ASIC Derivative Transaction Rules (Reporting) 2024: Follow-on consultation on changes to data elements and other minor amendments

Background

Following two rounds of consultation (Consultation Paper 334 *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation* (CP 334) released on 27 November 2020 and Consultation Paper 361 *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation* (CP 361) released on 16 May 2022), ASIC made the *ASIC Derivative Transaction Rules (Reporting) 2024* (2024 Rules) on 19 December 2022. The 2024 Rules will commence on 21 October 2024.

The 2024 Rules set out, in Schedule 1, data elements of derivative transaction information to be reported. The data elements proposed in CP 361 were based on the then status of the international standards and systems for the:

(a) Revised CDE Technical Guidance – version 3 (PDF 1.57 MB) (CDE TG);

(b) UPI system operated by The Derivatives Service Bureau (DSB) Limited; and

(c) ISO 20022 message definitions and external code sets in the Financial Instruments and Transactions Regulatory Reporting (Trade Repository Reporting) message set

Since the release of CP 361, each of the above standards and systems have undergone further developments, changes and/or proposed changes that are still to be finalised. Some of these developments affect the operation of the 2024 Rules in ways that were unanticipated or not fully clear at the time CP 361 was published.

We also consider that there are some aspects of the mix of derivative products, transaction types and entities dealing in derivatives in this jurisdiction that are sufficiently different to the circumstances of other jurisdictions that it warrants some small departures from the international standards for data elements. This includes reinstating some data elements that are still reportable under the current rules until the commencement of the 2024 Rules.

Our engagement with industry on their preparations and progress towards making system and process changes to implement the 2024 Rules has also given rise to a number of industry requests for clarification as to the intended requirements of the 2024 Rules in relation to a number of data elements. Industry also requested the addition of one data element.

In addition, the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* changed the location of some definitions in the *Corporations Act 2001* (Corporations Act) from 20 October 2023, which will require some changes to the 2024 Rules.

Therefore, under s901J(2) of the Corporations Act, we are consulting on proposals to amend the 2024 Rules for certain data elements, consequential rules changes and other amendments, and invite the public to comment on these proposals.

Summary of changes

Table 1 summarises proposed additional data elements in Table S1.1(1): Transaction information.

Table 2 summarises proposed clarifications to existing data elements in Table S1.1(1): Transaction information.

Table 3 summarises proposed clarifications to existing data elements in Table S1.1(2): Valuation information.

Table 4 summarises proposed clarifications to existing data elements in Table S1.1(3): Collateral information.

Table 5 summarises proposed consequential changes in Chapter 2 : Reporting Requirements relating to reporting exceptions if the data elements are not available in the ISO 20022 message definition.

Table 6 summarises proposed minor changes resulting from the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* and other minor amendments.

See Attachment 1 for the full text of the proposed changes.

Table 1: Proposed additional data elements in Table S1.1(1): Transaction information

Item	Label	Summary of change
1a	Secondary transaction identifier	Insert an optional secondary transaction identifier.
		This is in addition to the required 'Unique transaction identifier' (item 1) and is proposed at the request of industry to allow for a strengthened control and reconciliation framework to tie trade repository records to internal books and records.
7a	Counterparty 2 name	Reinstate this currently reported data element, but with a new condition that it is only required to be reported if 'Counterparty 2' (item 7) is not reported as a legal entity identifier or designated business identifier.
		This is a data element that enables matching among multiple datasets available to us for our regulatory purposes.
59a	Lower or only barrier price	Reinstate this currently reported data element.
		This data element relates to barrier options, which we observe are typically transacted with less sophisticated entities and may give rise to regulatory considerations of sales practices and fair pricing. More complete information about the terms of these transactions is important to inform our considerations.
59b	Upper barrier price	Add this data element.
		This complements 'Lower or only barrier price' (item 59a) for the types of barrier options that include both a lower and upper barrier.

Item	Label	Summary of change
58a	Lower or only barrier price notation	Consequentially add this data element, as for other existing 'price' data elements, to indicate the type of unit in which 'Lower or only barrier price' (item 59a) is reported.
58b	Upper barrier price notation	Consequentially add this data element, as for other existing 'price' data elements, to indicate the type of unit in which 'Upper barrier price' (item 59b) is reported.
105	New Derivative Trade Repository	Add this data element for completeness to allow for the circumstances of the transfer of transactions to a new derivative trade repository. This data element reports the legal entity identifier of the destination derivative trade repository.

Table 2: Proposed clarifications to data elements in Table S1.1(1): Transaction information

Item	Label	Summary of change
1	Unique transaction identifier	With the proposed addition of 'Secondary transaction identifier' (item 1a), which may only be reported after the commencement of the 2024 Rules, clarify that the transaction identifier reported at this item is the transaction identifier, or one of the transaction identifiers, reported for the initial reportable transaction.
		This would not be a 'Secondary transaction identifier' (item 1a) as this would either be reported in addition to a UTI in the format specified in ISO 23897 (in which case, that UTI is reported at this item) or was not reported for the initial reportable transaction (i.e. it has been subsequently added to an existing reported transaction).
		In addition, improve rules cross-referencing by inserting the words 'paragraph' and 'subparagraph' where applicable and adopt the format of the ISO 20022 message definition for 'any other kind of transaction identifier'—i.e. an alphanumeric code of not more than 72 characters.
13	Execution agent of the Counterparty 1	Re-label this data element as 'Execution agent of Counterparty 1'.
25	Platform identifier	Clarify that the reference to a 'facility' is to a 'financial market' and not otherwise more broadly to include a 'clearing facility'.
26	Notional amount—Leg 1	Reinstate that, as currently reported, a payout of a single fixed payment, such as for a digital option, is reported for this item.
		Clarify that a notional amount 'determined in accordance with the trade confirmation' is reportable for this item and that the notional amount need not be (temporarily) reported by reference to 'the market price for the underlier at the time of the transaction'.
		This responds to industry concerns that a near-term price-fixing event will conclusively determine the notional amount for the term of the OTC derivative and initially reporting a standard default value for notional amount is a more practical workflow than referencing a 'market price'.
		Finally, align with the CDE TG by restricting negative notional amounts to commodity derivatives only.
27	Notional amount—Leg 2	Similarly, align with the CDE TG by restricting negative notional amounts to commodity derivatives only.
32	Call amount	Clarify that this data element is not required for a digital option.

Item	Label	Summary of change
33	Put amount	Clarify that this data element is not required for a digital option.
42	Notional amount schedule amount—Leg 1	As per item 26 above, align with the CDE TG by restricting negative notional amounts to commodity derivatives only.
45	Notional amount schedule amount—Leg 2	As per item 26 above, align with the CDE TG by restricting negative notional amounts to commodity derivatives only.
47	Price	Clarify that 'Price' is not reported merely because an upfront payment is not reported for a credit derivative—this circumstance is one of many other data elements that are not reported as the trigger for 'Price' to be reported.
		The proposed note explains that the items listed in condition (c) are required to be reported for particular products and where at least one of those items is reported, then 'Price' is not reported.
		In addition, correct the reference to 'contracts for differences' to 'contracts for difference'.
59	Strike price	Insert the item number references for 'Strike price notation' in column 4.
75	Other payment type	Clarify that data elements related to other payments are reported for a partial termination as well as a full termination.
80	Custom basket code	Amend to directly state that this item is applicable where the UPI code reported identifies the underlier as a custom basket.
		The current phrasing of '*not* a UPI with a specific underlier …' may be taken as including a non-basket, non-specific underlier of 'Other', for which the actual underlier is reported at Underlier ID (Other) (item 83) and not at this item.
		The current reference to a 'code of a specific basket' intends to refer to proprietary index codes assigned to custom baskets within the UPI system at the request of the UPI system user. It would no longer be necessary to recognise custom baskets with a proprietary index code separately from custom baskets without such a code, and this phrasing is removed.
		Finally, above this item 80, insert the subheading 'Data elements related to underliers'.
81	Identifiers of the basket's constituents	Re-label this data element as 'Basket constituent identifiers' to conform to the re-naming of this data element in the CDE TG.
82	Basket constituent identifier source	Consequentially, change the references to 'Identifiers of the basket's constituents (item 81)' to references to 'Basket constituent identifiers (item 81)'.
83	Underlier ID (Other)	Generalise the applicability of this data element to any asset class, and clarify that this item is reported where the UPI reported does not identify the specific underlier for the OTC Derivative and Custom basket code (item 80) does not apply.
		We identify some cases in the foreign exchange asset class (e.g. derivatives over currency indices) where the UPI system does not currently support 'specific' underliers. Although there are no such cases identified in the credit and interest rate asset classes, for completeness and certainty, this data element is made applicable to any asset class.

Item	Label	Summary of change
85	Maturity date of the underlier	Generalise the applicability of this data element to swaptions in any asset class.
86	Identifier of the floating rate—Leg 2	Change references to 'identifier' to 'indicator'. The allowable values are unchanged as the applicable code in a specified ISO 20022 codeset. However, in the terminology used in the ISO 20022 message definition, the codeset contains 'indicator' codes, not 'identifier' codes.
87	Floating rate reference period— Leg 2	As for item 86, change the reference to 'identifier' to 'indicator'.
88	Floating rate reference period multiplier—Leg 2	As for item 86, change the reference to 'identifier' to 'indicator'.
99	Prior UTI	Clarify that 'Prior UTI' is only reported where the 'Reporting Entity' and/or 'Counterparty 1' was a party to the predecessor OTC Derivative for which the transaction identifier is the 'Prior UTI', or where the report is made about an allocation event (with 'Event type' (item 102) reported as ALOC). This means that an unrelated entity that 'steps-in' by assignment or novation of a prior transaction of another entity is not required to report the 'Prior UTI' of that prior transaction. The 'step-in' entity would not know the 'Prior UTI' unless informed of it by the continuing party or the 'step-out' party. However, in the case of allocation events, the step-in entity would be related to the step-out entity and/or the allocation event would be arranged by a single execution agent and the 'Prior UTI' would be readily accessible to the step-in entity. In addition, improve rules cross-referencing by replacing 'subrule 2.2.2(2)(c)' with 'paragraph 2.2.2(2)(c)'.

Table 3: Proposed clarifications to data elements in Table S1.1(2): Valuation information

Item	Label	Summary of change
1	Unique transaction identifier	As for 'Unique transaction identifier' in Table S1.1(1): Transaction information, clarify that the transaction identifier relates to the UTI or other form of transaction identifier reported for the initial reportable transaction. In addition, adopt the format of the ISO 20022 message definition for 'any other kind of transaction identifier'—i.e. an alphanumeric code of not more than 72 characters.
7	Valuation amount	Clarify that the amounts are reported as positive or negative numbers according to whether Counterparty 1 would receive or pay the amount, and zero if neither counterparty would receive or pay an amount.

Table 4: Proposed clarifications to data elements in Table S1.1(3): Collateral information

Item	Label	Summary of change
1	Unique transaction identifier	As for 'Unique transaction identifier' in Table S1.1(1): Transaction information, clarify that the transaction identifier relates to the UTI or other form of transaction identifier reported for the initial reportable transaction.
		In addition, adopt the format of the ISO 20022 message definition for 'any other kind of transaction identifier'—i.e. an alphanumeric code of not more than 72 characters.
		Clarify that 'Unique transaction identifier' is reported in association with different data elements of collateral information depending on whether the reportable transaction is collateralised in a portfolio or collateralised but not in a portfolio. This reflects the structures of ISO 20022 message definitions where certain data elements are reported in a transaction message and other data elements are reported in a margin message.
		There are different ways that an ISO 20022 message may be specified to convey collateral information and there are emergent international norms and/or best practices. The note explains that a derivative trade repository may have requirements to report collateral information in a particular way, including to positively report, for example, 'not applicable' rather than not report anything.
11	Collateral portfolio code (variation margin)	Clarify that the value of 'Collateral portfolio code (initial margin)' (item 10) is also reported as 'Collateral portfolio code (variation margin)' where there is only one collateral portfolio and the amounts of initial and variation margin are distinguished within that portfolio.
22	Action type	Add NEWT, MODI and CORR as applicable 'Action types' and clarify the circumstances for which these 'Action types' are reported.
		Reflecting the structures of ISO 20022 message definitions, NEWT, MODI and CORR are possible 'Action types' when reporting information about collateral 'arrangements' in a transaction message. However, only MARU and CORR are possible 'Action types' when reporting information about collateral 'amounts' in a margin message.

Table 5: Proposed consequential changes in Chapter 2: Reporting Requirements

Rule	Summary of change
2.2.1(1)	As a consequence of inserting new subrule 2.2.4(4) – see below – amend 'Subject to subrules (2) and (3)' to 'Subject to subrules (2) to (4)'.
2.2.1(4)	Insert a new subrule relating to 'Exception for incomplete ISO 20022 message definition'.
	The proposed new data element of 'Secondary transaction identifier' and the data elements related to barrier prices are not currently supported in the relevant ISO 20022 message definition.
	A change request is required to be submitted for international evaluation and approval. In the event that the change request is not approved by the 21 October 2024 commencement of the 2024 Rules, this new subrule provides that reporting entities are not required to report one or more items of derivative transaction information that is not included in the ISO 20022 message definition.
2.2.4(2)(b)	Similarly, amend this paragraph so that the ISO 20022 message definition used is that which, subject to subrule 2.2.1(4), includes the derivative transaction information set out in Part S1.3, rather than 'all of the derivative transaction information'.

Table 6: Proposed minor changes resulting from the Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023 and other minor amendments

Rule	Summary of change
1.2.3 Definitions	Amend the reference to 'section 761A of the Act' to 'section 9 of the Act' for the terms: *AFS Licence, CS Facility Licensee, Derivative Trade Repository, Derivative Transaction, Licence, Licensed CS Facility, Operating Rules, Prescribed Repository*
1.2.4(2)(a)	Amend 'within the meaning of section 761A of the Act' to 'within the meaning of section 9 of the Act'
1.2.4(5)(b)	In Note 2, amend 'Federal Register of Legislative Instruments (FRLI)' to 'Federal Register of Instruments (FRI)' and amend '*Legislative Instruments Act 2003*' to '*Legislation Act 2003*'

Specific questions for feedback

1. Do you agree with these proposals? In your response, please give detailed reasons for your answer.

2. Do you consider that you would have any issues of interpretation of the definitions or text of the draft new and clarified items of Table S1.1(1): Transaction information, Table S1.1(2): Valuation information, Table S1.1(3): Collateral information or the proposed consequential changes in Chapter 2 : Reporting Requirements as set out in Attachment 1? Please give detailed reasons for your answer.

3. In CP 361, we identified and estimated the regulatory compliance burden related to sourcing data elements for reporting within reporting entities' systems and implementing ISO 20022 as the technical standard for reporting. We consider that the proposals do not have a material regulatory compliance burden beyond what was identified and estimated in CP 361, noting that.

    *   the upper barrier data elements are new but related to the lower or only barrier data elements and applicable in the narrow circumstance of an option with two barriers;

    *   'Secondary transaction identifier' is a new but optional data element and included at the request of industry;

    *   'New Derivative Trade Repository' is a new data element but only reported when transaction is transferred to a new derivative trade repository;

    *   the other data element changes and clarifications do not materially impact on data sourcing or ISO 20022 implementation.

    Do you agree that the proposals do not have a material regulatory compliance burden beyond what was identified and estimated in CP 361? In your response, please give detailed reasons for your answer.

Making a submission

We seek your views on these changes and your responses to the questions set out above. We also ask you to describe, and provide reasons for, any alternative approaches you think would achieve our objectives.

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous, we will not be able to contact you to discuss your submission should we need to.

Please note that we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 15 December 2023 to:

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