



ASIC

Australian Securities &
Investments Commission

REPORT 771

Response to submissions on CP 366 Proposed amendments to the ASIC Derivative Transaction Rules (Clearing) 2015: Second consultation

September 2023

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 366 Proposed amendments to the ASIC Derivative Transaction Rules \(Clearing\) 2015: Second consultation](#) and details our responses to those issues.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Disclaimer

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

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview and consultation process

1 In response to the global financial crisis, the Leaders of the Group of 20 (G20) nations, including Australia, agreed to a range of reforms of over-the-counter (OTC) derivatives markets at the Pittsburgh Summit in 2009. One of the reforms was mandatory clearing of standardised OTC derivative transactions.

2 In August 2015, the Minister made the *Corporations (Derivatives) Amendment Determination 2015 (No. 1)*, which gave ASIC the power 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’.

3 On 3 December 2015, ASIC made the *ASIC Derivative Transaction Rules (Clearing) 2015*. Among other things, the rules specify the products within the determined clearing classes which may be subject to clearing requirements. These ‘clearing derivatives’ 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.

4 In tandem with these developments, global regulators and industry have been undertaking work to transition away from certain interbank offered rates (IBORs) and onto new near risk-free rates (RFRs). As of 30 June 2023, several interest rate benchmarks referenced as FRIs in the rules have now either ceased or are no longer published on a representative basis.

Note: For simplicity, we refer to these below as ‘discontinued benchmarks’ even though some London Interbank Offered Rate (LIBOR) settings will continue to be published on a synthetic basis until September 2024 to support an orderly transition for legacy contracts. See Financial Conduct Authority, [FCA announces decision on synthetic US dollar LIBOR](#), 3 April 2023.

5 In [Consultation Paper 366](#) *Proposed amendments to the ASIC Derivative Transaction Rules (Clearing) 2015: Second consultation* (CP 366), we proposed to modify the contract types denominated in US dollars that are subject to clearing requirements under the rules based on the following considerations:

- (a) ensuring that the rules reflect recent market developments related to global benchmark reform;

- (b) supporting the development of active and liquid markets for RFRs;
- (c) maintaining the broad level of activity subject to the clearing requirements; and
- (d) facilitating international convergence to the greatest possible extent.

6 Specifically, we proposed to remove products referencing USD LIBOR and to replace them with contracts in the existing Overnight Index Swaps (OIS) class referencing the Secured Overnight Financing Rate (SOFR), with a termination date range of seven days to 50 years. This is in line with the final rule issued by the US Commodity Futures Trading Commission (CFTC) for interest rate swaps denominated in US dollars, although we also took into account approaches taken by regulators in other major jurisdictions.

7 Separately, we also proposed to remove AUD-denominated contracts from the forward rate agreement (FRA) class, for which the clearing requirement has never commenced. We consider that requiring market participants to centrally clear AUD FRAs would not be consistent with the policy outlined in the [*Australian Regulators' Statement on Assessing the Case for Mandatory Central Clearing Obligations*](#) (May 2013) because:

- (a) only one central counterparty (CCP)—which does not have any direct Australian participants—clears AUD FRAs, and we do not believe that any other CCP is likely to begin clearing these products;
- (b) the efficiency, integrity and stability of the Australian financial system would not be materially enhanced by centrally clearing AUD FRAs because there is minimal transaction activity and exposures in these products; and
- (c) AUD FRAs are not subject to a clearing mandate in any other major jurisdictions, so international consistency considerations do not arise.

8 We therefore consider that the regulatory costs of imposing a mandate with respect to AUD FRAs would outweigh the potential benefits, and that this circumstance is unlikely to change.

9 We received three submissions (including two confidential submissions) to CP 366. A copy of the non-confidential joint submission is available on the [CP 366 page](#) on the ASIC website.

B Responses to consultation

Key points

This section outlines the feedback received on our proposed changes to the *ASIC Derivative Transaction Rules (Clearing) 2015* and our responses to those submissions. Specifically, we sought and obtained feedback in relation to:

- the proposed new product scope of the clearing requirement;
- when the proposed changes should take effect;
- the likely impact (if any) of our proposals; and
- the merits of aligning our proposals with those of our international counterparts.

Product scope and commencement

- 10 All respondents agreed with the proposed amendments to the product scope of the clearing requirement and indicated that they did not expect the changes to generate any additional costs or market-wide impacts. Respondents generally agreed with the reasons we provided in support of the proposals and two respondents specifically supported ASIC's approach to closely align the proposals to ensure international consistency and to meet Australia's G20 commitment. Both respondents indicated that international consistency in clearing mandates would support market liquidity and transparency. The joint response did not directly address our question about the benefits and costs of aligning the amendments with our overseas counterparts.
- 11 Additionally, we asked stakeholders whether they agreed with a three-month implementation period for the introduction of the new SOFR IOS class.
- 12 Two of the three submissions we received agreed with this proposal. However, the joint submission requested a longer implementation period of six months to allow clearing participants sufficient time to prepare and make the system and operational changes needed to comply with the amended mandate. They argued that the higher implementation risks associated with a shorter implementation period could impose additional costs on industry with no identified benefit.

ASIC's response

We note that all respondents agreed with the changes we proposed to the product scope of the clearing requirement.

With respect to the implementation period, and specifically the commencement of the new requirement to clear SOFR OIS contracts, we have decided to allow a slightly longer period of six months based on the rationale provided in the joint submission.

While we expect that clearing entities are already clearing the proposed new SOFR OIS, we consider that it is appropriate to give industry time to prepare for the technical commencement of the new obligations.