



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 251

# Derivative transaction reporting

August 2013

### **About this guide**

This guide is for reporting entities that are subject to the reporting obligations under the ASIC Derivative Transaction Rules (Reporting) 2013.

This guide explains the derivative transaction reporting regulatory regime, and gives guidance on particular areas where we consider reporting entities would benefit from guidance to assist them to understand how to comply with the reporting obligations.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in August 2013 and is based on legislation and regulations as at the date of issue.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

ASIC is responsible for administering the derivative trade repository licensing regime and for making and enforcing derivative transaction rules that establish mandatory requirements that apply to reporting, clearing and execution of derivative transactions.

This guide explains the reporting obligations for over-the-counter (OTC) derivatives that apply to reporting entities under the ASIC Derivative Transaction Rules (Reporting) 2013, and gives guidance on particular areas where we consider reporting entities would benefit from guidance to assist them to understand how to comply with the reporting obligations.

## Background

- RG 251.1 Over the past decade, rapid growth in OTC derivatives markets has been accompanied by an increasing awareness of the systemic importance and risks inherent in these markets. The magnitude of these risks was demonstrated during the financial crisis in 2008, particularly at the time of the collapse of the Lehman Brothers investment banking group and the threatened collapse of AIG insurance group.
- RG 251.2 As a result of the issues identified during the financial crisis, the Leaders of the Group of Twenty (G20) pledged in September 2009 to strengthen the international financial regulatory system, and called for reforms to improve practices in OTC derivatives markets. These reforms included the mandatory reporting of OTC derivative transactions to derivative trade repositories (trade repositories), that would make information available about these transactions to regulators and the broader market.
- RG 251.3 The objectives of these reforms are to:
- (a) enhance the transparency of derivative transaction information available to relevant authorities and the public;
  - (b) promote financial stability; and
  - (c) support the detection and prevention of market abuse.

Note: See the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO), *Principles for financial market infrastructures* (CPSS–IOSCO Principles), April 2012, p. 9.

## Australian legislative framework

RG 251.4 Division 6 of Pt 7.5A of the Corporations Act (as amended by the *Corporations Legislative Amendment (Derivative Transactions) Act 2012*) contains a licensing regime for trade repositories, largely modelled on the existing licensing regimes for market operators and clearing and settlement (CS) facilities. ASIC is responsible for administering this regime and supervising any trade repositories licensed under the regime, as well as making and enforcing derivative transaction rules that establish mandatory requirements that apply to reporting, clearing and execution of derivative transactions: see s901A.

Note: In this document, references to chapters (Chs), parts (Pts), divisions (Divs) or sections (s) are to the Corporations Act, unless otherwise specified.

RG 251.5 Under s901B, the Minister has the power to determine one or more classes of derivatives for which execution, reporting, or clearing requirements may be imposed.

RG 251.6 The Corporations (Derivatives) Determination 2013 (Ministerial determination) was made on 2 May 2013 empowering ASIC to make rules imposing reporting requirements (and incidental or related requirements) for credit derivatives, equity derivatives, foreign exchange derivatives, interest rate derivatives and commodity derivatives that are not electricity derivatives. On 9 July 2013, ASIC made the ASIC Derivative Transaction Rules (Reporting) 2013 imposing reporting requirements on specified reporting entities for all classes of derivatives.

Note: In this document 'derivative transaction rules (reporting)' refers to the ASIC Derivative Transaction Rules (Reporting) 2013.

RG 251.7 Trade repositories that wish to accept derivative trade data reported under the derivative transaction rules (reporting) must either be:

- (a) licensed under Pt 7.5A; or
- (b) prescribed (or a member of a class of trade repositories that is prescribed) by the Corporations Regulations 2001 (Corporations Regulations).

RG 251.8 On 30 June 2013, the Corporations Amendment (Derivative Trade Repositories) Regulation 2013 amended the Corporations Regulations to prescribe a number of facilities, provided that each relevant facility is registered to operate as a derivative trade repository under a law of a foreign jurisdiction (see reg 7.5A.30). Regulation 7.5A.30 ceases to have effect at the end of 30 June 2014.

## The reporting obligations

RG 251.9 The derivative transaction rules (reporting) impose obligations on reporting entities (see Rule 1.2.5) to report information about their transactions and positions in OTC derivatives to a licensed or prescribed trade repository (the reporting obligations).

Note: In this document, references to 'Rule 1.2.5', 'Part 2.4' or 'Schedule 2' (for example) are references to a particular rule, part or schedule of the derivative transaction rules (reporting).

RG 251.10 Rule 1.2.4 defines an OTC derivative as a derivative (within the meaning of s761D) that is prescribed by the Minister under s901B (see the Ministerial determination) that is not traded:

- (a) on a financial market subject to ASIC supervision under Pt 7.2A of the Corporations Act (such as ASX 24); or
- (b) on certain foreign markets (referred to as 'regulated foreign markets') that ASIC has determined under Rule 1.2.4(3) are subject to sufficiently equivalent requirements and supervision, in terms of market transparency and integrity, to those applying to markets supervised under Pt 7.2A.

RG 251.11 Determinations under Rule 1.2.4(3) are available on our website at [www.asic.gov.au/asic/ASIC.NSF/byHeadline/OTC%20derivatives%20reform](http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/OTC%20derivatives%20reform).

## Overview of our guidance

RG 251.12 This guide explains the reporting obligations that applies to reporting entities under the derivative transaction rules (reporting), and gives guidance on particular areas where we consider reporting entities would benefit from guidance to assist them to understand how to comply with the reporting obligations, including:

- (a) who the reporting obligations apply to and the phased commencement dates that apply to reporting entities (see Section B);
- (b) who reporting entities must report to (see Section C);
- (c) the derivative trade data that must be reported (see Section D);
- (d) how centrally cleared transactions should be reported (see Section E); and
- (e) our approach to applications for relief made to ASIC where certain information cannot be reported to a trade repository due to foreign privacy restrictions (see Section F).

## B Who the reporting obligations apply to

### Key points

This section gives guidance on:

- the reporting entities that must comply with the reporting obligations;
- how a reporting entity can appoint another person to report on its behalf;
- the phased implementation of the reporting obligations and when reporting entities must start reporting derivative trade data; and
- transitional measures, to assist reporting entities in the transition to compliance with their reporting obligations.

### Reporting entities

- RG 251.13 Subject to phased implementation (see RG 251.18) the reporting obligations applies to the reporting entities listed in Rule 1.2.5, which defines ‘reporting entities’ and ‘reportable transactions’ for each type of reporting entity. Generally, the reporting obligations apply as follows:
- (a) an Australian entity (i.e. an entity, including a corporation, partnership, managed investment scheme or trust, incorporated or formed in this jurisdiction: see Rule 1.2.3) must report information about all derivative transactions to which it is a counterparty;
  - (b) a foreign subsidiary of an Australian entity, where the Australian entity is an authorised deposit-taking institution (ADI) or an Australian financial services (AFS) licensee, must report information about all derivative transactions to which it is a counterparty;
  - (c) a foreign ADI (within the meaning of s5 of the *Banking Act 1959*) that has a branch located in this jurisdiction must report information about all derivative transactions booked to the profit and loss account of the foreign ADI, or entered into by the foreign ADI, in this jurisdiction; and
  - (d) a foreign company that is required to be registered under Div 2 of Pt 5B.2 of the Corporations Act must report information about all derivative transactions booked to the profit and loss account of the foreign company, or entered into by the foreign company, in this jurisdiction.
- RG 251.14 A responsible entity of a registered managed investment scheme or trustee of a trust is also a reporting entity if it enters into a reportable transaction in its capacity as the responsible entity or trustee of an Australian entity.
- RG 251.15 A reporting entity must also report information about its outstanding positions (referred to as ‘reportable positions’) in derivatives as at the date

the requirement to report reportable transactions in the relevant asset class commences (referred to as ‘backloading’).

RG 251.16 The information that must be reported about reportable transactions and reportable positions is explained further in Section D.

## Appointing another person to report

RG 251.17 The derivative transaction rules (reporting) allow a reporting entity to appoint another person to report on its behalf—this may be a counterparty, a central counterparty, a trading platform, a service provider, a broker or any person: see Rule 2.2.7. A reporting entity that appoints another person to report on its behalf remains responsible for complying with the derivative transaction rules (reporting).

## Commencement dates for the reporting obligations

RG 251.18 The reporting obligations are being implemented for specified reporting entities in three phases from 1 October 2013–1 October 2015: see Table 1.

**Table 1: Commencement dates for the reporting obligations**

| Phase        | Type of reporting entity   | Asset class  | Transaction reporting start date           | Position reporting start date  |
|--------------|--|--|--|--|
| Opt-in phase | Any reporting entities that opt-in during the opt-in reporting phase by lodging an opt-in notice with ASIC                           | As specified in the opt-in notice lodged with ASIC   | The date(s) specified in the opt-in notice | The date(s) specified in the opt-in notice (being no later than 30 September 2014) |
| Phase 1      | An Australian entity registered or provisionally registered with the US Commodity Futures Trading Commission (CFTC) as a swap dealer | Commodity derivatives, <sup>1</sup> credit derivatives, equity derivatives, foreign exchange derivatives and interest rate derivatives | 1 October 2013                             | 1 October 2014   |

| Phase   | Type of reporting entity   | Asset class   | Transaction reporting start date | Position reporting start date |
|---------|--|---|----------------------------------|-------------------------------|
| Phase 2 | A reporting entity that is an Australian ADI, an AFS licensee, a CS facility licensee, an exempt foreign licensee or a foreign ADI with greater than AUD\$50 billion total gross notional outstanding (see RG 251.20–RG 251.21) in derivatives as at 31 December 2013 and that was not required to report in Phase 1 | Credit derivatives and interest rate derivatives  | 1 April 2014                     | 1 October 2014                |
|         |  | Commodity derivatives, <sup>1</sup> equity derivatives and foreign exchange derivatives | 1 October 2014                   | 1 April 2015                  |
| Phase 3 | A reporting entity that is an ADI, an AFS licensee, a CS facility licensee, an exempt foreign licensee or a foreign ADI that was not required to report in Phases 1 or 2   | Credit derivatives and interest rate derivatives  | 1 October 2014                   | 1 April 2015                  |
|         |  | Commodity derivatives, <sup>1</sup> equity derivatives and foreign exchange derivatives | 1 April 2015                     | 1 October 2015                |

<sup>1</sup> Commodity derivatives for transaction reporting purposes do not include electricity derivatives.

RG 251.19 The reporting obligations for end users (i.e. reporting entities other than those specified in Table 1) will be implemented at a later date. We will consult further on the reporting obligations for end users in late 2013.

## Calculation of gross notional outstanding

RG 251.20 A reporting entity that is an Australian ADI, an AFS licensee, a CS facility licensee, an exempt foreign licensee or a foreign ADI (as defined in Rule 1.2.3), and which holds A\$50 billion or more of gross notional outstanding in derivatives totalled across all asset classes as measured at 31 December 2013, must commence reporting in Phase 2: see Table 1.

RG 251.21 The gross notional outstanding position includes the notional principal outstanding. However, the A\$50 billion threshold does not include:

- (a) OTC derivatives held by subsidiaries or other related bodies corporate of the reporting entity; or
- (b) OTC derivative transactions of a reporting entity that are not within the scope of the reporting requirements for that entity (e.g. for a foreign ADI, transactions that are not booked to a profit and loss account of the foreign ADI, or entered into by the foreign ADI, in this jurisdiction).

RG 251.22 Although electricity derivatives are not a prescribed class under the Ministerial determination, they are included in the calculation of a reporting entity's gross notional outstanding positions: see Rule 1.2.7(b).

RG 251.23 For managed investment schemes and trusts, the A\$50 billion threshold may be measured for each managed investment scheme or trust, rather than at the level of the responsible entity or trustee: see Rules 1.2.7 and S1.1.1(2) and S1.2.1(2).

## Transitional measures

RG 251.24 Part 2.4 of the derivative transaction rules (reporting) includes a number of transitional measures that will assist reporting entities to transition to compliance with the reporting obligations during the implementation phases in Table 1.

### Alternative reporting (until 30 September 2014)

RG 251.25 Under Rule 2.4.2(1), until 30 September 2014, a reporting entity that is required to report derivative transaction information to a licensed or prescribed trade repository will have complied with that obligation if:

- (a) the entity reports information that is substantially equivalent (see RG 251.53) to the derivative transaction information required to be reported under the derivative transaction rules (reporting), to a prescribed repository;
- (b) the derivative transaction information is reported substantially in accordance with the requirements of the derivative transaction rules (reporting); and
- (c) the prescribed repository has accepted the report.

RG 251.26 A reporting entity that reports a reportable transaction to a prescribed repository under Rule 2.4.2(1) before 1 October 2014, must comply with the requirements of Rule 2.4.5(3) by reporting the reportable transaction (or related position) to a licensed repository by 1 October 2014, unless the prescribed repository becomes a licensed repository by that date.

RG 251.27 From 1 October 2014, reporting by reporting entities that are Australian entities must be to licensed trade repositories.

### **One-sided reporting (until 30 September 2014)**

- RG 251.28 Under Rules 2.4.2(2) and (3), until 30 September 2014, a reporting entity that is required to report derivative transaction information to a licensed or prescribed trade repository will have complied with that obligation if (subject to certain conditions being met):
- (a) another reporting entity reports the derivative transaction information in accordance with the Australian reporting obligation; or
  - (b) another entity reports information that is substantially equivalent (see RG 251.53) to the derivative transaction information in accordance with a foreign reporting obligation.
- RG 251.29 During the transitional period, where both counterparties to a derivative transaction are reporting entities, the counterparties will need to establish appropriate arrangements as to who will report, unless both choose to report.
- RG 251.30 A reporting entity that does not report a reportable transaction before 1 October 2014 under Rule 2.4.2(2) or (3) must report the reportable transaction (or related position) to a licensed repository by 1 October 2014: see Rule 2.4.5(3).
- RG 251.31 From 1 October 2014, where both counterparties to a derivative transaction are reporting entities, both counterparties must report the transaction to a trade repository. A counterparty can delegate its reporting function to the other counterparty, who would then be required to report each side of the transaction (i.e. report on its own behalf and, separately, on behalf of the other reporting entity): see RG 251.17.

### **Barriers, collateral and valuations**

- RG 251.32 For an initial transitional period until 1 October 2014, reporting entities will not be required to report information about barriers, collateral and valuations (mark-to-market, mark-to-model or other valuation forms): see Rule 2.4.3. Reporting entities that are first required to report in Phase 3 have until 1 April 2015 before they are required to start reporting this information. Reporting entities that opt-in to reporting during the opt-in phase will not be required to report this information during the opt-in phase, but may choose to do so.

## C Who derivative trade data must be reported to

### Key points

This section gives guidance on which trade repositories derivative trade data must be reported to.

### Reporting to a licensed or prescribed trade repository

- RG 251.33 Reporting entities that are Australian entities (see RG 251.13) must report to a trade repository that is licensed by ASIC under the Corporations Act (referred to as a ‘licensed repository’).
- RG 251.34 However, until 30 September 2014, reporting entities that are Australian entities can report information about their derivative transactions and positions to a licensed or prescribed trade repository (referred to as a ‘prescribed repository’): see RG 251.25–RG 251.27.
- RG 251.35 A reporting entity other than an Australian entity or a reporting entity acting in its capacity as a responsible entity or trustee of an Australian entity (see RG 251.14), can report to a licensed or prescribed trade repository on an ongoing basis (subject to certain conditions being met, see Rule 2.2.1(3)).
- RG 251.36 Licensed repositories will be listed on our website as and when they become licensed.
- RG 251.37 Regulation 7.5A.30 of the Corporations Regulations prescribes eight trade repositories that can be used to meet Australian trade reporting obligations until the end of 30 June 2014 (see RG 251.8), subject to the facility being registered to operate as a trade repository under a law of a foreign jurisdiction:
- (a) DTCC Data Repository (US) LLC;
  - (b) DTCC Derivatives Repository Ltd;
  - (c) DTCC Data Repository (Japan) KK;
  - (d) DTCC Data Repository (Singapore) Pte Ltd;
  - (e) Chicago Mercantile Exchange Inc.;
  - (f) INFX SDR, Inc.;
  - (g) ICE Trade Vault, LLC; and
  - (h) the Monetary Authority appointed under s5A of the Exchange Fund Ordinance of Hong Kong.

## D Derivative trade data that must be reported

### Key points

This section gives guidance on:

- the derivative trade data that must be reported (i.e. derivative transaction information and derivative position information);
- the asset classes, and products within each asset class, to which the reporting obligations apply;
- the calculation of gross notional outstanding;
- the reporting of substantially equivalent information for the purposes of Rules 2.4.1(1)(c), 2.4.2(1)(a) and 2.4.2(3)(a);
- the reporting of counterparty information using a Legal Entity Identifier (LEI); and
- applications for relief.

### Derivative Trade Data

- RG 251.38 A reporting entity must report:
- (a) information about its reportable transactions (referred to as ‘derivative transaction information’); and
  - (b) information about its reportable positions (referred to as ‘derivative position information’).

- RG 251.39 The information, and changes to the information, must be reported to a licensed or prescribed repository (see Section C) in accordance with Rule 2.2.3—generally no later than the end of the next business day after the requirement to report arises.

### Derivative transaction information

- RG 251.40 Part S2.1 of Schedule 2 of the derivative transaction rules (reporting) specifies a common set of data fields that must be reported to a trade repository for each reportable transaction, along with an additional set of data fields to be reported that are specific to each asset class. These fields include, but are not limited to:
- (a) the economic terms of the transaction;
  - (b) product, transaction and entity identifiers;
  - (c) information on whether the transaction is centrally cleared; and
  - (d) valuation (mark-to-market, mark-to-model or other valuation) and collateral information.

Note: In this document, ‘Part S2.1’ (for example) refers to a particular part of Schedule 2 of the derivative transaction rules (reporting).

## Derivative position information

- RG 251.41 Part S2.2 specifies a common set of data fields that must be reported to a trade repository for each reportable position, along with an additional set of data fields to be reported that are specific to each asset class. These fields include, but are not limited to:
- (a) the economic terms of the position;
  - (b) product and entity identifiers;
  - (c) information on whether the position is centrally cleared; and
  - (d) valuation (mark-to-market, mark-to-model or other valuation) and collateral information.

## Reporting of counterparty information using a Legal Entity Identifier

- RG 251.42 The common data that is required to be reported in relation to reportable transactions and reportable positions includes Legal Entity Identifiers (LEIs) or interim LEIs (if available) for:
- (a) the counterparties to the transaction;
  - (b) the beneficiaries to the transaction (if different to the counterparties);
  - (c) the person making the report (if not the reporting counterparty);
  - (d) the broker (if any) that executed the transaction; and
  - (e) the clearing member (if any) that cleared the transaction: see Tables S2.1(1) and S2.2(1) of Schedule 2.
- RG 251.43 An LEI is a 20-character code that uniquely identifies entities participating on financial markets.
- RG 251.44 The LEI system is governed by the Regulatory Oversight Committee (ROC) of the Global Legal Entity Identifier System. LEIs will be issued by Local Operating Units, which are coordinated by a Central Operating Unit that is governed by the Global Legal Entity Identifier Foundation.
- RG 251.45 Ahead of the establishment of Local Operating Units that can issue LEIs, the ROC has agreed to establish an interim pre-LEI system for global acceptance of pre-LEIs that meet global standards. The ROC will endorse certain pre-Local Operating Units to issue pre-LEIs. We consider a pre-LEI to be an interim entity identifier for the purposes of the derivative transaction rules (reporting).
- Note: See LEI ROC, *Legal Entity Identifier Regulatory Oversight Committee makes progress in the establishment of the Global LEI System and produces key decisions for Interim Global System*, 19 June 2013, [www.leiroc.org/publications/gls/roc\\_20130619.pdf](http://www.leiroc.org/publications/gls/roc_20130619.pdf).
- RG 251.46 More information about LEIs is available at [www.LEIROC.org](http://www.LEIROC.org).

## Changes to information previously reported

RG 251.47 A reporting entity must also report changes to information previously reported, including changes to valuation and collateral valuation information: see Rule 2.2.2.

Note: For further information, see Schedule 2 of the derivative transaction rules (reporting).

## The asset classes and products that must be reported

RG 251.48 As outlined in RG 251.9, a reporting entity must report details of its reportable transactions and reportable positions (see RG 251.13–RG 251.15), in the following asset classes:

- (a) commodity derivatives other than electricity derivatives (see RG 251.50);
- (b) credit derivatives;
- (c) equity derivatives;
- (d) foreign exchange derivatives; and
- (e) interest rate derivatives.

RG 251.49 The appendix to this guide lists the types of derivatives in each asset class for which information about reportable transactions and positions must be reported to a trade repository. This list is aligned with the standardised taxonomy developed by the International Swaps and Derivatives Association (ISDA) for derivatives to support regulatory mandates to increase transparency through public and regulatory reporting.

Note: See ISDA, *OTC taxonomies*, [www2.isda.org/identifiers-and-otc-taxonomies/](http://www2.isda.org/identifiers-and-otc-taxonomies/).

## Exemption for electricity derivatives

RG 251.50 The Ministerial determination empowered ASIC to make the derivative transaction rules (reporting) for 'commodity derivatives that are not electricity derivatives', among other classes. We would generally consider that where the underlying instrument or arrangement is, or directly relates to, electricity or the price of electricity, the derivative would be considered to be an electricity derivative.

## Applications for relief

RG 251.51 Under s907D we are empowered to grant relief to one or more reporting entities to allow them not to report certain transactions or information that would otherwise be required to be reported under the derivative transaction rules (reporting). Specific guidance on applications for relief due to foreign privacy restrictions for information that must be reported is set out in Section F.

RG 251.52 In accordance with the process outlined in Regulatory Guide 51 *Applications for relief* (RG 51), we will consider applications for relief from reporting certain derivative products in exceptional circumstances. Exceptional circumstances may include where relevant infrastructure is not available to facilitate the reporting of transactions to trade repositories, or where it would be overly burdensome to require reporting of transactions that are not subject to reporting obligations in other major jurisdictions. Relief of this kind would ordinarily be transitional in nature.

## Reporting of substantially equivalent information

- RG 251.53 The following derivative transaction rules (reporting) refer to the reporting of information that is substantially equivalent to information that is required to be reported under the derivative transaction rules (reporting):
- (a) a reporting entity that elects to report during the opt-in phase may choose to report information about reportable transactions that is substantially equivalent to the derivative transaction information set out in Part S2.1, or information about reportable positions that is substantially equivalent to the derivative position information set out in Part S2.2: see Rule 2.4.1(1)(c);
  - (b) a reporting entity may comply with its reporting obligations before 1 October 2014 by reporting information about a reportable transaction that is substantially equivalent to the derivative transaction information set out in Part S2.1, to a prescribed repository: see Rule 2.4.2(1)(a) and RG 251.25(a); and
  - (c) a reporting entity may comply with its reporting obligations until 30 September 2014 by relying on reporting by a non-reporting entity of information about a reportable transaction that is substantially equivalent to the derivative transaction information set out in Part S2.1, in accordance with foreign requirements: see Rule 2.4.2(3)(a) and RG 251.28(b).
- RG 251.54 In determining whether the information reported is substantially equivalent to the information required to be reported under the derivative transaction rules (reporting) for the purposes of the rules in RG 251.53, reporting entities should consider the overall scope of the information that is reported.
- RG 251.55 We do not consider that every data field reported must be the same as the requirements under the derivative transaction rules (reporting) applicable to that transaction. This could mean that reporting entities may not report every single data field required to be reported under the derivative transaction rules (reporting), or that the information reported in some fields is similar in substance, but not identical, to the information required for those fields under Schedule 2 of the derivative transaction rules (reporting).

- RG 251.56 We would generally consider that the information reported is substantially equivalent to that required to be reported in Australia where the information is reported in accordance with the reporting obligations in other jurisdictions that have implemented derivative transaction reporting requirements. This is because the data required to be reported in jurisdictions that have implemented, or are in the process of implementing, reporting obligations that require the reporting of fields that are similar in number and substance to the fields required to be reported under the derivative transaction rules (reporting).
- RG 251.57 At the time of publication of this guide, the jurisdictions that we consider have implemented reporting obligations that require the reporting of substantially equivalent information as that required to be reported in Australia are Japan and (in respect of the CFTC's reporting rules) the United States. Other jurisdictions that we expect will require reporting of information that is substantially equivalent to information required to be reported in Australia include the European Union, Hong Kong and Singapore.

## E Reporting of centrally cleared transactions

### Key points

This section gives guidance in relation to when a clearing and settlement (CS) facility licensee is a reporting entity under the derivative transaction rules (reporting), and how and when a cleared transaction must be reported to a trade repository.

### CS facility licensees

- RG 251.58 Rule 1.2.5 sets out which entities are reporting entities and which transactions are reportable transactions for those reporting entities. A CS facility licensee is a reporting entity under:
- (a) item 1 of the table in Rule 1.2.5, if the licensee is an Australian entity; or
  - (b) item 4 of the table in Rule 1.2.5, if the licensee is a foreign company required to be registered under Division 2 of Part 5B.2.

### Reporting cleared trades to a trade repository

- RG 251.59 Under Rule 1.2.4, a derivative is an OTC derivative regardless of whether it is cleared through a CS facility. This means that both cleared and uncleared derivative transactions in OTC derivatives are potentially reportable under the derivative transaction rules (reporting). Where a derivative is, for example, novated to a CS facility, this may give rise to separate reportable transactions under the derivative transaction rules (reporting).
- RG 251.60 For example, a derivative transaction in an OTC derivative between the original counterparties, entered into before the clearing of a transaction through a CS facility, may be a reportable transaction for one or both counterparties under Rule 1.2.5. If this is the case the transaction must be reported to a trade repository in accordance with the derivative transaction rules (reporting).
- RG 251.61 When a derivative transaction is cleared by a CS facility, the original transaction between the counterparties may be novated to the CS facility. The CS facility would then enter into two new transactions with the counterparties. If these new transactions are reportable transactions under Rule 1.2.5 for one or both counterparties (including the CS facility), they must be reported to a trade repository in accordance with the derivative transaction rules (reporting). This is the case regardless of whether the original transaction was a reportable transaction.
- RG 251.62 Under Rule 2.2.7, a reporting entity may appoint one or more persons to report on its behalf any information required to be reported to a trade

repository: see RG 251.17. In the case of a cleared derivative transaction this could include, but is not limited to:

- (a) a CS facility reporting information on behalf of a clearing member of the CS facility;
- (b) a CS facility reporting information on the original bilateral transaction on behalf of both reporting entities; or
- (c) another person reporting transactions on behalf of a CS facility.

## F Foreign privacy restrictions and applications for relief

### Key points

This section gives guidance on:

- foreign privacy restrictions that may prevent compliance with the reporting obligations;
- our powers to grant relief from the obligation to report certain derivative trade data to a trade repository;
- our approach to applications for relief from reporting certain derivative trade data to a trade repository due to foreign privacy restrictions; and
- how to apply for relief from reporting certain derivative trade data to a trade repository due to foreign privacy restrictions.

### Foreign privacy restrictions

- RG 251.63 Foreign privacy restrictions—including foreign privacy laws, blocking statutes, confidentiality provisions and other laws—may prevent the reporting of derivative trade data required under the derivative transaction rules (reporting).
- RG 251.64 Some foreign regulatory agencies have provided time-limited no-action relief to exempt reporting entities from reporting certain derivative trade data to trade repositories. We are continuing to work with foreign regulatory agencies to encourage the removal of foreign privacy restrictions where possible.
- RG 251.65 This section includes guidance on applications for relief due to foreign privacy restrictions on the information that can be reported.

### Our powers to grant relief

- RG 251.66 We are empowered under s907D to grant relief, from all or specified provisions, to:
- (a) a person or class of persons;
  - (b) a facility or class of facilities; or
  - (c) a derivative transaction or class of derivative transactions.
- RG 251.67 The specified provisions we can grant relief from are:
- (a) the provisions of Pt 7.5A;

- (b) the provisions of the Corporations Regulations made for the purposes of Pt 7.5A, or the provisions of the derivative transaction rules (reporting) and ASIC Derivative Trade Repository Rules 2013; and
- (c) the definitions in the Corporations Act, or in the Corporations Regulations, as they apply to references in the provisions referred to in RG 251.67(a)–RG 251.67(b).

RG 251.68 Under s907D we are empowered to grant relief to one or more reporting entities to allow them not to report certain derivative trade data that would otherwise be required to be reported under the derivative transaction rules (reporting).

## Our approach to applications for relief

- RG 251.69 Our general approach to considering applications for relief under the Corporations Act is outlined in RG 51.
- RG 251.70 When assessing an application for relief from reporting certain derivative trade data to a trade repository due to foreign privacy restrictions, we will seek to achieve consistency of application and provide exemptions on the basis of principles that are definite and have clearly defined limits.
- RG 251.71 We will consider granting an exemption from the reporting obligations for a class of data or a class of transactions on the grounds of a foreign privacy restriction where the restriction clearly prohibits or has the effect of prohibiting the reporting entity from reporting under the derivative transaction rules (reporting) for that class of data or class of transactions, even with the consent of the person to whom the derivative trade data relates. Applications for relief on this basis will be treated as minor or technical in nature, provided they are limited to no longer than one year in operation.
- RG 251.72 In other cases or circumstances, we will also consider applications for relief from reporting derivative trade data on the grounds of privacy or confidentiality. We will treat this as an application for new policy relief for the purposes of RG 51.
- RG 251.73 We will generally grant relief where:
- (a) we consider there is a net regulatory benefit; or
  - (b) the regulatory detriment is minimal and is clearly outweighed by the resulting commercial benefit (see RG 51.57).
- RG 251.74 When determining whether there is regulatory benefit or detriment we will consider the material on regulatory benefits and costs contained in our Regulation Impact Statement *G20 OTC derivatives transaction reporting regime*. Regulatory benefits of imposing reporting obligations are listed at RG 251.3.

RG 251.75 We may make a class order exemption to remove the need for applicants to apply for relief on an individual basis: see RG 51.63. We would encourage applicants that are affected by a set of circumstances in a very similar way to consider making a joint application.

## Applying for relief

RG 251.76 Applications for relief should be accompanied by the information in Table 2 of RG 51. We expect applications for relief due to foreign privacy restrictions to include an authoritative legal opinion from a local law practitioner giving evidence of how compliance with the Australian reporting obligations would cause a breach of the foreign law.

RG 251.77 As part of this application, you should provide us with information about the length of time you will be prevented from complying with your Australian reporting obligations due to the foreign privacy restriction. We expect any exemptions we provide will be time-limited, and subject to regular reassessment to determine if the foreign privacy restriction still prevents you from complying with your Australian reporting obligations.

RG 251.78 For information about how to apply for relief, see Information Sheet 82 *Applying for relief* (INFO 82). We will only be able make a decision on applications for relief that are complete and in sufficient detail and accompanied by the prescribed fee: see RG 51.36.

RG 251.79 We will process and consider applications in accordance with RG 51. When considering an application we will:

- (a) obtain internal legal advice on the relief sought if needed—applicants should be aware that this process takes time;
- (b) consider the policy implications of the application to determine whether relief should be granted and, if so, on what conditions—this may involve liaising internally on policy issues and may also take time; and
- (c) make a decision on the application (see RG 51.44).

RG 251.80 Applications often raise issues on which we want to obtain public comment. We may seek public comment through hearings or submissions, either before or after the application is finalised. Where extensive liaison with the public is required before a general policy decision can be made, we may give interim relief or a no-action letter to the applicant, if appropriate, pending final resolution of the application.

## Appendix: Derivative asset classes and products

**Table 2: Derivative asset classes and products to which the derivative transaction rules (reporting) apply**

| <b>Asset class</b>                  | <b>Products that must be reported</b>   |
|-------------------------------------|---|
| <b>Commodity derivatives</b>        | <ul style="list-style-type: none"> <li>Agricultural</li> <li>Metals</li> <li>Energy (other than electricity derivatives)</li> <li>Environmental</li> <li>Freight</li> </ul>                                     |
| <b>Credit derivatives</b>           | <ul style="list-style-type: none"> <li>Single name</li> <li>Index tranche</li> <li>Index</li> <li>Total return swap</li> <li>Swaption</li> <li>Exotic</li> </ul>  |
| <b>Equity derivatives</b>           | <ul style="list-style-type: none"> <li>Equity swap</li> <li>Equity index swap</li> <li>Equity options</li> </ul>  |
| <b>Foreign exchange derivatives</b> | <ul style="list-style-type: none"> <li>Swap</li> <li>Forward</li> <li>Non-deliverable forward</li> <li>Non-deliverable option</li> <li>Options</li> <li>Exotic options</li> <li>Precious metals swap</li> </ul> |

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| <b>Asset class</b>               | <b>Products that must be reported</b>   |
|----------------------------------|---|
| <b>Interest rate derivatives</b> | Interest rate swap<br>Non-deliverable interest rate swap<br>Forward rate agreement<br>Cap and floor<br>Swaption<br>Cross-currency swap<br>Non-deliverable cross-currency swap<br>Options<br>Exotic options<br>Basis swaps<br>Exchange-for-physical<br>Inflation-linked (zero coupon) swap<br>Inflation-linked (indexed annuity) swap<br>Inflation-linked (capital indexed) swap |

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## Key terms

| Term   | Meaning in this document   |
|--|--|
| ADI  | Authorised deposit-taking institution  |
| AFS licence                                    | An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services<br><br>Note: This is a definition contained in s761A of the Corporations Act. |
| AFS licensee                                   | A person who holds an AFS licence under s913B of the Corporations Act<br><br>Note: This is a definition contained in s761A of the Corporations Act.  |
| ASIC   | Australian Securities and Investments Commission   |
| Australian derivative trade repository licence | Australian derivative trade repository licence granted under s905C of the Corporations Act that authorises a person to operate a trade repository  |
| Australian entity                              | An entity (including a corporation, managed investment scheme, partnership or trust) that is incorporated or formed in Australia   |
| CFTC   | Commodity Futures Trading Commission   |
| Corporations Act                               | <i>Corporations Act 2001</i> , including any regulations made for the purposes of that Act   |
| Corporations Regulations                       | Corporations Regulations 2001  |
| CPSS   | Committee on Payment and Settlement Systems of the Bank of International Settlement  |
| CPSS–IOSCO Principles                          | CPSS–IOSCO, <i>Principles for financial market infrastructures</i> , as revised from time to time, available at <a href="http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf">www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf</a>                         |
| CS facility                                    | A clearing and settlement facility as defined by s768A of the Corporations Act   |
| CS facility licence                            | An Australian CS facility licence under s824B of the Corporations Act that authorises a person to operate a CS facility in Australia   |
| CS facility licensee                           | A person who holds a CS facility licence<br><br>Note: This is a definition contained in s761A of the Corporations Act.   |
| derivative position information                | Information about positions relating to derivative transactions  |

| Term                                     | Meaning in this document  |
|--|---|
| derivative trade data                    | Means: <ul style="list-style-type: none"> <li>• information about derivative transactions, or about positions relating to derivative transactions; or</li> <li>• information (including statistical data) that is created or derived from this information</li> </ul>   |
| derivative trade repository rules        | ASIC Derivative Trade Repository Rules 2013—rules made by ASIC under s903A of the Corporations Act that deal with the matters as permitted by this section  |
| derivative transaction                   | Means: <ul style="list-style-type: none"> <li>• the entry into an arrangement that is a derivative;</li> <li>• the modification or termination of such an arrangement;</li> <li>• the assignment, by a party to such an arrangement, of some or all of the party's rights and obligations under the arrangement; or</li> <li>• any other transaction that relates to a derivative and that is in a class of transactions prescribed by the regulations</li> </ul> |
| derivative transaction information       | Information about derivative transactions   |
| derivative transaction rules (reporting) | ASIC Derivative Transaction Rules (Reporting) 2013—rules made by ASIC under s901A of the Corporations Act that deal with reporting requirements, and requirements that are incidental or related to the reporting obligation  |
| foreign ADI                              | Has the meaning given by s5 of the <i>Banking Act 1959</i>  |
| G20                                      | Group of 19 of the world's largest economies, and the European Union  |
| IOSCO                                    | International Organization of Securities Commissions  |
| ISDA                                     | International Swaps and Derivatives Association   |
| legal entity identifier (LEI)            | A 20-character, alpha-numeric code that connects to key reference information that enables clear and unique identification of entities participating in global financial markets  |
| licensed trade repository                | A licensed derivative trade repository as defined in s761A of the Corporations Act and licensed by ASIC   |
| Ministerial determination                | Corporations (Derivatives) Determination 2013   |
| OTC                                      | Over the counter  |
| OTC derivative transaction               | An arrangement that is an OTC derivative under the derivative transaction rules (reporting)   |
| Part 2.4 (for example)                   | A part of the derivative transaction rules (reporting) (in this example numbered 2.4), unless otherwise specified   |

| Term                        | Meaning in this document  |
|-----------------------------|---|
| Pt 7.5A (for example)       | A part of the Corporations Act (in this example numbered 7.5A)  |
| prescribed trade repository | A trade repository that is a facility (or is in a class of facilities) prescribed by the Corporations Regulations for the purpose of s901A(6) of the Corporations Act                       |
| reportable position         | A position which is subject to a reporting obligation under Rule S1.2.1(1)(b)   |
| reportable transaction      | As defined in Rule 1.2.5, a derivative transaction that is entered into by a reporting entity under the circumstances outlined in Rule 1.2.5  |
| reporting entity            | An entity that is referred to in Rule 1.2.5 that may be subject to the reporting obligation   |
| reporting obligations       | The obligations of a reporting entity to report derivative trade data in accordance with the requirements of the derivative transaction rules (reporting)                                   |
| RG 249 (for example)        | An ASIC regulatory guide (in this example numbered 249)   |
| ROC                         | Regulatory Oversight Committee of the Global Legal Entity Identifier System   |
| Rule 1.2.5 (for example)    | A rule of the derivative transaction rules (reporting) (in this example numbered 1.2.5)   |
| s903A (for example)         | A section of the Corporations Act (in this example numbered 903A)   |
| trade repository            | A licensed or prescribed derivative trade repository—a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported |

## Related information

### Headnotes

asset class, cleared transaction, CPSS–IOSCO Principles, CS facility, derivative position information, derivative transaction, derivative transaction information, electricity derivative, exemption, foreign privacy restriction, licensed trade repository, prescribed trade repository, relief, reporting entity, reporting obligation, substantially equivalent, trade repository

### Regulatory guides

Regulatory Guide 51 *Applications for relief*

Regulatory Guide 249 *Derivative trade repositories*

### Legislation

Corporations Act, Pt 7.5A, s761D, 907D

Corporations Regulations, reg 7.5A.30

### ASIC rules

ASIC Derivative Trade Repository Rules 2013

ASIC Derivative Transaction Rules (Reporting) 2013

### Consultation papers and reports

CP 201 *Derivative trade repositories*

CP 205 *Derivative transaction reporting*

REP 309 *Report on the Australian OTC derivatives market – October 2012*

REP 356 *Response to submissions on CP 201 Derivative trade repositories*

REP 357 *Response to submissions on CP 205 Derivative transaction reporting*

### Information sheets

INFO 82 *Applying for relief*

### Media and other releases

Media Release (13-066MR) *ASIC consults on trade reporting obligations for OTC derivatives* (28 March 2013)

Media Release (13-171MR) *OTC derivatives reform: ASIC implements reporting regime* (11 July 2013)

### **International standards**

CPSS–IOSCO, *Principles for financial market infrastructures: Disclosure framework and assessment methodology*

CPSS–IOSCO, *Principles for financial market infrastructures*