be challenging from a number of perspectives. First, there is the issue of volume. For some participants it can be quite operationally and technologically burdensome to back load large volumes of data if the back loading period is not long enough. The regulations should provide participants with a reasonable time frame in which to back load data. Second is the issue of availability and consistency of historical data. With respect to new transactions it can be expected that transaction records will be created to conform to the regulatory requirements in existence at execution and are more than likely to be matched. Historical transaction records may not conform to standards created after the execution of such transactions or have had the benefit of electronic matching. The regulations will have to provide for such disparity.

In considering the scope of trades to be back loaded, DTCC recommends that the back loaded population is limited to the open positions at the time of compliance as these positions would be the most relevant records for systemic oversight purposes. Essentially, the back load would create the starting open position for each counterparty.

11. Do you agree with the option of prescribing a broad range of derivative classes to be subject to the mandate for trade reporting? If not, what other option do you prefer?

We agree with a broad range of derivative classes being subject to trade reporting. As stated in Section 4.2.1 of the Consultation "For regulators, as complete an information set as possible enhances their understanding of the OTC derivatives market. In addition, as reporting to trade repositories will give regulators a more accurate understanding of market activity and participation. . ." Only through the collection of data from a broad range of classes can this be accomplished. From a systemic risk oversight perspective, it is imperative that all OTC derivative transactions be reported to a trade repository and that the trade information is accurately and promptly made available for regulators. We would encourage Australia, to the extent possible, to harmonize its reporting requirements with those of other jurisdictions to facilitate coordination amongst jurisdictions where necessary and appropriate.

12. Do you agree with the option of including a broad range of entities in the mandate to report trades? If not what option do you prefer?

See Response to question 9 above

13. Are there specific classes of entity that should be excluded from the potential reach of trade reporting DTRs?

DTCC does not believe that any class of entity, other than private individuals on whom burdens of reporting could be disproportionate, can be excluded from reporting of trades to a TR and still have a data set that is complete. To ease the burden of reporting on, for example, small end-user clients, TRs can be required to provide a variety of access methods that would be efficient to be used by varying types of users. Additionally, third parties such as execution or clearing brokers or middleware service providers should be allowed to act as reporting agents for trading parties.

13.1. What metrics should be used to determine any thresholds?

See Response to question 13 above.

13.2. What should be the thresholds of these metrics that trigger when an entity may be subject to trade reporting rules? Should this threshold vary depending upon the nature of the entity?

See Response to question 13 above.

13.3. What is an appropriate threshold to exempt end users from the mandatory obligation to report OTC derivatives transactions to a trade repository or regulator?

See Response to question 13 above.

14. Do you agree with the option of including a broad range of transactions in the mandate to report trades? If not what option do you prefer?

See Response to Question 11 above.

We would encourage Australia, to the extent possible, to harmonize its reporting requirements with those of other jurisdictions to facilitate coordination amongst jurisdictions where necessary and appropriate.

14.1. Are there specific classes of transaction that should be excluded from the potential reach of trade reporting DTRs?

See Response to Question 11 above.

15. Do you agree with the option of using a wide definition for what would constitute a transaction in this jurisdiction for the purposes of mandating trade reporting? If not, what definition do you prefer?

We agree with utilizing a definition of transaction as stated in Section 4.2.2 of the consult that "could include contracts booked in Australia, denominated in Australian dollars of where the underlying reference entity is resident of has a presence in Australia, as well as contracts traded by market participant, resident or having a presence in Australia." However, to effectively monitor systemic risk, regulatory authorities must have access to both onshore and offshore activity for trades which have a nexus to Australia. Such trades may be transacted by foreign counterparties who would not otherwise have reporting obligations to Australia. The scope of that nexus must be carefully considered.

25.1. What restrictions should there be on the disclosure of reported data by trade repositories? What requirements should be imposed in relation to data protection and privacy?

We believe that data reported to the public should be anonymized to protect the commercial interests of the reporting firms and central banks. We believe that market regulators should have full access to data of the firms they supervise.

A trade repository should be able to demonstrate through its policy, procedure and technology that it can protect the data it is entrusted with and ensure that only parties entitled to the data or portions thereof can access the data.

25.2. What restrictions should there be on the use of reported data by trade repositories?

A trade repository should not be permitted to bundle its trade reporting services with other services, for example in a manner that requires purchase of such other services as a condition to utilizing the trade reporting service. This linkage would create an anti-competitive environment.

25.3. What restrictions should there be on the sharing of trade repository data between TRLs; and on the sharing of trade repository data between regulators (both domestic and international)?

TRLs should share data to the extent that such sharing will result in greater efficiencies for the market participants, the regulators and the public. DTCC anticipates sharing data from its GTR with local regulators who have determined that the operation of local trade repositories is the most appropriate way to supervise their relevant markets. The sharing of data will only proceed to the extent the local regulator is entitled to the data being shared in accordance with established regulatory sharing rules which protect the confidentiality of the data and upon consent of the trading counterparties to which the data relates. To the extent the data is shared, it should be shared without any encumbrances or conditions such as indemnification.

26. Would Australian market participants support a domestic trade repository as an alternative to an international trade repository, recognising there are likely to be cost implications in establishing and maintaining a domestic trade repository?

DTCC would like to point out not only the cost implications, but the technical and logistical issues caused by disparate trade repositories. International firms are establishing secure connections to the GTR already. By utilizing this established infrastructure the firms can not only reduce costs, but can also reduce the chance of a technical problem as a result of supporting multiple connections. Additionally, the creation of multiple local TRs around the world will lead to data fragmentation which in turn diminishes the ability of a regulator to properly monitor changes in the market.

28. Should any requirements be imposed on trade repositories with respect to obligations to provide third parties with access to the information (subject to authorisation from data providers and regulators)?

DTCC's perspective is that access to data is a key issue relating to trade repositories. DTCC supports open access to data by other service providers, based on the consent of the parties for that provider to receive the data. DTCC believes this is an important principle for allowing development of automation and efficient operational processing in the market, while preserving the parties' control over confidential information. The DTCC Trade Information Warehouse currently provides access to many vendors, including trade confirmation and trade messaging providers, central counterparties, portfolio reconciliation service providers, portfolio compression services, custodians, and outsourcing providers. A corollary of this sort of independence is that third party service providers should be barred from bundling their services with those of its trade repository.

29. Do you have any initial views on the property rights in trade information passed to trade repositories.

Data reported by market participants should be regarded as the market participants' data and not owned by the repository, rather the TR should have the rights to the use of data to support regulatory mandates as defined. Data should not be commercialized and fees should not be charged for access to the data.

30. Are there any reasons why the location requirements being developed for FMIs should not be applied to trade repositories? If so, are there alternate approaches you prefer?

We support the concept of licensing of foreign trade repositories pursuant to sufficient oversight by Australian authorities through the assurance of the TR that its rules and regulatory oversight would be broadly compatible with Australian law

31. Do you agree with the factors identified in section 6.2 for ongoing derivatives markets assessments?

We agree with the factors identified and agree with the "bottom up" approach as DTCC has already not only indicated its willingness to provide a TR but has in fact established functional TRs for interest rate, credit, equity and commodity derivatives and will soon have a functional TR for FX derivatives.

32. Are there other factors that should also be included?

We believe the operating model of a perspective TR should be carefully studied. DTCC believes that trade repositories should be privately developed and operated on a not-for-profit basis, rather than developed for profit or operated by provincial market regulators. As a private not-for-profit trade repository, DTCC and its clearing agency subsidiaries operate on an at-cost basis, charging transaction fees for services at levels sufficient to cover operating expenses . Trade repositories that are privately operated on a not-for-profit basis promote greater access to aggregate market data, while avoiding potential abuses and conflicts of interest that may exist in the relatively small universe of trade repository service providers. Such industry cooperative repositories serve a critical market function in the collection, aggregation and dissemination of swap data, promoting transparency and supporting regulatory oversight. DTCC is concerned that a proliferation of provincial market regulators performing this function directly will impede global access to swap data, thereby jeopardizing market transparency.