CS-048 Proposed changes to the ASIC Derivative Transaction Rules (Reporting) 2024

ASIC

Submitter:

Michael Sanderson

[redacted]

Introduction

I welcome the opportunity to comment on CS 48 and the proposed amendments to the ASIC Derivative Transaction Rules Reporting 2024.

This submission supports targeted improvements to derivative transaction reporting where those improvements serve good public purpose.

The purpose of derivative transaction reporting is not administrative neatness. It is public visibility over private financial complexity. Derivatives can serve useful economic functions when they help manage genuine risk, support productive activity, improve price discovery and contribute to orderly markets. They can also create hidden leverage, interconnected exposure, regulatory blindness and private profit from complexity. The public interest lies in ensuring that the useful function is visible, contained and supervised, and that the harmful function is not allowed to hide behind technical reporting architecture.

ASIC should therefore assess these amendments by a simple test.

Do they improve ASIC's ability to see who is exposed, to whom, through what instrument, linked to what underlier, on what terms, with what collateral, with what leverage, and how that exposure changes over time?

If the answer is yes, the amendment serves good public purpose. If the answer is no, the amendment should be rejected, narrowed or strengthened.

Overall position

I broadly support ASIC proceeding with the proposed amendments.

The amendments appear to be a limited maintenance exercise. They respond to industry requests, support practical reporting improvements, align with international data standards and seek to improve the quality of data reported to ASIC.

Those are worthwhile objectives, but they are not enough on their own.

Simplification must not mean accommodation of opacity. Practical improvement must not mean convenience for industry at the expense of regulatory sight. International alignment must not become a reason to copy the lowest common denominator. Data quality must be judged by what ASIC can actually see, test, aggregate, trace and act upon.

Derivative markets should not be treated as inherently useful merely because they are technically sophisticated. Their public value depends on whether they help manage real risk or whether they mainly multiply financial claims, trading opportunities and fee extraction. Reporting rules are therefore a critical public safeguard. They are one of the ways ASIC can distinguish useful risk management from risk concealment.

Good public purpose as the primary test

Good public purpose requires the reporting framework to expose financial complexity, not normalise it.

A derivative is a contract whose value is derived from something else. Its proper function is to help parties manage risk. A farmer may manage future commodity price risk. A business may manage exchange rate risk. A borrower or lender may manage interest rate risk. In those cases, the derivative can support planning, stability and productive activity.

But the same legal form can be used for a very different purpose. It can be used to create leverage, move risk away from balance sheet visibility, speculate on volatility, generate fees, manufacture apparent hedges, or distribute exposure through chains of private contracts that regulators, customers and even counterparties may not fully understand.

That is why derivative reporting is not a minor compliance exercise. It is part of the public architecture of financial supervision.

The public purpose test should require ASIC to ask whether each amendment strengthens visibility over real economic exposure. The answer should not depend only on whether a field is easier for industry to populate. It should depend on whether ASIC receives clearer, more complete and more usable information.

Public support and private opacity should not coexist

This issue is especially important where derivative activity involves authorised deposit taking institutions, licensed financial entities or other bodies that benefit from public confidence, public licensing, prudential standing or direct and indirect public support.

Banking is not an ordinary private business. It operates inside a public architecture made up of the payments system, deposit taking, credit creation under public law, prudential supervision, Reserve Bank liquidity support and the public deposit guarantee. That architecture exists to protect public confidence and financial stability, not to subsidise private opacity. Where a publicly supported institution participates in derivative markets, ASIC must be able to see the exposure clearly. Public backing and hidden derivative risk should not be allowed to coexist.

It is not good enough for public support to sit on one side of the system while private complexity sits on the other. If an institution benefits from the public architecture of money, payments, deposits, prudential supervision or market licensing, its derivative exposures should be capable of being seen, traced and understood by ASIC.

Additional information required by derivative trade repositories

I support the proposed provision allowing a derivative trade repository to require additional information about a report for data handling requirements.

This is acceptable if it improves validation, reconciliation, error management, traceability and data integrity.

However, ASIC should ensure that this provision does not create inconsistent repository specific practices that undermine comparability. Additional report information should not become a shadow reporting regime. It should remain clearly connected to the handling, validation and tracing of reports.

The public purpose is served if this information helps ASIC and repositories identify reports, connect related records, manage errors and preserve audit trails. It is not served if it merely creates more operational clutter.

Not required reporting

I support the proposal to permit reporting of information that is not strictly required for a particular reportable transaction, provided it complies with the required format and allowed values.

This may improve completeness and avoid artificial gaps.

However, ASIC should treat optional additional reporting carefully. Optional fields can produce uneven data. If some entities report additional information and others do not, ASIC may receive a data set that appears more complete than it really is. Optional reporting may also allow strategic selectivity, where firms provide additional information when it is convenient and omit it when it would reveal complexity or risk.

ASIC should monitor the use of not required reporting after commencement. If optional information proves material to supervision, risk aggregation or enforcement, ASIC should consider making it mandatory in defined circumstances.

Optional reporting should be a practical flexibility, not a substitute for clear obligations where the information matters.

ISO 20022 technical constraints

I accept the need to clarify the effect of technical constraints in the ISO 20022 message definition.

ASIC should not create obligations that cannot technically be performed. If a message structure does not allow certain information to be reported in combination with other information, the rules should recognise that reality.

However, technical constraint must not become regulatory blindness.

Where the message definition prevents the reporting of one item because another item is reported, ASIC should ensure that the reported item gives an equal or better view of the economic exposure. The reporting entity should not be able to rely on technical architecture to omit material information if there is another reasonable way for ASIC to obtain the substance.

The purpose of the reporting rules is not mechanical field completion. The purpose is accurate visibility of risk.

Alphanumeric format

I support clarifying the meaning of alphanumeric reporting, including the use of special characters where necessary.

This is a practical data quality matter. Legal names, codes and underlier names should not be distorted in ways that reduce identification, matching or reconciliation. At the same time, flexibility should be disciplined by standardisation.

The aim should be accurate identification, not uncontrolled variation.

Execution agent of Counterparty 2

I support adding Execution agent of Counterparty 2 as an expressly recognised data element.

Derivative markets can involve layers of agency and intermediation. ASIC may need to see not only the formal counterparty but also the party that executed or facilitated the transaction. That information can matter for market conduct, concentration, conflicts and risk transmission.

ASIC should consider whether this field should remain optional indefinitely. If the execution agent is material to understanding market conduct or transaction architecture, then the stronger public purpose position is that it should be required where applicable.

Leverage ratio

I strongly support adding the leverage ratio data element.

This is one of the most important proposed amendments.

A headline notional amount may not reveal the true economic exposure of a structured derivative. Where exposure is contingent, scaled, path dependent or capable of changing under the terms of the transaction, ASIC needs to see that feature.

The leverage ratio field should therefore be interpreted broadly and purposively. It should not be confined to the current industry use case of FX TARF transactions. It should apply wherever the economic exposure can differ materially from the simple reported notional or from the ordinary appearance of the transaction.

ASIC should provide guidance to prevent narrow or inconsistent interpretations. If derivative reporting fails to reveal leverage, it fails one of its central public purposes.

Schedule information for notional quantity, price, strike price and barrier price

I support adding data elements for notional quantity schedules, price schedules, strike price schedules and barrier price schedules.

These changes appear useful because they allow known schedule information to be reported once rather than through repeated updates as each schedule period commences.

That may reduce unnecessary reporting burden and improve ASIC's forward visibility of exposure.

However, ASIC should be careful about the line between a scheduled change and a substantive change. Reporting a schedule at the outset should not allow later changes in economic exposure to be hidden or treated as merely technical. If the transaction is amended, restructured, reset or otherwise altered, ASIC should receive a clear report of that change.

One time reporting is useful only if it gives ASIC a fuller picture earlier. It is not useful if it becomes a device for reducing later transparency.

Barrier type and barrier exercise style

I support adding barrier type and barrier exercise style where this information is not identified by the Unique Product Identifier.

Barrier products may contain important embedded risk features. If ASIC can see a barrier price but cannot see the type of barrier or the way the barrier operates, ASIC may not be able to understand the true behaviour of the product.

This amendment reflects an important principle. Identifiers are useful, but they are not enough if they do not reveal material economic terms. Where the Unique Product Identifier does not identify a material risk feature, the reporting rules should require that feature to be reported separately.

Subsequent position UTI

I strongly support adding the Subsequent position UTI data element for transaction to position conversion reporting.

Traceability is central to the public purpose of derivative reporting.

ASIC must be able to follow a transaction through its lifecycle. It must be able to understand how an original transaction becomes a position, how that position changes, and how related reports connect to each other.

A transaction should not disappear into a new reporting form without a clear link to its prior record. Fragmented reporting weakens supervision, enforcement and systemic risk analysis.

The Subsequent position UTI field should be supported because it improves continuity, auditability and event tracing.

Other payment clarification

I support clarifying that another payment includes a monetary value transfer.

ASIC should ensure that other payment fields are not treated as residual or unimportant. Payments outside the ordinary price, premium, notional or collateral structure may be important to understanding the true economics of a transaction.

The reporting framework should capture the full economic arrangement, not merely its most familiar components.

Underlier identification

I strongly support adopting standardised identification of underliers where they are not specifically identified by the Unique Product Identifier.

This is fundamental.

A derivative cannot be properly understood unless the thing to which it is linked can be identified. If ASIC cannot clearly identify the underlier, it cannot properly assess concentration, correlation, contagion, market manipulation risk or the connection between derivative activity and the real economy.

Underlier identification should be treated as a high priority data quality issue.

ASIC should ensure that underlier data is standardised enough to support aggregation across reporting entities, repositories, asset classes and time.

EROR action type for collateral reporting

I support adding EROR as an action type for collateral reporting only if it preserves a clear and permanent audit trail.

Error correction is necessary. Reporting systems must allow mistakes to be fixed. But error correction must not become error erasure.

Where EROR is used, ASIC should be able to see what was cancelled, when it was cancelled, who cancelled it, why it was cancelled, and where the corrected information now appears.

Collateral reporting is important because collateral affects the stability, protection and transmission of derivative exposures. A weak audit trail in collateral reporting would undermine the public purpose of the reporting framework.

Records and access

ASIC should reinforce the importance of records that allow compliance to be demonstrated.

The reporting obligation should not be understood as merely sending data to a repository. Reporting entities should maintain systems, records and controls that allow the reported information to be tested and explained.

ASIC should also be willing to use its information gathering powers where data quality concerns arise. Poor derivative reporting should not be treated as a harmless technical defect. It can impair ASIC's ability to see risk in the financial system.

Commencement and implementation

I do not object to the proposed commencement date of 1 March 2027.

However, the implementation period should be used actively. ASIC should issue guidance, test data flows, identify interpretive risks, engage with repositories and ensure that validation systems support the public purpose of the amendments.

Implementation should not be reduced to industry readiness. It should also mean regulatory readiness. ASIC should be satisfied that it can use the new data effectively from commencement.

Regulatory capacity and implementation risk

These amendments should also be assessed against ASIC's own institutional capacity.

The proposed changes may improve the theoretical quality of derivative transaction data. But improved fields do not automatically produce improved supervision. More data can strengthen regulation only if ASIC has the systems, expertise, staffing, analytical capability and enforcement culture needed to use that data.

This is not an abstract concern. The Financial Services Royal Commission exposed serious failures across the financial services sector and placed renewed emphasis on regulatory accountability and effective enforcement. The later Senate inquiry into ASIC investigation and enforcement examined ASIC's capacity and capability to undertake proportionate investigation and enforcement action. Its executive summary referred to ASIC being inwardly focused and distracted from core regulatory functions by shortcomings in governance arrangements.

That history matters for CS 48.

Derivative reporting reform should not become a process where industry reports more data, ASIC receives more data, but the public obtains no meaningful increase in regulatory visibility or enforcement capability. A larger reporting architecture is not necessarily a stronger one. It may simply become another layer of complexity unless ASIC can validate, analyse, connect and act on the information.

ASIC should therefore accompany these amendments with a clear implementation plan. That plan should explain how ASIC will use the new data elements, how it will monitor data quality, how it will identify inconsistent optional reporting, how it will preserve audit trails for error correction, how it will test underlier identification, and how it will act where reporting entities repeatedly provide incomplete, inaccurate or strategically unhelpful data.

Good public purpose requires more than collecting information. It requires regulatory capability to turn that information into supervision, deterrence and public protection.

Post implementation review

ASIC should commit to a public post implementation review.

That review should examine whether the amendments improved data quality, reduced unnecessary reporting burden, improved traceability, improved underlier identification, improved leverage visibility and reduced error rates.

ASIC should also report in aggregate on the use of optional fields, repository required data, EROR collateral reporting, rejected reports, corrected reports and common data quality issues.

This need not disclose commercially sensitive transaction information. It would simply allow the public, Parliament and industry to know whether the amended reporting regime is working as a public regulatory system.

Broader public purpose and system design

Some of the issues raised by derivative reporting cannot be solved by CS 48 alone.

ASIC is consulting on targeted amendments to reporting rules. It is not consulting on whether Australia should redesign the financial system, prohibit particular derivative activities, establish public risk facilities or reduce the size of the financial sector.

However, it is still useful to place CS 48 in its broader public purpose context.

Derivative markets often exist because public policy permits or encourages private actors to manage risk through complex financial contracts rather than through simpler public arrangements. In some cases, that may be appropriate. In other cases, it creates unnecessary intermediation, private fees, opacity and social cost.

A better public system would ask a prior question before accepting private derivative complexity as inevitable.

Can the underlying risk be managed more simply through public design?

For some real economy risks, the answer may be yes. Public risk pooling, public insurance, strategic reserves, direct public contracting, public banking facilities, domestic reservation arrangements, transparent public price data and regulated standard products may perform the useful risk management function without creating the same level of private rent seeking and complexity.

For banking, the broader public purpose principle is that publicly supported institutions should be confined to activities that serve the payments system and lending based on credit analysis. Activities that shift risk through credit derivatives, rely on financial assets as collateral, create leverage on leverage, or combine public support with speculative side businesses should be treated with deep scepticism.

That broader reform question sits mainly with the Commonwealth Government and Parliament, supported by Treasury, the Reserve Bank of Australia, APRA and ASIC within their respective statutory functions. But it is relevant to ASIC in one important respect.

ASIC should not design reporting rules on the assumption that all existing derivative complexity is socially necessary. The fact that a market has developed a complex product does not mean the public must accommodate that product on the market's preferred terms. If the product exists, ASIC should be able to see it. If ASIC cannot see it clearly, the reporting framework is inadequate. If the only way the product can function is through opacity, that is not an argument for weaker reporting. It is an argument for questioning the product.

Out of scope systemic reform for Government consideration

The following matters may be outside the narrow scope of CS 48, but they are relevant to the broader public purpose of financial system reform.

The Commonwealth, Treasury, the Reserve Bank of Australia, APRA and ASIC should examine whether Australia can reduce reliance on private derivative intermediation by building simpler public mechanisms for risk management.

Where public banking or public treasury facilities can provide transparent risk management at cost for productive firms, particularly small and medium businesses, that should be preferred to opaque private dealing structures.

Where strategic commodities or essential inputs can be stabilised through public reserves, domestic reservation, direct public contracts or regulated price structures, that should be considered before relying on speculative private markets.

Where publicly supported banks use derivatives for activity beyond simple customer risk management, Parliament and regulators should consider whether that activity serves any public purpose at all.

Where financial assets are used as collateral for further financial leverage, regulators should ask whether the system is producing real economic value or merely multiplying claims on existing financial assets.

Where a financial activity absorbs skilled labour, legal resources, compliance resources, technology, energy and regulatory attention without adding commensurate real economy value, Government should ask whether the activity should be simplified, publicised, restricted or removed.

The Commonwealth is the issuer of the Australian dollar. The binding constraints on better public design are real resources, institutional capacity, skills, technology and political will. They are not a shortage of Australian dollars. Where a public mechanism can manage risk more simply, transparently and fairly than private financial engineering, good public purpose requires that option to be considered.

Recommendations

Recommendation one

ASIC should proceed with the amendments only where they improve regulatory visibility, data quality, traceability and risk aggregation.

Recommendation two

ASIC should apply a good public purpose test to derivative reporting. The reporting framework should show who is exposed, to whom, through what product, linked to what underlier, with what leverage, with what collateral, and how that exposure changes over time.

Recommendation three

ASIC should support the leverage ratio data element and interpret it broadly so that contingent, scaled, path dependent and materially variable exposure is visible across all relevant asset classes and transaction types.

Recommendation four

ASIC should support new schedule reporting fields only if they improve forward visibility and do not reduce reporting of later substantive changes.

Recommendation five

ASIC should support the Subsequent position UTI field because transaction traceability is central to effective supervision.

Recommendation six

ASIC should treat underlier identification as a high priority data quality issue and ensure standardised identification where the Unique Product Identifier does not provide sufficient information.

Recommendation seven

ASIC should ensure that EROR collateral reporting preserves a clear audit trail and does not become a mechanism for erasing inconvenient reporting history.

Recommendation eight

ASIC should monitor optional and not required reporting after commencement and consider making material optional fields mandatory in defined circumstances.

Recommendation nine

ASIC should conduct a public post implementation review of the amendments, focused on data quality, traceability, leverage visibility, underlier identification, error correction and repository consistency.

Recommendation ten
ASIC should accompany the amendments with a clear regulatory capacity and implementation plan, explaining how it will validate, analyse, connect and act on the new data elements, and how it will respond to repeated poor quality, incomplete or strategically unhelpful reporting.

Recommendation eleven
ASIC should advise Government, where appropriate, that derivative reporting reform is only one part of the broader public purpose question. Government should also consider whether simpler public mechanisms can reduce reliance on private derivative complexity and rent seeking.

Conclusion

ASIC should proceed with the proposed amendments, but only on a clear public purpose footing.

The purpose of derivative transaction reporting is not to make complex financial activity more comfortable for the institutions that conduct it. The purpose is to make that activity visible, intelligible and usable by the public regulator.

Derivatives can help manage real risk. They can also manufacture hidden leverage, private fees, opaque exposures and interconnected losses. The difference between those two functions depends heavily on whether the regulator can see the transaction clearly, connect it to related events, identify the underlier, understand the collateral position and act on the information received.

Good public purpose therefore requires more than data collection. It requires regulatory visibility, regulatory capacity and regulatory follow through. More fields and more reports will not protect the public unless ASIC has the systems, expertise, staffing, analytical capability and enforcement posture needed to validate, connect, interrogate and act on the data.

Simplification is worthwhile only if it produces cleaner sight. International alignment is worthwhile only if it improves meaningful comparability. Optional reporting is worthwhile only if it does not create selective opacity. Error correction is worthwhile only if it preserves the audit trail. Technical constraints should be recognised only where they do not defeat substantive visibility.

The broader lesson is that derivative complexity should never be treated as inevitable merely because private markets have created it. Where simpler public mechanisms can manage real economic risk more transparently and with less rent seeking, those mechanisms should be considered. Where derivatives remain, ASIC's reporting rules should expose their real economic substance.

The central principle should be this.

Derivative reporting should expose financial complexity, not protect it.