

5 July 2023

Sheridan Hure  
Senior Analyst  
Market Infrastructure  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000

By email: [otcd@asic.gov.au](mailto:otcd@asic.gov.au)

Dear Ms Hure

**Consultation Paper 370: Proposed remake of the ASIC Derivative Trade Repository Rules 2013**

1. The Financial Services Committee of the Business Law Section of the Law Council of Australia (the **Committee**) thanks the Australian Securities and Investments Commission (**ASIC**) for the opportunity to respond to ASIC Consultation Paper 370 *Proposed remake of the ASIC Derivative Trade Repository Rules 2013* (the **Consultation Paper**).

Background

2. The *ASIC Derivative Trade Repository Rules 2013* (the **Rules**) are due to sunset on 1 October 2023.
3. The Consultation Paper proposes that ASIC will remake the Rules in substantially the same form with minor and targeted amendments which (if made) would:
  - (a) introduce a new provision that would allow ASIC to give directions to manage “dead” or stale trades which have become trapped in the derivative trade data held by a licensed trade repository; and
  - (b) amend the weekly statistical data requirements for public reporting to remove the geographic location of the underlying reference asset, rate, index or commodity.
4. The proposed draft replacement rules (the **New Rules**) have been provided as an attachment to the Consultation Paper.

#### Proposal B1—New ASIC direction provision to deal with stale data

5. The Committee agrees with the policy objective of ensuring that derivative trade data is accurate, and acknowledges the practical difficulties that can arise when a reporting entity:
  - (a) ceases to be a participant of a licensed trade repository; or
  - (b) ceases to operate at all.
6. The Committee is not in a position to evaluate the benefits, risks or associated costs of this proposal, or to suggest any alternative solutions.

#### Proposal B2—Update to weekly statistical data for public reporting

7. The Committee agrees with the proposal to dispense with the requirement to report the geographic location of the underlying reference asset, rate, index or commodity in weekly statistical data, noting that, after 10 years of the Rules being in place, ASIC has not been able to identify (and does not envisage) any specific use case.
8. The Committee is not in a position to evaluate the benefits, risks or associated costs of this proposal.

#### Incidental matters

9. The Committee recommends that ASIC make a technical update to any regulatory guides that currently cross-refer to the Rules so that any relevant regulatory guidance refers to the rules that are currently in place (rather than rules that are no longer in force).

#### General observations

10. The Committee wishes to commend the ASIC staff members who were involved in producing the Consultation Paper. The Consultation Paper is clear, comprehensive and well structured. It provides useful background information and clearly explains the proposal and associated policy rationale, which assists readers (some of whom may not be familiar with the subject matter) to evaluate the proposals.
11. The only concerns that the Committee wishes to raise are:
  - (a) the Committee was unable to ascertain or locate the proposed sunset date of the New Rules; and
  - (b) there was no accompanying ASIC Media Release announcing the Consultation Paper, which the Committee believes means that potentially interested stakeholders may not have been made aware of the Consultation Paper and their opportunity to comment on it.

12. If ASIC has any questions, or would like to further discuss with any matters raised in this submission with the Committee, please do not hesitate to contact [REDACTED], Chair of the Committee ([REDACTED]).

Yours faithfully



**Philip Argy**  
**Chairman**  
**Business Law Section**