PLEN/2014/45 ANNEX

Response for Australia as at 30 June 2014

Part A: With respect to the **authorisation and supervision of:** OTC derivatives market participants; TRs; CCPs; and exchanges or electronic trading platforms:

Trade Repositories

A.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.	**Background** The Corporations Act establishes a framework by which Australia's G20 commitments may be implemented by legislative instruments, including rules made by ASIC. *When is a trade repository licence required?* Mandatory trade reporting in Australia requires certain derivatives counterparties to report their transactions to either a licensed/exempt trade repository or a prescribed trade repository (s901A(6)(a) and (b) of the Corporations Act1 and the ASIC Derivative Transaction Rules (Reporting) 2013 (ASIC Rules)). Therefore to receive mandated trade reports – a trade repository must be prescribed, licensed or exempt. In addition, the Corporations Regulations may identify certain classes of trade repository that need a licence. None have been listed at this time. The trade reporting regime is currently being phased in. Ultimately, Australian reporting entities will be required to report to a licensed or exempt trade repository. Foreign reporting entities that are required to trade report under ASIC Rules may also report to a prescribed trade repository. Where an overseas trade repository triggers a licensing requirement will require a licence unless: - Exempted by ASIC; or - Prescribed in regulation. If a licensed trade repository is wholly or partly operated in a foreign jurisdiction, ASIC may also perform its supervision by relying on the supervision of the trade repository in it home jurisdiction. **Partial/Conditional or Full Deference - Licensing exemptions** ASIC has the power to exempt a licensed trade repository from substantive requirements of the Act or ASIC Rules and has publicly stated that it would consider doing so in cases where an overseas-based trade repository is regulated as a trade repository in its home jurisdiction and ASIC is satisfied of certain additional matters. (see answer to A.2 below). **Full Deference - Prescribed trade repositories** Foreign reporting entities required to report under ASIC Rules also have the

1 All statute references are to the Corporations Act (Cth) 2001, unless otherwise stated.

	option of complying with their reporting obligation by reporting to a prescribed trade repository in accordance with a foreign reporting obligation that is substantially equivalent, subject to certain conditions being met (see ASIC Rule 2.2.1(3)). Prescription is by regulation made by the government or ASIC may prescribe a trade repository. Corporations Regulation 7.5A.30 currently prescribes eight trade repositories that can be used to meet Australian trade reporting obligations, subject to the facility being registered to operate as a trade repository under a law of a foreign jurisdiction: (a) DTCC Data Repository (US) LLC; (b) DTCC Derivatives Repository Ltd; (c) DTCC Data Repository (Japan) KK; (d) DTCC Data Repository (Singapore) Pte Ltd; (e) Chicago Mercantile Exchange Inc.; (f) INFX SDR, Inc.; (g) ICE Trade Vault, LLC; (h) the Monetary Authority appointed under s5A of the Exchange Fund Ordinance of Hong Kong; and (i) UnaVista Limited; These prescriptions expire on 30 June 2015. Corporations Regulation 7.5A.30 (2)(j) provides that ASIC may prescribe a trade repository. P**artial/conditional deference - Supervisory deference** Section 902A of the Corporations Act 2001 provides that, if a licensed trade repository is wholly or partly operated in a foreign country, ASIC may, to the extent it consider appropriate, perform the function of supervising the repository by satisfying itself that: (a) the regulatory regime that applies in relation to the repository in that country provides for adequate supervision of the repository; or (b) adequate cooperative arrangements are in place with an appropriate authority of that country to ensure that the repository will be adequately supervised by that authority. ASIC has stated publicly it would normally expect to be satisfied of both criteria (*Regulatory Guide 249 - Derivative Trade Repositories* (RG 249), paragraph 249.89).
A.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether	ASIC has published RG249, which provides guidance on ASIC's licensing requirements for Trade Repositories (TRs). RG 249 outlines how overseas TRs seeking a licence in Australia may seek exemptive relief from ASIC, or may wish ASIC to perform its supervisory functions in respect of the repository's activities by relying on their compliance with a foreign regulatory regime in accordance with s902A. RG249 outlines that for licensed overseas TRs, ASIC may consider (per RG

these standards have been met (e.g. whether "similar outcomes" is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	249.86): (a) *licence exemptions* - exempting them from substantive parts of the Australian regime in accordance with the considerations set out in RG 249.106–RG 249.107; (b) *supervisory deference* - accepting reliance (in whole or in part) on compliance with overseas regulation as set out in RG 249.88–RG 249.105; or (c) adopting a combined approach by seeking to rely on compliance with overseas regulation, as well as potentially exempting the foreign operator from specific relevant obligations under the Corporations Act or the derivative trade repository rules. For the purpose of 'supervisory deference' ASIC must assess whether the overseas regulatory regime provides for adequate supervision of the trade repository. ASIC has stated in RG 249 that in doing so it will consider whether the foreign regime is *sufficiently equivalent*. ASIC must also assess whether there are *adequate cooperation arrangements* between ASIC and the appropriate authority of the foreign country. For the purposes of licensing exemptions ASIC will assess whether the foreign regime is considered to be *sufficiently equivalent* to the Australian regime (see RG 249.91 and 249.106). It would also assess whether there are *adequate cooperation arrangements* between ASIC and the appropriate authority of the foreign country. **Sufficiently Equivalent** In assessing whether a regime is sufficient equivalent, ASIC will take into account the extent to which the overseas regulatory regime, as it applies to the overseas TR: (a) *is clear, transparent and certain*: A "clear" regulatory regime is one that is clearly articulated and can be easily understood. A "transparent" regulatory regime is one whose rules, policies and practices are readily available to and known by all relevant persons. A "certain" regulatory regime is one that is applied in a consistent manner and is not subject to indiscriminate changes. At a minimum, this principle means that the relevant parts of the home regulatory regime must be in written form, be available to Australians in English and not be subject to arbitrary discretions (RG 54.82 – 54.84). (b) *is adequately enforced in the foreign country*, as explained in RG 54.87–RG 54.89; A regulatory regime is adequately enforced if the relevant home regulatory authority: i. has sufficient powers of investigation and enforcement; ii. has sufficient resources to use those powers; and iii. uses those powers and resources to promote compliance with the regulatory regime.

	In assessing whether the home regulatory regime is adequately enforced, ASIC will rely on matters such as: the international reputation of the home regulatory regime; assessments of the home regulatory regime by the home regulatory authority; and assessments of the home regulatory regime by international financial institutions and other international organisations. (c) *is consistent with the CPSS–IOSCO Principles for Financial Market Infrastructures*, to the extent that they apply to trade repositories; and (d) *achieves equivalent outcomes* to outcomes to the Australian regulatory regime for trade repositories. The achievement of the key outcomes by the overseas regulatory regime does not require the regulatory mechanisms used in each country to be precisely the same. In RG249, paragraph 249.94 ASIC publicly stated it would consider whether an overseas regulatory regime is designed to achieve the high-level outcomes of the CPSS-IOSCO Principles in determining whether there is sufficient regulatory equivalence between the overseas regime and Australia's regulatory regime **Adequate cooperative arrangements** For 'supervisory deference', under s902A(2)(b), ASIC must satisfy itself that there are adequate cooperative arrangements in place with an appropriate regulatory authority of the relevant country to ensure that the TR will be adequately supervised by that authority (per RG 249.88). ASIC would also consider the same issue when looking at exemptions. At a minimum, adequate cooperative arrangements will provide for: (a) prompt sharing of information by the home regulatory authority; and (b) effective cooperation on supervision, and investigation and enforcement. **Prescription – full deference** To prescribe trade repository under regulation 7.5A.30(2)(j), ASIC must be satisfied that either: (a) the facility has adopted rules, procedures or processes that substantially implement the CPSS‑IOSCO Principles applicable to the regulation of derivative trade repositories; or (b) the foreign jurisdiction concerned has adopted legislation, policies, standards or practices that substantially implement the CPSS‑IOSCO Principles applicable to the regulation of derivative trade repositories; and

	(c) adequate arrangements exist for cooperation between ASIC and an appropriate authority responsible for licensing, authorising or registering the facility as a derivative trade repository in the foreign jurisdiction. ASIC may also take into account other matters that it considers relevant in deciding whether to make a determination, including whether ASIC, the Reserve Bank of Australia or the Australian Prudential Regulation Authority has, or will have, adequate access to derivative trade data that has been reported to a prescribed derivative trade repository
A.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).	ASIC has not yet licensed a TR in Australia. A potential licensee would need to lodge an application for a licence or exemption with ASIC. In that context ASIC would initially look to hold bilateral discussions with potential overseas TR applicants to provide guidance on the licensing process. Concurrently, ASIC would begin bilateral discussions with relevant jurisdictions on any cooperative arrangements that may need to be put in place. In considering any draft or formal application, ASIC will consider whether we would exempt a licensee from compliance with, or place reliance on overseas requirements in respect of, a provision or provisions of the ASIC Rules and provisions of Part 7.5A of the Corporations Act. No assessment of equivalence is undertaken of the TR rules in a foreign jurisdiction other than through the process of considering a particular TR licence or exemption application from a TR. It will also be considered in relation considering requests for 'supervisory deference'. ASIC also requires that adequate cooperative arrangements are in place with an appropriate regulatory authority of that country to ensure that the trade repository will be adequately supervised by that authority. Adequate cooperative arrangements with the overseas regulatory authority will generally be in the form of a memorandum of understanding or some other documented arrangement. These arrangements will need to be finalised before ASIC would grant an ADTR license. ASIC is still developing its policy and approach in relation to prescribing TRs. **Time Frame** The duration of the application process may vary substantially, depending on the nature of the trade repository. As a conservative estimate, we estimate that it may take 6-12 months to assess an application from the earliest informal approach. This includes the time taken to agree with the relevant overseas regulator on a data access agreement and supervisory agreements that will cover the TR. The minimum time from formal application to licensing specified by the statute is 42 days.

A.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	**- S902A & S907D of the Corporations Act 2001** http://www.comlaw.gov.au/Details/C2013C00605/Html/Volume_4#_Toc367969634 **- Regulatory Guide 249 Derivative trade repositories** http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+Guide+249+Derivative+trade+repositories?openDocument **- ASIC Derivative Trade Repository Rules 2013** http://www.comlaw.gov.au/Details/F2013L01344 **- Australian Derivative Trade Repository licence application form** http://www.asic.gov.au/asic/asic.nsf/byheadline/Derivative+trade+repositories?openDocument **- Regulatory Guide 54 - Principles for cross-border financial regulation** http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg54-published-29-June-2012.pdf/$file/rg54-published-29-June-2012.pdf
A.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.	DTCC Data Repository (Singapore) Pte Ltd. has submitted a draft application for a TR licence in Australia. We are currently reviewing their TR license application including the extent to which reliance can be placed on the rules and supervision in Singapore.

CCPs

A.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.	**Background** An entity needs a CS facility licence if it operates a CS facility in Australia, and has not received an exemption. The Corporations Act 2001 (the Act) provides a single licensing regimes for all types of clearing and settlement facility, including a domestic CS Facility Licence (s824B(1)) and an overseas CS Facility Licence (s824B(2)). The Minster grants CS Facility licences and exemptions, after advice from ASIC and the RBA. An exemption may be granted where there is no satisfactory policy reason for regulating it as a CS Facility. These licensing and exemption provisions in the Australian regulatory regime for clearing and settlement (CS) facilities (i.e., central counterparties and securities settlement facilities) allow for the exercise of *unconditional* and *conditional* deference to other jurisdictions' regimes.

When a person applies for an overseas or domestic CS Facility Licence, the application is lodged with ASIC. ASIC considers the application and then advises the Minister on the application (s795A). The Minister then grants the licence or not, as the Minister decides. When a person applies for an exemption from licensing, a similar process applies.

Scope of licensing jurisdiction

Under the *Corporations Act 2001* (the Act), the first test is to establish whether a CS facility is within the scope of the Australian regulatory regime. This is a judgement as to whether for the purposes of the Act the facility is deemed to be 'operating in Australia'.

ASIC has issued regulatory guidance (RG 211; see link in response to A.4 below) on the criteria it will consider to determine whether a facility is operating in Australia (see response to A.2 below). The key test is whether there is a sufficient 'nexus' between the facility's operations and Australia.

Even where an overseas CS facility is providing services directly to one or more Australian-headquartered financial entities, there may be circumstances in which the nature and scale of its activities is such that **it is not considered to be operating in Australia. Therefore the Australian authorities will have no regulatory remit over the CS facility**.

Conditional deference - Overseas CS Facility Licences

If a CS facility is deemed to be operating in Australia, it is required to be licensed under Part 7.3 of the Act (unless the Minister decides that it meets the conditions for a licence exemption under s820C(1)). s824(B)(1) of the Act sets out the general criteria that a CS facility licence applicant must meet.

Subsection 824B(2) specifies alternative criteria for overseas CS facilities, which include that in its principal place of business the facility is subject to requirements and supervision that are sufficiently equivalent in relation to:

(a) the effectiveness and fairness of services they achieve
(b) the degree of protection from systemic risk.

These alternative criteria are designed to avoid regulatory duplication. ASIC and the Reserve Bank of Australia (RBA) are responsible for advising the Minister on applications for CS facility licences, including whether these conditions are met.

ASIC and the RBA have issued guidance on their respective approaches to assessing sufficient equivalence. ASIC's approach is set out in its regulatory guidance (RG211.114, p34, which references other regulatory guides listed in the response to A.4). The RBA's approach is detailed in the publication, *Assessing the Sufficient Equivalence of an Overseas Regulatory Regime* (see response to A.4 below).

In granting a licence, the Minister must also be satisfied that adequate

	arrangements exist for cooperation between ASIC, the RBA and both the facility and its home regulator(s). If these requirements are met and a licence is granted under s 824B(2), **ASIC and the RBA may, under s823CA, 'take account of… information and reports from an overseas regulatory authority' in assessing a licensee's compliance with its obligation under the Act**. In its publication, *The Reserve Bank's Approach to Assessing Clearing and Settlement Facility Licensees*, the RBA sets out the conditions under which it will place reliance on overseas authorities (see responses to A.2 and A.4).
A.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether "similar outcomes" is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	**Licensing jurisdiction – CCPs operating in Australia** In reaching a judgement as to whether an overseas CS facility is operating in Australia, ASIC will consider the matters below. (a) A CS facility is operating in Australia if it is operated by a body corporate that is registered under Chapter 2A of the Act (s820D(1)). (b) A CS facility may also operate in Australia in other circumstances. When assessing whether a CS facility operates in Australia, ASIC will consider a number of factors including the nature of its activities (e.g., the products it clears/settles) as well as: − whether all or a significant part of the CS facility's technical infrastructure is located in Australia − whether the CS facility has one or more users and/or participants in Australia and is targeted at Australian users and/or participants − the volume and value of transactions cleared and settled by the facility that are submitted by Australian participants and/or users are material − the CS facility operator has entered into an arrangement with a financial market operating in Australia. ASIC notes that the specified criteria are not exhaustive and also that 'the presence or absence of one or more of the specified factors will not be determinative of its approach to a particular facility'. Ultimately, ASIC's assessment will turn on whether there is a sufficient nexus between operation of the facility and Australia. **If, having considered these factors, ASIC reaches the judgement that a particular facility is not operating in Australia for the purposes of the Act, ASIC would consider Australian authorities have no regulatory remit to licence the CS facility**. **Conditional deference – Overseas CS Facility Licence** ***Sufficient equivalence*** As noted in the response to A.1, an overseas CS facility may be licensed under s824B(2) of the Act if a number of criteria are met, including that the

	facility is subject to requirements and supervision in its home jurisdiction that are sufficiently equivalent, and that there are adequate arrangements for cooperation with both the facility and its home regulator. *ASIC's approach* ASIC will consider an overseas regime to be sufficiently equivalent in relation to the effectiveness and fairness of services, if it: a) is clear, transparent and certain; b) is consistent with the International Organization of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulation, and achieves the high-level outcomes set out in international recommendations and/or standards relating to CCPs or, if relevant, securities settlement systems published by Committee on Payment and Settlement Systems (CPSS) and IOSCO from time to time; Note: See CPSS–IOSCO *Principles for financial market infrastructures* (CPSS–IOSCO Principles), set out in Appendix 2. c) is comparably enforced in the home jurisdiction; and d) achieves the systemic risk protection and fair and effective services outcomes that are achieved by the Australian regulatory regime for comparable domestic CS facilities. Note: See Principles 7–10 of RG 54. Guidance on how ASIC assesses an overseas regime in each of these areas is set out in RG paragraphs 211.113 to 211.130. *RBA approach* The RBA will additionally take the following into account in assessing sufficient equivalence in relation to the degree of protection from systemic risk: a) the clarity and coverage of financial stability-related principles applied by the home regulator relative to the financial stability standards set by the RBA b) the nature and intensity of the home regulator's oversight process c) the observed outcomes relative to those in Australia, as reflected in an initial assessment of CS facilities operating under the relevant overseas regime. If a facility meets the criteria for licensing under s824B(2), both ASIC and the RBA may place conditional reliance on the facility's home regulator in assessing whether the facility is meeting its obligations under the Act. ***Conditional reliance on overseas regulators*** *ASIC's approach* ASIC will only advise the Minister to grant an overseas CS facility license under s824B(2) if it is satisfied that all the criteria in s824B(2) on regulatory equivalence are met, and that a number of other matters that the Minister must have regard to in granting a licence are adequately addressed. One of the matters the Minister must consider is whether there are adequate cooperation arrangements between ASIC, the RBA and the home regulator of the applicant CS facility. ASIC would expect to advise the Minister to

	grant an overseas CS facility licence only if both the RBA and ASIC had in place adequate arrangements with the home regulatory authority. A high degree of cooperation and information sharing will be required to ensure that both duplicative regulation and regulatory gaps with respect to CS facility oversight are minimised. Adequate cooperation arrangements will result in appropriate action in relation to the overseas CS facility by the appropriate regulator to assist in achieving ASIC's regulatory objectives in Australia. ASIC's cooperation arrangements with the home regulatory authority will generally be in the form of a memorandum of understanding or some other documented arrangement. This may be supplemented by more informal arrangements and relationships. In addition, the Minister may impose any conditions deemed appropriate for the operation of the CS facility in Australia. ASIC and RBA will advise the Minister about the conditions that they consider should apply to a CS facility licence. *RBA's approach* In its publication, *The Reserve Bank's Approach to Assessing Clearing and Settlement Facility Licensees*, the RBA notes that, while an overseas regime may be sufficiently equivalent to that in Australia, there may be some differences in the detailed application of principles or standards. The RBA therefore will only place reliance on a sufficiently equivalent overseas regulator in respect of assessment against those Financial Stability Standards (FSS) for which a 'materially equivalent' standard is explicitly applied in the overseas regulatory regime. To the extent that other jurisdictions apply the CPSS-IOSCO Principles, a materially equivalent standard would be expected to apply in most cases. The exceptions would therefore typically be where the RBA's FSS introduce complementary measures tailored to the Australian context, including regulatory reporting and notification requirements and measures to enhance Australian regulatory influence over cross-border facilities. Accordingly, the RBA will assess compliance with each standard for which there is a materially equivalent standard in the home jurisdiction with reference to information and reports from the overseas regulator if each of the following conditions is met: 1. The licensee provides the RBA with legal analysis that demonstrates, to the satisfaction of the RBA, that the licensee is held to a materially equivalent standard in its principal place of business. The analysis should be updated periodically and in the event of material changes to the applicable laws or regulations in the licensee's principal place of business. Applicable laws or regulations would include: those governing or regulating a licensed CS facility; those designed to prevent misconduct or prohibit a specified type of conduct by a licensed CS facility; and those designed to protect the interests of a client or participant of a licensed CS facility 2. The RBA receives documentary evidence on an agreed basis from the licensee's overseas regulator that the licensee has complied in all material respects with the materially equivalent requirements to which it is held by the overseas regulator, and the RBA is satisfied with the information received.

A.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).	**Licensing jurisdiction – CCPs operating in Australia** There are typically two triggers for ASIC to make a judgement as to whether a facility is operating in Australia: (a) In some cases, a CCP will engage directly and pro-actively with ASIC (and perhaps also the RBA) to seek a view on whether it is deemed to have a sufficient nexus with Australia to be deemed to be operating in Australia. (b) In other cases, on the basis of information received from Australian-based participants in an overseas facility (or other third party sources), ASIC (with advice from the RBA) will contact the facility and/or the relevant overseas regulator to gather information to form a judgement. **Conditional deference – Overseas CS Facility Licence** If a decision is taken that a facility is operating in Australia and that licensing is required, ASIC's RG211 (RG211.170 – RG211.172) sets out a process and timeline for licence applications: (a) An applicant typically submits a *draft* application before making a *formal* application so that ASIC can ensure it is sufficiently complete for ASIC and the RBA to be able to prepare advice for the Minister. (b) It will generally take between 12 and 16 weeks for ASIC and the RBA to assess a facility's formal application and prepare advice for the Minister. **This part of the process will include assessing sufficient equivalence and establishing cooperation arrangements with the licensee and its home regulator(s).** (c) The stated processing time excludes time spent clarifying issues, waiting for information, consulting with third parties (if deemed necessary to do so), or – in the case of novel or complex applications, consulting with the public. If public consultation is required, processing may take significantly longer than 16 weeks (see RG211.172).
A.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	A number of relevant documents/links are detailed below: • Corporations Act 2001 (http://www.comlaw.gov.au/Details/C2013C00003) • ASICs Regulatory Guide 211: Clearing and settlement facilities: Australian and overseas operators (RG211) (https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg211-published-18-december-2012.pdf/$file/rg211-published-18-december-2012.pdf) • Regulatory Guide 54 *Principles for cross border financial regulation* (RG 54) (http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg54-published-29-June-2012.pdf/$file/rg54-published-29-June-2012.pdf)

	• Regulatory Guide 176 *Foreign financial services providers* (RG 176) (http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg176-published-29-June-2012.pdf/$file/rg176-published-29-June-2012.pdf) • Regulatory Guide 177 *Australian market licences: Overseas operators* (RG 177) (https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps177.pdf/$file/ps177.pdf) • RBA publication, '*Assessing the Sufficient Equivalence of an Overseas Regulatory Regime*' (http://www.rba.gov.au/payments-system/clearing-settlement/standards/overseas-equivalence.html) • The Reserve Bank's Approach to Assessing Clearing and Settlement Facility Licensees (http://www.rba.gov.au/payments-system/clearing-settlement/standards/assess-csf-licensees.html)
A.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.	*Determined to be sufficiently equivalent* **European Union**. Assessments have been carried out of the European Market Infrastructure Regulation (EMIR), UK Recognitions Requirements, and the European Settlement Finality Directive for the purpose of licensing LCH.Clearnet Ltd.

Exchange and Electronic Platforms

A.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.	**Background** Chapter 7.2 of the *Corporations Act 2001* (the Act) provides for a single, flexible licensing regime for all types of financial markets that operate in Australia. It covers a range of markets, from domestic to foreign domiciled licensed market operators, providing for a domestic markets licence and for an overseas market licence respectively. Under the Act, a person is required to hold an Australian market licence (AML) in order to operate a financial market in Australia, unless an exemption applies (s791A of the Act). If the person has their principal place of business in another country they can apply for an overseas market licence under s795B(2). When a person applies for an AML, the application is lodged with ASIC. ASIC considers the application and then advises the Minister on the application (s795A), whether it be for a domestic market licence under s795B(1) or an overseas market licence under s795B(2). The Minister then determines whether to grant the licence. **Conditional/partial deference - Overseas market operators licence** ASIC's policy on overseas market operators is articulated in *Regulatory*

	Guide 177 Australian market licences: Overseas operators (RG 177). The alternative licensing route in s795B(2) for overseas markets is intended to facilitate competition and avoid regulatory duplication while maintaining investor protection and market integrity (RG 177.8). In order for the Minister to grant an applicant an overseas market licence under s795B(2) of the Act, the Minister must be satisfied of the criteria in s795B(2) including: (a) that the home regulatory regime as it applies to the operation of the overseas market in the home country is sufficiently equivalent, in relation to the degree of investor protection and market integrity it achieves, to the Australian regulatory regime for financial markets (s795B(2)(c)); and (b) the applicant undertakes to cooperate with ASIC by sharing information. An overseas market licensee is subject to a number of the same obligations under the Corporations Act as a domestic licensee (shared obligations). These include maintaining a fair, orderly and transparent market; adequate arrangements for the operating of the market; sufficient resources; annual report. Overseas licensees are, however, excluded from a number of obligations that apply to domestic licensee such as including specific matters in their operating rules; submitting changes to operating rules for Ministerial disallowance; retail compensation arrangement. There are also obligations that apply only to overseas licensees such as notifying ASIC of significant changes to the home regulatory regime (including disciplinary action taken by the home regulator) or changes to their operating rules. In supervising overseas markets, ASIC will apply its approach to financial market regulation, as set out in RG 172. However, in relation to overseas licensees, reliance is placed on the home regulatory regime and on the home regulators activities. **Licensing exemption** The Minister may grant an exemption from licencing for market operated in this jurisdiction under s791C of the Corporations Act. ASIC's policy recommendations to the Minister to grant an exemption is set out in RG 172.51 to 172. 67, and ASIC will only advise the Minister that an exemption be granted in rare and exceptional circumstances. ASIC would normally only make such a recommendation if it considered there was no public benefit because : (a) Regulatory outcomes for market operators are not relevant to the facility; (b) Regulatory outcomes for market operators are achieved without regulation; or (c) The cost of regulation required to achieve the regulatory outcomes for market operators significantly outweighs the benefits of those outcomes. These circumstances are elaborated in RG172.49 to 172.67. An exemption may be subject to conditions which impose ongoing obligations on the market

	operator.
A.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether "similar outcomes" is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	Before ASIC would advise the Minister to grant an overseas market licence, ASIC would assess whether there was *sufficient equivalence* between the Australian and overseas regimes, and that there were *adequate co-operation arrangements*. **Sufficiently equivalent** In assessing whether there is sufficient equivalence between the overseas regulatory regime and the Australian regulatory regime for the purpose of subsection 795B(2)(c) of the Act, ASIC would assess whether the overseas regime: (a) is clear, transparent and certain; (b) is consistent with the IOSCO Objectives and Principles of Securities Regulation; (c) is adequately enforced in the home jurisdiction; and (d) achieves the investor protection and market integrity outcomes that are achieved by the Australian regulatory regime for comparable domestic markets. These criteria form our "equivalence test" for s795B(2)(c) (RG 177.20). *(a) Clear, transparent and certain* In terms of assessing criteria (a), a "clear" regulatory regime is one that is clearly articulated and can be easily understood. A "transparent" regulatory regime is one whose rules, policies and practices are readily available to and known by all relevant persons. A "certain" regulatory regime is one that is applied in a consistent manner and is not subject to indiscriminate changes. At a minimum, this principle means that the relevant parts of the home regulatory regime must be in written form, be available to Australians in English and not be subject to arbitrary discretions (RG 177.21). *(b) Consistent with IOSCO Principles* At paragraph RG177.24, a regulatory regime is consistent with the IOSCO objectives and principles if the home regulatory authority and other international organisations: (a) assesses the home regulatory regime against those objectives and principles; and (b) reasonably determines that the home regulatory regime is broadly compliant with those objectives and principles. As the aims, purposes, outcomes of the Australian regulatory regime for financial markets are consistent with these IOSCO objectives and principles, consistency of the home regime with these objectives and principles is important so as to have a similar regulatory philosophy and to be equivalent at least at a high level. *(c) Adequately enforced*

A regulatory regime is adequately enforced if the relevant home regulatory authority:

(a) has sufficient powers of investigation and enforcement;
(b) has sufficient resources to use those powers; and
(c) uses those powers and resources to promote compliance with the regulatory regime.

In assessing whether the home regulatory regime is adequately enforced, ASIC will rely on matters such as: the international reputation of the home regulatory regime; assessments of the home regulatory regime by the home regulatory authority; and assessments of the home regulatory regime by international financial institutions and other international organisations (RG 177.27).

(d) Similar investor protection and market integrity outcomes

In assessing whether the home regulatory regime achieves the investor protection and market integrity outcomes that are achieved by the Australian regulatory regime for comparable domestic markets, the following six key investor protection and market integrity outcomes that are relevant in ASIC's assessment:

(a) market users use the overseas market on an informed basis;

(b) market users are confident that the overseas market as a whole operates fairly and that they will be treated fairly;

(c) market users are confident about the participants in the overseas market they deal with;

(d) listed entities, participants and other market users that breach the law or the overseas market's rules are likely to be detected and disciplined, and supervision of the overseas market is not compromised by conflicts of interest or other improper influences;

(e) the price formation processes, and the overseas market as a whole, operate reliably; and

(f) transactions entered into through the overseas market are cleared and settled promptly, fairly and effectively.

Co-operation arrangements

When making licensing decisions about overseas markets, in addition to determining whether the home regulatory system is sufficiently equivalent, the Minister must be satisfied that the applicant undertakes to co-operate with ASIC by sharing information and in other appropriate ways (s795B(2)(d)). This will include arrangements regarding how the market operator will advise ASIC of certain matters including changes to financial products traded on it, significant changes to its home regulatory regime or changes to its operating rules.

The Minister shall also consider whether there are adequate co-operation arrangements between ASIC and the home regulatory authority (s798A(3)(d), RG 177.40).

	ASIC will only advise the Minister to grant an overseas market licence if ASIC has adequate co-operation arrangements with the home regulatory authority. This is because licensing of overseas markets in Australia raises a number of regulatory issues that do not arise with domestic markets. One major issue is balancing the respective regulatory responsibilities of ASIC and the home regulatory authority. A high degree of co-operation and information sharing will be needed between the relevant regulators to ensure that both duplicative regulation and regulatory gaps are minimised as much as possible. The co-operation arrangements with the home regulatory authority will generally be in the form of a memorandum of understanding (MoU). ASIC currently have MoUs with a number of foreign regulators, copies of these agreements can be viewed on ASIC's website at the following: http://www.asic.gov.au/asic/asic.nsf/byheadline/OIR+-+Memorandum+of+Understandings?openDocument In additional to the co-operative arrangements with the home regulator, ASIC must be satisfied that the applicant has undertaken to cooperate with ASIC by sharing information and assisting in other appropriate ways. This usually takes the form of a letter of co-operative arrangements.
A.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).	**Application process** Consideration of another regulatory regime is initiated when ASIC receives an application for an overseas markets licence from an overseas market operator. The process is not commenced by the home regulator. The application process is characterised by two distinct stages, the informal and formal lodgement. Although not stipulated in the Act or regulations, prospective overseas market operators must first lodge an informal application with ASIC. It is at this stage all the threshold issues are considered along with a review of the kinds of information that the applicant intends to provide as part of the formal lodgement. On completing a preliminary review, and subject to ASIC being satisfied that the applicant is eligible to apply and that the information provided addresses all the regulatory requirements, the applicant is then invited to formally lodge. Once ASIC has reviewed the formal application and is satisfied that all the requirements in the Act and relevant regulations are met, an advice is provided to the Minister. ASIC generally aims to provide the Minister with advice about an application for an overseas market licence within 16 weeks of receiving an application that contains all the information and documents required. This review period does not include time spent clarifying issues with the applicant. A component of this assessment involves the review on the sufficient equivalency of the home regulatory regime. On receiving the advice from ASIC, there is no statutory period for which the Minister must made a decision by. It is worth noting that the advice from ASIC contains a recommendation, and that ultimately, the Minister not ASIC is the decision maker with respect to these applications. When an application for a new overseas markets licence is made under s795B(2) of the Act, ASIC will assess whether the application satisfies all of the criteria and matters set out in s795B(2) and 798A of the Act, and will make a recommendation to the Minister regarding whether or not to accept the application.

	Minister's decision The final decision to grant an overseas market licence is made by the Minister. Subsection 795B(2) states that the Minister may grant an applicant a market licence authorising the applicant to operate a market in this jurisdiction, the Minister must be satisfied that: (a) the application was made in accordance with section 795A; and (b) the applicant will comply with the obligations that will apply if the licence is granted; and (c) the operation of the market in that country is subject to requirements and supervision that are sufficiently equivalent, in relation to the degree of investor protection and market integrity they achieve, to the requirements and supervision to which financial markets are subject under this Act in relation to those matters; and (d) the applicant undertakes to cooperate with ASIC by sharing information and in other appropriate ways; and (e) no unacceptable control situation (see Division 1 of Part 7.4) is likely to result if the licence is granted; and (f) no disqualified individual appears to be involved in the applicant (see Division 2 of Part 7.4); and (g) any other requirements that are prescribed by regulations made for the purposes of this paragraph are satisfied. Under s798A, in deciding whether to grant a market licence under subsection 795B(2), the Minister must also have regard to: (a) the criteria that the licensee or applicant satisfied to obtain an authorisation to operate the same market in the foreign country in which their principal place of business is located; and (b) the obligations they must continue to satisfy to keep the authorisation; and (c) the level of supervision to which the operation of the market in that country is subject; and (d) whether adequate arrangements exist for cooperation between ASIC and the authority that is responsible for that supervision.
A.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	**RG 177: Australian market licences: Overseas operators** http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps177.pdf/$file/ps177.pdf
A.5 Please provide a	The following jurisdictions have been determined to be sufficiently

list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.	equivalent to the Australian regime: • United Kingdom • United States • Germany

Market Participants

A.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.	Under the Corporations Act, an entity that is taken to be offering financial services in Australia, including issuing or dealing OTC derivatives, is required to hold an Australian financial services licence (unless an exemption applies). 'Issuing' and 'dealing' are broad terms that can apply to activities to OTC derivatives dealers as well as non-dealers. **Full/Conditional deference – Foreign Financial Services Providers** ASIC may defer to another jurisdiction's regulation in relation to OTC derivatives market participants under section 911A(2)(h) of the Corporations Act 2001. This enables a form of 'full' deference, as the Corporations Act provision allows ASIC to exempt a foreign financial services provider (FFSP) from the requirement to hold an Australian financial services licence, where the FFSP: (a) provides financial services to wholesale clients only in Australia; and (b) is regulated by an overseas regulatory. ASIC will consider providing such relief if regulation in the foreign regime is 'sufficiently equivalent' to ASIC's regulation. ASIC's policy on granting such relief is set out in Regulatory Guide 176 *Foreign Financial Services Providers* (details in next section), ASIC may grant 'class order' relief, which is a relief decision that applies to all entities within a defined group or class. ASIC may also provide individual relief, which only applies to an individual entity and the financial services (including dealing in OTC derivatives) that it proposes to offer. In addition, there are some other avenues for ASIC to defer to the regulation of another jurisdiction, including partial deference. For example ASIC has the power to grant relief to an Australian financial services licensee from the requirement to meet our financial resources requirements, if they are subject to sufficient prudential regulation by an overseas authority.
A.2 Please provide a brief description of the standards that need to be	The requirements that need to be met in coming to a decision to grant relief are set out in ASIC's regulatory guidance (Regulatory Guide 54 for

met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether "similar outcomes" is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	general guidance on cross border financial regulation; and Regulatory Guide 176 which is specific to FFSPs including OTC derivatives market participants). RG176 sets out when relief would be available for FFSPs including OTC derivatives market participants. It states relief may be available only if: a) the particular financial services are provided in Australia to wholesale clients only; b) the particular financial services are regulated by an overseas regulatory authority; c) the regulatory regime overseen by the overseas regulatory authority is sufficiently equivalent to the Australian regulatory regime; d) there are effective cooperation arrangements between the overseas regulatory authority and ASIC; e) the FFSP meets all the relevant conditions of relief. ASIC imposes standard conditions on all FFSPs that may be eligible for relief, including submitting to the non-exclusive jurisdiction of the Australian courts, notification and reporting (including notifying ASIC of significant regulatory actions in other jurisdictions), and disclosure to clients that the entity is operating under relief. **Sufficiently equivalent** RG54 set out the general principles of cross-border financial regulation, as well as specific equivalence principles for making 'sufficient equivalence' assessments. They are also covered in RG176. The equivalence principles are: a) The equivalent regulatory regime is clear, transparent and certain; b) The equivalent regulatory regime is consistent with the IOSCO Objectives and Principles of Securities Regulation; c) The equivalent regulatory regime is adequately enforced in the home jurisdiction; d) The equivalent regulatory regime achieves equivalent outcomes to the Australian regulatory regime.

	These equivalent principals have been further described above. **Effective Co-operation Arrangements** RG 176 sets out ASIC's policy requirements for co-operation arrangements. ASIC will grant relief only if it is satisfied that there are effective cooperation arrangements between the relevant overseas regulatory authority and ASIC. This is a matter for ASIC to decide, in consultation with the relevant overseas regulatory authority. Effective cooperation arrangements will usually be in the form of a Memorandum of Understanding (MOU), or some other documented arrangement, Effective cooperation arrangements will provide for: (a) the prompt sharing of information by the relevant overseas regulatory authority; and (b) effective cooperation on: (i) supervision and investigation; and (ii) enforcement.
A.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal	The application requirements are outlined in RG54 and RG176. There is no prescribed form for applying for relief. An application is made by an entity, rather than a jurisdiction, whether the relief sought is for a class of entities or for individual relief. The applicant entity provides information about its foreign regulatory regime, the entity itself and the financial services it proposes to offer, as well as any other information required by ASIC. If an entity is seeking individual relief, we also ask the entity to notify its regulator. In addition, even if an entity is covered by a class order, it is still required to write to ASIC and provide certain information. ASIC would review the information provided by the applicant and conduct our assessment of the equivalence of the relevant foreign regime, based on the Equivalence Principles set out in RG54. Generally, a decision by our internal policy decision making bodies (such as our Regulatory Policy Group) would be required.

	arrangements).	The time taken to process an application varies and would depend on the complexity of the issues raised by the application. As stated above, a pre-requisite for making a decision to grant relief is that ASIC has adequate cooperation arrangements with the relevant overseas regulator. To facilitate enforcement actions in Australia, the FFSP must execute and lodge with ASIC a deed that sets out certain provisions. This deed is for the benefit of, and is enforceable by, ASIC (and other persons referred to in s659B(1) of the Corporations Act), and continues to apply even if the FFSP has ceased to rely on relief.
A.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	As stated above, there is no prescribed form for applying for relief under RG176. Section D of RG176 set out general information about the process and requirements for applying for relief. Information Sheet INFO 157 provides practical guidance to entities seeking to provide financial services under the relevant FFSP class orders. Question 3 of the Information Sheet sets out the questions that entities are required to answer when applying for individual relief.	
A.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.	ASIC has issued a number of class orders that grant relief to FFSPs (which include OTC derivatives market participants. We have also issued individual relief to a number of entities. The class orders apply to entities regulated by: a) UK FSA [CO 03/1099] (which carries over to the UK FCA and PRA) b) US SEC [CO 03/1100] c) US Federal Reserve and OCC [CO 03/1101] d) Singapore MAS [CO 03/1102] e) Hong Kong SFC [CO 03/1103] f) US CFTC [CO 04/829] g) German BaFin [CO 04/1313]	

Part B: With respect to **requirements on market participants** related to: reporting to TRs; clearing transactions through CCPs; capital, margin and/or other risk mitigation requirements; and executing transactions on exchanges or electronic platforms:

Reporting to TRs

B.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's	ASIC has made derivative transaction rules dealing with the reporting of OTC derivative transactions, once a determination is made by the Minister that certain products may be subject to a reporting

regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.	requirement. **Full/conditional deference – Alternative reporting** A form of substituted compliance is available to non-Australian Reporting Entities (as defined) under the ASIC Rules. Where a non-Australian Reporting Entity is subject to the reporting obligation (generally where a trade has been booked to the profit and loss account of a branch in Australia or entered into in Australia), and there is a prescribed TR in the jurisdiction where the non-Australian entity is established, and either: (a) the Reporting Entity or another entity reports information about a Reportable Transaction or Reportable Position to the Prescribed Repository in accordance with a substantially equivalent reporting obligation in that jurisdiction, or (b) the Reporting Entity is exempt in that jurisdiction from the reporting obligation in relation to a Reportable Transaction or Reportable Position, or there is no reporting obligation in that jurisdiction in relation to a Reportable Transaction or Reportable Position, the Reporting Entity is not required to comply with the Reporting Requirements set out in the ASIC Rules in relation to that Reportable Transaction or Reportable Position (see Rule 2.2.1(3)). (Alternative Reporting) The Reporting Entity determines whether it qualifies for Alternative Reporting. ASIC does not make any determination about which jurisdictions are considered to have requirements that a substantially equivalent to ASIC reporting requirements. In Regulatory Guide 251 *Derivative Transaction Reporting*, ASIC provides some guidance on how reporting entities should determine if requirements in a foreign jurisdiction are substantially equivalent to ASIC requirements. RG 251.54-57 states that, in determining whether the information reported is substantially equivalent to the information required to be reported under the derivative transaction rules, reporting entities should consider the overall scope of the information that is reported. RG 251.55 further states that ASIC does not consider that every data field reported must be the same as the requirements under the rules applicable to that transaction. This could mean that reporting entities may not report every single data field required to be reported under the derivative transaction rules (reporting), or that the information reported in some fields is similar in substance, but not identical, to the information required for those fields under the rules. ASIC states that it would generally consider that the information reported is substantially equivalent to that required to be reported in Australia where the information is reported in accordance with the reporting obligations in other jurisdictions that have implemented derivative transaction reporting requirements. This is because the data required to be reported in jurisdictions that have implemented, or are in the process of implementing, reporting obligations that require the reporting of fields that are similar in number and substance to the fields

	required to be reported under the rules. Finally at RG 251.57, ASIC states that as at the time of publication of the RG (August 2013), the jurisdictions that it considers to have implemented reporting obligations that require the reporting of substantially equivalent information as that required to be reported in Australia are Japan and (in respect of the CFTC's reporting rules) the United States. Other jurisdictions that we expect will require reporting of information that is substantially equivalent to information required to be reported in Australia include the European Union, Hong Kong and Singapore.
B.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether "similar outcomes" is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	As per the above, the obligation is placed onto reporting entities to determine whether the derivative information reported is substantially equivalent to the information required to be reported under the derivative transaction rules. ASIC has provided guidance in the RG 251 to assist reporting entities in making this determination.
B.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).	As per response to B.2.
B.4 Please provide copies of, or weblinks to, any documentation or forms that	**ASIC Derivative Transaction Rules (Reporting) 2013** http://www.comlaw.gov.au/Details/F2013L01345

have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	**Regulatory Guide 251 - Derivative transaction reporting** http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg251-published-29-August-2013.pdf/$file/rg251-published-29-August-2013.pdf
B.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.	As per the response to B.2, ASIC stated that as at the time of publication of RG 251 (August 2013), the jurisdictions that it considered to have implemented reporting obligations that require the reporting of substantially equivalent information as that required to be reported in Australia are Japan and (in respect of the CFTC's reporting rules) the United States. Other jurisdictions that ASIC expects will require reporting of information that is substantially equivalent to information required to be reported in Australia include the European Union, Hong Kong and Singapore. In June 2014, ASIC published regulatory guidance that states ASIC considers a number of jurisdictions' trade reporting requirements are equivalent to the Australian requirements, including the requirements of the European Union (EU), Japan, and CFTC.[2]

Mandatory Central Clearing

B.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.	Subsection 901A(1) of the Corporations Act provides that ASIC may make derivative transaction rules dealing with the mandatory clearing of OTC derivative transactions, once a determination is made by the Minister that certain products may be subject to a clearing requirement. In the July 2013 report on the Australian OTC Derivatives market, ASIC and other Council of Financial Regulators agencies recommended that Government mandate mandatory clearing of OTC transactions among internationally active dealers in G4-denominated (ie USD, EUR, GBP, JPY) interest rate derivatives. On 27 February 2014, in line with this recommendation, the Government published a Paper proposing such a mandate. The consultation period closed on 10 April and Government is considering its response. On 3 April 2014, ASIC, APRA and RBA published their latest Report on the Australian OTC derivatives market. The report recommends that the Government consider a mandatory clearing obligation for OTC transactions in Australian Dollar (AUD) interest rate derivatives for the dealer market. The Government's response to this recommendation has not yet been finalised, and therefore ASIC does not yet have powers to make rules in respect of mandatory clearing requirements. If and when the Minister makes a determination that certain products should be subject to a mandatory clearing obligation, then ASIC would likely consult on

2 See http://www.asic.gov.au/asic/asic.nsf/byheadline/ASIC-Derivative-Transaction-Rules-%28Reporting%29-2013—-FAQs?openDocument#a2.

	and make rules to implement a mandatory clearing requirement. This consultation would include consideration of the extent to which ASIC would defer to another jurisdiction's regulatory framework for mandatory clearing. It should be noted that the Corporations Act provides that mandatory clearing obligations can require clearing to be effected through licensed CCPs (either domestic or overseas) or through prescribed CCPs. At the appropriate time, ASIC would need to consider in what circumstances clearing through CCPs that were not licensed but were prescribed would be appropriate.
B.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether "similar outcomes" is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	Per the response to B.1, these considerations would be subject to future ASIC consultation and rulemaking, if and when the Minister makes a determination that certain products should be subject to a clearing requirement.
B.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).	See the response to B.1.
B.4 Please provide copies of, or weblinks to, any documentation or forms that	See the response to B.1.

have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	
B.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.	See the response to B.1.

Financial resource requirements and risk mitigation requirements:

B.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.	ASIC may defer to another jurisdiction's regulation in relation to OTC derivatives market participants under section 911A(2)(h) of the Corporations Act 2001. This enables a form of 'full' deference, as the Corporations Act provision allows ASIC to exempt a foreign financial services provider (FFSP) from the requirement to hold an Australian financial services licence, where the FFSP: (a) provides services to wholesale clients only; and (b) is regulated by an overseas regulatory authority. Where OTC derivatives market participants would be required to hold an Australian financial services licence, including financial resources requirements and general risk management requirements, this provision of the Corporations Act enables ASIC to exercise deference to foreign regimes in relation to these requirements. Please refer to Part A (OTC derivatives market participants) for details. **APRA** As stated in **A.1** under the Corporations Act, an entity that is taken to be offering financial services in Australia, including issuing or dealing OTC derivatives, is required to hold an Australian financial services licence (AFSL) unless an exemption applies. APRA prudentially regulates AFSL market participants that have been licenced by APRA as Authorised Deposit Institutions (ADIs). The APRA regulated AFSL market participants' capital, margin and/or other risk mitigation requirements are deferred to it under section 912A(1)(d) & (h) of the Corporations Act 2001 where a financial services licensee must, unless the licensee is a body regulated by APRA--have (d)…available adequate resources including financial i.e. capital and (h) …adequate risk management systems i.e. margin and/or other risk mitigation requirements. Other cases where APRA may defer to another jurisdiction's regulatory framework and/or authorities (such as where the ADI is a foreign ADI) are: *Capital:* **APS 110 – capital adequacy** states these rules apply to all

	ADIs under the Banking Act, subject to paragraph 3 where these rules do not apply to a **foreign ADI**, which must, however, be subject to comparable capital adequacy standards in its home country. A foreign ADI has the meaning in section 5 of the Banking Act. Also **APS 112 – CA: Standardised Approach to Credit Risk** states that those rules apply to all ADIs with the exception of (a) **foreign ADIs**. These capital rules cover trade exposure [paragraph 9 (cc)] and default fund guarantee provided to a CCP [paragraphs 27 to 30 of **Attachment C**]3.
B.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether "similar outcomes" is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	Please refer to B1 and A2.
B.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative	Please refer to B1 and A3.

3 Trade exposure calculation of current exposure plus potential future exposure refer to Attachment B – paragraph 1-11 – talks about calculation of CEA in general (i.e. factors for PFE etc.) and Attachment C – paragraph 6 (b) for transactions covered by an eligible bilateral netting agreement, the CEA is calculated under paragraph 28 of Attachment J and adjusted for collateralisation of that netting set under paragraph 27 of Attachment H.

decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).	
B.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	Please refer to B1 and A4. **APRA:** **APS110 – Capital Adequacy** http://www.apra.gov.au/adi/PrudentialFramework/Documents/Basel-III-Prudential-Standard-APS-110-(January-2013).pdf **APS 112 – Capital Adequacy: Standardised Approach to Credit Risk** http://www.apra.gov.au/adi/PrudentialFramework/Documents/Prudential-standard-APS-112-January-2008.pdf
B.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.	Please refer to B1 and A5.

Margin requirements:

B.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.	The regime for imposing margin requirements consistent with the BCBS-IOSCO framework is still under consideration in Australia. The Australian government and agencies will take into account the need to seek internationally consistent application of margin requirements when developing our framework. This would include consideration of where it would be appropriate to defer to another jurisdiction's regulatory framework in relation to margin.
B.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether "similar outcomes" is the standard used; whether an analysis of enforcement	Please refer to B1.

regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	
B.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).	Please refer to B1.
B.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	Please refer to B1.
B.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.	Please refer to B1.

Mandatory Trade Execution Requirement

B.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when 'partial' or 'conditional' deference decisions can be made.	Subsection 901A(1) of the Corporations Act provides that ASIC may make derivative transaction rules dealing with the mandatory platform trading of OTC derivative transactions, once a determination is made by the Minister that certain products may be subject to a platform trading requirement. The regulators are continuing to assess whether a mandatory trade execution requirement should be implemented in Australia in the context of international developments. In their April 2014 report the Australian regulators concluded that it was not yet appropriate to recommend a mandatory platform trading obligation, but that the regulators would nevertheless continue to monitor developments to gauge the implications of overseas regimes for methods of execution and liquidity in the Australian OTC derivatives market, and more generally monitor evolving trends in the utilisation of electronic trading platforms. If and when the Minister makes a determination that certain products should be subject to a mandatory platform trading obligation, then ASIC would likely consult on and make rules to implement a requirement. This consultation would include consideration of the extent to which we defer to another jurisdiction's regulatory framework for mandatory
B.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether "similar outcomes" is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).	See the response to B.1.
B.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for	See the response to B.1.

reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).	
B.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.	See the response to B.1.
B.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.	See the response to B.1.