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To Whom It May Concern

### **Central Clearing and Single-Sided Reporting Regulation 2015**

Origin Energy (Origin) appreciates the opportunity to provide comments to the Treasury consultation on the central clearing and single-sided reporting regulation.

Origin supports the intention of the draft regulation for single-sided reporting to not impose an unnecessary compliance burden on industry.<sup>1</sup> We agree that imposing a reporting obligation on non-financial entities that do not undertake systemically significant trading in over-the-counter derivatives, including for hedging purposes or where a low volume of trades are executed, is not justifiable.

We appreciate the relief that single-sided reporting will provide where the counterparty to a derivative transaction is already required to report. Trading activity in commodity derivatives is predominately conducted with larger financial intermediaries that are currently already required to report. The proposed single-sided reporting regulations could, therefore, remove the compliance burden for a significant proportion of trading activity.

The draft regulations could, however, unintentionally impose a reporting obligation on Phase 3B entities for peer to peer derivative transactions or where the counterparty does not hold an Australian Financial Services Licence (AFSL). We do not consider it is the intention of the draft regulation to impose a reporting requirement on other commodity transactions, for example oil, gas and environmental derivatives when the exposure and volume of transactions would be low.

To minimise the potential for unintended consequences a further ministerial determination or amendments to the draft regulations could be warranted to ensure a reporting obligation is not imposed on commodity derivatives that are not systemically important. That is, the same rationale applied in the exemption of electricity derivatives should be extended to other commodities including oil, gas and environmental derivatives.

#### *Defining the problem*

The regulations are drafted such that the derivative transaction rules cannot be imposed where an entity's AFSL does not authorise them to provide financial services for that class of derivatives. The problem with the practical application of the regulation is an entity's AFSL could provide a general authorisation relating to derivatives rather than an explicit reference to any particular class of derivatives.

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<sup>1</sup> Media Release: Senator the Hon Mathias Cormann, 'Making Over-the-Counter Derivatives Markets Safer,' 12 December 2014.

The implication of this in practice is where an entity may be exempt from reporting through being an end user they would be required to report through holding an AFSL with a general authorisation to trade derivatives. The general authorisation becomes a catch-all provision covering all derivative asset classes irrespective of the purpose and volume of transactions or the size of the exposure.

*A preferred solution*

We consider a ministerial determination or regulations should be extended to provide further relief from reporting for other commodity derivative transactions where the trades are for hedging purposes or there is a low volume of transactions. The compliance costs for reporting a low volume of transactions could increase derivative transaction costs and hinder the development of a competitive and efficient commodity market.

*Ministerial determination or refined regulations*

A ministerial determination under section 901B (3)(iii) of the Corporations Act may consider the impact of reporting on commodity markets as a matter in making a determination. We consider a reporting requirement could hinder a competitive and efficient market for commodity derivatives when the compliance burden influences trading decisions between a counterparty that does or does not require the reporting of the transaction.

Alternatively, the regulations under section 901C considers limiting a reporting requirement for certain classes of derivative transactions including the derivatives to which a transaction relates, for example hedging, while 901D considers the classes of person impacted by reporting including the volume of derivative transactions entered into by a person over a period.

*Removing gaps in the reporting regime*

We consider an expanded ministerial determination or refinement in the regulations could reduce any gaps in the reporting regime where the intention of single-sided reporting is to provide a relief from reporting for entities that are unlikely to pose a risk to the stability of the Australian financial system.

Should you have any questions or wish to discuss this information further, please contact Ashley Kemp on (02) 9503 5061 or [ashley.kemp@originenergy.com.au](mailto:ashley.kemp@originenergy.com.au).

Yours sincerely,



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