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To Whom Should Australian OTC Derivative Issuers Report?

Posted By *Patricia Tsang* On September 4, 2015 @ 5:20 pm In Bloggers | [No Comments](#)

This article was written by Patricia Tsang and Sophie Gerber (Director, TRAction Fintech Pty Ltd, which provides services to report on behalf of OTC derivatives issuers).

Some OTC derivatives issuers must report to a trade repository licensed by ASIC. Currently, there is only one – the DTCC Data Repository (Singapore) Pte Ltd. However, some issuers have the option to report to a prescribed trade repository instead (ASIC prescribed six of these), subject to certain conditions. Whether an issuer may have the option depends on how the issuer is set up – whether it is:

an Australian entity;

a foreign subsidiary of an Australian entity where the Australian entity is an authorised deposit-taking institution (ADI) or an Australian financial services (AFS) licensee;

a foreign ADI that has a branch located in Australia or;

a foreign company that is required to be registered under Div 2 of Pt 5B.2 of the Corporations Act.

(1) Australian entity

An Australian entity includes a corporation, partnership, managed investment scheme or trust, incorporated or formed in Australia.

An Australian entity must report to a trade repository that is licensed by ASIC – currently, only the DTCC Data Repository (Singapore) Pte Ltd is licensed.

(2) Foreign subsidiary of an Australian entity...

...where the Australian entity is an ADI or an AFS licensee.

Such an entity can report to a licensed trade repository **or** a prescribed trade repository on an ongoing basis (subject to certain conditions being met) – see below.

(3) Foreign ADI that has a branch located in Australia

Such an entity can report to a licensed trade repository **or** a prescribed trade repository on an ongoing basis (subject to certain conditions being met) – see below.

(4) Foreign company

A foreign company that is required to be registered under Div 2 of Pt 5B.2 of the Corporations Act can report to a licensed trade repository **or** a prescribed trade repository on an ongoing basis (subject to certain conditions being met) – see below.

Prescribed trade repositories

For an entity referred to in **(2)**, **(3)** or **(4)** above, such an entity has the option to report to a prescribed trade repository on an ongoing basis by reporting information under the requirements of a foreign jurisdiction, only where those requirements are substantially equivalent to the requirements that would otherwise apply to the reporting entity.

As of February 2015, the jurisdictions that ASIC considers to have implemented reporting obligations that are substantially equivalent to the derivative transaction rules (reporting) are:

Canada;
the European Union;
Hong Kong;
Japan;
Singapore; and
the United States.

On June 25, 2015, ASIC made a determination prescribing six overseas trade repositories. These are:

DTCC Data Repository (U.S.) LLC
Derivatives Repository Ltd
DTCC Data Repository (Japan) KK
DTCC Data Repository (Singapore) Pte Ltd\
UnaVista Limited, and
the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance of Hong Kong.

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