

Replacement Explanatory Statement

***ASIC Derivative Transaction Rules (Reporting) 2024***

This Replacement Explanatory Statement replaces the Initial Explanatory Statement for *ASIC Derivative Transaction Rules (Reporting) 2024* (the ***2024 Rules,*** orthe ***instrument***)*,* in accordance with paragraph 15J(1)(b) of the *Legislation Act 2003.*

The Replacement 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) 2022* (the ***2022 Rules***), with a deferred commencement of 21 October 2024.
2. This instrument continues the requirements that first commenced in 2013 to report information about over-the-counter (***OTC***) derivatives transactions by businesses licensed by ASIC or otherwise authorised to deal in derivatives in Australia, but updates the requirements to harmonise to various international reporting standards, remove outdated transitional provisions, consolidate associated exemptions within the 2024 Rules and ensure that the reporting requirements are fit for purpose and clear as to the roles and responsibilities of reporting entities.
3. Between 2012 and 2018, international standards and guidance for the reporting of certain derivatives transactions information was developed with a view to common adoption across G20 and Financial Stability Board (***FSB***) 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.
4. Since 2020, in line with their G20 commitments and the FSB’s expectations, several major jurisdictions have updated, or are in the process of updating, their derivatives transactions reporting rules to adopt these international standards. ASIC made proposals to adopt these international standards in a first consultation paper in November 2020 and a second consultation paper in May 2022.
5. This instrument implements ASIC’s consultation conclusions as the 2024 Rules.
6. The purpose of this Replacement Explanatory Statement is to deal with the matters dealt with in the Initial Explanatory Statement, and to correct minor or typographical errors which were in the Initial Explanatory Statement.

**Purpose of the instrument**

1. The purpose of this instrument is to continue the requirements that first commenced in 2013 to report information about OTC derivatives transactions by businesses licensed by ASIC or otherwise authorised to deal in derivatives in Australia, but updates the requirements to:
   1. harmonise to the international standards for legal entity identifiers (***LEIs*)**, unique transaction identifiers (***UTIs***), unique product identifiers (***UPIs***) and critical data elements (***CDEs***) supplemented with other important data elements;
   2. remove outdated transitional provisions and consolidate associated exemptions within the 2024 Rules;
   3. ensure that they are fit for purpose as to the scope of reporting entities, derivative products and types of transactions that are subject to the 2024 Rules and clear as to the roles and responsibilities of entities submitting derivative transaction reports; and
   4. harmonise to an internationally adopted technical standard for reporting under ISO 20022 *Financial services – Universal financial messaging scheme (****ISO 20022****)*.
2. With the Minister’s consent, on 9 July 2013, ASIC made the *ASIC Derivative Transaction Rules (Reporting) 2013* (the ***2013 Rules***). The 2013 Rules mandated 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, mitigating systemic risk, and protecting against market abuse.
3. With the Minister’s consent, on 16 December 2022, ASIC made the 2022 Rules which repealed and remade the 2013 Rules in the same form. The 2022 Rules ensured the continuation of 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.
4. Between 2012 and 2018, in various multi-jurisdictional fora, international standards were developed for LEIs, UTIs, UPIs and CDEs for reporting with a view to common adoption across G20 and FSB 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.
5. These international standards are:
   1. A system for global LEIs recommended by the FSB in [A global legal entity identifier for financial markets](https://www.fsb.org/2012/06/fsb-report-global-legal-entity-identifier-for-financial-markets/), June 2012 which was endorsed by the G20 at the Los Cabos Summit in June 2012;
   2. CPMI IOSCO[[1]](#footnote-2), [*Technical guidance: Harmonisation of the unique transaction identifier*](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD557.pdf), February 2017 (***UTI Guidance***);
   3. CPMI IOSCO, [*Technical guidance: Harmonisation of the unique product identifier*](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD580.pdf), September 2017 (***UPI Guidance***); and
   4. Regulatory Oversight Committee, [*Technical guidance: Harmonisation of critical OTC derivatives data elements (other than UTI and UPI)*](https://www.leiroc.org/publications/gls/roc_20210922.pdf), September 2021 (***CDE Guidance***)[[2]](#footnote-3)

(together, the ***international standards***).

1. Since 2020, various jurisdictions have updated, or are in the process of updating, their derivatives transactions reporting rules to adopt these international standards. The United States (***US***) (by the Commodities Futures Trading Commission (***CFTC***)) and the European Union (***EU****)*(by the European Securities and Markets Authority (***ESMA***)) finalised their rules changes in September 2020 and December 2020 respectively. Other jurisdictions have released consultation papers about adopting the standards, including Hong Kong (April 2019), Singapore (June 2021), the United Kingdom (November 2021), Canada (June 2022) and Japan (August 2022).
2. Harmonising to the international standards has the purposes of reducing ongoing costs and complexity for industry, improving data quality for the Australian regulators, including more comprehensive and fit for purpose transaction details, and improving inter-jurisdictional data handling and aggregation.
3. The 2024 Rules are simplified by removing outdated transitional provisions of the 2022 Rules and by consolidating associated exemptions to the 2022 Rules within the 2024 Rules. This has the purpose of clarifying for entities the requirements that apply to them, including by removing the need to refer to other exemption instruments to understand the requirements in full.
4. The 2024 Rules also update the 2022 Rules to clarify certain requirements and improve reporting to better satisfy the needs of the Australian regulators by:
   1. clarifying that trades by foreign AFS licensees with Australian retail clients are always reportable;
   2. exempting small-scale buy-side entities from certain elements of the extended reporting requirements in the 2024 Rules;
   3. aligning the compliance obligations of entities that use outsourced reporting services with all other regulatory provisions for outsourcing;
   4. implementing lifecycle reporting for all derivative products; and
   5. curtailing recurring duplicative reporting of all outstanding transactions rather than just the new or changed transactions since the last report of transactions.

**Consultation**

1. On 27 November 2020, ASIC released [Consultation Paper 334](https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-334-proposed-changes-to-simplify-the-asic-derivative-transaction-rules-reporting-first-consultation/) Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation (***CP 334***). CP 334 referred to proposed changes to the then current 2013 Rules.
2. CP 334 set out a two-stage consultation process and made a mix of specific and in-principle proposals in relation to:
   1. implementing the UTI Guidance;
   2. implementing the UPI Guidance;
   3. implementing the CDE Guidance, supplemented with other important data elements that had been proposed by the CFTC and/or ESMA;
   4. fully implementing the LEI requirements;
   5. ensuring that transactions with Australian retail clients are reportable transactions and to clarify the scope of reporting for foreign subsidiaries of Australian entities;
   6. indicating our concerns about the operation of alternative reporting and delegated reporting;
   7. indicating that the extension of lifecycle reporting to all products was warranted; and
   8. excluding transactions for “spot settlement” transactions and more generically defining excluded exchange-traded derivatives.
3. 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 derivates market operator, a reporting services provider, and a central counterparty.
4. The submissions were broadly supportive of many of our proposals, especially to harmonise to the international standards, but there were a number of important concerns raised by stakeholders.
5. 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, with comments closing on 8 July 2022.
6. CP 361 set out a proposed two-stage rules update and implementation process of:
   1. Stage 1: with effect from the sunsetting of the 2013 Rules on 1 October 2023, Stage 1 changes would apply to revise the 2013 Rules to:
      1. implement LEI as the only kind of entity identifiers (other than for natural persons not eligible for an LEI);
      2. implement requirements for the generation, provision and receipt and reporting of UTIs;
      3. remove certain data elements, add a few data elements and conform names and meanings of data elements to the international standards;
      4. implement lifecycle reporting for all products;
      5. clarify that trades with Australian retail clients are always reportable;
      6. remove the delegated reporting “safe harbour”;
      7. curtail duplicative reporting but recognise certain other in-practice reporting practices within the rules; and
   2. Stage 2: With effect from 1 April 2024, Stage 2 changes would apply to further revise the Stage 1 rules to:
      1. add data elements to complete the ASIC data elements requirements;
      2. require existing transactions to be re-reported to update them to the information requirements of this future state; and
      3. require reporting to a derivative trade repository to conform to the technical standard of ISO 20022.
7. 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.
8. 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, ongoing concerns about the practical implementation of the UTI rule and the scope of the updating re-reporting requirement. 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.
9. We responded to these concerns with additional bilateral consultations with individual respondents and the industry association respondents about further revised proposals.
10. This included that the rules changes should only be implemented in one stage commencing 21 October 2024 as the 2024 Rules. This would:
    1. provide businesses with at least 18 months to implement systems and process changes for the 2024 Rules;
    2. coincide with the expected commencement of updated rules in Singapore; and
    3. be sequenced approximately 6 months after the commencement of the updated EU rules (which are, in turn, sequenced about 17 months after the commencement of the updated US rules).
11. Accordingly, in order to continue the requirements for the reporting of OTC derivatives transactions beyond the 1 October 2023 sunsetting of the 2013 Rules, the 2022 Rules repealed and remade the 2013 Rules in the same form.
12. Then this instrument, the 2024 Rules, repeals and remakes the 2022 Rules with a deferred commencement of 21 October 2024.
13. The following is a summary of the other key issues raised in consultation and ASIC’s response to these issues.

*UTIs*

1. The UTI is a globally unique transaction identifier used to ensure that each reportable derivative transaction is identifiable and that each party to the transaction reports the same UTI. It will provide significant regulatory benefit in terms of matching both sides of the same transaction, including avoiding double-count in market metrics such as turnover and aggregate notional principal.
2. The UTI Guidance sets out a waterfall of steps to determine which entity should generate the UTI. It starts with market infrastructures (such as central counterparties and trading platforms) then steps into cases of single-jurisdiction reporting, with one or both entities reporting, and then multi-jurisdictional reporting (which involves determining the jurisdiction with the earliest reporting deadline and then determining the UTI generating entity according to the UTI rules of that jurisdiction).
3. In CP 334, we proposed adopting the first steps of the UTI Guidance that start with market infrastructures followed by the same steps as the ESMA rules for the cases of single-jurisdiction reporting and multi-jurisdictional reporting.
4. We also discussed certain difficulties and uncertainties with a UTI implementation, including:
   1. identifying the jurisdictions in which a multi-jurisdictional transaction is reported;
   2. determining the jurisdiction with the earliest reporting deadline;
   3. whether market infrastructures would be recognised as being of that kind in a consistent manner in all jurisdictions and therefore consistently identified as the UTI generating entity;
   4. whether there may be rules implementation timing differences between jurisdictions such that an entity has an obligation to report the UTI received from an entity in another jurisdiction, but that other entity is not subject to an obligation to generate and give that UTI to the receiving entity; and
   5. whether there should be a deadline by which the UTI generating entity must provide the UTI to its counterparty in order that the counterparty can also report by the overarching deadline for reporting.
5. Submissions to CP 334 expressed support for adopting the market infrastructure steps of the UTI Guidance but most were opposed to ASIC’s proposals on how to identify the jurisdictions involved in reporting a multi-jurisdictional transaction. Respondents cited difficulties with the need to obtain and maintain information about the jurisdictional reporting requirements of their counterparties.
6. In CP 361, we responded to the concerns in setting out a revised UTI waterfall and UTI generating and sharing provisions as a proposed new Rule 2.2.9. This rule and the proposed definitions to be added to Rule 1.2.3:
   1. detailed the definitions and provisions for market infrastructures as UTI generating entities;
   2. finalised UTI generation methods for single-jurisdictional transactions;
   3. provided increased flexibility for UTI generation for multi-jurisdictional transactions; and
   4. set out requirements for providing UTIs to counterparties, the non-receipt of UTIs from other entities and the roles of third parties in UTI generation.
7. Submissions to CP 361 supported most of the proposed provisions but still identified concerns with conclusively identifying single-jurisdiction reporting cases and, for multi-jurisdictional reporting cases, a perceived emphasis on the ASIC reporting entity validating that the other counterparty was following the UTI rules of the jurisdiction(s) to which it would report.
8. Following further consultation with industry, we finalised a revised approach in the 2024 Rules that retains a single-jurisdiction UTI method if the reporting entity is certain it applies. If the reporting entity is not certain, then the flexible approach to multi-jurisdictional reporting applies. The reporting entity is responsible for its compliance with its own foreign jurisdiction UTI reporting (if any) but Rule 2.2.9 does not set out any responsibility for the other counterparty’s compliance with its UTI reporting.
9. Submissions also raised concerns that our proposal to require UTI generating entities to provide the UTI to the other counterparty by 10 am Sydney time on the next business day was challenging for non-mainstream cases of “structured” transactions and transactions that are not electronically confirmed. Some respondents, considering their role as UTI recipients, noted that they would be penalised by failings in UTI provision by their counterparties, in terms of having to set up new workflows for transactions “awaiting UTI” but still meet the reporting deadline by creating and reporting their own UTI.
10. Industry suggested that these concerns could be alleviated by extending the ordinary deadline for reporting from one business day after the trade date (T+1) to two business days after the trade date (T+2), which would also align with the reporting deadlines of Singapore, Hong Kong, and Japan.
11. The 2024 Rules responds to these concerns by extending the ordinary deadline for reporting from T+1 to T+2. In addition, the deadline for reporting “structured” transactions is extended to T+4. These relaxed deadlines for reporting reduce the imperative for a specific deadline by which a reporting entity must provide the UTI to its counterparty and the requirement is to do so “as soon as practicable”. The relaxed deadlines for reporting are also expected to reduce the incidence of “awaiting UTI” situations as compared to maintaining a T+1 deadline for reporting.

*UPIs*

1. The UPI is a globally unique product identifier (as a 12-character code) to be used in OTC derivatives transactions reporting to identify the type of derivative that is reported – such as an equity option over a particular underlying share. It will provide an internationally common product schema, with its attendant simplification for reporting entities, derivative trade repositories and regulatory authorities.
2. The UPI Guidance provides a system design and suggested reference data elements and reference data values – i.e. the information to which the code relates, such as the currency pairs, interest rate benchmark rate, underlying asset or instrument, option type and settlement calculation method. The system design, reference data elements and technical specification of the code are set out in ISO standard 4914 Financial services — Unique product identifier (UPI).
3. At the time of the release of CP 334, the governance and operational arrangements for the UPI system had been substantively established but the international operationalisation of the UPI system was not well developed, and the scope of product information that would be embedded as reference data elements of a UPI code was not fully defined.
4. In CP 334 we proposed including the UPI as a reportable data element and identified data elements that may need to continue to be reported as separate data elements if they were not embedded as reference data elements of a UPI code. Given the then underdeveloped state of the UPI system, we did not seek specific feedback on our proposed approach.
5. At the time of release of CP 361, the UPI system was better developed and the scope of product information not covered within the system was clearer. We proposed a number of additional data elements necessary to cover these gaps, including where the underlier of an OTC derivative was not explicitly named or identified within the UPI system (a “non-UPI underlier”).
6. Submissions to CP 361 broadly supported the addition of these data elements, but some concerns were expressed about the requirement to report non-UPI underliers. It was suggested that this should only be an optional requirement that allowed time for the UPI system to broaden its coverage of underliers.
7. We disagreed with this suggestion as the importance of underlier information is reflected in the 2013 Rules and 2022 Rules requirements to report an underlier in all circumstances. The 2024 Rules maintain this requirement that an underlier be reported as either product information embedded in a UPI code (a “UPI underlier”) or as a separate data element (as a non-UPI underlier). However, to allow that reporting entities do not need to implement specific tests in their reporting systems to distinguish between UPI underliers and non-UPI underliers, the 2024 Rules allow that all underliers may be reported as the separate data element, even if it is UPI underlier. The 2024 Rules also respond to concerns that the proposed technical specification of the required non-UPI underlier identifier as a waterfall of types of identifiers was too prescriptive by allowing that any one of the identifier types may be reported.

*LEIs*

1. In CP 334 we proposed that all entities be identified with an LEI, other than natural persons not acting in a business capacity (who are not eligible to obtain an LEI).
2. In CP 361, we further proposed that the LEIs must be current (i.e. duly renewed), other than for foreign counterparties and beneficiaries who are not ASIC reporting entities.
3. Some submissions to CP 361 were concerned that the requirement for a current LEI for counterparty 2 went beyond the requirements of derivative transaction rules of other jurisdictions (e.g. the CFTC and ESMA rules).
4. The 2024 Rules respond to the concern by aligning with the requirements of the CFTC and ESMA rules by only requiring a current LEI to identify reporting entities, counterparty 1s and central counterparties. Where an LEI is required to identify any other entity, it need not be a current LEI.
5. The 2024 Rules also respond to the challenges expressed from some stakeholders in their CP 334 responses about the conversion of many, typically small- and medium-sized, entities from non-LEI to LEI identifiers. A form of Exemption 2 (Entity Information) in *ASIC Corporations (Derivative Transaction Reporting Exemption) 2015/844* (***Instrument 2015/844***) is retained within the 2024 Rules and allows the reporting of a non-LEI entity identifier where an LEI is applied for within two business days after the requirement to report the reportable transaction arises.

*ASIC data elements*

1. The CDE Guidance is a set of 101[[3]](#footnote-4) derivative transaction data elements in specified data types and formats and, where relevant, allowed values. It is intended to be the globally common, critical data elements from which regulators can draw to form their core individual datasets, supplemented by other data elements that are important to jurisdictions. Harmonising the datasets of jurisdictions internationally has been a clarion call from industry since the inception of trade reporting.
2. In CP 334, we set out the ASIC data elements that we proposed to include in the updated requirements, as well as the data elements that we would consider for inclusion in proposals in the second round of consultation.
3. These proposals included removing many data elements that were either unique to, or duplicative within, the 2013 Rules and to adopt data elements from the CDE Guidance to expand the dataset for important data elements not in the 2013 Rules.
4. Submissions to CP 334 generally expressed support for, or did not make any significant objections to, our proposals that continued existing data elements, removed data elements and adopted data elements from the CDE Guidance or from the CFTC and/or ESMA datasets.
5. Stakeholders raised concerns with a number of the data elements, particularly those that we were only considering for proposing in the second round of consultation. The concerns generally related to the complexities in sourcing the information from disparate systems (including the systems of outsourced execution agents and post-trade service providers), the perception of limited regulatory importance of the information or the need to create various information in a manner inconsistent with the approach in other jurisdictions.
6. In CP 361, we decided to:
   1. proceed with 117 of 124 proposed data elements, including for some data elements notwithstanding stakeholder concerns about their cost and complexity of reporting, but with an exemption from certain extended requirements for about 90% of entities; and
   2. not proceed with 19 data elements where we considered that the regulatory benefit of the information did not outweigh the cost and complexity to businesses.
7. We also made proposals for 8 new data elements – 5 related to underlier information as an essentially unavoidable consequence of design decisions that the UPI system would not include this information (as previously flagged in CP 334), 1 to report the collateral amount calculation timestamp in the equivalent manner of valuation timestamp, and 2 to identify future events of benchmark rate-settings in the manner required in the CFTC rules.
8. In addition, we proposed to exempt “small-scale buy-side entities” from the extended requirements to report collateral, option notional conversion factors (“delta”) and to report on a lifecycle basis. This would exempt about 800 of the approximately 900 total number of reporting entities, whose aggregate notional and collateral posted is less than 2% of that of all reporting entities.
9. Submissions to CP 361 were generally supportive of our revisions to our CP 334 proposals for ASIC data elements. They did restate but did not articulate any new concerns about certain data elements that we had decided to proceed with. Respondents also raised some concerns with our new proposals to identify non-UPI underliers and the future dates of benchmark rate-setting events.
10. The “problem” of non-UPI underliers excluded from the UPI system has also been recognised in other jurisdictions and this important data element has been publicly proposed for addition to the CDE Guidance. In this international context, we agreed with industry views that the final rules should not be prescriptive as to form of the underliers’ identifiers in the absence of a common international approach – our finalised approach is that an underlier identifier includes that it may be a “free text” value.
11. In relation to reporting the future dates of benchmark rate-setting events, as we set out in CP 361, we think it is important information for the supervision of benchmark rate-setting events and we have decided to maintain our proposed approach.
12. In further bilateral consultations after the CP 361 consultation period, the sole ASIC-licensed derivative trade repository noted that its validation of reported information would be enhanced by specific asset class and contract type data elements. The derivative trade repository (with engagement from industry) also advised that reporting entities had advised it that they would welcome the data reconciliation, organisational and readability benefits of having asset class and contract type data elements present in the data files in the proposed 2024 Rules.
13. Consequently, the 2024 Rules include adding these data elements, as well as a small-scale buy-side entity exemption indicator.
14. Table 1 summarises the commonality of the data elements of the 2013 Rules / 2022 Rules and the 2024 Rules with those of the CFTC and ESMA.
15. Notably only 47% of the 2013 Rules / 2022 Rules data elements align with an equivalent CFTC and ESMA data element – this rises to 67% in the proposed 2024 Rules. Similarly, the alignment of the ASIC data elements with at least one of the CFTC and ESMA rises from 81% to 92%.
16. Importantly the number of ASIC-only data elements falls from 18% to 4%. Taken together, these factors will significantly assist businesses to streamline and consolidate their reporting systems and lessen the costs to maintain bespoke systems for ASIC reporting.

Table 1: Number of ASIC Rules data elements common to jurisdictions

| Regulatory authorities | 2013 Rules 2022 Rules | % of all data elements | 2024 Rules | % of all data elements |
| --- | --- | --- | --- | --- |
| ASIC, CFTC, ESMA | 50 | 47% | 86 | 67% |
| ASIC, CFTC | 7 | 7% | 20 | 16% |
| ASIC, ESMA | 29 | 27% | 12 | 9% |
| ASIC, CFTC &/or ESMA | 86 | 81% | 118 | 92% |
| ASIC, CDE Guidance  but not CFTC or ESMA | 1 | 1% | 5 | 4% |
| ASIC-only | 19 | 18% | 5 | 4% |
| TOTAL | 106 | 100% | 128 | 100% |

1. In August 2022, four of the ASIC-only data elements in the 2024 Rules have been proposed for inclusion in the CDE Guidance in public consultation proposals made by the Regulatory Oversight Commission. If the CDE Guidance is amended to include these data elements, there would then be just 1 ASIC-only data element.

*ISO 20022 for derivatives transactions reporting*

1. In CP 361, we proposed requiring that reporting entities report information to derivative trade repositories in an ISO 20022 XML message, identifying four major jurisdictions that have decided or proposed to require such a technical format for reporting.
2. We also noted our analysis that 97% of ASIC reporting entities will be affected, or influenced, by the technical approaches to reporting required in other jurisdictions – either because the entity is, or is in a related entity group that is, a multi-jurisdictional reporter or the entity uses outsourced reporting by an international report submitting entity.
3. Submissions to CP 361 were supportive of mandating ISO 20022 XML as the technical format for reporting.

*Scope of reportable transactions*

1. In CP 334, we made proposals to:
   1. incorporate the existing exemption for FX securities conversion transactions in the rules;
   2. exclude from the meaning of a reportable transaction a transaction for spot settlement;
   3. ensure that transactions with Australian retail clients are reportable transactions; and
   4. clarify the scope of reporting for foreign subsidiaries of Australian entities.
2. Submissions to CP 334 either supported or raised no objections to these proposals.
3. In CP 361, we said that we had decided to proceed with our proposals in CP 334 and made new proposals to:
   1. clarify the meaning of a Part 7.2A market as being a financial market for which market integrity rules apply – noting that a derivative traded on such a Part 7.2A market is not an OTC derivative under the rules;
   2. exclude as reporting entities Australian financial services (***AFS***) licensees without relevant derivatives authorisations in their AFS licence, consistent with reg 7.5A.50 of the *Corporations Regulations 2001* (***Corporations Regulations***);
   3. exclude as reporting entities clearing members in certain circumstances of an agency clearing model, generalising the existing exemption for OTC clearing participants of ASX Clear (Futures) Pty Ltd; and
   4. clarify that the OTC derivative transactions of a corporate collective investment vehicle (***CCIV***) are reportable transactions.
4. In relation to CCIVs, the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* implemented a legislative regime for CCIVs, which commenced on 1 July 2022. It provides an alternative to the existing managed investment scheme regime under the *Corporations Act 2001* (the ***Corporations Act***) and, to maintain regulatory parity between CCIVs and managed investment schemes, the 2024 Rules clarify that, for derivative transactions entered into for a CCIV, the corporate director of the CCIV is the reporting entity.
5. Submissions to CP 361 either supported or raised no objections to these proposals.
6. Given the support for our proposal to exclude from the meaning of a reportable transaction a transaction for spot settlement, on 5 September 2022 ASIC made *ASIC Corporations (Amendment) Instrument 2022/775* to insert “Exemption 10 (Spot Settlement Transactions)” in Instrument 2015/844. Subrule 1.2.4(7) is the equivalent form of Exemption 10 within the 2024 Rules and we intend that Exemption 10 will be ended upon the commencement of the 2024 Rules.

*Delegated reporting*

1. As is commonly provided for in other jurisdictions, the 2024 Rules continue to provide that a reporting entity may appoint another person (a delegate) to report on behalf of the reporting entity.
2. Prior to the commencement of the 2024 Rules, a “safe harbour” provision allows that a reporting entity is taken to have complied with its reporting obligations if they have a documented agreement with their delegate and if they make “regular inquiries reasonably designed” to determine if the delegate is complying with the terms of the agreement.
3. In CP 334, we described our concerns with the operation of delegated reporting from our own interactions with a variety of reporting entities that make use of delegated reporting. We have been unconvinced that all reporting entities are capable of subjecting, and do subject, their delegated reporting arrangements to a level of oversight and rigour that sufficiently contributes to maintaining reported information as complete, accurate and current.
4. In CP 334, we did not make a specific proposal on delegated reporting but we said that, in principle, we considered the most effective approach to addressing our concerns in relation to delegated reporting is to remove the “safe harbour” provision and revert to reporting entities having responsibilities for reporting as otherwise set out in the 2013 Rules.
5. Following the release of CP 334, we requested submissions to CP 334 from a cross-section of industry identified as using reporting services providers, to better understand existing practices and operational insights in relation to delegated reporting. Respondents to CP 334 strongly disagreed with our preliminary approach of proposing to remove the “safe harbour” provisions.
6. The key challenges and concerns raised by respondents were centred on:
   1. the capability uplift that may be required by reporting entities to accurately oversee their delegates;
   2. the outsourcing of some business functions creates a lack of proximity to the transaction details/source data for some types of reporting entities using delegated reporting and there were concerns about the deadline for reporting, the ability to conduct timely and accurate reconciliations and other operational complexities; and
   3. other concerns included a potential move away from the use of reporting services providers, a potential deterioration in the quality of reported data and a potential move away from using appropriate OTC derivative hedge products to avoid triggering reporting obligations.
7. In CP 361, we said that thorough consideration was given to the responses, but we consider that, on balance, it is appropriate to propose the removal of the “safe harbour” provision and align the updated rules with the outsourcing responsibility settings in other domestic and international regulatory rules and standards.
8. Internationally, we do not observe the existence of any similar “safe harbour” regimes or diminished liability for reporting entities in circumstances where derivatives transactions reporting is outsourced to another person.
9. In CP 361, we also said that we recognise the underlying concerns that the “safe harbour” regime has helped to address and that we intend to provide regulatory guidance in terms of:
   1. our expectations in relation to a reporting entity outsourcing its OTC derivative transaction reporting; and
   2. ASIC’s approach and expectations in respect of OTC derivative transaction reporting errors and significant breaches – in particular, by reference to the established principles of the [Markets Disciplinary Panel](https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-216-markets-disciplinary-panel/) which take a scaled assessment approach to the factors of the character and consequences of the conduct, compliance culture and the promptness and permanence of remediation.
10. Submissions to CP 361 either supported or raised no objections to this proposal.

*Lifecycle reporting*

1. “Lifecycle reporting” is the reporting of each reportable transaction in an OTC derivative, including where there are multiple transactions – such as a “buy” and a “sell” – within the same day. Alternatively, “snapshot reporting” is the reporting of an OTC derivative on its terms as at the end of the day – such as the non-zero net transaction arising from a “buy” and a “sell” of lesser notional amount within the same day.
2. In CP 334, we noted that under the 2013 Rules a reportable transaction in an “excluded derivative” must be reported by lifecycle reporting and that all other reportable transactions may be reported by either lifecycle reporting or snapshot reporting. Since 1 July 2019, excluded derivatives are CFDs, margin FX and equity derivatives under [*ASIC Derivative Transaction Rules (Reporting) Determination 2018/1096*](https://download.asic.gov.au/media/4950776/asic-derivative-transaction-rules-reporting-2013-deternination-2018-1096.pdf).
3. In CP 334, we said that we considered that the material termination and amendment transactional activity, especially as short-term trading and post-trade clearing, that we observed in the reported derivative transaction information indicates that transparency of transaction information available to relevant authorities and support for detection and prevention of market abuse would be enhanced by lifecycle reporting for all OTC derivative products.
4. There was widespread support in submissions to CP 334 to implement lifecycle reporting for all OTC derivative products.

*Other reporting requirements*

1. In CP 361, we proposed to recognise as reportable transactions the reporting practice of converting the report of a transaction into a report of a position – a “transaction to position conversion”.
2. Submissions to CP 361 raised concerns about the scope of the provision in proposed Rule 1.2.5 – in the 2024 Rules, the scope of subparagraph 1.2.5(1)(b)(iv) has been narrowed to only apply to a change in the way a reporting entity records an OTC derivative in the reporting entity’s books and records, from representation as a transaction, to representation as a position.
3. In CP 361, we also proposed to require that reporting entities re-report transactions that had been previously reported before the updated ASIC data element requirements applied in order to conform the derivative transaction information of those transactions to the updated requirements.
4. Submissions to CP 361 raised concerns that some of the derivative transaction information of those previously reported transactions would not have been created and/or recorded in electronic form at the time the transaction was entered into and reported. The proposed Rule 2.4.1 has been revised in the 2024 Rules with subrule 2.4.1(2) setting out that a reporting entity is not required to include derivative transaction information that has not been recorded in electronic form in the systems that are the source of that information, or is not able to be created by systems in the ordinary way that the systems create derivative transaction information for a report made after 20 October 2024.

Other consultation

1. 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. The RBA and APRA support the repeal and remake of the 2022 Rules with this instrument.

**Operation of the instrument**

Chapter 1: Introduction

Part 1.1 Preliminary

1. 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.
2. Rule 1.1.2 provides that the instrument is the *ASIC Derivative Transaction Rules (Reporting) 2024*.
3. Rule 1.1.3 provides that the instrument commences on the later of 21 October 2024 and the day after the instrument is registered on the Federal Register of Legislation.
4. Rule 1.1.3A provides that the instrument *ASIC Derivative Transaction Rules (Reporting) 2022* is repealed.
5. Rule 1.1.4 provides that the maximum pecuniary penalty payable for a contravention of a provision of the 2024 Rules is an amount determined by the Court under section 1317G of the Corporations Act.

Part 1.2 Interpretation

1. Rule 1.2.1 provides that, in the 2024 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.
2. Rule 1.2.2 provides that words and expressions defined in the Corporations Act will, unless otherwise defined or specified in the 2024 Rules or the contrary intention appears, have the same meaning in the 2024 Rules. For convenience, some words and expressions defined in the Corporations Act are cross-referenced in Rule 1.2.3.
3. Rule 1.2.3 provides definitions for terms used in the 2024 Rules. This includes but is not limited to the following terms, which are either new or changed in the 2024 Rules:

***“affirmation or confirmation platform”*** whichmeans a facility that provides a regular electronic mechanism for the counterparties to a reportable transaction to affirm or confirm some or all of the terms of a reportable transaction to each other.

The operator of an affirmation or confirmation platform is an entity that is a UTI generating entity for specified reportable transactions as set out in Table 2 of Rule 2.2.9.

***“authorised clearing facility”*** whichmeans an authorised clearing and settlement facility that provides a regular mechanism for the operator of the facility to enter into reportable transactions by being substituted, by novation, as a counterparty to a reportable transaction or becomes a counterparty to a reportable transaction with the equivalent, or substantially equivalent, legal and economic effect as a novation.

The operator of an authorised clearing facility is an entity that is a UTI generating entity for specified reportable transactions as set out in Table 2 of Rule 2.2.9.

1. ***“authorised financial market”*** whichmeans:
   1. a licensed market; or
   2. a financial market where the operator of the financial market is authorised to operate the financial market in the foreign country in which the operator’s principal place of business is located.

The operator of an authorised financial market is an entity that is a UTI generating entity for specified reportable transactions as set out in Table 2 of Rule 2.2.9.

1. ***“Non-centrally Cleared Derivative”*** which means an OTC derivative where:
   1. the operator of an authorised clearing facility is not a counterparty; and
   2. a clearing member, acting in the capacity of clearing member, is not a counterparty.

The amount of non-centrally cleared derivatives that certain entities hold on two consecutive dates among 31 March, 30 June, 30 September and 31 December determines if the entity meets, or is disqualified from meeting, the small-scale criteria and therefore is, or is not, a small-scale buy-side entity that is not required to report certain items of derivative transaction information.

1. ***“Part 7.2A Market”*** which means a financial market to which an instrument made under subsection 798G(1) of the Corporations Act applies.

Instruments made under subsection 798G(1) of the Corporations Act are market integrity rules made by ASIC. Market integrity rules generally only apply to financial markets with retail client participation and are not financial markets whose derivatives traded on those markets are intended to be reportable under the 2024 Rules.

1. ***“Small-scale Buy-side Entity”*** means a reporting entity that:
   1. is a responsible entity (***RE***), trustee, a non-bank body regulated by APRA, or a corporate director of a CCIV; and
   2. is not an AFS Licensee whose AFS Licence authorises them to make a market in derivatives; and
   3. is not an exempt foreign licensee; and
   4. ***meets the small-scale criteria***; and
   5. is not ***disqualified from the small-scale criteria;***

where:

* 1. an entity ***meets the small-scale criteria*** from the day after the quarter day following two successive quarter days that it holds 12 billion Australian dollars or less of total gross notional outstanding non-centrally cleared derivatives; and
  2. an entity is ***disqualified from the*** ***small-scale criteria*** from the day after the quarter day following two successive quarter days that it holds greater than 12 billion Australian dollars of total gross notional outstanding non-centrally cleared derivatives;
  3. for a reporting entity other than an RE or a trustee, ***holds*** means, holds other than in a representative capacity;
  4. for a reporting entity that is an RE or a trustee, ***holds*** means holds in the capacity of RE or trustee for a particular scheme or trust; and
  5. for a CCIV, ***holds*** means holds by the CCIV for a particular sub-fund, and includes holds by another person holding property of the CCIV for a particular sub-fund.

A small-scale buy-side entity is not required to report certain items of derivative transaction information.

1. ***“UTI***” which means a unique transaction identifier in the form specified in ISO 23897.
2. ***“UTI generating entity”*** which means an entity that generates a UTI for the purposes of these Rules.
3. Rule 1.2.3 also provides definitions for other terms used in the 2024 Rules. This includes but is not limited to the terms “prescribed class” and “prescribed repository”.
4. 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).
5. 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:
   1. commodity derivatives that are not electricity derivatives;
   2. credit derivatives;
   3. equity derivatives;
   4. foreign exchange derivatives;
   5. interest rate derivatives.
6. Rule 1.2.3 defines “prescribed repository”as a prescribed derivative trade repository as defined in section 761A of the Corporations Act.
7. 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).
8. Regulation 7.5A.30 sets out that, after 30 June 2015, a prescribed facility is only a facility determined by ASIC.
9. On 25 June 2015, ASIC made a determination ([*ASIC Prescribed Trade Repositories Determination [15/0591]*](https://download.asic.gov.au/media/3276186/asic-prescribed-trade-repositories-determination-15_0591.pdf)) determining the following overseas derivative trade repositories as prescribed repositories commencing 1 July 2015:
   1. DTCC Data Repository (U.S.) LLC
   2. DTCC Derivatives Repository Ltd
   3. DTCC Data Repository (Japan) KK
   4. DTCC Data Repository (Singapore) Pte Ltd
   5. UnaVista Limited, and
   6. the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance of Hong Kong.
10. On 9 April 2019, ASIC [amended the determination](https://download.asic.gov.au/media/5072063/prescribed-derivative-trade-repositories-determination-19-0325.pdf) to add the following overseas derivative trade repositories as prescribed repositories commencing 9 April 2019:
    1. DTCC Data Repository (Ireland) Plc; and
    2. UnaVista TRADEcho B.V.

Rule 1.2.4 OTC derivative

1. Rule 1.2.4 provides a definition of an “OTC derivative” for the purposes of the 2024 Rules. Under the 2024 Rules, reporting entities are required to report information about their derivative transactions in OTC derivatives (referred to in the 2024 Rules as “reportable transactions”).
2. Subrule 1.2.4(1) provides that, subject to subrules 1.2.4(2), (6) and (7) in the 2024 Rules a derivative is an “OTC derivative” if the derivative is in a prescribed class. 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. As at the date of making the 2024 Rules, the prescribed classes are:
   1. commodity derivatives that are not electricity derivatives;
   2. credit derivatives;
   3. equity derivatives;
   4. foreign exchange derivatives; and
   5. interest rate derivatives.
3. Subrule 1.2.4(2) of the 2024 Rules carves out certain exchange-traded derivatives from the definition of “OTC derivative” for the purposes of the 2024 Rules. Under that subrule, a derivative is not an OTC derivative if:
   1. 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
   2. 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*

1. “Part 7.2A market” is defined in Rule 1.2.3 as “a financial market to which an instrument made under subsection 798G(1) of the Corporations Act applies.”
2. Instruments made under subsection 798G(1) of the Corporations Act are market integrity rules made by ASIC. Market integrity rules generally only apply to financial markets with retail client participation and are not financial markets whose derivatives traded on those markets are intended to be reportable under the 2024 Rules.

*Regulated foreign markets*

1. 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).
2. 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)).
3. 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.
4. As at the date of making the 2024 Rules, the *ASIC Regulated Foreign Markets Determination [OTC DET 13/1145]* determines as regulated foreign markets:
   1. a national securities exchange registered with the US Securities and Exchange Commission of the United States of America;
   2. 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
   3. a further 35 named foreign financial markets.
5. 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.

*Other derivatives that are not OTC derivatives*

1. Subrule 1.2.4(6) incorporates into the 2024 Rules a form of the Exemption 9 (FX Securities Conversion Transactions) in Instrument 2015/844 - we intend that this exemption will be ended upon the commencement of the 2024 Rules.
2. Subrule 1.2.4(6) provides that a derivative is not an OTC derivative if:
   1. it is a foreign exchange contract between counterparties solely to facilitate the settlement of a transaction between the counterparties, or by one of the counterparties, for the purchase or sale of a foreign currency denominated security, or a portfolio of foreign currency denominated securities; and
   2. under which consideration is provided to settle the transaction not more than 7 business days after the day on which the transaction is entered into.
3. Paragraphs 1.2.4(6)(a) and (b) describe the characteristics of an OTC derivative transaction commonly known as a “Foreign Exchange Securities Conversion Transaction”. The prior exemption and now rule recognises that foreign exchange security conversion transactions are typically not required to be reported to trade repositories in other jurisdictions. As we do not anticipate any change in the exemptive approach in other jurisdictions, this subrule provides an ongoing exclusion for reporting these types of transaction.
4. Subrule 1.2.4(7) incorporates into the 2024 Rules Exemption 10 (Spot Settlement Transactions) in Instrument 2015/844 – we intend that this exemption will be ended upon the commencement of the 2024 Rules.
5. Subrule 1.2.4(7) provides that a derivative is not an OTC derivative if:
   1. under an arrangement a party has an obligation to buy, and another party has an obligation to sell, intangible property at a price and within a period of no longer than the shortest period determined by usual market practice for delivery of the property;
   2. the arrangement does not permit the seller’s obligations to be wholly settled by cash, or by set‑off between the parties, rather than by delivery of the property; and
   3. it is not a foreign exchange contract or an option;

but only to the extent that the arrangement deals with that purchase and sale.

*Cleared and uncleared trades*

1. 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 2024 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 2024 Rules.
2. The information that must be reported about a reportable transaction includes information about whether the OTC derivative has been subject to clearing: see items 21 to 24 in Table S1.1(1) in Rule S1.3.1 (Derivative Transaction Information).

Rule 1.2.5 Reporting entities and reportable transactions

1. 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 2024 Rules.
2. The “reporting entity” is the person who is required to comply with the reporting requirements imposed by the 2024 Rules (see paragraph 901A(3)(e) of the Corporations Act).
3. 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 1.2.4) of the kind referred to in column 3 of Table 1.
4. The definition of “derivative transaction” in the 2024 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.
5. Subparagraph 1.2.5(1)(b)(iv) includes as a reportable transaction a change to the way a reporting entity records an OTC derivative in the reporting entity’s books and records, from representation as a transaction, to representation as a position, being changes that are terminations in the reporting entity’s records, and new positions recorded there.
6. The note to subparagraph 1.2.5(1)(b)(iv) explains that the change described in subparagraph 1.2.5(1)(b)(iv) includes reporting the termination of the original transaction and the reporting of a new position. Both the termination and the new position are reportable transactions. In addition, the reporting of the new position requires the determination and reporting of a new UTI (see Rule 2.2.9).
7. 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 2024 Rules, there are no regulations under paragraph (d) of the definition of “derivative transaction” in section 761A of the Corporations Act.
8. 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) that is:  (a) an Australian ADI;  (b) an AFS Licensee; or  (c) a CS Facility Licensee. | 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:   * entered into with a retail client located in this jurisdiction; * 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. |
| A foreign company that is required to be registered under Division 2 of Part 5B.2 of the Corporations Act and is:  (a) an AFS Licensee;  (b) a CS Facility Licensee; or  (c) an Exempt Foreign Licensee. |
| An RE (defined in Rule 1.2.3 as a responsible entity of a managed investment scheme), Trustee (defined in Rule 1.2.3 as a trustee of a trust) or corporate director of a CCIV. | Entry into, modification, termination or assignment of an OTC derivative in the RE, Trustee, or corporate director’s capacity as RE or trustee of an Australian entity or as corporate director of a CCIV. |

1. Regulation 7.5A.50 of the Corporations Regulations precludes derivative transaction rules being imposed upon “end users”, defined as persons who are not:
   1. Australian ADIs; or
   2. CS facility licensees;
   3. AFS licensees; or
   4. 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.
2. 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:
   1. who are taken not to be end users only because they are an AFS licensee; and
   2. whose AFS licence does not authorise them to provide financial services in relation to that class of derivatives.
3. The 2024 Rules do not impose requirements on end users, or AFS licensees which are captured by paragraph (2A) of Regulation 7.5A.50.
4. Subrule 1.2.5(3) provides that, in accordance with Regulation 7.5A.50 of the Corporations Regulations, an entity is not a reporting entity for a reportable transaction in a prescribed class if the entity is an AFS licensee whose AFS licence does not authorise them to provide financial services in relation to that prescribed class.
5. In addition, Subrule 1.2.5(4) incorporates into the 2024 Rules a generalised form of the exemption for clearing members, acting in the capacity of a clearing member of an authorised clearing facility, in *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2016/0688* applicable to derivative transactions of clearing members under an agency clearing model of an authorised clearing facility – we intend that this exemption will be ended upon the commencement of the 2024 Rules.
6. Also, as at the date that the 2024 Rules are made, *ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015* provides that foreign reporting entities may opt in to applying a “sales or trader basis” test to the “entered into” test to determine the reportable transactions that are required to be reported. That is, that a reportable transaction is entered into in this jurisdiction where functions such as, for example, pricing, sales or risk management are performed for the relevant reporting entity by a person in this jurisdiction.
7. 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.”

1. 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

1. Rule 1.2.6 provides that a reference in the 2024 Rules to reporting information about a reportable transaction to:
   1. 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;
   2. 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.
2. Under subsection 901A(6) of the Corporations Act, the 2024 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 2024 Rules as “licensed repositories” and “prescribed repositories” respectively). Rule 1.2.6 aligns the reporting requirements set out in the 2024 Rules with the definition of “reporting requirements” in subsection 901A(6) of the Corporations Act.
3. 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).”

Chapter 2: Reporting requirements

1. Chapter 2 of the 2024 Rules, along with Schedule 1:
   1. imposes reporting requirements as permitted by paragraph 901A(2)(b) and subsection 901A(6) of the Corporations Act;
   2. specifies the persons who are required to comply with the reporting requirements imposed by the 2024 Rules as permitted by paragraph 901A(3)(e) of the Corporations Act;
   3. deals with the manner and form in which persons are required to comply with the reporting requirement imposed by the 2024 Rules as permitted by paragraph 901A(3)(f) of the Corporations Act; and
   4. deals with the circumstances in which persons are relieved from complying with the reporting requirements in the 2024 Rules that would otherwise apply to them as permitted by paragraph 901A(3)(g) of the Corporations Act.

Part 2.1 Application

1. Rule 2.1.1 provides that Chapter 2 imposes obligations on reporting entities to report their reportable transactions to licensed repositories and prescribed repositories.

Part 2.2 Reporting requirements

Rule 2.2.1 Transaction reporting requirements

*Subrule 2.2.1(1) – Core transaction reporting requirements*

1. Under subrule 2.2.1(1) and subject to exceptions set out in subrules 2.2.1(2) and (3), Rule 2.2.8 and Part 2.4, reporting entities must report information about their reportable transactions in accordance with the reporting requirements set out in Schedule 1 to the 2024 Rules, and in accordance with the other requirements of Part 2.2 concerning:
   1. changes to information reported (see Rule 2.2.2);
   2. timing of reporting (generally, T+2) (see Rule 2.2.3);
   3. format of reporting (see Rule 2.2.4);
   4. continuity of reporting (see Rule 2.2.5);
   5. accuracy of reporting (see Rule 2.2.6);
   6. delegation of reporting (see Rule 2.2.7);
   7. lifecycle or snapshot reporting (see Rule 2.2.8); and
   8. the UTI (see Rule 2.2.9).
2. As at the date the 2024 Rules are made, the reporting requirements are affected by regulations 7.5A.70–7.5A.74 of the Corporations Regulations. Regulations 7.5A.70–7.5A.74 exempts reporting entities with small-scale gross notional outstanding positions from reporting transactions where their counterparty reports the transactions.
3. Subrule 2.2.1(1A) requires that a reporting entity must use its best endeavours to ensure that its reports are not duplicated reports.
4. The notes to subrule 2.2.1(1A) explain two kinds of reports that are not duplicated reports – a valuation or collateral report where the amounts do not change but the date and time at which the reported valuation or collateral amount has changed; and a report of a change to the way a reporting entity records an OTC derivative in the reporting entity’s books and records (see subparagraph 1.2.5(1)(b)(iv)). A duplicated report is not otherwise defined but its ordinary meaning is an exact copy of another report – i.e. a report about a reportable transaction or an OTC derivative that provides no changed or additional derivative transaction information to a preceding report.
5. Subrule 2.2.1(1B) provides that where a derivative trade repository creates an item of derivative transaction information that it derives from other information reported by the reporting entity and that item of derivative transaction information is in accordance with the requirements of Part S1.3 of Schedule 1, the reporting entity is taken to have complied with its reporting requirements.
6. The note to subrule 2.2.1(1B) explains, by way of example, that reporting timestamp is an item that may be created by a derivative trade repository derived from the submission by a reporting entity of a report about a reportable transaction – that is, the derivative trade repository’s timestamping of the receipt of a report creates the item reporting timestamp derived by the submission and receipt of the report.

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

1. 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.
2. 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 if, at the time the reporting entity is required to comply with the requirements:
   1. 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 relates; and
   2. there is no prescribed repository that is prescribed in relation to the class of derivatives that includes the derivatives to which the reportable transaction relates.
3. 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.

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

1. 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.
2. 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 if, at the time the reporting entity is required to comply with the requirements:
   1. 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 2024 Rules; and
   2. either:
      1. the reporting entity or another entity has:
         1. reported information about the reportable transaction to a prescribed repository, in compliance with the Alternative Reporting Requirements in at least one Foreign Jurisdiction; and
         2. designated the information reported under paragraph (a) as information that has been reported under the 2024 Rules; or
      2. the reporting entity is exempt from the requirement in all of the Foreign Jurisdictions to report information about the reportable transaction, or there is no requirement in the Foreign Jurisdiction to report information about the reportable transaction.
3. 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).
4. 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 in the 2024 Rules. 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

1. Rule 2.2.2 requires a reporting entity to report changes to previously reported information that do not constitute a reportable transaction.
2. Subrule 2.2.2(1) provides that, where a reporting entity has reported information about an OTC derivative 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 items 101 and 102 of Table S1.1(1), item 13 of Table S1.1(2) and item 22 of Table S1.1(3) in accordance with the requirements of Part 2.2. These items require an indication of the nature of the change.
3. 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:
   1. each updated valuation of the OTC derivative, whether performed by the reporting entity or by another person on behalf of the reporting entity;
   2. each updated collateral amount posted or collected in relation to the OTC derivative; and
   3. a change to the UTI of the OTC derivative where a UTI has been generated and reported under paragraph 2.2.9(6)(a) or subparagraph 2.2.9(6)(c)(ii) and, at a later time, the reporting entity receives a UTI from the UTI generating entity.
4. Subrule 2.2.2(3) provides that if there is more than one update to the valuation or change to the collateral 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.
5. “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.
6. “Relevant jurisdiction” is also defined in Rule 1.2.3 to mean, in relation to a reportable transaction:
   1. this jurisdiction, if the reportable transaction 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
   2. if paragraph (a) doesn’t apply:
      1. the jurisdiction in which the reportable transaction was booked to the profit or loss account of a branch of the reporting entity; or
      2. 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+2)

1. Subrule 2.2.3(1) provides that, subject to subrules 2.2.3(2) and (3), a reporting entity that is required to report:
   1. information about a reportable transaction in accordance with subrule 2.2.1(1); or
   2. a change to information about an OTC derivative in accordance with subrule 2.2.2(1),

must report the information or change by no later than the end of the second business day after the day on which the reportable transaction or change occurs.

1. 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.
2. Subrule 2.2.3(2) 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.
3. Subrule 2.2.3(3) provides that certain types of reportable transactions may be reported later than the second business day because the reportable transactions must be reported by no later than the fourth business day after the day on which the reportable transaction occurs.
4. These types of reportable transactions are reportable transactions, other than foreign exchange transactions that are part of a foreign exchange swap derivative transaction, for which a value for item 92 of Table S1.1(1) is required to be reported. Item 92 of Table S1.1(1) is a package identifier which is required to be reported for each reportable transaction that is reported as a package. Packages can be complex to be confirmed by each of the counterparties and not necessarily confirmed electronically. This can delay UTI generation and sharing and other reporting practices and subrule 2.2.3(3) provides additional time for reporting.
5. A foreign exchange swap derivative transaction is also required to be reported as a package of two foreign exchange contracts but these transactions do not have complex confirmation needs and no additional time for reporting is provided for these types of reportable transactions.

Rule 2.2.4 – Reporting requirement – format

1. Rule 2.2.4 provides that a reporting entity that is required to report:
   1. information about a reportable transaction in accordance with subrule 2.2.1(1); or
   2. a change to information about a reportable transaction 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:

* 1. in subrule (2) and otherwise in the 2024 Rules; and
  2. 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 2024 Rules.

1. Format requirements for all derivative transaction information items are specified in Schedule 1 of the 2024 Rules.
2. Subrule 2.2.4(2) requires that a reporting entity is required to report:
   1. in a machine-readable form;
   2. in accordance with an ISO 20022 message definition whose message elements include all of the derivative transaction information set out in Part S1.3; and
   3. using the XML tags specified in the ISO 20022 message definition utilised by the reporting entity.
3. There are more than 700 ISO 20022 message definitions for a wide range of uses in financial services. There are particular derivative transaction reporting message definitions which are maintained in versions that may change as new or changed reporting needs arise in jurisdictions that require reporting according to an ISO 20022 message definition.
4. Accordingly, a specific ISO 20022 message definition version is not specified in subrule 2.2.4(2). Reporting entities are required to use the ISO 20022 message definition whose message elements include all of the derivative transaction information set out in Part S1.3. This excludes the use of an ISO 20022 message definition that does not include all of the information required under the 2024 Rules but does not preclude the use of an ISO 20022 message definition that includes message elements that are in addition to the message elements that include all of the information required under the 2024 Rules. It is expected that the latter scenario will continue to prevail – that is, that the latest version of an ISO 20022 derivative transaction reporting message definition will have message elements covering all of the information required in multiple jurisdictions, a subset of which will be the message elements sufficient to cover all of the derivative transaction information set out in Part S1.3.

Rule 2.2.5 – Reporting requirement – continuity of reporting

1. Subrule 2.2.5(1) provides that, subject to subrule 2.2.5(2), a reporting entity that reports to a derivative trade repository (in Rule 2.2.5, the ***Original Trade Repository***):
   1. information about a reportable transaction in an OTC derivative, in accordance with subrule 2.2.1(1); or
   2. a change to information about a reportable transaction 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.

1. 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

1. 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 or on its own behalf of by another person on behalf of the reporting entity, is and remains at all times complete, accurate and current.
2. 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.
3. 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

1. Rule 2.2.7 provides that a reporting entity may appoint one or more persons (referred to in the 2024 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.
2. The note 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, an operator of a financial market, a service provider, a broker or any other third party.

Rule 2.2.8 – Lifecycle or snapshot reporting

1. 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.
2. Subrule 2.2.8(1) provides that a reporting entity that is not a small-scale buy-side entity must report derivative transaction information for each reportable transaction in an OTC derivative that takes place on a day, in accordance with the 2024 Rules (i.e. as lifecycle reporting).
3. Subrule 2.2.8(2) provides that a reporting entity that is a small-scale buy-side entity must report derivative transaction information for each reportable transaction in an OTC derivative that is an equity derivative that takes place on a day, in accordance with the 2024 Rules (i.e. as lifecycle reporting).
4. Subrule 2.2.8(3) provides that a reporting entity that is a small-scale buy-side entity may comply with Rule 2.2.1 in relation to a reportable transaction in an OTC derivative (***Relevant OTC Derivative***) that is not an equity derivative at the time the reportable transaction is entered into, that takes place on a day (***Relevant Day***) by:
   1. reporting derivative transaction information for each reportable transaction in the Relevant OTC Derivative (i.e. as lifecycle reporting); or
   2. 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 2024 Rules.

1. The 2024 Rules require reporting entities that are not a small-scale buy-side entity to report all derivative transactions in an OTC derivative, including intra-day modifications of an OTC derivative – that is, to report by “lifecycle reporting”. Reporting entities that are a small-scale buy-side entity must also report by “lifecycle reporting” but only in relation to equity derivatives.
2. In relation to OTC derivatives that are not equity derivatives, reporting entities that are a small-scale buy-side entity may report either by “lifecycle reporting” or “snapshot reporting”.

Rule 2.2.9 – Unique transaction identifier

1. Rule 2.2.9 sets out requirements for determining the UTI generating entity, generating a UTI and providing it to the other counterparty as soon as practicable. It also deals with generating and reporting a UTI when the reporting entity does not receive a UTI from the UTI generating entity in sufficient time for reporting and that a reporting entity may appoint a service provider to generate the UTI and provide it to the other counterparty.
2. Subrule 2.2.9(1) provides that Rule 2.2.9 applies if a reporting entity is required to report a UTI for a reportable transaction referred to in subparagraphs 1.2.5(1)(b)(i), (iii) or (iv) in a report made under subrule 2.2.1(1).
3. A reportable transaction referred to in:
   1. subparagraph 1.2.5(1)(b)(i) is the entry into of an arrangement that is an OTC derivative;
   2. subparagraph 1.2.5(1)(b)(iii) is the assignment of an arrangement that is an OTC derivative; and
   3. subparagraph 1.2.5(1)(b)(iv) is the change in the recording of an OTC derivative from representation as a transaction to representation as a position.
4. Each of these kinds of reportable transactions involve the reporting of a new transaction or position and the reporting of a new transaction or position requires the generation and reporting of a new UTI. Conversely, a new UTI is not required for a reportable transaction referred to in subparagraph 1.2.5(1)(b)(ii) as this is the modification or termination of an arrangement that is an OTC derivative and the reporting of such a modification or termination is reported with the transaction identifier of the original transaction that is being modified or terminated.
5. Subrule 2.2.9(1) only applies to a report made under subrule 2.2.1(1). The note to subrule 2.2.9(1) explains that the subrule does not apply to a report made under subrule 2.2.1(3) to a prescribed repository – in this situation the UTI generating requirements, if any, of the foreign jurisdiction(s) in which the reportable transaction is reported by the reporting entity apply. The note also explains that subrule 2.2.9(1) does not apply where the reporting entity does not report the reportable transaction in accordance with subparagraph 2.2.1(3)(b)(ii).
6. Subrule 2.2.9(2) provides that in Rule 2.2.9, other than subrule (8), a reference to a reporting entity that is an RE, trustee, or corporate director of a CCIV, includes a person appointed by an RE, trustee, or corporate director of a CCIV to enter into OTC derivatives on behalf of the RE, trustee or corporate director of a CCIV.
7. The note to subrule 2.2.9(2) identifies, by way of an example, that a person appointed by an RE, trustee, or corporate director of a CCIV may be a fund manager—in which case, the reporting entity or the fund manager may determine the UTI generating entity under subrule (3), generate and provide the UTI to the other counterparty under subrule (4), act upon non-receipt of a UTI under subrule (6) and appoint a service provider under subrule (7). The actions, in relation to a UTI, that must be undertaken under Rule 2.2.9 include actions that ordinarily are required to be performed promptly after the entry into an OTC derivative—the fund manager or other appointed person that entered into the OTC derivative may be able to perform the actions for the reporting entity more efficiently and effectively than the reporting entity itself.
8. Subrule 2.2.9(3) sets out the reporting entity’s obligation to determine the UTI generating entity. A reporting entity must determine the UTI generating entity:
   1. for a reportable transaction specified in column 2 of Table 2—which are specified for circumstances of a reportable transaction that, in summary:
      1. is cleared by an authorised clearing facility (see item 1);
      2. is a transaction between a clearing member of an authorised clearing facility (acting in its capacity of a clearing member) and a client of the clearing services of that clearing member (see item 2);
      3. is entered into through a facility that is an authorised financial market or, in certain circumstances, not an authorised financial market (see item 3);
      4. is only reportable in this jurisdiction, whether by one or both counterparties to the transaction (see item 4); or
      5. is, or may be, also reportable in a foreign jurisdiction (see items 5—8A); and
   2. in accordance with column 3 of Table 2—which specifies the UTI generating entity for the circumstances of a reportable transaction as variously the:
      1. operator of the authorised clearing facility (see item 1);
      2. clearing member (see item 2);
      3. operator of the facility that is an authorised financial market or, in certain circumstances, not an authorised financial market (item 3);
      4. operator of the affirmation or confirmation platform (see items 4, 6A and 8A);
      5. reporting entity (see item 4);
      6. UTI generating entity determined as agreed by the reporting entity and the other counterparty (see items 4, 6A and 8A);
      7. counterparty whose LEI with the characters reversed would appear first if the reversed LEIs of the counterparties were sorted in alphanumeric order, or the only counterparty with an LEI (see items 4, 6A and 8A);
      8. UTI generating entity determined according to a method in accordance with the derivative transaction reporting requirements of each of the foreign jurisdiction(s) in which the reportable transaction will or may be reported by the reporting entity (see item 5);
      9. UTI generating entity determined according to the derivative transaction reporting requirements of the foreign jurisdiction with the earliest reporting deadline (see item 7); or
      10. operator of the derivative trade repository to which the reportable transaction will be reported and recorded in the repository records of a single jurisdiction, subject to both counterparties satisfying any reasonable requirements for the generation of a UTI by the operator (see item 8A).
9. Subrule 2.2.9(3) also requires that a reporting entity determines the UTI generating entity using:
   1. the first item of items 1, 2, 3, 4 and 5 of Table 2 that applies to the reportable transaction; or
   2. if items 1, 2, 3, 4 and 5 of Table 2 do not apply to the reportable transaction, any one of items 6, 7 or 8 that the reporting entity believes is applicable having regard to its own reporting requirements in foreign jurisdictions, and its knowledge of, or reasonable assumptions about, the reporting requirements of the other counterparty.
10. Items 1 and 3 of Table 2 apply to reportable transactions entered into through financial market infrastructures, such as authorised clearing facilities or authorised financial markets. Item 2 applies to a reportable transaction under the principal model of client clearing where the clearing member enters into a transaction with a client (an item 2 reportable transaction) and an equal and offsetting transaction with a central counterparty (an item 1 reportable transaction).
11. If items 1, 2 and 3 do not apply, the reportable transaction must be either:
    1. only reportable in this jurisdiction; or
    2. reportable in this jurisdiction and one or more foreign jurisdictions.
12. Item 4 applies if the reporting entity knows that the reportable transaction is only reportable in this jurisdiction. In this situation, the UTI generating entity is determined according to different circumstances of the reportable transaction that are in an order of priority of:
    1. where the reportable transaction has been, or will be, electronically affirmed or confirmed on an affirmation or confirmation platform and the operator of the affirmation or confirmation platform will generate a UTI—the operator of the affirmation or confirmation platform;
    2. if paragraph (a) does not apply and the other counterparty is not a reporting entity or is not required to report the reportable transaction—the reporting entity;
    3. if paragraphs (a) and (b) do not apply and the reporting entity and the other counterparty agree, or agree a method for determining, which of them is the UTI generating entity—the UTI generating entity determined as agreed by the reporting entity and the other counterparty;
    4. otherwise— the counterparty whose LEI with the characters reversed (***reversed LEI***) would appear first if the reversed LEIs of the counterparties were sorted in alphanumeric order, or the only counterparty with an LEI.
13. If items 1, 2, 3 and 4 do not apply, item 5 may apply in the circumstances of the reportable transaction that:
    1. it is only reportable in this jurisdiction, but the reporting entity does not know that it is only reportable in this jurisdiction; or
    2. it is or may be reportable in a foreign jurisdiction.
14. It may not be practical for a reporting entity to determine all of the reporting requirements of the other counterparty – reporting requirements in different jurisdictions that apply to the other counterparty depend on a range of factors such as the asset class or product type of the transaction, the domicile of an entity, the location of the person who enters into the transaction for the other counterparty and whether the transaction will be cleared.
15. Item 4 and item 5 do not require a reporting entity to conclusively determine all of the jurisdictions in which the transaction will be reported. If the reporting entity determines that it knows that the transactions is only reportable in this jurisdiction, item 4 applies. If not, item 5 applies, subject to meeting the requirements in (b) of item 5.
16. The condition (b) of item 5 requires that the reporting entity and the other counterparty determine the UTI generating entity in accordance with a method that is in accordance with the derivative transaction reporting requirements of each of the foreign jurisdiction(s) in which the reportable transaction will or may be reported by the reporting entity.
17. The method used to determine the UTI generating entity may be any method and is not dependent on determining the jurisdiction with the earliest reporting deadline, but is subject to it being:
    1. determined by the reporting entity and the other counterparty; and
    2. in accordance with the derivative transaction reporting requirements of each of the foreign jurisdiction(s) in which the reportable transaction will or may be reported by the reporting entity.
18. The condition (b) of item 5 would not be satisfied where, for example:
    1. the other counterparty is not a reporting entity under the 2024 Rules and the rules of the foreign jurisdiction under which the other counterparty will report the transaction require that the other counterparty determine the jurisdiction with the earliest reporting deadline as an explicit step before determining the method to determine the UTI generating entity – the other counterparty may consider that it cannot apply item 5; and/or
    2. the reporting entity will also report the transaction in a foreign jurisdiction and the rules of that foreign jurisdiction likewise do not provide that the reporting entity can apply item 5.
19. If item 5 does not apply, then one of items 6, 7 and 8 must apply. Subparagraph 2.2.9(3)(b)(ii) provides that the reporting entity apply any one of items 6, 7 or 8 that the reporting entity believes is applicable having regard to its own reporting requirements in foreign jurisdictions, and its knowledge of, or reasonable assumptions about, the reporting requirements of the other counterparty.
20. Items 6, 7 and 8 align with the UTI Guidance in being applicable depending on whether this jurisdiction or a foreign jurisdiction is the jurisdiction with the earliest reporting deadline or if there is no jurisdiction with an earliest reporting deadline.
21. At the time of making the 2024 Rules, in addition to the practical difficulties of determining all of the jurisdictions in which the transaction is reportable, there is not an international consensus about how to determine, among the identified jurisdictions to which the transaction is reportable, which jurisdiction has the earliest reporting deadline.
22. Given these uncertainties, subparagraph 2.2.9(3)(b)(ii) only requires that a reporting entity believes that one of items 6, 7 or 8 applies having regard to its own reporting requirements in foreign jurisdictions, and its knowledge of, or reasonable assumptions about, the reporting requirements of the other counterparty.
23. If item 6 applies, the UTI generating entity is determined under item 6A in the same manner as item 4, but excluding the possibility that the reporting entity is the UTI generating entity as the only entity that will report the transaction.
24. If item 7 applies, the UTI generating entity is determined according to the derivative transaction reporting requirements of the foreign jurisdiction.
25. If item 8 applies, the UTI generating entity is determined under item 8A in an order of priority of:
    1. the UTI generating entity determined as agreed by the reporting entity and the other counterparty;
    2. the operator of the affirmation or confirmation platform;
    3. the operator of the derivative trade repository; and
    4. the counterparty whose reversed LEI would appear first if the reversed LEIs of the counterparties were sorted in alphanumeric order, or the only counterparty with an LEI.
26. In relation to paragraph (c) of item 8A, a derivative trade repository may provide repository services for more than one jurisdiction and holds the reports for each jurisdiction segregated from each other. Paragraph (c) of item 8A only applies to a transaction that is recorded by a derivative trade repository in the records of a single jurisdiction.
27. Paragraph (c) of item 8A does not prescribe the processes by which the operator of the derivative trade repository generates a UTI. The process may be, for example:
    1. reports are submitted without a UTI and the operator of the derivative trade repository generates a UTI and assigns it to the records of each of the reports that it has received; or
    2. the operator of the derivative trade repository requires that one or both of the counterparties apply to receive a UTI generated by the operator and then the counterparties include that UTI in the reports that they submit to the derivative trade repository.
28. Subparagraph (c)(ii) of item 8A allows that the operator of the derivative trade repository may require that the reporting entity and the other counterparty satisfy requirements of the operator for the generation of a UTI (such as applying for a UTI in a particular manner), provided that these requirements are reasonable.
29. Subrule 2.2.9(4) provides that for the purposes of Item 6, 7 and 8 in Table 2, the reporting deadline in this jurisdiction for a reportable transaction is the end of the second business day in Sydney after the day on which the reportable transaction occurs.
30. The general reporting deadline under Rule 2.2.3 for a particular reportable transaction is referenced to the business days of the jurisdiction in which the reportable transaction is entered into – it can be that the reporting deadline for a reportable transaction is two business days in the foreign jurisdiction in which the reportable transaction is entered into but this is three Sydney business days.
31. To avoid unnecessary complexity in determining, for UTI purposes, the jurisdiction with the earliest reporting deadline, subrule 2.2.9(4) sets out a singular reporting deadline for the purposes of Item 6, 7 and 8 in Table 2 as the end of the second business day in Sydney.
32. Subrule 2.2.9(6) deals with the situation that the reporting entity is not the UTI generating entity for the reportable transaction and does not receive a UTI from the UTI generating entity determined under subrule (3) in sufficient time to enable the reporting entity to report the UTI for the reportable transaction in accordance with Rule 2.2.3.
33. Paragraph 2.2.9(6)(a) deals with the temporary non-receipt of a UTI from the UTI generating entity (such as where the UTI generating entity does not promptly provide the UTI to the reporting entity). Paragraphs 2.2.9(6)(b) and (c) deal with the permanent non-receipt of a UTI from the UTI generating entity (such as where, for example, a foreign central counterparty is determined under the 2024 Rules to be the UTI generating entity but the foreign jurisdiction of the central counterparty does not impose UTI generation obligations on the central counterparty).
34. The expression “in sufficient time” is not defined in specific temporal terms but rather in relation to sufficient time to enable the reporting entity to report the UTI for the reportable transaction in accordance with the requirements of Rule 2.2.3. It is anticipated that reporting entities will have capabilities to delay the ordinary reporting of a transaction pending receipt of a UTI to the extent that this delay does not unduly disrupt the transaction reporting processes of the reporting entity.
35. Under subrule 2.2.9(6):
    1. if the reporting entity reasonably believes that it will, at a later time, receive the UTI from the UTI generating entity determined under subrule (3), the reporting entity must generate a UTI and report that UTI for the reportable transaction in accordance with this Part;
    2. if the reporting entity reasonably believes that it will not receive the UTI from the UTI generating entity determined under subrule (3), the reporting entity must use its best endeavours to determine the UTI generating entity (new UTI generating entity) according to the next applicable item in Table 2 in subrule (3); and
    3. if the new UTI generating entity:
       1. is the reporting entity; or
       2. is not the reporting entity and does not provide the reporting entity with a UTI in sufficient time to enable the reporting entity to report the UTI for the reportable transaction in accordance with rule 2.2.3;

the reporting entity must generate a UTI and report that UTI for the reportable transaction in accordance with this Part.

1. The note to subrule 2.2.9(6) explains, by way of examples, that a reporting entity may not receive a UTI from another entity in sufficient time to report the reportable transaction because the other entity is not required by the rules of its home jurisdiction to generate a UTI or the UTI generating entity has not promptly provided the UTI to the reporting entity.
2. Subrule 2.2.9(7) deals with the appointment of a person (***Service Provider***) to generate the UTI for a reportable transaction for which the reporting entity is the UTI generating entity, provided that:
   1. the terms of the Service Provider’s appointment and any related agreements or arrangements require that the Service Provider generate a UTI using the Service Provider’s LEI as the LEI component of the UTI; and
   2. the terms of the Service Provider’s appointment and any related agreements or arrangements require that the Service Provider provide that UTI to the other counterparty in accordance with subrule (5)(b).
3. Subrule 2.2.9(8) provides that, for the avoidance of doubt, a reporting entity:
   1. that appoints a Service Provider under subrule (7); or
   2. is an RE or trustee that appoints a person to enter into OTC derivative Transactions on behalf of the RE or trustee and that person acts for the RE or trustee under this Rule for a reportable transaction;

contravenes this Rule if the Service Provider or person appointed does not determine and provide a UTI as required under this Rule 2.2.9.

Part 2.3 Records

1. Part 2.3 of the 2024 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 2024 Rules, as permitted by paragraph 901A(3)(h) of the Corporations Act.
2. 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 2024 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)).
3. 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).
4. 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).
5. 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 2024 Rules.
6. 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.
7. 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

1. Part 2.4 of the 2024 Rules deals with the transition of derivative transaction information from the requirements of the 2022 Rules to the requirements of the 2024 Rules in relation to reports for a reportable transaction that were reported prior to the commencement of the 2024 Rules.
2. Subrule 2.4.1(1) requires that, subject to subrule (2), a reporting entity that has, on or before 20 October 2024, made a report for a reportable transaction and:
   1. the OTC derivative the subject of the reportable transaction has an expiration date (as defined by item 18 of Table S1.1(1)) later than 20 October 2025;
   2. the OTC derivative has not been terminated on or before 20 April 2025;
   3. the current state information about the OTC derivative reported on or before 20 October 2024 does not include:
      1. all of the derivative transaction information set out in column 3 of Table S1.1(1), to the extent that information is relevant to the reportable transaction; or
      2. information in accordance with the format and allowed values set out in columns 4-5 of Table S1.1(1),

the reporting entity must, by 20 April 2025 make a change report about the OTC derivative under subrule 2.2.2(1) that includes the information specified in subparagraph 2.4.1(c).

1. A report for a reportable transaction made on or before 20 October 2024 would have been reported under the 2022 Rules or 2013 Rules. The derivative transaction information reported under the 2022 Rules or 2013 Rules would generally have information that does not include all of the data elements information required under the 2024 Rules and would also generally have data element information that is not a value that is allowed under the 2024 Rules and/or is not in the format required under the 2024 Rules.
2. By 20 April 2025, reporting entities are required to make a change report under subrule 2.2.2(1) to update the current state of the derivative transaction information about each of their OTC derivatives so that it meets the requirements for derivative transaction information under the 2024 Rules.
3. A reporting entity is not required to update the current state of the derivative transaction information about an OTC derivative if the OTC derivative:
   1. has been terminated by 20 April 2025; or
   2. has an expiration date not later than 20 October 2025.
4. In addition, subrule 2.4.1(2) provides that a reporting entity is not required to include in a change report made under subrule 2.4.1(1) derivative transaction information set out in column 3 of Table S1.1(1) that:
   1. has not been recorded in electronic form in the systems that are the source of derivative transaction information; or
   2. is not able to be created by the systems that create derivative transaction information in the ordinary way that the systems create derivative transaction information for a report made after 20 October 2024.
5. In making reports under the 2024 Rules, reporting entities generally extract information from their business systems and then use one or more other systems, which may include the systems of a person appointed to report on behalf of the reporting entity, to create derivative transaction information. This may include transforming, supplementing or making no changes to information extracted from the ordinary business systems.
6. For a reporting entity’s report made under the 2022 Rules or 2013 Rules, some derivative transaction information required under the 2024 Rules but not required under the 2022 Rules and 2013 Rules:
   1. may not exist;
   2. may not be held in electronic form in the systems that are the source of derivative transaction information; or
   3. may not be able to be created by the systems that create derivative transaction information in the ordinary way that the systems create derivative transaction information for a report made after 20 October 2024.
7. Derivative transaction information of this kind may include, for example, the identifier of the execution agent of counterparty 1, the market identifier code that is the platform identifier, information about basket codes and constituents and information about packages. In this case, this information is not required to be reported as derivative transaction information under subrule 2.4.1(1).
8. However, where there is derivative transaction information required under the 2024 Rules but not required under the 2022 Rules and 2013 Rules that is held in electronic form in the systems that are the source of derivative transaction information or able to be created by the systems that create derivative transaction information in the ordinary way that the systems create derivative transaction information for a report made after 20 October 2024, the derivative transaction information is required to be reported under subrule 2.4.1(1).
9. Derivative transaction information of this kind may include, for example, price in relation to commodity or equity derivatives, spread in relation to spreads to floating rate reference rates in interest rate derivatives and information related to leg 2 of interest rate derivatives. In this case, this information is required to be reported as derivative transaction information under subrule 2.4.1(1).

Schedule 1: Information requirements

1. Schedule 1 provides for the information to be reported in accordance with the transaction reporting requirements established under subrule 2.2.1(1).

Part S1.1 Preliminary

1. Part S1.1 provides that, in the Schedule, a reference to a reporting entity that is an RE, trustee or corporate director of a CCIV includes a reference to a person appointed by the RE, trustee, corporate director of a CCIV or a CCIV to enter into OTC derivatives on behalf of the RE, trustee or CCIV.
2. The note to Part S1.1 explains, by way of an example, that a person so appointed may be a fund manager—in which case, the reporting entity or the fund manager may, for example, create and maintain data elements of client codes, collateral portfolio codes, package identifiers, custom basket codes and event identifiers.

Part S1.2 Definitions

Rule S1.2.1 Definitions

1. Rule S1.2.1 provides definitions for the following terms used in the Definitions and the Tables in Part S1.3:
   1. Business Identifier Code;
   2. CCP;
   3. Client Code;
   4. Designated Business Identifier;
   5. GLEIF;
   6. ISIN;
   7. MIC;
   8. Portfolio Basis;
   9. reported as a monetary amount;
   10. reported as a decimal;
   11. reported in basis points;
   12. RIC;
   13. ROC Statement; and
   14. UPI.

Part S1.3 Derivative transaction information

Rule S1.3.1 Derivative transaction information

1. Rule S1.3.1 and Tables S1.1(1) to (3) set out the derivative transaction information that must be reported in relation to reportable transactions for the purposes of Rules 2.2.1 and 2.2.2. Table S1.1(1) sets out the transaction information, Table S1.1(2) sets out the valuation information and Table S1.1(3) sets out the collateral information to be reported.
2. The derivative transaction information set out in Part S1.3 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.
3. The derivative transaction information set out in Part S1.3 falls broadly into the following categories
   1. counterparty information – such as an identifier for the counterparty to a derivative (e.g. an LEI);
   2. operational information – such as an identifier for the derivative transaction, and information about whether the derivative transaction was traded on an execution venue and/or cleared;
   3. product information – such as an identifier of the type of derivative that conveys information about its general type (e.g. swap, forward, option), underlier and other characteristics;
   4. transaction economics – the material terms of a derivative, including effective dates, expiration dates, notional amounts, prices and interest rates;
   5. exposure data – information about the valuation of a derivative, and information about collateral exchanged on the derivative; and
   6. event data – information that records the occurrence of an event and includes a timestamp, such as a clearing, execution or reporting timestamp.
4. As at the date the 2024 Rules commence, it is intended that no exemption instrument will modify the information requirements of the 2024 Rules – certain exemptions in Instrument 2015/844 are intended to be ended upon the commencement of the 2024 Rules as summarised in the table below.

|  |  |  |
| --- | --- | --- |
| **Exemption:** | **Exemption for:** | **In the 2024 Rules:** |
| Exemption 2 (Entity Information) | * entity identifiers where entity identifiers of certain types are applied for within two business days | * a form of the exemption is incorporated in S1.3.1(2) |
|  | * entity identifiers for certain types of foreign counterparties in transactions entered into by NZ registered banks | * the rules no longer have the scope for which the exemption was required |
| Exemption 2A (Reference Entity Information) | * reference entity identifiers for certain types of credit derivatives where an identifier of a certain type is reported | * the rules no longer require reporting of reference entity identifiers |
| Exemption 2B (Joint Counterparties) | * entity identifiers for counterparties who have entered into transactions as joint or joint and several counterparties | * the requirement for entity identifiers for joint or joint and several counterparties is set out in S1.3.1(2) |
| Exemption 3 (Name Information) | * entity name information where entity identifiers of certain types are reported | * the rules no longer require reporting of name information |
| Exemption 7 (Trade identifiers) | * UTIs other than identifiers generated under foreign rules or by certain trading platforms or confirmation platforms | * the requirements for UTIs are set out in 2.2.9 and Tables S1.1(1)-(3) |

Incorporation by reference

1. This instrument incorporates by reference certain International Organization for Standardization (**ISO**) standards. Certain derivative transaction information is required to be reported in the format and structure specified in the referenced ISO standard. Certain derivative transaction information is also required to be reported as a value that is created or issued and maintained under the referenced ISO standard. These standards are:
   1. ISO 3166 Country Codes;
   2. ISO 4217 Codes for the representation of currencies.
   3. ISO 4914 Financial services — Unique product identifier (UPI);
   4. ISO 6166 Financial services — International securities identification number (ISIN);
   5. ISO 8601 Date and time — Representations for information interchange;
   6. ISO 9362 Banking — Banking telecommunication messages — Business identifier code (BIC);
   7. ISO 10383 Securities and related financial Instruments — Codes for exchanges and market Identification;
   8. ISO 17442 Financial services — Legal entity identifier (LEI);
   9. ISO 20022 Financial services — Universal financial message scheme; and
   10. ISO 23897 Financial services — Unique transaction identifier (UTI);

These ISO standards are available on the website maintained by ISO at <https://www.iso.org/home.html>.

1. This instrument complies with section 14 of the *Legislation Act 2003*. Under subsection 907B(2) of the Corporations Act, the 2024 Rules may incorporate any matter contained in a writing as in force or existing from time to time and subsection 907B(3) provide that subsection (2) has effect despite subsection 14(2) of the *Legislation Act 2003*.

Legislative instrument and primary legislation

1. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
   1. the 2024 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
   2. the 2024 Rules contain technical detail which would otherwise introduce unnecessary complexity to the primary legislation. As a consequence, if the matters in the 2024 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**

1. This instrument will automatically sunset in accordance with section 50 of the *Legislation Act 2003* (***Legislation Act***) on 1 April 2033.
2. This duration is appropriate because:
   1. the instrument is made under a specifically delegated power which is set out in the primary legislation and is intended to complement the requirements or objectives in the primary legislation – see Part 7.5A of the Corporations Act; and
   2. there would be appreciable business uncertainty about the treatment of, or framework for, business activities giving rise to significant commercial risks and/or costs if the sunsetting period was shorter – in CP 361, we identified anticipated significant investments by reporting entities in making changes to their systems and processes to:
      1. source additional data elements from front-office, middle-office and/or post-trade systems;
      2. determine UTI generating entities and generate, share and handle receipt/non-receipt of UTIs;
      3. create, obtain and/or receive UPIs;
      4. engage in outreach with counterparties about LEI requirements and update counterparty reference data; and
      5. form and submit to trade repositories ISO 20022 reporting messages.

**Legislative authority**

1. The instrument is made under section 901A of the Corporations Act.
2. 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. Section 44 of the Legislation Act does not apply to this instrument. This instrument is subject to disallowance.
3. 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

1. 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:
   1. 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
   2. 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)).
2. 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:
   1. 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
   2. 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.
3. As at the time of making of the 2024 Rules, *ASIC Prescribed Trade Repositories Determination [15-0591]* prescribes eight overseas derivative trade repositories as prescribed repositories.
4. 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:
   1. specifying the classes of derivative transactions in relation to which particular requirements apply (see paragraph 901A(3)(a) of the Corporations Act);
   2. for reporting requirements:
      1. 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
      2. specifying the information that is required to be reported (see paragraph 901A(3)(c) of the Corporations Act);
   3. specifying the persons who are required to comply with requirements imposed by the rules (see paragraph 901A(3)(e) of the Corporations Act);
   4. the manner and form in which persons must comply with requirements imposed by the rules (see paragraph 901A(3)(f) of the Corporations Act);
   5. the circumstances in which persons are, or may be, relieved from complying with requirements in the rules that would otherwise apply to them (see paragraph 901A(3)(g) of the Corporations Act);
   6. 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 rules (see paragraph 901A(3)(h) of the Corporations Act);
   7. 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

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

*Ministerial determination*

1. 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.
2. 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:
   1. commodity derivatives that are not electricity derivatives;
   2. credit derivatives;
   3. equity derivatives;
   4. foreign exchange derivatives; and
   5. interest rate derivatives.
3. The 2024 Rules apply only to derivative transactions in derivatives in the prescribed class.

*Transactions and positions to which the 2024 Rules apply*

1. 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.
2. 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 continued the reporting requirements of the 2013 Rules and did 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. The 2024 Rules change the reporting requirements of the 2022 Rules but do not impose any new or additional reporting requirements on derivative transactions entered into, or positions as they were, before the commencement of the 2024 Rules.

*Corporations Regulations*

1. Under section 901C of the Corporations Act, the Corporations Regulations may provide that the derivative transaction rules:
   1. cannot impose requirements (or certain kinds of requirements) in relation to certain classes of derivative transactions; or
   2. can only impose requirements (or certain kinds of requirements) in relation to certain classes of derivative transactions in certain circumstances.
2. Under section 901D of the Corporations Act, the Corporations Regulations may provide that the derivative transaction rules:
   1. cannot impose requirements (or certain kinds of requirements) on certain classes of persons; or
   2. can only impose requirements (or certain kinds of requirements) on certain classes of persons in certain circumstances.
3. Regulation 7.5A.50 of the Corporations Regulations precludes derivative transaction rules being imposed upon “end users”, defined as persons who are not:
   1. Australian ADIs; or
   2. CS facility licensees;
   3. AFS licensees; or
   4. 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.
4. 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:
   1. who are taken not to be end users only because they are an AFS licensee; and
   2. whose AFS licence does not authorise them to provide financial services in relation to that class derivatives,
5. The 2024 Rules do not impose requirements on end users, or AFS licensees which are captured by paragraph (2A).

**Statement of Compatibility with Human Rights**

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.

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) 2024***

Overview

1. The *ASIC Derivative Transaction Rules (Reporting) 2024* (the ***2024 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) 2022* (the ***2022 Rules***) so as to continue, but update, the requirements for the reporting of over-the-counter (***OTC***) derivatives transactions.
3. The requirements to report OTC derivatives transactions were introduced in Australia in 2013 (as the *ASIC Derivative Transaction Rules (Reporting) 2013*) 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. Between 2012 and 2018, international standards and guidance for the reporting of certain derivatives transactions information was developed with a view to common adoption across G20 and Financial Stability Board (***FSB***) 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.
5. These international standards are:
   1. A system for global Legal Entity Identifiers (***LEIs***) recommended by the FSB in [A global legal entity identifier for financial markets](https://www.fsb.org/2012/06/fsb-report-global-legal-entity-identifier-for-financial-markets/), June 2012 which was endorsed by the G20 at the Los Cabos Summit in June 2012;
   2. CPMI IOSCO[[4]](#footnote-5), [*Technical guidance: Harmonisation of the unique transaction identifier*](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD557.pdf), February 2017 (***UTI Guidance***);
   3. CPMI IOSCO, [*Technical guidance: Harmonisation of the unique product identifier*](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD580.pdf), September 2017 (***UPI Guidance***); and
   4. Regulatory Oversight Committee, [*Technical guidance: Harmonisation of critical OTC derivatives data elements (other than UTI and UPI)*](https://www.leiroc.org/publications/gls/roc_20210922.pdf), September 2021 (***CDE Guidance***)[[5]](#footnote-6)

(together, the ***international standards***).

1. Since 2020, in line with their G20 commitments and the FSB’s expectations, several major jurisdictions have updated their derivatives transactions reporting rules to adopt the international standards, or have released consultation proposals papers about adopting the standards. This includes the United States (September 2020), the European Union (December 2020), Hong Kong (April 2019), Singapore (June 2021), the UK (November 2021), Canada (June 2022) and Japan (August 2022). ASIC made proposals to adopt the international standards in a first consultation paper in November 2020, [Consultation Paper 334](https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-334-proposed-changes-to-simplify-the-asic-derivative-transaction-rules-reporting-first-consultation/) Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation, and a second consultation paper in May 2022, [Consultation Paper 361](https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-361-proposed-changes-to-simplify-the-asic-derivative-transaction-rules-reporting-second-consultation/) Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation.
2. This instrument implements ASIC’s consultation conclusions.
3. The purpose of this instrument is to continue the requirements that first commenced in 2013 to report information about OTC derivatives transactions by businesses licensed by ASIC or otherwise authorised to deal in derivatives in Australia, but updates the requirements to:
   1. harmonise to the international standards for LEIs, transaction identifiers (UTI Guidance), product identifiers (UPI Guidance) and critical data elements (CDE Guidance, supplemented with other important data elements) as implemented or proposed in other jurisdictions;
   2. remove outdated transitional provisions and consolidate associated exemptions within this instrument;
   3. ensure that they are fit for purpose as to the scope of reporting entities, derivative products and types of transactions that are subject to this instrument and clear as to the roles and responsibilities of entities submitting derivative transaction reports; and
   4. harmonise to an internationally adopted technical standard for reporting under ISO 20022 *Financial services – Universal financial messaging scheme*.
4. Harmonising to the international standards has the purposes of reducing ongoing costs and complexity for industry, improving data quality for the Australian regulators, including more comprehensive and fit for purpose transaction details, and improving inter-jurisdictional data handling and aggregation.
5. This instrument is simplified by removing outdated transitional provisions of the 2022 Rules and by consolidating associated exemptions to the 2022 Rules within this instrument. This has the purpose of clarifying for entities the requirements that apply to them, including by removing the need to refer to other exemption instruments to understand the requirements in full.
6. This instrument also updates the 2022 Rules to clarify certain requirements and improve reporting to better satisfy the needs of the Australian regulators by:
   1. clarifying that trades by foreign Australian financial services (***AFS***) licensees with Australian retail clients are always reportable;
   2. exempting small-scale buy-side entities from certain elements of the extended reporting requirements in this instrument;
   3. aligning the compliance obligations of entities that use outsourced reporting services with all other regulatory provisions for outsourcing;
   4. implementing lifecycle reporting for all derivative products; and
   5. curtailing recurring duplicative reporting of all outstanding transactions rather than just the new or changed transactions since the last report of transactions.
7. This instrument:
   1. imposes reporting requirements as permitted by paragraph 901A(2)(b) and subsection 901A(6) of the Corporations Act;
   2. specifies the persons who are required to comply with the reporting requirements imposed by the 2024 Rules as permitted by paragraph 901A(3)(e) of the Corporations Act;
   3. deals with the manner and form in which persons are required to comply with the reporting requirement imposed by the 2024 Rules as permitted by paragraph 901A(3)(f) of the Corporations Act; and
   4. deals with the circumstances in which persons are relieved from complying with the reporting requirements in the 2024 Rules that would otherwise apply to them as permitted by paragraph 901A(3)(g) of the Corporations Act.
8. The information that is required to be reported falls broadly into the following categories:
   1. counterparty information – such as an identifier for the counterparties to a derivative (e.g. an LEI);
   2. other entity information – such as an identifier for the reporting entity, beneficiary, broker, central clearing facility, clearing member or the person making the report in relation to a derivative (e.g. an LEI);
   3. operational information – such as an identifier for the derivative transaction, and information about whether the derivative transaction was traded on an execution venue and/or cleared;
   4. product information – such as an identifier of the type of derivative that conveys information about its general type (e.g. swap, forward, option), underlier and other characteristics;
   5. transaction economics – the material terms of a derivative, including effective dates, expiration dates, notional amounts, prices and interest rates;
   6. exposures data – information about the valuation of a derivative, and information about collateral exchanged on the derivative; and
   7. event data – information that records the occurrence of an event and includes a timestamp, such as a clearing, execution or reporting timestamp.
9. An important update in this instrument from the 2022 Rules is that there are no longer any requirements to report the name of any counterparty or other entity – all counterparties and other entities are only identified with an identifier code. As is the case with identifier codes reported under the 2022 Rules, for the vast majority of counterparties and beneficiaries that are individuals, it is expected that these identifier codes (as required under this instrument for a “client code”) will be created by, and be unique to, the reporting entity. As such, ASIC will not be able to derive the name of the individual from publicly available information or other information ordinarily held by ASIC.

Assessment of human rights implications

*Article 17 of the International Covenant on Civil and Political Rights*

1. 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](https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/privacy-and-reputation) 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.
2. This instrument may engage the right to privacy and reputation in Article 17
3. 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 it 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*(the ***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.
4. Derivative trade data includes, for each side of an OTC derivative transaction, information that is capable of identifying the counterparties to the OTC derivative (referred to as “counterparty information”). If applicable, derivative trade data also includes information that 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 or the person making the derivatives trade data report to a derivative trade repository (see Tables S1.1(1), S1.1(2) and S1.1(3) in Schedule 1 to the instrument).
5. “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.
6. This is the case where the counterparty or other entity is an individual and the reporting entity reporting the OTC derivative provides a code to identify the individual from which the identity of the individual can reasonably be ascertained. Such identifiers of individuals may be codes (e.g. an LEI) that allow the identity of the individual to be ascertained from publicly available databases, but it is expected that the vast majority of these codes will be a “client code” created by, and unique to, the reporting entity and ASIC will not be able to derive the name of the entity from publicly available information or other information ordinarily held by ASIC.
7. The right in Article 17 is engaged by the instrument by reason that the reporting of derivative trade data in accordance with the instrument may:
   1. involve the collection, storage, security, use or disclosure of personal information;
   2. create confidentiality or secrecy provisions relating to personal information; and
   3. provide for mandatory disclosure or reporting of information.
8. 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:
   1. 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);
   2. 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;
   3. 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
   4. 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 Act).
9. The instrument is subject to a number of safeguards, including
   1. 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
   2. 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.
10. 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.
11. 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.
12. 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.”

1. 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.
2. 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

1. 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*.

1. CPMI-IOSCO refers to the joint work of the Committee on Payments and Market Infrastructures (CPMI) of the Bank for International Settlements and the International Organisation of Securities Commissions (IOSCO). [↑](#footnote-ref-2)
2. CPMI IOSCO first published the CDE Guidance in April 2018. Since October 2020, the Regulatory Oversight Committee ([ROC](https://www.leiroc.org)) has been designated as the International Governance Body for the CDE Guidance and published an update to the CDE Guidance in September 2021. [↑](#footnote-ref-3)
3. In August 2022, the Regulatory Oversight Committee released a consultation paper that proposed to add 11 new data elements to the CDE Guidance, of which 7 are already included in the 2024 Rules. At the time of writing, any revisions to the CDE Guidance have not been finalised. [↑](#footnote-ref-4)
4. CPMI-IOSCO refers to the joint work of the Committee on Payments and Market Infrastructures (CPMI) of the Bank for International Settlements and the International Organisation of Securities Commissions (IOSCO). [↑](#footnote-ref-5)
5. CPMI IOSCO first published the CDE Guidance in April 2018. Since October 2020, the Regulatory Oversight Committee ([ROC](https://www.leiroc.org)) has been designated as the International Governance Body for the CDE Guidance and published an update to the CDE Guidance in September 2021. [↑](#footnote-ref-6)