

List of proposals and questions CONSULTATION PAPER 334

**Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation**

November 2020

List of proposals and questions

| Proposal | Your feedback |
| --- | --- |
| C1 We propose to set out the UTI structure and format in a technical specification and the text of UTI rules for transaction events in the ASIC Rules. | C1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  C1Q2 Do you consider that the UTI Guidance concerning the impact of the transaction events on the UTI is sufficiently clear or are there uncertainties that we should take into account when drafting the text for the ASIC Rules? In your response, please give detailed reasons for your answer. |
| C2 We propose to implement UTI Guidance step 1 (CCP), UTI Guidance step 2 (clearing member) and UTI Guidance step 3 (trading platform) as steps 1, 2 and 3 respectively in the ASIC Rules for UTI generation and reporting. | C2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  C2Q2 Do you consider that, in addition to uncertainties about the globally common recognition, for UTI rules’ purposes, of CCPs, clearing members and trading platforms and the manner and timing of implementing UTI generation obligations, there are other uncertainties or implementation risks in relation to implementing these steps 1, 2 and 3 as UTI rules within the ASIC Rules? In your response, please give detailed reasons for your answer.  C2Q3 Do you consider that, in addition to considering temporary exemptions for jurisdictional implementation timing differences, there are other steps that ASIC could take or other provisions or exemptions that ASIC could consider to resolve or minimise the uncertainties or implementation risks? In your response, please give detailed reasons for your answer. |
| C3 In principle, we propose to implement the elements of Table 4 as the steps of UTI rules for single-jurisdictional transactions within the ASIC Rules. As these steps are intended to align with the EU rules, our proposal is subject to the final EU rules. | C3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  C3Q2 Do you consider that either option 1 or option 2 or both should not be adopted in the ASIC Rules? In your response please give detailed reasons for your answer.  C3Q3 Noting that the proposal would not include the step of a UTI generator determination by agreement between the counterparties under option 2, do you consider that this form of UTI generator determination should be a step in the UTI rules within the ASIC Rules? In your response please give detailed reasons for your answer.  C3Q4 Noting that the proposal focuses on aligning with the final EU rules, do you consider there are other specific jurisdictions where aligning with UTI rules should be of greater focus? In your response please give detailed reasons for your answer.  C3Q5 Do you consider there are combinations of types of counterparties to a single-jurisdictional transaction where the UTI generator may not be determinable or would determine the UTI generator as a type of counterparty that is not your preferred UTI generator outcome? In your response please give detailed reasons for your answer.  C3Q6 Do you have any other comments about the proposal? |
| C4 We are not making a formal proposal in relation to a UTI cross-jurisdictional test at this time but we seek your feedback as set out below. | C4Q1 Do you consider that the approach outlined in paragraphs 103–107 would assist in clarifying the determination of a UTI generator? In your response, please give detailed reasons for your answer.  C4Q2 Do you consider that the capacity in which a counterparty is acting should include any status information that would overarchingly impact on a UTI generator determination? In your response, please give detailed reasons for your answer.  C4Q3 Do you consider there are significant impediments for you in obtaining such capacity information from your counterparties or conveying such capacity information to them? In your response, please give detailed reasons for your answer.  C4Q4 Do you consider there are particular transaction circumstances (such as counterparty domicile/branch location/status combinations) where the approach outlined in paragraphs 103–107 would not assist in clarifying how to determine a UTI generator? In your response, please give detailed reasons for your answer.  C4Q5 Do you have any other comments about the approach outlined in paragraphs 103–107? |
| C5 We are not making a formal proposal in relation to a method for determining the jurisdiction with the sooner deadline for reporting at this time but we seek your feedback as set out below. | C5Q1 Do you consider there is uncertainty in how the UTI Guidance’s ‘sooner deadline for reporting’ test is interpreted? In your response, please give detailed reasons for your answer.  C5Q2 Do you consider we have correctly identified the possible interpretations? In your response, please give detailed reasons for your answer.  C5Q3 Do you have a preferred single interpretation? In your response, please give detailed reasons for your answer.  C5Q4 Do you have any other comments about this issue? |
| C6 In principle, we propose that the UTI generator rules for a cross-jurisdictional transaction are the same rules as for a single-jurisdictional transaction. | C6Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  C6Q2 Do you agree that the above rules will provide the same UTI generator outcome in a transaction between an Australian entity and an EU financial counterparty, whether under the ASIC Rules or the ESMA proposals for EU rules? In your response, please give detailed reasons for your answer.  C6Q3 Do you agree that there can be the outcome (described in paragraph 134) that an EU non-financial counterparty is the UTI generator in a transaction with an Australian reporting entity but not in a transaction with an EU financial counterparty? In your response, please give detailed reasons for your answer.  C6Q4 Do you consider there are other particular transaction circumstances (such as counterparty domicile/branch location/status/jurisdictional combinations) where there may be similar differences in a UTI generator outcome? In your response, please give detailed reasons for your answer.  C6Q5 Do you have any other comments about the proposal? |
| C7 We are not making a formal proposal for ‘special purpose’ rules as discussed at paragraphs 135–139 at this time but we seek your feedback as set out below. | C7Q1 Do you consider there is merit in considering a ‘special purpose’ rule that would, in effect, deem the CFTC to be the sooner jurisdiction in all such cross-jurisdictional transactions? In your response, please give detailed reasons for your answer.  C7Q2 Do you consider there are particular transaction circumstances (such as counterparty domicile/branch location/status/jurisdictional combinations) where there may be unintended complexities or conflicts with other jurisdictions’ rules under this approach? In your response, please give detailed reasons for your answer.  C7Q3 Do you consider there may be other cross-jurisdictional situations which may also merit a ‘special purpose’ UTI rule? In your response, please give detailed reasons for your answer.  C7Q4 Do you have any other comments about this issue? |
| C8 In principle, we propose to provide for an ultimate determinant as per the UTI Guidance. | C8Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer. |
| C9 We intend to propose that the ASIC Rules require that ASIC reporting entities, when acting as a UTI generator, generate a UTI and provide it to their counterparty with an obligation of timeliness. | C9Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  C9Q2 Do you consider that an obligation of timeliness should refer to a fixed deadline (e.g. T+1, 12:00 a.m. Sydney) or as an amount of time after transaction execution (e.g. 12 hours) or as another timeliness reference? In your response, please give detailed reasons for your answer.  C9Q3 Do you consider there should be different obligations of timeliness for single-jurisdictional transactions and cross-jurisdictional transactions? In your response, please give detailed reasons for your answer. |
| C10 We may propose in the second round of consultation that the ASIC Rules include requirements on reporting entities to report their own UTI when they do not receive the UTI from the other UTI generator and to re-report using that second UTI when it is received. | C10Q1 Do you agree that we should propose such requirements? In your response, please give detailed reasons for your answer.  C10Q2 What are the kinds of requirements that you consider we should take into account when drafting such a proposal? In your response, please give detailed reasons for your answer. |
| E1 We propose to include in the ASIC Rules the data elements related to dates and timestamps set out in Table 7. | E1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E1Q2 In relation to ‘effective date’, do you consider that:  (a) there is a need to clarify the meaning of ‘effective date’;  (b) there are particular types of transactions for which determining ‘effective date’ is problematic; or  (c) in the absence of a determinable ‘effective date’, ‘execution timestamp’ should be reported instead?  In your response, please give detailed reasons for your answer.  E1Q3 Do you agree that ‘event timestamp’ should be a timestamp data element and not a date data element? In your response, please give detailed reasons for your answer.  E1Q4 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 7? In your response, please give detailed reasons for your answer. |
| E2 We propose to include in the ASIC Rules the data elements related to counterparties and beneficiaries set out in Table 8. | E2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E2Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 8? In your response, please give detailed reasons for your answer.  E2Q3 In relation to ‘reporting entity’, do you consider that this should be reported in all circumstances or only reported where it is a different entity to ‘counterparty 1 (reporting counterparty)? |
| E3 We propose to include in the ASIC Rules the data elements for ‘direction’ that make the same elections as proposed by ESMA—that is, the data elements ‘Direction 1’, ‘Direction 2 —Leg 1’ and ‘Direction 2—Leg 2’: see Table 10. | E3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E3Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 10? In your response, please give detailed reasons for your answer. |
| E4 We propose to include in the ASIC Rules the data elements related to clearing, trading, confirmation and settlement set out in Table 11. | E4Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E4Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 11? In your response, please give detailed reasons for your answer. |
| E5 We propose to include in the ASIC Rules the data elements related to regular payments set out in Table 12. | E5Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E5Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 12? In your response, please give detailed reasons for your answer. |
| E6 We are considering a proposal, in the second round of consultation, to include in the ASIC Rules the data elements related to the floating rate reset frequency set out in Table 13. | E6Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.  E6Q2 For transactions where the frequency of resets of the floating rate differ from the frequency of the reference rate itself, please provide feedback about:  (a) the incidence of these types of transactions in your own dealings; and  (b) whether other data elements—for example, payment frequency—could be relied on, in all cases or in most cases or in few cases, to infer the ‘floating rate reset frequency (period/period multiplier)’.  E6Q3 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 13? In your response, please give detailed reasons for your answer. |
| E7 We propose to include in the ASIC Rules the data elements related to valuation set out in Table 14. | E7Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E7Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 14? In your response, please give detailed reasons for your answer. |
| E8 We propose to include in the ASIC Rules the data elements related to collateral and margins set out in Table 15. | E8Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E8Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 15? In your response, please give detailed reasons for your answer. |
| E9 We do not propose to include in the ASIC Rules the data elements related to counterparty rating triggers set out in Table 16. | E9Q1 Do you agree with this proposal? If not, please give detailed reasons for your answer. |
| E10 We propose to include in the ASIC Rules the data elements related to prices set out in Table 18. | E10Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E10Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 18? In your response, please give detailed reasons for your answer. |
| E11 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to prices set out in Table 19. | E11Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.  E11Q2 For transactions involving ‘price schedules’ or ‘strike price schedules’, please provide feedback about:  (a) the incidence of such types of transactions in your own dealings; and  (b) whether you prefer to provide this information in your initial transaction report as a ‘schedule’ rather than reporting the changes according to the ‘schedule’ in subsequent transaction reports.  E11Q3 For transactions where ‘first exercise date’ would be reported as a value that is not otherwise reported in another data element, please provide feedback about the incidence of such types of transactions in your own dealings and any other feedback.  E11Q4 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 19? In your response, please give detailed reasons for your answer. |
| E12 We propose to include in the ASIC Rules the data elements related to notional amounts and quantities set out in Table 20. | E12Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E12Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 20? In your response, please give detailed reasons for your answer.  E12Q3 Do you consider that the identification of which currency data elements are the call option/put option data elements in a foreign exchange option could, or should, be simplified by, for example, only specifying the call currency? In your response, please give detailed reasons for your answer. |
| E13 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to notional quantities set out in Table 21. | E13Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.  E13Q2 For transactions involving ‘notional quantity schedules’, please provide feedback about:  (a) the incidence of such types of transactions in your own dealings; and  (b) if the relationship between quantity, price and notional can be relied on to infer a ‘notional quantity schedule’ from a ‘notional amount schedule; and  (c) whether you prefer to provide this information in your initial transaction report as a ‘schedule’ rather than reporting the changes according to the ‘schedule’ in subsequent transaction reports.  E13Q3 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 21? In your response, please give detailed reasons for your answer. |
| E14 We propose to include in the ASIC Rules the data elements related to CDS index transactions set out in Table 22. | E14Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E14Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 22? In your response, please give detailed reasons for your answer. |
| E15 We propose to include in the ASIC Rules the data elements related to other payments set out in Table 23. | E15Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E15Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 23? In your response, please give detailed reasons for your answer. |
| E16 We propose to include in the ASIC Rules the data elements related to packages and links set out in Table 24. | E16Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E16Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 24? In your response, please give detailed reasons for your answer. |
| E17 We propose to include in the ASIC Rules the data elements related to custom baskets set out in Table 25. | E17Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E17Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 25? In your response, please give detailed reasons for your answer. |
| E18 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to custom baskets set out in Table 26. | E18Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.  E18Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 26? In your response, please give detailed reasons for your answer. |
| E19 We propose to include in the ASIC Rules the non-CDE data elements set out in Table 27. | E19Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E19Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 27? In your response, please give detailed reasons for your answer. |
| E20 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to custom baskets set out in Table 28. | E20Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.  E20Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 28? In your response, please give detailed reasons for your answer. |
| E21 We propose to develop and prescribe technical specifications to the ASIC Rules as a writing that is applied under the ASIC Rules as in force or existing from time to time. | E21Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  E21Q2 Do you suggest that we should model the form of a technical specification on one or more existing technical specification related to transaction reporting? In your response, please give detailed reasons for your answer. |
| F1 We propose to amend the ASIC Rules to:  (a) require that entity identifiers must be valid and duly renewed LEIs (other than for entities that are natural persons not acting in a business capacity); and  (b) require that transactions that have been reported with entity identifiers that are not valid and duly renewed LEIs have their transaction information updated to include a valid and duly renewed LEI. | F1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  F1Q2 Do you consider that you will have particular interpretation or implementation issues with the proposed LEI requirements? In your response, please give detailed reasons for your answer. |
| F2 We propose to repeal section 6 ‘Exemption 2 (Entity Information)’ and section 6B ‘Exemption 2B (Joint Counterparties)’ of ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 in relation to reporting entities other than reporting entities that are foreign subsidiaries of Australian reporting entities. | F2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  F2Q2 Do you consider that you will have particular interpretation or implementation issues with the proposed LEI requirements? In your response, please give detailed reasons for your answer. |
| G1 We propose to amend the ASIC Rules to:  (a) exclude from meaning of a reportable transaction a transaction for spot settlement, with specific rules text to be proposed in the second round of consultation;  (b) exclude from the meaning of an OTC derivative those derivatives that fall within a generic definition of an exchange-traded derivative, with specific rules text to be proposed in the second round of consultation. | G1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.  G1Q2 Do you consider that the Singapore and Hong Kong definitions for a spot contract are an appropriate basis for an equivalent definition in the ASIC Rules? Are there other definitions that you consider we should also take into account? In your response, please give detailed reasons for your answer.  G1Q3 Do you consider that the existing generic definition in the exemption is an appropriate basis for an equivalent definition in the ASIC Rules? Are there other definitions that you consider we should also take into account? In your response, please give detailed reasons for your answer.  G1Q4 Do you consider that the design of this exclusion should include ‘avoidance of doubt’ references to certain classes of financial markets, a requirement to notify ASIC of financial markets that a reporting entity considers trades exchange-trade derivatives and/or a form of ‘disallowance’ determination that empowers ASIC to determine that certain derivatives are not exchange-traded derivatives? In your response, please give detailed reasons for your answer. |
| G2 We propose to amend the ASIC Rules to:  (a) ensure that transactions with Australian retail clients are reportable transactions with specific rules text to be proposed in the second round of consultation; and  (b) to clarify the scope of reporting for foreign subsidiaries of Australian entities with specific rules text to be proposed in the second round of consultation. | G2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer. |
| H1 In this first consultation we seek to gather information about the scope and practices of reporting entities undertaking alternative reporting in order to better inform any future proposals we may make in relation to alternative reporting in the second round of consultation. | H1Q1 We request that reporting entities that are current users of alternative reporting identify themselves to us and engage in discussion with us about their alternative reporting practices. In particular:  (a) to which ASIC prescribed repository do you report?  (b) how do you ‘designate’ the reporting as information that has been reported under the ASIC Rules? |
| H2 In principle, we consider the most effective approach to addressing our concerns in relation to delegated reporting is to amend the ASIC Rules to remove the ‘safe harbour’ provisions and revert to reporting entities having responsibilities for reporting as otherwise set out in the ASIC Rules. | H2Q1 In this first consultation we seek to gather information about the practices of reporting entities in overseeing their delegates in order to better inform any future proposals we may make in relation to delegated reporting in the second round of consultation. In particular:  (a) What are the specific processes and practices that you rely on to determine if the delegate is complying with the terms of the delegation agreement and to ensure that complete, accurate and current reporting is being carried out on your behalf? |
| I1 We propose to clarify in the ASIC Rules that the deadline for reporting for the purposes of the UTI rules within the ASIC Rules is a singular time referring to Sydney time. | I1Q1 Do you agree with our proposal to clarify the deadline for reporting for the purposes of the UTI rules within the ASIC Rules? In your response, please give detailed reasons for your answer.  I1Q2 Do you consider there should be a single deadline for reporting that is applicable to both the UTI rules and the actual reporting obligation? In your response, please give detailed reasons for your answers.  I1Q3 Do you consider that such a singular time should be expressed as a precise time such as 11.59 pm or as the end of the day? In your response, please give detailed reasons for your answers. |
| I2 We are considering a proposal in the second round of consultation to amend the ASIC Rules to require lifecycle reporting for all reportable transactions. | I2Q1 Do you agree that we should propose such requirements? In your response, please give detailed reasons for your answer.  I2Q2 Do you consider that you will have particular interpretation or implementation issues with ‘lifecycle reporting’ for all reportable transactions? In your response, please give detailed reasons for your answer. |
| I3 We propose to repeal or amend the relevant outdated provisions of the ASIC Rules | I3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer. |