



ASIC

Australian Securities &
Investments Commission

REPORT 792

Response to submissions on CP 375 Proposed changes to the ASIC Derivative Transaction Rules (Reporting): Third consultation

August 2024

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 375 *Proposed changes to the ASIC Derivative Transaction Rules (Reporting): Third consultation* ([CP 375](#)) and details our responses to those issues.

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.

Disclaimer

This report 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.

This report does not contain ASIC policy. Please see Regulatory Guide 251 *Derivative transaction reporting* (RG 251), as amended with effect from 21 October 2024 (publication pending).

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A Overview

- 1 In Consultation Paper 375 *Proposed changes to the ASIC Derivative Transaction Rules (Reporting): Third consultation (CP 375)*, we consulted on proposals to amend the [ASIC Derivative Transaction Rules \(Reporting\) 2024](#) (2024 ASIC Rules) to:
 - (a) simplify and permanently exclude exchange-traded derivatives wholly by provisions within the 2024 ASIC Rules, but with a determination power to adjust for any unanticipated definitional uncertainties;
 - (b) substitute a form of the definition of nexus derivative used in the [ASIC Derivative Transaction Rules \(Nexus Derivatives\) Class Exemption 2015](#) (2015 nexus exemption) for the ‘entered into in this jurisdiction’ meaning of an in-scope reportable transaction, and simplify the scope of foreign central counterparties’ (CCPs) reporting requirements;
 - (c) remove the provision for alternative reporting from the 2024 ASIC Rules and de-prescribe the current prescribed repositories; and
 - (d) clarify the exclusion of FX securities conversion transactions and add additional allowable values for certain data elements.
- 2 We also proposed to simplify the [ASIC Derivative Transaction Rules \(Clearing\) 2015](#) (Clearing Rules) by:
 - (a) redefining a clearing derivative as certain kinds of OTC derivatives defined under the 2024 ASIC Rules (which already exclude exchange-traded derivatives); and
 - (b) amending certain definitions of terms in the Clearing Rules that refer to terms in the *Corporations Act 2001* (Corporations Act) whose location has been changed by the [Treasury Laws Amendment \(2023 Law Improvement Package No. 1\) Act 2023](#) (Law Improvement Package No. 1), and update one reference to the [Corporations \(Derivatives\) Determination 2023](#).
- 3 This report highlights the key issues that arose out of the submissions received on CP 375 and our responses to those issues.
- 4 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 375. We have limited this report to the key issues.
- 5 We received four confidential and four non-confidential responses to CP 375 from industry associations and a derivative trade repository. We are grateful to respondents for taking the time to send us their comments.

- 6 For a list of the non-confidential respondents to CP 375, see the appendix. Copies of these submissions are currently on the [CP 375 page](#) of the ASIC website.

Responses to consultation

- 7 The main issues raised by respondents related to:
- (a) the substitution of a nexus derivative for the ‘entered into in this jurisdiction’ meaning of an in-scope reportable transaction; and
 - (b) the removal of the alternative reporting provisions.
- 8 There were no material issues raised by respondents with the proposal to simplify the exclusion of exchange-traded derivatives.
- 9 The proposals to clarify the exclusion of FX securities conversion transactions and add additional allowable values for certain data elements were supported by respondents that commented on the proposals. One respondent commented that our proposed guidance for one of the additional allowable values would be too rigid in certain circumstances.
- 10 There were no issues raised by respondents in relation to the proposed simplification of and consequential definitional changes to the Clearing Rules.
- 11 The final amendments to the 2024 ASIC Rules also respond to a number of other data element and rules matters raised in the feedback to CP 375, before representations from industry or before they were detected by us as errors or deficiencies.
- 12 Note that the final amendments to the 2024 ASIC Rules and the Clearing Rules were made on 19 August 2024 by [ASIC Derivative Transaction Rules \(Reporting and Clearing\) Amendment Instrument 2024/416](#) (the amendment instrument) under s901M of the Corporations Act with the consent of the Minister.

B Scope of foreign entity reporting: Nexus derivative and CCP reporting

Key points

We have requested the Minister's consent to amend the scope of foreign entity reporting in the 2024 ASIC Rules as proposed in CP 375, but deferring the commencement of the amendments until 20 October 2025.

Simplifying the scope of foreign entity reporting

- 13 Our proposal in [CP 375](#) was to adopt the widely used existing 'nexus' test from the 2015 nexus exemption into the 2024 ASIC Rules, in substitution of the 'entered into in this jurisdiction' test. Similarly, the scope for foreign CCPs would be specified as transactions that are 'entered into with Australian entities' instead of 'entered into in this jurisdiction'.
- 14 While one respondent supported the improved clarity and better alignment with the similar scope tests of Singapore and Hong Kong, another respondent advocated that it be narrowed from, in effect, a 'trader, sales or financial risk manager' scope to the 'trader-only' scope used in those jurisdictions.
- 15 This respondent did not elaborate on any particular industry difficulties in identifying in-scope transactions on a 'sales' basis as distinct from a 'trader' basis, but did express concerns that the in-scoping based on functions performed rather than roles held may be interpreted by reporting entities more widely than intended.
- 16 Other comments in the industry feedback were that:
- (a) a longer 12 to 18 months implementation lead time should be provided;
 - (b) even so, reporting entities should be allowed to commence reporting on the changed scope at an earlier time; and
 - (c) the changed scope should not require historical transactions to be reported.

ASIC's response

As we stated in CP 375, given that nearly 95% of all reports made by foreign entities are made by foreign entities that have opted into the 2015 nexus exemption, we consider that the text of the 2015 nexus exemption represents the mainstream interpretation by foreign reporting entities of an in-scope reportable transaction.

We concluded that the existing ‘trader, sales or financial risk manager’ regulatory perimeter of the 2015 nexus exemption is the appropriate setting for the 2024 ASIC Rules to maximise regulatory transparency of financial services in derivatives provided in Australia.

We have supported a common interpretation of the definitions of the functions performed by restating in the explanatory statement to the amendment instrument the relevant text from the explanatory statement to the 2015 nexus exemption.

We have responded to the feedback for a longer implementation lead time by deferring the commencement of the amendments until 20 October 2025. This includes the commencement of the changed scope for foreign CCP reporting.

We intend to respond to the feedback that reporting entities should be allowed to commence reporting on the changed scope at an earlier time by extending the 2015 nexus exemption from its current 1 April 2025 sunset to 20 October 2025—this will continue to allow reporting entities to opt in to nexus reporting at any time before 20 October 2025.

Finally, the 2024 ASIC Rules do not ordinarily operate to newly bring into scope the reporting of historical transactions that were not in scope at the time they were entered into—a transaction that was not a nexus derivative before 20 October 2025 is not reclassified as a nexus derivative as of 20 October 2025.

C Alternative reporting

Key points

We have requested the Minister's consent to remove the provision for alternative reporting from the 2024 ASIC Rules substantially as proposed in CP 375, but deferring the commencement of the amendments until 20 October 2025.

The amendment instrument also inserts provisions in Rule 2.2.1(3) and Rule 2.2.2(4) to clarify that reporting requirements arising from 20 October 2025 do not apply to transactions reported to a prescribed repository before 20 October 2025.

Removing alternative reporting

- 17 Our proposal in [CP 375](#) was to remove the provision for alternative reporting from the 2024 ASIC Rules and to de-prescribe the current prescribed repositories.
- 18 Industry associations supported the proposal but requested a longer implementation lead time. Another respondent also supported the proposal.
- 19 Only the non-confidential submission from the Japanese Bankers Association and a confidential submission from a foreign bank were opposed, citing costs and complexities as burdens on their member firms. They suggested alternative settings of mandatory notifications of the use of alternative reporting and limiting the number of prescribed repositories.
- 20 A respondent also noted that associated collateral reporting of portfolios of global transactions would be mismatched to the subset view to ASIC of only the nexus transactions within that portfolio.

ASIC's response

We estimated in CP 375 that, of about 925 reporting counterparties, our proposal would impact about 17 large-scale reporting entities using alternative reporting, and about 30 small-scale entities would need to re-arrange their dealing arrangements with foreign entities or commence direct reporting themselves.

Taking into account the feedback to CP 375, we concluded that the opposition to our proposal is quite narrowly based among significantly fewer entities than the number we estimated to be impacted and that, on balance, the regulatory benefits of

proceeding as proposed outweigh the potential regulatory costs to a small number of reporting entities.

The feedback suggestions of mandatory notifications and limiting the number of prescribed repositories do not overcome our repository connectivity and data-handling concerns, which were key reasons for our rules change proposal.

The feedback comment related to mismatched collateral information is an issue already present in the data for other direct reporting foreign entities and is not overcome in the data available to ASIC from prescribed repositories under international data access arrangements that, in any event, typically require filtering down to 'ASIC-connected' transactions only.

However, we decided to respond to the feedback and recognition of unintended incompleteness of the proposal in CP 375 by:

- deferring the commencement of the amendments until 20 October 2025; and
- inserting provisions in Rule 2.2.1(3) and Rule 2.2.2(4) to clarify that reporting requirements arising from 20 October 2025 do not apply to transactions reported to a prescribed repository before 20 October 2025.

D Exchange-traded derivatives and other matters

Key points

We have requested the Minister's consent to:

- simplify the exclusion of exchange-traded derivatives as proposed in CP 375;
- clarify the exclusion of FX securities conversion transactions and add 'PEXH' and 'CCPV' as allowable values for certain data elements as proposed in CP 375;
- proceed with the simplification of and consequential definitional changes to the Clearing Rules as proposed in CP 375;
- address a number of other data elements and rules matters raised in the feedback to CP 375, before representations from industry or before they were detected by us as errors or deficiencies.

Simplify the exclusion of exchange-traded derivatives

- 21 Our proposal in [CP 375](#) was to adopt the existing generic exchange-traded derivative definition in the exemption instrument into the 2024 ASIC Rules as the sole exchange-traded derivative definition, in place of the existing list of specified financial markets and classes of financial markets, but with a determination power to adjust for any unanticipated definitional uncertainties.
- 22 All respondents who commented on this proposal supported it, but one respondent suggested some simplifying text for perceived easier interpretation.

ASIC's response

We concluded that the suggested simplifying text is less robust than the text of the exemption which has been in place since March 2019—in particular, 'series' in the suggested text would be less clearly read as stemming from the operating rules, and we think that directly stemming from the operating rules is an important defining attribute of an exchange-traded derivative that should be preserved in the rules text.

The final amendment instrument also preserves the current rules element that includes that exchange-traded derivatives that are traded off-market but reported to a financial market in accordance with its operating rules are also not OTC derivatives.

Add additional allowable values for certain data elements

- 23 Our proposals in [CP 375](#) included adding ‘CCPV’—meaning central counterparty’s valuation—as an allowable valuation method, and ‘PEXH’—meaning an exchange of a notional amount—as an allowable other payment type. These proposals were supported by respondents that commented on them.
- 24 Our proposal also included that our guidance would expect that this value would only be reported where the reporting entity uses that CCPV valuation in their own books and records.
- 25 One respondent commented that there are circumstances where, for example, multiple execution agents of the trustee of a trust perform delegated valuation reporting, and some agents report CCPV and other agents report MTMA or MTMO. Meanwhile the trustee maintains its own valuations independent of the execution agents.
- 26 The respondent further commented that ASIC’s proposed guidance would expect the trustee to also make valuation reports to override any CCPV valuation reports made by its execution agents.

ASIC’s response

While there is no effect on the introduction of the additional CCPV allowable value into the 2024 ASIC Rules, we have decided not to proceed with any guidance that links CCPV reporting to the use of CCPV valuations in a reporting entity’s own books and records.

We consider that it is not warranted to impact the ordinary reporting workflows of reporting entities in the circumstances described above or in comparable circumstances.

Other data elements and rules matters

- 27 Respondents also raised in the feedback to CP 375, or in previous representations from industry, other matters in relation to data elements and rules provisions that:
- (a) industry should be provided with an implementation lead time after an item of Derivative Transaction Information has been included in an ISO 20022 message definition; and
 - (b) ‘Event timestamp’ should be applicable to all transaction information reports, as is the requirement in other major jurisdictions.

ASIC’s response

The final amendment instrument responds to industry’s feedback and previous representations by:

- inserting in Rule 2.2.1(4) that an item of Derivative Transaction Information is not required to be reported until

seven months after the date of an approved change to the ISO base message; and

- amending 'Event timestamp' to make it applicable to all transaction information reports.

The final amendment instrument also addresses other errors or deficiencies by:

- amending 'Execution timestamp' to narrow its applicability to the same types of transaction information reports, as is the requirement in other major jurisdictions;
- amending 'Notional amount schedule end date—Leg 1' and 'Notional amount schedule end date—Leg 2' to adopt the 'is back-to-back with' text used in other major jurisdictions and as set out in the [international guidance for critical data elements](#) (PDF 1.57 MB); and
- amending 'Initial margin posted by the Reporting Entity (pre-haircut)', 'Initial margin collected by the Reporting Entity (pre-haircut)', 'Variation margin posted by the Reporting Entity (pre-haircut)' and 'Variation margin collected by the Reporting Entity (pre-haircut)' so that a single amount of margin that does not distinguish between margin that is initial margin and margin that is variation margin is, along with its collateral portfolio code, consistently reported as variation margin.

Appendix: List of non-confidential respondents

- Financial Services Council
- International Swaps and Derivatives Association, Australian Financial Markets Association and Global Financial Markets Association (joint submission)
- Japanese Bankers Association
- DTCC Data Repository (Singapore) Pte Ltd