



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 221

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

July 2014

## **About this paper**

This consultation paper seeks feedback on our proposals to amend the ASIC Derivative Transaction Rules (Reporting) 2013.

The draft rules attached to this paper set out our proposed amendments, which seek to reduce compliance costs for reporting entities and ensure that regulators obtain comprehensive and complete derivative trade data.

### 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 25 July 2014 and is based on the Corporations Act as at the date of issue.

### 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

You are invited to comment on the proposals in this paper, 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 alternative approaches. 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.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on derivative transaction reporting. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section E, 'Regulatory and financial impact'.

### Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous, we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at [www.asic.gov.au/privacy](http://www.asic.gov.au/privacy) for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by Friday, 29 August 2014 to:

Laurence White  
Senior Manager, OTC Derivatives Reform  
Financial Market Infrastructure  
Australian Securities and Investments Commission  
GPO Box 9827  
Melbourne VIC 3001  
email: [OTCD@asic.gov.au](mailto:OTCD@asic.gov.au)  
queries: Benjamin Cohn-Urbach 02 9911 2029

## What will happen next?

<b>Stage 1</b>	25 July 2014	ASIC consultation paper and draft amended derivative transaction rules (reporting) released
<b>Stage 2</b>	29 August 2014	Comments due on the consultation paper
<b>Stage 3</b>	Late 2014	Final derivative transaction rules (reporting) made

## A Background to the proposals

### Key points

Derivative transaction reporting is the reporting of over-the-counter (OTC) derivative transaction information to trade repositories, and is a key element of the OTC derivatives reform agenda agreed to by the G20. In Australia, different types of reporting entities have begun (or will soon begin) reporting OTC derivative transactions in three phases.

In the course of implementing Phase 1 and Phase 2 of the derivative transaction reporting regime, we have engaged extensively with relevant industry participants and domestic and international regulators on the policy and technical issues that we have identified.

In this paper, we consult on three options to address these issues. Our recommended option proposes amendments to the ASIC Derivative Transaction Rules (Reporting) 2013, which seek to reduce compliance costs for reporting entities and ensure that regulators obtain comprehensive and complete derivative trade data.

### The G20 OTC derivatives reform agenda

1 In response to the global financial crisis, the leaders of the G20 (including Australia) agreed to a range of reforms to OTC derivatives markets at the 2009 Pittsburgh summit. These reforms included:

- (a) mandatory reporting of OTC derivative transactions to trade repositories;
- (b) requiring all standardised OTC derivative transactions to be made on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties; and
- (c) requiring non-centrally cleared transactions to be subject to higher capital requirements.

Note: In November 2011, the G20 leaders also agreed that international standards should be developed for margin requirements of non-centrally cleared OTC derivatives.

### What is transaction reporting?

2 Transaction reporting is the mandatory reporting of information about OTC derivative transactions to a derivative trade repository. A trade repository acts as a centralised registry that maintains an electronic database of records of transactions.

## Implementation of transaction reporting in Australia

- 3 In 2012, Parliament passed the *Corporations Legislation Amendments (Derivatives Transactions) Act 2012*. The legislation provided a framework for the Minister to mandate requirements for derivative transactions, and for ASIC to make rules in respect of these requirements. The legislation came into force on 3 January 2013.
- 4 In March 2013, ASIC issued Consultation Paper 205 *Derivative transaction reporting* (CP 205), which proposed derivative transaction reporting rules for the Australian OTC derivatives market and the phased implementation of reporting obligations for different types of entities.
- 5 On 9 July 2013, ASIC made the ASIC Derivative Transaction Rules (Reporting) 2013. Consistent with the draft rules attached to CP 205, the final derivative transaction rules (reporting) allowed for the implementation of reporting obligations in three phases for different types of reporting entities.

Note: In this paper, 'derivative transaction rules (reporting)' refer to the ASIC Derivative Transaction Rules (Reporting) 2013.
- 6 Also in July 2013, ASIC released Report 357 *Response to submissions on CP 205 Derivative transaction reporting* (REP 357). REP 357 provided responses to the feedback we received on CP 205.
- 7 On 27 June 2014, we made Instrument [14/0633] *Transitional exemptive relief for Phase 3 Reporting Entities from elements of the ASIC Derivative Transaction Rules (Reporting) 2013* under s907D(2)(a) of the Corporations Act. The class exemption [14/0633] has the effect of splitting Phase 3 reporting entities into Phase 3A and Phase 3B, and provides for a further phased implementation of the reporting obligations for these entities, with Phase 3B reporting entities not required to report transaction information until a later date.
- 8 Table 1 sets out the types of reporting entities included in each phase, and the relevant start dates for each type of reporting entity (taking into account the class exemption).

**Table 1: Implementation phases for transaction reporting**

Phase	Type of reporting entity	Transaction reporting start date	Position reporting start date
Opt-in phase	Counterparties that wish to opt in	As specified in the opt-in notice	As specified in the opt-in notice (but before 1 October 2014)
Phase 1	US Commodity Futures Trading Commission registered swap dealers	1 October 2013	1 October 2014
Phase 2	Major financial entities (with \$50 billion or more gross notional outstanding OTC derivative positions)	1 April 2014 (interest rate and credit derivatives)	1 October 2014 (interest rate and credit derivatives)
		1 October 2014 (all other classes of OTC derivatives)	1 April 2015 (all other classes of OTC derivatives)
Phase 3 (under the original derivative transaction rules (reporting))	Other Australian financial services (AFS) licensees, authorised deposit-taking institutions (ADIs), clearing and settlement (CS) facility licensees and exempt foreign entities	1 October 2014 (interest rate and credit derivatives)	1 April 2015 (interest rate and credit derivatives)
		1 April 2015 (all other classes of OTC derivatives)	1 October 2015 (all other classes of OTC derivatives)
Phase 3 (as amended by the class exemption [14/0633])	Phase 3A: entities with \$5 billion or more gross notional outstanding OTC derivative positions	Approximately* seven months after the first trade repository is licensed in Australia, but not before 13 April 2015 (interest rate and credit derivatives)	Approximately* six months after transaction reporting commences
		Approximately* 13 months after the first trade repository is licensed in Australia, but no later than 12 October 2015 (all other classes of OTC derivatives)	Approximately* six months after transaction reporting commences
		Phase 3B: entities with less than \$5 billion gross notional outstanding OTC derivative positions	Approximately* 13 months after the first trade repository is licensed in Australia, but no later than 12 October 2015

\* The exact start dates for transaction and position reporting by Phase 3A and 3B entities under the class exemption are designated to be a Monday that is a business day. It is therefore not necessarily an exact number of months after the first trade repository is licensed in Australia, or after transaction reporting commences.



## ASIC's engagement with industry

9 In the lead-up to the commencement of Phase 1 and Phase 2, we engaged extensively with industry to seek to ensure the smooth implementation of the reporting obligations. We did this by establishing working groups with representatives of industry associations and relevant reporting entities.

10 Through our engagement with industry, we identified a number of implementation issues. In some cases, these issues were addressed by giving time-limited relief in the form of waivers. That relief was justified and given within the policy set out in Regulatory Guide 51 *Applications for Relief* (RG 51).

Note: These waivers include a number of ASIC class orders and individual relief instruments. A summary of these, as well as the instruments themselves, are available on the 'Derivative transaction reporting' page of our website at: [www.asic.gov.au/asic/ASIC.NSF/byHeadline/Derivative%20transaction%20reporting](http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Derivative%20transaction%20reporting).

11 We also identified a number of issues where the derivative transaction rules (reporting) have either:

- (a) imposed compliance costs on reporting entities that are disproportionate to the regulatory benefits gained from obtaining the relevant data; or
- (b) led to undesirable 'gaps' in reporting (i.e. regulators and the market do not have access to comprehensive and complete information that is relevant to the Australian financial markets).

## Options considered in this consultation paper

12 To address the implementation issues that we identified during our engagement with industry (see paragraph 10), we are considering the following three options.

### Option 1

13 Under Option 1 (not recommended), we propose to maintain the derivative transaction rules (reporting) as they are, without amendment.

### Option 2

14 Under Option 2 (recommended), we propose to amend the derivative transaction rules (reporting) to help minimise compliance costs and to ensure that derivative trade data is comprehensive and complete.

15 We propose to:

- (a) make the following technical amendments to the derivative transaction rules (reporting):

- (i) incorporate ‘snapshot reporting’ as a permanent reporting option;
  - (ii) allow foreign entities to report to prescribed trade repositories in jurisdictions other than the jurisdiction in which they are incorporated;
  - (iii) require foreign entities that use alternative reporting arrangements to ‘tag’ transactions as being reported under the derivative transaction rules (reporting);
  - (iv) amend the definition of ‘regulated foreign market’;
  - (v) require Australian reporting entities to report to a prescribed trade repository if a licensed trade repository is not available; and
  - (vi) remove Australian Business Numbers (ABNs) from the hierarchy of entity identifiers that must be reported by reporting entities if a global ‘legal entity identifier’ (LEI) is not available: see Section B;
- (b) require foreign subsidiaries of Australian financial entities to report OTC derivative transactions, if the subsidiary meets a materiality threshold (see Section C); and
  - (c) amend the derivative transaction rules (reporting) for delegated reporting to provide a ‘safe harbour’ from enforcement action if certain conditions are met (see Section D).

### Option 3

16 Under Option 3 (not recommended), we propose to make the same rule changes as set out in paragraphs 15(a) and 15(c) above. In relation to reporting by foreign subsidiaries, Option 3 would amend the derivative transaction rules (reporting) to require *all* (and not just some) foreign subsidiaries of Australian financial entities to report OTC derivative transactions (as proposed in CP 205).

### Proposal

- A1 We are considering three options (see paragraphs 12–16):
- (a) Option 1: Maintain the derivative transaction rules (reporting) as they are, without amendment. *Not recommended.*
  - (b) Option 2: Make specific amendments to the derivative transaction rules (reporting) to help minimise compliance costs and ensure that derivative trade data is comprehensive and complete. *Recommended.*
  - (c) Option 3: In addition to the proposed amendments in Option 2, amend the derivative transaction rules (reporting) to require *all* (and not just some) foreign subsidiaries of Australian financial entities to report OTC derivative transactions. *Not recommended.*

We recommend Option 2, and are therefore consulting in detail on this option.

**Your feedback**

- A1Q1 Do you agree with our recommended option (Option 2)? If not, why not?
- A1Q2 Will Option 2 reduce the compliance costs that you will incur in implementing OTC derivative transaction reporting? If so, please provide details.
- A1Q3 Please provide your specific feedback in relation to Option 2 by responding to the detailed proposals set out in Sections B–D of this paper.
- A1Q4 Do you think that we should adopt Option 1? Please give reasons for your answer.
- A1Q5 Do you think that we should adopt Option 3? Please give reasons for your answer.
- A1Q6 Are there any other options we should consider to meet our regulatory objective of minimising compliance costs while ensuring that trade data is comprehensive and complete?

**Rationale****Option 1**

- 17 We do not recommend Option 1 because it does not address the current issues of excessive compliance costs or data gaps. Leaving the derivative transaction rules (reporting) as they are would mean that reporting entities will continue to bear higher compliance costs than if Options 2 or 3 were implemented, and leave regulators unable to access comprehensive and complete derivative trade data.

**Option 2**

- 18 Our proposals in Option 2 (our recommended option) are designed to address the issues we have identified under the current derivative transaction rules (reporting) that either impose unnecessary compliance costs on reporting entities or cause ‘gaps’ in derivative trade data reported to regulators.
- 19 Sections B–D set out in detail our proposals for Option 2 and our rationale for each proposal. We are seeking your feedback on these proposals.

**Option 3**

- 20 In addition to making the rule changes proposed in Option 2—which include requiring foreign subsidiaries of Australian financial entities to report derivative transactions, if the subsidiary meets a materiality threshold—we believe there is also some regulatory interest in transactions made by *any* foreign subsidiary of an Australian financial entity. This is because any

foreign subsidiary of an Australian financial entity can have an impact on the financial position of the Australian entity.

- 21 Where foreign subsidiaries of Australian financial entities are already reporting under foreign rules that are substantially equivalent to Australian rules, there is no additional burden on the foreign subsidiaries. Therefore, this option would only involve additional reporting by subsidiaries in jurisdictions that do not have substantially equivalent reporting requirements.
- 22 On balance, we believe that the threshold for foreign subsidiaries of Australian financial entities, as proposed in Section C, is appropriate. This recognises that the risk from smaller foreign subsidiaries is likely to be lower than the risk from larger foreign subsidiaries, and that the reporting requirement may create a disproportionate cost for smaller foreign subsidiaries and their Australian parent financial entities. We therefore believe that a threshold, as proposed in Section C, will ensure that Australian regulators obtain the most useful information about larger foreign subsidiaries, while not imposing disproportionate costs on smaller foreign subsidiaries.
- 23 We have considered how the threshold should be determined, and we are proposing that it should be defined by reference to gross notional outstanding OTC derivative positions of \$5 billion to be applied at the entity level but aggregated across foreign subsidiaries incorporated in the same jurisdiction. We are conscious that this could lead to reporting entities seeking to ensure that their transactions in each jurisdiction are below the threshold in order to avoid transaction reporting. We would therefore propose to keep the question of whether the threshold should be applied on a global level under review.

## B Technical amendments to the derivative transaction rules (reporting)

### Key points

Under Option 2 (see proposal A1(b)), we propose to make technical amendments to the derivative transaction rules (reporting) to help reduce compliance costs and ensure that comprehensive and complete derivative trade data is provided to ASIC. Our proposed amendments include:

- incorporating 'snapshot reporting' as a permanent transaction reporting option (see proposal B1);
- allowing foreign entities that use alternative reporting arrangements to report to prescribed trade repositories in jurisdictions other than the jurisdiction in which they are incorporated or formed (see proposal B2);
- requiring foreign entities that use alternative reporting arrangements to 'tag' transactions as being reported under the derivative transaction rules (reporting) (see proposal B3);
- amending the definition of 'regulated foreign market' (see proposal B4);
- requiring Australian reporting entities to report to a prescribed trade repository if a licensed trade repository is not available (see proposal B5); and
- removing Australian Business Numbers (ABNs) from the hierarchy of entity identifiers that must be reported by reporting entities if a global 'legal entity identifier' (LEI) is not available (see proposal B6).

## Snapshot reporting

### Proposal

**B1** We propose to amend Rule 2.2.1 to allow reporting entities to meet their reporting obligations in relation to an OTC derivative by either:

- (a) reporting transaction information separately for each reportable transaction in the OTC derivative ('lifecycle reporting'); or
- (b) reporting transaction information, or substantially equivalent information, in relation to the OTC derivative on its terms at the end of each business day ('snapshot reporting').

Note: In this paper, Rule 2.2.1 (for example) refers to a rule of the derivative transaction rules (reporting) (in this example, numbered 2.2.1).

### *Your feedback*

B1Q1 Do you agree with this proposal? If not, why not?

B1Q2 Will this proposal reduce your costs of implementing transaction reporting? If so, please provide details.

- B1Q3 Taking into account the varying record-keeping practices and requirements applicable to relevant OTC derivatives market participants, are records currently maintained in a form that would support the accurate recording of transactions (including 'time stamping') to facilitate investigations by financial regulators into (for example) market abuse in OTC derivatives markets (in the absence of a transaction-by-transaction reporting obligation)?
- B1Q4 Do you support an exception to snapshot reporting being made for intraday trades (i.e. trades that are opened and closed on the same day, leaving no net end-of-day position)? What would the costs and benefits of such an exception be?
- B1Q5 Would you support a reversion to transaction-by-transaction reporting at some point in the future (e.g. if ASIC were in a position to undertake proactive and automated analysis of data in its supervision of market conduct)?

## Rationale

- 24 Snapshot (or end-of-day) reporting is a form of transaction reporting that requires reporting entities to report individual positions at the end of each business day. Snapshot reporting removes the requirement for entities to report intraday modifications to transactions.
- 25 The derivative transaction rules (reporting) currently require lifecycle reporting, with a T+1 delay. This means that reporting entities must report every modification and amendment to a transaction, even if the transaction is subsequently modified or amended on the same day. To assist with the implementation of the reporting obligations, we have previously given time-limited relief to Phase 1 and Phase 2 reporting entities to allow them to report in the form of snapshot reporting.
- Note: 'T+1' refers to the business day following the transaction date.
- 26 A number of reporting entities have told us that they have already implemented reporting systems that support snapshot reporting. This has, in part, been based on reporting requirements in other jurisdictions that allow for snapshot reporting. Therefore, requiring lifecycle reporting could impose significant initial and ongoing compliance costs on reporting entities.
- 27 Incorporating snapshot reporting into the derivative transaction rules (reporting) could potentially reduce compliance costs to business. It would also make it more feasible for Phase 3 reporting entities to report transactions, or to delegate the reporting of transactions to counterparties or service providers.

- 28 We believe that allowing reporting entities to implement snapshot reporting would allow reporting entities to provide regulators with adequate information to meet their regulatory objectives, from the perspective of financial stability oversight.
- 29 On the other hand, from the market misconduct perspective, valuable information might be lost if individual transactions are no longer required to be reported. While the financial stability objective of the transaction reporting obligations is paramount, prevention and detection of market abuse is an important part of ASIC's regulatory remit which can be furthered by the reporting and analysis of granular OTC derivative data.
- 30 If firms are not keeping records from which a full transaction history can be reconstructed, a move to snapshot reporting could impair the fulfilment of our regulatory objectives in relation to market integrity. Because reporting entities cover a range of different counterparty types (including ADIs, AFS licensees and foreign exempt licensees), which are subject to varying record-keeping obligations, we seek feedback on whether existing record-keeping practices would be sufficient to reconstruct a full transaction history in the absence of a transaction-by-transaction reporting obligation.
- 31 Furthermore, from a market integrity perspective, a particular 'loss' resulting from a move to snapshot reporting would be that intraday transactions (i.e. those opened and closed on the same day) would not be reported. We would be interested in the costs and benefits that would attach to the option of requiring these transactions to be reported individually.
- 32 Depending on the level of any concern about market misconduct in OTC derivatives markets, we consider that it may be appropriate to revert to transaction-by-transaction reporting at some point in the future (e.g. if ASIC were in a position to undertake proactive and automated analysis of the data, similar to its oversight of exchange-traded derivatives markets covered by Pt 7.2A of the Corporations Act).

## Alternative reporting to prescribed trade repositories by foreign reporting entities

### Allowing a wider range of prescribed trade repositories to be used under alternative reporting

#### Proposal

- B2** We propose to amend Rule 2.2.1(3) to allow foreign reporting entities that use alternative reporting under that rule to report to prescribed trade repositories in jurisdictions other than the jurisdiction in which the foreign reporting entity is incorporated or formed.

*Your feedback*

B2Q1 Do you agree with this proposal? If not, why not?

B2Q2 Will allowing the use of alternative reporting reduce your costs of implementing transaction reporting? If so, please provide details.

**Rationale**

- 33 The alternative reporting exception in Rule 2.2.1(3) is intended to relieve foreign reporting entities from the requirement to report under the derivative transaction rules (reporting) when they have already reported a transaction under a sufficiently equivalent reporting regime, or when the relevant transaction is exempt from being reported under that regime.
- 34 The current wording of Rule 2.2.1(3) may be too narrow to relieve foreign reporting entities from the requirement to report under the derivative transaction rules (reporting) when the foreign reporting entity is required to report to a prescribed trade repository that is not incorporated in the same jurisdiction as the entity.
- 35 We propose to amend Rule 2.2.1(3) to remove the connection between the jurisdiction of incorporation of the reporting entity and the jurisdiction of incorporation of the trade repository.
- 36 We consider that this proposal appropriately relieves foreign reporting entities from being subject to overlapping reporting obligations when they are subject to substantially equivalent reporting obligations in another jurisdiction, even if the prescribed trade repository is in a different jurisdiction to the reporting entity.

**'Tagging' of derivative trade data under alternative reporting****Proposal**

- B3** We propose to amend Rule 2.2.1(3) to require foreign reporting entities that use alternative reporting under that rule to designate (or 'tag') the transactions as being reported under the derivative transaction rules (reporting).

*Your feedback*

B3Q1 Do you agree with our proposal? If not, why not?

B3Q2 Do you anticipate any practical difficulties with implementing 'tagging'? If so, please provide details.

B3Q3 Are there any alternative approaches that may meet our regulatory objective of ensuring that regulators have prompt and complete access to derivative trade data reported under alternative reporting arrangements?



## Rationale

- 37 The alternative reporting exception in Rule 2.2.1(3) is intended to relieve foreign reporting entities from the requirement to report derivative trade data under the derivative transaction rules (reporting) when those entities are subject to a sufficiently equivalent reporting regime in their jurisdiction of incorporation. However, it is also vital that regulators are able to have prompt and complete access to derivative trade data that affects Australian financial markets.
- 38 Trade repositories are subject to confidentiality requirements. For this reason, it can be very difficult for Australian regulators (including ASIC) to obtain access to derivative trade data that has not been specifically identified as being reported under the derivative transaction rules (reporting). We refer to such designation of transactions as ‘tagging’.
- 39 Because of the importance of regulators having prompt and complete access to relevant derivative trade data, the time-limited relief that we provided to Phase 2 reporting entities contains a ‘tagging’ condition, as does the class exemption [14/0633].
- Note: See [14/0633] and the accompanying explanatory statement, available at [www.asic.gov.au/asic/asic.nsf/byheadline/2014+Class+Orders?openDocument](http://www.asic.gov.au/asic/asic.nsf/byheadline/2014+Class+Orders?openDocument).
- 40 Many Phase 2 reporting entities are global banks based overseas that will probably seek to rely on the alternative reporting exception. This proposal will effectively make the ‘tagging’ condition permanent for all reporting entities that make use of alternative reporting.
- 41 We also note that other jurisdictions, such as Canada, are in the process of implementing a similar tagging requirement for the reporting of transactions, where those transactions are reported under foreign reporting requirements.

## Amended definition of ‘regulated foreign market’

### Proposal

- B4** We propose to amend the definition of ‘regulated foreign market’ in Rule 1.2.4(3), and also in the proposed new Rule 1.2.4(2A), so that:
- (a) any market that is a ‘designated contract market’ in the United States, or a ‘regulated market’ in the European Union, is deemed to be a ‘regulated foreign market’; and
  - (b) we may determine that a foreign market, or a market within a particular class of foreign markets, is a ‘regulated foreign market’ where we determine that the market is subject to regulation that is sufficiently equivalent to:
    - (i) a Pt 7.2A market under the Corporations Act; or
    - (ii) a market of a type described in proposal B4(a).

We also propose to amend Rules 1.2.4(4) and (5) to reflect that determinations and notices of withdrawal under Rule 1.2.4 will be registered by ASIC on the Federal Register of Legislative Instruments (FRLI) and take effect in accordance with the *Legislative Instruments Act 2003*.

#### Your feedback

B4Q1 Do you agree with our proposal? If not, why not?

B4Q2 Are there any alternative proposals that may meet our regulatory objective of excluding exchange-traded derivatives from the derivative transaction reporting regime (while still ensuring that OTC derivatives executed on trading platforms are included)? If so, please provide details.

## Rationale

- 42 ASIC's transaction reporting regime is an OTC derivatives regime and, as such, exchange-traded derivatives (e.g. futures and options) do not need to be reported. This presents the challenge of defining 'exchange-traded derivatives' for the purposes of the derivative transaction rules (reporting).
- 43 Rule 1.2.4 currently allows ASIC to determine whether the operation of a foreign market is subject to requirements and supervision that are sufficiently equivalent, in relation to market integrity and transparency, to a Pt 7.2A market. Transactions on these 'regulated foreign markets' do not need to be reported.
- 44 The test in Rule 1.2.4 may set the bar higher than our regulatory objective of only requiring OTC derivatives to be reported and ensuring that OTC derivatives traded on platforms remain reportable. Rule 1.2.4 currently requires ASIC to make a determination in respect of each foreign market. This process has been criticised by some reporting entities as being too slow and administratively burdensome.
- 45 For these reasons, entities that commenced reporting under Phase 1 or Phase 2 were given time-limited transitional relief that exempts transactions from being reported when they are entered into on any of the 'relevant foreign markets' listed.

Note: See the ASIC Special Gazette of 1 October 2013 (A45/13) (Instruments 13/1173, 13/1175, 13/1176, 13/1177 and 13/1178), available on the 'Derivative transaction reporting' page of our website at:  
[www.asic.gov.au/asic/ASIC.NSF/byHeadline/Derivative%20transaction%20reporting](http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Derivative%20transaction%20reporting).

- 46 Proposal B4 would provide greater certainty to reporting entities by automatically including some classes of market as 'regulated foreign markets' and excluding others that have the nature of an OTC trading platform.

- 47 Our residual determinations power is also made more flexible by allowing ASIC to make determinations for a class of market as well as individual markets. This expands the criteria by including equivalence to certain foreign regimes as well as to the Pt 7.2A markets. We also propose to clarify the timing of when the determinations are deemed to take effect or cease.

## Reporting to prescribed trade repositories

### Proposal

- B5** We propose to amend Tables S1.1 and S1.2 in Schedule 1 to the derivative transaction rules (reporting) to require Australian reporting entities to report to a prescribed trade repository if a licensed trade repository in the relevant asset class is not available.

We also propose consequential amendments to Rule 2.4.5 to require reporting entities to transfer, or 'port', their derivative transactions and positions to a licensed trade repository within six months from the licensing date.

#### *Your feedback*

- B5Q1 Do you agree with this proposal? If not, why not?

### Rationale

- 48 Rule 2.4.2 allows all reporting entities to report transactions to prescribed trade repositories until 1 October 2014. After this date, Australian reporting entities must report to a licensed trade repository.
- 49 The derivative transaction rules (reporting) do not currently provide for circumstances where there are no licensed trade repositories in Australia. This situation could arise if, by 1 October 2014, no trade repositories have been licensed, or if one or more trade repositories cease to be licensed by 1 October 2014.
- 50 The proposed amendments require Australian reporting entities to report to a prescribed trade repository if, under the circumstances set out at paragraph 49, no licensed trade repository is available to report to.
- 51 This technical amendment to the derivative transaction rules (reporting) is intended to deal with the possibility that a licensed trade repository becomes unlicensed or a trade repository takes longer (on a transitional basis) to become licensed than is currently anticipated.
- 52 It remains our preference to have a licensed trade repository operating in Australia and we anticipate that a trade repository will be licensed before 1 October 2014. However, if this expectation should change, we will communicate with the market and work with industry to address any additional implementation challenges that the absence of a licensed trade repository could present.

## ABNs as entity identifiers

### Proposal

**B6** We propose to amend the tables in Schedule 2 to the derivative transaction rules (reporting) to remove Australian Business Numbers (ABNs) from the hierarchy of entity identifiers that reporting entities must report to trade repositories.

#### *Your feedback*

B6Q1 Do you agree with our proposal? If not, why not?

### Rationale

- 53 Currently, Tables S2.1(1), S2.1(3) and S2.1(5) in Schedule 2 to the derivative transaction rules (reporting) provide for a hierarchy that sets out what form of entity identifier must be reported to a trade repository by a reporting entity in respect of a transaction. This is relevant for identifying counterparties and also other entities, such as beneficiaries and reporting persons.
- 54 The current hierarchy provides that, if a legal entity identifier (LEI) or interim entity identifier—which are each a form of international, standardised counterparty identifier—is available, then it must be reported. Where an LEI or an interim entity identifier is not available, an ABN must be reported. If an ABN is not available, other identifiers may be used.
- 55 We understand that trade repositories do not currently support ABNs as identifiers. Furthermore, because ABNs are an Australia-specific identifier, we regard it as unlikely that ABNs will be supported by trade repositories in the foreseeable future.
- 56 As such, we consider it appropriate to remove ABNs from the hierarchy of identifiers that must be reported to trade repositories under the derivative transaction rules (reporting).

## C Reporting obligations for foreign subsidiaries of Australian financial entities

### Key points

Under Option 2 (see proposal A1(b)), we propose to require certain larger foreign subsidiaries of Australian ADIs and AFS licensees to report derivative transactions to a trade repository.

This proposal is intended to ensure that we receive derivative trade data about foreign subsidiaries of Australian entities, where the derivatives exposure of those subsidiaries is sufficiently material to transfer risk to Australian financial markets.

### Proposal

- c1 We propose to amend Table S1.1 in Schedule 1 to the derivative transaction rules (reporting) to require transactions to be reported from 1 October 2015 for all interest rate and credit derivatives, and from 1 April 2016 for all other classes of derivatives, if the reporting entity:
- (a) is a foreign subsidiary of an Australian ADI or AFS licensee;
  - (b) as at 30 June 2015, holds—either on its own or in combination with other foreign subsidiaries of the ADI or AFS licensee where these subsidiaries are incorporated or formed in the same jurisdiction—total gross notional outstanding OTC derivative positions of \$5 billion or more; and
  - (c) is not required to report under Phase 1, 2, or 3.

We also propose to amend Table S1.2 in Schedule 1 to require these reporting entities to 'backload' their outstanding positions within six months from the transaction reporting date (i.e. by 1 April 2016 for all interest rate and credit derivatives, and by 1 October 2016 for all other classes of derivatives).

### Your feedback

- C1Q1 Do you agree with our proposal? If not, why not?
- C1Q2 Is the proposed threshold of \$5 billion appropriate? If not, what threshold or trigger would be more appropriate?
- C1Q3 If a foreign subsidiary starts (or ceases) to hold \$5 billion in gross notional outstanding OTC derivative positions, should the foreign subsidiary be required to start (or be permitted to cease) reporting transactions? If not, why not?
- C1Q4 Is the proposed timeframe for implementing reporting obligations for foreign subsidiaries of Australian entities appropriate? If not, what timeframe would be more appropriate?

## Rationale

- 57 We first considered whether to require foreign subsidiaries of Australian entities to report OTC derivative transactions in CP 205. In response to CP 205, we received a number of submissions arguing against implementing a requirement for foreign subsidiaries to report, on the basis that:
- (a) it would be costly for foreign subsidiaries to implement derivative transaction reporting;
  - (b) the subsidiary may be subject to reporting requirements in both Australia and its jurisdiction of incorporation;
  - (c) foreign subsidiaries are unlikely to present a material risk to Australian financial markets; and
  - (d) it would be particularly difficult for foreign subsidiaries in emerging markets to implement transaction reporting, because of less developed financial markets infrastructure in these markets.
- 58 In REP 357, we responded to these concerns and noted that a number of foreign jurisdictions, including Hong Kong and Canada, intended to implement reporting obligations for foreign subsidiaries. We also noted the importance of regulators having access to comprehensive and complete information about derivative transactions that are relevant to Australian financial markets. This would include transactions made by the foreign subsidiaries of Australian ADIs and AFS licensees that would normally be expected to be financially supported by the parent entity.
- 59 For the reasons set out in REP 357, we consider that requiring OTC derivative transaction reporting by foreign subsidiaries would be valuable from a regulatory perspective. However, in recognition of the associated compliance costs, we propose to apply a materiality threshold, at a jurisdiction level, to determine when foreign subsidiaries must report transactions. By doing this, we would ensure that foreign subsidiaries begin reporting their transactions when their overall OTC derivative activity becomes sufficiently material to potentially transfer material risk to Australian financial markets.
- 60 As outlined in Section A, we also considered (in Option 3) not setting a threshold for foreign subsidiaries of Australian financial entities—and this was the original proposal in CP 205. In light of the feedback received, and summarised above, we consider that the benefits gained from information about non-material foreign subsidiaries of Australian financial entities would not outweigh the costs imposed by requiring a probable large number of small foreign entities to report.
- 61 This recognises that the risk from smaller foreign subsidiaries is likely to be lower than the risk from larger foreign subsidiaries, and that the reporting requirement may create a disproportionate cost for smaller foreign subsidiaries

and their Australian parent financial entities. We believe that a threshold, as proposed, will ensure that Australian regulators obtain the most useful information about larger foreign subsidiaries, while not incurring unnecessary costs for smaller foreign subsidiaries and their Australian parent entities.

- 62 We also considered an alternative approach of aggregating the threshold across all foreign subsidiaries. This would avoid the possibility of foreign subsidiaries ensuring that their gross notional outstanding OTC derivative positions in a particular jurisdiction are below the threshold by shifting transactions to another foreign jurisdiction, and therefore avoiding the requirement to report any of these transactions under the rules. However, we consider the cost of splitting OTC derivative trading across a wide range of subsidiaries, in terms of increased margin requirements, capital costs and legal expenses, would be a significant drag on ‘gaming’ in practice. We would, however, propose to keep the issue under review, with a view to avoiding gaming of the threshold, should we adopt this proposal in the final rules.

## D A ‘safe harbour’ for delegated reporting

### Key points

Under Option 2 (see proposal A1(b)), we propose to amend the derivative transaction rules (reporting) to limit the extent to which a reporting entity that delegates its reporting obligations to another entity can be subject to enforcement action for a breach of the rules, provided that certain conditions are met.

This proposal is intended to encourage the use of delegated reporting, particularly by Phase 3 reporting entities. We consider that the availability of delegated reporting has the potential to reduce compliance costs, particularly for reporting entities in the wealth management sector.

### Proposal

- D1** We propose to amend Rules 2.2.6 and 2.2.7 in relation to delegated reporting to provide a ‘safe harbour’ from enforcement action if certain conditions are met—that is, a reporting entity is not responsible for a breach of the relevant rules for a reportable transaction or reportable position, provided that the reporting entity delegates the reporting obligation to another entity (the ‘delegate’), and:
- (a) the terms of the delegate’s appointment and any related agreements or arrangements are documented in writing;
  - (b) the appointment, agreements and arrangements between the reporting entity and the delegate provide that the delegate will:
    - (i) report on behalf of the reporting entity in relation to the reportable transactions and reportable positions in accordance with Rules 2.2.1 to 2.2.5; and
    - (ii) take all reasonable steps to ensure that the information, and any changes to the information, reported on behalf of the reporting entity under Rules 2.2.1(1) and 2.2.2(1) in relation to the reportable transactions and reportable positions is and remains complete, accurate and up-to-date; and
  - (c) the reporting entity makes regular inquiries that are reasonably designed to determine whether the delegate is discharging its obligations under the terms of its appointment.

#### *Your feedback*

D1Q1 Do you agree with this proposal? If not, why not?

D1Q2 Do you consider that this proposal will encourage the use of delegated reporting? If not, why not?

D1Q3 Will a ‘safe harbour’ for delegated reporting reduce your costs of implementing transaction reporting? If so, please provide details.



D1Q4 Are there any other proposals that may meet our regulatory objective of encouraging the use of delegated reporting? If so, please provide details.

## Rationale

- 63 A number of reporting entities—particularly, Phase 3 reporting entities—have raised concerns that a reporting entity that uses delegated reporting may be exposed to liability for breaches of the derivative transaction rules (reporting), even if it takes all reasonable steps to ensure that the reported information is complete, accurate and up-to-date.
- 64 Concerns were also raised about what type of action would amount to ‘taking all reasonable steps to ensure accuracy’—in particular, whether it would require onboarding with a trade repository and a direct review of reported transactions under Rule 2.2.7.
- 65 We understand the existing requirements could expose reporting entities that delegate reporting to significant costs and potentially reduce the value of delegated reporting to them. As a result, it appears that many reporting entities, including those that enter into comparatively few derivative transactions, may be reluctant to pursue delegated reporting as an alternative to building a system to carry out their own reporting.
- 66 We consider that encouraging the use of delegated reporting could significantly reduce compliance costs for reporting entities, particularly those entities in the wealth management sector. We have received some information from industry that supports this position, but we seek to confirm this information in the course of this consultation.
- 67 This proposal seeks to remove, to the extent possible, any ambiguity about what actions reporting entities that delegate their reporting obligations need to take to ensure they will not incur any residual liability for a delegate’s reporting errors, where they take reasonable steps to ensure that the reported information is accurate.

## E Regulatory and financial impact

68 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:

- (a) minimising compliance costs to business; and
- (b) ensuring that regulators have access to comprehensive and complete information about OTC derivative transactions in the Australian market.

69 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).

70 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.

71 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.

## Key terms

Term	Meaning in this document
ABN	Australian Business Number
ADI	Authorised deposit-taking institution
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
Australian derivative trade repository licence	Australian derivative trade repository licence granted under s905C of the Corporations Act that authorises a person to operate a trade repository
Australian entity	An entity (including a corporation, managed investment scheme, partnership or trust) that is incorporated or formed in Australia
Corporations Act	<i>Corporations Act 2001</i> , including any regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
CP 205	An ASIC consultation paper (in this example numbered 205)
CS facility	A clearing and settlement facility as defined by s768A of the Corporations Act
CS facility licence	An Australian CS facility licence under s824B of the Corporations Act that authorises a person to operate a CS facility in Australia
CS facility licensee	A person who holds a CS facility licence  Note: This is a definition contained in s761A of the Corporations Act.
delegate	An entity to which the reporting entity delegates the reporting obligation
derivative position information	Information about positions relating to derivative transactions

Term	Meaning in this document
derivative trade data	Means: <ul style="list-style-type: none"> <li>information about derivative transactions, or about positions relating to derivative transactions; or</li> <li>information (including statistical data) that is created or derived from this information</li> </ul>
derivative trade repository rules	ASIC Derivative Trade Repository Rules 2013—rules made by ASIC under s903A of the Corporations Act that deal with the matters as permitted by this section
derivative transaction	Means: <ul style="list-style-type: none"> <li>the entry into an arrangement that is a derivative;</li> <li>the modification or termination of such an arrangement;</li> <li>the assignment, by a party to such an arrangement, of some or all of the party's rights and obligations under the arrangement; or</li> <li>any other transaction that relates to a derivative and that is in a class of transactions prescribed by the regulations</li> </ul>
derivative transaction information	Information about derivative transactions
derivative transaction rules (reporting)	ASIC Derivative Transaction Rules (Reporting) 2013—rules made by ASIC under s901A of the Corporations Act that deal with reporting requirements, and requirements that are incidental or related to the reporting obligation
G20	Group of 19 of the world's largest economies, and the European Union
legal entity identifier (LEI)	A 20-character, alphanumeric code that connects to key reference information that enables clear and unique identification of entities participating in global financial markets
licensed trade repository	A licensed derivative trade repository as defined in s761A of the Corporations Act and licensed by ASIC
licensing date	Means the day on which ASIC grants an Australian derivative trade repository licence for the first time
OTC	Over the counter
OTC derivative transaction	An arrangement that is an OTC derivative under the derivative transaction rules (reporting)
Part 2.4 (for example)	A part of the derivative transaction rules (reporting) (in this example numbered 2.4), unless otherwise specified
Phase 1 reporting entity	A reporting entity that commenced reporting in Phase 1 of the implementation of the derivative transaction reporting regime (see Table 1)

Term	Meaning in this document
Phase 2 reporting entity	A reporting entity that commenced reporting in Phase 2 of the implementation of the derivative transaction reporting regime (see Table 1)
Phase 3 reporting entity	A reporting entity that will commence reporting in Phase 3 of the implementation of the derivative transaction reporting regime (see Table 1)
Phase 3A or Phase 3B reporting entity	A reporting entity that has the benefit of Instrument [14/0633] <i>Transitional exemptive relief for Phase 3 Reporting Entities from elements of the ASIC Derivative Transaction Rules (Reporting) 2013</i> under s907D(2)(a) of the Corporations Act
Pt 7.2A (for example)	A part of the Corporations Act (in this example numbered 7.2A)
prescribed trade repository	A derivative trade repository that is a facility (or is in a class of facilities) prescribed by the Corporations Regulations for the purpose of s901A(6) of the Corporations Act
REP 357	An ASIC consultation paper (in this example numbered 357)
reportable position	A position which is subject to a reporting obligation under Rule S1.2.1(1)(b)
reportable transaction	As defined in Rule 1.2.5, a derivative transaction that is entered into by a reporting entity under the circumstances outlined in Rule 1.2.5
reporting entity	An entity that is referred to in Rule 1.2.5 that may be subject to the reporting obligations
reporting obligations	The obligations of a reporting entity to report derivative trade data in accordance with the requirements of the derivative transaction rules (reporting)
RG 251 (for example)	An ASIC regulatory guide (in this example numbered 251)
Rule 2.2.1 (for example)	A rule of the derivative transaction rules (reporting) (in this example numbered 2.2.1)
s903A (for example)	A section of the Corporations Act (in this example numbered 903A)
snapshot reporting	Reporting transaction information, or substantially equivalent information, in relation to an OTC derivative on its terms at the end of each business day
T+1	Refers to the business day following the transaction date
trade repository	A licensed or prescribed derivative trade repository—a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported

## Related information

### Headnotes

alternative reporting, class exemption, delegated reporting, derivative trade data, derivative transaction, derivative transaction information, entity identifier, exemption, foreign reporting entity, foreign subsidiary, OTC derivative, prescribed trade repository, regulated foreign market, relief, reporting entity, reporting obligation, snapshot reporting, substantially equivalent, trade repository

### Regulatory guides

Regulatory Guide 51 *Applications for relief*

Regulatory Guide 249 *Derivative trade repositories*

Regulatory Guide 251 *Derivative transaction reporting*

### Legislation

Corporations Act, Pt 7.2A

Corporations Regulations 2001

### ASIC instruments

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

13/1173, 13/1175, 13/1176, 13/1177 and 13/1178

### ASIC rules

ASIC Derivative Trade Repository Rules 2013

ASIC Derivative Transaction Rules (Reporting) 2013

### Consultation papers and reports

CP 201 *Derivative trade repositories*

CP 205 *Derivative transaction reporting*

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

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

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

REP 359 *Report on the Australian OTC derivatives market* (July 2013)

### **Media and other releases**

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

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

## List of proposals and questions

Proposal	Your feedback
<p>A1 We are considering three options (see paragraphs 12–16):</p> <p>(a) Option 1: Maintain the derivative transaction rules (reporting) as they are, without amendment. Not recommended.</p> <p>(b) Option 2: Make specific amendments to the derivative transaction rules (reporting) to help minimise compliance costs and ensure that derivative trade data is comprehensive and complete. Recommended.</p> <p>(c) Option 3: In addition to the proposed amendments in Option 2, amend the derivative transaction rules (reporting) to require all (and not just some) foreign subsidiaries of Australian financial entities to report OTC derivative transactions. Not recommended.</p> <p>We recommend Option 2, and are therefore consulting in detail on this option.</p>	<p>A1Q1 Do you agree with our recommended option (Option 2)? If not, why not?</p> <p>A1Q2 Will Option 2 reduce the compliance costs that you will incur in implementing OTC derivative transaction reporting? If so, please provide details.</p> <p>A1Q3 Please provide your specific feedback in relation to Option 2 by responding to the detailed proposals set out in Sections B–D of this paper.</p> <p>A1Q4 Do you think that we should adopt Option 1? Please give reasons for your answer.</p> <p>A1Q5 Do you think that we should adopt Option 3? Please give reasons for your answer.</p> <p>A1Q6 Are there any other options we should consider to meet our regulatory objective of minimising compliance costs while ensuring that trade data is comprehensive and complete?</p>
<p>B1 We propose to amend Rule 2.2.1 to allow reporting entities to meet their reporting obligations in relation to an OTC derivative by either:</p> <p>(a) reporting transaction information separately for each reportable transaction in the OTC derivative ('lifecycle reporting'); or</p> <p>(b) reporting transaction information, or substantially equivalent information, in relation to the OTC derivative on its terms at the end of each business day ('snapshot reporting').</p> <p>Note: In this paper, Rule 2.2.1 (for example) refers to a rule of the derivative transaction rules (reporting) (in this example, numbered 2.2.1).</p>	<p>B1Q1 Do you agree with this proposal? If not, why not?</p> <p>B1Q2 Will this proposal reduce your costs of implementing transaction reporting? If so, please provide details.</p> <p>B1Q3 Taking into account the varying record-keeping practices and requirements applicable to relevant OTC derivatives market participants, are records currently maintained in a form that would support the accurate recording of transactions (including 'time stamping') to facilitate investigations by financial regulators into (for example) market abuse in OTC derivatives markets (in the absence of a transaction-by-transaction reporting obligation)?</p> <p>B1Q4 Do you support an exception to snapshot reporting being made for intraday trades (i.e. trades that are opened and closed on the same day, leaving no net end-of-day position)? What would the costs and benefits of such an exception be?</p> <p>B1Q5 Would you support a reversion to transaction-by-transaction reporting at some point in the future (e.g. if ASIC were in a position to undertake proactive and automated analysis of data in its supervision of market conduct)?</p>



Proposal	Your feedback
<p>B2 We propose to amend Rule 2.2.1(3) to allow foreign reporting entities that use alternative reporting under that rule to report to prescribed trade repositories in jurisdictions other than the jurisdiction in which the foreign reporting entity is incorporated or formed.</p>	<p>B2Q1 Do you agree with this proposal? If not, why not?</p> <p>B2Q2 Will allowing the use of alternative reporting reduce your costs of implementing transaction reporting? If so, please provide details.</p>
<p>B3 We propose to amend Rule 2.2.1(3) to require foreign reporting entities that use alternative reporting under that rule to designate (or 'tag') the transactions as being reported under the derivative transaction rules (reporting).</p>	<p>B3Q1 Do you agree with our proposal? If not, why not?</p> <p>B3Q2 Do you anticipate any practical difficulties with implementing 'tagging'? If so, please provide details.</p> <p>B3Q3 Are there any alternative approaches that may meet our regulatory objective of ensuring that regulators have prompt and complete access to derivative trade data reported under alternative reporting arrangements?</p>
<p>B4 We propose to amend the definition of 'regulated foreign market' in Rule 1.2.4(3), and also in the proposed new Rule 1.2.4(2A), so that:</p> <p>(a) any market that is a 'designated contract market' in the United States, or a 'regulated market' in the European Union, is deemed to be a 'regulated foreign market'; and</p> <p>(b) we may determine that a foreign market, or a market within a particular class of foreign markets, is a 'regulated foreign market' where we determine that the market is subject to regulation that is sufficiently equivalent to:</p> <p>(i) a Pt 7.2A market under the Corporations Act; or</p> <p>(ii) a market of a type described in proposal B4(a).</p> <p>We also propose to amend Rules 1.2.4(4) and (5) to reflect that determinations and notices of withdrawal under Rule 1.2.4 will be registered by ASIC on the Federal Register of Legislative Instruments (FRLI) and take effect in accordance with the Legislative Instruments Act 2003.</p>	<p>B4Q1 Do you agree with our proposal? If not, why not?</p> <p>B4Q2 Are there any alternative proposals that may meet our regulatory objective of excluding exchange-traded derivatives from the derivative transaction reporting regime (while still ensuring that OTC derivatives executed on trading platforms are included)? If so, please provide details.</p>

Proposal	Your feedback
<p>B5 We propose to amend Tables S1.1 and S1.2 in Schedule 1 to the derivative transaction rules (reporting) to require Australian reporting entities to report to a prescribed trade repository if a licensed trade repository in the relevant asset class is not available.</p> <p>We also propose consequential amendments to Rule 2.4.5 to require reporting entities to transfer, or 'port', their derivative transactions and positions to a licensed trade repository within six months from the licensing date.</p>	<p>B5Q1 Do you agree with this proposal? If not, why not?</p>
<p>B6 We propose to amend the tables in Schedule 2 to the derivative transaction rules (reporting) to remove Australian Business Numbers (ABNs) from the hierarchy of entity identifiers that reporting entities must report to trade repositories.</p>	<p>B6Q1 Do you agree with our proposal? If not, why not?</p>
<p>C1 We propose to amend Table S1.1 in Schedule 1 to the derivative transaction rules (reporting) to require transactions to be reported from 1 October 2015 for all interest rate and credit derivatives, and from 1 April 2016 for all other classes of derivatives, if the reporting entity:</p> <ul style="list-style-type: none"> <li>(a) is a foreign subsidiary of an Australian ADI or AFS licensee;</li> <li>(b) as at 30 June 2015, holds—either on its own or in combination with other foreign subsidiaries of the ADI or AFS licensee where these subsidiaries are incorporated or formed in the same jurisdiction—total gross notional outstanding OTC derivative positions of \$5 billion or more; and</li> <li>(c) is not required to report under Phase 1, 2, or 3.</li> </ul> <p>We also propose to amend Table S1.2 in Schedule 1 to require these reporting entities to 'backload' their outstanding positions within six months from the transaction reporting date (i.e. by 1 April 2016 for all interest rate and credit derivatives, and by 1 October 2016 for all other classes of derivatives).</p>	<p>C1Q1 Do you agree with our proposal? If not, why not?</p> <p>C1Q2 Is the proposed threshold of \$5 billion appropriate? If not, what threshold or trigger would be more appropriate?</p> <p>C1Q3 If a foreign subsidiary starts (or ceases) to hold \$5 billion in gross notional outstanding OTC derivative positions, should the foreign subsidiary be required to start (or be permitted to cease) reporting transactions? If not, why not?</p> <p>C1Q4 Is the proposed timeframe for implementing reporting obligations for foreign subsidiaries of Australian entities appropriate? If not, what timeframe would be more appropriate?</p>

Proposal	Your feedback
<p>D1 We propose to amend Rules 2.2.6 and 2.2.7 in relation to delegated reporting to provide a 'safe harbour' from enforcement action if certain conditions are met—that is, a reporting entity is not responsible for a breach of the relevant rules for a reportable transaction or reportable position, provided that the reporting entity delegates the reporting obligation to another entity (the 'delegate'), and:</p> <ul style="list-style-type: none"> <li>(a) the terms of the delegate's appointment and any related agreements or arrangements are documented in writing;</li> <li>(b) the appointment, agreements and arrangements between the reporting entity and the delegate provide that the delegate will: <ul style="list-style-type: none"> <li>(i) report on behalf of the reporting entity in relation to the reportable transactions and reportable positions in accordance with Rules 2.2.1 to 2.2.5; and</li> <li>(ii) take all reasonable steps to ensure that the information, and any changes to the information, reported on behalf of the reporting entity under Rules 2.2.1(1) and 2.2.2(1) in relation to the reportable transactions and reportable positions is and remains complete, accurate and up-to-date; and</li> </ul> </li> <li>(c) the reporting entity makes regular inquiries that are reasonably designed to determine whether the delegate is discharging its obligations under the terms of its appointment.</li> </ul>	<p>D1Q1 Do you agree with this proposal? If not, why not?</p> <p>D1Q2 Do you consider that this proposal will encourage the use of delegated reporting? If not, why not?</p> <p>D1Q3 Will a 'safe harbour' for delegated reporting reduce your costs of implementing transaction reporting? If so, please provide details.</p> <p>D1Q4 Are there any other proposals that may meet our regulatory objective of encouraging the use of delegated reporting? If so, please provide details.</p>