



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Derivative Trade Repository Rules 2023

This is the Explanatory Statement for *ASIC Derivative Trade Repository Rules 2023* (the **Rules**, or the **instrument**).

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

Summary

1. This instrument remakes the *ASIC Derivative Trade Repository Rules (Reporting) 2013* (the **2013 Rules**) in substantially the same form to continue the operation of Australia's over-the-counter (**OTC**) derivatives trade reporting regime (**trade reporting regime**) under Part 7.5A of the Corporations Act 2001 (**Corporations Act**).
2. On 9 July 2013, with the Minister's consent, ASIC concurrently made the 2013 Rules and the *ASIC Derivative Transaction Rules (Reporting) 2013 (Reporting Rules¹)*, both initially due to sunset on 1 October 2023. Together, these rules facilitated the commencement of Australia's trade reporting regime. The trade reporting regime implemented a key component of Australia's Group of Twenty (**G20**) OTC derivatives reforms commitment at the Pittsburgh Summit in September 2009² following the Global Financial Crisis (**GFC**).
3. Broadly, the Reporting Rules require individual reporting entities to report transactions to a derivative trade repository, and the Rules require a licensed derivative trade repository to, among other things, provide participants with access to its services, receive and handle the derivative trade data reported by entities under the Reporting Rules, and provide timely and reliable access to derivative trade data to ASIC and, if required, to other Australian regulators.
4. In June 2023, ASIC consulted on remaking the 2013 Rules. This instrument implements ASIC's consultation proposals for the Rules and substantially continues the requirements imposed on operators and officers of licensed

¹ The *ASIC Derivative Transaction Rules (Reporting) 2013* were repealed and remade as the *ASIC Derivative Transaction Rules (Reporting) 2022* on 19 December 2022, and will be repealed and remade as the *ASIC Derivative Transaction Rules (Reporting) 2024* on 21 October 2024.

² [G20, 'Leaders' Statement](#), 3rd Summit, Pittsburgh, 24-25 September 2009.

derivative trade repositories under the 2013 Rules, except for two minor and targeted updates to:

- (a) include an administrative provision for ASIC to issue limited directions to manage erroneous derivative trade data in narrow circumstances; and
 - (b) remove the “underlier location” category of weekly statistical data required for public reporting to reduce the burden on a licensed trade repository to create and disclose data not directly reporting under the Reporting Rules.
5. The Rules seek to implement principles and guidance published by the Committee on Payments and Market Infrastructure (*CPMI*) and the International Organization of Securities Commissions (*IOSCO*) as the [*Principles for Financial Market Infrastructures*](#) (*CPMI–IOSCO Principles*) in 2012.

Purpose of the instrument

6. The purpose of this instrument is to continue the requirements of the 2013 Rules beyond the initial sunset date of 1 October 2023. The instrument does this by remaking the 2013 Rules in substantially the same form, except for two minor and targeted policy updates in relation to the handling and use of derivative trade data.
7. In response to the GFC, the leaders of the G20 nations agreed to a range of reforms to OTC derivatives markets at the 2009 Pittsburgh Summit. The agreed reforms included:
- (a) mandatory reporting of OTC derivative transactions to trade repositories;
 - (b) all standardised OTC derivative transactions to be made on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties; and
 - (c) non-centrally cleared transactions to be subject to higher capital requirements
- (together the *OTC derivatives reforms*).
8. The 2013 Rules were designed to:
- (a) implement the Australian Government’s G20 commitments in relation to trade reporting;
 - (b) achieve the stated objectives of the OTC derivative reforms, in particular, by enhancing the transparency of OTC derivative markets, both to regulators and the public, leading to an increased capacity for the oversight and monitoring of systemic risk and the detection and prevention of market abuse;

- (c) ensure that the Australian trade reporting regime is consistent with other international regimes, including those in the European Union (*EU*), the United States (*US*), Canada, Singapore and Hong Kong, for mutual recognition or substituted compliance purposes; and
 - (d) implement the CPMI-IOSCO Principles, published in July 2012, and the relevant “key considerations” to the CPMI-IOSCO Principles within the framework provided under Pt 7.5A of the Corporations Act to the extent that they apply to derivative trade repositories.
9. In July 2013, with the Minister’s consent, ASIC concurrently made the 2013 Rules and the 2013 Reporting Rules. Together, these rules facilitated the commencement of Australia’s derivatives trade reporting regime under Pt 7.5A of the Corporations Act and fulfilled a key component of Australia’s G20 OTC derivatives reforms commitment.
10. ASIC made the 2013 Rules under subsection 903A(1) of the Corporations Act, making provisions dealing with matters prescribed in subsections 903A(2) and (3), such as:
- (a) the manner in which licensed derivative trade repositories provide their services;
 - (b) the handling or use of derivative trade data by licensed derivative trade repositories and their officers and employees;
 - (c) the governance, management and resources (including financial, technological and human resources) of licensed derivative trade repositories;
 - (d) the disclosure of conditions, including fees, on which licensed derivative trade repositories provide their services;
 - (e) the reporting to ASIC or other regulators of matters related to licensed derivative trade repositories and
 - (f) specifying the persons, the manner and form, and the circumstances in which persons are required to comply with requirements imposed by the rules and the keeping of records (paragraphs 903A(3)(a)–(d)).
11. On 22 September 2023, with the Minister’s consent, ASIC made the Rules which remade the 2013 Rules in substantially the same form, except for two minor and targeted policy updates to:
- (a) include a limited, administrative ASIC direction provision to manage erroneous derivative trade data in narrow circumstances (see subrules 2.3.4(5) and (6)); and
 - (b) remove the underlier location category from public reporting requirements to reduce the burden on a licensed trade repository to create and publicly report data which is not being directly reported under the Reporting Rules.

12. The Rules ensure the continuation of requirements imposed on operators and officers of licensed trade repositories under the 2013 Rules, in substantially the same form, beyond the 1 October 2023 sunset date of the 2013 Rules. The Rules support the ongoing operation of the trade reporting regime and implementation of the CPMI-IOSCO Principles.
13. A broad mapping of the Rules to the CPMI-IOSCO Principles that are applicable to derivative trade repositories, is set out in the following table.

CPMI-IOSCO Principle	Corresponding Rule reference
Principle 1: Legal basis	Rule 2.2.1—Legal basis
Principle 2: Governance arrangements	Rule 2.4.1—Governance Rule 2.4.2—Handling of conflicts of interest (in part) Rule 2.4.6—Human resources
Principle 3: Framework for the comprehensive management of risks	Rule 2.4.4—Risk management (in part) Rule 2.4.11—Recovery and resolution
Principle 15: General business risk	Rule 2.4.4—Risk management (in part) Rule 2.4.7—Financial resources
Principle 17: Operational risk	Rule 2.4.4—Risk management (in part) Rule 2.4.8—Integrity and security of computer systems and other systems Rule 2.4.9—Operational reliability Rule 2.4.10—Business continuity planning
Principle 18: Access and participation	Rule 2.2.2—Access and participation requirements
Principle 19: Tiered participation arrangements	Rule 2.2.2—Access and participation requirements (in part) Rule 2.4.4—Risk management (in part)
Principle 20: Financial market infrastructure links	Rule 2.4.4—Risk management (in part)
Principle 21: Efficiency and effectiveness	Rule 2.2.3—Security, efficiency and effectiveness of services Rule 2.4.5—Resources
Principle 22: Communication procedures and standards	Rule 2.3.7—Communication procedures and standards
Principle 23: Disclosure of rules, key procedures and market data	Rule 2.5.1— Disclosure of rules, procedures and other information Rule 2.5.2—Public disclosures

Principle 24: Disclosure of market data by trade repositories	Rule 2.3.4—Provision of access to derivative trade data Rules 2.3.5 and 2.3.6 —Creation and disclosure of statistical data
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14. The Rules maintain the operation of the trade reporting regime which provides valuable transparency for regulators in relation to trading activity, positions, and counterparty exposures. The derivative trade data reported to trade repositories assists regulators in identifying financial system vulnerabilities, conducting market surveillance, monitoring market metrics and practices, and informing policy developments and assessing outcomes.

Consultation

15. Except in emergency situations (see section 903J), under section 903G of the Corporations Act, ASIC must not make a derivative trade repository rule unless ASIC has consulted:
- (a) the public about the proposed rule; and
 - (b) any other person or body as required by regulations made for the purpose of paragraph 903G(1)(b) of the Corporations Act.

As at the date of making the Rules, there are no regulations of the *Corporations Regulations 2001 (Corporations Regulations)* made under paragraph 903G(1)(b) of the Corporations Act.

16. On 15 June 2023, ASIC released [Consultation Paper 370](#) *Proposed remake of the ASIC Derivative Trade Repository Rules 2013 (CP 370)*. CP 370 proposed to remake the 2013 Rules in substantially the same form except for two minor and targeted policy updates to Part 2.3 ‘Handling and use of derivative trade data by Trade Repositories and their Officers and employees’. Submissions to CP 370 closed on 6 July 2023.
17. ASIC received two written submissions to CP 370, from DTCC Data Repository (Singapore) Pte Ltd (**DDRS**) and the Financial Services Committee of the Business Law Section of the Law Council of Australia. Broadly, the submissions were supportive of the proposals set out in CP 370.
18. Whilst the level of feedback we received is very low, it was consistent with our expectations. There was only one licensed trade repository at the time of consultation. At the same time, there were many trade reporting regulatory changes being reviewed and implemented globally by trade repositories and reporting entities. To ensure that there was broad industry awareness, ASIC promoted the publication of CP 370 through our established communication channels for OTC derivative trade reporting, including directly emailing stakeholders and industry associations and publishing an article in ASIC’s monthly, online *Market Integrity Update* newsletter.
19. For historical context and completeness, on 15 March 2013, ASIC released [Consultation Paper 201](#) *Derivative trade repositories (CP 201)*, which proposed

the initial draft derivative trade repository rules and draft regulatory guidance on ASIC's proposed approach to granting Australian derivative trade repository licences and how to apply for them. ASIC received 8 written submissions (including 1 confidential submission) and conducted meetings with relevant stakeholders. Generally, submissions were supportive of the approach taken, and there were few substantive issues raised.

Other consultation

20. ASIC has consulted with the Reserve Bank of Australia (**RBA**) and the Australian Prudential Regulation Authority (**APRA**). The RBA and APRA respectively did not object to, and supported, the proposed remake of the 2013 Rules and minor policy updates set out in CP 370. Broadly, the Rules set out requirements for an operator to provide access and data to ASIC, APRA and RBA, together referred to as "Australian Regulators".

Operation of the instrument

Chapter 1: Introduction

Part 1.1 Preliminary

21. Rule 1.1.1 provides that ASIC makes the instrument under section 903A of the Corporations Act. Section 903A of the Corporations Act empowers ASIC to make derivative trade repository rules dealing with matters as permitted by that section.
22. Rule 1.1.2 provides that the title for the instrument is *ASIC Derivative Trade Repository Rules 2023*.
23. Rule 1.1.3 provides that the instrument commences on the later of 1 October 2023 and the day after the instrument is registered on the Federal Register of Legislation. The 2013 Rules ceased to operate on 1 October 2023.
24. Rule 1.1.4 provides that the maximum pecuniary penalty payable for a contravention of a provision of the Rules is an amount determined by the Court under section 1317G of the Corporations Act.

Part 1.2 Interpretation

25. Rule 1.2.1 provides that, in the Rules, unless the contrary intention appears, a reference to time is to Australian Eastern Standard Time (AEST) or Australian Eastern Daylight Time (AEDT), as relevant, in Sydney, Australia.
26. Rule 1.2.2 provides that words and expressions defined in the Corporations Act will, unless otherwise defined or specified in these Rules or the contrary intention appears, have the same meaning in these Rules. For convenience, some words and expressions defined in the Corporations Act are cross-referenced in Rule 1.2.3.

27. Rule 1.2.3 provides definitions for terms used in the Rules. This includes but is not limited to the following terms, which are either new or changed in the Rules from the 2013 Rules:

“**Chapter 5 Body Corporate**” has the meaning given by section 9 of the Corporations Act.

“**Corporations Act**” means the Corporations Act 2001 (previously defined as the “Act”).

“**Reporting Rules**” means the *ASIC Derivative Transaction Rules (Reporting) 2022* and from 21 October 2024 means the *ASIC Derivative Transaction Rules (Reporting) 2024*.

28. Rule 1.2.3 also provides definitions for other terms used in the Rules. This includes but is not limited to the terms “prescribed derivative trade repository” and “prescribed foreign regulator”.
29. Rule 1.2.3 defines “prescribed derivative trade repository” as having the same meaning as in section 761A of the Corporations Act. 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). Regulation 7.5A.30 of the Corporations Regulations sets out that, after 30 June 2015, a prescribed facility is a facility determined by ASIC for the purposes of this paragraph.
30. On 25 June 2015, ASIC made [*ASIC Prescribed Trade Repositories Determination \[15/0591\]*](#) (**Determination [15/0591]**) listing the following overseas derivative trade repositories as prescribed repositories commencing 1 July 2015:
- (a) DTCC Data Repository (U.S.) LLC
 - (b) DTCC Derivatives Repository Ltd
 - (c) DTCC Data Repository (Japan) KK
 - (d) DTCC Data Repository (Singapore) Pte Ltd
 - (e) UnaVista Limited, and
 - (f) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance of Hong Kong.
31. On 9 April 2019, ASIC made [*ASIC Prescribed Trade Repositories Determination \[19/325\]*](#) which amended Determination [15/0591] to add the following overseas derivative trade repositories as prescribed repositories commencing 9 April 2019:
- (g) DTCC Data Repository (Ireland) Plc; and
 - (h) UnaVista TRADEcho B.V.

32. Rule 1.2.3 defines “prescribed foreign regulator” to mean a person or body that has functions or powers relating to the regulation of Derivative Trade Repositories or markets in Derivatives in a foreign jurisdiction, and that is prescribed under regulations made for the purposes of paragraph 904B(2)(d) of the Corporations Act.
33. Subsection 904B(2) of the Corporations Act specifies persons or bodies that may request derivative trade data that is retained in the derivative trade repository of a derivative trade repository licensee, subject to subsection (3)-(5). These are ASIC, APRA, the RBA, and another derivative trade repository licensee. In addition, under paragraph 904B(2)(d) of the Corporations Act, a person or body may be prescribed by the Corporations Regulations.
34. For the purpose of paragraph 904B(2)(d) of the Corporations Act, Regulation 7.5A.150A of the Corporations Regulations includes “...the persons or bodies mentioned in Article 81(3)(a) to (e), (g), (h) and (j) of Regulation (EU) No. 648/2012 of the European Parliament and the Council of the European Union, dated 4 July 2012...”³ (*EU regulators*). Further, Regulation 7.5A.150B of the Corporations Regulations also prescribes each of the following persons or bodies for the purpose of paragraph 904B(2)(d) of the Corporations Act:
 - (a) the Bank of England (*the BOE*);
 - (b) the Financial Conduct Authority of the United Kingdom (*the FCA*); and
 - (c) the Monetary Authority of Singapore (*the MAS*).

Chapter 2: Obligations of Officers and Operators

Part 2.1 Obligations of Officers

35. Under paragraph 903A(3)(a) of the Corporations Act, the derivative trade repository rules may, subject to Division 4 of Part 7.5A of the Corporations Act, deal with matters incidental or related to matters referred to in subsection 903A(2), including specifying the persons (being persons referred to in section 903B) who are required to comply with requirements imposed by the rules. Section 903B of the Corporations Act provides that the only persons on whom the derivative trade repository rules may impose requirements are operators and officers of licensed derivative trade repositories.
 - (a) Note: Requirements may also be imposed on these persons by the derivative transaction rules.
36. The obligations under Chapter 2 of the Rules are generally imposed on the Officers and Operators of a Trade Repository, being a licensed derivative trade repository as defined in section 761A of the Act (see Rule 1.2.3).

³ See article 81(3) of [Regulation \(EU\) No 648/2012 of The European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories](#)

37. Rule 2.1.1 imposes an obligation on each Officer of a Trade Repository to take all reasonable steps to ensure the Operator of the Trade Repository complies with its obligations under the Rules.
38. “Officer” when used in section 903B of the Corporations Act and Rule 2.1.1, has the meaning given by section 9 of the Corporations Act and in relation to a corporation (other than a corporate collective investment vehicle (*CCIV*)) includes a director, secretary, and a person who makes or participates in decisions that affect the whole, or a substantial part of the business of the corporation. “Operator” is not defined for the purposes of section 903B of the Corporations Act, however, under section 905B, the derivative trade repository licensee will be the body corporate authorised to operate the Trade Repository.

Part 2.2 Manner in which the Trade Repository provides its services

39. As permitted by paragraph 903A(2)(a) of the Corporations Act, Part 2.2 of the Rules deals with the manner in which Trade Repositories provide their services.

Rule 2.2.1 Legal basis

40. Rule 2.2.1 deals with the legal basis of a Trade Repository’s services. Rule 2.2.1 broadly reflects Principle 1 (Legal basis) of the CPMI-IOSCO Principles and the relevant key considerations for that principle.
41. Subrule 2.2.1(1) sets out that an Operator must ensure there is a clear, transparent, and enforceable legal basis, including rules, procedures and contractual arrangements, for each material aspect of the Trade Repository’s services. The aspects of a Trade Repository’s services that are ‘material’ for the purposes of subrule 2.2.1(1) include the acceptance, retention, use, disclosure and provision of access to Derivative Trade Data.
42. The note to subrule 2.2.1(1) explains, by way of example, that there must be a high degree of certainty that actions taken by the Operator under its rules, procedures and contractual arrangements will be enforceable and will not be voided, reversed or subject to stays.
43. Under subrule 2.2.1(2), an Operator must have documented and enforceable rules, procedures and contractual arrangements in relation to each material aspect of its services, including but not limited to, acceptance, retention, use, disclosure and provision of access to Derivative Trade Data.
44. Paragraph 2.2.1(3)(a) requires that the Operator’s rules, procedures and contractual arrangements under subrule 2.2.1(2) must clearly define the rights and obligations of:
 - (a) the Operator of the Trade Repository;
 - (b) Users of the Trade Repository, being:

- (i) Participants, defined under Rule 1.2.3 as meaning Reporting Entities, or persons that report on behalf of Reporting Entities, to which the Trade Repository provides Trade Reporting Services; and
 - (ii) Linked Entities, defined under Rule 1.2.3 as meaning other Derivative Trade Repositories, payment systems, central securities depositories, securities settlement systems, central counterparties and other service providers (e.g. collateral management, portfolio reconciliation or portfolio compression service providers) with which an Operator has operational and contractual arrangements in connection with the acceptance, retention, use, disclosure and provision of access to Derivative Trade Data; and, if applicable
 - (c) Indirect Participants, defined under Rule 1.2.3 as meaning Reporting Entities that are not Participants but that comply with the Reporting Requirements, under the Reporting Rules, under an arrangement to do so with a Participant.
45. Under paragraph 2.2.1(3)(a) the rules, procedures and contractual arrangements under subrule (2) must clearly define the rights and obligations of the Operator, Users and, if applicable, Indirect Participants, with respect to acceptance, retention, use, disclosure and provision of access to Derivative Trade Data, including, without limitation, the obligations of the Operator with respect to minimum service levels, operational reliability and maintaining the integrity, security and confidentiality of Derivative Trade Data; and the rights of Users with respect to access to the Derivative Trade Data.
46. Further, paragraph 2.2.1(3)(b) requires the Operator to have clearly defined procedures for the resolution of disputes between the Operator and Users in its rules, procedures and contractual arrangements.
47. Subrule 2.2.1(4) sets out that the rules, procedures, and contractual arrangements referred to in subrules 2.2.1(1)-(3) must be consistent with the legal framework in this jurisdiction which includes:
- (a) the Rules;
 - (b) the Reporting Rules;
 - (c) the Corporations legislation, as defined in section 9 of the Corporations Act; and
 - (d) any other applicable law of a State or Territory or law of the Commonwealth.
48. Subrule 2.2.1(5) applies if the Trade Repository provides services in more than one jurisdiction. Where the Trade Repository provides services in more than one jurisdiction, where the legal frameworks may differ, the Operator must take all reasonable steps to identify and mitigate any risks arising from potential conflicts of laws across those jurisdictions.

2.2.2 Access and participation requirements

49. Rule 2.2.2 deals with access to and participation in the Trade Repository's services. Rule 2.2.2 broadly reflects CPMI-IOSCO Principle 18 (Access and participation) and the relevant key considerations for that Principle.
50. Subrule 2.2.2(1) provides that an Operator must have and apply objective conditions for access to and participation in the Trade Repository's services that permit open and non-discriminatory access to and participation in the Trade Repository by Users and, if applicable, Indirect Participants. The note to paragraph 903A(2)(a) of the Corporations Act, the section that sets out ASIC's power to make derivative trade repository rules, states that the derivative trade repository rules "may (for example) require licensed derivative trade repositories to provide open and non-discriminatory access to their services".
51. Ensuring open and non-discriminatory access to, and participation in, Trade Repositories is essential because Participants and Indirect Participants that are Reporting Entities require access to Trade Repositories to comply with their obligations under the Reporting Rules.
52. Subrule 2.2.2(2) requires that the access and participation conditions of a Trade Repository referred to in subrule 2.2.2(1) must include conditions reasonably designed to ensure Users and, if applicable, Indirect Participants do not pose undue risks to the secure, efficient and effective operation of the Trade Repository. In appropriate circumstances this may include, for example, conditions reasonably designed to ensure that Participants have the necessary IT capability, competency, training and resources to use the Trade Repository's services.
53. Subrule 2.2.2(3) requires that the access and participation conditions, other than conditions referred to in subrule 2.2.2(2), must not unreasonably prohibit or limit access to or participation in the Trade Repository, and the Operator must not impose unreasonable conditions on participation or access. Subrule 2.2.2(3) seeks to ensure that conditions, other than conditions reasonably designed to mitigate risk, have the least-restrictive impact on access and participation that circumstances permit.⁴
54. Subrule 2.2.2(4) requires an Operator to monitor compliance with its access and participation conditions on an ongoing basis and have clearly defined procedures for facilitating the disciplining, suspension or orderly exit of a User that breaches or no longer meets the access or participation conditions.

Rule 2.2.3 Security, efficiency and effectiveness of services

55. Rule 2.2.3 deals with the security, efficiency and effectiveness of the Trade Repository's services. Rule 2.2.3 broadly reflects CPMI-IOSCO Principle 21

⁴ CPMI-IOSCO Principles, Principle 18: Access and participation requirements, explanatory note 3.18.6

(Efficiency and effectiveness) and the relevant key considerations for that Principle.

56. Subrule 2.2.3(1) provides that an Operator must ensure that the Trade Repository's services are provided at all times in a secure, efficient and effective manner. "Efficiency" in the context of Rule 2.2.3 includes, for example, the resources used by the Trade Repository to perform its functions, while "effectiveness" includes, for example, whether the Trade Repository is meeting its objectives.⁵
57. Subrule 2.2.3(2) provides that an Operator must establish, implement, maintain and enforce mechanisms for regularly reviewing whether the Trade Repository is efficient and effective in meeting the requirements of Users, Australian Regulators (i.e. ASIC, APRA and RBA), and the markets it serves. The note to subrule 2.2.3(2) explains by way of example that an Operator should regularly review its minimum service levels, operational reliability, cost-effectiveness and pricing.

Part 2.3 Handling and use of Derivative Trade Data by Trade Repositories and their Officers and employees

58. As permitted by paragraph 903A(2)(b) of the Corporations Act, Part 2.3 deals with the handling and use of derivative trade data by licensed derivative trade repositories and their officers and employees.

Rule 2.3.1 Acceptance of Derivative Trade Data

59. As permitted by subparagraph 903A(2)(b)(i) of the Corporations Act, Rule 2.3.1 deals with the acceptance of Derivative Trade Data by the Operator.
60. Under paragraph 905F(4)(b) of the Corporations Act, the Operator's Licence must be subject to conditions that specify the class or classes of derivatives in respect of which the Trade Repository can provide services for the purposes of Part 7.5A of the Corporations Act.
61. Under subrule 2.3.1(1), an Operator must accept from Participants Derivative Trade Data for all classes of Derivatives that it is licensed to accept. This is particularly important because, as noted in relation to access and participation requirements (see Rule 2.2.2), Reporting Entities are required to report Derivative Trade Data to Trade Repositories to comply with their obligations under the Reporting Rules.
62. Under subrule 2.3.1(2), an Operator must establish, implement, maintain and enforce policies, procedures, systems and controls for the reporting of Derivative Trade Data to the Trade Repository.
63. Under paragraph 2.3.1(3)(a), an Operator is specifically required to establish, implement, maintain and enforce policies, procedures, systems and controls

⁵ CPMI-IOSCO Principles, Principle 21: Efficiency and effectiveness, explanatory note 3.21.1

reasonably designed to maintain a continuous, reliable and secure connection between the Trade Repository and Participants for the purposes of accepting Derivative Trade Data.

64. One of the key objectives of the trade reporting regime is to ensure that Australian Regulators have access to a reliable source of Derivative Trade Data. Paragraph 2.3.1(3)(b) therefore also specifically requires the Operator to establish, implement, maintain and enforce policies, procedures, systems and controls designed to provide reasonable assurance that the Derivative Trade Data reported to the Trade Repository by Participants is and remains at all times complete, accurate and current.

Rule 2.3.2 Retention of Derivative Trade Data

65. As permitted by subparagraph 903A(2)(b)(i) of the Corporations Act, Rule 2.3.2 deals with the retention of Derivative Trade Data by the Operator.
66. Another core responsibility of an Operator is retaining current and historical Derivative Trade Data so that Participants, Australian Regulators and in some cases, Prescribed Foreign Regulators, can obtain access to that Derivative Trade Data to perform their regulatory functions.
67. Subrule 2.3.2(1) provides that an Operator must ensure that all Derivative Trade Data accepted by the Trade Repository, and each alteration and correction to that Derivative Trade Data, is recorded on a timely basis. This helps to ensure that Derivative Trade Data retained in the Trade Repository is at all times complete, accurate and current.
68. Subrule 2.3.2(2) provides that an Operator must retain all records of Derivative Trade Data, and any alterations or corrections to that Derivative Trade Data, from the date the record is made until five years have elapsed since the Derivative to which the Derivative Trade Data relates expires or terminates.
69. Subrule 2.3.2(3) provides that an Operator must ensure that each record referred to in subrule 2.3.2(2) is, for the period of time that the record must be retained under that subrule, retained in a secure location and in an electronic format, and is immediately accessible by the Operator.
70. Subrule 2.3.2(4) provides that an Operator must create at least one backup copy of each record referred to in subrule 2.3.2(2) and must ensure that, for the period of time that the record must be retained under that subrule, the backup copy is retained in a secure location and in an electronic format, separate from the location of the record, and is accessible by the Operator within three business days.
71. Subrule 2.3.2(5) provides that Rule 2.3.2 applies subject to any direction given by ASIC under section 904K of the Corporations Act. Under section 904K, ASIC may give a written direction relating to Derivative Trade Data if the Trade Repository ceases to be licensed, including a direction requiring an Operator or former Operator to destroy or transfer to another Trade Repository or a Prescribed Derivative Trade Repository all records of the Derivative Trade Data

over which the Operator or former Operator has control. As a result of being subject to such directions under the Corporations Act, an Operator will not be found to have breached its obligations under Rule 2.3.2 by complying with such a direction.

Rule 2.3.3 Use and disclosure of Derivative Trade Data

72. Subrule 2.3.3(1) provides that an Operator must establish, implement, maintain and enforce policies, procedures, systems and controls designed to ensure that the Operator, its Officers and employees comply with section 904B of the Corporations Act in handling, using and disclosing Derivative Trade Data. Such policies, procedures, systems and controls would be expected to address, for example, the uses or disclosures of Derivative Trade Data that the Operator considers are covered by the exception in subparagraph 904B(1)(a)(i) of the Corporations Act.
73. Subsection 904B(1) of the Corporations Act provides that a derivative trade repository licensee, or an officer or employee of a derivative trade repository licensee may use or disclose derivative trade data only if the use or disclosure:
 - (a) is not excluded by regulations made under subparagraph 904B(1)(a)(ii), is for the purpose of, or occurs in the course of, the provision of the repository's services, or the performance of the duties of the officer or employee as an officer or employee of the licensee (see subparagraph 904B(1)(a)(i)); or
 - (b) is required or permitted by another provision of the Corporations Act, these Rules or the Reporting Rules, or another law of the Commonwealth, or a law of a State or Territory (see paragraph 904B(1)(b)).
74. "Derivative trade data" as defined for the purposes of section 904B and the Rules includes statistical data created or derived from derivative trade data (see section 761A of the Corporations Act and Rule 1.2.3).
75. Subrule 2.3.3(2) permits an Operator to use and disclose Derivative Trade Data in certain circumstances for the purposes of subparagraph 904B(1)(b)(ii) of the Corporations Act. Under that subrule, an Operator is permitted to use and disclose Derivative Trade Data that is, or that is created or derived from:
 - (a) Derivative Trade Data that the Operator has disclosed in accordance with Rule 2.3.5 (obligation to create and disclose weekly statistical data) or Rule 2.3.6 (permission to create and disclose financial year-to-date statistical data);
 - (b) Derivative Trade Data other than Derivative Trade Data disclosed under Rule 2.3.5 and 2.3.6 that is, or that is created or derived from, Derivative Trade Data that has been reported to the Operator by a Participant, only if:
 - (i) the Participant that reported the Derivative Trade Data has given prior written consent to the use or disclosure of the Derivative Trade Data by the Operator; and

- (ii) the Derivative Trade Data is capable of identifying a counterparty to a Derivative Transaction, that counterparty has consented in writing to the use or disclosure of the Derivative Trade Data.
76. Subrule 2.3.3(3) is designed to ensure that Trade Repositories do not expressly or impliedly force Participants to consent to the use and disclosure of their Derivative Trade Data for the purposes of paragraph 2.3.3(2)(b). Subrule 2.3.3(3) provides that, for the purposes of paragraph 2.3.3(2)(b), an Operator:
- (a) must not require a Participant to consent to the use or disclosure of Derivative Trade Data reported by the Participant as a condition of the Participant's access to the Trade Repository's services; and
 - (b) must not induce or attempt to induce a Participant to consent to the use or disclosure of the Participant's Derivative Trade Data by offering or providing to the Participant incentives or benefits that are not offered or provided to Participants that do not consent to the use or disclosure of their Derivative Trade Data, unless the incentive or benefit is reasonably related to the value to the Operator of using or disclosing the Participant's Derivative Trade Data.
77. An example of an incentive or benefit for the purposes of paragraph 2.3.3(3)(b) is a reduced fee, rate or charge for access to the Trade Repository's services.
78. As noted in paragraph 1.181 of the Revised Explanatory Memorandum to the *Corporations Legislation Amendment (Derivative Transactions) Bill 2012*, "Commercialisation of trade data is therefore not absolutely prohibited. The regulations or rules may potentially permit some kinds of commercialisation and may deal with the manner in which licensees may deal with property rights associated with data."

Rule 2.3.4 Provision of access to Derivative Trade Data

79. As permitted by subparagraph 903A(2)(b)(iii) of the Corporations Act, Rule 2.3.4 deals with the provision of access to Derivative Trade Data.
80. Rule 2.3.4 is designed to ensure that the provision of data from the Trade Repository to relevant regulators is supported from a legal, procedural, operational, and technological perspective.⁶

Participant access

81. Subrule 2.3.4(1) provides that, subject to subrule 2.3.4(4) (which deals with an entity that is suspended from being, or has ceased to be, a Participant in the Trade Repository), an Operator must provide each Participant with access to the records of the Derivative Trade Data that the Participant has reported to the Trade Repository, including access for the purposes of making necessary corrections or alterations to that Derivative Trade Data.

⁶ CPMI-IOSCO Principles, Principle 24: Disclosure of market data by trade repositories, explanatory note 3.24.3

82. Subrule 2.3.4(2) provides that, to the extent not provided under subrule 2.3.4(1) and subject to subrule 2.3.4(4), an Operator must provide each Participant with access to the records of each Derivative Transaction for which the Participant is a counterparty or for which the Participant reported on behalf of the counterparty.
83. Subrule 2.3.4(3) provides that an Operator must ensure that its rules, procedures and contractual arrangements relating to the provision of access to Derivative Trade Data clearly define the categories of access available to Participants, if there is more than one category. It is noted that under Rule 2.2.1, the Operator's rules, procedures and contractual arrangements must also clearly define the rights and obligations of Users with respect to the provision of access to Derivative Trade Data.
84. Subrule 2.3.4(4) provides that an Operator is not required to provide access under Rule 2.3.4 to a Participant that is suspended from being, or has ceased to be, a Participant in the Trade Repository.
85. Subrule 2.3.4(5) has been updated since the 2013 Rules to provide an administrative ASIC direction provision for the purpose of maintaining data quality.
86. Under subrule 2.3.4(5) ASIC may give a written direction to an Operator requiring the Operator deal, in a specified way, with Derivative Trade Data reported by or on behalf of a Reporting Entity, if:
- (a) the Reporting Entity, or a person reporting on behalf of a Reporting Entity:
 - (i) is suspended from being, or has ceased to be, a Participant in the Trade Repository; or
 - (ii) becomes a Chapter 5 Body Corporate, or becomes subject to a similar regime in a foreign jurisdiction; and
 - (b) ASIC reasonably believes the direction will ensure the Derivative Trade Data the subject of the direction is accurate and current.
87. Broadly, under subrule 2.3.4(5), ASIC may give a written direction to the Operator of a Trade Repository to correct erroneous Derivative Trade Data in limited circumstances where a Reporting Entity or its delegate, ceases to be a current Participant in the Trade Repository or ceases to operate and ASIC reasonable believes, its Derivative Trade Data is no longer accurate and current.
88. A direction issued by ASIC under subrule 2.3.4(5) must be provided in writing to the Operator of the Trade Repository and specify the manner in which the Operator is required to deal with Derivative Trade Data.
89. Subparagraph 2.3.4(5)(a)(i) has been designed to follow subrule 2.3.4(4). It is the first option in the first test for when a written direction may apply. Subparagraph 2.3.4(5)(a)(i) provides for circumstances in which a Reporting

Entity, or a person reporting on behalf of a Reporting Entity, is suspended from being, or has ceased to be, a Participant in the Trade Repository and hence no longer has access to its Derivative trade data retained in the Trade Repository.

90. Subparagraph 2.3.4(5)(a)(ii) is the second option in the first test for when a written direction may apply. It provides for circumstances in which a Reporting Entity, or a person reporting on behalf of a Reporting Entity, becomes a Chapter 5 Body Corporate, or becomes subject to a similar regime in a foreign jurisdiction. Subparagraph 2.3.4(5)(a)(ii) is broadly intended to apply in circumstances where an entity has ceased to operate as a going concern and hence may no longer have the staff or technological resources, or the standing with the licensed trade repository, to ensure its Derivative Trade Data in the trade repository is accurate and current.
91. A Chapter 5 Body Corporate is a body corporate:
- (a) that is being wound up; or
 - (aa) that is a CCIV of which one or more sub-funds is being wound up;
 - (b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting;
 - (c) that is under administration; or
 - (d) that has executed a deed of company arrangement that has not yet terminated; or
 - (da) that is under restructuring; or
 - (db) that has made a restructuring plan that has not yet terminated; or
 - (e) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.
92. Paragraph 2.3.4(5)(b) is the second test in the direction provision that provides that ASIC may only issue a written direction to the Operator of a Trade Repository under subrule 2.3.4(5) if it reasonable believes, based on its enquiries, that the direction will correct the Derivative Trade Date that is the subject of the direction.
93. Under subrule 2.3.4.(6) an operator of a trade repository must comply with an ASIC direction under subrule 2.3.4(5) as soon as reasonably practicable. It is designed to ensure that an operator responds to a request given by ASIC under subrule 2.3.4.(5) in a timely and flexible manner.

Provision of access to Australian Regulators

94. Under subsection 904B of the Corporations Act, ASIC, APRA, RBA, a person or body prescribed by regulations for the purposes of paragraph 904B(2)(d), or another derivative trade repository licensee, may require a derivative trade repository licensee to provide the person or body with Derivative Trade Data

that is retained in the derivative trade repository. The Corporations Regulations made under s904B(4) requires that certain information must not be included in Derivative Trade Data provided pursuant to requests, or a class of requests, under subsection 904B(2).

95. While Derivative Trade Data must be protected from improper disclosure, a fundamental purpose of the trade reporting regime is to ensure that relevant regulatory bodies have access to trade data.⁷ Principle 24 of the CPMI-IOSCO Principles also recognises that, “Relevant authorities should have access to additional data recorded in a TR, including participant-level data, that is relevant to their respective regulatory mandates and legal responsibilities, which may include market regulation and surveillance, oversight of market infrastructures, prudential supervision, resolution of failed institutions, and systemic risk regulation.”⁸
96. Under subrule 2.3.4(7) an Operator must provide to each Australian Regulator, defined as ASIC, APRA or RBA under Rule 1.2.3, if requested by that Australian Regulator and at no charge, continuous, direct and immediate electronic access to the following Derivative Trade Data retained in the Trade Repository:
 - (a) all Derivative Trade Data reported by Participants in accordance with the Reporting Requirements; and
 - (b) all information (including statistical data) that is created or derived from Derivative Trade Data reported by Participants in accordance with the Reporting Requirements.
97. Note 1 under subrule 2.3.4(7) elaborates that direct access may be provided through an electronic system, platform or framework that provides secure internet or web-based access to Derivative Trade Data, or by way of a direct real-time feed of Derivative Trade Data.
98. Note 2 under subrule 2.3.4(7) elaborates that an Operator may be required to provide access to aggregate-level data, position-level data and transaction-level data (including the identity of counterparties).

Requests to provide data to Australian Regulators

99. Subrule 2.3.4(8) provides that, for the purposes of subparagraph 904B(5)(b)(ii) of the Corporations Act, an Operator that receives a request from an Australian Regulator under subsection 904B(2) of the Corporations Act for Derivative Trade Data retained in the Trade Repository, including a request for Derivative Trade Data referred to in subrule 2.3.4(7), is excused from complying with the request unless the request is for Derivative Trade Data that is required by the

⁷ Revised Explanatory Memorandum to the *Corporations Legislation Amendment (Derivative Transactions) Bill 2012*, at paragraph 1.183

⁸ CPMI-IOSCO Principles, Principle 24: Disclosure of market data by trade repositories, explanatory note 3.24.2

Australian Regulator in connection with the performance of its functions or exercise of its powers.

100. The limitation provided for in subrule 2.3.4(8) was designed to address concerns raised in submissions to CP 201 that regulators should only have access to Derivative Trade Data held in a Trade Repository in accordance with the regulator's mandate, by expressly recognising that access by Australian Regulators must be in connection with the exercise or performance of the relevant regulators' functions and powers.
101. Subrule 2.3.4(9) also provides that an Operator that receives a request from an Australian Regulator under subsection 904B(2) of the Corporations Act for Derivative Trade Data retained in the Trade Repository, including a request for Derivative Trade Data referred to in subrule 2.3.4(7), must comply with any reasonable requirement specified in the request to provide the Derivative Trade Data:
 - (a) on an ad hoc or periodic basis, or each time a particular circumstance or event occurs;
 - (b) by a specified time; and/or
 - (c) in a specified format.
102. Subrule 2.3.4(9) is designed to ensure Operators are ready to respond to requests by Australian Regulators under subsection 904B(2) of the Act in a timely and flexible manner.

Requests to provide data to Prescribed Foreign Regulators

103. OTC derivatives markets are global in nature with market participants frequently engaging in cross-border Derivative Transactions. Derivative Trade Data retained in a Derivative Trade Repository licensed under the Australian regime may be relevant to a regulator in another jurisdiction. As noted in paragraph 1.185 of the Revised Explanatory Memorandum to the *Corporations Legislation Amendment (Derivative Transactions) Bill 2012*: 'It is intended that the regulations will provide for the sharing of trade data with appropriate foreign financial markets regulators.'
104. Subrule 2.3.4(10) provides for limitations on requests by "Prescribed Foreign Regulators", defined in Rule 1.2.3 to mean "a person or body that has functions or powers relating to the regulation of Derivative Trade Repositories or markets in Derivatives in a foreign jurisdiction, and that is prescribed under regulations made for the purposes of paragraph 904B(2)(d) of the Corporations Act".
105. Subrule 2.3.4(10) provides that, for the purposes of subparagraph 904B(5)(b)(ii) of the Corporations Act, an Operator that receives a request from a Prescribed Foreign Regulator under subsection 904B(2) of the Corporations Act for Derivative Trade Data retained in the Trade Repository, is excused from complying with the request unless:

- (a) the request is for:
 - (i) Derivative Trade Data reported by Participants in accordance with the Reporting Requirements; or
 - (ii) information (including statistical data) that is created or derived from Derivative Trade Data reported by Participants in accordance with the Reporting Requirements (paragraph 2.3.4(10)(a));
 - (b) the Derivative Trade Data is required by the Prescribed Foreign Regulator in the performance of its functions or exercise of its powers (paragraph 2.3.4(10)(b)); and
 - (c) the request is made subject to and in accordance with internationally accepted regulatory access standards applicable to Derivative Trade Repositories.
106. For the purposes of paragraph 904B(2)(d) of the Corporations Act, regulations 7.5A.150A and 7.5A.150B of the Corporations Regulation set out the Prescribed Foreign Regulators. At the time of writing, these are EU regulators, the BOE, the FCA and the MAS.
107. Paragraph 2.3.4(10)(a) in particular is designed to ensure that Prescribed Foreign Regulators are only able to rely on subsection 904B(2) of the Corporations Act to request data from Operators licensed under the Australian regime where the data is data retained in accordance with the Australian regime. It is noted that under subrule 2.3.4(10), an Operator may be required to provide the Prescribed Foreign Regulator with aggregate-level data, position-level data or transaction-level data (including the identity of counterparties), depending on the Prescribed Foreign Regulator's regulatory mandate.

Limitations on access and request

108. Subrule 2.3.4(11) sets out that subrules 2.3.4(7)-(10) operate subject to any requirements of regulations made for the purposes of subsection 904B(4) and subparagraph 904B(5)(b)(i) of the Corporations Act.
109. Subsection 904B(4) of the Corporations Act sets out that the Corporations Regulations may require that certain information must not be included in derivative trade data provided pursuant to requests, or a class of requests, under subsection (2) which in turn sets out the persons or bodies who are authorised to make such requests.
110. As at the date of making the Rules, regulation 7.5A.150A and 7.5A.150B have been made for the purpose of subsection 904B(4) of the Corporations Act.
111. Subregulation (2) of regulation 7.5A.150A requires that information must not be included in derivative trade data provided in response to a request from an EU regulator, unless:

- (a) the information relates to a transaction or position that is required to be reported under either of the following:
 - (i) the Reporting Rules;
 - (ii) the conditions of an exemption given under section 907D of the Corporations Act; and
 - (b) subregulation (3) or (4), as outline below, applies.
112. Broadly, subregulations (3) of regulation 7.5A.150A applies if the information relates to a transaction or position that would, but for mutual recognition arrangements, be required to be reported under similar EU trade reporting regulations. Subregulation (4) applies if the information relates to an EU or European Economic Area underlying asset, index, rate or currency and is not covered by subregulation (3).
113. Subregulation (4) of regulation 7.5A.150B requires that information must not be included in derivative trade data provided in response to a request from the BOE, the FCA or the MAS, unless:
- (a) the information relates to a transaction or position that is required to be reported under either of the following:
 - (i) the Reporting Rules;
 - (ii) the conditions of an exemption given under section 907D of the Corporations Act; and
 - (b) subregulation (5) or (6), as outline below, applies.
114. Broadly, subregulation (5) of regulation 7.5A.150B applies if the information relates to a transaction or position that would, but for mutual recognition arrangements, be required to be reported under the laws of the jurisdiction in which the regulator is located and is required as part of the performance of its functions or exercise of its powers. Subregulation (6) applies if the information relates to an underlying asset, index, rate or currency of the jurisdiction of the regulator making the request or relates to a counterparty located in the jurisdiction of the regulator making the request and is not covered by subregulation (5).
115. As at the date of making the Rules and for the purpose of subparagraph 904B(5)(b)(i) of the Corporations Act, regulation 7.5A.151 of the Corporations Regulation provides that every derivative trade repository licensee is excused from complying with a request for derivative trade data under paragraph 904B(2)(e) of the Act.

Information taken to be given to ASIC in confidence

116. Subsection 903A(5) of the Corporations Act provides that this instrument may provide (either generally or in specified circumstances) that information given to ASIC is to be taken (for the purpose of section 127 of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*) to be given to ASIC in confidence in connection with the performance of ASIC's functions under the Corporations Act. This information is given to ASIC by the operator (or an officer of the operator) of a licensed derivative trade repository, under:
- (a) a provision of Part 7.5A;
 - (b) regulations made for the purpose of Part 7.5A;
 - (c) the derivative transaction rules; or
 - (d) the derivative trade repository rules
- (together, *the trade reporting provisions*),
117. At the time of writing, regulation 7.5A.150 applies under subsection 903A(5) of the Corporations Act, applies to information given to ASIC, by the operator, or an officer of the operator, of a licensed derivative trade repository, under the trade reporting provisions. Subregulation (2) provides that the information is taken, for the purpose of section 127 (confidentiality) of the ASIC Act, to be given to ASIC in confidence in connection with the performance of ASIC's functions under the Act, unless:
- (a) the information has been made publicly available in accordance with the trade reporting provisions; or
 - (b) a law requires or permits the information to be released.
118. Under subsection 903A(6) of the Corporations Act, derivative trade repository rules that provide as mentioned in subsection 903A(5) have effect accordingly for the purpose of section 127 of the ASIC Act.
119. Subrule 2.3.4(12) makes such provision for the purposes of subsection 903A(5) of the Corporations Act. However, subrule 2.3.4(12) does not apply to information that has been made publicly available in accordance with the trade reporting provisions, or as otherwise required or permitted by law. Subrule 2.3.4(12) does not limit the circumstances in which information given to ASIC by an Operator, or an Officer of an Operator, may, for the purpose of section 127 of the ASIC Act, be regarded as having been given to ASIC in confidence in connection with the performance of ASIC's functions under the Corporations Act.
120. Under subrule 2.3.4(13), an Operator must not disclose that:

- (a) a request for particular Derivative Trade Data was made under subsection 904B(2) of the Corporations Act, or that particular Derivative Trade Data was provided in compliance with such a request;
- (b) access to particular Derivative Trade Data was provided in accordance with subrule 2.3.4(7),

other than for the purposes of seeking legal advice or as required by law. Subrule 2.3.4(13) seeks to ensure that requests for Derivative Trade Data remain confidential so that, for example, an investigation is not prejudiced by a person becoming aware that an Australian Regulator has requested Derivative Trade Data in connection with that person's Derivative Transactions.

Rule 2.3.5 Obligation to create and disclosure weekly statistical data

- 121. As permitted by subparagraph 903A(2)(b)(ii) of the Corporations Act, Rule 2.3.5 deals with the creation and disclosure of statistical data from Derivative Trade Data.
- 122. Disclosure of statistical data may improve the efficient operation of financial markets in derivatives and may benefit participants in those markets and data users more broadly. CPMI-IOSCO Principle also 24 recognises that: “At a minimum, a TR should provide aggregate data on open positions and transaction volumes and values and categorised data (for example, aggregated breakdowns of trading counterparties, reference entities, or currency breakdowns of products), as available and appropriate, to the public.”⁹
- 123. Subrule 2.3.5(1) provides that an Operator must create and disclose in accordance with Rule 2.3.5 statistical data on Derivative Trade Data (referred to in Rule 2.3.5 as “Relevant Derivative Trade Data”) that is retained in the Trade Repository and that was reported to the Trade Repository by Participants in accordance with the Reporting Rules.
- 124. Subrule 2.3.5(2) provides that, for the purposes of subrule 2.3.5(1), an Operator must, for each 7-calendar day period (referred to in Rule 2.3.5 as the “Relevant Period”) commencing from the day the Operator first accepts a report of Relevant Derivative Trade Data, create certain statistical data from the Relevant Derivative Trade Data, being:
 - (a) all aggregate open positions as at the end of the last day in the Relevant Period for which the statistical data is created; and
 - (b) volumes by number and by value of Derivative Transactions reported during the Relevant Period.

⁹ CPMI-IOSCO Principles, Principle 24: Disclosure of market data by trade repositories, explanatory note 3.24.2

125. Subrule 2.3.5(3) provides that the statistical data created in accordance with subrule 2.3.5(2) must include breakdowns by the following categories (if applicable):
- (a) the asset class, currency of the notional amount, type and maturity of the Derivatives to which the statistical data relates; and
 - (b) whether the Derivatives to which the statistical data relates are cleared or uncleared.
126. Subrule 2.3.5(4) provides that, subject to subrule 2.3.5(6) (dealing with counterparty information), an Operator must disclose the statistical data required under subrules 2.3.5(1)–(3) in relation to a Relevant Period, from a day that is between 3–5 business days after the day on which the Relevant Period ends.
127. Subrule 2.3.5(5) provides that an Operator must disclose the statistical data required under subrules (1)–(3) by making the statistical data available at no charge and through a publicly accessible website.
128. Subrule 2.3.5(6) provides that the statistical data published under Rule 2.3.5 must not include Derivative Trade Data capable of identifying a counterparty to a Derivative Transaction.

Rule 2.3.6 Permission to create and disclose financial year-to-date statistical data

129. Subrule 2.3.6(1) provides that, subject to subrule 2.3.6(2), an Operator may publish the statistical data created and disclosed in accordance with paragraph 2.3.5(2)(b), aggregated in financial-year-to-date form, by making the aggregated financial year-to-date statistical data available at no charge and through a publicly accessible website.
130. Subrule 2.3.6(2) provides that the statistical data published under this Rule 2.3.6 must not include Derivative Trade Data capable of identifying a counterparty to a Derivative Transaction.

Communication procedures and standards

131. Rule 2.3.7 broadly reflects CPMI–IOSCO Principle 22 (Communication procedures and standards) and the relevant key considerations for that Principle.
132. CPMI-IOSCO Principle 22 recognises that the ability of Users to communicate with a Trade Repository in a timely, reliable and accurate manner is key to achieving efficient recording of Derivative Trade Data.¹⁰
133. Rule 2.3.7 therefore provides that an Operator must use or, at a minimum, accommodate, relevant internationally accepted communication procedures and standards to facilitate accurate, consistent, efficient and reliable acceptance, retention, use, disclosure and provision of access to Derivative Trade Data by

¹⁰ CPMI-IOSCO Principles, Principle 22: Communication procedures and standards, explanatory note 3.22.1

the Trade Repository. A Trade Repository may accommodate a relevant internationally accepted communication standard by, for example, using systems that translate or convert data from international standards into the domestic equivalent and vice versa.¹¹

134. Communication procedures in the context of Rule 2.3.7 includes, for example, a standardised communication procedure that provide a common set of rules across systems for exchanging messages.¹² “Communication standards” in the context of that Rule includes, for example, standardised messaging formats and reference data standards for identifying Derivatives and counterparties (e.g. legal entity identifiers).¹³

Part 2.4 Governance, management and resources

135. As permitted by paragraph 903A(2)(c) of the Corporations Act, Part 2.4 of the Rules deals with the governance, management and resources (including financial, technological and human resources) of Trade Repositories.

Rule 2.4.1 Governance

136. Rule 2.4.1 broadly reflects CPMI-IOSCO Principle 2 (Governance) and the relevant key considerations for that Principle.
137. Given the importance of Trade Repositories and the fact that their decisions can have widespread impact, it is essential for a Trade Repository to place a high priority on the safety and efficiency of its operations and explicitly support financial stability and other relevant public interests. Supporting the public interest is a broad concept that includes, for example, fostering fair and efficient markets.¹⁴
138. Subrule 2.4.1(1) provides that an Operator must establish, implement and maintain documented arrangements for the governance and management of the Trade Repository that are clear and transparent, promote the secure, efficient and effective operation of the Trade Repository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of Users. A Trade Repository, for example, should have objectives, policies, and procedures that support the effective and appropriate disclosure of market data to Australian Regulators and the public (see CPMI-IOSCO Principle 24 and Rules 2.3.4, 2.3.5 and 2.3.6).
139. Subrule 2.4.1(2) provides that the governance and management arrangements referred to in subrule 2.4.1(1) must provide for:

¹¹ CPMI-IOSCO Principles, Principle 22: Communication procedures and standards, explanatory note 3.22.3

¹² CPMI-IOSCO Principles, Principle 22: Communication procedures and standards, explanatory note 3.22.2

¹³ CPMI-IOSCO Principles, Principle 22: Communication procedures and standards, explanatory note 3.22.3.

¹⁴ CPMI-IOSCO Principles, Principle 2: Governance, explanatory note 3.2.2

- (a) clear and direct lines of accountability in the governance and management of the Trade Repository;
- (b) clearly defined roles and responsibilities for the Operator’s governing body and management in the governance and management of the Trade Repository, including roles and responsibilities in relation to the identification, measurement, monitoring and management of risks;
- (c) clearly defined decision-making processes, including processes for:
 - (i) decision making in crises and emergencies; and
 - (ii) ensuring significant decisions in relation to the design, rules or overall strategy of the Trade Repository are made taking into account the objectives of Users and, where appropriate, are disclosed to Users; and
 - (iii) internal control functions (including compliance, audit and review functions) to be exercised by persons with adequate authority, independence, resources, and access to the governing body and senior management to perform the control function.

Rule 2.4.2 Handling of conflicts of interest

140. As permitted by subparagraph 903A(2)(c)(i) of the Corporations Act, Rule 2.4.2 deals with the handling of conflicts of interest.
141. Ensuring that proper governance arrangements exist for appropriate identification, disclosure and management of conflicts of interest is important to ensuring that an Operator is able to operate in a secure, efficient and effective manner, and retains the confidence of Users and Australian Regulators alike, as well as market stakeholders more broadly. As Explanatory Note 3.2.5 to CPMI–IOSCO Principle 2 states: “[A] trade repository should ensure that it effectively identifies and manages conflicts of interests that may arise between its public role as a centralised data repository and its own commercial interests, particularly if it offers services other than record keeping.”
142. Rule 2.4.2 therefore provides that an Operator must establish, implement, maintain and enforce documented arrangements for identifying and effectively managing (including by avoiding, controlling or disclosing) any actual or potential conflicts between:
- (a) the interests of the Operator, its related bodies corporate or members of the Operator’s governing body, and the interests of Users;
 - (b) the interests of different Users; and
 - (c) the interests of the Operator, its related bodies corporate or members of the Operator’s governing body, and the need to ensure the Trade Repository’s services are provided in a secure, efficient and effective manner.

Rule 2.4.3 Monitoring and enforcement of compliance with obligations

143. As permitted by subparagraph 903A(2)(c)(ii) of the Corporations Act, Rule 2.4.3 deals with the monitoring and enforcement of compliance with obligations.
144. Obligations relating to monitoring and enforcing compliance are necessary to give Users and ASIC confidence that the Operator can comply with all of its relevant obligations and has robust internal controls, including mechanisms for regular reviews of its compliance and effective identification of instances of non-compliance.
145. Subrule 2.4.3(1) therefore provides that an Operator must establish, implement, maintain and enforce policies, procedures, systems and controls for monitoring and enforcing compliance by its officers and employees with the Rules, the Reporting Rules and the Corporations legislation and any other applicable law of a State or Territory or law of the Commonwealth.
146. Subrule 2.4.3(2) provides that, without limiting subrule 2.4.3(1), the Operator must ensure that the arrangements, rules, procedures, policies, plans, systems and controls required by this Chapter are reviewed, audited and tested periodically and after significant changes, to ensure compliance with the Rules. This would include for example, reviewing, auditing and testing periodically the business continuity plans required by Rule 2.4.10 and the plans for recovery and resolution required by Rule 2.4.11.

Rule 2.4.4 Risk management

147. Rule 2.4.4 broadly reflects elements of:
 - (a) CPMI-IOSCO Principle 2 (Governance);
 - (b) CPMI-IOSCO Principle 3 (Framework for comprehensive management of risks);
 - (c) CPMI-IOSCO Principle 15 (General business risk);
 - (d) CPMI-IOSCO Principle 17 (Operational risk);
 - (e) in relation to Linked Entities, CPMI-IOSCO Principle 20 (FMI links);
and
 - (f) key considerations in relation to those Principles.
148. Subrule 2.4.4(1) provides that an Operator must establish, implement, maintain and enforce policies, procedures, systems and controls to enable the Operator to identify, measure, monitor and effectively manage risks to the secure, efficient or effective operation of the Trade Repository, including legal, operational and business risks.
149. Subrule 2.4.4(2) provides that, in establishing, implementing and maintaining the policies, procedures, systems and controls required by subrule 2.4.4(1), the

Operator must take into account, at a minimum, legal, operational and business risks that arise or may arise:

- (a) from Users and, if applicable, Indirect Participants;
- (b) in relation to the Operator's operational and contractual arrangements with Linked Entities¹⁵; and
- (c) from the provision of Non-Trade Reporting Services (including any Ancillary Services such as trade matching, trade confirmation and portfolio compression: see Rule 1.2.3) by the Operator, a related body corporate (within the meaning of section 9 of the Corporations Act) of the Operator, or any other company with which the Operator has a material agreement in connection with Trade Reporting Services.

150. Rule 2.4.4 notes complementary obligations relevant to the management of legal, operational and business risks. These are set out in Rule 2.2.1 (Legal basis), Rule 2.4.5 (Resources), Rule 2.4.7 (Financial resources), 2.4.8 (Integrity and security of computer systems and other systems), Rule 2.4.9 (Operational reliability), Rule 2.4.10 (Business continuity planning), Rule 2.4.11 (Recovery and resolution) and Rule 2.4.12 (Operational separation of functions).

Rule 2.4.5 Resources

- 151. As permitted by subparagraph 903A(2)(c)(iii) of the Corporations Act, Rule 2.4.5, along with Rules 2.4.6 and 2.4.7, deals with the resources that licensed derivative trade repositories should have.
- 152. Rule 2.4.5 provides that an Operator must establish and maintain sufficient and appropriate human, technological and financial resources to ensure that the Trade Repository operates at all times securely, efficiently and effectively. Rule 2.4.5 is complemented by specific requirements in Rule 2.4.6 in relation to human resources, and Rule 2.4.7 in relation to financial resources.
- 153. Rule 2.4.5 is consistent with requirements imposed on other types of financial market infrastructures in this jurisdiction, including financial markets and clearing and settlement facilities (see paragraph 792A(d) of the Corporations Act in relation to market licensees, and paragraph 821A(d) of the Corporations Act in relation to clearing and settlement facility licensees).

Rule 2.4.6 Human resources

- 154. As permitted by subparagraph 903A(2)(c)(iii) of the Corporations Act, Rule 2.4.6 deals with the human resources that licensed derivative trade repositories should have (including requirements relating to the experience, qualifications or fitness for office of operators and their officers and employees).

¹⁵ Note: The reference in Rule 2.4.4 to "Linked Providers" is a typographical error and will be corrected by amendment in due course.

155. Rule 2.4.6 broadly reflects CPMI-IOSCO Principle 2 (Governance) and key considerations 2.4 and 2.5 of that Principle.
156. Rule 2.4.6 provides that, without limiting Rule 2.4.5, an Operator must at all times ensure its Officers, managers and employees are fit for office, taking into account the experience, qualifications and skills necessary to perform their respective roles and responsibilities in the governance, management and operation of the Trade Repository

Rule 2.4.7 Financial resources

157. As permitted by subparagraph 903A(2)(c)(iii) of the Corporations Act, Rule 2.4.7 deals with the financial resources that licensed derivative trade repositories should have.
158. Rule 2.4.7 broadly reflects CPMI-IOSCO Principle 15 (General business risk) and the key considerations of that Principle.
159. Subrule 2.4.7(1) provides that, without limiting Rule 2.4.5, an Operator must hold at all times net assets funded by equity (such as shares, disclosed reserves or other retained earnings) that, at a minimum, are equal to an amount that would enable the Trade Repository to cover at least six months of current operating expenses, calculated on a rolling basis at the end of each month.
160. It is noted that ASIC may also specify financial resources that the Operator is required to hold, in the conditions of the Operator's Licence. This ensures that ASIC is able to demonstrate that minimum financial requirements apply to all Operators, but to tailor additional financial requirements as appropriate to each individual Operator.
161. Subrule 2.4.7(2) provides that an Operator must maintain a viable plan, approved by its governing body and updated regularly, for raising additional equity should its equity fall close to or below the amount needed under subrule 2.4.7(1).

Rule 2.4.8 Integrity and security of computer systems and other systems

162. As permitted by subparagraph 903A(2)(c)(iv) of the Corporations Act, Rule 2.4.8 deals with the integrity and security of computer systems and other systems.
163. Rule 2.4.8 broadly reflects CPMI-IOSCO Principle 17 and key consideration 17.5 of that Principle.
164. Operators of Trade Repositories will be responsible for accepting, retaining, using and disclosing Derivative Trade Data that may be commercially valuable and market-sensitive. Any compromise in the security of the Derivative Trade Data, or unauthorised access, could have a significant impact on markets and market participants, and could damage confidence in the trade reporting regime and in the Operator.

165. Rule 2.4.8 provides that an Operator must establish, implement, maintain and enforce policies, procedures and physical and electronic controls over its systems for accepting, retaining, using, disclosing and providing access to Derivative Trade Data designed to:
- (a) maintain the integrity, security and confidentiality of Derivative Trade Data at all times during transmission between the Trade Repository, Australian Regulators and Users, and while retained in the Trade Repository (for example, systems and controls designed for ensuring the Derivative Trade Data is protected from loss, leakage and corruption); and
 - (b) prevent unauthorised use and disclosure of, and access to, Derivative Trade Data.

Rule 2.4.9 Operational reliability

166. As permitted by subparagraph 903A(2)(c)(v) of the Corporations Act, Rule 2.4.9 deals with operational reliability.
167. Rule 2.4.9 broadly reflects CPMI-IOSCO Principle 3 (Framework for the comprehensive management of risks) and Principle 17 (Operational risk) and key considerations 17.3 and 17.4 of Principle 17.
168. Subrule 2.4.9(1) provides that an Operator must ensure that its systems for accepting, retaining, using, disclosing and providing access to Derivative Trade Data are reliable and have sufficient, scalable capacity for the ongoing and planned operations of the Trade Repository, including, without limitation, the capacity to accept and retain for the period required by Rule 2.3.2 all Derivative Trade Data reported to the Trade Repository by Participants. As noted in Explanatory Note 3.17.11 to CPMI-IOSCO Principle 17: “A TR, in particular, should have scalable capacity adequate to maintain historical data as required”.
169. Subrule 2.4.9(2) provides that an Operator must establish, implement, maintain and enforce plans, including escalation plans, for its internal communications and its communications with Users and Australian Regulators addressing circumstances where there may be operational outages and other disruptions to the Trade Repository’s services.

Rule 2.4.10 Business continuity planning

170. As permitted by subparagraph 903A(2)(c)(vi) of the Corporations Act, Rule 2.4.10 deals with business continuity planning.
171. Rule 2.4.10 broadly reflects CPMI-IOSCO Principle 17 and key consideration 17.6 of that Principle. As stated in Explanatory Note 3.17.13 to CPMI-IOSCO Principle 17: “Business continuity management is a key component of an FMI’s operational risk-management framework.”¹⁶

¹⁶ CPMI-IOSCO Principles, Principle 17: Operational risk, explanatory note 3.17.13

172. Rule 2.4.10 provides that an Operator must establish, implement, maintain and enforce business continuity, backup and data recovery plans designed to:
- (a) address events that pose a significant risk of disruption to the Trade Repository's operations or services, including events that could cause a wide-scale or major disruption; and
 - (b) in the event of any disruption to the Trade Repository's operations or services, enable the timely restoration of those operations and services and enable the Operator to meet its obligations to Australian Regulators and Users.

Rule 2.4.11 Recovery and resolution

173. Rule 2.4.11 expands on Rule 2.4.10 and deals specifically with recovery and resolution.
174. Rule 2.4.11 broadly reflects CPMI-IOSCO Principle 3 (Risk management) and key consideration 3.4 of that Principle.
175. Subrule 2.4.11(1) provides that an Operator must establish, implement, maintain and enforce policies, procedures and plans designed to:
- (a) identify scenarios that may potentially prevent the Operator from being able to provide the Trade Repository's critical operations or services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down; and
 - (b) provide for the recovery or orderly wind-down of the Trade Repository's critical operations or services based on the results of that assessment.
176. Subrule 2.4.11(2) provides that an Operator must, on request by an Australian Regulator, provide the Australian Regulator with information reasonably required by the Australian Regulator for purposes of resolution planning in respect of the Operator or in respect of Users.
177. Subrule 2.4.11(3) provides that in establishing, implementing, maintaining the policies, procedures and plans required under subrule (1), the Operator must take into account its obligations under Rules 2.3.2 (Retention of Derivative Trade Data) and 2.3.4 (Provision of access to Derivative Trade Data), and any obligations that may arise under section 904K of the Corporations Act in the event that the Trade Repository ceases to be licensed under section 905C of the Corporations Act.
178. Under section 904K, ASIC may give a written direction relating to Derivative Trade Data if the Trade Repository ceases to be licensed, including a direction requiring an Operator or former Operator to destroy or transfer to another Trade Repository or a Prescribed Derivative Trade Repository, all records of the Derivative Trade Data over which the Operator or former Operator has control. An Operator therefore needs to be prepared to arrange for the continuing retention of, and provision of access to, Derivative Trade Data, in the event of

the wind-down of the Trade Repository's services and must be prepared to respond to a direction from ASIC in this regard in the event the Trade Repository ceases to be licensed.

Rule 2.4.12 Operational separation of functions

179. As permitted by subparagraph 903A(2)(c)(vii) of the Corporations Act, Rule 2.4.12 deals with the operational separation of functions.
180. An Operator may provide services other than those directly related to the acceptance, retention, use, disclosure and provision of access to Derivative Trade Data by the Trade Repository. Such services may also be provided by a related body corporate of the Operator, or another company with which the Operator has a material agreement in connection with the Trade Reporting Services. Where such commercial arrangements exist, there are potential risks that may arise from these other services and which may have an impact on the core Trade Reporting Services. One way to manage these risks is to ensure there is operational separation of the various services.
181. Rule 2.4.12 provides that, where the Operator, a related body corporate of the Operator, or any other company with which the Operator has a material agreement in connection with the Trade Reporting Services provides Non-Trade Reporting Services (including any Ancillary Services), the Operator must:
- (a) disclose to ASIC a description of all of the Non-Trade Reporting Services, and update the disclosure as soon as practicable after any changes are made to the Non-Trade Reporting Services; and
 - (b) establish, implement, maintain and enforce policies, procedures, systems and controls designed to ensure the operational separation between the Non-Trade Reporting Services and the Trade Reporting Services.
182. It is noted that operational separation may be achieved, for example, by supervisory arrangements including information barriers. The effectiveness of such arrangements to comply with Rule 2.4.12 will depend on the circumstances of each individual Operator.
183. Rule 2.4.12 also broadly reflects requirements in the EU.¹⁷

Rule 2.4.13 Outsourcing

184. As permitted by subparagraph 903A(2)(c)(viii) of the Corporations Act, Rule 2.4.13 deals with the outsourcing of functions to other entities.
185. An Operator may outsource some of its activities and operations to another service provider. Where the outsourced services include the core Trade Reporting Services of the Trade Repository, it is necessary to ensure that these

¹⁷ See article 78(5) of the [Regulation \(EU\) No 648/2012 of The European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories](#)

services meet the same requirements as if provided internally, the selection process of the provider is robust and the arrangements with the outsourced provider are documented by way of a written contract with appropriate policies, procedures and controls in place. In addition, Australian Regulators should have the same level of access to the outsourced provider as if the services had been provided by the Trade Repository.

186. Rule 2.4.13 therefore provides that if an Operator outsources any of the Trade Reporting Services to another person (referred to in Rule 2.4.13 as the “Service Provider”), the Operator must:
- (a) ensure that the outsourcing arrangement is covered by a contract with the Service Provider that is in writing;
 - (b) establish, implement, maintain and enforce documented policies, procedures, systems and controls for ensuring the Operator continues to comply with its obligations under Part 7.5A of the Corporations Act, including under the Rules, in relation to the outsourced Trade Reporting Services;
 - (c) at all times be able to access books, records and other information of the Service Provider relating to the outsourced Trade Reporting Services; and
 - (d) ensure that Australian Regulators have the same access to all Derivative Trade Data, books, records and other information relating to the outsourced Trade Reporting Services and maintained by the Service Provider, that the Australian Regulator would have if not for the outsourcing arrangements.

Part 2.5 Disclosure of conditions (including fees) on which Trade Repositories provide their services

187. As permitted by paragraph 903A(2)(d) of the Corporations Act, Part 2.5 of the instrument deals with the disclosure of conditions (including fees) on which licensed derivative trade repositories provide their services.
188. Part 2.5 of the Rules broadly reflects CPMI-IOSCO Principle 23 (Disclosure of rules, key procedures, and market data) and the CPMI-IOSCO *Disclosure framework for financial market infrastructures*. Transparency of key rules, procedures and fees helps Users to effectively evaluate the system’s design and operations, their rights and obligations, and the risks and costs of participating in the Trade Repository.¹⁸

Rule 2.5.1 Disclosure of rules, procedures and other information

189. Subrule 2.5.1(1) provides that an Operator must disclose to Participants in writing:

¹⁸ CPMI-IOSCO Principles, Principle 23: Disclosure of rules, key procedures, and market data, explanatory note 3.23.6

- (a) the Operator's rules and procedures for accepting, retaining, using, disclosing and providing access to Derivative Trade Data (see also subrule 2.2.1(2) which sets out requirements on the Operator to have documented rules, procedures and contractual arrangements in relation to acceptance, retention, use, disclosure and provision of access to Derivative Trade Data);
 - (b) the Operator's commitments in relation to minimum service levels and operational reliability;
 - (c) subject to subrule 2.5.1(2), a description of the design and operation of the Trade Repository's systems for accepting, retaining and providing access to Derivative Trade Data; and
 - (d) subject to subrule 2.5.1(2) and to the extent not disclosed under paragraphs (a), (b) or (c) or Rule 2.5.2, any other information reasonably required by Participants to assess the risks and costs of participating in the Trade Repository.
190. Subrule 2.5.1(2) provides that the Operator is not required to comply with paragraph 2.5.1(1)(c) or (d) to the extent that such disclosure would compromise the integrity or security of the Trade Repository or require the disclosure of commercially sensitive information.
191. Subrule 2.5.1(3) provides that if the Operator proposes to make a change to the access and participation conditions referred to in Rule 2.2.2, or the fees, rates and charges for the Trade Reporting Services as referred to in paragraph 2.5.2(1)(g), the Operator must notify ASIC and Participants in writing about the change within a reasonable time before the change is implemented.

Rule 2.5.2 Public disclosures

192. Subrule 2.5.2(1) provides that an Operator must disclose, on a publicly accessible section of its website and at no charge, a description of:
- (a) the Trade Reporting Services and any Ancillary Services;
 - (b) the class or classes of Derivatives for which the Trade Repository can provide services for the purposes of Part 7.5A of the Corporations Act, as specified in the conditions of the Operator's Licence (see paragraph 905F(4)(b) of the Corporations Act);
 - (c) key elements of the Operator's rules, procedures and contractual arrangements referred to in Rule 2.2.1, including the dispute resolution procedures referred to in paragraph 2.2.1(3)(b);
 - (d) the Operator's access and participation conditions referred to in Rule 2.2.2;

- (e) the organisational, legal and ownership structure of the Operator and the arrangements for the governance and management of the Trade Repository referred to in Rule 2.4.1;
- (f) the Operator's policies and procedures in relation to the commercial use of Derivative Trade Data retained in the Trade Repository (see also Rule 2.3.3 which provides a permission to use and disclose Derivative Trade Data other than as required by the Rules in certain circumstances); and
- (g) the fees, rates and charges for the Trade Reporting Services and Ancillary Services, at an individual service level, and the Operator's policies in relation to discounts and rebates, if any.

193. Subrule 2.5.2(2) provides that an Operator must ensure the disclosures required under subrule 2.5.2(1) are at all times complete, accurate and current.

Part 2.6 Reporting to Australian Regulators on matters related to Trade Repositories

194. As permitted by paragraph 903A(2)(e) of the Corporations Act, Part 2.6 deals with the reporting to ASIC or other regulators of matters related to licensed derivative trade repositories.

Rule 2.6.1 Annual compliance report

195. Subrule 2.6.1(1) provides that an Operator must, within three months after the end of its financial year, give ASIC a written report (referred to in Rule 2.6.1 as the "Annual Compliance Report") on the extent to which the Operator has complied during the financial year with its obligations as an Operator under the Corporations legislation, including under the Rules and the *ASIC Derivative Transaction Rules (Reporting) 2013*, unless ASIC relieves the Operator from this requirement in writing.
196. Subrule 2.6.1(2) provides that the Operator must, on request by ASIC, obtain an audit report on the Annual Compliance Report, prepared by such specified person or body as ASIC nominates or accepts as suitably qualified to prepare the audit report. Subrule 2.6.1(3) provides that a request by ASIC for an audit report under subrule 2.6.1(2) must be in writing and allow the Operator a reasonable period to comply.
197. The requirement in Rule 2.6.1 to give Annual Compliance Reports is consistent with existing requirements on financial market licensees and clearing and settlement facility licensees (see section 792F and section 821E of the Corporations Act in relation to market licensees and clearing and settlement facility licensees respectively). Annual Compliance Reports under Rule 2.6.1 may also be taken into account by ASIC in any assessment of how well an Operator is complying with any or all of its licence obligations under s904J of the Corporations Act.

Rule 2.6.2 Disclosure of proceedings

198. Rule 2.6.2 provides that an Operator must notify ASIC in writing as soon as practicable after the Operator becomes aware that:
- (a) any civil or criminal legal proceeding has been instituted against the Operator or an Officer of the Operator, other than by ASIC, whether or not in Australia;
 - (b) any disciplinary action has been taken against the Operator or an Officer of the Operator by any regulatory authority other than ASIC, whether or not in Australia; and
 - (c) any significant changes are made to the regulatory requirements imposed on the Operator or an Officer of the Operator by any regulatory authority other than ASIC, whether or not in Australia.
199. The information reported under Rule 2.6.2 will provide important background and context for ASIC's supervision of a Trade Repository under section 902A of the Corporations Act, and for ASIC's oversight of compliance by the Operator and its Officers with their obligations under the Rules and Corporations Act.

Rule 2.6.3 Notification of acquisition of significant holding in the Operator

200. Subrule 2.6.3(1) provides that an Operator must notify ASIC of the information in subrule 2.6.3(2) as soon as practicable after the Operator becomes aware that a person has come to have, or has ceased to have, more than 15% of the total voting power in the Operator or in a holding company of the Operator.
201. Subrule 2.6.3(2) provides that, for the purposes of subrule 2.6.3(1), the information to be given to ASIC by the Operator is:
- (a) the person's name and contact details;
 - (b) If known by the Operator, the date on which the person came to have, or ceased to have, more than 15% of the voting power; and
 - (c) if the Operator knows the voting power that the person had immediately before the person came to have, or ceased to have, more than 15% of the voting power, that voting power; and
 - (d) whether the Operator knows the manner in which the person came to have, or ceased to have, more than 15% of the voting power and, if the Operator knows the manner, details of what the Operator knows.
202. Under subsection 904C(3) of the Corporations Act, the Operator must also notify ASIC as soon as practicable after a person becomes, or ceases to be, a director, secretary or senior manager of the Operator or its holding company.
203. Rule 2.6.3, along with subsection 904C(3) of the Corporations Act, complements the obligations on the Operator under paragraph 904A(c) of the Corporations Act to take all reasonable steps to ensure that no disqualified

individual (within the meaning of Division 2 of Part 7.4 of the Corporations Act) becomes, or remains involved in the Operator. Rule 2.6.3 is also consistent with requirements imposed on financial markets and clearing and settlement facilities in this jurisdiction (see subsection 792B(5) of the Corporations Act in relation to market licensees and subsection 821B(4) of the Corporations Act in relation to clearing and settlement facility licensees).

Rule 2.6.4 Delays, disruptions, suspension and termination, breaches of data security, integrity and confidentiality

204. Rule 2.6.4 provides that if the Trade Repository experiences:

- (a) a disruption of, delay in, or suspension or termination of any of the Trade Repository's systems for the acceptance, retention, use, disclosure or provision of access to Derivative Trade Data, including as a result of any system failure; or
- (b) a breach of the integrity, security, or confidentiality of the Derivative Trade Data retained in the Trade Repository,

the Operator must:

- (c) as soon as practicable, notify ASIC of the occurrence of the circumstance; and
- (d) within 14 days of the occurrence of the circumstance, submit a report to ASIC describing the cause and results of the occurrence of the circumstance, and any remedial actions already taken or planned by the Operator in response to the occurrence of the circumstance.

205. Subsection 902A of the Corporations Act provides that ASIC has the function of supervising licensed derivative trade repositories. Rule 2.6.4 complements the more general reporting requirement in subsection 904C(1) of the Corporations Act. The information reported under Rule 2.6.4 also provides important background and context for ASIC's supervision of a Trade Repository's activities.

Part 2.7 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

206. As permitted by paragraph 903A(3)(d) of the Corporations Act, Part 2.7 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 Rules.

Rule 2.7.1 Keeping of records

207. Subrule 2.7.1(1) provides that an Operator must keep records that enable the Operator to demonstrate that it has complied with the requirements of the Rules.

208. Subrule 2.7.1(2) provides that an Operator must keep the records referred to in subrule 2.7.1(1) for a period of at least five years from the date the record is made or amended, or for any longer period for which the record is required to be kept under any other Rule.

Rule 2.7.2 Provision of records or other information

209. Subrule 2.7.2(1) provides that an Operator 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 Rules.
210. Subrule 2.7.2(2) provides that a request by ASIC under subrule 2.7.2(1) must be in writing and give the Operator a reasonable time to comply.
211. Subrule 2.7.2(3) provides that the Operator must comply with a request under subrule 2.7.2(1) within the time specified in the request or, if no time is specified, within a reasonable time.

Rule 2.7.3 Language of records

212. Subrule 2.7.3(1) provides that all records required to be kept by these Rules must be kept in writing in the English language, or in a manner that enables them to be readily accessible and readily converted into writing in the English language.
213. Subrule 2.7.3(2) provides that if any of the records are not kept in writing in the English language, the Operator must, if required by ASIC to convert the records into writing in the English language, comply with that requirement within a reasonable time.

Legislative instrument and primary legislation

214. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
- (a) the Rules are made by ASIC utilising powers given by Parliament to ASIC that allow ASIC to make derivative trade repository rules that broadly impose requirements on operators and officers of derivative trade repositories to provide users with access to its services, receive and handle the derivative trade data reported by entities under the Reporting Rules, and provide timely and reliable access to derivative trade data to Australian regulators; and
 - (b) the Rules contain detailed requirements which would otherwise introduce unnecessary complexity to the primary legislation.

Duration of the instrument

215. This instrument will automatically sunset in accordance with section 50 of the *Legislation Act 2003 (Legislation Act)* on 1 October 2033.
216. This duration is appropriate because:

- (a) 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;
- (b) 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 sunset period was shorter. In particular, the instrument is consistent with the 10-year duration for the complimentary Reporting Rules which impose requirements on reporting entities to report derivative trade data to a trade repository; and
- (c) the legislative instrument deals with confined or unique circumstances affecting licenced trade repositories which do not fit within the strict operation of the primary law but would result in anomalous or inconsistent outcomes given the intent of the primary legislation as set by Parliament.

Legislative authority

217. The instrument is made under section 903A of the Corporations Act.
218. Section 903A 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.
219. Section 903H of the Corporations Act provides that ASIC must not make a derivative trade repository 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 8 August 2023.

Matters that may be dealt with in the derivative trade repository rules

220. The derivative trade repository rules may, subject to Division 4 of Part 7.5A of the Corporations Act, deal with any or all of the following matters (including by imposing requirements for or relating to any of the following matters):
- (a) the manner in which licensed trade repositories provide their services (see paragraph 903A(2)(a));
 - (b) the handling or use of derivative trade data by licensed trade repositories and their officers and employees, including the following:
 - (i) the acceptance and retention of derivative trade data;
 - (ii) the creation of statistical data from derivative trade data; and
 - (iii) the use and disclosure of, and provision of access to, derivative trade data (including statistical data referred to in subparagraph (b)(ii)) (see paragraph 903A(2)(b));

- (c) the governance, management and resources (including financial, technological and human resources) of licensed trade repositories, including the following:
 - (i) the handling of conflicts of interest;
 - (ii) the monitoring and enforcement of compliance with obligations;
 - (iii) the resources that licensed trade repositories must have (including requirements relating to the experience, qualifications or fitness for office of operators and their officers and employees);
 - (iv) the integrity and security of computer systems and other systems;
 - (v) operational reliability;
 - (vi) business continuity planning;
 - (vii) the operational separation of functions; and
 - (viii) the outsourcing of functions to other entities (see paragraph 903A(2)(c));
- (d) the disclosure of conditions (including fees) on which licensed trade repositories provide their services (see paragraph 903A(2)(d));
- (e) the reporting to ASIC or other regulators of matters related to licensed trade repositories (see paragraph 903A(2)(e)); and
- (f) matters incidental or relating to the matters referred to in paragraphs (a)-(e), including:
 - (i) specifying the persons (being persons referred to in section 903B) who are required to comply with requirements imposed by the rules (see paragraph 903A(3)(a));
 - (ii) the manner and form in which persons must comply with requirements imposed by the rules (see paragraph 903A(3)(b));
 - (iii) 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 903A(3)(c));
 - (iv) 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 903A(3)(d)); and
 - (v) any other matters that the provisions of the Corporations Act provide may be dealt with in the derivative trade repository rules (see paragraph 903A(3)(e)).

221. Under subsection 903A(5), the derivative trade repository rules may also provide, either generally or in the circumstances specified in the rules, that information given to ASIC by the operator, or an officer of the operator of a licensed derivative trade repository, under a provision of Part 7.5A, the relevant regulations, the derivative transaction rules or the derivative trade repository rules, is to be taken, for the purpose of section 127 (confidentiality) of the ASIC Act, to be given to ASIC in confidence in connection with the performance of ASIC's functions under the Corporations Act.

Limitations on rule-making power

222. ASIC's power to make derivative trade repository rules is subject to a number of limitations.

Persons on which Rules may impose requirements

223. Under section 903B of the Corporations Act, the only persons on whom the derivative trade repository rules may impose requirements are operators and officers of licensed derivative trade repositories. The Rules only impose requirements on such persons.

Limits on how Rules may deal with matters relating to derivative trade data

224. Under section 903C of the Corporations Act, the Corporations Regulations may prescribe limits on the extent to which, or the way in which, the derivative trade repository rules may deal with matters referred to in paragraph 903A(2)(b) (that is, the handling or use of derivative trade data by licensed derivative trade repositories and their officers and employees). To date no such Regulations have been made.

Consultation

225. Except in emergency situations (see section 903J), under section 903G of the Corporations Act ASIC must not make a derivative trade repository rule unless ASIC:
- (a) has consulted the public about the proposed rule; and
 - (b) has also consulted any other person or body as required by regulations made for the purpose of paragraph 903G(1)(b) of the Corporations Act.

To date no Regulations have been made under paragraph 903G(1)(b). ASIC makes the Rules after consulting the public about the proposed rules in CP 370 as outlined in the earlier "Consultation" section.

Ministerial consent

226. Except in emergency situations (see section 903J), under section 903H of the Corporations Act ASIC must not make a derivative trade repository rule unless the Minister has consented, in writing, to the making of the rule. ASIC makes the Rules with the written consent of the Minister.

Relevant considerations in making derivative trade repository rules

227. In considering whether to make a derivative trade repository rule, ASIC:

- (a) must have regard to:
 - (i) the likely effect of the proposed rule on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system; and
 - (ii) the likely regulatory impact of the proposed rule; and
- (b) may have regard to any other matters that ASIC considers relevant, for example, any relevant international standards and international commitments and matters raised in consultations (if any) under section 903G of the Corporations Act (see section 903F of the Corporations Act).

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](#).

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 Trade Repository Rules 2023

Overview

1. The *ASIC Derivative Trade Repository Rules 2023* (the **Rules**, or the **instrument**) are made by ASIC under section 903A of the *Corporations Act 2001* (the **Corporations Act**), acting with the consent of the Minister under section 903H of the *Corporations Act*.
2. This instrument remakes the *ASIC Trade Repository Rules 2013* (the **2013 Rules**) in substantially the same form so as to continue the operation of Australia's over-the-counter (**OTC**) derivatives trade reporting regime under Part 7.5A of the *Corporations Act*.
3. 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 to improve transparency, mitigate systemic risk and protect against market abuse.
4. In 2013, ASIC concurrently made the *ASIC Derivative Transaction Rules (Reporting) 2013 (Reporting Rules¹⁹)* and the 2013 Rules. Together, these rules facilitated the commencement of Australia's derivatives trade reporting regime under Pt 7.5A of the *Corporations Act*, implementing a key component of Australia's G20 OTC derivatives reforms commitment.
5. Broadly, the Reporting Rules require individual reporting entities to report transactions to a derivative trade repository, and the Rules require a licensed derivative trade repository to, among other things, provide participants with access to its services, receive and handle the derivative trade data reported by entities under the Reporting Rules, and provide timely and reliable access to derivative trade data to ASIC and, if required, to other Australian regulators.
6. To continue the operation of Australia's derivatives trade reporting regime, this instrument remakes the 2013 Rules in substantially the same form, except for two minor and targeted policy updates to:

¹⁹ The *ASIC Derivative Transaction Rules (Reporting) 2013* were repealed and remade as the *ASIC Derivative Transaction Rules (Reporting) 2022* on 19 December 2022, and will be repealed and remade as the *ASIC Derivative Transaction Rules (Reporting) 2024* on 21 October 2024.

- (a) include a limited, administrative ASIC direction provision to manage erroneous derivative trade data in very narrow circumstances; and
 - (b) remove the underlier location category of weekly statistical data required for public reporting to reduce the burden on a licensed trade repository to create and disclose data not directly reporting under the Reporting Rules.
7. This instrument implements ASIC's proposals set out in Consultation Paper 370 *Proposed remake of the ASIC Derivative Trade Repository Rules 2013 (CP 370)*.
 8. The purpose of this instrument is to continue the requirements that first commenced in 2013 to implement the Committee on Payments and Market Infrastructure (CPMI) and the International Organization of Securities Commissions (IOSCO) *Principles for financial market infrastructures (CPMI–IOSCO Principles)*. The CPMI–IOSCO Principles set out standards for trade repositories (among other categories of financial market infrastructure) that should be applied by regulators. The relevant standards cover areas such as a trade repository's legal basis, governance, risk management, third-party access arrangements and efficiency.
 9. The 2013 Rules were designed to implement the CPMI–IOSCO Principles and the relevant key considerations, within the framework provided under Pt 7.5A of the Corporations Act, to the extent they apply to trade repositories.
 10. This instrument, made under subsection 903A(1) of the Corporations Act, makes provisions dealing with matters prescribed in subsections 903A(2)-(3), such as:
 - (a) the manner in which licensed derivative trade repositories provide their services;
 - (b) the handling or use of derivative trade data by licensed derivative trade repositories and their officers and employees;
 - (c) the governance, management and resources (including financial, technological and human resources) of licensed derivative trade repositories;
 - (d) the disclosure of conditions, including fees, on which licensed derivative trade repositories provide their services;
 - (e) the reporting to ASIC or other regulators of matters related to licensed derivative trade repositories and
 - (f) specifying the persons, the manner and form, and the circumstances in which persons are required to comply with requirements imposed by the rules and the keeping of records (paragraphs 903A(3)(a)-(d)).

Assessment of human rights implications

Article 17 of the International Covenant on Civil and Political Rights (ICCPR)

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

Rules 2.3.1 to 2.3.4 may engage the right to privacy and reputation in Article 17

12. The *ASIC Derivative Transaction Rules (Reporting) 2022* (the **2022 Reporting Rules**) and from 1 October 2023, the *ASIC Derivative Transaction Rules (Reporting) 2024* (the **2024 Reporting Rules**), together referred to as the **Reporting Rules**, requires a "reporting entity" (as defined in Rule 1.2.3 of the Reporting Rules) 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.
13. Under Rules 2.3.1 and 2.3.2 of this instrument, an operator of a licensed derivative trade repository must accept and retain that information in records of derivative trade data. Under subsection 904B(1) of the Corporations Act and Rule 2.3.3 an operator of a licensed derivative trade repository may use or disclose derivative trade data. Under subsection 904B(2) of the Corporations Act and Rule 2.3.4 of this instrument, 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.
14. 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 S2.1(1) and S2.2(1) in Schedule 2 to the 2022 Reporting Rules and Tables S1.1(1) to (3) in Schedule 1 to the 2024 Reporting Rules).

15. “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.
16. 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. a Legal Entity Identifier) 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.
17. The right in Article 17 is engaged by the instrument by reason that the acceptance, retention, use, disclosure and provision of access to derivative trade data in accordance with Rules 2.3.1 to 2.3.4 may:
 - (a) involve the collection, storage, security, use or disclosure of personal information;
 - (b) create confidentiality or secrecy provisions relating to personal information; or
 - (c) provide for mandatory disclosure or reporting of information.

Compatibility of Rules 2.3.1 to 2.3.4 with the rights recognised in Article 17

18. Rules 2.3.1 to 2.3.4 are compatible with the rights recognised in Article 17 of the ICCPR by reason that any interference with a person's privacy or reputation resulting from compliance with the instrument will be lawful and not arbitrary. In particular:
 - (a) Rules 2.3.1 to 2.3.4 are made in accordance with ASIC’s power to make derivative trade repository rules dealing with the handling and use of derivative trade data by licensed derivative trade repositories and their officers and employees, including the acceptance, retention, use, disclosure and provision of access to derivative trade data (see paragraph 903A(2)(b) of the Act), and are closely related to the operator’s obligations relating to the use and disclosure of derivative trade data under section 904B of the Corporations Act;
 - (b) Rules 2.3.1 to 2.3.4 are critical to the implementation of an 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; and

- (c) the Rules as a whole further the objects of Chapter 7 of the Corporations Act, including promoting fair, orderly and transparent markets for financial products (see paragraph 760A(c) of the Corporations Act). A fair, orderly and transparent market is one in which market misconduct is minimised. Detection and deterrence of market misconduct contribute to minimising that misconduct, and the Rules will assist ASIC in detecting and deterring that misconduct.
19. Rules 2.3.1 to 2.3.4 are subject to a number of safeguards, including:
- (a) Any personal information in derivative trade data provided to ASIC will be protected in accordance with ASIC’s legislative obligations under s127 of the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*), and to the extent the information is personal information, under the *Privacy Act 1988*. In particular, subrule 2.3.4(12) of the instrument 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 the Reporting Rules 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);
- (b) The operator of a derivative trade repository will be subject to obligations under section 904B of the Corporations Act, and under Rules 2.3.3 to 2.3.6 and 2.4.8 of this instrument 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; and
- (c) Under the instrument, the counterparty information that must be reported is likely to be in a form from which the identity of the counterparty cannot be readily ascertained without further enquiries by Australian regulators (and subject to legislative safeguards applying to those regulators).
20. If Rules 2.3.1 to 2.3.4 were 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.
21. 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. 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.”

22. 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.
23. Rules 2.3.1 to 2.3.4 are 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.

Rules 2.6.2 and 2.6.3 may also engage the right to privacy and reputation in Article 17

24. Rule 2.6.2 requires the operator to notify ASIC in writing as soon as practicable after the operator becomes aware that any civil or criminal legal proceeding is instituted against the operator or an officer of the operator, other than by ASIC, whether or not in Australia, and any disciplinary action has been taken against the operator or an officer of the operator by any regulatory authority other than ASIC, whether or not in Australia.
25. Rule 2.6.3 requires the operator to notify ASIC of certain information as soon as practicable after the operator becomes aware that a person has come to have, or has ceased to have, more than 15% of the total voting power in the operator or in a holding company of the operator. This information includes the name and contact details of the person. It is noted that subsection 903C(4) of the Act already requires the licensee to notify ASIC as soon as practicable after a person becomes or ceases to be a director, secretary or senior manager of a derivative trade repository licensee or of a holding company of a derivative trade repository licensee.
26. Where information notified to ASIC under Rules 2.6.2 and 2.6.3 concerns an individual, that information is likely to be ‘personal information’ as defined in

the *Privacy Act 1988*. As in relation to Rules 2.3.1, 2.3.2, 2.3.3 and 2.3.4, the right in Article 17 is engaged by Rules 2.6.2 and 2.6.3 by reason that compliance with Rules 2.6.2 and 2.6.3 may:

- (a) involve the collection, storage, security, use or disclosure of personal information;
- (b) create confidentiality or secrecy provisions relating to personal information;
- (c) provide for mandatory disclosure or reporting of information.

Compatibility of Rules 2.6.2 and 2.6.3 with the rights recognised in Article 17

27. Rules 2.6.2 and 2.6.3 are 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 those Rules will be lawful and not arbitrary. In particular:
- (a) Rules 2.6.2 and 2.6.3 are made in accordance with ASIC's power to make derivative trade repository rules dealing with reporting to ASIC and other regulators of matters related to Australian derivative trade repository licensees (see paragraph 903A(2)(e) of the Act).
 - (b) Rules 2.6.2 and 2.6.3 form part of the regulatory framework required for ASIC to perform its function of supervising licensed derivative trade repositories (see section 902A of the Act).
28. Rules 2.6.2 and 2.6.3 are subject to safeguards, including that any personal information in provided to ASIC under Rules 2.6.2 and 2.6.3 will be protected in accordance with ASIC's legislative obligations under s127 the ASIC Act, and to the extent the information is personal information, under the *Privacy Act 1988*. In particular, subrule 2.3.4(12) 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 Act or regulations made under that Part, or under the Rules or the Reporting Rules, 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).
29. If Rules 2.6.2 and 2.6.3 were considered to limit the right in Article 17 of the ICCPR, ASIC considers that the Rules are 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.
30. Any limitation imposed on the right by the Rules has a clear legal basis, in that it aims to achieve a legitimate objective, has a rational connection with that objective, and is reasonable, necessary and proportionate. In particular:

- (a) The information reported under Rule 2.6.2 will provide important background and context for ASIC's supervision of derivative trade repositories under section 902A of the Act, and for ASIC's oversight of compliance by the operator and officers of the derivative trade repository under the Rules and the Corporations Act.
- (b) Rule 2.6.3 complements the operator's obligation under paragraph 904A(c) of the Corporations Act to take all reasonable steps to ensure that no disqualified individual becomes, or remains, involved in the operator (see Division 2 of Part 7.4 of the Act). An individual is involved in a licensee for the purposes of Division 2 of Part 7.4 of the Act if that individual is a director, secretary or senior manager of the licensee, or if the individual has more than 15 per cent of the voting power in the licensee. As noted in paragraph 1.89 of the Revised Explanatory Memorandum to the *Corporations Legislation Amendment (Derivative Transactions) Bill 2012*, the provisions of Division 2 of Part 7.4 "operate in parallel to any derivative trade repository rules that ASIC may make".

Conclusion

- 31. 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*.