



ASIC
Australian Securities &
Investments Commission

REPORT 755

Response to submissions on CP 361 Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation

December 2022

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 361](#) *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation* (CP 361) and details our responses to those issues.

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.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy.

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A Overview and consultation process

- 1 In [Consultation Paper 361](#) *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation* (CP 361), we consulted on proposals to make changes to the *ASIC Derivative Transaction Rules (Reporting) 2013* (current ASIC rules). We consulted on a two-stage approach to effect specific changes to the current ASIC rules to:
 - (a) harmonise to the international standards for legal entity identifiers (LEIs), unique transaction identifiers (UTIs), unique product identifiers (UPIs) and critical data elements (supplemented with other important data elements);
 - (b) harmonise to an internationally adopted technical standard for reporting under [ISO 20022](#) *Financial services—Universal financial industry messaging scheme*;
 - (c) remove outdated transitional provisions and consolidate associated exemptions within the updated rules; and
 - (d) ensure they are fit for purpose as to the scope of reporting entities, derivative products and lifecycle transaction events that are subject to the updated rules, and clear as to the roles and responsibilities of entities submitting derivative transaction reports.
- 2 CP 361 set out a proposed two-stage rules update and implementation process:
 - (a) *Stage 1*: With effect from the 1 October 2023 sunset of the current ASIC rules, the rules would implement the LEI and UTI international standards, make limited functional changes to the data elements and make some changes to required reporting practices.
 - (b) *Stage 2*: With effect from 1 April 2024, the rules would implement the significant data element changes and the new technical standard for reporting.
- 3 CP 361 consisted of both a consultation paper and a feedback report to [Consultation Paper 334](#) *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation* (CP 334). CP 334 made a mix of specific and in-principle proposals and noted the uncertainties at the time about the final implementation of the international standards in other jurisdictions. We received 40 written submissions to CP 334 from stakeholders as noted in CP 361. The proposals made in CP 361 took into account these submissions.
- 4 We received four confidential and six non-confidential responses to CP 361. Responses came from stakeholders including reporting entities, industry bodies and associations, LEI system entities, a derivative trade repository, and trading and reporting services providers.

- 5 For a list of the non-confidential respondents to CP 361, see the appendix. Copies of these submissions are currently on the [CP 361](#) webpage on the ASIC website.
- 6 Following the close of the CP 361 consultation period, we engaged in further discussions with respondents to CP 361. As a result of these discussions, we have made amendments to the draft rules that we consulted on in CP 361, as highlighted in this report.
- 7 This report highlights the key issues that arose from the submissions received on CP 361 and our responses to those issues. For context, we have included a summary of our proposals in [CP 334](#). Where capitalised terms are not defined in this report, please refer to the list of defined terms in CP 361.
- 8 This report is not meant to be a comprehensive summary of all responses received. It is also not intended to be a detailed report on every question from CP 361. We have limited this report to the key issues.

Responses to consultation

- 9 Generally, respondents recognised the importance of updating the current ASIC rules to align with international standards. They were broadly supportive of the technical nature of the proposed changes, but raised a number of important concerns.
- 10 The main issues raised by respondents related to the proposals in CP 361 that would require reporting entities to:
- (a) effect changes to their systems twice in relation to the two-stage rules update approach;
 - (b) report a renewed LEI for entities other than the reporting entity;
 - (c) understand their counterparties' reporting obligations when generating a UTI;
 - (d) generate and provide a UTI to their reporting counterparty within one business day after the trade date; and
 - (e) report non-UPI underliers and the future dates of benchmark rate-setting events.
- 11 The other issues raised by respondents related to requests for further guidance on:
- (a) whether a re-submission that uses a new UTI would constitute late reporting; and
 - (b) whether the re-reporting requirement would require reporting entities to report information not captured within their systems when the trade was entered into.

Implementation and transition period

- 12 Respondents to [CP 361](#) raised concerns about the costs and complexities of a two-stage rules update process. Respondents also highlighted the importance of aligning the proposed rule changes with those of other jurisdictions as well as appropriately sequencing the timing of implementation to minimise the complexity of making system changes to comply with rules in multiple jurisdictions.
- 13 As a result of industry feedback about the cost and complexity associated with a two-staged implementation approach, we have consolidated our rule change implementation to a single go-live date commencing in 21 October 2024.
- 14 *ASIC Derivative Transaction Rules (Reporting) 2022* (2022 Rules) repeals and remakes the current ASIC rules in the same form, so as to continue the requirements for reporting over-the-counter (OTC) derivatives transactions beyond the 1 October 2023 sunset of the 2013 Rules. *ASIC Derivative Transaction Rules (Reporting) 2024* (2024 Rules) implements the proposals consulted on in CP 361 in one stage commencing 21 October 2024.
- 15 Ahead of the commencement of the 2024 Rules, we will also update the guidance in [Regulatory Guide 251](#) *Derivative transaction reporting* (RG 251). The updated guidance will be informed by the feedback we received on CP 361 and will further explain the approach and scope of the rules, and our expectations of how the guidance may apply in practice.
- 16 We are also intending to issue a third consultation paper in 2023 that will address outstanding matters that have not been consulted on in [CP 334](#) and [CP 361](#). These matters are set out in Table 43 of CP 361 and include:
- (a) alternative reporting;
 - (b) excluding exchange-traded derivatives; and
 - (c) reporting by foreign entities trading with Australian wholesale clients.

B Derivative transaction rules

Key points

This section outlines the key issues highlighted by the submissions in relation to our proposed rules in CP 361, including:

- implementation of the UTI (see paragraphs 17–24), UPI (see paragraphs 25–27), and LEI (see paragraphs 28–31);
- implementation of the ASIC data elements;
- implementation of the ISO 20022 messaging standard;
- proposals around the scope of reportable transactions and reporting entities;
- proposals around delegated reporting; and
- proposals around changes to the reporting requirements.

This section also includes our responses to the feedback received.

Unique transaction identifier (UTI)

- 17 In [CP 334](#), we proposed adopting the first steps of the UTI Guidance that start with market infrastructures followed by the same steps as the final European Securities and Markets Authority (ESMA) rules for the cases of single-jurisdictional reporting and multi-jurisdictional reporting.
- 18 We also discussed certain difficulties and uncertainties with UTI implementation, including:
- (a) identifying the jurisdictions in which a multi-jurisdictional transaction is reported;
 - (b) determining the jurisdiction with the earliest reporting deadline;
 - (c) whether market infrastructures would be recognised as being of that kind in a consistent manner in all jurisdictions and therefore consistently identified as the UTI generating entity;
 - (d) whether there may be rules implementation timing differences between jurisdictions such that an entity has an obligation to report the UTI received from an entity in another jurisdiction, but that other entity is not subject to an obligation to generate and give that UTI to the receiving entity; and
 - (e) whether there should be a deadline by which the UTI generating entity must provide the UTI to its counterparty in order that the counterparty can also report by the overarching deadline for reporting.

- 19 Submissions on [CP 334](#) expressed support for adopting the market infrastructure steps of the UTI Guidance but most were opposed to ASIC's proposals on how to identify the jurisdictions involved in reporting a multi-jurisdictional transaction. Respondents cited difficulties with the need to obtain and maintain information about the jurisdictional reporting requirements of their counterparties.
- 20 In [CP 361](#), we responded to the concerns in setting out a revised UTI waterfall and UTI generating and sharing provisions as a proposed new Rule 2.2.9. This rule and the proposed definitions to be added to Rule 1.2.3:
- (a) detailed the definitions and provisions for market infrastructures as UTI generating entities;
 - (b) finalised UTI generation methods for single-jurisdictional transactions;
 - (c) provided increased flexibility for UTI generation for multi-jurisdictional transactions; and
 - (d) set out requirements for providing UTIs to counterparties, the non-receipt of UTIs from other entities and the roles of third parties in UTI generation.
- 21 We received eight submissions on this proposal. The majority of those submissions provided full or in-principle support for the proposal, recognising the importance of the industry-wide adoption of a singular transaction identifier.
- 22 However, several respondents identified concerns with conclusively identifying single-jurisdictional reporting cases and, for multi-jurisdictional reporting cases, a perceived emphasis on the ASIC reporting entity validating that the other counterparty was following the UTI rules of the jurisdictions to which it would report. These respondents supported promoting the step for a bilateral agreement between the counterparties to determine who is the UTI generator above the step for determining the jurisdiction whose UTI rules are to be followed.
- 23 Other submissions requested clarification and further guidance on the reporting deadline and whether updating a temporary UTI to an actual UTI would constitute a late report. Submissions also raised concerns that our proposal to require UTI generating entities to provide the UTI to the other counterparty by 10 am Sydney time on the next business day was challenging for non-mainstream cases of 'structured' transactions and transactions that are not electronically confirmed. Some respondents, considering their role as UTI recipients, noted that they would be penalised by failings in UTI provision by their counterparties, in terms of having to set up new workflows for transactions 'awaiting UTI' but still meet the reporting deadline by creating and reporting their own UTI.

- 24 Industry suggested that these concerns could be alleviated by extending the ordinary deadline for reporting from one business day after the trade date (T+1) to two business days after the trade date (T+2), which would also align with the reporting deadlines of Singapore, Hong Kong and Japan.

ASIC's response

As proposed in [CP 361](#), we have implemented the UTI. We have included the requirements for UTI generation and sharing in Rule 2.2.9 of the 2024 Rules.

UTI generation

We acknowledge the complexities that respondents have raised in relation to determining the reporting obligations of their counterparty. In response to these concerns, we have undertaken further consultation with industry and amended draft Rule 2.2.9 to include a single-jurisdictional UTI generation method if the reporting entity is certain that this applies, otherwise the flexible approach to multi-jurisdictional reporting applies. The reporting entity is then responsible for its compliance with its own foreign jurisdiction UTI reporting but is not responsible for the other counterparty's compliance with their UTI reporting.

Reporting deadline

In response to the feedback about the complexities of UTI generation and the concerns about the reporting deadline, we extended the transaction reporting deadline from one business day after the trade date (T+1) to two business days after the trade date (T+2). The extension of the reporting deadline aligns with the reporting deadlines of Singapore, Hong Kong and Japan. In addition, the deadline for reporting 'structured' transactions is extended to T+4. These relaxed deadlines for reporting reduce the imperative for a specific deadline by which a reporting entity must provide the UTI to its counterparty and instead the requirement is to do so 'as soon as practicable'. The relaxed deadlines for reporting are also expected to reduce the incidence of 'awaiting UTI' situations as compared to maintaining a T+1 deadline for reporting.

In response to the feedback seeking clarification as to whether updating a temporary UTI to an actual UTI at a later date would constitute a late report, the reporting of the actual UTI is identified as a type of change report made under Rule 2.2.2 of the 2024 Rules.

Unique product identifier (UPI)

- 25 In [CP 334](#), we proposed including the UPI as a reportable data element and identified data elements that may need to continue to be reported as separate data elements if they are not embedded as reference data elements of a UPI code. Given the then underdeveloped state of the UPI system, we did not seek specific feedback on our proposed approach.

- 26 At the time of release of [CP 361](#), the UPI system was better developed and the scope of product information not covered within the system was clearer. As such, we proposed a number of additional data elements necessary to cover these gaps, including where the underlier of an OTC derivative was not explicitly named or identified within the UPI system (a ‘non-UPI underlier’).
- 27 We received six submissions on this proposal that broadly supported the addition of these data elements, but some concerns were expressed about the requirement to report non-UPI underliers and it was suggested that this should only be an optional requirement that allowed time for the UPI system to broaden its coverage of underliers.

ASIC’s response

As proposed in CP 361, we have implemented the non-UPI data elements consulted on in CP 361 in the 2024 Rules. We have included the non-UPI data elements in Schedule 1 of the 2024 Rules.

Non-UPI underliers

We have considered the feedback in relation to non-UPI underliers but disagreed with industry that reporting of non-UPI underliers should only be optional. The 2024 Rules maintain the requirement of the current ASIC rules and the 2022 Rules that an underlier should be reported in all circumstances.

Legal entity identifier (LEI)

- 28 In [CP 334](#), we proposed that all entities be identified with an LEI, other than natural persons not acting in a business capacity (who are not eligible to obtain an LEI).
- 29 In CP 361, we set out our decisions to:
- (a) require all entity identifiers to be current LEIs, other than for natural persons not acting in a business capacity (who are not eligible to obtain an LEI);
 - (b) require the LEIs to be current (i.e. duly renewed), other than for foreign counterparties and beneficiaries who are not ASIC reporting entities;
 - (c) not require transactions reported with entity identifiers that are not LEIs to have their information updated to an LEI;
 - (d) retain the provision allowing reporting of a non-LEI identifier when an LEI is applied for within two business days; and
 - (e) require that one of the joint counterparties is reported as an LEI.

- 30 We received eight submissions on our decision to implement the LEI. All the submissions agreed in principle with the LEI requirement.
- 31 Some submissions were concerned that the requirement for a renewed and valid LEI for counterparty 2 went beyond the requirements of the final rules imposed by other jurisdictions—for example, Commodity Futures Trading Commission (CFTC) and ESMA.

ASIC's response

As raised in [CP 361](#), we have proceeded with the decision to require the reporting of LEIs as entity identifiers for certain entities. Rule S1.3.1(2) and Tables S1.1(1)–(3) of the 2024 Rules set out the requirements in relation to reporting an LEI.

Current LEI

We have considered the feedback in relation to the requirement for a current LEI and have amended our decision by aligning our rules with the final CFTC and ESMA rules and only requiring that a renewed LEI be reported for the reporting entity, counterparty 1 and the central counterparty.

ASIC data elements

- 32 In [CP 334](#) we set out the ASIC data elements that we proposed to include in the updated ASIC rules, as well as the data elements that we would consider for inclusion in proposals in [CP 361](#). These proposals included removing many data elements that were either unique to, or duplicative within, the current ASIC rules and adopting data elements from the CDE Guidance to expand the dataset for important data elements not in the current ASIC rules.
- 33 Submissions on CP 334 generally expressed support for, or made no significant objections to our proposals to continue existing data elements, remove data elements and adopt data elements from the CDE Guidance or from the CFTC and/or ESMA datasets.
- 34 Stakeholders raised concerns with a number of the data elements, particularly those that were under consideration for proposal in CP 361. The concerns generally related to the complexities in sourcing the information from disparate systems (including the systems of outsourced execution agents and post-trade service providers), the perception of limited regulatory importance of the information and the need to create various information in a manner inconsistent with the approach in other jurisdictions.
- 35 In CP 361, we decided to:
- (a) proceed with 117 of the 124 proposed data elements set out in CP 334, including for some data elements notwithstanding stakeholder concerns about cost and complexity but with an exemption from certain extended requirements for about 90% of entities;

- (b) not proceed with 19 data elements proposed in [CP 334](#) where we considered that the regulatory benefit of the information did not outweigh the cost and complexity to businesses; and
 - (c) make new proposals for eight data elements across the two-stage process to update the current ASIC rules.
- 36 In [CP 361](#), the proposed additional data elements set out were designed to:
- (a) make limited functional changes to the data elements reported from the commencement of the stage 1 changes;
 - (b) provide underlier information that the UPI system would not include;
 - (c) report the collateral amount calculation timestamp in the equivalent manner of the valuation timestamp; and
 - (d) identify future events of benchmark rate-settings in the manner required in the final CFTC rules.
- 37 In addition, we proposed to exempt ‘small-scale buy-side entities’ from the extended requirements to report collateral, option notional conversion factors (‘delta’) and to report on a lifecycle basis. This exempts about 800 of the approximately 900 total number of reporting entities, whose aggregate notional and collateral posted is less than 2% of that of all reporting entities.
- 38 In summary, our proposals for the ASIC data elements in CP 361 included:
- (a) data elements commencing in the 2022 Rules and 2024 Rules;
 - (b) recognising transaction-to-position conversion reporting practices;
 - (c) curtailing duplicative reporting;
 - (d) recognising that reporting entities comply with their reporting obligations where a derivative trade repository creates an item of derivative transaction information for the reporting entity that it derives from other information reported by the reporting entity;
 - (e) introducing an exemption for small-scale buy-side entities from certain reporting requirements;
 - (f) allowing requirements of a reporting entity that is a responsible entity or trustee to be met by a person appointed to deal on behalf of the responsible entity or trustee; and
 - (g) re-reporting requirements for adherence to new formats and allowable values for legacy transactions.
- 39 We received eight submissions on this proposal. The majority of submissions were generally supportive of our revisions to the CP 334 proposals for the ASIC data elements.
- 40 Some submissions restated concerns but did not articulate any new concerns about certain data elements that we had decided to proceed with.

- Respondents also raised some concerns with our new proposals to identify non-UPI underliers and the future dates of benchmark rate-setting events.
- 41 Two respondents raised concerns about reporting the ‘package identifier’ data element, due to uncertainty about determining what constitutes a package and the technical complexity of reporting package transactions. Respondents also noted that the examples of packages in [CP 361](#) were not treated as package transactions by all entities. Respondents expressed concerns that the rules would always require reporting of package transactions in these circumstances.
- 42 In bilateral consultations after the CP 361 consultation period, the sole ASIC-licensed derivative trade repository noted that its validation of reported information would be enhanced by specific asset class and contract type data elements as well as an indicator to identify that the reporting entity is a small-scale buy-side entity. The derivative trade repository (with engagement from industry) also advised that reporting entities would welcome the data reconciliation, organisational and readability benefits of having asset class and contract type data elements present in the data files.
- 43 Respondents were also concerned about re-reporting data elements that were not originally captured for legacy transactions when the transactions were entered into.
- 44 Some submissions also sought clarification about the intended scope of the transaction-to-position conversion provision in draft Rule 1.2.5.

ASIC’s response

We have slightly revised our ASIC data elements to specify 128 data elements in total, and have proceeded with 125 data elements proposed in CP 361 and included an additional three data elements for data validation and organisational purposes. We have included these data elements in Schedule 1 of the 2024 Rules.

Non-UPI underliers and benchmark rate-setting events

In response to feedback from respondents about our proposals to include non-UPI underliers, we have revised our finalised proposal so that the underlier identifier may be populated with a ‘free text’ value, rather than mandating a waterfall of non-UPI underliers. However, we have not changed our proposal for reporting future dates of benchmark rate-setting events, as we think it is important information for the supervision of benchmark rate-setting events.

Data validation and reconciliation fields

In response to concerns raised by the sole ASIC-licensed derivative trade repository (with engagement from industry), our finalised proposals included adding the data elements of asset class, contract type and small-scale buy-side entity exemption indicator.

Package transactions

After the consultation period, we provided clarification in bilateral consultation with respondents in relation to reporting package transactions. We noted that the rules do not require counterparties to agree on package components for reporting purposes. They also allow counterparties to report package transactions as separate types of transactions. For example, one counterparty may report a 'package' as a single transaction while the other counterparty may report the 'package' as decomposed transactions.

Re-reporting of legacy transactions

To address respondents' concerns around re-reporting data elements not originally captured when legacy transactions were entered into, we have amended our rules. Only the information recorded in electronic form in the systems that are the sources for reportable derivative transaction information—or created in the ordinary way that systems would create information for reporting—needs to be re-reported. The intention is that information not originally captured into systems need not be sourced and added to systems for re-reporting.

Transaction to position conversion

In response to concerns raised by respondents about the scope of the transaction-to-position conversion provision in draft Rule 1.2.5, we have amended Rule 1.2.5(1)(b)(iv) of the 2024 Rules to only apply to a change to the way a reporting entity records an OTC derivative in the reporting entity's books and records, from representation as a transaction, to representation as a position.

ISO 20022 messaging standard

- 45 In [CP 361](#), we proposed requiring that reporting entities report information to derivative trade repositories in an ISO 20022 XML message, identifying four major jurisdictions that have decided or proposed to require such a technical format for reporting.
- 46 We received five submissions on this proposal. All submissions were supportive of mandating ISO 20022 XML as the technical format for reporting.

ASIC's response

As proposed in CP 361, we have proceeded with the implementation of ISO 20022 as the technical format in which reporting entities report information to derivative trade repositories. We have included this requirement in Rule 2.2.4 of the 2024 Rules.

Scope of reportable transactions and reporting entities

- 47 In [CP 334](#), we made proposals to:
- (a) incorporate the existing exemption for FX securities conversion transactions in the rules;
 - (b) exclude from the meaning of a reportable transaction a transaction for spot settlement;
 - (c) ensure that transactions with Australian retail clients are reportable transactions; and
 - (d) clarify the scope of reporting for foreign subsidiaries of Australian entities.
- 48 Submissions on CP 334 either supported or raised no objections to these proposals.
- 49 In [CP 361](#), we said that we had decided to proceed with our proposals in CP 334 and sought feedback on our proposal to include new and amended rules to:
- (a) clarify the meaning of a Part 7.2A Market as being a financial market for which market integrity rules apply—noting that a derivative traded on a Part 7.2A Market is not an OTC derivative under the rules;
 - (b) exclude as reporting entities Australian financial services (AFS) licensees without relevant derivatives authorisations in their AFS licence, consistent with reg 7.5A.50 of the *Corporations Regulations 2001* (Corporations Regulations);
 - (c) exclude as reporting entities clearing members in certain circumstances of an agency clearing model, generalising the existing exemption for OTC clearing participants of ASX Clear (Futures) Pty Ltd; and
 - (d) clarify that the OTC derivative transactions of a corporate collective investment vehicle (CCIV) are reportable transactions.
- 50 We received three submissions on this proposal. All submissions were supportive of the proposed changes to the scope of reportable transactions and reporting entities.

ASIC's response

As proposed in CP 361, we have proceeded with our proposals to amend the scope of reportable transactions and reporting entities as outlined above. We have included these amendments in Rules 1.2.4 and 1.2.5 of the 2024 Rules.

Spot settlement transactions

Given the support for our proposal to exclude from the meaning of a reportable transaction a transaction for spot settlement, we made [ASIC Corporations \(Amendment\) Instrument 2022/775](#) on

5 September 2022 to extend existing exemptions and insert 'Exemption 10 (Spot Settlement Transactions)' into [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#) (ASIC Instrument 2015/844). This exemption is included as Rule 1.2.4(7) in the 2024 Rules. We intend that Exemption 10 in ASIC Instrument 2015/844 will cease on the commencement of the 2024 Rules.

Delegated reporting

- 51 In [CP 334](#), we described our concerns about the operation of delegated reporting from our own interactions with a variety of reporting entities that make use of delegated reporting. We remain unconvinced that all reporting entities are capable of subjecting, and do subject, their delegated reporting arrangements to a level of oversight and rigour that sufficiently contributes to maintaining reported information as complete, accurate and current.
- 52 In CP 334, we did not make a specific proposal on delegated reporting but noted that, in principle, we considered the most effective approach to addressing our concerns in relation to delegated reporting is to remove the 'safe harbour' provision and revert to reporting entities having responsibility for reporting as otherwise set out in the current ASIC rules.
- 53 Following the release of CP 334, we requested submissions on this topic from a cross-section of industry identified as using reporting services providers, to better understand existing practices and operational insights in relation to delegated reporting. Respondents to CP 334 strongly disagreed with our preliminary approach of proposing to remove the 'safe harbour' provisions.
- 54 The key challenges and concerns raised by respondents were centred on:
- (a) the capability uplift that may be required by reporting entities to accurately oversee their delegates;
 - (b) the outsourcing of some business functions creating a lack of proximity to the transaction details and source data for some types of reporting entities using delegated reporting. There were related concerns about the deadline for reporting, the ability to conduct timely and accurate reconciliations and other operational complexities; and
 - (c) a potential move away from the use of reporting services providers, a potential deterioration in the quality of reported data and a potential move away from using appropriate OTC derivative hedge products to avoid triggering reporting obligations.

- 55 In [CP 361](#), we said that thorough consideration was given to the responses, but we consider that, on balance, it is appropriate to propose the removal of the ‘safe harbour’ provision and align the 2022 Rules with the outsourcing responsibility settings in other domestic and international regulatory rules and standards.
- 56 Internationally, we do not observe the existence of any similar ‘safe harbour’ regimes or diminished liability for reporting entities in circumstances where derivative transaction reporting is outsourced to another person.
- 57 We received seven submissions on this proposal. All submissions agreed in principle with the proposal to remove the ‘safe harbour’ provision.
- 58 Three respondents requested that the ‘safe harbour’ provision be retained in the 2022 Rules until such time as the 2024 Rules are made, in order to allow time for firms to strengthen existing governance frameworks and prepare for the resultant changes to systems, processes and controls.

ASIC’s response

As proposed in CP 361, we have proceeded with our proposal to remove the ‘safe harbour’ provision for delegated reporting. We have included these amendments in Rule 2.2.7 of the 2024 Rules.

Single-stage rules implementation

In response to the feedback requesting deferral of the removal of the ‘safe harbour’ until the 2024 Rules commence, we have consolidated our rule change implementation into a single-stage approach where the 2022 Rules are a remade and unchanged form of the current ASIC rules and the change proposals set out in CP 361 commence in the 2024 Rules.

Small-scale buy-side exemption

In response to feedback that the removal of the ‘safe harbour’ provision for delegated reporting may lead to a capability uplift by reporting entities to accurately oversee their delegates, we have introduced a small-scale buy-side exemption to relieve the regulatory burden for smaller reporting entities by exempting these entities (approximately 800 of about 900 reporting counterparties) from certain elements of the extended reporting requirements in the 2024 Rules.

Reporting deadline

In response to feedback about the reporting deadline and the ability to conduct timely and accurate reconciliations and other operational complexities, we have extended the reporting deadline from one business day after the trade date to two business days after the trade date (and to four business days for more complex ‘structured’ trades).

Reporting requirements

- 59 In [CP 334](#), we noted that in the current ASIC rules a reportable transaction is an ‘excluded derivative’ that must be reported by lifecycle reporting, and all other reportable transactions may be reported by either lifecycle reporting or snapshot reporting. Since 1 July 2019, excluded derivatives are CFDs, margin FX and equity derivatives—see [ASIC Derivative Transaction Rules \(Reporting\) Determination 2018/1096](#) (PDF 106 KB).
- 60 In CP 334, we considered that the material termination and amendment transactional activity observed in the reported derivative transaction information—especially as short-term trading and post-trade clearing—indicates that transparency of transaction information available to relevant authorities, and support for detection and prevention of market abuse, would be enhanced by lifecycle reporting for all OTC derivative products.
- 61 There was widespread support in submissions on CP 334 to implement lifecycle reporting for all OTC derivative products.
- 62 In [CP 361](#), we sought feedback on the proposal to extend lifecycle reporting to all products, with the exception of allowing snapshot reporting for small-scale buy-side entities for transactions in products other than equity derivatives.
- 63 We received three submissions on this proposal. All the submissions supported the introduction of lifecycle reporting.
- 64 One respondent requested clarification on lifecycle reporting for transactions that are executed anonymously on a derivative trading facility and subsequently cleared in accordance with the regulatory requirements of foreign jurisdictions. They submitted that an exclusion from reporting anonymous alpha trades would be appropriate.

ASIC’s response

We have proceeded with our proposal to extend lifecycle reporting to all products, with small-scale buy-side entities exempt from certain aspects of this requirement. We have included this requirement in Rule 2.2.8 of the 2024 Rules.

Anonymised reporting

We will still require lifecycle reporting, including where the trade is anonymised to the reporting entity. We have provided clarification in the 2024 Rules that, in this event, the identifier for counterparty 2 should be reported as ‘ANON’.

Outstanding matters

- 65 In [CP 361](#), we set out a number of matters that we have deferred to a third consultation. These matters included alternative reporting, excluding exchange-traded derivatives, and reporting by foreign entities trading with Australian wholesale clients. We also sought feedback about any other matters that should be considered in the third consultation paper.
- 66 We did not receive any submissions on this proposal.

ASIC's response

We intend to issue a third consultation paper in 2023 that will address outstanding matters that have not been consulted on in [CP 334](#) and [CP 361](#), including alternative reporting, excluding exchange-traded derivatives, and reporting by foreign entities trading with Australian wholesale clients.

Regulatory and financial impact

- 67 In CP 361, we provided our estimates of the regulatory compliance burden of implementing the proposed two-stage rules update. We considered all feasible options, including examining the likely impacts of the range of alternative options that could meet our policy objectives. The options we considered were:
- (a) Option 1—implement the draft amended ASIC Rules;
 - (b) Option 2—implement the ASIC data elements, UTI, UPI and LEI as proposed in CP 361 but do not implement ISO 20022 report messaging;
 - (c) Option 3—implement the ASIC data elements, UTI and LEI as proposed in CP 361 but implement UPI as a ‘conversion obligation’ imposed on derivative trade repositories, add-back additional ‘non-UPI’ data elements as ASIC data elements and do not implement ISO 20022 report messaging; and
 - (d) Option 4—remake the ASIC Rules without any changes to the current ASIC Rules (status quo).
- 68 We received five submissions on these estimates.
- 69 Two respondents noted that the impact and cost estimates set out in this section are understated compared to their preliminary assessment. Specifically, the two-stage rules update process proposed in CP 361 would require a duplication of build and resources that would need to run concurrently in order to meet both commencement dates.

- 70 Submissions also stressed the importance of maximising alignment of the proposed rules changes with those of other jurisdictions as well as appropriately sequencing the timing of implementation to minimise the complexity of making system changes to comply with rules in multiple jurisdictions.
- 71 Respondents also noted that the cost of re-reporting legacy trades would have a greater resourcing impact and would be costly to implement.

ASIC's response

We have amended our proposal to implement the proposed rules from the two-stage rules update process proposed in [CP 361](#) to a single-stage implementation with a single commencement date for the 2024 Rules on 21 October 2024.

Sequencing with other jurisdictions

We have set our commencement date on 21 October 2024 to minimise the complexity of making system changes and resourcing concerns to comply with rules in multiple jurisdictions by avoiding the commencement date of the final ESMA rules by approximately six months.

Re-reporting legacy trades

In response to feedback on the cost of re-reporting legacy trades, we have amended the re-reporting requirement in Rule 2.4.1 of the 2024 Rules.

Only the information recorded in electronic form in the systems that are the sources for reportable derivative transaction information—or created in the ordinary way that systems would create information for reporting—needs to be re-reported. The intention is that information not originally captured into systems need not be sourced and added to systems for re-reporting.

Appendix: List of non-confidential respondents

- Axicorp Financial Services Pty Ltd
- Bloomberg L.P.
- DTCC Data Repository Singapore Pte. Ltd.
- ISDA, AFMA and GFMA joint submission
- Retail Derivatives Forum
- SWIFT