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Mr Laurence White
Senior Manager, Post-trading and OTC Derivatives
Financial Market Infrastructure
Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

By email: OTCD@asic.gov.au

Dear Mr White,

CP201 – Derivative trade repositories

ASX welcomes the opportunity to provide comments on the proposed approach to licensing trade repositories and regulating Australian derivative trade repository licensees.

As discussed in ASX's previous submission to Treasury, ASX supports mandated trade reporting as part of the implementation of the Australian Government's G20 commitments. These commitments are an important element in reducing the risk of future financial crises by providing regulators with the tools to deliver greater transparency in critical OTC derivatives markets and appropriate risk management controls to govern that activity¹.

ASX supports the licensing and regulatory framework proposed in the consultation paper. The licensing requirements will ensure that trade repositories are appropriately qualified and the regulatory framework will enable ASIC to supervise the provision of trade reporting services. There are a small number of practical issues in relation to the implementation of the framework which are discussed in the Appendix.

ASX maintains an interest in providing trade repository services and will continue to explore the potential with other commercial parties.

If you would like to discuss our submission in further detail please contact me on (02) 9227 0920 or sally.palmer@asx.com.au.

Yours sincerely

A handwritten signature in blue ink that reads 'Sally Palmer'.

Sally Palmer
General Manager, Legal

¹ ASX submission dated 15 February 2013 to The Treasury on the proposal paper 'Implementation of Australia's G20 over-the-counter derivatives commitments'.

Appendix – Detailed Responses to ASIC Questions

Consultation Question	ASX Comments
<p>C4Q1. Do you agree with draft Rule 2.3.1?</p> <p>C4Q2. What is the likely impact of our proposals?</p>	<p>Requirements concerning connections and data</p> <p>Rule 2.3.1(2) requires the Operator to establish, implement and maintain policies, procedures, systems and controls reasonably designed to:</p> <ul style="list-style-type: none"> (a) maintain a continuous, reliable and secure connection between the Trade Repository and Participants for the purpose of accepting Derivatives Trade Data; and (b) ensure that Derivative Trade Data reported to the Trade Repository by Participants is and remains at all times complete, accurate and current. <p>In relation to the connection, an Operator can ensure they are able to receive the data and have requirements about how Participants connect, but may not control the Participant’s physical connection. ASX suggests that this should be recognised in the Regulatory Guide.</p> <p>In relation to the data, an Operator can specify the details of the data to be reported to it and take steps to ensure that the data meets those specifications. However, the Operator would not have the ability to ensure that Participants are reporting all derivatives transactions, as it would not have visibility of all the participant’s business activities and internal processes. The obligation to report is clearly on the Participant under the proposed ASIC Derivative Transaction Rules (Reporting) 2013. If an Operator had to inquire into these matters it would substantially increase the costs of the service. ASX submits that ASIC should provide clarification that this is not required under Rule 2.3.1(2)(b).</p>
<p>C5Q1 Do you agree with draft Rules 2.3.2 and 2.3.3?</p>	<p>Use of data</p> <p>Rule 2.3.3 appears to have been intended to provide permission under s904B(1)(b)(ii) of the Corporations Act for the use or disclosure of data. We note that ASIC appears to support data being available for commercial purposes (see rule 2.5.2(1)(g) which deals with fees for the disclosure and provision of access to data, and rule 2.3.4 which requires data to be provided to regulators ‘at no charge’ but does not have a similar requirement for the provision of data to Participants).</p> <p>Despite ASIC’s apparent support for the use of data for commercial purposes, rule 2.3.3 does not expressly permit an Operator to disclose non-statistical data for such purposes (nor does any other rule). Because s904B(1)(b)(ii) arguably requires an explicit statement in the rules that disclosure of derivative trade data is <i>permitted</i> for non-statistical (commercial) purposes, we submit that rule 2.3.3 should be amended to expressly provide this permission. If necessary, it could also include a sub-</p>

	<p>rule or note which states that the rule does not require the disclosure of trade data, or that an Operator and Participants must agree on the way in which trade data is disclosed.</p>
<p>C16Q1. Do you agree with draft Rule 2.4.12?</p> <p>C16Q2. What is the likely impact of our proposals?</p>	<p>Operational separation</p> <p>Rule 2.4.12 states that where the Operator, a subsidiary of the Operator's holding company, or any other company with which the Operator has a material agreement in connection with the Trade Reporting Services provides Non-Trade Reporting Services (including Ancillary Services) the Operator must establish, implement, maintain and enforce policies, procedures, systems and controls designed to ensure the operational separation between the Non-Trade Reporting Services and the Trade Reporting Services.</p> <p>A note below the rule states that 'Operational separation may be achieved, for example, by supervisory arrangements including information barriers'. ASX submits that the Regulatory Guide should also clarify that operational separation can be achieved by policies and procedures which ensure that the data is used only by the Operator in connection with the Trade Repository Service. These measures are an effective and efficient way to safeguard the data. Any greater degree of operational separation is not justified and would be costly to implement, resulting in a more expensive service.</p>