



ASIC
Australian Securities &
Investments Commission

ASIC Derivative Transaction Rules (Reporting and Clearing) Amendment Instrument 2024/416

I, Benjamin Cohn-Urbach, delegate of the Australian Securities and Investments Commission, acting with the written consent of the Minister, make the following legislative instrument.

Date 19 August 2024

Benjamin Cohn-Urbach

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Derivative Transaction Rules (Reporting and Clearing) Amendment Instrument 2024/416*.

2 Commencement

This instrument commences as follows:

- (1) Part 1 and Schedules 1, 2, 3 and 5 to this instrument commence on the later of:
 - (a) 21 October 2024; and
 - (b) the day after it is registered on the Federal Register of Legislation;
- (2) Schedule 4 to this instrument commences on the later of:
 - (a) 20 October 2025; and
 - (b) the day after it is registered on the Federal Register of Legislation;

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under section 901M of the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

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

1 Item 12 Subrule 2.2.1(4) (heading)

After “Exception for incomplete ISO 20022 message definition”, insert “, delay for changed message definition”.

2 Item 12 Subrule 2.2.1(4)

Omit all of words after “Reportable Transaction”, substitute:

“:

- (a) if at the time the Reporting Entity is required to comply with the requirements, the ISO 20022 message definition used in accordance with subrule 2.2.4(2) does not include those items of Derivative Transaction Information; or
- (b) until the first Monday that occurs 7 months after the date of an approved change to the ISO 20022 message definition, if at the time the reporting entity is required to comply with the requirements, the changed ISO 20022 message definition has been in effect for a period of less than 7 months.”

3 Item 15 Paragraph 2.2.4(2)(b)

Repeal the item.

Schedule 2—Amendments

ASIC Derivative Transaction Rules (Reporting) 2024

1 Rule 1.2.3 (definition of *clearing member*)

Omit “operating rules”, substitute “Operating Rules”.

2 Rule 1.2.3 (definition of *Operating Rules*)

Relocate the definition to its appropriate alphabetical position, determined on a letter-by-letter basis.

3 Rule 1.2.3 (definition of *Part 7.2A Market*)

Repeal the definition, including the note.

4 Rule 1.2.3 (definition of *Regulated Foreign Market*)

Repeal the definition.

5 Subrule 1.2.4(2)

Repeal the subrule, substitute:

(2) In these Rules a Derivative is not an *OTC Derivative* if:

- (a) the Derivative is able to be traded (within the meaning of section 9 of the Act) on an authorised financial market and the entry into of the arrangement that is the Derivative:
 - (i) takes place on an authorised financial market, or is reported to the operator of an authorised financial market in its capacity as operator of the authorised financial market, in accordance with the Operating Rules of the authorised financial market; and
 - (ii) ASIC has made a determination under subrule (3) that specifies the Derivative for the purposes of this paragraph; or
- (b) the Derivative is able to be traded (within the meaning of section 9 of the Act) on an authorised financial market and the entry into of the arrangement that is the Derivative:
 - (i) takes place on an authorised financial market, or is reported to the operator of an authorised financial market in its capacity as operator of the authorised financial market, in accordance with the Operating Rules of the authorised financial market; and
 - (ii) is in accordance with the Operating Rules of the authorised financial market; and
 - (iii) the terms of the Derivative are documented under or prescribed by the Operating Rules of the authorised financial market; and

- (iv) the Derivative is made available in one or more series in accordance with the Operating Rules of the authorised financial market and the terms of the arrangement constituting the Derivative, including the amount or size of the Derivative specified by the operator of the authorised financial market, are the same as for every other Derivative in the same series, with the exception of the price; and
- (v) is not specified in a determination made by ASIC under subrule (3) for the purposes of this paragraph.

6 Subrule 1.2.4(2A)

Repeal the subrule.

7 Subrule 1.2.4(3)

Repeal the subrule, substitute:

- (3) ASIC may determine from time to time, to specify, for the purposes of paragraph (2)(a) or (b):
 - (a) a Derivative or a class of Derivatives able to be traded on any authorised financial market; or
 - (b) a Derivative or a class of Derivatives able to be traded on a particular authorised financial market or an authorised financial market in a class of authorised financial market.

Note: A determination specifying a Derivative or class of Derivatives for the purposes of paragraph (2)(a) means the Derivative or class of Derivatives (as applicable) is not an OTC Derivative if it is traded on an authorised financial market. A determination specifying a Derivative or class of Derivatives for the purposes of paragraph (2)(b) means that despite meeting the requirements of subparagraphs (2)(b)(i) – (iv), the specified Derivative or class of Derivatives is an OTC Derivative.

8 Paragraph 1.2.4(5)(b) (Note 2)

Omit Note 2, substitute:

Note 2: Legislative instruments made under this rule are available on the Federal Register of Legislation. The register may be accessed at www.legislation.gov.au.

9 Paragraph 1.2.4(6)(a)

After “contract between counterparties”, insert “that the Reporting Entity reasonably believes is”.

10 Paragraph 1.2.5(4)(b)

Omit “operating rules”, substitute “Operating Rules”.

11 Rule S1.3.1 (Table S1.1(1): Transaction information, cell at item 19, column headed “3. Derivative Transaction Information”)

Omit the paragraph beginning “This data element remains”, substitute:

This data element remains constant during the life of the OTC Derivative and must be included in reports where the Action type (item 101 below) is reported as NEWT, MODI, TERM, CORR or REVI.

12 Rule S1.3.1 (Table S1.1(1): Transaction information, cell at item 20, column headed “3. Derivative Transaction Information”)

Omit the cell, substitute:

The date, or date and time, of the occurrence of the event of the Action type (item 101 below).

13 Rule S1.3.1 (Table S1.1(1): Transaction information, cell at item 74, column headed “5. Allowable Values”)

Omit the cell, substitute:

Any numeric values greater than or equal to zero.

14 Rule S1.3.1 (Table S1.1(2): Valuation information, cell at item 9, column headed “5. Allowable Values”)

Omit the cell, substitute:

- (a) MTMA—if the Valuation amount (item 7 above) was determined using a mark-to-market method;
- (b) MTMO—if the Valuation amount (item 7 above) was determined using a mark-to-model method; or
- (c) CCPV—if the Valuation amount (item 7 above) was determined by the Central counterparty reported for item 23 in Table S1.1(1) above.

15 Rule S1.3.1 (Table S1.1(3): Collateral information, cell at item 12, column headed “3. Derivative Transaction Information”)

Omit the paragraph beginning “Where a single amount of margin”.

16 Rule S1.3.1 (Table S1.1(3): Collateral information, cell at item 15, column headed “3. Derivative Transaction Information”)

Omit the paragraph beginning “Where a single amount of margin”.

17 Rule S1.3.1 (Table S1.1(3): Collateral information, cell at item 18, column headed “3. Derivative Transaction Information”)

After the paragraph ending “its daily change.”, insert the paragraph “Where a single amount of margin is posted that does not distinguish between margin that is initial margin and margin that is variation margin, the single amount of margin is reported for this data element.”

18 Rule S1.3.1 (Table S1.1(3): Collateral information, cell at item 20, column headed “3. Derivative Transaction Information”)

After the paragraph ending “its daily change.”, insert the paragraph “Where a single amount of margin is collected that does not distinguish between margin that is initial margin and margin that is variation margin, the single amount of margin is reported for this data element.”

Schedule 3—Amendments

ASIC Derivative Transaction Rules (Reporting) 2024

1 Rule S1.3.1 (Table S1.1(1): Transaction information, item 41)

Repeal the item, substitute:

41	Notional amount schedule end date—Leg 1	If applicable, each unadjusted end date on which the associated Notional amount schedule amount—Leg 1 ceases to be effective.	YYYY-MM-DD in accordance with ISO 8601, repeatable for each date.	Any valid date for each date.
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This data element is only required for OTC Derivatives where Notional amount—Leg 1 is not a constant value over the entire term of the OTC Derivative and a notional amount schedule is specified in the terms of the OTC Derivative.

An end date is not required to be reported if it is back-to-back with the effective date of the next period of the schedule.

2 Rule S1.3.1 (Table S1.1(1): Transaction information, item 44)

Repeal the item, substitute:

44	Notional amount schedule end date—Leg 2	If applicable, each unadjusted end date on which the associated Notional amount schedule amount—Leg 2 ceases to be effective.	YYYY-MM-DD in accordance with ISO 8601, repeatable for each date.	Any valid date for each date.
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This data element is only required for OTC Derivatives where Notional amount—Leg 2 is not a constant value over the entire term of the OTC Derivative and the Notional amount schedule end date—Leg 2 dates are not the same as the equivalent Notional amount schedule end date—Leg 1 dates.

An end date is not required to be reported if it is back-to-back with the effective date of the next period of the schedule.

3 Rule S1.3.1 (Table S1.1(1): Transaction information, item 75)

Repeal the item, substitute:

75	Other payment type	<p>An indicator of whether the type of payment(s) reported as Other payment amount (item 74 above) is:</p> <p>(a) an upfront payment that is not a payment of an option premium, notional amount or standard fees, taxes or commissions;</p> <p>(b) a payment made upon a partial or full termination of an OTC Derivative that is not a payment of an option premium, notional amount or standard fees, taxes or commissions; or</p> <p>(c) a payment by exchange of a notional amount and the UPI reported for Unique product identifier (item 2 above) is a UPI for a cross-currency swap—an indicator may be, but is not required to be, reported for this item.</p>	<p>As specified in the applicable paragraph of column 5 of this item, repeatable for each Other payment amount (item 74 above).</p>	<p>(a) UFRO—if the payment is an upfront payment;</p> <p>(b) UWIN—if the payment is made upon a partial or full termination of an OTC Derivative; or</p> <p>(c) PEXH—if the payment is an exchange of a notional amount.</p>
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Schedule 4—Amendments

ASIC Derivative Transaction Rules (Reporting) 2024

1 Rule 1.2.3 (after the definition of *Licensed Repository*)

Insert:

Nexus Derivative means an OTC Derivative to which the Reporting Entity is a counterparty, where:

- (a) one or more of the following functions in relation to the OTC Derivative:
 - (i) determining the price, level, rate or other economic terms (collectively, ***Terms***) on which the Reporting Entity is willing to enter into the OTC Derivative, including by determining the proposed Terms or range of proposed Terms which may be communicated to the proposed counterparty or agreeing the final Terms on which the Reporting Entity will enter into the OTC Derivative with the proposed counterparty;
 - (ii) communicating to the proposed counterparty one or more of the Terms on which the Reporting Entity is willing to enter into the OTC Derivative;
 - (iii) offering to enter into the OTC Derivative with the proposed counterparty or inviting the proposed counterparty to offer to enter into the OTC Derivative with the Reporting Entity;
 - (iv) agreeing to enter into the OTC Derivative with the proposed counterparty;
 - (v) managing the financial risk arising from the OTC Derivative;
is, or in the case of the function referred to in subparagraph (v), will be, performed on behalf of the Reporting Entity by a person who is:
 - (vi) ordinarily resident or employed in this jurisdiction; or
 - (vii) acting as part of a desk, office or branch of:
 - (A) the Reporting Entity; or
 - (B) an entity that is an associate of the Reporting Entity,
where that desk, office or branch is located in this jurisdiction; and
- (b) if the OTC Derivative was executed through an authorised financial market, one or more of the functions referred to in subparagraphs (a)(i) - (v) in relation to the OTC Derivative is, or in the case of the function referred to in subparagraph (a)(v), will be, performed on behalf of the Reporting Entity by a person who is:
 - (i) ordinarily resident or employed in this jurisdiction; or
 - (ii) acting as part of a desk, office or branch of:
 - (A) the Reporting Entity; or
 - (B) an entity that is an associate of the Reporting Entity,

where that desk, office or branch is located in this jurisdiction.

2 Rule 1.2.5 (Table 1: Reporting Entities and OTC Derivatives, after item 1)

Insert:

2	A foreign entity that is a CS Facility Licensee.	All OTC Derivatives entered into with an Australian Entity.
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3 Rule 1.2.5 (Table 1: Reporting Entities and OTC Derivatives, item 2)

Repeat the item, substitute:

3	<p>A foreign entity that is required to be registered under Division 2 of Part 5B.2 of the Act and is:</p> <p>(a) a Foreign ADI that has a branch located in this jurisdiction;</p> <p>(b) an AFS Licensee; or</p> <p>(c) an Exempt Foreign Licensee.</p>	<p>All OTC Derivatives:</p> <p>(a) entered into with a Retail Client located in this jurisdiction;</p> <p>(b) booked to the profit or loss account of a branch of the Reporting Entity located in this jurisdiction; or</p> <p>(c) that are a Nexus Derivative.</p>
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4 Subrule 2.2.1(3)

Omit all of the words after “in relation to a Reportable Transaction”, substitute “referred to in subparagraphs 1.2.5(1)(b)(ii)-(iv) if, at the time the Reporting Entity is required to comply with the requirements, information about the OTC Derivative to which the Reportable Transaction relates has been reported to a Prescribed Repository before 20 October 2025.”.

5 Subrule 2.2.2(1)

Omit “Where”, substitute “Subject to subrule (4), where”.

6 Subrule 2.2.2(2)

Omit “subrule (3)”, substitute “subrules (3) and (4)”.

7 Rule 2.2.2 (after subrule(3))

Insert:

(4) A Reporting Entity is not required to comply with the requirements of subrule (1) in relation to information about an OTC Derivative that has been reported to a Prescribed Repository before 20 October 2025.

8 Subrule 2.2.9(1)

Omit the note.

Schedule 5—Amendments

ASIC Derivative Transaction Rules (Clearing) 2015

1 Rule 1.2.1 (definition of *Derivative Transaction*)

Omit “section 761A”, substitute “section 9”.

2 Rule 1.2.1 (note to definition of *Determined Clearing Class*)

Omit “section 5”, substitute “section 7”.

3 Rule 1.2.1 (note to definition of *Determined Clearing Class*)

Omit “2013”, substitute “2023”.

4 Rule 1.2.1 (definition of *Exempt Financial Market*)

Repeal the definition.

5 Rule 1.2.1 (definition of *Licensed CS Facility*)

Omit “section 761A”, substitute “section 9”.

6 Rule 1.2.1 (definition of *Part 7.2A Market*)

Repeal the definition.

7 Rule 1.2.1 (after the definition of *Overnight Index Swap*)

Insert:

OTC Derivative has the meaning given by rule 1.2.4 of the Reporting Rules.

8 Rule 1.2.1 (definition of *Regulated Foreign Market*)

Repeal the definition.

9 Subrule 1.2.3(1)

Omit the subrule, substitute:

(1) Subject to subrules (6) to (7), a Derivative is a *Clearing Derivative* if the Derivative:

- (a) is an OTC Derivative; and
- (b) is in a Determined Clearing Class; and
- (c) is a Basis Swap, Fixed-to-Floating Swap, Forward Rate Agreement or Overnight Index Swap; and
- (d) meets the IRD Class Specifications.

10 Subrule 1.2.3(7)

Repeal the subrule.

11 Subrule 1.2.3(8)

Omit “(8)”, substitute “(7)”.