

Attachment to CP 370: Draft remade ASIC Rules



ASIC
Australian Securities &
Investments Commission

ASIC Derivative Trade Repository Rules 2023

I, Nathan Bourne, acting with the written consent of the Minister,
make the following derivative trade repository rules under
section 903A of the *Corporations Act 2001*.

Dated this XXth day of XX 2023

Signed by Nathan Bourne
as delegate of the Australian Securities and Investments Commission

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Chapter 1: Introduction

Part 1.1 Preliminary

1.1.1 Enabling legislation

ASIC makes this instrument under section 903A of the Corporations Act.

1.1.2 Title

This instrument is the *ASIC Derivative Trade Repository Rules 2023*.

1.1.3 Commencement

This instrument commences on the later of:

- (a) 1 October 2023; and
- (b) the day after it is registered on the Federal Register of Legislation.

1.1.4 Penalties for a contravention of these Rules

The maximum pecuniary penalty payable for a contravention of a provision of these Rules is an amount determined by the Court under section 1317G of the Corporations Act.

Part 1.2 Interpretation

1.2.1 References to time

In these Rules, unless the contrary intention appears, a reference to time is to Australian Eastern Standard Time or Australian Eastern Daylight Time, as relevant, in Sydney, Australia.

1.2.2 Words and expressions defined in the Corporations Act

Words and expressions defined in the Corporations Act will, unless otherwise defined or specified in these Rules or the contrary intention appears, have the same meaning in these Rules.

Note: For convenience, some words and expressions defined in the Corporations Act are cross-referenced in Rule 1.2.3.

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1.2.3 Definitions

In these Rules, unless the contrary intention appears:

Ancillary Services means services ancillary to the Trade Reporting Services (e.g. collateral management, portfolio reconciliation or portfolio compression services).

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

Australian Regulator means each of ASIC, APRA and RBA.

Chapter 5 Body Corporate has the meaning given by section 9 of the Corporations Act.

Corporations Act means the *Corporations Act 2001*.

Derivative has the meaning given by section 761D of the Corporations Act.

Derivative Position Information means information about positions relating to Derivative Transactions reported in accordance with the Reporting Requirements.

Derivative Trade Data has the meaning given by section 761A of the Corporations Act and includes Derivative Transaction Information and Derivative Position Information.

Derivative Trade Repository has the meaning given by section 761A of the Corporations Act.

Derivative Transaction has the meaning given by section 761A of the Corporations Act.

Derivative Transaction Information means information about Derivative Transactions reported in accordance with the Reporting Requirements.

Indirect Participant means a Reporting Entity that is not a Participant but that complies with the Reporting Requirements under an arrangement to do so with a Participant.

Licence means an Australian derivative trade repository licence within the meaning of section 761A of the Corporations Act.

Linked Entities means other Derivative Trade Repositories, payment systems, central securities depositories, securities settlement systems, central counterparties and other service providers (e.g. collateral management, portfolio reconciliation or portfolio compression service providers) with which an Operator has operational and contractual arrangements in connection with the acceptance, retention, use, disclosure and provision of access to Derivative Trade Data.

Non-Trade Reporting Services means services other than Trade Reporting Services, and includes Ancillary Services.

Officer means an officer within the meaning of section 9 of the Corporations Act.

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Operator means the operator of a Trade Repository.

Note: See paragraph 903B(a) of the Corporations Act. Under section 905B of the Corporations Act, a body corporate may, by lodging an application with ASIC in the prescribed form, apply for a Licence authorising the body corporate to operate a Trade Repository.

Participant means a Reporting Entity, or a person that reports Derivative Transaction Information or Derivative Position Information on behalf of a Reporting Entity, to which a Trade Repository provides Trade Reporting Services.

Note: A Participant that reports on behalf of a Reporting Entity may be a central counterparty, trading, confirmation or matching platform, service provider, broker or any other third party.

Prescribed Derivative Trade Repository has the meaning given by section 761A of the Corporations Act.

Prescribed Foreign Regulator means a person or body that has functions or powers relating to the regulation of Derivative Trade Repositories or markets in Derivatives in a foreign jurisdiction, and that is prescribed under regulations made for the purposes of paragraph 904B(2)(d) of the Corporations Act.

RBA means the Reserve Bank of Australia.

Reporting Entity means a person that is required to report Derivative Transaction Information or Derivative Position Information in accordance with the Reporting Requirements.

Reporting Requirements means reporting requirements within the meaning of subsection 901A(6) of the Corporations Act, imposed under the Reporting Rules.

Reporting Rules means the *ASIC Derivative Transaction Rules (Reporting) 2022* and from 21 October 2024 means the *ASIC Derivative Transaction Rules (Reporting) 2024*.

Rules means these derivative trade repository rules.

Trade Reporting Services means all services provided by a Trade Repository for the acceptance, retention, use, disclosure and provision of access to Derivative Trade Data, including any services for the acceptance, retention, use, disclosure and provision of access to Derivative Trade Data that are outsourced by the Operator.

Trade Repository means a licensed derivative trade repository as defined in section 761A of the Corporations Act.

Users means Participants and Linked Entities.

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Chapter 2: Obligations of Officers and Operators

Part 2.1 Obligations of Officers

2.1.1 Obligations of Officers

An Officer of a Trade Repository must take all reasonable steps to ensure the Operator of the Trade Repository complies with its obligations under these Rules.

Note: See paragraph 903B(b) of the Corporations Act.

Part 2.2 Manner in which the Trade Repository provides its services

2.2.1 Legal basis

(1) An Operator must ensure there is a clear, transparent and enforceable legal basis, including rules, procedures and contractual arrangements, for each material aspect of the Trade Repository's services.

Note: For example, there must be a high degree of certainty that actions taken by the Operator under its rules, procedures and contractual arrangements will be enforceable and will not be voided, reversed or subject to stays.

(2) Without limiting subrule (1), an Operator must have documented and enforceable rules, procedures and contractual arrangements in relation to the acceptance, retention, use, disclosure and provision of access to Derivative Trade Data.

(3) The rules, procedures and contractual arrangements referred to in subrule (2) must clearly define:

- (a) the rights and obligations of the Operator, Users and, if applicable, Indirect Participants, with respect to acceptance, retention, use, disclosure and provision of access to Derivative Trade Data, including, without limitation:
 - (i) the obligations of the Operator with respect to minimum service levels, operational reliability and maintaining the integrity, security and confidentiality of Derivative Trade Data; and
 - (ii) the rights of Users with respect to access to the Derivative Trade Data; and
- (b) procedures for the resolution of disputes between the Operator and Users.

(4) The rules, procedures, and contractual arrangements referred to in subrules (1)–(3) must be consistent with these Rules, the Reporting Rules, the Corporations legislation and any other applicable law of a State or Territory or law of the Commonwealth.

(5) If the Trade Repository provides services in more than one jurisdiction, the Operator must take all reasonable steps to identify and mitigate any risks arising from any potential conflict of laws across those jurisdictions.

2.2.2 Access and participation requirements

- (1) An Operator must have and apply objective conditions for access to and participation in the Trade Repository's services that permit open and non-discriminatory access to and participation in the Trade Repository by Users and, if applicable, Indirect Participants.
- (2) The access and participation conditions referred to in subrule (1) must include conditions reasonably designed to ensure Users and, if applicable, Indirect Participants do not pose undue risks to the secure, efficient and effective operation of the Trade Repository.
- (3) The access and participation conditions referred to in subrule (1), other than the conditions in subrule (2), must not unreasonably prohibit or limit access to or participation in the Trade Repository, and the Operator must not impose unreasonable conditions on participation or access.
- (4) An Operator must monitor compliance with its access and participation conditions on an ongoing basis and have clearly defined procedures for facilitating the disciplining, suspension or orderly exit of a User that breaches or no longer meets the access or participation conditions.

2.2.3 Security, efficiency and effectiveness of services

- (1) An Operator must ensure that the Trade Repository's services are provided at all times in a secure, efficient and effective manner.
- (2) An Operator must establish, implement, maintain and enforce mechanisms for regularly reviewing whether the Trade Repository is efficient and effective in meeting the requirements of Users, Australian Regulators, and the markets it serves.

Note: For example, the Operator should regularly review its minimum service levels, operational reliability, cost-effectiveness and pricing.

Part 2.3 Handling and use of Derivative Trade Data by Trade Repositories and their Officers and employees

2.3.1 Acceptance of Derivative Trade Data

- (1) An Operator must accept from Participants Derivative Trade Data for all classes of Derivatives specified in the conditions of the Operator's Licence.

Note: Under paragraph 905F(4)(b) of the Corporations Act, a Licence must be subject to conditions that specify the class or classes of Derivatives in respect of which the Trade Repository can provide services for the purposes of Part 7.5A of the Corporations Act.

- (2) An Operator must establish, implement, maintain and enforce policies, procedures, systems and controls for the reporting of Derivative Trade Data to the Trade Repository.

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(3) Without limiting subrule (2), an Operator must establish, implement, maintain and enforce policies, procedures, systems and controls:

- (a) reasonably designed to maintain a continuous, reliable and secure connection between the Trade Repository and Participants for the purposes of accepting Derivative Trade Data; and
- (b) 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.

2.3.2 Retention of Derivative Trade Data

(1) An Operator must ensure that all Derivative Trade Data accepted by the Trade Repository, and each alteration and correction to that Derivative Trade Data, is recorded on a timely basis.

(2) An Operator must retain all records of Derivative Trade Data accepted by the Trade Repository, and records of each alteration or correction to that Derivative Trade Data, from the date the record is first made until five years have elapsed since the Derivative to which the record relates expires or terminates.

(3) An Operator must ensure that each record referred to in subrule (2) is, for the period of time that the record must be retained under that subrule, retained in a secure location and in an electronic format, and is immediately accessible by the Operator.

(4) An Operator must create at least one backup copy of each record referred to in subrule (2) and must ensure that, for the period of time that the record must be retained under that subrule, the backup copy is retained in a secure location and in an electronic format, separate from the location of the record, and is accessible by the Operator within 3 business days.

(5) This Rule applies subject to any direction given by ASIC under section 904K of the Corporations Act.

Note: Under section 904K, ASIC may make a direction relating to Derivative Trade Data if the Trade Repository ceases to be licensed, including a direction requiring an Operator or former Operator to destroy or transfer to another Trade Repository or a Prescribed Derivative Trade Repository all records of the Derivative Trade Data over which the Operator or former Operator has control.

2.3.3 Use and disclosure of Derivative Trade Data

(1) An Operator must establish, implement, maintain and enforce policies, procedures, systems and controls designed to ensure that the Operator, its Officers and employees comply with section 904B of the Corporations Act in handling, using and disclosing Derivative Trade Data.

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(2) For subparagraph 904B(1)(b)(ii) of the Corporations Act, an Operator is permitted to use and disclose:

- (a) statistical data that the Operator has disclosed in accordance with Rule 2.3.5 or Rule 2.3.6;
- (b) Derivative Trade Data other than statistical data referred to in paragraph (a) that is, or that is created or derived from, Derivative Trade Data that has been reported to the Operator by a Participant, only if:
 - (i) the Participant that reported the Derivative Trade Data has given prior written consent to the use or disclosure of the Derivative Trade Data by the Operator; and
 - (ii) where the Derivative Trade Data is capable of identifying a counterparty to a Derivative Transaction, that counterparty has consented in writing to the use or disclosure of the Derivative Trade Data.

(3) For the purposes of paragraph (2)(b), an Operator:

- (a) must not require a Participant to consent to the use or disclosure of Derivative Trade Data reported by the Participant as a condition of the Participant's access to the Trade Repository's services; and
- (b) must not induce or attempt to induce a Participant to consent to the use or disclosure of the Participant's Derivative Trade Data by offering or providing to the Participant incentives or benefits that are not offered or provided to Participants that do not consent to the use or disclosure of their Derivative Trade Data, unless the incentive or benefit is reasonably related to the value to the Operator of using or disclosing the Participant's Derivative Trade Data.

Note: An example of an incentive or benefit for the purposes of paragraph (3)(b) is a reduced fee, rate or charge for access to the Trade Repository's services.

2.3.4 Provision of access to Derivative Trade Data

Participant access

- (1) Subject to subrule (4), an Operator must provide each Participant with access to the records of the Derivative Trade Data that the Participant has reported to the Trade Repository, including access for the purposes of making necessary corrections or alterations to that Derivative Trade Data.
- (2) To the extent not provided under subrule (1) and subject to subrule (4), an Operator must provide each Participant with access to the records of each Derivative for which the Participant is a counterparty or for which the Participant reported on behalf of the counterparty.
- (3) An Operator must ensure that its rules, procedures and contractual arrangements relating to the provision of access to Derivative Trade Data clearly define the categories of access available to Participants, if there is more than one category.

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(4) An Operator is not required to provide access under this Rule to an entity that is suspended from being, or has ceased to be, a Participant in the Trade Repository.

Note: Under Rule 2.2.1, the Operator's rules, procedures and contractual arrangements must also clearly define the rights and obligations of Users with respect to the provision of access to Derivative Trade Data.

(5) ASIC may give a written direction to an Operator requiring the Operator deal, in a specified way, with Derivative Trade Data reported by or on behalf of a Reporting Entity, 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) becomes a Chapter 5 Body Corporate, or becomes subject to a similar regime in a foreign jurisdiction; and
- (b) ASIC reasonably believes the direction will ensure the Derivative Trade Data the subject of the direction is accurate and current.

(6) An Operator must comply with a subrule (5) direction as soon as reasonably practicable.

Provision of access to Australian Regulators

(7) An Operator must provide to each Australian Regulator, if requested by that Australian Regulator and at no charge, continuous, direct and immediate electronic access to the following information retained in the Trade Repository:

- (a) all Derivative Trade Data reported by Participants in accordance with the Reporting Requirements; and
- (b) all information (including statistical data) that is created or derived from Derivative Trade Data referred to in paragraph (a).

Note 1: Direct access may be provided through an electronic system, platform or framework that provides secure internet or web-based access to Derivative Trade Data, or by way of a direct real-time feed of Derivative Trade Data.

Note 2: Under this Rule, an Operator may be required to provide access to aggregate-level data, position-level data and transaction-level data (including the identity of counterparties).

Requests to provide data to Australian Regulators and Prescribed Foreign Regulators

(8) For the purposes of subparagraph 904B(5)(b)(ii) of the Corporations Act, an Operator that receives a request from an Australian Regulator under subsection 904B(2) of the Corporations Act for Derivative Trade Data retained in the Trade Repository, including a request for information referred to in subrule (7), is excused from complying with the request unless the request is for Derivative Trade Data that is required by the Australian Regulator in connection with the performance of its functions or exercise of its powers.

(9) An Operator that receives a request from an Australian Regulator under subsection 904B(2) of the Corporations Act for Derivative Trade Data retained in the Trade Repository,

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including a request for Derivative Trade Data referred to in subrule (7), must comply with any reasonable requirement specified in the request to provide the Derivative Trade Data:

- (a) on an ad hoc or periodic basis, or each time a particular circumstance or event occurs;
- (b) by a specified time; and/or
- (c) in a specified format.

(10) For the purposes of subparagraph 904B(5)(b)(ii) of the Corporations Act, an Operator that receives a request from a Prescribed Foreign Regulator under subsection 904B(2) of the Corporations Act for Derivative Trade Data retained in the Trade Repository, is excused from complying with the request unless:

- (a) the request is for:
 - (i) Derivative Trade Data reported by Participants in accordance with the Reporting Requirements; or
 - (ii) information (including statistical data) that is created or derived from the Derivative Trade Data referred to in subparagraph (i);
- (b) the Derivative Trade Data is required by the Prescribed Foreign Regulator in the performance of its functions or exercise of its powers; and
- (c) the request is made subject to and in accordance with internationally accepted regulatory access standards applicable to Derivative Trade Repositories.

Note: Under this Rule, an Operator may be required to provide the Prescribed Foreign Regulator with aggregate-level data, position-level data or transaction-level data (including the identity of counterparties), depending on the Prescribed Foreign Regulator's regulatory mandate.

Limitations on access and request

(11) Subrules (7)–(10) operate subject to any requirements of regulations made for the purposes of subsection 904B(4) or subparagraph 904B(5)(b)(i) of the Corporations Act.

Information taken to be given to ASIC in confidence

(12) For subsection 903A(5) of the Corporations Act, information given to ASIC by an Operator (or an Officer of an Operator), under a provision of:

- (a) Part 7.5A of the Corporations Act;
- (b) regulations made for the purpose of Part 7.5A of the Corporations Act; or
- (c) these Rules or the Reporting Rules,

is to be taken, for the purpose of section 127 (confidentiality) of the *Australian Securities and Investments Commission Act 2001*, to be given to ASIC in confidence in connection with the performance of ASIC's functions under the Corporations Act, unless the information has been made publicly available in accordance with the provisions referred to in paragraphs (a)–(c) or as otherwise required or permitted by law.

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(13) An Operator must not disclose that:

- (a) a request for particular Derivative Trade Data was made under subsection 904B(2) of the Corporations Act, or that particular Derivative Trade Data was provided in compliance with such a request;
- (b) access to particular Derivative Trade Data was provided in accordance with subrule (7), other than for the purposes of seeking legal advice or as required by law.

2.3.5 Obligation to create and disclose weekly statistical data

(1) An Operator must create and disclose in accordance with this Rule statistical data on Derivative Trade Data (in this Rule, *Relevant Derivative Trade Data*) that is retained in the Trade Repository and that was reported to the Trade Repository by Participants in accordance with the Reporting Rules.

(2) For the purposes of subrule (1), an Operator must, for each 7-calendar day period (in this Rule, *Relevant Period*) commencing from the day the Operator first accepts a report of Relevant Derivative Trade Data, create the following statistical data from the Relevant Derivative Trade Data:

- (a) all aggregate open positions as at the end of the last day in the Relevant Period for which the statistical data is created; and
- (b) volumes by number and by value of Derivative Transactions reported during the Relevant Period.

(3) The statistical data created in accordance with subrule (2) must include breakdowns by the following categories (if applicable):

- (a) the asset class, currency of the notional amount, type and maturity of the Derivatives to which the statistical data relates; and
- (b) whether the Derivatives to which the statistical data relates are cleared or uncleared.

(4) Subject to subrule (6), an Operator must disclose the statistical data required under subrules (1)–(3) in relation to a Relevant Period, from a day that is between 3–5 business days after the day on which the Relevant Period ends.

(5) An Operator must disclose the statistical data required under subrules (1)–(3) by making the statistical data available at no charge and through a publicly accessible website.

(6) The statistical data published under this Rule must not include Derivative Trade Data capable of identifying a counterparty to a Derivative Transaction.

2.3.6 Permission to create and disclose financial year-to-date statistical data

(1) Subject to subrule (2), an Operator may publish the statistical data created and disclosed in accordance with paragraph 2.3.5(2)(b) aggregated in financial-year-to-date form, by making the aggregated financial year-to-date statistical data available at no charge and through a publicly accessible website.

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(2) The statistical data published under this Rule must not include Derivative Trade Data capable of identifying a counterparty to a Derivative Transaction.

2.3.7 Communication procedures and standards

An Operator must use or, at a minimum, accommodate, relevant internationally accepted communication procedures and standards to facilitate accurate, consistent, efficient and reliable acceptance, retention, use, disclosure and provision of access to Derivative Trade Data by the Trade Repository.

Part 2.4 Governance, management and resources

2.4.1 Governance

(1) An Operator must establish, implement, maintain and enforce documented arrangements for the governance and management of the Trade Repository that are clear and transparent, promote the secure, efficient and effective operation of the Trade Repository, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of Users.

(2) The governance arrangements referred to in subrule (1) must provide for:

- (a) clear and direct lines of accountability in the governance and management of the Trade Repository;
- (b) clearly defined roles and responsibilities for the Operator's Officers and members of its governing body and management in the governance and management of the Trade Repository, including roles and responsibilities in relation to the identification, measurement, monitoring and management of risks;
- (c) clearly defined decision-making processes, including processes for:
 - (i) decision making in crises and emergencies; and
 - (ii) ensuring significant decisions in relation to the design, rules or overall strategy of the Trade Repository are made taking into account the objectives of Users and, where appropriate, are disclosed to Users; and
- (d) internal control functions to be exercised by persons with adequate authority, independence, resources, and access to the governing body and senior management to perform the control function.

Note: For example, internal control functions include compliance, audit and review functions.

2.4.2 Handling of conflicts of interest

An Operator must establish, implement, maintain and enforce documented arrangements for identifying and effectively managing (including by avoiding, controlling or disclosing) any actual or potential conflicts between:

- (a) the interests of the Operator, its related bodies corporate or members of the Operator's governing body, and the interests of Users;

- (b) the interests of different Users; and
- (c) the interests of the Operator, its related bodies corporate or members of the Operator's governing body, and the need to ensure the Trade Repository's services are provided in a secure, efficient and effective manner.

2.4.3 Monitoring and enforcement of compliance with obligations

(1) An Operator must establish, implement, maintain and enforce policies, procedures, systems and controls for monitoring and enforcing compliance by its Officers and employees with these Rules, the Reporting Rules, the Corporations legislation and any other applicable law of a State or Territory or law of the Commonwealth.

(2) Without limiting subrule (1), the Operator must ensure that the arrangements, rules, procedures, policies, plans, systems and controls required by these Rules are reviewed, audited and tested periodically and after significant changes, to ensure compliance with these Rules.

2.4.4 Risk management

(1) An Operator must establish, implement, maintain and enforce policies, procedures, systems and controls to enable the Operator to identify, measure, monitor and effectively manage risks to the secure or efficient or effective operation of the Trade Repository, including legal, operational and business risks.

(2) In establishing, implementing, maintaining and enforcing the policies, procedures, systems and controls required by subrule (1), the Operator must take into account, at a minimum, legal, operational and business risks that arise or may arise:

- (a) from Users and, if applicable, Indirect Participants;
- (b) in relation to the Operator's operational and contractual arrangements with Linked Providers; and
- (c) from the provision of Non-Trade Reporting Services by the Operator, a related body corporate of the Operator, or any other company with which the Operator has a material agreement in connection with Trade Reporting Services.

Note: See also Rule 2.2.1 (Legal basis), Rule 2.4.5 (Resources), Rule 2.4.7 (Financial resources), Rule 2.4.8 (Integrity and security of computer systems and other systems), Rule 2.4.9 (Operational reliability), Rule 2.4.10 (Business continuity planning), Rule 2.4.11 (Recovery and resolution) and Rule 2.4.12 (Operational separation of functions).

2.4.5 Resources

An Operator must establish and maintain sufficient and appropriate human, technological and financial resources to ensure that the Trade Repository operates at all times securely, efficiently and effectively.

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2.4.6 Human resources

Without limiting Rule 2.4.5, an Operator must at all times ensure its Officers, managers and employees are fit for office, taking into account the experience, qualifications and skills necessary to perform their respective roles and responsibilities in the governance, management and operation of the Trade Repository.

2.4.7 Financial resources

(1) Without limiting Rule 2.4.5, an Operator must hold at all times net assets funded by equity (such as shares, disclosed reserves or other retained earnings) that, at a minimum, are equal to an amount that would enable the Trade Repository to cover at least six months of current operating expenses, calculated on a rolling basis at the end of each month.

Note: ASIC may also specify financial resources that the Operator is required to hold, in the conditions of the Operator's Licence.

(2) An Operator must maintain a viable plan, approved by its governing body and updated regularly, for raising additional equity should its equity fall close to or below the amount needed under subrule (1).

2.4.8 Integrity and security of computer systems and other systems

An Operator must establish, implement, maintain and enforce policies, procedures, and physical and electronic controls over its systems for accepting, retaining, using, disclosing and providing access to Derivative Trade Data designed to:

- (a) maintain the integrity, security and confidentiality of Derivative Trade Data at all times during transmission between the Trade Repository, Australian Regulators and Users, and while retained in the Trade Repository; and

Note: For example, ensuring the Derivative Trade Data is protected from loss, leakage and corruption.

- (b) prevent unauthorised use or disclosure of, or access to, Derivative Trade Data.

2.4.9 Operational reliability

(1) An Operator must ensure that its systems for accepting, retaining, using, disclosing and providing access to Derivative Trade Data are reliable and have sufficient, scalable capacity for the ongoing and planned operations of the Trade Repository, including, without limitation, the capacity to accept and retain for the period required by Rule 2.3.2 all Derivative Trade Data reported to the Trade Repository by Participants.

(2) An Operator must establish, implement, maintain and enforce plans, including escalation plans, for its internal communications and its communications with Users and Australian Regulators in circumstances of an operational outage or other disruption to the Trade Repository's services.

2.4.10 Business continuity planning

An Operator must establish, implement, maintain and enforce business continuity, backup and data recovery plans designed to:

- (a) address events that pose a significant risk of disruption to the Trade Repository's operations or services, including events that could cause a wide-scale or major disruption; and
- (b) in the event of any disruption to the Trade Repository's operations or services, enable the timely restoration of those operations and services and enable the Operator to meet its obligations to Australian Regulators and Users.

2.4.11 Recovery and resolution

(1) An Operator must establish, implement, maintain and enforce policies, procedures and plans designed to:

- (a) identify scenarios that may potentially prevent the Operator from being able to provide the Trade Repository's critical operations or services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down; and
- (b) provide for the recovery or orderly wind-down of the Trade Repository's critical operations or services based on the results of the assessment referred to in paragraph (a).

(2) An Operator must, on request by an Australian Regulator, provide the Australian Regulator with information reasonably required by the Australian Regulator for purposes of resolution planning in respect of the Operator or in respect of Users.

(3) In establishing, implementing, maintaining and enforcing the policies, procedures and plans required under subrule (1), the Operator must take into account its obligations under Rules 2.3.2 and 2.3.4, and any obligations that may arise under section 904K of the Corporations Act in the event that the Trade Repository ceases to be licensed under section 905C of the Corporations Act.

Note: Under section 904K, ASIC may make a direction relating to Derivative Trade Data if the Trade Repository ceases to be licensed, including a direction requiring an Operator or former Operator to destroy or transfer to another Trade Repository or a Prescribed Derivative Trade Repository, all records of the Derivative Trade Data over which the Operator or former Operator has control.

2.4.12 Operational separation of functions

Where the Operator, a related body corporate of the Operator, or any other company with which the Operator has a material agreement in connection with the Trade Reporting Services, provides Non-Trade Reporting Services, the Operator must:

- (a) disclose to ASIC a description of all of the Non-Trade Reporting Services, and update the disclosure as soon as practicable after any changes are made to the Non-Trade Reporting Services; and

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- (b) establish, implement, maintain and enforce policies, procedures, systems and controls designed to ensure operational separation between the Non-Trade Reporting Services and the Trade Reporting Services.

Note: Operational separation may be achieved, for example, by supervisory arrangements including information barriers.

2.4.13 Outsourcing of functions

If an Operator outsources any of the Trade Reporting Services to another person (in this Rule, the *Service Provider*), the Operator must:

- (a) ensure that the outsourcing arrangement is covered by a contract with the Service Provider that is in writing;
- (b) establish, implement, maintain and enforce documented policies, procedures, systems and controls for ensuring the Operator continues to comply with its obligations under Part 7.5A of the Corporations Act, including under these Rules, in relation to the outsourced Trade Reporting Services;
- (c) at all times be able to access books, records and other information of the Service Provider relating to the outsourced Trade Reporting Services; and
- (d) ensure that Australian Regulators have the same access to all Derivative Trade Data, books, records and other information relating to the outsourced Trade Reporting Services and maintained by the Service Provider, that the Australian Regulator would have if not for the outsourcing arrangements.

Part 2.5 Disclosure of conditions (including fees) on which Trade Repositories provide their services

2.5.1 Disclosure of rules, procedures and other information

(1) An Operator must disclose to Participants in writing:

- (a) the Operator's rules and procedures for accepting, retaining, using, disclosing and providing access to Derivative Trade Data;

Note: See also subrule 2.2.1(2).

- (b) the Operator's commitments in relation to minimum service levels and operational reliability;
- (c) subject to subrule (2), a description of the design and operation of the Trade Repository's systems for accepting, retaining and providing access to Derivative Trade Data; and
- (d) subject to subrule (2) and to the extent not disclosed under paragraphs (a), (b) or (c) or Rule 2.5.2, any other information reasonably required by Participants to assess the risks and costs of participating in the Trade Repository.

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(2) The Operator is not required to comply with paragraph (1)(c) or (d) to the extent that such disclosure would comprise the integrity or security of the Trade Repository or require the disclosure of commercially sensitive information.

(3) If the Operator proposes to make a change to the access and participation conditions referred to in Rule 2.2.2, or the fees, rates and charges for the Trade Reporting Services as referred to in paragraph 2.5.2(1)(g), the Operator must notify ASIC and Participants in writing about the change within a reasonable time before the change is implemented.

2.5.2 Public disclosures

(1) An Operator must disclose, on a publicly accessible section of its website and at no charge, a description of:

- (a) the Trade Reporting Services and any Ancillary Services;
- (b) the class or classes of Derivatives for which the Trade Repository can provide services for the purposes of Part 7.5A of the Corporations Act, as specified in the conditions of the Operator's Licence;

Note: See paragraph 905F(4)(b) of the Corporations Act.

- (c) key elements of the Operator's rules, procedures and contractual arrangements referred to in Rule 2.2.1, including the dispute resolution procedures referred to in paragraph 2.2.1(3)(b);
- (d) the Operator's access and participation conditions referred to in Rule 2.2.2;
- (e) the organisational, legal and ownership structure of the Operator and the arrangements for the governance and management of the Trade Repository referred to in Rule 2.4.1;
- (f) the Operator's policies and procedures in relation to the commercial use of Derivative Trade Data retained in the Trade Repository; and

Note: See also Rule 2.3.3.

- (g) the fees, rates and charges for the services referred to in paragraph (a), at an individual service level, and the Operator's policies in relation to discounts and rebates, if any.

(2) An Operator must ensure the disclosures required under subrule (1) are at all times complete, accurate and current.

Part 2.6 Reporting to Australian Regulators on matters related to Trade Repositories

2.6.1 Annual compliance report

(1) An Operator must, within three months after the end of its financial year, give ASIC a written report (the *Annual Compliance Report*) on the extent to which the Operator has complied during the financial year with its obligations as an Operator under the Corporations

legislation, including under these Rules and the Reporting Rules, unless ASIC relieves the Operator from this requirement in writing.

(2) The Operator must, on request by ASIC, obtain an audit report on the Annual Compliance Report, prepared by such specified person or body as ASIC nominates or accepts as suitably qualified to prepare the audit report.

(3) A request by ASIC for an audit report under subrule (2) must be in writing and allow the Operator a reasonable period to comply.

2.6.2 Disclosure of proceedings

An Operator must notify ASIC in writing as soon as practicable after the Operator becomes aware that:

- (a) any civil or criminal legal proceeding has been instituted against the Operator or an Officer of the Operator, other than by ASIC, whether or not in Australia;
- (b) any disciplinary action has been taken against the Operator or an Officer of the Operator by any regulatory authority other than ASIC, whether or not in Australia; and
- (c) any significant changes are made to the regulatory requirements imposed on the Operator or an Officer of the Operator by any regulatory authority other than ASIC, whether or not in Australia.

2.6.3 Notification of acquisition of significant holding in the Operator

(1) An Operator must notify ASIC of the information in subrule (2) as soon as practicable after the Operator becomes aware that a person has come to have, or has ceased to have, more than 15% of the total voting power in the Operator or in a holding company of the Operator.

(2) For the purposes of subrule (1), the information to be given to ASIC by the Operator is:

- (a) the person's name and contact details;
- (b) if known by the Operator, the date on which the person came to have, or ceased to have, more than 15% of the voting power; and
- (c) if the Operator knows the voting power that the person had immediately before the person came to have, or ceased to have, more than 15% of the voting power, that voting power; and
- (d) whether the Operator knows the manner in which the person came to have, or ceased to have, more than 15% of the voting power and, if the Operator knows the manner, details of what the Operator knows.

Note: Under subsection s904C(3) of the Corporations Act, the Operator must also notify ASIC as soon as practicable after a person becomes, or ceases to be, a director, secretary or senior manager of the Operator or its holding company.

2.6.4 Delays, disruptions, suspension and termination, breaches of data security, integrity and confidentiality

If the Trade Repository experiences:

- (a) a disruption of, delay in, or suspension or termination of any of the Trade Repository's systems for the acceptance, retention, use, disclosure or provision of access to Derivative Trade Data, including as a result of any system failure; or
- (b) a breach of the integrity, security, or confidentiality of the Derivative Trade Data retained in the Trade Repository,

the Operator must:

- (c) as soon as practicable, notify ASIC of the occurrence of the circumstance; and
- (d) within 14 days of the occurrence of the circumstance, submit a report to ASIC describing the cause and results of the occurrence of the circumstance, and any remedial actions already taken or planned by the Operator in response to the occurrence of the circumstance.

Part 2.7 Keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the Rules

2.7.1 Keeping of records

(1) An Operator must keep records that enable the Operator to demonstrate that it has complied with the requirements of these Rules.

(2) An Operator must keep the records referred to in subrule (1) for a period of at least five years from the date the record is made or amended, or for any longer period for which the record is required to be kept under any other Rule.

2.7.2 Provision of records or other information

(1) An Operator must, on request by ASIC, provide ASIC with records or other information relating to compliance with, or determining whether there has been compliance with, these Rules.

(2) A request by ASIC under subrule (1) must be in writing and give the Operator a reasonable time to comply.

(3) The Operator must comply with a request under subrule (1) within the time specified in the request or, if no time is specified, within a reasonable time.

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2.7.3 Language of records

(1) All records required to be kept by these Rules must be kept in writing in the English language, or in a manner that enables them to be readily accessible and readily converted into writing in the English language.

(2) If any of the records are not kept in writing in the English language, the Operator must, if required by ASIC to convert the records into writing in the English language, comply with that requirement within a reasonable time.

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