



**ASIC**  
Australian Securities &  
Investments Commission

## REGULATORY GUIDE 249

# Derivative trade repositories

October 2023

### About this guide

This guide tells you:

- when you need an Australian derivative trade repository (ADTR) licence and how to apply for one, whether you are an Australian or overseas operator;
- what information you should submit with your application; and
- what you should do after you have been granted a licence.

**Note:** This guide does not reflect amendments to the Corporations Act introduced by the *Treasury Laws Amendments (Financial Market Infrastructure and Other Measures) Act 2024*, which received the Royal Assent on 17 September 2024. This guide will be reviewed and updated in due course. For more information, please visit our [FMI reform implementation](#) page.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in October 2023 and is based on legislation and regulations as at the date of issue. The note on the front page was inserted in November 2024.

Previous version:

- Superseded Regulatory Guide 249, issued August 2013, reissued 10 April 2015 and February 2023.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

A derivative trade repository (trade repository) is a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported.

The reason for establishing and regulating trade repositories is to increase the transparency, integrity and stability of over-the-counter (OTC) derivatives markets.

Under s902A and 905C of the *Corporations Act 2001* (Corporations Act), the Australian Securities and Investments Commission (ASIC) has responsibility for licensing and supervising trade repositories, the operation of which is authorised by an Australian derivative trade repository (ADTR) licence.

Trade repositories that wish to accept derivative trade data reported under mandatory reporting requirements imposed by the Corporations Act must either be licensed under Pt 7.5A of the Corporations Act or prescribed (or a member of a class of trade repositories that is prescribed) by the *Corporations Regulations 2001* (Corporations Regulations).

Also, if the Corporations Regulations identify a class of trade repositories as being required to be licensed under Pt 7.5A of the Corporations Act, a person must not operate, or hold out that they operate, a trade repository in an identified class if the person does not have an ADTR licence which authorises the person to operate the repository.

You can apply to ASIC for an ADTR licence. If you are granted a licence, you must ensure that you comply with your licensee obligations.

We may assess and report on your compliance to the Minister.

## Background

### What is a trade repository?

RG 249.1 A trade repository is a facility to which information about derivative transactions and positions relating to derivative transactions can be reported (whether or not other information or data can also be reported to the facility and whether or not it can provide other types of services or facilities). A trade repository acts as a centralised registry that maintains an electronic database of records of transactions. Trade information is submitted to a repository by one or both trade counterparties, and typically covers information such as transaction maturity, notional amount, reference entity and counterparty.

Note: See Council of Financial Regulators, *OTC derivatives market reform considerations: A report by the Council of Financial Regulators*, report, CFR, March 2012, p. 3.

RG 249.2 Trade repositories have emerged as a relatively new type of financial market infrastructure (FMI) and have recently grown in importance, particularly in light of the ‘Group of Twenty (G20) commitments’. These are the commitments made by the leadership of the G20 nations in September 2009 for the operation of OTC derivatives markets.

RG 249.3 The key rationale for requiring trade reporting, and establishing and regulating trade repositories, is to:

- (a) enhance the transparency of transaction information provided to relevant authorities and the public;
- (b) promote financial stability; and
- (c) support the detection and prevention of market abuse.

Note: See CPMI–IOSCO *Principles for financial market infrastructures*, April 2012, p. 9.

### Australian legislative framework

RG 249.4 The Corporations Act establishes a framework by which Australia’s G20 commitments may be implemented by legislative instruments, including rules made by ASIC.

RG 249.5 Division 6 of Pt 7.5A of the Corporations Act (as amended by the *Corporations Legislative Amendment (Derivative Transactions) Act 2012*) contains a licensing regime for trade repositories, largely modelled on the existing licensing regimes for market operators and clearing and settlement (CS) facilities.

Note: In this document, references to chapters (Chs), parts (Pts), divisions (Divs) or sections (s) are to the Corporations Act, unless otherwise specified.

RG 249.6 ASIC is responsible for administering this regime and supervising any trade repositories licensed under the regime, as well as making the *ASIC Derivative Trade Repository Rules 2023* under s903A dealing with certain matters in relation to those repositories.

Note: In this document ‘derivative trade repository rules’ refers to the *ASIC Derivative Trade Repository Rules 2023* which superseded the *ASIC Derivative Trade Repository Rules 2013*.

RG 249.7 Under s901B of the Corporations Act, the Minister has the power to determine one or more classes of derivatives in relation to which reporting requirements (being requirements for information about derivative transactions, or about positions relating to derivative transactions, to be reported to a licensed or prescribed trade repository) may be imposed. A determination made by the Minister is ordinarily based on advice by ASIC, the Reserve Bank of Australia (RBA) and the Australian Prudential Regulation Authority (APRA): s901B. This advice may take the form of periodic surveys or assessments of the Australian OTC derivatives markets.

RG 249.8 The *Corporations (Derivatives) Determination 2013* was remade on 8 August 2023 as the *Corporations (Derivative) Determination 2023* (Ministerial determination). The Ministerial determination empowers ASIC to make derivative transaction rules (reporting) imposing reporting requirements in relation to commodity derivatives that are not electricity derivatives, credit derivatives, equity derivatives, foreign exchange derivatives or interest rate derivatives. On 16 December 2022, ASIC made the *ASIC Derivative Transaction Rules (Reporting) 2022*, which repealed and remade the *ASIC Derivative Transaction Rules (Reporting) 2013* in the same form.

Note: In this document ‘derivative transaction rules (reporting)’ refers to the *ASIC Derivative Transaction Rules (Reporting) 2022* and, from 21 October 2024, the *ASIC Derivative Transaction Rules (Reporting) 2024*.

RG 249.9 Subject to the Minister’s consent, ASIC may make derivative transaction rules (reporting) under s901A imposing reporting requirements (and incidental or related requirements) in relation to derivative transactions where the derivatives to which the transactions relate are covered by the Ministerial determination. ASIC is required to consult the public, APRA, the RBA and any other prescribed persons before issuing any derivative transaction rules (reporting): s901J.

### **CPMI–IOSCO Principles for financial market infrastructures**

RG 249.10 In April 2012, the Committee on Payments and Market Infrastructure (CPMI) (then, the Committee on Payment and Settlement Systems (CPSS)) and the International Organization of Securities Commissions (IOSCO) published the *CPMI–IOSCO Principles for financial market infrastructures* (CPMI–IOSCO Principles).

RG 249.11 The CPMI–IOSCO Principles set out standards for trade repositories (among other categories of FMI) that should be applied by regulators. The relevant standards are listed in Table 1 and cover areas such as a trade repository’s legal basis, governance, risk management, third-party access arrangements and efficiency.

RG 249.12 The CPMI–IOSCO Principles represent an important milestone in the broader process of international financial reform that has emerged in response to rapid developments in financial markets and the growing awareness of the systemic importance of FMIs following the global financial crisis.

**Table 1: Standards relevant to trade repositories contained in the CPMI–IOSCO Principles**

<b>General organisation</b>	The legal basis, governance arrangements and risk management framework of an FMI.  See Principles 1–3 in Appendix 1.
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<b>General business and operational risk management</b>	Sufficient resources to cover business losses, and the use of secure and reliable systems to ensure continuous operation. See Principles 15 and 17 in Appendix 1.
<b>Access and participation requirements</b>	Fair and open access for prospective participants, balanced against controls to manage risks arising from direct or indirect participation, or links to other FMI. See Principles 18–20 in Appendix 1.
<b>Efficiency and transparency</b>	Efficient provision of services, clear and comprehensive disclosure of risks, costs and obligations arising from participation, and provision of data by trade repositories. See Principles 21–24 in Appendix 1.

Source: CPMI–IOSCO Principles.

## Who regulates trade repositories?

### ASIC

- RG 249.13 ASIC has the function of supervising licensed trade repositories: s902A. This includes:
- (a) granting ADTR licences (s905C), and imposing, varying or revoking conditions on licences (s905F);
  - (b) varying, suspending or cancelling ADTR licences (Pt 7.5A, Div 6, Subdiv D);
  - (c) granting relief or exemptions from certain provisions regulating the licensing or operations of a trade repository (s901A(3)(g), 903A(3)(c) and 907D);
  - (d) making and enforcing derivative transaction rules (reporting) that establish mandatory requirements (reporting, clearing and/or execution) (s901A, 901E, 901F, 901J and 901K);
  - (e) making and enforcing derivative trade repository rules (s903A, 903D, 903E, 903G and 903H);
  - (f) giving directions to an ADTR licensee if ASIC considers the licensee is not complying with its obligations (s904G);
  - (g) giving directions to an ADTR licensee requiring the licensee to give ASIC a special report and an audit report on the special report, and giving a copy of the special report to the Minister (s904H);
  - (h) assessing how well an ADTR licensee is complying with any or all of its obligations as a licensee, and giving a copy of our written report on the assessment to the Minister (s904J); and
  - (i) giving directions relating to derivative trade data if the trade repository ceases to be licensed (s904K).

- RG 249.14 In addition to licensed ADTRs, trade repositories may be prescribed by regulations made under s901A(6)(b): see reg 7.5A.30 of the Corporations Regulations, which also confers power on ASIC to add to the list of prescribed trade repositories by determination. Regulations may be made under s906A of the Corporations Act that impose obligations on prescribed trade repositories and confer powers on ASIC in relation to prescribed trade repositories. As yet, no such regulations have been made.
- RG 249.15 In deciding whether to grant an ADTR licence, we must take into account the matters contained in s905P(2). We must also consider these matters in deciding whether to impose, vary or revoke conditions on a licence under s905F, or suspend or cancel a licence under s905J. These matters are:
- (a) the structure, or proposed structure, of the trade repository;
  - (b) the nature of the activities conducted, or proposed to be conducted, by the trade repository;
  - (c) the size, or proposed size, of the trade repository;
  - (d) the persons who are, or may be, required to report derivative trade data to the trade repository;
  - (e) the technology used, or proposed to be used, in operating the trade repository; and
  - (f) whether it would be in the public interest to take the relevant action.
- RG 249.16 We may also take into account any other matter that we consider relevant.

### **The Minister**

- RG 249.17 The Minister's functions, with the advice and assistance of the Department of Treasury, include:
- (a) determining, by legislative instrument, one or more classes of derivatives in relation to which mandatory requirements (reporting, clearing and/or execution) may be imposed under the derivative transaction rules (reporting) (s901B);
  - (b) deciding whether to consent to making derivative transaction rules (reporting) and derivative trade repository rules (s901K and 903H);
  - (c) giving a written direction to an ADTR licensee if the Minister considers the licensee is not complying with its obligations in certain circumstances (s904F); and
  - (d) receiving special reports and assessment reports from ASIC (s904H and 904J).



## Department of Treasury

- RG 249.18 The Department of Treasury:
- (a) advises the Minister on policy relating to trade repositories; and
  - (b) briefs the Minister on whether the Minister should give consent to the derivative transaction rules (reporting) and derivative trade repository rules that ASIC proposes to make.

## When do you need an ADTR licence?

- RG 249.19 Under s905A, the Corporations Regulations may identify certain classes of trade repository as being required to be licensed. If you operate a trade repository of a class that is identified by the Corporations Regulations as being required to be licensed, you must hold an ADTR licence authorising you to operate the repository, unless:
- (a) ASIC has exempted you from holding an ADTR licence (s907D); or
  - (b) you are otherwise exempt under the Corporations Regulations from holding an ADTR licence (s907E).

Note: At the time of writing, the Australian Government had not made any such regulations.

- RG 249.20 The derivative transaction rules (reporting) may impose an obligation on certain persons to report derivative trade data to licensed or prescribed trade repositories. You may also seek to be licensed if you wish for reports to your trade repository to qualify for compliance with these reporting obligations: s901A(6)(a).

Note: Reporting to a trade repository that is not licensed, but which is prescribed (or a member of a class of trade repository that is prescribed) by any regulations made under s901A(6)(b), would also qualify for compliance.

- RG 249.21 You must not hold out that you operate a trade repository in a class that is identified by the Corporations Regulations as being required to be licensed, unless you have an ADTR licence authorising you to operate the repository: s905A(2).
- RG 249.22 If a class of trade repository is not identified by the Corporations Regulations as being required to be licensed, repositories of that class may operate without an ADTR licence. A trade repository may obtain a licence despite not being required to do so by the Corporations Regulations.
- RG 249.23 A person must also not hold out that they have an ADTR licence, or that the operation of a trade repository by the person is authorised by a licence, if this is not the case: s907A(a) and (b).

- RG 249.24 You may apply for an ADTR licence under s905B and the same licence may authorise you to operate two or more trade repositories: s905E.
- RG 249.25 Operators of a trade repository based overseas that is a repository of a class identified by the Corporations Regulations as being required to be licensed will require an ADTR licence, unless exempted by ASIC.
- RG 249.26 If a licensed trade repository is wholly or partly operated in a foreign country we may, to the extent we consider appropriate, perform the function of supervising the repository by satisfying ourselves that:
- (a) the regulatory regime that applies to the repository in the foreign country provides for adequate supervision of the repository; or
  - (b) adequate cooperative arrangements are in place with an appropriate authority of the foreign country to ensure that the repository will be adequately supervised by that authority (s902A).
- RG 249.27 We would ordinarily expect to satisfy ourselves of both these criteria, rather than relying on one alone.

## Applying for an ADTR licence

- RG 249.28 Section B outlines the application process and tells you what information we expect to find in an application for an ADTR licence.
- RG 249.29 In short, as an ADTR licence applicant, you will need to send us an application that contains detailed information on your company, the characteristics of the (proposed) facility, the proposed financial, human and technological resources and key contracts, and operational and compliance rules, plans and procedures.
- RG 249.30 Section B contains guidance on how to prepare an application, and Appendix 2 contains specific information to include as part of your ADTR licence application.
- RG 249.31 We recommend potential applicants discuss their proposed operations with us before submitting an application. Potential applicants should send an email to:

Senior Executive Leader, Financial Market Infrastructure, ASIC  
[OTCD@asic.gov.au](mailto:OTCD@asic.gov.au)

## Exemptions

- RG 249.32 You can apply to ASIC for an exemption from all or specified provisions regulating the licensing or operations of a trade repository. This includes the provisions of Pt 7.5A, the Corporations Regulations relevant to Pt 7.5A, the

derivative transaction rules (reporting) and the derivative trade repository rules. We may exempt a person or class of persons, a facility or class of facilities, or a derivative transaction or class of derivative transactions, from all or specified provisions: s907D.

- RG 249.33 We may grant an exemption from certain provisions relating to the regulation of trade repositories. We will do this when we consider the regulatory outcomes for trade repositories are not relevant or are otherwise achieved. We will also consider whether the regulatory costs significantly outweigh the benefits. All applications will be assessed on a case-by-case basis.
- RG 249.34 We may exempt an ADTR licensee that is based overseas from Australian requirements in certain circumstances. Section C outlines our approach to granting exemptions.

## Continuing obligations if you have an ADTR licence

- RG 249.35 If you are granted an ADTR licence, you must comply with:
- (a) any derivative transaction rules (reporting) that apply to you (s901E);
  - (b) the derivative trade repository rules (s903D);
  - (c) your general obligations (s904A);
  - (d) your obligations relating to derivative trade data (s904B);
  - (e) your obligation to notify ASIC of certain matters (s904C);
  - (f) your obligation to assist ASIC, APRA and the RBA (s904D);
  - (g) your obligation to give ASIC access to the trade repository's facilities (s904E); and
  - (h) any direction given by the Minister or ASIC under s904F, 904G, 904H or 904K.
- RG 249.36 We may conduct an assessment of how well an ADTR licensee is complying with any or all of its licensee obligations. In doing the assessment, we may take into account any information and reports that we consider appropriate: s904J.
- RG 249.37 See Section E for more details on ADTR licensee obligations and assessments.

## B Applying for an ADTR licence

### Key points

This section outlines the application process and tells you what information we expect to find in your ADTR licence application.

You need to send us an application that contains detailed information on the applicant body corporate, including the characteristics of the proposed facility, resources, governance framework, policies and procedures.

We will consider each application on a case-by-case basis before deciding whether to grant an ADTR licence, and whether to impose any conditions.

### Background

- RG 249.38 Under s905B, a body corporate may, by lodging an application with ASIC, apply for an ADTR licence authorising it to operate a trade repository.
- RG 249.39 Section 905C provides that we may grant an applicant an ADTR licence if we are satisfied that:
- (a) the application has been made in accordance with 905B;
  - (b) the applicant will comply with its obligations if the licence is granted; and
  - (c) no disqualified individual appears to be involved in the applicant.
- RG 249.40 Section 905P(2) lists matters that we must take into account in deciding whether to grant an applicant an ADTR licence under s905C. These matters are:
- (a) the structure, or proposed structure, of the trade repository;
  - (b) the nature of the activities conducted, or proposed to be conducted, by the trade repository;
  - (c) the size, or proposed size, of the trade repository;
  - (d) the persons who are, or may be, required to report derivative trade data to the trade repository;
  - (e) the technology used, or proposed to be used, in operating the trade repository; and
  - (f) whether it would be in the public interest to grant an ADTR licence.
- We may also take into account any other matter that we consider relevant.
- RG 249.41 We must not grant an applicant an ADTR licence unless:
- (a) the applicant is registered under Div 2 of Pt 5B.2, if the applicant is a foreign body corporate (s905C(2)); and

- (b) 42 days have passed since the application was made and we have not given a notice under s853D(2) to the applicant within those 42 days (s905C(3)).

Note: A notice under s853D(2) is a notice that we propose to make a declaration under s853C that an individual who is involved in the licence applicant is disqualified for the purposes of Div 2 of Pt 7.4.

## Licence conditions

RG 249.42 Section 905F gives ASIC the ability to impose conditions, or additional conditions, on an ADTR licence.

RG 249.43 All ADTR licensees will be subject to licence conditions that specify:

- (a) the particular trade repository that the licensee is authorised to operate;
- (b) the class or classes of derivatives for which the repository can provide services for the purposes of Pt 7.5A (s905F(4)); and
- (c) any other conditions that apply to that particular trade repository.

We will make publicly available the list of ADTR licensees and their licence conditions.

## Asset classes

RG 249.44 On 8 August 2023, a Ministerial determination was made under s901B(2) determining the classes of derivative for which reporting requirements could be made. The broad asset classes of derivatives which may be subject to reporting requirements, are:

- (a) interest rates;
- (b) credit;
- (c) equities;
- (d) foreign exchange; and
- (e) commodity derivatives that are not electricity derivatives.

Note: See *Corporations (Derivatives) Determination 2023*.

RG 249.45 Under Rule 2.3.1 of the derivative trade repository rules, an ADTR licensee must be in a position to accept derivative trade reports for all asset classes specified in its licence conditions. As a result, the asset classes for which a trade repository is licensed may need to be more narrowly defined than the classes referred to in RG 249.44. Licensees seeking to offer a Pt 7.5A reporting service for additional asset classes after a licence has been granted will need to apply to ASIC for a variation to their licence.

Note: In this guide 'Part 2.4' or 'Rule 2.4.2' (for example) refer to a particular part or rule of the derivative trade repository rules.

RG 249.46 Authorising ADTR licensees to offer specific asset classes for reporting purposes mirrors the licensing approach taken by ASIC in relation to holders of an Australian market licence (market licensees) or CS facility licence (CS facility licensees). It also allows us to conduct an examination of any issues specific to a particular asset class before authorising the licensee to offer the asset class for Pt 7.5A reporting purposes.

### Other conditions

RG 249.47 As part of our consideration of your ADTR licence application, we will consider what other conditions should apply to your licence.

RG 249.48 For instance, we may consider imposing the following conditions (to the extent they are not covered by the relevant derivative trade repository rules):

- (a) regular reporting to ASIC on financial resources and directors' certifications about the adequacy of financial resources;
- (b) more frequent regular reporting during the first years of operation on cash flows, financial performance and your financial position;
- (c) requiring or confirming that key human or technological resources, or other key arrangements, are in place before beginning to offer the service;
- (d) the type or formats of data to be provided to ASIC or other regulators;
- (e) requiring the trade repository to establish a domestic operational presence, either with respect to human or technological resources or other aspects of its operations;
- (f) outsourcing critical functions;
- (g) submission to the jurisdiction, where the applicant is domiciled offshore; and
- (h) requirements for user support, regulator support or escalation procedures.

RG 249.49 We will consider imposing conditions about financial resource requirements for certain applicants. In assessing whether or not to impose such conditions, and what the financial requirements shall be, we will consider (among other things):

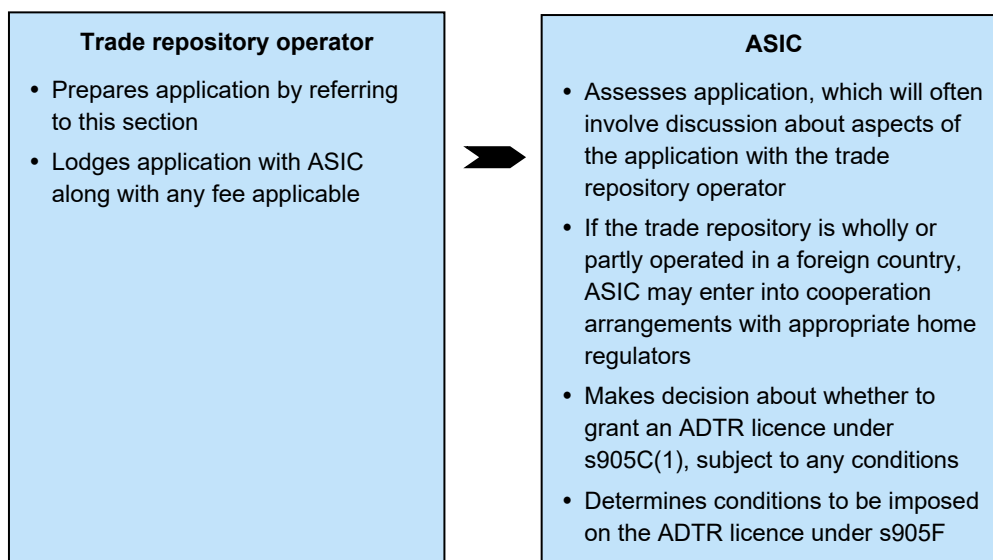
- (a) your current and projected operating expenses under a range of scenarios, including in adverse market conditions;
- (b) any potential general business losses that may arise and the level of financial resources that may be required so that you can continue the operations and services of the trade repository as a going concern even if those general business losses materialise; and
- (c) the level of financial resources required in a recovery situation or orderly wind-down of critical operations and services, taking into account the length of time that may be required to achieve a recovery or orderly wind-down.

RG 249.50 We will consult with you about any conditions we may impose.

## Application process

RG 249.51 Figure 1 provides a summary of the ADTR licence application process.

**Figure 1: ADTR licence application process**



RG 249.52 Our experience in dealing with applications by market licensees and CS facility licensees has shown that it is desirable for applicants to submit a draft application before their formal application—so we can ensure it is complete and detailed enough for us to make a determination.

## What to include with your application

RG 249.53 An application must be made in accordance with s905B and include the information and documentation referred to in this regulatory guide.

RG 249.54 As the applicant, you must demonstrate that you have the skills, expertise, procedures and capacity to comply with the obligations that will apply to you—including the obligations imposed by the derivative trade repository rules—when your trade repository commences and on a continuing basis.

Note: See Section E for a discussion of your obligations as an ADTR licensee.

RG 249.55 An applicant must provide information and documents that explain the matters in s905P that we must consider when deciding whether to grant an ADTR licence, and any other matters we consider relevant in deciding whether to grant a licence.

RG 249.56 We also expect an applicant whose business is wholly or partly operated in a foreign country to provide ASIC with comprehensive information about its overseas operations, how it proposes to provide services for the purposes of the Australian regime under Pt 7.5A (including full details of the foreign

resources it intends to deploy in providing services for the purposes of Pt 7.5A) and the overseas regulatory regime that applies to it. We may also consult with relevant overseas authorities with supervisory or regulatory responsibility for the applicant.

- RG 249.57 Your application should contain all relevant information and we may take steps to confirm the information you provide.
- RG 249.58 The application and all information and documents provided with the application must be in English or translated into English by a suitably qualified translator.
- RG 249.59 We may request independent verification by a suitably qualified third party about any matter in your application, where we consider it necessary to do so. In such a case, you are responsible for the cost of supplying the verification.
- RG 249.60 We will require evidence that an applicant's governing body expressly considered and approved the application before it was made. We will accept for this purpose a declaration made by a senior person or persons authorised by specific resolution of the governing body to make the declaration on the governing body's behalf, that to the best of the governing body's knowledge and having made proper inquiries:
- (a) the applicant meets the criteria in s905C; and
  - (b) the information and documentation provided with the application is true, correct and complete.
- RG 249.61 Applications should address specific information requirements set out in Appendix 2 in their application, which broadly reflect the requirements of s905P(2) and the derivative trade repository rules. These requirements are also largely based on, and consistent with, application requirements internationally, and include matters such as:
- (a) a general description of the operations of the trade repository;
  - (b) ownership of the applicant;
  - (c) organisational structure, governance and compliance;
  - (d) human resources and remuneration;
  - (e) financial resources;
  - (f) conflicts of interest;
  - (g) resources and procedures relating to information technology, ancillary services, operational separation of functions, access terms and allied matters;
  - (h) risk management and business continuity;
  - (i) record keeping;
  - (j) confidentiality and data security;
  - (k) data protocols and data submission by users; and
  - (l) data availability to the public, market participants and regulators.



## C Exemptions

### Key points

We may grant an exemption from certain provisions relating to the regulation of trade repositories. We will do this when we consider the regulatory outcomes for trade repositories are not relevant or are otherwise achieved. We will also consider whether the regulatory costs significantly outweigh the benefits. This can be of relevance to trade repositories that are also subject to overseas regulatory regimes.

When applying for an exemption, you should provide information about the facility, as set out in this section.

### When an exemption may be granted

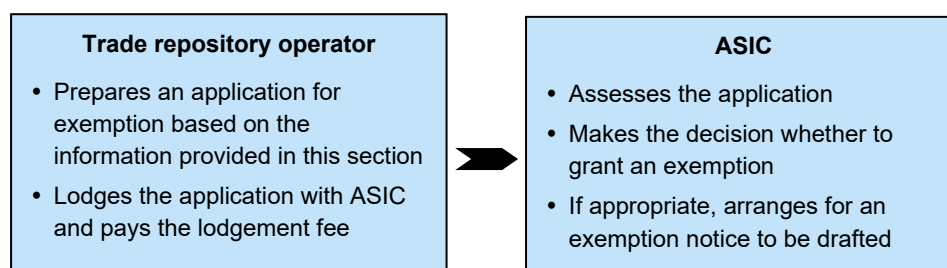
- RG 249.62 We are empowered by s907D to exempt the following from all or specified provisions:
- (a) a person or class or persons;
  - (b) a facility or class of facilities; or
  - (c) a derivative transaction or class of derivative transactions.
- RG 249.63 The specified provisions we can exempt compliance from are:
- (a) the provisions of Pt 7.5A;
  - (b) the provisions of the Corporations Regulations made for the purposes of Pt 7.5A, or the provisions of the derivative transaction rules (reporting) and the derivative trade repository rules; and
  - (c) the definitions in the Corporations Act or Corporations Regulations, as they apply to references in the provisions in RG 249.63(a)–RG 249.63(b).
- RG 249.64 There may also be exemptions or relief in and concerning the:
- (a) Corporations Regulations (s907E);
  - (b) derivative transaction rules (reporting) (s901A(3)(g)); and
  - (c) derivative trade repository rules (s903A(3)(c)).
- RG 249.65 Exemptions under s907D may be used to exempt a person from the need to be licensed under Pt 7.5A, or the specific obligations that will apply once a person is licensed, and may apply unconditionally or subject to specified conditions.
- RG 249.66 The exemption power under s907D has been included to:
- (a) ensure that there is sufficient power to address any unforeseen consequences of the implementation of the requirements in Pt 7.5A; and

- (b) deal with circumstances where the determinations, regulations or rules may operate inadvertently, or in a perverse manner, contrary to the underlying intention of the regime.

Note: See paragraphs 1.241–1.242 of the Revised Explanatory Memorandum to the *Corporations Legislation Amendment (Derivative Transactions) Bill 2012* (Revised Explanatory Memorandum).

RG 249.67 We will consider each application for exemption on a case-by-case basis. Figure 2 broadly outlines the exemption process.

**Figure 2: Trade repository exemption process**



Note: Applications for exemptions should be submitted through the [ASIC Regulatory Portal](#). For more information, see [how you apply for relief](#).

## When we will decide to grant an exemption

RG 249.68 We will normally only decide to grant an exemption from the specified provisions if:

- regulatory outcomes for trade repositories are not relevant to the facility;
- regulatory outcomes are achieved without regulation under Pt 7.5A; or
- the cost of regulation required to achieve the regulatory outcomes for trade repositories significantly outweighs the benefits of those outcomes.

These categories may overlap.

### Regulatory outcomes are not relevant to a trade repository

RG 249.69 Under special circumstances, we may decide to exempt you from a particular provision, or provisions, because the regulatory outcomes set out in RG 249.3 (as they apply to trade repositories) are not relevant to your facility. In these circumstances, there may be no satisfactory reason for requiring you to be subject to a particular provision.

## Regulatory outcomes are achieved without Pt 7.5A

RG 249.70 We may decide to exempt you from a provision, or provisions, if you are subject to other forms of regulation that ensure the regulatory outcomes for trade repositories, or the regulatory benefits of the provision, are achieved without regulation under Pt 7.5A. In these circumstances, there may be no satisfactory policy reason for complying with the provision.

## Regulatory cost significantly outweighs benefits

RG 249.71 We may decide to exempt you if the cost of regulation significantly outweighs the benefits. In making the assessment, we will take into account factors including:

- (a) the number of transactions reported through your facility;
- (b) the impact of the activities of your facility on the Australian financial system;
- (c) the degree of systemic risk posed by the activities of your facility;
- (d) your characteristics as the facility operator, including whether you operate any other trade repositories;
- (e) the number and type of Australian participants that use your facility; and
- (f) whether you are subject to other forms of regulation and the nature of that regulation.

Note: See [Regulatory Guide 51 Applications for relief](#) (RG 51) more generally for how we use our relief powers.

RG 249.72 The key benefits and regulatory outcomes of trade repository regulation are outlined in RG 249.3. When we consider the costs of trade repository regulation, we look at the burden or costs associated with meeting the regulatory obligations, including:

- (a) supervising the trade repository; and
- (b) reporting and completing an annual assessment.

RG 249.73 You should make a clear case for why the costs outweigh the benefits of regulation.

## Overseas trade repositories and exemptions

RG 249.74 We will consider granting an exemption from substantive parts of the trade repository regulatory regime, with appropriate conditions, where an overseas trade repository is regulated as a trade repository in its home jurisdiction (i.e. where its principal place of business is located), and we are satisfied that the criteria outlined in RG 249.68 are satisfied.

- RG 249.75 Where an overseas trade repository is covered by an overseas regulatory regime, we may determine that instead of an exemption it is preferable for the operator to remain subject to requirements under the Corporations Act in the interests of users, ASIC and other regulators, financial markets or the general public.
- RG 249.76 In such instances, we may perform our supervisory function in accordance with s902A, to the extent we consider appropriate, by satisfying ourselves that the supervision of the repository provided by the overseas regulatory regime in that country is adequate. This provision is discussed in more detail in Section D.

## Exemption conditions

- RG 249.77 There may be one-off or ongoing obligations imposed on a trade repository operator when an exemption is granted, by way of conditions on the exemption: s907D(3).
- RG 249.78 We may decide to impose conditions on the exemption to protect the users of the facility or other interests such as financial stability, market integrity or market confidence. Without limiting the generality of our power of exemption conditions may include, for example, a requirement:
- (a) for an operator of an overseas trade repository to obtain certifications of ongoing compliance with overseas requirements, and to submit to the jurisdiction of an Australian court in an action brought by us in relation to its operation of the facility;
  - (b) for the key features of the service provided by the trade repository to remain as they were when the exemption was granted;
  - (c) to report to us periodically about the operation of the trade repository and compliance with the conditions of the exemption;
  - (d) to inform users of the trade repository that it is exempted;
  - (e) to report to us any disciplinary action taken against a user of the trade repository or when the trade repository operator suspects that a person has committed, is committing, or is about to commit a significant contravention of the Corporations Act;
  - (f) to report to us any material outages affecting the operation of the trade repository;
  - (g) to obtain an audit report about the operation of the trade repository prepared by a suitably qualified person;
  - (h) to maintain all derivative trade data for at least five years after the end of the relevant contracts;
  - (i) to provide us with regular reports or electronic feeds of data, as prescribed by us, on all or classes of transactions reported through the facility;
  - (j) to make publicly available an annual audited financial statement;

- (k) to enter into a written cooperation agreement or deed with us; or
- (l) any other conditions necessary to ensure that the key regulatory outcomes will be achieved.

RG 249.79 Trade repository operators must comply with any exemption conditions: s907D(3).

## How to apply for an exemption

RG 249.80 Trade repository operators can apply for an exemption from all or specified provisions noted in RG 249.63 by submitting an application to us with the relevant fee. The application should provide details of:

- (a) the operation of the particular trade repository; and
- (b) the reasons why you should be exempted, having regard to our criteria for exemption above.

RG 249.81 We recommend discussing a potential application with us before submission.

RG 249.82 We also strongly encourage submission of a draft application before a formal application to ensure it is complete and sufficiently detailed.

Note: Applications for exemptions should be submitted through the [ASIC Regulatory Portal](#). For more information, see [how you apply for relief](#).

## D Overseas trade repositories

### Key points

Operators of trade repositories based overseas may need, or may choose to seek, an ADTR licence.

Where an overseas trade repository seeks an ADTR licence but is also subject to an overseas regulatory regime that is sufficiently equivalent to the regime in Australia we may, to the extent we consider appropriate, place reliance on the overseas regulatory regime in supervising the trade repository.

Alternatively, an overseas trade repository may seek an exemption from the requirements of the Corporations Act, or a combination of exemptions and reliance by ASIC on the overseas regime.

We may also consider an approach which combines both exemptive relief and reliance on an overseas regulatory regime.

### Our approach

- RG 249.83 Operators of overseas trade repositories may need, or may choose to seek, an ADTR licence in the circumstances set out in RG 249.19–RG 249.27. They may also seek exemptive relief from ASIC, or may wish ASIC to perform our supervisory functions in respect of the repository’s activities by relying on their compliance with a foreign regulatory regime under s902A.
- RG 249.84 In relation to licensed overseas trade repositories, we may consider:
- (a) exempting them from substantive parts of the Australian regime in accordance with the considerations set out in RG 249.104–RG 249.105;
  - (b) accepting reliance (in whole or in part) on compliance with overseas regulation as set out in RG 249.86–RG 249.103; or
  - (c) adopting a combined approach by seeking to rely on compliance with overseas regulation, as well as potentially exempting the foreign operator from specific relevant obligations under the Corporations Act or the derivative trade repository rules.
- RG 249.85 We will adopt the approach that is most appropriate to the circumstances of the particular case.

## Reliance by ASIC on regulation in home jurisdiction

RG 249.86 Section 902A provides that, if a licensed trade repository is wholly or partly operated in a foreign country, ASIC may, to the extent we consider appropriate, perform the function of supervising the repository by satisfying ourselves that:

- (a) the regulatory regime that applies to the repository in the foreign country provides for adequate supervision of the repository; or
- (b) adequate cooperative arrangements are in place with an appropriate authority of the foreign country to ensure that the repository will be adequately supervised by that authority.

RG 249.87 We would ordinarily expect to satisfy ourselves of both these criteria, rather than relying on one alone.

Note: See paragraph 1.137 of the Revised Explanatory Memorandum.

RG 249.88 This means that in administering our supervisory obligations, we may consider the regulatory requirements in the home jurisdiction, where those requirements apply to the ADTR licensee's Australian activities. We may view the licensee's compliance with those obligations as partially or wholly fulfilling particular regulatory obligations that the licensee faces under the Australian regime. This does not alter the legal obligations of the licensee under the Australian regime, but does determine how we will administer the regime.

### Assessing adequacy of supervision

RG 249.89 For the purpose of satisfying ourselves that the regulatory regime in the foreign country provides for adequate supervision of the trade repository, we will assess whether the overseas regulatory regime is sufficiently equivalent to the Australian regulatory regime.

RG 249.90 In assessing whether the overseas regulatory regime is sufficiently equivalent and whether there are adequate cooperation arrangements between ASIC and the appropriate authority of the foreign country or countries in which the trade repository is wholly or partly operated, we will apply the approach set out in [Regulatory Guide 54](#) *Principles for cross-border financial regulation* (RG 54).

Note: See also [Regulatory Guide 172](#) *Financial markets: Domestic and overseas operators* (RG 172) and [Regulatory Guide 211](#) *Clearing and settlement facilities: Australian and overseas operators* (RG 211).

RG 249.91 With this in mind, we will take into account the extent to which the overseas regulatory regime, as it applies to the overseas trade repository:

- (a) is clear, transparent and certain (see [RG 54](#) at RG 54.82–RG 54.84);
- (b) is adequately enforced in the foreign country (see [RG 54](#) at RG 54.87–RG 54.89);

- (c) is consistent with the CPMI–IOSCO Principles, to the extent that they apply to trade repositories; and

Note: See the CPMI–IOSCO Principles, in Appendix 1, and the accompanying key considerations.

- (d) achieves equivalent outcomes to the outcomes of the Australian regulatory regime for trade repositories.

### **Consistent with the CPMI–IOSCO Principles as they apply to trade repositories**

RG 249.92 We will consider whether an overseas regulatory regime is designed to achieve the high-level outcomes of the CPMI–IOSCO Principles in determining whether there is sufficient regulatory equivalence between the overseas regime and Australia’s regulatory regime.

RG 249.93 Normally, this would require the relevant CPMI–IOSCO Principles (and, where appropriate, relevant key considerations) to be explicitly provided for and legally enforceable in the overseas regulatory regime. However, in some circumstances, convincing evidence could be provided that the relevant CPMI–IOSCO Principles either are implicit in the overseas regulatory regime or are provided for through supervisory practice.

RG 249.94 We will take into account any revised or newly established principles or recommendations on trade repositories published by CPMI and IOSCO, or other relevant international standard-setting body or forum from time to time.

### **Achieves equivalent outcomes to the Australian regulatory regime for trade repositories**

RG 249.95 The relevant key outcomes (see RG 249.3) include enhancing the transparency of transaction information to relevant authorities and the public, promoting financial stability and supporting the detection and prevention of market abuse. In our view, these outcomes require:

- (a) ensuring the operational integrity, effectiveness and security of the trade repository and the data it contains;
- (b) ensuring the adequate availability of data to regulators and market participants; and
- (c) ensuring fair and transparent terms of access to counterparties who may be required to report to the trade repository.

RG 249.96 When we consider whether the overseas regulatory regime achieves the key outcomes, we will focus on whether the outcomes are achieved from the perspective of Australian users of the trade repository facility.



RG 249.97 The achievement of the key outcomes by the overseas regulatory regime does not require the regulatory mechanisms used in each country to be precisely the same. However, to assess whether the overseas regulatory regime achieves the key outcomes, we will need to know and understand, in detail, the regulatory mechanisms by which those outcomes may be achieved, especially if those mechanisms are not the same as the Australian regulatory mechanisms.

### **Adequate cooperative arrangements**

RG 249.98 We may also, under s902A(2)(b), perform the function of supervising a trade repository that is wholly or partly operated in a foreign country, by satisfying ourselves that there are adequate cooperative arrangements in place with an appropriate regulatory authority of that country to ensure that the trade repository will be adequately supervised by that authority.

RG 249.99 We would normally expect to grant an ADTR licence to an overseas operator only if we have adequate cooperative arrangements with the relevant regulator, located in the home jurisdiction of the operator.

RG 249.100 At a minimum, adequate cooperative arrangements will provide for:

- (a) prompt sharing of information by the home regulatory authority; and
- (b) effective cooperation of supervision, investigation and enforcement.

RG 249.101 Particularly in the area of supervising the overseas trade repository, adequate cooperative arrangements will mean that we have access to direct and continuing contact with the relevant officers of the overseas regulatory authority to allow us to make the arrangements effective by enabling prompt exchanges of information.

RG 249.102 Adequate cooperative arrangements with the overseas regulatory authority will generally be in the form of a memorandum of understanding or some other documented arrangement.

### **Reliance**

RG 249.103 It will be important for the operator of an overseas trade repository that is applying for an ADTR licence to indicate to us the extent to which it will expect us to rely on compliance with the home jurisdiction requirements as being sufficient for Australian purposes. Any such expected reliance is also likely to be relevant in any self-assessment report required under the derivative trade repository rules.

## Exemptions

- RG 249.104 Where an overseas regulatory regime is sufficiently equivalent (see RG 249.95–RG 249.97) we may also consider granting an exemption from relevant substantive parts of the Australian regime, under our power to issue exemptions under s907D and in accordance with the exemptions policy framework outlined in Section C.
- RG 249.105 Where an overseas operator wishes us to consider an exemption, it should apply in accordance with the procedure outlined in RG 249.80–RG 249.82. If we do not grant an exemption, we may nevertheless place reliance on the overseas regulation in supervising the overseas trade repository, as contemplated by s902A.

## E Licensee obligations and assessment

### Key points

After you have been granted an ADTR licence, you must ensure that you meet your various licensee obligations on an ongoing basis.

Important responsibilities include complying with the conditions on your ADTR licence and with the derivative trade repository rules.

We may assess whether you are complying with your ADTR licensee obligations and report our findings to the Minister.

### Licensee obligations

- RG 249.106 The general obligations of an ADTR licensee are set out in the Corporations Act. As a licensee, you must ensure that you comply with:
- (a) any derivative transaction rules (reporting) that apply to you;
  - (b) the derivative trade repository rules that apply to you;
  - (c) your general obligations under s904A, including:
    - (i) complying with the conditions on the licence;
    - (ii) if you are a foreign body corporate, being registered under Div 2 of Pt 5B.2; and
    - (iii) taking all reasonable steps to ensure that no disqualified individual becomes, or remains, involved in the operator;
  - (d) your obligations relating to derivative trade data under s904B and the applicable derivative trade repository rules, including:
    - (i) the obligation relating to use or disclosure of the data;
    - (ii) the obligation to comply with requests from regulators or other persons for data; and
    - (iii) obligations relating to the creation of statistical data from the derivative trade data;
  - (e) your obligation to notify ASIC of certain matters under s904C, including:
    - (i) notification of an inability to meet obligations under s904A; and
    - (ii) notification of changes to directors, secretaries, or senior managers of the licensee or the licensee's holding company;
  - (f) your obligation to assist ASIC, APRA and the RBA under s904D, including showing your books or giving derivative trade data or other information;

- (g) your obligation to give ASIC such reasonable access to trade repository facilities, as we request (s904E); and
- (h) any direction given by the Minister or ASIC under s904F, 904G, 904H or 904K.

### **Derivative trade repository rules**

- RG 249.107 Derivative trade repository rules are rules dealing with certain matters relating to licensed trade repositories. Derivative trade repository rules are made by ASIC under s903A(1).
- RG 249.108 Section 903D imposes an obligation on a person to comply with the derivative trade repository rules that apply to them. The derivative trade repository rules may impose obligations on both the operator of the trade repository, and the officers of the trade repository: s903B.
- RG 249.109 The derivative trade repository rules can deal with the following matters, as foreshadowed in s903A:
- (a) the manner in which licensed trade repositories provide their services;
  - (b) the handling or use of derivative trade data by licensed trade repositories and their officers and employees;
  - (c) the governance, management and resources (including financial, technological and human resources) of licensed trade repositories, including the handling of conflicts of interest, the monitoring and enforcing of compliance with obligations, the integrity and security of computer systems and other systems, operational reliability, business continuity planning and operational separation and outsourcing of functions;
  - (d) the disclosure of conditions, including the fees that licensed trade repositories charge to provide their services; and
  - (e) the reporting to ASIC or other regulators of matters related to licensed trade repositories.
- RG 249.110 We have set out our guidance on the derivative trade repository rules in Appendix 3. We will take this guidance into account when assessing an ADTR licensee's compliance with the derivative trade repository rules. Failure to comply with derivative trade repository rules is a breach of s903D, which is a civil penalty provision.

### **General obligations**

- RG 249.111 The Corporations Act imposes fewer general obligations on ADTR licensees, compared with the equivalent existing provisions for market licensees (s792A) and CS facility licensees (s821A). This is largely because the operations of trade repositories are less complex than those of financial

markets or CS facilities. Many of the obligations of trade repositories are imposed through the derivative trade repository rules.

Note: See paragraphs 1.173–1.175 of the Revised Explanatory Memorandum.

### **Obligations relating to derivative trade data**

RG 249.112 Section 904B imposes obligations relating to derivative trade data on ADTR licensees and their officers and employees. ‘Derivative trade data’ is information about derivative transactions, or about positions relating to derivative transactions, or information (including statistical data) that is created or derived from that information: s761A.

RG 249.113 The use or disclosure of derivative trade data by an ADTR licensee, or an officer or employee of the licensee, is permitted if it is for the purpose of, or occurs in the course of, the provision of the trade repository’s services, or the officer or employee performing their duties as an officer or employee of the licensee: s904B(1)(a)(i). The Corporations Regulations may curtail the scope of this permission: s904B(1)(a)(ii).

Note: See paragraph 1.177 of the Revised Explanatory Memorandum.

RG 249.114 This permission applies to the use or disclosure of derivative trade data for the purpose of, or in the course of, the provision of services by the trade repository and not the operator of the facility. It therefore does not cover the use or disclosure of data for the purposes of, or in the course of, other non-trade repository activities carried on by a person who operates a trade repository facility.

Note: See paragraph 1.178 of the Revised Explanatory Memorandum.

RG 249.115 Other than for the purpose of providing trade repository services, the use and disclosure of trade data is prohibited unless required or permitted by the Corporations Act, Corporations Regulations, derivative transaction rules (reporting), derivative trade repository rules, another law of the Commonwealth, or a law of a state or territory: s904B(1)(b).

Note: See Rule 2.3.3 of the derivative trade repository rules.

RG 249.116 While the use and disclosure of information may be permitted by the Corporations Act, Corporations Regulations or the derivative trade repository rules, the Corporations Regulations may restrict the ability of the rules to regulate use and handling (including disclosure): s903A(2)(b) and 903C. Specifically, the Corporations Regulations may restrict the ability of the rules to permit some types of commercialisation.

Note: See paragraph 1.181 of the Revised Explanatory Memorandum.

RG 249.117 Section 904B requires a trade repository to comply with requests for information from certain bodies (ASIC, APRA, the RBA or another licensed

trade repository). Additional persons or bodies may also be prescribed by the Corporations Regulations for this purpose. It is intended that the Corporations Regulations will allow for the sharing of trade data with appropriate foreign regulators.

Note: See paragraph 1.185 of the Revised Explanatory Memorandum.

- RG 249.118 This regulation power operates in parallel to the ability for the derivative trade repository rules to impose obligations regarding the creation and disclosure of statistical data: s903A. This rule making power is subject to any restrictions imposed by regulation: s903C. Therefore, ultimately, all obligations to create and disseminate statistical data (and handling and use of trade data) are subject to powers to make regulations. This is appropriate to ensure the confidentiality and privacy of data is protected.

### **Ensuring an appropriate degree of regulatory influence over cross-border trade repositories**

- RG 249.119 We may consider imposing specific conditions on the ADTR licence of a trade repository if the trade repository:
- (a) is wholly or partially operated in a foreign country and the information held by the trade repository is of high importance for the Australian regulators in relation to the Australian market; or
  - (b) is based in Australia and has outsourced operations, moved them overseas, or intends to do so.
- RG 249.120 We may consider one or more of the following conditions (or other conditions as appropriate) to ensure that ASIC can exercise appropriate regulatory influence in these circumstances by imposing obligations that:
- (a) facilitate our ability to conduct periodic activity-based reviews;
  - (b) require you to report to us regularly on your activities and presence overseas;
  - (c) require you to establish particular customer support or regulator support arrangements, including, where appropriate, requiring a domestic operational presence; and/or
  - (d) deal with outsourcing of critical functions.

## **ASIC assessment**

- RG 249.121 We may assess how well an ADTR licensee is complying with any or all of its obligations. In conducting the assessment, we may take account of any information and reports that we think appropriate: s904J. See Figure 3 for an overview of our assessment process.

**Figure 3: ASIC's assessment process**

RG 249.122 We may take a risk-based approach to the frequency of the assessments and we are not obliged to conduct annual assessments. It is open to us to conduct partial assessments, focusing only on certain aspects of the ADTR licensee's operations and governance.

RG 249.123 As soon as practicable after doing an assessment, we must give a written report on the assessment to the ADTR licensee. We may give a copy of the report to the Minister. We will normally publish such reports.

RG 249.124 If an assessment, or part of an assessment, relates to any other person's affairs to a material extent, we may, at the person's request or on our own initiative, give the person a copy of the report on the assessment or the relevant part of the report.

RG 249.125 Our assessment will take into account the fact that your obligations are ongoing and cannot be assessed at a single moment in time. We will use your annual report (to be provided under Rule 2.6.1 of the derivative trade repository rules) for background when conducting an assessment.

RG 249.126 In conducting our assessments, we will also take into account any relevant standards and recommendations made by international regulatory bodies such as CPMI and IOSCO, including most notably the CPMI–IOSCO Principles and the associated disclosure framework and assessment methodology, as in force from time to time.



## Appendix 1: CPMI–IOSCO *Principles for financial market infrastructures*

**Table 2: CPMI–IOSCO Principles relevant to trade repositories**

Principle	
<b>1</b>	<b>Legal basis</b>
	An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.
<b>2</b>	<b>Governance arrangements</b>
	An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.
<b>3</b>	<b>Framework for the comprehensive management of risks</b>
	An FMI should have a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.
<b>15</b>	<b>General business risk</b>
	An FMI should identify, monitor and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.
<b>17</b>	<b>Operational risk</b>
	An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of wide-scale or major disruption.
<b>18</b>	<b>Access and participation</b>
	An FMI should have objective, risk-based and publicly disclosed criteria for participation, which permits fair and open access.
<b>19</b>	<b>Tiered participation arrangements</b>
	An FMI should identify, monitor and manage the material risks to the FMI arising from tiered participation arrangements.
<b>20</b>	<b>Financial market infrastructure links</b>
	An FMI that establishes a link with one or more FMIs should identify, monitor and manage link-related risks.
<b>21</b>	<b>Efficiency and effectiveness</b>
	An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.

**Principle****22 Communication procedures and standards**

An FMI should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement and recording.

**23 Disclosure of rules, key procedures and market data**

An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees and other material costs they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.

**24 Disclosure of market data by trade repositories**

A trade repository should provide timely and accurate data to relevant authorities and the public in line with their respective needs.

Source: CPMI–IOSCO Principles.

## Appendix 2: Specific information to include in your application for an ADTR licence

### A2.1 General

#### Identification, legal status and class of derivatives

RG 249.127 When you apply for an ADTR licence, you need to identify who you are and tell us about the services you intend to provide and the activities you intend to carry out that require you to be licensed as a trade repository. Your application must include:

- (a) your full name and address, as the applicant;
- (b) a certificate of incorporation;
- (c) if you are a foreign body corporate, a certificate of registration under Div 2 of Pt 5B.2;
- (d) information on the classes of derivatives for which you intend to provide services under the ADTR licence;
- (e) minutes from your governing body approving your application and its submission to ASIC;
- (f) the name and contact details of the persons responsible, or to be responsible, for compliance and any other staff involved, or to be involved, in compliance within the trade repository;
- (g) the name and address of every director, secretary and member of the senior management of the applicant and of any holding company of the applicant;
- (h) your program of operations, including the location or intended location of your main business activities;
- (i) the identification of any related bodies corporate and your position within any corporate group;
- (j) details of any service, other than the trade repository function, that you intend to provide;
- (k) a list of all regulatory licences or registrations (or exemptions from licensing requirements) worldwide, and any current applications for the same, held or made by you and your related bodies corporate;
- (l) your accounting period year end;
- (m) a copy of your constitution; and
- (n) details of any pending judicial, administrative, tax, insolvency, arbitration or any other litigation proceedings, irrespective of their type, that you or any related body corporate may be party to, or any such proceedings that are no longer pending if they still represent a material expense to you or any related body corporate.

## Policies and procedures

- RG 249.128 Where you are required to include your policies and procedures with your application, you must ensure that they contain the following information:
- (a) who is responsible for the approval and maintenance of the policies and procedures;
  - (b) a description of how compliance with the policies and procedures will be ensured and monitored, and who will be responsible for implementing this;
  - (c) a description of the measures to apply in the event of a breach of policies and procedures; and
  - (d) an indication of the procedure for reporting to ASIC any material breaches of policies and procedures that may result in a breach of licence conditions.

## A2.2 Ownership

- RG 249.129 Your application must contain a list of each person or entity that directly or indirectly holds or controls 5% or more in aggregate of your capital or your voting rights, or whose holding or holdings make it possible to exercise a significant influence over your management.

## A2.3 Organisational structure, governance and compliance

### Organisational chart

- RG 249.130 Your application must contain an organisational chart detailing your organisational structure, including any ancillary services offered. The chart must identify who is responsible for each significant role, including senior management and persons who direct the activities of any branches. The chart should also include the intended date of commencement for future employees or officers that have been appointed but have not yet commenced.

### Corporate governance

- RG 249.131 Your application must:
- (a) include information about your internal corporate governance policies and the procedures and terms of reference that govern your senior management, including the board, its non-executive members and, where established, committees;

- (b) include a description of the process for the selection, appointment, performance evaluation and removal of the directors, secretary and senior management of the applicant; and
- (c) identify any recognised corporate governance code of conduct that you adhere to and explain any situations where you deviate from that code.

### **Internal controls**

RG 249.132 Your application must contain:

- (a) an overview of your internal controls, including information about your compliance function, review function, risk assessment and management, internal control mechanisms and arrangements for your internal audit function;
- (b) where relevant, information on the following matters:
  - (i) policies and procedures that support your internal controls;
  - (ii) the monitoring and evaluation of the adequacy and effectiveness of your systems;
  - (iii) the control and safeguarding of your information processing systems; and
  - (iv) the internal bodies in charge of the evaluation of any findings; and
- (c) the following information about your internal audit function:
  - (i) an explanation of how your internal audit methodology is developed and applied, taking into account the nature and complexity of your activities and risks; and
  - (ii) a forward work plan for at least the next year.

### **Compliance**

RG 249.133 Your application must contain the following information about your arrangements for ensuring compliance with your obligations as an ADTR licensee:

- (a) a description of the roles of the persons responsible for compliance and of any other staff involved in compliance assessments, including how you ensure the independence of the compliance function from the rest of the business;
- (b) information about your internal policies and procedures for ensuring that the trade repository (including your managers and employees) complies with all relevant requirements, including a description of the role of the directors, secretary and senior management of the applicant; and
- (c) where available, the most recent internal report prepared by the persons responsible for compliance or any other staff involved in compliance assessments.

## Directors, secretary and senior management

RG 249.134 Your application must contain the following information for each current director, secretary and member of the senior management team of the applicant and holding company of the applicant—and for each future director, secretary and member of the senior management team of the applicant and holding company of the applicant that has been appointed but has not yet commenced:

### Professional competence

- (a) a curriculum vitae setting out the experience and knowledge relevant to perform the person's responsibilities;

### Fit and proper

- (b) a declaration (i.e. a statutory declaration or, when given outside Australia, in an equivalent form) declaring whether the relevant person has been:
- (i) convicted of any criminal offence and, if so, a description of the offence;
  - (ii) subject to an adverse finding in any proceedings of a disciplinary nature brought by a regulatory authority or government body or agency, or is the subject of any such proceedings that are not concluded;
  - (iii) subject to an adverse finding, judgment or order in civil proceedings;
  - (iv) refused the right to carry on activities that require registration or authorisation by a regulatory body or has had any such right withdrawn, cancelled or suspended;
  - (v) disqualified from acting as a director, disqualified from acting as a secretary, disqualified from acting in any managerial capacity, or dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;
  - (vi) otherwise fined, suspended, disqualified or subject to any other sanction by a government, regulatory or professional body; and
  - (vii) a director, secretary or a member of senior management of an undertaking which, while the person was connected (as such or as an employee) to the undertaking or within a year of the person ceasing to be connected to the undertaking:
    - (A) had its registration or authorisation withdrawn, cancelled or suspended by a regulatory body;
    - (B) has gone into administration, receivership, liquidation or other form of insolvency administration; or
    - (C) was subject to an adverse finding or penalty by a regulatory body;

and in each case giving full details of the relevant matter; and

**Conflicts of interest**

- (c) a declaration of any potential conflicts of interest that person may have in performing their duties and how these conflicts will be managed.

**A2.4 Human resources and remuneration****Staffing policies and procedures**

RG 249.135 Your application must include the following policies and procedures:

- (a) a copy of your remuneration policy for the directors, secretary and senior management, and the staff employed in risk and compliance functions; and
- (b) a description of the measures you have put in place to mitigate key person risk.

**Fit and proper**

RG 249.136 Your application must include the following information about your staff:

- (a) a list of the staff employed, or to be employed, including their role and qualifications for the role;
- (b) a specific description of the information technology staff employed, or to be employed, in providing the trade repository services, including the role and qualifications of each individual;
- (c) a description of the role and qualifications of each individual responsible for internal audit, internal controls, compliance, risk management and internal review;
- (d) which of your staff are dedicated staff members and which staff members will be operating under an outsourcing arrangement; and
- (e) details of the training and development relevant to the trade repository business, including any examination or other type of formal assessment required for staff conducting trade repository activities.

**A2.5 Financial resources****Financial resources and business plans**

RG 249.137 Your application must include the following financial and business information:

- (a) a complete set of your audited consolidated financial statements (and those of any corporate group of which you are a member), prepared on an annual basis in conformity with international or Australian

- accounting standards, for the three financial years preceding the date of your application;
- (b) the name and national registration number of your external auditor;
  - (c) a financial business plan contemplating different business scenarios for the trade repository services over a minimum three-year period;
  - (d) details of the funding referred to in Rule 2.4.7;
  - (e) a viable recovery or orderly wind-down plan, as referred to in Rule 2.4.11;
  - (f) where the historical financial information referred to in RG 249.137(a) is not available:
    - (i) a statement demonstrating proper resources and expected business status in six months after registration is granted;
    - (ii) an interim financial report where the financial statements are not yet available for the requested period of time; and
    - (iii) a statement of financial position, such as a balance sheet, of income, changes in equity and cash flows, and notes comprising a summary of accounting policies and other explanatory notes;
  - (g) an indication of future plans for the establishment of subsidiaries and their location; and
  - (h) a description of the business activities you plan to carry out, specifying the activities of subsidiaries.

## A2.6 Conflicts of interest

### Management of conflicts of interest

RG 249.138 Your application must contain the following information:

- (a) your policies and procedures for the identification, management and disclosure of conflicts of interest, consistent with Rule 2.4.2;
- (b) a description of your processes for ensuring that the relevant persons are aware of these policies and procedures; and
- (c) any other measures and controls you have put in place to ensure that conflicts of interest are identified, managed and disclosed.

### Inventory and mitigation of conflicts of interest

RG 249.139 Your application must contain an inventory of existing material conflicts of interest in relation to any services provided by you. The inventory must:

- (a) be up to date at the time of your application;



- (b) include a description of how these existing material conflicts of interest are being managed; and
- (c) where you are part of a group, include any material conflicts of interest arising from other undertakings within the group.

## **A2.7 Resources and procedures**

### **Information technology resources and outsourcing**

- RG 249.140 Your application must include a description of the following:
- (a) your systems and facilities for providing trade repository services to users, including a copy of any user manuals and internal procedures;
  - (b) your investment and renewal policies on information technology resources; and
  - (c) your outsourcing arrangements, together with your methods for monitoring the service level of the outsourced functions and a copy of the contracts governing such arrangements.
- RG 249.141 We may also require you to include a written confirmation from an independent third party (with the scope of the work approved by ASIC) relating to your operational readiness and the adequacy of your governance framework and all of your information technology systems.

### **Non-trade reporting (including ancillary) services**

- RG 249.142 Where you, a related body corporate or an undertaking with which you have a material agreement offers, or plans to offer, any non-trade repository reporting services (including services ancillary to the trade repository services), your application must contain a description of the ancillary services to be provided.

### **Operational separation of functions**

- RG 249.143 You must provide a copy of the policies and procedures referred to in Rule 2.4.12 to ensure the operational separation of functions.

### **Transparency about access terms**

- RG 249.144 Your application must include:
- (a) the access policies and procedures under which users access data in the trade repository, including any process by which users may need to amend or modify registered contracts;

- (b) a copy of the terms and conditions that determine the user's rights and obligations;
- (c) a description of the different categories of access (if there is more than one) that are available to users; and
- (d) the access policies and procedures under which other service providers may have non-discriminatory access to information maintained by the trade repository where the relevant counterparties have provided their consent.

### **Transparency about compliance arrangements and data accuracy**

RG 249.145 Your application must contain a description of the procedures you have put in place designed to provide reasonable assurance:

- (a) of the compliance of the reporting counterparty or submitting entity with the reporting requirements;
- (b) of the completeness and correctness of the information reported to it; and
- (c) that data can be reconciled between trade repositories if counterparties report to different trade repositories.

### **Pricing policy transparency**

RG 249.146 Your application must contain:

- (a) a copy of your pricing policy, including the fees for individual services offered (including ancillary services) and policies relating to any available discounts or rebates or any other incentives or benefits; and
- (b) a description of your methods for making this information available to users.

## **A2.8 Risk management and business continuity**

RG 249.147 Your application must contain:

- (a) a detailed description of the risk management framework required under Rule 2.4.4;
- (b) a detailed description of the resources available and procedures designed to identify, manage and mitigate operational risk, business risk, legal risk and any other material risks to which you are exposed;
- (c) a detailed description of your general business risk management arrangements, including a description of the net assets funded by equity to cover at least six months of current operating expenses, as referred to in Rule 2.4.7;

- (d) a business continuity plan, as required under Rule 2.4.10, including a detailed description of your arrangements for ensuring that your trade repository activities can continue in the event of disruption, the involvement of trade repository users and other third parties in those arrangements, and an indication of your arrangements for testing and updating the plan; and
- (e) any relevant international or national standards relating to business continuity arrangements and/or back-up facilities you intend to comply with.

## A2.9 Record keeping

RG 249.148 Your application must contain:

- (a) information about the receipt and administration of data, including any policies and procedures to ensure:
  - (i) the timely and accurate registration of the information reported;
  - (ii) that the data is maintained both online and offline; and
  - (iii) that the data is copied for business continuity purposes; and
- (b) a description of your record-keeping systems, policies and procedures for ensuring that information is modified appropriately and that positions are calculated correctly in accordance with relevant legislative or regulatory requirements.

## A2.10 Confidentiality and data security

### Confidentiality

RG 249.149 Your application must set out in detail your policies, procedures and controls for preventing any unauthorised access to, or the use or disclosure of, derivative trade data by the trade repository. This information must include a description of the controls on access to, use of and disclosure of data by staff, users and regulators, including how you intend to log, manage and audit these controls: see, for instance, Rules 2.3.3 and 2.4.8.

### Data security

RG 249.150 Your application must specify in detail all data security and anti-cybercrime arrangements, including which applicable international or national standards you are accredited under or intend to comply with.

- RG 249.151 The application should, in particular, specify the relevant security controls and standards that you will implement with regard to all foreseeable threats and vulnerabilities, including intentional or unintentional access to, or use, corruption or disclosure of, derivative trade data or associated statistical data by the trade repository, users, regulators, or their officers, employees, agents, or contractors, or former such persons, as well as third parties such as hackers.

## **A2.11 Data protocols and data submission by users**

- RG 249.152 Your application must also specify in detail all data protocols for submission of derivative trade data by users, including the applicable international or national standards you intend to require compliance with or accreditation under: Rule 2.3.7.

## **A2.12 Data availability to market participants, regulators and public**

### **Data availability mechanisms**

- RG 249.153 Your application must contain a description of the resources, methods and channels you intend to employ to provide users, regulators and the general public with access to derivative trade data and associated statistical data in accordance with the derivative trade repository rules, the Corporations Act and the controls and verifications you may establish for the access filtering process.

## Appendix 3: Guidance on complying with the derivative trade repository rules

### A3.1 Introduction

RG 249.154 If you are an ADTR licensee, we will assess your compliance with the guidance in this appendix as part of any assessment we perform of how well you are complying with any or all of your obligations as an ADTR licensee, including for determining whether to take enforcement action against you or any of your officers.

Note: Under Rule 2.1.1, officers are responsible for taking all reasonable steps to ensure the ADTR licensee complies with its obligations.

RG 249.155 We will also take into account your self-assessment of the extent to which you have complied with this guidance.

RG 249.156 We do not provide guidance on all the derivative trade repository rules, but focus on those where we believe additional guidance may be helpful.

### A3.2 Manner in which the trade repository provides its services

RG 249.157 Part 2.2 of the derivative trade repository rules imposes obligations on you in relation to:

- (a) the legal basis for each material aspect of your activities;
- (b) access and participation requirements; and
- (c) the secure, efficient and effective provision of trade repository services.

#### Legal basis for material services

RG 249.158 You must have a clear, transparent and enforceable legal basis for each material aspect of your trade repository services: Rule 2.2.1(1). The legal basis for your trade repository services consists of the legal framework within which you provide those services, and your rules, procedures and contracts.

RG 249.159 You must therefore establish rules, procedures and contracts that are consistent with the legal framework and are enforceable, including in situations of recovery or wind-down, with a high degree of certainty that any actions taken by you under those rules, procedures and contracts will not be voided, reversed or subject to a stay.

RG 249.160 If you are subject to the laws of various jurisdictions, you must take all reasonable steps to mitigate any risks arising from any potential conflict of laws across those jurisdictions: Rule 2.2.1(5).

RG 249.161 We consider that the aspects of your services that are ‘material’ for the purposes of Rule 2.2.1 are those that affect, or have the potential to affect, either:

- (a) the performance of your obligations in accepting, retaining, using, disclosing and providing access to derivative trade data; or
- (b) your compliance with any applicable rules, laws or regulations.

RG 249.162 We consider that the following activities are material aspects of a trade repository’s services:

- (a) the on-boarding of users and regulators;
- (b) the acceptance, processing, retention, handling and transmission of derivative trade data;
- (c) the provision of access to derivative trade data for regulators and users and the provision of related statistical data to third parties and the public (Part 2.3), including minimum service levels, operational reliability (Rule 2.4.9), protection of confidential information (Rules 2.3.3 and 2.4.8) and intellectual property rights in the data;
- (d) business continuity arrangements (Rule 2.4.10);
- (e) risk management, including management of business, operational, legal and information technology risk (Rule 2.4.4);
- (f) governance arrangements (Rule 2.4.1); and
- (g) outsourcing arrangements (Rule 2.4.13).

You must therefore have a clear, transparent and enforceable legal basis for these activities.

### **Access and participation requirements**

RG 249.163 Rule 2.2.2(1) requires operators to have objective conditions for access to, and participation in, their trade repository that permit open and non-discriminatory access.

RG 249.164 CPMI–IOSCO Principle 18 addresses access and participation requirements for trade repositories. The explanatory note to this principle indicates that:

- (a) ensuring fair and open access may be essential because a wide range of stakeholders may need access to the trade repository;
- (b) terms of use should be commercially reasonable and support interconnectivity, so that competition and innovation in post-trade processing is not impaired by central record keeping; and
- (c) a trade repository should not engage in anti-competitive behaviour by setting overly restrictive terms of use or engage in anti-competitive price discrimination.

RG 249.165 If we consider that any competition issues arise, we will review and engage with other regulators as necessary, including the ACCC. Regardless of any such consideration, all licensed trade repositories are responsible for ensuring the operations and conduct of their trade repository in Australia comply with all relevant laws and regulatory requirements.

### **Security, efficiency and effectiveness of services**

RG 249.166 Under Rule 2.2.3(1), you must ensure that the trade repository's services are provided at all times in a secure, efficient and effective manner. This requirement is amplified by other rules relating, in particular, to the handling and use of derivative trade data (Part 2.3) and the adequacy of resources: Rules 2.4.5–2.4.7.

RG 249.167 You should have specific arrangements in place to periodically review service levels, costs, pricing and operational reliability.

RG 249.168 You must be efficient and effective in meeting the requirements of users, Australian regulators, and the markets that you serve: Rule 2.2.3(2). This requirement is amplified, in particular, by Rule 2.3.4 on the provision of access to derivative trade data.

## **A3.3 Handling and use of derivative trade data by trade repositories and their officers and employees**

### **Acceptance of derivative trade data**

RG 249.169 An operator must create and maintain policies and procedures for reporting trade data under Rule 2.3.1. This includes policies, procedures and controls that are designed to provide reasonable assurance that any trade data reporting to the repository by participants is, and remains, complete, accurate and current.

RG 249.170 Whether policies and procedures will be considered adequate in a particular scenario, or for a particular trade repository's operations, will depend on the facts and circumstances of the trade repository's business. We expect to engage with applicants for an ADTR licence on these arrangements during the licensing process and on an ongoing process as part of assessments.

RG 249.171 What is necessary to comply with Rule 2.3.1 could include a combination of:

- (a) requiring reporting entities to confirm data submitted is accurate and complete;
- (b) requiring adequate ongoing representations and warranties from users in user agreements as to the accuracy and completeness of data submitted; and

- (c) processes to identify material discrepancies or incomplete data fields in reports submitted by or on behalf of reporting entities for the same transactions, and implementing procedures to verify the accuracy of this data with the counterparties.

### **Communication procedures and standards**

- RG 249.172 Rule 2.3.7 sets out requirements for communication procedures and standards. A trade repository should support technologies that are widely accepted in the market and across different jurisdictions, including applicable market standards for reporting and recording trade information.
- RG 249.173 A trade repository should also apply consistent application interfaces and communication links that enable technical interconnectivity with other FMIs and service providers. In addition, a trade repository should, where appropriate, be able to directly exchange trade information not only with market participants but also with other entities such as exchanges, electronic trading venues, confirmation-matching platforms, central counterparties and other service providers. To facilitate accurate data representation, use and aggregation, trade repositories should follow industry standards relating to the unique identification of counterparties (e.g. legal entity identifiers).

## **A3.4 Governance, management and resources**

- RG 249.174 Part 2.4 of the derivative trade repository rules deals with the governance, management and resources of the trade repository.

### **Governance**

- RG 249.175 Under Rule 2.4.1(2)(c), your decision-making processes for the design, rules or overall strategy of the trade repository must take into account the objectives of users. In fulfilling this requirement you should consider establishing one or more user groups (in which Australian users are appropriately represented) that you consult before making major decisions.

### **Conflicts of interest**

- RG 249.176 Conflicts of interest may stem from, but not be limited to, a conflict between a trade repository's commercial interests and its obligation to operate securely, efficiently and effectively.
- RG 249.177 For example, a trade repository may have a commercial imperative to be less vigilant in enforcing compliance with its rules and procedures through disciplinary action in relation to a user who contributes a large portion of the trade repository's revenue. This would be the case regardless of whether the



trade repository operates on a for-profit or not-for-profit basis, and may have a significant impact on the overall degree of user confidence in the trade repository.

- RG 249.178 Conflicts may also arise between a trade repository's own obligations (or those of its related bodies corporate) and the interests of its users or stakeholders, or between the interests of different users or stakeholders.
- RG 249.179 Under Rule 2.4.2, you must have documented arrangements for identifying and managing (including by disclosing, avoiding or controlling) any actual or potential conflicts between your own interests and obligations (or those of your related bodies corporate) and the interests of your users or stakeholders, or between the interests of different users or stakeholders. Such arrangements might include information barriers, separate supervision or reporting lines, separate remuneration pools, and/or controls for preventing inappropriate influence or involvement between different business lines.
- RG 249.180 In any compliance assessment of a trade repository that we may conduct under s904J, we would expect a trade repository to be able to demonstrate that it is identifying and managing all conflicts of interest appropriately at all times. This evidentiary responsibility may best be discharged in the form of a register of conflicts.

### **Monitoring and enforcement of compliance**

- RG 249.181 When we assess your arrangements for monitoring and enforcing compliance under Rule 2.4.3, we will consider the extent to which they:
- (a) are sufficiently independent of your other activities to ensure they are not improperly influenced by commercial considerations;
  - (b) are comprehensive and are regularly reviewed;
  - (c) are reassessed if there are significant changes in your:
    - (i) trade repository's operations;
    - (ii) trade repository's users; or
    - (iii) resources; and
  - (d) include adequate processes for monitoring and assessing the performance of any outsourced licensee obligations.
- RG 249.182 We expect that effective compliance arrangements would include at least ensuring that you:
- (a) reliably and efficiently identify actual or potential breaches of your obligations as an ADTR licensee;
  - (b) deal adequately with any breaches detected; and
  - (c) can conclude fairly and reasonably whether, and how well, you have complied with each of your obligations.

## Risk management

- RG 249.183 Under Rule 2.4.4, you must establish risk management arrangements in relation to legal, operational and business risks.
- RG 249.184 Operational risk refers to risks that arise from deficiencies in information systems, internal processes and personnel, or disruptions from external events that will result in a breakdown or deterioration of the trade repository services.
- RG 249.185 You should also address additional operational risks that can arise when entering into arrangements in which users access the trade repository's reporting facilities through the services of another entity.
- RG 249.186 In relation to the risks associated with indirect participants (i.e. persons who are required to report their derivative transactions to the trade repository under Australian reporting requirements but that do so through another person), we consider that you need to ensure you have policies and procedures in place that allow you to do the following:
- (a) gather basic information about indirect participation in order to facilitate identifying, monitoring and managing any material risks to the trade repository arising from such tiered participation arrangements;
  - (b) identify material dependencies between direct and indirect users that might affect the trade repository;
  - (c) identify indirect participants that are responsible for a significant proportion of data reported to the trade repository in order to manage the risks arising from these derivative transactions; and
  - (d) regularly review the risks arising from any tiered participation arrangements you enter into, and take mitigating action when appropriate.
- RG 249.187 We consider that you also need to carefully assess the additional operational risks related to your link arrangements with other FMIs to ensure the scalability and reliability of information technology and related resources. We expect you to consider these issues during the process of determining whether to enter into a link arrangement but also on an ongoing basis once any link is established.
- RG 249.188 As part of this process, we expect you will:
- (a) only enter a link that is designed so that the linked licensed trade repository can continue to observe its other obligations under its ADTR licence, the derivative trade repository rules and the Corporations Act;
  - (b) only enter a link that has a well-founded legal basis that supports the design of the link and provides adequate protection to the linked licensed trade repository; and

- (c) carefully assess the additional operational risks related to your link arrangements to ensure the scalability and reliability of your information technology and related resources.

RG 249.189 Where you provide non-trade reporting services (services other than the collection, storage, distribution and statistical analysis of derivative trade data in accordance with the relevant rules), including services that are ancillary to trade reporting services (such as portfolio compression or collateral management), you must identify and manage or mitigate any risks associated with such other services, including legal, operational and business risks, particularly to the extent that they affect either:

- (a) the performance of your reporting services; or
- (b) your compliance with any relevant rules, laws or regulations.

RG 249.190 Adequate rules, policies, procedures and contracts for managing any risks associated with non-trade reporting or ancillary services may address:

- (a) the operational separation of functions;
- (b) communication protocols;
- (c) the appropriate handling of information;
- (d) data protection and confidentiality; and
- (e) providing access, and disclosing data, to users, relevant regulatory authorities and the public.

RG 249.191 Under Rule 2.4.4, you must fulfil obligations that are aimed at managing risks and the potential for loss arising from the trade repository's administration and operation as a business enterprise that are not related to participant default. Some examples of business risks that could arise for trade repositories include losses from poor execution of business strategy, negative cash flows or unexpected and excessively large operating expenses.

## Resources

RG 249.192 As an operator of a trade repository, you must have sufficient human, technological and financial resources for ensuring that you operate securely, efficiently and effectively: Rules 2.4.5–2.4.7. The sufficiency of resources will be influenced by such factors as the complexity and scale of your business, as well as the jurisdictions in which it is based or operates.

RG 249.193 Because these factors may change over time, we expect you to continually assess what resources you need to support the ongoing effective operation of the trade repository.

RG 249.194 Examples of acceptable financial resources for complying with Rules 2.4.5 and 2.4.7 are assets within your ownership and control, funding from other business activities, or an intra-group guarantee.

- RG 249.195 Financial resources should cover obligations arising from:
- (a) the operation of the trade repository; and
  - (b) any activity conducted by you other than operating the trade repository.
- RG 249.196 We expect the assets you hold in relation to Rule 2.4.7 to be of high quality and sufficiently liquid to allow you to meet your current and projected operating expenses in a range of scenarios, including in adverse market conditions.

### **Integrity and security of systems**

- RG 249.197 We consider that to fulfil the requirements about system integrity and security in Rule 2.4.8, it is advisable that you have a comprehensive strategy designed to minimise or prevent the possibility of unauthorised access to, and use and disclosure of, data in relation to all foreseeable internal and external vulnerabilities. We also expect that in complying with Rule 2.4.8 you will comply with applicable international or national standards you are accredited under.
- RG 249.198 We consider that your policies and procedures should at least address and minimise all foreseeable risks arising from:
- (a) unauthorised cyber intrusions;
  - (b) viruses, malware and data corruption;
  - (c) the deliberate or negligent misuse of data or access privileges by staff, contractors, users and regulators, including those associated with staff or contractor departures; and
  - (d) internet denial of service.

### **Business continuity**

- RG 249.199 Under Rule 2.4.10, you must have a business continuity plan. We would expect that the plan would incorporate the use of a secondary site and should be designed to ensure that critical information technology systems can resume operations within a short period of time (e.g. by the end of the day on which the disruption occurred) following disruptive events.
- RG 249.200 We would expect your business continuity plan to be designed to enable you to complete your operations by the end of the day of the disruption, even in cases of extreme circumstances. We also expect your plan to include:
- (a) all business processes, escalation procedures and related systems that are critical to ensuring the continuity of your services as a trade repository, including any relevant outsourced services and the trade repository strategy, policy and objectives towards the continuity of these processes;

- (b) the arrangements you have in place with other FMIs, including other trade repositories;
- (c) the arrangements you have in place to ensure a minimum service level of the critical functions, and the expected timing to complete the full recovery of those processes;
- (d) the maximum acceptable recovery time for the business processes and systems;
- (e) the procedures to deal with incident logging and reviews;
- (f) a testing program and the results of any tests;
- (g) the number of alternative technical and operational sites available, their location, the resources when compared with the main site, and the business continuity procedures in place if alternative sites need to be used; and
- (h) information access to a secondary business site to allow staff to ensure the continuity of the service if a main office location is not available.

RG 249.201 We expect that you would regularly test these arrangements.

### **Operational separation of functions**

RG 249.202 Where an operator, a related body corporate of the operator, or any other company the operator has a material agreement with in connection with the trade reporting services, provides non-trade reporting services (including ancillary services), the operator must comply with Rule 2.4.12. This includes ensuring operational separation between non-trade reporting services and trade reporting services. Operational separation does not require the services to be provided by different legal entities, and may be achieved by implementing adequate policies and procedures such as supervisory arrangements, information barriers, separate business units and reporting lines, and independent remuneration structures.

## **A3.5 Disclosure of conditions**

RG 249.203 In fulfilling your obligations under Part 2.5 of the derivative trade repository rules, you should also refer to and follow the *CPMI–IOSCO Principles for financial market infrastructures: Disclosure framework and assessment methodology*, published in December 2012.

## A3.6 Reporting to Australian regulators on matters related to trade repositories

### Compliance report

RG 249.204 Part 2.6 of the derivative trade repository rules imposes obligations requiring you to prepare an annual written report for ASIC on your compliance as an ADTR licensee with the Corporations Act and the derivative trade repository rules.

RG 249.205 We expect that your annual compliance report will:

- (a) describe in detail the activities that you have undertaken throughout the year in order to meet your obligations;
- (b) state the objective outcomes and/or standards against which you have measured your compliance with each of your obligations, and explain how these outcomes and/or standards show evidence of your compliance with your obligations;
- (c) identify and explain any divergences during the year between your planned and actual activities, and your resources for complying with, and monitoring your compliance with, your obligations; and
- (d) state and explain your conclusions about:
  - (i) whether you have achieved your stated outcomes and/or standards, and the extent to which you have fully complied with each obligation;
  - (ii) if less than full compliance is identified, how you will ensure that you achieve full compliance with each obligation in the future;
  - (iii) the adequacy and effectiveness of your arrangements for handling conflicts of interest;
  - (iv) how well you meet or have met each of your obligations;
  - (v) how well you monitor your own compliance with each of your obligations; and
  - (vi) if any inadequacy or weaknesses have been identified, how you propose to address or have addressed these matters.

RG 249.206 In preparing your report for ASIC, you should refer to and follow the CPMI–IOSCO *Principles for financial market infrastructures: Disclosure framework and assessment methodology*, published in December 2012, which give guidance on complying with the principles on which the derivative trade repository rules are based.

## Key terms

Term	Meaning in this document
ADTR licence	Australian derivative trade repository licence
ADTR licensee	Holder of an ADTR licence
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Australian derivative trade repository licence	Australian derivative trade repository licence under s905C of the Corporations Act that authorises a person to operate a trade repository
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
Corporations Act	<i>Corporations Act 2001</i> , including any regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
CPMI	Committee on Payments and Market Infrastructure Note: Formerly the Committee on Payment and Settlement Systems of the Bank of International Settlement (CPSS)
CPMI–IOSCO Principles	CPMI–IOSCO <i>Principles for financial market infrastructures</i> , as revised from time to time
CS facility	A clearing and settlement facility as defined by s768A of the Corporations Act
CS facility licence	An Australian CS facility licence under s824B of the Corporations Act that authorises a person to operate a CS facility in Australia
CS facility licensee	A person who holds a CS facility licence Note: This is a definition contained in s761A of the Corporations Act.
derivative trade data	Means: <ul style="list-style-type: none"> <li>information about derivative transactions, or about positions relating to derivative transactions; or</li> <li>information (including statistical data) that is created or derived from the information referred to above</li> </ul>
derivative trade repository rules	<i>ASIC Derivative Trade Repository Rules 2023</i> —rules made by ASIC under s903A of the Corporations Act that deal with the matters as permitted by this section

Term	Meaning in this document
derivative transaction	Means: <ul style="list-style-type: none"> <li>• entry into an arrangement that is a derivative;</li> <li>• the modification or termination of such an arrangement;</li> <li>• the assignment, by a party to such an arrangement, of some or all of the party's rights and obligations under the arrangement; or</li> <li>• any other transaction that relates to a derivative and that is in a class of transactions prescribed by the regulations</li> </ul>
derivative transaction rules (reporting)	<i>ASIC Derivative Transaction Rules (Reporting) 2022</i> and, from 21 October 2024, the <i>ASIC Derivative Transaction Rules (Reporting) 2024</i> —rules made by ASIC under s901A of the Corporations Act that deal with reporting requirements and requirements that are incidental or related to the reporting obligation
directions	Directions that may be given by ASIC or the Minister under Subdiv B of Div 5 of Pt 7.5A to an ADTR licensee not complying with its obligations
FMI	Financial market infrastructure
G20	Group of 19 of the world's largest economies, and the European Union
G20 commitments	Commitments made by the leadership of the G20 nations in September 2009 for the operation of OTC derivatives markets
IOSCO	International Organization of Securities Commissions
licensed trade repository	A licensed derivative trade repository as defined in s761A of the Corporations Act
licensee obligations	Obligations imposed on an ADTR licensee as part of the ADTR licence conditions
market licensee	Holder of an Australian market licence
Ministerial determination	<i>Corporations (Derivatives) Determination 2023</i>
OTC	Over-the-counter
Part 2.4 (for example)	A part of the derivative trade repository rules (in this example numbered 2.4), unless otherwise specified
participants	Persons who have agreed to the terms and conditions of a trade repository for the use of their data collection and data reporting services
prescribed trade repository	A trade repository that is a facility (or is in a class of facilities) prescribed by the Corporations Regulations for the purpose of s901A(6) of the Corporations Act



Term	Meaning in this document
Pt 7.5A (for example)	A part of the Corporations Act (in this example numbered 7.5A)
Revised Explanatory Memorandum	Revised Explanatory Memorandum to the <i>Corporations Legislation Amendment (Derivative Transactions) Bill 2012</i>
RBA	Reserve Bank of Australia
Rule 2.4.2 (for example)	A rule of the derivative trade repository rules (in this example numbered 2.4.2)
s903A (for example)	A section of the Corporations Act (in this example numbered 903A)
statistical data	Aggregate data created by a trade repository that is created from derivative trade data reported to that repository
trade repository	Derivative trade repository—a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported
users	Regulatory authorities, organisations or persons who may use the data collection or data reporting services of trade repositories

## Related information

### Headnotes

ADTR licence, Australian derivative trade repository licence, conflicts of interest, CPMI–IOSCO Principles, derivative transaction reporting, exemptions, financial resources, licence conditions, regulatory outcomes, sufficiently equivalent, trade repository, trade repository regulation

### Regulatory guides

[Regulatory Guide 51](#) *Applications for relief*

[Regulatory Guide 54](#) *Principles for cross-border financial regulation*

[Regulatory Guide 172](#) *Financial markets: Domestic and overseas operators*

[Regulatory Guide 211](#) *Clearing and settlement facilities: Australian and overseas operators*

[Regulatory Guide 251](#) *Derivative transaction reporting*

### Consultation paper and reports

[Consultation Paper 201](#) *Derivative trade repositories*

[Consultation Paper 370](#) *Proposed remake of the ASIC Derivative Trade Repository Rules 2012*

[Report 356](#) *Response to submissions on CP 201 Derivative trade repositories*

### Legislation

Corporations Act, Pt 7.5A

### International standards

CPMI–IOSCO *Principles for financial market infrastructures*

CPMI–IOSCO *Principles for financial market infrastructures: Disclosure framework and assessment methodology*