

Sydney Branch
ABN 70 062 819 630
AFSL 239679
Level 14, 420 George Street
Sydney NSW 2000

Telephone +61 2 8249 1100
Facsimile +61 2 8249 1141

www.statestreetglobalmarkets.com

15 February 2013

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

Email: financialmarkets@treasury.gov.au

Dear Sir/Madam

Thank you for the opportunity to comment on the paper titled "*Implementation of Australia's G-20 over-the-counter derivatives commitments*" of December 2012.

State Street is a leading provider of financial services to sophisticated institutional investors such as pension funds, mutual funds, endowments and sovereign wealth funds. State Street offers a suite of services that spans the investment spectrum, including investment management, research and trading, and investment servicing. As of 30 September 2012 State Street had USD 23.4 trillion in assets under custody and administration and USD 2.1 trillion in assets under management, operations in 29 countries, including Australia, and a geographic network that spans more than 100 markets.

In derivatives, State Street is one of the largest processors of derivatives transactions and is a member of CCPs in the United States and Europe. State Street is also a provider of market leading electronic execution facilities. Given the diversified nature of its business, State Street often offers a different perspective to traditional participants in the derivatives market on the central clearing of derivatives. Drawing on our global experience, State Street has been active in policy discussions about central counterparty clearing of derivatives in the United States, Europe and the Asia Pacific. We would like to offer several comments on the proposals put forward in the above paper related to reporting, clearing and execution of derivatives in Australia.

Reporting

In response to feedback question 1 on the costs of complying with trade reporting obligations we have several comments.

It is important to ensure that Australia adopts globally consistent reporting requirements and formats so that global processes can be leveraged in the international derivatives market. For example, in the case of FX forwards, swaps and options, U.S. banks such as State Street will be using the Depository Trust and Clearing Corporation ("DTCC") global FX repository. The use of such platforms satisfies public policy goals of trade reporting while maintaining consistency and cost containment for users.

It is also important to ensure that overseas trade repositories can be used for reporting given the global nature of the derivatives market and the firms involved in the transactions. We note that this is contemplated in the Corporations Act, and the paper acknowledges that global repositories are likely to seek to be licensed as derivative trade repositories.

In addition, it is important that reporting to a locally licensed overseas trade repository will satisfy the reporting rules. There should be no further requirement to report a trade to a local repository. Such double reporting would be duplicative without any clear benefit and would substantially increase the costs of reporting.

We welcome the recognition of the potential difficulties faced by firms if reporting is to be done on a voluntary basis, such as a possible conflict with the duty of confidentiality owed to clients under Australian law and under contract. As set out in the paper, firms also face potential difficulties relating to confidentiality in other jurisdictions. As noted, a mandatory reporting regime would assist firms manage confidentiality issues. It would also assist market participants seek mutual recognition or substituted compliance with regulatory requirements in other jurisdictions.

As a final comment on reporting, care needs to be taken in formulating regulations in determining the type of information required and the timing and release of such information. The reporting should be sufficient to provide transparency, but not to provide information which can place anyone at a disadvantage. In addition, the timing needs to be fast enough to make it effective but not so fast as to allow the market to take advantage of any participant working multi-leg trades.

Clearing

In response to feedback question 10 on the proposal not to impose central clearing obligations at this stage we have several comments.

State Street is supportive of the G-20 mandate to clear standardized derivatives which we believe will reduce global systemic risk, and, properly implemented, benefit our institutional investor customer base due to the resulting price transparency. As a general principle, we support consistency of timing in implementation of mandatory clearing of standardized derivatives on a world-wide basis and so would be concerned if Australia was out of step with other major markets.

That said, we understand Australia's desire to gain a better understanding of the local derivatives market and for greater clarity on rule-making in other major jurisdictions before coming to a decision on clearing. We also recognize the preference for an industry led migration to clearing. We support the intention for regulators to revisit mandatory clearing if substantial industry progress is not evident in the near future. We encourage early action by regulators towards a mandatory regime if reportable trades indicate clearing is warranted and if industry does not lead the market toward clearing as is hoped. Given the fundamental change being proposed, regulatory intervention might be needed to ensure change occurs in the existing market. Regulations might also be needed to ensure the use of internationally consistent regulations in Australia.

While we realise that clearing will be dealt with in later consultation papers, we would like to highlight Foreign Exchange ("FX") forwards and swaps and non-deliverable forwards ("NDFs") as important issues for consideration in future rule making.

We firmly believe that FX forwards and swaps should be exempt from mandatory central clearing. FX markets are not organized in the same manner as OTC derivatives markets, and do not share the same core characteristics. Instead, they are well-organized and provide high-levels of liquidity and transparency. This includes the availability of the Continuous Link Settlement (“CLS”) system to address settlement risk, as well as long-established procedures for mitigating counterparty credit exposure. Furthermore, the current FX system has worked well throughout the recent financial crisis, with little evidence of the sort of dislocation encountered in certain segments of the OTC derivatives market and in wholesale funding markets generally. In our view, any potential systemic risk concerns in the FX market have therefore already been properly addressed.

In addition, State Street is concerned that incorporating FX transactions such as FX forwards and currency swaps within CCPs would unnecessarily disrupt the market, with important implications for overall efficiency, stability and costs. Indeed, any presumption in favor of standardization, central clearing, and exchange trading in the highly customized FX market, would greatly reduce its effectiveness as a source of funding and/or hedging for corporations, financial institutions, pension funds and registered or collective funds. Moreover, it would have an especially detrimental impact on funding markets, where FX swaps are a low cost, low risk instrument used extensively by banks, including central banks, for short-term funding needs, such as currency mismatches. Reducing the availability of customized FX swaps could result in greater reliance on short term placements and/or deposits, thereby creating increased credit risk.

State Street therefore strongly recommends the exclusion of FX transactions from the scope of the envisioned framework, especially forwards and currency swaps. If regulators nonetheless conclude that it is important to structure legislation on the basis of an encompassing definition of OTC derivatives, broad discretion should be provided to the appropriate competent authorities to exempt certain categories of FX transactions and/or certain specific regulatory requirements, such as product standardization, centralized clearing and exchange-based trading. This approach has been adopted in the United States where Treasury has the discretion to exempt FX transactions.

In addition to the above, we believe that NDFs should be exempt from clearing requirements. These transactions are essential to support investment and trade in developing markets, and consist of transactions that generally would be delivered but for the existence of currency controls in these markets.

Execution

In response to feedback question 11 we note the intention to delay a decision on trade execution and to develop future recommendations on trade execution separately from recommendations on central clearing. We recommend that central execution be considered at the same time as central clearing and that it be introduced as soon as possible. State Street strongly supports the mandatory use of electronic trading platforms, implemented in conjunction with a mandatory clearing requirement. Such platforms increase price transparency and have the potential to increase market liquidity, particularly in the case of standardized derivatives.

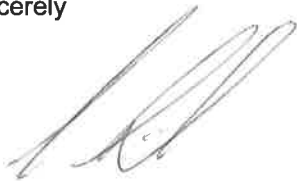
In the present model the volume is spread across numerous dealers – without transparency. If clearing and execution is not simultaneously required, users could incur additional expenses related to clearing without the benefit of increased transparency, narrowed spreads and cost reductions for transactions that electronic trading would bring by replacing “one-to-one” trading with “one-to many” trading. Introduction of a simultaneous clearing and execution mandate will encourage new entrant market participants, increase competition, and better serve the goal of establishing robust clearing houses.

Concerns about fragmentation and liquidity are sometimes cited as the key reason for deferment. We believe only a small number of viable platforms will emerge, reducing this risk. Concerns are also cited about the difficulty of creating trading platforms. Many existing electronic trading venues could be easily converted to execute derivatives. State Street, for example, operates a foreign exchange trading platform, and is planning to operate one or more swap execution facilities ("SEFs").

In recognition of the importance and inter connectedness of clearing and trading, clearable trades will be required to be executed electronically through a Swap Execution Facility ("SEF") or exchange where available in the United States under the Dodd-Frank Act. We hope Australia will adopt a similar approach.

Thank you once again for the opportunity to comment on the proposals. Please do not hesitate to contact us with any questions you might have on the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'I. P. Martin', written in a cursive style.

Ian P Martin
Senior Vice President
Head of Global Markets Australia & New Zealand
Head of Global Services, S.E. Asia & Pacific