

**Financial Sector (Collection of Data) (reporting standard) determination No. 131 of 2023**

**EXPLANATORY STATEMENT**

**Prepared by the Australian Prudential Regulation Authority (APRA)**

*Financial Sector (Collection of Data) Act 2001*, sections 13 and 15

*Acts Interpretation Act 1901*, section 33

Under subsection 13(1) of the *Financial Sector (Collection of Data) Act 2001* (the Act), APRA has the power to determine, in writing, reporting standards with which specified financial sector entities must comply. Such standards relate to reporting financial or accounting data and other information regarding the business or activities of the entities. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to issue an instrument the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to revoke any such instrument.

Subsection 15(1) of the Act provides that APRA may declare a day on and after which the reporting standards are to apply.

On 26 October 2023, APRA made Financial Sector (Collection of Data) (reporting standard) determination No. 131 of 2023 which:

- (1) determines a new *Reporting Standard ARS 226.0 Margining and risk mitigation for non-centrally cleared derivatives* (ARS 226.0).

The instrument commences at the start of the day after the day that it is registered on the Federal Register of Legislation.

## **1. Background**

APRA's mandate is to ensure the safety and soundness of prudentially regulated financial institutions so that they can meet their financial promises to depositors, policyholders and fund members within a stable, efficient and competitive financial system. APRA carries out this mandate through a prudential framework and is empowered under the *Banking Act 1959* to issue prudential standards that set out specific prudential requirements with which authorised deposit taking institutions (ADIs) must comply.

A key component of APRA's prudential framework is the suite of prudential standards that impose regulatory capital requirements on ADIs for the purpose of ensuring ADIs hold sufficient capital to address the risks associated with their operations.

The ADI capital reforms in recent years will embed the industry's 'unquestionably strong' capital position and improve the flexibility of the framework to respond during periods of stress. To support the capital reforms, APRA updated a number of ADI reporting standards that incorporate necessary consequential changes as a result of the new ADI capital framework to ensure that APRA's reporting framework aligns with APRA's updated ADI capital framework.

As part of some further consequential amendments to *Reporting Standard 180.0 Capital Adequacy: Counterparty Credit Risk* (ARS 180.0), APRA has moved *Reporting Form ARF 226.0 Margining and risk mitigation for non-centrally cleared derivatives* (ARF 226.0) from ARS 180.0 to a new reporting standard, ARS 226.0. This change will make it easier for the industry to locate this reporting form, and avoid the confusion reported to APRA by several entities over the years in relation to whether they have to report on this form, as it was difficult to find when it was located in ARS 180.0. There will be no change in reporting burden.

## **2. Purpose and operation of the instrument**

The purpose of the instrument is to determine a new reporting standard ARS 226.0.

The reporting standard sets out requirements for the provision of information to APRA by an ADI relating to margining exposures for non-centrally cleared derivatives.

The new reporting standard will ensure that APRA's reporting framework aligns with its prudential framework. It will also ensure that APRA will continue to receive data that is necessary to supervise ADIs' compliance against *Prudential Standard CPS 226 Margining and risk mitigation for non-centrally cleared derivatives* (CPS 226).

The reporting standard requires reporting for reporting periods prior to the commencement of the reporting standard. However, the reporting standard is not retrospective in operation as the obligation to report (including in relation to pre-commencement reporting periods) only applies after the commencement of the reporting standard.

### ***Explanation of each provision in the instrument***

#### *Authority – paragraph 1*

This paragraph outlines APRA's authority to determine reporting standards that are required to be complied with by financial sector entities under section 13 of the Act.

#### *Purpose – paragraph 2*

This paragraph explains the purpose of APRA's collection of information under the reporting standard. Information collected under this reporting standard will be used by APRA for the purpose of prudential supervision and publication. It may also be used by the Reserve Bank of Australia (RBA) and the Australian Bureau of Statistics (ABS).

#### *Application – paragraph 3*

This paragraph states which financial sector entities must comply with the reporting standard, as provided for in section 15 of the Act.

#### *Commencement – paragraph 4*

This paragraph states when the reporting standard commences as provided for in section 15 of the Act.

Paragraph 4 states that information required by this reporting standard must be provided for reporting periods ending on or after 30 September 2023.

#### *Information required – paragraphs 5 – 7*

Sections 13(2)(d) and (e) of the Act permits reporting standards determined by APRA to include matters related to the times as at which, or the periods to which, the information in reporting documents is to relate, the giving of reporting documents to APRA, and when they should be provided.

Paragraphs 5, 6 and 7 rely on these powers. Paragraph 5 applies to ADIs at Level 1 and Paragraph 6 applies to Level 2 ADIs.

Paragraph 7 specifies the class of ADI to which the reporting form applies.

#### *Method of submission – paragraph 8*

This paragraph specifies how information required by the reporting standard must be given to APRA as provided for in section 13(2)(e) of the Act.

#### *Reporting period – paragraphs 9-11*

Section 13(2)(d) of the Act permits reporting standards determined by APRA to include matters related to the times as at which, or the periods to which, the information in reporting documents is to relate.

Paragraph 9 relies on this power. Paragraph 5 states that ADIs to which this Reporting Standard applies are to provide the information required by this reporting standard within 35 calendar days after the end of each quarter based on the ADI's financial year (within the meaning of the *Corporations Act 2001*).

Sections 13(2)(d)-(f) of the Act permits reporting standards determined by APRA to include matters related to the times as at which, or the periods to which, the information in reporting documents is to relate, the giving of reporting documents to APRA, and when they should be provided, and the discretion of APRA, in particular cases, to vary reporting standards, including, but not limited to, the discretion to vary when entities are to provide documents.

Paragraph 10 provides for APRA to vary the reporting periods mentioned in paragraph 9 in writing, if, having regard to the particular circumstances of a financial sector entity, APRA considers it necessary or desirable to obtain information at a different frequency than stated in paragraph 9. Paragraph 10 also states that in the case of information provided in accordance with paragraph 10, the due date will be as stated on the written notice. Paragraph 11 states that APRA may grant an extension of a due date in writing.

#### *Quality control – paragraphs 12-13*

Paragraph 12 states that information provided to APRA under this reporting standard must be the product of systems, processes and controls that have been reviewed and tested by the external auditor of the ADI to which the information relates.

Paragraph 13 states that information provided under this reporting standard must be subject to systems, processes and controls developed by the entity for the internal review and authorisation of that information.

#### *Authorisation – paragraph 14*

Paragraph 14 states how information provided to APRA should be authenticated and who is authorised to provide information to APRA for a financial sector entity.

### *Variations – paragraphs 15-16*

Paragraph 15 states that APRA may vary the requirements of this reporting standard in relation to a financial sector entity in writing, as provided for in paragraph 13(2)(f) of the Act.

Paragraph 16 states that APRA may determine in writing that an individual ADI of one class of ADI is to be treated, for the purposes of this Reporting Standard, as though it was an ADI of another class of ADI.

### *Interpretation – paragraphs 17-18*

Paragraph 17 provides definitions of common terms used throughout this reporting standard. Paragraph 18 states that unless the contrary intention appears, a reference to an Act, Prudential Standard, Reporting Standard, Australian Accounting or Auditing Standard is a reference to the instrument as in force from time to time.

### *General instructions*

The general instructions contain details on the data to be reported to APRA under this reporting standard. Information in the general instructions applies to all data items in this reporting standard. This information includes definitions of terms that relate to the data reported to APRA under this reporting standard, and instructions on how to interpret the reporting tables.

### *Specific instructions*

The specific instructions list the specific data items that must be reported to APRA and how financial sector entities should determine these items.

### ***Documents incorporated by reference***

Under paragraph 14(1)(a) of the *Legislation Act 2003*, the reporting standard may incorporate by reference as in force from time to time:

- Acts of Parliament and associated delegated legislation;
- Prudential Standards determined by APRA under Subsection 11AF(1) of the *Banking Act 1959*;
- Reporting Standards determined by APRA under subsection 13(1) of the Act;
- the Australian Accounting Standards determined by the Australian Accounting Standards Board under section 334 of the *Corporations Act 2001* (Cth); and
- the Australian Auditing Standards determined by the Auditing and Assurance Standards Board under section 336 of the *Corporations Act 2001* (Cth).

Acts of Parliament and delegated legislation, APRA's Prudential Standards and APRA's Reporting Standards may be freely obtained at [www.legislation.gov.au](http://www.legislation.gov.au). Australian Accounting Standards may be freely obtained from [https://www.aasb.gov.au/pronouncements/accounting-standards/\(Australian Accounting Standards\)](https://www.aasb.gov.au/pronouncements/accounting-standards/(Australian_Accounting_Standards)). Australian Auditing Standards may be freely obtained from [https://auasb.gov.au/standards-guidance/auasb-standards/auditing-standards/\(Australian Auditing Standards\)](https://auasb.gov.au/standards-guidance/auasb-standards/auditing-standards/(Australian_Auditing_Standards)).

### ***Review of decisions***

There are a number of powers that may be exercised by APRA in reporting standards that involve an element of discretion and which may impact the interests of the ADIs to which the reporting standards apply. These decisions include APRA changing a reporting period or due date for an ADI to provide information required by each of the instruments or determining, in writing, that an individual ADI of one class of ADI is to be treated, for the purposes of a Reporting Standard, as though it were an ADI of another class of ADI. Decisions made by APRA exercising those powers are not subject to merits review. These discretions have not been amended and are consistent with discretions included in the reporting standards being revoked by the instrument.

APRA considers decisions made by APRA exercising discretions under its reporting standards should not be subject to merits review as they are financial decisions with a significant public interest element.

APRA's reporting standards collect financial data from regulated entities. This data contains critical indicators of a regulated entity's financial wellbeing, including capital adequacy. APRA relies heavily on this financial data to inform its supervisory actions towards its regulated entities. Without timely and complete data, APRA may miss indicators that an ADI is taking on imprudent risk or is in distress. APRA's supervisory decisions may be jeopardised if its receipt of data is unreliable due to entities seeking merits review under its reporting standards.

### **3. Consultation**

APRA undertook a short public consultation in a letter to the ADI industry in September 2023 on the proposed updates to ADI capital reporting standards. APRA consulted affected ADIs on moving ARF 226.0 to a new reporting standard ARS 226.0 with no change in reporting obligations, to make it easier for the industry to locate this reporting form.

There was one submission to the consultation, which did not raise any concerns with this change.

### **4. Regulation Impact Statement**

The Office of Impact Analysis confirmed that a Regulation Impact Statement was not required.

### **5. Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

## ATTACHMENT A

### Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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

#### **Overview of the Legislative Instrument**

The purpose of the Legislative Instrument is to determine a new *Reporting Standard ARS 226.0 Margining and risk mitigation for non-centrally cleared derivatives* that create a new reporting standard for *Reporting Form ARF 226.0 Margining and risk mitigation for non-centrally cleared derivatives* (ARF 226.0), to make it easier for the industry to locate this reporting form. Presently ARF 226.0 is located in *Reporting Standard 180.0 Capital Adequacy: Counterparty Credit Risk* (ARS 180.0).

#### **Human rights implications**

APRA has assessed the Legislative Instrument and is of the view that it does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the HRPS Act. Accordingly, in APRA's assessment, the Instrument is compatible with human rights.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.