



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Derivative Transaction Rules (Reporting) 2024 Amendment Instrument 2024/1

This is the Explanatory Statement for *ASIC Derivative Transaction Rules (Reporting) 2024 Amendment Instrument 2024/1 (Amending Instrument)*.

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

Summary

1. The Amending Instrument is made under section 901M of the *Corporations Act 2001* (the *Act*) and amends the *ASIC Derivative Transaction Rules (Reporting) 2024 (2024 Rules)* to make certain changes to data elements, consequential rule changes, and other minor changes.
2. On 21 October 2024, the 2024 Rules will repeal and replace the *ASIC Derivative Transaction Rules (Reporting) 2022 (2022 Rules)*, substantially amending the current over-the-counter (*OTC*) derivative transaction reporting requirements to align with international reporting standards, consolidate existing transitional provisions and exemptions within the rules and ensure they remain fit for purpose. The 2024 Rules were made on 19 December 2022 providing industry with a 22-month implementation period ahead of commencement for systems and processes changes.
3. Since making the 2024 Rules, the underlying international standards and systems for harmonised OTC derivative transaction reporting have undergone further developments. Preparations for the impending implementation of the 2024 Rules has led to industry requests for clarification as well as additional technical requirements.
4. This Amending Instrument amends the 2024 Rules to:
 - (a) include the reporting of seven additional data elements;
 - (b) provide clarifications and administrative updates to other data elements;
 - (c) make consequential changes to Chapter 2: Reporting Requirements; and
 - (d) make other administrative updates including re-referencing definitions in the Act which have been amended by the *Treasury Laws Amendment*

(2023 Law Improvement Package No. 1) Act 2023 (Treasury Laws Amendment)

(together, the *amendments*).

Purpose of the instrument

5. The purpose of the Amending Instrument is to amend the 2024 Rules to ensure they are clear, harmonised to international standards (where appropriate), and fit for regulatory purposes. Since making the 2024 Rules, the amendments have been informed by further developments internationally, and ASIC's ongoing engagement with internal and external stakeholders. The Amending Instrument aims to ensure regulation in this area keeps pace with international and industry developments.

Background

6. Following two rounds of consultation ([Consultation Paper 334 Proposed changes to simplify the ASIC Derivative Transaction Rules \(Reporting\): First consultation \(CP 334\)](#) released on 27 November 2020 and [Consultation Paper 361 Proposed changes to simplify the ASIC Derivative Transaction Rules \(Reporting\): Second consultation \(CP 361\)](#) released on 16 May 2022), ASIC made the 2024 Rules on 19 December 2022. The 2024 Rules will commence on 21 October 2024.
7. The 2024 Rules set out, in Schedule 1, data elements of derivative transaction information to be reported. The data elements proposed in CP 361 were based on the then status of the international standards and systems for the:
 - (a) *Revised CDE Technical Guidance – version 3 (CDE TG)*;
 - (b) [Unique Product Identifier \(UPI\) system](#) operated by The Derivatives Service Bureau (DSB) Limited; and
 - (c) ISO 20022 Financial Services—*Universal financial industry message scheme (ISO 20022)* message definitions and external code sets in the [Financial Instruments and Transactions Regulatory Reporting \(Trade Repository Reporting\) Message Set](#).
8. Since the release of CP 361, each of the above standards and systems have undergone further developments, changes and/or proposed changes. Further, ASIC's engagement with industry, and internal stakeholders, in relation to planning for and implementation of 2024 Rules has led to requests by industry for further clarification, and for some additional requirements in the above standards and systems to be included in the 2024 Rules.

Consultation

9. On 15 November 2023 ASIC published [Consultation Paper 361a ASIC Derivative Transaction Rules \(Reporting\) 2024: Follow-on consultation on](#)

changes to data elements and other minor amendments (CP 361a). CP 361a proposed changes to the 2024 Rules to make amendments to the 2024 Rules to:

- (a) insert seven additional data elements in Table S1.1(1): Transaction information;
- (b) provide clarifications to existing data elements in Table S1.1(1): Transaction information;
- (c) provide clarifications to existing data elements in Table S1.1(2): Valuation information;
- (d) provide clarifications to existing data elements in Table S1.1(3): Collateral information;
- (e) make consequential changes in Chapter 2 : Reporting Requirements relating to reporting exceptions if the data elements are not available in the ISO 20022 message definition; and
- (f) make minor changes resulting from the Treasury Laws Amendment and other minor amendments

(together, the *proposals*).

- 10. ASIC's proposals were broadly supported by industry feedback to CP 361a. ASIC received five submissions in total from reporting entities, a trade repository and a joint industry associations submission from the Australian Financial Markets Association, the Global Foreign Exchange Division of the Global Financial Markets Association and the International Swaps and Derivatives Association.
- 11. ASIC has consulted with the Reserve Bank of Australia (*RBA*) and the Australian Prudential Regulation Authority (*APRA*) in relation to ASIC's proposals. The RBA and APRA support the proposed amendments to the 2024 Rules.
- 12. ASIC has consulted with the Office of Impact Analysis (*OIA*) in relation to whether an Impact Analysis (*IA*) would be required. OIA advised that the preparation of an IA was not required because it assessed the proposals as unlikely to have a more than minor regulatory impact.

Operation of the instrument

Part 1: Preliminary

- 13. Section 1 of Part 1 provides that the name of the Amending Instrument is the *ASIC Derivative Transaction Rules (Reporting) 2024 Amendment Instrument 2024/1*.
- 14. Section 2 of Part 1 provides that the Amending Instrument commences on 21 October 2024 or the day after the Amending Instrument is registered on the Federal Register of Legislation, whichever is later.

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15. Section 3 of Part 1 provides that the Amending Instrument is made under sections 901M of the Act.
 16. Section 4 of Part 1 provides that each instrument that is specified in a Schedule to the Amending Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amending Instrument has effect according to its terms.

Schedule 1 Amendments

17. Broadly, Schedule 1 amendments make readily defined small changes to the reporting requirements within existing items of derivative transaction information included in Rule S1.3.1, Tables S1.1(1): Transaction information, S1.1(2): Valuation information and S1.1(3): Collateral information.
18. Items 1 to 8 of the Amending Instrument amend their respective definitions in Rule 1.2.3 to reflect changes to those definitions in the Act which have been made by the Treasury Laws Amendment. Item 9 similarly amends paragraph 1.2.4(2)(a). All references to “section 761A” (of the Act) are replaced by “section 9”.
19. Item 10 of the Amending Instrument amends Note 2 to paragraph 1.2.4(5)(b) to replace “Federal Register of Legislative Instruments (FRLI) and take effect under the Legislative Instruments Act 2003” with “Federal Register of Legislation (FRL) and take effect under the Legislation Act 2003”.
20. Item 11 of the Amending Instrument provides that subrule 2.2.1(1) is also subject to the new subrule 2.2.1(4) (Exception for incomplete ISO 20022 message definition) by replacing “and (3)” with “to (4)”.
21. Item 12 of the Amending Instrument inserts new subrule 2.2.1(4) under the heading “Exception for incomplete ISO 20022 message definition”. Subrule 2.2.1(4) provides an exception for reporting entities from having to comply with subrule 2.2.1(1) and Part 2.2 (Reporting Requirements), in relation to one or more items of derivative transaction information, to the extent that, the ISO 20022 message definition used in accordance with subrule 2.2.4(2) does not include those items of derivative transaction information. Subrule 2.2.1(4) may be relevant if proposed changes to the ISO message definition, including five of ASIC’s additional data elements in the Amending Instrument, take longer than anticipated or do not proceed at all.
22. Item 13 of the Amending Instrument provides that paragraph 2.2.4(2)(b) is subject to new subrule 2.2.1(4), which provides an exception to reporting requirements in circumstances where the ISO 20022 message definition does not include all items of derivative transaction information. Further, item 14 of the Amending Instrument amends paragraph 2.2.4(2)(b) by removing the requirement for “all of” the derivative transaction information in Part S1.3 to be message elements in an ISO message definition.

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23. Item 15 omits the text “where available” from paragraph 2.2.4(2)(b). However, there is no such text in the 2024 Rules and this item makes no effective amendment to the 2024 Rules.
24. Items 16 and 17 of the Amending Instrument make minor amendments to insert and correct rule level references respectively in Rule S1.3.1, Table S1.1(1): Transaction information, item 1 (Unique transaction identifier) (*UTI*), under the column headed “3. Derivative Transaction Information”.
25. Item 18 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 1 (Unique transaction identifier), under the column headed “3. Derivative Transaction Information” by replacing the paragraph beginning “For a Reportable Transaction of the kind referred to in 1.2.5(1)(b)(ii)” (including paragraphs (a) and (b) of that paragraph), with:
- “For a Reportable Transaction of the kind referred to in subparagraph 1.2.5(1)(b)(ii) in relation to an OTC Derivative or for a report made under paragraph 2.2.2(2)(a) or (b) or Rule 2.4.1 in relation to an OTC Derivative:
- (a) if a UTI was reported for the initial Reportable Transaction in relation to the OTC Derivative—that UTI; and
- (b) if a UTI was not reported for the initial Reportable Transaction—a transaction identifier that was reported for the initial Reportable Transaction.”
26. With the addition of item 1a Secondary transaction identifier (inserted by Item 1 of Schedule 2 of the Amending Instrument) – which may only be reported after the commencement of the 2024 Rules – the amendment by Item 18 clarifies that the transaction identifier reported for item 1 is the transaction identifier, or one of the transaction identifiers, reported for the initial reportable transaction. This would not be a ‘Secondary transaction identifier’ as this would either be reported in addition to a UTI in the format specified in ISO 23897 (in which case, that UTI is reported at this item) or was not reported for the initial reportable transaction (i.e. it has been subsequently added to an existing reported transaction).
27. Item 19 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 1 (Unique transaction identifier), under the column headed “4. Format” to adopt the format of the ISO 20022 message definition for “any other kind of transaction identifier” by replacing “no format is specified” with “an alphanumeric code of not more than 72 characters”.
28. Item 20 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 13 (Execution agent of Counterparty 1), under the column headed “2. Label” by removing “the” from the label that previously read “Execution agent of the Counterparty 1”.
29. Item 21 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 25 (Platform identifier), under the column headed “3. Derivative Transaction Information” by replacing the term “facility” with “financial market”, wherever occurring, to clarify that the reference to “facility” does include a “clearing facility”.

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30. Item 22 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 25 (Platform identifier), under the column headed “5. Allowable Values” by replacing the term “facility” with “financial market” wherever occurring.
 31. Item 23 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 26 (Notional amount—Leg 1), under the column headed “3. Derivative Transaction Information” by replacing “The notional amount taken from the trade confirmation of the Reportable Transaction.” with: “The notional amount, or payout where a single fixed payment is made based on certain conditions being met during the term of the OTC Derivative the subject of the Reportable Transaction, taken from, or determined in accordance with, the trade confirmation of the Reportable Transaction.” The amendment reinstates the reporting requirement under the 2022 Rules, where a payout of a single fixed payment, such as for a digital option, is reported for this item.
 32. Item 24 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 26 (Notional amount—Leg 1), under the column headed “3. Derivative Transaction Information” by expanding the condition “If no notional amount is specified in” to also include “, or determinable in accordance with,” the trade confirmation to clarify that the notional amount need not be (temporarily) reported by reference to “the market price for the underlier at the time of the transaction” at paragraph (c) of item 26. This addresses industry concerns that a near-term price-fixing event will conclusively determine the notional amount for the term of the OTC derivative and initially reporting a standard default value for notional amount is a more practical workflow than referencing a “market price”.
 33. Item 25 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 26 (Notional amount—Leg 1), under the column headed “5. Allowable Values” by replacing the cell with: “For Reportable Transactions that are commodity derivatives, any numeric value. For Reportable Transactions that are not commodity derivatives, any numeric value greater than or equal to zero.” This aligns with the CDE TG by restricting negative notional amounts to commodity derivatives only.
 34. Item 26 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 27 (Notional amount—Leg 2), under the column headed “5. Allowable Values” by replacing the cell with: “For Reportable Transactions that are commodity derivatives, any numeric value. For Reportable Transactions that are not commodity derivatives, any numeric value greater than or equal to zero.” This aligns with the CDE TG by restricting negative notional amounts to commodity derivatives only.
 35. Item 27 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 32 (Call amount), under the column headed “3. Derivative Transaction Information” to clarify that this data element is not required to be reported for digital option transactions by expanding the condition “If the Reportable Transaction is a foreign exchange option” to

include “and the UPI that is reported for Unique product identifier (item 2 above) is not a UPI for a digital option”.

36. Item 28 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 33 (Put amount), under the column headed “3. Derivative Transaction Information” to clarify that this data element is not required to be reported for digital option transactions by expanding the condition “If the Reportable Transaction is a foreign exchange option” to include “and the UPI that is reported for Unique product identifier (item 2 above) is not a UPI for a digital option”.
37. Item 29 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 42 (Notional amount schedule amount—Leg 1), under the column headed “5. Allowable Values” by replacing the cell with: “For Reportable Transactions that are commodity derivatives, any numeric value. For Reportable Transactions that are not commodity derivatives, any numeric value greater than or equal to zero.” This aligns with the CDE TG by restricting negative notional amounts to commodity derivatives only.
38. Item 30 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 45 (Notional amount schedule amount—Leg 2), under the column headed “5. Allowable Values” by replacing the cell with: “For Reportable Transactions that are commodity derivatives, any numeric value. For Reportable Transactions that are not commodity derivatives, any numeric value greater than or equal to zero.” This aligns with the CDE TG by restricting negative notional amounts to commodity derivatives only.
39. Item 31 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 59 (Strike price), under the column headed “4. Format” by adding “(item 58 above)” following reference to the item name “Strike price notation” wherever occurring.
40. Item 32 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 75 (Other payment type), under the column headed “3. Derivative Transaction Information” under paragraph (b) to clarify that data elements related to other payments are reported for a partial termination as well as a full termination by replacing “the termination” with “a partial or full termination”.
41. Item 33 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 75 (Other payment type), under the column headed “5. Allowable Values” under paragraph (b) to clarify that data elements related to other payments are reported for a partial termination as well as a full termination by replacing “the termination” with “a partial or full termination”.
42. Item 34 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, after item 79 (Other payment receiver) by adding the new subheading “Data elements related to underliers”. This is intended to aid the reader that items 80 to 88 specifically relate to underlier information.

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43. Item 35 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 80 (Custom basket code), under the column headed “3. Derivative Transaction Information” to directly state that this item is applicable where the UPI code reported identifies the underlier as a custom basket by replacing “not a UPI with a specific underlier or code of a specific basket as a reference data element” with “a UPI which identifies that the underlier is a custom basket” as part of the applicability condition.
 44. Items 36 and 37 of the Amending Instrument amend Rule S1.3.1, Table S1.1(1): Transaction information, item 80 (Custom basket code), under the column headed “3. Derivative Transaction Information”, under paragraph (b) by replacing the first occurrence of “Custom basket code” with “the unique code” and the second reference to “custom basket code” with “that code” respectively. These minor updates are for clarity and consistency.
 45. Item 38 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 80 (Custom basket code), under the column headed “3. Derivative Transaction Information”, under subparagraph (b)(ii) by replacing “code B” with “the value B” for clarity and consistency.
 46. Item 39 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 81 (Basket constituent identifiers), under the column headed “2. Label” to conform to the re-naming of this data element in the CDE TG by replacing the item label “Identifiers of the basket’s constituents” with “Basket constituent identifiers”.
 47. Items 40 and 41 of the Amending Instrument amend Rule S1.3.1, Table S1.1(1): Transaction information, item 82 (Basket constituent identifier source), under the columns headed “3. Derivative Transaction Information” and “5. Allowable Values” by consequentially re-referencing the label for item 81 to consistently use “Basket constituent identifiers” wherever occurring.
 48. Item 42 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 83 (Underlier ID (Other)), under the column headed “3. Derivative Transaction Information” by replacing the cell with: “Where the UPI that is reported for Unique product identifier (item 2 above) is a UPI which does not identify the specific underlier for the OTC Derivative and Custom basket code (item 80) does not apply, an identifier which identifies the specific underlier. Otherwise, the identifier of the specific underlier may be, but is not required to be, reported for this item.” This generalises the applicability of Underlier ID (Other) to any asset class and clarifies that this item is reported where the UPI reported does not identify the specific underlier for the OTC Derivative and Custom basket code (item 80) does not apply.
 49. Item 43 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 85 (Maturity date of the underlier), under the column headed “3. Derivative Transaction Information” to generalise the applicability of this data element to swaptions (*SWPT*) in any asset class by replacing the cell with “Where Contract type (item 4 above) is reported as SWPT, the unadjusted date of the expiration date of the swap that is the underlier to the option.”

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50. Items 44 and 45 of the instrument amend Rule S1.3.1, Table S1.1(1): Transaction information, item 86 (Indicator of the floating rate—Leg 2), under the columns headed “2. Label” and “3. Derivative Transaction Information” by replacing “Identifier” with “Indicator” for clarity and consistency with the terminology used in the ISO 20022 message definition.
51. Item 46 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 87 (Floating rate reference period—Leg 2), under the column headed “3. Derivative Transaction Information” by replacing the word “Identifier” with “Indicator” for clarity and consistency.
52. Item 47 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 88 (Floating rate reference period multiplier—Leg 2), under the column headed “3. Derivative Transaction Information” also by replacing the word “Identifier” with “Indicator” for clarity and consistency.
53. Item 48 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 99 (Prior UTI), under the column headed “3. Derivative Transaction Information” by replacing the first paragraph with:
- “For a Reportable Transaction that arises due to a lifecycle event on a single predecessor OTC Derivative, and
- (a) Reporting Entity (item 5 above) was reported as Reporting Entity for that predecessor OTC Derivative;
- (b) Counterparty 1 (item 6 above) was reported as Counterparty 1 for that predecessor OTC Derivative; or
- (c) Event type (item 102 below) is reported as ALOC;
- the transaction identifier of that single predecessor OTC Derivative.”
54. This amendment clarifies that item 99 (Prior UTI) is only reported where the Reporting Entity and/or Counterparty 1 was a party to the predecessor OTC derivative for which the transaction identifier is the “Prior UTI”, or where the report is made about an allocation event (with item 102, Event type, reported as ALOC). This means that an unrelated entity that “steps-in” by assignment or novation of a prior transaction of another entity is not required to report the “Prior UTI” of that prior transaction. The “step-in” entity would not know the “Prior UTI” unless informed of it by the continuing party or the “step-out” party. However, in the case of allocation events, the step-in entity would be related to the step-out entity and/or the allocation event would be arranged by a single execution agent and the “Prior UTI” would be readily accessible to the step-in entity.
55. Item 49 of the Amending Instrument also amends Rule S1.3.1, Table S1.1(1): Transaction information, item 99 (Prior UTI), under the column headed “3. Derivative Transaction Information” to correct the rule level reference from “subrule 2.2.2(2)(c)” to “paragraph 2.2.2(2)(c)”.

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56. Item 50 of the Amending Instrument amends Rule S1.3.1, Table S1.1(2): Valuation information, item 1 (Unique transaction identifier), under the column headed “3. Derivative Transaction Information” by replacing the cell with:
- “For a report made under Rule 2.2.2:
- (a) if a UTI was reported for the initial Reportable Transaction for the OTC Derivative—that UTI; or
- (b) if a UTI was not reported for the initial Reportable Transaction—a transaction identifier that was reported for the initial Reportable Transaction.”
- This amendment clarifies that the transaction identifier relates to the UTI or other form of transaction identifier reported for the initial reportable transaction.
57. Item 51 of the Amending Instrument amends Rule S1.3.1, Table S1.1(2): Valuation information, item 1 (Unique transaction identifier), under the column headed “4. Format” to adopt the format of the ISO 20022 message definition for “any other kind of transaction identifier” by replacing “no format is specified” with “an alphanumeric code of not more than 72 characters”.
58. Item 52 of the Amending Instrument amends Rule S1.3.1, Table S1.1(3): Collateral information, item 10 (Collateral portfolio code (initial margin)), under the column headed “3. Derivative Transaction Information” by replacing the paragraph beginning “If there is only one collateral portfolio” with “This data element is not reported if there is only one collateral portfolio of amounts of margin that does not distinguish between margin that is initial margin and margin that is variation margin, and the collateral portfolio code of the collateral portfolio is reported as Collateral portfolio code (variation margin) (item 11 below).”
59. Together with the amendment of item 53, this amendment moves the reporting of only one collateral portfolio of amounts of margin that does not distinguish between margin that is initial margin and margin that is variation margin from reporting as initial margin to reporting as variation margin.
60. Item 53 of the Amending Instrument amends Rule S1.3.1, Table S1.1(3): Collateral information, item 11 (Collateral portfolio code (variation margin)), under the column headed “3. Derivative Transaction Information” by replacing the paragraph beginning “This data element is not reported” with:
- “If there is only one collateral portfolio of amounts of margin that does not distinguish between margin that is initial margin and margin that is variation margin, the unique code is of that portfolio.
- This data element is reported as the same code as Collateral portfolio code (initial margin) (item 10 above) if there is only one collateral portfolio and the amounts of initial and variation margin are distinguished within that portfolio.”
61. This amendment clarifies that the value of item 10, Collateral portfolio code (initial margin) is also reported as “Collateral portfolio code (variation margin)” where there is only one collateral portfolio and the amounts of initial and variation margin are distinguished within that portfolio. Together with the

amendment of item 52, this amendment moves the reporting of only one collateral portfolio of amounts of margin that does not distinguish between margin that is initial margin and margin that is variation margin from reporting as initial margin to reporting as variation margin.

Schedule 2 Amendments

62. Broadly, Schedule 2 amendments make changes to derivative transaction information included in Rule S1.3.1, Tables S1.1(1): Transaction information, S1.1(2): Valuation information and S1.1(3): Collateral information by inserting new items and repealing and replacing entire existing items.
63. Item 1 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information after item 1 (Unique transaction identifier) by inserting the new data element item 1a, labelled “Secondary transaction identifier”. Secondary transaction identifier has been included in response to a request by industry on the basis that it may assist some reporting entities to strengthen their controls and reconciliation framework to tie trade repository records to internal books and records. A reporting entity may choose whether to submit a secondary transaction identifier in addition to mandatorily submitting a unique transaction identifier.
64. Item 2 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information after item 7 (Counterparty 2) by inserting the new data element item 7a, labelled “Counterparty 2 name”. Counterparty 2 name is being reinstated from the current reporting requirements under the 2022 Rules but with a new condition that it is only required to be reported if “Counterparty 2”, item 7, is not reported as a legal entity identifier, designated business identifier or the value ANON. This data element enables matching among multiple datasets available to ASIC for regulatory purposes.
65. Item 3 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 47 (Price) by repealing and replacing the entire item. The changes clarify that Price is not reported merely because an upfront payment is not reported for a credit derivative—this circumstance is one of many other data elements that are not reported as the trigger for Price to be reported. Further, the note explains that the items listed in condition (c) are required to be reported for certain products and where at least one of those items is reported, then Price is not reported. In addition, the amended item corrects the reference to “contracts for differences” to “contracts for difference”.
66. Item 4 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information after item 58 (Strike price notation) by inserting two new data elements, items 58a and 58b respectively, labelled “Lower or only barrier price notation” and “Upper barrier price notation”. As for other existing price data elements, these items have been included to indicate the type of unit the barrier price (lower or only and upper) is reported.
67. Item 5 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information after item 59 (Strike price) by inserting two new data elements, items 59a and 59b respectively labelled “Lower or only barrier price”

and “Upper barrier price”. Lower or only barrier price is being reinstated from the current reporting requirements under the 2022 ASIC Rules and Upper barrier price provides for a second barrier price to be reported, for the types of barrier options that include both a lower and upper barrier. ASIC considers the inclusion of data elements to identify barrier option transaction information as important for regulatory purposes. We observe that these products are typically transacted with less sophisticated entities. More complete information about the terms of these transactions is important to inform our considerations.

68. Item 6 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information after item 104 (Report submitting entity) by inserting the new data element item 105, labelled “New Derivative Trade Repository”. This data element has been included to clearly identify circumstance of transactions being transferred from one derivative trade repository to another. This data element requires reporting entities to report the legal entity identifier of the destination derivative trade repository where a value of “PRTO”, representing transfer out, is reported for item 101 (Action type).
69. Item 7 of the Amending Instrument amends Rule S1.3.1, Table S1.1(2): Valuation information, item 7 (Valuation amount) by repealing and replacing the entire item. The expanded derivative transaction information clarifies that the amounts are reported as positive or negative numbers according to whether Counterparty 1 would receive or pay the amount, and zero if neither counterparty would receive or pay an amount.
70. Item 8 of the Amending Instrument amends Rule S1.3.1, Table S1.1(3): Collateral information, item 1 (Unique transaction identifier) by repealing and replacing the entire item. The changes amend Unique transaction identifier to:
 - (a) be consistent with item (Unique Transaction identifier) 1 of Table S1.1(1): Transaction information and clarify that the transaction identifier relates to the UTI or other form of transaction identifier reported for the initial reportable transaction;
 - (b) adopt the format of the ISO 20022 message definition for “any other kind of transaction identifier”;
 - (c) clarify that it is reported in association with different data elements of collateral information depending on whether the reportable transaction is collateralised in a portfolio or collateralised but not in a portfolio; and
 - (d) the note explains that a derivative trade repository may have requirements to report collateral information in a particular way, including to positively report, for example, “not applicable” rather than not report anything.
71. Item 9 of the Amending Instrument amends Rule S1.3.1, Table S1.1(3): Collateral information, item 22 (Action type) by repealing and replacing the entire item. The changes amend Action type to add “NEWT”, “MODI” and “CORR” as allowable values and clarify the circumstances for which these action types are reported. NEWT, MODI and CORR are possible action types when reporting information about collateral arrangements in an ISO 20022

transaction message. However, only MARU and CORR are possible action types when reporting information about collateral amounts in an ISO 20022 margin message.

Legislative instrument and primary legislation

72. The subject matter and policy implemented by the Amending Instrument is more appropriate for a legislative instrument rather than primary legislation because:
- (a) the Amending Instrument utilises powers given by Parliament to ASIC that allow ASIC to make, amend and repeal rules relating to derivatives transactions; and
 - (b) the matters contained in the Amending Instrument are specific amendments to the 2024 Rules in relation to the requirements to report certain data elements that do not change the scope of the 2024 Rules in terms of reporting entities and reportable transactions, and to consequentially reflect the changed location of definitions in the Act.
73. The duration of the amendments made by this Amending Instrument align with the duration of the 2024 Rules, which are scheduled to sunset on 1 April 2033.

Legislative authority

74. The Amending Instrument is made under section 901M of the Act.
75. Subsection 901M(1) of the Act provides that ASIC may amend a derivative transaction rule in like manner and subject to like conditions.
76. ASIC sought and received the Minister's consent to making the amendments. The Minister consented to the making of the Amending Instrument by written notice to ASIC dated 2 February 2024.

Statement of Compatibility with Human Rights

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

Statement of Compatibility with Human Rights

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

ASIC Derivative Transaction Rules (Reporting) 2024 Amendment Instrument 2024/1

Overview

1. The *ASIC Derivative Transaction Rules (Reporting) 2024 Amendment Instrument 2024/1* (the **Amending Instrument**) is made by ASIC under section 901M of the *Corporations Act 2001* (the **Corporations Act**), acting with the consent of the Minister under section 901K of the Corporations Act.
2. The Amending Instrument amends the *ASIC Derivative Transaction Rules (Reporting) 2024 (2024 Rules)* which require the reporting of the terms and ongoing valuations and collateral exchanged for over-the-counter (**OTC**) derivative transactions by businesses licensed by ASIC or otherwise authorised to deal in derivatives in Australia.
3. The requirements to report OTC derivatives transactions were introduced in Australia in 2013 (as the *ASIC Derivative Transaction Rules (Reporting) 2013*) as a key component of the comprehensive OTC derivatives reform agenda agreed by the G20 leaders in response to the global financial crisis given the significant economic and social damage that was experienced. The OTC derivatives market reform agenda was developed with the objectives of improving transparency to regulators, mitigating systemic risk, and protecting against market abuse.
4. The Amending Instrument amends the 2024 Rules to:
 - (a) include the reporting of seven additional data elements, including, in some circumstances, the name of a counterparty to a transaction;
 - (b) provide clarifications and administrative updates to other data elements;
 - (c) make consequential changes to Chapter 2: Reporting Requirements;
 - (d) make other administrative updates including re-referencing the definitions in the Corporations Act which have been moved by the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* (together, the **amendments**).
5. The Amending Instrument:

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- (a) imposes reporting requirements as permitted by paragraph 901A(2)(b) and subsection 901A(6) of the Corporations Act;
 - (b) deals with the manner and form in which persons are required to comply with the reporting requirement imposed by the 2024 Rules as permitted by paragraph 901A(3)(f) of the Corporations Act; and
 - (c) deals with the circumstances in which persons are relieved from complying with the reporting requirements in the 2024 Rules that would otherwise apply to them as permitted by paragraph 901A(3)(g) of the Corporations Act.
6. The information that is required to be reported under the 2024 Rules, as amended by the Amending Instrument, falls broadly into the following categories:
- (a) counterparty information – such as an identifier for the counterparties to a derivative (for example, a Legal Entity Identifier (**LEI**)) and the name of a counterparty where the name cannot be determined from the identifier alone;
 - (b) other entity information – such as an identifier for the reporting entity, beneficiary, broker, central clearing facility, clearing member or the person making the report in relation to a derivative (for example, an LEI);
 - (c) operational information – such as an identifier for the derivative transaction, and information about whether the derivative transaction was traded on an execution venue and/or cleared;
 - (d) product information – such as an identifier of the type of derivative that conveys information about its general type (for example, swap, forward, option), underlier and other characteristics;
 - (e) transaction economics – the material terms of a derivative, including effective dates, expiration dates, notional amounts, prices and interest rates;
 - (f) exposures data – information about the valuation of a derivative, and information about collateral exchanged on the derivative; and
 - (g) event data – information that records the occurrence of an event and includes a timestamp, such as a clearing, execution or reporting timestamp.

Assessment of human rights implications

Article 17 of the International Covenant on Civil and Political Rights

7. The Amending Instrument may engage the right to privacy and reputation in Article 17 of the *International Covenant on Civil and Political Rights (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.

8. The Amending Instrument may engage the right to privacy and reputation in Article 17.
9. The Amending Instrument requires a "reporting entity" (as defined in Rule 1.2.3 of the 2024 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. Under Rules 2.3.1 and 2.3.2 of the *ASIC Derivative Trade Repository Rules 2023 (Trade Repository Rules 2023)*, an operator of a licensed derivative trade repository must accept and retain that information in records of derivative trade data. Under subsection 904B(2) of the Corporations Act and Rule 2.3.4 of the Trade Repository Rules 2023, the operator of a licensed derivative trade repository may be required to provide derivative trade data on request made by ASIC, the Australian Prudential Regulatory Authority, the Reserve Bank of Australia, a prescribed person or body, or another licensed derivative trade repository.
10. Derivative trade data includes, for each side of an OTC derivative transaction, information that identifies or is capable of identifying the counterparties to the OTC derivative (referred to as "counterparty information").
11. "Counterparty information" may contain "personal information" as defined in the *Privacy Act 1988*, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. This is the case where the counterparty is an individual and the reporting entity reporting the OTC derivative provides:
 - (a) the name of that individual; or
 - (b) a code to identify the individual from which the identity of the individual is apparent or can reasonably be ascertained.
12. The right in Article 17 is engaged by the Amending Instrument by reason that the reporting of derivative trade data may:
 - (a) involve the collection, storage, security, use or disclosure of personal information;

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- (b) create confidentiality or secrecy provisions relating to personal information; and
 - (c) provide for mandatory disclosure or reporting of information.
13. The Amending Instrument is compatible with the rights recognised in Article 17 of the ICCPR by reason that any interference with a person's privacy or reputation resulting from compliance with the Amending Instrument will be lawful and not arbitrary. In particular:
- (a) the Amending Instrument is made in accordance with ASIC's power to make derivative transaction rules imposing reporting requirements (see paragraph 901A(2)(b) and subsection 901A(6) of the Corporations Act);
 - (b) the Amending Instrument is important to improvements in the Australian trade reporting regime that achieves the stated objectives of the OTC derivatives reforms of improving transparency to regulators, mitigating systemic risk, and protecting against market abuse;
 - (c) the Amending Instrument achieves the objects of the *Corporations Legislation Amendment (Derivative Transactions) Act 2012* by giving regulators access to valuable data with which to assess the risks associated with the OTC derivatives market; and
 - (d) the Amending Instrument as a whole will further the objects of Chapter 7 of the Corporations Act, including promoting fair, orderly and transparent markets for financial products (see paragraph 760A(c) of the Corporations Act).
14. The Amending Instrument is subject to a number of safeguards, including:
- (a) Any personal information in derivative trade data provided to ASIC will be protected in accordance with ASIC's legislative obligations under s127 of the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*), and to the extent the information is personal information, under the *Privacy Act 1988*. In particular, subrule 2.3.4(12) of the Trade Repository Rules 2023 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 Amending Instrument or the Trade Repository Rules 2023, will be taken to have been given to ASIC in confidence for the purposes of s127 of the ASIC Act (unless the information has already been made publicly available in accordance with those legislative provisions, or as otherwise required or permitted by law); and
 - (b) The operator of a derivative trade repository will be subject to obligations under section 904B of the Corporations Act, and under Rules 2.3.3, 2.3.4, 2.3.5, 2.3.6 and 2.4.8 of the Trade Repository Rules 2023 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.

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15. If the Amending Instrument was considered to limit the right in Article 17 of the ICCPR, ASIC considers that the Amending Instrument is nevertheless compatible with that right. The right in Article 17 is not absolute. As noted, the right has implied limitations (“unlawful” and “arbitrary”) and may be subject to a permissible limitation where that limitation aims to achieve a legitimate objective, there is a rational connection between the limitation, and the objective and the limitation is reasonable, necessary and proportionate.
 16. Any limitation imposed on the right by the Amending Instrument has a clear legal basis, in that it aims to achieve a legitimate objective, has a rational connection with the objective, and is reasonable, necessary and proportionate.
 17. As noted in the March 2012 report of the Australian Council of Financial Regulators entitled *OTC Derivatives Market Reform Considerations*:

“Reporting to trade repositories should facilitate the maintenance of a reliable and comprehensive source of information on participant trading activity, which would be useful to many regulators in performing their respective functions. It is expected that this increased transparency will assist authorities in identifying vulnerabilities in the financial system and, more broadly, to develop well-informed policies to promote financial stability. Information from trade repositories will be particularly useful in times of financial distress, where rapid and reliable access to accurate data may assist prudential and systemic regulators in their functions. From a market supervision perspective, transaction information stored in trade repositories in some product classes in particular, such as equity derivatives and credit derivatives, has the potential to assist investigations into market misconduct.”
 18. Effective regulation of the OTC derivatives market requires regulators to have detailed data on counterparty exposures where these will pose a systemic risk. A requirement to report transactions, and counterparty information in relation to those transactions, is the most effective method of achieving this legitimate objective.
 19. The Amending Instrument is necessary to achieve the legitimate objective because it provides ASIC and other regulators with the data they need to assess the exposures of counterparties and relevant other entities, and support the detection and prevention of market abuse. The Amending Instrument contains adequate safeguards by only requiring reporting entities to report the data necessary to achieve that objective, and, in conjunction with section 904B of the Corporations Act, to require operators of derivative trade repositories to maintain the confidentiality, security and integrity of that information. Further safeguards are provided by statutory obligations to protect confidential and personal information contained in the data.

Conclusion

20. The Amending 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*.