



**Australian Securitisation Forum**

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26 June 2015

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

Dear Manager

**OTC DERIVATIVES CENTRAL CLEARING AND SINGLE-SIDED TRADE REPORTING  
AUSTRALIAN SECURITISATION FORUM SUBMISSION**

The Australian Securitisation Forum (**ASF**) welcomes the opportunity to comment on the *Corporations (Derivatives) Amendment Determination 2015 (No. 1)* and the *Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015*, both released by the Treasury on 28 May 2015.

The ASF is supportive of the move to a one-sided reporting regime in respect of phase 3 reporting entities.

However, the ASF is concerned as to the operation of the proposed single-sided exemption insofar as it relates to derivatives entered into with foreign entities – as contemplated in proposed regulations 7.5A.71(3) and 7.5A.72(3).

The ASF's concern is that the exemption only applies where the foreign entity actually reports the information and tags the relevant derivative.

The Australian entity cannot ensure compliance by the foreign entity, nor can it monitor the foreign entity's reporting.

To the extent that the foreign entity does not so report and tag, the counterparty would immediately be in breach of the regulations (as the one-sided exemption would not apply). It would not have any time to remedy a breach.

These characteristics substantially detract from the proposed single-sided regime and mean that the Australian entity is still on risk for reporting, rendering the exemption of limited value.

We suggest that the exemption be re-drafted as a safe harbour that is to apply in the event that certain requirements are met – similar to the delegation regime previously introduced.

Our suggested drafting amendments are attached.

We would be pleased to discuss this further.

Yours sincerely

A handwritten signature in black ink that reads "Chris Dalton". The signature is written in a cursive, slightly slanted style.

**CHRIS DALTON**

## Transactions involving foreign entities

### Suggested amendments to one-sided reporting regime

#### Regulation 7.5A.71(3)

A phase 3 reporting entity is also exempt from a provision of the Derivative Transaction Rules (Reporting) requiring the entity, at a particular time, to report information about an OTC derivative transaction to which the entity is a party if:

- (a) regulation 7.5A.73 applies to the entity at that time; and
- (b) the other party to the transaction is a foreign entity that:
  - (i) is subject to reporting requirements in one or more foreign jurisdictions that are substantially equivalent to requirements under the Derivative Transaction Rules (Reporting); and
  - (ii) has agreed with the phase 3 reporting entity in writing that the foreign entity will:
    - ~~(iii)(A)~~ reports information about the transaction, in accordance with the requirements that apply in one or more of those foreign jurisdictions, to a facility prescribed by or under subregulation 7.5A.30(2); and
    - ~~(iii)(B)~~ designates the information reported to that facility as information that has been reported to ASIC under the Derivative Transaction Rules (Reporting); and
- (c) the phase 3 reporting entity makes regular enquiries reasonably designed to determine whether the foreign entity is discharging its obligations under the terms of its appointment referred to in paragraph (ii).

#### Regulation 7.5A.72(3)

A phase 3 reporting entity is also exempt from a provision of the Derivative Transaction Rules (Reporting) requiring the entity, at a particular time, to report OTC derivative position information in relation to a position if:

- (a) regulation 7.5A.73 applies to the entity at that time; and
- (b) a foreign entity that is subject to reporting requirements in one or more foreign jurisdictions that are substantially equivalent to requirements under the Derivative

Transaction Rules (Reporting) has agreed with the phase 3 reporting entity in writing that the foreign entity will:

- (i) reports information about the position, in accordance with the requirements that apply in one or more of those foreign jurisdictions, to a facility prescribed by or under subregulation 7.5A.30(2); and
- (ii) designates the information reported to that facility as information that has been reported to ASIC under the Derivative Transaction Rules (Reporting); and

(c) the phase 3 reporting entity makes regular enquiries reasonably designed to determine whether the foreign entity is discharging its obligations under the terms of its appointment referred to in paragraph (ii).