



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 370

Proposed remake of the ASIC Derivative Trade Repository Rules 2013

June 2023

About this paper

This consultation paper sets out our proposals to remake the *ASIC Derivative Trade Repository Rules 2013*, in substantially the same form, under s903A of the *Corporations Act 2001*.

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

Note: The draft remade rules, which are attached to this paper, are available on our [Consultation papers](#) page under CP 370.

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 15 June 2023 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 develop our policy on OTC derivative trade repository requirements. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare an Impact Analysis: 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](#) 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 6 July 2023 to:

Sheriden Hure, Senior Analyst
Market Infrastructure
Australian Securities and Investments Commission
Level 5, 100 Market Street, Sydney, NSW 2000
email: otcd@asic.gov.au

What will happen next?

Stage 1	15 June 2023	ASIC consultation paper released
Stage 2	6 July 2023	Comments due on the consultation paper
Stage 3	Q3 2023	<i>ASIC Derivative Trade Repository Rules 2023</i> made
Stage 4	Q3 2023	<i>ASIC Derivative Trade Repository Rules 2023</i> come into force

A Background to the proposals

Key points

Since the 2008 global financial crisis, Australia, along with other G20 nations, has made significant progress towards implementing over-the-counter derivatives reforms, including implementation of the Australian derivative transaction reporting regime.

Australian requirements to report derivative transactions commenced under the *ASIC Derivative Transaction Rules (Reporting) 2013*, recently superseded by the *ASIC Derivative Transaction Rules (Reporting) 2022*. This has provided regulators with transparency in relation to trading activity and positions and counterparty exposures, which assists them to identify financial system vulnerabilities, conduct market surveillance, monitor market metrics and practices, and develop policy and assess outcomes.

The *ASIC Derivative Trade Repository Rules 2013* are due to sunset on 1 October 2023. They need to be remade so that the Australian derivative transaction reporting regime—which couples together derivative transaction reporting requirements and trade repository licensing and operating requirements—can continue to operate effectively.

This consultation paper—and the draft *ASIC Derivative Trade Repository Rules 2023* attached to this consultation paper—outline our proposed approach to remaking the current rules in substantially the same form except for two minor and targeted policy updates (discussed in more detail in Section B).

The G20 OTC derivatives reforms

- 1 In response to the global financial crisis (GFC), the leaders of the Group of Twenty (G20) nations agreed to a range of reforms to over-the-counter (OTC) derivatives markets at the 2009 Pittsburgh Summit. These reforms required:
 - (a) mandatory reporting of OTC derivative transactions to trade repositories;
 - (b) all standardised OTC derivative transactions to be made on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties; and
 - (c) non-centrally cleared transactions to be subject to higher capital requirements.

These reforms, together with the November 2011 reform noted below, are referred to throughout as the G20 OTC derivatives reforms.

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

- 2 The G20 OTC derivatives reforms were developed with the objectives of:
 - (a) improving transparency;
 - (b) mitigating systemic risk; and
 - (c) protecting against market abuse.
- 3 The Financial Stability Board (FSB) publishes on its website annual consolidated progress reports detailing the implementation of the G20 OTC derivatives reforms by FSB member jurisdictions—the most recent, at the time of writing, being [*OTC Derivatives Market Reforms: Implementation progress in 2022*](#) (PDF 629 KB), November 2022.

What is a trade repository?

- 4 Broadly speaking, a derivative trade repository (trade repository) is an entity that centrally collects and maintains records of OTC derivative trade data. Section 761A of the *Corporations Act 2001* (Corporations Act) defines a derivative trade repository as:

‘...a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported (whether or not other information or data can also be reported to the facility).’
- 5 Trade repositories are a relatively new type of financial market infrastructure having developed in response to the G20 OTC derivatives reforms. Trade repositories serve as intermediaries between entities with reporting obligations and regulatory authorities who are the primary recipients of the aggregate reported data.

Implementation of transaction reporting in Australia

- 6 In 2012, Parliament passed the *Corporations Legislation Amendments (Derivative Transactions) Act 2012* inserting Pt 7.5A ‘Regulation of derivative transactions and derivative trade repositories’ into the Corporations Act. The legislation provided a framework for the Minister to mandate requirements for derivative transactions, and for ASIC to make rules in respect of these requirements. The legislation came into force on 3 January 2013.
- 7 In April 2012, the Committee on Payments and Market Infrastructure (CPMI) (then, the Committee on Payment and Settlement Systems (CPSS)) and the International Organization of Securities Commissions (IOSCO) published the CPSS–IOSCO Principles for financial market infrastructures (CPSS–IOSCO Principles).

- 8 The CPSS–IOSCO Principles set out standards for trade repositories (among other categories of financial market infrastructure) that should be applied by regulators. The relevant standards are listed in Appendix 1 of [Regulatory Guide 249](#) *Derivative trade repositories* (RG 249) and cover areas such as a trade repository’s legal basis, governance, risk management, third-party access arrangements and efficiency.
- 9 On 2 May 2013, the Minister made a determination (the *Corporations (Derivatives) Determination 2013*) under s901B(2) of the Corporations Act that the classes of derivatives in relation to which reporting requirements may be imposed are:
- (a) commodity derivatives that are not electricity derivatives;
 - (b) credit derivatives;
 - (c) equity derivatives;
 - (d) foreign exchange derivatives; and
 - (e) interest rate derivatives.
- 10 On 9 July 2013, ASIC concurrently made the *ASIC Derivative Transaction Rules (Reporting) 2013* (2013 Reporting Rules) and the *ASIC Derivative Trade Repository Rules 2013* (2013 DTR Rules). Together, these rules facilitated the commencement of Australia’s derivatives trade reporting regime under Pt 7.5A of the Corporations Act and are a key component of Australia’s G20 OTC derivatives reforms commitment.
- 11 The 2013 DTR Rules were designed to implement the CPSS–IOSCO Principles and the relevant key considerations, within the framework provided under Pt 7.5A of the Corporations Act, to the extent they apply to trade repositories.
- 12 On 15 September 2014, ASIC granted DTCC Data Repository (Singapore) Pte Ltd (DDRS) an Australian derivative trade repository licence (ADTR licence) and *Exemption Instrument 14/0913* which provided DDRS with relief from certain provisions of the 2013 DTR Rules, subject to conditions, including in relation to compliance with specified sufficiently equivalent requirements under Singaporean law. On 18 September 2014, ASIC granted DDRS a supplementary exemption in relation to the liability of its officers where an exemption is granted, subject to conditions.
- 13 On 23 October 2015, ASIC granted Chicago Mercantile Exchange Inc. (CME) an ADTR licence. On 27 November 2015, ASIC issued CME with an ADTR licence variation to add equity derivatives to the classes of derivatives that CME could provide services for under its ADTR licence. On 15 December 2020, ASIC cancelled CME’s ADTR licence following the orderly, voluntary wind-down of CME’s ADTR business, leaving DDRS as the sole ADTR licensee.

- 14 On 25 June 2015, ASIC made the [ASIC Prescribed Trade Repositories Determination \[15-0591\]](#) (PDF 33 KB), prescribing several overseas trade repositories to facilitate alternative reporting by foreign reporting entities. These are: DTCC Data Repository (U.S.) LLC, Derivatives Repository Ltd, DTCC Data Repository (Japan) KK, DTCC Data Repository (Singapore) Pte Ltd, and the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance of Hong Kong. On 10 April 2019, the list of ASIC prescribed trade repositories was amended by [ASIC Prescribed Trade Repositories Determination \[19/325\]](#) (PDF 29 KB) to add DTCC Data Repository (Ireland) Plc and UnaVista TRADEcho B.V.
- 15 On 19 December 2022, with Ministerial approval, ASIC remade the 2013 Reporting Rules in substantially the same form as the [ASIC Derivative Transaction Rules \(Reporting\) 2022](#) (2022 Reporting Rules) to extend the 2013 Reporting Rules obligations beyond the 1 October 2023 sunset date. Concurrently, ASIC made the [ASIC Derivative Transaction Rules \(Reporting\) 2024](#) (2024 Reporting Rules). The 2024 Reporting Rules, which commence on 21 October 2024, make substantial changes to the 2013 Reporting Rules to align with international reporting standards, consolidate transitional provisions and exemptions within the rules and ensure that the reporting requirements are fit for purpose.

What we are doing now

- 16 This consultation paper outlines our proposal to remake the 2013 DTR Rules to continue their operation beyond the current sunset date of 1 October 2023. We are proposing to remake the 2013 DTR Rules in substantially the same form, except for two minor and targeted policy updates, as set out in the draft *ASIC Derivative Trade Repository Rules 2023* (draft 2023 DTR Rules). We propose to make the draft 2023 DTR Rules to maintain the operation of Australia's derivatives trade reporting regime under Pt 7.5A of the Corporations Act.
- 17 Section 903G of the Corporations Act provides that ASIC must not make a derivative trade repository rule unless it has consulted the public about the proposed rule and has also consulted any other person or body as required by regulations made for the purpose of this paragraph.
- 18 Section 903H of the Corporations Act provides that ASIC must not make a derivative trade repository rule unless the Minister has consented, in writing, to making the rule.

B The derivative trade repository rules

Key points

The draft 2023 DTR Rules are intended to ensure the ongoing operation of the Australian trade reporting regime under Pt 7.5A of the Corporations Act and implementation of the CPSS-IOSCO Principles.

The draft 2023 DTR Rules propose to remake the 2013 DTR Rules in substantially the same form except for two minor and targeted policy updates to Part 2.3 'Handling and use of derivative trade data by Trade Repositories and their Officers and employees'.

Purpose of the rules

- 19 The 2013 DTR Rules have been reviewed to assess their ongoing operational effectiveness against the CPSS-IOSCO Principles and the relevant key considerations, within the framework provided under Pt 7.5A of the Corporations Act, to the extent they apply to trade repositories.
- 20 The 2013 DTR Rules were designed to ensure that the operation of Australian trade repositories is internationally consistent to facilitate ADTR licensees seeking recognition or licensing in another jurisdiction, or a trade repository licensed elsewhere to more readily be licensed in Australia. DDRS relies, to a large extent, on substituted compliance with Singaporean requirements under its ASIC licensing arrangements.
- 21 We have assessed the current 2013 DTR Rules as operating efficiently and effectively and therefore propose to remake the rules in substantially the same form with two minor and targeted policy updates to elements of the rules as discussed below.

Minor updates to the rules

- 22 The operation and effectiveness of the 2013 DTR Rules has been reviewed to ensure they remain fit for purpose. As part of our review, we have considered feedback and items such as:
- (a) regulatory notifications lodged by licensed trade repositories;
 - (b) annual compliance reports and supporting documents submitted in accordance with Rule 2.6.1(1) of the 2013 DTR Rules;
 - (c) business liaison meetings with licensed trade repositories and other relevant stakeholders;

- (d) exemption instruments granted to ADTR licensees; and
- (e) the internationally adopted CPSS-IOSCO Principles.

23 We have determined that the 2013 DTR Rules remain substantially fit for purpose—however, we propose to make two minor and targeted policy updates to the rules in certain circumstances in relation to the handling and use of derivative trade data. The proposed policy updates are:

- (a) a new targeted ASIC direction provision to manage ‘dead’ or stale trades that have become trapped in the derivative trade data held by a licensed trade repository; and
- (b) removal of ‘the geographic location of the reference asset, rate, index commodity or other thing underlying the Derivatives to which the statistical data relates’ category (the geographic location of the underlier category) from the weekly statistical data requirements for public reporting.

Together, these policy updates are referred to throughout as the minor policy updates.

24 The minor policy updates are proposed for the purposes of:

- (a) providing a fallback to maintain data quality at the primary or ‘golden’ source in narrow circumstances where a participant ceases to have access to the licensed trade repository or ceases to operate and is no longer able to maintain its derivative trade data; and
- (b) reducing the burden on a licensed trade repository to create and publicly report data not directly reported under the 2022 or 2024 Reporting Rules by removing the geographic location of the underlier category, which has warranted exemptive relief.

25 The draft 2023 DTR Rules also make minor administrative updates to the 2013 DTR Rules, including updates to definitions.

New ASIC direction provision to deal with stale data

26 In both the 2022 Reporting Rules and the 2013 DTR Rules there are respective provisions designed to ensure that derivative trade data reported by or on behalf of a reporting entity to a licensed trade repository remains at all times complete, accurate and current.

27 Rule 2.3.4 ‘Provision of access to derivative trade data: Participant access’ of the 2013 DTR Rules is intended to ensure that the operator of a licensed trade repository provides open and non-discriminatory access to participants in respect of its services. The 2013 DTR Rules do not, however, set out any provisions for access arrangements if an entity ceases to be a participant in a trade repository or ceases to operate.

28 Under the 2013 DTR Rules, ASIC has experienced instances where an ASIC reporting entity:

- (a) no longer had a reporting obligation (due to changes to the entity's operations) so they ceased being a participant of a licensed trade repository, or
- (b) ceased to operate entirely—for example, entered administration or receivership.

Under these circumstances, the ASIC reporting entity may no longer have the staff or technological resources, or the standing with the trade repository, to ensure their derivative trade data in the trade repository is complete, accurate and current.

29 When this occurs, derivative trade data held by the trade repository can become trapped and stale. Stale derivative trade data refers to derivative trade data previously reported that is not current and accurate and may include dead (matured or expired) derivatives and unreported changes. Erroneous open positions persist in the derivative trade data until they reach the reported expiration date, which may take years. In the meantime, any non-reported terminations, maturities or expiries of derivatives, or other changes, adversely impact the underlying data quality and integrity and affect data analysis performed to support regulatory functions.

30 We understand that, subject to the terms and conditions of its service, a trade repository may have no legal authority, or it may be legally unclear whether it is able, to modify or remove an entity's derivative trade data, even with their consent, to correct erroneous open positions.

31 We are proposing to include a new provision (the ASIC direction provision) in the draft 2023 DTR Rules allowing ASIC to direct a licensed trade repository to deal, in a specified way, with a reporting entity's derivative trade data if:

- (a) the reporting entity or a person reporting on behalf of a reporting entity:
 - (i) is suspended from being or has ceased to be a participant in the trade repository; or
 - (ii) has ceased to operate; and
- (b) ASIC reasonably believes that the direction will ensure that the derivative trade data, which is the subject of the direction, will be accurate and current.

The licensed trade repository would need to comply with an ASIC direction as soon as reasonably practicable.

32 The ASIC direction provision is intended to provide legal certainty that a licensed trade repository can, in narrow circumstances, access and correct the derivative trade data of a participant for the mutual benefit of the

licensed trade repository, the former reporting entity and ASIC to resolve erroneous derivative trade data.

- 33 We anticipate that the ASIC direction provision could be used as a fallback to instruct a licensed trade repository to deal with derivative trade data if, for example, ASIC's internal and external inquiries substantiate that:
- (a) a former reporting entity has permanently ceased reporting and ASIC reasonably believes its derivative trade data is no longer accurate and current; or
 - (b) a person reporting on behalf of a reporting entity has ceased to operate and in doing so a reporting entity's derivative trade data has become trapped and inaccessible irrespective of other arrangements that the reporting entity may enter into to ensure its derivative trade data is accurate and current.

Proposal

- B1** We propose to include a new ASIC direction provision (Rule 2.3.4(5) and (6)) in the draft 2023 DTR Rules to allow ASIC to give a written direction to a licensed trade repository to deal, in a specified way, with a reporting entity's derivative trade data if the reporting entity, or a person reporting on behalf of the reporting entity, is suspended from being, or has ceased to be, a participant in a licensed trade repository, or ceases to operate and ASIC reasonably believes that the direction will ensure its derivative trade data is accurate and current.

See the draft *ASIC Derivative Trade Repository Rules 2023* in the attachment to this paper (available on our [Consultation papers](#) page under CP 370).

Your feedback

- B1Q1** Do you agree with the proposed inclusion of an ASIC direction provision to address derivative trade data that is not accurate and current? In your response, please outline potential benefits, risks and/or alternative solutions. If you agree with the proposal, when should the proposed provision come into force?
- B1Q2** What is the likely impact of our proposal? Do you expect to incur any costs as a result of our proposal? 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 amendment.

Rationale

- 34 This proposal originated from ASIC's past engagements with licensed trade repositories and entity administrators in relation to identifying and assessing the impact of and options available in relation to the treatment of stale derivative trade data.

- 35 The rationale for our proposal is to:
- (a) provide a fallback for managing erroneous, stale derivative trade data; and
 - (b) improve data quality at the primary or ‘golden’ source.
- 36 Under the terms and conditions of a licensed trade repository’s service, there may be legal uncertainty about a trade repository’s authority to access a participant’s records, even with their consent, for the purpose of terminating open positions if a reporting entity or a person reporting on behalf of a reporting entity has either been suspended or ceased to be a participant and/or ceased to operate. The principle of restricting who has access to report derivative trade data is important and fundamentally supports data integrity. However, it can lead to a reporting entity’s derivative trade data becoming trapped without anyone having clear authority and access to remove erroneous position data, which also affects data quality and integrity.
- 37 Currently, ASIC data users have to create workarounds to account for instances where it is known that an entity’s derivative trade data is no longer complete, accurate and current. We consider that this proposal provides a targeted solution to facilitate the removal of stale derivative trade data. It is intended to act as a fallback provision to support an effective resolution of stale derivative trade data if the licensed trade repository and participants fail to resolve the accuracy and currency of the derivative trade data directly in the first instance.
- 38 On 14 December 2022, the European Securities and Markets Authority (ESMA) published its [*Final Report: Guidelines for reporting under EMIR*](#) (PDF 3.3 MB), December 2022. Section 7.17 outlines ESMA’s approach to dealing with dead derivatives, where a counterparty ceases to exist, without being acquired or merged, and has not terminated its outstanding derivatives. The ESMA approach specifies a waterfall of steps to ensure that all relevant entities to the outstanding derivatives work to remove them from the trade repository. However, as a fallback, the trade repository should flag the relevant derivatives, with expiry dates of greater than 12 months, for exclusion from certain reporting.
- 39 We have considered whether adopting a similar approach would be a preferable solution, noting that it avoids regulatory intervention and favours resolution by entities with closer proximity to the source of the reported data. We likewise encourage reporting entities, reporting counterparties, delegate report makers, licensed trade repositories and, where applicable, appointed administrators to coordinate, where appropriate, to ensure that derivative trade data remains at all times complete, accurate and current. However, in circumstances where there are legal concerns and/or a lack of access for correcting derivative trade data then we consider there is a net regulatory benefit in having the proposed ASIC direction provision to resolve the erroneous data.

40 We have settled on the proposed approach after weighing the options, instead favouring the potential benefits of having more timely resolution of erroneous data and potentially minimising the requirement for licensed trade repositories to apply logic to determine exclusions from reporting.

41 We do not expect that trade repositories or participants will incur costs because of this proposal. The proposed ASIC direction provision seeks to provide a fallback arrangement to support a licensed trade repository in maintaining and enforcing its policies, procedures, systems and controls designed to provide reasonable assurance that derivative trade data reported to the trade repository by participants is and remains at all times complete, accurate and current as required under Rule 2.3.1 of the 2013 DTR Rules. Further, it is intended to benefit reporting entities and, where applicable, their administrators, by potentially reducing ongoing engagement with ASIC and/or the licensed trade repository to resolve errors in the derivative trade data more efficiently, thereby marginally reducing resource requirements. The proposed ASIC direction provision may also, for example, assist a reporting entity under administration—which may no longer have the staff or technological resources, or the standing with the licensed trade repository, to ensure its derivative trade data in the trade repository is complete, accurate and current—to avoid consideration of the significance of reporting breaches and whether to apply for relief from the relevant reporting rules.

Update to weekly statistical data for public reporting

42 Rule 2.3.5 ‘Obligation to create and disclose weekly statistical data’ of the 2013 DTR Rules includes the requirement for licensed trade repositories to create and disclose aggregate open positions and derivative transaction volumes and values reported for each seven-calendar-day period broken down by the following categories:

- (a) asset class, currency type and maturity;
- (b) the geographic location of the underlier category; and
- (c) whether the derivatives are cleared or uncleared.

Together, these categories are referred to throughout as the weekly statistical data.

43 Under Rule 2.3.5(5), a licensed trade repository must make the weekly statistical data publicly available on its website at no charge (public reporting). Further, Rule 2.3.5(6) requires that the public weekly statistical data must not be capable of identifying a counterparty to a derivative transaction.

44 Rule 2.3.6 ‘Permission to create and disclose financial year-to-date statistical data’ of the 2013 DTR Rules requires licensed trade repositories to create and disclose financial-year-to-date aggregate derivative transaction data

broken down as per the weekly statistical data. Further, Rule 2.3.6(2) requires that the aggregated financial-year-to-date statistical data must not be capable of identifying a counterparty to a derivative transaction.

- 45 DDRS’s weekly statistical data reporting requirements are amended by *Exemption Instrument 14/0913* under Exemption 8 ‘Create & Disclose Statistical Data’. This exemption substitutes DDRS’s requirements under Rules 2.3.5 and 2.3.6 of the 2013 DTR Rules with requirements that narrow the scope of the weekly statistical data, including by removing DDRS’s obligation to create and report data in relation to the geographic location of the underlier category.
- 46 The geographic location of the underlier of a derivative transaction is not transaction information that is explicitly captured by reporting under the 2022 Reporting Rules dataset, nor is it proposed for inclusion in the 2024 Reporting Rules.
- 47 We have not had, nor do we envisage, any specific use cases to continue with the existing requirement to include the geographic location of the underlier category in the weekly statistical data. Further, we do not observe this to be a commonly reported category of derivative transaction data in other jurisdictions’ equivalent public reporting. We note that the original requirement reflected early international guidance in CPSS-IOSCO’s [Report on OTC derivatives data reporting and aggregation requirements—final report](#) (PDF 499 KB), January 2012.

Proposal

- B2** We propose to update Rule 2.3.5 ‘Obligation to create and disclose weekly statistical data’ of the 2013 DTR Rules to remove the requirement to create and disclose a breakdown of derivative trade data by the geographic location of the underlier category in the weekly statistical data.

See the draft *ASIC Derivative Trade Repository Rules 2023* in the attachment to this paper (available on our [Consultation papers](#) page under CP 370).

Your feedback

- B2Q1 Do you agree with the proposed update to weekly statistical data? Please outline potential benefits and/or risks or concerns in your response. Are there any other changes to weekly statistical data that should be considered? If you agree with this proposal, when should the proposed update come into force?
- B2Q2 What is the likely impact of our proposal? Do you expect to incur any costs as a result of our proposal? 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 amendment.

Rationale

- 48 Our proposal to remove the geographic location of the underlier category from the weekly statistical data required to be created and disclosed has originated from our review of current exemptions to the 2013 DTR Rules and weekly statistical data reporting.
- 49 The rationale for removing the geographic location of the underlier category from the weekly statistical data is to reduce the regulatory burden on a licensed trade repository to create data from within the draft 2023 DTR Rules, rather than having to rely on exemptive relief. We recognise that the data needed to determine the geographic location of the reference asset, rate, index commodity or other thing underlying the derivatives to which the statistical data relates is not directly reported under the 2022 or 2024 Reporting Rules and would require logic and explanation of the resulting weekly statistical data.
- 50 We consider the proposed update to public reporting is minor and seeks to update the 2013 DTR Rules for the mutual benefit of trade repositories and ASIC.
- 51 We do not expect that trade repositories or participants will incur costs because of our proposal to update the public reporting requirements. The proposed changes seek to reduce regulatory burden in the draft 2023 DTR Rules.

C Regulatory and financial impact

52 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.

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

54 Before settling on a final policy, we will comply with the Australian Government's policy impact analysis (PIA) 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 Impact Analysis (OIA); and
- (c) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector, preparing an Impact Analysis (IA).

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

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

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

See 'The consultation process', p. 4.

Key terms

Term	Meaning in this document
ADTR licence	Australian derivative trade repository licence
ADTR licensee	Holder of an ADTR licence
ASIC	Australian Securities and Investments Commission
Australian derivative trade repository licence	Australian derivative trade repository licence under s905C of the Corporations Act that authorises a person to operate a trade repository
CME	Chicago Mercantile Exchange Inc.
Corporations Act	<i>Corporations Act 2001</i> , including any regulations made for the purposes of that Act
CPMI	Committee on Payments and Market Infrastructure Note: Formerly the Committee on Payment and Settlement Systems of the Bank of International Settlement (CPSS).
CPSS–IOSCO Principles	CPSS–IOSCO <i>Principles for financial market infrastructures</i> , as revised from time to time
DDRS	DTCC Data Repository (Singapore) Pte Ltd
derivative trade data	Means: <ul style="list-style-type: none"> information about derivative transactions, or about positions relating to derivative transactions; or information (including statistical data) that is created or derived from the information referred to above
derivative transaction	Means: <ul style="list-style-type: none"> the entry into an arrangement that is a derivative; the modification or termination of such an arrangement; the assignment, by a party to such an arrangement, of some or all of the party's rights and obligations under the arrangement; or any other transaction that relates to a derivative and that is in a class of transactions prescribed by the regulations
DTR Rules	Derivative Trade Repository Rules
ESMA	European Securities and Markets Authority
FSB	Financial Stability Board
G20	Group of 19 of the world's largest economies, and the European Union

Term	Meaning in this document
G20 OTC derivatives reforms	Commitments made by the leadership of the G20 nations in September 2009 for the operation of OTC derivatives markets
IOSCO	International Organization of Securities Commissions
licensed trade repository	A licensed derivative trade repository as defined in s761A of the Corporations Act
licensee obligations	Obligations imposed on an ADTR licensee as part of the ADTR licence conditions
Ministerial determination	<i>Corporations (Derivatives) Determination 2013</i> as amended from time to time
OTC	Over-the-counter
Part 2.4 (for example)	A part of the derivative trade repository rules (in this example numbered 2.4), unless otherwise specified
participants	Persons who have agreed to the terms and conditions of a trade repository for the use of their data collection and data reporting services
prescribed trade repository	A trade repository that is a facility (or is in a class of facilities) prescribed by the <i>Corporations Regulations 2001</i> for the purpose of s901A(6) of the Corporations Act
Pt 7.5A (for example)	A part of the Corporations Act (in this example numbered 7.5A)
Rule 2.4.2 (for example)	A rule of the derivative trade repository rules (in this example numbered 2.4.2)
s903A (for example)	A section of the Corporations Act (in this example numbered 903A)
trade repository	A facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported (whether or not other information or data can also be reported to the facility)
2013 DTR Rules	<i>ASIC Derivative Trade Repository Rules 2013</i> —rules made by ASIC under s903A of the Corporations Act that deal with the matters as permitted by this section
2013 Reporting Rules	<i>ASIC Derivative Transaction Rules 2013 (Reporting)</i> —superseded rules made by ASIC under s901A of the Corporations Act
2022 Reporting Rules	<i>ASIC Derivative Transaction Rules 2022 (Reporting)</i> —rules made by ASIC under s901A of the Corporations Act
2024 Reporting Rules	<i>ASIC Derivative Transaction Rules 2024 (Reporting)</i> —rules made by ASIC under s901A of the Corporations Act

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to include a new ASIC direction provision (Rule 2.3.4(5) and (6)) in the draft 2023 DTR Rules to allow ASIC to give a written direction to a licensed trade repository to deal, in a specified way, with a reporting entity's derivative trade data if the reporting entity, or a person reporting on behalf of the reporting entity, is suspended from being, or has ceased to be, a participant in a licensed trade repository, or ceases to operate and ASIC reasonably believes that the direction will ensure its derivative trade data is accurate and current.</p> <p>See the draft <i>ASIC Derivative Trade Repository Rules 2023</i> in the attachment to this paper (available on our Consultation papers page under CP 370).</p>	<p>B1Q1 Do you agree with the proposed inclusion of an ASIC direction provision to address derivative trade data that is not accurate and current? In your response, please outline potential benefits, risks and/or alternative solutions. If you agree with the proposal, when should the proposed provision come into force?</p> <p>B1Q2 What is the likely impact of our proposal? Do you expect to incur any costs as a result of our proposal? 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 amendment.</p>
<p>B2 We propose to update Rule 2.3.5 'Obligation to create and disclose weekly statistical data' of the 2013 DTR Rules to remove the requirement to create and disclose a breakdown of derivative trade data by the geographic location of the underlier category in the weekly statistical data.</p> <p>See the draft <i>ASIC Derivative Trade Repository Rules 2023</i> in the attachment to this paper (available on our Consultation papers page under CP 370).</p>	<p>B2Q1 Do you agree with the proposed update to weekly statistical data? Please outline potential benefits and/or risks or concerns in your response. Are there any other changes to weekly statistical data that should be considered? If you agree with this proposal, when should the proposed update come into force?</p> <p>B2Q2 What is the likely impact of our proposal? Do you expect to incur any costs as a result of our proposal? 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 amendment.</p>