

20 August 2012

Manager
Financial Markets Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: financialmarkets@treasury.gov.au

Re: Corporations Legislation Amendment (Derivative Transaction) Bill 2012 (the “Bill”)

Dear Sir or Madam:

On behalf of The Depository Trust & Clearing Corporation (“DTCC”), we appreciate the opportunity to comment on the Bill. DTCC is pleased to see a thoughtful approach to the proposed legislation to implement reporting rules for derivative transactions and agrees with the approach taken in the Bill to provide Australian regulators with the flexibility to consider matters which may be raised before any future decision to mandate reporting is finalized. DTCC is especially supportive of the sentiments expressed in the Overview of the Draft Bill which provide for the implementation of graduated measures to respond proportionally in managing risks in the Australian OTC derivatives markets.

DTCC firmly agrees with the legislative requirements for consultation between the regulators and the public prior to the implementation of any derivative transaction rules. It is only through a robust consultation will regulators be able to craft legislation and regulation that can meet their needs and not unduly burden market participants in their jurisdiction.

DTCC looks forward to further collaboration between the relevant Australian regulatory authorities and the stakeholders in the market. In addition to the comments provided below, DTCC is happy to further discuss development issues to mitigate industry’s cost of compliance and ensure a quicker time to market.

Update on DTCC’s Repository Service

Since DTCC last commented on the Australian consultation in June 2012, it has made significant strides toward the expansion and enhancement of its Global Trade Repository service (the “GTR service”). DTCC is currently in the final stages of its application to be registered as a Swap Data Repository under the Dodd Frank Act in the United States. DTCC will provide trade repository services to entities with mandatory reporting obligations in the United States through a United States company, DTCC Data Repository (US) LLC (“DDR”). DTCC will have fully functioning trade

repository ability in the United States prior to the CFTC compliance date of October 12, 2012 to report Interest Rate and Credit Derivative transactions. DTCC expects to be provisionally registered as a SDR on or prior to the compliance date and begin reporting as a SDR on that date. DTCC will also be ready to accept, process and report data for Equity, FX and Commodity derivatives prior to the CFTC compliance date of January 10, 2013 for those asset classes.

DTCC has also begun the process to be registered as a Japanese trade repository to provide trade repository services to entities with mandatory reporting obligations in the Japan through a Japanese company, DTCC Data Repository (Japan) KK (“DDRJ”). DTCC will have fully functioning trade repository ability for use in Japan prior to the JFSA compliance date of November 1, 2012 to report Interest Rate, Credit, Equity and FX Derivative transactions. DTCC expects to be provisionally registered in Japan on or prior to the compliance date.

The *DTCC Responses* in the document attached hereto are focused on the trade repository (“TR”) portions of the Bill. 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,

A handwritten signature in cursive script that reads "Larry E. Thompson".

Larry E. Thompson
Managing Director and General Counsel

DTCC Responses

Overview

2.3 Decisions to prescribe or make rules for a class of derivatives will require public consultation, and will include opportunities for other agencies to provide advice.

DTCC is very happy to see that decisions to prescribe or make rules for a class of derivatives will require public consultation, and will include opportunities for other agencies to provide advice. Recent history has proven that only through the consultative process will appropriate legislation and regulation be promulgated. DTCC believes the consultative process has already informed regulators in ways that have allowed them to alter their regulatory approach in ways that retain the protective elements necessary but contemplate the burden placed on market participants.

2.7 . . . no separate overseas licensing regime is necessary as the requirements for licensing will be limited to those that would be appropriate for either a domestic or overseas based trade repository.

DTCC is pleased with the decision made to allow for overseas entities to be licensed as trade repositories in Australia. DTCC believes in the extraordinary benefits conferred on regulators by the use of a singular trade repository including the fullness of data, the operational and cost efficiencies to both regulators and market participants and the “speed to market” obtained by utilizing an established trade repository.

2.9 It is important that the regime established for licensing and supervising any domestic facility is sufficiently equivalent to the regimes in place in major overseas jurisdictions such as the EU and the US . . .

DTCC agrees that the licensing and supervisory regimes should be sufficiently equivalent to regimes in major jurisdictions such as the EU. To achieve such equivalence, DTCC would expect Australia to align its regulatory requirement with international standard such as those being addressed by CPSS-IOSCO. Such an alignment will not only provide for sufficient equivalence but will also enable consistency across the global OTC markets increasing the efficiency of reporting and supervision and also reducing the opportunity for regulatory arbitrage.

2.10 Where the DTRs oblige a person to utilise the services of a trade repository, clearing facility or trading platform, the rules can impose a duty upon the relevant facility to provide non-discriminatory access.

DTCC strongly supports the idea of non-discriminatory access to trade repositories and clearing facilities. The concept of non-discriminatory access is being picked up by regulators around the world in consultations and DTCC believes it is the only way to ensure the fair and appropriately priced provision of services to market participants.

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 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.

2.11 The Bill provides for the protection of trade data through imposing restrictions on the use and disclosure of reported data.

With respect to the restrictions on use and disclosure of reported data, DTCC believes the parties to a trade should be allowed to consent to the use of their data for purposes they designate, such as the provision of ancillary services. Combining the non-discriminatory access provisions discussed above with the ability of facilities to use parties' data will result in services being provided in the most cost efficient manner for parties.

Exposure Draft

DTCC believes the Overview captures the essence of the legislation but would like to comment on one specific point: back loading of historical transactions.

901A(8)(b) The derivative transaction rules: cannot impose a reporting requirement on a person in relation to a transaction entered into before the requirement started to apply to the person, or in relation to a position as it was at a time before the requirement started to apply to the person;

DTCC would like to see clarity in the rules to be proposed by ASIC regarding historical transactions addressed in Section 901A(8). DTCC agrees with the statement from the previous 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 derivative transaction rules to require participants to provide information on positions that were initiated prior to the commencement of the obligation."

It is now widely recognized by regulators around the world that loading data for trades active on a chosen date is necessary for them to be able to have a more complete view of the risk held by the parties under their jurisdiction. 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.