



**ASIC**

Australian Securities &  
Investments Commission

**REPORT 726**

# **Response to submissions on CP 353 Proposed amendments to the ASIC Derivative Transaction Rules (Clearing) 2015**

May 2022

## **About this report**

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 353 Proposed amendments to the ASIC Derivative Transaction Rules \(Clearing\) 2015](#) and details our response 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;
- (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 3 January 2022, 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 the end of 2022 to support an orderly transition for legacy contracts. See Financial Conduct Authority, [FCA confirms rules for legacy use of synthetic LIBOR rates and no new use of US dollar LIBOR](#), 16 November 2021.

5 In [Consultation Paper 353 Proposed amendments to the ASIC Derivative Transaction Rules \(Clearing\) 2015 \(CP 353\)](#), we proposed to modify the contract types 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 We received four submissions (including two confidential submissions) to CP 353. For a list of the non-confidential respondents to CP 353, see the appendix. Copies of these submissions are currently on the [CP 353 page](#) on the ASIC website.

## B Response 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 requirements;
- 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.

We have also included our response to some out-of-scope feedback suggesting that the clearing requirement should not apply to transactions resulting from risk-reducing processes.

### Product scope

- 7 All respondents were supportive of our proposal to remove all products referencing discontinued benchmarks and to replace them with contracts in the overnight index swap (OIS) class referencing the relevant replacement RFR selected for each currency.
- 8 In order to maintain, as far as possible, the level of OTC derivatives activity covered by the clearing requirements, we proposed termination date ranges for these new OIS class products to match those of the products they were replacing.
- 9 While this ‘one-for-one’ approach was generally accepted by industry, three out of four respondents suggested that extending the range of maturities of the euro short-term rate (€STR) OIS class out to three years, so as to align the Australian mandate with the final policy announced by the European Securities and Markets Association (ESMA) (the relevant home regulator) as well as the requirement now in force in the United Kingdom.
- Note: The fourth respondent did not specifically address euro-denominated products in its submission.
- 10 We had sought to minimise the impact of our proposed changes by not extending the range of maturities covered by the clearing requirement beyond that of the outgoing Euro Overnight Index Average (EONIA) OIS class. The feedback we received suggests, however, that expanding the scope of the Australian mandate to match those of other major jurisdictions will in fact assist industry by facilitating monitoring and compliance.

*ASIC's response*

We considered industry's submissions on aligning the Australian requirement with the amended mandates of the European Union and the United Kingdom. We recognise the value in facilitating a more simple and efficient clearing regime in this way and, as such, we have extended the termination date range of €STR OIS contracts subject to the clearing requirement out to three years.

## Commencement of the new obligations

- 11 In [CP 353](#), we asked stakeholders to provide their views on when the proposed amendments should commence. Of the four submissions we received:
- (a) two respondents submitted that they should come into force as soon as feasible;
  - (b) one respondent indicated that it did not have a strong preference, but was content for the new clearing obligations to be implemented sooner rather than later; and
  - (c) the final (joint) submission argued that we should allow for an implementation period of at least three months from when the amended rules are published.
- 12 The joint submission further suggested that a (new) Australian clearing obligation should not come into force earlier than in the relevant home jurisdiction, in particular for €STR and the Secured Overnight Financing Rate (SOFR).

*ASIC's response*

We considered the submissions received regarding when the amendments should come into force. While we expect that clearing entities are already clearing the proposed new clearing derivatives, we have allowed an implementation period of three months from when the amendment instrument is registered on the Federal Register of Legislation to give industry time to prepare for the technical commencement of the new obligations.

Consistent with our fast follower approach, we will consult on a proposal to add contracts referencing SOFR to the Australian clearing requirement shortly after a final rule has been published by the US Commodity Futures Trading Commission (CFTC). With respect to the €STR OIS class, we note that ESMA has finalised draft regulatory technical standards setting out the new EU clearing obligation for these contracts. We do not consider there is any need to make further allowance based on when the EU mandate becomes legally enforceable.

## International convergence

- 13 All respondents supported our ‘fast follower’ approach to amending the Australian clearing mandate, and in particular our decision to closely align our proposals with the approach taken by the relevant home regulator for each currency.

## Feedback outside of the consultation

- 14 A joint submission by two industry associations suggested that transactions resulting from post-trade risk reduction (PTRR) exercises should be exempt from the rules.
- 15 The existing rules contain an exemption for transactions that result from one type of PTRR exercise, known as multilateral trade compression. However, the joint respondents suggested that the exemption should extend to other types of PTRR exercises, including processes such as multilateral risk rebalancing cycles.

### *ASIC's response*

The proposal to extend the multilateral portfolio compression exemption to include bilateral compression was put to us by industry when we consulted on introducing the rules. At that time, we noted that there was no overseas precedent for such an exemption and that, relative to multilateral compression, there are fewer safeguards to ensure that the exemption is being applied as intended. Our view on these matters has not changed and as such we have decided not to expand the existing exemption to cover bilateral compression exercises.

We are not aware of any other jurisdiction that has introduced an exemption for transactions resulting from other kinds of PTRR exercises, although we note that work is being done internationally to investigate the relative merits of doing so. We will continue to monitor the progress of this work and, depending on its outcome, may revisit the issue in the future.



## **Appendix: List of non-confidential respondents**

- Japan Securities Clearing Corporation
- Australian Financial Markets Association & International Swaps and Derivatives Association (joint submission)