

CLAYTON UTZ

# **ASF Evening Series - OTC Derivatives Tuesday 3 September 2013**

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# Background

- G20 commitment in 2009

*"All standardized OTC derivative contracts should be traded on exchanges or electronic platforms, where appropriate and cleared through central counterparties by end 2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non- centrally cleared contracts should be subject to higher capital requirements."*

- G20 Countries have since enacted legislation to give effect to this commitment e.g. Dodd Frank Act in US.
- Corporations Legislation Amendment (Derivatives Transaction) Act 2012
  - New OTC derivatives framework for Australia - Part 7.5A Corporations Act

# Mandatory OTC derivatives reporting obligation

- Reporting DTRs impose reporting obligations in respect of:
  - credit derivatives
  - interest rate derivatives
  - foreign exchange derivatives
  - equity derivatives
  - commodity derivatives (other than electricity derivatives).
- DTRs also released in relation to ASIC's licensing and regulation of trade repositories in Australia.

# Who must report?

Reporting Entity	Reportable Transactions
<b>An Australian Entity</b>	All OTC Derivatives to which the Reporting Entity is a counterparty, regardless of where the OTC Derivative is entered into
<b>A foreign subsidiary of an Australian Entity where that Australian Entity is an Australian ADI or holder of an AFSL</b>	All OTC Derivatives to which the Reporting Entity is a counterparty, regardless of where the OTC Derivative is entered into
<b>A foreign ADI that has a branch located in Australia</b>	All OTC Derivatives (a) booked to the profit or loss account of a branch of the Reporting Entity located in Australia; or (b) entered into by the Reporting Entity in Australia
<b>A foreign company that is required to be registered under Division 2 of Part 5B.2 of the Corporations Act</b>	All OTC Derivatives: (a) booked to the profit or loss account of a branch of the Reporting Entity located in Australia; or (b) entered into by the Reporting Entity in Australia

# What must be reported?

Reporting entity must report:

- Execution
- Amendment
- Termination
- Assignment

of Reportable Transactions by "T + 1"

Transaction Data	Position Data
Common Data	Common Data
Commodity	Commodity
Equity/Credit	Equity/Credit
FX	FX
Interest Rate	Interest Rate
Double-sided from 1 Oct 2014 Delegation Option	

One-off requirement to report outstanding positions as at a date 6 to 12 months earlier.

Commences 6 months after commencement of Transaction reporting

# Are there any Exemptions?

## End users

- End users are exempt until at least 31 Dec 2014.
- However, end users do not include ADIs/ AFSL holders and so not relevant to securitisation parties

## Alternative Reporting exemption

- Recognition that OTC derivatives reporting to certain overseas trade repositories ("Prescribed Repositories") will satisfy a foreign Reporting Entity's obligations under the DTRs.

# Who must reporting entities report to?

- Until 1 October 2014, Reporting Entities can report to a Licensed TR or a Prescribed TR
- No Trade Repository licensed as yet in Australia
  - Expecting the first license in Q4 2013 or Q1 2014
- Prescribed Trade Repositories (until 30 June 2014)
  - DTCC Data Repository (U.S.) LCC
  - DTCC Data Repository (Japan) KK
  - Chicago Mercantile Exchange Inc
  - ICE Trade Vault, LLC
  - DTCC Derivatives Repository Ltd
  - DTCC Data Repository (Singapore) Pte Ltd
  - INFX SDR
  - HKMA

# Who must reporting entities report to?

- From 1 October 2014
  - Australian entities must report to Licensed TRs.
  - Non-Australian entities (Foreign ADI with an Australian branch or Foreign company registered under Part 5.2B of Corporations Act) can:
    - Report to Licensed TRs; or
    - Report to Prescribed TRs (if relying on alternative reporting regime).



# When does reporting commence?

- **Opt-In Reporting Phase:** Any Reporting Entity that opts-in under the Opt-In Reporting Phase by lodging an 'Opt-In Notice'

Asset class	Transaction reporting date	Position reporting date
As outlined in the Opt-In Notice lodged with ASIC	The date(s) specified in the Opt-In Notice.	The date(s) specified in the Opt-in notice (being not later than 30 Sept 2014).

- **Phase 1** – Australian Entities registered or provisionally registered with the CFTC as 'Swap Dealers'

Asset class	Transaction reporting date	Position reporting date
All prescribed asset classes	1 October 2013	1 October 2014

# When does reporting commence?

- **Phase 2** – Reporting Entities that are Australian/Foreign ADIs or AFS, CS Facility or Exempt Foreign Licensees with  $\geq$  A\$50 billion total gross notional outstanding as at 31 Dec 2013 and not reportable in Phase 1

Asset class	Transaction reporting date	Position reporting date
Credit and interest rate derivatives	1 April 2014	1 October 2014
All other prescribed asset classes	1 October 2014	1 April 2015

- **Phase 3** – Reporting Entities that are Australian/Foreign ADIs or AFS, CS Facility or Exempt Foreign Licensees and not reportable in Phase 1 or 2

Asset class	Transaction reporting date	Position reporting date
Credit and interest rate derivatives	1 October 2014	1 April 2015
All other prescribed asset classes	1 April 2015	1 October 2015

# Issues for the securitisation industry

- Credit derivatives and interest rate swaps, including basis and fixed rate swaps caught
- Reportable entities
  - Trustee/Australian swap banks
  - Foreign swap bank caught if swap entered into in Australia or booked to Australian branch
  - Trust Manager?

# Issues for the securitisation industry

Trustees likely to report from 1 October 2014

Australian Swap Banks will report:

- from 1 Oct 2013 for CFTC registered swap dealers
- otherwise from 1 April 2014 to the extent threshold exceeded
- otherwise from 1 October 2014.

Foreign swap banks likely to report from 1 April 2014 (if threshold exceeded) or 1 October 2014 - if swap entered into in Australia or booked to Australian branch

Trust Manager?

# Issues for the securitisation industry

- A\$50 billion threshold does not include
  - Subsidiaries or other related bodies corporate
  - Reporting entities that are not within the scope of the reporting requirements
- Includes electricity derivatives even though not reportable
- Threshold measured individually for each trust

# Issues for the securitisation industry

## Practical steps:

- establish infrastructure to comply with reporting requirements if choose to manage the reporting process directly; or
- establish report delegation arrangements.

# Australian central clearing mandate?

- DTRs not yet released
- Regulators' thinking on the issue has evolved
- Central clearing mandate currently recommended for foreign currency-denominated derivatives, based on:
  - Practicality
  - Policy

# Australian central clearing mandate?

Derivative classes	Status of Clearing Mandate	Clearing parties	Timing
Interest rate derivatives denominated in US dollars, pounds sterling, euros and yen	Recommendation for Australian Government to consider a clearing mandate	Initial focus on dealers with significant cross border activity	To be determined in consultation with the relevant authorities in the "home currency" jurisdiction
Interest rate derivatives denominated in A\$ dollars	Central clearing mandate recommendation subject to further review and monitoring of Australian bank's progress in implementing appropriate clearing arrangements	Likely to commence with the inter-dealer market	Further report planned for 2014 when OTC clearing services in the Australian market should be in place via ASX and LCH
North American and European referenced credit derivatives	No case for a central clearing mandate at this time, subject to further consultation	NA	NA



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