

25 March 2024

Craig McBurnie, Senior Analyst
Market Infrastructure
Australian Securities and Investments Commission
By email: otcd@asic.gov.au

Dear Mr McBurnie

Proposed changes to the ASIC Derivative Transaction Rules (Reporting): Third consultation and request for facilitative compliance approach to enforcement

Introduction

The Financial Services Council (**FSC**) writes in relation to the ASIC Derivative Transaction Rules (Reporting) 2024 (**2024 Rules**) and Consultation Paper 375 *Proposed changes to the ASIC Derivative Transaction Rules (Reporting): Third consultation*.

The FSC appreciates the efforts made by ASIC to engage with industry and recognises that ASIC has undertaken considerable effort in updating the 2024 Rules. The FSC acknowledges that ASIC is carrying out important work in the context of ongoing global efforts to simplify and harmonise derivative reporting rules to reduce difficulties, uncertainties and instances of varying industry practice.

Our members are required to prepare, test and implement significant changes to their systems and processes ahead of the start date for the 2024 Rules, a challenging process which needs to be undertaken in parallel with this latest ASIC consultation. In these circumstances, the FSC is writing to request that ASIC adopt a facilitative compliance approach with regard to the enforcement of the current and 2024 Rules in the lead up to, and for a reasonable period after, the implementation date.

Background

Preparing for the 2024 Rules is a significant undertaking. It involves substantial technology and operations build out and requires businesses to commit significant resources. There are a number of complexities and uncertainties with the interpretation of the 2024 Rules, particularly around some data fields and reporting. As our members become more familiar with the changes that need to be made to their businesses to comply with the 2024 Rules, it is increasingly apparent that they will continue to need to dedicate substantial resources to an ongoing program of adaptation.

ASIC's reports leading to the proposed 2024 Rules acknowledge that reporting entities already face difficulties and uncertainties in implementing the current ASIC Derivative Transaction Rules (Reporting) 2022 (**2022 Rules**). We note in this regard that there are specific examples where ASIC acknowledges varying industry practice (e.g. paragraph 461 of [CP 361](#)). It is expected that these difficulties, uncertainties and variances will continue with regards to the 2022 Rules.

As reporting entities re-write their derivative transaction reporting frameworks, they will likely be applying scrutiny to existing processes and methodologies. In the course of this exercise, it is expected that discrepancies may be identified. For example, interpretation of field logic may have evolved since first designed with changing personnel or industry practice. Given

this, it is reasonable to expect reporting entities to become aware of potential errors or breaches of the 2022 Rules in the period leading to transition.

Where these discrepancies will be resolved on or before commencement of the 2024 Rules, the FSC submits that ASIC allow reporting entities to focus on the position that would apply under the 2024 Rules, rather than committing resources to rectify issues under the 2022 Rules (if different).

When the 2024 Rules come into effect, industry will need time to adapt to the further new requirements. Whilst reporting entities are already embarking on programs of rigorous testing and configuration projects, it is likely that reporting issues will arise in a live environment. This will be compounded by the number of participants involved in the reporting process, for example reporting entities, delegates, counterparties and trade repositories. We note in this context that businesses are heavily dependent on third parties such as information data providers that are currently servicing thousands of financial firms. This could give rise to instances of technical non-compliance outside of the control of any given firm.

Now that ASIC has released the Third Consultation it is clear that there will likely be further changes to the 2024 Rules. The Third Consultation is an additional moving part that reporting entities need to monitor, and any changes following it will need to be integrated by businesses into their operational and systems changes. Ongoing testing includes testing of certain reportable data fields that are discussed in the Third Consultation, so any changes following this consultation will need to be taken into account and may involve further testing where relevant.

Finally, the FSC notes that ASIC RG 251 *Derivative Transaction Reporting*, last updated in February 2023, will also need to be further updated. The longer industry has to wait for this RG to be updated, the more difficult it will be for businesses to consistently interpret the 2024 Rules and implement them effectively.

It is likely that, notwithstanding rigorous testing, discrepancies will arise as industry commences reporting in a live environment and continues to receive feedback from the various industry stakeholders.

Facilitative compliance approach requested

In view of the above, the FSC requests that ASIC adopt a facilitative compliance approach to enforcing the 2022 and 2024 Rules where reporting entities make a good-faith attempt to comply with the applicable reporting requirements but are unable to do so because of, for example, the need to make systems changes.

The FSC requests that this facilitative compliance approach should apply immediately and end no earlier than a period of 6 months after the start date of the 2024 Rules, being 21 April 2025.

As part of a facilitative compliance approach, the FSC also requests ASIC to provide guidance to industry on its expectations relating to the obligation to notify ASIC of 'reportable situations' in relation to breaches or likely breaches of the 2022 and 2024 Rules.

Next steps

The FSC and some of our members would be pleased to meet with ASIC to discuss this request and provide more detail regarding this issue.

Please contact Ashley Davies in the first instance at adavies@fsc.org.au or 0421 062 327 and we would be pleased to arrange.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ashley Davies', with a long horizontal stroke extending to the right.

Ashley Davies
Director of Policy, Legal
Financial Services Council