



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 249

Derivative trade repositories

April 2026

About this guide

This guide tells you:

- when you need an Australian derivative trade repository licence and how to apply for one, whether you are an Australian or overseas operator; and
- what you should do after you have been granted a licence.

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 draft guide was issued in April 2026 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 249, issued August 2013, reissued 10 April 2015, February 2023 and October 2023

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.

DRAFT

Contents

A Overview	4
What is a trade repository?	4
Australian legislative framework	4
When do you need an ADTR licence?	6
About this guide	7
B Our approach to granting an ADTR licence or exemption	8
ADTR licence	8
Overseas trade repositories	12
Exemptions	15
C Applying for an ADTR licence or exemption	16
How to apply for an ADTR licence	16
How to apply for an exemption	17
D Licensee obligations and ASIC’s powers	19
Licensee obligations	19
ASIC supervisory powers relating to ADTR licensees	24
ASIC approval to have greater than 20% voting power	26
Appendix 1: CPMI–IOSCO Principles for financial market infrastructures	28
Appendix 2: Guidance on complying with the derivative trade repository rules	30
Key terms	40
Related information	43

DRAFT

A Overview

Key points

A derivative trade repository (trade repository) is a facility to which information about derivative transactions can be reported.

The reason for establishing and regulating trade repositories is to increase the transparency of over-the-counter (OTC) derivatives markets to the Australian regulators by centralising the reporting of OTC derivative transactions in one or more trade repositories.

ASIC is responsible for licensing and supervising trade repositories under the *Corporations Act 2001* (Corporations Act).

Trade repositories that accept derivative trade data reported under mandatory reporting requirements imposed by the Corporations Act must either be licensed under Pt 7.5A of the Corporations Act or a member of a class of trade repositories that is prescribed by ASIC under the *Corporations Regulations 2001* (Corporations Regulations).

What is a trade repository?

- RG 249.1 A trade repository is a central facility to which information about derivative transactions can be reported. A trade repository acts as an electronic registry that maintains a database of transaction records. Trade information is submitted to a repository by one or both trade counterparties, and typically covers information such as transaction, product and entity identifiers, the economic terms of transactions and regularly updated valuation and collateral information.
- RG 249.2 The key rationale for requiring derivative transaction reporting, and establishing and regulating trade repositories, is to:
- (a) enhance the transparency of transaction information available to relevant authorities and the public;
 - (b) mitigate systemic risk; and
 - (c) protect against market abuse.

Australian legislative framework

- RG 249.3 Pt 7.5A of the Corporations Act sets out the licensing and supervisory regime for trade repositories.

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

DRAFT

ASIC's role

- RG 249.4 We are responsible for administering the licensing and supervisory regime for trade repositories. Our function includes:
- (a) granting Australian derivative trade repository (ADTR) licences, and imposing, varying or revoking conditions on licences;
 - (b) varying, suspending or cancelling ADTR licences;
 - (c) granting exemptions from certain provisions regulating the licensing or operations of a trade repository;
 - (d) making and enforcing derivative transaction rules that establish mandatory requirements (reporting, clearing and/or execution);
 - (e) making and enforcing the *ASIC Derivative Trade Repository Rules 2023* (derivative trade repository rules) that govern how ADTR licensees provide services and handle derivative trade data (including providing data access to regulators), and the governance, management and resources of an ADTR licensee; and
 - (f) assessing applications for approval to have more than 20% voting power in a domestically incorporated ADTR licensee or its holding company.

ASIC's powers

- RG 249.5 We have the power to assess how well an ADTR licensee is complying with any or all of its obligations as a licensee. We can also:
- (a) give directions to an ADTR licensee if we consider the licensee is not complying with its obligations;
 - (b) give directions to an ADTR licensee requiring the licensee to give ASIC a special report and an audit report on the special report;
 - (c) give directions relating to derivative trade data if the trade repository ceases to be licensed; and
 - (d) issue a financial market infrastructure (FMI) banning order to prevent an individual from controlling or performing core functions at an ADTR licensee.

The Minister's role

- RG 249.6 The Minister's functions include:
- (a) determining, by legislative instrument, one or more classes of derivatives in relation to which mandatory requirements may be imposed under the *ASIC Derivative Transaction Rules (Reporting) 2024* (derivative transaction rules (reporting));

DRAFT

- (b) deciding whether to consent to ASIC making the derivative transaction rules (reporting) and derivative trade repository rules;
- (c) giving a written direction to an ADTR licensee if the Minister considers the licensee is not complying with its obligations in certain circumstances; and
- (d) assessing a referral of an ASIC written direction at the request of a derivative trade repository licensee (that ASIC considers is not complying with its obligations in certain circumstances) and deciding whether to direct ASIC to vary or revoke the direction.

Note: A determination made by the Minister in RG 249.6(a) is ordinarily based on advice by ASIC, the Reserve Bank of Australia (RBA) and the Australian Prudential Regulation Authority (APRA). This advice may take the form of periodic surveys or assessments of the Australian OTC derivatives markets.

CPMI–IOSCO Principles for financial market infrastructures

- RG 249.7 The [CPMI–IOSCO Principles for financial market infrastructures](#) (CPMI–IOSCO Principles) set out standards for trade repositories that should be applied by regulators. The relevant standards are listed in Appendix 1 and cover areas such as a trade repository’s legal basis, governance, risk management, third-party access arrangements and efficiency.
- RG 249.8 Where an overseas trade repository seeks an ADTR licence and is subject to an overseas regulatory regime that is sufficiently equivalent to the Australian regime, we may, to the extent we consider appropriate, rely on that overseas regulatory regime in supervising the trade repository. In assessing equivalence, we consider, among other things, whether the overseas regime achieves outcomes equivalent to the Australian framework, including consistency with the CPMI–IOSCO Principles.

When do you need an ADTR licence?

- RG 249.9 Domestic and overseas-based trade repositories that accept derivative trade data reported under mandatory reporting requirements imposed by the Corporations Act must either be:
- (a) licensed under Pt 7.5A of the Corporations Act—unless we have exempted you from holding an ADTR licence (s907D) or you are exempt under the Corporations Regulations from holding an ADTR licence (s907E); or
 - (b) a member of a class of trade repositories that is prescribed by ASIC under the Corporations Regulations.

Note: At the time of writing, the Australian Government had not made any such regulations.

DRAFT

About this guide

RG 249.10 This guide is structured as follows:

- (a) Section B outlines our approach to granting ADTR licences and exemptions, including our approach for overseas trade repositories.
- (b) Section C includes guidance on how you can apply for an ADTR licence or exemption.
- (c) Section D sets out the obligations that apply to ADTR licensees and our supervisory powers.

DRAFT

B Our approach to granting an ADTR licence or exemption

Key points

We will consider each application on a case-by-case basis before deciding whether to grant an ADTR licence or exemption, and whether to impose any conditions.

We may grant an application for an ADTR licence if we are satisfied that the application has been made in accordance with s905B, the applicant will comply with its obligations if the licence is granted, and no disqualified individual appears to be involved in the applicant. In deciding whether to grant a licence, we must consider the list of matters in s905P(2) and any other matters we consider relevant.

Operators of trade repositories based overseas may need, or may choose to seek, an ADTR licence. Where an overseas trade repository seeks an ADTR licence but is also subject to an overseas regulatory regime that is sufficiently equivalent to the regime in Australia we may, to the extent we consider appropriate, rely on the overseas regulatory regime in supervising the trade repository.

We may grant an exemption from certain provisions relating to the regulation of trade repositories when we consider the regulatory outcomes are not relevant or are otherwise achieved, and whether the regulatory costs significantly outweigh the benefits. Trade repositories that are subject to overseas regulatory regimes may also be eligible to apply for an exemption.

ADTR licence

- RG 249.11 You may apply for an ADTR licence under s905B and the same licence may authorise you to operate two or more trade repositories: s905E.
- RG 249.12 We will consider each licence application on a case-by-case basis.
- RG 249.13 Section 905P(2) lists the matters that we must consider in deciding whether to grant an applicant an ADTR licence. These matters are:
- (a) the structure, or proposed structure, of the trade repository;
 - (b) the nature of the activities conducted, or proposed to be conducted, by the trade repository;
 - (c) the size, or proposed size, of the trade repository;
 - (d) the persons who are, or may be, required to report derivative trade data to the trade repository;
 - (e) the technology used, or proposed to be used, in operating the trade repository; and
 - (f) whether it would be in the public interest to grant an ADTR licence.

DRAFT

- RG 249.14 We may also take into account any other matter that we consider relevant.
- RG 249.15 Section 905C provides that we may grant an applicant an ADTR licence if we are satisfied that:
- (a) the application has been made in accordance with 905B;
 - (b) the applicant will comply with its obligations if the licence is granted (see RG 249.63); and
 - (c) no disqualified individual appears to be involved in the applicant (see RG 249.66–RG 249.67).

- RG 249.16 ASIC must not grant an applicant an ADTR licence unless:
- (a) the applicant is registered under Div 2 of Pt 5B.2, if the applicant is a foreign body corporate (s905C(2)); and
 - (b) 42 days have passed since the application was made and we have not given a notice under s853D(2) to the applicant within that time (s905C(3)).

Note: A notice under s853D(2) is a notice that we propose to make a declaration under s853C that an individual who is involved in the licence applicant is disqualified for the purposes of Div 2 of Pt 7.4.

Disqualified individuals

- RG 249.17 To enable us to assess the requirement in s905(1)(c) that no disqualified individual appears to be involved in the applicant, or the applicant's holding company, an application should include the following:
- (a) for each director, secretary and senior manager of the applicant:
 - (i) their full name, address and contact details; and
 - (ii) whether they are, or have been, disqualified; and
 - (b) for each individual who holds more than 20% of the total voting power in the applicant, or a holding company of the applicant:
 - (i) their full name, address and contact details; and
 - (ii) whether they are, or have been, disqualified.

Note: See s853A and 853B and RG 249.66.

No unacceptable control situation is likely to result when a licence is granted

- RG 249.18 Where a domestically incorporated licence applicant has shareholders whose voting power will exceed 20% when the licence is granted, we must separately assess and approve each instance in which shareholder voting power exceeds 20%. This assessment occurs at the same time as we consider and decide the licence application. This process ensures that no unacceptable

control situation arises after the licence is granted: see s852DA, 852DB and 852DD.

RG 249.19 Although we may consider a licence application and the voting power of each of the applicant's shareholders concurrently, we must issue a separate written approval for each shareholder whose voting power will exceed 20% at the same time we grant the licence.

RG 249.20 For further information, see ASIC approval to have greater than 20% voting power in RG 249.91–RG 249.99.

Licence conditions

RG 249.21 Section 905F gives ASIC the ability to impose conditions, or additional conditions, on an ADTR licence.

RG 249.22 All ADTR licensees will be subject to licence conditions that specify:

- (a) the particular trade repository that the licensee is authorised to operate;
- (b) the class or classes of derivatives for which the repository can provide services for the purposes of Pt 7.5A (s905F(4)); and
- (c) any other conditions that apply to that particular trade repository.

RG 249.23 We will make publicly available the list of ADTR licensees and their licence conditions.

Asset classes

RG 249.24 Under Rule 2.3.1, an ADTR licensee must be in a position to accept derivative trade reports for all asset classes specified in its licence conditions. Accordingly, the asset classes for which a trade repository is licensed may need to be more narrowly defined than the asset classes set out in the Ministerial determination.

Note: In this document, references to 'Part 2.4' or 'Rule 2.4.2' (for example) are references to a particular part or rule of the derivative trade repository rules.

RG 249.25 Licensees seeking to offer a Pt 7.5A reporting service for additional asset classes after a licence has been granted will need to apply to ASIC for a variation to their licence.

Other conditions

RG 249.26 We may consider imposing additional conditions on your licence (to the extent they are not covered by the relevant derivative trade repository rules) in relation to:

- (a) regular reporting to ASIC on financial resources and directors' certifications about the adequacy of financial resources;
- (b) more frequent regular reporting during the first years of operation on cash flows, financial performance and your financial position;

- (c) requiring or confirming that key human or technological resources, or other key arrangements, are in place before beginning to offer the service;
- (d) the type or formats of data to be provided to ASIC or other regulators;
- (e) requiring the trade repository to establish a domestic operational presence, either with respect to human or technological resources or other aspects of its operations;
- (f) outsourcing critical functions;
- (g) submission to the jurisdiction of Australian courts in any action brought by ASIC, where the applicant is domiciled offshore; and
- (h) requirements for user support, regulator support or escalation procedures.

RG 249.27 We will consider imposing conditions about financial resource requirements for certain applicants. In assessing whether or not to impose such conditions, and what the financial requirements shall be, we will consider (among other things):

- (a) your current and projected operating expenses under a range of scenarios, including in adverse market conditions;
- (b) any potential general business losses that may arise and the level of financial resources that may be required so that you can continue the operations and services of the trade repository as a going concern even if those general business losses materialise; and
- (c) the level of financial resources required in a recovery situation or orderly wind-down of critical operations and services, taking into account the length of time that may be required to achieve a recovery or orderly wind-down.

RG 249.28 We will consult with you about any conditions we may impose.

Ensuring an appropriate degree of regulatory influence over cross-border trade repositories

RG 249.29 We may consider imposing specific conditions on the ADTR licence of a trade repository if the trade repository:

- (a) is wholly or partially operated in a foreign country and the information held by the trade repository is of high importance for the Australian regulators in relation to the Australian market; or
- (b) is based in Australia and has outsourced operations, moved them overseas, or intends to do so.

RG 249.30 We may consider one or more of the following conditions (or other conditions as appropriate) to ensure that we can exercise appropriate regulatory influence in these circumstances by imposing obligations that:

- (a) facilitate our ability to conduct periodic activity-based reviews;
- (b) require you to report to us regularly on your activities and presence overseas;

- (c) require you to establish particular customer support or regulator support arrangements, including, where appropriate, requiring a domestic operational presence; and/or
- (d) deal with outsourcing of critical functions.

Overseas trade repositories

RG 249.31 Overseas trade repositories may need, or may choose to seek, an ADTR licence: see RG 249.9. They may also seek exemptive relief from ASIC or may request ASIC to perform its supervisory functions in respect of the repository's activities by relying on their compliance with a foreign regulatory regime under s902A.

RG 249.32 In relation to licensed overseas trade repositories, we may consider:

- (a) exempting them from substantive parts of the Australian regime in accordance with the considerations set out in RG 249.53;
- (b) accepting reliance (in whole or in part) on compliance with overseas regulation as set out in RG 249.34–RG 249.48; or
- (c) adopting a combined approach by seeking to rely on compliance with overseas regulation, as well as potentially exempting the foreign operator from specific relevant obligations under the Corporations Act or the derivative trade repository rules.

RG 249.33 We will adopt the approach that is, in our view, most appropriate to the circumstances of the particular case.

Reliance by ASIC on regulation in home jurisdiction

RG 249.34 Section 902A provides that, if a licensed trade repository is wholly or partly operated in a foreign country, we may, to the extent we consider appropriate, perform the function of supervising the repository by satisfying ourselves that:

- (a) the regulatory regime that applies to the repository in the foreign country provides for adequate supervision of the repository; or
- (b) adequate cooperative arrangements are in place with an appropriate authority of the foreign country to ensure that the repository will be adequately supervised by that authority.

RG 249.35 We would ordinarily expect to satisfy ourselves of both these criteria, rather than relying on one alone.

Note: See paragraph 1.137 of the [Revised Explanatory Memorandum](#) to the *Corporations Legislation Amendment (Derivative Transactions) Bill 2012* (Revised Explanatory Memorandum).

DRAFT

Adequate supervision

RG 249.36 We may consider the regulatory requirements in the home jurisdiction, where those requirements apply to the ADTR licensee's Australian activities. We may view the licensee's compliance with those obligations as partially or wholly fulfilling particular regulatory obligations that the licensee faces under the Australian regime.

RG 249.37 For the purpose of satisfying ourselves that the regulatory regime in the foreign country provides for adequate supervision of the trade repository, we will assess whether the overseas regulatory regime is sufficiently equivalent to the Australian regulatory regime.

RG 249.38 In assessing whether the overseas regulatory regime is sufficiently equivalent and whether there are adequate cooperation arrangements between ASIC and the appropriate authority of the foreign country or countries in which the trade repository is wholly or partly operated, we will apply the approach set out in Regulatory Guide 54 *Principles for cross-border financial regulation* ([RG 54](#)).

Note: See also Regulatory Guide 172 *Financial markets: Domestic and overseas operators* ([RG 172](#)) and Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* ([RG 211](#)).

RG 249.39 We will take into account the extent to which the overseas regulatory regime, as it applies to the overseas trade repository:

- (a) is clear, transparent and certain (see [RG 54](#) at RG 54.82–RG 54.84);
- (b) is adequately enforced in the foreign country (see [RG 54](#) at RG 54.87–RG 54.89);
- (c) is consistent with the CPMI–IOSCO Principles in Appendix 1, to the extent that they apply to trade repositories; and
- (d) achieves equivalent outcomes to the outcomes of the Australian regulatory regime for trade repositories.

Consistency with the CPMI–IOSCO Principles as they apply to trade repositories

RG 249.40 We will consider whether an overseas regulatory regime is designed to achieve the high-level outcomes of the CPMI–IOSCO Principles in determining whether there is sufficient regulatory equivalence between the overseas regime and Australia's regulatory regime.

RG 249.41 Normally, this would require the relevant CPMI–IOSCO Principles (and, where appropriate, relevant key considerations) to be explicitly provided for and legally enforceable in the overseas regulatory regime. However, in some circumstances, convincing evidence could be provided that the relevant CPMI–IOSCO Principles either are implicit in the overseas regulatory regime or are provided for through supervisory practice.

RG 249.42 We will take into account any revised or newly established principles or recommendations on trade repositories published by CPMI and IOSCO, or other relevant international standard-setting body or forum from time to time.

Achieves equivalent outcomes to the Australian regulatory regime for trade repositories

RG 249.43 In our view, the relevant key outcomes in RG 249.2 require:

- (a) ensuring the operational integrity, effectiveness and security of the trade repository and the data it contains;
- (b) ensuring the adequate availability of data to regulators and market participants; and
- (c) ensuring fair and transparent terms of access to counterparties who may be required to report to the trade repository.

RG 249.44 When we consider whether the overseas regulatory regime achieves the key outcomes, we will focus on whether the outcomes are achieved from the perspective of Australian users of the trade repository facility.

RG 249.45 The achievement of the key outcomes by the overseas regulatory regime does not require the regulatory mechanisms used in each country to be precisely the same. However, to assess whether the overseas regulatory regime achieves the key outcomes, we will need to know and understand, in detail, the regulatory mechanisms by which those outcomes may be achieved, especially if those mechanisms are not the same as the Australian regulatory mechanisms.

Adequate cooperative arrangements

RG 249.46 We would normally expect to grant an ADTR licence to an overseas operator only if we have adequate cooperative arrangements—generally in the form of a memorandum of understanding or some other documented arrangement—with the relevant regulator, located in the home jurisdiction of the operator.

RG 249.47 Adequate cooperative arrangements generally mean:

- (a) prompt sharing of information by the home regulatory authority (facilitated by direct access to and continuing contact with relevant officers of the overseas regulatory authority); and
- (b) effective cooperation of supervision, investigation and enforcement.

RG 249.48 It will be important for the operator of an overseas trade repository that is applying for an ADTR licence to indicate to us the extent to which it will expect us to rely on compliance with the home jurisdiction requirements as being sufficient for Australian purposes. Any such expected reliance is also likely to be relevant in any self-assessment report required under the derivative trade repository rules.

DRAFT

Exemptions

When an exemption may be granted

RG 249.49 Under s907D, we may exempt the following from all or specified provisions:

- (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 249.50 The specified provisions we can exempt compliance 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 the derivative trade repository rules; and
- (c) the definitions in the Corporations Act or Corporations Regulations, as they apply to references in the provisions in RG 249.50(a)–RG 249.50(b).

RG 249.51 We may also grant exemptions or relief from the:

- (a) Corporations Regulations (s907E);
- (b) derivative transaction rules (reporting) (s901A(3)(g)); and
- (c) derivative trade repository rules (s903A(3)(c)).

RG 249.52 We may grant exemptions unconditionally or subject to specified conditions. For example, we may impose exemption conditions to protect the users of the facility or other interests such as financial stability, market integrity or market confidence.

Note: See Regulatory Guide 51 *Applications for relief* ([RG 51](#)) more generally for how we use our relief powers.

Overseas trade repositories

RG 249.53 Where an overseas regulatory regime is sufficiently equivalent (see RG 249.37–RG 249.45) we may consider granting an exemption from relevant substantive parts of the Australian regime: see s907D. However, we may impose exemption conditions, such as:

- (a) a requirement for the operator to obtain certifications of its ongoing compliance with overseas requirements; and
- (b) a requirement for the operator to submit to the jurisdiction of an Australian court in an action brought by us in relation to its operation of the facility.

DRAFT

C Applying for an ADTR licence or exemption

Key points

As an ADTR licence applicant, you will need to send us an application that contains:

- detailed information on your company;
- the characteristics of the (proposed) facility;
- the proposed financial, human and technological resources and key contracts;
- the governance framework; and
- the operational and compliance rules, plans and procedures.

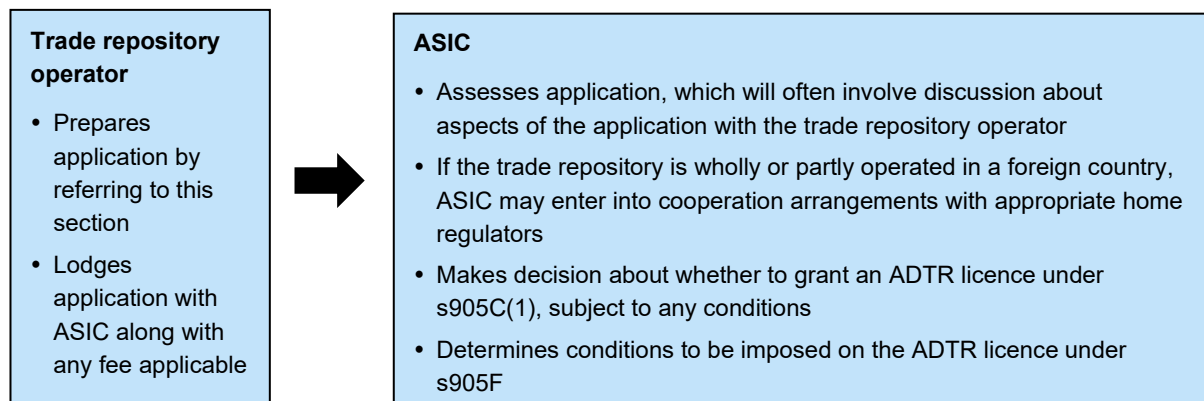
If you are applying for an exemption, your application needs to include details of the particular trade repository and the reasons for seeking an exemption.

How to apply for an ADTR licence

RG 249.54 Figure 1 provides an overview of the ADTR licence application process. We recommend potential applicants discuss their proposed operations with us before applying. Potential applicants should send an email to:

Senior Executive Leader, Financial Market Infrastructure, ASIC
OTCD@asic.gov.au

Figure 1: ADTR licence application process



DRAFT

What to include with your ADTR licence application

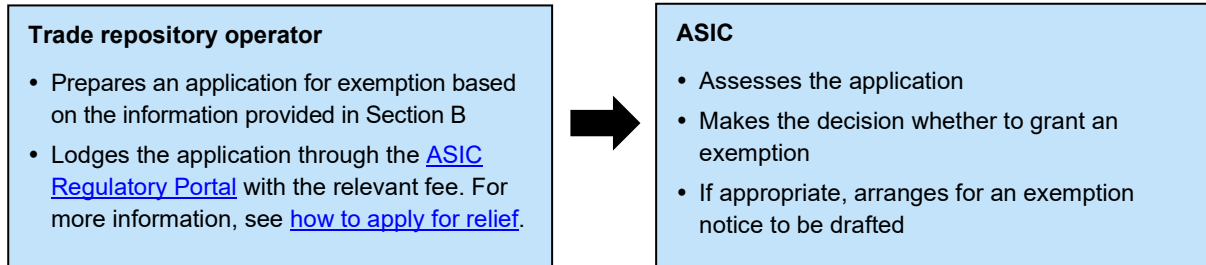
- RG 249.55 An application must be made in accordance with s905B.
- RG 249.56 Your application must explain the matters in s905P that we must consider when deciding whether to grant an ADTR licence, and any other matters we consider relevant in deciding whether to grant a licence. We may take steps to confirm the information you provide.
- RG 249.57 As an applicant, you must demonstrate that you have the skills, expertise, procedures and capacity to comply with the obligations that will apply to you—including the obligations imposed by the derivative trade repository rules—when your trade repository commences and on a continuing basis.
- Note: See Section D for a discussion of your obligations as an ADTR licensee.
- RG 249.58 We will require evidence that an applicant’s governing body expressly considered and approved the application before it was made. We will accept for this purpose a declaration made by a senior person or persons authorised by specific resolution of the governing body to make the declaration on the governing body’s behalf, that to the best of the governing body’s knowledge and having made proper inquiries:
- (a) the applicant meets the criteria in s905C; and
 - (b) the information and documentation provided with the application is true, correct and complete.
- RG 249.59 Applicants whose business is wholly or partly operated in a foreign country need to provide ASIC with comprehensive information about their overseas operations, how they propose to provide services for the purposes of the Australian regime under Pt 7.5A (including full details of the foreign resources it intends to deploy in providing services for the purposes of Pt 7.5A) and the overseas regulatory regime that applies to them. The application and all information and documents provided with the application must be in English or translated into English by a suitably qualified translator.
- RG 249.60 We may consult with relevant overseas authorities with supervisory or regulatory responsibility for the applicant. We may request independent verification by a suitably qualified third party about any matter in your application, where we consider it is necessary to do so. In such a case, you are responsible for the cost of supplying the verification.

How to apply for an exemption

- RG 249.61 Your exemption application should provide details of:
- (a) the operation of the particular trade repository; and
 - (b) the reasons why you should be exempted, having regard to our criteria for exemption above.

RG 249.62 We recommend discussing a potential application with us before submission. We also strongly encourage submitting a draft application with us before formally applying.

Figure 2: Trade repository exemption process



D Licensee obligations and ASIC's powers

Key points

After you have been granted an ADTR licence, you must ensure that you meet your various licensee obligations on an ongoing basis, including complying with the conditions on your ADTR licence and with the derivative trade repository rules.

We may assess whether you are complying with your ADTR licensee obligations.

Licensee obligations

- RG 249.63 As an ADTR licensee, you must ensure that you comply with:
- (a) the derivative trade repository rules that apply to you;
 - (b) your general obligations under s904A, including:
 - (i) complying with the conditions on the licence;
 - (ii) if you are a foreign body corporate, being registered under Div 2 of Pt 5B.2; and
 - (iii) your obligation to take all reasonable steps to ensure that each core officer of the licensee is:
 - (A) a fit and proper person to perform their functions; and
 - (B) capable, including being competent, to perform their functions; and
 - (iv) your obligation to take all reasonable steps to ensure that no disqualified individual becomes, or remains, involved in the operator; and
 - (v) your obligation to take all reasonable steps to ensure that no individual against whom an FMI banning order is made becomes or remains involved in the licensee or does anything prohibited under the FMI banning order in relation to the licensee;
 - (c) your obligations relating to derivative trade data under s904B and the applicable derivative trade repository rules, including:
 - (i) the obligations relating to use or disclosure of the data;
 - (ii) the obligation to comply with requests from regulators or other persons for data; and
 - (iii) the obligations relating to the creation of statistical data from the derivative trade data;

DRAFT

- (d) your obligation to notify ASIC of certain matters under s904C, including:
 - (i) notification of an inability to meet obligations under s904A; and
 - (ii) notification of changes to directors, secretaries, or senior managers of the licensee or the licensee's holding company;
- (e) your obligation to assist ASIC, APRA and the RBA under s904D, including showing your books or giving derivative trade data or other information;
- (f) your obligation to give ASIC such reasonable access to trade repository facilities, as we request (s904E);
- (g) any direction given by the Minister under s904F; and
- (h) any direction given by ASIC under s904G, 904H, 904K or 904L.

Core officers must be 'fit and proper' and 'capable'

RG 249.64 A core officer of an ADTR licensee includes:

- (a) a director or secretary of the licensee; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the licensee; or
 - (ii) who has the capacity to affect significantly the licensee's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (commonly known as a shadow director).

Note: See s9 and 9AD(1)(a)–(b). Also see paragraph 3.110 of the Explanatory Memorandum to the [Treasury Laws Amendment \(Financial Market Infrastructure and other Measures\) Bill 2024](#).

RG 249.65 An ADTR licensee should take all reasonable steps to ensure that each core officer:

- (a) is competent to undertake their role in relation to the trade repository;
- (b) has the attributes of good character, diligence, honesty, integrity and judgement;
- (c) is not disqualified or subject to a banning order by law from performing their role (see s853A, 853F, 853H and 853K);
- (d) has demonstrated the knowledge, skills and experience to perform their role; and

DRAFT

- (e) either has no conflict of interest in performing their role, or any conflict that exists will not create a material risk that the person will fail to properly perform their role.

Note: The criteria in RG 249.65 are consistent with the criteria for responsible persons of authorised deposit-taking institutions in APRA's Prudential Standard [CPS 520](#) *Fit and proper*, Australian financial services licences in Regulatory Guide 1 *Applying for and varying an AFS licence* ([RG 1](#)) and for Australian credit licences in Regulatory Guide 204 *Applying for and varying a credit licence* ([RG 204](#)).

Individuals—disqualified or subject to a banning order— not to become or remain involved in the ADTR licensee

RG 249.66 An individual is 'involved' in an ADTR licensee if they are:

- (a) a director, secretary or senior manager of the licensee, or in a holding company of the licensee; or
- (b) an individual who has more than 20% of the total voting power in the licensee, or in a holding company of the licensee.

Note: See s853B.

Disqualified individuals

RG 249.67 Licensees must take all reasonable steps to ensure the following disqualified individuals are not involved in the ADTR licensee:

- (a) individuals declared by ASIC under s853C as being unfit to be involved in the licensee, taking into account such matters as the individual's fame, character and integrity; or
- (b) individuals who have been automatically disqualified from managing a corporation due to certain circumstances including convictions, bankruptcy and foreign court orders (see s206B); or
- (c) individuals who are on the register of disqualified company directors and other officers that we must keep under s1274AA.

Note: See s853A.

Individuals subject to FMI banning orders

RG 249.68 Licensees must take all reasonable steps to ensure that any individual who is subject to an FMI banning order is not involved in the ADTR licensee.

RG 249.69 We have the power to issue an FMI banning order to prevent an individual who is insolvent, convicted of fraud, not fit and proper, not capable or competent, or has not complied with (or is likely to contravene) a financial services law from controlling or performing core functions at an FMI licensee: see s853H, 853L and 853M.

DRAFT

RG 249.70 Section 853K outlines the matters that we must consider when determining if an individual is not ‘fit and proper’ for the purposes of FMI banning orders. These matters include (but are not limited to) whether the individual has been:

- (a) a core officer of an FMI licensee that had its licence suspended or cancelled;
- (b) subject to a banning order (including an FMI banning order);
- (c) disqualified from managing corporations;
- (d) banned from engaging in a credit activity (within the meaning of the *National Consumer Credit Protection Act 2009*) under a law of a state or territory;
- (e) an insolvent under administration;
- (f) convicted of an offence in the last 10 years; or
- (g) linked to a refusal or failure to give effect to a determination made by the Australian Financial Complaints Authority.

Complying with ongoing obligations relating to core officers’ ‘fitness and propriety’ and ‘capability’, and ‘disqualified’ or ‘banned’ Individuals

RG 249.71 While there are no prescribed steps that a licensee must undertake to satisfy the ongoing obligations in RG 249.63(b)(iii)–RG 249.63(b)(v), a licensee may exercise its own discretion in determining how it satisfies itself that these requirements have been met. This may include making inquiries and assessments on a regular basis (e.g. annually), such as undertaking a national criminal history check or bankruptcy check, and verifying that no disqualified individual—or individual subject to an FMI banning order—is involved with or remains engaged by the licensee.

RG 249.72 Licensees should retain supporting documentation evidencing these inquiries and assessments, and should be able to provide such documentation to ASIC on request.

Note: This approach is consistent with our approach under the Australian financial services licence and Australian credit licence regimes: see [RG 1](#) and Regulatory Guide 206 *Credit licensing: Competence and training* ([RG 206](#)).

Derivative trade repository rules

RG 249.73 The derivative trade repository rules may impose obligations on both the operator of the trade repository, and the officers of the trade repository: s903B.

RG 249.74 The derivative trade repository rules can deal with the following matters, as foreshadowed in s903A:

- (a) how licensed trade repositories provide their services;
- (b) the handling or use of derivative trade data by licensed trade repositories and their officers and employees;
- (c) the governance, management and resources (including financial, technological and human resources) of licensed trade repositories, including the handling of conflicts of interest, the monitoring and enforcing of compliance with obligations, the integrity and security of computer systems and other systems, operational reliability, business continuity planning and operational separation and outsourcing of functions;
- (d) the disclosure of conditions, including the fees that licensed trade repositories charge to provide their services; and
- (e) the reporting to ASIC or other regulators of matters related to licensed trade repositories.

RG 249.75 We have set out our guidance on the derivative trade repository rules in Appendix 2. We will take this guidance into account when assessing an ADTR licensee's compliance with the derivative trade repository rules. Failure to comply with derivative trade repository rules is a breach of s903D, which is a civil penalty provision.

Obligations relating to derivative trade data

RG 249.76 Section 904B imposes obligations relating to the use of derivative trade data on ADTR licensees and their officers and employees. 'Derivative trade data' is information about derivative transactions, or about positions relating to derivative transactions, or information (including statistical data) that is created or derived from that information: s761A.

RG 249.77 The use or disclosure of derivative trade data by an ADTR licensee, or an officer or employee of the licensee, is permitted if it is for the purpose of, or occurs in the course of, the provision of the trade repository's services, or the officer or employee performing their duties as an officer or employee of the licensee: s904B(1)(a)(i). The Corporations Regulations may limit the scope of this permission: s904B(1)(a)(ii).

Note: The permission does not cover the use or disclosure of data for the purposes of, or in the course of, other non-trade repository activities carried on by a person who operates a trade repository facility. See paragraphs 1.177–1.178 of the Revised Explanatory Memorandum.

RG 249.78 The use and disclosure of derivative trade data is prohibited unless required or permitted by the Corporations Act, Corporations Regulations, derivative transaction rules (reporting), derivative trade repository rules, another law of the Commonwealth, or a law of a state or territory: s904B(1)(b). The Corporations Regulations may restrict the ability of the derivative trade repository rules to regulate use and handling (including disclosure):

s903A(2)(b) and 903C. Specifically, the Corporations Regulations may restrict the ability of the rules to permit some types of commercialisation.

Note: See Rule 2.3.3. See paragraph 1.181 of the Revised Explanatory Memorandum.

RG 249.79 Section 904B requires a trade repository to comply with requests for information from certain bodies (ASIC, APRA, the RBA or another licensed trade repository). Additional persons or bodies may also be prescribed by the Corporations Regulations for this purpose. It is intended that the Corporations Regulations will allow for the sharing of trade data with appropriate foreign regulators.

Note: See paragraph 1.185 of the Revised Explanatory Memorandum.

RG 249.80 This regulation power operates in parallel to the ability for the derivative trade repository rules to impose obligations regarding the creation and disclosure of statistical data: s903A. This rule-making power is subject to any restrictions imposed by regulation: s903C. Therefore, ultimately, all obligations to create and disseminate statistical data (and handling and use of trade data) are subject to powers to make regulations. This is appropriate to ensure the confidentiality and privacy of data is protected.

ASIC supervisory powers relating to ADTR licensees

ASIC assessment

RG 249.81 We may assess how well an ADTR licensee is complying with any or all of its obligations. In conducting the assessment, we may take account of any information and reports that we think appropriate: s904J.

RG 249.82 We may take a risk-based approach to the frequency of the assessments, and we are not obliged to conduct annual assessments. It is open to us to conduct partial assessments, focusing only on certain aspects of the ADTR licensee's operations and governance.

RG 249.83 As soon as practicable after doing an assessment, we must give a written report on the assessment to the ADTR licensee. We will normally publish such reports.

RG 249.84 If an assessment, or part of an assessment, relates to any other person's affairs to a material extent, we may, at the person's request or on our own initiative, give the person a copy of the report on the assessment or the relevant part of the report.

RG 249.85 Our assessment will consider the fact that your obligations are ongoing and cannot be assessed at a single moment in time. We will use your annual

DRAFT

report (to be provided under Rule 2.6.1) for background when conducting an assessment.

RG 249.86 In conducting our assessments, we will also consider any relevant standards and recommendations made by international regulatory bodies such as CPMI and IOSCO, including most notably the CPMI–IOSCO Principles and the associated disclosure framework and assessment methodology, as in force from time to time.

Suspension and cancellation of a licence

RG 249.87 Under s905H, we may, by written notice, suspend a licence for a specified period, or cancel it, if:

- (a) the licensee ceases to carry on the business of operating the repository specified in the licence;
- (b) it has been at least 12 months since ASIC granted the licence, and during the last 12 months the licensee has not provided the repository services, or engaged in conduct or activity specified in the ADTR licence;
- (c) the licensee is a Chapter 5 body corporate, or under a foreign law is in a similar position to a Chapter 5 body corporate;
- (d) the licensee asks ASIC to suspend or cancel its licence;
- (e) the licensee is being deregistered as a company under s601AA or 601AB; or
- (f) in the case of a licensee that is a leviable entity (within the meaning of the [ASIC Supervisory Cost Recovery Levy Act 2017](#)), an amount of levy payable by the licensee (including any payment or shortfall penalty payable in relation to the levy) has not been paid in full at least 12 months after the payment due date.

ASIC's power to require reports

RG 249.88 We may, by written direction, require an ADTR licensee to give us a report dealing with specified matters. If we require, the report must include an audit report on the licensee's report on those matters.

RG 249.89 In addition, we may, by written notice:

- (a) appoint an expert to provide us with a report on specified matters on the operator's compliance with its obligations as an ADTR licensee; or
- (b) direct the licensee to appoint a specific person to provide us with an expert report on specified matters relating to the operator's compliance with its obligations as an ADTR licensee.

- RG 249.90 A licensee must give all information, explanation and assistance to the expert, as the expert reasonably requests for the preparation and provision of the expert report.

Note: See s904H and 904L.

ASIC approval to have greater than 20% voting power

- RG 249.91 ASIC approval is required before a person can hold more than 20% voting power in a domestically incorporated derivative trade repository licensee or its holding company (a type of ‘controlled Australian financial body’): see s852DG and Div 1A of Pt 7.4. Guidance about voting power and related concepts is set out in Regulatory Guide 5 *Relevant interests and substantial holding notices* ([RG 5](#)).
- RG 249.92 A person’s voting power in a licensee or its holding company is the total number of votes attached to all the voting shares in the licensee or its holding company: s610. Voting power can arise without a person directly holding securities, for example through associates (see s12) or through influence over another body. A single acquisition can trigger approval requirements for multiple persons where each person’s voting power would exceed 20%.
- RG 249.93 To exceed the 20% voting power threshold, or to increase voting power that is already over 20%, a person must apply to ASIC, specifying their current and intended voting power, the period for which the approval is sought, and the reasons for their application: s852DG. If any information in the application changes or is incorrect after the application is made, the applicant must, as soon as practicable give ASIC the correct information in writing: s852DQ.
- RG 249.94 An unacceptable control situation exists in relation to a controlled Australian financial body and a particular person if the person’s voting power exceeds either 20% or an approved higher percentage: see s852DB.

Note: If, on 17 September 2024, a person held more than 20% voting power in a controlled Australian financial body, the person is taken to have been granted approval by ASIC to hold that percentage of voting power indefinitely unless varied or revoked: see s1705L.

- RG 249.95 We must provide written notice of our approval to the applicant if we are satisfied that the specified percentage in the application is the highest percentage of voting power, of that sought, for which the applicant passes the ‘legitimate control test’, and we believe relevant information in the application, or later provided by the applicant, is correct. Otherwise, we must refuse the application and notify the applicant in writing: see 852DH. A person passes the legitimate control test unless it is reasonable to expect that

DRAFT

holding the proposed voting power in the licensee or holding company would adversely affect the licensee's ability to meet one or more of its obligations: see 852DC. Our approval can be for a specified period—which may be extended—or indefinitely, and can be subject to conditions.

- RG 249.96 We have 90 days to decide on an application and may extend this by up to 30 days. If we do not decide within this period, approval is deemed to have been granted. We may request further information, and the decision period is paused until information is provided or if an unacceptable control situation exists: see s852DR.
- RG 249.97 We may impose, vary or revoke conditions after approval by written notice, on our own initiative or by application from the person who holds the s852DH(1) approval: s852DL.
- RG 249.98 We may vary a person's approval, such as changing the approved percentage or duration, on application by the person holding the approval or on our own initiative: s852DM.
- RG 249.99 Under s852DN, we may revoke an approval if we are satisfied that:
- (a) the person no longer passes the legitimate control test; or
 - (b) an unacceptable control situation exists in relation to the licensee and the person; or
 - (c) there has been a contravention of an approval condition; or
 - (d) information provided by the applicant was incorrect at the time of our decision.

DRAFT

Appendix 1: CPMI–IOSCO Principles for financial market infrastructures

Table 1: CPMI–IOSCO Principles relevant to trade repositories

Principle	
1	Legal basis
	An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.
2	Governance arrangements
	An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.
3	Framework for the comprehensive management of risks
	An FMI should have a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.
15	General business risk
	An FMI should identify, monitor and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.
17	Operational risk
	An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of wide-scale or major disruption.
18	Access and participation
	An FMI should have objective, risk-based and publicly disclosed criteria for participation, which permits fair and open access.
19	Tiered participation arrangements
	An FMI should identify, monitor and manage the material risks to the FMI arising from tiered participation arrangements.
20	Financial market infrastructure links
	An FMI that establishes a link with one or more FMIs should identify, monitor and manage link-related risks.
21	Efficiency and effectiveness
	An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.

DRAFT

Principle**22 Communication procedures and standards**

An FMI should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement and recording.

23 Disclosure of rules, key procedures and market data

An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees and other material costs they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.

24 Disclosure of market data by trade repositories

A trade repository should provide timely and accurate data to relevant authorities and the public in line with their respective needs.

Source: CPMI–IOSCO Principles.

DRAFT

Appendix 2: Guidance on complying with the derivative trade repository rules

A2.1 Introduction

RG 249.100 If you are an ADTR licensee, we will assess your compliance with the guidance in this appendix as part of any assessment we perform of how well you are complying with any or all of your obligations as an ADTR licensee, including for determining whether to take enforcement action against you or any of your officers.

Note: Under Rule 2.1.1, officers are responsible for taking all reasonable steps to ensure the ADTR licensee complies with its obligations.

RG 249.101 We will also take into account your self-assessment of the extent to which you have complied with this guidance.

RG 249.102 We do not provide guidance on all the derivative trade repository rules, but focus on those where we believe additional guidance may be helpful.

A2.2 Manner in which the trade repository provides its services

RG 249.103 Part 2.2 imposes obligations on you in relation to:

- (a) the legal basis for each material aspect of your activities;
- (b) access and participation requirements; and
- (c) the secure, efficient and effective provision of trade repository services.

Legal basis for material services

RG 249.104 You must have a clear, transparent and enforceable legal basis for each material aspect of your trade repository services: Rule 2.2.1(1). The legal basis for your trade repository services consists of the legal framework within which you provide those services, and your rules, procedures and contracts.

RG 249.105 You must therefore establish rules, procedures and contracts that are consistent with the legal framework and are enforceable, including in situations of recovery or wind-down, with a high degree of certainty that any actions taken by you under those rules, procedures and contracts will not be voided, reversed or subject to a stay.

RG 249.106 If you are subject to the laws of various jurisdictions, you must take all reasonable steps to mitigate any risks arising from any potential conflict of laws across those jurisdictions: Rule 2.2.1(5).

DRAFT

RG 249.107 We consider that the aspects of your services that are ‘material’ for the purposes of Rule 2.2.1 are those that affect, or have the potential to affect, either:

- (a) the performance of your obligations in accepting, retaining, using, disclosing and providing access to derivative trade data; or
- (b) your compliance with any applicable rules, laws or regulations.

RG 249.108 We consider that the following activities are material aspects of a trade repository’s services:

- (a) the on-boarding of users and regulators;
- (b) the acceptance, processing, retention, handling and transmission of derivative trade data;
- (c) the provision of access to derivative trade data for regulators and users and the provision of related statistical data to third parties and the public (Part 2.3), including minimum service levels, operational reliability (Rule 2.4.9), protection of confidential information (Rules 2.3.3 and 2.4.8) and intellectual property rights in the data;
- (d) business continuity arrangements (Rule 2.4.10);
- (e) risk management, including management of business, operational, legal and information technology risk (Rule 2.4.4);
- (f) governance arrangements (Rule 2.4.1); and
- (g) outsourcing arrangements (Rule 2.4.13).

You must therefore have a clear, transparent and enforceable legal basis for these activities.

Access and participation requirements

RG 249.109 Rule 2.2.2(1) requires operators to have objective conditions for access to, and participation in, their trade repository that permit open and non-discriminatory access.

RG 249.110 CPMI–IOSCO Principle 18 addresses access and participation requirements for trade repositories. The explanatory note to this principle indicates that:

- (a) ensuring fair and open access may be essential because a wide range of stakeholders may need access to the trade repository;
- (b) terms of use should be commercially reasonable and support interconnectivity, so that competition and innovation in post-trade processing is not impaired by central record keeping; and
- (c) a trade repository should not engage in anti-competitive behaviour by setting overly restrictive terms of use or engage in anti-competitive price discrimination.

RG 249.111 If we consider that any competition issues arise, we will review and engage with other regulators as necessary, including the ACCC. Regardless of any such consideration, all licensed trade repositories are responsible for ensuring the operations and conduct of their trade repository in Australia comply with all relevant laws and regulatory requirements.

Security, efficiency and effectiveness of services

RG 249.112 Under Rule 2.2.3(1), you must ensure that the trade repository's services are provided at all times in a secure, efficient and effective manner. This requirement is amplified by other rules relating, in particular, to the handling and use of derivative trade data (Part 2.3) and the adequacy of resources: Rules 2.4.5–2.4.7.

RG 249.113 You should have specific arrangements in place to periodically review service levels, costs, pricing and operational reliability.

RG 249.114 You must be efficient and effective in meeting the requirements of users, Australian regulators, and the markets that you serve: Rule 2.2.3(2). This requirement is amplified, in particular, by Rule 2.3.4 on the provision of access to derivative trade data.

A2.3 Handling and use of derivative trade data by trade repositories and their officers and employees

Acceptance of derivative trade data

RG 249.115 An operator must create and maintain policies and procedures for reporting trade data under Rule 2.3.1. This includes policies, procedures and controls that are designed to provide reasonable assurance that any trade data reporting to the repository by participants is, and remains, complete, accurate and current.

RG 249.116 Whether policies and procedures will be considered adequate in a particular scenario, or for a particular trade repository's operations, will depend on the facts and circumstances of the trade repository's business. We expect to engage with applicants for an ADTR licence on these arrangements during the licensing process and on an ongoing process as part of assessments.

RG 249.117 What is necessary to comply with Rule 2.3.1 could include a combination of:

- (a) requiring reporting entities to confirm data submitted is accurate and complete;
- (b) requiring adequate ongoing representations and warranties from users in user agreements as to the accuracy and completeness of data submitted; and

DRAFT

- (c) processes to identify material discrepancies or incomplete data fields in reports submitted by or on behalf of reporting entities for the same transactions, and implementing procedures to verify the accuracy of this data with the counterparties.

Communication procedures and standards

- RG 249.118 Rule 2.3.7 sets out requirements for communication procedures and standards. A trade repository should support technologies that are widely accepted in the market and across different jurisdictions, including applicable market standards for reporting and recording trade information.
- RG 249.119 A trade repository should also apply consistent application interfaces and communication links that enable technical interconnectivity with other FMIs and service providers. In addition, a trade repository should, where appropriate, be able to directly exchange trade information not only with market participants but also with other entities such as exchanges, electronic trading venues, confirmation-matching platforms, central counterparties and other service providers. To facilitate accurate data representation, use and aggregation, trade repositories should follow industry standards relating to the unique identification of counterparties (e.g. legal entity identifiers).

A2.4 Governance, management and resources

- RG 249.120 Part 2.4 deals with the governance, management and resources of the trade repository.

Governance

- RG 249.121 Under Rule 2.4.1(2)(c), your decision-making processes for the design, rules or overall strategy of the trade repository must take into account the objectives of users. In fulfilling this requirement you should consider establishing one or more user groups (in which Australian users are appropriately represented) that you consult before making major decisions.

Conflicts of interest

- RG 249.122 Conflicts of interest may stem from, but not be limited to, a conflict between a trade repository's commercial interests and its obligation to operate securely, efficiently and effectively.
- RG 249.123 For example, a trade repository may have a commercial imperative to be less vigilant in enforcing compliance with its rules and procedures through disciplinary action in relation to a user who contributes a large portion of the trade repository's revenue. This would be the case regardless of whether the

trade repository operates on a for-profit or not-for-profit basis, and may have a significant impact on the overall degree of user confidence in the trade repository.

- RG 249.124 Conflicts may also arise between a trade repository's own obligations (or those of its related bodies corporate) and the interests of its users or stakeholders, or between the interests of different users or stakeholders.
- RG 249.125 Under Rule 2.4.2, you must have documented arrangements for identifying and managing (including by disclosing, avoiding or controlling) any actual or potential conflicts between your own interests and obligations (or those of your related bodies corporate) and the interests of your users or stakeholders, or between the interests of different users or stakeholders. Such arrangements might include information barriers, separate supervision or reporting lines, separate remuneration pools, and/or controls for preventing inappropriate influence or involvement between different business lines.
- RG 249.126 In any compliance assessment of a trade repository that we may conduct under s904J, we would expect a trade repository to be able to demonstrate that it is identifying and managing all conflicts of interest appropriately at all times. This evidentiary responsibility may best be discharged in the form of a register of conflicts.

Monitoring and enforcement of compliance

- RG 249.127 When we assess your arrangements for monitoring and enforcing compliance under Rule 2.4.3, we will consider the extent to which they:
- (a) are sufficiently independent of your other activities to ensure they are not improperly influenced by commercial considerations;
 - (b) are comprehensive and are regularly reviewed;
 - (c) are reassessed if there are significant changes in your:
 - (i) trade repository's operations;
 - (ii) trade repository's users; or
 - (iii) resources; and
 - (d) include adequate processes for monitoring and assessing the performance of any outsourced licensee obligations.
- RG 249.128 We expect that effective compliance arrangements would include at least ensuring that you:
- (a) reliably and efficiently identify actual or potential breaches of your obligations as an ADTR licensee;
 - (b) deal adequately with any breaches detected; and
 - (c) can conclude fairly and reasonably whether, and how well, you have complied with each of your obligations.

Risk management

- RG 249.129 Under Rule 2.4.4, you must establish risk management arrangements in relation to legal, operational and business risks.
- RG 249.130 Operational risk refers to risks that arise from deficiencies in information systems, internal processes and personnel, or disruptions from external events that will result in a breakdown or deterioration of the trade repository services.
- RG 249.131 You should also address additional operational risks that can arise when entering into arrangements in which users access the trade repository's reporting facilities through the services of another entity.
- RG 249.132 In relation to the risks associated with indirect participants (i.e. persons who are required to report their derivative transactions to the trade repository under Australian reporting requirements but that do so through another person), we consider that you need to ensure you have policies and procedures in place that allow you to do the following:
- (a) gather basic information about indirect participation in order to facilitate identifying, monitoring and managing any material risks to the trade repository arising from such tiered participation arrangements;
 - (b) identify material dependencies between direct and indirect users that might affect the trade repository;
 - (c) identify indirect participants that are responsible for a significant proportion of data reported to the trade repository in order to manage the risks arising from these derivative transactions; and
 - (d) regularly review the risks arising from any tiered participation arrangements you enter into, and take mitigating action when appropriate.
- RG 249.133 We consider that you also need to carefully assess the additional operational risks related to your link arrangements with other FMIs to ensure the scalability and reliability of information technology and related resources. We expect you to consider these issues during the process of determining whether to enter into a link arrangement but also on an ongoing basis once any link is established.
- RG 249.134 As part of this process, we expect you will:
- (a) only enter a link that is designed so that the linked licensed trade repository can continue to observe its other obligations under its ADTR licence, the derivative trade repository rules and the Corporations Act;
 - (b) only enter a link that has a well-founded legal basis that supports the design of the link and provides adequate protection to the linked licensed trade repository; and

- (c) carefully assess the additional operational risks related to your link arrangements to ensure the scalability and reliability of your information technology and related resources.
- RG 249.135 Where you provide non-trade reporting services (services other than the collection, storage, distribution and statistical analysis of derivative trade data in accordance with the relevant rules), including services that are ancillary to trade reporting services (such as portfolio compression or collateral management), you must identify and manage or mitigate any risks associated with such other services, including legal, operational and business risks, particularly to the extent that they affect either:
- (a) the performance of your reporting services; or
 - (b) your compliance with any relevant rules, laws or regulations.
- RG 249.136 Adequate rules, policies, procedures and contracts for managing any risks associated with non-trade reporting or ancillary services may address:
- (a) the operational separation of functions;
 - (b) communication protocols;
 - (c) the appropriate handling of information;
 - (d) data protection and confidentiality; and
 - (e) providing access, and disclosing data, to users, relevant regulatory authorities and the public.
- RG 249.137 Under Rule 2.4.4, you must fulfil obligations that are aimed at managing risks and the potential for loss arising from the trade repository's administration and operation as a business enterprise that are not related to participant default. Some examples of business risks that could arise for trade repositories include losses from poor execution of business strategy, negative cash flows or unexpected and excessively large operating expenses.

Resources

- RG 249.138 As an operator of a trade repository, you must have sufficient human, technological and financial resources for ensuring that you operate securely, efficiently and effectively: Rules 2.4.5–2.4.7. The sufficiency of resources will be influenced by such factors as the complexity and scale of your business, as well as the jurisdictions in which it is based or operates.
- RG 249.139 Because these factors may change over time, we expect you to continually assess what resources you need to support the ongoing effective operation of the trade repository.
- RG 249.140 Examples of acceptable financial resources for complying with Rules 2.4.5 and 2.4.7 are assets within your ownership and control, funding from other business activities, or an intra-group guarantee.

- RG 249.141 Financial resources should cover obligations arising from:
- (a) the operation of the trade repository; and
 - (b) any activity conducted by you other than operating the trade repository.
- RG 249.142 We expect the assets you hold in relation to Rule 2.4.7 to be of high quality and sufficiently liquid to allow you to meet your current and projected operating expenses in a range of scenarios, including in adverse market conditions.

Integrity and security of systems

- RG 249.143 We consider that to fulfil the requirements about system integrity and security in Rule 2.4.8, it is advisable that you have a comprehensive strategy designed to minimise or prevent the possibility of unauthorised access to, and use and disclosure of, data in relation to all foreseeable internal and external vulnerabilities. We also expect that in complying with Rule 2.4.8 you will comply with applicable international or national standards you are accredited under.
- RG 249.144 We consider that your policies and procedures should at least address and minimise all foreseeable risks arising from:
- (a) unauthorised cyber intrusions;
 - (b) viruses, malware and data corruption;
 - (c) the deliberate or negligent misuse of data or access privileges by staff, contractors, users and regulators, including those associated with staff or contractor departures; and
 - (d) internet denial of service.

Business continuity

- RG 249.145 Under Rule 2.4.10, you must have a business continuity plan. We would expect that the plan would incorporate the use of a secondary site and should be designed to ensure that critical information technology systems can resume operations within a short period of time (e.g. by the end of the day on which the disruption occurred) following disruptive events.
- RG 249.146 We would expect your business continuity plan to be designed to enable you to complete your operations by the end of the day of the disruption, even in cases of extreme circumstances. We also expect your plan to include:
- (a) all business processes, escalation procedures and related systems that are critical to ensuring the continuity of your services as a trade repository, including any relevant outsourced services and the trade repository strategy, policy and objectives towards the continuity of these processes;

- (b) the arrangements you have in place with other FMIs, including other trade repositories;
- (c) the arrangements you have in place to ensure a minimum service level of the critical functions, and the expected timing to complete the full recovery of those processes;
- (d) the maximum acceptable recovery time for the business processes and systems;
- (e) the procedures to deal with incident logging and reviews;
- (f) a testing program and the results of any tests;
- (g) the number of alternative technical and operational sites available, their location, the resources when compared with the main site, and the business continuity procedures in place if alternative sites need to be used; and
- (h) information access to a secondary business site to allow staff to ensure the continuity of the service if a main office location is not available.

RG 249.147 We expect that you would regularly test these arrangements.

Operational separation of functions

RG 249.148 Where an operator, a related body corporate of the operator, or any other company the operator has a material agreement with in connection with the trade reporting services, provides non-trade reporting services (including ancillary services), the operator must comply with Rule 2.4.12. This includes ensuring operational separation between non-trade reporting services and trade reporting services. Operational separation does not require the services to be provided by different legal entities, and may be achieved by implementing adequate policies and procedures such as supervisory arrangements, information barriers, separate business units and reporting lines, and independent remuneration structures.

A2.5 Disclosure of conditions

RG 249.149 In fulfilling your obligations under Part 2.5, you should also refer to and follow the *CPMI–IOSCO Principles for financial market infrastructures: Disclosure framework and assessment methodology*, published in December 2012.

DRAFT

A2.6 Reporting to Australian regulators on matters related to trade repositories

Compliance report

- RG 249.150 Part 2.6 imposes obligations requiring you to prepare an annual written report for ASIC on your compliance as an ADTR licensee with the Corporations Act and the derivative trade repository rules.
- RG 249.151 We expect that your annual compliance report will:
- (a) describe in detail the activities that you have undertaken throughout the year in order to meet your obligations;
 - (b) state the objective outcomes and/or standards against which you have measured your compliance with each of your obligations, and explain how these outcomes and/or standards show evidence of your compliance with your obligations;
 - (c) identify and explain any divergences during the year between your planned and actual activities, and your resources for complying with, and monitoring your compliance with, your obligations; and
 - (d) state and explain your conclusions about:
 - (i) whether you have achieved your stated outcomes and/or standards, and the extent to which you have fully complied with each obligation;
 - (ii) if less than full compliance is identified, how you will ensure that you achieve full compliance with each obligation in the future;
 - (iii) the adequacy and effectiveness of your arrangements for handling conflicts of interest;
 - (iv) how well you meet or have met each of your obligations;
 - (v) how well you monitor your own compliance with each of your obligations; and
 - (vi) if any inadequacy or weaknesses have been identified, how you propose to address or have addressed these matters.
- RG 249.152 In preparing your report for ASIC, you should refer to and follow the CPMI–IOSCO *Principles for financial market infrastructures: Disclosure framework and assessment methodology*, published in December 2012, which give guidance on complying with the principles on which the derivative trade repository rules are based.

Key terms

Term	Meaning in this document
ADTR licence	Australian derivative trade repository licence
ADTR licensee	Holder of an ADTR licence
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Australian derivative trade repository licence	Australian derivative trade repository licence under s905C of the Corporations Act that authorises a person to operate a trade repository
Corporations Act	<i>Corporations Act 2001</i> , including any regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
CPMI	Committee on Payments and Market Infrastructure Note: Formerly the Committee on Payment and Settlement Systems of the Bank of International Settlement (CPSS)
CPMI–IOSCO Principles	CPMI–IOSCO <i>Principles for financial market infrastructures</i> , as revised from time to time
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 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 the information referred to above
derivative trade repository rules	<i>ASIC Derivative Trade Repository Rules 2023</i> —rules made by ASIC under s903A of the Corporations Act that deal with the matters as permitted by this section

DRAFT

Term	Meaning in this document
derivative transaction	Means: <ul style="list-style-type: none"> • 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 rules (reporting)	<i>ASIC Derivative Transaction Rules (Reporting) 2024</i> —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
directions	Directions that may be given by ASIC or the Minister under Subdiv B of Div 5 of Pt 7.5A to an ADTR licensee not complying with its obligations
FMI	Financial market infrastructure
FMI banning order	A banning order made by ASIC under s853H of the Corporations Act against an individual, prohibiting the individual from controlling an FMI licensee or performing any functions of a core officer of an FMI licensee
FMI licensee	Refers to a market licensee, clearing and settlement facility licensee, derivative trade repository licensee or benchmark administrator licensee (collectively FMI licensee)
IOSCO	International Organization of Securities Commissions
licensed trade repository	A licensed derivative trade repository as defined in s761A of the Corporations Act
licensee obligations	Obligations imposed on an ADTR licensee as part of the ADTR licence conditions
Ministerial determination	<i>Corporations (Derivatives) Determination 2023</i>
OTC	Over-the-counter
Part 2.4 (for example)	A part of the derivative trade repository rules (in this example numbered 2.4), unless otherwise specified
participants	Persons who have agreed to the terms and conditions of a trade repository for the use of their data collection and data reporting services
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

DRAFT

Term	Meaning in this document
Pt 7.5A (for example)	A part of the Corporations Act (in this example numbered 7.5A)
Revised Explanatory Memorandum	Revised Explanatory Memorandum to the <i>Corporations Legislation Amendment (Derivative Transactions) Bill 2012</i>
RBA	Reserve Bank of Australia
Rule 2.4.2 (for example)	A rule of the derivative trade repository rules (in this example numbered 2.4.2)
s903A (for example)	A section of the Corporations Act (in this example numbered 903A)
statistical data	Aggregate data created by a trade repository that is created from derivative trade data reported to that repository
trade repository	Derivative trade repository—a central facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported
users	Regulatory authorities, organisations or persons who may use the data collection or data reporting services of trade repositories

DRAFT

Related information

Headnotes

ADTR licence, Australian derivative trade repository licence, conflicts of interest, CPMI–IOSCO Principles, derivative transaction reporting, exemptions, financial resources, licence conditions, regulatory outcomes, sufficiently equivalent, trade repository, trade repository regulation

Regulatory guides

[RG 5](#) *Relevant interests and deemed economic interests*

[RG 51](#) *Applications for relief*

[RG 54](#) *Principles for cross-border financial regulation*

[RG 172](#) *Financial markets: Domestic and overseas operators*

[RG 204](#) *Applying for and varying a credit licence*

[RG 206](#) *Credit licensing: Competence and training*

[RG 211](#) *Clearing and settlement facilities: Australian and overseas operators*

[RG 251](#) *Derivative transaction reporting*

Consultation paper and reports

[CP 201](#) *Derivative trade repositories*

[CP 370](#) *Proposed remake of the ASIC Derivative Trade Repository Rules 2012*

[REP 356](#) *Response to submissions on CP 201 Derivative trade repositories*

Legislation

Corporations Act, Pt 5B.2, 7.4, 7.5A; s9, 9AD(1), 11, 206B, 601AA, 601AB, 610, 761A, 852DA, 852DB, 852DC, 852DD, 852DG, 852DH(1), 852DL, 852DM, 852DN, 852DQ, 852DR, 853A, 853B, 853C, 853D(2), 853F, 853H, 853K, 853L, 853M, 901A, 902A, 903A, 903B, 903C, 903D, 904A, 904B, 904C, 904D, 904E, 904F, 904G, 904H, 904J, 904K, 904L, 905(1), 905B, 905C, 905E, 905F(4), 905H, 905P, 907D, 907E, 1274AA, 1705L

DRAFT

ASIC Rules

*ASIC Derivative Trade Repository Rules 2023, Part 2.2, 2.3, 2.4, 2.5, 2.6;
Rule 2.1.1, 2.2.1(1), 2.2.1(5), 2.2.2(1), 2.2.3, 2.3.1, 2.3.3, 2.3.4, 2.3.7, 2.4.1,
2.4.2, 2.4.3, 2.4.4, 2.4.5–2.4.7, 2.4.8, 2.4.9, 2.4.10, 2.4.12, 2.4.13, 2.6.1*

International standards

CPMI–IOSCO Principles for financial market infrastructures

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

DRAFT