

Attachment 1 to CP 375: Draft amendments to 2024 Reporting Rules and 2015 Clearing Rules



ASIC
Australian Securities &
Investments Commission

Draft amendments to the 2024 Reporting Rules and 2015 Clearing Rules

1. Proposed amendments to exclude exchange-traded derivatives from the 2024 Reporting Rules

Rule 1.2.3 Definitions

Omit from Rule 1.2.3:

Part 7.2A Market means a financial market to which an instrument made under subsection 798G(1) of the Act applies.

Note: Instruments made under subsection 798G(1) of the Act are market integrity rules made by ASIC. Market integrity rules may be accessed at www.legislation.gov.au.

Regulated Foreign Market has the meaning given by Rule 1.2.4.

Rule 1.2.4 OTC Derivatives

Replace subrule 1.2.4(2) with:

- (2) In these Rules a Derivative is not an **OTC Derivative** if:
- (a) the entry into of the arrangement that is the Derivative:
 - (i) takes place on an authorised financial market; and
 - (ii) ASIC has made a determination under subrule (3) that specifies the Derivative for the purposes of this paragraph; or
 - (b) the entry into of the arrangement that is the Derivative:
 - (i) takes place on an authorised financial market; and
 - (ii) is in accordance with the operating rules of the authorised financial market; and
 - (iii) the terms of the Derivative are documented under or prescribed by the operating rules of the authorised financial market; and
 - (iv) the Derivative is made available in one or more series in accordance with the operating rules of the authorised financial market and the terms of the arrangement constituting the Derivative, including the amount or size of the Derivative specified by the operator of the authorised financial market, are the same as for every other Derivative in the same series, with the exception of the price; and
 - (v) is not specified in a determination made by ASIC under subrule (3) for the purposes of this paragraph.

Repeal subrule 1.2.4(2A):

(2A) For the purposes of subrule (2), **Regulated Foreign Market** means any financial market:

- (a) that is registered by the United States Commodity Futures Trading Commission as a “Designated Contract Market” under section 5h of *Commodity Exchange Act 1936* (US);

- (b) that is a “Regulated market” as defined in Article 4(1)(21) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (in this Rule, the *Directive*); or
- (c) that is a financial market, or is in a class of financial markets, that has been determined by ASIC as a Regulated Foreign Market under subrule (3).

Replace subrule 1.2.4(3) with:

- (3) ASIC may determine from time to time, to specify, for the purposes of paragraph (2)(a) or (b):
 - (a) a Derivative or a class of Derivatives able to be traded on any authorised financial market; or
 - (b) a Derivative or a class of Derivatives able to be traded on a particular authorised financial market or an authorised financial market in a class of authorised financial market.

Note: A determination specifying a Derivative or class of Derivatives for the purposes of paragraph (2)(a) means the Derivative or class of Derivatives (as applicable) is not an OTC Derivative if it is traded on an authorised financial market. A determination specifying a Derivative or class of Derivatives for the purpose of paragraph (2)(b) means that despite meeting the requirements of subparagraphs (2)(b)(i) – (iv), the specified Derivative or class of Derivatives is an OTC Derivative.

Replace Note 2 to subrule 1.2.4(5) with:

Note 2: Legislative instruments made under this rule are available on the Federal Register of Legislation. The register may be accessed at www.legislation.gov.au.

2. Proposed amendments to exclude exchange-traded derivatives in the 2015 Clearing Rules

Rule 1.2.1 Definitions

Omit from Rule 1.2.1:

Exempt Financial Market: a financial market is an Exempt Financial Market if:

- (a) the financial market is a Relevant Financial Market as defined in subsection 5(4) of the ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 (**Derivative Transaction Reporting Exemption Instrument**); and
- (b) the Derivative Transaction Reporting Exemption Instrument exempts Reporting Entities from compliance with Rule 2.2.1 of the Reporting Rules in relation to Derivatives able to be traded on, and entered into on, the financial market.

Note 1: As at the time of making these Rules, each Relevant Financial Market as defined in subsection 5(4) of the Derivative Transaction Reporting Exemption Instrument will be an Exempt Financial Market until 30 September 2018 (see subsection 5(1) of that instrument).

Note 2: Reporting Entity is defined in the Reporting Rules.

Note 3: A reference in these Rules to a legislative instrument or to a provision of a legislative instrument includes a reference to the instrument or to the provision as amended or as repealed and remade: see section 10 of the *Acts Interpretation Act 1901* and paragraph 13(1)(a) of the *Legislative Instruments Act 2003*.

Part 7.2A Market means a financial market the operator of which is licensed under subsection 795B(1) of the Act, but does not include a financial market operated by an operator specified in regulation 10.15.02 of the Regulations.

Regulated Foreign Market means any financial market:

- (a) that is registered by the Commodity Futures Trading Commission of the United States of America as a “Designated Contract Market” under section 5h of the *Commodity Exchange Act 1936* (US); or
- (b) that is a “Regulated market” as defined in Article 4(1)(21) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; or
- (c) that is a financial market, or is in a class of financial markets, that has been determined by ASIC as a Regulated Foreign Market under subrule 1.2.4(3) of the Reporting Rules.

Insert in Rule 1.2.1:

OTC Derivative has the meaning given by rule 1.2.4 of the Reporting Rules.

Rule 1.2.3 Meaning of Clearing Derivative

Amend subrule 1.2.3(1) by inserting 1.2.3(1)(a) and re-reference the subrules:

- (1) Subject to subrules (6) to (7), a Derivative is a **Clearing Derivative** if the Derivative:
- (a) is an OTC Derivative; and
 - (b) is in a Determined Clearing Class; and
 - (c) is a Basis Swap, Fixed-to-Floating Swap, Forward Rate Agreement or Overnight Index Swap; and
 - (d) meets the IRD Class Specifications.

Repeal subrule 1.2.3(7):

- (7) A Derivative is not a Clearing Derivative if:
- (a) the Derivative is able to be traded (within the meaning of section 761A of the Act) on a Part 7.2A Market, a Regulated Foreign Market or an Exempt Financial Market; and
 - (b) in the case of a Part 7.2A Market, the entry into of the arrangement that is the Derivative:
 - (i) takes place on the Part 7.2A Market in accordance with the operating rules of the Part 7.2A Market; or
 - (ii) is reported to the operator of the Part 7.2A Market in its capacity as operator of the Part 7.2A Market, in accordance with the operating rules of the Part 7.2A Market; and
 - (c) in the case of a Regulated Foreign Market or an Exempt Financial Market, the entry into of the arrangement that is the Derivative takes place on the Regulated Foreign Market or the Exempt Financial Market.

Renumber subrule 1.2.3(8) to 1.2.3(7):

- (7) A Derivative is not a Clearing Derivative if both the following are satisfied:
- (a) the notional principal amount and payments under the Derivative are denominated in Australian dollars;
 - (b) the Derivative is either:
 - (i) an Overnight Index Swap that was entered into before 3 October 2016; or
 - (ii) a Forward Rate Agreement that was entered into before 2 April 2018.

3. Proposed amendments to simplify the scope of foreign entity reporting in the 2024 Reporting Rules

Rule 1.2.3 Definitions

Insert in Rule 1.2.3:

Nexus Derivative means an OTC Derivative to which the Reporting Entity is a counterparty, where:

- (a) one or more of the following functions in relation to the OTC Derivative:
 - (i) determining the price, level, rate or other economic terms (collectively, **Terms**) on which the Reporting Entity is willing to enter into the OTC Derivative, including by determining the proposed Terms or range of proposed Terms which may be communicated to the proposed counterparty or agreeing the final Terms on which the Reporting Entity will enter into the OTC Derivative with the proposed counterparty;
 - (ii) communicating to the proposed counterparty one or more of the Terms on which the Reporting Entity is willing to enter into the OTC Derivative;
 - (iii) offering to enter into the OTC Derivative with the proposed counterparty or inviting the proposed counterparty to offer to enter into the OTC Derivative with the Reporting Entity;
 - (iv) agreeing to enter into the OTC Derivative with the proposed counterparty;
 - (v) managing the financial risk arising from the OTC Derivative;is, or in the case of the function referred to in subparagraph (v), will be, performed on behalf of the Reporting Entity by a person who is:
 - (vi) ordinarily resident or employed in this jurisdiction; or
 - (vii) acting as part of a desk, office or branch of:
 - (A) the Reporting Entity; or
 - (B) an entity that is an associate of the Reporting Entity,where that desk, office or branch is located in this jurisdiction; and
- (b) if the OTC Derivative was executed through an authorised financial market, one or more of the functions referred to in subparagraphs (a)(i) - (v) in relation to the OTC Derivative is, or in the case of the function referred to in subparagraph (a)(v), will be, performed on behalf of the Reporting Entity by a person who is:
 - (i) ordinarily resident or employed in this jurisdiction; or
 - (ii) acting as part of a desk, office or branch of:
 - (A) the Reporting Entity; or
 - (B) an entity that is an associate of the Reporting Entity,where that desk, office or branch is located in this jurisdiction.

Rule 1.2.5 Reporting Entities and Reportable Transactions

Amend Table 1 in subrule 1.2.5(4) by inserting Item 2, and renumbering and amending Item 3 as:

Table 1: Reporting Entities and OTC Derivatives

1. Item	2. Reporting Entity	3. OTC Derivatives
1	An Australian Entity that is: (a) an Australian ADI; (b) an AFS Licensee; or (c) a CS Facility Licensee.	All OTC Derivatives to which the Reporting Entity is a counterparty, regardless of where the OTC Derivative is entered into.
2	A foreign entity that is a CS Facility Licensee.	All OTC Derivatives entered into with an Australian Entity.
3	A foreign entity that is required to be registered under Division 2 of Part 5B.2 of the Act and is: (a) a Foreign ADI that has a branch located in this jurisdiction; (b) an AFS Licensee; or (c) an Exempt Foreign Licensee.	All OTC Derivatives: (a) entered into with a Retail Client located in this jurisdiction; (b) booked to the profit or loss account of a branch of the Reporting Entity located in this jurisdiction; or (c) that are a Nexus Derivative.

4. Proposed amendments to remove alternative reporting in the 2024 Reporting Rules

Rule 2.2.1 Transaction Reporting Requirements

Re-reference the subrules in subrule 2.2.1(1) to:

Core Transaction Reporting Requirements

(1) Subject to subrules (2) to (3), Rule 2.2.8 and Part 2.4, a Reporting Entity must report, for each of its Reportable Transactions, the Derivative Transaction Information set out in Part S1.3 of Schedule 1 to a Licensed Repository, or, if there is no Licensed Repository, to a Prescribed Repository and must report the information in accordance with the requirements of this Part.

Repeal subrule 2.2.1(3):

Exception for foreign entities

(3) A Reporting Entity other than an Australian Entity or an RE or Trustee acting in its capacity as RE or Trustee of an Australian Entity, is not required to comply with the requirements of subrule (1) and this Part that would otherwise apply to the Reporting Entity in relation to a Reportable Transaction if, at the time the Reporting Entity is required to comply with the requirements:

- (a) the Reporting Entity is subject to reporting requirements (*Alternative Reporting Requirements*) in one or more foreign jurisdictions (in this Rule, each, a *Foreign Jurisdiction*) that are substantially equivalent to the Reporting Requirements under these Rules; and
- (b) either:
 - (i) the Reporting Entity or another entity has:
 - (A) reported information about the Reportable Transaction to a Prescribed Repository, in compliance with the Alternative Reporting Requirements in at least one Foreign Jurisdiction; and
 - (B) designated the information reported under paragraph (a) as information that has been reported under these Rules; or
 - (ii) the Reporting Entity is exempt from the requirement in all of the Foreign Jurisdictions to report information about the Reportable Transaction, or there is no requirement in any of the Foreign Jurisdictions to report information about the Reportable Transaction.

Renumber subrule 2.2.1(4) to subrule 2.2.1(3):

Exception for incomplete ISO 20022 message definition

(3) A Reporting Entity is not required to comply with the requirements of subrule (1) and this Part that would otherwise apply to the Reporting Entity in relation to one or more items of Derivative Transaction Information set out in Part S1.3 of Schedule 1 about a Reportable Transaction to the extent that, at the time the Reporting Entity is required to comply with the requirements, the ISO 20022 message definition used in accordance with subrule 2.2.4(2) does not include those items of Derivative Transaction Information.

Rule 2.2.4 Reporting Requirement—Format

Re-reference the subrule in subrule 2.2.4(2) to:

- (2) A Reporting Entity is required to report the information referred to in subrule (1):
- (a) in a machine-readable form;
 - (b) subject to subrule 2.2.1(3), in accordance with an ISO 20022 message definition whose message elements include the Derivative Transaction Information set out in Part S1.3; and
 - (c) using the XML tags specified in the ISO 20022 message definition utilised by the Reporting Entity.

Rule 2.2.9 Reporting Requirement—Unique transaction identifier

Omit the Note to subrule 2.2.9(1):

Note: This Rule does not apply to a report made under subrule 2.2.1(3) to a Prescribed Repository or where the Reporting Entity does not report the Reportable Transaction in accordance with subparagraph 2.2.1(3)(b)(ii).

5. Proposed amendments on other matters raised by industry in the 2024 Reporting Rules

FX securities conversion transactions

Amend subrule 1.2.4(6) to:

- (6) In these Rules a Derivative is not an OTC Derivative if:
 - (a) it is a foreign exchange contract between counterparties that the Reporting Entity reasonably believes is solely to facilitate the settlement of a transaction between the counterparties, or by one of the counterparties, for the purchase and sale of a foreign currency denominated security, or a portfolio of foreign currency denominated securities; and
 - (b) under which consideration is provided to settle the transaction not more than 7 Business Days after the day on which the transaction is entered into.

Adding 'PEXH' as an optional allowable value

Amend Item 75 in Table S1.1(1): Transaction information in S1.3.1 Derivative Transaction Information to:

1. Item	2. Label	3. Derivative Transaction Information	4. Format	5. Allowable Values
75	Other payment type	<p>An indicator of whether the type of payment(s) reported as Other payment amount (item 74 above) is:</p> <p>(a) an upfront payment that is not a payment of an option premium, notional amount or standard fees, taxes or commissions;</p> <p>(b) a payment made upon a partial or full termination of an OTC Derivative that is not a payment of an option premium, notional amount or standard fees, taxes or commissions; or</p> <p>(c) a payment by exchange of a notional amount and the UPI reported for Unique product identifier (item 2 above) is a UPI for a cross-currency swap—an indicator may be, but is not required to be, reported for this item.</p>	As specified in the applicable paragraph of column 5 of this item, repeatable for each Other payment amount.	<p>(a) UFRO—if the payment is an upfront payment;</p> <p>(b) UWIN—if the payment is made upon a partial or full termination of an OTC Derivative; or</p> <p>(c) PEXH—if the payment is an exchange of a notional amount.</p>

Adding ‘CCPV’ as an allowable value

Amend Item 9 in Table S1.1(2): Valuation information in S1.3.1 Derivative Transaction Information to:

1. Item	2. Label	3. Derivative Transaction Information	4. Format	5. Allowable Values
9	Valuation method	An indicator of the source and method used to determine the amount reported as Valuation amount (item 7 above).	As specified in the applicable paragraph of column 5 of this item.	<ul style="list-style-type: none"> (a) MTMA—if the Valuation amount (item 7 above) was determined using a mark-to-market method; (b) MTMO—if the Valuation amount (item 7 above) was determined using a mark-to-model method; or (c) CCPV—if the Valuation amount (item 7 above) was determined by the Central counterparty reported for item 23 in Table S1.1(1) above.

6. Proposed minor changes to references to the Corporations Act in the 2015 Clearing Rules, and other minor amendments

Amend in Rule 1.2.1 to:

Derivative Transaction has the meaning given by section 9 of the Act.

Licensed CS Facility has the meaning given by section 9 of the Act.

Prescribed CS Facility has the meaning given by section 9 of the Act.

Omit the Note to the definition of Prescribed CS Facility in Rule 1.2.1:

Note : See regulation 7.5A..63 of the Regulations.

Amend the Note to the definition of Determined Clearing Class in Rule 1.2.1 to:

Note : See section 7 of *Corporations (Derivatives) Determination 2023*.