

Attachment to CP 231: Mandatory central clearing of OTC interest rate derivative transactions



ASIC

Australian Securities & Investments Commission

ASIC Derivative Transaction Rules (Clearing) 2015

May 2015

These draft rules reflect the proposals in Consultation Paper 231 *Mandatory central clearing of OTC interest rate derivative transactions* (CP 231).

For a copy of CP 231, see www.asic.gov.au/cp.

For more information, including the related ASIC media release, go to www.asic.gov.au/markets

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Chapter 1: Introduction

Part 1.1 Preliminary

1.1.1 Enabling legislation

ASIC makes this instrument under section 901A of the *Corporations Act 2001* (the *Act*).

1.1.2 Title

This instrument is the *ASIC Derivative Transaction Rules (Clearing) 2015*.

1.1.3 Commencement

The provisions of this instrument commence on the day after it is recorded in the Federal Register of Legislative Instruments in electronic form.

Note: The register may be accessed at <http://www.comlaw.gov.au>.

1.1.4 Penalties

(1) For subsection 901A(4) of the Act, the penalty amount specified under a Rule is the penalty amount for that Rule.

(2) If no penalty amount is specified under a Rule, there is no penalty for that Rule.

Part 1.2 Interpretation

1.2.1 References to time and day

In these Rules, unless the contrary intention appears:

- (a) a reference to time is to the time in Sydney, Australia; and
- (b) a reference to a Business Day is to a Business Day by reference to the time and day in Sydney, Australia.

Note: The time in Sydney, Australia will be Australian Eastern Standard Time (AEST) or Australian Eastern Daylight Time (AEDT), as applicable.

1.2.2 Definitions

In these Rules:

Act means the *Corporations Act 2001*.

Australian ADI has the meaning given by section 9 of the Act.

Australian Clearing Entity, in relation to a Derivative Transaction, has the meaning given by subrules 1.2.5(2) and (3).

Note: An entity will be an Australian Clearing Entity in relation to a Derivative if it is an Australian Clearing Entity in relation to a Derivative Transaction relating to the Derivative.

Basis Swap means a Swap under which:

- (a) the payments for one leg are determined by reference to, or derived from, a floating rate and a notional principal amount; and
- (b) the payments for the other leg are determined by reference to, or derived from, a different floating rate and the same notional principal amount.

Business Day means a day that is not a Saturday, a Sunday, or a public holiday or bank holiday in the place concerned.

Calculation Date means each of 31 March, 30 June, 30 September and 31 December in each calendar year, commencing on 30 September 2015.

Central Clearing Transaction has the meaning given by subrules 2.1.1(3) and (4).

Cleared Through has the meaning given by subrule 2.1.1(2).

Clearing Derivative has the meaning given by Rule 1.2.4.

Clearing Entity:

- (a) when used in relation to a Derivative Transaction, has the meaning given by subrule 1.2.5(1); and

Note: An entity will be a Clearing Entity in relation to a Derivative if it is a Clearing Entity in relation to a Derivative Transaction relating to the Derivative.

- (b) when used generally, an entity is a **Clearing Entity** if it is a Clearing Entity in relation to one or more of the following:
 - (i) a Derivative Transaction to which it is party in its Personal Capacity;
 - (ii) a Derivative Transaction to which it is party in a Representative Capacity.

Clearing Facility means:

- (a) when used in relation to a Clearing Transaction:
 - (i) a Licensed CS Facility, the licence for which authorises the Licensed CS Facility to provide services in respect of a class of financial products that includes the Clearing Derivative to which the Clearing Transaction relates; or

- (ii) a Prescribed CS Facility that is prescribed for the purposes of paragraph 901A(7)(b) of the Act in relation to a class of Derivatives that includes the Clearing Derivative to which the Clearing Transaction relates; and
- (b) when used in general terms, a Licensed CS Facility or a Prescribed CS Facility.

Clearing Requirements has the meaning given by subsection 901A(7) of the Act.

Note: Clearing Requirements include the requirements in Rule 2.1.1 and subrule 2.1.6(2).

Clearing Threshold: see the definition of *meets the Clearing Threshold*.

Clearing Transaction has the meaning given by Rule 1.2.6.

Derivative has the meaning given by section 761D of the Act.

Derivative Transaction has the meaning given by section 761A of the Act.

Designated Business Identifier means an international business entity identifier (or “AVID”) issued by Avox Limited (CRN 04806632).

Determined Clearing Class means a class of Derivatives that the Minister has determined, under subsection 901B(2) of the Act, as a class of Derivatives in relation to which Clearing Requirements may be imposed (and that determination has not been revoked).

Exempt Foreign Licensee means an entity:

- (a) that is incorporated or formed outside Australia; and
- (b) that provides financial services relating to Derivatives to wholesale clients (as defined in section 761G of the Act) and not to any other kind of clients; and
- (c) is exempt under the Act (including under the Regulations, or another instrument made under or for the purposes of the Act) from the requirement to hold a financial services licence for those financial services; and
- (d) whose activities relating to Derivatives are regulated by an overseas regulatory authority.

Financial Entity means each of the following:

- (a) a financial services licensee;
- (b) an Australian ADI;
- (c) an Exempt Foreign Licensee.

Fixed-to-Floating Swap means a Swap, other than a Forward Rate Agreement or an Overnight Index Swap, under which:

- (a) the payments for one leg are determined by reference to, or derived from, a fixed rate and a notional principal amount; and
- (b) the payments for the other leg are determined by reference to, or derived from, a floating rate and the same notional principal amount.

Foreign Clearing Entity, in relation to a Derivative Transaction, has the meaning given by subrules 1.2.5(4) and (5).

Note: An entity will be a Foreign Clearing Entity in relation to a Derivative if it is a Foreign Clearing Entity in relation to a Derivative Transaction relating to the Derivative.

Foreign Internationally Active Dealer means a foreign entity, other than a Foreign Clearing Entity, that is registered or provisionally registered as:

- (a) a swap dealer with the Commodity Futures Trading Commission of the United States of America under the *Commodity Exchange Act 1936* (US); or
- (b) a securities-based swap dealer with the Securities Exchange Commission of the United States of America under the *Securities Exchange Act 1934* (US).

Forward Rate Agreement means a Swap, other than an Overnight Index Swap, under which:

- (a) there is a single payment for one leg that is determined by reference to, or derived from, a fixed rate and a notional principal amount; and
- (b) there is a single payment for the other leg that is determined by reference to, or derived from, a floating rate as at a pre-determined date and the same notional principal amount; and
- (c) the payments for each leg are exchanged on a pre-determined date, including, for the avoidance of doubt, by the payments for each leg being netted against one another so that there is a single payment between the parties.

IRD Class Specifications: see the definition of *meets the IRD Class Specifications*.

LEI means Legal Entity Identifier.

Licensed CS Facility has the meaning given by section 761A of the Act.

meets the Clearing Threshold has the meaning given by Rule 1.2.8.

meets the IRD Class Specifications has the meaning given by subrules 1.2.4(2) to (4).

Multilateral Portfolio Compression Cycle has the meaning given by subrule 2.1.5(2).

Nexus Derivative in relation to a Foreign Clearing Entity means a Clearing Derivative to which the Foreign Clearing Entity is a party, where the following are satisfied:

- (a) the Foreign Clearing Entity is an Opt-In Nexus Entity in relation to the capacity in which the Foreign Clearing Entity is party to the Clearing Derivative;
- (b) one or more of the following functions in relation to the Clearing Derivative:
 - (i) determining the price, level, rate or other economic terms (collectively, **Terms**) at which the Foreign Clearing Entity is willing to enter into the Clearing Derivative, including by determining the proposed Terms or range of proposed Terms which may be communicated to the proposed counterparty or agreeing the final Terms on which the Foreign Clearing Entity will enter into the Clearing Derivative with the proposed counterparty;

- (ii) communicating to the proposed counterparty one or more of the Terms on which the Foreign Clearing Entity is willing to enter into the Clearing Derivative;
- (iii) offering to enter into the Clearing Derivative with the proposed counterparty or inviting the proposed counterparty to offer to enter into the Clearing Derivative;
- (iv) agreeing to enter into the Clearing Derivative with the proposed counterparty;
- (v) managing the financial risk arising from the Clearing Derivative;

has been, or in the case of the function referred to in subparagraph (v), is or will be, performed on behalf of the Foreign Clearing Entity by a person who is:

- (vi) ordinarily resident or employed in Australia; or
- (vii) acting as part of a desk, office or branch of:
 - (A) the Foreign Clearing Entity; or
 - (B) an entity that is an associate of the Foreign Clearing Entity;
 where that desk, office or branch is located in Australia;

- (c) if the Clearing Derivative was executed through an automated electronic trading facility, one or more of the functions referred to in subparagraphs (b)(i) and (v) in relation to the Clearing Derivative has been, or in the case of the function referred to in subparagraph (v), is or will be, performed on behalf of the Foreign Clearing Entity by a person who is:

- (i) ordinarily resident or employed in Australia; or
- (ii) acting as part of a desk, office or branch of:
 - (A) the Foreign Clearing Entity; or
 - (B) an entity that is an associate of the Foreign Clearing Entity;
 where that desk, office or branch is located in Australia.

Opt-In Australian Clearing Entity has the meaning given by paragraphs 1.2.9(4)(a) and 1.2.9(5)(a).

Opt-In Clearing Entity means an Opt-In Australian Clearing Entity or an Opt-In Foreign Clearing Entity.

Opt-In Foreign Clearing Entity has the meaning given by paragraphs 1.2.9(4)(b) and 1.2.9(5)(b).

Opt-In Nexus Entity has the meaning given by subrule 1.2.10(5).

Overnight Index Swap means a Swap under which:

- (a) the payments for one leg are determined by reference to, or derived from, a fixed rate and a notional principal amount; and
- (b) the payments for the other leg are determined by reference to, or derived from, a floating rate based on a daily overnight rate and the same notional principal amount.

Part 7.2A Market means a financial market the operator of which is licensed under subsection 795B(1) of the Act, but does not include a financial market operated by an operator specified in regulation 10.15.02 of the Regulations.

Personal Capacity, in relation to an entity, means the entity acting in a capacity that is not a Representative Capacity.

Prescribed CS Facility means a facility that is, or that is in a class of facilities that is, prescribed by regulations made for the purposes of paragraph 901A(7)(b) of the Act.

Regulated Foreign Market means any financial market:

- (a) that is registered by the Commodity Futures Trading Commission of the United States of America as a “Designated Contract Market” under section 5h of the *Commodity Exchange Act 1936* (US); or
- (b) that is a “Regulated market” as defined in Article 4(1)(21) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; or
- (c) that is a financial market, or is in a class of financial markets, that has been determined by ASIC as a Regulated Foreign Market under subrule 1.2.4(3) of the *ASIC Derivative Transaction Rules (Reporting) 2013*.

Regulations means the *Corporations Regulations 2001*.

Representative Capacity, in relation to an entity, means the entity acting in a capacity as the responsible entity for a registered scheme, or as the trustee of a trust.

Rules means these *ASIC Derivative Transaction Rules (Clearing) 2015*.

Swap means a Derivative between two parties under which:

- (a) one party (**Party A**) is required to make one or more payments (*payments for the first leg*) to the other party (**Party B**); and
- (b) Party B is required to make one or more payments (*payments for the second leg*) to Party A;

and includes a Derivative where some or all of those payments are netted against one another.

total gross notional outstanding positions has a meaning affected by Rule 1.2.7.

Note 1: Words and expressions defined in the Act have the same meaning in these Rules unless otherwise defined or specified in these Rules or the contrary intention appears: paragraph 13(1)(b) of the *Legislative Instruments Act 2003*.

Note 2: For convenience, some words and expressions defined in the Act are defined in the same way in this Rule.

1.2.3 References to entity acting in a capacity

In these Rules, unless the contrary intention appears, a reference to an entity *acting in a capacity* or *acting in a particular capacity* where the capacity is not specified is a reference to the entity acting in its Personal Capacity or in a Representative Capacity.

1.2.4 Meaning of Clearing Derivative

(1) Subject to subrules (6) and (7), a Derivative is a **Clearing Derivative** if the Derivative:

- (a) is in a Determined Clearing Class; and
- (b) is a Basis Swap, Fixed-to-Floating Swap, Forward Rate Agreement or Overnight Index Swap; and
- (c) meets the IRD Class Specifications.

(2) A Derivative that is a Basis Swap or a Fixed-to-Floating Swap **meets the IRD Class Specifications** if a row of the following table contains:

- (a) the currency (**Currency**) in which the notional principal amount and payments under the Derivative are denominated; and
- (b) the benchmark, index or rate (**Floating Rate Index**) on which each floating rate for the Derivative is based; and
- (c) a period of time (**Termination Date Range**) which includes the period from entry into the Derivative until the termination date for the Derivative.

IRD Class Specifications for Basis Swaps and Fixed-to-Floating Swaps			
Item	Currency	Floating Rate Index	Termination Date Range
1	US dollar	London Interbank Offered Rate (LIBOR)	28 days to 50 years
2	Euro	Euro Interbank Offered Rate (EURIBOR)	28 days to 50 years
3	British pound	London Interbank Offered Rate (LIBOR)	28 days to 50 years
4	Japanese yen	London Interbank Offered Rate (LIBOR)	28 days to 30 years
5	Australian dollar	Australian Bank Bill Swap Rate (BBSW)	28 days to 30 years

(3) A Derivative that is a Forward Rate Agreement **meets the IRD Class Specifications** if a row of the following table contains:

- (a) the Currency in which the notional principal amount and payments under the Derivative are denominated; and
- (b) the Floating Rate Index on which the floating rate for the Derivative is based; and
- (c) a Termination Date Range that includes the period from entry into the Derivative until the termination date for the Derivative.

IRD Class Specifications for Forward Rate Agreements			
Item	Currency	Floating Rate Index	Termination Date Range
1	US dollar	London Interbank Offered Rate (LIBOR)	3 days to 3 years
2	Euro	Euro Interbank Offered Rate (EURIBOR)	3 days to 3 years
3	British pound	London Interbank Offered Rate (LIBOR)	3 days to 3 years
4	Japanese yen	London Interbank Offered Rate (LIBOR)	3 days to 3 years
5	Australian dollar	Australian Bank Bill Swap Rate (BBSW)	3 days to 3 years

(4) A Derivative that is an Overnight Index Swap *meets the IRD Class Specifications* if a row of the following table contains:

- (a) the Currency in which the notional principal amount and payments under the Derivative are denominated; and
- (b) the Floating Rate Index on which the floating rate for the Derivative is based; and
- (c) a Termination Date Range that includes the period from entry into the Derivative until the termination date for the Derivative.

IRD Class Specifications for Overnight Index Swaps			
Item	Currency	Floating Rate Index	Termination Date Range
1	US dollar	Effective Federal Funds Rate (FedFunds)	7 days to 2 years
2	Euro	Euro Overnight Index Average (EONIA)	7 days to 2 years
3	British pound	Sterling Overnight Interbank Average Rate (SONIA)	7 days to 2 years
4	Australian dollar	RBA Interbank Overnight Cash Rate (IBOC)	7 days to 2 years

(5) A reference to a type of Floating Rate Index in a table in this Rule includes a reference to any successor to that Floating Rate Index.

(6) A Derivative is not a Clearing Derivative if under the Derivative:

Optionality

- (a) either party is granted an option which, if exercised, would or might affect the amount, timing or form of the consideration that would otherwise be provided under the Derivative by a party to the Derivative; or

Note: A Derivative that gave a party the ability to change the notional principal amount at its election would be an example of optionality. This type of optionality would also fall within paragraph (c).

Multi-currency

- (b) the notional principal amount and payments under the Derivative are not all denominated in the same currency; or

Note: Such a Derivative would also not be a Clearing Derivative because it would not meet the IRD Class Specifications: see paragraphs (2)(a), (3)(a) and (4)(a).

Conditional notional principal amount

- (c) the notional principal amount will or may change upon the occurrence of a specified future event where, at the time of entry into the Derivative, at least one of the following is uncertain:
- (i) when the future event will occur;
 - (ii) whether the future event will occur.

(7) A Derivative is not a Clearing Derivative if:

- (a) the Derivative is able to be traded (within the meaning of section 761A of the Act) on a Part 7.2A Market or a Regulated Foreign Market; and
- (b) in the case of a Part 7.2A Market, the entry into of the arrangement that is the Derivative:
 - (i) takes place on the Part 7.2A Market in accordance with the operating rules of the Part 7.2A Market; or
 - (ii) is reported to the operator of the Part 7.2A Market in its capacity as operator of the Part 7.2A Market, in accordance with the operating rules of the Part 7.2A Market; and
- (c) in the case of a Regulated Foreign Market, the entry into of the arrangement that is the Derivative takes place on the Regulated Foreign Market.

1.2.5 Meaning of Clearing Entity

(1) An entity is a **Clearing Entity** in relation to a Derivative Transaction if it is an Australian Clearing Entity or a Foreign Clearing Entity in relation to the Derivative Transaction.

(2) An entity is an **Australian Clearing Entity** in relation to a Derivative Transaction to which it is party in its Personal Capacity if the entity is:

- (a) an Australian ADI or a financial services licensee that:
 - (i) is incorporated or formed in Australia; and
 - (ii) meets the Clearing Threshold in its Personal Capacity; or
- (b) an Opt-In Australian Clearing Entity in its Personal Capacity.

(3) An entity is an **Australian Clearing Entity** in relation to a Derivative Transaction to which it is a party in a Representative Capacity if:

- (a) the scheme or trust to which the Representative Capacity relates is incorporated or formed in Australia; and
- (b) the entity is:

- (i) a Financial Entity that:
 - (A) is incorporated or formed in Australia or is a foreign company that is registered or required to be registered under Division 2 of Part 5B.2 of the Act; and
 - (B) meets the Clearing Threshold in that Representative Capacity; or
 - (ii) an Opt-In Australian Clearing Entity in that Representative Capacity.
- (4) An entity is a **Foreign Clearing Entity** in relation to a Derivative Transaction to which it is party in its Personal Capacity if the entity is:
- (a) a Financial Entity that:
 - (i) is a foreign company that is registered or required to be registered under Division 2 of Part 5B.2 of the Act; and
 - (ii) meets the Clearing Threshold in its Personal Capacity; or
 - (b) an Opt-In Foreign Clearing Entity in its Personal Capacity.
- (5) An entity is a **Foreign Clearing Entity** in relation to a Derivative Transaction to which it is a party in a Representative Capacity if:
- (a) the scheme or trust to which the Representative Capacity relates is incorporated or formed outside Australia; and
 - (b) the entity is either:
 - (i) a Financial Entity that:
 - (A) is incorporated or formed in Australia or is a foreign company that is registered or required to be registered under Division 2 of Part 5B.2 of the Act; and
 - (B) meets the Clearing Threshold in that Representative Capacity; or
 - (ii) an Opt-In Foreign Clearing Entity in that Representative Capacity.

Definitions of Australian clearing entity and foreign clearing entity in the Regulations

- (6) For the purposes of subregulations 7.5A.61(2) and 7.5A.62(2) of the Regulations, an entity that is:
- (a) an Australian Clearing Entity in relation to a Derivative Transaction to which it is party in a Representative Capacity is an **Australian clearing entity** (as defined in subregulation 7.5A.61(2)) in relation to the Derivative Transaction; and
 - (b) a Foreign Clearing Entity in relation to a Derivative Transaction to which it is party in a Representative Capacity is a **foreign clearing entity** (as defined in subregulation 7.5A.62(2)) in relation to the Derivative Transaction.

1.2.6 Meaning of Clearing Transaction

- (1) This Rule defines when a Derivative Transaction is a **Clearing Transaction** for a Clearing Entity in relation to the Derivative Transaction.

Note: Subject to certain requirements being satisfied, the following Derivative Transactions may be Clearing Transactions under these Rules:

- (a) entry into a Clearing Derivative by a Clearing Entity in relation to the Clearing Derivative; and
- (b) modification of a Clearing Derivative by a Clearing Entity in relation to the Clearing Derivative.

Entry into a Clearing Derivative by an Australian Clearing Entity

(2) Entry into a Clearing Derivative by an Australian Clearing Entity is a ***Clearing Transaction*** for the Australian Clearing Entity if the other party to the Clearing Derivative is:

- (a) an Australian Clearing Entity; or
- (b) a Foreign Clearing Entity; or
- (c) a Foreign Internationally Active Dealer.

Entry into a Clearing Derivative by a Foreign Clearing Entity

(3) Entry into a Clearing Derivative by a Foreign Clearing Entity is a ***Clearing Transaction*** for the Foreign Clearing Entity if:

- (a) the other party to the Clearing Derivative is:
 - (i) an Australian Clearing Entity; or
 - (ii) a Foreign Clearing Entity; or
 - (iii) a Foreign Internationally Active Dealer; and
- (b) where the other party is a Foreign Clearing Entity or a Foreign Internationally Active Dealer:
 - (i) at least one Foreign Clearing Entity that is party to the Clearing Derivative books the Clearing Derivative to the profit or loss account of a branch of the Foreign Clearing Entity located in Australia; or
 - (ii) in relation to at least one Foreign Clearing Entity that is party to the Clearing Derivative, the Clearing Derivative is:
 - (A) if the Foreign Clearing Entity is an Opt-In Nexus Entity in relation to the capacity in which it is party to the Clearing Derivative – a Nexus Derivative in relation to the Foreign Clearing Entity; or
 - (B) otherwise, entered into in Australia.

Modification of Clearing Derivatives

(4) Modification of a Clearing Derivative by a Clearing Entity is a ***Clearing Transaction*** for the Clearing Entity if:

- (a) entry into the Clearing Derivative (as modified) would be a Clearing Transaction for the Clearing Entity if it were entered into at the time of the modification; and
- (b) the Clearing Derivative has not been cleared through a clearing and settlement facility (whether or not a Clearing Facility); and

- (c) the modification of the Clearing Derivative, on its own or when considered with other modifications to the Clearing Derivative, has the effect of extending the termination date of the Clearing Derivative by a period of 12 months or more.

Clearing Entity that is party to a Clearing Derivative in different capacities

- (5) For the avoidance of doubt, if:
 - (a) an entity is party, in different capacities, to both sides of a Clearing Derivative; and
 - (b) the entity is a Clearing Entity in relation to the Clearing Derivative in each of those capacities;

subrules (2) to (4) apply as if the Clearing Derivative had two distinct parties, being the entity acting in each of those capacities.

Note: This may result in entry into, or the modification of, such a Clearing Derivative being a Clearing Transaction for the entity.

1.2.7 References to total gross notional outstanding positions

(1) A reference in these Rules to the total gross notional outstanding positions held by an entity in a particular capacity is a reference to the entity's total gross notional outstanding positions aggregated across all Derivatives to which the entity is a party in that capacity, but does not include:

- (a) a position in a Derivative that is not a Clearing Derivative because of subrule 1.2.4(7) (whether or not it is also not a Clearing Derivative for other reasons); or
- (b) a position in a Derivative entered into with a related body corporate of the entity; or
- (c) for an entity:
 - (i) that is acting in its Personal Capacity and is incorporated or formed outside Australia; or
 - (ii) that is acting in a Representative Capacity in relation to a scheme or trust that is incorporated or formed outside Australia;

a position in a Derivative:

- (iii) that was not booked to the profit or loss account of a branch of the entity located in Australia; and
- (iv) that was not entered into in Australia.

(2) This Rule applies for the purposes of these Rules and paragraph 7.5A.60(2)(a) of the Regulations.

1.2.8 Clearing Threshold

Financial Entity acting in its Personal Capacity

(1) If a Financial Entity holds total gross notional outstanding positions of AUD \$100 billion or more in its Personal Capacity on each of two consecutive Calculation Dates, the entity **meets the Clearing Threshold** in its Personal Capacity from the date (**Clearing Start Date**) that is the first Monday after the immediately following Calculation Date.

(2) If the Financial Entity meets the Clearing Threshold in its Personal Capacity, but does not hold total gross notional outstanding positions of AUD \$100 billion or more in its Personal Capacity on each of two consecutive Calculation Dates, the Financial Entity ceases to meet the Clearing Threshold in its Personal Capacity on the day (**Clearing End Date**) after the second of those Calculation Dates.

Financial Entity acting in a Representative Capacity

(3) If a Financial Entity holds total gross notional outstanding positions of AUD \$100 billion or more in a Representative Capacity on each of two consecutive Calculation Dates, the Financial Entity **meets the Clearing Threshold** in that Representative Capacity from the date (**Clearing Start Date**) that is the first Monday after the immediately following Calculation Date.

(4) If a Financial Entity meets the Clearing Threshold in a Representative Capacity, but does not hold total gross notional outstanding positions of AUD \$100 billion or more in that Representative Capacity on each of two consecutive Calculation Dates, the Financial Entity ceases to meet the Clearing Threshold in that Representative Capacity on the day (**Clearing End Date**) after the second of those Calculation Dates.

(5) Nothing in this Rule prevents a Financial Entity that has ceased to meet the Clearing Threshold in its Personal Capacity under subrule (2) or in a Representative Capacity under subrule (4) from meeting the Clearing Threshold in that capacity again under subrule (1) or (3).

(6) This Rule applies for the purposes of these Rules and paragraph 7.5A.60(2)(b) of the Regulations.

Note: For example, a Financial Entity that holds total gross notional outstanding positions of AUD \$100 billion or more in a particular capacity as at both 30 September 2015 and 31 December 2015 meets the Clearing Threshold in that capacity from 4 April 2016. If the Financial Entity subsequently holds total gross notional outstanding positions of less than AUD \$100 billion in that capacity on both 30 September 2016 and 31 December 2016, the Financial Entity will cease to meet the Clearing Threshold in that capacity on 1 January 2017.

1.2.9 Opt In to become a Clearing Entity

(1) An entity may lodge a written notice (an **Opt-In Notice**) with ASIC setting out the following:

- (a) the name of the entity;

- (b) the entity's LEI or interim entity identifier or, if no LEI or interim entity identifier is available for the entity, a Designated Business Identifier or, if no Designated Business Identifier is available for the entity, a Business Identifier Code (BIC code);
- (c) which of the following capacities the entity is lodging the notice in:
 - (i) its Personal Capacity;
 - (ii) a Representative Capacity;
- (d) if the entity is lodging the notice in a Representative Capacity – the name of each scheme or trust to which the Representative Capacity relates and whether the scheme or trust was incorporated or formed in Australia or outside Australia;
- (e) the date (***Clearing Start Date***) on which the entity will commence being an Opt-In Clearing Entity in relation to each capacity in which it is lodging the notice, being a date not less than 30 days from the date the Opt-In Notice is lodged.

(2) An entity that has lodged an Opt-In Notice under subrule (1) may withdraw the Opt-In Notice by lodging a written notice (***Withdrawal Notice***) with ASIC setting out the following:

- (a) the name of the entity;
- (b) the entity's LEI or interim entity identifier or, if no LEI or interim entity identifier is available for the entity, a Designated Business Identifier or, if no Designated Business Identifier is available for the entity, a Business Identifier Code (BIC code);
- (c) which of the following capacities the entity is lodging the notice in:
 - (i) its Personal Capacity;
 - (ii) a Representative Capacity;
- (d) if the entity is lodging the notice in a Representative Capacity – the name of each scheme or trust to which the Representative Capacity relates;
- (e) the date (***Clearing End Date***) on which the entity will cease being an Opt-In Clearing Entity in relation to each capacity in which it is lodging the notice, being a date not less than 30 days from the date the Withdrawal Notice is lodged.

(3) ASIC may publish on its website any Opt-In Notice or a Withdrawal Notice given to it by an entity under this Rule.

(4) If an entity lodges an Opt-In Notice with ASIC under subrule (1) in its Personal Capacity:

- (a) if the entity is incorporated or formed in Australia – it will be an ***Opt-In Australian Clearing Entity*** in its Personal Capacity from the Clearing Start Date; and

Note: For the purposes of the Regulations, the entity will be an ***Australian clearing entity*** (as defined in subregulation 7.5A.61(1) of the Regulations) in relation to a Derivative Transaction to which it is party in its Personal Capacity: see paragraph 7.5A.61(1)(b) of the Regulations.

- (b) if the entity is incorporated or formed outside Australia – it will be an ***Opt-In Foreign Clearing Entity*** in its Personal Capacity from the Clearing Start Date.

Note: For the purposes of the Regulations, the entity will be a ***foreign clearing entity*** (as defined in subregulation 7.5A.62(1) of the Regulations) in relation to a Derivative Transaction to which it is party in its Personal Capacity: see paragraph 7.5A.62(1)(c) of the Regulations.

- (5) If an entity lodges an Opt-In Notice with ASIC under subrule (1) in a Representative Capacity:
- (a) if the scheme or trust to which the Representative Capacity relates is incorporated or formed in Australia – the entity will be an ***Opt-In Australian Clearing Entity*** in that Representative Capacity from the Clearing Start Date; and
 - (b) if the scheme or trust is incorporated or formed outside Australia – the entity will be an ***Opt-In Foreign Clearing Entity*** in that Representative Capacity from the Clearing Start Date.
- (6) If an entity lodges a Withdrawal Notice under subrule (2), the entity ceases to be an Opt-In Australian Clearing Entity or an Opt-In Foreign Clearing Entity (as the case may be) in relation to each capacity in which it lodges the notice from the Clearing End Date.
- (7) Nothing in this Rule affects whether an entity is a Clearing Entity under any other Rule.

Note: An entity that has lodged an Opt-In Notice in accordance with this Rule will be required to comply with the applicable Clearing Requirements from the Clearing Start Date until the Clearing End Date.

1.2.10 Opt In and Nexus Derivatives

- (1) This Rule applies to an entity that is:
- (a) incorporated or formed outside Australia; or
 - (b) the responsible entity of a registered scheme or the trustee of a trust that is incorporated or formed outside Australia.
- (2) An entity to which this Rule applies may lodge a written notice (an ***Opt-In Notice***) with ASIC setting out the following:
- (a) the name of the entity;
 - (b) the entity's LEI or interim entity identifier or, if no LEI or interim entity identifier is available for the entity, a Designated Business Identifier or, if no Designated Business Identifier is available for the entity, a Business Identifier Code (BIC code);
 - (c) which of the following capacities the entity is lodging the notice in:
 - (i) its Personal Capacity;
 - (ii) a Representative Capacity;
 - (d) if the entity is lodging the notice in a Representative Capacity – the name of each scheme or trust to which the Representative Capacity relates;
 - (e) the date (***Effective Date***) from which the entity will commence being an Opt-In Nexus Entity in relation to each capacity in which it is lodging the notice, being a date no earlier than the date the Opt-In Notice is lodged.
- (3) An entity that has given an Opt-In Notice under subrule (1) may withdraw the Opt-In Notice by lodging a written notice (the ***Withdrawal Notice***) with ASIC setting out the following:
- (a) the name of the entity;

- (b) which of the following capacities the entity is lodging the notice in:
 - (i) its Personal Capacity;
 - (ii) a Representative Capacity;
 - (c) if the entity is lodging the notice in a Representative Capacity – the name of each scheme or trust to which the Representative Capacity relates;
 - (d) the date (***Withdrawal Effective Date***) the entity will cease being an Opt-In Nexus Entity in relation to each capacity in which it is lodging the notice, being a date not less than 30 days from the date the Withdrawal Notice is lodged.
- (4) ASIC may publish on its website any Opt-In Notice or a Withdrawal Notice given to it by an entity under this Rule.
- (5) If an entity lodges an Opt-In Notice under subrule (1), the entity will be an ***Opt-In Nexus Entity*** in relation to each capacity in which it lodges the notice from the Effective Date.
- (6) If an entity lodges a Withdrawal Notice under subrule (2), the entity will cease to be an Opt-In Nexus Entity in relation to each capacity in which it lodges the notice from the Withdrawal Effective Date.

Chapter 2: Clearing Requirements

2.1.1 Clearing Requirement

(1) A Clearing Entity must ensure that each of its Clearing Transactions is Cleared Through a Clearing Facility as soon as practicable after the Clearing Transaction is entered into and by no later than the end of the first Business Day after the day on which the Clearing Transaction is entered into.

(2) A Clearing Transaction is **Cleared Through** a Clearing Facility if:

- (a) for each party to the Clearing Transaction that is a participant in the Clearing Facility, the operator of the Clearing Facility enters into a Central Clearing Transaction with:
 - (i) that party; or
 - (ii) another participant acting on behalf of that party; and
- (b) for each party to the Clearing Transaction that is not a participant in the Clearing Facility, the operator of the Clearing Facility enters into a Central Clearing Transaction with a participant:
 - (i) acting on behalf of that party; or
 - (ii) acting on behalf of a person who is acting on behalf of that party; and

Note: A participant may be acting on behalf of a person even if it enters into a Central Clearing Transaction as principal.

- (c) following entry into the Central Clearing Transactions, each party to the Clearing Transaction has no, or substantially no, further rights against, or obligations to, the other party under the Clearing Derivative to which the Clearing Transaction relates.

(3) In this Rule, an operator of a Clearing Facility enters into a **Central Clearing Transaction** with:

- (a) a party to a Clearing Transaction who is a participant in the Clearing Facility if the operator is substituted, by novation, as the counterparty to the participant under the Clearing Derivative to which the Clearing Transaction relates; and
- (b) a participant who is acting on behalf of a party (**first party**) to a Clearing Transaction if:
 - (i) the participant is substituted, by novation, as the first party under the Clearing Derivative to which the Clearing Transaction relates; and
 - (ii) the operator is substituted, by novation, as the counterparty to the first party under the Clearing Derivative; and
- (c) a participant who is acting on behalf of a person who is acting on behalf of a party (**first party**) to a Clearing Transaction if:
 - (i) the participant is substituted, by novation, as the first party under the Clearing Derivative to which the Clearing Transaction relates; and
 - (ii) the operator is substituted, by novation, as the counterparty to the first party under the Clearing Derivative.

(4) In this Rule, an operator of a Clearing Facility also enters into a **Central Clearing Transaction** with a person in relation to a Clearing Transaction if the operator and the person enter into a transaction which has an equivalent, or a substantially equivalent, legal and economic effect as between the operator and the person as a novation referred to in paragraph (3)(a), (b) or (c).

Penalty amount: 1,000 penalty units.

2.1.2 Exception where Clearing Derivative terminated

A Clearing Entity is not required to comply with Rule 2.1.1 in relation to a Clearing Transaction if the Clearing Derivative to which the Clearing Transaction relates is terminated before the time by which the Clearing Transaction must be cleared in accordance with Rule 2.1.1.

2.1.3 Exception where no Licensed CS Facility or Prescribed CS Facility

A Clearing Entity is not required to comply with Rule 2.1.1 in relation to a Clearing Transaction if:

- (a) there is no Licensed CS Facility that:
 - (i) is authorised to provide clearing services in respect of the class of Derivatives that includes the Clearing Derivative to which the Clearing Transaction relates; and
 - (ii) provides clearing services in respect of the Clearing Derivative to which the Clearing Transaction relates; and
- (b) there is no Prescribed CS Facility that:
 - (i) is prescribed in relation to the class of Derivatives that includes the Clearing Derivative to which the Clearing Transaction relates; and
 - (ii) provides clearing services in respect of the Clearing Derivative to which the Clearing Transaction relates.

2.1.4 Exception to Clearing Requirement – Intra-group trades

(1) A Clearing Entity is not required to comply with Rule 2.1.1 in relation to a Clearing Transaction if:

- (a) at the time the Clearing Transaction is entered into, the counterparty to the Clearing Transaction is a related body corporate of the Clearing Entity; and
- (b) at least one Business Day before the Clearing Transaction is entered into, the Clearing Entity had given ASIC a written notice stating the following:
 - (i) the name of the Clearing Entity;
 - (ii) that the Clearing Entity intends to rely on the exemption in this Rule in relation to one or more Clearing Transactions with the counterparty;

Note: The notice may identify that the Clearing Entity intends to rely on the exemption in relation to all Clearing Transactions with the counterparty.

- (iii) the name of the counterparty;
- (iv) for the Clearing Entity and the counterparty, an LEI or interim entity identifier or, if no LEI or interim entity identifier is available for the entity, a Designated Business Identifier or, if no Designated Business Identifier is available for the entity, a Business Identifier Code (BIC code);
- (v) the reason that the counterparty is a related body corporate of the Clearing Entity.

Note to subparagraph (v): For example, that the counterparty is a subsidiary of the Clearing Entity.

(2) A notice given for the purpose of paragraph (1)(b) may relate to one or more Clearing Entities or counterparties.

Note: For example, the notice may relate to all entities in a corporate group, provided that the information required by paragraph (1)(b) is provided in relation to each Clearing Entity and each counterparty in the group, and the notice is given by, or on behalf of, each Clearing Entity in the group.

2.1.5 Exception to Clearing Requirement – Multilateral portfolio compression

(1) A Clearing Entity is not required to comply with Rule 2.1.1 in relation to a Clearing Transaction if:

- (a) the Clearing Transaction is entered into by the Clearing Entity as a result of the Clearing Entity modifying or terminating and replacing Derivatives under a Multilateral Portfolio Compression Cycle; and
- (b) those Derivatives were not subject to the Clearing Requirement in Rule 2.1.1 at the time the Derivatives were entered into;
- (c) the Clearing Transactions entered into by the Clearing Entity as a result of the Multilateral Portfolio Compression Cycle are only entered into with persons who were counterparties to those Derivatives; and
- (d) the Multilateral Portfolio Compression Cycle was conducted in accordance with the rules of a third-party operator of Multilateral Portfolio Compression Cycles and involved more than two participants, none of which was the operator; and
- (e) the Multilateral Portfolio Compression Cycle was conducted in compliance with the counterparty credit risk tolerance levels set by the participants in the Multilateral Portfolio Compression Cycle.

(2) In subrule (1), *Multilateral Portfolio Compression Cycle* means a process under which portfolios of Derivatives between participants in the process are modified to reduce their notional value or terminated and replaced with new Derivatives providing for reduced notional exposures between the participants, conducted for the purposes of reducing operational risk or counterparty credit risk for the participants.

2.1.6 T+3 clearing if foreign clearing requirements apply

(1) A Clearing Entity is not required to comply with Rule 2.1.1 in relation to a Clearing Transaction if the Clearing Entity or its counterparty to the Clearing Transaction is subject to a requirement in a foreign jurisdiction (*relevant foreign jurisdiction*) which requires the Clearing Transaction to be Cleared Through a Clearing Facility by no later than three Business Days after the date on which the Clearing Transaction was entered into.

(2) A Clearing Entity that relies on the exemption in subrule (1) must ensure that the Clearing Transaction is cleared in accordance with the requirements of the relevant foreign jurisdiction by no later than three Business Days after the date on which the Clearing Transaction was entered into.

Penalty amount: 1,000 penalty units.

(3) For the purposes of this Rule, *Business Day* means a day that is a business day as that term is commonly understood in the relevant foreign jurisdiction.

Chapter 3: Notifications and record keeping

Part 3.1 Notifications

3.1.1 Notification of Clearing Start Dates and Clearing End Dates

(1) A Financial Entity that is incorporated or formed in Australia or outside Australia must notify ASIC of each Clearing Start Date and each Clearing End Date that applies to the entity under Rule 1.2.8.

(2) A notification under subrule (1) must be in writing and must include the following information:

- (a) the name of the entity;
- (b) the entity's LEI or interim entity identifier or, if no LEI or interim entity identifier is available for the entity, a Designated Business Identifier, or if no Designated Business Identifier is available for the entity, a Business Identifier Code (BIC code);
- (c) whether the entity is giving the notification in its Personal Capacity or in a Representative Capacity;
- (d) if the entity is giving the notification in relation to a Representative Capacity – the name of each scheme or trust to which the Representative Capacity relates;
- (e) if the notification is of a Clearing Start Date – the Clearing Start Date and whether the entity will become an Australian Clearing Entity or a Foreign Clearing Entity on the Clearing Start Date;
- (f) if the notification is of a Clearing End Date – the Clearing End Date and whether the entity will cease to be an Australian Clearing Entity or a Foreign Clearing Entity on the Clearing End Date.

(3) A notification under subrule (1) must be given to ASIC no later than:

- (a) if the notification is of a Clearing Start Date – 30 days before the Clearing Start Date; and
- (b) if the notification is of a Clearing End Date – 30 days after the Clearing End Date.

(4) ASIC may publish on its website any notification given to ASIC under this Rule.

Penalty amount: 1,000 penalty units.

3.1.2 Notification of Clearing Entity status to counterparty

(1) This Rule applies to an entity that:

- (a) is a Clearing Entity; or
- (b) has given, or is required to give, a notice to ASIC under Rule 1.2.9 or subrule 3.1.1(1).

(2) An entity to which this Rule applies must, on request by a person that has entered into or proposes to enter into a Derivative Transaction with the entity, disclose in writing to the person the following within a reasonable time after the request:

- (a) whether the entity is an Australian Clearing Entity or a Foreign Clearing Entity; and
- (b) if the entity will become or cease to be a Clearing Entity on an identifiable future date – that date and whether the entity will become or cease to be an Australian Clearing Entity or a Foreign Clearing Entity on that date; and
- (c) whether the entity is an Opt-In Nexus Entity; and
- (d) whether the entity will begin or cease to be an Opt-In Nexus Entity on an identifiable future date and, if so, that date.

(3) An entity must disclose information under this Rule in relation to each capacity in which the entity:

- (a) is a Clearing Entity; or
- (b) is an Opt-In Nexus Entity; or
- (c) has given, or is required to give, a notice to ASIC under Rule 1.2.9 or subrule 3.1.1(1).

Penalty amount: 1,000 penalty units.

Part 3.2 Records

3.2.1 Keeping of records

(1) A Clearing Entity must keep records that enable the Clearing Entity to demonstrate it has complied with the requirements of these Rules.

(2) A Clearing Entity must keep each record referred to in subrule (1) for a period of at least five years from the date the record is made or amended.

(3) A Clearing Entity is not required to keep the records referred to in subrule (1) where the Clearing Entity has arrangements in place to access those records in a Clearing Facility, either directly or through another person, for the period set out in subrule (2).

Penalty amount: 1,000 penalty units.

3.2.2 Provision of records or other information

(1) A Clearing Entity must, on written request by ASIC, provide ASIC with records or other information relating to compliance with or determining whether there has been compliance with these Rules.

(2) A Clearing Entity must comply with a request under subrule (1) within the time specified in the request.

Penalty amount: 1,000 penalty units.