



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 201

Derivative trade repositories

March 2013

About this paper

This consultation paper seeks the views of stakeholders, including potential operators of derivative trade repositories and potential users of these facilities, on our proposed trade repository regulatory regime.

The draft ASIC Derivative Trade Repository Rules 2013 (derivative trade repository rules) (Attachment 1) set out our proposed requirements for Australian derivative trade repository (ADTR) licensees. The draft regulatory guide (Attachment 2) sets out our approach to granting ADTR licences and our guidance on the rules.

We invite comments on the specific proposals and questions in the paper, and on any other matters in the draft regulatory guide and the draft derivative trade repository rules that are not specifically covered in this paper.

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 paper was issued on 15 March 2013 and is based on the Corporations Act as at that date.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

This paper outlines our intended approach to regulating Australian derivative trade repository (ADTR) licensees.

You are invited to comment on the proposals in this paper and the attachments, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any realistic alternatives that would attain the same objectives. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information, and identification of impacts. Please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing. We also seek information about the costs of not implementing the proposals (particularly in terms of market integrity or investor confidence). Please also provide feedback on any other issues you consider important.

In considering whether to make trade repository rules, we must have regard to the matters set out in s903F, including:

- the likely effect on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system; and
- the likely regulatory impact of the proposed rules.

We must also, under s903G, consult with the public about the proposed rules.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential. Comments should be sent by 12 April 2013 to:

Senior Manager, Post-trading and OTC Derivatives, Financial Market Infrastructure
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000
email: OTCD@asic.gov.au
queries: Charmaine Byrne 02 9911 2425 or Rishi Kapoor 02 9911 2071

What will happen next?

Stage 1	15 March 2013	ASIC consultation paper, draft regulatory guide and draft derivative trade repository rules released
Stage 2	12 April 2013	Comments due on the consultation paper
	June 2013	Regulatory guide and derivative trade repository rules finalised
Stage 3	July 2013	Regulatory guide released and final derivative trade repository rules made

A Background to the proposals

Key points

As a result of the global financial crisis in 2008, the Leaders of the Group of Twenty (G20) nations made a number of commitments to substantial reforms to over-the-counter (OTC) derivatives market practices in September 2009. These commitments included that all OTC derivative contracts should be reported to derivative trade repositories (trade repositories). These reforms are expected to improve transparency, mitigate systemic risk and protect against market abuse in the OTC derivatives markets.¹

On 3 January 2013, legislation² inserting a new Pt 7.5A in the *Corporations Act 2001* (Corporations Act) and providing a legislative framework to implement these G20 commitments in Australia became effective.

Under the legislative framework, ASIC has been given powers to licence and make rules governing the operation of trade repositories, as well as requiring reporting of derivative transactions to trade repositories in certain circumstances.

This consultation paper, together with the draft ASIC Derivative Trade Repository Rules 2013 (derivative trade repository rules) and draft regulatory guide, outline our proposed approach to licensing trade repositories and regulating Australian derivative trade repository (ADTR) licensees. A separate consultation will address the trade reporting obligations imposed by any derivative transaction rules resulting from the Australian Government's proposals paper on implementation of the G20 commitments.³

OTC derivatives markets and the global financial crisis

- 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.
- 2 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.

¹ See www.g20.utoronto.ca/2009/2009communique0925.html.

² The *Corporations Legislation Amendment (Derivative Transactions) Act 2012*.

³ Treasury, *Implementation of Australia's G-20 over-the-counter derivatives commitments*, Proposals Paper, December 2012, www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/G20-OTC-derivatives-commitments.

- 3 As a result of the issues identified during the crisis, the Leaders of the 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 trade repositories, which would in turn make information available about OTC derivative transactions to regulators and the broader market.

Note: For the definitions of key terms used in this paper, see the 'Key terms' in the draft regulatory guide (Attachment 2).

- 4 The stated objectives of these reforms are:
- (a) to enhance the transparency of transaction information available to relevant authorities and the public;
 - (b) to promote financial stability; and
 - (c) to support the detection and prevention of market abuse.⁴

- 5 A trade repository is defined in the Corporations Act as a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported (whether or not other information or data can also be reported to the facility). A trade repository acts as a centralised registry that maintains an electronic database of records of transactions. Trade information is submitted to a repository by one or both trade counterparties, and typically covers information such as transaction maturity, price, reference entity and counterparty.⁵

The Australian response

- 6 In response to these developments, the agencies of the Council of Financial Regulators, including ASIC, have considered regulatory reform policy options for OTC derivatives markets and have engaged in extensive stakeholder consultation.
- 7 In March 2012, the Council of Financial Regulators released a report setting out its proposed policy approach, which included recommending that a legislative framework be introduced, including:
- (a) imposing a mandatory reporting requirement for certain products and participants to trade repositories; and
 - (b) adding a trade repository licensing regime to Ch 7 of the Corporations Act.⁶

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

⁴ See CPSS–IOSCO *Principles for financial market infrastructures*, April 2012, p. 9.

⁵ See *OTC derivatives market reform considerations: A report by the Council of Financial Regulators*, March 2012, p. 3.

⁶ See www.treasury.gov.au/PublicationsAndMedia/Publications/2012/Council-of-Financial-Regulators-report-on-over-the-counter-derivatives.

- 8 The Council of Financial Regulators proposed that the trade repository licensing regime would be established at a high level in the amended Corporations Act, with supplementing regulations and rules made for the purposes of the legislation.
- 9 Effective from 3 January 2013, the *Corporations Legislation Amendment (Derivative Transactions) Act 2012* amended the Corporations Act by introducing a new Pt 7.5A. Part 7.5A empowers the Minister to determine that mandatory reporting requirements may be imposed in relation to specified classes of derivatives. The framework further allows regulations and ASIC-made rules to be made to specify the details of these obligations, and allows for the licensing and regulation of trade repositories.
- 10 The framework is intended to enable Australia to implement its commitments made at the Pittsburgh G20 Summit in September 2009.
- 11 The legislation gives ASIC the power to make rules dealing with a range of matters relating to licensed trade repositories, subject to Ministerial consent. These rules will be complemented by a licensing regime for this new category of financial market infrastructure (FMI).

The trade repositories licensing regime

- 12 Under s905B, a body corporate may, by lodging an application with ASIC, apply for an ADTR licence, authorising the body corporate to operate a trade repository.
- 13 Section 905C provides that ASIC may grant an applicant an ADTR licence if we are satisfied that:
- (a) the application was made in accordance with s905B;
 - (b) the applicant will comply with the obligations that will apply if the licence is granted; and
 - (c) no disqualified individual appears to be involved in the applicant.
- 14 Section 905P lists matters that we must take into account in deciding whether to grant an ADTR licence under s905C.

The derivative trade repository rules

- 15 Section 903A gives ASIC the power, subject to Ministerial consent under s903H, to make rules imposing requirements on operators and officers of licensed trade repositories. The derivative trade repository rules may deal with any or all of the following matters:

- (a) the manner in which licensed trade repositories provide their services;
- (b) the handling or use of derivative trade data by licensed trade repositories and their officers and employees, including the following:
 - (i) the acceptance and retention of derivative trade data;
 - (ii) the creation of statistical data from derivative trade data; and
 - (iii) the use and disclosure of, and provision of access to, derivative trade data (including statistical data referred to in paragraph 15(b)(ii));
- (c) the governance, management and resources (including financial, technological and human resources) of licensed trade repositories, including the following:
 - (i) the handling of conflicts of interest;
 - (ii) the monitoring and enforcement of compliance with obligations;
 - (iii) the resources that licensed trade repositories must have (including requirements relating to the experience, qualifications or fitness for office of operators and their officers and employees);
 - (iv) the integrity and security of computer systems and other systems;
 - (v) operational reliability;
 - (vi) business continuity planning;
 - (vii) the operational separation of functions; and
 - (viii) the outsourcing of functions to other entities;
- (d) the disclosure of conditions (including fees) on which licensed trade repositories provide their services;
- (e) the reporting to ASIC or other regulators of matters related to licensed trade repositories; and
- (f) matters incidental or relating to the matters referred to in paragraphs 15(a)–15(e), including the keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the derivative trade repository rules.

16 This consultation paper and the draft regulatory guide (Attachment 2) outline our proposals for what prospective ADTR licence applicants must include with their application, how we will deal with those applications and what factors we will consider when assessing those applications, as well as questions relating to exemptions, overseas trade repositories, and the like.

17 The draft derivative trade repository rules (Attachment 1) comprise our proposals for the ongoing requirements of ADTR licensees. See Section C of this paper for consultation questions on the rules.

Consistency with overseas regimes

- 18 Australia's OTC derivatives market is international in nature. As such, Australia's policy response needs to be consistent with international regulatory developments. There are a number of workstreams underway by international standard-setting bodies relevant to OTC derivatives markets with which we seek to align ourselves.

CPSS–IOSCO Principles for financial market infrastructures

- 19 Given the important role that will be played in the implementation of the G20 commitments by FMIs such as trade repositories, internationally agreed standards have been jointly developed by the Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO). The resulting CPSS–IOSCO *Principles for financial market infrastructures* (CPSS–IOSCO Principles) were released in April 2012, with an accompanying disclosure framework and assessment methodology released in December 2012.⁷ The assessment methodology contains detailed key considerations that are referred to throughout this consultation paper.
- 20 The draft derivative trade repository rules aim to implement the CPSS–IOSCO Principles, and the key considerations relevant to those principles, to the extent relevant to trade repositories: see Appendix 1 of this paper for a mapping of the CPSS–IOSCO Principles to the draft derivative trade repository rules. Accordingly, on many topics, the draft rules adopt the same or similar language as contained in the principles.
- 21 Our intention in framing these proposals is to ensure that the operation of ADTR licensees will be consistent with other international regimes, including those of the European Union (EU), the United States (US), Canada, Singapore and Hong Kong. Given that no national regime is identical, by squarely basing our proposals on the CPSS–IOSCO Principles we expect to maximise the extent of this consistency.
- 22 We anticipate such an approach will enable ADTR licensees to more readily seek recognition or licensing in those jurisdictions, while also enabling trade repositories licensed in those jurisdictions to more readily be licensed in Australia.

⁷ See www.bis.org/publ/cpss101a.pdf and www.bis.org/publ/cpss106.pdf.

Purpose of this consultation paper

- 23 The purpose of this paper is to seek stakeholder views on our draft derivative trade repository rules (Attachment 1) and draft regulatory guidance (Attachment 2) about trade repositories.
- 24 The proposals in this paper will apply to operators and users of licensed trade repositories, as well as officers of ADTR licensees. Persons intending to apply for a licence should read this paper.
- 25 We seek your feedback on the specific proposals in this paper and accompanying questions. We also seek your feedback more generally on the draft regulatory guide and the draft derivative trade repository rules, including those aspects that are not specifically noted in this paper.

B Licensing of trade repositories

Key points

Certain trade repositories may require licensing in Australia. In deciding whether or not to grant an ADTR licence, we must take certain matters into account, including the structure of the trade repository, the nature of its activities, its size and technology used.

This section of the consultation paper and the draft regulatory guide (Attachment 2) set out our proposed guidance on:

- the process of applying for an ADTR licence, including the information that we will require;
- the conditions we may consider imposing on ADTR licences; and
- our approach to granting exemptions from all or specified provisions of the Corporations Act.

The licensing requirement

- 26 A trade repository must hold an ADTR licence (or applicable exemption) where it is in a class of trade repository identified by the Corporations Regulations 2001 (Corporations Regulations) as requiring a licence: s905A. To date, no such regulations have been made. The derivative transaction rules may impose an obligation on certain persons to report derivative trade data to licensed or prescribed trade repositories. An operator of a trade repository may therefore also seek to be licensed, despite not being required to by the regulations, if it wishes to provide services to persons who need to meet their reporting obligations by reporting to a licensed trade repository: s901A(6)(a).

Note: The ASIC Derivative Transaction Rules 2013 (derivative transaction rules) will be the subject of a separate consultation paper.

Matters that we must take into account

- 27 In deciding whether to grant an ADTR licence under s905C, the matters we must take into account 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 the operation of the trade repository; and
 - (f) whether it would be in the public interest to grant the ADTR licence (s905P).
- 28 We may also take into account any other matter that we consider relevant. We will consult with an applicant on such other matters.

Information and documentation required with an application

- 29 Appendix 2 of the draft regulatory guide sets out the proposed information and documentation that must be included with an application for an ADTR licence under s905B.
- 30 We require this information and documentation in order to make an accurate, effective and comprehensive assessment of an ADTR licence application, including the matters under s905P set out in paragraph 27. Specifically, the applicant must demonstrate that it has the skills, expertise, procedures and capacity to comply with the obligations that will apply to it when its ADTR licence commences, and on a continuing basis. This includes the obligations imposed by the derivative trade repository rules, as well as the relevant provisions under the Corporations Act.
- 31 Requiring such information and documentation in the application will also enable us to monitor, assess and enforce an ADTR licensee's compliance with the derivative trade repository rules, based on a comprehensive understanding of the licensee's operations and the way it complies with the rules. The proposed required matters to be addressed in the application are also largely based on, and consistent with, application requirements internationally, and for other categories of FMI such as financial market operators and clearing and settlement facilities (CS facilities).

Proposal

- B1** We propose that when preparing an ADTR licence application under s905B, an applicant must provide the information and documentation referred to in draft RG 000.53–RG 000.63 and Appendix 2 of the draft regulatory guide.

Feedback

- B1Q1** Do you agree with the scope of the required information and documentation, having regard to our responsibility to monitor, assess and enforce an ADTR licensee's compliance with the derivative trade repository rules?

Licence conditions

- 32 Section 905F gives ASIC the ability to impose conditions on an ADTR licence. We see it as important to include conditions on the licence, which may be necessary to ensure that the licensee will be able to operate its facility in a secure, efficient and effective manner.
- 33 Under s905F(4), we must ensure that each ADTR licence is subject to conditions that specify:
- (a) the particular trade repository that the licensee is authorised to operate; and
 - (b) the class or classes of derivatives in respect of which the trade repository can provide services for the purposes of Pt 7.5A.
- 34 Our proposed approach to imposing conditions on an ADTR licence is set out in draft RG 000.42–RG 000.50.
- 35 In formulating our policy approach, our objective has been to ensure that our approach to imposing ADTR licence conditions is aligned with that taken in respect of other comparable types of FMI, such as CS facilities or holders of an Australian market licence (market licence).

Proposal

- B2** We propose to adopt the approach to the imposition of licence conditions on an ADTR licence, including the scope of conditions, set out in draft RG 000.42–RG 000.50.

Feedback

- B2Q1 Do you agree with our approach to imposing ADTR licence conditions and the proposed areas in which conditions may be imposed?
- B2Q2 Do you believe there should be other considerations applied in relation to determining any financial resource conditions?

Exemptions from licensing provisions

- 36 You can apply to ASIC for an exemption from all or specified provisions regulating the licensing or operations of a trade repository. This includes the provisions of Pt 7.5A, the provisions of the Corporations Regulations relevant to Pt 7.5A, the provisions of the derivative transaction rules and the derivative trade repository rules, or definitions in the Corporations Act, or in the Corporations Regulations, as they apply to references in those provisions: see s907D(1). We may exempt a person or class of persons, a

facility or class of facilities, or a derivative transaction or class of derivative transactions, from all or specified provisions: see s907D(2).

- 37 Section C of the draft regulatory guide sets out our proposed approach to exemptions.
- 38 We have aligned our proposed approach to granting exemptions for trade repositories with our approach to exemptions for other types of FMI in Australia. In particular, we have taken into account our policy approach to exemptions as outlined in Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* (RG 211). We see value in ensuring consistency in our proposed policy and regulatory approach for trade repositories with RG 211 because both trade repositories and CS facilities are types of FMI that may have a level of systemic importance in the Australian market.

Proposal

- B3** We propose to adopt the approach to granting exemptions set out in Section C of the draft regulatory guide.

Feedback

- B3Q1 Do you agree with our proposed approach to granting exemptions?
- B3Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Overseas trade repositories

- 39 Operators of overseas trade repositories may need or choose to seek an ADTR licence in the circumstances set out in draft RG 000.19–RG 000.27.
- 40 Operators of overseas trade repositories may also consider applying for exemptions from substantive parts of the Australian regime, particularly where there may be regulatory duplication. We will consider these applications in accordance with our proposed policy on exemptions set out in Section C of the draft regulatory guide.
- 41 ASIC is responsible for supervising all licensed derivative trade repositories: see s902A(1). Where a licensed trade repository is wholly or partly operated in a foreign country, s902A recognises that we may perform our supervisory function in relation to that trade repository by satisfying ourselves that the foreign country's regime provides for adequate supervision of the trade repository, or that adequate cooperative arrangements are in place. This means that in administering our supervisory obligations, we may consider the regulatory requirements in the home jurisdiction, where those requirements apply to the ADTR licensee's Australian activities.

42 We may view the ADTR licensee's compliance with those obligations as partially or wholly fulfilling particular regulatory obligations that the licensee faces under the Australian regime. This does not alter the legal obligations of the licensee under the Australian regime, but goes to how we will administer that regime. We may so rely on the overseas regulatory regime where we consider it to be sufficiently equivalent with adequate supervision and cooperative arrangements. We have set out our criteria for this assessment in draft RG 000.88–RG 000.105.

Proposal

- B4** In relation to licensed overseas trade repositories, we propose to adopt the approach of:
- (a) exempting overseas trade repositories from substantive parts of the Australian regime in accordance with the considerations set out in draft RG 000.106–RG 000.107;
 - (b) accepting reliance (in whole or in part) on compliance with overseas regulation set out in draft RG 000.88–RG 000.105; or
 - (c) adopting a combined approach by seeking to rely on compliance with home regulation, as well as potentially exempting the foreign operator from specific relevant obligations under the Corporations Act or the draft derivative trade repository rules.

We propose to adopt the approach that is most appropriate to the circumstances of the particular case.

Feedback

- B4Q1 Do you agree with our proposed approach to overseas trade repositories?
- B4Q2 Do you consider that any particular option is more effective or efficient than the other, while still achieving the appropriate regulatory outcomes?
- B4Q3 What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)

C The derivative trade repository rules

Key points

The draft derivative trade repository rules are designed to ensure that ADTR licensees provide a reliable reporting system and conduct themselves in a way that fosters market stability and market integrity, and promotes transparency.

The draft derivative trade repository rules implement, within the framework provided under Pt 7.5A of the Corporations Act, the CPSS–IOSCO Principles and the relevant key considerations, to the extent they apply to trade repositories, as well as selected aspects of other national regulatory schemes for trade repositories.

Purpose of the rules

- 43 The draft derivative trade repository rules (Attachment 1) are designed to implement the CPSS–IOSCO Principles and the relevant key considerations, within the framework provided under Pt 7.5A of the Corporations Act and to the extent they apply to trade repositories.
- 44 Our intention in framing the derivative trade repository rules in this way is to ensure that the operation of Australian trade repositories is consistent with other regimes so as to facilitate ADTR licensees seeking recognition or licensing in another jurisdiction, or a trade repository licensed elsewhere to more readily be licensed in Australia.
- 45 The draft derivative trade repository rules are designed to promote the key rationales for regulating trade repositories set out in draft RG 000.4.

Manner in which services are provided

- 46 Part 2.2 of the draft derivative trade repository rules sets out rules on the manner in which licensed trade repositories provide their services: see s903A(2)(a). These include that a licensee must:
- (a) have a clear, transparent and enforceable legal basis for each material aspect of the trade repository’s services;
 - (b) have objective criteria for access to and participation in the services that permit open and non-discriminatory access and participation; and
 - (c) ensure at all times that the services are provided in a secure, efficient and effective manner.

Legal basis

- 47 The legal basis includes the ADTR licensee's rules, procedures and contractual arrangements. A sound legal basis is important to ensuring the actions of the licensee are valid and enforceable, and provides certainty as to the respective rights and obligations of the licensee and users. Section A3.2 of Appendix 3 of the draft regulatory guide sets out examples of what we consider to be key material aspects of a trade repository's activities.
- 48 We also consider having dispute resolution arrangements specified in the rules, procedures and contractual arrangements will provide certainty to stakeholders on the process and forum for resolution of any disputes with the ADTR licensee.
- 49 These draft derivative trade repository rules reflect CPSS–IOSCO Principle 1 and the associated key considerations.

Proposal

- c1 We propose that an ADTR licensee must:
- (a) ensure there is a clear, transparent and enforceable legal basis, including rules, procedures and contractual arrangements, for each material aspect of the trade repository's services;
 - (b) have documented and enforceable rules, procedures and contractual arrangements in relation the acceptance, retention, use, disclosure and provision of access to derivative trade data:
 - (i) that clearly define the legal status of the derivative trade data retained by the licensee;
 - (ii) that clearly define the rights and obligations of the licensee, users and, if applicable, indirect participants;
 - (iii) that clearly define procedures for the resolution of disputes; and
 - (iv) that are consistent with the derivative trade repository rules, the derivative transaction rules, the corporations legislation and any other applicable laws of a state or territory or laws of the Commonwealth; and
 - (c) if the licensee provides services in multiple jurisdictions—take all reasonable steps to identify and manage any risks arising from any potential conflict of laws across those jurisdictions.

See draft Rule 2.2.1 and draft RG 000.160–RG 000.164.

Note: In this document, 'Rule 2.2.1' (for example) refers to a particular rule of the draft derivative trade repository rules.

Your feedback

C1Q1 Do you agree with draft Rule 2.2.1?

C1Q2 Do you agree with our examples of material aspects of an ADTR licensee’s activities, as set out in draft RG 000.163–RG 000.164?

Access and participation requirements

- 50 Ensuring that an ADTR licensee provides open and non-discriminatory access to users in respect of its services is essential because a range of users may need, or be required by law to have, access to the trade repository’s services, both to report and retrieve data. Users include participants that may be required under the derivative transaction rules to report derivative trade data to the trade repository (referred to in the rules as ‘reporting entities’) or that report derivative trade data as agent for a reporting entity (including trading platforms, or confirmation or matching service providers).
- 51 In addition, users may include linked providers such as other FMIs or service providers that offer ancillary services (e.g. collateral management, portfolio reconciliation or portfolio compression services).⁸
- 52 Users and indirect participants may pose risks to the secure, efficient or effective operation of a trade repository. Therefore, we also consider it appropriate that ADTR licensees develop risk-based criteria for participation and access. Such criteria may include minimum requirements to ensure that users have the necessary resources, training and competencies to access or participate in the trade repository.
- 53 These draft derivative trade repository rules reflect CPSS–IOSCO Principle 18 and the associated key considerations.

Proposal

- c2** We propose that an ADTR licensee must:
- (a) have objective criteria for access to and participation in the trade repository’s services that permit open and non-discriminatory participation and access;
 - (b) have reasonable criteria designed to ensure users and, if applicable, indirect participants, do not pose undue risks to the secure, efficient and effective operation of its trade repository, but must not otherwise unreasonably prohibit, condition or limit access or participation; and
 - (c) monitor compliance with its access and participation criteria and have procedures for disciplining, suspending or facilitating the orderly exit of participants or other users that breach or no longer meet the criteria or conditions.

See draft Rule 2.2.2.

⁸ CPSS–IOSCO Principles, Explanatory Note 3.18.3.

Your feedback

- C2Q1 Do you agree with draft Rule 2.2.2?
- C2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Security, efficiency and effectiveness of services

- 54 A trade repository's services should be provided in an efficient and effective manner, while also maintaining appropriate security standards. 'Efficiency' refers generally to the resources required by the trade repository to perform its functions, while 'effectiveness' refers to whether the trade repository is meeting its intended goals and objectives.
- 55 We propose that an ADTR licensee must regularly review whether the trade repository is efficient and effective in meeting the requirements of the Australian regulators, users and the markets it serves. For example, an ADTR licensee should regularly review its minimum service levels, operational reliability, cost effectiveness and pricing.
- 56 The draft derivative trade repository rules reflect CPSS–IOSCO Principle 21 and the associated key considerations.

Proposal

- c3 We propose that an ADTR licensee must:
- (a) ensure that the trade repository's services are provided at all times in a secure, efficient and effective manner; and
 - (b) establish, implement and maintain mechanisms for regularly reviewing whether the trade repository is efficient and effective in meeting the requirements of its users, Australian regulators and the markets it serves.

See draft Rule 2.2.3 and draft RG 000.165–RG 000.167.

Feedback

- C3Q1 Do you agree with draft Rule 2.2.3 and the associated guidance in draft RG 000.165–RG 000.167?
- C3Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Handling and use of derivative trade data

- 57 Part 2.3 of the draft derivative trade repository rules sets out obligations on the handling and use of derivative trade data by a licensed derivative trade repository and its officers and employees: see s903A(2)(b). These include that the licensee must:

- (a) accept all derivative trade data for which it is licensed;
- (b) maintain technical connectivity with participants and ensure derivative trade data reported by participants is complete, accurate and current;
- (c) retain derivative trade data, and backup copies of derivative trade data, for a minimum period;
- (d) ensure that data is used and disclosed only in accordance with s904B;
- (e) provide appropriate access to data to users and regulators, subject to strict criteria;
- (f) provide specified aggregate-level data to the public; and
- (g) use internationally accepted communication standards and procedures.

58 Part 2.3 of the draft derivative trade repository rules broadly reflects CPSS–IOSCO Principle 24 and the associated key considerations.

Acceptance of data

59 A core responsibility of an ADTR licensee will be accepting derivative trade data that it is licensed to accept. It will also be important to ensure that the data it accepts is complete, accurate and current, in order to serve as a reliable central data source. It is therefore proper that a licensee be required to ensure the availability of its systems to perform such a service in this jurisdiction and the availability of any necessary support. Regular failure to maintain such access and support will affect the operational efficiency of users, the efficacy of the regime to produce the desired outcomes, and may reduce market confidence in the licensee.

Proposal

c4 We propose that an ADTR licensee must:

- (a) establish, implement and maintain policies, procedures, systems and controls for the reporting of derivative trade data to the licensee and must accept from participants derivative trade data for all classes of derivative specified in the conditions of the licence;
- (b) establish, implement and maintain policies, procedures, systems and controls for:
 - (i) maintaining a continuous, reliable and secure connection between the licensee and participants for the purposes of accepting derivative trade data; and
 - (ii) ensuring that derivative trade data reported to the licensee by participants is and remains at all times complete, accurate and current.

See draft Rule 2.3.1.

Your feedback

C4Q1 Do you agree with draft Rule 2.3.1?

C4Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Retention, use and disclosure of data

- 60 A central function of trade repositories is to store derivative trade data and provide access to that data to users, regulators and the public. We propose requiring that ADTR licensees retain records in a way that is accessible to the licensee and to have appropriate backup. We see this as a necessary part of the licensee's role as a data warehouse.
- 61 Our proposed requirements are in line with proposed requirements in the European Union and the United States.

Proposal

c5 We propose that:

- (a) subject to any direction given by ASIC under s904K, an ADTR licensee must:
 - (i) ensure that all derivative trade data accepted by the licensee, and each alteration and correction to that derivative trade data, is recorded on a timely basis;
 - (ii) maintain derivative trade data it receives from a user for five years after the termination of the transaction that the derivative trade data relates to, in a secure location and in an electronic format, immediately accessible by the licensee; and
 - (iii) maintain a backup copy of the data in a secure location in an electronic format and separate from the main record, accessible by the licensee within three business days; and
- (b) have policies, procedures, systems and controls designed to ensure that the operator, its officers and employees comply with s904B in handling, using and disclosing derivative trade data.

See draft Rules 2.3.2 and 2.3.3.

Your feedback

C5Q1 Do you agree with draft Rules 2.3.2 and 2.3.3?

C5Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Access to data by ASIC

- 62 Access to derivative trade data by relevant regulators is fundamental to the objective of implementing a trade reporting regime and establishing trade repositories in the OTC derivatives market.
- 63 The CPSS–IOSCO work on data access by regulators will set down guidelines for market regulators such as ASIC in relation to powers to access information contained within a trade repository for the purpose of carrying

out supervisory responsibilities. In our view, it is vital to be able to access the ADTR licensee's records of transactions reported to it, including historical records, to facilitate transparency of market activity and position risk. Such access is also essential to assist with investigations of potential breaches of the mandatory trade reporting requirements that OTC derivative participants will be subject to under the G20 reporting commitments, and investigations of other potential misconduct.

64 In our role as regulator of the financial markets, we have broad responsibility for market surveillance and supervision. Therefore, we will need access to derivative trade data submitted to an ADTR licensee:

- (a) as defined in s761A; and
- (b) that must be reported to an ADTR licensee in accordance with any Australian trade reporting rules; and
- (c) all other information (including statistical data) retained by the ADTR licensee that is derived from this derivative trade data.

65 We propose requiring that this data be provided to ASIC by direct electronic access if required, or on request on a periodic or ad-hoc basis. An ADTR licensee must also be able to accommodate requests to provide any derivative trade data under s904B(2) of the Corporations Act on an ad-hoc or periodic basis, and must be ready to respond to such requests in accordance with reasonable requirements as to format and timing specified in the request.

Access by other Australian regulators

66 In addition to the requirement for ASIC to be given access to derivative trade data, other Australian financial regulators also need access to an ADTR licensee's derivative transaction data for different regulatory purposes, depending on their responsibilities, and statutory or other legal authorities. In particular, access on request, on an ongoing, periodic or ad-hoc basis, must be provided to:

- (a) the Reserve Bank of Australia (RBA), in its role as the central bank; and
- (b) the Australian Prudential Regulation Authority (APRA), in its role as a prudential supervisor.

67 We propose requiring that derivative trade data referred to in paragraph 64 also be made available by direct electronic access to APRA and the RBA as required, along with any responses to periodic and ad-hoc requests for data by those agencies referred to in paragraph 66.

68 Other Australian regulators may also wish to gain access to derivative transaction data retained by a licensed trade repository. Where the Minister is satisfied that there are adequate controls on the use or disclosure of the

data, then regulations may be made prescribing other regulators for the purposes of s904B(2)(d), as bodies that may request derivative trade data from licensed trade repositories under s904B(2).

Access by overseas regulators

- 69 The OTC derivatives markets are global in nature. Market participants may be trading, clearing and reporting transactions with counterparties, central counterparties and trade repositories located outside market participants' local jurisdiction. As a result of this market structure, data on OTC derivative transactions may be stored in one or more trade repositories and may be relevant to authorities from different jurisdictions.
- 70 To maximise their ability to carry out their respective mandates, market regulators, central banks, prudential supervisors, overseers and resolution authorities will need a global view of OTC derivatives markets through effective and practical access to relevant data, as well as an ability to aggregate the data efficiently. While the scope of access will depend on the specific mandates of the particular authority, access should not depend on or be constrained by the location of the trade repository.⁹
- 71 We anticipate that regulations will be made under s904B(2)(d) prescribing identified foreign financial regulators as bodies that may request derivative trade data from licensed trade repositories under s904B(2). Where such a designation is in place, we propose that an ADTR licensee must comply with any request from that regulator for access to derivative trade data submitted to that licensee which has been reported to it in accordance with any Australian trade reporting rules, or to information (including statistical data) created or derived from the derivative trade data submitted. This would be required only to the extent that it is a request by the foreign financial regulator, is in accordance with the performance of their functions and subject to applicable internationally accepted regulatory access standards.

Proposal

- c6 We propose that an ADTR licensee will be subject to the requirements in draft Rule 2.3.4, which provides for access:
- (a) to derivative trade data by users;
 - (b) by Australian regulators (ASIC, APRA and the RBA); and
 - (c) where identified foreign regulators have been prescribed by regulations, by those regulators subject to certain criteria being met.

Draft Rule 2.3.4 also provides for the confidential treatment of that data and the confidentiality of any access requests by regulators.

⁹ CPSS-IOSCO, *Report on OTC derivatives data reporting and aggregation requirements*, August 2011, s 3.2.1, www.iosco.org/library/pubdocs/pdf/IOSCOPD356.pdf.

Your feedback

C6Q1 Do you agree with draft Rule 2.3.4?

C6Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Publication of statistical data

- 72 One of the central tenets for having trade repositories in the OTC derivatives market is to enhance market transparency of OTC derivative transaction information.
- 73 Accordingly, we consider it necessary for an ADTR licensee to make available to the public aggregated data on open positions, volume, number and prices for all the asset classes for which it receives derivative trade data. Trade repositories in the United States must have systems to accept and disseminate individual swap transaction data in near real-time, while trade repositories in the European Union are obliged to disclose aggregated open positions, transaction volumes and values, by derivative and asset class, on a weekly basis. We have modelled our requirements on the EU requirements.
- 74 Post-trade transparency will be dealt with under the proposed Markets in Financial Instruments Regulation (MiFIR) in the European Union. We may need to revisit our approach to post-trade transparency in light of changing circumstances, and international regulatory developments.

Proposal

- c7 We propose that an ADTR licensee will be subject to the requirements on the creation and disclosure of statistical data in draft Rule 2.3.5.

Your feedback

C7Q1 Do you agree with draft Rule 2.3.5?

C7Q2 Should ADTR licensees be subject to post-trade transparency obligations at the individual transaction level, rather than only at the aggregate data level?

C7Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Communication procedures and standards

- 75 The experience with trade repositories globally is that the reporting, access and retention activities are largely automated, both for the trade repository and for users and regulators. As such, communication procedures and standards are particularly important. A trade repository should support technologies that are widely accepted in the market, including applicable market standards for reporting and recording trade information.

- 76 A trade repository also should apply consistent application interfaces and communication links that enable technical interconnectivity with other FMIs and service providers. To facilitate accurate data representation, use and aggregation, trade repositories should follow industry standards relating to the unique identification of counterparties (such as legal entity identifiers).
- 77 We have sought to reflect CPSS–IOSCO Principle 22 and the associated key consideration in draft Rule 2.3.6.

Proposal

- c8** We propose that an ADTR licensee must use or, at a minimum, accommodate, relevant internationally accepted communication procedures and standards to facilitate accurate, consistent, efficient and reliable acceptance, retention, use, disclosure and provision of access to derivative trade data by the trade repository: see draft Rule 2.3.6.

Your feedback

- C8Q1 Do you agree with draft Rule 2.3.6 and the associated guidance in draft RG 000.168–RG 000.169?
- C8Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Governance, management and resources

- 78 Part 2.4 of the draft derivative trade repository rules deals with the governance, compliance and risk management and the resources of the trade repository: see s903A(2)(c). These include obligations on:
- (a) the governance and management arrangements of the trade repository;
 - (b) handling of conflicts of interests;
 - (c) monitoring and enforcement of compliance with obligations;
 - (d) risk management;
 - (e) resources (including human, financial and technological resources);
 - (f) integrity and security of computer systems and other systems; and
 - (g) operational reliability, business continuity and recovery and resolution, and operational separation of functions.
- 79 ADTR licensees will be important FMIs and their decisions may have a widespread impact, potentially affecting multiple institutions, markets and jurisdictions. In addition, the licensee’s governing body will have an important role and responsibility in connection with the trade repository achieving its business objectives.

Governance

- 80 We are proposing rules, based on CPSS–IOSCO Principle 2 and the associated key considerations, requiring clear, transparent documented governance arrangements that specify roles and responsibilities of boards and management, and which support efficiency, stability and public interest considerations.

Proposal

- c9** We propose that an ADTR licensee must have documented governance and management arrangements that:
- (a) are clear and transparent;
 - (b) promote the secure, efficient and effective operation of its services;
 - (c) support the stability of the broader financial system, other relevant public interest considerations, and the objectives of users; and
 - (d) provide for:
 - (i) clear and direct lines of accountability;
 - (ii) clearly defined roles and responsibilities, including on risk management;
 - (iii) clearly defined decision-making processes, including processes for decision making in crises and emergencies, and processes for ensuring significant decisions on the design, rules or overall strategy of its services take into account the objectives of users and, where appropriate, are disclosed to users; and
 - (iv) the internal control function to be exercised by persons with adequate authority, independence, resources and access to the governing body and management to perform their control function.

See draft Rule 2.4.1 and draft RG 000.171.

Feedback

- C9Q1 Do you agree with draft Rule 2.4.1 and the associated guidance in draft RG 000.171?
- C9Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Managing conflicts of interest

- 81 Ensuring that proper governance arrangements exist for appropriate identification, disclosure and management of conflicts of interest is important to ensuring that an ADTR licensee is able to operate in a secure, efficient and effective manner, and retains the confidence of users and regulators alike, as well as market stakeholders more broadly. As Explanatory Note 3.2.5 to CPSS–IOSCO Principle 2 states:

[A] trade repository should ensure that it effectively identifies and manages conflicts of interests that may arise between its public role as a centralised data repository and its own commercial interests, particularly if it offers services other than record keeping.

- 82 Management of conflicts of interest will be a key aspect of the governance arrangements of an ADTR licensee. Therefore, we would expect a licensee to be able to demonstrate this, including during any compliance assessment.

Proposal

C10 We propose that an ADTR licensee must establish, implement and maintain documented arrangements for identifying and effectively managing (including by avoiding, controlling or disclosing) any actual or potential conflicts between:

- (a) the interests of the licensee, its related bodies corporate or members of the licensee's governing body, and the interests of users;
- (b) the interests of different users; and
- (c) the interests of the licensee, its related bodies corporate or members of the licensee's governing body, and the need to ensure its services are provided in a secure, efficient and effective manner.

See draft Rule 2.4.2 and draft RG 000.172–RG 000.176. Our draft regulatory guidance also addresses the desirability of a conflicts register: see draft RG 000.176.

Feedback

C10Q1 Do you agree with draft Rule 2.4.2 and the associated guidance in draft RG 000.172–RG 000.176?

C10Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Monitoring and enforcing compliance with the rules

- 83 We intend to require that an ADTR licensee have effective arrangements for monitoring and ensuring compliance with the derivative trade repository rules and its other obligations under relevant legislation. We consider that the obligations relating to compliance are necessary to give users and ASIC confidence that the licensee:

- (a) is able to comply with all of its relevant obligations;
- (b) has mechanisms for regular reviews of its compliance and effective identification of instances of non-compliance; and
- (c) has robust internal controls.

- 84 The draft regulatory guide sets out our guidance on how ADTR licensees can ensure the effectiveness of their compliance arrangements, including the

content of an annual written report: see draft RG 000.199–RG 000.201. We also provide guidance as to what may be reviewed as part of the ASIC annual assessment process: see draft RG 000.123–RG 000.128.

Proposal

c11 We propose that an ADTR licensee must:

- (a) establish, implement, maintain and enforce policies, procedures, systems and controls for monitoring and enforcing compliance by its officers and employees with the derivative trade repository rules, the derivative transaction rules, the corporations legislation and any other applicable laws of a state or territory or laws of the Commonwealth; and
- (b) ensure that the arrangements, rules, procedures, policies, systems and controls required by draft Chapter 2 are reviewed, audited and tested periodically and after significant changes.

See draft Rule 2.4.3 and draft RG 000.177–RG 000.178.

Your feedback

C11Q1 Do you agree with draft Rule 2.4.3 and the associated guidance in draft RG 000.177–RG 000.178?

C11Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Risk management

85 We have sought to reflect CPSS–IOSCO Principle 3, and the associated key considerations, in draft Rule 2.4.4.

86 Given the role ADTR licensees are intended to play in the market, we consider they should have a sound risk management framework that enables them to identify, measure, monitor and manage the range of risks that may arise in relation to the operation of the trade repository, including legal, operational and business risks.

Managing operational risk

87 The key risk of a trade repository is operational risk. Deficiencies in business continuity management, data integrity, and the safeguarding of data are a particular concern.¹⁰

88 As part of its risk management framework, we intend to require an ADTR licensee to specifically identify, monitor and manage operational risks. This is also consistent with CPSS–IOSCO Principle 17 and key consideration 17.1. The proposed general requirement to manage operational

¹⁰ Explanatory Note 3.17.3 to CPSS-IOSCO Principle 17.

risks is complemented by proposed specific requirements in relation to integrity and security of data and other systems (see proposal C14 and draft Rule 2.4.8), operational reliability (see proposal C15 and draft Rule 2.4.9) and business continuity (see proposal C15 and draft Rule 2.4.10).

Managing general business risks

- 89 ADTR licensees are likely to be systemically important to the Australian OTC derivatives market. Any wind-down of a licensee would cause significant disruption to reporting and data distribution arrangements for its users.
- 90 We therefore intend to require an ADTR licensee to specifically identify, monitor and manage general business risks. This is also consistent with CPSS–IOSCO Principle 15 and associated Key Considerations 15.1. This proposed general requirement is complemented by specific requirements in relation to financial resources (see draft Rule 2.4.7). The draft regulatory guide (see draft RG 000.188–RG 000.192) sets out proposed guidance on:
- (a) the types of risks that we consider to be general business risks;
 - (b) our expectations of ADTR licensees in relation to periodic and regular reviews of the risks; and
 - (c) ensuring that such reviews are undertaken by sufficiently independent persons or entities.

Risks associated with linked providers

- 91 An ADTR licensee may be a part of a network linking various entities that could include central counterparties, dealers, custodians and service providers, and it should therefore ensure that it effectively manages and minimises its own risks to reduce the potential for systemic risk to spread to such linked entities.¹¹ We have sought to address these issues in line with Principles 17 and 20, and the associated key considerations.

Risks associated with non-trade reporting (including ancillary) services

- 92 In addition to its material activities, an ADTR licensee may provide services other than those connected with or directly related to its data collection, holding and reporting activities. It is important for a licensee to ensure that it identifies and mitigates any legal, operational and business risks associated with any such other services it provides, particularly to the extent that it affects the performance of its trade reporting services.

¹¹ CPSS–IOSCO Principles, footnote 37.

Proposal

c12 We propose that an ADTR licensee must:

- (a) establish, implement and maintain policies, procedures, systems and controls that enable it to identify, measure, monitor and effectively manage risks to the secure, efficient or effective operation of the trade repository, including legal, operational and business risks; and
- (b) in establishing its risk management framework, take into account, at a minimum, legal, operational and business risks that may arise from or to users, indirect participants, operational and contractual arrangements with linked providers, and the provision of non-trade reporting (including ancillary) services.

See draft Rule 2.4.4 and draft RG 000.179–RG 000.187.

Your feedback

C12Q1 Do you agree with draft Rule 2.4.4 and the associated guidance in draft RG 000.179–RG 000.187?

C12Q2 Do you agree that we should consider ancillary services and the risks posed in the way proposed?

C12Q3 Do you agree that we should consider linked providers and the risks posed in the way proposed?

C12Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Maintaining sufficient resources

- 93 In line with other categories of FMI (through the Corporations Act and Corporations Regulations, market integrity rules or through licence conditions), we intend to require that an ADTR licensee maintain sufficient and appropriate human, technological and financial resources at all times to ensure that it operates efficiently, securely and effectively. This includes specific requirements for the operator's human and financial resources.¹² Additional requirements in relation to resources may be specified in the conditions of the licence.

Proposal

c13 We propose that an ADTR licensee must:

- (a) establish and maintain sufficient and appropriate human, technological and financial resources to ensure that it operates, at all times, securely, efficiently and effectively;
- (b) ensure, at all times, its officers, managers and employees are fit for office having regard to the experience, qualifications and skills

¹² See CPSS-IOSCO Principles 2 and 15 and Key Considerations 2.4, 2.5 and 15.3.

necessary to perform their respective roles and responsibilities in the governance, management and operation of its services;

- (c) hold, at all times, net assets funded by equity (such as shares, disclosed reserves or other retained earnings) that at a minimum, are equal to an amount that would enable the licensee to cover at least six months of current operating expenses, calculated on a rolling basis at the end of each month; and
- (d) maintain a viable plan for raising additional equity should its equity fall close to or below the amount needed under draft Rule 2.4.7(1), which is approved by its governing body and updated regularly.

See draft Rules 2.4.5, 2.4.6 and 2.4.7, and draft RG 000.188–RG 000.192.

Your feedback

C13Q1 Do you agree with draft Rules 2.4.5, 2.4.6 and 2.4.7, and the associated guidance in draft RG 000.188–RG 000.192?

C13Q2 Do you agree that the minimum financial resource requirements in draft Rule 2.4.7 are an adequate minimum?

C13Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Integrity and security of computer and other systems

- 94 ADTR licensees will be responsible for the collection and dissemination of derivative trade data that may be highly commercially valuable and market sensitive. We therefore intend to require that a licensee ensures that the data it maintains is secure, accurate and current. Continuous availability of data is also essential.
- 95 Any compromise in the security of this data or unauthorised access could have an impact on global markets and participants, and could significantly affect market confidence in the trade repository system. Therefore, it is of paramount importance that an ADTR licensee has robust controls for the protection of its data and information from all security threats.
- 96 Our proposed controls are broadly in line with those overseas (particularly those of the European Union, the United States and Singapore), and broadly reflect CPSS–IOSCO Principle 17 and Key Consideration 17.5.

Proposal

- c14** We propose that an ADTR licensee must establish, implement, maintain and enforce policies and procedures, and physical and electronic controls over its systems, for accepting, retaining, using, disclosing and providing access to derivative trade data, designed to:
- (a) maintain the integrity, security and confidentiality of derivative trade data, at all times, during transmission between the trade repository,

Australian regulators and users, and while retained by the trade repository; and

- (b) prevent unauthorised use and disclosure of, and access to, derivative trade data.

See draft Rule 2.4.8 and draft RG 000.193–RG 000.194.

Your feedback

C14Q1 Do you agree with draft Rule 2.4.8 and the associated guidance in draft RG 000.193–RG 000.194?

C14Q2 Are there any other requirements regarding data integrity and security that should be imposed on ADTR licensees?

C14Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Operational reliability, business continuity, and recovery and resolution

- 97 A trade repository typically serves as a single source of information for a particular market. Therefore, an ADTR licensee’s failure to perform as expected could cause significant disruption.¹³ Continuous availability of reliable data is critical.
- 98 Operational risk is the key risk area for trade repositories. Operational failures can damage the perceived reliability of trade repositories leading to a lack of confidence in their ability to perform their core functions safely and effectively, which may have a wider impact on the market and, potentially, be a source of systemic risk.
- 99 Our proposals are consistent with CPSS–IOSCO Principles 3 and 17 and the associated key considerations.

Proposal

- c15** We propose that an ADTR licensee must meet the following minimum requirements:
- (a) operational reliability and sufficient scalable capacity to meet its obligations;
 - (b) plans for communications in the event of operational outages and other disruptions to its services;
 - (c) business continuity, backup and data recovery plans in the event of disruption to enable the timely restoration of services; and
 - (d) identification of scenarios that may potentially prevent it from being able to provide its critical services as a going concern and provide for recovery and orderly wind-down options.

¹³ CPSS–IOSCO Principles, Explanatory Note 3.17.3.

See draft Rules 2.4.9, 2.4.10 and 2.4.11, and draft RG 000.195–RG 000.197.

Your feedback

C15Q1 Do you agree with draft Rules 2.4.9, 2.4.10 and 2.4.11, and the associated guidance in draft RG 000.195–RG 000.197?

C15Q2 Are there any other requirements regarding data security and integrity that should be imposed on ADTR licensees?

C15Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Operational separation of functions

100 An ADTR licensee may provide services other than those connected with or directly related to its data collection, holding and reporting activities. Where such commercial arrangements exist, there are potential risks that may arise from these other services that may be provided by a corporate group, and which may have an impact on the core reporting services provided by the licensee. One way to manage these risks is to ensure there is operational separation of the various services provided.

101 There are similar requirements in the European Union (see EMIR Article 78(5) and the technical standards made for this article). We intend to require that when an ADTR licensee offers ancillary services such as trade matching, trade confirmation and portfolio compressions, these must be maintained separately from the functions of being a central collecting agency and data warehouse.

Proposal

c16 We propose that, where the ADTR licensee, a subsidiary of the ADTR licensee's holding company, or any other company with which the ADTR licensee has a material agreement in connection with trade reporting services, provides non-reporting (including ancillary) services, the ADTR licensee must:

- (a) disclose to ASIC a description of all such non-reporting services and update the disclosure as soon as practicable after any changes to such non-reporting services; and
- (b) establish, implement, maintain and enforce policies, procedures, systems and controls designed to ensure that there is operational separation between the non-reporting services and the trade reporting services.

See draft Rule 2.4.12.

Feedback

C16Q1 Do you agree with draft Rule 2.4.12?

C16Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Outsourcing

102 A trade repository may outsource some of its activities and operations to an outsourced service provider (e.g. data processing and data storage). Where this is the case, the trade repository should ensure that these services meet the same requirements as if provided internally, the selection process of the provider is robust and the arrangements with the outsourced provider are documented by way of a written contract with appropriate policies, procedures and controls in place. In addition, Australian regulators should have the same level of access to the outsourced provider as if the services had been provided by the repository.

Proposal

c17 We propose that where an operator outsources any trade reporting services (or any activities that are part of, or intrinsic to, trade reporting services), they must:

- (a) ensure that the outsourcing arrangement is covered by a contract that is in writing;
- (b) establish documented policies, procedures, systems and controls to ensure that the operator continues to comply with their obligations under the Corporations Act and the draft derivative trade repository rules;
- (c) maintain access to books and records relating to the trade reporting services; and
- (d) ensure that Australian regulators have the same access to records and information as they would if there were no outsourcing arrangements.

See draft Rule 2.4.13.

Your feedback

C17Q1 Do you agree with draft Rule 2.4.13?

C17Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Disclosure of conditions of service

103 Part 2.5 of the draft derivative trade repository rules deals with the disclosure of conditions (including fees) on which an ADTR licensee provides its services: see s903A(2)(d).

104 Transparency of rules, key procedures and fees is an integral element of an efficient and well-functioning trade repository because it helps users to effectively evaluate the system's design and operations, their rights and

obligations, and the risks of participating in the system.¹⁴ This promotes confidence in the operation of the trade repository. In accordance with the key considerations to CPSS–IOSCO Principle 23 and the CPSS-IOSCO *Disclosure framework for financial market infrastructures*, we intend to require ADTR licensees to disclose information about these issues, as well as clear disclosure of fees and system design, to allow potential participants to fully ascertain the costs of participation.

105 Operators of other types of FMI, such as market licensees, exempt professional financial markets and CS facility licensees, are already subject to a requirement to at least notify ASIC of changes to their operating rules or procedures.

Proposal

c18 We propose that an ADTR licensee must:

- (a) disclose to participants its rules and procedures (which, under draft Rule 2.2.1, would set out the licensee’s and participant’s rights and obligations);
- (b) disclose to participants its commitments on minimum service levels and operational reliability;
- (c) to the extent it would not compromise its security or integrity or require the disclosure of commercially sensitive information, disclose information about:
 - (i) the system’s design and operation; and
 - (ii) any other information reasonably required by the participant to assess the risks and costs of participation (see draft Rules 2.5.2(1)–(2));
- (d) notify ASIC and participants of any material changes proposed to any of its access or participation criteria or fees, rates and charges within a reasonable timeframe before the change is implemented (see draft Rule 2.5.1(3)); and
- (e) disclose to the public the information set out in draft Rule 2.5.2 and, at all times, keep the disclosures complete, accurate and up-to-date.

See draft Rules 2.5.1 and 2.5.2, and draft RG 000.198.

Your feedback

C18Q1 Do you agree with draft Rules 2.5.1 and 2.5.2, and the associated guidance in draft RG 000.198?

C18Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

¹⁴ CPSS–IOSCO Principles, Explanatory Note 3.23.1.

Reporting requirements

- 106 Part 2.6 of the draft derivative trade repository rules deals with reporting to ASIC and other regulators of matters related to ADTR licensees (see s903A(2)(e)), including requirements to:
- (a) produce and provide an annual compliance report to ASIC;
 - (b) disclose criminal and civil proceedings, disciplinary action and changes in regulatory requirements;
 - (c) notify the acquisition of a significant holding in the ADTR licensee; and
 - (d) notify disruptions and security breaches.

Annual compliance report

- 107 We intend to require an ADTR licensee to report on the extent to which it has complied with its obligations under the derivative trade repository rules (unless ASIC exempts the licensee from this obligation in writing). We may also require an audit of the annual report. The proposed annual reporting requirement reflects the requirements imposed on market licensees and CS facility licensees.
- 108 Annual reports may also be taken into account by ASIC in any assessment of how well an ADTR licensee is complying with any or all of its licence obligations under s904J.

Proposal

c19 We propose that an ADTR licensee must give ASIC an annual compliance report, which would be required to be submitted to ASIC within three months of the end of the licensee's financial year, on the extent to which it has complied with its obligations under the derivative trade repository rules. ASIC may also request an audit of the annual compliance report.

See draft Rule 2.6.1 and draft RG 000.199–RG 000.201.

Your feedback

C19Q1 Do you agree with draft Rule 2.6.1 and the associated guidance in draft RG 000.199–RG 000.201?

C19Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Disclosure of proceedings

Proposal

c20 We propose that an ADTR licensee must notify ASIC of criminal and civil proceedings, disciplinary action and changes in regulatory requirements, in this and other jurisdictions: see draft Rule 2.6.2.

Your feedback

C20Q1 Do you agree with draft Rule 2.6.2?

Notification of acquisition of significant holding

- 109 The Explanatory Statement to CPSS–IOSCO Principle 2 explains that governance arrangements, including the ownership structure of the FMI, should be clearly and thoroughly documented, and that these arrangements should be disclosed to owners, the authorities, participants and, at a more general level, the public.¹⁵
- 110 In line with this, we consider it appropriate to impose on ADTR licensees a similar requirement to that found in s792B(5), which imposes a notification requirement to ASIC if a person comes to have, or ceases to have, more than 15% voting power in any market licensee or its holding company. This is complemented by the requirement in s904C(3) to notify ASIC as soon as practicable after a person becomes, or ceases to be, a director, secretary or senior manager of an ADTR licensee or its holding company.
- 111 Similar requirements for notification to authorities of a change in control of a trade repository exist in overseas regimes. For example, trade repositories licensed by the US Commodity Futures Trading Commission (CFTC) are subject to a disclosure requirement where there is a transfer of equity interest of more than 10% in the trade repository.¹⁶ Similarly, Singaporean legislation includes a requirement to notify the Monetary Authority of Singapore (MAS) if a trade repository acquires a substantial shareholding in a corporation that is not in the trade repository business or in the business of a class prescribed by the MAS.¹⁷

Proposal

- c21** We propose that an ADTR licensee must notify ASIC as soon as practicable after it becomes aware that a person has come to have, or has ceased to have, more than 15% of the voting power in the licensee or in a holding company of the licensee: see draft Rule 2.6.3.

Your feedback

C21Q1 Do you agree with draft Rule 2.6.3?

C21Q2 Are there any other requirements on control that ASIC should impose? For example, would a prohibition on acquisition of more than a certain percentage of control in an entity that is not a trade repository (including trade repositories in other jurisdictions) be appropriate?

¹⁵ CPSS–IOSCO Principles, Explanatory Note 3.2.3.

¹⁶ See CFTC, 17 CFR Part 49, *Swap data repositories*, § 49.5, www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-31133a.pdf.

¹⁷ The Securities and Futures (Amendment) Bill 2012, Division 2, s46K(1)(c).

System disruptions and data security, integrity and confidentiality breaches

Proposal

c22 We propose that, in the event that an ADTR licensee experiences a system disruption (due to delay, suspension or termination of any systems, including those resulting from any system failure), or a breach of the security, integrity or confidentiality of derivative trade data, the licensee must:

- (a) notify ASIC of the disruption or breach as soon as practicable; and
- (b) within 14 days of the disruption or breach, provide a report to ASIC setting out the circumstances of the disruption or breach, the remedial actions already taken, and any subsequent actions the licensee will take in response to the circumstances.

See draft Rule 2.6.4.

Your feedback

C22Q1 Do you agree with draft Rule 2.6.4?

C22Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Record-keeping requirements

112 Part 2.7 of the draft derivative trade repository rules deals with the keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the rules: see s903A(3)(d).

Proposal

c23 We propose that an ADTR licensee must:

- (a) keep records that enable it to demonstrate it has complied with the derivative trade repository rules for five years;
- (b) provide such records or other information to ASIC upon request; and
- (c) keep the records in English or readily convertible to English.

See draft Rules 2.7.1, 2.7.2 and 2.7.3.

Your feedback

C23Q1 Do you agree with draft Rules 2.7.1, 2.7.2 and 2.7.3?

C23Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)

Penalties and enforcement

- 113 Under the Corporations Act, the obligation to comply with the derivative trade repository rules is a civil penalty provision. This means that for a breach, ASIC can take action to pursue a civil penalty. This is similar to the ASIC market integrity rules under the markets supervisory framework, where the obligation to comply with those rules (s798H) is a civil penalty provision for those purposes.
- 114 Compared to provisions in respect of the market integrity rules, the Corporations Act also provides for the regulations to set out alternatives to civil proceedings, being one or more of the following:
- (a) paying a penalty to the Commonwealth;¹⁸
 - (b) undertaking remedial measures;
 - (c) accepting sanctions other than a payment of a penalty;
 - (d) entering into an enforceable undertaking.
- 115 The Corporations Act requires that each derivative trade repository rule must specify a penalty for an amount not to exceed 1,000 penalty units (a penalty unit is currently \$170).
- 116 We are seeking your feedback on the proposed penalty amounts for breaches of each of the draft derivative trade repository rules—in particular, on the appropriate maximum penalty for each rule.

Proposal

c24 We propose that:

- (a) the maximum penalty amount for each derivative trade repository rule that includes a penalty be 1,000 penalty units; and
- (b) the same maximum amount apply across all rules for consistency and to preserve flexibility.

Feedback

C24Q1 What are your views on an appropriate maximum penalty amount for each of the draft derivative trade repository rules?

¹⁸ The penalty payable under the regulations made for the purpose of this provision in respect to the derivative trade repository rules must not exceed one-fifth of the penalty amount specified for the rule: see s901F(2).

D Regulatory and financial impact

117 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between achieving the stated policy objectives in draft RG 000.4 and the desirability of minimising compliance costs and reducing barriers to entry. We have also borne in mind the desirability of ensuring that the Australian trade repository regime is adjudged sufficiently equivalent by overseas regulators (particularly those in the European Union and the United States).

118 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

119 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

120 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Appendix 1 CPSS–IOSCO Principles implemented in the draft trade repository rules

Table 1: CPSS–IOSCO Principles implemented in the draft trade repository rules

Principle	Relevant rules
1 Legal basis	Rule 2.2.1—Legal basis
2 Governance arrangements	Rule 2.4.1—Governance Rule 2.4.2—Handling of conflicts of interest (in part) Rule 2.4.6—Human resources
3 Framework for the comprehensive management of risks	Rule 2.4.4—Risk management (in part) Rule 2.4.11—Recovery and resolution
15 General business risk	Rule 2.4.4—Risk management (in part) Rule 2.4.7—Financial resources
17 Operational risk	Rule 2.4.4—Risk management (in part) Rule 2.4.8—Integrity and security of computer systems and other systems Rule 2.4.9—Operational reliability Rule 2.4.10—Business continuity
18 Access and participation	Rule 2.2.2—Access and participation requirements
19 Tiered participation arrangements	Rule 2.2.2—Access and participation requirements (in part) Rule 2.4.4—Risk management (in part)
20 Financial market infrastructure links	Rule 2.4.4—Risk management (in part)
21 Efficiency and effectiveness	Rule 2.2.3—Security, efficiency and effectiveness of services Rule 2.4.5—Resources
22 Communication procedures and standards	Rule 2.3.6—Communication procedures and standards
23 Disclosure of rules, key procedures and market data	Rule 2.5.1— Disclosure of rules, procedures and other information Rule 2.5.2—Public disclosures
24 Disclosure of market data by trade repositories	Rule 2.3.4—Provision of access to derivative trade data Rule 2.3.5—Creation and disclosure of statistical data

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose that when preparing an ADTR licence application under s905B, an applicant must provide the information and documentation referred to in draft RG 000.53–RG 000.63 and Appendix 2 of the draft regulatory guide.</p>	<p>B1Q1 Do you agree with the scope of the required information and documentation, having regard to our responsibility to monitor, assess and enforce an ADTR licensee’s compliance with the derivative trade repository rules?</p>
<p>B2 We propose to adopt the approach to the imposition of licence conditions on an ADTR licence, including the scope of conditions, set out in draft RG 000.42–RG 000.50.</p>	<p>B2Q1 Do you agree with our approach to imposing ADTR licence conditions and the proposed areas in which conditions may be imposed?</p> <p>B2Q2 Do you believe there should be other considerations applied in relation to determining any financial resource conditions?</p>
<p>B3 We propose to adopt the approach to granting exemptions set out in Section C of the draft regulatory guide.</p>	<p>B3Q1 Do you agree with our proposed approach to granting exemptions?</p> <p>B3Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>B4 In relation to licensed overseas trade repositories, we propose to adopt the approach of:</p> <ul style="list-style-type: none"> (a) exempting overseas trade repositories from substantive parts of the Australian regime in accordance with the considerations set out in draft RG 000.106–RG 000.107; (b) accepting reliance (in whole or in part) on compliance with overseas regulation set out in draft RG 000.88–RG 000.105; or (c) adopting a combined approach by seeking to rely on compliance with home regulation, as well as potentially exempting the foreign operator from specific relevant obligations under the Corporations Act or the draft derivative trade repository rules. 	<p>B4Q1 Do you agree with our proposed approach to overseas trade repositories?</p> <p>B4Q2 Do you consider that any particular option is more effective or efficient than the other, while still achieving the appropriate regulatory outcomes?</p> <p>B4Q3 What is the likely impact of each of our proposed options? (Please see page 4 for the information required.)</p>
<p>We propose to adopt the approach that is most appropriate to the circumstances of the particular case.</p>	

Proposal	Your feedback
<p>C1 We propose that an ADTR licensee must:</p> <ul style="list-style-type: none"> (a) ensure there is a clear, transparent and enforceable legal basis, including rules, procedures and contractual arrangements, for each material aspect of the trade repository's services; (b) have documented and enforceable rules, procedures and contractual arrangements in relation the acceptance, retention, use, disclosure and provision of access to derivative trade data: <ul style="list-style-type: none"> (i) that clearly define the legal status of the derivative trade data retained by the licensee; (ii) that clearly define the rights and obligations of the licensee, users and, if applicable, indirect participants; (iii) that clearly define procedures for the resolution of disputes; and (iv) that are consistent with the derivative trade repository rules, the derivative transaction rules, the corporations legislation and any other applicable laws of a state or territory or laws of the Commonwealth; and (c) if the licensee provides services in multiple jurisdictions—take all reasonable steps to identify and manage any risks arising from any potential conflict of laws across those jurisdictions. <p>See draft Rule 2.2.1 and draft RG 000.160–RG 000.164.</p>	<p>C1Q1 Do you agree with draft Rule 2.2.1?</p> <p>C1Q2 Do you agree with our examples of material aspects of an ADTR licensee's activities, as set out in draft RG 000.163–RG 000.164?</p>

Proposal	Your feedback
<p>C2 We propose that an ADTR licensee must:</p> <ul style="list-style-type: none"> (a) have objective criteria for access to and participation in the trade repository's services that permit open and non-discriminatory participation and access; (b) have reasonable criteria designed to ensure users and, if applicable, indirect participants, do not pose undue risks to the secure, efficient and effective operation of its trade repository, but must not otherwise unreasonably prohibit, condition or limit access or participation; and (c) monitor compliance with its access and participation criteria and have procedures for disciplining, suspending or facilitating the orderly exit of participants or other users that breach or no longer meet the criteria or conditions. <p>See draft Rule 2.2.2.</p>	<p>C2Q1 Do you agree with draft Rule 2.2.2?</p> <p>C2Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C3 We propose that an ADTR licensee must:</p> <ul style="list-style-type: none"> (a) ensure that the trade repository's services are provided at all times in a secure, efficient and effective manner; and (b) establish, implement and maintain mechanisms for regularly reviewing whether the trade repository is efficient and effective in meeting the requirements of its users, Australian regulators and the markets it serves. <p>See draft Rule 2.2.3 and draft RG 000.165–RG 000.167.</p>	<p>C3Q1 Do you agree with draft Rule 2.2.3 and the associated guidance in draft RG 000.165–RG 000.167?</p> <p>C3Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C4 We propose that an ADTR licensee must:</p> <ul style="list-style-type: none"> (a) establish, implement and maintain policies, procedures, systems and controls for the reporting of derivative trade data to the licensee and must accept from participants derivative trade data for all classes of derivative specified in the conditions of the licence; (b) establish, implement and maintain policies, procedures, systems and controls for: <ul style="list-style-type: none"> (i) maintaining a continuous, reliable and secure connection between the licensee and participants for the purposes of accepting derivative trade data; and (ii) ensuring that derivative trade data 	<p>C4Q1 Do you agree with draft Rule 2.3.1?</p> <p>C4Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>reported to the licensee by participants is and remains at all times complete, accurate and current.</p> <p>See draft Rule 2.3.1.</p>	
<p>C5 We propose that:</p> <p>(a) subject to any direction given by ASIC under s904K, an ADTR licensee must:</p> <p>(i) ensure that all derivative trade data accepted by the licensee, and each alteration and correction to that derivative trade data, is recorded on a timely basis;</p> <p>(ii) maintain derivative trade data it receives from a user for five years after the termination of the transaction that the derivative trade data relates to, in a secure location and in an electronic format, immediately accessible by the licensee; and</p> <p>(iii) maintain a backup copy of the data in a secure location in an electronic format and separate from the main record, accessible by the licensee within three business days; and</p> <p>(b) have policies, procedures, systems and controls designed to ensure that the operator, its officers and employees comply with s904B in handling, using and disclosing derivative trade data.</p> <p>See draft Rules 2.3.2 and 2.3.3.</p>	<p>C5Q1 Do you agree with draft Rules 2.3.2 and 2.3.3?</p> <p>C5Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C6 We propose that an ADTR licensee will be subject to the requirements in draft Rule 2.3.4, which provides for access:</p> <p>(a) to derivative trade data by users;</p> <p>(b) by Australian regulators (ASIC, APRA and the RBA); and</p> <p>(c) where identified foreign regulators have been prescribed by regulations, by those regulators subject to certain criteria being met.</p> <p>Draft Rule 2.3.4 also provides for the confidential treatment of that data and the confidentiality of any access requests by regulators.</p>	<p>C6Q1 Do you agree with draft Rule 2.3.4?</p> <p>C6Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>C7 We propose that an ADTR licensee will be subject to the requirements on the creation and disclosure of statistical data in draft Rule 2.3.5.</p>	<p>C7Q1 Do you agree with draft Rule 2.3.5?</p> <p>C7Q2 Should ADTR licensees be subject to post-trade transparency obligations at the individual transaction level, rather than only at the aggregate data level?</p> <p>C7Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C8 We propose that an ADTR licensee must use or, at a minimum, accommodate, relevant internationally accepted communication procedures and standards to facilitate accurate, consistent, efficient and reliable acceptance, retention, use, disclosure and provision of access to derivative trade data by the trade repository: see draft Rule 2.3.6.</p>	<p>C8Q1 Do you agree with draft Rule 2.3.6 and the associated guidance in draft RG 000.168–RG 000.169?</p> <p>C8Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C9 We propose that an ADTR licensee must have documented governance and management arrangements that:</p> <ul style="list-style-type: none"> (a) are clear and transparent; (b) promote the secure, efficient and effective operation of its services; (c) support the stability of the broader financial system, other relevant public interest considerations, and the objectives of users; and (d) provide for: <ul style="list-style-type: none"> (i) clear and direct lines of accountability; (ii) clearly defined roles and responsibilities, including on risk management; (iii) clearly defined decision-making processes, including processes for decision making in crises and emergencies, and processes for ensuring significant decisions on the design, rules or overall strategy of its services take into account the objectives of users and, where appropriate, are disclosed to users; and (iv) the internal control function to be exercised by persons with adequate authority, independence, resources and access to the governing body and management to perform their control function. <p>See draft Rule 2.4.1 and draft RG 000.171.</p>	<p>C9Q1 Do you agree with draft Rule 2.4.1 and the associated guidance in draft RG 000.171?</p> <p>C9Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>C10 We propose that an ADTR licensee must establish, implement and maintain documented arrangements for identifying and effectively managing (including by avoiding, controlling or disclosing) any actual or potential conflicts between:</p> <ul style="list-style-type: none"> (a) the interests of the licensee, its related bodies corporate or members of the licensee's governing body, and the interests of users; (b) the interests of different users; and (c) the interests of the licensee, its related bodies corporate or members of the licensee's governing body, and the need to ensure its services are provided in a secure, efficient and effective manner. <p>See draft Rule 2.4.2 and draft RG 000.172–RG 000.176. Our draft regulatory guidance also addresses the desirability of a conflicts register: see draft RG 000.176.</p>	<p>C10Q1 Do you agree with draft Rule 2.4.2 and the associated guidance in draft RG 000.172–RG 000.176?</p> <p>C10Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C11 We propose that an ADTR licensee must:</p> <ul style="list-style-type: none"> (a) establish, implement, maintain and enforce policies, procedures, systems and controls for monitoring and enforcing compliance by its officers and employees with the derivative trade repository rules, the derivative transaction rules, the corporations legislation and any other applicable laws of a state or territory or laws of the Commonwealth; and (b) ensure that the arrangements, rules, procedures, policies, systems and controls required by draft Chapter 2 are reviewed, audited and tested periodically and after significant changes. <p>See draft Rule 2.4.3 and draft RG 000.177–RG 000.178.</p>	<p>C11Q1 Do you agree with draft Rule 2.4.3 and the associated guidance in draft RG 000.177–RG 000.178?</p> <p>C11Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>C12 We propose that an ADTR licensee must:</p> <ul style="list-style-type: none"> (a) establish, implement and maintain policies, procedures, systems and controls that enable it to identify, measure, monitor and effectively manage risks to the secure, efficient or effective operation of the trade repository, including legal, operational and business risks; and (b) in establishing its risk management framework, take into account, at a minimum, legal, operational and business risks that may arise from or to users, indirect participants, operational and contractual arrangements with linked providers, and the provision of non-trade reporting (including ancillary) services. <p>See draft Rule 2.4.4 and draft RG 000.179–RG 000.187.</p>	<p>C12Q1 Do you agree with draft Rule 2.4.4 and the associated guidance in draft RG 000.179–RG 000.187?</p> <p>C12Q2 Do you agree that we should consider ancillary services and the risks posed in the way proposed?</p> <p>C12Q3 Do you agree that we should consider linked providers and the risks posed in the way proposed?</p> <p>C12Q4 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C13 We propose that an ADTR licensee must:</p> <ul style="list-style-type: none"> (a) establish and maintain sufficient and appropriate human, technological and financial resources to ensure that it operates, at all times, securely, efficiently and effectively; (b) ensure, at all times, its officers, managers and employees are fit for office having regard to the experience, qualifications and skills necessary to perform their respective roles and responsibilities in the governance, management and operation of its services; (c) hold, at all times, net assets funded by equity (such as shares, disclosed reserves or other retained earnings) that at a minimum, are equal to an amount that would enable the licensee to cover at least six months of current operating expenses, calculated on a rolling basis at the end of each month; and (d) maintain a viable plan for raising additional equity should its equity fall close to or below the amount needed under draft Rule 2.4.7(1), which is approved by its governing body and updated regularly. <p>See draft Rules 2.4.5, 2.4.6 and 2.4.7, and draft RG 000.188–RG 000.192.</p>	<p>C13Q1 Do you agree with draft Rules 2.4.5, 2.4.6 and 2.4.7, and the associated guidance in draft RG 000.188–RG 000.192?</p> <p>C13Q2 Do you agree that the minimum financial resource requirements in draft Rule 2.4.7 are an adequate minimum?</p> <p>C13Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>C14 We propose that an ADTR licensee must establish, implement, maintain and enforce policies and procedures, and physical and electronic controls over its systems, for accepting, retaining, using, disclosing and providing access to derivative trade data, designed to:</p> <ul style="list-style-type: none"> (a) maintain the integrity, security and confidentiality of derivative trade data, at all times, during transmission between the trade repository, Australian regulators and users, and while retained by the trade repository; and (b) prevent unauthorised use and disclosure of, and access to, derivative trade data. <p>See draft Rule 2.4.8 and draft RG 000.193–RG 000.194.</p>	<p>C14Q1 Do you agree with draft Rule 2.4.8 and the associated guidance in draft RG 000.193–RG 000.194?</p> <p>C14Q2 Are there any other requirements regarding data integrity and security that should be imposed on ADTR licensees?</p> <p>C14Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C15 We propose that an ADTR licensee must meet the following minimum requirements:</p> <ul style="list-style-type: none"> (a) operational reliability and sufficient scalable capacity to meet its obligations; (b) plans for communications in the event of operational outages and other disruptions to its services; (c) business continuity, backup and data recovery plans in the event of disruption to enable the timely restoration of services; and (d) identification of scenarios that may potentially prevent it from being able to provide its critical services as a going concern and provide for recovery and orderly wind-down options. <p>See draft Rules 2.4.9, 2.4.10 and 2.4.11, and draft RG 000.195–RG 000.197.</p>	<p>C15Q1 Do you agree with draft Rules 2.4.9, 2.4.10 and 2.4.11, and the associated guidance in draft RG 000.195–RG 000.197?</p> <p>C15Q2 Are there any other requirements regarding data security and integrity that should be imposed on ADTR licensees?</p> <p>C15Q3 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>C16 We propose that, where the ADTR licensee, a subsidiary of the ADTR licensee's holding company, or any other company with which the ADTR licensee has a material agreement in connection with trade reporting services, provides non-reporting (including ancillary) services, the ADTR licensee must:</p> <ul style="list-style-type: none"> (a) disclose to ASIC a description of all such non-reporting services and update the disclosure as soon as practicable after any changes to such non-reporting services; and (b) establish, implement, maintain and enforce policies, procedures, systems and controls designed to ensure that there is operational separation between the non-reporting services and the trade reporting services. <p>See draft Rule 2.4.12.</p>	<p>C16Q1 Do you agree with draft Rule 2.4.12?</p> <p>C16Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C17 We propose that where an operator outsources any trade reporting services (or any activities that are part of, or intrinsic to, trade reporting services), they must:</p> <ul style="list-style-type: none"> (a) ensure that the outsourcing arrangement is covered by a contract that is in writing; (b) establish documented policies, procedures, systems and controls to ensure that the operator continues to comply with their obligations under the Corporations Act and the draft derivative trade repository rules; (c) maintain access to books and records relating to the trade reporting services; and (d) ensure that Australian regulators have the same access to records and information as they would if there were no outsourcing arrangements. <p>See draft Rule 2.4.13.</p>	<p>C17Q1 Do you agree with draft Rule 2.4.13?</p> <p>C17Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>

Proposal	Your feedback
<p>C18 We propose that an ADTR licensee must:</p> <ul style="list-style-type: none"> (a) disclose to participants its rules and procedures (which, under draft Rule 2.2.1, would set out the licensee's and participant's rights and obligations); (b) disclose to participants its commitments on minimum service levels and operational reliability; (c) to the extent it would not compromise its security or integrity or require the disclosure of commercially sensitive information, disclose information about: <ul style="list-style-type: none"> (i) the system's design and operation; and (ii) any other information reasonably required by the participant to assess the risks and costs of participation (see draft Rules 2.5.2(1)–(2)); (d) notify ASIC and participants of any material changes proposed to any of its access or participation criteria or fees, rates and charges within a reasonable timeframe before the change is implemented (see draft Rule 2.5.1(3)); and (e) disclose to the public the information set out in draft Rule 2.5.2 and, at all times, keep the disclosures complete, accurate and up-to-date. <p>See draft Rules 2.5.1 and 2.5.2, and draft RG 000.198.</p>	<p>C18Q1 Do you agree with draft Rules 2.5.1 and 2.5.2, and the associated guidance in draft RG 000.198?</p> <p>C18Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C19 We propose that an ADTR licensee must give ASIC an annual compliance report, which would be required to be submitted to ASIC within three months of the end of the licensee's financial year, on the extent to which it has complied with its obligations under the derivative trade repository rules. ASIC may also request an audit of the annual compliance report.</p> <p>See draft Rule 2.6.1 and draft RG 000.199–RG 000.201.</p>	<p>C19Q1 Do you agree with draft Rule 2.6.1 and the associated guidance in draft RG 000.199–RG 000.201?</p> <p>C19Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C20 We propose that an ADTR licensee must notify ASIC of criminal and civil proceedings, disciplinary action and changes in regulatory requirements, in this and other jurisdictions: see draft Rule 2.6.2.</p>	<p>C20Q1 Do you agree with draft Rule 2.6.2?</p>

Proposal	Your feedback
<p>C21 We propose that an ADTR licensee must notify ASIC as soon as practicable after it becomes aware that a person has come to have, or has ceased to have, more than 15% of the voting power in the licensee or in a holding company of the licensee: see draft Rule 2.6.3.</p>	<p>C21Q1 Do you agree with draft Rule 2.6.3?</p> <p>C21Q2 Are there any other requirements on control that ASIC should impose? For example, would a prohibition on acquisition of more than a certain percentage of control in an entity that is not a trade repository (including trade repositories in other jurisdictions) be appropriate?</p>
<p>C22 We propose that, in the event that an ADTR licensee experiences a system disruption (due to delay, suspension or termination of any systems, including those resulting from any system failure), or a breach of the security, integrity or confidentiality of derivative trade data, the licensee must:</p> <ul style="list-style-type: none"> (a) notify ASIC of the disruption or breach as soon as practicable; and (b) within 14 days of the disruption or breach, provide a report to ASIC setting out the circumstances of the disruption or breach, the remedial actions already taken, and any subsequent actions the licensee will take in response to the circumstances. <p>See draft Rule 2.6.4.</p>	<p>C22Q1 Do you agree with draft Rule 2.6.4?</p> <p>C22Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C23 We propose that an ADTR licensee must:</p> <ul style="list-style-type: none"> (a) keep records that enable it to demonstrate it has complied with the derivative trade repository rules for five years; (b) provide such records or other information to ASIC upon request; and (c) keep the records in English or readily convertible to English. <p>See draft Rules 2.7.1, 2.7.2 and 2.7.3.</p>	<p>C23Q1 Do you agree with draft Rules 2.7.1, 2.7.2 and 2.7.3?</p> <p>C23Q2 What is the likely impact of our proposals? (Please see page 4 for the information required.)</p>
<p>C24 We propose that:</p> <ul style="list-style-type: none"> (a) the maximum penalty amount for each derivative trade repository rule that includes a penalty be 1,000 penalty units; and (b) the same maximum amount apply across all rules for consistency and to preserve flexibility. 	<p>C24Q1 What are your views on an appropriate maximum penalty amount for each of the draft derivative trade repository rules?</p>