



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 251

Derivative transaction reporting

February 2015

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 February 2015 and is based on legislation and regulations as at the date of issue.

- Previous version: Superseded Regulatory Guide 251, issued 29 August 2013, superseded 13 February 2015.

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 Payments and Market Infrastructures (CPMI) (formerly 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 2001* (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: 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. On 9 February 2015, the ASIC Derivative Transaction Rules (Reporting) Amendment 2014 (No. 1) was made, amending the derivative transaction rules (reporting).

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) (s901A(6)).

RG 251.8 Regulation 7.5A.30(2) prescribes various facilities until the end of 30 June 2015, provided that each relevant facility is registered to operate as a derivative trade repository under a law of a foreign jurisdiction.

RG 251.9 Regulation 7.5A.30(2) also allows ASIC to determine that a facility should be prescribed, should certain conditions be met: see RG 251.53. Any ASIC determination that is made will not be subject to the 30 June 2015 end date.

The reporting obligations

RG 251.10 The derivative transaction rules (reporting) impose obligations on reporting entities (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 251.11 We have issued a number of instruments granting relief to reporting entities under s907D(2), exempting them from complying with certain reporting obligations under the derivative transaction rules (reporting) (in some cases subject to conditions).

Note: These instruments are available on [our website](#) under ‘OTC derivatives reform’.

RG 251.12 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 that is:
 - (i) subject to ASIC supervision under Pt 7.2A of the Corporations Act (such as ASX 24);
 - (ii) registered by the US Commodity Futures Trading Commission (CFTC) as a ‘designated contract market’ under s5h of the *Commodity Exchange Act 1936* (US) (Commodity Exchange Act (US)); or
 - (iii) a ‘regulated market’ as defined in Article 4(1)(21) of the Markets in Financial Instruments Directive 2014/65/EU (MiFID II); 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, ‘designated contract markets’ or ‘regulated markets’.

RG 251.13 Based on their regulatory status in the United States and the European Union, ASIC does not consider that the following types of facilities 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, ‘designated contract markets’ or ‘regulated markets’:

- (a) facilities that are a ‘multilateral trading facility’ or ‘organised trading facility’ as defined in the Markets in Financial Instruments Directive 2004/39/EC (MiFID I) or the recast Markets in Financial Instruments Directive 2014/65/EU (MiFID II); and
- (b) facilities that are registered or provisionally registered as a ‘swap execution facility’ under the Commodity Exchange Act (US) or as a

‘security-based swap execution facility’ under the *Securities Exchange Act of 1934* (US).

Note: Determinations under Rule 1.2.4(3) are available on [our website](#).

Overview of our guidance

- RG 251.14 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; and
- the phased implementation of the reporting obligations and when reporting entities must start reporting derivative trade data.

Reporting entities

- RG 251.15 Subject to phased implementation (see RG 251.36) the reporting obligations apply 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 251.16 A responsible entity of a registered managed investment scheme or a 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 251.17 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 251.18 The information that must be reported about reportable transactions and reportable positions is explained further in Section D.

Reporting of trades ‘entered into’ in Australia

- RG 251.19 Rule 1.2.5(1) states that a foreign ADI that has a branch located in this jurisdiction, or a foreign company that is required to be registered under the Corporations Act, is a reporting entity under the derivative transaction rules (reporting).

- RG 251.20 For these entities, reportable transactions under the derivative transaction rules (reporting) are all OTC derivatives:
- (a) booked to the profit or loss account of a branch of the reporting entity located in Australia; or
 - (b) entered into by the reporting entity in this jurisdiction (Table 1, items 3 and 4 of Rule 1.2.5 and Rule 2.2.1).

Note: Rule 2.2.1 deals with the obligation for a reporting entity to report information about its reportable transactions.

Meaning of ‘entered into by the reporting entity in this jurisdiction’

- RG 251.21 The ordinary principles of Australian contract law apply to the requirement to report trades entered into by the reporting entity in this jurisdiction under the derivative transaction rules (reporting).
- RG 251.22 Under Australian law a contract is entered into in the place where the acceptance of the offer to enter into the contract is received, where an instantaneous form of communication is used to communicate the acceptance.
- RG 251.23 It is the responsibility of the counterparty to an OTC derivative to determine whether a reporting obligation on the part of the counterparty arises under the derivative transaction rules (reporting).

Alternative approach based on the location of the salesperson or trader

- RG 251.24 On 29 January 2015, we made ASIC Instrument [15/0067] *Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015*, which provides relief to certain reporting entities from the reporting requirements for trades entered into by the reporting entity in Australia. [15/0067] became effective on 2 February 2015, the date of registration.

- RG 251.25 The relief applies where a relevant reporting entity opts-in to report trades using an alternative test based on the location of persons performing particular functions in relation to an OTC derivative (including where the OTC derivative is entered into through an automated trading facility). The relief is subject to certain conditions.
- RG 251.26 Reporting entities seeking to rely on this exemption must opt-in by providing a notice to ASIC. These reporting entities are then required to report all of their trades in each opted-in asset class, based on this alternative approach.

Appointing another person to report

- RG 251.27 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: Rule 2.2.7.
- RG 251.28 Under Rule 2.2.7(2) a reporting entity that appoints a delegate in accordance with Rule 2.2.7(1) is taken to have complied with their obligations under Rules 2.2.1–2.2.5 and 2.2.8 in relation to the transactions for which the delegate has been appointed to report, if:
- (a) the terms of the delegate’s appointment and any related agreements or arrangements are documented in writing; and
 - (b) the reporting entity makes regular enquiries reasonably designed to determine whether the delegate is discharging its obligations under the terms of its appointment.
- RG 251.29 A reporting entity that appoints another person to report on its behalf remains responsible for taking all reasonable steps to ensure the completeness, accuracy and currency of the information reported: Rule 2.2.6.
- RG 251.30 A reporting entity can comply with its reporting obligations by delegating them in accordance with Rule 2.2.7(2) to multiple delegates. Where a reporting entity delegates to multiple delegates, it will need to ensure that each OTC derivative transaction it enters into is covered by one of the delegation agreements. Where particular transactions are not covered by a delegation agreement, the reporting entity will remain responsible for reporting these transactions in accordance with the derivative transaction rules (reporting).

Frequency and form of regular enquiries

- RG 251.31 For a reporting entity to rely on the delegation ‘safe harbour’ in Rule 2.2.7, it must ensure that it makes regular enquiries, and that those enquiries are reasonably designed to determine whether the delegate is discharging its obligations under the terms of its appointment.

- RG 251.32 To determine whether a reporting entity's enquiries are sufficiently regular, it will need to consider the number of outstanding OTC derivatives and the frequency with which transactions are entered into, modified or terminated. For reporting entities with few outstanding transactions and few or no changes to these transactions, we believe these regular enquiries could be undertaken as infrequently as once or twice a year. On the other hand, for a reporting entity with a large number of outstanding transactions and with frequent changes to these transactions, we would expect these enquiries to take place at least once a month.
- RG 251.33 The types of enquiry a reporting entity undertakes will also depend on the number of transactions and the frequency of changes. The two main ways we expect a reporting entity could make these enquiries are by obtaining:
- (a) from the delegate, details of the trades that have been reported on their behalf, and reconciling these details with the reporting entity's own records of OTC derivative transactions undertaken, which the delegate should be reporting; or
 - (b) from the trade repository to which the delegate is reporting, details of the trades that have been reported on their behalf, and reconciling these details with the reporting entity's own records of OTC derivative transactions undertaken, which the delegate should be reporting.
- RG 251.34 This is not an exhaustive list of ways regular enquiries could be made—the delegate's written appointment or any related agreements may outline a different approach that still ensure the reporting entity's reporting obligations are complied with.
- RG 251.35 We also recognise that regular enquiries could be made by an entity other than the reporting entity, by arrangement with and on behalf of the reporting entity. For example, the regular enquiries may be undertaken by:
- (a) in the case of a fund or trust entering into OTC derivatives, a fund manager rather than the responsible entity or trustee of the fund or trust;
 - (b) a related body corporate of the reporting entity; or
 - (c) a third-party service provider, such as an auditor.

Commencement dates for the reporting obligations

- RG 251.36 The derivative transaction rules (reporting) set out three phases for the commencement of the reporting obligation for specified reporting entities from 1 October 2013 to 1 October 2015.
- RG 251.37 On 27 June 2014, we made ASIC Instrument [14/0633] *Transitional exemptive relief for Phase 3 Reporting Entities from elements of the ASIC Derivative Transaction Rules (Reporting) 2013* under s907D(2)(a) of the Corporations Act.

[14/0633] had the effect of splitting Phase 3 reporting entities into Phase 3A and Phase 3B, and provided for further phased implementation of the reporting obligations for these entities—with Phase 3B reporting entities not required to report transaction information until a later date.

RG 251.38 Table 1 sets out the types of reporting entities included in each phase, and the relevant start dates for each type of reporting entity (taking into account the class exemption).

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 CFTC as a swap dealer	Commodity derivatives,* credit derivatives, equity derivatives, foreign exchange derivatives and interest rate derivatives	1 October 2013	1 October 2014
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 A\$50 billion total gross notional outstanding (see RG 251.40–RG 251.41) 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,* equity derivatives and foreign exchange derivatives	1 October 2014	1 April 2015

Phase	Type of reporting entity	Asset class	Transaction reporting start date	Position reporting start date
Phase 3 (as amended by [14/0633])	Phase 3A: A reporting entity that is an Australian ADI, an AFS licensee, a CS facility licensee, an exempt foreign licensee or a foreign ADI with A\$5 billion or more gross notional outstanding OTC derivative positions as at 30 June 2014, and that was not required to report in Phase 1 or 2.	Credit derivatives and interest rate derivatives	13 April 2015	19 October 2015
		Commodity derivatives,* equity derivatives and foreign exchange derivatives	12 October 2015	18 April 2016
	Phase 3B: A reporting entity that is an Australian ADI, an AFS licensee, a CS facility licensee, an exempt foreign licensee or a foreign ADI with less than A\$5 billion gross notional outstanding OTC derivative positions as at 30 June 2014, and that was not required to report in Phase 1 or 2.	Commodity derivatives,* credit derivatives, equity derivatives, foreign exchange derivatives and interest rate derivatives	12 October 2015	18 April 2016

* Commodity derivatives for transaction reporting purposes do not include electricity derivatives.

RG 251.39 Under reg 7.5A.50, the derivative transaction rules (reporting) cannot impose reporting obligations on end users (i.e. reporting entities other than those specified in Table 1).

Note: On 12 December 2014, the Acting Assistant Treasurer announced that Phase 3B entities will benefit from 'single-sided' reporting relief, provided they conclude their derivative transactions with counterparties that are already required to report the transaction. The Acting Assistant Treasurer stated that proposed regulations setting out the details of the 'single-sided' reporting regime will be released for public consultation in early-2015.

Calculation of gross notional outstanding

RG 251.40 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 held A\$50 billion or more of gross notional outstanding in derivatives totalled across all asset classes, as measured at 31 December 2013, must have commenced reporting in Phase 2: see Table 1.

RG 251.41 Similarly, 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 held:

- (a) less than A\$50 billion of gross notional outstanding in derivatives totalled across all asset classes as measured at 31 December 2013; and

(b) A\$5 billion or more of gross notional outstanding in derivatives totalled across all asset classes as measured at 30 June 2014,

must commence reporting in Phase 3A: see Table 1. All other Phase 3 reporting entities must commence reporting in Phase 3B: see Table 1.

RG 251.42 The gross notional outstanding position includes the notional principal outstanding. However, the thresholds do 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 251.43 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: Rule 1.2.7(b) and paragraph 12 of [14/0633].

RG 251.44 For managed investment schemes and trusts, the thresholds may be measured for each managed investment scheme or trust, rather than at the level of the responsible entity or trustee: Rules 1.2.7, S1.1.1(2) and S1.2.1(2), and paragraphs 13 and 14 of [14/0633].

Reporting more information than is required by the derivative transaction rules (reporting)

RG 251.45 The derivative transaction rules (reporting) do not prohibit a reporting entity from reporting information about a reportable transaction that is in addition to the information required by the derivative transaction rules (reporting). An example of additional information is information that is required to be reported under the derivative transaction reporting requirements of another jurisdiction.

RG 251.46 However, in doing so, a reporting entity should consider s907C of the Corporations Act. Section 907C provides, among other things, that if a person ('protected person') provides derivative trade data to another person and the protected person does so, in good faith, in compliance with a requirement imposed by or under the derivative transaction rules (reporting), the protected person is not liable to an action or other proceeding, whether civil or criminal, for or in relation to that conduct.

Reporting of trades made by a fund manager

RG 251.47 Where a fund manager enters into an arrangement that is an OTC derivative as agent on behalf of:

- (a) an a responsible entity of an Australian managed investment scheme; or
- (b) a trustee of an Australian trust,

the responsible entity or trustee is the reporting entity for that reportable transaction for the purposes of the derivative transaction rules (reporting): Rule 1.2.5(2).

RG 251.48 Where an Australian entity (e.g. an Australian fund manager) enters into an arrangement that is an OTC derivative as a principal, then the Australian entity is the reporting entity in relation to that transaction.

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 251.49 Reporting entities that are Australian entities (see RG 251.15) must report to a trade repository that is licensed by ASIC under the Corporations Act (referred to as a ‘licensed repository’). The derivative transaction rules (reporting) require that, in the event that there is no licensed repository, trades must be reported to a prescribed repository.
- RG 251.50 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 251.16), can report to a licensed or prescribed trade repository on an ongoing basis (subject to certain conditions being met, see RG 251.70): Rule 2.2.1(3).
- RG 251.51 Licensed repositories are listed on our website as and when they become licensed.
- RG 251.52 Regulation 7.5A.30 of the Corporations Regulations prescribes nine trade repositories that can be used to meet Australian trade reporting obligations until the end of 30 June 2015 (see RG 251.8), subject to the facility being registered to operate as a trade repository under a law of a foreign jurisdiction. These are:
- (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;
 - (h) the Monetary Authority appointed under s5A of the Exchange Fund Ordinance of Hong Kong; and
 - (i) UnaVista Limited

- RG 251.53 Regulation 7.5A.30 also allows ASIC to determine that a facility is prescribed for this purpose (an ASIC determination is not subject to the 30 June 2015 expiry date). Under reg 7.5A.30(2A), ASIC must not determine a facility is prescribed unless ASIC is satisfied that:
- (a) either:
 - (i) the facility has adopted rules, procedures or processes that substantially implement the CPSS–IOSCO Principles applicable to the regulation of derivative trade repositories; or
 - (ii) the foreign jurisdiction has adopted legislation, policies, standards or practices that substantially implement the CPSS–IOSCO Principles applicable to the regulation of derivative trade repositories; and
 - (b) adequate arrangements exist for cooperation between ASIC and an appropriate authority responsible for licensing, authorising or registering the facility as a derivative trade repository in the foreign jurisdiction.
- RG 251.54 Any trade repositories that we determine are prescribed under regulation 7.5A.30(2A) will be listed on our website.

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;
- reporting under substantially equivalent foreign reporting requirements;
- the reporting of counterparty information using a Legal Entity Identifier (LEI); and
- applications for relief.

Derivative trade data

RG 251.55 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 251.56 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 251.57 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 251.58 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 251.59 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 (Tables S2.1(1) and S2.2(1) of Schedule 2).
- RG 251.60 An LEI is a 20-character code that uniquely identifies entities participating on financial markets.
- RG 251.61 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 251.62 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.
- RG 251.63 More information about LEIs is available at www.LEIROC.org.

Changes to information previously reported

RG 251.64 A reporting entity must also report changes to information previously reported, including changes to valuation and collateral valuation information: 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 251.65 As outlined in RG 251.10, a reporting entity must report details of its reportable transactions and reportable positions (see RG 251.15–RG 251.17), in the following asset classes:

- (a) commodity derivatives other than electricity derivatives (see RG 251.67);
- (b) credit derivatives;
- (c) equity derivatives;
- (d) foreign exchange derivatives; and
- (e) interest rate derivatives.

RG 251.66 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/.

Exemption for electricity derivatives

RG 251.67 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 251.68 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 251.69 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.

Substantially equivalent reporting requirements

- RG 251.70 A reporting entity can meet its reporting obligations under the derivative transaction rules (reporting) in the following ways (as an alternative to the usual reporting requirements):
- (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 (Rule 2.4.1(1)(c)); or
 - (b) 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 251.16), can report to a prescribed repository on an ongoing basis (subject to certain conditions being met) by reporting information under the requirements of a foreign jurisdiction, where those requirements are substantially equivalent to the requirements that would otherwise apply to the reporting entity (Rule 2.2.1(3)).
- RG 251.71 In determining whether foreign reporting requirements are substantially equivalent to requirements under the derivative transaction rules (reporting) for the purposes of RG 251.70, reporting entities should consider the overall scope of the information that is reported.
- RG 251.72 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 251.73 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 251.74 At the time of publication of this guide, the jurisdictions that we consider have implemented reporting obligations that are substantially equivalent to the derivative transaction rules (reporting) (i.e. in terms of asset classes subject to a reporting obligation in each foreign jurisdiction) are:

- (a) Canada;
- (b) the European Union;
- (c) Hong Kong;
- (d) Japan;
- (e) Singapore; and
- (f) the United States.

E Reporting of centrally cleared transactions

Key points

This section gives guidance in relation to when a 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.

Clearing and settlement facility licensees

- RG 251.75 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 CS facility licensee is an Australian entity; or
 - (b) item 4 of the table in Rule 1.2.5, if the CS facility licensee is a foreign company required to be registered under Division 2 of Part 5B.2.

Reporting cleared trades to a trade repository

- RG 251.76 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 251.77 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 251.78 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 251.79 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 251.27. 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 251.80 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 251.81 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 251.82 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 251.83 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 251.84 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 251.84(a)–RG 251.84(b).

RG 251.85 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 251.86 Our general approach to considering applications for relief under the Corporations Act is outlined in RG 51.

RG 251.87 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 251.88 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 251.89 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 251.90 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 251.91 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 251.92 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 251.93 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 251.94 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 251.95 For information about how to apply for relief, see Information Sheet 82 *Applying for relief* (INFO 82). We will only be able to 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 251.96 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 251.97 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

Asset class	Products that must be reported
Commodity derivatives	<ul style="list-style-type: none"> • Agricultural • Metals • Energy (other than electricity derivatives) • Environmental • Freight
Credit derivatives	<ul style="list-style-type: none"> • Single name • Index tranche • Index • Total return swap • Swaption • Exotic
Equity derivatives	<ul style="list-style-type: none"> • Equity swap • Equity index swap • Equity options
Foreign exchange derivatives	<ul style="list-style-type: none"> • Swap • Forward • Non-deliverable forward • Non-deliverable option • Options • Exotic options • Precious metals swap
Interest rate derivatives	<ul style="list-style-type: none"> • Interest rate swap • Non-deliverable interest rate swap • Forward rate agreement • Cap and floor • Swaption • Cross-currency swap • Non-deliverable cross-currency swap • Options • Exotic options • Basis swaps • Exchange-for-physical • Inflation-linked (zero coupon) swap • Inflation-linked (indexed annuity) swap • Inflation-linked (capital indexed) swap

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 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 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	US 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
CPMI	Committee on Payments and Market Infrastructures, formerly the Committee on Payment and Settlement Systems (CPSS)
CPSS–IOSCO Principles	CPSS–IOSCO, <i>Principles for financial market infrastructures</i> , as revised from time to time, available at www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf
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 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"> • information about derivative transactions, or about positions relating to derivative transactions; or • information (including statistical data) that is created or derived from this information
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"> • the entry into an arrangement that is a derivative; • the modification or termination of such an arrangement; • the assignment, by a party to such an arrangement, of some or all of the party's rights and obligations under the arrangement; or • any other transaction that relates to a derivative and that is in a class of transactions prescribed by the regulations
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
MiFID I	Markets in Financial Instruments Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, on markets in financial instruments
MiFID II	Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, on markets in financial instruments
Ministerial determination	Corporations (Derivatives) Determination 2013

Term	Meaning in this document
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
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

Class exemptions

ASIC Instrument [14/0633] *Transitional exemptive relief for Phase 3 Reporting Entities from elements of the ASIC Derivative Transaction Rules (Reporting) 2013*

ASIC Instrument [15/0067] *ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015*

Consultation papers and reports

CP 201 *Derivative trade repositories*

CP 205 *Derivative transaction reporting*

CP 221 *OTC derivatives reform: Proposed amendments to the ASIC Derivative Transaction Rules (Reporting) 2013*

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*

REP 422 *Response to submissions on CP 221 Proposed Amendments to ASIC Derivative Transaction Rules (Reporting) 2013*

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*