



**ASIC**  
Australian Securities &  
Investments Commission

CONSULTATION PAPER 353

# **Proposed amendments to the *ASIC Derivative Transaction Rules (Clearing) 2015***

December 2021

## **About this paper**

This consultation paper sets out our proposals to modify the contract types that are subject to the *ASIC Derivative Transaction Rules (Clearing) 2015* made under s901A of the Corporations Act.

We are seeking the views of interested stakeholders on our proposals.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 6 December 2021 and is based on the legislation as at the date of issue.

### Disclaimer

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

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## The consultation process

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

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

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

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

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us respond to global regulatory initiatives on benchmark reform, while ensuring that the [ASIC Derivative Transaction Rules \(Clearing\) 2015](#) continue to reflect the Council of Financial Regulators' [Australian regulators' statement on assessing the case for mandatory clearing obligations](#), 8 May 2013. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

### Making a submission

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

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

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

Comments should be sent by 24 January 2022 to:

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### What will happen next?

<b>Stage 1</b>	6 December 2021	ASIC consultation paper released
<b>Stage 2</b>	24 January 2022	Comments due on the consultation paper
<b>Stage 3</b>	To be confirmed	Amended <i>ASIC Derivative Transaction Rules (Clearing) 2015</i> made and feedback report released

## A Background to the proposals

### Key points

Following the global financial crisis, the Leaders of the Group of Twenty (G20) nations, including Australia, committed to reforming over-the-counter (OTC) derivatives markets. One of the key commitments made was to require all standardised OTC derivative transactions to be cleared through central counterparties (CCPs). These reforms were directed towards improving transparency, mitigating systemic risk, and protecting against market abuse in OTC derivatives markets.

On 3 January 2013, legislation providing a framework to implement these G20 commitments in Australia came into effect. This allowed ASIC to make rules imposing central clearing requirements for certain products within interest rate derivative classes determined by the Minister.

Since the [ASIC Derivative Transaction Rules \(Clearing\) 2015](#) (the ASIC Derivative Transaction Rules (Clearing)) were implemented, there have been international efforts to transition away from certain benchmark rates that are used in a range of financial instruments, including interest rate derivative contracts. These reforms necessitate amendments to the rules to maintain the intended scope of the clearing requirement.

This consultation paper—and the draft amended ASIC Derivative Transaction Rules (Clearing) attached to this consultation paper—outline our proposed approach to amending the product scope of the rules to reflect changes in OTC derivative markets that will have taken place by 3 January 2022. Specifically, we are proposing to remove products that reference certain discontinuing benchmarks and replace them with contracts that reference replacement near risk-free rates (RFRs) selected for each currency.

### The G20 OTC derivatives reforms

- 1 In response to the systemic risks exposed by the global financial crisis, the Leaders of the G20 nations agreed to strengthen the international financial regulatory system at the Pittsburgh Summit in 2009.

Note: See G20 Leaders, [G20 Leaders Statement: The Pittsburgh Summit](#), 24–25 September 2009.

- 2 Among other initiatives, the G20 Leaders committed to the following reforms to improve practices in OTC derivatives markets:
  - (a) all standardised OTC derivative transactions should be traded on exchanges or electronic trading platforms, when appropriate;

- (b) all standardised OTC derivative contracts should be cleared through CCPs;
- (c) OTC derivative transactions should be reported to trade repositories; and
- (d) non-centrally cleared transactions should be subject to higher capital requirements.

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

3 The objectives of these reforms were to:

- (a) enhance the transparency of transaction information available to relevant authorities and the public;
- (b) promote financial stability; and
- (c) support the detection and prevention of market abuse.

Note: See the Committee on Payments and Market Infrastructures (formerly the Committee on Payment and Settlement Systems) and the Technical Committee of the International Organization of Securities Commissions, [Principles for financial market infrastructures](#) (1.07 MB PDF), April 2012, p. 9.

### What is central clearing?

4 Broadly speaking, central clearing is a process whereby an entity—known as a central counterparty or CCP—interposes itself between the parties to a bilateral transaction through a process known as novation. The CCP becomes the buyer to every seller and the seller to every buyer, such that the parties to the original transaction have no, or substantially no, further rights against, or obligations to, each other under the derivative after it has been cleared.

## Implementation of central clearing requirements in Australia

5 The *Corporations Legislation Amendment (Derivative Transactions) Act 2012* inserted Pt 7.5A ‘Regulation of derivative transactions and derivative trade repositories’ into the *Corporations Act 2001* (Corporations Act). Relevantly, Pt 7.5A established a mechanism whereby the Minister may determine classes of derivative transactions in relation to which ASIC may make rules imposing central clearing requirements.

6 Section 901B of the Corporations Act relevantly provides that the Minister must consult with ASIC, the Reserve Bank of Australia (RBA) and the Australian Prudential Regulation Authority (APRA)—collectively, the regulators—about any proposed determination.

- 7 The regulators must have regard to:
- (a) the likely effect on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system; and
  - (b) the likely regulatory impact.
- 8 The regulators may also have regard to any other matters that the Minister considers relevant, including, for example:
- (a) any relevant international standards and international commitments; and
  - (b) matters raised in consultations.
- 9 In making rules imposing central clearing requirements, ASIC is to have regard to the same matters as the Minister and must, before making (or amending) such rules, consult with the public and the other regulators.
- 10 On 8 May 2013, the regulators published the [\*Australian regulators' statement on assessing the case for mandatory clearing obligations\*](#) (regulators' statement). It set out the analysis that the regulators would apply when assessing the case for mandatory central clearing (by reference to the matters highlighted for consideration in Pt 7.5A).
- 11 Specifically, the regulators' statement identified and addressed:
- (a) the preconditions for central clearing;
  - (b) the potential benefits of central clearing for the efficiency, integrity and stability of financial markets;
  - (c) the incremental benefits and costs of a mandated (as opposed to incentives-led) transition to central clearing; and
  - (d) the benefits of international consistency.
- 12 In the first instance, consideration must be given to whether a particular product is suitable for central clearing. Drawing upon internationally accepted standards, the regulators' statement identified the characteristics a particular product must have before it can be safely and reliably cleared by a CCP. These include:
- (a) the product must have a robust valuation methodology;
  - (b) there must be sufficient liquidity in the market;
  - (c) there must be sufficient transaction activity and participation; and
  - (d) there must be some standardisation of contracts.
- Note: These are the 'preconditions for central clearing'.
- 13 Given the large number of products that potentially satisfy these basic requirements, the regulators indicated that they would prioritise assessing the case for mandatory central clearing based on:
- (a) the relative systemic importance of the product;

- (b) whether the product is already under a clearing obligation in another jurisdiction;
  - (c) whether the product is designed as a deliberate attempt to avoid a clearing obligation; and
  - (d) the degree to which the efficiency, integrity and stability of financial markets would be enhanced by centrally clearing a particular product class (based on its characteristics, the level of trading activity, and the profile of participation in the market).
- 14 For each product identified and prioritised through this process, the case for imposing a clearing requirement will focus on the incremental benefits and costs of such a mandate, relative to allowing the market to transition to central clearing on a voluntary basis, in response to private or other regulatory incentives. This involves consideration of:
- (a) the extent to which market participants are already centrally clearing that product;
  - (b) the availability or accessibility of central clearing of that product for different types of Australian market participants, whether as direct participants or as clients;
  - (c) whether participants have already established appropriate commercial and operational arrangements with CCPs or whether such arrangements are still under negotiation for particular types of participants; and
  - (d) evidence of commercial pressure or regulatory incentives to centrally clear that product.
- 15 When a product is subject to an overseas mandate, the following three factors will have a significant bearing on the case for mandatory clearing:
- (a) the likelihood of regulatory arbitrage, which may arise in the absence of broadly harmonised requirements across jurisdictions;
  - (b) any unintended consequences arising from the structure of the Australian market when Australian participants are subject to a mandate overseas but not in Australia; and
  - (c) the effect on other jurisdictions' assessment of the equivalence or comparability of the Australian regime.
- 16 Applying this approach to the Australian OTC derivatives market, the regulators advised the Minister to consider determining interest rate derivatives denominated in:
- (a) Australian dollars;
  - (b) US dollars;
  - (c) euros;

- (d) British pounds; and
- (e) Japanese yen.

Note: See Council of Financial Regulators (CFR), [Report on the Australian OTC derivatives market](#), July 2013 (CFR July 2013 report); and CFR, [Report on the Australian OTC derivatives market](#), April 2014 (CFR April 2014 report).

17 The regulators further recommended that the initial focus of the mandate should be on dealers with significant cross-border activity in OTC derivatives.

18 In relation to interest rate derivatives denominated in US dollars, euros, British pounds and Japanese yen (the G4 currencies), the regulators' recommendation was based primarily on international consistency grounds, noting that the incremental regulatory cost of imposing a mandate was likely to be low for dealers with significant cross-border activities.

Note: See CFR July 2013 report, pp. 32–3.

19 In line with the regulators' advice, the Minister made a determination under s901B of the Corporations Act empowering ASIC to make rules imposing central clearing requirements for interest rate derivatives denominated in any of the following currencies:

- (a) Australian dollars;
- (b) US dollars;
- (c) euros;
- (d) British pounds; and
- (e) Japanese yen.

Note: These are the 'determined clearing classes': see *Corporations (Derivatives) Amendment Determination 2015 (No. 1)* amending the *Corporations (Derivatives) Determination 2013*.

20 On 3 December 2015, ASIC made the ASIC Derivative Transaction Rules (Clearing) under s901A of the Corporations Act. These rules do not apply to all products within the determined clearing classes. The 'clearing derivatives', which may be subject to the clearing requirement, are identified by reference to certain additional characteristics, including the Floating Rate Index (FRI) on which each floating rate for the derivative transaction is based.

## Benchmark reform

21 Since the global financial crisis, global regulators and industry have undertaken work to strengthen confidence in interest rate benchmarks and identify alternatives based on near risk-free rates (RFRs). A roadmap for the

transition away from certain interbank offered rates and onto new RFRs was published by the Financial Stability Board in October 2020.

Note: See Financial Stability Board, [Global transition roadmap for LIBOR](#), 16 October 2020.

- 22 Several benchmarks referenced as FRIs in the ASIC Derivative Transaction Rules (Clearing) are due to cease or no longer be representative by 3 January 2022—namely, the Euro Overnight Index Average (EONIA) and the London Interbank Offered Rate (LIBOR) for the following settings:
- (a) GBP LIBOR (all tenors);
  - (b) JPY LIBOR (all tenors); and
  - (c) USD LIBOR (one week and two months).
- 23 The remaining USD LIBOR settings (i.e. one, three, six and 12 months, and overnight) are due to cease or no longer be representative by June 2023.
- 24 The Euro Interbank Offered Rate (EURIBOR) and the Australian Bank Bill Swap Rate (BBSW)—other interbank offered rates that are referenced as FRIs in the ASIC Derivative Transaction Rules (Clearing)—are not being phased out and we are not considering any changes that would impact contracts referencing these benchmarks.
- 25 Internationally, efforts have been underway to facilitate the transition from EONIA and LIBOR and onto replacement RFRs selected for each currency: see Table 1.

**Table 1: FRIs and replacement RFRs**

Currency	Existing FRI	Replacement RFR
EUR	EONIA	Euro Short-Term Rate (€STR)
GBP	GBP LIBOR	Sterling Overnight Index Average (SONIA)
JPY	JPY LIBOR	Tokyo Overnight Average Rate (TONA)
USD	USD LIBOR	Secured Overnight Financing Rate (SOFR)

Note: Table 1 only includes discontinuing benchmarks that are referred to in the ASIC Derivative Transaction Rules (Clearing).

- 26 In tandem with these developments, CCPs have been working to ensure an orderly transition away from benchmarks ahead of their planned cessation dates and onto replacement RFRs. To this end, CCPs will no longer clear contracts referencing EONIA and LIBOR (other than USD LIBOR). Any legacy (cleared) contracts will have been converted to contracts referencing the relevant replacement RFRs by the end of 2021.

- 27 The conversion dates for products covered in this consultation paper correspond to the following weekends in Q4 2021:
- (a) 16 October 2021 for EONIA to €STR;
  - (b) 4 December 2021 for JPY LIBOR to TONA; and
  - (c) 18 December 2021 for GBP LIBOR to SONIA.
- 28 It is anticipated that, following these conversion dates, any market liquidity remaining in contracts referencing discontinuing benchmarks will sharply decrease. This liquidity is expected to shift—to a greater or lesser extent depending on the currency—to products referencing the relevant RFRs.
- 29 In consideration of the systemic importance of the transition to RFRs, and the development of active and liquid markets for RFRs, we are proposing to amend the ASIC Derivative Transaction Rules (Clearing) to reflect market developments resulting from benchmark reform.

## Purpose of this paper

- 30 This consultation paper sets out our proposal to amend the ASIC Derivative Transaction Rules (Clearing) to ensure that they continue to reflect the policy outlined in the regulators' statement. In particular, we propose to:
- (a) remove contracts referencing benchmarks that will cease or no longer be representative by January 2022; and
  - (b) replace these contracts with contracts within the existing Overnight Index Swaps (OIS) class referencing replacement RFRs selected for each currency by the relevant regulators.
- 31 We consider that these changes will ensure that the clearing mandate will only apply to products that:
- (a) satisfy the preconditions for central clearing; and
  - (b) are suitable for mandatory (as opposed to voluntary) central clearing based on the analytical approach outlined in the regulators' statement.
- 32 As with the regulators' advice to the Minister before the ASIC Derivative Transaction Rules (Clearing) were made, we have primarily considered international consistency in proposing new clearing derivatives—given that:
- (a) the products we propose to add as clearing derivatives are already being safely and reliably cleared by CCPs; and
  - (b) the incremental regulatory cost of adding these products is likely to be relatively low given there will be no change to the clearing threshold.

Note: See CFR July 2013 report, pp. 32–3.

- 33 Our proposal to add new clearing derivative products to the existing OIS class is informed by our intention to be a ‘fast follower’ of the relevant overseas regulators. We will continue to monitor international regulatory developments to maintain, as far as possible, overall consistency with the approach taken by home regulators for each currency.
- 34 The purpose of these proposed amendments is to maintain existing policy settings and to provide industry with certainty about the continued application of the clearing requirement. Our intention is to maintain, as far as possible, the level of activity covered by the clearing mandate without attempting to pre-empt future market developments that could lead to new products.

## B Clearing derivatives

### Key points

The ASIC Derivative Transaction Rules (Clearing) currently specify certain interest rate derivative contracts referencing benchmarks that will cease or no longer be representative by January 2022. These products will no longer be suitable—nor indeed available—for central clearing beyond the end of 2021.

Given the underlying policy objectives of mandatory central clearing are not altered by these developments, we are proposing to replace these contracts with a range of products referencing replacement RFRs within the existing OIS class. By making these changes concurrently, we hope to maintain, as far as possible, the level of activity covered by the clearing mandate.

Consistent with our ‘fast follower’ approach, we intend to revisit the removal and replacement of contracts referencing USD LIBOR after the US authorities have settled their approach.

## Benchmark transition

### Proposal

**B1** We propose to make the following amendments to the ASIC Derivative Transaction Rules (Clearing):

- (a) remove contracts referencing EONIA from the OIS class and replace them with contracts in the same class referencing €STR with a termination date range of seven days to two years;
- (b) remove contracts referencing JPY LIBOR from the basis swaps, fixed-to-floating swaps and forward rate agreement classes and replace them with OIS contracts referencing TONA with a termination date range of seven days to 30 years; and
- (c) remove contracts referencing GBP LIBOR from the basis swaps, fixed-to-floating swaps and forward rate agreement classes and replace them with OIS contracts referencing SONIA with a termination date range of seven days to 50 years.

See the draft amended Rule 1.2.3 in the appendix to this paper.

### Your feedback

**B1Q1** Do you agree with the proposed amendments to the product scope of the clearing requirement? If not, please elaborate on alternative options.

**B1Q2** When should these proposed amendments come into force?

B1Q3 What is the likely impact of our proposals? Do you expect to incur any costs as a result of our proposals? If so, please provide an estimate of the time and costs that you will expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed amendments.

B1Q4 What are the benefits and costs of aligning our amendments closely with our overseas counterparts in meeting Australia's G20 commitment?

## Rationale

35 Our proposals are necessitated by global regulatory initiatives on benchmark reforms described at paragraphs 1–29. Consequential amendments are required to avoid a situation in which, on their face, the ASIC Derivative Transaction Rules (Clearing):

- (a) impose a clearing requirement in respect of products that do not satisfy the preconditions for central clearing; and
- (b) cease to achieve the underlying policy objectives of mandatory central clearing, including based on international consistency considerations.

36 The rationale for our proposals is to ensure that the ASIC Derivative Transaction Rules (Clearing) continue to reflect their original policy intention, as well as the principles outlined in the regulators' statement (in particular with respect to international consistency). We expect that a similar level of OTC derivatives activity will be covered by the clearing mandate after these amendments are made by:

- (a) removing contracts that will no longer be suitable (or available) for central clearing; and
- (b) replacing them with contracts in the existing OIS class referencing the replacement RFR selected for each currency by the relevant home regulator.

37 We will continue to monitor developments with benchmark transition in the US dollar interest rate derivative markets.

38 The timing of our proposals has been informed by the international consistency considerations set out in the regulators' statement, which has enabled us to observe the direction taken in the relevant home jurisdiction for each currency.

39 We do not expect that market participants will incur costs as a result of our proposals. The proposed new products are all within the existing OIS class and we are not changing the threshold at which clearing requirements begin to apply to entities. Costs associated with participants' preparations for the benchmark transition more broadly are not properly attributable to our proposed amendments, which are consequential in nature.

## C Regulatory and financial impact

40 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us, we think the proposed amendments strike an appropriate balance between:

- (a) the likely effect of the proposed rule changes on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system;
- (b) the likely regulatory impact of the proposed rule changes, including any effects on competition in the Australian financial system; and
- (c) relevant international standards and international commitments.

41 We will take into account any matters raised in public consultations (such as responses to this paper).

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

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

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

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

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

See 'The consultation process', p. 4.

## Appendix: Draft amended Rule 1.2.3 of the ASIC Derivative Transaction Rules (Clearing) 2015

This appendix sets out the draft amended Rule 1.2.3.

### 1.2.3 Meaning of Clearing Derivative

(1) Subject to subrules (6) to (8), 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	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	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 Short-term Rate (€STR)	7 days to 2 years
3	British pound	Sterling Overnight Interbank Average Rate (SONIA)	7 days to 50 years
4	Japanese yen	Tokyo Overnight Average Rate (TONA)	7 days to 30 years
5	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, a Regulated Foreign Market or an Exempt Financial 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 or an Exempt Financial Market, the entry into of the arrangement that is the Derivative takes place on the Regulated Foreign Market or the Exempt Financial Market.

(8) A Derivative is not a Clearing Derivative if both the following are satisfied:

- (a) the notional principal amount and payments under the Derivative are denominated in Australian dollars;
- (b) the Derivative is either:
  - (i) an Overnight Index Swap that was entered into before 3 October 2016; or
  - (ii) a Forward Rate Agreement that was entered into before 2 April 2018.

## Key terms

Term	Meaning in this document
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Derivative Transaction Rules (Clearing)	<i>ASIC Derivative Transaction Rules (Clearing) 2015</i> —rules made by ASIC under s901A of the Corporations Act
basis swap	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
CCP	A central counterparty—an entity that interposes itself between counterparties to bilateral trades, becoming the buyer to every seller and the seller to every buyer
CFR	Council of Financial Regulators—the coordinating body for Australia's main financial regulatory agencies, which has four members: APRA, ASIC, the Australian Treasury and the RBA
CFR July 2013 report	CFR, <a href="#">Report on the Australian OTC derivatives market</a> , July 2013
CFR April 2014 report	CFR, <a href="#">Report on the Australian OTC derivatives market</a> , April 2014
clearing derivative	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
clearing entity	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
clearing facility	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
clearing requirements	Has the meaning given by s901A(7) of the Corporations Act
clearing threshold	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
clearing transaction	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
derivative	A derivative as defined by s761D of the Corporations Act
derivative transaction	A derivative transaction as defined by s761A of the Corporations Act

Term	Meaning in this document
determined clearing class	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
EONIA	Euro Overnight Index Average
€STR	Euro Short-term Rate
FRI	Floating Rate Index
fixed-to-floating swap	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
forward rate agreement	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
G20	Group of 19 of the world's largest economies, and the European Union
LIBOR	London Interbank Offered Rate
Ministerial determination	A determination made by the relevant Minister under s901B of the Corporations Act, specifying one or more classes of derivatives in relation to which mandatory reporting, clearing or trade execution obligations may be imposed
OIS	Overnight Index Swap as defined in the ASIC Derivative Transaction Rules (Clearing)
OTC	Over-the-counter
RBA	Reserve Bank of Australia
regulators	ASIC, the RBA and APRA
regulators' statement	CFR, <a href="#">Australian regulators' statement on assessing the case for mandatory clearing obligations</a> , 8 May 2013
RFRs	Near risk-free rates
SONIA	Sterling Overnight Index Average
swap	Has the meaning given in the ASIC Derivative Transaction Rules (Clearing)
TONA	Tokyo Overnight Average Rate