



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Derivative Transaction Rules (Reporting) 2022

This is the Explanatory Statement for *ASIC Derivative Transaction Rules (Reporting) 2022* (the **2022 Rules**, or the *instrument*).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. This instrument repeals and remakes the *ASIC Derivative Transaction Rules (Reporting) 2013* (the **2013 Rules**) in the same form, so as to continue the requirements for the reporting of over-the-counter (**OTC**) derivatives transactions beyond the 1 October 2023 sunset of the 2013 Rules.
2. Over two rounds of consultation, in November 2020 and May 2022, ASIC made proposals to significantly change the 2013 Rules in two stages. The first stage would commence from the 1 October 2023 sunset of the 2013 Rules and the second stage would commence six months later.
3. Submissions to the May 2022 consultation strongly favoured that there be only one stage of significant changes to the 2013 Rules, and that the changes be appropriately sequenced with the similar changes being made in other major jurisdictions.
4. Consequently, the *ASIC Derivative Transaction Rules (Reporting) 2024* (the **2024 Rules**) implements these significant changes in one stage commencing 21 October 2024. This instrument ensures that the requirements for the reporting of OTC derivatives transactions under the 2013 Rules continues under the 2022 Rules, until the commencement of the 2024 Rules.

Purpose of the instrument

5. The purpose of this instrument is to continue the requirements for the reporting of OTC derivatives transactions under the 2013 Rules beyond their 1 October 2023 sunset date, and until the commencement of the 2024 Rules. The instrument does this by repealing the 2013 Rules and remaking them in the same form as the 2022 Rules. The 2022 Rules commence on the day after the instrument is registered on the Federal Register of Legislation.

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6. To ensure that this remake of the 2013 Rules by the 2022 Rules can be clearly understood by businesses to be in the same form, the instrument does not include removing outdated transitional provisions or consolidating associated exemptions within the rules themselves.
 7. The following associated exemption and determination instruments continue to apply to the 2022 Rules:
 - (a) *ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015 (Nexus Exemption)*;
 - (b) *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 (Instrument 2015/844)*;
 - (c) *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2016/0688 (Instrument 2016/0688)*;
 - (d) *ASIC Derivative Transaction Rules (ADI Foreign Subsidiaries) Class Exemption 2021/51 (ADI Foreign Subsidiaries Exemption)*;
 - (e) *ASIC Derivative Transaction Rules (Reporting) Determination 2018/1096 (Excluded Derivative Determination)*; and
 - (f) *ASIC Regulated Foreign Markets Determination [OTC DET 13/1145] (Foreign Markets Determination)*,

noting that s10 of the *Acts Interpretation Act 1901* and subparagraph 13(1)(a) of the *Legislation Act 2003* have the effect that, unless a contrary intention appears:

- (g) where a legislative instrument contains a reference to a legislative instrument that has been repealed and remade, the reference to the repealed instrument is construed as including a reference to the remade instrument; and
 - (h) where references to particular provisions of a repealed instrument correspond to the provisions of a remade instrument, those references to the repealed instrument provisions are construed as a reference to the corresponding remade provisions.
8. With the Minister's consent, ASIC made the 2013 Rules on 9 July 2013. The 2013 Rules mandate the reporting of OTC derivatives transactions by businesses licensed by ASIC or otherwise authorised to deal in derivatives in Australia. Mandatory reporting of OTC derivatives transactions to trade repositories was a key component of the comprehensive OTC derivatives reform agenda agreed by the G20 leaders in response to the global financial crisis given the significant economic and social damage that was experienced. The OTC derivatives market reform agenda was developed with the objectives of improving transparency to regulators, mitigating systemic risk, and protecting against market abuse.

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9. Between 2012 and 2018, in various multi-jurisdictional fora, international standards were developed for legal entity identifiers (**LEI**), transaction identifiers, product identifiers and critical data elements for reporting with a view to common adoption across G20 and Financial Stability Board member jurisdictions. These standards were developed to streamline and simplify reporting requirements for businesses and to enable regulatory authorities to more readily aggregate information about internationally traded OTC derivatives and better understand the multiple cross-border connections between counterparties.
 10. In keeping with steps taken by other jurisdictions since 2020 – the United States (**US**), European Union, Hong Kong, Singapore, the United Kingdom, Canada and Japan – over two rounds of consultation, in November 2020 and May 2022, ASIC made proposals to implement significant changes to the 2013 Rules, including to implement the international standards.
 11. ASIC’s proposals involved a two-stage rules change process. The first stage would commence from the 1 October 2023 sunset of the 2013 Rules and the second stage would commence six months later.
 12. Submissions to the May 2022 consultation strongly favoured that there be only one stage of significant changes to the 2013 Rules and that the changes be appropriately sequenced with the similar changes being made in other major jurisdictions. The 2024 Rules implements one stage of significant changes, commencing 21 October 2024.
 13. Accordingly, this instrument ensures that, in the interim, the requirements for the reporting of OTC derivatives transactions under the 2013 Rules are remade in the same form under the 2022 Rules, until the commencement of the 2024 Rules.

Consultation

14. On 27 November 2020, ASIC released [Consultation Paper 334 Proposed changes to simplify the ASIC Derivative Transaction Rules \(Reporting\): First consultation \(CP 334\)](#).
15. CP 334 set out a two-stage consultation process and made a mix of specific and in-principle proposals in relation to our harmonisation, simplification and fit for purpose rules changes objectives.
16. ASIC received 40 written submissions to CP 334 from stakeholders including reporting entities (contracts for difference (**CFD**) providers, investment managers and derivatives dealers), industry associations, LEI system entities, a derivatives market operator, a reporting services provider, and a central counterparty.
17. The submissions were broadly supportive of many of the proposals, especially to harmonise to the international standards, but there were a number of important concerns raised by stakeholders.

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18. ASIC responded to these concerns and proposed the updated text of the rules in [Consultation Paper 361](#) *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation (CP 361)*, which was released on 16 May 2022.
 19. CP 361 set out the proposed two-stage rules update and implementation process of:
 - (a) Stage 1: with effect from the 1 October 2023 sunset of the 2013 Rules, the rules would implement the LEI and unique transaction identifier international standards; make limited functional changes to the data elements and make some reporting practices changes; and
 - (b) Stage 2: with effect from 1 April 2024, the rules would implement the significant data element changes and new technical formats of reporting.
 20. ASIC received 10 written submissions to CP 361 from stakeholders including reporting entities (CFD providers and derivatives dealers), industry associations, LEI system entities, a derivative trade repository and trading and reporting services providers.
 21. The submissions were broadly supportive of the technical nature of our proposals but raised concerns about the costs and complexities of a two-stage rules update process and the practical implementation of the unique transaction identifier requirements. Submissions also stressed the importance of maximising alignment of the proposed rules changes with those of other jurisdictions, as well as appropriately sequencing the timing of implementation to minimise the complexity of making system changes to comply with rules in multiple jurisdictions.
 22. Our conclusions from the CP 361 consultation process were that the rule changes should only be implemented in one stage commencing 21 October 2024 as the 2024 Rules.
 23. In the interim, this instrument ensures that the requirements for the reporting of OTC derivatives transactions under the 2013 Rules are continued in the same form until the commencement of the 2024 Rules.

Other consultation

24. ASIC has consulted with the Reserve Bank of Australia (**RBA**) and the Australian Prudential Regulation Authority (**APRA**) in accordance with the requirements of section 901J of the *Corporations Act 2001* (the **Corporations Act**). The RBA and APRA support:
 - (a) the repeal and remake of the 2013 Rules with this instrument; and
 - (b) the repeal and replacement of this instrument with the 2024 Rules commencing 21 October 2024.

Operation of the instrument

Chapter 1: Introduction

Part 1.1 Preliminary

25. Rule 1.1.1 provides that ASIC makes the instrument under section 901A of the Corporations Act. Section 901A of the Corporations Act empowers ASIC to make derivative transaction rules imposing reporting requirements.
26. Rule 1.1.2 provides that the instrument is the *ASIC Derivative Transaction Rules (Reporting) 2022*.
27. Rule 1.1.3 provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
28. Rule 1.1.3A provides that the instrument *ASIC Derivative Transaction Rules (Reporting) 2013* is repealed.
29. Rule 1.1.4 provides that the maximum pecuniary penalty payable for a contravention of a provision of the 2022 Rules is an amount determined by the Court under section 1317G of the Corporations Act.

Part 1.2 Interpretation

30. Rule 1.2.1 provides that, in the 2022 Rules, unless the contrary intention appears, a reference to time is to Australian Eastern Standard Time (AEST) or Australian Eastern Daylight Time (AEDT), as applicable, in Sydney, Australia.
31. Rule 1.2.2 provides that words and expressions defined in the Corporations Act will, unless otherwise defined or specified in the 2022 Rules or the contrary intention appears, have the same meaning in the 2022 Rules. For convenience, some words and expressions defined in the Corporations Act are cross-referenced in Rule 1.2.3.
32. Rule 1.2.3 provides definitions for terms used in the 2022 Rules. This includes but is not limited to the terms “prescribed class” and “prescribed repository”.
33. Rule 1.2.3 defines “prescribed class” as a class of derivatives that the Minister has determined, under section 901B of the Corporations Act, as a class of derivatives in relation to which reporting requirements may be imposed (and that determination has not been revoked).
34. On 2 May 2013, the Minister made *Corporations (Derivatives) Determination 2013* that sets out, for subsection 901B(2) of the Corporations Act, the classes of derivatives in relation to which reporting requirements may be imposed as:
 - (a) commodity derivatives that are not electricity derivatives;
 - (b) credit derivatives;
 - (c) equity derivatives;

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- (d) foreign exchange derivatives;
 - (e) interest rate derivatives.
35. Rule 1.2.3 defines “prescribed repository” as a prescribed derivative trade repository as defined in section 761A of the Corporations Act.
36. Section 761A of the Corporations Act defines a “prescribed derivative trade repository” as a facility that is (or that is in a class that is) prescribed by the regulations for the purpose of paragraph 901A(6)(b).
37. Regulation 7.5A.30 of the *Corporations Regulations 2001* (***Corporations Regulations***) sets out that, after 30 June 2015, a prescribed facility is only a facility determined by ASIC.
38. On 25 June 2015, ASIC made [ASIC Prescribed Trade Repositories Determination \[15-0591\]](#), which determines the following overseas derivative trade repositories as prescribed repositories commencing 1 July 2015:
- (a) DTCC Data Repository (U.S.) LLC;
 - (b) DTCC Derivatives Repository Ltd;
 - (c) DTCC Data Repository (Japan) KK;
 - (d) DTCC Data Repository (Singapore) Pte Ltd;
 - (e) UnaVista Limited; and
 - (f) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance of Hong Kong.
39. On 9 April 2019, ASIC [amended the determination](#) to add the following overseas derivative trade repositories as prescribed repositories commencing 9 April 2019:
- (g) DTCC Data Repository (Ireland) Plc; and
 - (h) UnaVista TRADEcho B.V.

Rule 1.2.4 OTC derivative

40. Rule 1.2.4 provides a definition of an “OTC derivative” for the purposes of the 2022 Rules.
41. Under the 2022 Rules, reporting entities are required to report information about their derivative transactions in OTC derivatives (referred to in the 2022 Rules as “reportable transactions”), and positions in relation to OTC derivatives (referred to in the rules as “reportable positions”) (see Rule 1.2.5).

Note: a “reportable position” is an outstanding position as of the dates when “reportable transactions” were required to be reported for each of the phases set out in Table S1.2. A

“reportable position” was required to be reported by a date – the “position reporting date” – that was 6 – 12 months after the date when “reportable transactions” were first required to be reported for each phase and the latest “position reporting date” in Table S1.2 is 1 October 2015. Only a minority of outstanding positions as of the commencement of the 2022 Rules would have been first reported as “reportable positions” and, in this Explanatory Statement, unless the context requires otherwise, references to “reportable positions” are disregarded.

42. Subrule 1.2.4(1) provides that, subject to subrule 1.2.4(2), in the 2022 Rules a derivative is an “OTC derivative” if the derivative is in a prescribed class.
43. Subrule 1.2.4(1) therefore ensures the scope of the reporting requirements is consistent with the limitations on ASIC’s rule-making power provided for in subsection 901B(2) of the Corporations Act, and the relevant Ministerial determination.
44. As at the date of making the 2022 Rules, the prescribed classes are:
 - (a) commodity derivatives that are not electricity derivatives;
 - (b) credit derivatives;
 - (c) equity derivatives;
 - (d) foreign exchange derivatives; and
 - (e) interest rate derivatives.
45. Subrule 1.2.4(2) of the 2022 Rules carves out certain exchange-traded derivatives from the definition of “OTC derivative” for the purposes of the 2022 Rules. Under this subrule, a derivative is not an OTC derivative if:
 - (a) it is able to be traded (within the meaning of section 761A of the Corporations Act) on a “Part 7.2A market” and the entry into the arrangement that is the derivative takes place on the Part 7.2A market, or is reported to the operator of the Part 7.2A market in its capacity as operator of the Part 7.2A market, in accordance with the operating rules of the Part 7.2A market; or
 - (b) it is able to be traded on a “regulated foreign market” and the entry into of the arrangement that is the derivative takes place on the regulated foreign market.

Part 7.2A markets

46. “Part 7.2A market” is defined in Rule 1.2.3 as a financial market the operator of which is licensed under subsection 795B(1) of the Corporations Act, but does not include a financial market operated by an operator specified in regulation 10.15.02 of the Corporations Regulations, or any other financial market that ASIC does not have the function of supervising under section 798F of the Corporations Act.

Regulated foreign markets

47. Under subrule 1.2.4(2A), a “Regulated Foreign Market” means a designated contract market registered by the CFTC, a regulated market under a specified directive of the European Parliament and of the Council or is a financial market, or is in a class of financial markets, that has been determined by ASIC as a regulated foreign market under subrule 1.2.4(3).
48. Under subrule 1.2.4(3), ASIC may determine that a financial market in a foreign jurisdiction is a regulated foreign market for the purposes of subrule 1.2.4(2), where, in the opinion of ASIC, the operation of the financial market in the foreign jurisdiction is subject to requirements and supervision that are sufficiently equivalent, in relation to market integrity and market transparency, to the requirements and supervision to which a designated contract market, a regulated market or a Part 7.2A market is subject in their respective jurisdictions. A determination by ASIC for the purposes of subrule 1.2.4(3) will be published on ASIC’s website and takes effect on the date specified in the determination (see subrule 1.2.4(4)). A determination may be withdrawn by ASIC by notice published on ASIC’s website, from a date specified in the notification that is not less than 1 calendar month after the date the notice is registered under the *Legislative Instrument Act 2003*, and once withdrawn ceases to have effect (see subrule 1.2.4(5)).
49. Subrule 1.2.4(2A) identifies kinds of US and European markets whose derivatives traded on those markets are not OTC derivatives and subrules 1.2.4(3), (4) and (5) provide ASIC with flexibility to carve foreign exchange-traded derivatives out of the scope of the reporting requirements in appropriate circumstances.
50. As at the date of making the 2022 Rules, the Foreign Markets Determination determines as regulated foreign markets:
 - (a) a national securities exchange registered with the US Securities and Exchange Commission of the United States of America;
 - (b) a recognised investment exchange under section 285 of *the United Kingdom Financial Services and Markets Act 2000*, but not an overseas investment exchange within the meaning of section 313(1) of that Act; and
 - (c) a further 35 named foreign financial markets.
51. Exemption 1 (Exchange-traded derivatives) of Instrument 2015/844 also provides a generic definition of a foreign financial market exchange-traded derivative that is in terms of it being made available in one or more series, with the terms of a trade in that derivative being the same as for every other derivative in the same series (with the exception of price), and the terms of, and the trade in, the derivative are in accordance with the operating rules of the financial market. A transaction in such a derivative is not required to be reported, provided that certain information about the financial market, set out in

Exemption 1 and not previously notified to ASIC, is notified to ASIC within 10 business days of the trade in the derivative.

Cleared and uncleared trades

52. A derivative is an OTC derivative under Rule 1.2.4 regardless of whether it is cleared through a licensed clearing and settlement (**CS**) facility. This means that both cleared and uncleared derivative transactions in OTC derivatives are reportable under the 2022 Rules. Where an OTC derivative is, for example, novated to a licensed CS facility, this may give rise to separate reportable transactions for the purposes of the 2022 Rules.
53. The information that must be reported about a reportable transaction includes information about whether the OTC derivative has been subject to clearing: see items 17 to 20 and 38 in Table S2.1(1) in Rule S2.1.1 (Derivative Transaction Information).

Rule 1.2.5 Reporting entities and reportable transactions

54. Rule 1.2.5 and Table 1 define the scope of the reporting requirements by defining “reporting entity”, and “reportable transaction” in relation to each kind of reporting entity, for the purposes of the 2022 Rules.
55. The “reporting entity” is the person who is required to comply with the reporting requirements imposed by the 2022 Rules (see paragraph 901A(3)(e) of the Corporations Act).
56. A “reportable transaction” in relation to a reporting entity referred to in column 2 of Table 1, is a “derivative transaction” (as defined in Rule 1.2.3 and section 761A of the Corporations Act) in an OTC derivative (as defined in Rule 1.2.5) of the kind referred to in column 3 of Table 1.
57. The definition of “derivative transaction” in the 2022 Rules and Corporations Act covers entry into an arrangement that is a “derivative” (as defined in Rule 1.2.3 and section 761D of the Corporations Act), and modification, assignment or termination of such an arrangement. However, under subparagraph 1.2.5(1)(b)(iii), an assignment of an OTC derivative will only be a reportable transaction in relation to a reporting entity if the reporting entity has actual knowledge of the assignment.
58. Paragraph (d) of the definition of “derivative transaction” in section 761A of the Corporations Act also allows for other types of transaction to be included through the Corporations Regulations. As at the date of making the 2022 Rules, there are no regulations under paragraph (d) of the definition of “derivative transaction” in section 761A of the Corporations Act.
59. Table 1 below summarises the definitions in Rule 1.2.5.

Table 1 – Reporting entities and reportable transactions

Reporting entity	Reportable transaction
An “Australian entity” (defined in Rule 1.2.3 as an entity (including a corporation, partnership, managed investment scheme or trust) that is incorporated or formed in this jurisdiction).	Entry into, modification, termination or assignment of an OTC derivative to which the reporting entity is a counterparty, regardless of where the OTC derivative is entered into.
<p>A foreign subsidiary of an Australian entity where that Australian entity is:</p> <ul style="list-style-type: none"> • an “Australian ADI” (defined in Rule 1.2.3 as an Australian entity that is an Australian ADI as defined in section 9 of the Corporations Act); or • an “AFS licensee” (defined in Rule 1.2.3 as a holder of an Australian financial services (AFS) licence granted under section 913B of the Corporations Act). 	Entry into, modification, termination or assignment of an OTC derivative to which the reporting entity is a counterparty, regardless of where the OTC derivative is entered into.
A foreign ADI that has a branch located in this jurisdiction.	Entry into, modification, termination or assignment of an OTC derivative:
A foreign company that is required to be registered under Division 2 of Part 5B.2 of the Corporations Act.	<ul style="list-style-type: none"> • booked to the profit or loss account of a branch of the reporting entity located in this jurisdiction; or • entered into by the reporting entity in this jurisdiction.
An “RE” (defined in Rule 1.2.3 as a responsible entity of a managed investment scheme) or “trustee” (defined in Rule 1.2.3 as a trustee of a trust).	Entry into, modification, termination or assignment of an OTC derivative in the RE or trustee’s capacity as RE or trustee of an Australian entity.
<p>60. Regulation 7.5A.50 of the Corporations Regulations precludes derivative transaction rules being imposed upon “end users”, defined as persons who are not:</p> <ul style="list-style-type: none"> (a) Australian ADIs; or (b) CS facility licensees; (c) AFS licensees; or (d) persons who, in this jurisdiction, provides financial services relating to derivatives to wholesale clients only and whose activities, relating to derivatives, are regulated by an overseas regulatory authority. 	

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61. Paragraph (2A) of Regulation 7.5A.50, also precludes the derivative transaction rules from imposing requirements relating to a class of derivatives on AFS licensees:
- (a) who are taken not to be end users only because they are an AFS licensee; and
 - (b) whose AFS licence does not authorise them to provide financial services in relation to that class of derivatives.
62. The 2022 Rules do not impose requirements on end users, or AFS licensees which are captured by paragraph (2A).
63. In addition, in Table S1.1: Transaction Reporting Requirements a transaction reporting requirement is not specified for a foreign subsidiary of an Australian entity. For foreign entities, Table S1.1 only specifies a transaction reporting requirement for a foreign ADI and an exempt foreign licensee (both of whom are generally required to be registered under Division 2 of Part 5B.2 of the Corporations Act).
64. As at the date that the 2022 Rules are made, ADI Foreign Subsidiaries Exemption further clarifies that a foreign subsidiary of an Australian ADI is only required to report a derivative transaction in an OTC derivative which is booked to the profit and loss account of a branch of that entity located in this jurisdiction or that has a “sales or trader nexus” with Australia.
65. Also, as at the date that the 2022 Rules are made, the Nexus Exemption provides that foreign reporting entities may opt in to applying a “sales or trader nexus” test to the “entered into” test to determine the reportable transactions that are required to be reported. The “sales or trader nexus” test would be satisfied where a reportable transaction is entered into in this jurisdiction and functions such as, for example, pricing, sales or risk management are performed for the relevant reporting entity by a person in this jurisdiction.
66. It is noted that, under section 900A of the Corporations Act, Part 7.5A of the Corporations Act applies to (among other things) derivatives, derivative transactions and persons located in or otherwise connected with Australia or a place outside Australia. Paragraph 1.96 of the Revised Explanatory Memorandum to the Corporations Legislation Amendment (Derivative Transactions) Bill 2012 notes with regard to section 900A:
- “The broad territorial reach of the provision is required to ensure that ASIC is able to coordinate its rule-making with foreign jurisdictions to aid in consistency of regulatory approaches and to assist in ensuring that international capital markets remain open to cross-border participation.”
67. The Revised Explanatory Memorandum at paragraph 1.100 also notes that “Derivative transaction rules are not limited in their application to the parties to a transaction. For example, a person involved in arranging a transaction may be made subject to a rule.”

Rule 1.2.6 References to licensed repositories and prescribed repositories

68. Rule 1.2.6 provides that a reference in the 2022 Rules to reporting information about a reportable transaction to:
- (a) a licensed repository, is a reference to reporting the information to a licensed repository, the licence for which authorises the licensed repository to provide services in respect of a class of derivatives that includes the derivatives to which the reportable transaction relates;
 - (b) a prescribed repository, is a reference to reporting the information to a prescribed repository that is prescribed in relation to a class of derivatives that includes the derivatives to which the reportable transaction relates.
69. Under subsection 901A(6) of the Corporations Act, the 2022 Rules may require reporting to facilities that are licensed under section 905C of the Corporations Act or prescribed under paragraph 901A(6)(b) (defined in the 2022 Rules as “licensed repositories” and “prescribed repositories” respectively). Rule 1.2.6 aligns the reporting requirements set out in the 2022 Rules with the definition of “reporting requirements” in subsection 901A(6) of the Corporations Act.
70. As noted in paragraph 1.109 of the Revised Explanatory Memorandum to the Corporations Legislation Amendment (Derivative Transactions) Bill 2012:
- “The rules may require trade reporting, clearing and execution to or on prescribed facilities (in addition to licensed facilities). The ability to prescribe facilities will provide flexibility to: (a) enable non-licensed domestic facilities to be utilised, such as to enable trade reporting in respect of certain classes of derivatives to a non-licensed government body such as a regulator; and (b) to enable rules to be made to support compliance with foreign trade reporting, clearing or execution laws (where such laws involve non-domestically licensed facilities).”

Rule 1.2.7 References to total gross notional outstanding

71. Rule 1.2.7 deals with references in the 2022 Rules to “total gross notional outstanding” in relation to the phased introduction of the reporting requirements.
72. Schedule 1 provides for the transaction reporting requirements and position reporting requirements to be implemented in phases. Phase 2 of the reporting requirements applies to Australian ADIs, AFS licensees, CS facility licensees and exempt foreign licensees that, as at 31 December 2013 hold total gross notional outstanding positions of \$50 billion or more.
73. For the 2022 Rules, all of the phased reporting requirements have already applied under the 2013 Rules and there are no additional phased reporting requirements yet to be satisfied under the 2022 Rules.

Chapter 2: Reporting requirements

74. Chapter 2 of the 2022 Rules, along with the Schedules:
- (a) imposes reporting requirements as permitted by paragraph 901A(2)(b) and subsection 901A(6) of the Corporations Act;
 - (b) specifies the persons who are required to comply with the reporting requirements imposed by the 2022 Rules as permitted by paragraph 901A(3)(e) of the Corporations Act;
 - (c) deals with the manner and form in which persons are required to comply with the reporting requirement imposed by the 2022 Rules as permitted by paragraph 901A(3)(f) of the Corporations Act; and
 - (d) deals with the circumstances in which persons are relieved from complying with the reporting requirements in the 2022 Rules that would otherwise apply to them as permitted by paragraph 901A(3)(g) of the Corporations Act.

Part 2.1 Application

75. Rule 2.1.1 provides that Chapter 2 imposes obligations on reporting entities to report their reportable transactions and reportable positions to licensed repositories and prescribed repositories. It is noted that Schedule 1 deals with phased implementation of the reporting requirements and Schedule 2 sets out the information to be reported.

Part 2.2 Reporting requirements

Rule 2.2.1 Reporting requirements

Subrule 2.2.1(1) - Transaction reporting requirements and position reporting requirements

76. Under subrule 2.2.1(1) and subject to exceptions set out in subrules 2.2.1(2) and (3) and Part 2.4, reporting entities must report information about their reportable transactions and reportable positions in accordance with the reporting requirements set out in the Schedules to the 2022 Rules, and in accordance with the other requirements of Part 2.2 concerning:
- (a) changes to information reported (see Rule 2.2.2);
 - (b) timing of reporting (generally, T+1) (see Rule 2.2.3);
 - (c) format of reporting (see Rule 2.2.4);
 - (d) continuity of reporting (see Rule 2.2.5);
 - (e) accuracy of reporting (see Rule 2.2.6);
 - (f) delegation of reporting (see Rule 2.2.7); and

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- (g) lifecycle or snapshot reporting (see Rule 2.2.8).
77. As at the date the 2022 Rules are made, the reporting requirements are affected by regulations under the Corporations Regulations and exemptions instruments:
- (a) regulations 7.5A.71–7.5A.74 exempts reporting entities with small-scale gross notional outstanding positions from reporting transactions where their counterparty reports the transactions;
 - (b) Instrument 2016/0688, having regard to the agency OTC clearing model of ASX Clear (Futures) Pty Ltd (*ASX Clear (Futures)*) for affiliates and clients, exempts the clearing participant from reporting cleared transactions with ASX Clear (Futures) that are entered into by an affiliate or client; and
 - (c) Instrument 2015/844 provides conditional exemptions from the reporting of certain entity name information, entity identifiers, transaction identifiers and short-dated foreign exchange transactions.
78. Paragraph 2.2.1(1)(a) provides that reporting entities must report each of their reportable transactions in accordance with the transaction reporting requirements in Part S1.1 of Schedule 1, during the applicable reporting periods set out in that Part, other than a modification, termination or assignment referred to in paragraph 2.2.1(1)(c). Part S1.1 of Schedule 1 provides for phased implementation of the transaction reporting requirements for different kinds of reporting entities and Part S2.1 of Schedule 2 provides for the derivative transaction information to be reported.
79. For the 2022 Rules, all of the reporting periods set out in Part S1.1 of Schedule 1 have commenced and there are no reporting periods yet to commence under the 2022 Rules.
80. Paragraph 2.2.1(1)(b) provides that reporting entities must report their reportable positions in accordance with the position reporting requirements in Part S1.2 of Schedule 1, by the applicable position reporting date set out in that Part. Part S1.2 of Schedule 1 provides for phased implementation of the position reporting requirements for different kinds of reporting entities and Part S2.2 of Schedule 2 provides for the derivative position information to be reported.
81. Paragraph 2.2.1(1)(c) provides that reporting entities must report a reportable transaction that is a modification, termination or assignment of a reportable position and that occurs before the applicable position reporting date for that reportable position, in accordance with Rule 2.4.4. See the explanatory material on Rule 2.4.4 below, for further information.
82. For the 2022 Rules, all of the position reporting dates set out in Part S1.2 of Schedule 1 have already occurred and there are no additional phased position reporting requirements yet to be satisfied under the 2022 Rules.

Subrule 2.2.1(2) - Exception where no licensed repository and no prescribed repository

83. Subrule 2.2.1(2) provides for a general, ongoing exception to the requirements of subrule 2.2.1(1) and Part 2.2, for all reporting entities.
84. Subrule 2.2.1(2) provides that a reporting entity is not required to comply with the requirements of subrule 2.2.1(1) and Part 2.2 that would otherwise apply to the reporting entity in relation to a reportable transaction or a reportable position if, at the time the reporting entity is required to comply with the requirements:
- (a) there is no licensed repository authorised to provide services in respect of the class of derivatives that includes the derivatives to which the reportable transaction or reportable position relates; and
 - (b) there is no prescribed repository that is prescribed in relation to the class of derivatives that includes the derivatives to which the reportable transaction or reportable position relates.
85. Subrule 2.2.1(2) is included to make it clear that a reporting entity will not breach its reporting obligations where there is no licensed repository and no prescribed repository that can accept reports in relation to a particular reportable transaction or reportable position.

Subrule 2.2.1(3) - Alternative reporting exception for foreign entities

86. Subrule 2.2.1(3) provides for a specific, ongoing, exception to the requirements of subrule 2.2.1(1) and Part 2.2, for all reporting entities other than Australian entities or an RE or trustee acting in its capacity as RE or trustee of an Australian entity. Subrule 2.2.1(3) is designed to ensure that foreign reporting entities are not subject to duplicate reporting requirements, where they are subject to a reporting obligation in another jurisdiction.
87. Subrule 2.2.1(3) provides that a reporting entity other than an Australian entity or an RE or trustee acting in its capacity as RE or trustee of an Australian entity, is not required to comply with the requirements of subrule 2.2.1(1) and Part 2.2 that would otherwise apply to the reporting entity in relation to a reportable transaction or a reportable position if, at the time the reporting entity is required to comply with the requirements:
- (a) the reporting entity is subject to reporting requirements (*Alternative Reporting Requirements*) in one or more foreign jurisdictions (in this Rule, each, a *Foreign Jurisdiction*) that are substantially equivalent to the reporting requirements under the 2022 Rules; and
 - (b) either:
 - (i) the reporting entity or another entity has:
 - (A) reported information about the reportable transaction or the reportable position to a prescribed repository, in compliance with

the Alternative Reporting Requirements in at least one Foreign Jurisdiction; and

- (B) designated the information reported under paragraph (a) as information that has been reported under the 2022 Rules; or
- (ii) the reporting entity is exempt from the requirement in all of the Foreign Jurisdictions to report information about the reportable transaction or the reportable position, or there is no requirement in the Foreign Jurisdiction to report information about the reportable transaction or reportable position.

88. This allows foreign reporting entities to rely on subrule 2.2.1(3) where the foreign reporting entity reports to a prescribed trade repository in accordance with Alternative Reporting Requirements in a Foreign Jurisdiction as a form of substituted compliance (for example, because the reporting entity is registered as a “Swap Dealer” in the US and subject to Dodd-Frank reporting requirements).
89. Subrule 2.2.1(3) requires foreign reporting entities that rely on subrule 2.2.1(3) to designate or “tag” the information reported to the prescribed repository as information that has been reported under the Australian reporting requirements. This ensures that prescribed repositories are able to provide the information to Australian regulators, and that Australian regulators are able to obtain more timely and complete access to information about OTC derivatives activity that is relevant to Australian financial markets.

Rule 2.2.2 – Reporting requirement – changes

90. Rule 2.2.2 requires a reporting entity to report changes to previously reported information that do not constitute a reportable transaction. It is noted that a change that does constitute a reportable transaction (e.g. a modification, termination or assignment of the OTC derivative) will be required to be reported under subrule 2.2.1(1).
91. Subrule 2.2.2(1) provides that, where a reporting entity has reported information about a reportable transaction or reportable position in accordance with subrule 2.2.1(1) and there is a change to the information reported that does not constitute a reportable transaction, the reporting entity must report the change, and also the applicable information about the change set out in item 55 of Table S2.1(1), in accordance with the requirements of Part 2.2. Item 55 of Table S2.1(1) requires an indication of the nature of the change.
92. Subrule 2.2.2(2) provides that, without limiting subrule 2.2.2(1) and subject to subrule 2.2.2(3), a reporting entity must report:
- (a) each updated mark-to-market, mark-to-model or other valuation of the OTC derivative to which the reportable transaction or reportable position relates, whether performed by the reporting entity or by another person on behalf of the reporting entity; and

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- (b) each change to the collateral held in relation to the OTC derivative to which the reportable transaction or reportable position relates.
93. Subrule 2.2.2(3) provides that if there is more than one update to the valuation or the collateral amount (as referred to in paragraphs 2.2.2(2)(a) and 2.2.2(2) (b) respectively) during a business day, the reporting entity is only required to report the update or change that occurs closest to the end of that business day. Subrule 2.2.2(3) ensures that reporting entities are not required to report multiple intra-day mark-to-market valuations and changes to collateral.
94. “Business day” is defined in Rule 1.2.3 to mean a day that is not a Saturday, a Sunday, or a public holiday or bank holiday in the relevant jurisdiction.
95. “Relevant jurisdiction” is also defined in Rule 1.2.3 to mean, in relation to a reportable transaction or reportable position:
- (a) this jurisdiction, if the reportable transaction or reportable position was booked to the profit or loss account of a branch of the reporting entity located in this jurisdiction or was entered into by the reporting entity in this jurisdiction; or
 - (b) if paragraph (a) doesn’t apply:
 - (i) the jurisdiction in which the reportable transaction or reportable position was booked to the profit or loss account of a branch of the reporting entity; or
 - (ii) if subparagraph (i) does not apply, the jurisdiction in which the reportable transaction was entered into by the reporting entity.

Rule 2.2.3 – Reporting requirement – timing (generally T+1)

96. Subrule 2.2.3(1) provides that, subject to subrule 2.2.3(2), a reporting entity that is required to report:
- (a) information about a reportable transaction in accordance with paragraph 2.2.1(1)(a) or (c); or
 - (b) a change to information about a reportable transaction or reportable position, in accordance with subrule 2.2.2(1),
- must report the information or change by no later than the end of the next business day after the requirement to report the information or change arises.
97. Subrule 2.2.3(2) provides that if the licensed repository or prescribed repository to which the information or changes are to be reported is not available to accept the report of information or changes by the time required under subrule 2.2.3(1), the reporting entity must report the information or changes as soon as practicable after the licensed repository or prescribed repository becomes available to accept the report.

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98. Subrule 2.2.3(2) of the 2022 Rules is designed to ensure a reporting entity does not breach subrule 2.2.3(1) where the trade repository's services are temporarily unavailable. It is noted that paragraph 2.3.1(3)(a) of the ASIC Derivative Trade Repository Rules 2013 requires the operator of a licensed repository to have in place policies, procedures, systems and controls reasonably designed to maintain continuous, reliable and secure connections with participants (i.e. reporting entities or persons reporting on their behalf) for the purposes of accepting derivative trade data.

Rule 2.2.4 – Reporting requirement – format

99. Rule 2.2.4 provides that a reporting entity that is required to report:
- (a) information about a reportable transaction, or a reportable position in accordance with subrule 2.2.1(1); or
 - (b) a change to information about a reportable transaction or reportable position in accordance with subrule 2.2.2(1),
- must report the information or change in an electronic form and in accordance with any format requirements specified:
- (c) in the 2022 Rules; and
 - (d) by the licensed repository or prescribed repository to which the information or change is reported, to the extent those format requirements are not inconsistent with any format requirements specified in the 2022 Rules.
100. Some format requirements are specified in Schedule 2 of the 2022 Rules.

Rule 2.2.5 – Reporting requirement – continuity of reporting

101. Subrule 2.2.5(1) provides that, subject to subrule 2.2.5(2) and Rule 2.4.5, a reporting entity that reports to a derivative trade repository (in Rule 2.2.5, the **Original Trade Repository**):
- (a) information about a reportable transaction in an OTC derivative, or a reportable position in an OTC derivative, in accordance with subrule 2.2.1(1); or
 - (b) a change to information about a reportable transaction in an OTC derivative, or a reportable position in an OTC derivative, in accordance with subrule 2.2.2(1),
- must take all reasonable steps to ensure that it reports further information or changes that relate to the same OTC derivative, to the Original Trade Repository.
102. Subrule 2.2.5(2) provides if the reporting entity or the person that reports on its behalf is no longer a participant of the Original Trade Repository, or is no longer able to comply with subrule 2.2.1(1) or 2.2.2(1) by reporting the

information to the Original Trade Repository, the information must be reported to another licensed repository or prescribed repository in accordance with the requirements of Part 2.2.

Rule 2.2.6 Reporting requirement—accuracy of reporting

103. Rule 2.2.6 provides that a reporting entity must take all reasonable steps to ensure that information reported under subrule 2.2.1(1) and any change to that information reported under subrule 2.2.2(1), whether reported by the reporting entity on its own behalf or by another person on behalf of the reporting entity, is and remains at all times complete, accurate and current.
104. It is noted that under paragraph 2.3.1(3)(b) of the ASIC Derivative Trade Repository Rules 2013, the operator of a licensed repository will be required to establish, implement and maintain policies, procedures, systems and controls designed to provide reasonable assurance that derivative trade data reported to the licensed repository by participants generally is and remains at all times complete, accurate and current.
105. The reporting entity retains primary responsibility under Rule 2.2.6 for the completeness, accuracy and currency of the information reported, regardless of whether the reporting entity reports through another person and regardless of the policies, procedures, systems and controls the operator of the licensed repository puts in place to comply with paragraph 2.3.1(3)(b) of the ASIC Derivative Trade Repository Rules 2013.

Rule 2.2.7 Derivative transaction information—delegation of reporting

106. Subrule 2.2.7(1) provides that a reporting entity may appoint one or more persons (referred to in the 2022 Rules as each a ***Delegate***) to report on behalf of the reporting entity in accordance with Rules 2.2.1 to 2.2.5 and 2.2.8.
107. Note 1 to Rule 2.2.7 notes by way of example that the reporting entity may appoint as a delegate a counterparty of the reporting entity, a central counterparty, a trading platform, a service provider, a broker or any other third party.
108. Subrule 2.2.7(2) provides that a reporting entity that appoints a Delegate in accordance with subrule 2.2.7(1) is taken to have complied with Rules 2.2.1 to 2.2.5 in relation to the reportable transactions and reportable positions which the Delegate has been appointed to report, if the terms of the Delegate's appointment and any related agreements or arrangements are documented in writing and the reporting entity makes regular enquiries reasonably designed to determine whether the Delegate is discharging its obligations under the terms of its appointment.
109. The reporting entity retains responsibility under Rule 2.2.6 for the completeness, accuracy and currency of the information reported, regardless of whether the reporting entity reports through another person. Rule 2.2.7 provides a "safe harbour" for reporting entities, by stating the conditions under which a

reporting entity will be taken to have complied with Rule 2.2.1 to 2.2.5 where it delegates reporting.

110. Note 2 to Rule 2.2.7 notes that while other forms of delegation are permissible under the 2022 Rules, a reporting entity may only be taken to have complied with the reporting obligations in Rules 2.2.1 to 2.2.5 for those reportable transactions and reportable positions reported by a Delegate in accordance with Rule 2.2.7.

Rule 2.2.8 – Lifecycle or snapshot reporting

111. The reporting of all derivative transactions in an OTC derivative, including intra-day modifications of an OTC derivative, is commonly referred to as “lifecycle reporting”. “Snapshot reporting” is a form of reporting whereby reporting entities report positions as of each business day.
112. Subrule 2.2.8(1) provides that a reporting entity may comply with Rule 2.2.1 in relation to a reportable transaction in an OTC derivative (the **Relevant OTC Derivative**), other than a derivative that is an excluded derivative or that is in a class of excluded derivatives at the time the reportable transaction is entered into, on a day (**Relevant Day**) by:
- (a) reporting derivative transaction information separately for each reportable transaction in the Relevant OTC Derivative (i.e. as lifecycle reporting); or
 - (b) reporting derivative transaction information in relation to the Relevant OTC Derivative on its terms as of the Relevant Day (i.e. as snapshot reporting),

and otherwise reporting the information in accordance with the 2022 Rules.

113. Subrule 2.2.8(2) provides that where a reporting entity complies with Rule 2.2.1 in relation to a reportable transaction that is a modification of an OTC derivative in accordance with paragraph 2.2.1(1)(b), the reporting entity does not have to comply with Rules 2.2.1 and 2.2.2 in relation to that reportable transaction to the extent those Rules require a reporting entity to report the derivative transaction information in Item 55 of Table S2.1(1) for a reportable transaction.
114. Subrule 2.2.8(3) provides that ASIC may determine from time to time that an OTC derivative, or a derivative product class, is an excluded derivative for the purposes of subrule 2.2.8(1), where, in the opinion of ASIC, doing so is desirable in order to enhance the transparency of transaction information available to relevant authorities and the public, promote financial stability or support the detection and prevention of market abuse.
115. Subrule 2.2.8(4) provides a determination by ASIC for the purposes of new subrule 2.2.8(3) will be published on ASIC’s website and takes effect on the day specified in the determination that is not less than 90 calendar days after the date the determination is published on ASIC’s website.

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116. Subrule 2.2.8(5) provides that a determination by ASIC for the purposes of subrule 2.2.8(3) may be withdrawn by ASIC, from a date specified in a notice of withdrawal that is not less than 90 calendar days after the date the notice is published on ASIC's website, and once withdrawn ceases to have effect.
 117. Subrule 2.2.8(6) provides, for the purposes of section 8 of the *Legislative Instruments Act 2003*, that a determination under subrule 2.2.8(3) is not a legislative instrument.
 118. Rule 2.2.8 includes a mechanism (in Rule 2.2.8(3) described above) whereby ASIC may determine from time to time that derivative transactions in a particular derivative (referred to in the 2022 Rules as an “excluded derivative”) must be reported on lifecycle basis.
 119. On 30 November 2018, ASIC made the Excluded Derivative Determination requiring transactions in CFDs, margin FX and equity derivatives to be reported to derivative trade repositories on a “lifecycle” method, with effect from 1 July 2019.

Part 2.3 Records

120. Part 2.3 of the 2022 Rules deals with the keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the 2022 Rules, as permitted by paragraph 901A(3)(h) of the Corporations Act.
121. Subrule 2.3.1(1) provides that a reporting entity must keep records that enable the reporting entity to demonstrate it has complied with the requirements of the 2022 Rules. A reporting entity must keep the records referred to in subrule 2.3.1(1) for a period of at least five years from the date the record is made or amended (see subrule 2.3.1(2)).
122. Subrule 2.3.1(3) provides that, without limiting subrule 2.3.1(1) and subject to subrule 2.3.1(4), a reporting entity must keep a record of all information that it is required to report under subrules 2.2.1(1) and 2.2.2(2).
123. Under subrule 2.3.1(4) a reporting entity is not required to keep the records referred to in subrule 2.3.1(3) where the reporting entity has arrangements in place to access to those records in a licensed repository or prescribed repository, either directly or through another person, for the period set out in subrule 2.3.1(2).
124. Subrule 2.3.2(1) provides that a reporting entity must, on request by ASIC, provide ASIC with records or other information relating to compliance with or determining whether there has been compliance with these 2022 Rules.
125. Subrule 2.3.2(2) provides that a request by ASIC under subrule 2.3.2(1) must be in writing and give the reporting entity a reasonable time to comply.

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126. Subrule 2.3.2(3) provides that the reporting entity must comply with a request under subrule 2.3.2(1) within the time specified in the request or if no time is specified, within a reasonable time.

Part 2.4 Transitional matters

127. Part 2.4 of the 2022 Rules:
- (a) deals with matters incidental or related to the reporting requirements set out in Part 2.2, as permitted by paragraph 901A(2)(d) of the Corporations Act; and
 - (b) deals with the circumstances in which persons are relieved from complying with the reporting requirements in the 2022 Rules that would otherwise apply to them, as permitted by paragraph 901A(3)(g) of the Corporations Act.
128. For the 2022 Rules, all of the dates referred to in Part 2.4 have already passed. There are no further transitional provisions in effect under the 2022 Rules.

Schedule 1: Reporting requirements—phasing

129. Schedule 1 provides for the phased implementation of the transaction reporting requirements established under paragraph 2.2.1(1)(a) and the position reporting requirements established under paragraph 2.2.1(1)(b).
130. Part S1.1 in Schedule 1 provides for the phased implementation of the transaction reporting requirements and Part S1.2 in Schedule 1 provides for the phased implementation of the position reporting requirements.
131. For the 2022 Rules, all of the phased reporting requirements have already applied under the 2013 Rules and there are no additional phased reporting requirements yet to be satisfied under the 2022 Rules.

Schedule 2: Information requirements

132. Schedule 2 provides for the information to be reported in accordance with the transaction reporting requirements established under paragraph 2.2.1(1)(a) and the position reporting requirements established under paragraph 2.2.1(1)(b).

Part S2.1A Definitions

Rule S2.1A.1 Definitions

133. Rule S2.1A.1 provides definitions for the following terms used in the Tables in Parts S2.1 and S2.2:
- (a) designated business identifier;
 - (b) non-reporting counterparty.
 - (c) portfolio basis; and

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- (d) reporting counterparty.

Part S2.1 Derivative transaction information and Part S2.2 derivative position information

Rule S2.1.1 Derivative transaction information and Rule S2.2.1 derivative position information

134. Rule S2.1.1 and Tables S2.1(1) to (5) set out the derivative transaction information that must be reported in relation to reportable transactions for the purposes of paragraph 2.2.1(1)(a) and (c). Table S2.1(1) sets out common data to be reported for all reportable transactions, while Tables S2.1(2) to (5) set out additional asset-specific data for each asset class.
135. Rule S2.2.1 and Tables S2.2(1) to (5) set out the derivative position information that must be reported in relation to reportable positions for the purposes of paragraph 2.2.1(1)(b). Table S2.2(1) sets out common data to be reported for all reportable transactions, while Tables S2.2(2) to (5) set out additional asset-specific data for each asset class.
136. As at the date the 2022 Rules are made, the prescribed classes under the *Corporations (Derivatives) Determination 2013* are commodity derivatives (other than electricity derivatives), credit derivatives, equity derivatives, foreign exchange derivatives and interest rate derivatives. The derivative transaction information and derivative position information to be reported is therefore categorised according to these prescribed classes, as summarised in the table below.

Reportable transaction	Derivative transaction information to be reported	Derivative position information to be reported
Commodity derivatives (other than electricity derivatives)	Tables S2.1(1) and S2.1(2)	Tables S2.2(1) and S2.1(2)
Credit derivatives	Tables S2.1(1) and S2.1(3)	Tables S2.2(1) and S2.2(3)
Equity derivatives	Tables S2.1(1) and S2.1(3)	Tables S2.2(1) and S2.2(3)
Foreign exchange derivative	Tables S2.1(1) and S2.1(4)	Tables S2.2(1) and S2.2(4)
Interest rate derivative	Tables S2.1(1) and S2.1(5)	Tables S2.2(1) and S2.2(5)

137. The derivative transaction information and derivative position information set out in Parts S2.1 and S2.2 of Schedule 2 is based on the needs of the Australian regulators to achieve the objectives of the trade reporting regime, and the fields being required to be reported in other jurisdictions, such as Canada, the EU, Hong Kong, Japan, Singapore and the US.

138. The derivative transaction information and derivative position information set out in Parts S2.1 and S2.2 of Schedule 2 falls broadly into the following categories:

- (a) counterparty information – such as an identifier for the counterparty to a derivative (e.g. an LEI);
- (b) operational information – such as an identifier for the derivative transaction, information about the master agreement type and date, and information about whether the derivative transaction was traded on an execution venue, cleared and/or confirmed;
- (c) product information – such as information about the type of derivative (e.g. swap, forward, option) and in the case of options, the exercise style (e.g. American, Asian, European or Bermudan);
- (d) transaction economics – the material terms of a derivative, including effective dates, termination dates, notional amounts, coupon amounts and payment schedules;
- (e) exposures data – information about the mark-to-market, mark-to-model or other valuation of a derivative, and information about collateral exchanged on the derivative;
- (f) event data – information that records the occurrence of an event and includes a timestamp, such as a confirmation, clearing, execution or reporting timestamp.

139. As at the date the 2022 Rules are made, exemption instruments modify the information requirements, as summarised in the table below.

Legislative instrument	Effect of legislative instrument
<i>ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844</i>	Exemptions for: <ul style="list-style-type: none"> • entity name information where entity identifiers of certain types are reported • entity identifiers where entity identifiers of certain types are applied for within two business days • entity identifiers for certain types of foreign counterparties in transactions entered into by NZ registered banks • entity identifiers for counterparties who have entered into transactions as joint or joint and several counterparties • reference entity identifiers for certain types of credit derivatives where an identifier of a certain type is reported

Legislative instrument	Effect of legislative instrument
	<ul style="list-style-type: none"> • UTIs other than identifiers generated under foreign rules or by certain trading platforms or confirmation platforms • short-dated foreign exchange transactions facilitating foreign currency securities settlement

Legislative instrument and primary legislation

140. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
- (a) the 2022 Rules are made by ASIC utilising powers given by Parliament to ASIC that allow ASIC to make derivative transaction rules that impose reporting requirements upon persons to report information about derivative transactions to a derivative trade repository; and
 - (b) the 2022 Rules contain technical detail which would otherwise introduce unnecessary complexity to the primary legislation. As a consequence, if the matters in the 2022 Rules were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of provisions that are highly specific in nature and may unduly lag behind developments in derivative products for which additional or different information should be required to be reported, changes in the nature of persons from whom information should be required to be reported or changes in the manner or form by which reporting should occur.

Duration of the instrument

141. This instrument is repealed on 21 October 2024, by the 2024 Rules.

Legislative authority

142. The instrument is made under section 901A of the Corporations Act.
143. Section 901A of the Corporations Act provides that rules made under this section are by way of legislative instrument. This means that such rules are subject to disallowance in accordance with section 42 of the *Legislation Act 2003*. Section 44 of the *Legislation Act 2003* does not apply to this instrument. This instrument is subject to disallowance.
144. Section 901K of the Corporations Act provides that ASIC must not make a derivative transaction rule unless the Minister has consented, in writing, to the making of the rule. The Minister consented to the making of this instrument by written notice to ASIC dated 4 December 2022.

Matters that may be dealt with in the derivative transaction rules – reporting requirements

145. Under paragraph 901A(2)(b) and (d) of the Corporations Act, the derivative transaction rules may, subject to Division 2 of Part 7.5A of the Corporations Act, impose reporting requirements, and requirements that are incidental or related to reporting requirements. “Reporting requirements” is defined in subsection 901A(6) as requirements for information about derivative transactions, or about positions relating to derivative transactions, to be reported to:
- (a) a licensed derivative trade repository, the licence for which authorises the repository to provide services in respect of a class of derivatives that includes the derivatives to which the transactions relate (see paragraph 901A(6)(a)); or
 - (b) a facility that is (or that is in a class of facilities that is) prescribed by the regulations for the purpose of this paragraph in relation to a class of derivatives that includes the derivatives to which the transactions relate (see paragraph 901A(6)(b)).
146. Regulation 7.5A.30 sets out that, after 30 June 2015, a prescribed facility is only a facility determined by ASIC. Paragraph (2A) of the regulation states that ASIC must not determine a facility unless ASIC is satisfied that:
- (a) either the facility has adopted rules, procedures or processes that substantially implement the CPSS- IOSCO Principles applicable to the regulation of derivative trade repositories or 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
 - (b) 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.
147. As at the time of making of the 2022 Rules, *ASIC Prescribed Trade Repositories Determination [15-0591]* prescribes eight overseas derivative trade repositories as prescribed repositories.
148. Under subsection 901A(3) of the Corporations Act, the derivative transaction rules may also, subject to Division 2 of Part 7.5A of the Corporations Act, deal with matters incidental to or related to requirements referred to in subsection 901A(2) of the Corporations Act, including any of the following:
- (a) specifying the classes of derivative transactions in relation to which particular requirements apply (see paragraph 901A(3)(a) of the Corporations Act);
 - (b) for reporting requirements:

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- (i) specifying the licensed derivative trade repository or prescribed derivative trade repository (or the class of licensed derivative trade repository or prescribed derivative trade repository), to which information about derivative transactions, or positions, in a particular class must be reported; and
 - (ii) specifying the information that is required to be reported (see paragraph 901A(3)(c) of the Corporations Act);
- (c) specifying the persons who are required to comply with requirements imposed by the 2022 Rules (see paragraph 901A(3)(e) of the Corporations Act);
 - (d) the manner and form in which persons must comply with requirements imposed by the 2022 Rules (see paragraph 901A(3)(f) of the Corporations Act);
 - (e) the circumstances in which persons are, or may be, relieved from complying with requirements in the 2022 Rules that would otherwise apply to them (see paragraph 901A(3)(g) of the Corporations Act);
 - (f) the keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the 2022 Rules (see paragraph 901A(3)(h) of the Corporations Act);
 - (g) any other matters that the provisions of the Corporations Act provide may be dealt with in the derivative transaction rules (see paragraph 901A(3)(i) of the Corporations Act).

Limitations on rule-making power

149. ASIC's power to make derivative transaction rules imposing reporting requirements is subject to a number of limitations.

Ministerial determination

150. Subsection 901B(1) of the Corporations Act provides that the derivative transaction rules cannot impose reporting requirements in relation to derivative transactions unless the derivatives to which the transactions relate are covered by a determination under section 901B of the Corporations Act that relates to requirements of that kind.

151. On 2 May 2013 the Treasurer made the *Corporations (Derivatives) Determination 2013 (Ministerial Determination)* under subsection 901B(2) of the Corporations Act, determining the class of derivatives in relation which reporting requirements may be imposed. Under the Ministerial Determination, the classes of derivatives determined for subsection 901B(2) of the Corporations Act is:

- (a) commodity derivatives that are not electricity derivatives;

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- (b) credit derivatives;
 - (c) equity derivatives;
 - (d) foreign exchange derivatives; and
 - (e) interest rate derivatives.

152. The 2022 Rules apply only to derivative transactions in derivatives in a prescribed class.

Transactions and positions to which the 2022 Rules apply

153. Paragraph 901A(8)(b) of the Corporations Act provides that the derivative transaction rules cannot impose a reporting requirement on a person in relation to a derivative transaction entered into before the requirement started to apply to the person, or in relation to a position as it was at a time before the requirement started to apply to the person.
154. The 2013 Rules applied only to derivative transactions entered into after the reporting requirements started to apply to a person, and to positions as they were at the time the reporting requirement started to apply. The 2022 Rules continue the reporting requirements of the 2013 Rules and do not impose any new or additional reporting requirements on derivative transactions entered into, or positions as they were, before the commencement of the 2022 Rules.

Corporations Regulations

155. Under section 901C of the Corporations Act, the Corporations Regulations may provide that the derivative transaction rules:
- (a) cannot impose requirements (or certain kinds of requirements) in relation to certain classes of derivative transactions; or
 - (b) can only impose requirements (or certain kinds of requirements) in relation to certain classes of derivative transactions in certain circumstances.
156. Under section 901D of the Corporations Act, the Corporations Regulations may provide that the derivative transaction rules:
- (a) cannot impose requirements (or certain kinds of requirements) on certain classes of persons; or
 - (b) can only impose requirements (or certain kinds of requirements) on certain classes of persons in certain circumstances.

157. Regulation 7.5A.50 of the Corporations Regulations precludes derivative transaction rules being imposed upon “end users”, defined as persons who are not:
- (a) Australian ADIs; or

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- (b) CS facility licensees;
 - (c) AFS licensees; or
 - (d) persons who, in this jurisdiction, provides financial services relating to derivatives to wholesale clients only and whose activities, relating to derivatives, are regulated by an overseas regulatory authority.
158. Paragraph (2A) of Regulation 7.5A.50, also precludes the derivative transaction rules from imposing requirements relating to a class of derivatives on AFS licensees:
- (a) who are taken not to be end users only because they are an AFS licensee; and
 - (b) whose AFS licence does not authorise them to provide financial services in relation to that class of derivatives.
159. The 2022 Rules do not impose requirements on end users, or AFS licensees which are captured by paragraph (2A).

Statement of Compatibility with Human Rights

160. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Derivative Transaction Rules (Reporting) 2022

Overview

1. The *ASIC Derivative Transaction Rules (Reporting) 2022* (the **2022 Rules**, or the **instrument**) are made by ASIC under section 901A of the *Corporations Act 2001* (the **Corporations Act**), acting with the consent of the Minister under section 901K of the *Corporations Act*.
2. This instrument repeals and remakes the *ASIC Derivative Transaction Rules (Reporting) 2013 (2013 Rules)* in the same form, so as to continue the requirements for the reporting of over-the-counter (**OTC**) derivatives transactions beyond the 1 October 2023 sunset of the 2013 Rules.
3. The requirements to report OTC derivatives transactions were introduced as a key component of the comprehensive OTC derivatives reform agenda agreed by the G20 leaders in response to the global financial crisis, given the significant economic and social damage that was experienced. The OTC derivatives market reform agenda was developed with the objectives of improving transparency to regulators, mitigating systemic risk, and protecting against market abuse.
4. This instrument continues requirements to report OTC derivatives transactions to a derivative trade repository by businesses licensed by ASIC or otherwise authorised to deal in derivatives in Australia.
5. This instrument:
 - (a) imposes reporting requirements as permitted by paragraph 901A(2)(b) and subsection 901A(6) of the *Corporations Act*;
 - (b) specifies the persons who are required to comply with the reporting requirements imposed by the 2022 Rules as permitted by paragraph 901A(3)(e) of the *Corporations Act*;
 - (c) deals with the manner and form in which persons are required to comply with the reporting requirement imposed by the 2022 Rules as permitted by paragraph 901A(3)(f) of the *Corporations Act*; and
 - (d) deals with the circumstances in which persons are relieved from complying with the reporting requirements in the 2022 Rules that would otherwise apply to them as permitted by paragraph 901A(3)(g) of the *Corporations Act*.

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6. The information that is required to be reported falls broadly into the following categories:
- (a) counterparty information – such as an identifier for, and name of, the counterparties to a derivative (e.g. a Legal Entity Identifier (**LEI**) and legal name);
 - (b) other entity information – such as an identifier for, and name of, a beneficiary, broker, central clearing facility, clearing member, reference entity or the person making the report in relation to a derivative (e.g. an LEI and legal name);
 - (c) operational information – such as an identifier for the derivative transaction, information about the master agreement type and date, and information about whether the derivative transaction was traded on an execution venue, cleared and/or confirmed;
 - (d) product information – such as information about the type of derivative (e.g. swap, forward, option) and in the case of options, the exercise style (e.g. American, Asian, European or Bermudan);
 - (e) transaction economics – the material terms of a derivative, including effective dates, termination dates, notional amounts, coupon amounts and payment schedules;
 - (f) exposures data – information about the mark-to-market, mark-to-model or other valuation of a derivative, and information about collateral exchanged on the derivative; and
 - (g) event data – information that records the occurrence of an event and includes a timestamp, such as a confirmation, clearing, execution or reporting timestamp.

Assessment of human rights implications

Article 17 of the International Covenant on Civil and Political Rights

7. This instrument may engage the right to privacy and reputation in Article 17 of the International Covenant on Civil and Political Rights (**Article 17**). Article 17 prohibits unlawful or arbitrary interferences with a person's privacy, family, home (which the UN Human Rights Committee has interpreted as including a person's workplace) and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to the protection of the law against such interference or attacks. The UN Human Rights Committee has not defined "privacy". The Commonwealth Attorney-General's Department has provided [guidance](#) that privacy should be understood to comprise freedom from unwarranted and unreasonable intrusion into activities that society recognises as falling into the individual sphere of autonomy. To avoid being considered arbitrary, any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.

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8. This instrument may engage the right to privacy and reputation in Article 17.
 9. The instrument requires a “reporting entity” (as defined in Rule 1.2.3 of the instrument) to provide certain “derivative trade data” to a derivative trade repository that is licensed under section 905C of the Corporations Act or a derivative trade repository that is prescribed under paragraph 901A(6)(b) of the Corporations Act. Under Rules 2.3.1 and 2.3.2 of the *ASIC Derivative Trade Repository Rules 2013 (Trade Repository Rules 2013)*, an operator of a licensed derivative trade repository must accept and retain that information in records of derivative trade data. Under subsection 904B(2) of the Corporations Act and Rule 2.3.4 of the Trade Repository Rules 2013, the operator of a licensed derivative trade repository may be required to provide derivative trade data on request made by ASIC, the Australian Prudential Regulatory Authority, the Reserve Bank of Australia, a prescribed person or body, or another licensed derivative trade repository.
 10. Derivative trade data includes, for each side of an OTC derivative transaction, information that identifies or is capable of identifying the counterparties to the OTC derivative (referred to as “counterparty information”). If applicable, derivative trade data also includes information that identifies or is capable of identifying other entities (referred to as “other entity information”) involved in the OTC derivative transaction which may be a beneficiary, broker, central clearing facility, clearing member, reference entity or the person making the derivatives trade data report to a derivative trade repository (see Tables S2.1(1) and S2.2(1) in Schedule 2 to the 2022 Rules).
 11. “Counterparty information” and “other entity information” may contain “personal information” as defined in the *Privacy Act 1988*, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. This is the case where the counterparty or other entity is an individual and the reporting entity reporting the OTC derivative provides:
 - (a) the name of that individual; or
 - (b) a code to identify the individual from which the identity of the individual is apparent or can reasonably be ascertained.
 12. The right in Article 17 is engaged by the instrument by reason that the reporting of derivative trade data may:
 - (a) involve the collection, storage, security, use or disclosure of personal information;
 - (b) create confidentiality or secrecy provisions relating to personal information; and
 - (c) provide for mandatory disclosure or reporting of information.

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13. The instrument is compatible with the rights recognised in Article 17 of the ICCPR by reason that any interference with a person's privacy or reputation resulting from compliance with the instrument will be lawful and not arbitrary. In particular:
- (a) the instrument is made in accordance with ASIC's power to make derivative transaction rules imposing reporting requirements (see paragraph 901A(2)(b) and subsection 901A(6) of the Corporations Act);
 - (b) the instrument is critical to the continuation of the Australian trade reporting regime and regime for the licensing and regulation of derivative trade repositories, that achieves the stated objectives of the OTC derivatives reforms of improving transparency to regulators, mitigating systemic risk, and protecting against market abuse;
 - (c) the instrument achieves the objects of the *Corporations Legislation Amendment (Derivative Transactions) Act 2012* by giving regulators access to valuable data with which to assess the risks associated with the OTC derivatives market; and
 - (d) the instrument as a whole will further the objects of Chapter 7 of the Corporations Act, including promoting fair, orderly and transparent markets for financial products (see paragraph 760A(c) of the Corporations Act).
14. The instrument is subject to a number of safeguards, including:
- (a) Any personal information in derivative trade data provided to ASIC will be protected in accordance with ASIC's legislative obligations under s127 of the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*), and to the extent the information is personal information, under the *Privacy Act 1988*. In particular, subrule 2.3.4(10) of the Trade Repository Rules 2013 provides that information given to ASIC by the operator, or an officer of an operator, of a derivative trade repository under Part 7.5A of the Corporations Act or regulations made under that Part, or under this instrument or the Trade Repository Rules 2013, will be taken to have been given to ASIC in confidence for the purposes of s127 of the ASIC Act (unless the information has already been made publicly available in accordance with those legislative provisions, or as otherwise required or permitted by law); and
 - (b) The operator of a derivative trade repository will be subject to obligations under section 904B of the Corporations Act, and under Rules 2.3.3, 2.3.4, 2.3.5, 2.3.6 and 2.4.8 of the Trade Repository Rules 2013 to only use or disclose derivative trade data in certain circumstances, and to take steps to maintain the confidentiality, security and integrity of the derivative trade data at all times.
15. If the instrument was considered to limit the right in Article 17 of the ICCPR, ASIC considers that the instrument is nevertheless compatible with that right. The right in Article 17 is not absolute. As noted, the right has implied

limitations (“unlawful” and “arbitrary”) and may be subject to a permissible limitation where that limitation aims to achieve a legitimate objective, there is a rational connection between the limitation, and the objective and the limitation is reasonable, necessary and proportionate.

16. Any limitation imposed on the right by this instrument has a clear legal basis, in that it aims to achieve a legitimate objective, has a rational connection with the objective, and is reasonable, necessary and proportionate.
17. As noted in the March 2012 report of the Australian Council of Financial Regulators entitled *OTC Derivatives Market Reform Considerations*:

“Reporting to trade repositories should facilitate the maintenance of a reliable and comprehensive source of information on participant trading activity, which would be useful to many regulators in performing their respective functions. It is expected that this increased transparency will assist authorities in identifying vulnerabilities in the financial system and, more broadly, to develop well-informed policies to promote financial stability. Information from trade repositories will be particularly useful in times of financial distress, where rapid and reliable access to accurate data may assist prudential and systemic regulators in their functions. From a market supervision perspective, transaction information stored in trade repositories in some product classes in particular, such as equity derivatives and credit derivatives, has the potential to assist investigations into market misconduct.”

18. Effective regulation of the OTC derivatives market requires regulators to have detailed data on counterparty exposures where these will pose a systemic risk. A requirement to report transactions, and counterparty information in relation to those transactions, is the most effective method of achieving this legitimate objective.
19. The instrument is necessary to achieve the legitimate objective because it provides ASIC and other regulators with the data they need to assess the exposures of counterparties and relevant other entities, and support the detection and prevention of market abuse. The instrument contains adequate safeguards by only requiring reporting entities to report the data necessary to achieve that objective, and, in conjunction with section 904B of the Corporations Act, to require operators of derivative trade repositories to maintain the confidentiality, security and integrity of that information. Further safeguards are provided by statutory obligations to protect confidential and personal information contained in the data.

Conclusion

20. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.