22 June 2012

Manager, Financial Markets Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
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By Email only: financialmarkets@treasury.gov.au

Dear Sir/Madam

Treasury Consultation Paper (April 2012) on the *Implementation of a framework for Australia's G20 over-the-counter derivatives commitments*

The Financial Services Council ("**FSC**") represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The Council has over 130 members who are responsible for investing more than $1.8 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

FSC welcomes the opportunity to provide comments in response to *Treasury Consultation Paper (April 2012) on the Implementation of a framework for Australia's G20 over-the-counter derivatives commitment.* We applaud the quality of the Consultation Paper.

We support measures to enhance the integrity and stability of Australia's financial system. We welcome trade reporting. In relation to *mandated* clearing requirements, we consider that certain participants which are not systemically important, or where the risks and liquidity costs of *mandated* clearing are greater than the benefits or reduction of systemic risk achieved by mandated central clearing of certain over-the-counter ("**OTC**") derivatives, should be exempt from mandated central clearing requirements; albeit incentives may be provided to encourage central clearing of certain OTC derivatives by such participants. The identity of what is (or is not) a systemically important entity or participant would require further analysis, including by reference to data obtained from any mandated trade reporting requirement as well as other existing data sets. For example, while a definitive conclusion will depend on a plethora of factors (such as size, nature of and types of transactions), collective investment vehicles (such as managed investment schemes and superannuation funds) would not ordinarily be considered systemically important. Further, the costs and implications of *mandated* clearing for such collective investment vehicles (as well as other participants) requires further consideration before finalising any *mandated* clearing obligation and the entities and/or transactions which would be subject to such *mandated* clearing obligation.

We also support Treasury's commitment to undertake further analysis and consultation before implementing the rules. We consider a phased approach should be adopted whereby mandated trade reporting should be the first of the implemented phases to commence (after consultation is finalised and subject to an appropriate transition period) and the data obtained from trade reporting can then be used to inform the scope and extent of the proposed clearing framework, including the assessment of systemically important entities.

The proposals in the Consultation Paper are at an early stage of development. Our detailed comments on the questions in the consultation paper are attached. Please note that our submission reflects FSC's initial thinking at this stage of the reform proposals under consideration.

FSC may (and reserves the right to) revise, supplement or refine FSC's views on any matters set out in this submission, in light of market developments, further consideration and further consultation. Our comments should be taken in that light.

If you have any questions on our submission, please feel free to call Stephen Judge on 9299 3022.

Yours sincerely,

Stephen Judge
General Counsel

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Definitions Any terms which are defined in the CP, have the same meaning in this submission, unless the context requires otherwise. **General – Our comments are preliminary** The proposals in the CP are at an early stage of development. Our response to the CP in this submission reflects FSC's initial thinking at this stage of the reform proposals under consideration. FSC may (and reserves the right to) revise, supplement or refine FSC's views on any matters set out in this submission, in light of market developments, further consideration and further consultation. Our comments should be taken in that light.			
1.	Do you have any comments on the general form of the legislative framework?	p.9	FSC generally supports the framework, subject to the comments made in this submission. Page 11 of the Consultation Paper says: "DTRs will include rules that prescribe the parties and transactions to which an obligation applies. That is, the Act and regulations define the potential persons and transactions which may be covered by a DTR, but the DTRs are expected to further restrict the range of parties and transactions that come within the scope of any obligation." We refer also to the example on page 28 which states "The legislative framework and the regulations will only define who may *potentially* be subject to the rules, so the DTRs will need to prescribe who they will apply to; for example: : Two Authorised Deposit-taking Institutions (ADIs) transact in AUD interest rate swaps. If

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			this class of derivative is prescribed by the Minister for trade reporting purposes and the ADIs are not entities excluded by the regulations from the potential application of the rules, then the rules may impose a trade reporting obligation upon them." Nonetheless, it is not entirely clear to us how the Minister's prescribed requirements, ASIC's rules (i.e. "**Derivative Transaction Rules**" or "**DTRs**") and the Regulations (insofar as they affect the DTRs) are intended to interact. Specifically: (1) It appears that the Act will give the Minister the power to prescribe the types of transactions that come within the scope of a mandatory obligation; (2) The Act will also give ASIC the power to make Derivative Transaction Rules or DTRs in relation to, among other things, persons who <u>do not</u> have to comply with the mandatory obligation; (3) The Act will also give the Minister the power to make regulations to exclude the potential application of the DTRs to particular entities. There should be a legislative requirement (in the Act) to consult (subject, perhaps to urgent market systemically critical situations, as happened – at times - during the GFC (e.g. the GFC announcement of the unlimited Government guarantee of ADI's; but in such cases there should be a post-implementation review); (4) However, it is not entirely clear to us what is intended to happen once the Minister prescribes a type of transaction, e.g. for reporting purposes. In this example, will the

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			Minister's prescription essentially have no effect until a DTR is made (being a DTR that imposes the obligation to report on the participant)? Or will the Minister's prescription **automatically** impose the reporting obligation on the participant **unless**: (a) a DTR has the effect that the participant does not have to report it; or (b) a Regulation has the same effect as (a) above? We would support a legislative framework under which DTRs impose, specifically and clearly, the obligation on a particular participant or transaction or class of participant or transaction (subject to classes of participants being removed from the reach of DTRs by the Regulations). We suspect this is the model that is intended. We would not support the other model (i.e. where the Minister's prescription 'automatically' imposes the obligation) as we believe it has a higher probability of creating unintended consequences, market disruption/confusion and inefficiency. Also it is important that even at the more detailed prescription we anticipate will be in DTRs, that the Minister, Regulation amendments or DTR amendments facilitate the ability to exclude a particular type of transaction or participant or class of transaction or participant. This is because we anticipate that (just like other principles based regimes, such as the Financial Services Reform regime), unintended consequences may not be immediately apparent initially. Therefore it is essential that the framework facilitate prompt exclusions if there are unintended or inappropriate consequences. We accept that such exclusions would be subject to prompt but proper consideration of relevant policy (costs, benefits and systemic risks). We would also like to enquire whether consideration is being given to managing risks under OTC derivatives transactions that ultimately fall outside the scope of mandated central clearing. While

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			relatively sophisticated risk management tools are currently available to participants, not every participant can or does avail itself of these tools. Has the Council of Financial Regulators (the "**CFR**") considered whether or not it is appropriate to introduce a margining requirement in respect of certain uncleared OTC derivatives transactions that carry volatility risk and do not otherwise have an effective counterparty risk mitigation mechanism in place? FSC does not put forward a view as to whether or not this is appropriate as further consultation would be required, including consideration of: (a) the implications for the costs of transactions; (b) liquidity implications (for example, of collateral arrangements under uncleared OTC derivative transactions); (c) the implications for the availability and pricing of OTC derivative transactions for certain end-users or participants if there was any mandating of margin requirements for certain (volatile) uncleared OTC transactions (as opposed to market-based *incentives* to margin OTC transactions). Any consideration of this matter by the CFR would necessitate that FSC consult with its members to ascertain the implications and views of our members, and we would expect the CFR (or Treasury) would consult if this is given consideration. Finally any DTRs should include appropriate guidance and direction as to how participants need to treat potential cross jurisdictional conflicts in rules in overseas CCPs and TRs.
2.	Do you have any comments on the definition of	pp9&10: A transaction includes the	**Trade Reporting**: We believe it is appropriate for 'transaction' to include the making of a contract for mandatory reporting purposes. We also believe this is appropriate for modifications (but only of reportable parameters under the DTRs) and terminations. Generally in the context of mandatory

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	'transaction'?	making, modifying or terminating of a contract for derivatives.	trade reporting, we believe a simpler reporting mechanism for 'roll-overs' should also be considered. We also seek confirmation that a termination of a transaction includes the expiry of a transaction on its terms. **Clearing/Execution**: We believe it is appropriate for 'transaction' to include the making of a transaction for mandatory central clearing or execution purposes. However, we are not certain how the extended definition of "transaction" (specifically, the 'modifying' or 'terminating' of a derivative) is intended to operate. While a modification could bring a derivative within the mandatory clearing / execution regime, the reverse can also be true. Please see our comment on Question 24 below. **General comments:** "Transaction" has a very broad meaning in ISDA Master Agreements—and of course, OTC derivatives are generally traded under ISDA Master Agreements. Whatever form the statutory definition takes, it is worth keeping in mind that 'transfers' under risk collateralisation structures (so-called 'English Law' Credit Support Annex (**CSA**) transfers) are also "transactions" under ISDA Master Agreements. Where the movement of collateral is deemed to be a reportable Transaction and where the swap dealer is the recommended party to report, consideration should be given to allowing a CCP to report collateral movements. Additional clarity is required in respect of what constitutes a modification of a contract. This would need to apply only to the reportable terms of the contract and would explicitly need to exclude actions such as rate sets or collateral calls from the definition.
3.	Do you have any comments on the definition of 'party'?	pp9&10	It seems to us that it is possible for the definition of "party" to capture only one of the parties to the transaction, i.e. capturing the domestic party and not the international party. However the defined term is framed, we believe the legislation should make it clear that non-"parties" may not object to a

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			"party" complying with the obligation. In addition, it seems to us that it is also possible for "party", as defined, to capture both the Investment Manager and its client/principal where the Investment Manager transacts on behalf of its client/principal. As risk and asset ownership reside with the principals to transactions, we consider that the regulation ought to focus on the principals and not on agents (such as Investment Managers), and not target aggregate trading across different principals/clients who are managed by a common Investment Manager. This recognises the obligation of Investment Managers to keep trust assets separate and also addresses potentially arbitrary effects arising from regulating parties at the agent or Investment Manager level. For instance, thresholds could apply differently to a principal depending upon which Investment Manager or how many Investment Managers the principal/client chooses if the obligation is imposed in respect of the Investment Manager instead of the principal/client. Of course, any application to a principal should be subject to appropriate exemptions (such as for example, transactions below a particular threshold). Clarity is required in respect of transactions undertaken by Investment Managers on behalf of underlying clients. It is important that any obligation be clearly applied to one of these parties only (but not both the principal (or client) and the Investment Manager). We consider that the most appropriate and practical application of the obligations (where they apply) is that it fall on the party where the risk ultimately lies – that is the client/principal rather than the agent/investment manager.
4.	Do you have any comments on the definition of 'eligible facility'?	p.10:	In respect of each type of mandatory obligation, there may be several eligible facilities. Care would need to be taken so that overlapping, duplication or distortion of data is not an issue. One way of addressing this would be for the reporting obligation to be borne by one party only.

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			In addition, some "transactions" may also have to reported elsewhere, depending on whether overseas laws apply and what they may say. Mutual recognition treaties may allow for only one report to be made in order to save on duplication and expense. At least this cross-jurisdictional issue is less likely to arise in the context of clearing/execution if restricted to AUD derivatives (except AUD Transactions already cleared internationally like AUD LIBOR swaps on LCH). Refer also to the risk of double counting discussed in the response to Question 12.
5	Do you agree that non-discriminatory access requirements should be imposed on eligible facilities?	p.10	We agree that non-discriminatory access requirements should be imposed on eligible facilities. However, how will this be monitored, measured or enforced? Non-discriminatory access should not come at the expense of maintaining robust and stable eligible facilities. Appropriate risk management measures are required, especially in the case of participants in a clearing facility.
6.	Do you have any comments on the rule-making power that will be available to ASIC?	p. 11	The Consultation Paper says that "ASIC will consult with other agencies (including the Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia (Reserve Bank) and stakeholders in developing DTRs". We consider that the reference to stakeholders need to be expressed to include all affected stakeholders including industry bodies, such as FSC. It is imperative that industry participants be given an opportunity to respond to any proposals so that ASIC may have regard to the response in finalising the proposals. ASIC should also be required to publish (in addition to consultation) the reasons for its decision to make or issue a DTR. We agree that ASIC DTR decisions should require Ministerial approval, and also be subject to Parliamentary disallowance (we refer to page 1 and 5 of the CP). The issue of DTRs should also be subject to the Office of Best Practice Regulation requirements,

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			including a regulatory impact statement (and potentially a draft RIS for consultation with affected stakeholders including industry), before any DTR is finalised. Also it is important that the Minister, Regulation amendments or DTR amendments facilitate the ability to exclude a particular type of transaction or participant or class of transaction or participant. This is because we anticipate that (just like other principles based regimes, such as the Financial Services Reform regime), unintended consequences may not be immediately apparent initially. Therefore it is essential that the framework facilitate prompt exclusions if there are unintended or inappropriate consequences. We accept that such exclusions would be subject to prompt but proper consideration of relevant policy (such as costs, benefits and systemic risks). It appears from the Consultation Paper that ASIC will not necessarily engage in public consultation when developing the DTRs. We strongly suggest that ASIC <u>must be required</u> to engage in appropriate public consultation for all DTRs. The DTRs will contain the precise elements of the mandatory requirements. There will likely be a variety of important details that will need to be addressed in the DTRs. As such, it is appropriate that ASIC canvasses and understands market participants (and other interested stakeholders) concerns in relation to each of those elements. Without public consultation, there is a significant risk that the market will not be able to meet ASIC's expectations and/or that DTRs have unintended and/or inappropriate consequences.
7.	What should be the minimum period of consultation imposed on ASIC in developing DTRs?	p. 11	We believe this should depend on the likely reach and impact of the relevant DTRs. A suggested rule of thumb would be a minimum 90 days, but a longer timeframe may be required depending on the nature and impact of the proposed DTR.

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			Please also see our response to Question 6 in respect of meeting Office of Best Practice Regulation requirements and other transparency and accountability requirements which ASIC should be subject to (in addition to Ministerial consent) in developing proposed DTR rules. By way of example, ASIC consulted widely on market integrity rules relating to the introduction of competition in markets. Our suggestions in this submission are not to suggest ASIC would not consult widely in respect of proposed DTRs (as it appropriately did so in the case of market integrity rules). Rather, the Ministerial consent, accountability and transparency of decision/rule making and the requirement for ASIC to consult on proposed DTRs set out in our response to Question 6 should be stipulated in the Act or Regulations.
8.	What should be the minimum period of notice between when a DTR is made and when any obligation under the DTR commences?	p. 11	Again, this would depend on the likely reach and impact of the DTRs and whether they have been sufficiently widely disseminated and consulted upon, and in light of the ramifications and implications apparent from that consultation. We suggest the minimum transition period should generally be not less than 12 months after the first tranche of DTRs is finalised. This would apply to all DTRs that effect substantive changes to systems, processes, etc. For other DTRs, we suggest, as a general rule, a minimum transition period of 6 months. However, we consider that the appropriate transition period should be considered on a case by case basis given the impacts and implications of any proposed DTR for markets, participants, end-users, IT system changes, impacts on processes and training requirements and other relevant factors. Consultation should canvass market views on timing for implementation. There should be longer consultation periods in respect of proposed DTRs where the impact is likely to be significant or require substantive changes to infrastructure, systems, policies, training or

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			procedures.
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)?	p. 11	It would depend on what these thresholds relate to and how/if the mandatory obligation continued to apply in respect of the other party. For instance, in the context of central clearing, it may be considered appropriate for a threshold to apply to counterparties within a particular class so that the obligation to centrally clear does not arise until the threshold is reached (but subject to appropriate rules to remove the opportunity for counterparties to seek to "arbitrage" (i.e. avoid) a mandated central clearing requirement by structuring transactions below the threshold). However, such a counterparty may have difficulty finding its own counterparty for a bilateral contract under the threshold amount if no banks were subject to a threshold, i.e. if banks could only enter into such transactions if they were mandatorily cleared. We believe the ability to opt in to central clearing should be permitted if the participant deemed this to be commercially appropriate. A case could be made for non-institutional or low aggregate trade volume counterparties to be excluded from the reporting mandate, for instance. However, most if not all of this data would still be captured if, for instance, the mandated obligation is on 'swap dealers'. FSC supports a framework which allows the exclusion of particular types of entities or parties to derivatives transactions from the requirements of these obligations. The type of entities which may be worthy of exclusion will turn on their systemic importance and the effect of excluding them on the robustness of the mandated requirements.
10.	From the point of view of your business and/or of	p.12	If 'back loading' is implemented, we expect it would only apply to the reporting obligation—to capture only transactions that were outstanding at the time the rule is made. As to how far back the

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	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?		'capture' or 'back loading' should go, we suggest no earlier than such time as participants could reasonably be expected to have their systems set up for reporting. Otherwise, the information may have to be gathered (and reported) manually and the compliance cost of 'back loading' would be likely to be higher. There should also be a materiality threshold if existing transactions are required to be "backloaded". If reporting obligations are applied to historical Transactions then we recommend this be restricted to a smaller data set. Subject to the comments above being accommodated, FSC has no material concerns with back loading of any reporting requirement. FSC has concerns if "back loading" were applied to Clearing. Clearing changes the cost and liquidity of *previously* priced and transacted arrangements, which were not contemplated at the time of initial pricing, and therefore if "back loading" applied to Clearing, this may negatively impact the economics of previously entered into transactions and may operate as an imposition of a requirement retrospectively.
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?	See pp 13-15	We would support this in respect of trade reporting. We believe that the financial markets generally would ultimately benefit from a broader catchment of information resulting in higher transparency on volume, price, maturity, etc, at the appropriate time—as to which, please see our comments in 25.4 below. In terms of what type of information should be reported, we believe the appropriate measures should focus on reducing or mitigating market risk, e.g. relatively low volume derivatives may have higher market risk, e.g. options.

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			Intra-group transactions should be excluded. Any information provided should be in a consistent format to international TRs to assist in cross jurisdictional Transactions.
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 pp 13-15	We would <u>not</u> support a necessarily broad range of entities in the mandate to report trades, where that will result in double-counting, duplication of reporting requirements (i.e. the same information being reported by more than one party) and "confusion" as to the reported data. We believe that the risk of corruption of (and confusion relating to) market data (e.g. due to double-counting) is higher with each additional entity that is required to report the trade. In addition, compliance costs will generally be higher for lower-volume trading participants. Our view is that 'swap dealers' (within the meaning of Dodd-Frank) should have the sole reporting obligation. Typically, swap dealers have the volume of trades and existing infrastructure to make reporting a lower cost option as compared with other participants. We would submit that other parties should only have the obligation to report if a swap dealer is not a party to the trade. However, should the CFR (or Government) be inclined to include all parties in the mandate to report, we would submit that a phased implementation is appropriate—<u>beginning with swap dealers</u> and <u>then</u> assessing how effective this is before the CFR (or Government) concludes whether or not the mandate should be further extended to other entities (<u>such as investment managers if required</u>), and <u>then</u> finally if appropriate and required, <u>end-users</u>. Intra-group transactions should be excluded. Consideration longer term should be given to a swap execution facility and CCPs being eligible to also facilitate trade reporting.

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13.	Are there specific classes of entity that should be excluded from the potential reach of trade reporting DTRs?	See pp 13-15	Please see our comments in relation to Questions 3 and 12 above, as well as our response to Question 6 in respect of meeting Office of Best Practice Regulation requirements and other transparency, consultation and accountability requirements in respect of particular proposed DTRs.
	13.1. What metrics should be used to determine any thresholds?	See pp 13-15	Is this asking what parameters should be used in determining any thresholds for trade reporting purposes? We are not certain if this answers the question but our comments in respect of Question 11 may be relevant in this context, on the assumption that the threshold for trade reporting would only be relevant for entities which are subject to mandatory trade reporting. For those classes of entity which (following consultation) are to be subject to mandatory trade reporting, a threshold should not apply in the first place in the context of trade reporting. Hypothetically, if a threshold amount had to be met for those entities subject to mandated trade reporting (e.g. for net exposure, gross amounts, etc) before the reporting obligation arose, the Council of Financial Regulators would also have to consider implementing preventative measures, e.g. to prevent reporting entities from structuring transactions (e.g. by entering into a lot of smaller transactions) to avoid any reporting requirement.
	13.2. What should be the thresholds of these metrics that trigger when an entity may be subject to trade reporting rules? Should this	See pp 13-15	Please see our comment in 13.1 above. If the reporting obligation is only imposed on 'swap dealers', this would largely cut across the debate concerning whether different thresholds for trade reporting purposes could be considered for different entity types. Consideration longer term should be given to a swap execution facility and CCPs being eligible to also facilitate trade reporting.

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	threshold vary depending upon the nature of the entity?		Our answer to Question 13.2 (like question 13.1) pre-supposes that only entities subject to mandated trade reporting would be subject to the reporting requirements. Questions relating to what ***type of entities*** should be subject to trade reporting, and for those entities ***what should the reporting threshold be***, are inter-related. Our response to the first (what entities) would impact our answer to the second (what threshold). We would need to know the answer to the first to definitely respond to the second.
	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 pp 13-15	In this context, perhaps the appropriate determinant could be (instead of a threshold) whether that transaction had already been reported to an Australian or an offshore TR. As previously outlined, clarification needs to be provided on where the reporting obligation (and thus any exemption) exists in the case where an investment manager is acting as the agent for a principal/fund/client.
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 pp 13-15	Yes. Our comments on Question 11 apply equally here. Our answer to this question 14 is distinct from ***what entities*** should be subject to mandatory reporting (in which case, see our answer to question 12 and our comments in our answer to Question 13.2 relating to the inter-relationship between what ***type of entities*** should be subject to trade reporting, and for those entities ***what should the reporting threshold be***).
	14.1. Are there specific classes of transaction that should be excluded from	See pp 13-15	We believe that the reporting obligation should extend (for those entities subject to mandated reporting) to all classes of transactions that impact materially on market risk—whether risk is increased due to the nature of the transaction (e.g. options), volumes traded (e.g. FX, swaps, FRAs),

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	the potential reach of trade reporting DTRs?		maturities (long term derivatives), etc. Although data on lower risk trades (e.g. repos) would be of interest, if the primary parameter is enhanced market risk, these types of trades may be discounted. Spot FX trades may also be too short term (and of relatively low risk) to include in the catchment for reporting purposes.
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?	See pp 13-15	We believe it is appropriate for 'transaction' to include the making of a contract, modifications (but only of reportable parameters under the DTRs) and terminations (or expiry). We also believe a simpler reporting mechanism for 'roll-overs' should be considered. Consideration should also be given as to whether the reporting of certain OTC derivative transactions (e.g. 'transactions' constituted by CSA transfers (see 2 and 4 above)) would distort market data. Collateral may change daily. If this is reportable a more efficient reporting mechanism could instead be via a CCP.
16.	Do you agree with the option of relying upon market forces and a range of other mechanisms, such as capital incentives, while monitoring the impact of such mechanisms in systemically important derivative classes and providing for possible future	Pp15-17	There are many considerations for this question. It is a difficult question to answer as there are many relevant factors and inter-dependencies. We consider that there is a logical sequence for implementation of these reforms in order to minimise market uncertainty/disruption and to maximise effectiveness and, if applicable, voluntary take-up: • In order for **clearing** and **trading** mandates to be imposed on an informed basis, central **reporting** must first apply so that gathered data can be analysed to assess the potential liquidity impact of the proposals; • Due to the likely impact on liquidity, following the assessment of trade data, mandatory

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	mandating, to ensure that central clearing becomes standard industry practice in Australia within a timeframe that is consistent with international implementation of the G20 commitments? If not, is there another option you prefer?		clearing should precede consideration of mandatory exchange trading; and • Due to the need for significant infrastructure enhancements, implementation of each new mandate (reporting, clearing and trading) should begin first with 'swap dealers', followed by investment managers where appropriate, then finally, by end-users where appropriate. As to whether market forces in combination with capital incentives should be relied on to encourage timely take-up, it is difficult to answer this question without knowing how the central clearing system will actually operate. E.g. will there be one central pool (there are potentially many CCPs) for different types of transactions with different risk profiles? What, if anything, will be done to protect participants from 'fellow customer risk'? Will there be adequate liquidity? Will the central clearing model be a sufficiently attractive alternative to encourage take-up by participants (as compared with the existing bilateral model with its attendant risk management tools)? The existing bilateral model offers the benefit of one pool for all such transactions between two parties. Only one net amount is determined on an insolvency. Introducing a parallel central clearing system for some of these derivatives effectively splits the pool and creates two smaller pools with two net amounts on insolvency. This could have the anomalous effect (given the purpose of central clearing to decrease risk) of actually increasing overall risk. Central clearing could also expose participants to new risks, e.g. fellow customer risk and credit risk on the CCP (albeit the later risk is managed by the operation of a CCP). We can see how the take-up of a non-compulsory central clearing system might be quite slow, particularly in the initial stages, as participants try to come to grips with which option (cleared or non-cleared) gives rise to the best economic and lowest risk outcome. We agree with comments in the Consultation Paper (page 16) that there may be a "tipping point" in terms of number of parties centrally clearing, after which it makes more sense for

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			other parties to also centrally clear. **<u>Overall, we can see the benefits at this stage of not legislating a mandatory take-up</u>**. It will give the market time to assess the pros and cons and provide feedback to the regulator. In the shorter term, however, this uncertainty could promote higher costs, arbitrage and market imperfections which are not desirable in times of global financial stress. For these reasons, we consider that a phased implementation—beginning with mandatory non-public central reporting—would at least potentially arm the regulator with sufficient information to consult and then decide on the next steps. However, we would therefore expect market forces to assist in take up; before any legislated mandate if that is required. We are also conscious of other reforms taking place in the financial services industry at the moment and that mandatory clearing in the near term would require a considerable investment of resources that may not be currently available.
17.	Are there specific entities that should be excluded from the potential reach of central clearing rules?	Pp15-17	The specific entities that should be excluded are those entities which are not systemically important, for example, certain collective investment vehicles (such as registered managed investment schemes and superannuation funds) provided they are not of a size or nature to be systemically important. This is due to situations where the need to post collateral could force liquidation of underlying physical investments, thus having a negative impact on the retail investors in such collective investment schemes. Daily margining of any type, including central clearing, may add significant liquidity risks to particular classes of investors, especially where borrowing to fund margin calls is not a viable option. The flow-on effects of such clearing may well create an overall riskier outcome for some participants. There is

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			the need to address these additional risks within the concept of central clearing for all entities. Investigation of trade reporting data needs to be undertaken over a period of time to ascertain who the systemic important entities in the market are. Once this investigation has taken place, it can be determined which non-systemic entities can be fully excluded from the mandatory clearing rules. The predominant bilateral risk management system currently in use in Australia for OTC derivatives utilises the 'absolute transfer' method of collateralising risk, i.e. daily calculations and adjustments to bring net exposures to zero (or close enough). Contrast the method currently used in the USA, where assets are 'pledged' to the party that is in-the-money but often with an inbuilt entitlement for that party to 'rehypothecate' or transfer the pledged assets elsewhere. These are two entirely different systems of risk management. While the existing US 'regime' is quite different to the general central clearing model currently under consideration, the Australian 'regime' is reasonably similar to it. Under central clearing as we understand it, margin will be paid into the central account and made available for application against the payer's potential loss on a trade. (Essentially, that is what happens under the 'absolute transfer' system of collateral risk management in Australia under OTC bilateral derivatives assuming the collateral is cash.) However, central clearing could also introduce additional risks to those that currently prevail in the Australian 'absolute transfer' model – e.g. participants take a risk on the central counterparty (albeit the operations of CCPs seek to manage this risk), broker and potentially fellow customers. Further, having two smaller (split) pools instead of one large pool could result in unnecessary loss of capital e.g. if the 'non-defaulting party' is in-the-money in the non-centrally-cleared-pool but out-of-the-money in the centrally-cleared-pool.

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			In short, we can see why the US, for instance, may wish to adopt a central clearing model but we are not entirely clear on what this system will add in the domestic space, given the inter-dependencies set out above. If we have a central clearing system, the CFR may consider exempting entities from central clearing that are typically asset-rich-but-cash-poor (assuming, of course they are not systemically important – it would be unlikely for a collective investment vehicle to be systemically important). Otherwise, these entities would be forced to liquidate assets to realise margin. Examples include many funds in the funds management industry (such as registered managed investment schemes and superannuation funds). The CFR may also consider exempting entities from mandatory central clearing where the entity already has an effective bilateral risk management system in place. However, if these entitles are 'excluded' (**i.e. not permitted** to centrally clear, as opposed to 'exempted' i.e. not *mandated* to centrally clear) from central clearing, an *exclusion* may create issues if, for instance, all banks are obliged to centrally clear. 'Excluded' entities may thereby be unable to find a counterparty for bilateral uncleared trades and thus, may wish to have the flexibility to 'opt in' to the central clearing regime. For this and other reasons, we suggest that if some market participants will be 'exempted' from complying with *mandatory* central clearing, they should nonetheless be permitted to voluntarily engage in any mandated activity (such as central clearing).
	17.1. What metrics should be used to determine any thresholds?	Pp15-17	In answering this question, we assume it only relates to those entities which are subject to mandated clearing (which as we note above should only be systemically important institutions as determined by analysis of data reported over a period of time under any mandatory trade reporting requirement). We expect this question concerns thresholds in the context of margins to be paid to the

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			clearinghouse. We believe that initial margin levels for cleared trades should reflect no more than a 3 day volatility risk. We think it would be suitable for thresholds to apply not only for de minimis and cost-efficiency type reasons but also, to particular types of entities, e.g. funds holding less liquid assets in the funds management industry. Given the relative sophistication of existing available risk management mechanisms in the OTC derivatives market, we also submit that care needs to be taken to ensure that the central clearing model does not potentially worsen the risk profile of these products (e.g. by introducing 'fellow customer risk' without significantly mitigating other risks). Under any collateral movement we recommend clarity to ensure movements do not create "disposals" in terms of CGT/TOFA disposal rules.
	17.2. What should be the thresholds of these metrics that trigger when an entity may be subject to trade clearing rules? Should this threshold vary depending upon the nature of the entity?	Pp15-17	See above.
	17.3. What is an appropriate threshold to exempt end users from the mandatory obligation to	Pp15-17	See above

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	clear OTC derivatives classes?		
18.	Are there specific classes of transaction that should be excluded from the potential reach of trade clearing DTRs?	Pp15-17	We consider that the clearing mandate should only apply to standardised swaps for which there is adequate liquidity to enable a clearing house to value the risk. It is not clear to us that a transaction ought to be excluded from trade clearing based on the purpose of the transaction (hedging or risk mitigation *versus* speculative, position taking or proprietary). The purpose of the transaction does not necessarily determine the systemic importance of the transaction or entity. An exemption for hedging or risk mitigation could exempt large and potentially systemic important transactions. However, we consider that further consideration is required as to whether it is appropriate to provide an exclusion for hedge/risk mitigation by certain entities (e.g. non-financial entities or entities which are not systemically important). It should not be assumed that hedge transactions by non-financial entities should automatically be exempt from trade clearing without considering in detail of the systemic implications of the non-financial entity which would be a function of the extent and level of the transactions. Also, if there was an exclusion from mandated clearing for hedge/risk mitigation transactions, it is not always easy to determine whether / when a transaction falls within the description as a transaction entered into for hedging or risk mitigation. Our initial view is that hedge transactions should not *prima facie* be excluded as they provide valuable information on pricing/volume etc., and it cannot be assumed that necessarily hedge transactions don't contribute (along with transactions for non-hedge purposes) to systemic risk. Further consideration of this is required. In summary, further consideration and consultation is required in relation to the effect and

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			appropriateness of excluding hedge/risk mitigation transactions. Intra-group transactions should be excluded from the requirement to centrally clear. The introduction of a broad trade reporting requirement (as opposed to clearing requirement) will assist in the assessment of the systemic importance of transactions entered for specific purposes, before deciding which transactions should be subject to mandated central clearing.
	18.1. In particular, should some transactions entered into for certain purposes (for example, hedging, commercial risk mitigation) be outside the potential reach of the rule-making power?	Pp15-17	See above.
19.	Do you agree with the option of requiring central clearing for derivatives where at least one side of the contract is booked in Australia and either: (a) both parties to the contract are resident or have presence in Australia and	Pp15-17:	FSC considers that only systemically important entities should be *mandated* to clear derivatives transactions regardless of size or location of the transaction. However, entities which are not subject to mandated clearing, should still be permitted to clear transactions (subject to meeting the requirements of clearing participant members). Adopting the second option would promote consistency of clearing. Many buy-side participants are resident in Australia and trades derivatives with dealers who are resident or present in Australia and with dealers who are not. If the first option were adopted, then an identical transaction with two

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	are entities that are subject to the clearing mandate; or (b) one party to the contract is resident or has a presence in Australia and is subject to the clearing mandate, and the other party is an entity that would have been subject to the clearing mandate if it had been resident or had a presence in Australia? If not, what definition do you prefer?		different dealers may be cleared with one dealer but not the other. The main difficulty we see with the definitions is: if different currency derivatives come within the central clearing regime at any time in any jurisdiction, there could be an obligation in more than one jurisdiction to centrally clear the transaction. However, this could be mitigated by mutual recognition treaties. However, clarity over the treatment of conflicts (of laws) and whether it is a right for a participant to determine which jurisdiction to opt in will need careful consideration. Also, please see our comments in 1 above in relation to situations where there might be only one 'party' (as defined).
20.	Do you consider that there are any OTC derivative classes for which an execution on trading platforms mandate would be appropriate at this time? If so, please provide any evidence which supports your view.	Pp19&20	We do not provide a definitive answer. It is too early in these proposals to assess this and consultation will be required at a later stage of the implementation of the OTC framework. FSC has not had a sufficient opportunity to fully canvass our members in relation to these matters. Hence, at this time, it is too early to consider if there should or should not be any OTC derivative class for which execution on trading platforms is mandated. We would note that any OTC derivative made subject to mandated execution on a trading platform would need to be highly standardised in order to ensure price and volume transparency on the exchange (or swap execution facility).

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21.	Alternatively, do you agree with the option of applying the same approach to prescribing entities, transactions and derivative classes as has been applied for mandating clearing?	Pp19&20	We do not provide a definitive answer. It is too early in these proposals to assess this and consultation will be required at a later stage of the implementation of the OTC framework. FSC has not had a sufficient opportunity to fully canvass our members in relation to these matters. However, it is not clear to us at this point (that is, it has not yet been convincingly evidenced) that it is appropriate to *mandate* a trade execution obligation. Such an obligation could introduce market inefficiencies and higher costs. We would note that any OTC derivative made subject to mandated execution on a trading platform would need to be highly standardised in order to ensure price and volume transparency on the exchange (or swap execution facility). Also, consideration should be given as to the market and operational impacts of any mandated trading on an execution platform. The systems (if mandated execution is eventually implemented for certain liquid and standardised OTC derivatives) would need to be able to cope with high volumes.
22.	If a derivative class is prescribed for mandated use of CCPs should it also be mandated for execution on a trading platform?	Pp19&20	A mandated trade execution requirement may result in unintended disruptions to liquidity. A *mandated* trade execution obligation may introduce market inefficiencies and higher costs. In the fullness of time, and for the appropriate liquid and standardised OTC derivatives, it is possible that the mandated use of CCPs on a trading platform may enhance price and volume transparency. However, this would need to be supported by analysis of market implications before mandated use of a trading platform is imposed.

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			However, we are unable at this stage of the implementation of the OTC proposals to provide any definitive view as to whether or not a derivative class prescribed for mandated use of CCPs should also be mandated for execution on a trading platform. Essentially, further consultation and consideration of evidence is required on this item.
23.	Do you agree with the option of initially excluding the same entities and transactions from the mandate to execute trades on trading platforms as those for the mandate to clear through a CCP? If not what option do you prefer?	Pp19&20	See our response to questions 21 and 22.
24.	Do you agree with the option of using the same definition of a transaction in Australia for the purposes of mandating executing a trade on a trading platform as for mandating clearing	Pp19&20	The proposed definition of 'transaction' includes making, modifying or terminating a derivatives contract. We consider that describing the components of a 'transaction' in this way might lead to confusion in the context of *clearing* or *execution*. Potentially, three 'transactions' could arise in the life cycle of one contract that is made, modified and terminated—with even more 'transactions' if modified more than once. We believe it is worth considering whether and how to structure the legislation so that 'transactions' (within the ordinary meaning of the word) that fall within certain standardised parameters are subject to mandatory clearing/execution. If 'transaction' were to retain

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	transactions through a CCP? If not, what definition do you prefer?		its ordinary meaning, this need not affect the reporting obligation, e.g. the 'making, modifying or terminating of a transaction' could still give rise to an obligation to report. If the Transaction is a liquid and standard contract it is possible that mandating executing a trade on a trading platform and mandating that such trade be cleared through a CCP may assist price and volume transparency. This would also reduce the possibility that important information on depth of liquidity might be withheld from financial markets (for liquid and standardised contracts). However we are unable, at this stage of the implementation of the OTC proposals to provide any definitive view as to whether or not the same definition should be used. Essentially further consultation is required on this item.
25.	From the point of view of your business and/or that of your clients, do you have concerns with reporting Australian trades to Australian and/or international trade repositories?	Pp21-22	Maintaining client confidentiality is a key concern for the funds management industry. We can see how a reporting requirement could impact negatively on client confidentiality unless rigorous protections were put in place. However, we can also see how greater transparency and availability of information would enhance existing services provided to clients and investors—provided appropriate delays in public reporting of block transactions, for instance, are built into the system and there are appropriate controls (backed by sanctions/penalties for breach) designed to ensure there is no misuse of information by those who receive it ahead of time. Trade repositories should be subject to rigorous and enforceable confidentiality requirements, and the risks of enforcement off-shore should also be considered. Any licencing of offshore trade repositories (as well as domestic repositories) should require satisfaction as to protection and use of data and protection of client confidentiality, and should also consider whether the trade repository is subject to an enforceable regime in respect of these matters. Further, any licenced trade repository

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			(under the proposed new licencing regime for trade repositories) should be subject to annual regulatory reviews (such as ASIC reviews of ASX) as well as compliance reports signed off by boards in relation to the trade repository's compliance with all requirements of the (proposed) trade repository licencing regime. Any consideration of trade repository licencing of off-shore/international trade repositories would clearly also require consideration of cross-jurisdictional issues, regulatory equivalence, conflicts of laws and enforceability issues – and these matters need to be considered in the licencing regime for off-shore/international trade repositories. Consideration is also required of the effect of multiple trade repositories in terms of aggregating and reporting data. Unless aggregation of data across multiple trade repositories is managed effectively, there is a risk that trades could be reported more than once, thus providing a less accurate view of systemic risk within the Australian financial market.
	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?	Pp21-22	Trade repositories should be regulated entities only (under a new rigorous and robust licencing regime for trade repositories). That licencing regime must adequately address the risk of conflicts given the trade repository will receive data/information before the aggregated/combined data is released to the public or market. Further the repository may receive disaggregated data that the market/public will not see (as the data reported to the market may be aggregated) – this also involves conflicts and obligations of confidentiality which need to be strictly controlled and managed, including controls to prevent use of or access of that information to other parties, unless released to the market as a whole. In terms of what data should be publicly disclosed, we support the disclosure of data that promotes the efficient operation of the market (e.g. price, volume, maturities, fees, etc). This recognises that immediate disclosure of certain types of trades (such as block trades) would not promote the

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			efficient operation of the market. Timing of public disclosure of data to the market should ensure an appropriate time-lag so as not to act as a disincentive to market participants from undertaking trading activity (and not allow others to "trade off" the proprietary information of fund managers in their trading strategies). This is not to suggest that the lag will necessarily be significant – rather the time-lag needs to be sufficient (given the liquidity of the OTC derivative) to prevent others "trading off" the trading strategies of others. We also accept a balance is required in terms of ensuring prompt public disclosure (for market transparency, providing information on depth, volume and pricing in the market, for market efficiency reasons), subject to managing the "proprietary" issues above. As to data protection, we expect that the legislation will provide for appropriate penalties on untoward disclosure. In relation to privacy, we can see an argument that at least the identities of end users should not be disclosed—including any information that could identify end users. Disclosure should be limited to the policy aims sought to be achieved (market stability, systemic risk management, transparency and encouraging liquid and efficient markets), balanced against the need to ensure fund managers' proprietary trading information and trading strategies are appropriately protected.
	25.2. What restrictions should there be on the use of reported data by trade repositories?	Pp21-22	There should be strong controls and restrictions on the use of reported data by trade repositories. Aggregated data should be only used by regulators for market monitoring and in their assessment of systemic risk. A concern that might arise in this context is conflicts and arbitraging. As the first recipient of the market information, the trade repository could potentially use the information to its advantage in its

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			own trading activities. We don't know, for instance, how effective a restriction on entering into the type of trade might be, e.g. no trading in the relevant derivative until the information is made public. We also believe it would be worth considering a restriction on who trade repositories should report to—e.g. only to ASIC (or another regulatory agency) and no other entity, with the intent that any agency requiring information should obtain it from ASIC, subject to appropriate restrictions and consequences. Disclosure (and use) should be limited to the policy aims sought to be achieved (market stability, systemic risk management, transparency and encouraging liquid and efficient markets), balanced against the need to ensure fund managers' proprietary trading information and trading strategies are appropriately protected. Trade repositories should be subject to rigorous and enforceable confidentiality requirements, and the risks of enforcement off-shore should also be considered. Any licencing of offshore trade repositories (as well as domestic repositories) should require satisfaction as to protection and use of data and protection of client confidentiality, and should also consider whether the trade repository is subject to an enforceable regime in respect of these matters. Any consideration of trade repository licencing of off-shore/international trade repositories would clearly also require consideration of cross-jurisdictional issues, regulatory equivalence, conflicts of laws, enforceability issues, and privacy/data protections – and these matters need to be considered in the licencing regime for off-shore/international trade repositories. Please also refer to our response to question 25 in respect to aspects of the proposed licencing regime for trade repositories.

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			Any licencing of trade repositories should also be subject to a review of any conflicts. For example, presumably the trade repository would not be permitted to own or be related to a market participant unless rigorous and enforceable controls (subject to a penalty regime) were in place. Further consultation would be required on these matters.
	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)?	Pp21-22	Sharing of trade repository data between Trade Repository Licence-holders: this may exacerbate the concerns raised in 25.2 above, if information were to be concentrated ahead of time into a small number of hands. In the absence of good reason, we would argue against the sharing of this information between trade repositories, subject to regulator systemic risk concerns. Individual transactions should not be shared between TRLs. Only aggregated data should be shared. If anyone obtains information that isn't made public (whether TRLs or regulators etc): an obligation to keep this information confidential should apply, together with strict liability for disclosure (and penalties imposed on TRLs for breach). TRLs should be subject to criminal sanctions for reckless or deliberate breaches. If information is to be shared with international bodies, there should at least be a connection with that jurisdiction, e.g. an overlapping obligation to report/clear /execute in that jurisdiction. There should be review and accountability mechanisms as to the use and disclosure of information by Trade Repositories. For example, perhaps a regular report to the regulator, reviewed by the regulator. The regulator could then be required to release its assessment of the trade repository (just like ASIC's assessment of market operators).
	25.4. Should the prices and	Pp21-22	Subject to balancing the competing considerations set out in our response to this question, we

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	sizes of individual transactions reported to trade repositories be made publicly available? If so, do you have any views on the time frame in which the information should become publicly available? Should there be different time periods for public release of transaction data depending on the size of particular transactions?		wouldn't object to trade prices and sizes being made publicly available at the appropriate time. To assist the regulator in determining what the appropriate timing should be, we submit that *non-public* central reporting should precede any mandate for *public* reporting of data. This would give the regulator valuable time to gather information to make informed decisions based on a thorough analysis of market data. We expect that based on the review of such data, more timely public reporting will be more appropriate for the most liquid products, with more delayed public reporting for less liquid products. Essentially, the time-lag in public reporting will need to balance the policy aims of systemic risk management and enhancing the transparency, depth, and pricing availability of markets, against ensuring that market participants (including fund managers) proprietary information and trading strategies are appropriately protected while the strategies are being implemented. The actual time-lag (for public reporting) which should apply, will depend on the depth/liquidity/volume of transactions for that OTC derivative in the market. While we generally support greater price transparency, we emphasize that market liquidity should **not** be sacrificed to achieve transparency—for instance, if details of large-sized block trades are disseminated prematurely. When quoting a price for a block trade, dealers will typically charge a premium to the then current market price for a similar trade of a more liquid size. Once a block trade is completed, the dealer would typically execute one or more liquid-sized mirror trades at current market prices to lay-off its position and to reduce its market exposure. If block trade details are disseminated prematurely, the market will have advance knowledge of the dealer's imminent trading and will move against the dealer. In anticipation, either dealers will have to raise their block price or counterparties will have to disaggregate their block trades—but incur less efficient and more costly execution. There is also a concern that dealers could be more reluctant to quote on block

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			trades. Block trades aggregated across multiple accounts are not unusual for investment managers as investment managers act for a number of funds and clients. Investors would ultimately bear the inflated pricing/costs arising from a more illiquid market for block trades. Given the above, we believe it is appropriate to delay the public release of transaction data for large sized transactions. The delay needs to be long enough to allow a dealer enough time to comfortably hedge its exposure in the market. This will depend on individual transaction types, sizes and market composition. Further, as liquidity levels differ over time, these factors should be reassessed at least quarterly. We would suggest that public reporting of large-sized transactions should be delayed until a sufficient period after the transaction is executed. However, for very liquid and standardised contracts, it may be acceptable to disclose after a shorter period (after execution of the trade in full) as this may improve liquidity as all participants would see open interest and price/volume rather than trying to seek liquidity in a bilateral manner. This may well allow large sized transactions to find more natural participants to lay off the risk. In summary, we cannot set out a definitive view, as the timing of any delay on public release of transaction data will be a function of: ➢ the type of transaction, ➢ the effect of earlier delay on the market participant whose trade is disclosed, ➢ the liquidity, volume and depth of the market, and ➢ the potential liquidity (and pricing and transparency) benefits in (albeit delayed) public release of information; and ➢ the inherent systemic risk in the type of transaction globally.

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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?	Pp21-22	Perhaps. However a substantial investment in infrastructure would be required which may tend to favour larger global TR. At a minimum the reporting requirements to any Australian TR should be consistent with international reporting standards.
27.	Is it appropriate for ASIC or another regulator to have the power to grant licenses to trade repositories, or should the Minister have this power? What checks and balances should there be on ASIC's power to grant trade repository licenses?	Pp21-22	Our initial view is that the importance of a trade repository in the OTC framework the subject of the Consultation Paper is such that Minister approval ought to be required to hold a repository licence.
28.	Should any requirements be imposed on trade repositories with respect to obligations to provide third	Pp21-22	Aside from other TRLs and regulators, we are not sure what third parties ought to have access to the information. Our initial view is that this information should only be available to regulators (until the information is publicly available to all market participants).

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	parties with access to the information (subject to authorisation from data providers and regulators)?		
29.	Do you have any initial views on the property rights in trade information passed to trade repositories?	p.23	Property rights in relation to trade information should remain the property of the participants (i.e. those reporting the transactions) and not trade repositories.
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?	p.24	Government is currently considering their regulatory requirements for financial market infrastructure. Once this policy framework is finalised and implemented, we believe it should be assessed to determine its appropriateness for OTC derivative trade depositories.
31.	Do you agree with the factors identified in section 6.2 for ongoing derivatives markets assessments?	Pp25-27	In general terms, yes. We reserve the right to comment further on further consultation.
32.	Are there other factors that should also be included?	Pp25-27	The extent to which mandating could add risk (type and extent) as compared with existing available risk mitigation practices.

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			The final policy outcome needs to assess the need to manage systemic risk versus the costs and market and liquidity implications (including cost of transactions) of any mandated requirement. Other unintended risks and outcomes need to considered, such as effectiveness of regulations, liquidity etc. Unintended consequences, such as the cost of compliance on managed investment schemes whose underlying investors are retail investors or superannuants should be considered. We therefore suggest this additional factor be defined in section 6.2: The potential creation of other unintended risks, cost implications or adverse outcomes. Under any collateral movement we recommend clarity to ensure movements do not create "disposals" for the purposes of CGT/TOFA disposal rules.
33.	Do you have any comments on the rule-making power that will be available to ASIC?	Pp27-28	Please see our response to Questions 6 and 7. ASIC DTR decisions should require Ministerial approval, and also be subject to Parliamentary disallowance (we refer to page 1 and 5 of the Consultation Paper).
34.	Do you have any preliminary views on matters to which DTRs	Pp27-28	We believe it is appropriate for legislation to prescribe how risk should be addressed in the central clearing process. For instance, steps to be taken to mitigate 'fellow customer' risk, investment risk, operational (fraud) risk, and other risks. If this is to be done through DTRs, they need to be

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	should apply?		sufficiently certain to be workable. In terms of other legislation, we note that the Payment Systems and Netting Act is relevant in the context of clearing houses generally.

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