23 August 2016

Mr Oliver Harvey
Senior Executive Leader
Financial Market Infrastructure
Australian Securities and Investments Commission
Level 5 100 Market Street
SYDNEY NSW 2000

Cc: Mr Alex Orgaz-Barnier, Senior Manager, Post-trading and OTC Derivatives
Mr Michael Cleland, Senior Analyst, OTC Derivatives Reform

By email: OTCD@asic.gov.au

Dear Mr Harvey

Derivative Transaction Rules Application for Class Relief

The Australian Financial Markets Association (AFMA) is making a class relief application (Relief Application) as representative industry body for the benefit of all 'Reporting Entities' as defined under the *ASIC Derivative Transaction Rules (Reporting) 2013* (DTRs).

AFMA has been in discussion with members over the last several months regarding the need for revised relief measures affecting Reporting Entities in relation to the DTRs.

All terms undefined in this Application have the same meaning as in the DTRs.

This application covers two items which are generally requests for extension of reliefs which are currently in place:

1. Foreign Exchange Securities Conversion Transactions
2. Entity Information and Name Information

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Item 1 - Foreign Exchange Securities Conversion Transactions

1.1	Generally what are the facts?

The Reporting Entities each transact a number of foreign exchange trades for clients to facilitate the settlement of the purchase or sale of a foreign currency-denominated security or equity (FX Securities Conversion Transactions).

Under a FX Securities Conversion Transaction, a client will settle the cash payment/receipt for the purchase/sale of a foreign currency security by executing a FX trade to settle in their base currency, usually AUD. These trades are entered into solely to effect the purchase of a foreign security.

The settlement of these FX Securities Conversion Transactions occurs at the same time as the related securities transaction, which may take up to 7 days after the day on which the relevant arrangement was entered into.

The FX Securities Conversion Transaction settles at the same time as the related securities transaction in order to ensure the customer is best able to reduce their exposure to currency risk between the date the trade is entered into and the settlement date. On this basis, FX Securities Conversion Transactions are usually considered, from an industry perspective, to be 'spot' transactions.

1.2	What is the impact of legislative provisions or existing ASIC policy?

Under Section 761D(1)(b) of the Corporations Act 2001 (Corps Act) and the corresponding Corporations Regulation 7.1.04(1)(a), foreign exchange contracts settled not less than 3 business days after the day on which the arrangement is entered into are classified as "derivatives" and are subject to the DTRs.

However, on the basis that FX Securities Conversion Transactions are considered, from an industry perspective, to be 'spot' transactions, they are not listed in the "Products that must be reported" in Table 2 of the Appendix to Regulatory Guide 251 nor would they commercially be considered to be a 'forward' for the purposes of that table.

1.3	What relief is sought?

This application seeks continuation of relief in the form currently provided under ASIC Instrument 2015/844 Exemption 9 such that any ASIC Reporting Entities will not be required to report FX Securities Conversion Transactions under the Reporting Rules for the reasons set out below.

This application is a minor and technical application in accordance with Regulatory Guide 51 as it involves the application of existing policy to existing situations.

It is AFMA's general position on regulatory policy that the law / rules should accurately portray legal requirements as an aid to transparent understanding and compliance with the law. AFMA is of the view that continuation of temporary exemptive relief is stopgap measure and that a permanent solution needs to occur through amendment of the DTRs. The need for permanent exemptive relief indicates that a rule should be changed. Where a regulator is granted administrative discretion to appropriately apply the law there is no practical barrier to changes to rules such as is the case with the DTRs.

This application addresses the problem of FX Securities Conversions and the anomalous operation of global rules. Derivatives regulation should not be applied to the types of incidental transactions at issue here and will not provide any meaningful protection to

participants (in the form of disclosures) or meaningful information to the regulatory authorities (in the form of regulatory reporting). Current inconsistent treatment of these transactions globally needs to be resolved by the authorities. AFMA notes the Thematic Review Report by the Financial Stability Board (FSB) of November 2015 which describes the workstreams underway under the auspices of the FSB, Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) which, once completed and adopted, are expected to make significant progress in improving the quality and usability of TR-held data. Dealing with the inclusion of FX Securities Conversions is a matter currently being addressed. CPMI and IOSCO have begun issuing a series of consultation reports. During the course of 2017 there is the aim to have finalised guidance to authorities to help globally harmonise the use of key identifiers and data elements in trade reporting. Once this guidance is finalised and global systems (including decisions on governance) for these identifiers are operational, it will be important that jurisdictions do not delay implementation of revised principles in their trade reporting frameworks, since this should significantly improve the usability of TR-held data to effectively support regulators' mandates. It is therefore hoped that within a two year horizon period ASIC will be able to bring in place revisions to the ASIC DTRs which will clearly remove FX Security Conversions from the scope of reporting.

Accordingly, AFMA requests that a further 2 year exemption be granted, with a recommendation that the DTRs are amended in line with global principles once settled to remove FX Securities Conversions permanently. A target date for this to occur is by September 2018.

The proposed wording of the relief follows the current wording of relief in Instrument 2015/844:

> *From 1 October 2016 to 30 September 2018, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Reporting Entity to report a Reportable Transaction or Reportable Position in a foreign exchange contract:*
>
> *(a) that is entered into by the Reporting Entity solely to facilitate the settlement of a transaction for the purchase or sale of a foreign currency denominated security; and*
>
> *(b) under which consideration is provided to settle the transaction not more than 7 business days after the day on which the transaction is entered into.*

1.4	Why should the relief be granted?

We submit that relief is appropriate from a legal, commercial and policy perspective for the reasons set out in our letter to ASIC dated 22 August 2014, (the 2014 Application). Those reasons remain applicable to this application for relief.

The 2014 Application explained that the European Commission Directorate General Internal Market and Services (DG MARKT) wrote to the European Securities and Markets Authority (ESMA) on 23 July 2014 in relation to this issue. DG MARKT noted that a broad

consensus with respect to defining FX spot contracts appeared to have been reached, and included – in relation to FX Securities Conversion Transactions – the use of the accepted market settlement period of that transferable security to define an FX spot contract, subject to a cap of 7 days in line with rules in Singapore and Hong Kong[1] .

Since the date of the 2014 Application, the European Commission has issued its Delegated Regulation addressing this issue (amongst other matters). In the European Commission's Delegated Act published on 25 April 2016, an FX spot contract includes "a contract for the exchange of one currency against another currency…where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, and delivery is scheduled to be made within the period generally accepted in the market for the settlement of that transferable security or a unit in a collective investment undertaking as the standard delivery period or 5 trading days, whichever is shorter".[2] By being classified as a spot transaction, FX Securities Conversion Transactions are not a "financial instrument" for the purposes of, and therefore are outside the scope of, MiFID and as a result the EU does not require such transactions to be reported.

As described in the 2014 Application, because AISC Reporting Entities are not required to report FX Securities Conversion Transactions in other jurisdictions (including the US, Canada, Hong Kong and the EU), a significant system build would be required for most of the ASIC Reporting Entities were they required to do so, in the absence of relief. In terms of scale of the market we are discussing the table below makes an estimate of the number of transactions taking place on a daily basis.

	A Daily average turnover of 7 days or less FX Swaps* AUD	**B** Estimated market share 4 majors approx. 27% AUD	**C** Estimated no. of column B daily transactions @ avg. $10 million transaction size**
Against AUD	62,774,000,000	16,949,000,000	1,695
Against USD	47,940,000,000	12,943,800,000	1,294
Against EUR	156,000,000	42,120,000	4
Other Currencies	264,000,000	71,280,000	7
FX Swaps total	111,136,000,000	30,006,720,000	3,001

Source: *AFXC 2015 Survey ** Council of Financial Regulators Report on the Australian OTC Derivatives Market – April 2014.

The cost of this build would be significant, and the ASIC Reporting Entities estimate of this cost is $2,240,000. This reflects the cost of hiring external consultants, undertaking urgent system modification and integration with existing systems and platforms, meeting the required legal and compliance issues, testing and training, seeking consent as appropriate from counterparties and technical support. The time needed to undertake this build would be in the order of many months, reflecting both the complexity of the build and

[1] Hong Kong Monetary Authority - 2016 Expanded Reporting Rules – see Rules 7 and 8
Government of Singapore - Regulation 5 of the Securities and Futures (Reporting of Derivatives Contracts) (Exemption) Regulations

[2] Commission Delegated Regulation (EU) of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

the lack of people currently available in the Australian market with the necessary expertise and the competing obligations to which the ASIC Reporting Entities are currently devoting significant resources and efforts to comply with. The ASIC Reporting Entities believe that no third party should be directly, materially and adversely affected by a decision from ASIC in favour of this relief application.

10.5 What conditions should be imposed on the relief?

We submit that relief be issued without any conditions. We further submit that the grant of this relief should not preclude the ASIC Reporting Entities from seeking additional relief at a later date.

1.6 Value of the relief

The estimated value of this relief to the requesting Reporting Entities would be $2,240,000 for a two year exemption.

Item 2 - Name Information

2.1 What are the facts?

Relief has been previously provided from the ASIC requirement to provide the legal name in trade data reporting through Exemption 3 - Name Information of ASIC Instrument 2015/844). This requires that the data be concatenated so as to capture the two separate data sets, the counterparty identifier and the legal name in the same field in reports. There has been relief issued on and around this basic requirement, meaning that in certain circumstances, the name information does not need to be provided where generally accepted entity identifiers are provided. This relief is due to expire on 30 September.

AFMA is advised that ASIC is the only regulator which expressly requires name information over and above the identifier information. Most major jurisdictions do not require name information in addition to identifier information. In Europe there is currently a requirement to provide legal name where an internal or client code is used but this will no longer be the case under the upcoming Regulatory Technical Standards (RTS) this is set to be dropped under the revised Regulatory Technical Standards (RTS) following their review. With some very specific exceptions in Europe, no other jurisdiction in which DTCC acts as a Trade Repository requires the provision of name information in addition to the provision of an entity identifier.

It continues to be the case that Legal Entity Identifiers (LEI) are at the pinnacle of the name hierarchy and are a fundamental building block of the trade reporting system. AFMA is of the view that industry needs to continue to move to universal use of LEIs.

Since provision of name information over and above the provision of an entity identifier is not a common cross-border feature of trade reporting requirements the data provided through the DTCC Data Repository (Singapore) PTE Ltd (DDRS) system does not consistently facilitate the provision of name data when a standard entity identifier is used.

In cases where a standard entity identifier is provided, DDRS process will attempt to translate that identifier into a name on the outbound report to ASIC which would achieve compliance with the requirement, however, this cannot always be achieved, and the service does not allow for a value to be provided by the submitting entity in cases where this translation cannot be achieved. As a result, trade reporting entities have been advised

that DDRS processes will not allow for this requirement to be met in a consistent manner. This means that trade reporting entities are not confident that the legal name would be reflected in trade reports.

In the case where Client Codes (internal identifiers) are used in the trade report, ASIC receives name information where a firm provides an internal ID and manually concatenates with the client name in (for all entity identifier fields), or provides this value in the manual name field that is open for trade party information only. However, these processes cannot be used where a standard identifier is provided. Because of this, the relief allowing for reporting parties to not comply with Rule 2.2.1 of the rules to the extent that the Rule requires the Reporting Entity to report Name Information about the entity in their trade report should be extended.

Inconsistency in data standards is now well recognised by the authorities as a crucial problem with the current reporting system around the globe. In September 2014, the Financial Stability Board (FSB) published a feasibility study on options for a mechanism to produce and share global aggregated OTC derivatives TR data. The "Aggregation Feasibility Study" concluded that "it is critical for any aggregation option that the work on standardisation and harmonisation of important data elements be completed, including in particular through the global introduction of the LEI, Following the Aggregation Feasibility Study, the FSB asked the CPMI and IOSCO to develop global guidance on the harmonisation of data elements reported to TRs and important for the aggregation of data by authorities. In November 2014, CPMI and IOSCO established a working group for the harmonisation of key OTC derivatives data elements (Harmonisation Group) in order to develop such guidance, including for UTIs and UPIs. The mandate of the Harmonisation Group is to develop guidance regarding the definition, format, and usage of key OTC derivatives data elements, the Harmonisation Group aims to produce clear guidance to authorities on definitions, format and usage of key data elements other than UTI and UPI that are important for consistent and meaningful aggregation on a global basis. The Harmonisation Group is currently addressing the harmonisation of definitions, format and usage of key data elements important for consistent and meaningful aggregation on a global basis, other than UTI and UPI.

The Harmonisation's Group work is likely produce results during the course of 2017 at a global principles level which would mean that local implementation could occur through amendment of the DTRs in 2018. As suggested in relation to Item 1, setting an end date of 30 September 2018 for the extension of current relief provides an appropriate period in order to make needed changes to the law consistent with the to be agreed international principles on data harmonisation.

2.2	What is the impact of legislative provisions or existing ASIC policy?

The explicit provision of this additional name information adds little discernible benefit and the requirement to provide it may inadvertently discourage the move to a globally accepted standard for identifying legal entities. Name information is arbitrary and free format in its nature when not from a universally agreed and accepted ie "golden" source.

In particular, issues that may arise with a requirement to provide name information include:

- Unlike a legal identifier, name information cannot be validated or verified against a golden source
- Name Information will be derived from a reporting entity's in house static data systems. Those systems may differ between different entities and so information relating to the same legal entity may be different depending on the input methods and system restrictions and configurations of individual firms.

By comparison, LEI follow a universally agreed format and can be centrally validated, therefore removing potential inconsistency. Therefore, while these constraints make name information impossible to use as an accurate point of aggregation, a legal identifier such as an LEI on the other hand, can be used for this purpose.

Allowing independent provision of legal name along with multiple identifier types reduces the incentive to maintain accurate and up to date legal identifier information, thus slowing efforts to harmonise data collection globally.

2.3 What relief is sought?

Relief is sought in the form of the currently worded relief in Instrument 2015/844 as follows:

> *(1) From 1 October 2016 to 30 September 2018, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Reporting Entity to report Name Information about an entity (**Relevant Entity**) in relation to a Reportable Transaction or Reportable Position to a Trade Repository.*
>
> *Where relief applies*
>
> *(2) The exemption in subsection (1) applies where the Reporting Entity reports to the Trade Repository an identifier for the Relevant Entity that is a Legal Entity Identifier (**LEI**), interim entity identifier, Designated Business Identifier or Business Identifier Code (**BIC Code**).*

2.4 Why should the relief be granted?

Requiring a name along with and identifier for all entity level requirements results in gaps in the global trade repository system. While reporting entities can provide DDRS with identifiers, the ability to provide an actual free format name is restricted to unique circumstances where the identifier provided is an Internal Client Code or Free Format. In all other circumstances, if the Identifier cannot be translated, a name is not provided.

Where reporting entities apply user internal client codes over in addition to the globally recognised identifiers, they are able to under the DDRS system to add a name in a free format manner. However, in the circumstance they are obliged to use an identifier for all but individuals, they are dependent on the ability of DDRS to translate the free format name.

Further, the allowance of identifiers that are not widely supported such as SWIFTBIC increases the number that cannot be translated by DDRS.

2.5 What conditions should be imposed on the relief?

We submit that relief should be permanent and be issued without any conditions.

2.6 Value of the relief

The estimated value of this relief to the requesting Reporting Entities is $1,200,000.

Please contact David Love at dlove@afma.com.au or on (02) 9776 7995 if further clarification or elaboration is desired.

Yours sincerely

David Love
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AFMA