



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 375

Proposed changes to the ASIC Derivative Transaction Rules (Reporting): Third consultation

February 2024

About this paper

This consultation paper proposes further amendments to the *ASIC Derivative Transaction Rules (Reporting) 2024* in relation to outstanding matters from our prior consultations released in November 2020 and May 2022.

It sets out our proposals on simplifying the exclusion of exchange-traded derivatives and the scope of foreign entity reporting, and the removal of the alternative reporting provisions.

It also addresses certain additional data elements and other matters that have been raised by industry, and consequential changes to the *ASIC Derivative Transaction Rules (Clearing) 2015*.

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 paper was issued on 15 February 2024 and is based on the legislation as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on over-the-counter (OTC) derivative transaction reporting requirements. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section F, 'Regulatory and financial impact'.

Making a submission

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

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

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

Comments should be sent by 28 March 2024 to:

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What will happen next?

Stage 1	15 February 2024	ASIC consultation paper released
Stage 2	28 March 2024	Comments due on the consultation paper
Stage 3	Q3 2024	Subject to the Minister's consent, rules amendments made

A Background to the proposals

Key points

Following two rounds of public consultation in November 2020 and May 2022, the [ASIC Derivative Transaction Rules \(Reporting\) 2024](#) (2024 ASIC Rules) were made on 19 December 2022 and will commence on 21 October 2024.

The 2024 ASIC Rules prioritise implementing the international harmonised standards for entity, product and transaction identifiers and ISO 20022 XML as the technical standard for reporting, as well as more closely aligning the reportable data elements with those of other major jurisdictions.

This third consultation addresses other issues that are outstanding matters from our previous consultations. It sets out our proposals on simplifying the exclusion of exchange-traded derivatives and the scope of foreign entity reporting, and the removal of the alternative reporting provisions.

It also addresses certain additional data elements and other matters that have been raised by industry, and consequential changes to the [ASIC Derivative Transaction Rules \(Clearing\) 2015](#).

What we are doing now

- 1 In November 2020, we released Consultation Paper 334 *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation* ([CP 334](#)) in which we made a number of specific and in-principle proposals for updates to the then in-force [ASIC Derivative Transaction Rules \(Reporting\) 2013](#) (2013 ASIC Rules), including to harmonise to various international standards, remove outdated transitional provisions, and consolidate exemptions within the rules.
- 2 In May 2022, we released Consultation Paper 361 *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation* ([CP 361](#)) in which we proposed specific changes to the then in-force 2013 ASIC Rules, taking into account the feedback to CP 334. Consequently, the 2024 ASIC Rules were made on 19 December 2022 and will commence on 21 October 2024.

Note 1: In response to industry feedback to [CP 361](#), the final changes to the then in-force 2013 ASIC Rules were deferred to commence on 21 October 2024, after the 2013 ASIC Rules were scheduled to sunset. However, in order to maintain continuity of derivative transaction reporting rules, effective on 20 December 2022, the 2013 ASIC Rules were repealed and replaced in substantially the same form by the [ASIC Derivative Transaction Rules \(Reporting\) 2022](#) (2022 ASIC Rules). The 2022 ASIC Rules are currently in force but will be repealed and replaced by the 2024 ASIC Rules which will commence on 21 October 2024.

Note 2: This consultation paper is only making proposals about changes to the 2024 ASIC Rules. In this consultation paper, where we refer to ‘the ASIC Rules’ in the context of a reference to [CP 334](#) or [CP 361](#), we are referring to the 2013 ASIC Rules in force at the time of release of those consultation papers. Where we refer to ‘the ASIC Rules’ in the context of the current in-force rules, we are referring to the 2022 ASIC Rules.

3 In November 2023, we released Consultation Paper 361a *ASIC Derivative Transaction Rules (Reporting) 2024: Follow-on consultation on changes to data elements and other minor amendments (CP 361a)* in which we proposed a number of technical changes to the data element requirements of the 2024 ASIC Rules to reinstate data elements, add new data elements, correct errors and omissions and take into account further developments in the international standards and systems since the release of the previous consultation papers. The consultation period closed on 15 December 2023 and stakeholder feedback is currently being evaluated.

4 In [CP 334](#), we introduced and discussed certain matters of concern with the operation of the ASIC Rules in relation to:

- (a) the means by which exchange-traded derivatives are excluded from the OTC derivatives scope of the ASIC Rules;
- (b) the scope of coverage of foreign entities trading with Australian wholesale clients; and
- (c) the provisions for alternative reporting under the ASIC Rules.

Note: The rules about these matters are currently unchanged in the 2024 ASIC Rules.

5 In [CP 361](#), we said that we had not completed our review of these matters raised in [CP 334](#) and that they would be deferred to a third round of consultation.

6 We are now making proposals in relation to these outstanding matters which:

- (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) reflect the overwhelming mainstream interpretation by foreign ASIC reporting entities of an in-scope reportable transaction as a ‘nexus derivative’ by adding a form of its definition under the [ASIC Derivative Transaction Rules \(Nexus Derivatives\) Class Exemption 2015](#) (nexus exemption) to the 2024 ASIC Rules; and
- (c) address our concerns with the operation of alternative reporting by removing the provision from the 2024 ASIC Rules and de-prescribing the current prescribed repositories.

- 7 We propose, subject to this consultation and the Minister’s consent under s901K of the *Corporations Act 2001* (Corporations Act), to amend the 2024 ASIC Rules:
- (a) with effect from the 21 October 2024 commencement of the 2024 ASIC Rules, in relation to excluding exchange-traded derivatives; and
 - (b) with effect from 1 April 2025, in relation to the scope of foreign entity reporting and the removal of the alternative reporting provisions.
- 8 We also propose to de-prescribe the current prescribed repositories with effect from 1 April 2025.
- 9 Finally, we propose:
- (a) in response to requests from industry, a small number of changes that clarify the exclusion of FX securities conversion transactions and add additional allowable values that may be reported for some data elements; and
 - (b) minor consequential changes to the [*ASIC Derivative Transaction Rules \(Clearing\) 2015*](#) (Clearing Rules) to reflect the proposed amendments to the 2024 ASIC Rules and the effect of [*Treasury Laws Amendment \(2023 Law Improvement Package No. 1\) Act 2023*](#) (Law Improvement Package No. 1) that changed the location of some definitions in the Corporations Act.

B Excluding exchange-traded derivatives

Key points

We propose to 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.

We also propose to simplify the Clearing Rules by re-defining a clearing derivative as certain kinds of OTC derivatives defined under the 2024 ASIC Rules (which already exclude exchange-traded derivatives).

Finally, we propose to amend certain definitions of terms in the Clearing Rules that refer to terms in the Corporations Act whose location has been changed by the Law Improvement Package No. 1, and update two other references to other legislative instruments.

Proposal

- B1** We propose to amend the 2024 ASIC Rules (see Attachment 1) to:
- (a) substitute Rule 1.2.4(2) with a generic definition of an exchange-traded derivative which is based on paragraph 5(1) of [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#);
 - (b) repeal Rule 1.2.4(2A) which defines a Regulated Foreign Market;
 - (c) amend the ASIC determination power of Rule 1.2.4(3) to be a power to specify certain derivatives for the purposes of Rule 1.2.4(2)—with the effect that they are, or are not, exchange-traded derivatives;
 - (d) omit from Rule 1.2.3 the definitions of the terms Part 7.2A Market and Regulated Foreign Market, which are no longer required;
 - (e) withdraw [ASIC Regulated Foreign Markets Determination 2023/346](#) with effect from 21 October 2024; and
 - (f) repeal paragraph 5 of [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#) with effect from 21 October 2024.

Your feedback

B1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

- B2** We propose to amend the Clearing Rules (see Attachment 1) to:
- (a) insert a new subparagraph in Rule 1.2.3(1) so that a clearing derivative must be an 'OTC Derivative';

- (b) insert a new definition in Rule 1.2.1 that an ‘OTC Derivative has the meaning given by Rule 1.2.4 of the Reporting Rules’;
- (c) omit Rule 1.2.3(7) and consequently renumber the subrules;
- (d) omit from Rule 1.2.1 the definitions of the terms Part 7.2A Market, Regulated Foreign Market and Exempt Financial Market, which are no longer required;
- (e) amend the definitions of the terms Derivative Transaction, Licensed CS Facility and Prescribed CS Facility to refer to s9 of the Corporations Act; and
- (f) update the reference in the note to the definition of Determined Clearing Class to be the Minister’s 2023 determination.

Your feedback

B2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

Rationale for the 2024 ASIC Rules proposals

Prior consultation considerations

- 10 In [CP 334](#), we outlined the nature of our proposals to exclude from the meaning of an OTC derivative:
- (a) transactions for spot settlement;
 - (b) FX contracts for foreign currency securities settlement purposes; and
 - (c) exchange-traded derivatives.
- 11 Following specific proposals in [CP 361](#) and positive feedback from stakeholders, we incorporated into the 2024 ASIC Rules exclusions from the meaning of an OTC derivative for:
- (a) transactions for spot settlement (see Rule 1.2.4(7)); and
 - (b) FX contracts for foreign currency securities settlement purposes (see Rule 1.2.4(6)).
- 12 We did not make a specific proposal in [CP 361](#) about excluding exchange-traded derivatives, but noted it as an outstanding matter for this third consultation.
- 13 In paragraphs 370–375 of [CP 334](#), we set out the following shortcomings of the current manner of excluding exchange-traded derivatives:
- (a) the exclusions are provided for in multiple instruments:
 - (i) in the ASIC Rules, for particular classes of financial markets;

- (ii) in [*ASIC Regulated Foreign Markets Determination \[OTC DET 13/1145\]*](#) (the then prevailing determination), for a large listing of individual financial markets and particular classes of financial markets; and
 - (iii) in [*ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844*](#) (the exemption), for derivatives with characteristics and a method of dealing that meets a generic definition of an exchange-traded derivative and whose financial market is notified to ASIC;
- (b) the approach has not fully met the need to inform reporting entities, in a fully up-to-date and consolidated concise manner, of the derivative transactions that are OTC derivatives, particularly where the names of financial markets have changed, financial markets have ceased to operate and the listings are not consolidated within a single instrument—our updates to listings have unavoidably lagged real-time changes, creating temporary uncertainties about the scope of the rules;
- (c) for example, in September 2020, we updated the listings of the then 113 financial markets in the determination and the exemption and:
- (i) removed 53 financial markets already covered by a class of financial markets definition;
 - (ii) removed 24 financial markets that are not, or are no longer, financial markets; and
 - (iii) consolidated 24 financial markets from the exemption into the determination.

14 These multiple instruments have arisen as a way to provide a closer to real-time response to changes in the landscape for exchange-traded derivatives markets.

15 However, we also said that, in our view, a better solution to identifying and maintaining lists of individual financial markets whose derivative contracts are not OTC derivatives is to rely on a generic definition of an exchange-traded derivative in the ASIC Rules.

16 We said that we considered that such ASIC Rules text would define a generic exchange-traded derivative in the same manner as is currently defined in the exemption, but would also consider whether the design of this exclusion should include:

- (a) ‘avoidance of doubt’ measures that retain certain classes of financial markets, as is currently the case in the ASIC Rules and the determination;

- (b) a requirement for a reporting entity to notify ASIC of those financial markets whose derivatives the reporting entity considers meet the generic definition of exchange-trade derivatives, as is currently the case in the exemption; and
- (c) a form of ‘disallowance’ determination that empowers ASIC to determine that some or all of the derivatives of a financial market are not exchange-traded derivatives.

Feedback to prior consultations

- 17 Stakeholder feedback to [CP 334](#) was broadly supportive of our in-principle proposal, noting:
- (a) the definition of an exchange-traded derivative should provide enough clarity to reporting entities to identify which exchange-traded derivatives are to be excluded from reporting;
 - (b) a ‘disallowance’ determination can provide a clarifying fallback for any definitional uncertainty;
 - (c) no strong views on ‘avoidance of doubt’ measures, except that they should be secondary to the primary classification of exchange-traded derivatives via the generic definition; and
 - (d) a notification requirement was opposed as carrying over some of the shortcomings of the existing approach and would require unnecessary and burdensome monitoring.
- 18 We have taken this feedback into consideration and are proposing to amend Rules 1.2.4(2) and (3) of the 2024 ASIC Rules. The amendments proposed:
- (a) are based on the generic definition in the exemption, but with additional emphasis on the key term of an operator-specified contract size as being a ‘same’ term;
 - (b) include a provision to specify one or more derivatives as not being exchange-traded derivatives as a form of disallowance;
 - (c) do not include any ‘avoidance of doubt’ provisions covering particular classes of derivatives as exchange-traded derivatives, but include a provision to specify one or more derivatives as being exchange-traded derivatives which can be used as a type of ‘avoidance of doubt’ measure; and
 - (d) do not impose any notification requirements on reporting entities.

High standardisation of exchange-traded derivatives

- 19 The objective of Rules 1.2.4(2) and (3)—in keeping with a longstanding objective since the inception of the derivative transaction reporting rules—is to exclude from reporting derivatives that are futures and exchange-traded

options. These derivatives are typically highly standardised in series with the same terms of underliers, expiration dates and, importantly, contract or ‘lot’ sizes and/or ‘tick’ values. New series are regularly but, typically, not frequently created—other than so-called same-day, next-day or overnight derivatives.

- 20 These derivatives are typically traded on ‘public’ exchanges that are open to retail client participation and which are designated in jurisdictions as, for example, Tier 1 Part 7.2A financial markets (Australia), Designated Contract Markets (United States) and Regulated markets (European Union).
- 21 Relying on the jurisdictional designations of financial markets under the ASIC Rules and the determination to classify derivatives traded on certain financial markets as non-reportable exchange-traded derivatives has been the approach used—with the challenges of maintaining up-to-date lists of such financial markets as noted in paragraph 13.
- 22 In common with other jurisdictions, this approach therefore includes as OTC derivatives those derivatives that are traded only among institutions or corporations on financial markets that are not public exchanges—such as, for example, Tier 2 Part 7.2A financial markets in Australia, Swap Execution Facilities in the United States and Multilateral Trading Facilities in the European Union. In this section, we refer to such financial markets as ‘OTC trading platforms’.

Limited standardisation of OTC derivatives

- 23 We observe that there can be a level of standardisation of derivatives traded on OTC trading platforms, but have not observed any standardisation that is of such a high level as to fall within the meaning of proposed amended Rule 1.2.4(2).
- 24 We observe that operators of OTC trading platforms identify, at least commonly traded, derivatives using codes, abbreviations or short names that may be thought of as identifying a derivative as being of a ‘series’.

Not standardised from day to day

- 25 However, where the derivative, such as an interest rate swap, is ‘listed’ afresh on a new trading day as a ‘spot start, on-the-run’ derivative the terms of effective date and expiration date are not the same terms from day to day. Any trades in a derivative on a day would not be on the same terms (other than price) as trades in a derivative on any other day and the ‘terms of the arrangement constituting the Derivative’ would not be the same from day to day. This derivative would not fall within the meaning of proposed Rule 1.2.4(2)(b)(iv) as far as being in the same series from day to day.

- 26 In another case where the derivative, such as a credit default swap over a credit index, is listed from day to day for the same expiration date but any trades would have a different effective date from day to day, we think that these derivatives are not of the same series from day to day.
- 27 Derivatives that are forwards or options that are traded from day to day with ‘on-the-run’ expiration dates would also not be of the same series from day to day, as would options whose strike price is set relative to the spot price of the underlier at the time of entering into the trade.

Not standardised in amount or size

- 28 While the observations in paragraphs 25–27 identify circumstances that are likely to apply to large numbers of derivatives that are traded on OTC trading platforms, there are other circumstances where proposed Rule 1.2.4(2) may be thought to apply—for example:
- (a) while not in a series on the same terms from day to day, derivatives may be in a series on the same terms within each day;
 - (b) forwards that are traded for the same expiration date may not have an effective date that differentiates any series and they may be derivatives of a series on the same terms until the expiration date;
 - (c) similarly, options with a stated strike price that are traded for the same expiration date may be derivatives of a series on the same terms until the expiration date; and
 - (d) swaps that are traded for the same expiration date and the same future-dated effective date may be derivatives of a series on the same terms (noting that such products are sometimes referred to as ‘futures look-alikes’).
- 29 Other definitional conditions could be introduced to further narrow the scope of proposed Rule 1.2.4(2). However, we have not identified any additional conditions that would appear to clearly assist in further distinguishing OTC derivatives from exchange-traded derivatives. For example, while the frequency with which series are created appears to be a consistent and prominent distinguishing feature, there are the cases of exchange-traded same-day, next-day or overnight derivatives which share a daily creation frequency with derivatives traded on OTC trading platforms.
- 30 However, we do observe that there is a distinguishing feature in the way in which the amount or size of a derivative is determined.
- 31 In the case of an exchange-traded derivative, the operator of the financial market, without exception in our observation, specifies the amount or size of the derivative—its ‘contract’ or ‘lot’ size. This is a term that is the same for each derivative in a series.

- 32 In the case of derivatives traded on OTC trading platforms, we observe that the operators do not specify amounts or sizes of the derivatives traded and the amount or size of the derivative is as agreed between the counterparties.
- 33 Operators of OTC trading platforms may specify minimum trade sizes or there may be conventions observed by platform participants about standard sizes, but in the absence of a singular size being specified by the operator, we consider that the amount or size of a derivative is a term that is not the same term ‘of the arrangement constituting the Derivative’ ‘as for every other Derivative’.
- 34 Where this is the case for the examples in paragraph 28, and equally for the examples in paragraphs 25–27, the conditions of proposed Rule 1.2.4(2) would not be met and the derivatives would be reportable as OTC derivatives.
- 35 In proposed Rule 1.2.4(2)(b)(iv), the phrase ‘including the amount or size of the Derivative specified by the operator of the financial market’ is inserted to the generic text of the exemption, not as a new condition, but rather to highlight this as a distinguishing term in an exchange-traded derivative series.

Backstop determinations for unforeseen circumstances

- 36 We acknowledge that it is possible that this proposed generic definition may not work in all circumstances and may result in unintended consequences that a derivative is, or is not, a non-reportable exchange-traded derivative, where the contrary is the more reasonable position.
- 37 This may arise because, for example:
- (a) the range of circumstances for which the generic definition is designed to apply does not take into account all of the existing permutations of the terms of exchange-traded derivatives or derivatives traded on an OTC trading platform;
 - (b) the operators of existing financial markets for exchange-traded derivatives loosen the ‘sameness’ of their terms towards terms that are more akin to OTC derivative terms; or
 - (c) the operators of OTC trading platforms tighten the ‘sameness’ of their terms towards terms that are more akin to exchange-traded derivatives.
- 38 This risk of unintended misclassification is mitigated by proposed Rule 1.2.4(3) which allows ASIC to make a determination that a specified derivative is, or is not, an OTC derivative for reporting purposes.
- 39 A determination specifying a derivative or class of derivatives for the purposes of Rule 1.2.4 (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 purposes of Rule 1.2.4(2)(b) means that despite meeting the requirements

of Rule 1.2.4(2)(b)(i)–(iv), the specified derivative or class of derivatives is an OTC derivative.

- 40 As with all aspects of the 2024 ASIC Rules, it is the responsibility of reporting entities to determine what they need to report to meet their obligations under the 2024 ASIC Rules.
- 41 We expect that reporting entities will act reasonably in interpreting this principles-based proposed Rule 1.2.4(2)—that is, that only derivatives that, in their opinion, are commonly accepted as exchange-traded derivatives are treated as non-reportable derivatives in line with the intent of proposed Rule 1.2.4(2).
- 42 We expect that reporting entities will draw our attention to their understandings of any deficiencies or ambiguities in the application of proposed Rule 1.2.4(2) so that we can review this against other reporting entities’ practices and, if needed, regularise an included or excluded treatment through a determination process under proposed amended Rule 1.2.4(3).

Rationale for the Clearing Rules proposals

- 43 The Clearing Rules also exclude exchange-traded derivatives, and currently do so in a similar manner to the current 2024 ASIC Rules by:
- (a) at Rule 1.2.3(7), excluding from the meaning of a clearing derivative derivatives that are exchange-traded derivatives;
 - (b) using substantially the same form of text to define an exchange-traded derivative as is used in the current 2024 ASIC Rules.
- 44 However, clearing derivatives are certain types of interest rate derivatives, which are a subset of derivatives that are OTC derivatives under the 2024 ASIC Rules—that is, there are no clearing derivatives that are not also OTC derivatives under the 2024 ASIC Rules.
- 45 Therefore, we propose to simplify the Clearing Rules by inserting a new paragraph in Rule 1.2.3(1) so that the first condition that a derivative must meet in order to be a clearing derivative is that it ‘is an OTC Derivative’—with a new definition in Rule 1.2.1 that an ‘OTC Derivative has the meaning given by rule 1.2.4 of the Reporting Rules’.
- 46 As Rule 1.2.4 of the Reporting Rules excludes an exchange-traded derivative from the meaning of an OTC derivative, it is not necessary for the Clearing Rules to also provide for the exclusion of exchange-traded derivatives, and we propose to amend the Clearing Rules to:
- (a) remove Rule 1.2.3(7) and consequently renumber the subrules and subrule cross-references; and

- (b) remove the definitions in Rule 1.2.1 of Exempt Financial Market, Part 7.2A Market and Regulated Foreign Market that are consequently no longer required.

- 47 As a separate matter, the Law Improvement Package No. 1 changed the location of some definitions in the Corporations Act. References to those definitions in the Clearing Rules need to be updated. Consequently we propose to amend Rule 1.2.1 of the Clearing Rules to:
 - (a) amend the meaning of the term Prescribed CS Facility to be ‘the meaning given by section 9 of the Act; and
 - (b) amend the reference to ‘section 761A of the Act’ to ‘section 9 of the Act’ for the terms Derivative Transaction and Licensed CS Facility.

- 48 Finally, we propose to amend Rule 1.2.1 of the Clearing Rules to amend the reference in the note to Determined Clearing Class to ‘section 5 of the *Corporations (Derivatives) Determination 2012*’ to ‘section 7 of the *Corporations (Derivatives) Determination 2023*’ to reflect the update to this instrument.

C Simplifying the scope of foreign entity reporting

Key points

The current approach to defining the scope of foreign entity reporting has led to inconsistencies and narrower reporting. It does not reflect the overwhelming mainstream use of the alternative 'nexus derivative' definition.

We propose to amend the 2024 ASIC rules by substituting a form of the definition of nexus derivative used in the [ASIC Derivative Transaction Rules \(Nexus Derivatives\) Class Exemption 2015](#) (nexus exemption) for the 'entered into in this jurisdiction' meaning of an in-scope reportable transaction.

We propose that the amendments would take effect from 1 April 2025.

Proposal

- c1 We propose to amend the 2024 ASIC Rules (see Attachment 1) from 1 April 2025 to:
- (a) in Rule 1.2.3, insert a definition of 'Nexus Derivative' adapted from its meaning in paragraph 9(a) of the nexus exemption;
 - (b) amend column 3 of (relabelled) item 3 of Table 1 of Rule 1.2.5 applicable to foreign entities to substitute the reference to OTC derivatives that are 'entered into by the Reporting Entity in this jurisdiction' with a reference to OTC derivatives 'that are a Nexus Derivative'; and
 - (c) consequentially, insert item 2 in Table 1 of Rule 1.2.5 applicable to foreign entities that are clearing and settlement (CS) facility licensees to retain the reference to OTC derivatives that are entered into but simplified to a reference to OTC derivatives 'entered into with an Australian Entity'.

Your feedback

C1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

Rationale

49

In [CP 334](#), we outlined the nature of our proposals to:

- (a) ensure that transactions by foreign entities with Australian retail clients are reportable transactions; and
- (b) clarify the scope of reporting for foreign subsidiaries of Australian entities.

- 50 Following specific proposals in [CP 361](#), the amended Table 1 of Rule 1.2.5 of the 2024 ASIC Rules, made on 19 December 2022:
- (a) includes that ‘All OTC Derivatives: (a) entered into with a Retail Client located in this jurisdiction’ are reportable transactions for reporting entities that are foreign entities; and
 - (b) excludes any reference to foreign subsidiaries of Australian entities, who are therefore not reporting entities.
- 51 In [CP 334](#), we also noted our uncertainties about apparent inconsistencies in reporting by foreign financial services providers trading with Australian wholesale clients who are end users and whether there were circumstances where:
- (a) the foreign financial services provider considers it is not a reporting entity under the ASIC Rules—for example, it is not an exempt foreign licensee;
 - (b) the foreign financial services provider considers it is a reporting entity under the ASIC Rules but the transactions are not reportable transactions or are not nexus transactions under the ASIC Rules; or
 - (c) the foreign financial services provider considers it is a reporting entity under the ASIC Rules and the transactions are reportable transactions under the ASIC Rules, but the foreign financial services provider is complying with the ASIC Rules by reporting to a trade repository under the alternative reporting provisions of the ASIC Rules.
- 52 We also said that, given the use of alternative reporting may be a significant factor in explaining any apparent non-reporting by foreign entities of transactions with Australian wholesale clients, we had not yet determined that there was a reporting problem that needed to be addressed. Our approach to reviewing alternative reporting would inform our further analysis and we did not make any specific proposal on this matter in [CP 334](#).
- 53 Absent any specific proposal, stakeholder feedback to CP 334 was limited, but concern was expressed about our discussion of reviewing the apparent non-reporting by foreign entities of transactions with Australian wholesale clients if that led to reporting requirements that were inconsistent with the treatment of ‘nexus’ transactions under the current ASIC Rules.
- 54 We commenced a review of these situations but had not concluded our review when [CP 361](#) was released, so it was noted as an outstanding matter for this third consultation.
- 55 We have now concluded our review, which included engagement with a number of foreign financial services providers whose non-reporting gave rise to our view of apparent inconsistencies.

- 56 Our review identified that:
- (a) some reporting entities determined their in-scope reportable transactions as those ‘booked to the profit and loss account of a branch of the Reporting Entity located in this jurisdiction’; and
 - (b) other reporting entities determined their in-scope reportable transactions as those ‘entered into by the Reporting Entity in this jurisdiction’, which can be narrower than the alternative sales, trading and financial risk management locational in-scoping provided for under the nexus exemption.
- 57 Given that nearly 95% of all reports made by foreign entities are made by foreign entities that have opted into the nexus exemption, we consider that the nexus exemption represents the mainstream interpretation by foreign reporting entities of an in-scope reportable transaction.
- 58 As such, we consider that this mainstream interpretation should be added to the 2024 ASIC Rules and consistently apply to all foreign reporting entities, rather than persist as an alternative interpretation in an exemption instrument.
- 59 We propose to amend Table 1 of Rule 1.2.5 for foreign entities to substitute ‘All OTC Derivatives: (c) entered into by the Reporting Entity in this jurisdiction’ with ‘All OTC Derivatives: (c) that are a Nexus Derivative’.
- 60 We propose to add a definition of nexus derivative to Rule 1.2.3, adapting the text of paragraph 9(a) of the nexus exemption to define a nexus derivative as an OTC derivative to which the reporting entity is a counterparty where one or more of:
- (a) determining the terms on which the reporting entity is willing to enter into the OTC derivative;
 - (b) communicating to the proposed counterparty one or more of these terms;
 - (c) offering to enter into, or inviting the proposed counterparty to offer to enter into, the OTC derivative;
 - (d) agreeing to enter into the OTC derivative; or
 - (e) managing the financial risk arising from the OTC derivative,
- are, or will be, performed by a person ordinarily resident or employed in this jurisdiction or acting as part of a desk, office or branch, located in this jurisdiction, of the reporting entity or an associate of the reporting entity.
- 61 The definition also covers OTC derivatives executed through a financial market where one or more of the above functions are, or will be, performed by a person covered by the above locational and organisational conditions.

- 62 Table 1 of Rule 1.2.5 would retain the inclusion of ‘All OTC Derivatives: (b) booked to the profit and loss account of a branch of the Reporting Entity located in this jurisdiction’ as this is the condition that some reporting entities use to determine their in-scope reportable transactions.
- 63 These settings would be in-scope settings that are comparable to the settings in Singapore and Hong Kong where a nexus approach—that is, ‘booked in/traded in’—is also taken to determine in-scope reportable transactions.
- 64 The removal of ‘entered into in this jurisdiction’ would affect the meaning of an in-scope reportable transaction for foreign CS facility licensees.
- 65 Hence, we propose to insert into Table 1 of Rule 1.2.5, a provision that in-scope reportable transactions of a foreign CS facility licensee are ‘All OTC Derivatives entered into with an Australian Entity’. This is a provision that is also aligned with the approach taken in other jurisdictions (e.g. Hong Kong).
- 66 In addition, as s824B(3) of the Corporations Act sets out that the Minister must not grant an Australian CS facility licence to a foreign body corporate unless the applicant is registered under Div 2 of Pt 5B.2, we propose to simplify the relevant reporting entity definition to ‘A foreign entity that is a CS Facility Licensee’.
- 67 We think that these proposals would require about seven reporting entities to commence or widen their reporting of in-scope reportable transactions under the 2024 ASIC Rules. To provide time for this small number of reporting entities to implement systems and process changes, we propose that these amendments to the 2024 ASIC Rules would be effective from 1 April 2025. We think this provides a substantive implementation lead time for reporting entities that are already reporting in other jurisdictions, and coincides with the scheduled 1 April 2025 sunset of the nexus exemption.

D Removing alternative reporting

Key points

Alternative reporting provides a conditional form of substituted compliance for foreign entities to meet their ASIC reporting requirements. Further, the single-sided reporting exemption set out in regs 7.5A.70–7.5A.74 of the Corporations Regulations allows small-scale entities to rely on a reporting exemption where their foreign counterparty undertakes alternative reporting, subject to certain conditions.

The current alternative reporting settings have significant shortcomings for ASIC in terms of incomplete access to all ASIC reportable transactions, complexities in data cleansing and consolidation of disparate datasets, and limitations on data quality controls. They are also substantially inconsistent with the approach of other jurisdictions.

We propose to address our concerns with the operation of alternative reporting by removing the provision from the 2024 ASIC Rules and de-prescribing the current prescribed repositories.

We propose that the amendments would take effect from 1 April 2025.

Proposal

D1 We propose to:

- (a) amend the 2024 ASIC Rules (see Attachment 1) from 1 April 2025 by omitting Rule 2.2.1(3); and
- (b) withdraw [ASIC Prescribed Trade Repositories Determination \[15-0591\]](#) (PDF 32 KB) with effect from 1 April 2025.

Your feedback

D1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

Rationale

68 In [CP 334](#), we outlined our key concerns with the operation of alternative reporting as follows:

- (a) There is no requirement to notify ASIC that a reporting entity is using alternative reporting and, as such, we have no obvious explanation for the absence of direct reporting by a reporting entity.
- (b) The ability to ‘designate’ to a foreign trade repository that a report is also a report under the ASIC Rules is generally not technically supported in the systems of foreign trade repositories.

- (c) Where a licensed repository is also a prescribed repository, the trade repository can be constrained in implementing data element validations and completeness requirements for ASIC data elements that are not present in, or require different value types to, another jurisdiction's data element set given the possibility that a reporting entity is using alternative reporting.
- (d) In order to receive alternative reporting transaction reports, ASIC needs to connect to those prescribed repositories to whom such reports are being made. However, we do not readily know which relevant prescribed repositories we should connect to—our ability to access all ASIC reportable transactions is incomplete and the scale of this incompleteness is uncertain.

69 This impairs the efficiency and effectiveness of our regulatory work. We encounter impediments with the lack of visibility over:

- (a) transactions involving Australian end-users that are not reported to a licensed repository;
- (b) transactions involving ASIC reporting entities relying on the single-sided reporting exemption under regs 7.5A.70–7.5A.74 of the *Corporations Regulations 2001* (Corporations Regulations) that are not otherwise reported to a licensed repository; and
- (c) the manner by and extent to which ASIC reporting entities are meeting their reporting obligations under the ASIC Rules.

70 Overcoming these impediments has required, for example, the collection of information by formal notices under ASIC's information-gathering powers and by other direct inquiries of reporting entities—which are time- and labour-intensive processes to both ASIC and the respondent entities. Supplementary information-gathering processes do not overcome the impediments in any meaningful or sustained way and do not readily support market-wide and trend analysis over time.

71 In [CP 334](#), we said that approaches we can take to address our concerns with alternative reporting include:

- (a) removing the alternative reporting provisions in the ASIC Rules, with or without grandfathering the existing use of alternative reporting;
- (b) retaining the alternative reporting provisions in the ASIC Rules but requiring that reporting entities notify ASIC of the intention to commence alternative reporting but do not commence alternative reporting until ASIC has made arrangements to connect to the relevant trade repository; and
- (c) reducing the diversity of prescribed trade repositories, including ceasing to prescribe licensed trade repositories.

- 72 We received mixed, but limited, feedback in response to our request for information about the scope and practices of reporting entities undertaking alternative reporting in [CP 334](#):
- (a) One submission supported the removal of the alternative reporting provision, noting the operational complexities associated with its implementation, the lack of international adoption by other jurisdictions and the lack of a mechanism, under both current and proposed rules, by which ASIC can or could reliably identify alternative reporting submissions.
 - (b) Other respondents strongly disagreed with the removal of the provision and supported overcoming the shortcomings outlined in CP 334 with provisions aligned with the notification and trade repository connectivity requirements outlined in paragraph 71.
- 73 The breadth of the use of alternative reporting remains uncertain to us—we estimate that, of the approximately 925 reporting counterparties at the time of writing, about 17 large-scale reporting entities use alternative reporting and about 150 small-scale entities rely on the single-sided reporting exemption under regs 7.5A.70–7.5A.74 of the Corporations Regulations where their foreign counterparty is subject to alternative reporting requirements and reports to a prescribed repository.
- 74 In CP 334, we requested that reporting entities that are current users of alternative reporting identify themselves to us and engage in discussion with us about their alternative reporting practices, but only two entities did so.
- 75 Our estimates are therefore based on:
- (a) a small number of reporting entities with whom historic correspondence explains that they are users of alternative reporting;
 - (b) our inquiries and confirmative direct contact with other reporting entities whose reporting practices indicated the possible use of alternative reporting; and
 - (c) a detailed examination of the data from the few foreign prescribed repositories to whom we are connected.
- 76 One aspect revealed in our inquiries is that the complexities for ASIC of establishing and maintaining connections to a repository are rarely supported by the scale of a sole reporting entity’s transactions. We think there should be minimum thresholds of transactional scale intended to be reported in a foreign prescribed repository to warrant establishing and maintaining connections to that repository. A system supporting this approach would need to allow for the complexity of tracking and accumulating multiple notifications of alternative reporting intentions over time until the minimum threshold had been exceeded, warranting a connection to a particular repository. We do not consider that this is an appropriate alternative setting.

- 77 Given the uncertainties and inadequacies of the current settings for alternative reporting and complexities in different settings, we consider that our concerns can only be effectively and efficiently resolved by removing the provision from the 2024 ASIC Rules and by de-prescribing the current prescribed repositories.
- 78 We consider this would impose a modest burden, when considered for the totality of the ASIC reporting regime, taking into account the small number of affected reporting entities and/or the continuing provisions for single-sided reporting. We seek feedback on the likely impacts and costs to stakeholders and provide our estimates of the regulatory compliance burden in Section F.
- 79 In relation to the estimated 17 large-scale reporting entities, the effect of removing the provision from the 2024 ASIC Rules will be to require those reporting entities to commence reporting to a licensed repository. We note that from our inquiries:
- (a) three entities have already switched to direct reporting to a licensed repository;
 - (b) one entity has previously been a direct reporter to a licensed repository and indicated that it accepts that it can return to this reporting configuration; and
 - (c) one entity acknowledges that requiring direct reporting to a licensed repository is no different to the requirements imposed by other jurisdictions in which it has reporting obligations.
- 80 As we noted in [CP 334](#), alternative reporting is a provision in some overseas jurisdictions, but in much narrower and limited circumstances than under the ASIC Rules:
- (a) In the European Union, a form of alternative reporting is only available for non-financial counterparties below the clearing threshold in transactions with foreign reporting non-EU counterparties, who would be financial counterparties if formed in the European Union, and subject to an equivalence decision of the European Commission.

Note: An EU non-financial counterparty is equivalent to an 'end user' in this jurisdiction, who are not ASIC reporting entities anyway.
 - (b) In the United States, under Commodities Futures Trading Commission (CFTC) rules, substituted compliance for the entity-level requirement of swap data repository reporting is not available for transactions involving US persons but is available for transactions between non-US persons.
 - (c) In the comparable regional jurisdictions of Singapore, Hong Kong and Japan, alternative reporting is not available.

81 Therefore, removing the alternative reporting provision from the 2024 ASIC Rules would impose no different obligations on reporting entities from those imposed on them in other jurisdictions in which they have reporting obligations.

82 In relation to the estimated 150 small-scale entities relying on the single-sided reporting exemption where the other counterparty reports to a derivative trade repository:

- (a) reg 7.5A.72(3) of the Corporations Regulations identifies the other counterparty as a reporting counterparty who will report the transaction under the rules—which is generally to a licensed repository, but which may be to a prescribed repository under Rule 2.2.1(3);
- (b) reg 7.5A.72(4) identifies the other counterparty as a foreign entity (who need not be an ASIC reporting entity) who will report the transaction to a prescribed repository; and
- (c) reg 7.5A.72(5) identifies the other counterparty as a foreign entity (who need not be an ASIC reporting entity) who will report the transaction to a licensed repository.

83 Therefore, where the current prescribed repositories are de-prescribed, a small-scale entity can continue to rely on the single-sided exemption where the other entity is either an Australian entity or a foreign entity (that is not necessarily an ASIC reporting entity) who will report to a licensed repository.

84 Where the other counterparty is a foreign entity that is an ASIC reporting entity, the vast majority of single-sided reporting by those foreign entities is currently to a licensed repository, and the alternative reporting provisions are not being used.

85 Where the other counterparty is a foreign entity that is *not* an ASIC reporting entity, there are some instances of single-sided reporting by those foreign entities to a licensed repository, even though they may otherwise be solely reported to a prescribed repository.

86 We understand that this reporting practice is undertaken at the request of, and as a service to, the small-scale entity clients of the foreign entity. This is analogous to the delegated reporting services that Australian entities provide to their foreign fund clients in other jurisdictions, even though those Australian entities do not have reporting obligations in those other jurisdictions.

87 In our reporting data review, the vast majority of prescribed repository reporting with a small-scale entity as a counterparty is by a large international entity that we observe is either:

- (a) a direct reporter to a licensed repository for other counterparties; or
- (b) providing client services internationally and expected to extend those services to include reporting to a licensed repository.

- 88 Therefore, taking into account the multiple circumstances under which a small-scale entity can continue to rely on the single-sided reporting exemption, we consider that the de-prescribing of prescribed repositories would likely result in the vast majority of small-scale entities benefiting from reporting services provided by their counterparties, rather than commencing reporting themselves.

E Other matters raised by industry

Key points

In our stakeholder engagements to support industry's preparations to implement the 2024 ASIC Rules from 21 October 2024, industry has requested that we consider a small number of additional amendments to the 2024 ASIC Rules.

These are matters relating to:

- clarifying the exclusion of FX securities conversion transactions; and
- adding additional allowable values for certain data elements.

Proposal

- E1** We propose to amend the 2024 ASIC Rules (see Attachment 1) from 21 October 2024 to:
- insert in Rule 1.2.4(6)(a) the qualification that a foreign exchange contract that is not an OTC derivative is one that 'the Reporting Entity reasonably believes is' solely to facilitate settlement of a foreign currency securities transaction;
 - add 'PEXH' as an optional allowable value that may be reported for 'Other payment type' (item 75 in Table S1.1(1) Transaction information); and
 - add 'CCPV' as an allowable value that may be reported for 'Valuation method' (item 9 in Table S1.1(2) Valuation information) but provide in guidance that we expect that this would only be reported by reporting entities who use a CCP's valuation in their own books and records (including a CCP itself).

Your feedback

E1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

Rationale

Rule 1.2.4(6)—FX securities conversion transactions

- 89 As noted at paragraphs 10–11, we excluded FX contracts for foreign currency securities settlement purposes (otherwise known as FX securities conversion transactions) from the meaning of an OTC derivative in the 2024 ASIC Rules.

- 90 These transactions have been exempted from reporting under section 13 ‘Exemption 9 (FX Securities Conversion Transactions)’ of [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#) (Exemption 9). A form of this exemption was incorporated into the 2024 ASIC Rules.
- 91 However, industry expressed a view that the nature of the exemption/exclusion changed from ‘not required to report’ under Exemption 9 to an interpretation of ‘must not report’ under the 2024 ASIC Rules.
- 92 Industry noted a practice of ‘if in doubt about exemption eligibility, then report’ under Exemption 9—that is, if the purposes of the FX contract transaction from their counterparty’s perspective was not definitively clear to them, they could take a conservative compliance approach and report the transaction anyway (and not make any further efforts to clarify the counterparty’s purposes).
- 93 However, under the text of Rule 1.2.4(6) of the 2024 ASIC Rules, industry noted that an interpretation could be that a reporting entity must conclusively determine if the purpose test was satisfied or not, meaning that ‘further efforts’ would be necessary.
- 94 We consider that the exclusion under Rule 1.2.4(6) should impose no additional obligations or effort on reporting entities to what has been required under Exemption 9.
- 95 We consider that our proposal to insert a ‘reasonable belief’ qualification into Rule 1.2.4(6) will place the rules requirement on a more equal footing to the predecessor exemption requirements.

‘PEXH’ as an allowed value for ‘Other payment type’

- 96 In paragraphs 568–570 of [CP 361](#), we discussed excluding notional amount exchanges as a type of other payment (represented by the type value ‘PEXH’) as we thought this unnecessarily duplicates information that is reported as other data elements. Consequently, we did not proceed to include ‘PEXH’ as an allowable value for ‘Other payment type’ (item 75 in Table S1.1(1) Transaction information).
- 97 We remain of this view, but industry has represented to us that multi-jurisdictional reporters would benefit from more cohesive ISO 20022 XML message formation processes if they could form an ASIC message in the same way as they form other jurisdictions’ messages where ‘PEXH’ is a required ‘Other payment type’, along with the additional associated ‘Other payment’ data elements.

98 We are prepared to support these perceived efficiencies for some entities, as long as it does not unnecessarily impose burdens on other entities, such as ASIC-only reporting entities or trade repositories.

99 Consequently, we propose to add ‘PEXH’ as an allowable value, but only for the use-case of cross-currency interest rate swaps (which, we understand, is the only internationally accepted use-case) and only as an optional allowable value. This would mean that reporting entities that report cross-currency interest rate swap transactions may, but are not required to, report the ‘PEXH’ allowable value and up to 24 data elements that are associated with the notional amount exchanges of cross-currency interest rate swap transactions.

‘CCPV’ as an allowed value for ‘Valuation method’

100 In paragraph 672 of [CP 361](#), we proposed the allowable values for ‘Valuation method’ as substantively the same as in the CDE Guidance, except that it would not allow for a central counterparty’s valuation (‘CCPV’ in the CDE Guidance). We said that a reporting entity should report its own valuation amount as we think this conveys relevant information about the capability of a reporting entity to perform a core risk management function.

101 None of the feedback submissions to CP 361 specifically addressed this proposal by either supporting or opposing the exclusion of ‘CCPV’.

102 However, industry has subsequently represented to us that the 2024 ASIC Rules should allow for ‘CCPV’ as it is allowed under all other major jurisdictions’ reporting rules.

103 In our reported data as of late December 2023, we observed that about 4% of cleared transactions had been reported with a ‘CCPV’ valuation type. This is by five dealers and 68 funds for transactions cleared with nine CCPs. However, we have limited visibility in our data of both sides of the reporting—that is, as reports by both the CCP entities and their non-CCP counterparties for the same transactions.

104 Where we have visibility of both sides of the reporting, we have observed various cases of:

- (a) valuations that are closely matched; but also
- (b) CCPV valuations that are in a different valuation currency and for a different valuation timestamp to that of the CCP’s reported valuation—bringing into question whether it is an accurate CCPV valuation report; and

- (c) valuations that are significantly different, including multiple instances where both parties report a valuation with the same sign—for example, both parties appear simultaneously ‘in-the-money’.

105 Our observations are based on a single point-in-time analysis limited to open AUD interest rate swaps executed since 1 July 2023. We note the following limitations and/or approximations in our analysis:

- (a) 70% of valuation timestamps on reports by pairs of entities are within 12 hours of each other and the balance within 12–24 hours, such that different reference rates sampling by each entity can create valuation differences;
- (b) the absence of a data element for ‘basis point spread’ information means that understanding valuation differences in interest rate basis swaps is problematic, and we placed little weight on the analysis;
- (c) the typically much larger notionals of overnight index swaps means that small differences in valuation parameters can exaggerate the differences in valuations, and we also tended to downplay this information;
- (d) generally disregarding interest rate basis swaps and overnight index swaps, we focus on interest rate fixed-float swaps (the dominant 85% of the dataset), but within which we also note circumstances of transactions with:
 - (i) relatively small or near-zero valuations as being close to ‘at the money’; and
 - (ii) conversely, transactions with very high fixed rates (both positive and negative) as contrived rates for residual post-compression transactions,

for which, small differences in valuation parameters can exaggerate the differences in valuations.

106 One analytical approach we took was to exclude transactions whose valuation amount was < 0.5% of the notional amount. We think this removed a substantive number of cases of exaggerated differences in valuations for valuations close to ‘at the money’.

107 Our observations were across multiple pairs of reporting entities. It appeared to us that there were two distinct groups—one where the valuations appeared closely matched and one where they were quite different. We have termed the former group the ‘good’ group and the latter group the ‘poor’ group.

108 The basis of our observations is illustrated by the representative, approximately median metrics in Table 1 among analytical results for pairs of reporting entities that we assess as both ‘good’ and ‘poor’.

Table 1: Measures of percentage differences in valuations and percentage of same-sign valuations—representative median results

Result type	Minimum % difference	Average % difference	Maximum % difference	Same-sign valuations
'Good' (including < 0.5% valuations)	0.00%	5.50%	200.00%	1.4%
'Good' (excluding < 0.5% valuations)	0.02%	1.13%	6.22%	0.0%
'Poor' (including < 0.5% valuations)	0.00%	199.15%	200.00%	98.5%
'Poor' (excluding < 0.5% valuations)	199.61%	199.99%	200.00%	99.9%

109 In Table 1, a 'maximum % difference' of 200% occurs when both valuation amounts have the same sign. Excluding transactions with valuation amounts < 0.5% of the transaction's notional amount should reduce the number of 200% results and commensurately lower the measure of average % difference.

110 This is quite apparent for the 'good' groups and reinforces our assessment of the relative accuracy of transactions within this group. It is, however, the opposite effect for the 'poor' group, where we conclude that the more closely matched valuations (of which there are relatively few) actually occur where valuation amounts are < 0.5% of the transaction's notional amount.

111 While we conclude that there are examples where the CCP's valuation and the non-CCP entity's valuation are closely matched and that substituting CCPV in reporting would not lead to a diminution in the accuracy of valuation reporting, we cannot currently conclude this for all cases. It appears that any broader use of CCPV valuations could result in a diminution of overall valuation reporting accuracy.

112 We think that our concerns could be resolved with further testing, evaluation and explanation of differences, especially by engaging with reporting entities who are best placed to compare their own valuations with those received from CCPs.

113 We also think that there are circumstances where entities use a CCP's valuation as an external valuation in their own books and records and do not currently calculate the entity's own valuation.

- 114 Taking into account those circumstances and the indications from our analysis that some CCP valuations can be materially similar to reporting entities' own valuations, we propose to add 'CCPV' as an allowable value for 'Valuation method'.
- 115 We propose to do so without any limitations on the use of CCPV in the 2024 ASIC Rules but we will set out our expectations on the use of CCPV in separate guidance.
- 116 Our expectations would be that:
- (a) CCPV would only be reported by reporting entities who use a CCP's valuation as an external valuation in their own books and records;
 - (b) CCPV valuation amounts would be reported in the same valuation currency as the CCP's valuation that is provided to the reporting entity;
 - (c) the associated valuation timestamp reported would be the same as the timestamp or other indication of the time of valuation that the CCP provides to the reporting entity; and
 - (d) CCPs would use CCPV in their own reports as a reporting entity.
- 117 We are open to engage with reporting entities who wish to switch from reporting their own valuations to reporting CCP valuations to better understand the anomalous valuation differences that we have observed. This could then lead to a revision in the CCPV use expectations that we had set out.

F Regulatory and financial impact

- 118 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) the likely effect of the proposed rule changes on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system;
 - (b) any effects on competition in the Australian financial system;
 - (c) the likely regulatory impact of the proposed rule changes (including compliance costs and barriers to entry);
 - (d) ensuring that regulators have access to comprehensive and complete information about OTC derivative transactions in the Australian market; and
 - (e) providing an appropriate level of consistency with the international regulatory approach to OTC derivative transaction reporting in other jurisdictions.
- 119 Before settling on a final policy, we will comply with the Australian Government’s Policy Impact Analysis (PIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options that could meet our policy objectives;
 - (b) if regulatory options are under consideration, notifying the Office of Impact Analysis (OIA); and
 - (c) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector, preparing an Impact Analysis (IA) or an IA equivalent (Independent Review).
- 120 All IAs are submitted to the OIA for approval before we make any final decision, or if an IA equivalent—to the OIA for agreement. Without an approved IA or agreed IA equivalent, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 121 To ensure that we are in a position to properly complete any required IA or IA equivalent, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.

See ‘The consultation process’, p. 4.

ASIC's estimates of the regulatory compliance burden of implementing the draft amended 2024 ASIC Rules

- 122 We have estimated the regulatory compliance burden of our preferred option of implementing the proposed amendments to the 2024 ASIC Rules by considering:
- (a) the effort required to implement each of the elements of simplifying the exclusion of exchange-traded derivatives and the scope of foreign entity reporting, and the removal of the alternative reporting provisions; for
 - (b) the segments of the total reporting entity population that are affected by the proposals; and
 - (c) based on the regulatory compliance burden that we estimated for various aspects of reporting in [CP 361](#).
- 123 We think that the effort required to implement each of the elements of the proposed amendments to the 2024 ASIC Rules can be described as summarised in Table 2 below.

Table 2: Summary of implementation effort of each element

Component	Implementation effort
Simplifying exclusion of exchange-traded derivatives	<p>No material effort required for any reporting entity.</p> <p>No change to the current scope of the exclusion as it intends to achieve the same outcome by a different definitional method.</p> <p>Some possibility that future loosened 'sameness' of exchanged-traded derivatives or tightened 'sameness' of OTC derivatives (see paragraph 37) requires ad hoc analysis effort to assess exclusion or inclusion.</p>
Simplifying the scope of foreign entity reporting	<p>No effort required for the significant majority of foreign entities who already report under the scope of the nexus exemption.</p> <p>Effort required by an estimated seven entities to commence or widen their reporting under the 2024 ASIC Rules, in addition to the one or more other jurisdictions in which they report transactions.</p> <p>This effort is a marginal effort to form and submit an ASIC ISO 20022 XML message from fundamentally the same internal data sources as are used for trade reporting submissions in other jurisdictions.</p>

Component	Implementation effort
Complying with direct, instead of alternative, reporting to ASIC	<p>Large-scale reporting entities</p> <p>No effort required for the significant majority of foreign entities who already report directly to an ASIC-licensed repository.</p> <p>Effort required by an estimated 17 entities to commence reporting under the 2024 ASIC Rules, in addition to the one or more other jurisdictions in which they report transactions.</p> <p>This effort is a marginal effort to form and submit an ASIC ISO 20022 XML message from fundamentally the same internal data sources as are used for trade reporting submissions in other jurisdictions.</p> <p>Small-scale reporting entities</p> <p>Effort required by an estimated 150 entities to either re-arrange their dealing practices to ensure direct reporting by their counterparties or commence reporting themselves.</p> <p>The effort to re-arrange dealing practices would be one or more of the following actions with one or more counterparties:</p> <ul style="list-style-type: none"> • gain agreement that a counterparty directly reports; • cease dealing with a counterparty; • establish dealing arrangements with a new counterparty. <p>The consequential effort by a counterparty in relation to a small-scale entity would be to:</p> <ul style="list-style-type: none"> • commence direct reporting where the counterparty had not previously done so; or • widen existing direct reporting where the counterparty is already direct reporting for trades with other entities. <p>The effort to commence reporting involves sourcing the data to report and having the data submitted to a trade repository.</p>

Simplifying exclusion of exchange-traded derivatives

- 124 As we note in Table 2, we consider that the proposal to simplify the exclusion of exchange-traded derivatives does not require any material additional compliance effort by any reporting entity. There is no change to the current scope of the exclusion as the proposal intends to achieve the same outcome by a different definitional method.
- 125 There is some possibility that future loosened ‘sameness’ of exchange-traded derivatives or tightened ‘sameness’ of OTC derivatives requires ad hoc analysis effort by reporting entities to assess whether an affected derivative remains within the meaning of either an exchange-trade derivative

or an OTC derivative. However, as a speculative scenario, we are unable to meaningfully assess the regulatory compliance burden of such a possibility.

Simplifying the scope of foreign entity reporting

126 We estimate that the proposals to simplify the scope of foreign entity reporting would require an estimated seven entities to commence or widen their reporting under the 2024 ASIC Rules, in addition to the one or more other jurisdictions in which they report transactions.

127 In Table 47 in Section K of [CP 361](#), we identified a number of profiles of groups of reporting entities depending on the scale and asset class breadth of their reporting, and whether they self-reported or used delegated reporting and were a multi-jurisdictional reporter.

128 We believe that the entities affected by our proposals fall within these group profiles as were set out in Table 47 of CP 361:

Table 3: Applicable reporting entity group profiles

Group	Scale	No. of asset classes	Reporting by	International & Type
L1	Large	3–5	Self	Yes—Sell-side
L3	Large	1–2	Self	Yes—Sell-side
M1	Medium	3–5	Self	Yes—Sell-side
M3	Medium	1–2	Self	Yes—Sell-side

129 Our regulatory compliance burden estimates in CP 361 aggregated costs across the implementation elements of updating reporting to the 2024 ASIC Rules in terms of:

- (a) ASIC data elements—sourcing additional data elements to report from internal systems;
- (b) UTI—data handling for the generation, transmission, receipt and reporting of UTIs;
- (c) UPI—data handling for the creation, receipt and reporting of UPIs;
- (d) LEI—engagement with typically end-user clients on adoption of LEI as their entity identifier; and
- (e) ISO 20022—forming and submitting ISO 20022 reporting messages.

130 Of these implementation elements, taking into account the profiles of the affected entities, we consider that additionally implementing ISO 20022 reporting under the 2024 ASIC Rules is the only material marginal cost that they face. As it is a marginal cost to implement reporting for an additional

jurisdiction from fundamentally the same internal data sources used for trade reporting submissions in other jurisdictions, we estimate the regulatory compliance burden as 20% of the ‘First year costs—ISO 20022’ that we identified in Table 48 of [CP 361](#), uplifted by 9% to the current cost factors specified by the OIA and without any allowance for ongoing system synergies savings, as set out in Table 4.

Table 4: Estimated regulatory compliance burden

Group	First year costs—ISO 20022
L1	\$50,000
L3	\$25,000
M1	\$12,000
M3	\$12,000

Complying with direct, instead of alternative, reporting to ASIC

Large-scale reporting entities

- 131 We estimate that the proposals to require direct reporting to ASIC would require an estimated 17 large-scale reporting entities to commence reporting under the 2024 ASIC Rules, in addition to the one or more other jurisdictions in which they report transactions.
- 132 We believe that these large-scale reporting entities affected by this proposal fall within the same groups as set out in Table 3, with the same required effort to implement reporting for an additional jurisdiction. As such, we estimate the regulatory compliance burden to be the same as per Table 4.

Small-scale reporting entities

- 133 We also estimate that the proposals would require an estimated 150 entities to either re-arrange their dealing practices to ensure direct reporting by their counterparties or commence reporting themselves.
- 134 As we discuss at paragraphs 82–88, we consider that our proposals would likely result in small-scale entities making certain rearrangements of their dealing practices and/or the reporting services provided by their counterparties, rather than commencing reporting themselves.

- 135 In estimating this regulatory compliance burden, we assume:
- (a) in 80% of cases, a small-scale entity’s counterparty would maintain dealing services to the entity by providing direct reporting to enable the entity to continue to rely on the single-sided reporting exemption;
 - (b) in 10% of cases, a small-scale entity’s counterparty would not provide a direct reporting service and the entity would establish dealing arrangements with a new counterparty who would provide the reporting service; and
 - (c) in 10% of cases, a small-scale entity would retain its existing dealing arrangements with counterparties that do not provide a direct reporting service and would commence direct reporting itself.
- 136 For the 80% of cases, there is no change to the small-scale entity’s dealing or reporting practices and therefore no marginal regulatory compliance burden on them. For a counterparty that provides direct reporting, its estimated regulatory compliance burden would be in the \$12,000 to \$50,000 range in Table 4.
- 137 For the 10% of cases, establishing dealing arrangements with a new counterparty would incur costs related to onboarding the counterparty and executing dealing documentation—we estimate a cost of \$15,000, including an allowance for external legal fees.
- 138 For the 10% of cases where the small-scale entity commences reporting, we have again estimated the regulatory compliance burden based on Table 48 of [CP 361](#).
- 139 We believe these small-scale entities fall within the group profile set out in Table 47 of CP 361: see Table 5.

Table 5: Applicable small-scale entity group profile

Group	Scale	No. of asset classes	Reporting by	International & Type
VS9	Very small	1–2	Delegate	No—Buy-side

- 140 In CP 361, we estimated total first year costs of \$17,000 for Group VS9, including \$11,000 associated with sourcing *additional* data elements to report from internal systems.
- 141 However, for this scenario where an entity is commencing reporting for the first time, we allow a doubling of the data element sourcing costs and we also allow a new 0.1 FTE cost per annum to forward reportable transaction data to their delegate for submitting to a trade repository and to perform periodic reconciliations.

142 Our estimated regulatory compliance burden for a small-scale entity commencing reporting, including the 9% increase to the current cost factors specified by the OIA is set out in Table 6.

Table 6: Estimated regulatory compliance burden

Group	Total first year costs (CP 361 + 9%)	Additional first year data elements costs	Total first year costs (CP 375)	Ongoing costs per annum
VS9	\$18,000	\$11,000	\$29,000	\$17,000

Key terms

Term	Meaning in this document
alternative reporting	A form of substituted compliance, under Rule 2.2.1(3) of the ASIC Rules, for foreign reporting entities by taking their reporting under a foreign jurisdiction's substantially equivalent reporting requirements (alternative reporting requirements) as satisfying their ASIC Rules reporting requirements
ASIC	Australian Securities and Investments Commission
ASIC Rules	In the context of a reference to CP 334 or CP 361, the 2013 ASIC Rules in force at the time of release of those consultation papers In the context of the current in-force rules, the 2022 ASIC Rules
CFTC	US Commodity Futures Trading Commission
Clearing Rules	<i>ASIC Derivative Transaction Rules (Clearing) 2015</i>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
CP 361 (for example)	An ASIC consultation paper (in this example numbered 361)
CS facility licensee	A person who holds a licence under s824B of the Corporations Act that authorises the person to operate a clearing and settlement facility as defined in s768A of the Corporations Act
delegated reporting	The reporting by a person (a delegate) on behalf of a reporting entity under Rule 2.2.7 of the ASIC Rules or under comparable provisions in other jurisdictions
FX	Foreign exchange
Law Improvement Package No. 1	<i>Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023</i>
nexus exemption	<i>ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015</i>
OTC	Over the counter
OTC derivative	A derivative that has the meaning given by Rule 1.2.4 of the ASIC Rules

Term	Meaning in this document
prescribed repository	A derivative trade repository that has been prescribed by ASIC under the Corporations Regulations as a repository to which derivative transaction reports may be made in certain circumstances under the ASIC Rules
reg 7.5A.70 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.5A.70), unless otherwise specified
reporting entity	An entity defined under Rule 1.2.5 of the ASIC Rules with obligations to report information about derivative transactions
Rule 1.2.4 (for example)	A rule of the ASIC Rules (in this example numbered 1.2.4)
s901K (for example)	A section of the Corporations Act (in this example numbered 901K), unless otherwise specified
2013 ASIC Rules	<i>ASIC Derivative Transaction Rules (Reporting) 2013</i>
2022 ASIC Rules	<i>ASIC Derivative Transaction Rules (Reporting) 2022</i>
2024 ASIC Rules	<i>ASIC Derivative Transaction Rules (Reporting) 2024</i>
wholesale client	A client who is not a retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to amend the 2024 ASIC Rules (see Attachment 1) to:</p> <ul style="list-style-type: none"> (a) substitute Rule 1.2.4(2) with a generic definition of an exchange-traded derivative which is based on paragraph 5(1) of <i>ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844</i>; (b) repeal Rule 1.2.4(2A) which defines a Regulated Foreign Market; (c) amend the ASIC determination power of Rule 1.2.4(3) to be a power to specify certain derivatives for the purposes of Rule 1.2.4(2)—with the effect that they are, or are not, exchange-traded derivatives; (d) omit from Rule 1.2.3 the definitions of the terms Part 7.2A Market and Regulated Foreign Market, which are no longer required; (e) withdraw <i>ASIC Regulated Foreign Markets Determination 2023/346</i> with effect from 21 October 2024; and (f) repeal paragraph 5 of <i>ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844</i> with effect from 21 October 2024. 	<p>B1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>

Proposal	Your feedback
<p>B2 We propose to amend the Clearing Rules (see Attachment 1) to:</p> <ul style="list-style-type: none"> (a) insert a new subparagraph in Rule 1.2.3(1) so that a clearing derivative must be an 'OTC Derivative'; (b) insert a new definition in Rule 1.2.1 that an 'OTC Derivative has the meaning given by Rule 1.2.4 of the Reporting Rules';. (c) omit Rule 1.2.3(7) and consequently renumber the subrules; (d) omit from Rule 1.2.1 the definitions of the terms Part 7.2A Market, Regulated Foreign Market and Exempt Financial Market, which are no longer required; (e) amend the definitions of the terms Derivative Transaction, Licensed CS Facility and Prescribed CS Facility to refer to s9 of the Corporations Act; and (f) update the reference in the note to the definition of Determined Clearing Class to be the Minister's 2023 determination. 	<p>B2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>
<p>C1 We propose to amend the 2024 ASIC Rules (see Attachment 1) from 1 April 2025 to:</p> <ul style="list-style-type: none"> (a) in Rule 1.2.3, insert a definition of 'Nexus Derivative' adapted from its meaning in paragraph 9(a) of the nexus exemption; (b) amend column 3 of (relabelled) item 3 of Table 1 of Rule 1.2.5 applicable to foreign entities to substitute the reference to OTC derivatives that are 'entered into by the Reporting Entity in this jurisdiction' with a reference to OTC derivatives 'that are a Nexus Derivative'; and (c) consequentially, insert item 2 in Table 1 of Rule 1.2.5 applicable to foreign entities that are clearing and settlement (CS) facility licensees to retain the reference to OTC derivatives that are entered into but simplified to a reference to OTC derivatives 'entered into with an Australian Entity'. 	<p>C1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>

Proposal	Your feedback
<p>D1 We propose to:</p> <ul style="list-style-type: none"> (a) amend the 2024 ASIC Rules (see Attachment 1) from 1 April 2025 by omitting Rule 2.2.1(3); and (b) withdraw <i>ASIC Prescribed Trade Repositories Determination [15-0591]</i> (PDF 32 KB) with effect from 1 April 2025. 	<p>D1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>
<p>E1 We propose to amend the 2024 ASIC Rules (see Attachment 1) from 21 October 2024 to:</p> <ul style="list-style-type: none"> (a) insert in Rule 1.2.4(6)(a) the qualification that a foreign exchange contract that is not an OTC derivative is one that 'the Reporting Entity reasonably believes is' solely to facilitate settlement of a foreign currency securities transaction; (b) add 'PEXH' as an optional allowable value that may be reported for 'Other payment type' (item 75 in Table S1.1(1) Transaction information); and (c) add 'CCPV' as an allowable value that may be reported for 'Valuation method' (item 9 in Table S1.1(2) Valuation information) but provide in guidance that we expect that this would only be reported by reporting entities who use a CCP's valuation in their own books and records (including a CCP itself). 	<p>E1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>