Implementation of a framework for Australia's G20 over-the-counter derivatives commitments

Consultation Paper

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CONSULTATION PROCESS

Request for feedback and comments

This paper seeks stakeholder feedback on the options for the implementation of a legislative framework to meet Australia's G20 commitments on over-the-counter (OTC) derivatives.

Submissions should include the name of your organisation (or your name if the submission is made as an individual) and contact details for the submission, including an email address and contact telephone number where available.

While submissions may be lodged electronically or by post, electronic lodgement is strongly preferred. For accessibility reasons, please email responses in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* (Commonwealth) for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

In addition to seeking submissions, Treasury, with other Council agencies, will be conducting stakeholder consultation meetings on this issue. Should you wish to arrange a meeting in relation to the consultation contact Treasury by 4 May 2012.

Closing date for submissions: 15 June 2012.

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GLOSSARY

The Act	Corporations Act 2001
ADI	Authorised Deposit-taking Institution
AML	Australian market licence (-holder)
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited
AUD	Australian dollar
CCP	Central counterparty
CFTC	US Commodity Futures Trading Commission
The Council	The Council of Financial Regulators
CSFL	Australian clearing and settlement facility licence (-holder)
The Dodd–Frank Act	Dodd–Frank Wall Street Reform and Consumer Protection Act
EU	European Union
DTRs	Derivative transaction rules made by ASIC
EMIR	European Market Infrastructure Regulation
FMI	Financial market infrastructure
FSB	Financial Stability Board
FX	Foreign exchange
G20	Group of Twenty
HKMA	Hong Kong Monetary Authority
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
IRS	Interest rate swap
MAS	Monetary Authority of Singapore

The Minister	The Minister for Financial Services and Superannuation
OTC	Over-the-counter
The Reserve Bank	Reserve Bank of Australia
RIS	Regulation impact statement
SEC	US Securities and Exchange Commission
SFC	Hong Kong Securities and Futures Commission
TP	Trading platform
TR	Trade repository
TRL	Trade repository licence (-holder)
US	United States of America

EXECUTIVE SUMMARY

At the G20 summit in Pittsburgh in 2009, the Australian Government joined other jurisdictions in committing to substantial reforms to practices in over-the-counter (OTC) derivatives markets. The Australian Government has now announced it will be developing a legislative framework to ensure the implementation of three of the key G20 commitments in this area:

- the reporting of all OTC derivatives to trade repositories;
- the clearing of all standardised OTC derivatives through central counterparties; and
- the execution of all standardised OTC derivatives on exchanges or electronic trading platforms, where appropriate.

Reflecting these commitments, and other international regulatory developments, the Council of Financial Regulators (the Council) has been considering the implementation of reforms for the Australian OTC derivatives market for some time. In 2009 a survey of the domestic OTC derivatives market was published[1], and in June 2011 a discussion paper on central clearing was released as the basis for detailed consultation with interested stakeholders.[2]

Following that consultation, the Council provided a report to the Government on 20 March 2012, setting out advice and recommendations on implementing reforms in the Australian market. The Council's report has been published in conjunction with this consultation paper.

At an international level, in October 2011 the Financial Stability Board (FSB) published its second report on jurisdictions' progress towards meeting G20 commitments regarding OTC derivatives.[3] This report, which was endorsed by the G20 Cannes Summit final declaration in November 2011[4], found consistency in implementation across jurisdictions is critical. The report noted that, while it may be appropriate for reform implementation in smaller markets to wait until after the United States (US) and European Union (EU) rules are finalised, nonetheless it is important that all jurisdictions advance as far as possible to be in a position to act expeditiously once this has occurred. The report also noted that jurisdictions should push forward aggressively to meet the end-2012 deadline in as many areas as possible.

As the FSB noted, coordination across jurisdictions will be crucial to ensure the success of this global initiative to address risks in OTC derivatives market practices. However, key elements of the frameworks in major foreign jurisdictions such as the US and EU — for example, the extraterritorial scope of their application — have not yet been finalised, and accordingly the Australian Government considers it important to ensure Australian authorities have an adequate degree of flexibility, to maximise the prospects of Australia implementing a regime that is consistent with major financial centres.

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1 http://www.rba.gov.au/payments-system/clearing-settlement/survey-otc-deriv-mkts/index.html
2 http://www.rba.gov.au/publications/consultations/201106-otc-derivatives/index.html
3 http://www.financialstabilityboard.org/publications/r_111011b.pdf
4 http://www.g20-g8.com/g8-g20/g20/english/for-the-press/news-releases/cannes-summit-final-declaration.1557.html

To this end the Australian Government has announced a legislative framework for the implementation of graduated measures to respond proportionally in managing risks in Australian OTC derivatives markets. In outline, the framework will operate as follows:

- The Minister for Financial Services and Superannuation (the Minister) will be empowered by the Corporations Act to prescribe a certain class of derivatives (in relation to a mandatory obligation).

- A derivatives transaction rule (DTR) may in turn be issued by the Australian Securities and Investments Commission (ASIC) to establish one or more mandatory obligations (reporting, clearing or execution) for participants transacting in this prescribed class of derivatives.

- Any rule must be consented to by the Minister before taking effect. The scope of rules, and other technical features of the scheme, may be further limited by Regulation.

- 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.

The establishment of the framework (through amendments to the Corporations Act) does not in itself introduce any trade reporting, central clearing or trade execution obligations for OTC derivatives transactions. Rather, the framework creates a mechanism by which such obligations may be implemented by supporting regulations and rules. Trade reporting, clearing and execution obligations will be created only after further market analysis and subsequent additional consultation is undertaken by ASIC and other Council agencies.

This consultation paper seeks views on the next steps towards implementation. Stakeholders' views are now sought on the contents of the regulations to be made under the framework, and on the classes of derivatives that might be prescribed as being subject to the framework. The regulations will relate to a number of matters, including the conditions applicable to ASIC's powers to make trade reporting, clearing and execution rules.

The Australian Government has not yet settled on the classes of derivatives that might be mandated (that is, subject to one or more of the obligations in the first instance). Initial options for stakeholder comment, based on the Council's recommendations, are outlined below.

- For trade reporting:

  - A broad range of derivative classes may be mandated in regulation later this year, with most parties to be captured by trade reporting obligations.

- For central clearing:

  - Regulators to conduct ongoing assessment of the suitability of derivative classes in Australia for central clearing (see section 6.2); and

  - Identification of systemically important derivative classes as priorities for mandating (such as Australian dollar (AUD) denominated interest rates swaps) subject to further assessment of the market and monitoring of the impact of capital incentives and other initiatives to ensure that central clearing becomes standard industry practice in

Australia within a timeframe that is consistent with international implementation of the G20 commitments.

- For use of trading platforms:
  - Further analysis to be conducted on the volume and liquidity characteristics of markets for particular derivative classes and the emergence of suitable trading platforms. Additionally, there may need to be further consideration of reform to Australia's market licensing regime to better accommodate wholesale professional markets that may emerge to facilitate the execution of derivative transactions on trading platforms.

Following this consultation, draft proposals (exposure drafts) for mandating derivative classes and limiting ASIC's rule-making power will be released for stakeholder feedback. Once the scope of the rule-making power is settled, ASIC will make the final form of the derivative transaction rules (DTRs), having consulted stakeholders further. Council agencies will also conduct ongoing derivatives market assessments.

PART A — INTRODUCTORY

1. BACKGROUND

1.1 GOVERNMENT ANNOUNCEMENT ON OTC DERIVATIVES MARKET REFORMS

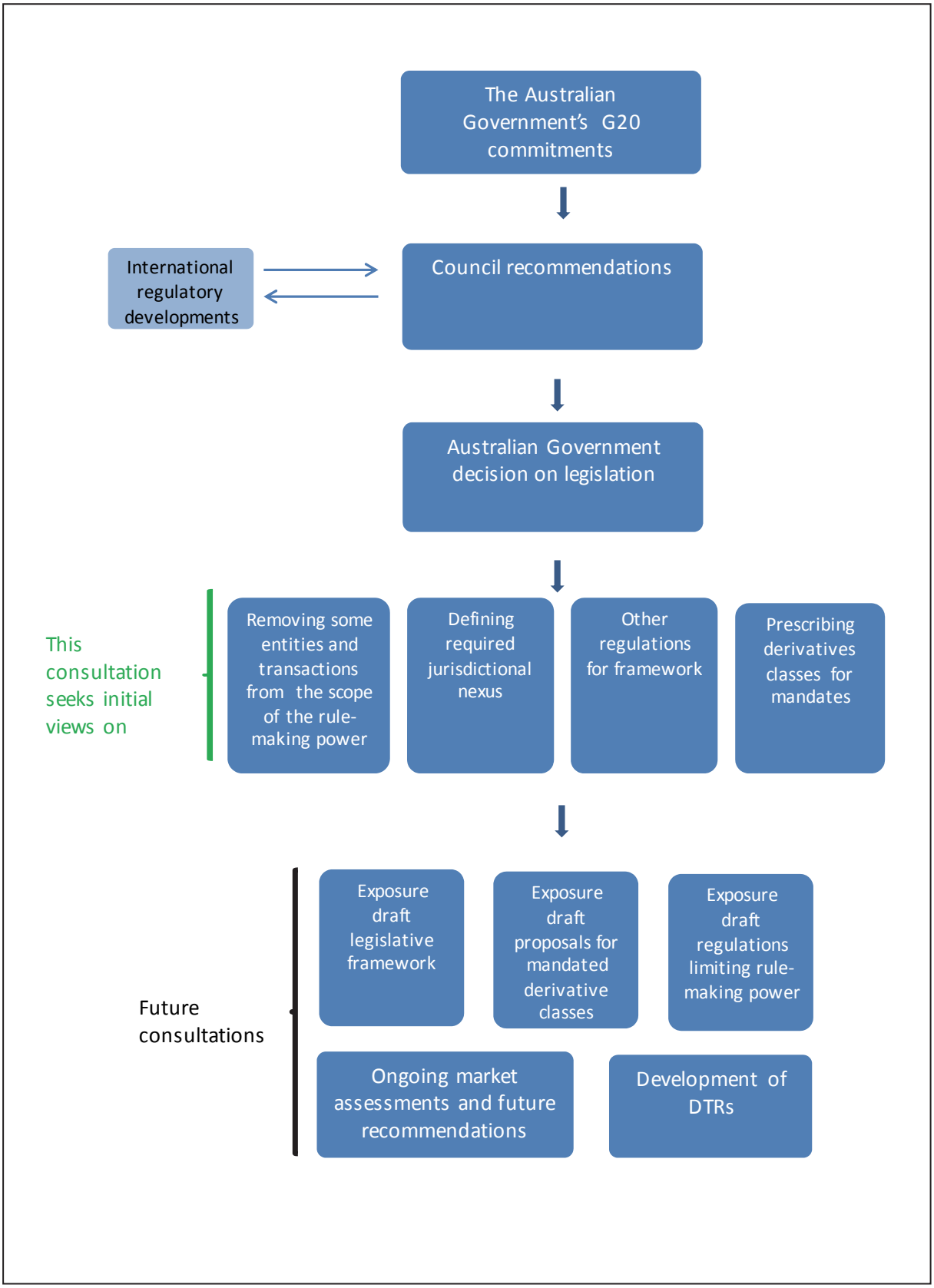
On 18 April 2012 the Australian Government announced it will be introducing legislation to amend the Corporations Act (the Act) to implement Australia's G20 commitments for OTC derivatives market reforms, which are intended to bring transparency to OTC derivatives markets and improve risk management practices in order to promote financial stability. The proposed amendments will give the Minister power to prescribe that classes of derivatives be subject to obligations requiring reporting to a trade repository, clearing through a central counterparty (CCP), or execution on a trading platform. The proposed amendments will give ASIC powers to make derivative transaction rules (DTRs) to give effect to these obligations. The powers of the Minister and ASIC may only be exercised after consultation with other agencies and stakeholders, and will be subject to ministerial consent and parliamentary disallowance.

The amendments will also allow for the creation of a licensing regime for trade repositories, whether they are based offshore and subject to primary foreign regulation, or are primarily domestic operations.

1.2 THE PROCESS FOR IMPLEMENTING AUSTRALIA'S G20 COMMITMENTS

This consultation is a part of an iterative process to implement Australia's G20 commitments in relation to OTC derivatives. Following this consultation there will be further opportunities to provide feedback to ASIC and other Council agencies prior to the imposition of any mandatory obligations.

Figure 1: The process of implementation of the G20 commitments in Australia



1.3 THE PURPOSE OF THIS CONSULTATION

This consultation sets out the proposed framework to implement mandatory obligations with respect to OTC derivatives, and invites comment on the broad proposals. It also seeks initial views on the classes of parties and transactions which should be excluded from the scope of the DTRs in respect of each mandatory requirement. Initial views are also sought as to which derivative classes might be subject to obligations. Different derivative classes could be prescribed as being subject to the trade reporting, clearing or execution rules.

The consultation also seeks initial stakeholder views on options for regulations arising in relation to other aspects of the proposed legislative framework — such as in relation to trade repository licensing.

Following this consultation, proposed mandates and regulations will be drafted and exposed for further consultation

1.3.1 Further ASIC consultation on derivative transaction rules (DTRs)

Once the regulations are in place, and should a first round of derivatives be mandated, ASIC will commence drafting DTRs as part of the rule-making stage. While the current consultation seeks comment on limiting the scope of the ASIC rule-making power, it should be noted that more detailed matters related to framework implementation will be addressed at the rule-making stage.

Further detail on anticipated steps following development of the legislation is provided in Part C.

PART B — LEGISLATIVE FRAMEWORK

2. OVERVIEW

2.1 INTRODUCTION

The Australian Government intends to make a range of amendments to the Act. The amended legislation will give the Minister power to prescribe, through legislative instrument, a class of derivatives as subject to one or more mandatory obligations:

- trade reporting;
- central clearing; or
- trade execution.

A class of derivatives may only be prescribed after consultation and the prescription will be subject to parliamentary disallowance.

The legislation will then give ASIC power to make DTRs in relation to requirements to:

- report trades in prescribed derivatives to eligible trade data repositories;
- clear trades in prescribed derivatives through eligible CCPs; and
- execute trades in prescribed derivatives on eligible trading platforms.

The DTRs will determine (within defined limits) which parties will be subject to trade reporting, clearing or execution requirements in respect of prescribed derivatives, how they comply and the timing of any requirements. All DTRs will require the Minister's consent.

There will be a regulation-making power to narrow the scope of the mandatory obligations (and therefore the parties who will be required to comply with the obligations under the DTRs). These regulations will provide a means of limiting the classes of persons and transactions to which the rules can be applied. Under the rule-making power, ASIC will also be able to specify cases in which certain persons or certain transactions would not be required to report, clear or execute trades in accordance with the DTRs.

Where the DTRs oblige a person to utilise the services of a trade repository, clearing facility or trading platform, the Act will impose a duty upon the relevant facility to provide non-discriminatory access. Such a requirement is important, given that there may be only one facility offering services for a given derivative class. ASIC will also have power to make additional rules to determine the

obligations of trade repositories, clearing facilities or trading platforms in relation to any requirements imposed upon parties to transactions.

As there is no existing regulation of trade repositories, trade reporting DTRs will be complemented by a licensing regime for trade repositories. There are no operators of trade repositories (as the term is contemplated by the G20 commitments) in Australia; therefore no existing operators will be affected. Clearing facilities and trading platforms are already subject to separate licensing regimes.

The trade repository licensing regime will be modelled on the current licensing regimes for Australian market licence holders (AMLs, Part 7.2 of the Act) and Australian clearing and settlement facility licence holders (CSFLs, Part 7.3 of the Act). It will have a similar structure to Part 7.2 and Part 7.3, and will provide alternative licensing criteria for overseas operators, who are subject to sufficiently equivalent regulation in their home jurisdiction. It is important that the Australian regulatory regime for trade repositories facilitates the offering of services in Australia by foreign operators whose primary regulator is foreign. It is also 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 to facilitate mutual recognition and therefore Australian facilities' access to intermediaries located in those jurisdictions.

The licensing regime will be established at a high level in the amended Act, with regulations filling in detail (as is the case with the AML and CSFL regimes). ASIC will be given powers to make rules governing the operation of a trade repository (this is explained further in section 5.2) in addition to issuing and imposing conditions on individual TR licensees. All DTRs will require the Minister's consent.

2.2 LEGISLATIVE FRAMEWORK DESIGN CONSIDERATIONS

The legislative framework being proposed by the Government is designed to be flexibly implemented. There is a high degree of diversity across OTC derivatives markets and the parties who trade in these markets. The proposed framework is intended to ensure regulatory flexibility is preserved to enable tailored regulations and rules to be applied to different derivative classes.

OTC derivatives markets are highly international in nature. Many Australian-based market participants are active offshore. Similarly, many significant participants operating in Australia are foreign entities, and which may be subject to foreign regulatory regimes. Accordingly, regulatory developments in offshore jurisdictions are likely to have some spillover effect on the configuration and activity of the domestic market. The importance of cross-border harmonisation in regulatory approaches to OTC derivatives market reform is increasingly appreciated in all jurisdictions.

However, the international regulatory environment is not settled. A number of key jurisdictions, including the US and EU, are currently developing rules that are likely to have a significant impact on some Australian market participants. There is also work underway by international standard-setting bodies which will be important in shaping Australia's domestic regulatory decision-making. Further discussion of the work of the international standard-setting groups and proposed regulation in the US, EU and other jurisdictions is included in the Council's report.

This paper, and the proposed legislative framework, does not seek to provide definitive answers to many detailed questions, such as the precise geographical scope of any domestic mandatory requirements for reporting, clearing or trading; or the interaction of any domestic requirements with

requirements imposed by other jurisdictions, where more than one regime could apply to particular conduct. Matters such as these will be discussed in future consultations and will be developed following further assessment of international developments.

3. Discussion of the legislative framework

3.1 Obligations

Under the amended Act it is proposed that the following obligations will be imposed:

- a party to a transaction in a prescribed derivative must report the transaction to an eligible trade repository or prescribed government authority, in accordance with the DTRs;
- a party to a transaction in a prescribed derivative must ensure that the transaction is cleared through an eligible clearing facility, in accordance with the DTRs; and
- a party to a transaction in a prescribed derivative must ensure the transaction is executed on an eligible trading platform, in accordance with the DTRs.

The Minister may, by legislative instrument, prescribe a derivative as being subject to one or more of these obligations. In the absence of prescription, the statutory obligation will not apply. This legislative instrument is subject to parliamentary disallowance.

Your feedback

1. Do you have any comments on the general form of the legislative framework?

3.2 Definition of 'transaction' and 'party'

For the purposes of the obligations set out in section 3.1, the following definition of 'transaction' will apply:

- A 'transaction' includes the making, modifying or termination of a contract for derivatives.

For the purposes of the obligations set out in section 3.1, the following definition of 'party' will apply:

- A 'party' means any domestic or foreign person who is dealing in a derivatives (including on its own behalf) and is a party to a derivative transaction.
- To fall within the definition, a foreign person entity must perform an action within the Australian jurisdiction that contributes to that entity becoming a party to the transaction in a prescribed derivative. The regulations will be able to specify that one or more entities or groups of entities are taken to fall within the definition of 'party' and therefore must comply with the obligation and therefore must comply with the obligation.

One intention of regulatory flexibility around the definition of parties and transactions would be to ensure that the definition could be adapted to respond to any attempt to avoid the application of the DTRs.

Regulations may also exempt persons and transactions from the obligations. Section 4 discusses some considerations in this area.

Your feedback

2. Do you have any comments on the definition of 'transaction'?

3. Do you have any comments on the definition of 'party'?

3.3 Definition of 'eligible facilities'

For the purposes of the obligations set out in section 3.1, the following definition of 'eligible facility' will apply:

- For trade reporting, an eligible facility means:
  - the holder of an Australian trade repository licence (TRL, see section 5.2) which has been authorised to operate a trade repository for the prescribed class of derivative; or
  - such other entities as prescribed by regulation;

    :this might include a prescribed government authority
- For central clearing, an eligible facility means:
  - a CSFL which has been authorised to operate a central counterparty for the prescribed class of derivatives; or
  - such other entities as prescribed by regulation.
- For trade execution, an eligible facility means:
  - an AML which has been authorised to operate a market for the prescribed class of derivative; or
  - such other entities as prescribed by regulation.

Your feedback

4. Do you have any comments on the definition of 'eligible facility'?

3.4 Non-discriminatory access

Given the significant economies of scale and scope typically associated with the operation of financial market infrastructure (FMI), there may be only one facility available to Australian market participants to meet obligations. Accordingly, the Act will impose an obligation on eligible facilities to provide non-discriminatory access on fair and open terms to Australian market participants.

Your feedback

5. Do you agree that non-discriminatory access requirements should be imposed on eligible facilities?

3.5 Derivative transaction rules (DTRs)

Once a derivative class and associated obligations has been prescribed by the Minister, ASIC may, by legislative instrument, make DTRs that further define the nature of obligations, and set out associated rules to give practical effect to these obligations. 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. The DTRs may also impose obligations on eligible facilities with respect to how these facilities are used to meet any obligations. While there may be some DTRs applicable to all derivative classes, the legislative framework is also intended to enable the development of tailored DTRs for particular derivative classes given the diversity of OTC derivative markets.

All DTRs will require the Minister's consent.

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.

Many of the matters which will need to be covered in DTRs will only be determined following the implementation of the proposed legislative framework, and will be subject to further consultation. However, initial thoughts are invited from stakeholders — this is discussed further in section 6.3.

In general, ASIC will be required to undertake a minimum period of consultation in developing DTRs, and will be required to ensure that sufficient notice or transition period is provided prior to the commencement of any obligation. The framework will also retain flexibility for a rule to be made expeditiously, should circumstances warrant this.

The DTRs may include a penalty amount for a rule, which must not exceed 1,000 penalty units (that is, $110,000 at present).

Your feedback

6. Do you have any comments on the rule-making power that will be available to ASIC?

7. What should be the minimum period of consultation imposed on ASIC in developing DTRs?

8. What should be the minimum period of notice between when a DTR is made and when any obligation under the DTR commences?

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)?

3.6 'BACK LOADING' OF THE OBLIGATIONS

Once a decision has been made to mandate a derivative for one of the obligations, it may become necessary to consider outstanding positions. For example, 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 DTRs to require participants to provide information on positions that were initiated prior to the commencement of the obligation.

3.6.1 Regulatory options

It may be appropriate for regulations to prescribe in detail the approach ASIC, in consultation with the other regulatory agencies, is to take in making DTRs that apply to existing positions.

Your feedback

10. From the point of view of your business and/or of 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?

PART C — OPTIONS FOR REGULATION

4. OPTIONS FOR IMPLEMENTING MANDATORY OBLIGATIONS

4.1 INTRODUCTION

Sections 2 and 3 outlined the proposed framework for imposing mandatory obligations with respect to OTC derivatives. Section 4 provides an opportunity for stakeholders to comment on possible derivative classes that the Minister may prescribe as subject to mandatory obligations, and to comment on the initial regulations to facilitate the implementation of the legislative framework. Further opportunity will be provided for stakeholders to make submissions on both the initial derivatives to be prescribed and the regulations, once draft legislation and draft regulations (exposure drafts) have been released. A further opportunity for detailed consultation will arise as ASIC develops the DTRs.

4.2 TRADE REPOSITORIES

4.2.1 Background

A **trade repository** is an entity that maintains a centralised electronic record of transaction data. By centralising the collection, storage and dissemination of data, they can play an important role in providing information that supports risk reduction (including: assessing systemic risks; conducting market surveillance and enforcement; supervising market participants; and conducting resolution activities) and operational efficiencies for both individual entities and the market as a whole.

Trade repositories are a relatively new type of FMI. For individual market participants, centralisation of trade data may assist in understanding their own risks and exposures. Regulators are also likely to require aggregate statistics to be made publicly available on a regular basis. The resulting increase in transparency may enhance market functioning, and may be beneficial to confidence in times of market turmoil. Standardised reporting formats are evolving so that the use of trade repositories is also likely to encourage operational efficiencies in post-trade processing, either by the trade repository or by other service providers that use the data maintained by the trade repository. If trade information is submitted by both counterparties to a trade, data from the trade repository can be used to facilitate asset servicing and other trade life-cycle events.

As the shift to automated post-trade services in the Australian market has been slower than in some overseas markets, there is significant scope for participants in the Australian market to benefit through improved risk reduction, operational efficiency and automation.

Reporting to trade repositories will facilitate the maintenance of a reliable and comprehensive source of information on participant trading activity, which will be useful to regulators in performing their respective functions. It is expected that this increased transparency will assist authorities to recognise vulnerabilities in the financial system and, more broadly, to develop well-informed policies to promote financial stability. Information from trade repositories will be particularly useful in times of financial distress, where rapid and reliable access to accurate data may assist prudential and systemic regulators in their functions. From a market supervision perspective, transaction information stored in trade repositories in some derivative classes in particular, such as equity derivatives and credit derivatives, has the potential to assist investigations into market misconduct.

Notwithstanding the substantial benefits that could accrue to Australian market participants in using trade repositories, other considerations may slow the uptake of these services. For instance, participants may need to investment in their systems in order to pass data to a trade repository. Other participants may be concerned about commercially sensitive information being held by a third party. These impediments will be reduced should a sufficiently large share of the market move to use trade repositories, given the strong network effects at work in financial market arrangements and conventions. But should this not occur, and since the effectiveness of trade repository services is maximised when all transactions of all counterparties are recorded, there may be a case for regulatory action to promote universal uptake of trade repositories for the collective benefit of market participants.

4.2.2 Options for imposing trade reporting obligations

The Australian Government's G20 Commitment is that all OTC derivatives contracts should be reported to trade repositories. This broad approach has been adopted in proposals from other jurisdictions including the US, the EU, and Asian jurisdictions.

The Council's report noted that the effectiveness of trade repository services is maximised when all transactions of all counterparties are recorded, and there may be a case for regulatory action to promote universal uptake of trade repositories for the collective benefit of market participants. For regulators, as complete an information set as possible enhances their understanding of the OTC derivatives market. In addition, as reporting to trade repositories will give regulators a more accurate understanding of market activity and participation, these data will underpin regulators' consideration of the merits of other regulatory reform proposals for OTC derivatives.

On this basis, one option would be to prescribe a broad range of derivative classes and for the obligation to apply to a broad range of entities and transactions. Notwithstanding the general nature of the obligation, implementation of reporting requirements could be phased in. There is sufficient flexibility in the rule-making power for this to occur, even if the Minister in the first instance prescribes a broad range of derivative classes as being subject to the rule-making power.

In terms of jurisdictional nexus, an alternate option could be to hold back prescription of derivative classes until a later date and/or to restrict the cohort of entities and transactions. However, this option could leave the regulators without vital information to monitor derivatives markets and make assessment of derivatives classes for future mandating for use of CCPs or trading platforms less accurate.

An option that has been identified in comparable jurisdictions is to have a wide scope of potential obligations. This could include contracts booked in Australia, denominated in Australian dollars or where the underlying reference entity is resident or has a presence in Australia, as well as contracts

traded by market participants, resident or having a presence in Australia. This could be further restricted by ASIC when developing the DTRs.

It may be practicable and appropriate to apply the trade reporting obligation to a smaller subset of parties and transactions, though the scope of the trade reporting obligation should also seek to ensure consistency with reporting obligations imposed in other jurisdictions. Some of these issues are expected to be dealt with under ASIC's DTRs relating to trade reporting. Other issues may be more appropriately addressed in regulations.

Your feedback

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?

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?

13. Are there specific classes of entity that should be excluded from the potential reach of trade reporting DTRs?

13.1. What metrics should be used to determine any thresholds?

13.2. What should be the thresholds of these metrics that trigger when an entity may be subject to trade reporting rules? Should this threshold vary depending upon the nature of the entity?

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?

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?

14.1. Are there specific classes of transaction that should be excluded from the potential reach of trade reporting DTRs?

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?

4.3 CENTRAL CLEARING

4.3.1 Background

A **central counterparty** (CCP) provides clearing services for derivatives and other securities transactions. Derivative contracts bind counterparties together for the duration of the contract. Throughout the lifetime of a contract, counterparties build up claims against each other, and the rights and obligations contained in the contract may evolve as a function of changing circumstances. The obligations that build up under these contracts give rise to counterparty credit risk. The complexity of managing large volumes of contracts, with many payments and other events needing to be managed throughout each contract's life-cycle, also gives rise to operational risk. Clearing is the

function by which these risks are managed over time. Clearing can be carried out centrally or bilaterally (with the latter most commonly used for OTC derivatives at present). The mandating of central clearing for certain derivatives transactions is directed at better managing the counterparty and operational risks associated with those transactions.

In the first instance, rather than having regulators implement a mandatory regime to force the move of transactions to CCPs, the Council's advice was that economic incentives and other initiatives should encourage this transition. APRA will be applying internationally agreed standards for prudential capital charges, which are being increased for banks' exposures that relate to non-centrally cleared contracts. International standard-setters are also working on proposals to strengthen risk management practices for non-centrally cleared OTC derivatives by introducing global minimum standards for margin requirements. As well as reinforcing the incentive to centrally clear, this would also serve to mitigate the risks involved in bilateral clearing of OTC derivatives. Regulatory agencies will consult on this as these proposals become more concrete.

The Council has reported that it expects these measures will prove effective in sending a price signal to all market participants that increases the relative cost of non-centrally cleared transactions over that of central clearing. In the short run this should be particularly effective in encouraging larger market participants to move to central clearing arrangements, which would in turn make a significant contribution to systemic risk reduction. Given the network externalities of clearing arrangements, once a sufficient number of large market participants begin centrally clearing it is likely that other market participants will also choose to centrally clear. A sustained differential in the relative prices of centrally and non-centrally cleared arrangements should also provide an incentive for market participants to search for central clearing solutions for derivatives where this is not currently available.

However, the magnitude of the changes necessary to move to central clearing may result in some participants making the transition at a slower-than-desirable pace. A significant difference in the pace of change among market participants, particularly larger intermediaries, could increase coordination problems and result in a transition to central clearing that less orderly than desirable. It is also important that the take-up of central clearing occurs on a timetable that ensures Australian regulation and market practices remain consistent with international standards. To that end, it is appropriate that there be a capacity to mandate central clearing if necessary.

4.3.2 Options for imposing central clearing obligations

The Australian Government's G20 commitment was that all standardised OTC derivative contracts should be cleared through CCPs.

Derivatives classes

The Council recommended that in the first instance, rather than regulators implementing a mandatory regime to force the move of transactions to CCPs, it would be preferable to rely on capital incentives and other initiatives to bring about this transition. However, the Council noted that there is a risk that this will not be sufficient to ensure that the take-up of central clearing occurs on a timeline that is satisfactory to the Government and regulators.

On this basis one option would be to move more expeditiously to mandate the clearing of some classes of derivatives. For instance, systemically important derivative classes, such as AUD denominated interest rates swaps (IRS), may be identified as priorities for mandating, subject to

further assessment of the market and consideration of the effect of capital incentives and other initiatives.

In some jurisdictions, it is proposed that important classes of foreign exchange (FX) derivatives (such as FX swaps and forwards) initially be exempt from any clearing requirements.

Entities

The benefits of any central clearing rules must be balanced against their costs. A major factor in determining the costs (and practicalities) of a mandatory central clearing regime is the nature of the parties which may potentially be subject to obligations imposed under the regime. It may therefore be appropriate to only apply the clearing obligation to some entities.

The entities that should be subject to the obligations might be identified by reference to their nature (for example, regulated financial services entities) or their size and impact on the financial system (for example, 'major swap participants' such as used in the US regime).

One option may be to exclude public entities, such as central banks, debt offices, supra-national multilateral development banks and entities such as the International Monetary Fund (IMF). In some overseas jurisdictions, pension funds have been one category of entity considered for exemption from central clearing obligations, due to the potential costs involved in providing suitable collateral.

For the purpose of any 'size' threshold, the participants may be assessed with reference to their total assets or derivatives exposures. Different size thresholds may apply for different entities. However, 'size' may not be the only metric that should be used in defining entities subject to obligations.

Transactions

It may be appropriate to only apply the clearing obligation to some types of transactions. The transactions to which the clearing obligation applies may be limited by reference to the nature of those transactions (for example, hedging or commercial risk mitigation transactions may be exempt from the obligation). Rules proposed in other jurisdictions would exempt transactions entered into for the purpose of hedging or mitigating commercial risks from a central clearing obligation.

Another class of transaction that may be excluded from central clearing rules is intra-group trades. Arguments have been raised both for excluding these trades (for example, not to do so would create costs and disincentives to risk management) and for including these trades (for example, uncleared intra-group trades can increase the risk of intra-group contagion).

Jurisdictional considerations

The derivatives market is a global market. Various activities in relation to a transaction may occur outside the jurisdiction. While the proposed Australian legislative framework provides for a potentially broad jurisdictional reach, a more narrowly defined application of the regime may be appropriate. For example, the necessary connection to the Australian jurisdiction may be narrowed by the regulations and/or DTRs with reference to: the presence within the jurisdiction of one or more of the parties; the extent to which the transaction takes place within the jurisdiction; or the extent to which the transaction (or trade in the relevant derivative class) has a substantial and foreseeable effect within the jurisdiction.

An option which has been proposed in other jurisdictions would be to require 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 a presence in Australia and 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.

These parameters may be prescribed in regulation. ASIC may further restrict the obligation and provide exemptions in some instances where these transactions would also be subject to a clearing obligation in another jurisdiction.

Your feedback

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 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?

17. Are there specific entities that should be excluded from the potential reach of central clearing rules?

17.1. What metrics should be used to determine any thresholds?

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?

17.3. What is an appropriate threshold to exempt end users from the mandatory obligation to clear OTC derivatives classes?

18. Are there specific classes of transaction that should be excluded from the potential reach of trade clearing DTRs?

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?

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 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?

4.4 TRADE EXECUTION

4.4.1 Background

A **trading platform** provides a means of improving the transparency, efficiency and regulation of trading in derivatives (and other financial instruments). Trading platforms therefore have a role in addressing some of the risks posed by derivatives trading.

It may be premature to impose a mandatory trade execution obligation in respect of any derivatives or participants. It is anticipated that transaction data from trade repositories will be useful to effectively evaluate whether there are derivatives for which it would be appropriate to mandate execution on an exchange or electronic platform. It is also anticipated that the move toward central clearing, which necessarily involves a degree of product standardisation, will organically give rise to an increase in electronic trading in derivatives that are sufficiently liquid.

It is also important to recognise that there are likely to be costs associated with any mandatory requirement. These are likely to include costs to buy-side derivatives users and OTC derivatives market participants (in the form of trading technology and operational costs to connect with electronic trading platforms). It is also acknowledged that a decision to mandate execution in a derivative class in which there is insufficient liquidity could result in an increase in bid/ask spreads, and potentially result in some users or market participants withdrawing from the market.

Given the size of the Australian OTC derivatives market and the presence of many international participants (who are likely to be subject to execution on trading platforms requirements in other jurisdictions), it is also expected that regulatory initiatives to mandate electronic trading in other jurisdictions will provide a significant impetus toward electronic trading by Australian participants in some derivatives.

A related issue is that a clearing facility's risk management depends upon the ability to price contracts accurately, to assure accurate marking-to-market of contracts and to enable rapid close-out of positions of a defaulting member. Some degree of transparency of transaction prices and reliable liquidity is therefore needed for sound risk management by clearing facilities. Given this, trading platforms may also have a role in facilitating an expansion in central clearing opportunities.

4.4.2 Options for imposing trade execution obligations

The Australian Government's G20 commitment is that all standardised OTC derivative contracts should be executed on exchanges or electronic trading platforms, where appropriate.

The Council's advice noted that it considers it is premature to impose any mandatory obligation to execute on trading platforms. It is anticipated that transaction data from trade repositories will be valuable in evaluating whether there are derivative classes for which it would be appropriate to mandate execution on an exchange or electronic platform. It is also anticipated that the move towards central clearing will organically give rise to an increase in electronic trading in derivatives which are sufficiently liquid.

One option would be to apply the same approach to prescribing entities, transactions and derivative classes as has been applied for mandating central clearing. This approach could be implemented once further analysis has been conducted on the volume and liquidity characteristics of markets for particular derivative classes and the emergence of suitable trading platforms. Further consideration

of reforms to Australia's market licensing regime may also be warranted, to better accommodate wholesale professional markets that may emerge to facilitate execution on trading platforms of new derivative classes not currently traded on platforms in Australia.

Similarly, for jurisdictional questions, one approach could be to adopt the same approach as is proposed to be taken for mandating CCPs.

Your feedback

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.

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?

22. If a derivative class is prescribed for mandated use of CCPs should it also be mandated for execution on a trading platform?

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?

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 transactions through a CCP? If not, what definition do you prefer?

5. TRADE REPOSITORIES

5.1 BACKGROUND

The legislative framework will require other regulations to implement the G20 commitments. The most significant of these is the facilitation of a licensing regime to ensure that trade repositories are able to become eligible trade repositories in Australia and that international standards of data protection and access are maintained.

5.2 LICENSING OF TRADE REPOSITORIES

5.2.1 Legislative framework

Corporations Act licensing of trade repositories

There will be a domestic licensing regime for trade repositories modelled on the licensing regime for AMLs. An Australian trade repository licence (TRL) may be granted by ASIC, rather than by the Minister (as is the case with AMLs and CSFLs).

Unlike the AML and CSFL licensing regimes, it would not be a breach of the Act for an entity to offer reporting services without a TRL. The purpose of licensing will be to determine eligible trade repositories under the DTRs. If it later emerges that unlicensed entities are holding themselves out as trade repositories, thereby creating confusion in the market place or accumulating sensitive information, the Australian Government may exercise regulation-making power to require some or all trade repositories to be licensed.

ASIC may make rules governing the operation of a TRL in addition to imposing conditions on individual licences. Ministerial consent will be required for the making of any rule.

Requirements for good repute and experience for a TRL's senior management and board will be aligned with existing requirements for other FMI (such as AMLs and CSFLs).

Protection and access to trade data

The Act will impose obligations upon TRLs to share information on with domestic and prescribed foreign regulators and with other trade repositories, subject to any conditions or restrictions provided for by regulation.

Except where disclosure or use is otherwise authorised by the Act or rules, there would be a duty to keep data private and confidential. The Act will authorise ASIC to share trade reporting data with other domestic regulators as well as prescribed foreign regulators.

The Act will restrict uses of information by trade repositories to those permitted by the regulations or rules.

The Act will provide for a duty to provide non-discriminatory and transparent acceptance of trade reporting data.

ASIC rule-making with respect to trade repositories

It is proposed that ASIC may also make rules governing the operation of trade repositories. The rules are required in order to:

- give ASIC flexibility to impose rules which will ensure the proper operation of TRs and the protection of the interests of parties dealing with them;;
- ensure that TRLs fulfil their role as FMI; and
- reflect international standards and assist in developing consistent international regulatory approaches.

Supervision of TRLs is not expected to be as intensive as for AMLs or CSFLs. Without limiting the matters that may be dealt, the rules may impose requirements regarding:

- data collection, maintenance and security standards;
- risk management and business continuity planning / disaster recovery planning;
- the separation of operational functionality from other services;
- governance arrangements, including with respect to the management of conflicts of interests;
- fee disclosure; and
- public reporting of trade data and reporting to relevant regulators of trade data.

5.2.2 Regulatory options

A number of jurisdictions have proposed rigorous standards on risk management and requirements relating to the collection, maintenance and dissemination of data. One option would be to impose similarly high standards in regulation once international standards on trade repositories are finalised. It may also be important for third-party providers of ancillary services to have access to information held by trade repositories, in order to facilitate other risk management and operational improvements in OTC derivatives markets. There may therefore be a case for third-party access requirements to be imposed on licensed trade repositories.

Your feedback

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?

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?

25.2. What restrictions should there be on the use of reported data by trade repositories?

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)?

25.4. Should the prices and 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?

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?

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?

28. Should any requirements be imposed on trade repositories with respect to obligations to provide third parties with access to the information (subject to authorisation from data providers and regulators)?

5.2.3 Property in transaction data

As parties will be obligated to provide transaction data to TRLs, it may be appropriate that limits be placed on the ability of TRLs to purport to create ownership rights over the reported data.

Similarly, part of the role of a TRL may be to conduct data analysis and create aggregate data — for example, specified statistics on transactions activities. This processed information would be available for use by regulators and market participants to improve market efficiency, integrity and stability, without restrictions arising from intellectual property concerns.

The regulations may provide for restrictions on intellectual property rights that may be acquired in data required to be reported to a TRL or generated by a TRL for regulatory purposes.

Your feedback

29. Do you have any initial views on the property rights in trade information passed to trade repositories?

5.3 REVIEW OF FINANCIAL MARKET INFRASTRUCTURE (FMI)

The proposed legislative framework specifies that only licensed entities can be eligible as trade repositories, CCPs or trading platforms. This would include entities based either in Australia or in a foreign jurisdiction, subject to certain conditions being met. This approach is in part to ensure that where regulators mandate the use of a facility, regulators are able to engage in the supervision of that facility.

In addition, given the systemic importance of many of the derivative classes that may become subject to mandate, it may be appropriate that trade repositories, CCPs and trading platforms are included in some of the proposals for FMIs separately being developed by the Council.

The licensing framework for FMIs in Australia has been subject to a separate review process. The results of this review were announced on 30 March 2012. [5]

In this review, among other recommendations, the Council recommended that existing powers to impose licence conditions be clarified by giving ASIC and the Reserve Bank explicit power to impose location requirements in key areas, such as financial, risk management and operational arrangements. In the case of an overseas-based FMIs, the scope of such a power would also extend, where appropriate, to the establishment of oversight arrangements that give Australian regulators sufficient influence. In some circumstances Australian regulators may also insist on a legal presence in Australia, or seek assurance as to the compatibility of the FMI's rules with Australian law.

Such requirements would be imposed in a proportional and graduated manner, striking an appropriate balance between efficiency costs and stability benefits. If the Australian Government makes a decision to adopt this recommendation, it will be important to provide the potential scenarios in which location requirements would typically be imposed, and set out the matters that regulators would take into account. These might include, for example, the systemic importance of the underlying market and the composition of the FMI's participants.

Stakeholders will be given further opportunities to engage on this topic in coming months, separate to this consultation.

Your feedback

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?

5 See Council of Financial Regulators Working Group on Financial Market Infrastructure Regulation: http://www.treasury.gov.au/contentitem.asp?ContentID=2093&NavID=037

6. ANTICIPATED FUTURE CONSULTATION PROCESSES

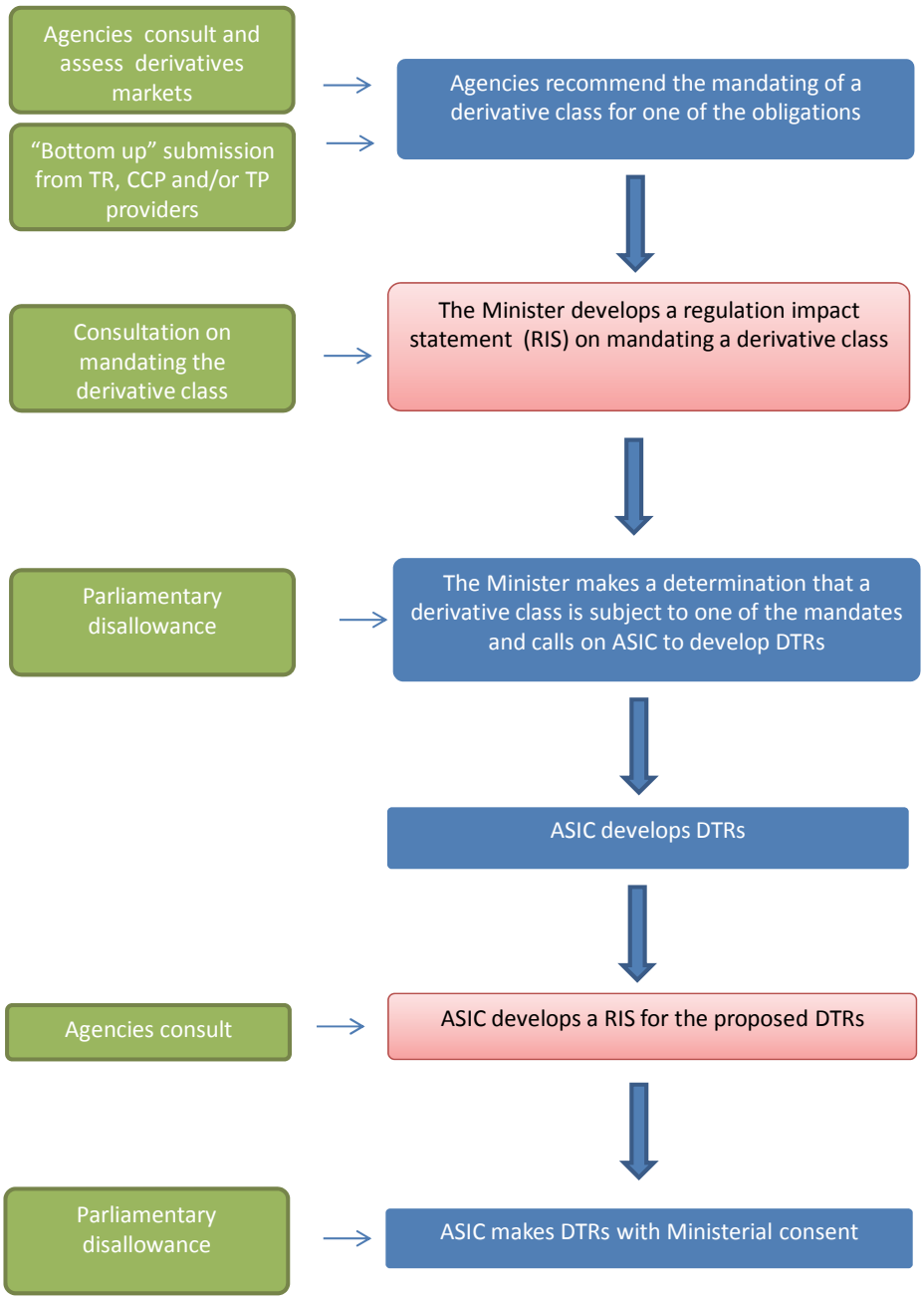
6.1 INTRODUCTION

This section sets out future steps which are expected be taken after the legislative framework has been developed and introduced.

Given that the final processes adopted will depend in part on the detailed legislative framework, this section is only intended to be indicative of the approach that will be taken, and to outline how the DTRs will be developed. This section also highlights some of the issues which will need to be addressed in the development of DTRs.

The anticipated process for recommendation of derivative classes and development of future DTRs is outlined below and illustrated in Fig 2.

Fig 2: Ongoing future consultation and market assessment



6.2 ONGOING ASSESSMENT OF DERIVATIVES MARKETS

Both before and after passage of the legislation, Council agencies will continue to monitor derivatives markets and provide ongoing reports to the Government with recommendations for the extension of any of the obligations to additional derivatives classes.

Recommendations for mandating derivative classes would be provided in conjunction with a report on derivatives markets. These reports will examine derivatives market practices for each derivative class and could consider the following factors:

- The extent to which mandating could address systemic risk posed by that derivative class.
- The competitiveness or reasonable terms of access to trade repositories, CCPs or trading platforms for that derivative class.
- Availability of access to trade repositories, CCPs and trading platforms for Australian entities and investors, either as direct members or as indirect clients for that derivative class.
- The impact of mandating and not mandating on competition among participants in the markets for that derivative class.
- The extent of voluntary take-up of trade repositories, CCPs and/or trading platforms in a derivative class.
- The extent of development of improved bilateral risk management practices in that derivative class, such as collateralisation, default handling procedures and improved back-office functions.
- Relevant international regulatory and market developments.
- Potential costs of compliance.

Assessments may consider whether a facility has indicated that it is willing to provide particular reporting, clearing or trading services. In that case, the assessment process could operate along the lines of the 'bottom up' approach being established in the US and EU. Alternatively, agencies may seek indications of interest from operators of relevant facilities to offer a service, as in the 'top down' approach of these jurisdictions.

Your feedback

31. Do you agree with the factors identified in section 6.2 for ongoing derivatives markets assessments?

32. Are there other factors that should also be included?

6.3 ASIC'S RULE-MAKING PROCESS

As described in section 3.5, once a derivative class and associated obligations has been prescribed by the Minister, ASIC will begin the process of making DTRs. ASIC will consult with other agencies (such as APRA and the Reserve Bank) and stakeholders in developing DTRs. Any DTRs proposed by ASIC will be provided to the Minister for consent.

Without restricting the matters which DTRs might encompass, some initial elements could include:

- When and how transactions must be reported, cleared or executed on a trading platform; for example:
  - What information must be trade reported in relation to a transaction, and what format the report should take;
  - What time parameters will apply to transaction reporting;
  - Which transactions will the obligation apply to, and whether transactions entered into prior to the date of the rules will need to be reported;
- Who will be subject to those obligations;
  - 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 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.
- Any requirements for the back loading of derivatives positions as at the commencement of any trade reporting requirements; and
- The timing of the coming into force of the DTRs; for example:
  - An obligation might come into effect for different classes of entities according to a phased-in process, acknowledging that market participants may vary in the volume of activity they are undertaking, and their operational capacity to meet obligations.
- DTRs may specify how parties may comply with this obligation, for example:
  - Rules may allow an end user to rely on a dealer or other counterparty to report a transaction.

As noted in section 5.2, ASIC would also consult on rules around the licensing of trade repositories as necessary.

Your feedback

33. Do you have any comments on the rule-making power that will be available to ASIC?

34. Do you have any preliminary views on matters to whish DTRs should apply?

PART D — NEXT STEPS AND FEEDBACK

7. NEXT STEPS

This paper has outlined the proposed legislative framework to implement Australia's G20 commitments on OTC derivatives and seeks stakeholder feedback on the options for initial regulations to facilitate implementation of that framework.

Treasury, in conjunction with other Council agencies, will be conducting stakeholder meetings on the issues set out in this paper during the consultation period. Stakeholders are invited to express their interest in arranging such meetings through the contact point given on page iii of this paper.

Following the consultation process regulations will be drafted and some derivatives may be proposed for one or more of the mandates. There will be further opportunities for stakeholder comment at each of these steps.

8. FEEDBACK SOUGHT

In commenting on the consultation questions below, you may wish to have regard to the following international publications:

- Hong Kong Monetary Authority (HKMA) and Securities and Futures Commission (SFC), *Consultation paper on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong,* October 2011 (https://www.sfc.hk/sfcConsultation/EN/sfcConsultFileServlet?name=otcreg&type=1&docno=1).

- Monetary Authority of Singapore (MAS), *Proposed Regulation of OTC Derivatives,* Consultation Paper P003 – 2012, February 2012 (http://www.mas.gov.sg/resource/publications/consult_papers/2012/OTCDerivativesConsult.pdf).

- Proposals by the US Commodity Futures Trading Commission (CFTC) and the US Securities and Exchange Commission (SEC) in relation to the United States Dodd–Frank Act (http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm and http://www.sec.gov/spotlight/dodd-frank.shtml).

- European proposals such as the *Proposal for a Regulation of the European Parliament and of the Council on OTC derivative transactions, CCPs and trade repositories (EMIR),* Inter-institutional File: 2010/0250 (COD) (http://register.consilium.europa.eu/); or European Markets and Securities Commission (ESMA), *Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories*, ESMA/2012/95, February 2012, (http://www.esma.europa.eu/content/Draft-Technical-Standards-Regulation-OTC-Derivatives-CCPs-and-Trade-Repositories).[6]

- Publications of international standard-setting bodies such as the Technical Committee of the International Organization of Securities Commissions (IOSCO, http://www.iosco.org), or the Committee on Payment and Settlement Systems (CPSS, http://www.bis.org/list/cpss/index.htm).

6 The latest text for EMIR is available at: http://register.consilium.europa.eu/pdf/en/12/st06/st06399.en12.pdf

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	3. Do you have any comments on the definition of 'party'?	
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4.3.2	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 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? 17. Are there specific entities that should be excluded from the potential reach of central clearing rules? 17.1. What metrics should be used to determine any thresholds? 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? 17.3. What is an appropriate threshold to exempt end users from the mandatory obligation to clear OTC derivatives classes? 18. Are there specific classes of transaction that should be excluded from the potential reach of trade clearing DTRs? 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? 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 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?	18
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5.2.2	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? 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? 25.2. What restrictions should there be on the use of reported data by trade repositories? 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)? 25.4. Should the prices and 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? 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? 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? 28. Should any requirements be imposed on trade repositories with respect to obligations to provide third parties with access to the information (subject to authorisation from data providers and regulators)?	23

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