



**ASIC**  
Australian Securities &  
Investments Commission

CONSULTATION PAPER 361

# Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation

May 2022

## About this paper

This consultation paper sets out further proposals to amend the *ASIC Derivative Transaction Rules (Reporting) 2013* made under s901A of the *Corporations Act 2001*, following our first round of consultation in [Consultation Paper 334](#) *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation* (CP 334). We are also giving our feedback on the first round of consultation.

We are seeking the views of interested stakeholders on our proposals. We also request certain information from stakeholders to inform the development of our final rules.

Note: The draft remade ASIC Rules (Attachment 1) and the draft amended ASIC Rules (Attachment 2) are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 361.

## 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 16 May 2022 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 K, '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 8 July 2022

Please send comments to:

Craig McBurnie, Senior Analyst  
Market Infrastructure  
Australian Securities and Investments Commission  
Level 5, 100 Market Street, Sydney, NSW 2000  
email: [otcd@asic.gov.au](mailto:otcd@asic.gov.au)

## What will happen next?

<b>Stage 1</b>	16 May 2022	ASIC's second consultation paper released
<b>Stage 2</b>	8 July 2022	Comments due on the second consultation paper
<b>Stage 3</b>	To be confirmed	Related to this second consultation and subject to the Minister's consent, rules made and feedback report released
<b>Stage 4</b>	Q4 2022	ASIC's third consultation paper released
<b>Stage 5</b>	+ 6–8 weeks	Comments due on the third consultation paper
<b>Stage 6</b>	To be confirmed	Related to the third consultation and subject to the Minister's consent, rule amendments, if any, made, feedback report released and regulatory guide amended
<b>Stage 7</b>	est. 1 October 2023	Remade ASIC Rules commence
<b>Stage 8</b>	est. 1 April 2024	Further amended ASIC Rules commence

## A Background to the proposals

### Key points

Australian requirements to report derivative transactions have been in place under the *ASIC Derivative Transaction Rules (Reporting) 2013* (current ASIC Rules). This has provided regulators with transparency in relation to trading activity and positions and counterparty exposures, which assists regulators in identifying financial system vulnerabilities, conducting market surveillance, monitoring market metrics and practices, and informing policy developments and assessing outcomes.

International standards have been developed for entity identifiers, transaction identifiers, product identifiers and critical data elements for transaction terms and valuation and collateral information for use in derivative transaction reporting. Several overseas regulators have made proposals and/or finalised rules to implement these standards.

We presented our proposals to implement these internationally harmonised standards in our first consultation paper ([CP 334](#)) released in November 2020. Having considered the consultation submissions, we are now proposing, in this second consultation paper, to make rules to implement these standards: see Sections B–E.

Our first consultation paper also discussed other issues related to the structure, scope and operation of the rules with a view to simplifying the rules and improving their fitness for purpose. Some of these issues are included in these proposals. We intend to issue a third consultation paper in Q4 2022 covering the rest of the issues.

### What we are doing now

- 1 On 27 November 2020, ASIC issued [Consultation Paper 334](#) *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation* (CP 334) in which we consulted on our first proposals to update the ASIC Rules.
- 2 In CP 334, we made proposals to update the current ASIC Rules so that they are:
  - (a) harmonised to international standards resulting in reduced cost and complexity for industry, improved data quality for the Australian regulators, more comprehensive and fit-for-purpose trade details and improved inter-jurisdictional data handling;

- (b) simplified by the removal of outdated transitional provisions and consolidation of exemptions within the rules; and
  - (c) fit for purpose as to the scope of reporting entities, derivative products and lifecycle transaction events that are subject to the rules, and clear as to the roles and responsibilities of entities submitting derivative transaction reports.
- 3 We received 40 submissions from 39 respondents to [CP 334](#), of which 32 were confidential submissions and eight were [non-confidential](#). Table 1 lists the number of respondents by type of respondent.

**Table 1: Number of respondents by type of respondent**

Type of respondent	No. of respondents
Reporting entity (CFD Provider)	15
Reporting entity (buy-side)	11
Reporting entity (sell-side)	5
Industry Association	3
Global LEI System entity	2
Derivative Trade Repository	1
Reporting services provider	1
CCP	1

- 4 We acknowledge, and are grateful for, the valuable contributions made by respondents and the time and effort they went to.
- 5 Having considered the feedback we received from stakeholders to CP 334, the breadth of the consultation matters and the long lead times requested by stakeholders to implement systems and process changes, we have decided to split our further proposals into two more rounds of consultation.
- 6 In this second consultation, we are proposing specific changes to the current ASIC Rules relating to the long lead time elements of implementing the internationally harmonised standards of the UTI, UPI and data elements and to specify [ISO 20022 Financial Services—Universal financial industry message scheme](#) as the data messaging standard. We are also proposing specific changes to simplify the current ASIC Rules by removing the outdated transitional provisions and consolidating some exemptions within the current ASIC Rules.



- 7 The current ASIC Rules cease on 1 October 2023 and we are proposing a two-stage process to effect updates to the rules:
- (a) subject to the Minister’s consent, commencing on the cessation of the current ASIC Rules on 1 October 2023, a new legislative instrument—the *ASIC Derivative Transaction Rules (Reporting) 2022*—would implement the UTI, fully implement LEI requirements and make other changes, but not add any new data elements beyond those currently reported. In this consultation paper we refer to these rules as the **draft remade ASIC Rules**; and
  - (b) subject to the Minister’s consent, commencing on 1 April 2024, an amendment to the new *ASIC Derivative Transaction Rules (Reporting) 2022* would implement the UPI and fully implement the additional data elements. In this consultation paper we refer to the amended rules as the **draft amended ASIC Rules**.

Note: In this consultation paper, where we refer to the ‘ASIC Rules’ in a future state context, we are referring to either or both of the draft remade ASIC Rules and the draft amended ASIC Rules, as the context implies.

- 8 Our proposals in [CP 334](#) were of a final future state of the ASIC Rules (CP 334 future state). Under our two-stage plan, the draft amended ASIC Rules reflect this final future state, with the changes of greatest impact on systems and processes only taking effect in those rules. The earlier draft remade ASIC Rules would include other elements of the final future state that we think are appropriate and important to implement at this earlier stage.

- 9 The rules elements of each of these stages are summarised in Table 2.

**Table 2: Elements of the rules by stage**

<p><b>In the draft remade ASIC Rules</b></p>	<ul style="list-style-type: none"> <li>• Implement the UTI and fully implement the LEI</li> <li>• Include an LEI 'grace period' and require an LEI for joint counterparties</li> <li>• Revise the schedule of data elements to: <ul style="list-style-type: none"> <li>– remove data elements that are not present in the CP 334 future state</li> <li>– add data elements that are present in the CP 334 future state and are, in practice, currently reported (albeit not as required data elements under the current ASIC Rules)</li> <li>– introduce requirements for formats and allowable values, but which are generally as per current reporting practices, and</li> <li>– amend most of the name and meanings of the data elements to conform to the CP 334 future state international standards</li> </ul> </li> <li>• Implement lifecycle reporting for all products</li> <li>• Exempt small-scale buy-side entities from the extended lifecycle reporting requirements</li> <li>• Remove the delegated reporting 'safe harbour'</li> <li>• Bring the FX securities conversion exemption into the rules</li> <li>• Introduce a 'spot' transaction exclusion</li> <li>• Reflect the 'end-user' exemption of reg 7.5A.50 of the <i>Corporations Regulations 2001</i> (Corporations Regulations) for certain Australian financial services (AFS) licensees</li> <li>• Bring the exemption for clearing members in agency clearing into the rules</li> <li>• Clarify that trades with Australian retail clients are always reportable</li> <li>• Curtail duplicative reporting</li> <li>• Recognise that a derivative trade repository may create derivative transaction information for reporting entities' reports that is derived from other information</li> <li>• Recognise that fund managers, and other persons appointed to enter into OTC derivatives on behalf of a reporting entity, may fulfil certain reporting requirements on behalf of the reporting entity</li> <li>• Remove the outdated opt-in and transition provisions</li> </ul>
<p><b>In the draft amended ASIC Rules</b></p>	<ul style="list-style-type: none"> <li>• Amend the revised schedule of data elements to: <ul style="list-style-type: none"> <li>– add data elements to complete the CP 334 future state, and</li> <li>– replace the asset-class-specific tables of data elements with report-type-specific tables of data elements</li> </ul> </li> <li>• Exempt small-scale buy-side entities from certain of the extended reporting requirements</li> <li>• Require re-reporting to update existing transactions to the reporting requirements of the draft amended ASIC Rules</li> <li>• Require reporting to a derivative trade repository to conform to the technical standard of ISO 20022</li> </ul>

- 10 After considering the feedback to this consultation, we intend to finalise the draft remade ASIC Rules and the amendments to the draft amended ASIC Rules and request the Minister’s consent under s901K of the *Corporations Act 2001* (Corporations Act) to make the rules and the amendments to the rules.
- 11 We are proposing to request that the Minister consent to ASIC making the draft remade ASIC Rules with an effective date of 1 October 2023. We are also proposing, at the same time, to request that the Minister consent to ASIC making the amendments to the rules to implement the draft amended ASIC Rules with an effective date of 1 April 2024.
- 12 We intend to release our third consultation paper in Q4 2022, which may make proposals for further changes to the ASIC Rules about any matters not addressed in these first changes.
- 13 We consider that any remaining matters are not likely to be matters of the long lead time nature of the first changes. We anticipate requesting the Minister’s consent to ASIC making any changes to the rules in Q2 2023 with an effective date of 1 April 2024.

### **This consultation package**

- 14 This consultation package comprises:
- (a) this consultation paper;
  - (b) the draft remade ASIC Rules as *ASIC Derivative Transaction Rules (Reporting) 2022* with effect from 1 October 2023—see Attachment 1;
  - (c) the draft amended ASIC Rules as *ASIC Derivative Transaction Rules (Reporting) 2022*, as a compilation that takes into account amendments with effect from 1 April 2024—see Attachment 2; and
  - (d) a mapping of the changes in data elements from the current ASIC Rules through the draft remade ASIC Rules to the draft amended ASIC Rules—see Appendix 1.

Note: The draft remade ASIC Rules (Attachment 1) and the draft amended ASIC Rules (Attachment 2) are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 361.

### **Legislative and regulatory architecture**

- 15 From the current ASIC Rules through the draft remade ASIC Rules to the draft amended ASIC Rules, the legislative and regulatory architecture is expected to be as set out in Table 3. In the final future state of the draft amended ASIC Rules, the operative legislation and instruments are expected to be the relevant provisions of the Corporations Act, the Minister’s determination, Corporations Regulations and the draft amended ASIC Rules—there are not expected to be any other ASIC-made determinations or exemptions.

**Table 3: Legislative and regulatory architecture—from now to ‘from 1 April 2024’**

<b>Purpose of the legislation and regulatory architecture</b>	<b>Current ASIC Rules From now to 30 Sep 2023</b>	<b>Draft remade ASIC Rules From 1 Oct 2023 to 31 Mar 2024</b>	<b>Draft amended ASIC Rules From 1 Apr 2024</b>
Primary legislation for the regulation of derivative transactions and derivative trade repositories	Corporations Act, Pt 7.5A	Corporations Act, Pt 7.5A	Corporations Act, Pt 7.5A
Prescribes the classes of derivatives in relation to which reporting requirements may be imposed by ASIC-made rules	<a href="#">Minister's determination under s901B(2)</a>	Minister's determination under s901B(2)	Minister's determination under s901B(2)
Precludes imposing requirements on end users	Corporations Regulations, reg 7.5A.50	Corporations Regulations, reg 7.5A.50	Corporations Regulations, reg 7.5A.50
Exempts entities with small-scale gross notional outstanding positions from reporting transactions where their counterparty reports the transactions	Corporations Regulations, regs 7.5A.71–7.5A.74	Corporations Regulations, regs 7.5A.71–7.5A.74	Corporations Regulations, regs 7.5A.71–7.5A.74
Exempts AFS licensees and Australian credit licensees from having to notify ASIC of certain breaches	Corporations Regulations, reg 7.6.02A	Corporations Regulations, reg 7.6.02A	Corporations Regulations, reg 7.6.02A
ASIC-made rules imposing specific reporting requirements	<a href="#">ASIC Derivative Transaction Rules (Reporting) 2013</a>	<i>ASIC Derivative Transaction Rules (Reporting) 2022</i>	<i>ASIC Derivative Transaction Rules (Reporting) 2022</i> with amended Schedule 1 'Information requirements' and related rules amendments

Purpose of the legislation and regulatory architecture	Current ASIC Rules From now to 30 Sep 2023	Draft remade ASIC Rules From 1 Oct 2023 to 31 Mar 2024	Draft amended ASIC Rules From 1 Apr 2024
Lists 32 individual foreign financial markets and two classes of financial markets whose traded derivatives are exchange-traded derivatives (and, therefore, not reportable OTC derivatives)	<a href="#">ASIC Regulated Foreign Markets Determination [OTC DET 13/1145]</a>	<i>ASIC Regulated Foreign Markets Determination [OTC DET 13/1145]</i>	Not applicable—intended to be repealed under proposals in the third consultation to give effect to the instrument within the rules themselves
Determines equity derivatives, contracts for difference (CFDs) and margin FX derivatives as excluded derivatives for which lifecycle reporting applies	<a href="#">ASIC Derivative Transaction Rules (Reporting) Determination 2018/1096</a> (PDF 105 KB)	Repealed—lifecycle reporting to apply to all products	Not applicable
Provides that foreign reporting entities may opt in to applying a ‘sales or trader basis’ test to the ‘entered into’ test to determine ASIC-reportable transactions	<a href="#">ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015</a>	<i>ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015</i>	Not applicable—intended to be repealed under proposals in the third consultation to give effect to the instrument within the rules themselves
Having regard to the agency OTC clearing model of ASX Clear (Futures) for affiliates and clients, the clearing participant is exempt from reporting cleared transactions with ASX Clear (Futures) that are entered into by an affiliate or client	<a href="#">ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2016/0688</a>	Not applicable—proposed to be repealed in this second consultation by giving effect to the instrument within the rules themselves	Not applicable

Purpose of the legislation and regulatory architecture	Current ASIC Rules From now to 30 Sep 2023	Draft remade ASIC Rules From 1 Oct 2023 to 31 Mar 2024	Draft amended ASIC Rules From 1 Apr 2024
<p>Exemptions for:</p> <ul style="list-style-type: none"> <li>entity name information where entity identifiers of certain types are reported</li> <li>UTIs other than identifiers generated under foreign rules or by certain trading platforms or confirmation platforms</li> <li>short-dated foreign exchange transactions facilitating foreign currency securities settlement</li> </ul>	<p><a href="#">ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844</a></p> <p>Previously expected to sunset on 30 September 2022, these exemptions extended to 30 September 2023</p>	<p>These exemptions repealed because:</p> <ul style="list-style-type: none"> <li>entity name information no longer required under the rules</li> <li>UTI requirements commence under the rules</li> <li>short-dated foreign exchange transaction exemption effected within the rules themselves</li> </ul>	<p>Not applicable</p>
<p>Exemptions for exchange-traded derivatives traded on other than a regulated foreign market</p>	<p><a href="#">ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844</a></p> <p>Previously expected to sunset on 30 September 2022, these exemptions extended to 31 March 2024</p>	<p><i>ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844</i></p> <p>Previously expected to sunset on 30 September 2022, these exemptions extended to 31 March 2024</p>	<p>Not applicable—intended to be repealed under proposals in the third consultation to give effect to the instrument within the rules themselves</p>

Purpose of the legislation and regulatory architecture	Current ASIC Rules From now to 30 Sep 2023	Draft remade ASIC Rules From 1 Oct 2023 to 31 Mar 2024	Draft amended ASIC Rules From 1 Apr 2024
<p>Exemptions for:</p> <ul style="list-style-type: none"> <li>entity identifiers where entity identifiers of certain types are applied for within two business days</li> <li>entity identifiers for certain types of foreign counterparties in transactions entered into by NZ registered banks</li> <li>entity identifiers for counterparties who have entered into transactions as joint or joint and several counterparties</li> <li>reference entity identifiers for certain types of credit derivatives where an identifier of a certain type is reported</li> </ul>	<p><a href="#">ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844</a></p>	<p><i>ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844</i></p> <p>Repeal of exemptions for entity identifiers:</p> <ul style="list-style-type: none"> <li>applied within two business days—a form of the exemption effected within the rules themselves</li> <li>for certain types of foreign counterparties—rules no longer have the scope for which the exemption was required</li> <li>for joint or joint and several counterparties—propose to cease the exemption</li> <li>for certain types of credit derivatives—these kinds of identifiers no longer required under the rules</li> </ul>	<p>Not applicable</p>
<p>An exemption for certain transactions of foreign subsidiaries of Australian deposit-taking institutions (ADIs)</p>	<p><a href="#">ASIC Derivative Transaction Rules (ADI Foreign Subsidiaries) Class Exemption 2021/51</a></p>	<p>Repealed—rules no longer have the scope for which the exemption was required</p>	<p>Not applicable</p>

## Note on interpretation

16 Words and expressions defined in the Corporations Act and the ASIC Rules will, unless otherwise defined or specified in this consultation paper or the contrary intention appears, have the same meaning in this consultation paper.

**CDE Guidance** means Regulatory Oversight Committee, [Technical guidance: Harmonisation of critical OTC derivatives data elements \(other than UTI and UPI\) Revised CDE Technical Guidance—version 2](#) (PDF 1.01 MB), September 2021.

**CFTC** means the US Commodity Futures Trading Commission.

**ESMA** means the European Securities and Markets Authority.

**ESMA proposals** means [Consultation Paper: Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT](#), 26 March 2020, ESMA74-362-47.

**EU rules** means Regulation (EU) No. 648/2012 of the European Parliament and Council of 4 July 2012 (EMIR) and Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No. 648/2012 (EMIR REFIT) and Commission Implementing Regulation (EU) No. 1247/2012 of 19 December 2012 as amended by Commission Implementing Regulation 2017/105 of 19 October 2016 and by Commission Implementing Regulation 2019/363 (ITS) and Commission Delegated Regulation (EU) No. 148/2013 of 19 December 2012 as amended by Commission Delegated Regulation No. 2017/104 of 19 October 2016, supplementing Regulation (EU) No. 648/2012 (RTS).

**final CFTC rules** means the final rule RIN 3038-AE31 for 17 CFR Parts 45, 46 and 49 Swap Data Recordkeeping and Reporting Requirements and the final rule RIN 3038-AE60 for 17 CFR Part 43 Real-Time Public Reporting Requirements.

**final ESMA rules** means [Final Report: Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT](#), 17 December 2020, ESMA74-362-824.

**UPI Guidance** means CPMI IOSCO, [Technical guidance: Harmonisation of the unique product identifier](#) (PDF 602 KB), September 2017.

**UTI Guidance** means CPMI IOSCO, [Technical guidance: Harmonisation of the unique transaction identifier](#) (PDF 570 KB), February 2017.



## B The unique transaction identifier (UTI)

### Key points

The UTI is a globally unique transaction identifier used in derivative transaction reporting by each party to the transaction so that each reported transaction is solely identified by a single UTI.

After considering the feedback to CP 334, we have decided to implement several of our proposals in CP 334 for steps of ASIC UTI rules, including detailing the definitions and provisions for market infrastructures, single-jurisdictional transactions, providing UTIs to counterparties, non-receipt of UTIs and the roles of third parties in UTI generation.

However, we are now also proposing significant revisions to provide increased flexibility for UTI generation for cross-jurisdictional transactions.

We are proposing to implement the provisions as the draft new Rule 2.2.9 in the draft remade ASIC Rules: see Attachment 1.

## Background

- 17 The UTI is a globally unique transaction identifier used to ensure that each reportable derivative transaction is identifiable and that each party to the transaction reports the same UTI. It will provide significant regulatory benefit in terms of matching both sides of the same transaction, including avoiding double-count in market metrics such as turnover and aggregate notional principal.
- 18 In Section B of [CP 334](#), we described the background to the development of the UTI and its governance and operations arrangements.
- 19 The UTI is one of the international harmonised standards for which the Committee on Payments and Market Infrastructures (CPMI) of the Bank for International Settlements and the International Organization of Securities Commissions (IOSCO) have developed global guidance: CPMI IOSCO, [Technical guidance: Harmonisation of the unique transaction identifier](#) (PDF 570 KB), February 2017 (UTI Guidance).
- 20 The International Organization for Standardization (ISO) is the data standard and maintenance body for the UTI, and the structure and format of the UTI are specified in ISO 23897:2020 *Financial Services: Unique Transaction Identifier (UTI)* as an alphanumeric code of up to 52 characters:
- (a) the first 20 characters are the LEI of the entity generating the UTI;

- (b) followed by up to 32 characters of a unique identifier assigned by the generating entity.
- 21 The UTI Guidance recommends to regulators an international standard for:
  - (a) the transaction lifecycle events that require a new UTI or the continued use of the existing UTI;
  - (b) determining which entity should generate the UTI; and
  - (c) the technical specification for the UTI (i.e. as the entity's LEI plus additional characters).
- 22 The UTI Guidance is not prescriptive and allows for variations according to individual jurisdictional circumstances. ASIC's approach to implementing the UTI is to respect as far practicable each of:
  - (a) the UTI Guidance;
  - (b) the UTI rules of other jurisdictions; and
  - (c) existing industry practices.
- 23 The UTI implementation will require ASIC reporting entities to be able to:
  - (a) in certain circumstances, receive and report a UTI generated by another entity; and
  - (b) in other circumstances, generate, report and provide a UTI to another entity.

## ASIC's proposed approach to the UTI in CP 334

- 24 In [CP 334](#), we proposed a UTI implementation of, in summary:
  - (a) adopting steps 1, 2 and 3 of the UTI Guidance which specifies the central counterparty (CCP), clearing member and trading platform respectively as the UTI generator; and
  - (b) adopting the same steps as in the ESMA proposals for the later steps of the UTI Guidance that relate to bilateral transactions, whether cross-jurisdictional or single-jurisdictional transactions. Our proposals for determining the UTI generator included that:
    - (i) if the transaction was electronically confirmed, the confirmation platform is the UTI generator; else
    - (ii) if only one of the counterparties is a reporting entity, that entity is the UTI generator;
    - (iii) there should be the same subsequent steps for a cross-jurisdictional transaction and a single-jurisdictional transaction;

- (iv) the subsequent steps could be either ESMA’s Option 1 proposal based on the ‘side’ of the counterparties or ESMA’s Option 2 proposal of an agreement between the counterparties, but if no such agreement is made, based on a particular sort order of the LEIs of the counterparties.

25 In [CP 334](#), we also discussed certain difficulties and uncertainties with a UTI implementation, including:

- (a) identifying the jurisdictions in which a cross-jurisdictional transaction is reported so that the jurisdiction with the sooner reporting deadline can be determined;
- (b) interpreting the meaning of ‘sooner’ in order to determine the jurisdiction with the sooner reporting deadline;
- (c) whether CCPs and trading platforms would be recognised as being of that kind in a consistent manner in all jurisdictions or if it may be that, for example, a particular trading platform is recognised as being a trading platform under one jurisdiction’s UTI rules but not under another jurisdiction’s rules; and
- (d) whether there may be rules implementation timing differences between jurisdictions such that an entity has an obligation to report the UTI received from an entity in another jurisdiction, but that other entity is not subject to an obligation to generate and give that UTI to the receiving entity.

26 In addressing these difficulties and uncertainties, ASIC’s proposals or proposal options included the following:

- (a) to reduce the number of jurisdictions that need to be identified for a cross-jurisdictional transaction, reporting entities could disregard a jurisdiction in which a reporting requirement only arises due to a ‘nexus’ or ‘trader location’ connection and could base their UTI generator evaluations on how each counterparty identifies itself to the other party—such as a ‘head office’, a ‘branch’ and/or a ‘US swap dealer’;
- (b) for the meaning of ‘sooner’, we identified three interpretations and sought comment from stakeholders on their preferred interpretations:
  - (i) a ‘semantic’ interpretation such that all T+1 reporting deadlines are the same deadline;
  - (ii) a ‘follow the sun’ interpretation such that, for example, Australia is always sooner than the European Union/United Kingdom which is always sooner than the United States/Canada; or

- (iii) an ‘execution clock’ interpretation such that the next occurring actual reporting deadline is sooner than, in turn, each of the successive actual reporting deadlines;
  - (c) we also considered that, given the prevalence of CFTC reportable transactions that are required to be, or in practice would continue to be, reported on an ‘as soon as technologically possible’ (ASATP) basis, one pragmatic proposal to simplify the ‘sooner’ issue may be for the ASIC Rules to deem that the CFTC is always the sooner jurisdiction in ASIC/CFTC cross-jurisdictional transactions; and
  - (d) to address issues where the ASIC UTI rules would identify a foreign entity as the UTI generator but that entity was not obliged by the rules of its home jurisdiction to generate a UTI, we outlined a possible provision, generalised to any ‘non-receipt of UTI’ circumstance, of the reporting entity self-generating and reporting a UTI and then making subsequent correcting reports if and when the UTI is received as originally intended.
- 27 In Section I of [CP 334](#), we also noted that the current ASIC Rules do not specify a singular time as the deadline for reporting. The deadline for reporting a reportable transaction is the end of the next business day in *the jurisdiction* in which the reportable transaction is entered into—‘*the jurisdiction*’ is not necessarily ‘this jurisdiction’ and the deadline for reporting a reportable transaction is not necessarily the end of the next business day in Sydney.
- 28 As we thought that this may introduce a complexity under the UTI rules in determining the ‘jurisdiction with the sooner deadline for reporting’ for a cross-jurisdictional transaction, we proposed to clarify in the ASIC Rules that the deadline for reporting *for the purposes of the UTI rules* is a singular time referring to Sydney time.

## Feedback on our proposed approach in CP 334

### Determining the UTI generator

- 29 Respondents expressed support for adopting steps 1, 2 and 3 of the UTI Guidance which specifies the CCP, clearing member and trading platform respectively as the UTI generator. Respondents’ comments included support for the ‘first touch’ principle and the advantages of having market infrastructures high in the UTI waterfall. However, several respondents agreed that there were implementation uncertainties requiring clarification, particularly in relation to common cross-jurisdictional recognition of trading platforms and differences in implementation timings between jurisdictions.

- 30 Most respondents were opposed to ASIC’s proposals on how to identify the jurisdictions involved in reporting a cross-jurisdictional transaction, of which the UTI rules of the jurisdiction with the sooner deadline for reporting are to be followed. Respondents cited difficulties with the need to obtain and maintain information about the jurisdictional reporting requirements of their counterparties. Respondents commonly advocated allowing an agreement (a ‘bilateral agreement’) between the counterparties as to who is the UTI generator to take precedence over determining the jurisdiction whose UTI rules are to be followed. Buy-side respondents indicated an expectation that they would receive a UTI from their counterparty or the trading platform as part of market practice post-trade messaging workflows.
- 31 In relation to the meaning of ‘sooner’, not all respondents commented and we did not find any consensus or strong preference expressed for any of the ‘semantic’, ‘follow the sun’ or ‘execution clock’ interpretations of the way to determine ‘sooner’. Generally, respondents felt there were various difficulties with each of the interpretations, reinforcing their arguments in favour of giving precedence to bilateral agreements.
- 32 After the cross-jurisdictional test, the later steps in the UTI Guidance relate to bilateral transactions, whether cross-jurisdictional or single-jurisdictional transactions. Several respondents supported our proposals that the confirmation platform (if applicable) and the sole reporting entity among the counterparties would be the UTI generator—there were no responses that opposed these proposals.
- 33 Respondents to [CP 334](#) generally expressed support for our proposals for determining the UTI generating entity for single-jurisdictional transactions. Some respondents noted that identifying a single-jurisdictional transaction still required knowing the jurisdictional reporting requirements of their counterparty, and that providing for a bilateral agreement between the counterparties would ameliorate this difficulty. Some respondents also advocated that the confirmation platform (if applicable) should be higher in the UTI waterfall and before the single- or cross-jurisdictional test. The proposal that the sole reporter should be the UTI generator was supported—there were no responses that opposed this proposal.
- 34 In relation to the subsequent steps, one respondent commented that Option 1 in the ESMA proposals based on the ‘side’ of the counterparties was preferable because it was a simpler approach but there was stronger support among other respondents for Option 2, noting that it included the ‘bilateral agreement’ approach.
- 35 After the release of CP 334, on 17 December 2020 ESMA published a [final report](#) on its proposals which included a decision to adopt Option 2 and also apply the same UTI rules for cross-jurisdictional transactions and single-jurisdictional transactions.

## Other elements of ASIC's UTI proposals

- 36 Respondents made comments about a number of the other elements of ASIC's UTI proposals.
- 37 Several respondents requested that ASIC provide comprehensive guidance about when a new UTI should be generated or an existing UTI should continue to be used in a variety of transactional circumstances.
- 38 Respondents were also concerned that ASIC clarify the requirements in relation to whether existing transactions, at the time that any rule changes became effective, would be required to be re-reported with a new UTI conforming to the then applicable UTI requirements.
- 39 There was a broad consensus expressed by respondents, particularly from the buy-side, that there should be an obligation on reporting entities, when acting as a UTI generator, to provide the UTI to its counterparty in a time-bound manner. There were different views on the preferred expression of a time limit—the sell-side tended to support a number of hours limit, the buy-side tended to support a particular time of next day deadline and others suggested including UTI provision in on-demand or intraday client 'pull' processes supplemented or backstopped by end-of-day client 'push' processes.
- 40 Respondents also raised other concerns or made other comments, including:
- (a) uncertainty about how UTI requirements are intended to be satisfied in each jurisdiction in the scenario that the UTI requirements would be implemented in a staggered manner across different jurisdictions;
  - (b) that referencing all UTI rules to the same time zone (i.e. Sydney time) will lead to potential non-compliance with current timeliness obligations for reporting where counterparties are subject to different regulatory reporting timeframes;
  - (c) that the reporting entity self-generating and reporting a UTI in the case of a 'non-receipt of a UTI' could also be used in the case where the UTI generating entity had not been determined in time for reporting; and
  - (d) that ASIC should provide regulatory guidance on UTI sharing requirements, such as the technical means of doing so and the minimum related transaction information in a 'UTI sharing message' that enables the recipient to match the message to a transaction.

## Our response

- 41 We have decided to proceed with several of the elements of our proposals to adopt:
- (a) steps 1, 2 and 3 of the UTI Guidance—CCPs, clearing members and trading platforms—proposal C2 in [CP 334](#);
  - (b) the steps for a single-jurisdictional transaction as we foreshadowed to align with the final ESMA rules—in-principle proposal C3 in [CP 334](#);
  - (c) the steps for a cross-jurisdictional transaction where this jurisdiction is the jurisdiction with the sooner reporting deadline as mirroring the steps for a single-jurisdictional transaction—in-principle proposal C6 in [CP 334](#); and
  - (d) for UTI purposes only, a singular reporting deadline of the end of the next business day in Sydney—proposal I1 of [CP 334](#).
- 42 However, we are responding to the CP 334 feedback with a significantly revised proposal on the key element of proposed approaches to the cross-jurisdictional test.
- 43 Overall, our decisions and revised proposals:
- (a) provide increased flexibility for UTI generation for cross-jurisdictional transactions;
  - (b) detail the definitions and provisions for market infrastructures as UTI generating entities;
  - (c) finalise methods for single-jurisdictional transactions; and
  - (d) set out requirements for providing UTIs to counterparties, the non-receipt of UTIs and the roles of third parties in UTI generation.
- 44 Having regard to the feedback to CP 334, our response and revised proposals are summarised in Table 4.

**Table 4: Summary of ASIC response and revised proposals**

<b>Decisions for the draft remade ASIC Rules</b>	<p>Implement steps 1, 2 and 3 of the UTI Guidance</p> <p>Implement the steps for a single-jurisdictional transaction in alignment with the final ESMA rules and mirror those steps for a cross-jurisdictional transaction where this jurisdiction is the jurisdiction with the sooner reporting deadline</p> <p>Specify, for UTI purposes only, the end of the next business day in Sydney as the reporting deadline in this jurisdiction</p>
<b>Proposals for the draft remade ASIC Rules</b>	<p>Introduce a conditional 'bilateral agreement' as a method to determine the UTI generating entity for cross-jurisdictional transactions</p> <p>Recognise that persons other than responsible entities and trustees may, in practice, determine the UTI generating entity for a responsible entity or trustee</p> <p>Require that a reporting entity provide a UTI to its counterparty by 10 am on the next business day in Sydney</p> <p>Require that a reporting entity generate and report its own UTI if it does not receive a UTI from another entity that is the UTI generating entity</p> <p>Allow that reporting entities may appoint other persons to generate a UTI but that the reporting entity remains responsible for complying with the UTI requirements</p>
<b>Decisions for the draft amended ASIC Rules</b>	Not applicable
<b>Proposals for the draft amended ASIC Rules</b>	Not applicable
<b>Matters deferred to the third consultation</b>	Not applicable

## ASIC's revised proposals

### Proposal

- B1** We propose to make new draft Rule 2.2.9 'Reporting requirement—Unique transaction identifier' in the draft remade ASIC Rules (see Attachment 1) setting out UTI requirements for a reporting entity to:
- (a) apply the rule if the reporting entity is required to report a UTI for a new transaction (Rule 2.2.9(1));



- (b) determine the UTI generating entity according to the steps set out in Table 2: UTI generating entity for specified reportable transactions of Rule 2.2.9—this is the draft ASIC UTI waterfall (Rule 2.2.9(3));
- (c) if the reporting entity is the UTI generating entity, generate the UTI and provide the UTI to the other counterparty in a timely manner and no later than 10 am Sydney time on the next business day (Rule 2.2.9(5));
- (d) if the reporting entity does not receive a UTI from the other UTI generating entity in sufficient time for reporting:
  - (i) if the reporting entity reasonably believes that it will, at a later time, receive the UTI—a ‘temporary’ non-receipt of a UTI—generate its own UTI for reporting; or
  - (ii) if the reporting entity reasonably believes that it will not receive the UTI—a ‘permanent’ non-receipt of a UTI—use its best endeavours to determine the UTI generating entity according to the next applicable method in the draft ASIC UTI waterfall; but
  - (iii) if the UTI generating entity determined according to the next applicable method does not provide the UTI, the reporting entity must generate and report its own UTI (Rule 2.2.9(6)).

*Your feedback*

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

B1Q2 Do you consider that you would have any issues of interpretation of the definitions or text of draft Rule 2.2.9? In your response, please give detailed reasons for your answer.

**B2** We also propose that new Rule 2.2.9 provides that:

- (a) a reference to a reporting entity that is a responsible entity or trustee includes a person appointed by the reporting entity to enter into OTC derivatives on behalf of the reporting entity—for example, a fund manager (Rule 2.2.9(2));
- (b) a reporting entity may, subject to conditions, appoint a service provider to generate the UTI (Rule 2.2.9(7));
- (c) if the UTI requirements are met by another person on behalf of the reporting entity; the reporting entity remains responsible for the obligations of the reporting entity (Rule 2.2.9(8)); and
- (d) for the purposes of Rule 2.2.9, the reporting deadline in this jurisdiction is the end of the next business day in Sydney (Rule 2.2.9(4)).

**Your feedback**

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

B2Q2 Do you consider that you would have any issues of interpretation of the definitions or text of draft Rule 2.2.9? In your response, please give detailed reasons for your answer.

**Rationale**

45 The draft new Rule 2.2.9 is explained in the paragraphs of this section as set out in Table 5.

**Table 5: Explanations of Rule 2.2.9**

Rule	Scope	Paragraphs
2.2.9(1)	When a UTI is required	48–53
2.2.9(2)	Persons dealing on behalf of a responsible entity or trustee	191–192
2.2.9(3)	The ASIC UTI waterfall	54–175
2.2.9(4)	ASIC reporting deadline for UTI purposes	198–203
2.2.9(5)	Timely provision of a UTI	189–190
2.2.9(6)	Non-receipt of a UTI	176–188
2.2.9(7) and (8)	UTI service providers and reporting entity remaining responsible	193–197

**What is a UTI?**

46 A UTI is defined in Rule 1.2.3 as a unique transaction identifier in the form specified in ISO 23897.

47 ISO 23897 sets out that the form of a UTI is a code of up to 52 characters, where:

- (a) the first 20 characters is the LEI of the entity that generated the UTI;
- (b) followed by up to 32 upper-case alphanumeric characters (A to Z and 0 to 9 only) of a unique identifier assigned to the transaction by the UTI generating entity without separators.

### When a UTI is required

48 Draft Rule 2.2.9(1) provides that Rule 2.2.9 applies if a reporting entity is required to report a UTI for a reportable transaction referred to in:

- (a) draft Rule 1.2.5(1)(b)(i)—this is ‘the entry into of an arrangement that is an OTC Derivative’;
- (b) draft Rule 1.2.5(1)(b)(iii)—this is ‘the assignment, by a party to an arrangement that is an OTC Derivative entered into as referred to in subparagraph (i), of some or all of the party’s rights and obligations under the arrangement, where the Reporting Entity has actual knowledge of the assignment’; or
- (c) draft Rule 1.2.5(1)(b)(iv)—this applies to the ‘final change’ to the way a Reporting Entity records an OTC Derivative in the Reporting Entity’s books and records: see also paragraphs 373–377,

and that this is in a report made under Rule 2.2.1(1).

49 A report made under Rule 2.2.1(1) is a report of the derivative transaction information set out in Part S1.3 of Schedule 1. In that part, a UTI is required as derivative transaction information for certain kinds of reportable transactions at item 1 of Table S1.1(1) ‘Common data’.

50 Under the alternative reporting provisions of Rule 2.2.1(3), certain foreign reporting entities are not required to comply with Rule 2.2.1(1) if they report information about the reportable transaction to a prescribed repository, in compliance with the substantially equivalent alternative reporting requirements in at least one foreign jurisdiction.

51 In this case, the reporting entity has not made a report under Rule 2.2.1(1) and the UTI requirements of the alternative reporting requirements will apply, rather than the requirements of Rule 2.2.9.

Note: Rule 2.2.1(3) also provides that a reporting entity that is subject to alternative reporting requirements is not required to comply with Rule 2.2.1(1) if it 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.

52 In relation to the kinds of reportable transactions for which a UTI is required to be reported, as we explained at paragraphs 36–40 in [CP 334](#), the UTI Guidance sets out that a new UTI should be used for the initial reports of new reportable transactions and for the replacement transaction(s) to a transaction that is terminated (e.g. due to compression, netting or a change in a counterparty) or split into different transactions.

53 We think that draft Rule 2.2.9(1) is fully aligned with the transaction scenarios for a new UTI in the UTI Guidance. The ‘entry into’ and ‘final change’ transactions align with the new or replacement transactions in the

UTI Guidance and the ‘assignment’ transaction arises when the other counterparty ‘steps-out’ and the reporting entity enters into a new transaction with a new counterparty. Where an ‘assignment’ transaction involves the reporting entity ‘stepping-out’, the reporting entity would report the termination of the existing transaction using the UTI of that transaction and not a new UTI.

### **The ASIC UTI waterfall—Overview**

- 54 As with our proposals in [CP 334](#), we are taking an outcomes-focused approach—that is, outcomes of a high level of same-UTI reporting by the counterparties to a transaction no matter to which jurisdiction(s) the transaction is reported. Our approach includes that the method of UTI generation is less important than this UTI outcome.
- 55 Draft Rule 2.2.9(3) sets out the ASIC UTI waterfall in Table 2 ‘UTI generating entity for specified Reportable Transactions’. A reporting entity must determine the UTI generating entity for a reportable transaction as specified in column 3 of the table for the circumstances in column 2 that apply to the reportable transaction.
- 56 A reporting entity must take all reasonable steps to determine the UTI generating entity using the first item of Table 2 that applies to the reportable transaction. This requires reporting entities to:
- (a) treat Table 2 as a waterfall; and
  - (b) take all reasonable steps to give effect to the waterfall, which could include, for example:
    - (i) clarifying with international clearing facilities and financial market facilities if they will generate UTIs, and do so for all of the participants of the facility—see paragraphs 82–83;
    - (ii) cooperating with a counterparty to ascertain sufficient information to determine that a relevant transaction is also reportable in another jurisdiction and sufficient information about the counterparty’s expectations for UTI generation so that a single UTI generation method can be used—this does not mean that a reporting entity needs to exhaustively ascertain all the information about all the jurisdictions to which the transaction may be reportable—see paragraphs 124–128; and
    - (iii) in situations where there are initial indicators that more than one item of Table 2 may apply but the method for determining the UTI generating entity would be the same under each of those items, that method can be used without conclusively determining the singular item of Table 2 that applies to the reportable transaction—see paragraphs 95–99.

57 We think that an outcomes-focused approach needs to be supported by as much clarity as possible about who should generate a UTI and by flexibilities to accommodate different UTI generation practices. It is also necessary to respect the approaches to requirements for UTI generation in other jurisdictions and that the ASIC UTI requirements do not have unintended consequences that may affect the operation of the UTI requirements in other jurisdictions.

58 Table 6 sets out an overview of the draft ASIC UTI waterfall in Rule 2.2.9(3).

**Table 6: Overview of Table 2 of Rule 2.2.9(3)**

1. Item	2. Reportable transaction	3. UTI generating entity	Note
1	Authorised clearing facility is a counterparty	The operator of the authorised clearing facility	As proposed in CP 334
2	Clearing member is a counterparty	The clearing member	As proposed in CP 334
3	Executed on a facility	The operator of the execution facility	As proposed in CP 334
4	Single-jurisdictional transaction	The operator of the affirmation or confirmation platform	As proposed in CP 334
		The sole reporting entity	As proposed in CP 334
		The entity by bilateral agreement	As noted in CP 334 as Option 2 of the ESMA proposals
		The entity by reverse LEI sorting	As noted in CP 334 as Option 2 of the ESMA proposals
5	Cross-jurisdictional transaction—determination of the jurisdiction with the earliest reporting deadline is not required	By an agreed method, in accordance with the requirements of foreign jurisdiction(s)	Responding to feedback to CP 334
6/6A	Cross-jurisdictional transaction—Australian jurisdiction has the earliest reporting deadline	The operator of the affirmation or confirmation platform	As proposed in CP 334
		The entity by bilateral agreement	As noted in CP 334 as Option 2 of the ESMA proposals
		The entity by reverse LEI sorting	As noted in CP 334 as Option 2 of the ESMA proposals
7	Cross-jurisdictional transaction—foreign jurisdiction has the earliest reporting deadline	By the foreign jurisdiction's requirements	As discussed in CP 334

1. Item	2. Reportable transaction	3. UTI generating entity	Note
8/8A	Cross-jurisdictional transaction—no jurisdiction has an earliest reporting deadline	The entity by bilateral agreement	As discussed in CP 334 and per the UTI Guidance
		The operator of the affirmation or confirmation platform	As discussed in CP 334 and per the UTI Guidance
		The operator of the Derivative Trade Repository	As discussed in CP 334 and per the UTI Guidance
		The entity by reverse LEI sorting	As discussed in CP 334 and per the UTI Guidance

### The ASIC UTI waterfall—Clearing facility, clearing member, execution facility

- 59 Items 1, 2 and 3 of Table 2 in draft Rule 2.2.9 implement steps 1, 2 and 3 of the UTI Guidance respectively, as proposed in [CP 334](#).
- 60 For item 1, the UTI generating entity is the operator of the authorised clearing facility, where the operator is a counterparty to the transaction and the other counterparty is not an operator of an authorised clearing and settlement facility.
- 61 An authorised clearing facility is defined in draft Rule 1.2.3 as an authorised clearing and settlement facility, as defined under section 761A of the Corporations Act, that provides clearing services, noting that:
- (a) an authorised clearing and settlement facility includes an Australian-licensed clearing and settlement facility and a foreign country authorised clearing and settlement facility; and
  - (b) an authorised clearing facility only includes an authorised clearing and settlement facility that provides a clearing service, expressed as—drawing on the *ASIC Derivative Transaction Rules (Clearing) 2015*—a regular mechanism by which the operator becomes a counterparty to a transaction by novation or with the equivalent, or substantially equivalent, legal and economic effect as a novation.
- 62 The purpose of the definition of authorised clearing facility is that, for the avoidance of doubt, a facility that does not provide novation or novation-like services—such as a settlement-only facility—is not an authorised clearing facility. The operator of the authorised clearing facility must be a counterparty to a reportable transaction to be a UTI generating entity.
- 63 We think that this is a fit-for-purpose definition of an authorised clearing facility that recognises as potential UTI generating entities both Australian-licensed and foreign-authorised clearing facilities.

- 64 For item 2, the UTI generator is the clearing member, where the clearing member is a counterparty to the transaction, the other counterparty is not an operator of an authorised clearing facility and the clearing member is acting in its capacity as a clearing member.
- 65 A clearing member is defined in draft Rule 1.2.3 as a person who is allowed to directly participate in an authorised clearing facility under the operating rules of the facility.
- 66 We think that this is a fit-for-purpose definition of a clearing member. In current ASIC reporting, we do not identify material misidentification of clearing members.
- 67 In [CP 334](#), we said that clearing members currently identified in ASIC derivative transaction reporting are either ASIC reporting entities or in a jurisdiction that is expected to implement UTI rules. We expect that relevant clearing members will act as UTI generating entities once there is widespread jurisdictional implementation of UTI rules. Prior to this future state, there may be situations where clearing members do not act as UTI generating entities, and ASIC reporting entities will need to apply draft Rule 2.2.9(6) where a UTI is not received from a clearing member.
- 68 For item 3, the UTI generator is the operator of the facility through which the transaction was entered into.
- 69 We are responding to feedback to CP 334 that acknowledged there are uncertainties in relation to common cross-jurisdictional recognition of trading platforms for the purposes of jurisdictions' UTI rules. We have taken the approach to propose to recognise as UTI generating entities the operators of a broad range of facilities.
- 70 The facility may be:
- (a) an authorised financial market; or
  - (b) not an authorised financial market and:
    - (i) the operator of the facility generates a UTI; and
    - (ii) the other counterparty will report the transaction using that UTI under the ASIC Rules or the derivative transaction reporting requirements of another jurisdiction.
- 71 An authorised financial market is defined in draft Rule 1.2.3 in analogous terms to the definition of an authorised clearing and settlement facility under section 761A of the Corporations Act. That is, it is defined as an Australian-licensed financial market or a foreign country financial market whose operator is authorised in a foreign country to operate the financial market.
- 72 We have engaged with Australian market licensees as to their awareness and preparedness to be a UTI generator. We have found that awareness has been raised and that they are generating some form of transaction identifier in

their ordinary operations currently, albeit not in the structure and format of a UTI. We have not found any material barriers to these operators converting their current transaction identifier generation to UTI generation in time for the commencement of requirements to report UTIs.

- 73 However, an operator of an authorised clearing facility or authorised financial market may be recognised as a UTI generating entity under the ASIC UTI waterfall but not so recognised in other jurisdictions.
- 74 An operator or facility may be recognised in those other jurisdictions as a UTI generating entity in its capacity as a UTI generating service provider, rather than in its capacity as an operator. In this case, we think that the UTI outcome would be the same under the ASIC UTI waterfall and the UTI requirements of other jurisdictions, albeit that the capacity in which the entity acts as a UTI generating entity differs.
- 75 If an operator of an authorised clearing facility or authorised financial market is not recognised as a UTI generating entity in other jurisdictions, then an entity with a reporting obligation in one or more other jurisdictions (which may include an ASIC reporting entity for a transaction with multi-jurisdictional reporting) would appear to be required to determine a UTI generating entity:
- (a) by treating a transaction with an authorised clearing facility as if it was an uncleared, bilateral transaction; or
  - (b) by treating a transaction entered into through an authorised financial market as if it was traded bilaterally and not through an authorised financial market.
- 76 This can result in the UTI generating entity in the foreign jurisdiction(s) being different to the UTI generating entity under the ASIC UTI waterfall.
- 77 It may be, for example, that an authorised financial market transaction results in an ASIC reporting entity:
- (a) receiving a UTI from the operator of the authorised financial market and reporting that UTI under the draft remade ASIC Rules;
  - (b) receiving a UTI from its foreign counterparty, who is the UTI generating entity under the UTI rules of its foreign jurisdiction, but not using that UTI in any reporting;
  - (c) being requested to generate a UTI by its foreign counterparty because it believes that the ASIC reporting entity is the UTI generating entity under the UTI rules of its foreign jurisdiction;
  - (d) for a transaction also reportable by the ASIC reporting entity in the jurisdiction of its foreign counterparty, receiving a UTI from its foreign counterparty as the UTI generating entity under the UTI rules of the foreign jurisdiction, and reporting that UTI in the foreign jurisdiction; or



- (e) for a transaction also reportable by the ASIC reporting entity in the jurisdiction of its foreign counterparty, generating a UTI and providing it to its foreign counterparty as the UTI generating entity under the UTI rules of the foreign jurisdiction, and reporting the UTI in the foreign jurisdiction.

- 78 It is therefore possible that there are two UTIs for the same transaction generated and reported in two jurisdictions.
- 79 We do not think that we can resolve this in the draft remade ASIC Rules without unduly complex provisions for a range of scenarios that may be uncommon and specific to the circumstances in the UTI rules of other jurisdictions, including circumstances that are not yet known for jurisdictions who have not yet finalised UTI rules. What we are proposing is that the ASIC UTI waterfall would recognise a broad range of types of infrastructures, consistent with the UTI Guidance, but the ASIC UTI waterfall would not necessarily align with any narrower recognition of infrastructures in the UTI rules of other jurisdictions.
- 80 This broad recognition includes that the operator of a facility, which is not an authorised financial market because its operator's authorisation may not be clear or widely recognised, may be determined as the UTI generating entity. This may be where counterparties customarily treat a facility as if it was a financial market, even though it is not a financial market under Australian law.
- 81 However, we propose a condition—item 3(b)(ii) of Table 2—that the operator may only be determined as the UTI generating entity where both counterparties will use that UTI in their reporting, so as to avoid a two-UTI situation. This condition would not be met where, for example, the transaction is reportable under the requirements of another jurisdiction and the UTI rules of that jurisdiction do not permit such a UTI to be reported.
- 82 We think it is important for the cohesiveness of multi-jurisdictional UTIs that such a UTI will only be used in reporting if both counterparties use it in reporting. Where ASIC reporting entities participate in such facilities, they will need to assess, through their own inquiries of the operator and/or their counterparties, that it is the practice of participants of that facility to use the UTI in reporting.
- 83 As we note at paragraphs 73–74, notwithstanding jurisdictional differences in the direct recognition of market infrastructures for UTI purposes, there may not be differences in UTI outcomes where there is indirect recognition of a market infrastructure as a UTI service provider. We encourage ASIC reporting entities to engage with the market infrastructures that they use with a view to those infrastructures acting as UTI service providers for foreign jurisdiction reporting where this would lead to common multi-jurisdictional UTIs.

- 84 However, if a two-UTI situation arises, there will be a break between the records in different jurisdictions for the same transaction.
- 85 For a new transaction requiring a new UTI, in Table S1.1(1) ‘Common data’ of Schedule 1 of the draft remade ASIC Rules, a reporting entity is required to report ‘a UTI as referred to in Rule 2.2.9’. In the example set out in paragraph 77, this is the UTI generated by the operator of the financial market per draft paragraph (a) of item 3 of the ASIC UTI waterfall.
- 86 The other actions of the example in paragraph 77 are actions that are neither required nor prohibited by the draft remade ASIC Rules:
- (a) for (b), receiving, and discarding, a UTI received from the foreign counterparty;
  - (b) for (c), generating and providing a UTI at the request of the foreign counterparty; and
  - (c) for (d) and (e), receiving or generating and providing a UTI according to the UTI rules of another jurisdiction to which the ASIC reporting entity is also subject, and reporting that UTI in the other jurisdiction.
- 87 It should be noted that it is possible that the opposite scenario occurs, where a market infrastructure is recognised in a foreign jurisdiction for UTI purposes but not so recognised under the ASIC UTI waterfall.
- 88 In the case of an authorised clearing facility, this would be where the facility is not an authorised clearing facility under the ASIC UTI waterfall—that is, the facility is not licensed or authorised in any jurisdiction—but we do not identify any specific examples of this in reporting under the current ASIC Rules.
- 89 In the case of a transaction entered into through a facility, this circumstance should not occur. Even if the facility was not an authorised financial market under paragraph (a) of item 3 of the ASIC UTI waterfall, if the other counterparty will report the UTI generated by the operator of the facility in another jurisdiction, then an ASIC reporting entity is also required to report the same UTI under paragraph (b) of item 3.
- 90 However, if the circumstances did occur, an ASIC reporting entity would be required to determine a UTI generating entity:
- (a) by treating a transaction with an authorised clearing facility as if was an uncleared, bilateral transaction; or
  - (b) by treating a transaction entered into through an authorised financial market as if it was traded bilaterally and not through an authorised financial market.

- 91 This may also result in a two-UTI situation—an ASIC reporting entity would be required to take such UTI generating, receiving, providing and reporting actions as are required under the ASIC Rules and, if subject to reporting requirements for the transaction in other jurisdiction(s), such actions as required by the rules of those other jurisdiction(s).
- 92 However, as with other jurisdictions, the ASIC UTI waterfall also provides that a person may act as a UTI service provider: Rule 2.2.9(7). This may be the means by which a market infrastructure is recognised as a UTI generating entity (as a UTI generating service provider) under the ASIC UTI waterfall. This can result in the same UTI outcome under the ASIC UTI waterfall and the UTI requirements of other jurisdictions, albeit that the capacity in which the entity acts as a UTI generating entity differs.

**The ASIC UTI waterfall—Single-jurisdictional transactions**

- 93 After considering the feedback to [CP 334](#), we have decided to implement our proposal in CP 334 for single-jurisdictional transactions as item 4 in Table 2 ‘UTI generating entity for specified Reportable Transactions’ of draft Rule 2.2.9. This follows our stated intention to align with the final ESMA rules that adopted ‘Option 2’ in the ESMA proposals.

**Table 7: Extract from Table 2 of Rule 2.2.9(3)**

1. Item	2. Reportable Transaction	3. UTI generating entity
4	The Reportable Transaction is not required to be reported in any foreign jurisdiction:	
	(a) where the Reportable Transaction has been, or will be, electronically affirmed or confirmed on an affirmation or confirmation platform and the operator of the affirmation or confirmation platform will generate a UTI;	The operator of the affirmation or confirmation platform
	(b) if paragraph (a) does not apply and the other counterparty is not a Reporting Entity or is not required to report the Reportable Transaction;	The Reporting Entity
	(c) if paragraphs (a) and (b) do not apply and the Reporting Entity and the other counterparty have an agreement for the purposes of determining which of them is the UTI generating entity;	The UTI generating entity determined according to that agreement
	(d) otherwise.	The counterparty whose LEI with the characters reversed (reversed LEI) would appear first if the reversed LEIs of the counterparties were sorted in alphanumeric order, or the only counterparty with an LEI

- 94 A reportable transaction is a single-jurisdictional transaction if it is not reportable in any foreign jurisdiction.
- 95 We think that the prima facie circumstances of a single-jurisdictional transaction should not be complex for reporting entities to identify. A reporting entity should know whether it will also report the transaction in a foreign jurisdiction. If it will not report the transaction in a foreign jurisdiction, that the transaction is a single-jurisdictional transaction will be:
- (a) prima facie indicated if its counterparty is an Australian entity; and
  - (b) prima facie contraindicated if its counterparty is a foreign entity formed in a jurisdiction with derivative transaction reporting requirements.
- 96 We acknowledge that there may be situations where the prima facie indicators are not conclusive that a transaction is a single-jurisdictional transaction.
- 97 For example, a foreign counterparty may be formed in a jurisdiction with derivative transaction reporting requirements, but the particular transaction is not reportable under the requirements—such as where the requirements do not cover the asset class, product type or transaction type of the particular transaction.
- 98 However, we note that the common patterns of methods in the ASIC UTI waterfall mean that there are scenarios where the method for determining the UTI generating entity that is used can be the same, regardless of whether the circumstances of the reportable transaction fall under one item or another item. For example:
- (a) the operator of the affirmation or confirmation platform is a method for determining the UTI generating entity under items 4, 6A and 8A and, if applicable under the UTI rules of the foreign jurisdiction, may be a method under items 5 and/or 7; and
  - (b) an agreement between the counterparties for the purposes of determining which of them is the UTI generating entity is a method under the same items.
- 99 In these scenarios, the reasonable steps taken by a reporting entity may be to establish that conclusively determining a singular item of Table 2 in Rule 2.2.9 that applies to the reportable transaction would not lead to using a different method for determining the UTI generating entity. That is, even if it is not certain that a transaction is a single-jurisdictional transaction and that other items in Table 2 may possibly apply, ascertaining additional information about the reporting requirements applicable to the transaction would not lead to a different outcome—the method for determining the UTI generating entity would be the same among all possible items of Table 2.

- 100 We think that this outcomes-focused approach can simplify reporting entities' approaches to determining the UTI generating entity.
- 101 In relation to the particular methods of item 4, some respondents pointed out that the operator of an affirmation or confirmation platform as the UTI generating entity should be higher in the ASIC UTI waterfall as a standalone item.
- 102 In the draft ASIC UTI waterfall, the operator of an affirmation or confirmation platform as the UTI generating entity is the first step (a) at each of items 4 and 6A, may effectively be the first step at 8A if the counterparties agree this method, and may commonly be a step in items 5 and 7—in practice, it is prominent in all of the steps of the ASIC UTI waterfall. However, to maximise international understandings of the operation of the ASIC UTI waterfall, we have positioned it in each of the items to align with the UTI Guidance and the UTI rules of other jurisdictions.
- 103 While it may be uncommon that a transaction by an ASIC reporting entity with an end user or a small-scale, single-sided reporting entity is affirmed or confirmed via an affirmation or confirmation platform, it aligns with the final ESMA rules to position an affirmation or confirmation platform as the first step in the single-jurisdictional rules.
- 104 We note that, as with operators of authorised clearing facilities and operators of facilities, the operator of an affirmation or confirmation platform may not be recognised as a UTI generating entity in other jurisdictions, but may be so recognised when acting in the capacity of a generating service provider. In this case, we think that the UTI outcome would be the same under the ASIC UTI waterfall and the UTI requirements of other jurisdictions, albeit that the capacity in which the entity acts as a UTI generating entity differs.
- 105 A definition of 'affirmation or confirmation platform' is proposed in Rule 1.2.3 as 'a facility that provides a regular electronic mechanism for the counterparties to a Reportable Transaction to affirm or confirm some or all of the terms of the Reportable Transaction to each other'.
- 106 We do not identify a definition of an affirmation or confirmation platform that is in common global use. In [CP 334](#), we used the UTI Guidance term of 'confirmation platform' but some respondents asked for clarification on whether this also includes an 'affirmation platform'. Reflecting that an affirmation platform may only provide for the affirmation of key economic terms, rather than all the terms, the definition refers to 'some or all of the terms of a Reportable Transaction'. We think that this is a fit-for-purpose definition of an affirmation or confirmation platform.

- 107 In [CP 334](#), we included the text from the UTI Guidance referring to the confirmation platform being ‘able, willing and permitted to generate a UTI’. Some respondents felt that this would require them to make an explicit assessment of a confirmation platform’s ability, willingness and permission to generate a UTI. We do not intend to require this and we propose the simple outcomes-focused approach that ‘the operator of the affirmation or confirmation will generate a UTI’.
- 108 If step (a) does not apply, step (b) applies where an ASIC reporting entity is the sole reporting entity of the two counterparties. The other counterparty would not report the transaction where it is not an ASIC reporting entity (such as an end user defined by reg 7.5A.50) or is not required to report the transaction (such as an entity relying on the small-scale, single-sided exemption of Subdivision 2.1B of Pt 7.5A of the Corporations Regulations). Ensuring that the sole reporter is the UTI generating entity was supported in the feedback to CP 334 and there were no responses that opposed that proposal.
- 109 If steps (a) and (b) do not apply, step (c) applies where the ASIC reporting entity and the other counterparty have an agreement for the purposes of determining which of them is the UTI generating entity—that is, a bilateral agreement.
- 110 The agreement is not required to be in writing and there are no minimum requirements or conditions that must be terms of an agreement. The agreement may specify one of the counterparties as the UTI generating entity for all kinds of transactions between the counterparties or only for certain kinds of transactions. The agreement may also be an agreement to a method for determining the UTI generating entity, such as via a tie-breaker protocol.
- 111 Finally, if a UTI generating entity has not been determined at one of the earlier steps, the UTI generating entity is determined by a ‘reverse LEI sort’ of the LEIs of the counterparties—that is, the counterparty whose LEI with the characters reversed (reversed LEI) would appear first if the reversed LEIs of the counterparties were sorted in alphanumeric order: see examples in Table 8.

**Table 8: Step-by-step illustration of reversed LEI sorting**

Information element in reversed LEI sorting	Example 1	Example 2
LEI of counterparty 1	1111ABCDEABCDEABC123	ABCDEABCDEABCDE12345
LEI of counterparty 2	1111AAAABBBBBCCC23	ABCDEABCDEAAAAA12344
Characters reversed for the LEI of counterparty 1	321CBAEDCBAEDCBA1111	54321EDCBAEDCBAEDCBA

Information element in reversed LEI sorting	Example 1	Example 2
Characters reversed for the LEI of counterparty 2	32CCCBBBBBAAAAA1111	44321AAAAAEDCBAEDCBA
First appearing {Characters reversed of the LEI} after sorting in alphanumeric order (a digit comes before a letter—ASCII order)	321CBAEDCBAEDCBA1111 because '1' (digit) comes before 'C' (letter)	44321AAAAAEDCBAEDCBA because '4' comes before '5'
Counterparty of sort result	counterparty 1	counterparty 2
UTI generating entity	counterparty 1	counterparty 2

- 112 Note that one respondent to CP 334 pointed out that it may not always be the case that both counterparties to a transaction each have an LEI.
- 113 This would be the case where the other counterparty is subject to UTI rules in the jurisdiction(s) in which it will report the transaction, but is not subject to a requirement to report an LEI in those jurisdiction(s) as its entity identifier and does not have an LEI.
- 114 We set out that the UTI generating entity for item 4(d) is '[t]he counterparty whose LEI with the characters reversed (reversed LEI) would appear first if the reversed LEIs of the counterparties were sorted in alphanumeric order, *or the only counterparty with an LEI* .
- 115 Finally, we think that, for a single-jurisdictional transaction, a UTI generating entity will always be able to be determined by one of the steps in item 4. Therefore, we do not think it is necessary to provide for any 'ultimate determinant' of the UTI generating entity to follow from item 4 as was discussed in paragraphs 141–144 of [CP 334](#) and proposed in principle as proposal C8 in CP 334. However, we are proposing that the 'ultimate determinant' step described in CP 334 should be included, as per the UTI Guidance and the final ESMA rules, in items 8/8A for a cross-jurisdictional transaction where no jurisdiction has the earlier reporting deadline.

#### **The ASIC UTI waterfall—Cross-jurisdictional transactions**

- 116 For reportable transactions that are required to be reported in one or more foreign jurisdictions, we are proposing four kinds of cross-jurisdictional transaction circumstances as listed in Table 9.

**Table 9: Extract from Table 2 for cross-jurisdictional transactions**

1. Item	2. Reportable Transaction
5	Cross-jurisdictional transaction determination of the jurisdiction with the earliest reporting deadline is not required
6/6A	Cross-jurisdictional transaction Australian jurisdiction has the earliest reporting deadline
7	Cross-jurisdictional transaction Foreign jurisdiction has the earliest reporting deadline
8/8A	Cross-jurisdictional transaction No jurisdiction has an earliest reporting deadline

117 A transaction would be cross-jurisdictional for the kinds of counterparty combinations for transactions set out in Table 10.

**Table 10: Counterparty combinations for cross-jurisdictional transactions**

Counterparty combination	Australian reporting requirements	Other jurisdiction(s) reporting requirements
ASIC reporting entity	Yes	No
Other counterparty	No	Yes
ASIC reporting entity	Yes	Yes
Other counterparty	No	Yes
ASIC reporting entity	Yes	No
Other counterparty	Yes	Yes
ASIC reporting entity	Yes	Yes
Other counterparty	Yes	Yes

118 We stress that determining the item of the reportable transaction is a requirement of the draft remade ASIC Rules that is only imposed on ASIC reporting entities—the draft remade ASIC Rules do not impose requirements on entities that are not ASIC reporting entities, or modify the operation of the UTI rules of other jurisdictions.

119 We also stress that determining the item of the reportable transaction under the draft remade ASIC Rules will be affected or constrained by the manner in which the UTI rules of the other jurisdiction(s) determine a UTI generating entity and the extent to which any relevant transactional circumstances in those rules differ from those in the draft remade ASIC Rules.



**The ASIC UTI waterfall—Cross-jurisdictional transactions—Item 5**

- 120 Item 5—Cross-jurisdictional transaction (determination of the jurisdiction with the earliest reporting deadline is not required)—responds to the feedback to CP 334 about the complexities of determining all of the jurisdictions to which a transaction is reportable and which of those jurisdictions has the earliest reporting deadline.
- 121 We think it is the most important new proposal we are making for Rule 2.2.9, as set out in Table 11.

**Table 11: Extract from Table 2 of Rule 2.2.9(3)**

1. Item	2. Reportable Transaction	3. UTI generating entity
5	Both of the following apply: (a) the Reportable Transaction is required to be reported in this jurisdiction and one or more foreign jurisdictions; and (b) the Reporting Entity and the other counterparty determine the UTI generating entity in accordance with a method that the Reporting Entity reasonably believes is in accordance with the derivative transaction reporting requirements of each of the foreign jurisdictions in which the Reportable Transaction will be reported.	The UTI generating entity determined according to that method
122	Item 5 is framed in the context that the CFTC and ESMA have published their final UTI rules and anticipating that future UTI rules will be made in other jurisdictions, in a form which is as yet unknown.	
123	Item 5 provides ASIC reporting entities with significant flexibilities for determining the UTI generating entity, but—respecting the UTI rules of other jurisdictions—is only available where the method used is ‘in accordance with a method that the Reporting Entity reasonably believes is in accordance with the derivative transaction reporting requirements of each of the foreign jurisdictions in which the Reportable Transaction will be reported’.	
124	An ASIC reporting entity should know whether it will also report the transaction in one or more foreign jurisdictions. It should also know which methods of determining the UTI generating entity are in accordance with the requirements in the foreign jurisdiction(s) for its reporting.	
125	The other counterparty should know the jurisdictions in which it will report the transaction for the circumstances of the transactions and the methods of determining the UTI generating entity that are in accordance with the requirements in the foreign jurisdiction(s).	
126	However, under this item 5, the ASIC reporting entity does not need to know all of the jurisdictions in which the other counterparty will report the transaction (other than it will report the transaction in at least one foreign jurisdiction) or the reporting deadlines in the jurisdiction(s).	

127 We think that the other counterparty should have the primary responsibility for compliance with the UTI rules to which it is subject. An ASIC reporting entity is required to ‘reasonably believe’ that the method used for determining the UTI generating entity is in accordance with the requirements in the foreign jurisdiction(s).

128 We think that an ASIC reporting entity can form this reasonable belief based on, for example:

- (a) representations from the other counterparty; or
- (b) its own knowledge of the requirements in foreign jurisdictions.

Note: There are no specific bases for the reasonable belief set out in Rule 2.2.9, including that there are no requirements for the form of a representation from the other counterparty.

129 We think the operation of item 5 can be as set out in Table 12 and we anticipate that we would include guidance of this kind in an amendment to [Regulatory Guide 251](#) *Derivative transaction reporting* (RG 251).

**Table 12: Operation of item 5 for circumstances of the other counterparty**

Method for determining the UTI generating entity	Circumstances of the other counterparty
A ‘bounce-back’ method (i.e. a method under the UTI rules to which the other counterparty is subject)	The other counterparty represents that it must use a method according to particular UTI rules to which it is subject
Any method as agreed by the parties (i.e. a bilateral agreement)	The other counterparty is subject to UTI rules that provide for any method or where the other counterparty recognises that item 5 is within the meaning of ‘the UTI rules of the jurisdiction with the earliest reporting deadline’
Not applicable—no method is available	The other counterparty does not recognise item 5 as a method for determining the UTI generating entity under the UTI rules to which it is subject

130 Under item 5, an ASIC reporting entity is not required to determine the jurisdiction with the earliest reporting deadline. However, the other counterparty may be subject to UTI rules that do require this.

131 Where the other counterparty asserts that a particular foreign jurisdiction is the jurisdiction with the earliest reporting deadline and that particular UTI rules apply to the transaction, the ASIC reporting entity may agree to using that method, regardless of any view that it may have on the jurisdiction with the earliest reporting deadline.

132 In this regard, we characterise this method as a ‘bounce-back’ method.

Note: The method that is used may be the same as is available under item 6 (Australian jurisdiction has the earliest reporting deadline)—whether the outcome is a ‘bounce-back’ is moot, if the alternative under the draft remade ASIC Rules would give the same outcome.

133 This is an example of the way in which the method that an ASIC reporting entity may agree with its counterparty is constrained by the manner in which the UTI rules of another jurisdiction apply to the other counterparty.

134 Where the UTI rules of another jurisdiction applicable to the other counterparty also allow an ‘any method’ outcome without requiring that the jurisdiction with the earliest reporting deadline be determined, any method—i.e. ‘a method’—may be used by the ASIC reporting entity under the ASIC Rules to determine the UTI generating entity.

135 The ASIC reporting entity must ‘reasonably believe’ that the method is in accordance with the requirements in the foreign jurisdiction(s)—as we currently understand, there are no UTI rules in foreign jurisdictions that explicitly allow for an ‘any method’ outcome, without requiring that the jurisdiction with the earliest reporting deadline be determined.

136 Alternatively, the UTI rules in the foreign jurisdiction(s) of the other counterparty may provide that, where this jurisdiction is the jurisdiction with the earliest reporting deadline, the other counterparty must generate a UTI according to the draft remade ASIC Rules.

137 Item 5 allows for ‘any method’ as agreed by the parties according to the draft remade ASIC Rules. Where the other counterparty asserts that this jurisdiction is the earliest reporting deadline and that it must generate a UTI according to the draft remade ASIC Rules, the parties may agree any method—that is, ‘a method’—for determining the UTI generating entity.

138 This is subject to the ASIC reporting entity ‘reasonably believing’ that the method is in accordance with the requirements in the foreign jurisdictions.

139 The last possible result of the operation of item 5 in Table 9—‘n/a—no method is available’—would most likely be in the circumstances that the other counterparty believes that item 5 is not in accordance with the UTI rules to which it is subject.

140 This may be where, notwithstanding that the other counterparty asserts that this jurisdiction has the earliest reporting deadline and that it must generate a UTI according to the draft remade ASIC Rules, the other counterparty may still not be sufficiently certain that generating a UTI under item 5 of the draft remade ASIC Rules would be in accordance with the UTI rules of the jurisdictions to which it is subject. For example, the other counterparty may

consider that item 6 is the relevant UTI rule within the draft remade ASIC Rules where this jurisdiction has the earliest reporting deadline.

141 In these circumstances, we think that the ASIC reporting entity would not be able to ‘reasonably believe’ that determining a UTI generating entity under item 5 is ‘in accordance with the derivative transaction reporting requirements of each of the foreign jurisdictions in which the Reportable Transaction will be reported’.

**The ASIC UTI waterfall—Determining the jurisdiction with the earliest reporting deadline**

142 While we think that many UTIs for cross-jurisdictional transactions will be able to be determined under item 5 without requiring an ASIC reporting entity to determine the jurisdiction with the earliest reporting deadline, this cannot be assured for all reportable transactions.

143 Notwithstanding that the ASIC UTI waterfall is framed with the flexibility to:

- (a) enable ASIC reporting entities to concur with the determination that their foreign counterparty makes of the jurisdiction with the earliest reporting deadline; or
- (b) use as their determination under the draft remade ASIC Rules the same determination that they make under the UTI rules of another jurisdiction to which they are also subject,

there may still be situations where an ASIC reporting entity will need to form an independent view of the jurisdiction with the earliest reporting deadline.

144 As a foundation element to enable the jurisdiction with the earliest reporting deadline to be determined under the draft remade ASIC Rules, we have decided to proceed with our proposal in [CP 334](#) to specify, for UTI purposes only, a singular time for the reporting deadline in this jurisdiction. In view of the mixed feedback as to how this time should be expressed, we have decided to maintain consistency with the existing Rule 2.2.3 and express this time as ‘the end of the next business day in Sydney’—see Rule 2.2.3(4). This resolves a singular reporting deadline for UTI purposes, whereas the actual reporting deadline for any particular transaction remains as the end of the next business day of the jurisdiction in which the transaction is entered into.

145 Given a clear definition, for UTI purposes, of the reporting deadline in this jurisdiction, we further intend that the way in which ASIC reporting entities determine the jurisdiction with the earliest reporting deadline is consistent with the ways that this is determined under the UTI rules of other jurisdictions.

146 At this time, we understand that, as with the feedback to CP 334 discussed at paragraph 31, engagement by other international regulators with their stakeholders has not yet resolved a preferred methodology for determining the jurisdiction with the earliest reporting deadline.

147 Consequently, and noting that we think the imperative to set out a methodology is secondary to the flexibilities provided under item 5, we are not proposing that any such methodology is set out in the draft remade ASIC Rules. We anticipate that, following a clearer international consensus on a common methodology, we would set this out as guidance in an amendment to [RG 251](#).

**The ASIC UTI waterfall—Cross-jurisdictional transactions—Items 6/6A**

148 Item 6 refers to the circumstances where this jurisdiction is the jurisdiction with the earliest reporting deadline and item 6A sets out the steps for determining the UTI generating entity, as set out in Table 13.

**Table 13: Extract from Table 2 of Rule 2.2.9(3)**

1. Item	2. Reportable Transaction	3. UTI generating entity
6	<p>Both of the following apply:</p> <p>(a) the Reportable Transaction is required to be reported in this jurisdiction and one or more foreign jurisdiction(s); and</p> <p>(b) this jurisdiction is the jurisdiction with the earliest reporting deadline.</p> <p>Note: See subrule (4) for the meaning of the reporting deadline in this jurisdiction</p>	The UTI generating entity determined according to Item 6A
6A	<p>If Item 6 requires the UTI generating entity to be determined in accordance with this item:</p> <p>(a) where the Reportable Transaction has been, or will be, electronically affirmed or confirmed on an affirmation or confirmation platform and the operator of the affirmation or confirmation platform will generate a UTI;</p> <p>(b) if paragraph (a) does not apply and the Reporting Entity and the other counterparty have an agreement for the purposes of determining which of them is the UTI generating entity;</p> <p>(c) otherwise.</p>	<p>The operator of the affirmation or confirmation platform</p> <p>The UTI generating entity determined according to that agreement</p> <p>The counterparty whose LEI with the characters reversed (<b>reversed LEI</b>) would appear first if the reversed LEIs of the counterparties were sorted in alphanumeric order, or the only counterparty with an LEI</p>

- 149 Items 6 and 6A are substantively as proposed in [CP 334](#).
- 150 In Table 6 at paragraph 58, we note that paragraph (a) of item 6A is ‘As proposed in CP 334’ and (b) and (c) of item 6A are ‘As noted in CP 334 as Option 2 of the ESMA proposals’.
- 151 The last two steps of item 6A are the same as the last two steps of item 4. This is as we proposed in CP 334 that, after the steps for the operator of the affirmation or confirmation platform and the sole reporting entity, there should be the same subsequent steps for a cross-jurisdictional transaction and a single-jurisdictional transaction.
- 152 As we note at paragraph 35, ESMA had decided to adopt its Option 2 and also apply the same UTI rules for cross-jurisdictional transactions and single-jurisdictional transactions.
- 153 Given the stronger support for Option 2 over Option 1 and support for our proposals for determining the UTI generating entity for single-jurisdictional transactions in feedback to CP 334 and the alignment to the final ESMA rules, we are proposing the above text as the implementation, in substantive terms, of our proposals in CP 334.
- 154 Finally, as item 6A has the same operative steps as item 4 for a single-jurisdictional transaction, we likewise think that a UTI generating entity will always be able to be determined by one of the steps in item 6A and that it is not necessary to provide for any ‘ultimate determinant’ of the UTI generating entity to follow from item 6A.

**The ASIC UTI waterfall—Cross-jurisdictional transactions—Item 7**

- 155 Item 7 refers to the circumstances where a foreign jurisdiction is the jurisdiction with the earliest reporting deadline and the UTI generating entity is determined according to the requirements of that foreign jurisdiction, as set out in Table 14.

**Table 14: Extract from Table 2 of Rule 2.2.9(3)**

1. Item	2. Reportable Transaction	3. UTI generating entity
7	<p>Both of the following apply:</p> <p>(a) the Reportable Transaction is required to be reported in this jurisdiction and one or more foreign jurisdiction(s); and</p> <p>(b) a foreign jurisdiction is the jurisdiction with the earliest reporting deadline.</p> <p>Note: See subrule (4) for the meaning of the reporting deadline in this jurisdiction</p>	<p>The UTI generating entity determined according to the derivative transaction reporting requirements of that foreign jurisdiction</p>

- 156 In [CP 334](#), we identified the elements, that are expressed as item 7(a) and 7(b) in Table 14, as the relevant steps in the UTI Guidance.
- 157 Item 7(a) answers, in effect, Step 4 of the UTI Guidance—‘Is the transaction cross-jurisdictional (i.e. are the counterparties to the transaction subject to more than one jurisdiction’s reporting rules)? If so, see Step 10?’
- 158 Item 7(b) answers, in effect, Step 10 of the UTI Guidance—‘Does one of the jurisdictions have a sooner deadline for reporting than the other(s)? If so, then the UTI generation rules of the jurisdiction with the sooner reporting deadline should be followed’.
- 159 As noted at paragraph 25, in CP 334 we identified difficulties with the practical implementation of these elements of the UTI Guidance. We also discussed one pragmatic ‘special purpose’ approach to avoid these difficulties, in relation to cross-jurisdictional transactions that also involved reporting under CFTC requirements, of deeming the CFTC to be, in all transactional circumstances, the jurisdiction with the earliest reporting deadline.
- 160 The feedback to CP 334 clearly identified that determining all of the jurisdictions in which the transaction will be reported and the jurisdiction within that set with the earliest reporting deadline is the bigger issue. We did not read any feedback on ‘special purpose deeming’ as supporting that it may serve a material purpose in ameliorating the bigger issue.
- 161 We think that our proposal for item 5 of the ASIC UTI rules is a practical solution to the bigger issue. We are now proposing this item 7 as being the straightforward implementation of the UTI Guidance and we are not proceeding with any additional ‘special purpose deeming’ or similar approaches.

#### **The ASIC UTI waterfall—Cross-jurisdictional transactions—Items 8/8A**

- 162 Item 8 refers to the circumstances where a transaction is required to be reported in one or more other jurisdictions and there is no jurisdiction with an earliest reporting deadline. Item 8A sets out the steps for determining the UTI generating entity under this circumstance. Items 8 and 8A are as set out in Table 15.

**Table 15: Extract from Table 2 of Rule 2.2.9(3)**

1. Item	2. Reportable Transaction	3. UTI generating entity
8	<p>Both of the following apply:</p> <p>(a) the Reportable Transaction is required to be reported in this jurisdiction and one or more foreign jurisdiction(s); and</p> <p>(b) there is no jurisdiction with an earliest reporting deadline.</p> <p>Note: See subrule (4) for the meaning of the reporting deadline in this jurisdiction.</p>	The UTI generating entity determined according to Item 8A
8A	<p>If Item 8 requires the UTI generating entity to be determined in accordance with this item:</p> <p>(a) if the Reporting Entity and the other counterparty have an agreement for the purposes of determining the UTI generating entity;</p> <p>(b) if paragraph (a) does not apply and the Reportable Transaction has been, or will be, electronically affirmed or confirmed on an affirmation or confirmation platform and the operator of the affirmation or confirmation platform will generate a UTI;</p> <p>(c) if paragraphs (a) and (b) do not apply and the Reportable Transaction will be reported by both counterparties to a single Derivative Trade Repository which records both reports into the repository records of a single jurisdiction;</p> <p>(d) otherwise.</p>	<p>The UTI generating entity determined according to that agreement</p> <p>The operator of the affirmation or confirmation platform</p> <p>The operator of the Derivative Trade Repository</p> <p>The counterparty whose LEI with the characters reversed (<b>reversed LEI</b>) would appear first if the reversed LEIs of the counterparties were sorted in alphanumeric order, or the only counterparty with an LEI</p>
163	Item 8 describes the last remaining scenario of a transaction that is not a single-jurisdictional transaction or a cross-jurisdictional transaction where one of the jurisdictions is the jurisdiction with the earlier reporting deadline.	
164	The steps of item 8A implement the same steps of the UTI Guidance and of the final ESMA rules.	
165	Considering the flexibility of item 5 to determine the UTI generating entity without determining the jurisdiction with the earlier reporting deadline and that Sydney’s time zone is unique among jurisdictions with transaction reporting requirements, we do not anticipate that item 8/8A would commonly apply to the transactions of ASIC reporting entities.	
166	However, as we noted at paragraph 144 of <a href="#">CP 334</a> , if the ‘semantic’ interpretation of T+1 reporting deadlines is adopted internationally and	



item 5 does not apply, item 8 would apply in a range of transaction circumstances that involve reporting to more than one T+1 jurisdiction.

- 167 If item 8 applies, the steps involved can be, in substance, the same steps involved in items 5 and 6A, and may be the same steps as for item 7.
- 168 Step (a) of item 8A is determining the UTI generating entity according to an agreement between the counterparties. This agreement may be, if applicable to the transaction, an agreement that the UTI generating entity is the operator of the affirmation or confirmation platform. In this way, the operator of the affirmation or confirmation platform can be the UTI generating entity at the first step of item 8A, as it is at the first step of items 5 and 6A.
- 169 If the transaction is not affirmed or confirmed on an affirmation or confirmation platform, determining the UTI generating entity by bilateral agreement remains the first operative step of item 8A, as it would be the first operative step of items 5 and 6A in the same circumstances that the transaction is not affirmed or confirmed on an affirmation or confirmation platform.
- 170 If neither step (a) nor step (b) of item 8A apply, at step (c) the operator of the single derivative trade repository to which the transaction will be reported by both counterparties is the UTI generating entity.
- 171 For example, DTCC Data Repository (Singapore) Pte Ltd (DDRS) is a single derivative trade repository but with separate datasets for reports made under the requirements of the current ASIC Rules and reports made under the requirements of the Monetary Authority of Singapore (MAS). Step (c) only applies where both reports are recorded into the repository records of a single jurisdiction—that is, both reports are only recorded in the ‘ASIC dataset’ or only in the ‘MAS dataset’ and not reported in each dataset. We do not think it is appropriate that a derivative trade repository should be required to act as the UTI generating entity for transactions that are reported to it under different processes and controls.
- 172 For this step (c) to apply, it would require circumstances where there are reporting requirements in a foreign jurisdiction that allow the requirements to be met by reporting entities only making reports to the ‘ASIC dataset’—however, we do not identify that there are currently any such circumstances.
- 173 Further, given that the circumstances must include that at least one of the counterparties is making a report under Rule 2.2.1(1) to the ‘ASIC dataset’—otherwise Rule 2.2.9 does not apply to the transaction—it follows that reporting by both counterparties to only the ‘MAS dataset’, or more generally to a single prescribed repository, would not be circumstances under which step (c) would apply.

174 If none of steps (a), (b) or (c) of item 8A apply, at step (d) the UTI generating entity is determined by a ‘reverse LEI sort’ of the LEIs of the counterparties (or the sole counterparty with an LEI)—this is the same final step as in items 4 and 6A.

175 Finally, as item 8A has the same in-substance operative steps as items 4 and 6A, we likewise think that a UTI generating entity will always be able to be determined by one of the steps in item 8A and that it is not necessary to provide for any ‘ultimate determinant’ of the UTI generating entity to follow from item 8A.

### **Non-receipt of a UTI**

176 Draft Rule 2.2.9(6) deals with what we describe as a ‘temporary’ or ‘permanent’ non-receipt of a UTI by an ASIC reporting entity in situations where the ASIC reporting entity is expecting that another entity will provide that UTI.

177 The ASIC reporting entity is required to take certain steps if it ‘does not receive a UTI from the UTI generating entity determined under Rule 2.2.9(3) in sufficient time to enable the Reporting Entity to report the UTI for the Reportable Transaction in accordance with Rule 2.2.3’.

178 ‘*[I]n sufficient time*’ is not given any specific temporal meaning in draft Rule 2.2.9(6) and is for the reporting entity to determine. We propose to give guidance in amendments to [RG 251](#) that we expect ASIC reporting entities to act reasonably, having regard to, for example:

- (a) if using real-time, or near real-time, reporting processes, temporarily diverting the transaction from that process and rescheduling it in a manner that balances allowing time to receive a UTI with the operational risks of non-standard processes;
- (b) if using batch-style reporting processes, allowing at least the time until the cut-off time for a batch to be formed or diverting to a subsequent batch;
- (c) in the meantime, taking proactive steps to follow up with the UTI generating entity to obtain the UTI, particularly where the UTI generating entity ordinarily and regularly provides a UTI;
- (d) the intent of the draft remade ASIC Rules is to support that the same UTI is reported to all relevant jurisdictions for a multi-jurisdictional transaction, so that any sooner reporting deadline in another jurisdiction limits the amount of sufficient time that a reporting entity may have for ASIC reporting; and
- (e) where the non-receipt is of a ‘permanent’ nature and there is no ‘next applicable method’, the reporting entity may immediately, upon entering into the transaction, use the fallback of generating its own UTI.

- 179 Draft Rule 2.2.9(6)(a) describes a ‘temporary’ UTI non-receipt situation where the ASIC reporting entity ‘reasonably believes that it will, at a later time, receive the UTI’. This may be, for example, a situation of an irregular technical or other form of interruption where ordinarily a UTI is received from the UTI generating entity.
- 180 This ‘later time’ is nonetheless not ‘in sufficient time’ to enable the ASIC reporting entity to report the UTI, and the ASIC reporting entity must generate its own UTI for reporting.
- 181 Draft Rule 2.2.9 does not prescribe what an ASIC reporting entity must do if it receives the originally expected UTI at the later time. However, we propose to give guidance in amendments to [RG 251](#) that we expect an ASIC reporting entity to take the necessary reporting steps to update the UTI in the derivative transaction information reported to the trade repository—for example, by ‘exiting’ the original reported transaction and re-reporting the transaction with the updated UTI.
- 182 Draft Rule 2.2.9(6)(b) describes a ‘permanent’ UTI non-receipt situation where the ASIC reporting entity ‘reasonably believes that it will not receive the UTI’. This may be, for example, a situation where the entity that is determined to be the UTI generating entity under the ASIC UTI waterfall is not required by the rules of its home jurisdiction to generate a UTI and does not do so. This may be because:
- (a) there are no derivative transaction reporting requirements in its home jurisdiction;
  - (b) there are derivative transaction reporting requirements but these do not include requirements to generate a UTI.
- 183 Draft Rule 2.2.9(6)(b) requires the ASIC reporting entity to ‘use its best endeavours to determine the UTI generating entity (new UTI generating entity) according to the next applicable method in subrule (3)’.
- 184 In practice, where the UTI generating entity who ‘permanently’ does not provide the UTI is a counterparty to the transaction—as an authorised clearing facility, clearing member or bilateral counterparty—there is no UTI generating entity that can be determined under the ‘next applicable method’ other than the ASIC reporting entity itself. In this situation, Rule 2.2.9(6)(c) requires the reporting entity to generate its own UTI for reporting.
- 185 Where the UTI generating entity who ‘permanently’ does not provide the UTI is an operator of a financial market, the ‘next applicable method’ would be among item 4 of Table 2 onwards for a bilateral transaction.
- 186 Where the execution on a financial market is on a name-disclosed basis, the counterparties can determine the ‘next applicable method’. Where the execution on a financial market is on an anonymous basis, the ‘next applicable method’ may be UTI generation by the downstream affirmation or confirmation platform, if such a platform is part of the transaction processing

workflow. Otherwise, there would be no ‘next applicable method’ and the ASIC reporting entity must generate its own UTI for reporting.

187 Note that the operator of an affirmation or confirmation platform is a UTI generating entity—either directly under an item for transactions executed bilaterally or indirectly as ‘next applicable method’—only where it ‘will generate a UTI’. If such an operator will not generate a UTI, it cannot be determined as a UTI generating entity under the ASIC UTI waterfall and the situation of draft Rule 2.2.9(6)(b) cannot arise. However, if such an operator will generate a UTI, it may be a UTI generating entity and the situation of draft Rule 2.2.9(6)(a) may arise.

188 Where a UTI generating entity is determined under item 5 or item 7 by following the UTI generation requirements of a foreign jurisdiction, we consider that the ASIC UTI waterfall has been ‘exited’. In this circumstance, if a situation of ‘permanent’ non-receipt of a UTI arises, there is no ‘next applicable method in subrule (3)’ and an ASIC reporting entity would need to follow the applicable requirements, if any, in those one or more foreign jurisdictions. If following those requirements does not result in a UTI being provided to the ASIC reporting entity, the ASIC reporting entity must generate its own UTI for reporting.

#### **Timely provision of a UTI to the other counterparty**

189 Draft Rule 2.2.9(5) requires a reporting entity that is the UTI generating entity to generate the UTI and to provide the UTI to the other counterparty in a timely manner and not later than 10 am Sydney time T+1.

190 We propose to adopt the ESMA approach and require that the UTI be provided in a timely manner and not later than 10 am T+1 Sydney time.

#### **Fund managers, etc, with roles in UTI generation**

191 Draft Rule 2.2.9(2) states ‘In this Rule, other than subrule (8), a reference to a Reporting Entity that is an RE or Trustee may be taken to be a reference to a person appointed by the Reporting Entity to enter into OTC Derivatives on behalf of the Reporting Entity’.

192 The note to draft Rule 2.2.9(2) recognises that, for example, a fund manager, rather than an RE or trustee, may be the entity that operationalises the UTI requirements on behalf of the RE or trustee. This can include the operations and roles of:

- (a) determining the UTI generating entity;
- (b) agreeing methods to determine the UTI generating entity;
- (c) generating and receiving UTIs;
- (d) providing UTIs to the other counterparty; and
- (e) appointing service providers under Rule 2.2.9(7).

**UTI service providers**

- 193 We did not make any proposals in [CP 334](#) regarding UTI generation service providers.
- 194 We are now proposing draft Rule 2.2.9(7) in relation to the appointment of a service provider and draft Rule 2.2.9(8) in relation to the reporting entity remaining responsible for its obligations under draft Rule 2.2.9.
- 195 Draft Rule 2.2.9(7) provides that an ASIC reporting entity may appoint a service provider to generate UTIs on its behalf. This is subject to the appointment terms and related agreements requiring the service provider to:
- (a) use its LEI as the LEI component of the UTI; and
  - (b) provide the UTI to the other counterparty in accordance with the timeliness provisions of Rule 2.2.9(5).
- 196 The final CFTC rules and the final ESMA rules also provide for the appointment of a UTI generation service provider:
- (a) § 45.5(g) of the final CFTC rules provides that if a reporting counterparty contracts with a third-party service provider to undertake derivative transaction reporting, the reporting counterparty shall ensure that the third-party service provider creates and transmits the UTI. The UTI generated by the third-party service provider will consist of two components:
    - (i) the legal entity identifier of the third-party service provider; and
    - (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the third-party service provider, which shall be unique with respect to all such codes generated and assigned by that third-party service provider.
  - (b) Article 7(4) of the draft ITS in Annex V of the final ESMA rules provides that a UTI can be generated by a delegated party and the delegated party shall comply with the requirements of articles 7(1) and 7(3) to:
    - (i) compose the UTI using the LEI of the entity which generated that UTI followed by a code containing up to 32 characters which is unique at the level of the generating entity; and
    - (ii) communicate the UTI to the other counterparty in a timely manner and no later than 10 am UTC of the working day following the date of the conclusion of the derivative.
- 197 We think it is important for the systemic cohesiveness and integrity of UTI generation that reporting entities that use third parties to generate and provide UTIs remain responsible for compliance with Rule 2.2.9. Rule 2.2.9(8) provides that a reporting entity contravenes Rule 2.2.9 if a service provider or person appointed and acting for the reporting entity under Rule 2.2.9 does not determine and provide a UTI as required under this rule.

### Reporting deadline in this jurisdiction for UTI purposes

- 198 Where the counterparties to a transaction are considering whether item 6, 7 or 8 of Table 2 applies to a transaction, they would need to have a common understanding of the reporting deadline applicable to the transaction under the ASIC Rules.
- 199 Absent any other provision, the reporting deadline applicable to the transaction would be, by Rule 2.2.3, the end of the next business day of the jurisdiction in which the transaction is entered into. Therefore, the counterparties would need to have a common view of the jurisdiction in which the transaction is entered into, which may not be the jurisdiction of Australia. We think that this may not always be straightforward, particularly for foreign entities who are not ASIC reporting entities and who are not familiar with the ASIC Rules.
- 200 We think that this is an unnecessary complexity that can be removed from the considerations to determine the UTI generating entity for a transaction by specifying, for UTI purposes, a singular reporting deadline that is independent of the jurisdiction in which the transaction is entered into. In this way, the counterparties can both always take it that the reporting deadline applicable to the transaction under the ASIC Rules is a known singular future time.
- 201 Draft Rule 2.2.9(4) sets out that, for the purposes of items 6, 7 and 8 in Table 2, the reporting deadline in this jurisdiction for a reportable transaction is the end of the next business day in Sydney after the requirement to report the reportable transaction arises. We think that ‘end of the next business day’ maintains consistency with the use of this phrase in Rule 2.2.3.
- 202 Note that Rule 2.2.9(4) only applies within Rule 2.2.9 and only for determining the UTI generating entity under:
- (a) item 6 where ‘this jurisdiction is the jurisdiction with the earliest reporting deadline’;
  - (b) item 7 where ‘a foreign jurisdiction is the jurisdiction with the earliest reporting deadline’; or
  - (c) item 8 where ‘there is no jurisdiction with an earliest reporting deadline’.
- 203 Rule 2.2.9(4) does not apply to the actual reporting deadline for a particular transaction—this is still according to Rule 2.2.3 ‘Reporting Requirement—Timing (generally, T+1)’.

## C The unique product identifier (UPI)

### Key points

The UPI is a globally unique product identifier to be used in derivative transaction reporting to identify the type of derivative that is the subject of the transaction.

We have decided to implement a modified form of our proposal in CP 334 to implement the UPI Guidance to specify UPIs in derivative transaction reporting.

The UPI will embed certain data element information. The UPI system is currently expected to be operational by the third quarter of 2023. The design of the UPI has been progressed since the release of CP 334. However, certain UPI-embedded information that we expected would be included has been omitted. Our draft amended ASIC Rules (see Attachment 2) specify a data element set that includes the omitted information.

### Background

204 The UPI is a code determined from a product taxonomy for OTC derivatives.

205 In Section B of [CP 334](#), we described the background to the development of the UPI and its governance and operational arrangements.

206 The UPI is one of the international harmonised standards for which the Committee on Payments and Market Infrastructures (CPMI) of the Bank for International Settlements and the International Organization of Securities Commissions (IOSCO) have developed global guidance: see CPMI–IOSCO, [Technical guidance: Harmonisation of the unique product identifier](#) (PDF 602 KB), September 2017 (UPI Guidance).

207 The UPI Guidance provides a system design and suggested reference data elements and reference data values. The Financial Stability Board (FSB) has determined that the reference data elements and values should be to an ISO standard and that The Derivatives Service Bureau Limited (DSB) has been designated as the service provider for the UPI system. DSB is a subsidiary of the Association of National Numbering Agencies (ANNA) and currently issues ISINs (international securities identification numbers) for OTC derivative products. The Regulatory Oversight Committee (ROC) is the international governance body for the UPI system.

Note: The ROC is the international governance body for the legal entity identifier (LEI), UTI, UPI and the critical data elements (CDE). The ROC is a group of 69 public authorities with full membership and 19 observers from more than 50 countries that was

established in January 2013 to oversee the Global Legal Entity Identifier System (GLEIS). The ROC's expanded mandate is supported by its Committee on Derivative Identifiers and Data Elements (CDIDE). ASIC represents the Australian regulators as a member of the ROC and the CDIDE.

- 208 The ROC has signed a [memorandum of understanding](#) (PDF 2.21 MB) with DSB. Members of the ROC CDIDE participate as observers in the meetings of DSB's [Product Committee](#) of industry experts.
- 209 The UPI Guidance intends to adopt an internationally common product schema, with its attendant simplification for reporting entities, cross-trade repository interoperability and regulatory authorities.
- 210 The UPI Guidance explains that a UPI code should be a semantically meaningless code—that is, the individual characters in the code do not convey any information of themselves but, as a whole code, they map to an explanation in a reference data library of the set of product attributes associated with that code. The UPI Guidance also explains that a UPI code of 12 characters would be consistent with being long enough to cover the range of product attribute permutations and short enough to be practical for manual data entry (for the least automated of market participants).
- 211 The UPI Guidance suggests that a UPI code retrieval or creation process would entail an entity making a query or request, comprising the set of product attributes of the derivative transaction for which a UPI code is required, and being returned with the UPI code that matches those product attributes or a newly created UPI code if that set of product attributes does not already have a UPI code.

## Developments in the UPI system since the release of CP 334

- 212 Since the release of [CP 334](#) in November 2020, there have been significant developments in the UPI system.
- 213 In November 2021, ISO published a standard for the UPI as [ISO 4914:2021](#) *Financial services—Unique product identifier*. The standard specifies the elements of an unambiguous scheme to identify OTC derivative products that are reportable to trade repositories—in particular:
- (a) the structure and format of the UPI code;
  - (b) the minimum data elements of the UPI reference data library, together with their allowable values; and
  - (c) the definition of a UPI service provider as an organisation designated by an external body of financial regulators to assign UPIs and operate the UPI reference data library.



- 214 DSB’s development work has included:
- (a) two rounds of [consultation](#) on DSB’s fee model and access methods;
  - (b) a [consultation](#) on DSB’s legal terms and conditions;
  - (c) publication of [API and connectivity specifications](#); and
  - (d) publication of draft [UPI product definitions](#).
- 215 ASIC also participated, with regulators from China, Hong Kong and Japan, in a joint ROC–DSB Asian webinar on 25 May 2021, which detailed key elements of the UPI system.
- 216 The ongoing development of the UPI product definitions and the reference data elements embedded in the UPI to describe those products has included the expert input of DSB’s industry [Product Committee](#). The views of the Product Committee have been presented to, and discussed with, the ROC CDIDE by DSB.
- 217 In the course of these developments, it has been clarified that certain reference data elements will not be included in the UPIs for particular products. In addition, the range of underlier identifiers that may be supported by the UPI system will depend on the extent to which DSB can identify and readily access robust and reliable sources of reference data. The current range of underlier identifier sources are set out in DSB’s draft [UPI product definitions](#).
- 218 The reference data elements that will not be included in the UPI are:
- (a) the maturity date or tenor of the interest rate swap that underlies a swaption; and
  - (b) information about the applicable interest rate floating rate reference rate that underlies one of the legs in, for example, an equity swap.
- 219 When an underlier identifier is not specifically supported under the UPI system, a UPI can still be created but with the reference data element value of ‘other’ for the underlier identifier and the underlier identifier source. In the commodity and equity asset classes, the underlier identifier sources currently set out in DSB’s draft product definitions are materially incomplete for transactions reported under the current ASIC Rules.
- 220 These current underlier identifier sources are:
- (a) for commodity derivatives, the ISDA Commodity Reference Price dataset of the ISDA Taxonomy 2.0; and
  - (b) for equity derivatives over equity indices, the indices listed in the equity derivatives transitional transparency calculations ([TTC](#)) file published by ESMA—these indices relate to certain transparency requirements of EU regulations.

- 221 However, for transactions reported under the current ASIC Rules:
- (a) although there are more than 1,700 underlier identifiers in the ISDA Commodity Reference Price dataset, less than 50% of commodity underliers that are reported by ASIC reporting entities are found in this dataset; and
  - (b) the TTC file published by ESMA does not include, for example, any ASX indices.
- 222 In March 2021, DSB opened a request for information process to identify a data provider for provision of underlier identifiers for the UPI system. Although this may enable DSB to identify and access a broader range of sources of reference data for the UPI system, particularly for equity indices, we think there will likely be an ongoing material level of incomplete coverage.
- 223 DSB has also set out its future work outcomes as including:
- (a) finalisation of DSB’s access and usage agreement in April 2022;
  - (b) finalisation of UPI product templates;
  - (c) commencement of UPI user acceptance and integration testing and user onboarding; and
  - (d) making the UPI system available so that live UPIs can be created and searched.
- 224 DSB has updated its UPI timeline to take into account its expectations of the commencement dates for regulatory requirements to report UPIs from the UPI system in major jurisdictions.
- 225 On 31 January 2022, the Division of Data of the CFTC published a temporary no-action position providing that they will not recommend that the CFTC commence an enforcement action against an entity for failure to comply with the final CFTC rules before 5 December 2022. The letter also explained that the Division currently expects the use of the ISO 20022 and UPI data standards to be required by the CFTC in Q4 2023.
- 226 Currently, the relevant regulations of the final ESMA rules have not yet entered into force. With the implementing technical standards to apply 18 months from the date of entry into force, the requirement to report a UPI under the final ESMA rules will not be before late Q3 2023.
- 227 On 8 February 2022, DSB published an update to its UPI timeline resetting its future work outcomes to be staged relative ‘to the first major regulatory reporting mandate’: see DSB’s [UPI implementation milestones](#). The UPI production system would be available three months ahead of the first major regulatory reporting mandate, which currently appears to be in late Q3 2023 or in Q4 2023.

## ASIC's proposed approach to the UPI system in CP 334

- 228 At the time of the release of [CP 334](#) in November 2020, the governance and operational arrangements for the UPI system had been substantively established. However, the international operationalisation of the UPI system was not well developed.
- 229 In CP 334, we noted that one of the UPI features is that it intends to embed information that would otherwise be provided in stand-alone derivative transaction data elements—for example, that the option is a European call option or that the floating rate reference rate is 3-month BBSW.
- 230 We said in CP 334 that we envisage that the long-term position under the ASIC Rules would be that the data element set would not duplicate information that is embedded in the UPI. Our approach in that the first round of consultation was to specify a data element set that:
- (a) assumes that the UPI system will be sufficiently operational by the time of our second consultation; and
  - (b) would not require additional data elements for information that is otherwise embedded within the UPI.
- 231 However, we also said that, in the event that the UPI system was not sufficiently operational by that time, we planned to:
- (a) adopt a conservative approach of ensuring that the additional data elements are specified in the ASIC Rules; and
  - (b) re-evaluate their removal when they can be substituted by UPI-embedded information.
- 232 In Section E of CP 334, we proposed to include the UPI as a reportable data element. We also identified data elements, such as the maturity date or tenor of the interest rate swap that underlies a swaption, that may need to continue to be reported as separate data elements if they are not embedded as reference data elements in the UPI.

## Feedback on our proposed approach in CP 334

- 233 We did not specifically ask for feedback on our approach to the UPI system, but one respondent expressed support for our approach.
- 234 Another respondent noted that the ISDA taxonomy specifically identifies a CFD product in the equities asset class, but it does not specifically identify a CFD product in the foreign exchange and commodity asset classes. They noted that ASIC's guidance on product identifiers for CFDs is not clear.

## Our response to developments

- 235 With the significant developments in the UPI system since the release of [CP 334](#) in November 2020, we are now confident that the UPI system will be operationalised as intended.
- 236 Consequently, we have decided to implement our proposal in CP 334 that the data element ‘Unique product identifier’ must be reported as a UPI from the UPI system under the draft amended ASIC Rules from 1 April 2024. We will not require data elements to be reported where the information is embedded in the UPI.
- 237 We are now proposing the separate data elements that would need to be reported where they are not reference data elements embedded in the UPI. This includes ‘Maturity date of the underlier’ for interest rate swaptions, as foreshadowed in CP 334, and the additional data elements subsequently identified as not to be embedded in the UPI:
- (a) information about the applicable interest rate floating rate reference rate that underlies one of the legs in, for example, an equity swap;
  - (b) the underlier identifier and the underlier identifier source where these data elements are not explicitly supported by the UPI system.
- 238 Our revised proposals are summarised in Table 16.

**Table 16: Summary of ASIC’s revised proposals**

<b>Decisions for the draft remade ASIC Rules</b>	Not applicable—no change to the reporting of a unique product identifier and data elements not embedded in the reported unique product identifier
<b>Proposals for the draft remade ASIC Rules</b>	Not applicable
<b>Decisions for the draft amended ASIC Rules</b>	Require reporting of a UPI from the UPI system Remove the data elements that are embedded in a UPI
<b>Proposals for the draft amended ASIC Rules</b>	Retain the data elements whose information is not embedded in a UPI Add the related data elements regarding floating rate reset frequency and underlier ID source
<b>Matters deferred to the third consultation</b>	Not applicable

## ASIC's revised proposals

### Proposal

- c1 We propose to include in the draft remade ASIC Rules the non-UPI data elements set out in Table 17: see Attachment 1.

#### *Your feedback*

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

Note: In Section E, we are seeking feedback on the definitions, formats and allowable values of these data elements, and any interpretation or implementation issues.

### Rationale

- 239 As a consequence of the developments in the UPI system referred to in paragraphs 217–222, we are proposing to retain the data elements that provide information that is not embedded in a UPI. We are also proposing to add related data elements that more fully describe the retained data elements, consistent with similar data elements in the draft amended ASIC Rules.
- 240 Table 17 sets out these data elements for the draft amended ASIC Rules (effective 1 April 2024) and relates them to the applicable corresponding data elements in the current ASIC Rules.

**Table 17: Reporting under the current ASIC Rules and the draft amended ASIC Rules**

Data element description	Current ASIC Rules	Draft amended ASIC Rules (effective 1 April 2024): see Attachment 2
Maturity date of underlying swap	'Maturity, termination or end date' Item 28, Table S2.1(1) 'Common data'	'Maturity date of the underlier' Item 83, Table S1.1(1) 'Transaction information'
Floating rate reference rate identifier	'Settlement rate or index' Item 35, Table S2.1(1) 'Common data'	'Identifier of the floating rate—Leg 2' Item 84, Table S1.1(1) 'Transaction information'
Floating rate reference rate reset information	'Rate reset frequency' Item 53, Table S2.1(1) 'Common data'	'Floating rate reference period—Leg 2' Item 85, Table S1.1(1) 'Transaction information'  'Floating rate reference period multiplier—Leg 2' Item 86, Table S1.1(1) 'Transaction information'

Data element description	Current ASIC Rules	Draft amended ASIC Rules (effective 1 April 2024): see Attachment 2
'Other' underlier identifier	'Underlying' Item 4, Table S2.1(1) 'Common data'	'Underlier ID—non-UPI' Item 81, Table S1.1(1) 'Transaction information'
'Other' underlier identifier source	Not applicable	'Underlier ID source—non-UPI' Item 82, Table S1.1(1) 'Transaction information'

- 241 In relation to 'maturity date of the underlying', we said in [CP 334](#) that it is important for the Australian regulators to understand the term of the underlying swap to a swaption, given that the risk characteristics of a one-year term underlier are notably different to those of a 30-year underlier.
- 242 As we foreshadowed in CP 334, now that the 'maturity date of the underlying' will not be a data element embedded in the UPI, we propose to require that the 'Maturity date of the underlier' be reported as a data element for the interest rate swap that underlies a swaption. This date will not be required to be reported for the debt instrument underlying an option on a debt instrument. This is because this information can be found from the ISIN of the debt instrument embedded in the UPI for this kind of product.
- 243 The current reporting practice for interest rate swaptions is to report the expiry date of the option element as the 'Option expiration date' and the maturity date of the underlying swap as the 'Maturity, termination or end date'. Under the draft amended ASIC Rules, the maturity date of the underlying swap would be reported as the specific data element 'Maturity date of underlier'.
- 244 In relation to information about the applicable interest rate floating rate reference rate that underlies one of the legs in a swap other than an interest rate swap, we had anticipated that this would be recognised as a relevant second underlier in addition to, for example, the equity underlier as one of the key terms of such a transaction.
- 245 Information about the interest rate floating rate reference rate for equity swaps is commonly reported under the current ASIC Rules in the data element 'Settlement rate or index'. As this will not be included in the UPI product definitions, we propose that this information continue to be reported under the draft remade ASIC Rules as the data element 'Identifier of the floating rate—Leg 2'.

246 Related to information identifying the floating rate reference rate—such as ‘AUD-BBR-BBSW’—is important information identifying the specific tenor or reference period of the rate—such as 1M or 3M. This is also commonly reported under the current ASIC Rules in the data element ‘Rate reset frequency’. We propose that this information continue to be reported under the draft remade ASIC Rules, but, consistent with the reporting of similar data elements, as a separate data element for the reference period—‘Floating rate reference period—Leg 2’—and for the reference period multiplier—‘Floating rate reference period multiplier—Leg 2’.

Note: A ‘period’ is, for example, DAIL for day and MNTH for month. A ‘period multiplier’ is, for example, 1 or 3. Taken together, 1 DAIL indicates a reference period of one day, and 3 MNTH indicates a reference period of three months.

247 In relation to underlier identifiers, we think there is uncertainty about the short-term and long-term comprehensiveness of the support for commodity underliers and equity index underliers that may be provided under the UPI system.

248 As we note at paragraph 221, the underlier identifier sources currently set out in DSB’s draft product definitions are materially incomplete for commodity and equity index transactions reported under the current ASIC Rules.

249 Though the UPI system may, in the future, access a broader range of sources of reference data and support a broader range of commodity and equity index underliers, if it did not do so, we think there would be an unacceptable level of non-specific identifiers in transaction reporting to ASIC.

250 Hence, we are proposing one retained data element and one new data element for reporting of underlier information in addition to the UPI. These are the underlier identifier—‘Underlier ID—non-UPI’—and the underlier identifier source—‘Underlier ID source—non-UPI’. However, these would only apply to the commodity and equity asset classes, and only when the UPI that is reported does not identify a specific underlier. If the UPI system broadens its underlier coverage to support more specific underliers, then values for these data elements would not be required to be reported.

251 Underliers are reported under the current ASIC Rules in the data element ‘Underlier’. In the draft amended ASIC Rules, this data element would be renamed ‘Underlier ID—non-UPI’. The new data element ‘Underlier ID source—non-UPI’ would identify the publisher of the ‘Underlier ID—non-UPI’—for example, a price reporting agency, index calculation agent or an exchange where the underlier is an instrument traded on that exchange.

## Reporting a UPI

### Accuracy of a UPI

- 252 We consider that the accuracy requirement of Rule 2.2.6 requires reporting entities to take all reasonable steps to ensure that the UPI reported is the most appropriate UPI for the reportable transaction.
- 253 Reporting entities should obtain and report the UPI that has the same UPI asset class, instrument type, product and UPI attributes as the reportable transaction.
- 254 To comply with the accuracy requirement of Rule 2.2.6, reporting entities that trade in products and kinds of transactions that require a new UPI to be created need to ensure that the UPI is created in time for reporting, noting that a UPI may be created at any time, can only be created once and can be reported for all future transactions for which the UPI is applicable.
- 255 Reporting entities need to have arrangements to access UPIs and, when applicable, to create UPIs. Access-only arrangements may be as a direct DSB user or as arrangements to receive a UPI from their counterparty who is a direct DSB user, subject to DSB's acceptable use provisions in user agreements and other policies. Arrangements to create UPIs are only available as a direct DSB user.
- 256 New UPIs need to be created when a product or kind of transaction references a new underlier, currency pair, option features or return/payoff features in the reference data elements. New UPIs also need to be created when a new combination of reference data elements is used in a product or transaction. New underliers are likely to be the main reason why new UPIs need to be created.
- 257 However, as discussed at paragraph 219 in relation to underliers and more broadly in relation to other UPI attributes, the UPI service is designed so that it is possible to obtain a UPI for any kind of OTC derivative, including by allowing 'other' as a value for each UPI attribute for which a 'standard' value is not applicable for an OTC derivative.

### Obtaining a UPI

- 258 DSB provides [information](#) on how to request or otherwise obtain a UPI.
- 259 In its [final report on the UPI fee model consultation](#) (DSB Final Report), DSB set out four categories of fee-paying user access mechanisms and one non-fee-paying user access mechanism: see Table 18. These are differentiated by:
- (a) the kind of access—whether 'programmatic' or 'manual'; and



- (b) the functions of the access—whether able to:
- (i) create UPIs;
  - (ii) search for UPIs applicable to products with one or more specific reference data elements; and/or
  - (iii) download UPI records with their associated reference data library.

Stakeholders should refer to the DSB Final Report for more information about these access mechanisms and access functions.

**Table 18: DSB’s user access mechanisms**

Category	Access mechanism	Access functions	Fee-paying
Power user	Full programmatic	Create, search, download	Yes
Search-only API user	Limited programmatic access	Search (limited)	Yes
Standard user	Manual access	Create, search, download	Yes
Infrequent user	Manual access	Create, search, download (limited)	Yes
Registered user	Manual access	Search, download	No

Source: Adapted from DSB, [Principles underlying the fee model for the unique product identifier \(UPI\) service: Based on industry feedback to two consultation papers—Final report](#), 27 September 2021.

260

DSB’s Final Report also sets out a fee schedule as ‘illustrative only for the expected first full year of operation (2023), with final fees being contingent on user numbers and Estimated Total UPI cost’. The fee schedule was presented for DSB’s ‘lower threshold of user estimates’ of 3,000 fee-paying users and for an even lower 300 users: see Table 19.

**Table 19: DSB’s illustrative fee schedules—Fees per annum**

Category	3,000 users	300 users
Power user fee	€5,111	€35,818
Standard user fee	€1,704	€11,939
Search only API fee	€852	€5,970
Infrequent user fee	€135	€150

Source: DSB, [Principles underlying the fee model for the unique product identifier \(UPI\) service: Based on industry feedback to two consultation papers—Final report](#), 27 September 2021.

## D The legal entity identifier (LEI)

### Key points

We have decided to implement a modified form of our proposal in CP 334 to require that a current, renewed LEI is the only allowable entity identifier in OTC derivative transaction reporting for most eligible relevant entities. This substantially aligns with the requirements in other major jurisdictions and with the CDE Guidance.

The key modifications are that for counterparty 2 and beneficiary 1, a 'grace period' is retained to allow for initial non-LEI reporting and a current, renewed LEI is not required for foreign counterparty 2s of certain types. For other payment payers or receivers of certain types, an LEI is not always required to be reported.

We have also decided to proceed with our proposal in CP 334 that, for natural persons, not eligible to obtain an LEI, the identifier required to be reported is a client code that comprises the reporting counterparty's LEI plus assigned extra characters as specified in the CDE Guidance.

### Background

- 261 The international derivative transaction reporting standard is that all entities are identified by an LEI, except for natural persons who are not eligible to obtain an LEI unless they trade in derivatives in a business capacity.
- 262 The current ASIC Rules provide that, for other than an individual, an LEI must be reported but, if not available, an AVID (issued by AVOX Limited, a Thomson Reuters company) or a BIC (issued by SWIFT) is a valid entity identifier. In practice, an LEI is reported as the entity identifier for reporting entities, brokers, CCPs, clearing members and trading platforms as financial services providers. An LEI has been less commonly reported as the identifier of the non-reporting counterparties who are not financial services providers.
- 263 In [Consultation Paper 205](#) *Derivative transaction reporting* (CP 205), released 28 March 2013, we outlined our proposals for making the ASIC Rules. We stated (at paragraph 54), 'There are however three international standards we consider essential to be used (i.e. LEIs, UTIs and UPIs), where they are available'. As the LEI system was then only in the process of being established, the ASIC Rules initially required entity identifiers as 'an LEI or interim entity identifier or, if not available, an Australian Business Number or, in the case of individuals, a client code'.

- 264 In 2015, the ASIC Rules were amended to substitute an AVID for an ABN to better align with then international practices where an AVID was among the valid entity identifiers in, for example, the US and Canadian trade reporting regimes.
- 265 The Global LEI System has since been established and over 1.95 million LEIs have been issued to entities in over 300 entity legal jurisdictions. There are currently nearly 25,000 LEIs issued to Australian entities.
- 266 For the identifier of the non-reporting counterparty (counterparty 2) (NRCP), conditional exemptions allowing an internal client code to be reported ceased from 1 October 2019 for Australian NRCPs and from 1 April 2020 for foreign NRCPs. Since then, the use of LEIs and AVIDs as entity identifiers has increased. Table 20 shows the estimated percentages of each type of entity identifier reported as the NRCP identifier, for entities other than individuals, in new transactions in a week in each month. The use of LEIs has risen to approximately two-thirds into 2021.

**Table 20: Percentage of NRCP entity identifier types in new transactions in the third week of the month**

Type	Oct 18	Apr 19	Oct 19	Apr 20	Oct 20	Apr 21	Oct 21
LEI	46.2%	54.8%	59.7%	63.8%	64.5%	67.4%	66.6%
AVID	6.1%	16.4%	32.7%	30.2%	29.6%	26.2%	29.9%
Client code	56.6%	28.8%	7.6%	6.0%	5.9%	6.4%	3.8%

- 267 This reflects the combination of new trades by existing NRCPs and new trades by new NRCPs. An alternative view of new entity identifier creation in Table 21 is much more in favour of LEIs, with nearly twice as many new Australian LEIs as global AVIDs newly appearing in reporting in the most recent quarters.

**Table 21: Numbers of new AVIDs and new LEIs**

Type	Jun quarter 2021	Sep quarter 2021	Dec quarter 2021
Number of new AVIDs in reporting	367	489	498
Number of new Australian LEIs in reporting	690	977	878

## ASIC's proposed approach to LEIs in CP 334

- 268 In [CP 334](#), we proposed to:
- (a) require all entity identifiers to be valid and duly renewed LEIs, other than for natural persons not acting in a business capacity;
  - (b) require that transactions reported with entity identifiers that are not valid and duly renewed LEIs have their transaction information updated to include a valid and duly renewed LEI;
  - (c) repeal the existing exemption that allows the reporting of an internal entity identifier when a non-internal entity identifier is applied for within two business days (the 'grace period') after the requirement to report the entity identifier arises; and
  - (d) repeal the existing exemption that allows the reporting of an internal entity identifier for joint counterparties and align with the final CFTC rules by requiring that the LEI of one of the joint counterparties is reported as the entity identifier of the non-reporting counterparty.

Note: These exemptions are section 6 'Exemption 2 (Entity Information)' and section 6B 'Exemption 2B (Joint Counterparties)' of [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#).

269 The requirement to use LEIs would apply to all 'new' transactions, and to transactions that had not matured or expired by the time the remade ASIC Rules come into force.

270 The conditional exemptions allowing an internal client code to be reported have provided that, once the NRCP obtains an allowable entity identifier, the reporting entity must report the identifier on existing transactions. Likewise, we proposed that, once the NRCP obtains an LEI, the reporting entity must report the LEI on existing transactions.

271 After the release of CP 334, on 17 December 2020, ESMA published its final report on its proposals, which included the clarification that the LEI reported as the identifier of counterparty 2 is not required to be a renewed LEI. However, noting that the LEI reported as the identifier of counterparty 1 continues to be required to be a renewed LEI, the lesser requirement on counterparty 2's LEI only applies, in effect, to counterparty 2s who are not ESMA reporting entities and never report as counterparty 1.

## Feedback on our proposed approach in CP 334

272 Respondents to CP 334 generally expressed support for our proposal to require all entity identifiers to be valid and duly renewed LEIs, other than for natural persons not acting in a business capacity. However, a number of respondents noted a number of challenges.

- 273 Two respondents noted that they had in excess of 1,000, typically SME, clients with an AVID but not an LEI. One respondent estimated a particular substantial monetary cost in staff and LEI fees and costs should they, in effect, sponsor these clients to obtain LEIs. Other respondents referred more generally to significant effort being required to uplift AVIDs to LEIs.
- 274 Related to the AVID-to-LEI conversion outreach and uplift challenge, some respondents advocated retaining the ‘grace period’ exemption, noting that counterparties had entered into existing transactions on the basis that AVID and BIC were acceptable identifiers and may have the ongoing expectation that AVID and BIC are acceptable for future transactions.
- 275 Respondents also advocated that, when a counterparty obtained an LEI, any requirement to update the identifiers on existing transactions to that LEI should not be triggered until the counterparty has entered into a new transaction.
- 276 Finally, some respondents advocated that the joint counterparties exemption be retained, but without stating any express reasons for doing so. We presume that these are, more often than not, also SME clients and the LEI challenges are the same as for any SME client.

### **Our response**

- 277 Responding to the feedback to CP 334, we have decided to:
- (a) proceed with our proposal to require the entity identifier of Australian counterparty 2s, and if applicable beneficiary 1, to be valid and duly renewed LEIs (other than for natural persons not acting in a business capacity);
  - (b) proceed with our proposal to require the entity identifiers of foreign counterparty 2s that are ASIC reporting entities to be valid and duly renewed LEIs;
  - (c) require the entity identifiers of other foreign counterparty 2s to be LEIs but not necessarily duly renewed LEIs;
  - (d) NOT require that transactions that have been reported with entity identifiers that are not LEIs have their transaction information updated to an LEI;
  - (e) retain the provision that allows the reporting of a non-LEI entity identifier when an LEI is applied for within two business days (the ‘grace period’) after the requirement to report the entity identifier arises; and
  - (f) proceed with our proposal to require that, for joint or joint and several counterparties, the LEI of one of the joint counterparties is reported as the entity identifier (this is modified to exclude partnerships because a partnership is eligible for an LEI).

278 Our decisions are summarised in Table 22.

**Table 22: Summary of ASIC’s revised proposals**

<b>Decisions for the draft remade ASIC Rules</b>	<p>Require the entity identifier of Australian entities and ASIC reporting entities to be valid and duly renewed LEIs (other than for natural persons not acting in a business capacity)</p> <p>Require the entity identifiers of other foreign counterparty 2s to be LEIs but not necessarily duly renewed LEIs</p> <p>Not require that transactions that have been reported with entity identifiers that are not LEIs have their transaction information updated to an LEI</p> <p>Retain the provision that allows the reporting of a non-LEI entity identifier when an LEI is applied for within a two business days ‘grace period’</p> <p>Require that one of the joint counterparties is reported as an LEI</p>
<b>Proposals for the draft remade ASIC Rules</b>	Not applicable
<b>Decisions for the draft amended ASIC Rules</b>	Not applicable
<b>Proposals for the draft amended ASIC Rules</b>	Not applicable
<b>Matters deferred to the third consultation</b>	Not applicable

279 We acknowledge that requiring LEIs for counterparties and beneficiaries may require a significant effort by some reporting entities to engage with their counterparties to communicate, promote and, in some cases, lead their conversion from AVID to LEI. However, we think that the more important overarching imperative is the fulfilment of the Australian Government’s agreement to the G20 OTC derivative markets reforms and that Australia implements, in line with other major jurisdictions, the LEI as the common, internationally recognised entity identifier in derivative transaction reporting.

280 As we noted in paragraph 267, there has been an increase in the reporting of LEIs compared with the reporting of AVIDs. Table 23 compares measures calculated at the time [CP 334](#) was prepared with those calculated at the time this consultation paper was prepared. Although the number of reporting entities reporting AVIDs for counterparty 2 has increased from 23 to 25, the

actual number of AVIDs has decreased, whereas the measures for LEI use have increased in all the measures.

**Table 23: Comparative measures for the reporting of AVIDs and LEIs**

Measure	For CP 334	For this paper
Number of reporting entities reporting AVIDs for counterparty 2	23	25
Number of counterparty 2s	9,040	6,950
Number of transactions	121,385	78,365
Number of reporting entities reporting LEIs for counterparty 2	806	865
Number of counterparty 2s	13,504	14,906
Number of transactions	1,549,104	1,849,423

281 In [CP 334](#), we estimated that, looking about two years forward, there were 14 reporting entities reporting AVID identifiers for 1,777 counterparty 2s on 5,711 transactions with maturity or expiry dates beyond 30 September 2022. We viewed this as a proxy for the AVID-to-LEI conversion task for residual existing transactions with AVIDs. There is only a small reduction in our updated December 2021 estimates—16 reporting entities reporting AVID identifiers for 1,614 NRCPs on 5,391 transactions with maturity or expiry dates beyond a two-year forward lead time.

282 Responding to the feedback that some reporting entities expect that a significant effort will be required in the conversion from AVID to LEI, the draft remade ASIC Rules would not include a requirement that existing transactions that have been reported with non-LEI entity identifiers have their transaction information updated to include a valid and duly renewed LEI.

283 Finally, we have decided to proceed with our proposal to require that, for joint or joint and several counterparties, the LEI of one of the joint counterparties is reported as the entity identifier. This is modified to exclude partnerships because a partnership is eligible for an LEI.

284 Entity identifier provisions are set out in the draft remade ASIC Rules (see Attachment 1) and the draft amended ASIC Rules (see Attachment 2) for the data elements listed in Table 24.

**Table 24: Data elements with entity identifier provisions**

Draft remade ASIC Rules (effective 1 October 2023 to 31 March 2024)	Draft amended ASIC Rules (effective 1 April 2024)
Not applicable	Reporting entity
Counterparty 1	Counterparty 1
Counterparty 2	Counterparty 2
Beneficiary 1	Beneficiary 1
Report submitting entity	Report submitting entity
Broker	Broker
Not applicable	Execution agent of counterparty 1
Central counterparty	Central counterparty
Clearing member	Clearing member
Payer (fixed rate leg 1)	Not applicable
Payer (fixed rate leg 2)	
Payer (floating rate leg 1)	
Payer (floating rate leg 2)	
Not applicable	Other payment payer
	Other payment receiver

**Entity identifier provisions in the draft remade ASIC Rules**

- 285 Draft Rule S1.3.1(2) of Part S1.3 in Schedule 1 determines the entity identifier that must be reported for counterparty 2 and, if applicable, beneficiary 1 and, for interest rate derivatives, payer (fixed rate leg 1), payer (fixed rate leg 2), payer (floating rate leg 1) and payer (floating rate leg 2).
- 286 For a reportable transaction that is the entry into an OTC derivative, including when the reporting entity's counterparty assigns their rights and obligations to a new counterparty, the entity identifier for an entity eligible for an LEI must be:
- (a) the entity's LEI; or
  - (b) if the entity does not have an LEI, a designated business identifier or a client code of the entity, provided that:
    - (i) an LEI is applied for within two business days; and
    - (ii) as soon as practicable, the reporting entity uses all reasonable endeavours to report that LEI for the reportable transaction.



- 287 A designated business identifier is any one of the non-LEI entity identifiers, other than an internal entity identifier, that has been allowed to be used in reporting under the current ASIC Rules. These are ABN, AVID and BIC. An internal entity identifier must be in the structure and format of a client code—that is, the LEI of the reporting entity followed by an identifier, unique to the reporting entity, of up to 52 characters.
- 288 For a reportable transaction that is the entry into an OTC derivative, the entity identifier for an entity that is a natural person not eligible for an LEI must be the client code of the entity.
- 289 For a reportable transaction that is the modification or termination of a previously reported derivative transaction, the entity identifier must be the identifier that was reported for the transaction. This may be:
- (a) a non-LEI identifier that has been reported for the transaction, but which has never been updated to an LEI; or
  - (b) a non-LEI identifier that has been determined and reported for the transaction according to draft Rule S1.3.1(2)(a)(ii) and the modification or termination occurs before the identifier is updated to an LEI.
- 290 There is no requirement under draft Rule S1.3.1(2), or elsewhere in the draft remade ASIC Rules, that non-LEI identifiers that have been reported before Rule S1.3.1(2) coming into force must be updated to an LEI.
- 291 Draft Rule S1.3.1(2)(d) also specifies that if the entity to which the item relates comprises two or more counterparties, other than a partnership, who entered into the reportable transaction as joint or joint and several counterparties, the entity is one of those joint or joint and several entities.
- 292 We have decided to describe a renewed LEI as a ‘current’ LEI. The relevant LEI status in the GLEIS is ‘issued’—as distinct from, for example, ‘lapsed’—and there is not a specific status in the GLEIS of ‘renewed’. We think that the ordinary meaning of ‘current’ is a more appropriate generalised description of the relevant LEI status than referencing a specific GLEIS term.
- 293 In draft Table S1.1(1) ‘Common data’, only an LEI may be reported and it must be a renewed LEI for:
- (a) a counterparty 1;
  - (b) a report submitting entity;
  - (c) a broker;
  - (d) a central counterparty; and
  - (e) a clearing member.

294 In draft Table S1.1(1) ‘Common data’, when an LEI is reported, it must be a renewed LEI for:

- (a) a counterparty 2 that is an Australian entity or an ASIC reporting entity; and
- (b) a beneficiary 1 that is an Australian entity or an ASIC reporting entity.

295 We think that reporting entities will not have material difficulties in determining whether counterparty 2 or beneficiary 1 is an Australian entity or an ASIC reporting entity, and therefore whether the requirement for a renewed LEI applies.

296 A counterparty 2 or beneficiary 1 that is not an Australian entity or ASIC reporting entity would be a foreign entity, other than a foreign entity that is an ASIC reporting entity. Such a foreign entity may or may not have a requirement to renew its LEI under regulatory provisions in its home jurisdiction. The draft ASIC Rules requirement is to report an LEI that need not be a renewed LEI. This aligns with ESMA’s rules for foreign entities that are not ESMA reporting entities.

297 A foreign counterparty 2 in a particular transaction may be a CCP or a clearing member, acting in its respective capacity as a CCP or clearing member for the transaction, and who is not an ASIC reporting entity. In this circumstance, the entity identifier of the CCP and/or clearing member will also be reported for the data elements of CCP and clearing member respectively. As the entity identifier requirement for these data elements is a renewed LEI, it follows that the entity identifier requirement for counterparty 2 as the CCP or clearing member for the transaction is, in effect, the same renewed LEI.

298 Although probably uncommon and unlikely, it is possible that a foreign CCP or clearing member is counterparty 2 in a transaction, but it is not acting in its capacity as a CCP or clearing member for the transaction, and its entity identifier is not also reported as another data element of the transaction. In this circumstance, the LEI that is reported need not be a renewed LEI.

299 Similarly, and also uncommonly, a foreign counterparty 2 may be a report submitting entity or a foreign beneficiary 1 may be a CCP, a clearing member, a report submitting entity or a broker, and also not an ASIC reporting entity. In such circumstances, if the entity’s identifier is reported for a data element other than counterparty 2 or beneficiary 1, its identifier will be, in effect, a renewed LEI, but otherwise need not be a renewed LEI. However, entities acting in these roles in other transactions, reported in this or other jurisdictions, will likely ordinarily have a renewed LEI.

300 Finally, in draft Table S1.1(5) ‘Interest rate derivative data’, when an LEI is reported for payer (fixed rate leg 1), payer (fixed rate leg 2), payer (floating rate leg 1) or payer (floating rate leg 2), it must be a renewed LEI for entities that are Australian entities or ASIC reporting entities.

**Entity identifier provisions in the draft amended ASIC Rules**

- 301 The entity identifier provisions are only changed in the draft amended ASIC Rules (effective 1 April 2024) as appropriate for the addition and deletion of data elements.
- 302 In draft Table S1.1(1) ‘Transaction information’, only an LEI may be reported and it must be a renewed LEI for the added data elements:
- (a) reporting entity; and
  - (b) execution agent of counterparty 1.
- 303 In draft Table S1.1(1) ‘Transaction information’, if the entity has an LEI, that LEI must be reported for the added data elements:
- (a) other payment payer; and
  - (b) other payment receiver.
- 304 The LEI must also be a renewed LEI if the entity is an Australian entity or an ASIC reporting entity.
- 305 We think that reporting entities will not have material difficulties in determining whether an ‘other payment payer’ or ‘other payment receiver’ is an Australian entity or an ASIC reporting entity, and therefore whether the requirement for a renewed LEI applies.
- 306 As with the discussion of the LEI renewal requirements for counterparty 2 and beneficiary 1 in paragraphs 296–299, when the ‘other payment payer’ or ‘other payment receiver’ is an entity whose identifier is also reported for another data element for the transaction with a renewed LEI requirement, the same renewed LEI would be reported for ‘other payment payer’ or ‘other payment receiver’. Otherwise, the LEI reported need not be a renewed LEI.
- 307 An ‘other payment payer’ or ‘other payment receiver’ may not be an entity that is a counterparty to the transaction—such as an entity that assigns its rights and obligations of an existing transaction and steps out of that transaction—and/or may not be an entity with whom the ASIC reporting entity has a regular dealer or client relationship and/or may be a one-off or very infrequent ‘other’ payment arrangement.
- 308 For these circumstances, we do not consider it necessary to require the kinds of LEI requirements that ordinarily apply in the ASIC Rules for entities that are counterparties, or act in other roles, in transactions with ASIC reporting entities. Consequently, the entity identifier is specified as:
- (a) in the case of an entity that has an LEI, the LEI; or
  - (b) in the case of any other person, a designated business identifier or client code.

- 309 A designated business identifier may particularly apply when an ‘other’ payment is for a transaction where counterparty 2 is an ‘other payment payer’ or an ‘other payment receiver’ and its entity identifier is determined under the ‘grace period’ provisions of draft Rule S1.3.1(2).
- 310 In the draft amended ASIC Rules (see Attachment 2), entity identifiers are no longer required for the deleted data elements of payer (fixed rate leg 1), payer (fixed rate leg 2), payer (floating rate leg 1) and payer (floating rate leg 1).
- 311 In addition, with the separate specifications for transaction reports, valuation reports and collateral reports in the draft amended ASIC Rules, when an entity identifier is also specified in a valuation or collateral report, the requirements for the identifier are the same as for a transaction report.

## E The ASIC data elements

### Key points

We are proposing the data elements set out in Schedule 1 'Information requirements' of the draft remade ASIC Rules and the draft amended ASIC Rules.

This includes proceeding with many of the data elements proposed in CP 334, not proceeding with certain data elements and now proposing some new data elements.

Our proposals also include new and amended rules:

- exempting small-scale buy-side entities from certain reporting requirements;
- curtailing duplicative reporting;
- requiring re-reporting of pre-1 April 2024 transactions in order to update the data elements for the transactions to the new specifications; and
- recognising practical reporting circumstances of derivative trade repositories deriving certain information, other persons operationalising certain reporting requirements on behalf of responsible entities and trustees, and requirements to update formats and allowable values in change reports.

## Background

312 In Section B of [CP 334](#), we described the background to the development of the CDE Guidance and its governance and operations arrangements.

313 The CDE Guidance is one of the international harmonised standards for which the Committee on Payments and Market Infrastructures (CPMI) of the Bank for International Settlements and the International Organization of Securities Commissions (IOSCO) have developed global guidance. In its role as the International Governing Body for the CDE, the ROC published [updates to the CDE Guidance](#) (PDF 1.23 MB) as version 2 in September 2021.

314 Adopting data elements from the CDE Guidance in the draft amended ASIC Rules will be beneficial to Australian regulators and reporting entities in:

- (a) expanding the dataset for important data elements not in the current ASIC Rules;

- (b) removing many data elements that are either unique to the current ASIC Rules or are duplicative within the current ASIC Rules;
- (c) minimising the need for reporting entities that will report under the ASIC Rules and under the rules of one or more other jurisdictions to prepare and make transaction reports of significantly differing content for the same transaction;
- (d) streamlining the offerings from international reporting services providers who provide their services in multiple jurisdictions; and
- (e) clarifying the definitions of data elements and their allowed values and formats to reduce ambiguity and complexity for reporting entities and improve the conformance and consistency in data values reported.

315 The CDE Guidance is not prescriptive as to a particular set of data elements and allows for variations according to individual jurisdictional circumstances. ASIC’s approach is to determine our preferred dataset having primary regard to the regulatory needs of the Australian regulators. We also seek to align with other jurisdictions’ rules and minimise requiring data elements that are unique to the draft remade ASIC Rules.

316 The data elements we proposed in [CP 334](#) and are finalising through this consultation paper—the ASIC data elements—are a combination of:

- (a) data elements drawn from the CDE Guidance;
- (b) other important data elements from one or both of the final CFTC rules and the final ESMA rules; and
- (c) additional data elements that would currently be unique to the ASIC Rules.

### **Our two-stage approach to updating the current ASIC Rules**

317 As we describe in paragraphs 7–11, we are proposing a two-stage process to give effect to updates to the data elements of the current ASIC Rules:

- (a) subject to the Minister’s consent, commencing on 1 October 2023 the draft remade ASIC Rules would make changes to the current data elements, but not add any new data elements beyond those currently reported; and
- (b) subject to the Minister’s consent, commencing on 1 April 2024, the draft amended ASIC Rules would implement the additional data elements.

318 Our proposals in CP 334 were of a final future state of the ASIC Rules. In this section, we describe the feedback to CP 334 and our response in terms

of our decisions and revised proposals as applicable to each of the draft remade ASIC Rules and the final future state draft amended ASIC Rules.

## ASIC’s proposed approach to data elements in CP 334

319 In [CP 334](#), we set out the ASIC data elements that we proposed to include in the ASIC Rules, as well as the data elements that we would consider for inclusion in proposals in the second round of consultation.

320 Table 25 sets out the number of data elements ‘Proposed’ and ‘Considering’ that are common to various combinations of the ASIC Rules, the CDE Guidance, the final CFTC rules and, what were then, ESMA proposals for the final ESMA rules.

**Table 25: Number of ASIC Rules data elements common to jurisdictions**

Jurisdictions	Proposed	Considering
ASIC, CDE, CFTC, EU	81	0
ASIC, CDE, CFTC	15	1
ASIC, CDE, EU	8	12
ASIC, CDE, CFTC &/or EU	104	13
ASIC, CFTC, EU	6	4
ASIC, CFTC	8	1
ASIC, EU	5	1
ASIC, CFTC &/or EU	19	6
ASIC-only	1	0

321 We proposed a data element set of 124 elements, of which:

- (a) 81 elements (65%) are common to ASIC, CDE, CFTC and the European Union;
- (b) 23 elements (19%) are common to ASIC, CDE and one of CFTC and the European Union;
- (c) 19 elements (15%) are not CDE elements but are common to ASIC and one of CFTC and the European Union; and
- (d) one element (1%) is an ASIC-only element—this element is ‘Execution Agent of counterparty 1’.

- 322 The major changes proposed to the current ASIC Rules data element set were:
- (a) the removal of multiple ‘name’ elements;
  - (b) the removal of extraneous elements whose information content is fully or substantially provided by another element;
  - (c) the removal of multiple ‘delivery timing and location’ elements for commodity derivatives;
  - (d) the substitution of asset-class-specific ‘side’ or ‘leg 1/leg 2’ elements with the CDE Guidance’s more generic, cross-asset class elements;
  - (e) the addition of ‘price information’ elements to adopt the more comprehensive treatment of this kind of information in the CDE Guidance;
  - (f) the addition of ‘collateral price information’ elements to adopt the more comprehensive treatment of this kind of information in the CDE Guidance;
  - (g) the addition of ‘credit derivative tranche and index factor’ elements and ‘structured product’ elements to elaborate on risk exposures in credit derivatives and in combination/package transactions;
  - (h) the addition of ‘prior transaction identifiers’ and ‘event timestamps’ to make the sequence and timing of transactions more transparent to the Australian regulators;
  - (i) the addition of indicators relating to non-standard features of transactions to assist in clarifying risk and exposure understandings;
  - (j) the addition of non-reporting counterparty categorisation elements and intragroup indicators to elaborate on geographic, inter-sectoral and intragroup risks and exposures.

## Feedback on our proposed approach in CP 334

### Data elements related to dates and timestamps

- 323 For the proposed data elements related to dates and timestamps—effective date, expiration date, reporting timestamp, execution timestamp, event timestamp and clearing timestamp—respondents did not make any objections to the data elements themselves, but some respondents requested clarifications and/or guidance as to whether certain dates apply or not for particular products or transactions.



### Data elements related to counterparties and beneficiaries

- 324 Many respondents expressed concerns about our proposals for nature of counterparty 2 and intragroup, citing the additional burden of categorising and maintaining information about their counterparties, and using a categorisation schema that was not consistent with schemas in other jurisdictions.
- 325 Some respondents also expressed individual and disparate concerns about various elements of the proposals, such as:
- (a) removing beneficiary data fields as had been removed in the final ESMA rules and not adopted by the CFTC;
  - (b) sell-side entities performing delegated reporting for their fund clients would need to record up to three identifiers of reporting entity, counterparty 1 and execution agent of counterparty 1; and
  - (c) querying whether LEI-only for broker ID would be too stringent.
- 326 However, more broadly, respondents did not make any objections to the data elements reporting entity, counterparty 1, reporting entity, counterparty 2, counterparty 2 identifier type, country of counterparty, beneficiary 1, beneficiary 1 type, broker ID and execution agent of counterparty 1—noting that concerns about the LEI as the sole type of entity identifier are discussed and addressed in Section D The legal entity identifier (LEI).

### Data elements related to direction

- 327 In [CP 334](#), we proposed to make the same elections as ESMA for the ‘direction’ data elements, which are different to the CFTC elections. Only a few respondents explicitly commented on our proposal and were supportive.

### Data elements related to clearing, trading, and settlement

- 328 Respondents expressed concerns about our proposals for final contractual settlement date, settlement location—leg 1 and settlement location—leg 2, generally citing the need to source and append information that is additional to what may otherwise be provided directly from front-office records and the potentially duplicative nature of the data elements.
- 329 For the other data elements related to clearing, trading and settlement—cleared, central counterparty, clearing member, platform identifier and settlement currency—respondents did not make any significant objections.

### Data elements related to regular payments

- 330 For the key data elements related to regular payments—day count convention and payment frequency data elements—respondents did not make any significant objections.
- 331 In [CP 334](#), we also discussed that we would consider for proposal in this second consultation data elements related to the reset frequency period of relevant floating rates, noting that this may differ from the frequency period of the floating rate reference rate itself—for example, where a contract resets to 6-month BBSW but on a 3-monthly reset frequency.
- 332 Respondents generally indicated that regulators could not rely on the frequency period of the floating rate reference rate itself being always the reset frequency of that rate in a contract, but that the incidence of such special cases is low.

### Data elements related to valuation

- 333 For the proposed data elements related to valuation—valuation amount, currency, timestamp and method—respondents did not make any significant objections.
- 334 Some respondents requested that ASIC clarify the definition of valuation amount as the ‘unadjusted’ valuation amount and that the valuation timestamp may be the time of, for example, an ‘end-of-day run’ rather than timestamps related to the time that reference prices or rates are determined, which are then used as inputs to a later ‘end-of-day run’.

### Data elements related to collateral and margins

- 335 Respondents expressed concerns about our proposals for collateral data elements—some respondents said that they had significant concerns with the complexities of the proposed collateral reporting.
- 336 Several respondents commented on the significant system changes required. The buy-side particularly noted challenges in the granularity of the data, complexities with sourcing information from third parties and potential differences arising across time zones. One sell-side respondent noted challenges in separating initial margin amounts from variation margin amounts for reporting, although another respondent commented that such separation would make their reporting easier as the amounts are carried separately in their systems.
- 337 On the other hand, allowing for up to two portfolio codes follows an industry proposal submitted to, and adopted by, the CFTC and one reporting entity further commented that segmenting the collateral amounts in this way would make their reconciliation processes easier.

### Data elements related to counterparty rating triggers

338 In [CP 334](#), we proposed not to include the two data elements related to counterparty rating triggers in the CDE Guidance, which have been adopted by ESMA but not by the CFTC.

339 There was no feedback that advocated that these data elements should be included.

### Data elements related to price

340 Respondents were generally supportive of, or did not oppose, our proposals regarding data elements related to price.

341 Some respondents agreed that we should follow the CFTC and require that interest rates and other percentage-like prices be reported as decimals and not as percentages—for example, a rate of 2.57% is reported as 0.0257 not 2.57. One respondent appeared to misconstrue that ‘spread’ refers to the ‘bid-offer spread’ and would require reporting of a transaction cost, whereas ‘spread’ refers to a contractual term (if applicable) such as a floating rate expressed as ‘3 month BBSW + 25 basis points’ where ‘25 basis points’ is the ‘spread’ to be reported.

342 In CP 334, we also discussed that we would consider for proposal in this second consultation the data elements of price schedule, strike price schedule and first exercise date. Respondents generally indicated that the incidence of such terms in contracts is low, and we have decided not to proceed with these proposals.

### Data elements related to notional amounts and quantities

343 Respondents were not opposed to our proposals for expanding the existing notional amounts, quantities and currencies data elements to their leg 2 equivalents, including notional amount schedule information and generalising to all asset classes. Respondents did, however, request guidance on how these data elements should be reported for certain products and transaction types.

344 Several respondents expressed concerns about the reporting of delta, particularly that its calculation and implementation is likely to be complex and costly. It was also noted that reporting as an end-of-day field included in a valuation report would be the most effective reporting workflow.

345 In CP 334, we also discussed that we would consider for proposal in this second consultation data elements to describe notional quantity schedules. Few respondents commented on this, but comments did include that there is a low incidence of quantity schedules not being equivalent to notional amount divided by price. There was also no apparent consensus about whether reporting an entire notional quantity schedule upfront was preferred

to reporting modification updates to notional quantity over the life of the transaction as and when different notional quantity schedule values become effective.

### **Data elements related to CDS index transactions**

346 Respondents did not express any significant concerns about our proposals for the reporting of CDS index attachment, detachment and index factor information. One respondent advocated that index factor not be required to be reported as this is publicly available information.

### **Data elements related to other payments**

347 Respondents did not express any significant concerns about our proposals for reporting data elements related to other payments.

348 However, several respondents requested additional guidance about reporting these data elements.

### **Data elements related to packages and links**

349 Generally, respondents did not express support or opposition to our proposals but commonly requested more explanation and guidance about reporting information related to packages and links.

### **Data elements related to custom baskets**

350 Respondents generally appeared comfortable with the requirement to report an identifier for each constituent of a custom basket, with some mixed views as to whether only ISINs or a range of identifier types should be allowed.

351 Respondents did express concerns about implementing the requirement to report a custom basket code—noting similarities to UTI requirements where the structurer of a custom basket needs to:

- (a) be identified (most likely as one of the counterparties to the transaction);
- (b) generate a custom basket code; and
- (c) provide it to the counterparties who will report the transaction.

352 Respondents also noted that, although a custom basket code is a CDE Guidance data element, the identification of custom baskets under the final CFTC rules is by true/false indicator, rather than by a code.

Note: In Table 25 of [CP 334](#), we misidentified that the ESMA proposals specify ‘B’ for custom basket code, rather than a code. However, at paragraph 305 of CP 334, we described that the ESMA proposals specify ‘B’ for ‘underlying identification type’, if a basket. In fact, in the ESMA proposals and in the final EU rules, a code is required for custom basket code and ‘B’ is required for ‘underlying identification type’, if a basket.

353 In [CP 334](#), we also discussed that we would consider for proposal in this second consultation additional data elements related to the number of units of each of a basket's constituents. We noted that these data elements were proposed in the text of ESMA proposals but not in the 'Draft RTS'.

354 These additional data elements are not in the final ESMA rules. Respondents also anticipated added complexity if these data elements were required to be reported.

### **Data elements related to other data elements**

355 In CP 334, the other data elements referred to UTI, UPI, action type, event type, report submitting entity, reporting timestamp, jurisdiction and embedded option type. We also discussed that we would consider for proposal in this second consultation additional data elements of maturity date of the underlying and a non-reported term indicator.

356 For the UTI and UPI, we have discussed the feedback responses and our revised proposals in Sections B and C respectively, including specifying maturity date of the underlying as a data element. For report submitting entity ID, respondents did not raise any concerns but noted that we had duplicated in error our proposal for reporting timestamp.

357 For action type and event type, several respondents requested comprehensive and clear guidance about the circumstances in which each kind of action type value or event type value is required to be reported.

358 However, several respondents opposed our proposals for the data elements of jurisdiction, embedded option type and our possible proposal for non-reported term indicator. Respondents commonly noted that:

- (a) our proposal for jurisdiction was not aligned with the CFTC's requirements for the data element;
- (b) embedded option type is information that is not ordinarily in systems and may present some front office data capture challenges; and
- (c) our proposal for non-reported term indicator introduced a meaning that was different to the CFTC's meaning for its comparable field and this meaning was not particularly clear.

### **Our response**

359 Taking into account the feedback to CP 334, for the draft amended ASIC Rules we have decided to:

- (a) proceed with many of the elements of our proposals in CP 334;
- (b) not proceed with several elements, particularly those which were to be considered for a proposal in this second consultation;
- (c) make new proposals for additional data elements.

360 We are now proposing Schedule 1 ‘Information requirements’ of the draft amended ASIC Rules (see Attachment 2) as the implementation of the data element requirements from 1 April 2024.

361 Schedule 1 ‘Information requirements’ of the draft amended ASIC Rules sets out:

- (a) the derivative transaction information organised in three tables as transaction information, valuation information and collateral information;
- (b) the meaning and applicability of each data element and the required formats and allowable values for each data element;
- (c) the entity identifier required to be reported for different circumstances of the kind of entity and kind of report;
- (d) an exemption for a ‘small-scale buy-side entity’ from the requirements to report delta for an option and most of the extended requirement for collateral information.

362 We are also proposing Schedule 1 ‘Information requirements’ of the draft remade ASIC Rules (see Attachment 1) as the implementation of the data element requirements from 1 October 2023 to 31 March 2024.

363 Schedule 1 ‘Information requirements’ of the draft remade ASIC Rules sets out:

- (a) consequential changes for consistency with the second stage draft amended ASIC Rules in the name, meaning and applicability of each data element;
- (b) additional data elements but only to the extent that the data elements are already reported to the sole ASIC-licensed derivative trade repository DDRS, albeit that they are not data elements required under the current ASIC Rules;
- (c) required formats and allowable values for each data element but only to the extent that the requirements are the same as under the current reporting to a derivative trade repository; and
- (d) temporarily retaining data elements of the current ASIC Rules that do not exactly align with data elements of the draft amended ASIC Rules.

364 Schedule 1 ‘Information requirements’ of the draft remade ASIC Rules does not intend to require changes to the systems and processes that the vast majority of reporting entities currently use for reporting. We think that:

- (a) data elements that are removed from the current ASIC Rules become data elements that are ‘not required’—they may, but not necessarily must, be removed from a reporting entity’s reporting to a derivative trade repository;
- (b) the formats and allowable values for data elements are not changed from their current formats and allowable values;

- (c) a small number of reporting entities would be required to report one or two data elements that they are not currently reporting (unlike the reporting by the vast majority of reporting entities).

365 Appendix 1 maps the changes in data elements from the current ASIC Rules through the draft remade ASIC Rules to the draft amended ASIC Rules.

366 We are also proposing changes in:

- (a) Rule 2.2.1 to curtail duplicative reporting and recognise information derived by a derivative trade repository from other information received; and
- (b) Schedule 1 to recognise that appointed persons (e.g. fund managers) may fulfil certain reporting requirements for a reporting entity that is a responsible entity or trustee, recognise transaction-to-position conversion reporting practices and not require format and allowable values updates in change reports until the commencement of the draft amended ASIC Rules.

367 These changes would affect or condition how the data elements are reported and are presented in this section to provide a fuller context for stakeholders' evaluation of the proposed data element requirements.

368 Our responses and proposals are summarised in Table 26.

**Table 26: Summary of ASIC's responses and proposals**

<b>Decisions for the draft remade ASIC Rules</b>	Remove data elements that are not present in the draft amended ASIC Rules
<b>Proposals for the draft remade ASIC Rules</b>	<p>In Part 1.2 Interpretation:</p> <ul style="list-style-type: none"> <li>• recognise transaction-to-position conversion reporting practices</li> </ul> <p>In Part 2.2 Reporting requirements:</p> <ul style="list-style-type: none"> <li>• curtail duplicative reporting</li> <li>• recognise that a derivative trade repository may create derivative transaction information for reporting entities' reports that is derived from other information</li> <li>• exempt small-scale buy-side entities from the extended lifecycle reporting requirements</li> </ul> <p>In Schedule 1 'Information requirements':</p> <ul style="list-style-type: none"> <li>• recognise that fund managers, and other persons appointed to enter into OTC derivatives on behalf of a reporting entity, may fulfil certain reporting requirements on behalf of the reporting entity</li> <li>• not require format and allowable values updates in change reports</li> </ul>

<b>Proposals for the draft remade ASIC Rules (cont.)</b>	<ul style="list-style-type: none"> <li>• make consequential changes for consistency with the draft amended ASIC Rules in the name, meaning and applicability of data elements</li> <li>• add data elements, but only as already currently reported</li> <li>• specify formats and allowable values but only the same as already currently reported</li> <li>• retain data elements until superseded by the draft amended ASIC Rules</li> </ul>
<b>Decisions for the draft amended ASIC Rules</b>	<p>Proceed with many of the data elements proposed in <a href="#">CP 334</a></p> <p>Not proceed with several data elements, particularly those which were to be considered for a proposal in this second consultation</p>
<b>Proposals for the draft amended ASIC Rules</b>	<p>In Part 2.4 Transitional matters:</p> <ul style="list-style-type: none"> <li>• require the re-reporting of pre-1 April 2024 transactions in order to update the data elements for the transactions to the new specifications</li> </ul> <p>In Schedule 1 'Information requirements':</p> <ul style="list-style-type: none"> <li>• require format and allowable values updates in change reports, other than for entity identifiers</li> <li>• organise the derivative transaction information in three tables as transaction information, valuation information and collateral information</li> <li>• specify the meaning and applicability of each data element and the required formats and allowable values for each data element</li> <li>• add data elements not proposed in CP 334</li> <li>• exempt small-scale buy-side entities from the requirements to report delta for an option and most of the extended requirement for collateral information</li> </ul>
<b>Matters deferred to the third consultation</b>	Not applicable

369

Table 27 sets out the number of data elements in this second consultation paper compared to [CP 334](#). Overall, there is only one more data element (125 versus 124). The alignment to the CDE Guidance is proportionately lower (79% versus 84%) as the number of ASIC-only fields has increased from one to six.



**Table 27: Number of ASIC Rules data elements common to jurisdictions**

Jurisdictions	Second consultation	As a % of all data elements	Change from CP 334
ASIC, CDE, CFTC, EU	78	62%	-3
ASIC, CDE, CFTC	13	10%	-2
ASIC, CDE, EU	5	4%	-3
ASIC, CDE	3	2%	+3
ASIC and CDE, CFTC &/or EU	99	79%	-5
ASIC, CFTC, EU	8	6%	+2
ASIC, CFTC	7	6%	-1
ASIC, EU	5	3%	+0
ASIC, CFTC &/or EU	20	16%	+1
ASIC-only	6	5%	+5
TOTAL	125		+1

370 The ASIC-only fields are:

- (a) ‘Execution agent of counterparty 1’ as was proposed in [CP 334](#);
- (b) ‘Identifier of the floating rate—Leg 2’ and the two associated reference rate period data elements in response to those data elements not being reference data elements in the UPI; and
- (c) ‘Underlier ID—non-UPI’ and ‘Underlier ID source—non-UPI’ in response to the incomplete underlier coverage in the UPI system for commodities and equity.

### Schedule 1 Technical Guidance

371 We have been developing a guidance document related to the Schedule 1 ‘Information requirements’—the Schedule 1 Technical Guidance—but we have not yet completed this. We intend to release this for public comment in the second half of this year.

372 Throughout this section we note matters that we intend to include in the Schedule 1 Technical Guidance and, generally, our various explanations of data elements can be taken as indicative of the sort of further guidance that we envisage could be covered in the guidance document.

## ASIC's proposals

### Proposal

- E1** We propose that the remade ASIC Rules (see Attachment 1) include:
- (a) new Rule 1.2.5(1)(b)(iv) and amended Rule S1.3.1(1)(a) recognising transaction-to-position conversion reporting practices;
  - (b) new Rule 2.2.1(1A) to curtail duplicative reporting;
  - (c) new Rule 2.2.1(1B) to recognise that reporting entities comply with their reporting obligations where derivative trade repositories derive derivative transaction information for the reporting entity from other information they receive;
  - (d) a definition of a 'Small-scale Buy-side Entity' in Rule 1.2.3 and amendments to Rule 2.2.8 such that small-scale buy-side entities are not required to report, on a lifecycle basis, reportable transactions that are not equity derivative transactions;
  - (e) new Part S1.1 rule allowing that requirements of a reporting entity that is a responsible entity or trustee may be met by a person appointed to deal on behalf of the responsible entity or trustee; and
  - (f) new Rule S1.3.1(3) only requiring adherence to the new formats and allowable values for the data elements that are being changed or updated in a report made under Rule 2.2.2.

#### *Your feedback*

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

- E2** We propose that the amended ASIC Rules (see Attachment 2) include:
- (a) new Rule S1.3.1(4) providing that small-scale buy-side entities are not required to report delta and some of the extended collateral information;
  - (b) amended Rule S1.3.1(3) requiring adherence to the new formats and allowable values for all the data elements reported, other than entity identifier data elements; and
  - (c) new Rule 2.4.1 requiring the re-reporting of transactions reported prior to the commencement of the amended ASIC Rules in order to update the data elements for the transactions to the new specifications.

#### *Your feedback*

E2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E2Q2 Do you consider that, from the commencement of the amended ASIC Rules, a trade state report should be structured on a 'carried forward/enlarged' basis, a 'converted' basis or on some other basis: see paragraphs 411–417? In your response, please give detailed reasons for your answer.

**E3** We propose that the remade ASIC Rules (see Attachment 1) include:

- (a) the meanings, formats and allowable values for derivative transaction information set out in Tables S1.1.(1)–(5).

*Your feedback*

E3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

**E4** We propose that the remade ASIC Rules (see Attachment 1) include:

- (a) the new data elements ‘Payer (fixed rate leg 2)’, ‘Fixed rate (leg 2)’, ‘Fixed leg payment frequency (leg 2)’, ‘Floating rate payment frequency (leg 2)’ and ‘Floating rate reset frequency (leg 2)’ with the meanings, formats and allowable values of items 7, 11, 14, 16 and 20 respectively in Table S1.1(5) ‘Interest rate derivative data’;
- (b) the relocation and renaming of ‘Basis’ from item 34 in Table S2.1(1) ‘Common data’ in the current ASIC Rules to ‘Day count convention—Leg 2’ as item 5 in Table S1.1(3) ‘Equity and credit derivatives data’ in the remade ASIC Rules with a changed meaning, format and allowable values;
- (c) the relocation, for commodity derivatives of ‘Settlement rate or index’ from item 35 in Table S2.1(1) ‘Common data’ in the current ASIC Rules to item 8 in Table S1.1(2) ‘Commodity derivative data’ with a changed meaning, format and allowable values;
- (d) the relocation and renaming, for equity and credit derivatives, of ‘Settlement rate or index’ from item 35 in Table S2.1(1) ‘Common data’ in the current ASIC Rules to ‘Identifier of the floating rate—Leg 2’ as item 6 in Table S1.1(3) ‘Equity and credit derivatives data’ in the remade ASIC Rules with a changed meaning, format and allowable values; and
- (e) the relocation, for equity and credit derivatives of ‘Rate reset frequency’ from item 53 in Table S2.1(1) ‘Common data’ in the current ASIC Rules to item 7 in Table S1.1(3) ‘Equity and credit derivatives data’ with a changed meaning, format and allowable values.

*Your feedback*

E4Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

**E5** We propose that the amended ASIC Rules (see Attachment 2) include:

- (a) the meanings, formats and allowable values for transaction information set out in Table S1.1.(1) ‘Transaction information’;
- (b) the meanings, formats and allowable values for valuation information set out in Table S1.1.(2) ‘Valuation information’; and
- (c) the meanings, formats and allowable values for transaction information set out in Table S1.1.(3) ‘Collateral information’.

*Your feedback*

E5Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E5Q2 Do you consider that the explanations of data elements in this consultation paper are an appropriate basis for guidance in a Schedule 1 Technical Guidance document? Are there particular data elements for which you consider additional guidance is required and what is the nature of the additional guidance required?

- E6** We propose that the amended ASIC Rules (see Attachment 2) include:
- (a) the new data elements ‘Underlier ID—non-UPI’ and ‘Underlier ID source—non-UPI’ with the meanings, formats and allowable values of items 81 and 82 respectively in Table S1.1(1) ‘Transaction information’;
  - (b) the new data elements ‘Identifier of the floating rate—Leg 2’, ‘Floating rate reference period—Leg 2’ and ‘Floating rate reference period multiplier—Leg 2’ with the meanings, formats and allowable values of items 84, 85 and 86 respectively in Table S1.1(1) ‘Transaction information’;
  - (c) the new data elements ‘Next floating reference reset date—Leg 1’ and ‘Next floating reference reset date—Leg 2’ with the meanings, formats and allowable values of items 10 and 11 respectively in Table S1.1(2) ‘Valuation information’; and
  - (d) the new data element ‘Collateral timestamp’ with the meaning, format and allowable values of item 5 in Table S1.1(3) ‘Collateral information’.

*Your feedback*

E6Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

## Rationale

### Recognising transaction-to-position conversion reporting practices (draft remade ASIC Rules)

373 Some reporters of CFD transactions, influenced by EU reporting practices, adopt a practice of reporting that we describe as the ‘conversion’ of a transaction into a ‘position’.

374 By this we mean, in this stylised example:

- (a) reporting a new trade with a UTI of ‘123’; followed by
- (b) reporting the termination of the trade with a UTI of ‘123’;
- (c) reporting a new ‘position’ with a UTI of ‘ABC’; and

(d) subsequently reporting modifications of the ‘position’ with a UTI of ‘ABC’ as further new trades increase or decrease the ‘position’.

375 However, while (a), (b) and (d) are all reportable transactions under the current ASIC Rules, we do not think that (c) is itself a reportable transaction—we do not think that it is ‘the entry into an arrangement that is an OTC Derivative’ (as the ‘entry into’ action is new trade (a) in the sequence above), and we think it is more akin to a bookkeeping or administrative action.

376 Consequently, for the purposes of reflecting current reporting practices and to provide certainty to reporting entities, draft new Rule 1.2.5(1)(b)(iv) recognises that each of the actions that in the stylised example in paragraph 374 is a ‘change to the way a Reporting Entity records an OTC Derivative in the Reporting Entity’s books and records’, is a reportable transaction.

377 Draft Rule S1.3.1(1)(a) also includes reference to Rule 1.2.5(1)(b)(iv) as a reportable transaction for which the derivative transaction information is required to be reported.

#### **Curtail duplicative reporting (draft remade ASIC Rules)**

378 Some reporting entities appear to practice what is sometimes known as ‘full refresh’ reporting, which is the reporting on a day of all existing transactions of the reporting entity on that day—that is, in addition to reporting ‘new’ transactions on a day, reporting entities are also reporting (again) ‘new’ transactions that were entered into yesterday and first reported yesterday, and indeed reporting again ‘new’ transactions that were first reported many days ago and reported on every day since then.

379 This impairs our data analysis in two keys ways:

- (a) the re-reported trades need to be excluded from analyses of late reporting by identifying that it was not late when first reported; and
- (b) the re-reported trades likewise need to be identified and excluded from datasets of actual trades on a day for surveillance needs and for accurate measures of true turnover on a day or in a period.

380 In other jurisdictions, the EU rules require that reporting entities report ‘without duplication’ and the final CFTC rules have removed the § 45.12 regulations for voluntary supplemental reporting on the grounds that it compromises data quality and provides no clear regulatory benefit.

381 Proposed Rule 2.2.1(1A) addresses this problem by requiring that a reporting entity use its best endeavours to ensure that a report is not a duplicated report. The best endeavours qualification intends to recognise that, on occasions, automated reporting systems may inadvertently run twice or more

on a day and duplicated reporting would then occur, but this would not be as a consequence of the fundamental design of the reporting systems and processes.

382 This proposed Rule 2.2.1(1A) would be continued in the draft amended ASIC Rules.

**Trade repositories may create derived transaction information (draft remade ASIC Rules)**

383 In practice, under the current ASIC Rules, certain data elements in the data files sent by DDRS to the Australian regulators are derived by DDRS from other information that is submitted to DDRS by reporting entities.

384 The enduring example is reporting timestamp, which is the trade repository timestamp of receipt of the report, rather than the reporting entity's timestamp of sending the report or an estimate of the receipt time by the trade repository.

385 Other examples include certain 'frequency' data elements which are derived from 'period' and 'period multiplier' data elements submitted by reporting entities.

386 The purpose of proposed Rule 2.2.1(1B) is to reflect current reporting practices, generalised to any trade repository, and provide certainty to reporting entities that where information is received by the Australian regulators in the form required by the ASIC Rules, having been derived by a trade repository from information submitted by a reporting entity, the reporting entity is taken to have complied with its reporting obligations.

387 This proposed Rule 2.2.1(1A) would be continued in the draft amended ASIC Rules, but not as a general endorsement of 'TR-derived' information. Given the detailed specification of data elements in the draft amended ASIC Rules, we think that 'TR-derived' information should only be the reporting timestamp.

**Exempting small-scale buy-side entities from certain extended reporting requirements (draft remade ASIC Rules and draft amended ASIC Rules)**

388 The feedback from buy-side respondents to [CP 334](#) raised a number of concerns about the complexity and costs in satisfying the requirements of some of our proposals that would extend the current reporting requirements, particularly for collateral reporting.

389 We have subsequently identified a large segment of the reporting entity population whose exposures and scale of trading are such that requiring extended reporting from them would not be of clear regulatory benefit.

- 390 The Australian Prudential Regulatory Authority (APRA)'s Prudential Standard CPS 226 *Margining and risk mitigation for non-centrally cleared derivatives* specifies that covered entities that hold more than A\$12 billion notional amount of non-centrally cleared derivatives must adopt the enhanced risk management practice of posting and collecting initial margin with a covered counterparty. We think that there are parallels between enhanced risk management obligations and extended reporting obligations, and we are proposing to use the same measure of more than A\$12 billion notional amount of non-centrally cleared derivatives held by a buy-side entity as the threshold for requiring the extended reporting requirements proposed in [CP 334](#) in relation to collateral, delta and lifecycle reporting. Correspondingly, a reporting entity holding A\$12 billion or less notional amount of non-centrally cleared derivatives would be 'small-scale'.
- 391 In our analysis, the cohort of 725 to 750 reporting entities that we identify as 'Small-scale Buy-side' entities account for (excluding CFD transactions):
- (a) less than 5% of the number of transactions;
  - (b) less than 1.5% of notional amount;
  - (c) less than 0.5% of collateral posted; and
  - (d) about 6% of option transactions,
- with about 105 reporting entities (excluding CFD providers) accounting for the balance of transactions, notional amount, collateral posted and options.
- 392 In Rule 1.2.3 of the draft remade ASIC Rules, a 'Small-scale Buy-side Entity' is firstly defined in terms of the buy-side elements:
- (a) is a responsible entity, trustee or a non-bank body regulated by APRA (i.e. an insurance company); and
  - (b) is not an AFS licensee whose AFS licence authorises them to make a market in derivatives (i.e. a market-maker cannot be taken to be a buy-side entity); and
  - (c) is not an exempt foreign licensee (as the definition of an exempt foreign licensee does not exclude that they may be a market-maker).
- 393 Then the small-scale element is defined in terms of:
- (a) holding total gross notional outstanding non-centrally cleared derivatives of A\$12 billion or less (measured at the managed investment scheme, trust or entity level (as applicable));
  - (b) measured on each 31 March, 30 June, 30 September and 31 December (each a 'quarter day');
  - (c) being small-scale from the day after the quarter day where the holding is A\$12 billion or less on the prior two quarter days; and

- (d) ceasing to be small-scale from the day after the quarter day where the holding is greater than A\$12 billion on the prior two quarter days.

394 This definition of small-scale linking total gross notional outstanding and the pattern of the measure versus a threshold over successive quarter days follows the same logic used in reg 7.5A.73 of the Corporations Regulations for ‘small-scale, single-sided’ reporting entities and for mandatory clearing under the *ASIC Derivative Transaction Rules (Clearing) 2015*. That is, that:

- (a) the small-scale, single-sided exemption continues to apply or commences to apply and mandatory clearing ceases to apply—with a further one quarter’s lag—if an entity’s holding of derivatives does not exceed the relevant threshold on two consecutive quarter days; and
- (b) the small-scale, single-sided exemption ceases to apply and mandatory clearing continues to apply or commences to apply—with a further one quarter’s lag—if an entity’s holding of derivatives exceeds the relevant threshold on two consecutive quarter days.

395 As we note at paragraph 838 in Section I ‘Reporting requirements’, we have decided to extend lifecycle reporting to all products in the draft remade ASIC Rules. However, this is one of the extended requirements small-scale buy-side entities would not be required to comply with.

396 Draft Rule 2.2.8 ‘Lifecycle or snapshot reporting’ states that:

- (a) at subrule (1), reporting entities that are not small-scale buy-side entities are required to report each transaction that takes place on a day;
- (b) at subrule (2), small-scale buy-side entities are required to report each equity derivative transaction that takes place on a day—this continues the situation under the current ASIC Rules and [ASIC Derivative Transaction Rules \(Reporting\) Determination 2018/1096](#) (PDF 105 KB) that all reporting entities are required to report equity derivative transactions on a lifecycle basis; and
- (c) at subrule (3), small-scale buy-side entities may report other kinds of derivative transactions on a snapshot basis.

397 The other extended reporting requirements that small-scale buy-side entities would not be required to comply with are introduced in the draft amended ASIC Rules and are delta and certain collateral information data elements.

398 In Schedule 1 ‘Information requirements’, Rule S1.3.1(4) sets out that a small-scale buy-side entity is not required to report:

- (a) delta (item 9 in Table S1.1(2)); or
- (b) initial margin posted (post-haircut), initial margin collected (both pre-haircut and post-haircut) and its currency and variation margin collected and its currency (items 12, 14, 15, 16, 19 and 20 in Table S1.1(3)).



399 In relation to collateral amounts information, a small-scale buy-side entity would be required to report:

- (a) initial margin posted (pre-haircut) and its currency; and
- (b) variation margin posted (pre-haircut) and its currency.

400 The requirement under the current ASIC Rules is to report the total collateral amount posted and its currency. This requirement would change for a small-scale buy-side entity by requiring that the total collateral amount posted be reported as split between initial margin and variation margin—though noting that item 11 ‘Initial margin posted by the Reporting Entity (pre-haircut)’ allows a single amount to be reported if the amount posted does not distinguish between initial margin and variation margin.

**Recognise that other entities may fulfil certain reporting requirements for responsible entities and trustees (draft remade ASIC Rules).**

401 The text at Part S1.1 ‘Preliminary’ of the draft remade ASIC Rules essentially repeats the text at Rule 2.2.9(2).

402 As we explain at paragraph 192, this recognises that, for example, a fund manager, rather than a responsible entity or trustee, may be the entity that operationalises the UTI requirements on behalf of a responsible entity or trustee.

403 Likewise, we think that there may be situations where, in practice, such an entity operationalises determining other data elements for reporting, in particular creating and maintaining internal codes, such as:

- (a) client codes;
- (b) collateral portfolio codes (for initial margin and/or variation margin);
- (c) package identifiers, custom basket codes and event identifiers.

404 In these situations, we consider that Part S1.1. ‘Preliminary’ of Schedule 1 would apply such that the maintenance, determination or assignment of codes may be performed by the fund manager as ‘a person appointed by the Reporting Entity to enter into OTC Derivatives on behalf of the Reporting Entity’.

**Format and allowable values updates in change reports (draft remade ASIC Rules and draft amended ASIC Rules)**

405 The draft remade ASIC Rules would introduce requirements for formats and allowable values. While we think that these are already in use in current reporting, although not set out in the current ASIC Rules, there may be some transactions that were reported before the current formats and allowable values were in use.

406 In keeping with our intention described at paragraph 364 not to require changes to the systems and processes that reporting entities currently use for reporting, new Rule S1.3.1(3) only requires adherence to the new formats and allowable values for the data elements that are being changed or updated and any information that is not being changed or updated may be reported with unchanged formats and allowable values.

407 This applies to a report made under Rule 2.2.2. This includes valuation and collateral reporting, for which there is likely to be limited unchanged information that would not already be in the formats and allowable values of the draft remade ASIC Rules. In practice, it more likely applies to ‘change’ reports that are correcting or updating other data elements of a reported transaction. It does not apply to reports made under Rule 2.2.1(1), such as a modification report, and in those cases all data elements must be reported according to the formats and allowable values of the draft remade ASIC Rules.

408 However, the effect of Rule S1.3.1(3) is narrowed in the draft amended ASIC Rules to only apply to data elements that are entity identifiers. We think that, from the commencement of the draft amended ASIC Rules, all reporting should adhere to the formats and allowable values of the draft amended ASIC Rules. This would not apply to entity identifiers, where, for example, a non-LEI identifier that was reported under Rule 2.2.1(1) does not need to be updated to an LEI in a report made under Rule 2.2.2.

**Require re-reporting of pre-1 April 2024 transactions (draft amended ASIC Rules)**

409 From the commencement of the draft amended ASIC Rules, new transactions must be reported using the data elements, formats and allowable values of the draft amended ASIC Rules (future-state reports).

410 Transactions reported under the current ASIC Rules or the draft remade ASIC Rules will have been reported using the data elements, formats and allowable values of those rules (legacy reports).

411 The Trade State Report (TSR) information that is compiled by DDRS as consolidated ‘open position’ information will necessarily be a mixture of information that has been reported on different bases, including that:

- (a) there will be typically fewer data elements describing the terms of transactions in legacy reports than in future-state reports;
- (b) certain information will be embedded in the UPI reported in future-state reports, but which will be separate data elements in legacy reports;
- (c) the indicator of the ‘side’ of the transaction will be of a different form in future-state reports compared to legacy reports;

- (d) the indicator of other data elements, such as action type, will also be of a different form in future-state reports compared to legacy reports; and
  - (e) there will be a significantly increased conformity to required formats and allowable values in future-state reports compared to the wider range of formats and values in legacy reports.
- 412 The base structure of the future-state TSR would be of the data elements of future-state reporting, which would include new data elements, data elements carried forward from legacy reporting but with changed allowable values (e.g. action type) and data elements carried forward from legacy reporting with unchanged allowable values (e.g. date data elements).
- 413 In addition, the structure of the TSR would need to accommodate data elements from legacy reporting that have been replaced with different data elements, or are ceased, in future-state reporting.
- 414 There appear to be two principal approaches to migrating the data of the last legacy TSR of 31 March 2024 to a structure of the daily TSR from the commencement of the draft amended ASIC Rules on 1 April 2024:
- (a) carry forward continuing data elements without converting any values and enlarge the base structure of the TSR to also include the data elements that are replaced or ceased (carried forward and enlarged TSR); or
  - (b) carry forward continuing data elements but with a one-time conversion of values in legacy reporting to their equivalent in future-state reporting and only enlarge the base structure of the TSR for continuing data elements that cannot readily be converted (carried forward and converted TSR).
- 415 Some examples of the application of these approaches are explained in Table 28.

**Table 28: Example applications of approaches to the future-state Trade State Report**

Data element	Carried forward and enlarged TSR	Carried forward and converted TSR
'Action type'  carried forward but with changed allowable values from e.g. 'New', 'Modify' to 'NEWT', 'MODI'	Legacy values are carried forward but the values for transaction records are mixed as 'New', 'NEWT', 'Modify', 'MODI', etc.	Legacy values are one-time converted—e.g. 'New' to 'NEWT', 'Modify' to 'MODI'—and values for transaction records are only 'NEWT', 'MODI', etc.

Data element	Carried forward and enlarged TSR	Carried forward and converted TSR
<p>'Counterparty side (buy/sell)'</p> <p>replaced by 'Direction 1' for most products and 'Direction 2—Leg 1/Leg 2' for some products (e.g. CDS) but with changed allowable values from e.g. 'Buyer', 'Seller' to 'BYER', 'SLLR' and for the Direction 2—Leg 1/Leg 2 data elements 'MAKE' or 'TAKE'</p>	<p>Legacy values are carried forward into 'Direction 1' but the values for transaction records are mixed as 'Buyer', 'BYER', 'Seller', 'SLLR'</p> <p>For some products (e.g. CDS), side for legacy reporting is indicated in 'Direction 1' but for future-state reporting is indicated in 'Direction 2—Leg 1/Leg 2'</p>	<p>Legacy values are one-time converted—e.g. 'Buyer' to 'BYER', 'Seller' to 'SLLR'—and values for transaction records are only 'BYER', 'SLLR', etc.</p> <p>For some products (e.g. CDS), legacy values are one-time converted—e.g. 'Buyer' to 'TAKE'—and populated to 'Direction 2—Leg 1/Leg 2', but this is a complex conversion that may not be practical</p>
<p>various 'frequency' data elements</p> <p>replaced by two data elements for the 'period multiplier' and the 'period'</p> <p>e.g. a legacy value of '3M' is reported separately as '3' and 'M' in future state reporting</p>	<p>Legacy 'frequency' data elements are added to the TSR and the values for transaction records are either '3M' for legacy reporting in one data element or '3' and 'M' for future-state reporting in two other data elements</p>	<p>Legacy values are one-time converted—e.g. '3M' to '3' and 'M'—and values for transaction records are only e.g. '3' and 'M' in the relevant future-state data elements</p>
<p>'Option type'</p> <p>ceases in future-state reporting as the information is embedded in the UPI reported</p>	<p>'Option type' is added to the TSR and option type for transaction records is either indicated in this data element for legacy reporting or in the UPI for future-state reporting</p>	<p>not applicable—we have not identified a practical approach to conversion of option type to a future-state value</p>

416 We have been discussing these approaches with DDRS but the technical and implementation requirements of each approach have not been fully determined or evaluated, and a preferred approach has not been settled. We think there are advantages in the 'carried forward and converted TSR' approach to make the TSR more compact and data element values more consistent than the 'carried forward and enlarged TSR' approach.

417 We recognise that the TSR is likely to be used by reporting entities for, for example, reconciliation purposes. We welcome any preliminary feedback from reporting entities about their preferred approach to the structure of the TSR from the commencement of the draft amended ASIC Rules.

418 However, as illustrated in Table 28, even with high levels of 'conversion', the TSR would not be fully normalised to future-state reporting and not be complete with all the data elements describing the terms of transactions in future-state reporting.

419 The Australian regulators consider that it is important for their regulatory purposes to normalise and complete the TSR information to a common structure within a reasonable period following the commencement of the draft amended ASIC Rules.

420 Consequently, in keeping with the requirements of the final ESMA rules and as also proposed by MAS, we are proposing a re-reporting requirement in the draft amended ASIC Rules.

421 In Part 2.4 ‘Transitional matters’, draft Rule 2.4.1 ‘Re-reporting requirement’, sets out a re-reporting requirement that follows the requirement proposed by MAS, that is:

- (a) by 30 September 2024 (i.e. within six months of the commencement of the draft amended ASIC Rules);
- (b) re-report outstanding legacy transactions with expiration dates after 31 March 2025 (i.e. with then greater than six months to expiration);
- (c) whose derivative transaction information does not include all of the information required under future-state reporting, and with the formats and allowable values required under future-state reporting.

422 Legacy transactions that expire within 12 months of the commencement of the draft amended ASIC Rules (i.e. by 31 March 2025) are not required to be re-reported. Legacy transactions that are terminated within six months of the commencement of the draft amended ASIC Rules are also not required to be re-reported.

423 Legacy transactions that are modified by 30 September 2024 would have the report of that modification made under the draft amended ASIC Rules, and, as such, are effectively re-reported by that modification report.

424 Under Rule 2.4.1(1)(d), a legacy transaction is only required to be re-reported if the information in the TSR does not accord with the reporting requirements under the draft amended ASIC Rules. This could apply, for example, to a legacy transaction of a plain vanilla interest rate swap that has been comprehensively ‘converted’ in the future-state TSR and the information about the transaction fully accords with the reporting requirements under the draft amended ASIC Rules.

### **Three tables of transaction information, valuation information and collateral information**

425 In Section J ‘Outstanding matters’ of [CP 334](#), we identified ‘Different types of reports’ as an outstanding matter—‘Whether the ASIC Rules should address specifying different types of reports—such as transaction, valuation or collateral reports—and the data elements that would be required to be reported in each type of report’.

426 We are now proposing the information that is required to be reported under the draft amended ASIC Rules be set out for transaction information (in Table S1.1(1)), valuation information (in Table S1.1(2)) and collateral information (in Table S1.1(3)).

427 This is because:

- (a) the structure of the data elements under the draft remade ASIC Rules are significantly more agnostic to asset classes than under the current ASIC Rules, and only one table is required to set out the data elements for derivative transaction information;
- (b) as a framework, it would better align with actual practices of reporting to the derivative trade repository where the mechanisms or forms of the submission of information may differ between reports about transaction, valuation and collateral information—note that the separation of the types of reports in the draft amended ASIC Rules does not mean that information must be reported by technically separated mechanisms or forms depending on the requirements of the derivative trade repository receiving the information;
- (c) it would align with similar delineations of types of information adopted in other jurisdictions; and
- (d) it allows a clear specification of the minimum information required in reports about transaction, valuation and collateral information.

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428 We are not proposing to implement information requirements separated by transaction, valuation and collateral information in the draft remade ASIC Rules, and propose to retain the table structure of the current ASIC Rules of one table for common data and four additional tables for asset-class-specific information.

**Data elements related to UTI and UPI**

429 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to UTI and UPI as were proposed or foreshadowed in [CP 334](#), with no new data elements proposed in this category.

<b>Proceed per CP 334</b>	Unique transaction identifier, Unique product identifier
<b>New proposal</b>	Not applicable

430 For the UTI, in Table S1.1.(1) ‘Transaction information’, item 1 ‘Unique transaction identifier’ implements the UTI Guidance by requiring the

reporting of a Rule 2.2.9 UTI for a reportable transaction of the kind referred to:

- (a) in draft Rule 1.2.5(1)(b)(i)—that is, a new transaction arising from a trade;
- (b) in draft Rule 1.2.5(1)(b)(iii)—that is, a new transaction arising from an assignment of an existing transaction by the other counterparty to another counterparty; or
- (c) in draft Rule 1.2.5(1)(b)(iv)—that is, the ‘final change’ to the way a reporting entity records an OTC Derivative in the reporting entity’s books and records.

431 These are the circumstances for which a new UTI is required to be generated under Rule 2.2.9, and this is the UTI that is reported for the reportable transaction.

432 However, for a:

- (a) reportable transaction of the kind referred to in Rule 1.2.5(1)(b)(ii)—that is, the modification or termination of a transaction; or
- (b) a report made under Rule 2.2.2— that is, a report of a change to information previously reported,

this item 1 is the ‘transaction identifier of the Reportable Transaction about which the report is made’.

433 This transaction identifier may be a UTI or it may be a transaction identifier of a form predating the requirement to use UTIs as transaction identifiers—hence, legacy transaction identifiers are able to be used in reporting modifications, terminations or information changes and there is no requirement to update legacy transaction identifiers to UTIs.

434 In Table S1.1.(2) ‘Valuation information’ and Table S1.1.(3) ‘Collateral information’, the respective item 1 ‘Unique transaction identifier’ only refers to a report made under Rule 2.2.2, as valuation information and collateral information are only reported under this rule.

435 As per Table S1.1.(1) ‘Transaction information’ for reports made under Rule 2.2.2, the item 1 ‘Unique transaction identifier’ is the ‘transaction identifier of the Reportable Transaction about which the report is made’. This may be a UTI or a legacy transaction identifier.

436 The format of a UTI is as specified in ISO 23897 *Unique transaction identifier*. The format of any other transaction identifier is not specified under the draft amended ASIC Rules, but a derivative trade repository may specify a format as envisaged by the existing Rule 2.2.4.

- 437 For the UPI, in Table S1.1.(1) ‘Transaction information’, item 2 ‘Unique product identifier’ implements the UPI Guidance.
- 438 The column 3 derivative transaction information does not itself specify a UPI from the UPI system operated by DSB. However, this is required by the column 4 format being ‘as specified in ISO 4914’, and ISO 4914 includes that a UPI is assigned by a ‘UPI service provider’ that is ‘an organisation designated by an external body of financial regulators to assign UPIs and operate the UPI reference data library’—the FSB has designated DSB as the service provider for the UPI system.
- 439 A UPI from the UPI system is required to be reported for a new transaction, a modification to an existing transaction or a report of changed information under Rule 2.2.2, but not for a termination of a transaction.
- 440 This means that if there is a report about a modification or a change of information to an existing transaction, a legacy unique product identifier will need to be upgraded to a UPI from the UPI system. We think this is consistent with the proposed re-reporting requirement of Rule 2.4.1 of the draft amended ASIC Rules.
- 441 However, a report of a termination does not require a UPI to be reported. A UPI is also not included as an item in Table S1.1(2) ‘Valuation information’ or Table S1.1.(3) ‘Collateral information’—terminations, valuation information and collateral information may be reported without a legacy unique product identifier needing to be upgraded to a UPI from the UPI system.

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- 442 For the UTI, in Table S1.1.(1) ‘Common data’, item 1 ‘Unique transaction identifier’ implements the same requirements as in the draft amended ASIC Rules—the UTI requirements commence from 1 October 2023 under the draft remade ASIC Rules.
- 443 For the UPI, in Table S1.1.(1) ‘Common data’, item 2 ‘Unique product identifier’ follows the text of the current ASIC Rules in referring to a product identifier ‘using an internationally accepted product taxonomy’. A format is not specified and the allowable values are ‘Any values accepted by the Derivative Trade Repository that is receiving the report’.
- 444 This continues the situation under the current ASIC Rules that it is left to derivative trade repositories to implement an internationally accepted product taxonomy in reporting. The requirement to report a UPI from the UPI system would only commence from 1 April 2024 under the draft amended ASIC Rules.



### Data elements related to counterparties, beneficiaries and other entities

445 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to counterparties, beneficiaries and other entities as were proposed or foreshadowed in [CP 334](#). We are not proceeding with two data elements that were proposed in CP 334.

<b>Proceed per CP 334</b>	Reporting Entity; Counterparty 1; Counterparty 2; Counterparty 2 identifier type; Country of counterparty 2; Beneficiary 1; Beneficiary 1 identifier type; Broker; Execution agent of counterparty 1
<b>Not proceed</b>	Nature of counterparty 2; Intragroup
<b>New proposal</b>	Not applicable

446 Responding to the feedback to CP 334, we have decided not to proceed with the data elements nature of counterparty 2 and intragroup.

447 Though there was some feedback advocating excluding the beneficiary data elements, we consider that it is important for the Australian regulators to have information about any person who has the rights and obligations of a reportable transaction, and we have decided to proceed with the beneficiary data elements.

448 More broadly, respondents did not make any objections to the other entity identifier data elements, and we have decided to proceed with them.

449 The types of entity identifier—that is, whether an LEI, designated business identifier or client code—for different entity identifier data elements, the requirements to report a current LEI and the absence of a requirement to update any non-LEI entity identifiers to LEIs, are discussed in Section D ‘The legal entity identifier (LEI)’.

450 The formats of the different types of identifiers are:

- (a) for an LEI, as specified in ISO 17442;
- (b) for a client code, an alphanumeric code of not more than 72 characters, noting that, under Rule S1.2.1 ‘Definitions’, the first 20 characters must be an LEI; and
- (c) for any other identifier, an alphanumeric code of not more than 72 characters.

451 In addition, in each of the Tables S1.1(1)–(3), counterparty 1 and counterparty 2 would identify a managed investment scheme or trust instead of the reporting entity. This conforms to the CDE Guidance and the approaches in other jurisdictions.

- 452 In Table S1.1(1), item 4 ‘Counterparty 1’ is required to be reported as ‘the managed investment scheme, trust or CCIV that holds the OTC Derivative’ where the reporting entity is the responsible entity, trustee or corporate director of that managed investment scheme, trust or CCIV. If there is no managed investment scheme, trust or CCIV involved, counterparty 1 is reported as the reporting entity.
- 453 In Table S1.1(1), item 5 ‘Counterparty 2’ refers to the counterparty whose identifier is not reported at item 4—that is, the other counterparty in the transaction that is not counterparty 1. Then, similar to the requirements for counterparty 1, counterparty 2 is required to be reported as ‘the managed investment scheme or trust that holds the OTC Derivative’ where the other counterparty is the responsible entity or trustee of that managed investment scheme or trust. If there is no managed investment scheme or trust involved, counterparty 2 is reported as the other counterparty.
- 454 Counterparty 1 and counterparty 2 are also data elements in Table S1.1(2) ‘Valuation information’ and Table S1.1(3) ‘Collateral information’. In these tables, counterparty 1 and counterparty 2 have the same meanings as in Table S1.1(1).
- 455 The meaning of beneficiary under the current ASIC Rules envisages that a managed investment scheme or trust may be reported as the beneficiary where the responsible entity or trustee is reported as the reporting counterparty (i.e. the reporting entity), and the multiple beneficiaries of the managed investment scheme or trust are not themselves reported.
- 456 In the draft amended ASIC Rules, the required reporting is of the responsible entity, trustee or corporate director of a CCIV as the reporting entity and the managed investment scheme, trust or CCIV as counterparty 1. To clarify that the multiple beneficiaries of the managed investment scheme, trust or CCIV should continue not to be reported, in Table S1.1(1), the meaning of item 8 ‘Beneficiary 1’ excludes the beneficiaries of a managed investment scheme, trust or CCIV.
- 457 In Table S1.1(1), the meaning of item 10 ‘Broker’ closely follows the description of this data element in the final ESMA rules, in particular using the qualification that the broker acted as an intermediary ‘without becoming a counterparty to the OTC Derivative’. The meaning of broker in the current ASIC Rules, with its reference to execution on behalf of the reporting counterparty, is intended to be interpreted in the same way, but we note that some buy-side reporting entities have reported their sell-side dealer counterparty as the broker (in addition to reporting them as the non-reporting counterparty). We think that the proposed meaning of ‘Broker’ in the draft amended ASIC Rules more clearly identifies the broker as an intermediary and not a counterparty.

458 We are proposing similar text for the meaning of item 11 ‘Execution agent of counterparty 1’ by identifying this entity as acting as agent for the reporting entity ‘without becoming a counterparty to the Reportable Transaction’.

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459 Beneficiary 1 and broker are data elements that are present in the current ASIC Rules and the draft remade ASIC Rules and have the same meanings as in the draft amended ASIC Rules.

460 Counterparty 1 and counterparty 2 are also data elements that are present in the draft remade ASIC Rules, but with meanings that allow that the reporting of a managed investment scheme or trust instead of the reporting entity is only optional and not required.

461 Existing reporting practices have been that some reporting entities who are responsible entities or trustees report themselves as counterparty 1 (‘Reporting Counterparty’ in the current ASIC Rules) and other reporting entities report the managed investment scheme or trust. In keeping with our intention described at paragraph 364 to not require changes to the systems and processes that reporting entities currently use for reporting, the draft remade ASIC Rules would continue to provide for either of these options. In the draft amended ASIC Rules, the option is removed and the reporting is required to be as described in paragraphs 452–453.

462 Reporting entity, counterparty 2 identifier type, country of counterparty 2, beneficiary 1 identifier type and execution agent of counterparty 1 are not data elements that are present in the current ASIC Rules or the draft remade ASIC Rules.

**Data elements related to direction**

463 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to direction—that is, the ‘side’ taken by each party to the transaction: buyer/seller, payer/receiver.

<b>Proceed per CP 334</b>	Direction 1, Direction 2—Leg 1, Direction 2—Leg 2
<b>Not proceed</b>	Not applicable
<b>New proposal</b>	Payer (fixed rate leg 2) in the draft remade ASIC Rules

464 As noted in paragraph 327, the few respondents who explicitly commented were supportive of our proposals and we have decided to proceed as we had proposed—that is, to make the same elections as ESMA for the direction data elements.

- 465 In paragraph 220 of [CP 334](#), we set out that:
- (a) CDE Guidance model 1 (Direction 1) applies to types of transactions where it is commonly understood that one party is the ‘buyer’ and the other party is the ‘seller’—for example, in a plain vanilla option transaction; and
  - (b) CDE Guidance model 2 (Direction 2) applies to types of transactions where it is commonly understood that one party is the ‘payer’ of leg 1 and the ‘receiver’ of leg 2 and vice versa for the other party—for example, in a fixed-rate versus floating-rate interest rate swap.

466 The CDE Guidance also sets out ‘non-exhaustive list[s] of examples of instruments’ for which each of direction 1 and direction 2 could apply.

467 In Table S1.1(1), the meaning of item 12 ‘Direction 1’ is the same meaning as is given in the CDE Guidance, other than referring to the reporting entity as the buyer or seller. The allowable values for this data element are BYER and SLLR.

468 The OTC derivatives for which this data element is required to be reported closely follow the ‘list of examples’ in the CDE Guidance as illustrated in Table 29.

**Table 29: Products/OTC derivatives to which direction 1 applies**

CDE Guidance	Draft amended ASIC Rules
most forwards and forward-like contracts (except for foreign exchange forwards and foreign exchange non-deliverable forwards)	where, other than for foreign exchange derivatives, the UPI that is reported is for an instrument type that is a forward
most options and option-like contracts including swaptions, caps and floors contracts for difference and spreadbets credit default swaps (buyer/seller of protection)	that are options, contracts for difference (other than foreign exchange contracts for difference) or credit default swaps
variance, volatility and correlation swaps	where the underlier to the OTC Derivative is a measure of variance, volatility, correlation, dividend or other attribute of an underlier (other than its price) which may vary in value
this data element is not applicable to instrument types covered by data elements Direction 2 or by Payer identifier and Receiver identifier	where an allowable value is not reported for Direction 2—Leg 1 or Direction—Leg 2  This data element is not applicable to Reportable Transactions for which a value for Direction 2—Leg 1 is required to be reported

469 We think that the relevant scope of OTC derivatives under the draft amended ASIC Rules accurately aligns with the intended scope of instruments in the CDE Guidance, noting that:

- (a) rather than define a ‘forward or forward-like contract’ directly, the meaning is indirectly linked to the instrument type data element of the UPI that is reported—every UPI from the UPI system is catalogued by a ‘header section’ that includes its asset class, *instrument type* (as a forward, swap or option) and product;
- (b) we think that options, contracts for difference and credit default swaps are commonly understood and are unambiguous terms that do not require to be further defined; and
- (c) the reference to variance, volatility and correlation swaps is extended to measures of dividend or any other attribute of an underlier, other than its price.

470 In addition, a value for direction 1 is required where a value is not reported for the direction 2 data elements, and is not applicable where a value is required to be reported for direction 2—leg 1. That is, either the direction 1 data element is reported or the direction 2 data elements are reported, but not both.

471 If a reporting entity considers that the kind of OTC derivative they are reporting does not readily fall within the scope set out of OTC derivatives for which direction 1 is required to be reported, the reporting entity may still report direction 1 for the transaction—the scope set out for direction 1 is not an exhaustive or exclusive scope. The reporting entity would need to determine that reporting the direction 2 data elements is not the more accurate reporting for the transaction, taking into account the other leg 1/leg 2 data elements that are required to be reported for the transaction.

472 In other words, the draft amended ASIC Rules allow for a ‘best fit’ approach to reporting of either the direction 1 data element or direction 2 data elements (but not both), taking into account the other leg 1/leg 2 data elements that are required to be reported for the transaction.

473 In Table S1.1(1), the meanings of item 13 ‘Direction 2—Leg 1’ and item 14 ‘Direction 2—Leg 1’ are the same meanings given in the CDE Guidance, other than referring to the reporting entity as the payer or receiver. The allowable values for these data elements are MAKE (for payer) and TAKE (for receiver).

474 The OTC derivatives for which this data element is required to be reported compares to the ‘list of examples’ in the CDE Guidance as illustrated in Table 30.

**Table 30: Instruments/OTC derivatives for which direction 2 applies**

CDE Guidance	Draft amended ASIC Rules
most swaps and swap-like contracts including interest rate swaps, credit total return swaps, and equity swaps (except for credit default swaps, variance, volatility, and correlation swaps)	not specified
foreign exchange swaps, forwards, non-deliverable forwards	not specified
This data element is not applicable to instrument types covered by data elements Direction 1 or Buyer identifier and Seller identifier	<p>This data element is required for OTC Derivatives where an allowable value is not reported for Direction 1.</p> <p>This data element is not applicable to Reportable Transactions for which a value for Direction 1 is required to be reported</p>

475 The approach that is taken in the draft amended ASIC Rules is that the scope of OTC derivatives for which the direction 2 data elements are required to be reported is ‘everything else’ that is not reported as the direction 1 data element.

476 The ‘everything else’ necessarily includes foreign exchange forwards and contracts for difference that are excluded from the scope of direction 1. The ‘everything else’ necessarily excludes options, credit default swaps, variance, volatility, correlation and other non-price attribute swaps, and non-foreign exchange contracts for difference which are included in the scope of direction 1.

477 As we note at paragraph 472, a reporting entity retains the flexibility, and responsibility, to determine the most accurate reporting of a particular OTC derivative as being reporting the direction 1 data element or the direction 2 data elements.

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478 Direction 1, Direction 2—Leg 1 and Direction 2—Leg 2 are not data elements that are present in the current ASIC Rules or the draft remade ASIC Rules.

479 The draft remade ASIC Rules, in keeping with our intention to not require changes to the systems and processes that reporting entities currently use for reporting until the draft amended ASIC Rules commence on 1 April 2024, continue with the relevant data elements in the current ASIC Rules:

- (a) ‘Counterparty side (buy/sell)’ is broadly reported with the same logic as for direction 1 under the draft amended ASIC Rules, except that equity and commodity swaps related to the price of the underlier are reported with this direction-1-like data element under the draft remade ASIC Rules but with direction-2-like data elements under the draft amended ASIC Rules;
- (b) for interest rate derivatives, payer (fixed rate leg 1), payer (floating rate leg 1) and payer (floating rate leg 2) continue to be reported as direction-2-like fields under the draft remade ASIC Rules but cease to be asset-class-specific data elements under the draft amended ASIC Rules.

480 We are also proposing to add the data element payer (fixed rate leg 2) to the draft remade ASIC Rules for completeness, recognising that it is a data element that is already commonly reported to DDRS and would not require any system or process changes by the reporting entities that are already reporting this data element. However, this would be as optional information as there are a material number of reporting entities who are not already reporting this data element and it is not a data element that is continued in the draft amended ASIC Rules.

**Data elements related to dates and timestamps**

481 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to date and timestamps.

<b>Proceed per CP 334</b>	Effective date, Expiration date, Execution timestamp, Event timestamp, Clearing timestamp
<b>Not proceed</b>	Not applicable
<b>New proposal</b>	Not applicable

482 As noted in paragraph 323, respondents to [CP 334](#) did not oppose our proposals to adopt these data elements and we have decided to proceed as we had proposed.

483 In Table S1.1(1), the meanings of item 15 ‘Effective date’ and item 16 ‘Expiration date’ closely follow the definition of these data elements in the CDE Guidance:

- (a) the dates are ‘unadjusted dates’ as the dates agreed between the counterparties prior to any subsequent adjustment where the unadjusted date is not a business day or banking business day; and

- (b) the dates are ‘taken from the trade confirmation’ and are therefore only required to be reported where there is such a date in the trade confirmation.

484 Dates ‘taken from the trade confirmation’ would conform to market practices for different kinds of OTC derivatives. For example:

- (a) a foreign exchange forward or an option does not ordinarily have an effective date included in the trade confirmation and, if so, a value for effective date is not required to be reported; and
- (b) contracts for difference do not ordinarily have an expiration date included in the trade confirmation and, if so, a value for expiration date is not required to be reported.

Note: Contracts for difference do not ordinarily have an expiration date except where the underlier has an expiration date—such as a futures contract—and the expiration date for the contract for difference may be the expiration date of the underlier.

485 As per the CDE Guidance, expiration date (as taken from the trade confirmation) applies to all instrument types of forwards, swaps and options—there is not a separate option expiration date data element in the draft amended ASIC Rules.

486 In Table S1.1(1), the meaning of item 17 ‘Execution date’ closely follows its definition in the CDE Guidance, including that this data element remains constant during the life of the OTC derivative.

487 In addition, it is specified that this data element is reported in all reports of transaction information, including a report about the termination of the OTC derivative. In current reporting practices, execution date is reported for modification reports but not for termination reports. We are proposing to require reporting of execution date for termination reports to more readily provide to the Australian regulators transparency about the hold period of open positions by reporting entities.

488 In Table S1.1(1), the meaning of item 18 ‘Event timestamp’ corresponds to its definition in the final CFTC rules. Whereas execution timestamp is reported for the entry into of an OTC derivative, event timestamp is reported for certain subsequent lifecycle events of the OTC derivative—identified in reporting as events reported with an action type of ‘MODI’ (for a modification) or ‘TERM’ (for a termination).

489 In Table S1.1(1), the meaning of item 19 ‘Clearing timestamp’ substantively corresponds to its definition in the final ESMA rules, with the clarification that the clearing timestamp is the timestamp ‘notified to the Reporting Entity by the CCP’.

490 For each of these date and timestamp fields, the format is specified as a date value or date and time value (as applicable) in accordance with ISO 8601.



*Application to the draft remade ASIC Rules*

491 Effective date, execution timestamp and clearing timestamp are data elements that are present in the current ASIC Rules and the draft remade ASIC Rules and have substantively the same meanings as in the draft amended ASIC Rules—noting that execution timestamp is not required to be reported in all reports of transaction information under the draft remade ASIC Rules.

492 For forward or swap contracts, expiration date is a data element that is present in the current ASIC Rules (as ‘Maturity, termination or end date’) and the draft remade ASIC Rules (as ‘Expiration date’). For options, the draft remade ASIC Rules continue with the separate option expiration date data element that is in the current ASIC Rules, but which would cease to be a separate data element in the draft amended ASIC Rules.

493 Event timestamp is not a data element that is present in the current ASIC Rules and is not included in the draft remade ASIC Rules.

**Data elements related to clearing and trading**

494 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to clearing and settlement. We have decided not to proceed with three data elements that were proposed in [CP 334](#).

<b>Proceed per CP 334</b>	Cleared, Central counterparty, Clearing member, Platform identifier
<b>Not proceed</b>	Final contractual settlement date, Settlement location—Leg 1, Settlement location—Leg 2
<b>New proposal</b>	Not applicable

495 As noted in paragraph 328, respondents to CP 334 expressed concerns about our proposals for final contractual settlement date, settlement location—leg 1 and settlement location—leg 2, and we have decided not to proceed with the proposals.

496 For the other data elements related to clearing and trading, respondents did not make any significant objections and we have decided to proceed with the proposals.

497 In Table S1.1(1), the meaning of item 20 ‘Cleared’ closely follows the definition of this data element in the CDE Guidance, including allowing the reporting of an intention to clear. The formats and allowable values are of the values Y, N or I.

498 In Table S1.1(1), the meaning of item 21 ‘Central counterparty’ closely follows the definition of this data element in the CDE Guidance. The formats and allowable values are of a current LEI.

499 In Table S1.1(1), the meaning of item 22 ‘Clearing member’ closely follows the definition of this data element in the CDE Guidance. The formats and allowable values are of a current LEI.

500 In Table S1.1(1), the meaning of item 23 ‘Platform identifier’ is based on the definition of this data element in the CDE Guidance, and the meanings of the codes XOFF, XXXX and BILT within ISO 10383. The format and allowable value to identify a platform is its segment market identification code (MIC) under ISO 10383.

*Application to the draft remade ASIC Rules*

501 Each of cleared, central counterparty, clearing member and platform identifier are data elements that are present in the current ASIC Rules and the draft remade ASIC Rules, but with some differences in their meanings and allowable values.

502 For ‘cleared’, the draft remade ASIC Rules continue with the substantive meaning of this data element in the current ASIC Rules, including that it does not provide for the reporting of an intention to clear. The format is not specified and the allowable values provide for the simple continuation of current reporting practices as ‘Any values accepted by the Derivative Trade Repository that is receiving the report’.

503 Central counterparty, in the current ASIC Rules, is defined as the ‘Name of the central clearing facility’—however, in practice, LEIs for CCPs are reported for this data element. In the draft remade ASIC Rules, the central counterparty data element would have the same meaning and current LEI allowed values as in the draft amended ASIC Rules.

504 The substantive meaning of the data element ‘clearing member’ is the same across each of the current ASIC Rules, the draft remade ASIC Rules and the draft amended ASIC Rules. In the draft remade ASIC Rules, the allowable value for this data element becomes only an LEI.

505 Platform identifier, in the current ASIC Rules (as ‘Execution venue’), is defined in terms of an identifier code or name of the trading venue or a notation to indicate there was no trading venue.

506 We propose to change this in the draft remade ASIC Rules to the same meaning and allowable values for platform identifier in the draft amended ASIC Rules.

507 The mix of values that has been reported as ‘Execution venue’ but also, in addition, to DDRS as ‘Execution Venue—MIC Code’ and ‘Execution Venue Type’ has changed over time. However, most recently in January and February 2022, we observed that 90.5% of reports identify the platform, or indicate an off-platform transaction, using a MIC. A further 8.4% identify a platform with an LEI that are LEIs of platforms, or platform operators, who have a MIC. Therefore, we think that 98.9% of recent reporting about platform identifiers is with a MIC or is ‘MIC-capable’.

508 From the same platform reporting analysis, we identified 12 reporting entities whose recent reporting about platform identifiers appears to not, or not commonly, use either MICs or LEIs in reporting.

509 Although our proposal would require 12 reporting entities to make changes to their systems and/or processes to incorporate MICs in reporting before the draft amended ASIC Rules commence on 1 April 2024, we think this is a small number of affected entities where nearly 99% of transactions by other reporting entities already incorporate MICs in reporting.

#### Data elements related to notional amounts and quantities

510 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to notional amounts and quantities. We have decided not to proceed with two data elements that were discussed in [CP 334](#) to be considered for possible proposal in this consultation.

<b>Proceed per CP 334</b>	Notional amount—Leg 1, Notional amount—Leg 2, Total notional quantity—Leg 1, Total notional quantity—Leg 2, Notional quantity—Leg 1, Notional quantity—Leg 2, Call amount, Put amount, Notional currency—Leg 1, Notional currency—Leg 2, Quantity unit of measure—Leg 1, Quantity unit of measure—Leg 2, Call currency, Put currency, Notional amount schedule effective date—Leg 1, Notional amount schedule end date—Leg 1, Notional amount schedule amount—Leg 1, Notional amount schedule effective date—Leg 2, Notional amount schedule end date—Leg 2, Notional amount schedule amount—Leg 2
<b>Not proceed</b>	Notional quantity schedule—Leg 1, Notional quantity schedule—Leg 2
<b>New proposal</b>	Not applicable

511 As noted in paragraph 345, respondents to [CP 334](#) indicated a low incidence of quantity schedules that would not be simply equivalent to notional amount divided by price, and there was no apparent consensus preference to report an entire notional quantity schedule upfront compared with reporting modification updates to notional quantity as and when different notional quantity schedule values become effective. We have decided not to make any proposal to include notional quantity schedule data elements.

512 Otherwise, respondents were not opposed to our proposals for expanding the existing notional amounts, quantities and currencies data elements to their leg 2 equivalents, including notional amount schedule information and generalising to all asset classes.

*Which is leg 1 and which is leg 2?*

513 Prior to elaborating on the various leg 1 and leg 2 data elements for notional amounts and quantities, we think it is important to discuss which legs of a transaction should be considered as leg 1 and leg 2 respectively.

514 The set of ASIC data elements, as with the data element sets in other jurisdictions, requires the reporting of a number of attributes relating to the 'leg' of a transaction, including an indicator of what the reporting entity is doing on the leg—that is, paying or receiving. Given the reported indicator of the action on a leg, it need not matter whether a transaction is reported in a leg 1/leg 2 pattern or a leg 2/leg 1 pattern.

515 As we understand it from interactions between industry and regulators in other jurisdictions, industry is generally of the view that there need not be guidance or prescription about determining leg 1 and leg 2 for different kinds of transactions in different asset classes. We also understand that it is a commonly held view that forward contracts and option contracts (other than foreign exchange contracts) are not considered to have 'legs'.

516 However, we think there is scope for, and benefits in, setting out some high-level guidance in order to promote a level of conformance to common methods of reporting. The guidance that we propose is not intended to cover every transactional circumstance and is set out in Table 31.

**Table 31: High-level guidance on leg 1/leg 2 reporting**

Guidance element	Explanation
<p>Notional amount—Leg 1 must always be reported</p>	<p>Notional amount—Leg 1 would be reported as the actual notional amount or the equivalent to the actual Total notional quantity—Leg 1</p> <p>This is consistent with the view that a forward or option contract (other than a foreign exchange contract) can be represented as:</p> <ul style="list-style-type: none"> <li>• Notional amount—Leg 1 only</li> <li>• Notional quantity—Leg 1 v. Notional amount—Leg 1</li> </ul> <p>This does not preclude that a contract could be viewed and reported as e.g.:</p> <ul style="list-style-type: none"> <li>• Notional quantity—Leg 1 v. Notional amount—Leg 2</li> </ul> <p>provided that Notional amount—Leg 1 was also reported</p>
<p>For derivatives involving fixed prices, fixed rates or strike prices, leg 1 should describe the fixed price or rate and leg 2 should describe the floating price or rate leg</p>	<p>This provides data conformance for the Australian regulators to be able to readily understand leg 1 as providing the fixed price or rate returns</p> <p>For a transaction involving two fixed prices or rates or two floating prices or rates, the price or rate returns can be attributed to the legs in any combination</p>
<p>For credit, commodity and equity derivatives, leg 1 should describe the credit, commodity or equity price or parameter returns</p>	<p>This provides data conformance for the Australian regulators to be able to readily understand leg 1 as providing the asset class returns</p> <p>For a transaction involving a credit, commodity or equity return on both legs (other than a fixed v. floating return in the same asset class), including a commodity return on one leg and an equity return on the other leg, the asset class returns can be attributed to the legs in any combination</p>

*Data elements relating to notional amounts and quantities in the draft amended ASIC Rules*

- 517 The meaning of the items related to notional amounts, total notional quantities and notional quantities follow, in principle, the definitions in the CDE Guidance.
- 518 In Table S1.1(1), item 24 ‘Notional amount—Leg 1’ is defined in terms of:
- (a) the notional amount taken from the trade confirmation—this corresponds to ‘amount specified in the contract’ in the CDE Guidance; and
  - (b) attributed by the reporting entity to leg 1—the trade confirmation may or may not specify an amount as being a leg 1 amount, but the reporting entity needs to attribute a notional amount to leg 1; or
  - (c) if there is no such amount specified in the trade confirmation, the notional equivalent calculated by multiplying the total notional quantity—leg 1 by the contract price, contract strike price or market price for the underlier at the time of the transaction—this corresponds to the various ‘Converted Amounts’ referred to in the CDE Guidance.
- 519 In Table S1.1(1), item 25 ‘Notional amount—Leg 2’ is only defined in terms of the amount taken from the trade confirmation and attributed by the reporting entity to leg 2. We do not anticipate that it would be necessary to require a quantity-to-notional conversion on leg 2—we expect that our guidance would promote high conformance to reporting quantity amounts as leg 1, where there is a conversion requirement, and in the case of a transaction with quantities on both legs, we do not consider that there is material regulatory value in requiring notional equivalents for both legs. This does not preclude the reporting of a converted amount if, for example, the reporting entity’s systems generate such an amount or the transaction is reported to another jurisdiction where the amount is required and excluding the amount from reporting in either case is an unnecessary complexity.
- 520 In Table S1.1(1), the meanings of item 26 ‘Total notional quantity—Leg 1’ and item 26 ‘Total notional quantity—Leg 2’ closely follow the definition of this data element in the CDE Guidance as relating to aggregate notional quantity of the underlier for the entire term of the transaction. These quantities are for the legs as attributed by the reporting entity.
- 521 In Table S1.1(1), the meanings of item 28 ‘Notional quantity—Leg 1’ and item 29 ‘Notional quantity—Leg 2’ follow the definition of this data element in the final CFTC rules as relating to the per-period constant quantity amount. As we have decided not to include notional quantity schedule data elements, these data elements specify the reporting of the notional quantity

of the current period of the OTC derivative—that is, if the notional quantity increases or decreases for a period, the reporting entity must report the changed notional quantity applying to the current period.

- 522 In Table S1.1(1), the meanings of item 30 ‘Call amount’ and item 31 ‘Put amount’ for foreign exchange options closely follow the definition of these data elements in the CDE Guidance. As noted in paragraph 275 of [CP 334](#), these data elements are necessary as ‘direction’ identifies the buyer and seller of the option but does not, of itself, identify whether the option is a call over the leg 1 currency amount or over the leg 2 currency amount.
- 523 The specified format for these notional amounts and notional quantities is as numbers per the CDE Guidance.
- 524 The allowable values are also as per the CDE Guidance as any numeric value greater than or equal to zero, except for Notional amount—Leg 1 and Notional amount—Leg 2 where negative numeric values are allowable. We expect that a negative number would only be reported for a notional equivalent amount on the rare occasions when the price, used as a multiplier to convert a notional quantity into a notional amount, is a negative number—this should only occur for commodity derivatives.
- 525 In Table S1.1(1), items 32 to 37 refer to the currency in which a monetary amount, or the unit of measure in which a quantity, is reported under another item in the table.
- (a) In the case of a currency, the format and allowable values are as per ISO 4217.
  - (b) In the case of a unit of measure, the format and allowable values reference a specified ISO 20022 code set of values.
- 526 In Table S1.1(1), items 38 to 43 refer to the data elements that describe a notional amount schedule.
- 527 The meanings of these items closely follow the definitions for these data elements in the CDE Guidance, including that:
- (a) the values for effective date and end date amount are repeatable for each date or amount; and
  - (b) an end date is not required to be reported if it is the same date as the effective date of the next period of the schedule.
- 528 In addition, a notional amount schedule for leg 2 is only required to be reported if the schedule information for leg 2 is different to the schedule information of leg 1 in one or more of its dates or amounts elements.

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- 529 In the current ASIC Rules, both leg 1 and leg 2 notional amounts are only present for foreign exchange derivatives and interest rate derivatives. There are only effectively leg 1 notional amounts for credit derivatives and equity derivatives and only effectively leg 1 notional amounts and leg 1 notional quantities for commodity derivatives.
- 530 In the draft remade ASIC Rules, these data elements adopt some of the leg1/leg 2 labelling of the draft amended ASIC Rules and substantively the meanings of the draft amended ASIC Rules, except that:
- (a) the reference to the reporting entity attributing an amount to a particular leg is only applied to interest rate derivatives; and
  - (b) for foreign exchange derivatives, the meanings of Notional amount—Leg 1 and Notional amount—Leg 2 continue to be expressed, as per the current ASIC Rules, in terms of the amount of the currency payable and receivable, respectively, by the reporting entity.
- 531 The corresponding currency and quantity unit data elements substantively adopt the meanings, formats and allowable values of these data elements in the draft amended ASIC Rules, except that the allowable values for the quantity unit of measure do not specify an ISO 20022 code set but continue with the existing practice that the allowable values are ‘Any value accepted by the Derivative Trade Repository that is receiving the report’.
- 532 Call amount, put amount, call currency, put currency, the remaining leg 2 data elements and the notional amount schedules data elements are not data elements that are present in the current ASIC Rules. In keeping with our intention not to require changes to the systems and processes that reporting entities currently use for reporting until the draft amended ASIC Rules commence on 1 April 2024, we are not proposing to include them in the earlier draft remade ASIC Rules.

**Data elements related to prices**

- 533 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to prices. We have decided not to proceed with three data elements that were discussed in [CP 334](#) to be considered for possible proposal in this consultation. However, we are now proposing to bring forward one new data element in the draft amended ASIC Rules to apply in the earlier draft remade ASIC Rules.



<b>Proceed per CP 334</b>	Price, Price currency, Price notation, Price unit of measure Fixed rate—Leg 1, Fixed rate —Leg 2 Spread—Leg 1, Spread—Leg 2 Spread currency—Leg 1, Spread currency—Leg 2 Spread notation—Leg 1, Spread notation—Leg 2  Strike price Strike price currency/currency pair, Strike price notation  Option premium amount, Option premium currency, Option premium payment date  Exchange rate, Exchange rate basis
<b>Not proceed</b>	Price schedule, Strike price schedule  First exercise date
<b>New proposal</b>	Fixed rate—Leg 2—in the draft remade ASIC Rules

534 As noted in paragraph 342, respondents to CP 334 indicated a low incidence of transactions involving price schedules, strike price schedules or first exercise dates and we have decided not to proceed with these proposals.

535 Otherwise, respondents were generally supportive of, or did not oppose, our proposals regarding the other data elements related to price.

536 In Table S1.1(1), the meaning of item 45 ‘Price’ is substantively the same as the definition of this data element in the CDE Guidance.

537 The OTC derivatives for which this data element is required to be reported closely follow the instruments specified in the CDE Guidance as illustrated in Table 32.

**Table 32: Instruments/OTC derivatives for which price applies**

CDE Guidance	Draft amended ASIC Rules
Price specified in the OTC derivative transaction. It does not include fees, taxes or commissions	The price taken from the trade confirmation of the Reportable Transaction, not including fees, taxes or commissions
commodity and equity forwards and similar products: price is the forward price	commodity derivatives or equity derivatives where: <ul style="list-style-type: none"> <li>the UPI that is reported is for an instrument type that is a forward</li> </ul>

CDE Guidance	Draft amended ASIC Rules
commodity fixed/float swaps and similar products with periodic payments: price is the fixed price of the fixed leg  equity swaps, portfolios swaps, and similar products: price is the initial price of the underlier	commodity derivatives or equity derivatives where: <ul style="list-style-type: none"> <li>• the UPI that is reported is for an instrument type that is a swap and the OTC Derivative includes a term that is, or is equivalent to, a fixed price or initial price</li> </ul>
contracts for difference and similar products: price is the initial price of the underlier	contracts for difference (other than foreign exchange derivatives)
This data element is not applicable to: <ul style="list-style-type: none"> <li>• interest rate swaps and forward rate agreements: price is Fixed rate and/or Spread</li> <li>• Interest rate options and interest rate swaptions: price is Strike price and/or Option premium</li> <li>• Commodity basis swaps and the floating leg of commodity fixed/float swaps: price is Spread</li> <li>• Foreign exchange swaps, forwards and options: price is Exchange rate, Strike price, and/or Option premium</li> <li>• Equity options: price is Strike price and/or Option premium</li> <li>• Credit default swaps and credit total return swaps: price is Fixed rate, Spread and/or Other payment type: Upfront payment</li> <li>• Commodity options: price is Strike price and/or Option premium</li> </ul>	Derivative transactions for which a value is not reported for all of: <ul style="list-style-type: none"> <li>• Fixed rate—Leg 1, Fixed rate—Leg 2, Spread—Leg 1, Spread—Leg 2</li> <li>• Strike price, Option premium amount</li> <li>• Exchange rate, and</li> <li>• for OTC Derivatives that are credit derivatives, a value of UFRO is not reported for Other payment type</li> </ul>

538

We think that the relevant scope of OTC derivatives under the draft amended ASIC Rules for which the price data element applies accurately aligns with the intended scope of instruments in the CDE Guidance, noting that:

- (a) the meaning uses the common phrasing in the draft amended ASIC Rules of ‘taken from the trade confirmation’ rather than the less precise ‘specified in the OTC derivative transaction’;
- (b) as with the approach to direction 1 described in paragraph 469, a forward is identified by the instrument type data element of the UPI that is reported;
- (c) the same kind of approach is taken to identify swaps by the instrument type data element of the UPI that is reported;

- (d) the meaning generally avoids stating a particular terminology that identifies the price (e.g. ‘the forward price’ in the CDE Guidance), except in relation to commodity and equity swaps where the meaning clarifies the in-scope OTC derivatives as those including ‘a term that is, or is equivalent to, a fixed price or initial price of the underlying or reference asset’;
- (e) it is clarified that the data element only applies to contracts for difference that are not foreign exchange derivatives—to treat foreign exchange contracts for difference in the same way as other foreign exchange forwards, as is their treatment for the direction data elements; and
- (f) the OTC derivatives for which the price data element does not apply are those whose ‘price’ has been reported in one of the other data elements listed, which are the same set of data elements that the CDE Guidance identifies as conveying price information for various products.

539 For the other data elements for ‘price’ in Table S1.1(1), we think that the meanings for these data elements in the draft amended ASIC Rules are straightforward, as set out in Table 33.

**Table 33: Other data elements for ‘price’ in Table S1.1(1)**

Item	Label	Derivative Transaction Information
48	Fixed rate— Leg 1	The value of the per annum rate of the fixed rate of Leg 1
49	Fixed rate —Leg 2	The value of the per annum rate of the fixed rate of Leg 2
50	Spread— Leg 1	If applicable, the value of the spread that is added to the reference rate or reference price of the underlier of Leg 1
51	Spread— Leg 2	If applicable, the value of the spread that is added to the reference rate or reference price of the underlier of Leg 2
56	Strike price	If the OTC Derivative the subject of the Reportable Transaction is an option, the value of the strike price of the option
59	Option premium amount	If the OTC Derivative the subject of the Reportable Transaction is an option, the monetary amount of the option premium paid, or due to be paid, by the option buyer

Item	Label	Derivative Transaction Information
62	Exchange rate	For foreign exchange derivatives that are not options, the exchange rate between Notional currency—Leg 1 (item 32 above) and Notional currency—Leg 2 (item 33 above) taken from the trade confirmation of the Reportable Transaction; or  if no such exchange rate is specified in the trade confirmation of the Reportable Transaction, the exchange rate calculated by dividing the amount reported as Notional amount—Leg 1 by Notional amount—Leg 2

- 540 As applicable, the currency of the ‘price’ data element is reported as an ISO 4217 currency code: see item 46 ‘Price currency’, item 54 ‘Spread currency—Leg 1’, item 55 ‘Spread currency—Leg 2’ and item 60 ‘Option premium currency’.
- 541 For the strike price of an option, the single currency of the strike is reported as an ISO 4217 currency code, or, in the case of a foreign exchange option, as the currency pair of the strike price, with the ISO 4217 currency codes in the same codes order as the strike price is expressed: see item 58 ‘Strike price currency/currency pair’.
- 542 Similarly, for the exchange rate of a foreign exchange derivative that is not an option, the currency pair of the exchange rate is reported, with the ISO 4217 currency codes in the same codes order as the exchange rate is expressed: see item 63 ‘Exchange rate basis’.
- 543 Finally, a number of the price data elements require an indicator—a ‘notation’—of the type of units in which the ‘price’ is expressed.
- 544 Respondents generally agreed with our proposal to follow the CFTC approach requiring the use of decimals and not allowing the use of percentages—for example, a rate of 2.57% is reported as 0.0257 not 2.57.
- 545 Therefore, the notations that apply in the draft amended ASIC Rules are:
- (a) 1—for a monetary amount;
  - (b) 3—for a decimal;
  - (c) 4—for a number in basis points.
- 546 In the draft amended ASIC Rules, the allowable notations are generally as 1 or 3, with 4 an additional option for the Spread data elements. There are no separate notation data elements for the Fixed rate data elements as these are required to be always reported as decimals.

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- 547 The following data elements are not present in the current ASIC Rules and we are not proposing to add them to the draft remade ASIC Rules:
- (a) Price, Price currency, Price notation, Price unit of measure;
  - (b) Spread—Leg 1, Spread—Leg 2, Spread currency—Leg 1, Spread currency—Leg 2, Spread notation—Leg 1, Spread notation—Leg 2; and
  - (c) Strike price notation, Option premium payment date.
- 548 Exchange rate basis and Strike price currency/currency pair are data elements present in the current ASIC Rules (in practice, as item 34 ‘Basis’ in Table S1.1(1) ‘Common data’ but without specifying an order of currency codes) and this data element is not proposed to be continued in the draft remade ASIC Rules.
- 549 Otherwise, the following data elements are present in the current ASIC Rules and are continued in the draft remade ASIC Rules using substantively the same meanings, formats and allowable values as in the draft amended ASIC Rules:
- (a) Fixed rate—Leg 1;
  - (b) Option premium amount, Option premium currency, Strike price; and
  - (c) Exchange rate.
- 550 We are also proposing to add the data element Fixed rate—Leg 2 to the draft remade ASIC Rules for the following reasons:
- (a) this data element is required to fully describe interest rate swaps, particularly cross-currency swaps, that have a fixed rate on both legs of the swap;
  - (b) it is a data element that is required under the draft amended ASIC Rules;
  - (c) it is a data element that is already commonly reported to DDRS and this would not require any system or process changes by the reporting entities that are already reporting this data element; and
  - (d) as indicated by a recent review of the data, we think that there are only 10 reporting entities who do not currently report Fixed rate—Leg 2 and this accounts for just 3% of all transactions for which Fixed rate—Leg 2 would be reported.

**Data elements related to regular payments and settlements**

- 551 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to regular payments and settlements. We have decided not to proceed with four data elements that were discussed in [CP 334](#) to be

considered for possible proposal in this consultation. However, we are now proposing to bring forward two data elements that would be required in the draft amended ASIC Rules to apply in the earlier draft remade ASIC Rules.

<b>Proceed per CP 334</b>	Day count convention—Leg 1, Day count convention—Leg 2, Payment frequency period—Leg 1, Payment frequency period multiplier—Leg 1, Payment frequency period—Leg 2, Payment frequency period multiplier—Leg 2, Settlement currency—Leg 1, Settlement currency—Leg 2
<b>Not proceed</b>	Floating rate reset frequency period —Leg 1, Floating rate reset frequency period —Leg 2, Floating rate reset frequency period multiplier—Leg 1, Floating rate reset frequency period multiplier—Leg 2
<b>New proposal</b>	Fixed leg payment frequency (leg 2), Floating rate payment frequency (leg 2) in the draft remade ASIC Rules

- 552 As noted in paragraph 332, respondents to CP 334 indicated a low incidence of transactions where the reset frequency of a floating rate was different to the reference period of the floating rate—for example, where the reference rate is 6-month BBSW but the reset frequency is monthly. We have decided not to proceed to propose additional data elements to describe the reset frequency separate from the reference period.
- 553 For the key data elements related to regular payments—day count convention, payment frequency and settlement currency data elements—respondents did not make any significant objections, and we have decided to proceed with these proposals.
- 554 In Table S1.1(1), the meaning of item 64 ‘Day count convention—Leg 1’ and item 65 ‘Day count convention—Leg 2’ is expressed as a condensed, but consistent, version of the definition in the CDE Guidance by describing the data element as ‘the indicator of the day count for calculation of periodic payments’. Although we expect that the vast majority of such periodic payments are periodic *interest* payments, in keeping with the approach in the draft amended ASIC Rules to be agnostic as to asset class and product type, these data elements would apply to any case of periodic payments being calculated by reference to a day count.
- 555 The allowable values reference a specified ISO 20022 code set of values—ISO 20022 code set InterestComputationMethod4Code. These are 20 codes from A001 to A020 representing various day count conventions—Table 4 in Annex 1 of the CDE Guidance maps these codes to their equivalent FpML and FIX/FIXML codes and definitions.

556 In Table S1.1(1), for the data elements related to payment frequency periods—items 66–69—their meanings closely follow the definitions in the CDE Guidance and their formats and allowable values are the same as those in the CDE Guidance.

557 In Table S1.1(1), the meanings of item 70 ‘Settlement currency—Leg 1’ and item 71 ‘Settlement currency—Leg 2’ follow the principles of the definition in the CDE Guidance, including that the data elements are not applicable to physically settled transactions.

558 We think that ‘physically settled’ should be interpreted as referring to:

- (a) the commonly understood situations where there is ‘delivery’—for example, of shares for a cash payment or of a swap following the exercise of a swaption; but also
- (b) situations where the normal terms of the transaction provide for the exchange of payments in different currencies (e.g. a foreign exchange forward) or the netting of payments of a transaction denominated in a single currency (e.g. an interest rate swap).

559 In other words, we think that the opposite concept of ‘cash-settlement’ should apply to situations where there is a payment in lieu of delivery or where there is a payment in a currency that is different from the currency in which the payment is nominally denominated.

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560 For the related data elements in the current ASIC Rules:

- (a) day convention information is reported as Fixed rate day count fraction in Table S2.1(5) ‘Interest rate derivative data’ and as Basis in Table S2.1(1) ‘Common data’ (but, in practice, only for equity derivatives);
- (b) payment frequency information is reported in each of the separate asset classes in Tables S2.1(2)–(5);
- (c) for interest rate derivatives, payment frequency information is only specified in the current ASIC Rules for one leg of a transaction, but, in practice, information about both legs is commonly reported to DDRS; and
- (d) settlement currency data elements are not present in the current ASIC Rules.

561 For the draft remade ASIC Rules, we are proposing to:

- (a) continue with data elements present in the current ASIC Rules;
- (b) add leg 2 payment frequency information for interest rate derivatives, recognising that this information is already commonly reported and would be required to be reported under the draft amended ASIC Rules;

- (c) relocate and rename Basis from Table S2.1(1) ‘Common data’ to Table S1.1(3) ‘Equity derivative and credit derivative data’, recognising that, in practice, it is only currently reported for equity derivatives; and
- (d) not introduce settlement currency data elements until the draft amended ASIC Rules commence on 1 April 2024.

562 The key points of these changes are set out in Table 34.

**Table 34: Related key changes in the draft remade ASIC Rules**

Current ASIC Rules	Draft remade ASIC Rules	Notes
Basis item 34, Table S2.1(1)	Day count convention—Leg 2 item 5, Table S1.1(3)	Relocating from all asset classes to equity and credit derivatives  Aligning the data element label with its meaning  Formats and allowable values as per current reporting practices
Payment frequency item 5, Table S2.1(2)	Payment frequency item 4, Table S1.1(2)	Clarified to only apply to swaps  Formats and allowable values as per current reporting practices
Payment frequency item 12, Table S2.1(3)	Payment frequency item 4, Table S1.1(3)	Clarified to only apply to swaps  Formats and allowable values as per current reporting practices
Fixed leg payment frequency item 15, Table S2.1(5)	Fixed leg payment frequency (leg 1) item 13, Table S1.1(5)	No substantive change to meaning  Formats and allowable values as per current reporting practices
Not applicable	Fixed leg payment frequency (leg 2) item 14, Table S1.1(5)	New data element  To be required under the draft amended ASIC Rules  Comparable meaning to the equivalent leg 1 data element  Formats and allowable values as per current reporting practices
Floating rate payment frequency item 16, Table S2.1(5)	Floating rate payment frequency (leg 1) item 15, Table S1.1(5)	No substantive change to meaning  Formats and allowable values as per current reporting practices



Current ASIC Rules	Draft remade ASIC Rules	Notes
Not applicable	Floating rate payment frequency (leg 2) item 16, Table S1.1(5)	New data element To be required under the draft amended ASIC Rules Comparable meaning to the equivalent leg 1 data element Formats and allowable values as per current reporting practices
Fixed rate day count fraction item 14, Table S2.1(5)	Fixed rate day count fraction item 12, Table S2.1(5)	Clarifies meaning as an indicator, rather than as a number of days Formats and allowable values as per current reporting practices

- 563 In relation to the new leg 2 payment frequency data elements for interest rate derivatives, we consider these data elements as ‘already commonly reported’ because, as indicated by a recent review of the reported data:
- (a) for Fixed leg payment frequency (leg 2), we only identified less than 2% of relevant transactions by 11 reporting entities as not including this data element in reporting; and
  - (b) for Floating rate payment frequency (leg 2), we only identified less than 5% of relevant transactions by 19 reporting entities as not including this data element in reporting.

564 We also considered extending the Fixed rate day count data element to a similar leg 1/leg 2 and fixed rate/floating rate coverage for interest rate derivatives. However, our data review indicated that the level of ‘already reporting’ of these data elements was only for an average of 63% of interest rate derivative transactions. Consequently, we are not proposing to require this additional information until the later commencement of the draft amended ASIC Rules.

#### Data elements related to other payments

565 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to other payments.

<b>Proceed per CP 334</b>	Other payment amount, Other payment type, Other payment currency, Other payment date, Other payment payer, Other payment receiver
<b>Not proceed</b>	Not applicable
<b>New proposal</b>	Not applicable

566 Respondents did not express any significant concerns about our proposals for the reporting of data elements related to other payments. We have decided to proceed as proposed, with the exception of not including notional amount exchanges as a type of other payment.

567 In Table S1.1(1), the meaning of item 72 ‘Other payment amount’ relates to the types of other payments identified at item 73 ‘Other payment type’. These are:

- (a) an upfront payment that is not a payment of an option premium or a notional; or
  - (b) a payment made on the termination of an OTC derivative that is not a payment of an option premium or a notional amount,
- and, in both cases, excluding standard fees, taxes or commissions.

568 We are proposing to exclude notional amount exchanges as a type of other payment as we think this unnecessarily duplicates information that is reported as other data elements. Reporting notional amount exchanges as other payments would be a positive statement that these cashflows have occurred, or will occur, whereas, strictly speaking, the amounts and currencies reported for Notional amount—Leg 1 and Notional amount—Leg 2 are merely the amounts from which interest amounts are calculated and are not definitive of being actual notional amount exchanges.

569 However, other than for cross-currency swaps that are indicated as non-deliverable by the UPI that is reported, we think it is very uncommon that there is not ordinarily a notional amounts exchange, at least on the far-dated expiration date of the swap. There may be a higher incidence of notional amounts not being exchanged at the near-dated effective date of the swap, but these are typically near-dated events and of limited regulatory value.

570 Consequently, we think we can rely on assuming that, ordinarily, notional amounts are exchanged without this needing to be confirmed by reporting additional data elements.

571 In Table S1.1(1), item 74 ‘Other payment currency’ and item 75 ‘Other payment date’ have meanings, formats and allowable values expressed in that same manner as currency and date data elements are expressed in other instances in the draft amended ASIC Rules.

572 In Table S1.1(1), for item 76 ‘Other payment payer’ and item 77 ‘Other payment receiver’, we recognise that the payer or receiver may be a ‘third party’—for example, where the reporting entity pays an upfront payment to the entity that is stepping-out of the transaction to which the reporting entity is stepping-in. In light of this, while an LEI is still first required if the payer or receiver has an LEI, there is no requirement for it to be a renewed LEI for certain types of entities and no requirement that an LEI be applied for in accordance with Rule S1.3.1(2)—though, if the payer or receiver was, for example, counterparty 2 then the identifier requirements for the counterparty 2

data element would effectively be the identifier requirements for the other payment payer or other payment receiver data elements.

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573 The current ASIC Rules only require reporting of upfront payments made or received in the asset classes other than foreign exchange. This encapsulates its amount, its type as an upfront payment and whether the reporting entity pays (by reporting a negative amount) or receives (by reporting a positive amount), but the current ASIC Rules do not include the other data elements of the currency and payment date.

574 The draft remade ASIC Rules rename the data element to ‘Other payment amount’ but continue with the substantive meaning of this data element in the current ASIC Rules, and apply formats and allowed values for positive and negative numbers.

575 The other data elements of currency and payment date of the other payment are not introduced into the draft remade ASIC Rules.

**Data elements related to custom baskets and underliers**

576 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to custom baskets and underliers.

<b>Proceed per CP 334</b>	Custom basket code, Identifiers of the basket’s constituents, Source of the identifiers of the basket constituents, Maturity date of the underlier
<b>Not proceed</b>	Basket constituent unit of measure, Basket constituent number of units
<b>New proposal</b>	Underlier ID—non-UPI, Underlier ID source—non-UPI, Identifier of the floating rate—Leg 2, Floating rate reference period—Leg 2, Floating rate reference period multiplier—Leg 2

577 As we note in paragraphs 350–354, respondents to CP 334:

- (a) were generally supportive of reporting an identifier for each constituent of a custom basket;
- (b) expressed mixed views as to the allowable identifier types;
- (c) had concerns about the generation and sharing of a structurer’s custom basket code;
- (d) contrasted a basket code requirement with the true/false indicator in the final CFTC rules; and
- (e) anticipated added complexity to report the number of units of each constituent in a basket.

- 578 Having considered this feedback, and noting our response to developments in the UPI discussed in Section C ‘The unique product identifier (UPI)’ at paragraphs 235–251, we are:
- (a) making a revised proposal in relation to the custom basket data elements;
  - (b) detailing the meanings, formats and allowable values of the ‘non-UPI’ data elements; and
  - (c) not proceeding to make proposals in relation to the number of units and units of measure of the basket constituents.
- 579 In Table S1.1(1), the meaning of item 78 ‘Custom basket code’ responds to the feedback of concerns about the generation and sharing of a structurer’s custom basket code. The meaning of item 78 retains the core requirement that the custom basket code is the unique code assigned by the structurer, but requires the reporting entity to report its own unique code if it has not received a code from the reporting entity *in sufficient time* for reporting. Further, instead of its own code, the reporting entity may report the value ‘B’ if it has not entered into more than 20 transactions involving a custom basket in the 12 months ending on the preceding quarter day.
- 580 We think that a custom basket code is important to enable the Australian regulators to readily identify custom baskets that are traded on a recurring basis and/or traded by structurers with multiple clients.
- 581 However, with the, albeit more cumbersome, fallback that a recurring custom basket can be identified by observing recurring patterns of basket constituent underliers, we think that it is not necessary to require the structurer’s code to be reported in all circumstances. So, as with the UTI, the reporting entity may generate and report its own unique code if it does not receive the structurer’s code in sufficient time for reporting. In managing the situation of waiting for a code from a structurer, we expect reporting entities to act reasonably and in line with our expectations for the UTI described at paragraph 178 to temporarily divert real-time reporting, await the cut-off time for batch-style processes and take proactive steps to obtain the custom basket code from the structurer.
- 582 Further, we think that reporting entities that are not structurers but trade in a material number of derivatives over custom baskets should be capable of having systems and processes for generating their own custom basket code in the required format of their LEI followed by a unique code. Conversely, we think that reporting entities with low and/or irregular levels of trading in such products should not need to have custom basket code generating systems and processes, so reporting a value of ‘B’ is sufficient.

583 From a review of the reported data in February 2022, we think that more than 20 trades per annum by a reporting entity appears to indicate a material level of trading in derivatives over custom baskets. There appears to be less than 10 reporting entities who trade more than 20 derivatives over custom baskets per annum, and these appear to be entities that would be structurers. Hence, a significant majority of reporting entities that trade in derivatives over custom baskets would have the option of reporting the value of ‘B’, rather than generating and reporting their own code, if they do not receive a code from the structurer in sufficient time for reporting.

584 In Table S1.1(1), the allowable values for item 79 ‘Identifiers of the basket’s constituents’ are any identifier that is of a kind that:

- (a) ‘can be a specific identifier in a UPI’; or
- (b) ‘is an item 81 allowable value’ for the data element Underlier ID—non-UPI (item 81).

585 By ‘a specific identifier in a UPI’ we mean an underlier identifier that is recognised by the UPI system in a user request for a UPI. For example, at paragraph 5.2 in the DSB’s [Underlier Input Method Functional Specification July 2021](#), it is explained that:

#### 5.2 Multiple Underlier ID Source

Underlier Type with multiple origins will have a selection of supported sources in the field and underlier ID definition will vary depending on its choice.

Sample 2: If underlier Type is Security, multiple sources are applicable i.e., Primary (ISIN) and Alternate (FIGI, CUSIP, RIC)

586 In this example, each of ISIN, FIGI, CUSIP and RIC are kinds of identifiers that may be included in a user request for a UPI, and the specific identifier of one of these types is an allowable value for item 79 ‘Identifiers of the basket’s constituents’.

587 The Appendix to DSB’s [Underlier Input Method Functional Specification July 2021](#) sets out DSB’s initial version of the kinds of underlier identifiers (a UPI underlier) that can be submitted in a user request for a UPI for various products. We understand that DSB has not yet finalised the kinds of underlier identifiers that will be supported by the UPI system—the DSB has stated in its [UPI Product Definition Design Principles](#):

The following design elements are included in the Product Definitions:

...

**Primary Underlier IDs:** To support the OTC ISIN/UPI hierarchy, only the underlier IDs currently used by the OTC ISIN (eg: ISIN, LEI etc.) are to be included in the product definitions.

...

The following design elements are not included in the current versions of the Product Definitions—but are subject to on-going review by the DSB / Product Committee:

**Alternate Underlier IDs:** The provision of reference data is currently subject to an RFI and so alternate IDs (such as CUSIP, FIGI etc.) are not included in the design.

- 588 Given the pre-eminence of primary underlier IDs in the UPI system, we intend to clarify in the Schedule 1 Technical Guidance that the identifiers of a basket’s constituents should be reported as all of one type and preferably as the primary identifier type supported by the UPI system for the relevant asset class of the basket.
- 589 Where an underlier identifier is not of a kind that is supported by the UPI system, the allowable value for item 79 ‘Identifiers of the basket’s constituents’ would be an identifier of a kind that ‘is an item 81 allowable value’: see paragraphs 593–595.
- 590 For each identifier of a basket constituent, the source of the identifier is reported at item 80 ‘Source of the identifiers of the basket constituents’. Where a UPI underlier is reported, the source of the identifier is the source supported by the UPI system for that UPI underlier—for example, if a particular ISIN is reported as an underlier at item 79, ‘ISIN’ is reported at this item 80.
- 591 In the Appendix of the DSB’s [Underlier Input Method Functional Specification July 2021](#), the current ‘Underlier ID Sources’ for UPI underliers are coded as:
- (a) ESMA—equity indices listed in the ESMA TTC file;
  - (b) FPML—FpML coding schemes for interest rates and inflation indices;
  - (c) ISIN—an ISIN code;
  - (d) LEI—an LEI code;
  - (e) MRKT—IHS Markit indices;
  - (f) PROP—DSB proprietary indices submitted by users to be used as underliers; and
  - (g) UPI—a UPI, such as the UPI of a swap underlying a swaption.
- 592 Where the underlier is reported as an identifier of a kind that ‘is an item 81 allowable value’, the corresponding source of the identifier is reported as ‘an item 82 allowable value’ for the data element Underlier ID source—non-UPI (item 82): see paragraph 596.
- 593 In Table S1.1(1), the data element item 81 ‘Underlier ID—non-UPI’ is a proposed new data element that responds to our concerns that the underlier identifier sources currently set out in DSB’s draft product definitions are materially incomplete for commodity and equity index transactions: see paragraphs 235–251 in Section C ‘The unique product identifier (UPI)’.

- 594 This data element is required for commodity and equity index transactions, where the UPI that is reported is not a UPI with a specific underlier as a reference data element—that is, the underlier in the reference data of the UPI that is reported would be the non-specific identifier value of ‘Other’.
- 595 The underlier identifier could have one or more values taken from a range of different kinds of sources. To provide for a level of standardisation and conformance, we are proposing a waterfall approach to require that the underlier is reported as an up to 72-character alphanumeric string, in order of priority:
- (a) an ISIN or RIC;
  - (b) the code assigned by the operator of the facility on which the underlier is traded—for example, if the underlier is a futures contract;
  - (c) the code assigned by the operator of the facility on which the things that determine the value of the underlier are traded—for example, an equity index which is not itself traded but whose constituents are traded on the facility;
  - (d) the code assigned by the publisher of the rate, price or measure of the underlier;
  - (e) the short name of the underlier assigned by the publisher;
  - (f) the (long) name of the underlier assigned by the publisher; or
  - (g) otherwise, any alphanumeric value.
- 596 As with item 80 ‘Source of the identifiers of the basket constituents’, there is a corresponding item 82 ‘Underlier ID source–non-UPI’ reporting the source of the item 81 ‘Underlier ID—non-UPI’. For each of the possible identifiers in item 81, the corresponding source is set out as:
- (a) ISIN—if item 81 is reported as an ISIN;
  - (b) RIC—if item 81 is reported as a RIC;
  - (c) the MIC of the facility—if item 81 is reported as a code assigned by the operator of the facility;
  - (d) the commonly understood abbreviation or short name of the publisher—if item 81 is reported as a code, short name or name assigned by the publisher;
  - (e) the name of the publisher—if the publisher does not have a commonly understood abbreviation or short name;
  - (f) otherwise, any alphanumeric value.

- 597 For item 81 ‘Underlier ID—non-UPI’ and item 82 ‘Underlier ID source—non-UPI’, we think that the descriptions of the allowable values for these data elements have a workable level of precision but we recognise that they are not wholly unambiguous, particularly for the names of underliers and abbreviations or names of publishers. We anticipate providing guidance on determining an allowable value in a range of circumstances, such as by way of a range of examples.
- 598 In Table S1.1(1), item 83 ‘Maturity date of the underlier’—of the interest rate swap underlying a swaption—is a data element that we foreshadowed in [CP 334](#) may need to be continued to be reported as a separate data element if it is not embedded as a reference data element in the UPI, and we are now making this proposal.
- 599 This data element is only applicable to an option over an interest rate swap, and is the unadjusted date of the expiration date of the interest rate swap that is the underlier to the option. The format and allowable values are as standard for date data elements.
- 600 Finally, as identified at paragraphs 217–218 in Section C ‘The unique product identifier (UPI)’, information about the applicable interest rate floating rate reference rate that underlies one of the legs in, for example, an equity swap will not be included as reference data elements in the UPI system.
- 601 Consequently, we are proposing the addition of three related data elements in Table S1.1(1):
- (a) item 84 ‘Identifier of the floating rate—Leg 2’;
  - (b) item 85 ‘Floating rate reference period—Leg 2’; and
  - (c) item 86 ‘Floating rate reference period multiplier—Leg 2’.
- 602 These data elements are not applicable to interest rate derivatives, as information about the interest rate floating rate reference rate(s) is included as reference data elements for interest rate derivatives in the UPI system. We think that these data elements are most often, in practice, applicable to equity derivatives, but may be applicable to commodity, credit and possibly foreign exchange derivatives and, as such, these asset classes are not explicitly excluded.
- 603 We have also characterised these data elements as ‘leg 2’ data elements. This is consistent with the high-level guidance that we set out in Table 31 that ‘For credit, commodity and equity derivatives, leg 1 should describe the credit, commodity or equity price or parameter returns’—meaning that leg 2 should describe the interest rate returns, if applicable.



604 For item 84 ‘Identifier of the floating rate—Leg 2’, similar to the allowable values for basket constituent identifiers and ‘non-UPI’ underlier identifiers, the allowable values for this data element are values allowed for interest rate reference rate identifiers in the UPI system.

605 Item 85 ‘Floating rate reference period—Leg 2’ and item 86 ‘Floating rate reference period multiplier—Leg 2’ are the familiar period and period multiplier data elements required to identify the term of the floating rate reference rate, in the same manner as identifying the frequency of payments—for example, items 66 and 67.

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606 The current ASIC Rules do not require reporting of custom basket codes, identifiers of basket constituents or sources of identifiers, and data elements of these kinds are not introduced into the draft remade ASIC Rules.

607 The data element ‘Underlying’ of the current ASIC Rules is retained in the draft remade ASIC Rules (as item 3 ‘Underlying’ in Table S1.1(1) ‘Common data’)—this includes that a basket underlier may be indicated with a notation and that the allowable values are ‘Any values accepted by the Derivative Trade Repository that is receiving the report’. In practice, current reporting practices are that underlier(s) of baskets are indicated by ‘B’ or ‘Basket’ or by a string of, for example, ISINs, that identify each constituent of the basket.

608 The draft remade ASIC Rules also do not introduce a separate data element for ‘Maturity date of the underlier’. In practice, current reporting practice is that, for swaptions, this would be reported as ‘Expiration date’ (item 14 in Table S1.1(1) ‘Common data’) with the expiry date of the swaption reported as ‘Option expiration date’ (item 28 in Table S1.1(1) ‘Common data’).

609 As noted at paragraph 245 in Section C ‘The unique product identifier (UPI)’, information about the interest rate floating rate reference rate for equity swaps is commonly reported under the current ASIC Rules in the data element ‘Settlement rate or index’. Recognising this current reporting practice, in the draft remade ASIC Rules, this data element is relocated to Table S1.1(3) ‘Equity derivative and credit derivative data’ and renamed as ‘Identifier of the floating rate—Leg 2’ (item 6 in Table S1.1(3)).

610 As with the data element ‘Underlying’, the allowable values in the draft remade ASIC Rules for item 6 ‘Identifier of the floating rate—Leg 2’ and item 7 ‘Rate reset frequency’ do not change the current reporting practices and allow ‘Any values accepted by the Derivative Trade Repository that is receiving the report’.

**Data elements related to CDS index transactions**

611 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to custom baskets and underliers.

<b>Proceed per CP 334</b>	CDS index attachment point, CDS index detachment point, Index factor
<b>Not proceed</b>	Not applicable
<b>New proposal</b>	Not applicable

612 As we note in paragraph 346, respondents to CP 334 did not express any significant concerns about our proposals for reporting CDS index attachment, detachment and index factor information, and we have decided to proceed with our proposals. One respondent advocated that index factor should not be required to be reported as this is publicly available information, but we have decided to follow the CFTC and ESMA and include this data element.

613 In Table S1.1(1), the meanings, formats and allowable values for item 87 ‘CDS index attachment point’ and item 88 ‘CDS index detachment point’ closely follow their definitions, formats and allowable values of the CDE Guidance.

614 In Table S1.1(1), the meanings, formats and allowable values for item 89 ‘Index factor’ closely follow the definition, format and allowable values of the final CFTC rules.

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615 The current ASIC Rules do not require reporting of these CDS-related data elements, and they are not introduced into the draft remade ASIC Rules.

**Data elements related to packages and links**

616 The draft amended ASIC Rules (Attachment 2) include the following data elements related to custom baskets and underliers.

<b>Proceed per CP 334</b>	Package identifier, Package transaction price, Package transaction price currency, Package transaction price notation, Package transaction spread, Package transaction spread currency, Package transaction spread notation, Prior UTI, Event identifier
<b>Not proceed</b>	Not applicable
<b>New proposal</b>	Not applicable

- 617 As we note in paragraph 349, respondents did not generally express support or opposition to our proposals but commonly requested more explanation and guidance about reporting information related to packages and links.
- 618 We have decided to proceed as proposed. We have set out the meanings, formats and allowable values of these data elements in the draft amended ASIC Rules and intend to provide additional explanation and guidance in a future Schedule 1 Technical Guidance document.
- 619 In Table S1.1(1), the meaning of item 90 ‘Package identifier’ follows the definition in the CDE Guidance as an up to 35-character alphanumeric identifier, determined by the reporting entity, to connect two or more separately reported transactions.
- 620 However, the proposed applicability of the data element has similarities and differences to the applicability described in the CDE Guidance, and is required for each of two or more transactions that:
- (a) are reported separately but entered into together as the product of a single economic arrangement;
  - (b) are reported separately because they are not able to be reported as a single report; or
  - (c) are the reporting representation of a single foreign exchange swap derivative transaction entered into as a single economic arrangement but represented in reporting as two foreign exchange contracts with different expiration dates.
- 621 The applicability of (a) in paragraph 620 is substantively the same as in the CDE Guidance. This could apply to, for example:
- (a) a ‘participating FX forward’ which combines an FX forward contract and an FX option contract in a single economic arrangement; or
  - (b) an interest rate swap where, because of an associated interest rate option, the floating rate cannot be set below 0%.
- 622 The applicability of (b) in paragraph 620 generalises the similar applicability in the CDE Guidance to ‘not able to be reported’ without specifying any particular circumstances, rather than solely because a jurisdictional requirement does not allow reporting with a single report. This could apply to:
- (a) a ‘collar’ option which must be reported as its separate call & put/cap & floor elements because the UPI system does not support a collar option as a stand-alone type of option (though a collar option could also fall under (a) as a single economic arrangement); or

- (b) a cross-jurisdictional transaction where, for example, either another jurisdiction's requirements do not allow, or a counterparty's trade repository does not facilitate, a single transaction report.

623 The applicability of (c) in paragraph 620 sets out a proposed jurisdictional reporting requirement in this jurisdiction to not allow the reporting of foreign exchange swap derivative transactions (FX swaps) within a single report. We are proposing this because:

- (a) we understand that the current and globally most common reporting practices are that FX swaps are reported as two 'transactions' that represent a spot/near-dated 'leg' and the opposite forward/far-dated 'leg' respectively—so we do not wish to require FX swaps to be reported in a single report;
- (b) we have considered that, particularly for cross-jurisdictional transactions, FX swaps could be allowed to be reported either in a single report or in two reports, but we think it is important to have conformity to one approach for FX swaps reporting—so we are proposing to require the globally most common approach of two reports.

624 Note that, for s761D(1)(b) of the Corporations Act, reg 7.1.04(1) of the Corporations Regulations excludes foreign exchange contracts for less than T+3 settlement from the meaning of a derivative. We consider that whether an FX swap is a derivative is determined by whether the forward/far-dated leg is for less than T+3 settlement and, as a single arrangement, the spot/near-dated leg would have the same characterisation. For example:

- (a) an 'overnight' FX swap (whose legs are for settlement today T+0 versus tomorrow T+1) or a 'tom/next' FX swap (whose legs are for settlement tomorrow T+1 versus the day after tomorrow T+2) would not be derivatives as the forward/far-dated leg is for less than T+3 settlement; whereas
- (b) a 'spot/week' FX swap (whose legs are for settlement 'spot' T+2 versus one week after spot T+9) would be a derivative as the forward/far-dated leg is for greater than T+3 settlement, and both the spot/near-dated leg and forward/far-dated leg are reported as separate transactions with the same package identifier reported in each report.

625 Where both counterparties will make derivative transaction reports under Rule 2.2.1(1)—that is, to a licensed repository—we would expect that the counterparties agree on the number and product nature of the transactions they will each report and, accordingly, report the same Rule 2.2.9 UTI for each transaction.

- 626 Where only one counterparty will make derivative transaction reports under Rule 2.2.1(1) and the other counterparty will not make reports under Rule 2.2.1(1), we would not necessarily expect the counterparties to agree, in every circumstance, on the number and product nature of the transactions they will each report.
- 627 For example, where the other counterparty reports an FX swap in a single report in another jurisdiction this only requires one UTI, but two UTIs will be required to report the FX swap in two reports in this jurisdiction.
- 628 In this situation, under Rule 2.2.9:
- (a) if the ASIC reporting entity is the UTI generating entity, the ASIC reporting entity would generate and provide two UTIs even though one of those UTIs will not be reported by the other counterparty; or
  - (b) if the other counterparty (or the operator of the facility on which the FX swap is traded) is the UTI generating entity but only provides one UTI, the ASIC reporting entity should use that UTI in reporting the forward/far-dated leg and, under Rule 2.2.9(6), generate and report its own UTI in reporting the spot/near-dated leg.
- 629 In Table S1.1(1), the other data elements related to packages are the package price or package spread, and the associated currencies and notations of the price or spread.
- 630 A package is either reported with a price at item 92 ‘Package transaction price’ or with a spread at item 95 ‘Package transaction spread’.
- 631 Each of the other data elements related to prices, spreads, rates or premia, etc., in Table S1.1(1) are required to be reported if a package price or spread is reported. For the examples described in paragraphs 621–623, some of the key other data elements that are required to be reported would be as listed in Table 35.

**Table 35: Key other data elements reportable for package transactions**

Participating forward		'Floored' interest rate swap		Collar option		FX swap	
Forward element	Notional amount— Leg 1/2	Swap element	Notional amount— Leg 1/2	Call element	Notional amount— Leg 1/2	Near-dated element	Notional amount— Leg 1/2
	Notional currency— Leg 1/2		Fixed rate		Strike price		Notional currency— Leg 1/2
	Exchange rate		Direction		Option premium amount		Exchange rate
	Direction		Other payment		Direction		Direction
	Other payment						
Option element	Call/Put amount	Option element	Notional amount— Leg 1/2	Put element	Notional amount— Leg 1/2	Far-dated element	Notional amount— Leg 1/2
	Call/Put currency		Strike price		Strike price		Notional currency— Leg 1/2
	Strike price		Option premium amount		Option premium amount		Exchange rate
	Option premium amount		Direction		Direction		Direction
	Direction						

632 The price of a package may be reported as a net value amount which may be zero or near-zero, where there are inherent equal and offsetting values in the elements of the package. Nonetheless, we expect that the price-maker of the package would report the 'value' information in the reports of the individual elements of the package. For example:

- (a) a notional option premium (not actually received) offset by a notional upfront payment (not actually paid) for an immediately in-the-money forward or swap element; or
- (b) a notional option premium (not actually received) on a sold option offset by a notional option premium (not actually paid) on a bought option.

633 However, where the price-taker is also an ASIC reporting entity, we would not expect that they would necessarily report this kind of 'value' information. If they receive the information from their price-making counterparty, we expect that they would report the information. They may also ascribe their own reasonable 'values' for the information.

634 The particular package of an FX swap is one where the package spread—that is, the difference between the exchange rates for the spot/near-dated leg

and forward/far-dated leg—is a contract term of the transaction or is determinable from the exchange rates that are terms of the transaction(s). In this case, we would expect that both counterparties would report the same values for the package spread and the exchange rates.

635 In Table S1.1(1), the other data elements related to package price and package spread are the associated:

- (a) currencies—item 93 ‘Package transaction price currency’ and item 96 ‘Package transaction spread currency’; and
- (b) notations—item 91 ‘Package transaction price notation’ and item 94 ‘Package transaction spread notation’.

636 These items have meanings, formats and allowable values that are expressed in the same way that these are expressed for these kinds of data elements through the draft remade ASIC Rules.

637 The final two data elements related to links are item 97 ‘Prior UTI’ and item 98 ‘Event identifier’.

638 In Table S1.1(1), the meaning of item 97 ‘Prior UTI’ substantively follows the definition in the CDE Guidance but in a more concise way that focuses on the ‘single predecessor OTC Derivative’ that need not elaborate on the one-to-one or one-to-many relationship as it applies to a reportable transaction which may be the one successor or one of many successors. We think that this, and the nature of the lifecycle events that give rise to the successor reportable transaction can be elaborated in the Schedule 1 Technical Guidance.

639 The meaning also refers to the ‘transaction identifier’, rather than a UTI, which follows, along with the format and allowable values, the September 2021 revision to the CDE Guidance that recognises that the prior transaction identifier need not be an ISO 23897 UTI.

640 In Table S1.1(1), the meaning of item 98 ‘Event identifier’, and its format and allowable values, closely follows the definitions in the final CFTC rules. We recognise that there is a case to provide guidance on this data element, such as given by the CFTC in the appendices for Parts 43 and 45 Technical Specification.

#### *Application to the draft remade ASIC Rules*

641 The current ASIC Rules do not require these package and links data elements to be reported, and they are not introduced into the draft remade ASIC Rules.

**Data elements that are other transaction reporting data elements**

642 The draft amended ASIC Rules (see Attachment 2) include the following other transaction reporting data elements.

<b>Proceed per CP 334</b>	Action type, Event type Reporting timestamp, Report submitting entity
<b>Not proceed</b>	Jurisdiction, Embedded option type, Non-reported term indicator
<b>New proposal</b>	Not applicable

643 As we note in paragraph 357, for action type and event type, several respondents were mainly concerned that ASIC would provide comprehensive and clear guidance about the circumstances in which each kind of action type value or event type value is required to be reported.

644 We have decided to proceed with our proposals and recognise that it will be important to provide guidance on reporting these data elements in the Schedule 1 Technical Guidance document. We note that both the CFTC and ESMA have published guidance in terms of matrices of action type and event type combinations and diagrams illustrating allowable action type sequences. At this time, we have not identified any parts of these guidance documents where future ASIC guidance would materially differ.

645 In relation to the data elements of jurisdiction, embedded option type and non-reported term indicator, several respondents opposed our proposals for reasons of misalignment with other jurisdictions' requirements, complexities in sourcing the information for reporting and unclear meanings. We have decided not to proceed with these proposals, particularly as they would be relatively bespoke ASIC data elements that may be more costly and complex to report than their regulatory information value.

646 In Table S1.1(1), our proposed approach to item 99 'Action type' and item 100 'Event type' is to set out the meanings of these items as functional actions and events and to specify, as the allowable values, the four-character codes applicable to the functional actions and events.

Note: In Table S1.1(1), the action types and event types are as relevant to 'Derivative Transaction Information'. The action types relevant to 'Derivative Valuation Information' and 'Derivative Collateral Information' are set out in Table S1.1(2) and Table S1.1(3) respectively.

647 We are proposing to include all the action types and event types that are in one or both of the final CFTC rules and the final ESMA rules. We think that each of these action types and event types would be relevant, even if only occasionally or irregularly, to the lifecycle or reporting events applicable to one or more reportable transactions over the term of the transaction.



648 We are also proposing, as with the final CFTC rules and the final ESMA rules, to not specify within the draft remade ASIC Rules the allowable action type–event type combinations and allowable action type sequences—as we note at paragraph 644, we intend to provide guidance on reporting these data elements in the Schedule 1 Technical Guidance document.

649 The final two data elements that are other transaction reporting data elements—item 101 ‘Reporting timestamp’ and item 102 ‘Report submitting entity’—are data elements that are present in the current ASIC Rules and whose meanings, formats and allowable values are not substantively changed from the current ASIC Rules or current reporting practices.

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650 The current ASIC Rules do not require reporting of event type, and this data element is not introduced into the draft remade ASIC Rules.

651 The current ASIC Rules include the data element action type. In the draft remade ASIC Rules, we are proposing two minor changes to better align the functional action types with current reporting practices to DDRS and to reflect the allowable values in the data files sent by DDRS to the Australian regulators.

652 These changes are to:

- (a) remove reference to a ‘correction’ as this is not represented in the allowable values sent by DDRS to the Australian regulators;
- (b) clarify that a termination report is for a ‘full termination’ as a partial termination is currently represented as a ‘Modify’ action type; and
- (c) reflect that the actual values of action types in the data files sent by DDRS to the Australian regulators are New, Modify, Cancel, Compression, Error and ValuationUpdate.

653 Finally, as noted at paragraph 649, the data elements of reporting timestamp and report submitting entity are present in the current ASIC Rules and, in the draft remade ASIC Rules, their meanings, formats and allowable values are not substantively changed from the current ASIC Rules or current reporting.

**Other data elements only continued in the draft remade ASIC Rules**

654 Some data elements of the current ASIC Rules are continued in the draft remade ASIC Rules, but cease in the draft amended ASIC Rules because the information of the data elements is then embedded in a UPI from the UPI system:

- (a) option type and option style; and
- (b) in Table S2.1(5) ‘Interest rate derivative data’, floating rate index identifier (leg 1), floating rate index identifier (leg 2), floating rate reset frequency (leg 1) and floating rate reset frequency (leg 2).

655 As noted at paragraph 245 in Section C ‘The unique product identifier (UPI)’, information about the interest rate floating rate reference rate for equity swaps is commonly reported under the current ASIC Rules in the data element ‘Settlement rate or index’. Recognising this current reporting practice, in the draft remade ASIC Rules, this data element is relocated to Table S1.1(3) ‘Equity derivative and credit derivative data’ and renamed as ‘Identifier of the floating rate—Leg 2’ (item 6 in Table S1.1(3)).

656 In the current ASIC Rules, for the data element ‘Settlement rate or index’, several reporting entities currently report values for this data element for commodity derivatives that indicate additional identifying detail about the underlier, whereas other reporting entities report such identifying detail directly in the data element ‘Underlying’. Recognising this current reporting practice, in the draft remade ASIC Rules this data element is relocated to Table S1.1(2) ‘Commodity derivative data’ as item 8, but qualified as may be reported, but is not required to be reported, as other reporting entities already report sufficient identifying detail in the data element ‘Underlying’.

657 Finally, in the current ASIC Rules, information about the reset period of the interest rate floating rate reference rate for equity swaps is commonly reported in the data element ‘Rate reset frequency’. Recognising this current reporting practice, in the draft remade ASIC Rules this data element is relocated to Table S1.1(3) ‘Equity derivative and credit derivative data’ as item 7.

**Data elements related to valuation information—Table S1.1(2)**

658 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to valuation.

<b>Proceed per CP 334</b>	Valuation amount, Valuation currency, Valuation timestamp, Valuation method Delta
<b>Not proceed</b>	Not applicable
<b>New proposal</b>	Next floating reference reset date—Leg 1, Next floating reference reset date—Leg 2 Minimum data elements in a valuation report to also include: Unique transaction identifier, Reporting Entity, Counterparty 1, Counterparty 2, Reporting timestamp, Report submitting entity, Action type

- 659 As we note in paragraphs 333–334, for the proposed data elements related to valuation—valuation amount, currency, timestamp and method—respondents did not make any significant objections, and we have decided to proceed with our proposals—noting requests for clarification of the valuation amount as the ‘unadjusted’ amount and timestamps as the calculation time and not the as-at time of the valuation inputs: see paragraphs 668–673.
- 660 In relation to the reporting of delta, several respondents expressed concerns about complexities and costs in calculation and implementation. It was also noted that reporting as an end-of-day field included in a valuation report would be the most effective reporting workflow.
- 661 The Australian regulators continue to believe that it is important for contemporary assessments of exposures and related updated valuation and collateral information that updated deltas are reported.
- 662 However, noting their significantly lower exposures, we are responding to the feedback by proposing that ‘small-scale buy-side entities’ are not required to report delta. We also set out in the proposed rules text that delta is only required to be reported for single-period options and the current period of multi-period options: see paragraphs 674–678.
- 663 We are also making a new proposal to include data elements that identify the next floating reference reset dates—these are data elements in the final CFTC rules as item 106 in Appendix 1 to Part 45—Swap Data Elements of the final CFTC rules. As with the CFTC’s approach, we are proposing to include these data elements as Derivative Valuation Information in Table S1.1(2), rather than as Derivative Transaction Information in Table S1.1(1): see paragraph 679.
- 664 For our surveillance needs in relation to monitoring the setting of benchmark floating rates, we are currently capable of estimating the notional amounts of derivative transactions that are subject to floating rate resetting on particular future dates, assuming a pattern of rate resetting dates. Inaccuracies in our assumptions impair the precision of our analysis, and we think that it is important to minimise this impairment by requiring reporting of the actual next floating reference rate reset date(s) for each transaction.
- 665 In Table S1.1(2), the minimum data elements in a valuation report include item 1 ‘Unique transaction identifier’, item 2 ‘Reporting entity’, item 3 ‘Counterparty 1’ and item 4 ‘Counterparty 2’ as items that we think are necessary to identify the OTC derivative that is the subject of the valuation information report.

- 666 The meanings, formats and allowable values for these data elements are the same as for those items in Table S1.1(1) ‘Transaction information’, except that, for item 1 ‘Unique transaction identifier’, the identifier is the identifier of the reportable transaction about which the report is made—that is, it may be a Rule 2.2.9 UTI or it may be the transaction identifier that was originally reported before the requirement to report a Rule 2.2.9 UTI.
- 667 In Table S1.1(2), the minimum data elements also include item 13 ‘Reporting timestamp’ and item 14 ‘Report submitting entity’ as ‘standard’ items in any kind of report. In addition, action type is reported at item 12 ‘Action type’ but always with the value VALU.
- 668 In Table S1.1(2), the meaning of item 5 ‘Valuation timestamp’ is the date, or date and time, that the reported valuation amount was determined. We think that date alone is sufficiently precise for our regulatory purposes, but if date and time is reported, it would be the date and time that the valuation amount is determined—that is, the calculation time and not the as-at time of the reference data inputs to the calculation.
- 669 If a reporting entity also reports the same valuation amount in another jurisdiction where the valuation timestamp is required to reference the as-at time of the reference data inputs to the calculation, the reporting entity could report, under the draft amended ASIC Rules, just the date element of the date and time value reported in the other jurisdiction.
- 670 In Table S1.1(2), the meaning of item 6 ‘Valuation amount’ follows the definition in the CDE Guidance, anchored on a termination value in an orderly market, but with explicit reference to this as the ‘unadjusted’ amount.
- 671 In Table S1.1(2), item 7 ‘Valuation currency’ has a meaning, format and allowable values expressed in the same manner as currency data elements are expressed in other instances in the draft amended ASIC Rules.
- 672 In Table S1.1(2), the meaning, formats and allowable values for item 8 ‘Valuation method’ are 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 think 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 of determining accurate valuations on a timely basis.
- 673 The CDE Guidance maps various IFRS descriptions of valuation inputs to the valuation method reportable under the CDE Guidance. We think this is a relevant explanation of the applicability of the CDE Guidance valuation methods that we can point to, or replicate, in our Schedule 1 Technical Guidance.

- 674 In Table S1.1(2), the meaning of item 9 ‘Delta’ follows the definition in the CDE Guidance, but with the qualification that it references ‘the change in the price of the underlier that is the underlier applicable to the next time that the option may be exercised’.
- 675 While this qualification can be left unsaid for a single-period option, it recognises that in the case of a multi-period option—such as an interest rate cap—there is a delta for each period of the option. For these cases, we considered that the required delta reporting could be:
- (a) all of the individual period deltas as a string of values;
  - (b) a simple average of all of the individual period deltas;
  - (c) a single delta but calculated on a swap-equivalent basis—that is, related to the notional amount of the theoretical swap with the same tenor and period frequencies, whose value change is the same as the option value change; or
  - (d) just the delta for the period relating to the next exercise date, noting that this kind of delta can be materially different to an average delta or swap-equivalent delta depending on the shape of the forward price or rates curve of the underlier.
- 676 We also noted from a review of the data that about 84% by notional value of all options were single-period options and 16% were multi-period options (of which 15% were in the interest rate class and 1% in the commodity asset class).
- 677 While an average delta or swap-equivalent delta may be a better measure for aggregate delta-adjusted notionals, the delta for the period relating to the next exercise date would be more informative about near-term price volatility exposures of a reporting entity. On balance, considering that multi-period options appear to be less than 20% of all options and the latter form of delta appears simpler to report, we are proposing that the reportable delta is the delta for the period relating to the next exercise date.
- 678 In addition, although the delta for all ‘vanilla’ options is bounded by negative 1 to positive 1, we understand that there can be circumstances where deltas can be outside these bounds—such as for a near-expiry, in-the-money barrier option with a nearby knock-out barrier strike. Therefore, we propose that the allowable values be any value.
- 679 In Table S1.1(2), the meanings of proposed item 10 ‘Next floating reference reset date—Leg 1’ and item 11 ‘Next floating reference reset date—Leg 2’ closely follow their definition in the final CFTC rules, except that we propose not to require reporting of the next reset dates for floating reference rates that reset on a daily frequency. The UPI reported for an OTC derivative identifies the underlier floating reference rate(s), and where this is a reference rate set on a daily basis, there is no additional information value to the Australian regulators in also reporting, in these data elements, in effect ‘tomorrow’s date’ on a daily basis.

*Application to the draft remade ASIC Rules*

- 680 The current ASIC Rules do not require reporting of valuation timestamp, delta or next floating rate reference reset dates, and these data elements are not introduced into the draft remade ASIC Rules.
- 681 Valuation amount and valuation currency are data elements that are present in the current ASIC Rules and the draft remade ASIC Rules and have the same meanings, formats and allowable values as in the draft amended ASIC Rules.
- 682 Valuation method is also present in the current ASIC Rules and the draft remade ASIC Rules with the same meaning as in the draft amended ASIC Rules, but the allowable values retain the current reporting practice of the values accepted by the trade repository.

**Data elements related to collateral information—Table S1.1(3)**

- 683 The draft amended ASIC Rules (see Attachment 2) include the following data elements related to collateral.

<b>Proceed per CP 334</b>	Collateralisation category, Collateral portfolio indicator, Portfolio containing non-reported component indicator, Collateral portfolio code (initial margin), Collateral portfolio code (variation margin), Initial margin posted by the Reporting Entity (pre-haircut), Initial margin posted by the Reporting Entity (post-haircut), Currency of initial margin posted, Initial margin collected by the Reporting Entity (pre-haircut), Initial margin collected by the Reporting Entity (post-haircut), Currency of initial margin collected, Variation margin posted by the Reporting Entity (pre-haircut), Currency of variation margin posted, Variation margin collected by the Reporting Entity (pre-haircut), Currency of variation margin collected
<b>Not proceed</b>	Not applicable
<b>New proposal</b>	Collateral timestamp Minimum data elements in a valuation report to also include: Unique transaction identifier, Reporting Entity, Counterparty 1, Counterparty 2, Reporting timestamp, Report submitting entity Action type

- 684 As we note in paragraphs 335–337, respondents expressed concerns about our proposals for collateral data elements, including significant concerns with the complexities of, and the significant systems changes required for, the proposed collateral reporting.

- 685 The buy-side particularly noted challenges in the granularity of the data, complexities with sourcing information from third parties and potential differences arising across time zones. There were some mixed views from the sell-side about challenges and benefits of separating initial margin amounts from variation margin amounts, and of allowing for up to two portfolio codes.
- 686 Despite the concerns, the Australian regulators consider that these are data elements of important regulatory value and superior to the current collateral reporting requirements. As highlighted in [CP 334](#), the data elements are common to each of the CDE, the final CFTC rules and the (then proposed but now final) ESMA rules. Consequently, we have decided to proceed with our CP 334 proposals.
- 687 However, we are responding to the feedback by proposing that ‘small-scale buy-side entities’ are not required to report all collateral data elements in the extended collateral dataset: see paragraphs 397–400.
- 688 We are also making a new proposal in this second consultation to add ‘Collateral value timestamp’ as a new data element. This is a similar data element to valuation timestamp but was omitted in error from the first consultation: see paragraphs 692–693.
- 689 In Table S1.1(3), the minimum data elements in a collateral report include item 1 ‘Unique transaction identifier’, item 2 ‘Reporting entity’, item 3 ‘Counterparty 1’ and item 4 ‘Counterparty 2’ as items that we think are necessary to identify the OTC derivative that is the subject of the collateral information report.
- 690 The meanings, formats and allowable values for these data elements are the same as for those items in Table S1.1(2) ‘Valuation information’.
- 691 In Table S1.1(3), the minimum data elements also include item 22 ‘Reporting timestamp’ and item 23 ‘Report submitting entity’ as ‘standard’ items in any kind of report. In addition, action type is reported at item 21 ‘Action type’ but always with the value MARU.
- 692 We are proposing to introduce item 5 ‘Collateral timestamp’ because, as with valuation timestamp in Table S1.1(2), this is an important data element (particularly in evaluating entity exposures) to confirm that the collateral amounts reported are current. This data element is not included in the CDE Guidance but is included in the final ESMA rules.
- 693 There are six collateral amount data elements and these are not necessarily updated contemporaneously—for example, variation margin may be updated on a day whereas initial margin remains unchanged. With only one collateral timestamp data element, the meaning of item 5 ‘Collateral timestamp’ is the *latest* date, or date and time, that one of the reported collateral amounts was determined.

694 In Table S1.1(3), the meaning of item 6 ‘Collateralisation category’ follows the definition in the CDE Guidance, with the elaboration that the indicator not only indicates the existence of a collateral arrangement but also the kind of collateral arrangements. The formats and allowable values closely follow the formats and allowable values in the CDE Guidance.

695 In Table S1.1(3), the meaning, format and allowable values for item 7 ‘Collateral portfolio indicator’ substantively follow the CDE Guidance for this data element.

696 In Table S1.1(3), the meaning, format and allowable values for item 8 ‘Portfolio containing non-reported component indicator’ substantively follow the final CFTC rules for this data element.

697 As we noted in paragraph 252 of [CP 334](#), this data element indicates that the collateral amounts cannot be directly related to the sum of the valuation amounts of the reportable transactions of that collateral portfolio because the collateral portfolio includes other transactions, for example:

- (a) where cleared interest rate derivative transactions are cross-collateralised with interest rate futures; or
- (b) where the collateral portfolio is a global portfolio comprised of global transactions that are not all ASIC reportable transactions.

698 In Table S1.1(3), the meanings of item 9 ‘Collateral portfolio code (initial margin)’ and item 10 ‘Collateral portfolio code (variation margin)’ follow the CDE Guidance, adapted to allow for two collateral portfolio codes.

699 The meanings of these items allow that there may be only one collateral portfolio that includes both initial margin and variation margin, or just margin that is not characterised as initial margin or variation margin. In this situation, the single collateral portfolio code is reported at item 9 ‘Collateral portfolio code (initial margin)’.

700 This provision is also used in the collateral amount data elements in relation to distinguishing amounts of initial margin and variation amount—that is, if amounts of margin are not so distinguished, the single margin amounts are reported as the relevant initial margin data elements.

701 In the items related to pre-haircut amounts of initial margin and variation margin, posted and collected, the meanings essentially carry forward the plain expression of ‘the value of the collateral posted’ in the current ASIC Rules as we do not think that this gives rise to any material uncertainty in current reporting practices. However, we have added the clarification that an amount reported is its total current value rather than its daily change.



702 In the amounts related to post-haircut amounts of initial margin, ‘the haircut’ is not defined in the CDE Guidance. We think that ‘the haircut’ may be a commonly understood term, particularly in relation to margining practices, but we have described this as meaning ‘the amount (the haircut), if any, that is not counted as satisfying a term of margin posting of the collateralisation arrangement’.

703 Finally, in Table S1.1(3), the other data elements are four items identifying the currencies of margin amounts reported and these have meanings, formats and allowable values that are expressed in the same way as for this kind of data element throughout the draft remade ASIC Rules.

*Application to the draft remade ASIC Rules*

704 The current ASIC Rules do not require reporting of collateral timestamp and portfolio containing non-reported component indicator delta, and these data elements are not introduced into the draft remade ASIC Rules.

705 Collateralisation category and collateral portfolio indicator are present in the current ASIC Rules and are continued in the draft remade ASIC Rules, including with the formats and allowable values as are currently reported.

706 The reporting of a single collateral portfolio code and a single amount of collateral posted and its currency are continued in the draft remade ASIC Rules, and the extended requirements of up to two collateral portfolio codes and margin amounts separated as initial margin and variation margin, post and collected and pre- and post-haircut are not introduced until the commencement of the draft amended ASIC Rules.

## F ISO 20022 messaging standard

### Key points

ISO 20022 is an agreed framework and methodology used by the global financial industry to create consistent message standards across business processes. It can further assist in the standardisation of derivatives transaction reporting internationally.

The ISO 20022 Derivatives Trade Report message definition version was recently updated to incorporate the CDE data elements, as submitted by ESMA. ASIC is currently collaborating with a number of our international peer regulators to develop an updated version that would cater to the supplementary data requirements of each jurisdiction including ASIC-only data elements.

Consistent with our international peer regulators, we are proposing to require the use of the ISO 20022 XML message format for OTC derivative transaction reporting to trade repositories.

We recognise the benefits that an internationally common data standard and technical format can deliver including for reporting entities with multi-jurisdictional reporting requirements.

## Background

- 707 In CPMI IOSCO, [Governance Arrangements for critical OTC derivatives data elements \(other than UTI and UPI\)](#), (PDF 403 KB), October 2019 (CDE Governance Arrangements), CPMI and IOSCO concluded that:
- (a) CDE should be included in the ISO 20022 data dictionary rather than adopting each of the CDE data elements as a separate ISO standard; and
  - (b) ISO 20022-compliant message(s) for CDE should be developed.
- 708 In March 2021, the message definition ‘auth.030.001.02 DerivativesTradeReportV02’ was approved under the ISO governance processes. This was submitted by ESMA and builds on the existing version 01 by incorporating the CDE data elements.
- 709 The documentation of the message definition is published in the ISO 20022 catalogue of messages at [ISO 20022 Message Definitions](#).
- 710 In the final CFTC rules, published in September 2020 and having regard to the feedback received to its rules proposals, the CFTC stated that ‘the Commission will mandate ISO 20022 for reporting to SDRs according to § 45.15(b)(2) when the standard is developed’ (p. 131).

Note: § 45.15(b)(2) delegates to the Commission’s DMO Director the authority to determine whether the Commission may permit or require use by reporting entities or counterparties, or by SDRs, of one or more particular data standards.

- 711 The ESMA proposals, published in March 2020, noted the existing use of ISO 20022 XML messaging in reporting:
- (a) derivatives transaction data from trade repositories to national competent authorities;
  - (b) financial instruments reference data and transaction data under the [Markets in Financial Instrument \(MiFIR\)—Regulation 600/2014](#); and
  - (c) securities financing transactions.
- 712 ESMA proposed ‘to establish an ISO 20022 technical format for the reporting to TRs. To ensure full standardisation of the reporting to be submitted to the TRs, the proposal is to use a harmonised XML schema’ ([ESMA proposals](#), p. 23).

## Developments since the release of CP 334

- 713 In the final ESMA rules, published in December 2020, and having regard to the feedback received to its rules proposals, ESMA mandated the use of ISO 20022 XML for reporting to trade repositories.
- 714 In July 2021, MAS published a consultation paper [Proposed Amendments to the Securities & Futures \(Reporting of Derivatives Contracts\) Regulations](#) (PDF 463 KB). In this paper, MAS stated ‘MAS recognises the benefits of a single standard for OTC derivatives reporting, and we intend to adopt the ISO 20022 XML message format for OTC derivatives reporting to the trade repository’ (p. 23). They sought feedback on the potential adoption of the ISO 20022 XML message format.
- 715 In November 2021, the Bank of England and the Financial Conduct Authority jointly published a consultation paper [Changes to reporting requirements, procedures for data quality and registration of Trade Repositories](#). In this paper, the authorities stated ‘We are proposing that counterparties should use standardised XML schemas when submitting details of their derivatives trades to a TR. To ensure consistency of reporting, the XML schemas will be based on the end-to-end reporting solutions in the ISO 20022 standards’ (p. 4).
- 716 Since the release of [CP 334](#), we have received comments from a few reporting entities that indicate they have a preference to use ISO 20022 messages as a common approach in their multi-jurisdictional reporting.
- 717 ASIC is currently collaborating with a number of our international peer regulators to develop a version 03 of the ISO message definition ‘auth.030.001.02 DerivativesTradeReportV02’. Together we have collated the data elements required, proposed or intended to be proposed or adopted in each of our jurisdictions with a view to determining a single ISO 20022

message definition version that is comprehensive enough to be used in each jurisdiction.

- 718 We also note that in various public forums about future regulatory reporting requirements in different jurisdictions and in publications of reporting services providers, there have been recurring references to ‘conversion’ services. This would be where reporting entities send their reportable information to their reporting services providers in the same manner and formats as they do now, and those services providers ‘convert’ that information to an ISO 20022 message and on-send to the trade repository.

## ASIC’s proposed approach in CP 334

- 719 In [CP 334](#), we neither discussed nor made any proposals about ISO 20022. However, we noted ‘Data messaging standard’ as an outstanding matter for the second round of consultation as an issue of ‘[w]hether to specify a common data messaging standard such as ISO 20022’.

## Feedback on ISO 20022 in CP 334

- 720 Only one respondent mentioned ISO 20022 in their feedback. This was in terms of noting its selection or contemplation in other jurisdictions and support for regulators’ moves to adopt a common data standard for reporting.
- 721 The respondent also noted that time is necessary to permit a rigorous fit-for-purpose evaluation of the message model, to increase the opportunity for coordinated, cross-jurisdictional adoption and to provide a meaningful implementation period. They encouraged ASIC to continue to work closely with the industry and regulators to adopt a common messaging methodology, with aligned implementation targets.

## ASIC’s proposals

- 722 Our proposals are summarised in Table 36.

**Table 36: Summary of ASIC proposals**

<b>Decisions for the draft remade ASIC Rules</b>	Not applicable
<b>Proposals for the draft remade ASIC Rules</b>	Not applicable

<b>Decisions for the draft amended ASIC Rules</b>	Not applicable
<b>Proposals for the draft amended ASIC Rules</b>	Require that reporting entities report information in a common XML template in accordance with the ISO 20022 methodology
<b>Matters deferred to the third consultation</b>	Not applicable

## Proposal

**F1** We propose to amend Rule 2.2.4 in the draft amended ASIC Rules to insert a requirement, with effect from 1 April 2024, that reporting entities report information in an ISO 20022 XML message.

### *Your feedback*

F1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

## Rationale

- 723 A common international concern of industry has been about the complexities, and associated costs, of the lack of harmonisation in the reporting requirements between different jurisdictions.
- 724 In our work on simplifying the ASIC Rules, we are seeking to harmonise, to the extent practicable, with other jurisdictions in relation to the UTI, UPI, LEI and the data elements of the ASIC Rules. To adopt ISO 20022 XML messaging would be another harmonisation step.
- 725 In paragraphs 710–715, we identify four major jurisdictions that have decided or proposed to require reporting entities to report information to trade repositories in an ISO 20022 XML message.
- 726 For reporting entities with multi-jurisdictional reporting requirements, and trade repositories and reporting services providers operating in multiple jurisdictions, we think there would be clear benefit in forming, transmitting and receiving derivative transaction information based on a common form of message.
- 727 We think the benefits should be reflected in lower costs, at least in the medium-to-long term, from the reduction or removal of the associated costs of maintaining more than one technical approach to reporting information to trade repositories.
- 728 We identified a range of relationships between kinds of ASIC reporting entities and their report submitting entities. We found that 18% of ASIC

reporting entities do their own ‘self-reporting’ and 82% use some form of ‘outsourced reporting’: see Table 37.

**Table 37: Percentages of relationships between kinds of ASIC reporting entities and their report submitting entities**

Kind of ASIC reporting entity	Kind of report submitting entity	Percentage of all relationships
Any kind	ASIC reporting entity	8.3%
Any kind	Another entity of the ASIC reporting entity's group	1.7%
An investment trust or fund	The RE or ‘in-house’ manager of the trust or fund	8.1%
	<b>Total self-reporting</b>	<b>18.1%</b>
An investment trust or fund	A third-party manager of the trust or fund	12.2%
An investment trust or fund	The transaction counterparty of the trust or fund	10.0%
An investment trust or fund	An entity providing ‘fund services’—e.g. valuation, unit pricing, custodial services—to the trust or fund	12.4%
Any kind	A reporting service provider	47.3%
	<b>Total outsourced reporting</b>	<b>81.9%</b>

729 We acknowledge that there are some Australian entities who only report under the ASIC Rules. However, when we consider the international connections of those Australian entities—such as being related to an international group whose other group entities report in other jurisdictions, or who use multi-jurisdictional reporting services providers—we consider that the connections to reporting requirements in other jurisdictions is strong.

730 Overall, we found that 97% of ASIC reporting entities have an international derivatives transaction reporting connection—either because the entity itself or its report submitting entity has such a connection: see Table 38.

**Table 38: Percentages of ASIC reporting entities with an international derivatives transaction reporting connection**

<b>Where the entity, or entities in its related group, is a multi-jurisdictional reporter</b>	41%
<b>Where the entity uses 'outsourced reporting' by an international report submitting entity</b>	80%
<b>Where either the entity or its report submitting entity has an international connection (i.e. one or both of the above situation)</b>	97%

- 731 We therefore consider there is a very high percentage of ASIC reporting entities whose medium-to-long term technical approaches to reporting will be affected, or influenced, by the technical approaches required in other jurisdictions.
- 732 If ASIC does not harmonise its technical approach to reporting with other jurisdictions, we anticipate that there will be cost implications—at least in terms of excluding opportunities for cost reductions or containment—for ASIC reporting entities, either directly for self-reporting or indirectly through outsourced reporting, in maintaining more than one technical approach to reporting.

## G Scope of reportable transactions and reporting entities

### Key points

We have decided to proceed with our proposals in CP 334 in relation to transactions for spot settlement, FX securities conversion transactions, transactions with retail clients and transactions by foreign subsidiaries of Australian entities that are not reporting entities by inserting new Rules 1.2.4(6), 1.2.4(7) and 1.2.5(4), and amending Table 1 of Rule 1.2.5.

We are also proposing to include new and amended rules to:

- clarify the meaning of a Part 7.2A Market;
- exclude from scope AFS licensees without relevant derivatives authorisations, consistent with reg 7.5A.50 of the Corporations Regulations; and
- incorporate the exemption for clearing members in certain circumstances of an agency clearing model into the rules.

### Background

- 733 The current ASIC Rules set out the types of transactions that must be reported and the types of entities that must report those transactions.
- 734 The [Minister's determination](#) sets out the classes of derivatives in relation to which reporting requirements may be imposed as:
- (a) commodity derivatives that are not electricity derivatives;
  - (b) credit derivatives;
  - (c) equity derivatives;
  - (d) foreign exchange derivatives;
  - (e) interest rate derivatives.
- 735 Rule 1.2.4 sets out the meaning of an OTC derivative and Rule 1.2.5 sets out the meaning of a reporting entity and a reportable transaction.
- 736 In Section G of [CP 334](#), we explained the scope of the meaning of an OTC derivative, including that:
- (a) though key products for which 'spot' settlement are common transaction types—such as foreign exchange, securities and



commodities—are already excluded from the meaning of an OTC derivative, there is a small number of other products—such as for Australian carbon credits or other environmental units—for which market practice for spot settlement is, for example, T+2 or T+3;

- (b) an ‘FX securities conversion transaction’ is currently exempted until 30 September 2022 from reporting requirements under the ASIC Rules and is a type of contract that is commonly exempted from reporting in overseas jurisdictions; and
- (c) the current manner of exclusion of exchange-traded derivatives is a combination of exclusions for derivatives:
  - (i) traded on particular classes of financial markets set out in the ASIC Rules;
  - (ii) traded on particular financial markets and particular classes of financial markets set out in the [ASIC Regulated Foreign Markets Determination \[OTC DET 13/1145\]](#); and
  - (iii) 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 as set out in [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#).

737

In Section G of [CP 334](#), we also explained the scope of the meaning of a reporting entity and a reportable transaction, including that:

- (a) Table 1 of Rule 1.2.5 of the current ASIC Rules sets out the types of entities that are reporting entities and the scope of OTC derivatives that are reportable transactions for each type of reporting entity;
- (b) Table S1.1 of Part S1.1 of Schedule 1 dealt with the phased implementation of the transaction reporting requirements by setting out progressive dates over 2013 and 2014 on which a transaction reporting requirement would commence for kinds of entities within the types of reporting entities;
- (c) the types of reporting entities in Table 1 of Rule 1.2.5 of the ASIC Rules are broader than the kinds of entities within these types for which a transaction reporting requirement is set out in Table S1.1 of Part S1.1 of Schedule 1 because:
  - (i) reg 7.5A.50 of the Corporations Regulations provides that derivative transaction rules cannot impose requirements on end users; and
  - (ii) a transaction reporting requirement is not specified for the foreign subsidiaries of Australian entities who are ADIs or AFS licensees;

- (d) regs 7.5A.71–7.5A.74 of the Corporations Regulations provide an exemption—the ‘single-sided’ exemption—from the reporting provisions of the ASIC Rules for reporting entities with total gross notional outstanding positions that are sustained below A\$5 billion and where the other party to the transaction is a reporting entity; and

Note: The Corporations Regulations set out the details for the tests that determine when the exemption commences, continues or ceases to apply to a reporting entity and the conditions on a reporting entity in terms of reporting representations from the other party to the transaction and regular testing of the correctness of those representations by the reporting entity.

- (e) for foreign entities (other than foreign subsidiaries of Australian reporting entities), [ASIC Derivative Transaction Rules \(Nexus Derivatives\) Class Exemption 2015](#) allows those entities to instead report derivative transaction information about, broadly, OTC derivatives for which sales, trading or financial risk management functions are performed on behalf of the reporting entity by a person ordinarily resident or employed in this jurisdiction or acting as part of a desk, office or branch in this jurisdiction—a ‘nexus’ transaction.

738 The combined effect of the provisions described in paragraph 737 is that the ASIC Rules reporting entities and their reportable transactions can be summarised in high-level terms as set out in Table 39.

**Table 39: High-level summary of reporting entities and reportable transactions**

Reporting entity	Reportable transactions
An Australian entity that is:	All OTC derivatives to which the reporting entity is a counterparty, regardless of where the OTC derivative is entered into, but not transactions that are:
(a) an Australian ADI	(a) single-sided exempt, or
(b) an AFS licensee, or	(b) for an AFS licensee, in a class of derivatives for which they are not authorised by their licence to provide financial services—that is, they are an ‘end user’ for those transactions
(c) a CS facility licensee	
A foreign entity that is:	All OTC derivatives:
(a) a foreign ADI	(a) booked to the profit or loss account of a branch of the reporting entity located in this jurisdiction
(b) an AFS licensee	(b) entered into by the reporting entity in this jurisdiction, or
(c) a CS facility licensee, or	(c) if opted-in instead of (b), that are ‘nexus’ transactions,
(d) an exempt foreign licensee—that is, broadly, a foreign-regulated financial services provider	but not transactions that are:
	(d) single-sided exempt, or
	(e) for an AFS licensee, in a class of derivatives for which they are not authorised by their licence to provide financial services—that is, they are an ‘end user’ for those transactions

## ASIC's proposed approach to the scope of reportable transactions and reporting entities in CP 334

- 739 In [CP 334](#), we made proposals to:
- (a) exclude from the meaning of a reportable transaction a transaction for spot settlement, with specific rules text to be proposed in the second round of consultation;
  - (b) exclude from the meaning of an OTC derivative those derivatives that fall within a generic definition of an exchange-traded derivative, with specific rules text to be proposed in the second round of consultation;
  - (c) amend the ASIC Rules to ensure that transactions with Australian retail clients are reportable transactions with specific rules text to be proposed in the second round of consultation; and
  - (d) to clarify the scope of reporting for foreign subsidiaries of Australian entities with specific rules text to be proposed in the second round of consultation.
- 740 In CP 334, we also noted that less than 1% of non-CFD transactions are reported with a foreign financial services provider as the non-reporting counterparty but the foreign financial services provider never appears as a reporting counterparty in the trade reports from trade repositories from whom ASIC currently receives trade reports.
- 741 We said that we considered there are potential explanations for this related to the foreign financial services provider's interpretation of reporting entity and reportable transaction as may apply to its transactions or that it is reporting to a trade repository under the alternative reporting provisions of the ASIC Rules.
- 742 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 is a reporting problem that needs 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.

## Feedback on our proposed approach in CP 334

- 743 All respondents supported our proposal to exclude from the meaning of a reportable transaction a transaction for spot settlement. Respondents who expressed a preference said they would prefer our rules text to be based on the definition used in the Singaporean reporting rules.
- 744 Some respondents pointed to European definitions in relation to foreign exchange contracts, but the definition of a foreign exchange contract that is not a derivative is already given in reg 7.1.04(1) of the Corporations Regulations.

745 Respondents also supported incorporating the existing exemption for FX securities conversion transactions in the ASIC Rules. One respondent suggested removing the ‘settling not more than seven business days forward’ condition and providing only that the kind of transaction is ‘solely to facilitate the settlement of a foreign currency denominated security transaction’.

Note: See section 13 ‘Exemption 9 (FX Securities Conversion Transactions)’ of [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#).

746 All respondents supported in principle our proposal to exclude from the meaning of an OTC derivative those derivatives that fall within a generic definition of an exchange-traded derivative.

747 Respondents did not object to ‘avoidance of doubt’ provisions that exclude specified classes of financial markets in the manner of the current ASIC Rules. Generally, respondents supported 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, although concern was expressed about the processes of such a notification and whether it would provide a period of time for an entity to commence reporting those derivatives.

748 However, respondents objected to a requirement to notify ASIC of those financial markets that a reporting entity considers trade derivatives that meet the definition of exchange-trade derivatives, as is the current case in the exemption. Respondents believed that drafting a generic definition of an exchange-traded derivative should minimise uncertainty, obviating the need for a notification requirement.

749 One respondent suggested that each of the exclusions of transactions for spot settlement contract, FX securities conversion transactions and exchange-traded derivatives should be provided in the definition of ‘OTC Derivative’ rather than ‘Reportable Transaction’.

750 Respondents also noted in feedback, or in subsequent discussions, that their practical interpretation of an in-scope OTC derivative was also informed by the list of derivative asset classes and products to which the current ASIC Rules apply in Table 2 of the Appendix to [RG 251](#), and by the lists of derivatives covered by the ISDA Taxonomy.

751 In relation to the proposal to ensure that transactions with Australian retail clients are reportable transactions, respondents without any material derivative transactions with Australian retail clients or who would already be reporting such transactions, either did not comment or were supportive.

752 Some foreign respondents asked for clarification on how the proposal would apply to transactions entered into directly between foreign entities without any Australian presence and Australian retail clients. There was concern about the apparent extra-territorial nature of the proposal.

753 Australian respondents with foreign subsidiaries welcomed our proposal to clarify the scope of reporting for those subsidiaries. More generally, however, 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 are inconsistent with the treatment of ‘nexus’ transactions under the current ASIC Rules.

### Our response

754 After considering the feedback to CP 334, we have decided to proceed with our proposals to:

- (a) exclude from the reporting scope, transactions for spot settlement in addition to the already excluded FX spot transactions;
- (b) incorporate the exemption for FX securities conversion transactions in the rules;
- (c) ensure that transactions with Australian retail clients are required to be reported; and
- (d) clarify that foreign subsidiaries of Australian entities are not reporting entities.

755 New Rule 1.2.4(7) in the draft remade ASIC Rules excludes from the meaning of an OTC derivative a transaction for spot settlement. The new rule is based on the definition used in the Singaporean reporting rules, as was favoured in the feedback to CP 334.

- (a) Paragraph (a) of draft Rule 1.2.4(7) closely follows the text of the Singaporean reporting rules by referring to an intention to take delivery within the market convention period for delivery of a thing. Reporting entities will need to determine what market convention is applicable to a transaction but we intend to provide guidance in an update to [RG 251](#) that will take a pragmatic stance in our own evaluations of market conventions that may be applicable to a transaction.
- (b) Paragraph (b) of draft Rule 1.2.4(7) is based on s761D(3)(a)(ii) of the Corporations Act that excludes from the meaning of a derivative arrangements that provide for cash settlement or set-off rather than delivery.
- (c) For completeness and avoidance of doubt, paragraph (c) of draft Rule 1.2.4(7) excludes foreign exchange contracts and options from the provisions of this subrule.

756 New Rule 1.2.4(6) brings the section 13 ‘Exemption 9 (FX Securities Conversion Transactions)’ of [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#) (Exemption 9) into the rules.

- (a) Paragraph (a) of draft Rule 1.2.4(6) follows the ‘Exemption 9’ text but narrows the meaning of the exempt transaction to that between the

counterparties where one of those counterparties is purchasing or selling the foreign currency security. We think this would:

- (i) not include a transaction that ‘hedges’ or ‘covers’ the exempt transaction; and
  - (ii) not disrupt the ordinary operation of the ASIC UTI rule and of UTI rules in other jurisdictions for the ‘hedge’ or ‘covering’ transactions if one of the counterparties would otherwise consider the transaction as not reportable in their jurisdiction.
- (b) Paragraph (b) of draft Rule 1.2.4.(6) retains the seven-business-day temporal condition to continue to align with the jurisdictions that have this temporal condition.

757 In the draft remade ASIC Rules, Table 1 in Rule 1.2.5 is amended to ensure that transactions with retail clients are reportable transactions.

- (a) Under item 1, transactions with retail clients by Australian reporting entities are already within the column 3 scope of OTC derivatives that are reportable transactions.
- (b) Under item 2, applicable to foreign reporting entities, OTC derivatives that are ‘(a) entered into with a Retail Client located in this jurisdiction’ are reportable transactions, regardless of whether they are booked to the profit or loss account of an Australian branch of the reporting entity or entered into in this jurisdiction.

758 Note that a foreign entity that carries on a financial services business in this jurisdiction providing financial services in derivatives to retail clients is required to hold an AFS licence and would be a reporting entity as an AFS licensee (and would not be an exempt foreign licensee, who only provides financial services in derivatives to wholesale clients). The amendment to Table 1 of Rule 1.2.5 would not impose reporting requirements on foreign entities who are not already AFS licensees.

759 In addition, Table 1 in Rule 1.2.5 would not refer to foreign subsidiaries of Australian entities as reporting entities, as is the case in the current ASIC Rules—such foreign subsidiaries would no longer be identified as reporting entities.

760 We are also now making new proposals to:

- (a) clarify the meaning of a Part 7.2A Market as being a financial market for which market integrity rules apply;
- (b) exclude as reporting entities AFS licensees without relevant derivatives authorisations, consistent with reg 7.5A.50 of the Corporations Regulations;

- (c) exclude as reporting entities scope clearing members in certain circumstances of an agency clearing model, generalising the existing exemption for OTC clearing participants of ASX Clear (Futures);
- (d) insert new Rule 1.2.5(4) to give effect to [\*ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2016/0688\*](#) within the ASIC Rules and to do so in a way that generalises to the agency clearing model of any authorised clearing facility; and
- (e) clarify that the OTC derivative transactions of a corporate collective investment vehicle (CCIV) are reportable transactions.

761 In relation to the exclusion of exchange-traded derivatives from the meaning of an OTC derivative, we have not concluded our review and analysis about improvements that could be made in the ASIC Rules.

762 In relation to the reporting of foreign entities’ trading with Australian wholesale clients, we have also not concluded our review and analysis about improvements that could be made in the ASIC Rules.

763 We are deferring consideration of these matters to the third consultation.

764 Our response and further proposals are summarised in Table 40.

**Table 40: Summary of ASIC response and further proposals**

<b>Decisions for the draft remade ASIC Rules</b>	<p>Exclude from scope transactions for spot settlement</p> <p>Incorporate the exemption for FX securities conversion transactions</p> <p>Ensure that transactions with Australian retail clients are required to be reported</p> <p>Clarify that foreign subsidiaries of Australian entities are not ASIC reporting entities</p>
<b>Proposals for the draft remade ASIC Rules</b>	<p>Clarify the meaning of a Part 7.2A Market</p> <p>Exclude from scope AFS licensees without relevant derivatives authorisations, consistent with reg 7.5A.50 of the Corporations Regulations</p> <p>Exclude from scope clearing members in certain circumstances of an agency clearing model</p> <p>Clarify as in-scope the OTC derivative transactions of a CCIV</p>
<b>Decisions for the draft amended ASIC Rules</b>	Not applicable
<b>Proposals for the draft amended ASIC Rules</b>	Not applicable

**Matters deferred to the third consultation**

The definition of an exchange-traded derivative and 'avoidance of doubt', 'notification' and 'disallowance determinations' provisions

Foreign entities trading with Australian wholesale clients

**Proposal**

**G1** We are making new proposals to:

- (a) clarify the meaning of a Part 7.2A Market;
- (b) exclude from scope AFS licensees without relevant derivatives authorisations, consistent with reg 7.5A.50;
- (c) exclude from scope clearing members in certain circumstances of an agency clearing model; and
- (d) clarify that the OTC derivative transactions of a CCIV are reportable transactions.

*Your feedback*

G1Q1 Do you agree with these proposals? In your response, please give detailed reasons for your answer.

**Rationale****Clarifying the meaning of a Part 7.2A Market**

- 765 A Part 7.2A Market is referred to in the current ASIC Rules as being one of the kinds of financial markets where derivatives traded on such a financial market are not OTC derivatives, and transactions in those derivatives are not reportable transactions.
- 766 The meaning of a Part 7.2A Market refers to domestic licensed financial markets, and excludes financial markets that ASIC does not have the function of supervising under s798F of the Corporations Act, including several financial markets that are only accessed by professional investors or wholesale clients for trading, for example, government bonds, interest rate swaps and foreign exchange contracts.
- 767 When the current ASIC Rules were made in 2013, this definition only covered Australia's public markets for securities, futures and other standardised options and derivatives contracts.
- 768 Since that time, additional financial markets have been licensed as domestic financial markets that are also only accessed by professional investors or wholesale clients and are also for trading, for example, equity derivatives, interest rate swaps and foreign exchange contracts.



769 To maintain the consistency that the exclusion of Part 7.2A Markets should only apply to Australia’s public markets, we propose to simplify the meaning of a Part 7.2A Market to ‘a financial market to which an instrument made under subsection 798G(1) of the Act applies’.

770 The instruments made under s798G(1) of the Corporations Act are *ASIC Market Integrity Rules (Securities Markets) 2017*, *ASIC Market Integrity Rules (Futures Markets) 2017* and *ASIC Market Integrity Rules (Capital) 2021*. We think there is likely to be a strong relationship between financial markets to which market integrity rules apply, and financial markets which trade kinds of derivatives that we think should not be OTC derivatives under the ASIC Rules.

771 However, if market integrity rules were to apply to a financial market where we did think that some or all of their derivative transactions should be reportable transactions, a mechanism such as a ‘disallowance determination’ could be the means to give effect to this. As we note at paragraph 761, we have deferred consideration of the framing of the exclusion of exchange-traded derivatives from OTC derivatives until the third consultation.

#### **Exclude AFS licensees without relevant derivatives authorisations**

772 Regulation 7.5A.50(2A) of the Corporations Regulations sets out that derivative transaction rules cannot impose requirements relating to a class of derivatives on financial services licensees ‘(b) whose Australian financial services licences do not authorise them to provide financial services in relation to that class of derivatives’.

773 We propose to insert new Rule 1.2.4(3) to explicitly conform to this regulation in the ASIC Rules.

#### **Exclude clearing members in certain circumstances of an agency clearing model**

774 Under [\*ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2016/0688\*](#) (Instrument 2016/0688) having regard to the agency OTC clearing model of ASX Clear (Futures) for affiliates and clients, the clearing participant is exempt from reporting cleared transactions with ASX Clear (Futures) that are entered into by an affiliate or client.

775 We propose to insert new Rule 1.2.4(4) to give effect to Instrument 2016/0688 within the ASIC Rules and to do so in a generalised way that would be applicable to the same circumstances of any authorised clearing facility—that is, where under the operating rules of the authorised clearing facility, both the clearing participant and the affiliate or client are taken to be counterparties of the authorised clearing facility for the reportable transaction.

776 We also propose to repeal Instrument 2016/0688.

**Clarify as in-scope the OTC derivative transactions of a CCIV**

- 777      The *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* implements a legislative regime for CCIVs through amendments to the Corporations Act, the *Australian Securities and Investments Commission Act 2001* and the *Personal Property Securities Act 2009*.
- 778      The CCIV regime will commence on 1 July 2022. It provides an alternative to the existing managed investment scheme regime under the Corporations Act:
- (a) a CCIV is a new type of company that is limited by shares and has a single ‘corporate director’;
  - (b) the corporate director is a public company with an AFS licence authorising it to operate the business and conduct the affairs of the CCIV;
  - (c) the CCIV itself does not hold an AFS licence; and
  - (d) the CCIV regime incorporates some aspects of the existing regulatory framework for registered managed investment schemes.
- 779      Maintaining regulatory parity between CCIVs and managed investment schemes, the draft amendments to Rule 1.2.5(2) clarify that, for derivative transactions entered into for a CCIV, the corporate director of the CCIV is the reporting entity.

## H Alternative reporting and delegated reporting

### Key points

Alternative reporting provides a form of substituted compliance for foreign entities to meet their ASIC reporting requirements.

We received limited feedback about alternative reporting in response to CP 334. We will further consider the operation and use of Rule 2.2.1(3) of the current ASIC Rules before forming specific proposals in the third round of consultation.

Delegated reporting allows a reporting entity to outsource its OTC derivatives reporting function by appointing one or more parties to perform this function on its behalf. Rule 2.2.7(2) of the current ASIC Rules provides a 'safe harbour' for reporting entities using delegates, provided certain conditions are met.

We have considered the information and feedback we received in response to CP 334 in relation to delegated reporting and are now proposing to remove the 'safe harbour' provision in the draft remade ASIC Rules.

We are seeking to align the ASIC Rules with the outsourcing principles and requirements of other domestic rules and standards for regulated entities. Further, we consider greater international alignment of OTC derivatives transaction reporting requirements will be achieved under our proposal.

We intend to revise RG 251 to provide updated guidance in relation to overseeing delegates and also to discuss factors and considerations when assessing the severity of OTC derivative transaction reporting breaches.

## Background

### Alternative reporting

780 Rule 2.2.1(3) of the ASIC Rules provides a form of substituted compliance 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. The transaction reporting must be to an ASIC prescribed repository and be 'designated' as information that has been reported under the ASIC Rules.

781 Alternative reporting can also be used under the 'single-sided' exemption in regs 5A.71–7.5A.74 of the Corporations Regulations as the means of reporting by the other party reporting entity in satisfaction of one of the conditions of the exemption.

## Delegated reporting

- 782 As is commonly provided for in other jurisdictions, Rule 2.2.7 of the ASIC Rules provides that a reporting entity may appoint another person (a delegate) to report on behalf of the reporting entity. Rule 2.2.7(2) provides that a reporting entity is taken to have complied with its reporting obligations if they have a documented agreement with their delegate and if they make ‘regular inquiries reasonably designed’ to determine if the delegate is complying with the terms of the agreement.
- 783 Rule 2.2.6 provides that a reporting entity must take all reasonable steps to ensure that information it reports, ‘whether reported by the reporting entity on its own behalf or by another person on behalf of the reporting entity, is and remains at all times complete, accurate and current’.

## ASIC’s discussion of alternative reporting and delegated reporting in CP 334

### Alternative reporting

- 784 In [CP 334](#), we described our concerns with the operation of alternative reporting, including that:
- (a) there is no requirement to notify ASIC that a reporting entity is using alternative reporting and ASIC is not readily able to identify the prescribed repositories to whom we need to connect to receive those transaction reports;
  - (b) the ‘designation’ was intended to be a designation to the relevant trade repository of transaction reporting that is also for ASIC Rules—however, none of the prescribed repositories with whom we have engaged are technically able to identify transaction reports as being in substituted compliance for the ASIC Rules; and
  - (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.
- 785 In CP 334, we did not make a specific proposal on alternative reporting and sought to gather information about the scope and practices of reporting entities undertaking alternative reporting. We requested that reporting entities that are current users of alternative reporting engage in discussion with us about their alternative reporting practices, including identifying the ASIC prescribed repository to which they report and the means by which they ‘designate’ their reporting as information that has been reported under the ASIC Rules.

## Delegated reporting

- 786 In [CP 334](#), we described our concerns with the operation of delegated reporting, including that:
- (a) from our own interactions with a variety of reporting entities that make use of delegated reporting, we have been unconvinced that all reporting entities are capable of subjecting, and do subject, their delegated reporting arrangements to a level of oversight and rigour that sufficiently contributes to maintaining reported information as complete, accurate and current; and
  - (b) circumstances have arisen where reporting entities have changed their delegate and the new reporting arrangements established with a trade repository have not immediately included the ability to make error corrections to transaction reports made by the preceding delegate.
- 787 In CP 334, we also did not make a specific proposal on delegated reporting but we said that, in principle, we considered the most effective approach to addressing our concerns in relation to delegated reporting is to amend the ASIC Rules to remove the ‘safe harbour’ provisions and revert to reporting entities having responsibilities for reporting as otherwise set out in the ASIC Rules.
- 788 However, we sought feedback to gather information about the practices of reporting entities in overseeing their delegates. In particular, we requested information about the specific processes and practices that reporting entities rely on to determine if their delegate is complying with the terms of the delegation agreement and to ensure that complete, accurate and current reporting is being carried out.

## Feedback on our discussions in CP 334

### Alternative reporting

- 789 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.
- 790 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, both under current and proposed rules, by which ASIC can or could reliably identify alternative reporting submissions.

- 791 Other respondents strongly disagreed with the removal of the provision. Responses supported amendments to the provision to overcome the shortcomings outlined in [CP 334](#), including:
- (a) a framework whereby reporting entities notify ASIC of their intention to commence alternative reporting and await confirmation of ASIC's connectivity to the relevant trade repository before commencing alternative reporting to a prescribed repository; and
  - (b) in the case of single-sided relief, firms could be required to sign up to an agreement which helps to identify who the reporting entity would be, similar to existing requirements under the Ontario Securities Commission in Canada.

### **Matter deferred to the third consultation**

- 792 We have not concluded our review and analysis about improvements that could be made in the ASIC Rules to the operation of the reporting exception for foreign entities using the alternative reporting provision or whether it should be removed altogether.
- 793 We are deferring consideration of this matter to the third consultation.

### **Delegated reporting**

- 794 Following the release of CP 334, we requested submissions to CP 334 from a cross-section of industry identified as using reporting services providers, to better understand existing practices and operational insights in relation to delegated reporting. Respondents to CP 334 strongly disagreed with our preliminary approach of proposing to remove the 'safe harbour' provisions and revert to reporting entities having responsibility for the accuracy of reporting performed by a delegate. In line with the intended policy design, feedback identified buy-side and/or smaller entities as the primary beneficiaries of the 'safe harbour' provision.
- 795 The key challenges and concerns raised by respondents were centred on the capability uplift that may be required by reporting entities to accurately oversee OTC derivative trade reporting by a delegate. Respondents expressed concern that a proposal to remove the 'safe harbour' provision would be tantamount to requiring reporting entities to build and resource their own trade reporting solutions to either mirror or replace that of their existing delegates.
- 796 Many respondents suggested alternatives in preference to removing the existing 'safe harbour' provision. Single-sided reporting was raised as a preferred solution by several respondents, as was improved guidance to both reporting entities and their delegates. One respondent suggested that ASIC

should provide reporting entities with direct access to their reported data via a regulatory portal for reconciliation purposes, particularly relevant in circumstances where trade repository access is exclusively via a third-party reporter.

797 We received comments highlighting the outsourcing of some business functions and a lack of proximity to the transaction details/source data as relevant for some types of reporting entities using delegated reporting. As a consequence, there were concerns about the deadline for reporting, the ability to conduct timely and accurate reconciliations and other operational complexities. Broadly, the current centralisation of the reporting function was considered fit for purpose.

798 Other concerns and challenges raised in feedback include a potential move away from the use of reporting services providers, a potential deterioration in the quality of reported data and a potential move away from using appropriate OTC derivative hedge products to avoid triggering reporting obligations.

#### **Our response**

799 Thorough consideration has been given to the valuable insights provided in response to our requests for feedback on delegated reporting. However, we are now formally proposing to remove it in the draft remade ASIC Rules: see draft Rule 2.2.7.

800 On balance, we consider that it is appropriate to propose the removal of the ‘safe harbour’ provision. We see benefits in simplifying the current ASIC Rules to maximise the alignment of outsourcing principles across other domestic rules and standards for regulated entities, and also more broadly against comparable international derivative transaction reporting requirements in foreign jurisdictions.

801 We recognise the underlying concerns that the ‘safe harbour’ regime has helped to address. Going forward, we intend to provide guidance in an update to [RG 251](#) that will take a pragmatic and harmonised stance, in terms of:

- (a) our expectations in relation to a reporting entity outsourcing its OTC derivative transaction reporting; and
- (b) ASIC’s approach and expectations in respect of OTC derivative transaction reporting errors and significant breaches.

802 Our responses and proposals are summarised in Table 41:

**Table 41: Summary of ASIC response and further proposals**

<b>Decisions for the draft remade ASIC Rules</b>	Not applicable
<b>Proposals for the draft remade ASIC Rules</b>	Remove the 'safe harbour' provision for delegated reporting
<b>Decisions for the draft amended ASIC Rules</b>	Not applicable
<b>Proposals for the draft amended ASIC Rules</b>	Not applicable
<b>Matters deferred to the third consultation</b>	Alternative reporting

## ASIC's proposals

### Delegated reporting

#### Proposal

H1 We propose to revise Rule 2.2.7 in the draft remade ASIC Rules (see Attachment 1) to remove the 'safe harbour' provisions.

#### *Your feedback*

H1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

H1Q2 What elements of revised RG 251 guidance would better assist reporting entities to understand their responsibilities and oversee their delegated reporting arrangements?

H1Q3 Do you agree that revised RG 251 guidance outlining our approach to reporting errors and breaches can assist in reducing reporting entities' concerns about delegated reporting breaches in the absence of a 'safe harbour'?

H1Q4 Are there any elements of revised RG 251 guidance that should be aligned with other regulatory requirements for outsourcing arrangements?

Note: In our first consultation we sought to gather further information to inform this proposal. We note some respondents have pre-emptively addressed similar feedback questions in [CP 334](#). This second consultation is intended to provide more information for your consideration and further feedback.



## Rationale

- 803 A key objective of the current ASIC Rules rewrite project has been to maximise the international alignment and harmonisation of data elements and other rules elements, to the extent practically possible, and reduce the number of bespoke ASIC requirements. We have used this lens to review a broad range of principles and regulatory reporting requirements relevant to delegated reporting and outsourcing more broadly, both domestically and internationally.
- 804 On 27 June 2019, ASIC issued [Consultation Paper 314 Market integrity rules for technological and operational resilience](#) (CP 314) including [Attachment 1 to CP 314 Proposed amendments to the ASIC Market Integrity Rules \(Securities Markets\) 2017 and ASIC Market Integrity Rules \(Futures Markets\) 2017](#). The final [ASIC Market Integrity Rules \(Securities Markets and Futures Markets\) Amendment Instrument 2022/74](#) (MIR Amendments) was registered 9 March 2022, effective from 10 March 2023.
- 805 In CP 314, ASIC discussed a range of rule updates for market operators and market participants largely to ensure the resilience of critical systems, including where they are outsourced. ASIC considers critical systems to include regulatory data reporting systems for market participants and market operators. We consider the proposals outlined in CP 314 and the subsequent MIR Amendments, which seek to ensure that outsourcing arrangements include appropriate controls, are relevant to our consideration of delegated reporting under the ASIC Rules.
- 806 Respondents to CP 314 provided feedback, summarised in [Report 719 Response to submissions on CP 314 Market integrity rules for technological and operational resilience](#) (REP 719), suggesting that ASIC should consider closer alignment of outsourcing requirements for stakeholders across requirements of other regulators, notably APRA's [Prudential Standard CPS 231 Outsourcing](#) (CPS 231). Respondents also agreed that responsibility should lie with market operators and market participants, even when functions are outsourced. We agree with the logic underpinning the alignment theme and that responsibility should lie with the regulated entity, even when services are outsourced.
- 807 Regulatory requirements across a range of domestic rules and standards allow outsourcing, but without any 'safe harbour' provision. Importantly, under s769B of the Corporations Act, and as discussed at paragraphs 68 and 69 of CP 314, market participants and market operators remain responsible for complying with their obligations as licensed entities in relation to their outsourced services. Under CPS 231, an APRA-regulated institution may outsource business activities—however, it remains responsible for complying with all prudential requirements that relate to the outsourced business activity. Further, we note that [Regulatory Guide 104 AFS licensing](#):

*Meeting the general obligations* (RG 104) addresses outsourcing as a key compliance concept for AFS licensees: ‘You can outsource functions, but not your responsibility as a licensee: see RG 104.33–RG 104.36’. In addition, the [ASIC Derivative Trade Repository Rules 2013](#) require that where an operator of a trade repository outsources any trade reporting services it must take steps to ensure that it continues to comply with its obligations without any ‘safe harbour’.

808 Alignment and harmonisation of regulatory requirements for licensed and regulated entities is important both domestically and internationally. In 2005 and 2009 respectively, IOSCO published reports for market intermediaries and for markets identifying key outsourcing principles and guidance. On 27 October 2021, IOSCO published a set of updated outsourcing principles for regulated entities that outsource tasks to service providers: see [Principles on Outsourcing: Final Report](#) (PDF 630 KB) (IOSCO FR07/2021 Report) adapting and building on its earlier work. We note that the IOSCO FR07/2021 Report states that ‘the regulated entity retains full responsibility, legal liability, and accountability to the regulator for all tasks that it may outsource to a service provider to the same extent as if the service were provided in-house’ (p. 12). The MIR Amendments provide baseline expectations for market operators and participants, which align with international regulatory developments and IOSCO principles.

809 Internationally, we do not observe the existence of any similar ‘safe harbour’ regimes or diminished liability for reporting entities in circumstances where reporting is outsourced to another person. In our proposal, we are seeking to align with the requirements set by ESMA and MAS in particular, both sufficiently equivalent dual-sided regimes, by proposing to remove the ‘safe harbour’ provision.

Note: Effective 18 June 2020, ESMA introduced mandatory delegated reporting by financial counterparties for certain types of their non-financial counterparties—these counterparties are equivalent to ‘end users’ under the ASIC Rules, who are not anyway reporting entities.

810 The ‘safe harbour’ provision was introduced in early 2015, ahead of Phase 3 reporting requirements under the current ASIC Rules. It was implemented as a policy setting intended to reduce the cost and complexity burden faced by buy-side and smaller entities in implementing trade reporting requirements for the first time. Further, it was intended to alleviate concerns about potential enforcement action by ASIC in respect of delegated reporting breaches of the Rules.

811 Since the phased introduction of the current ASIC Rules, transaction reporting has evolved considerably. Systems, processes and controls have been uplifted and tested by a range of industry changes including trade repositories undertaking ‘re-architectures’ of reporting schemas and also a trade repository migration for many reporting entities as a result of Chicago

Mercantile Exchange Inc. winding down its Australian licensed trade repository operations at the end of 2020. Since the commencement of the current ASIC Rules, ASIC has regularly engaged with industry associations and entities directly in relation to queries and reporting issues identified with the mutual objective of improving data quality and compliance. At this point in the maturity profile of derivative transaction reporting it is appropriate that regulatory expectations for reporting entities are better aligned with broader outsourcing regulatory requirements.

- 812 Our proposal to remove the ‘safe harbour’ provision does not require reporting entities to internalise the transaction reporting function where the costs and/or complexities are better managed through the use of delegated reporting. We are, however, seeking to ensure that reporting entities meet some baseline expectations for overseeing their reported OTC derivative transaction data and that the responsibility for compliance with the draft remade ASIC Rules remains with the regulated entity.
- 813 [RG 251](#) discusses current ASIC Rule 2.2.7 at RG 251.27—RG 251.35 and includes guidance about the frequency and nature of what may constitute ‘regular enquiries reasonably designed’. We intend to provide revised guidance in an update to RG 251 that will align with the outsourcing principles and requirements resulting from the MIR Amendments as relevant to OTC derivative transaction reporting. Further, it is our intention that the updated guidance will seek to alleviate some of the underlying concerns in relation to potential enforcement action in respect of breaches by a delegate.
- 814 For example, we intend to revise our guidance to highlight that the key outcome that we seek is high-quality, reliable data and that, where there are errors or omissions, these are promptly corrected. Thereafter, we base our initial breach assessment on an adaption of the relevant key factors and considerations discussed in [Regulatory Guide 216 Markets Disciplinary Panel](#) (RG 216). Such factors and considerations are outlined in Table 1 of RG 216 and the relevant considerations for OTC transaction reporting include:
- (a) character of the conduct—its nature, whether intentional, reckless or careless and its duration;
  - (b) consequences of the conduct—the impact of errors or omissions on our regulatory purposes and whether the entity repeated the breach when acting as a delegate of another;
  - (c) compliance culture—the adequacy of internal controls, whether the issue is promptly self-reported, cooperation with ASIC during the assessment, and past compliance history; and
  - (d) remediation—prompt correction of reporting going forward, steps taken to ensure the conduct does not re-occur.

815 Generally, the scale or particulars of OTC derivatives trade reporting errors and omissions that do not materially impact our regulatory purposes are viewed as being breaches at the low end of the severity scale. To this point, we note that since 1 October 2021 AFS licensees and Australian credit licensees have been required to submit notifications about reportable situations (previously breach reports) to ASIC in line with the new breach reporting regime. However, not every breach of the ASIC Rules is reportable under the new requirements (reg 7.6.02A(2)(b) of the Corporations Regulations) instead requiring reporting entities to consider other factors to determine whether a breach of the ASIC Rules is significant and reportable.

# I Reporting requirements

## Key points

We have decided to proceed with our proposals in CP 334 in relation to a reporting deadline for UTI purposes and to remove the relevant outdated provisions of the current ASIC Rules.

As foreshadowed in CP 334, we are now also proposing changes to the rules to extend lifecycle reporting to all products.

We have decided not to make any changes to the current provisions of Rule 2.2.3 Reporting Requirement—Timing (generally, T+1).

## Background

- 816 Chapter 2 of the current ASIC Rules imposes obligations on reporting entities to report their reportable transactions and reportable positions to licensed repositories and prescribed repositories. The parts of Chapter 2 are:
- (a) Part 2.1 Application;
  - (b) Part 2.2 Reporting Requirements;
  - (c) Part 2.3 Records; and
  - (d) Part 2.4 Transitional matters.
- 817 Part 2.2 Reporting Requirements includes:
- (a) Rule 2.2.1 Transaction Reporting Requirements and Position Reporting Requirements;
  - (b) Rule 2.2.2 Reporting Requirement—Changes;
  - (c) Rule 2.2.3 Reporting Requirement—Timing (generally, T+1);
  - (d) Rule 2.2.4 Reporting Requirement—Format;
  - (e) Rule 2.2.5 Reporting Requirement—Continuity of reporting;
  - (f) Rule 2.2.6 Reporting Requirement—Accuracy of reporting;
  - (g) Rule 2.2.7 Derivative Transaction Information—Delegation of reporting; and
  - (h) Rule 2.2.8 Lifecycle or snapshot reporting.

## ASIC's proposed approach to reporting requirements in CP 334

818 In [CP 334](#), we focused on the key changes to the ASIC Rules that we proposed in that consultation or considered for proposal in a subsequent consultation. We included in CP 334 proposals in relation to:

- (a) Rule 2.2.3 Reporting Requirement—Timing (generally, T+1);
- (b) Rule 2.2.8 Lifecycle or snapshot reporting; and
- (c) Part 2.4 Transitional Matters and other transitional matters.

819 We also said that we intend to further review the ASIC Rules and may make proposals in a subsequent consultation on any other provisions in the ASIC Rules.

### Rule 2.2.3 Reporting Requirement—Timing (generally, T+1)

820 In CP 334, we noted that Rule 2.2.3 does not specify a singular time as the deadline for reporting as the definition for 'business day' means '[a] day that is not a Saturday, Sunday, or a public holiday or bank holiday in the Relevant Jurisdiction'. This means that the deadline for reporting is the end of the next business day in the jurisdiction in which the reportable transaction is entered into.

821 Despite the ASIC Rules allowing a transaction to be reported after midnight Sydney T+1 if it is entered into in another jurisdiction, we do not observe any significant or systemic reliance on this provision in transaction reports under the ASIC Rules. We said that we do not currently consider it necessary to fix the deadline for reporting for the actual reporting obligation.

822 However, we proposed that, to enable any reporting entity in any jurisdiction that is subject to UTI generation rules to determine, if applicable, whether Australia is the jurisdiction with the 'sooner deadline for reporting', the ASIC Rules should clarify that the deadline for reporting for the purposes of the UTI rules within the ASIC Rules is a singular time referring to Sydney time.

823 We sought feedback on this proposal and on whether:

- (a) there should be a sole deadline for reporting that is applicable to both the UTI rules and the actual reporting obligation; and
- (b) such a singular time should be expressed as a precise time such as 11.59 pm or as the end of the day.

### Rule 2.2.8 Lifecycle or snapshot reporting

824 In summary, in CP 334, we noted that Rule 2.2.8 of the ASIC Rules provides that a reporting entity may comply with Rule 2.2.1 in relation to a reportable transaction (other than an excluded derivative) by 'lifecycle reporting' or by 'snapshot reporting'.

- 825 We also noted that on 30 November 2018, ASIC made an [excluded derivative determination](#) (PDF 105 KB) requiring transactions in CFDs, margin FX and equity derivatives to be reported to derivative trade repositories on a ‘lifecycle’ method from 1 July 2019.
- 826 Rule 2.2.8(3) provides that ASIC may determine from time to time that an OTC derivative, or a derivative product class, is an excluded derivative for the purposes of Rule 2.2.8(1) where, in the opinion of ASIC, doing so is desirable in order to enhance the transparency of transaction information available to relevant authorities and the public, promote financial stability or support the detection and prevention of market abuse.
- 827 In summary, in [CP 334](#), we said that:
- (a) ASIC is currently of the opinion that derivative transactions entered into with an intent to clear those transactions (i.e. the pre-clearing or ‘alpha’ transactions) would also satisfy the criteria of Rule 2.2.8(3);
  - (b) in products other than CFDs, margin FX, equity derivatives and cleared transactions, there appeared to be material termination and amendment transactional activity; and
  - (c) about 40%–60% of terminations were within two days of the execution date of the transactions and we considered that such short-term trading indicates that transparency of transaction information available to relevant authorities and support for detection and prevention of market abuse would be enhanced by ‘lifecycle reporting’ to ensure the reporting of same-day new and terminated transactions.
- 828 We said that, therefore, we would consider a proposal in the second round of consultation to amend the ASIC Rules to specify ‘lifecycle reporting’ as the reporting requirement for all reportable transactions.

## **Part 2.4 Transitional Matters and other transitional matters**

- 829 In CP 334, we noted that various transitional matters were dealt with in the ASIC Rules in:
- (a) Part 2.4 which defers certain aspects of the ASIC Rules from the commencement date of the ASIC Rules to various future dates;
  - (b) Schedule 1: Reporting Requirements—Phasing which sets out the phased implementation of the obligations under the ASIC Rules for various types of reporting entities, reportable transactions and reportable positions;
  - (c) Part S2.2 Derivative Position Information which sets out the information that must be reported for a reportable position, which is, broadly, a pre-existing derivative transaction at the time that reporting obligations commenced; and
  - (d) definitions in Part 1.2 Interpretation that solely apply to one or more of the above provisions.

830 As the relevant time for all these provisions has passed—that is, the Part 2.4 transitional matters are no longer transitional, the Schedule 1 phasing has been fully implemented and the deadlines for reportable positions have passed—we proposed to simplify the ASIC Rules by repealing or amending the relevant outdated provisions.

## Feedback on our proposed approaches in CP 334

### Rule 2.2.3 Reporting Requirement—Timing (generally, T+1)

831 There was mixed feedback to our proposals in relation to defining a singular time as the reporting deadline for the purposes of the UTI rules or for both the purposes of the UTI rules and for the actual reporting obligation.

832 Some respondents could see the benefits of a singular deadline for both purposes but felt that, in practice, the reporting deadline for UTI purposes would need to be sooner than that of the actual reporting obligation. Other respondents preferred not to change the reporting deadline for the actual reporting obligation.

### Rule 2.2.8 Lifecycle or snapshot reporting

833 There was widespread support among respondents to implement lifecycle reporting for all products. One respondent commented that they did not see the value in lifecycle reporting as the current reporting requirements captured all the information required for position monitoring.

### Part 2.4 Transitional Matters and other transitional matters

834 Only a few respondents specifically commented on our proposal to repeal or amend the relevant outdated provisions of the ASIC Rules. Those that did comment, supported the proposal and there were no comments opposing the proposal.

### Our response

835 Taking into account the feedback to CP 334, we have decided to:

- (a) proceed with specifying a reporting deadline for the purposes of the UTI rule (Rule 2.2.9), but not to change the current provisions of Rule 2.2.3 Reporting Requirement—Timing (generally, T+1);
- (b) proceed to remove the relevant outdated provisions of the current ASIC Rules referred to in paragraph 829; and



- (c) propose to extend lifecycle reporting to all products, but to exempt small-scale buy-side entities from the extended requirements.

836 In relation to reporting deadline(s), as discussed at paragraph 144 in Section B ‘The unique transaction identifier (UTI)’, we have decided to proceed with specifying that, for the purposes of the UTI rule (Rule 2.2.9), ‘the reporting deadline in this jurisdiction for a Reportable Transaction is the end of the next business day in Sydney’.

837 In light of the mixed feedback regarding specifying a singular reporting deadline for the actual reporting obligation, we have decided not to change the current provisions of Rule 2.2.3 Reporting Requirement—Timing (generally, T+1).

838 In relation to lifecycle reporting, as foreshadowed in [CP 334](#), we are now proposing to implement lifecycle reporting for all products. However, as proposed in Section E ‘The ASIC data elements’, extending lifecycle reporting to all products is one of the extended requirements that small-scale buy-side entities would not be required to comply with. Small-scale buy-side entities would continue to be required to report equity derivatives transactions using lifecycle reporting.

839 Our responses and proposals are summarised in Table 42:

**Table 42: Summary of ASIC’s responses and proposals**

<b>Decisions for the draft remade ASIC Rules</b>	Specify a reporting deadline for the purposes of the UTI rule (Rule 2.2.9) Not change the current provisions of Rule 2.2.3 Reporting Requirement—Timing (generally, T+1) Remove the relevant outdated provisions of the current ASIC Rules
<b>Proposals for the draft remade ASIC Rules</b>	Extend lifecycle reporting to all products
<b>Decisions for the draft amended ASIC Rules</b>	Not applicable
<b>Proposals for the draft amended ASIC Rules</b>	Not applicable
<b>Matters deferred to the third consultation</b>	Not applicable

## ASIC's further proposals

### Proposal

- 11 We propose to change Rule 2.2.8 in the draft remade ASIC Rules to require that transactions in all products are reported on a lifecycle basis, except that small-scale buy-side entities may report transactions in other than equity derivatives on a snapshot basis.

#### *Your feedback*

- 11Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

### Rationale

840 As we note in paragraph 827 and in [CP 334](#), we have identified a level of short-term trading that indicates that the transparency of transaction information available to relevant authorities would be enhanced by 'lifecycle reporting' to ensure the reporting of same-day new and terminated transactions—as distinct from end-of-day position monitoring information.

841 We also continue to be of the opinion that derivative transactions entered into with an intent to clear those transactions (i.e. the pre-clearing or 'alpha' transactions) would also satisfy the criteria of Rule 2.2.8(3) in the current ASIC Rules.

842 There was widespread support among respondents to CP 334 to implement lifecycle reporting for all products.

843 In the draft remade ASIC Rules, new Rule 2.2.8(1) would require reporting entities, that are not small-scale buy-side entities, to report each transaction that takes place on a day. New Rule 2.2.8(2) and Rule 2.2.8(3) would set out the lifecycle or snapshot reporting requirements applicable to small-scale buy-side entities.

Note: The proposal to exempt small-scale buy-side entities from the extended lifecycle reporting requirements is discussed in Section E 'The ASIC data elements' at paragraphs 388–396.

## J Outstanding matters

- 844 In this consultation, we set out a number of matters that we have deferred to a third consultation. These outstanding matters are set out in Table 43.
- 845 We also welcome feedback from stakeholders about any other matters that you suggest we should take into consideration in the third round of consultation.

**Table 43: Outstanding matters for the third round of consultation**

Matter	Issues
Alternative reporting	<p>We have not concluded our review and analysis about improvements that could be made in the ASIC Rules to the operation of the reporting exception for foreign entities using the alternative reporting provision or whether it should be removed altogether</p> <p>See paragraphs 784–785 and 789–793</p>
Excluding exchange-traded derivatives	<p>We have not concluded our review and analysis about improvements that could be made in the ASIC Rules in relation to a generic definition of an exchange-traded derivative and possible ‘avoidance of doubt’, ‘notification’ and ‘disallowance determination’ provisions</p> <p>See paragraphs 739, 746–750 and 761</p>
Reporting by foreign entities trading with Australian wholesale clients	<p>We have not concluded our review and analysis about improvements that could be made in the ASIC Rules in relation to the reporting requirements of foreign entities trading with Australian wholesale clients, noting that the unclear situation may be related to the use of alternative reporting provisions</p> <p>See paragraphs 740–742, 753 and 762</p>

## K Regulatory and financial impact

846 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.

847 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) 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 Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector, preparing a Regulation Impact Statement (RIS) or undertaking an independent review in lieu of a RIS.

848 All RISs or independent reviews are submitted to the OBPR for approval before we make any final decision. Without an approved RIS or independent review, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

849 To ensure that we are in a position to properly complete any required RIS, 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. 5.

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

850 We have estimated the regulatory compliance burden of our preferred option (Option 1) of implementing the draft amended ASIC Rules by considering:

- (a) the effort required to implement each of the components of the ASIC data elements, UTI, UPI, LEI and ISO 20022 report messaging; and
- (b) the reporting entity factors affecting the effort in terms of the volume and asset class breadth of reporting, existing transaction ID pairing, delegated reporting or self-reporting, whether internationally connected in reporting and whether the reporting entity is a sell-side or buy-side entity.

851 We think that the elements of the effort to implement each of the components of the draft amended ASIC Rules can be described as summarised in Table 44.

**Table 44: Summary of key component implementation elements**

Component	Implementation elements
ASIC data elements	<p>Source additional data elements from front-office, middle-office and/or post-trade systems</p> <p>These data elements are variously:</p> <ul style="list-style-type: none"> <li>• in keeping with existing reporting to derivative trade repositories—e.g. payment frequency period &amp; multipliers</li> <li>• required with more granularity—e.g. collateral data elements split by initial &amp; variation margin and posted &amp; collected</li> <li>• applicable for less common transaction types—e.g. involving notional amount schedules, spreads, baskets and packages</li> <li>• possibly more complex to source—e.g. delta, floating reference rate reset dates</li> </ul> <p>Also, cease to source multiple data elements that would no longer be required to be reported</p>
UTI	<p>Where applicable, make bilateral agreements as to UTI generating entities and apply to new transactions</p> <p>Otherwise, some reporting entities may need systems &amp;/or processes to determine UTI generating entities by the UTI waterfall</p> <p>All reporting entities will need UTI receipt-handling and UTI non-receipt processes</p> <p>UTI generating entities will need to change their transaction ID generation to conform to the UTI format and include UTIs in transaction confirmations</p>

Component	Implementation elements
UPI	<p>All reporting entities will need systems &amp;/or processes to obtain UPIs, which may be by, for example:</p> <ul style="list-style-type: none"> <li>• querying the UPI system</li> <li>• querying own records of UPI reference data downloads</li> <li>• receiving from a counterparty</li> </ul> <p>All reporting entities will need UPI receipt-handling processes</p> <p>Some reporting entities will need UPI creation capability</p>
LEI	<p>Some reporting entities may need to engage with some of their counterparties to communicate LEI requirements and possibly assist in converting from AVOX ID use to LEI use</p> <p>These reporting entities will also need to update their counterparty reference data</p>
ISO 20022	<p>Self-reporting entities will need systems and processes to form and submit to trade repositories ISO 20022 reporting messages</p> <p>Reporting entities that delegate reporting will likely have their ISO 20022 reporting messages formed and submitted by their delegate</p>

852 We think that the reporting entity factors that affect the effort can be described as summarised in Table 45.

**Table 45: Summary of reporting entity factors**

Component	Implementation elements								
Scale	<p>Higher volume reporters have more turnover and scale and diversity in counterparties, products, clearing and other connections with market infrastructures—implying a broader scope of implementation work</p> <p>In our analysis, we have categorised scale in terms of open positions as:</p> <table border="1"> <tbody> <tr> <td>LARGE</td> <td>≥10,000</td> </tr> <tr> <td>MEDIUM</td> <td>1,000 to 9,999</td> </tr> <tr> <td>SMALL</td> <td>100 to 999</td> </tr> <tr> <td>VERY SMALL</td> <td>&lt;100</td> </tr> </tbody> </table>	LARGE	≥10,000	MEDIUM	1,000 to 9,999	SMALL	100 to 999	VERY SMALL	<100
LARGE	≥10,000								
MEDIUM	1,000 to 9,999								
SMALL	100 to 999								
VERY SMALL	<100								
Breadth	<p>The more asset classes that are reported, the more likely that more product systems are involved—implying a broader scope of implementation work</p> <p>In our analysis, we have categorised breadth in terms of reporting transactions in:</p> <table border="1"> <tbody> <tr> <td>BROAD</td> <td>3–5 asset classes</td> </tr> <tr> <td>NARROW</td> <td>1–2 asset classes</td> </tr> </tbody> </table>	BROAD	3–5 asset classes	NARROW	1–2 asset classes				
BROAD	3–5 asset classes								
NARROW	1–2 asset classes								

Component	Implementation elements										
Existing UTI pairing	<p>Reporting entities who already report paired UTIs are indicating that they have existing UTI transmission and receipt-handling capabilities</p> <p>On a recent analysis, we identified 400 reporting entities who reported a paired UTI for some or all of their transactions. These reporting entities reported paired UTIs for, on average by asset class, the following percentages of transactions:</p> <table border="1" data-bbox="746 555 1230 779"> <tbody> <tr> <td>Commodities</td> <td>64%</td> </tr> <tr> <td>Credit</td> <td>78%</td> </tr> <tr> <td>Equity</td> <td>82%</td> </tr> <tr> <td>Foreign exchange</td> <td>40%</td> </tr> <tr> <td>Interest rates</td> <td>63%</td> </tr> </tbody> </table> <p>We assume that a UTI transmission and receipt-handling capability indicates a strong potential to likewise establish a UPI transmission and receipt-handling capability</p>	Commodities	64%	Credit	78%	Equity	82%	Foreign exchange	40%	Interest rates	63%
Commodities	64%										
Credit	78%										
Equity	82%										
Foreign exchange	40%										
Interest rates	63%										
Self-reporting or delegated reporting	<p>Delegated reporting is typically either where:</p> <ul style="list-style-type: none"> <li>the counterparty or executing agent reports on behalf of the reporting entity—the reporting entity does not need to implement reporting changes or uplift for those transactions, or</li> <li>the reporting entity uses a reporting services provider to form and submit to trade repositories ISO 20022 reporting messages and the provider can also assist the reporting entity to source data elements, including UTI handling, from their information systems—the reporting entity may be able to implement reporting changes or uplift more efficiently than on a solely in-house basis</li> </ul> <p>Self-reporters will bear their own costs in sourcing additional data elements from their information systems and forming and submitting to trade repositories ISO 20022 reporting messages</p>										
Internationally connected	<p>Reporting entities that have an international derivatives transaction reporting connection would face marginal implementation costs for the draft amended ASIC Rules, as they benefit from synergies with implementation requirements in other jurisdictions</p> <p>As we set out in paragraphs 729–730, we consider that a reporting entity is internationally connected where the reporting entity:</p> <ul style="list-style-type: none"> <li>is a multi-jurisdictional reporter</li> <li>is part of a related group which has other entities that report in other jurisdictions, or</li> <li>delegates reporting to an international report submitting entity</li> </ul>										

853 Our approach to estimating the regulatory compliance burden of implementing the draft amended ASIC Rules is to:

- (a) group reporting entities by the common factors applicable to their circumstances;
- (b) for each component of implementation, take as a reference case the reporting entity group or implementation element with the largest estimated costs and benefits;
- (c) apply adjustments to the reference case for the generally cumulative effect of the factors applicable to the other reporting entity groups.

854 The reference cases and adjustments for each component of implementation are summarised in Table 46.

**Table 46: Reference cases and discounts/loadings by implementation component**

Component	Reference case and adjustment factors																									
ASIC data elements	<p><i>Reference case:</i> Large-scale, broad asset classes, self-reporting, internationally connected, sell-side reporting entity</p> <p><i>Upfront effort:</i> 3.00 FTE for 1 year</p> <p><i>Adjustment multiplier factors:</i></p> <table border="1"> <tbody> <tr> <td rowspan="4">Scale</td> <td>Large</td> <td>x 1.00</td> </tr> <tr> <td>Medium</td> <td>x 0.50</td> </tr> <tr> <td>Small</td> <td>x 0.25</td> </tr> <tr> <td>Very Small</td> <td>x 0.10</td> </tr> <tr> <td rowspan="2">Breadth</td> <td>3–5 asset classes</td> <td>x 1.00</td> </tr> <tr> <td>1–2 asset classes</td> <td>x 0.50</td> </tr> <tr> <td rowspan="2">Nature of Reporting</td> <td>Self</td> <td>x 1.00</td> </tr> <tr> <td>Delegated</td> <td>x 0.50</td> </tr> <tr> <td rowspan="2">Internationally connected</td> <td>Yes</td> <td>x 1.00</td> </tr> <tr> <td>No</td> <td>x 2.00</td> </tr> </tbody> </table>		Scale	Large	x 1.00	Medium	x 0.50	Small	x 0.25	Very Small	x 0.10	Breadth	3–5 asset classes	x 1.00	1–2 asset classes	x 0.50	Nature of Reporting	Self	x 1.00	Delegated	x 0.50	Internationally connected	Yes	x 1.00	No	x 2.00
Scale	Large	x 1.00																								
	Medium	x 0.50																								
	Small	x 0.25																								
	Very Small	x 0.10																								
Breadth	3–5 asset classes	x 1.00																								
	1–2 asset classes	x 0.50																								
Nature of Reporting	Self	x 1.00																								
	Delegated	x 0.50																								
Internationally connected	Yes	x 1.00																								
	No	x 2.00																								

Assumptions:

- Costs decline with scale, breadth and nature of reporting
- Costs increase if not internationally connected as there are no synergies applicable from implementation work related to other jurisdictions



Component	Reference case and adjustment factors
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UTI

*Reference case:* Large-scale, broad asset classes, self-reporting, internationally connected, sell-side reporting entity

*Upfront effort:* 0.90 FTE for 1 year, including 0.15 FTE dealing with UTI not received in first year

*Adjustment multiplier factors:*

Scale	Large	x 1.00
	Medium	x 0.50
	Small	x 0.25
	Very Small	x 0.10
Breadth	n/a	n/a
Nature of Reporting	n/a	n/a
Internationally connected	n/a	n/a
Already UTI pairing	Yes	x 0.50
	No	x 1.00
Type of reporting entity	Sell-side	x 1.00
	Buy-side	x 0.25

Assumptions:

- Costs decline with scale but are unrelated to breadth, nature of reporting or international connectedness
- Costs decline if a reporting entity is already pairing UTIs as indicative of an existing UTI transmission and receipt-handling capability—adjustments for the UTI pairers in a reporting entity group are averaged over the whole group
- Costs decline for buy-side entities as they are expected to be commonly receivers of UTIs and uncommonly generators and transmitters of UTIs

Component	Reference case and adjustment factors
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UPI *Reference case:* Large-scale, broad asset classes, self-reporting, internationally connected, sell-side reporting entity

*Upfront effort:* 0.50 FTE for 1 year.

*Adjustment multiplier or additive factors:*

Scale	Large	x 1.00
	Medium	x 0.50
	Small	x 0.25
	Very Small	x 0.10
Breadth (proxied by UPI user fees)	Large scale	A\$8,382 pa
	Medium scale	A\$2,500 pa
	Small scale	A\$nil
	Very Small scale	A\$nil
Nature of Reporting	n/a	n/a
Internationally connected	n/a	n/a
Already UTI pairing	Yes	x 0.50
	No	x 1.00
Type of reporting entity	Sell-side	x 1.00
	Buy-side	x 0.25

Assumptions:

- Costs decline with scale but are unrelated to the nature of reporting or international connectedness
- Costs are related to breadth of asset class reporting and the need to handle many UPIs—this is proxied by assuming that large scale reporting entities will be UPI 'Power' users and medium-scale reporting entities will be UPI 'Standard' users, with user fees as DSB's illustrative fees: see Table 19

Note: This conservatively disregards that UPI handling costs for multi-jurisdictional reporters are more properly multi-jurisdictional costs and marginal ASIC reporting cost assumptions should be reduced

- Costs decline if a reporting entity is already pairing *UTIs* as indicative of an existing *UTI* transmission and receipt-handling capability that may be adapted as a *UPI* receipt-handling capability
- Costs decline for buy-side entities as they are expected to be commonly receivers of UPIs and uncommonly creators and transmitters of UTIs

Component	Reference case and adjustment factors
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LEI *Reference case:* Reporting entity reporting > 250 unique AVOX IDs.  
*Upfront effort:* 0.50 FTE for 1 year.  
*Adjustment multiplier or additive factors:*

Scale of AVOX ID reporting	Large ≥250	x 1.00
	100≤ Medium <250	x 0.50
	Small <100	x 0.25

Assumptions:

- Costs decline with scale of current AVOX ID, reflecting lesser outreach and counterparty static data change effort

ISO 20022 *Reference case:* Large-scale, broad asset classes, self-reporting, internationally connected, sell-side reporting entity.  
*Upfront effort:* 1.50 FTE for 1 year  
*Adjustment multiplier factors:*

Scale	Large	x 1.00
	Medium	x 0.50
	Small	x 0.25
	Very Small	x 0.10
Breadth	3–5 asset classes	x 1.00
	1-2 asset classes	x 0.50
Nature of Reporting	Self	x 1.00
	Delegated	x 0.00
Internationally connected	Yes	x 1.00
	No	x 2.00

Assumptions:

- Costs decline with scale, breadth and nature of reporting
- Costs reduce to zero for delegating reporters as the delegate will form and submit ISO 20022 reporting messages
- Costs increase if not internationally connected as there are no synergies applicable from implementation work related to other jurisdictions

Component	Reference case and adjustment factors				
Savings from reduced bespoke jurisdictional systems	<p><i>Reference case:</i> Self-reporting, internationally connected reporting entity</p> <p><i>Annual savings:</i> 10% of ASIC data element implementation cost</p> <p><i>Adjustment multiplier or additive factors:</i></p> <table border="1" style="margin-left: 40px;"> <tr> <td>Self-reporting &amp; internationally connected</td> <td>x 0.00</td> </tr> <tr> <td>Delegated reporting</td> <td>x 0.25</td> </tr> </table> <p>Assumptions:</p> <ul style="list-style-type: none"> <li>Eliminating jurisdictional-specific reporting systems or sub-systems or narrowing the differences between such systems creates savings for self-reporting, internationally connected reporting entities</li> <li>Delegating reporting entities achieve lesser savings with reporting by counterparties continuing as a transaction service and any cost recovery by reporting services providers offset by nil fee inflation</li> <li>Minimum non-zero savings as \$1,000 pa</li> </ul>	Self-reporting & internationally connected	x 0.00	Delegated reporting	x 0.25
Self-reporting & internationally connected	x 0.00				
Delegated reporting	x 0.25				

855 For the above implementation components in their various combinations, we identify 31 distinct groups of reporting entity profiles as set out in Table 47.

**Table 47: Reporting entity group profiles**

Group	Scale	No. of asset classes	Reporting nature	International	Type
L1	Large	3-5	Self	Yes	Sell-side
L2	Large	3-5	Delegated	Yes	Sell-side
L3	Large	1-2	Self	Yes	Sell-side
M1	Medium	3-5	Self	Yes	Sell-side
M2	Medium	3-5	Self	Yes	Buy-side
M3	Medium	3-5	Delegated	Yes	Sell-side
M4	Medium	3-5	Delegated	Yes	Buy-side
M5	Medium	1-2	Self	No	Sell-side
M6	Medium	1-2	Self	Yes	Sell-side
M7	Medium	1-2	Delegated	Yes	Sell-side
M8	Medium	1-2	Delegated	Yes	Buy-side

Group	Scale	No. of asset classes	Reporting nature	International	Type
S1	Small	3–5	Self	No	Sell-side
S2	Small	3–5	Self	No	Buy-side
S3	Small	3–5	Self	Yes	Buy-side
S4	Small	3–5	Delegated	Yes	Sell-side
S5	Small	3–5	Delegated	Yes	Buy-side
S6	Small	1–2	Self	No	Sell-side
S7	Small	1–2	Self	No	Buy-side
S8	Small	1–2	Self	Yes	Sell-side
S9	Small	1–2	Self	Yes	Buy-side
S10	Small	1–2	Delegated	Yes	Sell-side
S11	Small	1–2	Delegated	Yes	Buy-side
VS1	Very small	3–5	Self	Yes	Sell-side
VS2	Very small	3–5	Delegated	Yes	Sell-side
VS3	Very small	3–5	Delegated	Yes	Buy-side
VS4	Very small	1–2	Self	No	Sell-side
VS5	Very small	1–2	Self	No	Buy-side
VS6	Very small	1–2	Self	Yes	Sell-side
VS7	Very small	1–2	Self	Yes	Buy-side
VS8	Very small	1–2	Delegated	Yes	Sell-side
VS9	Very small	1–2	Delegated	Yes	Buy-side

856 Taking into account the above implementation components, reference cases and adjustments and using \$73.05 as the hourly labour cost specified by [The Office of Best Practice Regulation](#) for regulatory burden measurement, our estimates of the regulatory compliance burden of implementing the draft amended ASIC Rules for each group of reporting entity is set out in Table 48.

Note: See OBPR, *Regulatory Burden Measurement Framework*, March 2020.

**Table 48: Reporting entity group first year and ongoing costs per reporting entity**

Group	First year costs—ASIC data elements	First year costs—UTI*	First year costs—UPI*	First year costs—ISO 20022	Total first year costs	Ongoing costs—UPI fees	Ongoing costs—System synergies	Total ongoing costs
L1	\$456,000	\$68,000	\$76,000	\$228,000	\$828,000	\$8,400	(\$45,600)	(\$37,200)
L2	\$228,000	\$137,000	\$76,000	\$0	\$441,000	\$8,400	(\$5,700)	\$2,700
L3	\$228,000	\$96,000	\$76,000	\$114,000	\$514,000	\$8,400	(\$22,800)	(\$14,400)
M1	\$228,000	\$34,000	\$38,000	\$57,000	\$357,000	\$2,500	(\$22,800)	(\$20,300)
M2	\$228,000	\$17,000	\$9,000	\$57,000	\$311,000	\$600	(\$22,800)	(\$22,200)
M3	\$114,000	\$68,000	\$38,000	\$0	\$220,000	\$2,500	(\$2,800)	(\$300)
M4	\$114,000	\$9,000	\$5,000	\$0	\$128,000	\$600	(\$2,800)	(\$2,200)
M5	\$228,000	\$51,000	\$38,000	\$114,000	\$431,000	\$2,500	\$0	\$2,500
M6	\$114,000	\$49,000	\$38,000	\$57,000	\$258,000	\$2,500	(\$11,400)	(\$8,900)
M7	\$57,000	\$68,000	\$38,000	\$0	\$163,000	\$2,500	(\$1,400)	\$1,100
M8	\$57,000	\$9,000	\$5,000	\$0	\$70,000	\$600	(\$1,400)	(\$800)
S1	\$228,000	\$17,000	\$19,000	\$57,000	\$321,000	\$0	(\$0)	(\$0)
S2	\$228,000	\$4,000	\$2,000	\$57,000	\$292,000	\$0	(\$0)	(\$0)
S3	\$114,000	\$4,000	\$2,000	\$28,000	\$149,000	\$0	(\$11,400)	(\$11,400)
S4	\$57,000	\$34,000	\$19,000	\$0	\$110,000	\$0	(\$1,400)	(\$1,400)
S5	\$57,000	\$5,000	\$3,000	\$0	\$65,000	\$0	(\$1,400)	(\$1,400)

Group	First year costs—ASIC data elements	First year costs—UTI*	First year costs—UPI*	First year costs—ISO 20022	Total first year costs	Ongoing costs—UPI fees	Ongoing costs—System synergies	Total ongoing costs
S6	\$114,000	\$32,000	\$19,000	\$57,000	\$222,000	\$0	(\$0)	(\$0)
S7	\$114,000	\$8,000	\$4,000	\$57,000	\$183,000	\$0	(\$0)	(\$0)
S8	\$57,000	\$30,000	\$19,000	\$28,000	\$134,000	\$0	(\$5,700)	(\$5,700)
S9	\$57,000	\$7,000	\$4,000	\$28,000	\$97,000	\$0	(\$5,700)	(\$5,700)
S10	\$28,000	\$31,000	\$19,000	\$0	\$79,000	\$0	(\$1,000)	(\$1,000)
S11	\$28,000	\$6,000	\$3,000	\$0	\$38,000	\$0	(\$1,000)	(\$1,000)
VS1	\$46,000	\$7,000	\$14,000	\$11,000	\$77,000	\$0	(\$4,600)	(\$4,600)
VS2	\$23,000	\$14,000	\$14,000	\$0	\$50,000	\$0	(\$1,000)	(\$1,000)
VS3	\$23,000	\$2,000	\$2,000	\$0	\$28,000	\$0	(\$1,000)	(\$1,000)
VS4	\$46,000	\$14,000	\$14,000	\$23,000	\$96,000	\$0	(\$0)	(\$0)
VS5	\$46,000	\$3,000	\$3,000	\$23,000	\$75,000	\$0	(\$0)	(\$0)
VS6	\$23,000	\$14,000	\$14,000	\$11,000	\$62,000	\$0	(\$2,300)	(\$2,300)
VS7	\$41,000	\$3,000	\$3,000	\$11,000	\$41,000	\$0	(\$2,300)	(\$2,300)
VS8	\$11,000	\$14,000	\$14,000	\$0	\$39,000	\$0	(\$1,000)	(\$1,000)
VS9	\$11,000	\$3,000	\$3,000	\$0	\$17,000	\$0	(\$1,000)	(\$1,000)

\* Includes adjustment for the extent of UTI pairing within the group.

857 Only some reporting entities may need to engage with some of their counterparties to communicate LEI requirements and possibly assist in converting from AVOX ID use to LEI use. In our analysis, these relevant reporting entities are only in seven of the groups and are not always all of the entities in a group. Our estimates of the first year costs of converting from AVOX ID use to LEI use, averaged across the relevant reporting entities in a group, is set out in Table 49.

**Table 49: Average AVOX ID to LEI costs per relevant reporting entity**

Group	AVOX ID to LEI costs
L1	\$50,000
L2	\$25,000
L3	\$38,000
M8	\$19,000
S7	\$28,000
S9	\$19,000
VS4	\$19,000

### Regulatory compliance burden of alternative options

858 We have also estimated the regulatory compliance burden of two alternative options for implementing changes to simplify the ASIC Rules, and the option of not implementing any changes to the current ASIC Rules:

- (a) *Option 2*—implement the ASIC data elements, UTI, UPI and LEI as proposed in this consultation paper but do not implement ISO 20022 report messaging;
- (b) *Option 3*—implement the ASIC data elements, UTI and LEI as proposed in this consultation paper but implement UPI as a ‘conversion obligation’ imposed on derivative trade repositories, add-back additional ‘non-UPI’ data elements as ASIC data elements and do not implement ISO 20022 report messaging; and
- (c) *Option 4*—remake the ASIC Rules without any changes to the current ASIC Rules (status quo).

859 In relation to Option 2, the G20 initiatives and the FSB’s responses for internationally harmonised approaches to UTI, UPI, the data elements and LEI have a number of benefits, including improving the capability for cross-border aggregation of OTC derivatives transaction data. International



conformance to the use of ISO 20022 report messaging is likely highly beneficial, but not essential, as an enabler of ready cross-border aggregation of OTC derivatives transaction data.

860 Relative to Option 1, reporting entities would not incur the first year costs of implementing ISO 20022 but would also not receive the ongoing system synergies cost savings.

861 We further assume that reporting entities would have fewer bespoke systems to maintain at higher costs per system, as ISO 20022 reporting in other jurisdictions becomes the norm—we assume that the cost of maintaining an ASIC bespoke reporting system would rise to be 50% higher than the system synergies cost savings otherwise available.

862 We think that this approach is also applicable to reporting entities that use delegated reporting, as the delegates would likewise be required to maintain fewer bespoke systems at higher costs per system.

863 Our estimates of the regulatory compliance burden of implementing Option 2 *relative to Option 1* for groups of reporting entities is set out in Table 50.

**Table 50: Regulatory compliance burden by reporting entity groups—Option 2 relative to Option 1**

Group	ISO 20022—avoided first year costs	System synergies—forgone ongoing savings plus maintenance cost increase
L1	\$227,900	(\$68,400)
L2	\$0	(\$8,500)
L3	\$114,000	(\$34,200)
M1	\$57,000	(\$34,200)
M2	\$57,000	(\$34,200)
M3	\$0	(\$4,300)
M4	\$0	(\$4,300)
M5	\$114,000	(\$0)
M6	\$57,000	(\$17,100)
M7	\$0	(\$2,100)
M8	\$0	(\$2,100)

Group	ISO 20022—avoided first year costs	System synergies—forgone ongoing savings plus maintenance cost increase
S1	\$57,000	(\$0)
S2	\$57,000	(\$0)
S3	\$28,500	(\$17,100)
S4	\$0	(\$2,100)
S5	\$0	(\$2,100)
S6	\$57,000	(\$0)
S7	\$57,000	(\$0)
S8	\$28,500	(\$8,500)
S9	\$28,500	(\$8,500)
S10	\$0	(\$1,500)
S11	\$0	(\$1,500)
VS1	\$11,400	(\$6,800)
VS2	\$0	(\$1,500)
VS3	\$0	(\$1,500)
VS4	\$22,800	(\$0)
VS5	\$22,800	(\$0)
VS6	\$11,400	(\$3,400)
VS7	\$11,400	(\$3,400)
VS8	\$0	(\$1,500)
VS9	\$0	(\$1,500)

864 From Table 50, over a 10-year period, seven groups of reporting entities would have lower costs under Option 2 compared to Option 1, with an average cost reduction of \$5,535 per annum. However, 24 groups of reporting entities would have higher costs, with an average cost increase of \$8,637 per annum.

865 In relation to Option 3, it is possible that the product identifier requirements would not be the UPI in a jurisdiction, provided the UPI was supported when there is cross-border access to that jurisdiction's trade repository data to

better facilitate the cross-border aggregation of OTC derivatives transaction data.

- 866 This is not our preferred option and is not proposed in this consultation paper, but a means to achieve this could be to require that derivative trade repositories, whenever access to the trade repository data is provided to another jurisdiction, convert the product identifiers to UPIs when they provide the data.
- 867 A product identifier would be reported according to, for example, the current non-UPI product taxonomy. However, each transaction report from reporting entities would need to include all of the information that a derivative trade repository required in order to obtain a UPI for that transaction report. For this, a number of data elements that have been removed from the draft amended ASIC Rules—as otherwise duplicative of ‘UPI-embedded information’—would need to be added back to the rules.
- 868 In addition to the regulatory burden costs of not implementing ISO 20022 report messages per Option 2, we think that the implementation elements of Option 3 for reporting entities would be:
- (a) *ASIC data elements*—the add-back data elements are not new data elements that require sourcing but would no longer be data elements that can be removed from reporting. At least one additional data element would be required to be reported—the valuation or payoff descriptor that is a reference data element in the UPI system;
  - (b) *UPI*—many reporting entities would no longer require systems and processes to obtain UPIs though some may need to do so for reporting in other jurisdictions, including reporting as a delegate, or to provide a UPI to a client as may be permitted by the UPI user policies and agreements.
- 869 A derivative trade repository would need to implement systems and/or processes to obtain and handle UPIs. At this time, we think that such systems and/or processes would be solely in support of a requirement related to reporting under the ASIC Rules. They would also need to be applicable to any of the reports of any ASIC reporting entity—in our experience, and as we understand it more broadly, cross-border trade repository data is made available to regulators on a variety of factors, such as underlier and currency of notional principal, which are independent of the domiciles of the counterparties to the transaction and whether the transaction is only reported in this jurisdiction.
- 870 We have estimated the regulatory compliance burden of implementing Option 3 *relative to Option 1* assuming for:

- (a) *ISO 20022 report messaging*—the same regulatory compliance burden as Option 2 for this element of not implementing ISO 20022 report messaging;
- (b) *ASIC data elements*—any savings in not removing ‘UPI-embedded’ data elements are equally offset by the need to source and report the additional reference data elements in the UPI systems;
- (c) *UPI (direct)*—large-scale reporting entities would still require UPI handling capabilities and continue to be ‘Power users’ under the UPI system;
- (d) *UPI (indirect)*—a derivative trade repository would have first year and ongoing costs equal to the aggregate of these costs under Option 1 for large-scale reporting entities and would increase fees to all reporting entities in proportion to their Option 1 scale and breadth costs for the ASIC data elements (as a proxy for the ongoing scale and breadth of entities reporting).

871 Our estimates of the regulatory compliance burden of implementing Option 3 *relative to Option 1* for groups of reporting entities is set out in Table 51.

**Table 51: Regulatory compliance burden by reporting entity groups—Option 3 relative to Option 1**

Group	ISO 20022—avoided first year costs	UPI (direct)—avoided first year costs	UPI (direct)—avoided ongoing costs	System synergies—forgone ongoing savings plus maintenance cost increase	UPI (indirect)—increased TR fees ongoing costs
L1	\$228,000	\$0	\$0	(\$68,400)	(\$7,100)
L2	\$0	\$0	\$0	(\$8,500)	(\$7,100)
L3	\$114,000	\$0	\$0	(\$34,200)	(\$3,600)
M1	\$57,000	\$38,000	\$2,500	(\$34,200)	(\$3,600)
M2	\$57,000	\$9,000	\$600	(\$34,200)	(\$3,600)
M3	\$0	\$38,000	\$2,500	(\$4,300)	(\$3,600)
M4	\$0	\$5,000	\$600	(\$4,300)	(\$3,600)
M5	\$114,000	\$38,000	\$2,500	(\$0)	(\$1,800)
M6	\$57,000	\$38,000	\$2,500	(\$17,100)	(\$1,800)
M7	\$0	\$38,000	\$2,500	(\$2,100)	(\$1,800)
M8	\$0	\$5,000	\$600	(\$2,100)	(\$1,800)
S1	\$57,000	\$19,000	\$0	(\$0)	(\$1,800)
S2	\$57,000	\$2,000	\$0	(\$0)	(\$1,800)
S3	\$28,500	\$2,000	\$0	(\$17,100)	(\$1,800)
S4	\$0	\$19,000	\$0	(\$2,100)	(\$1,800)

Group	ISO 20022—avoided first year costs	UPI (direct)—avoided first year costs	UPI (direct)—avoided ongoing costs	System synergies—forgone ongoing savings plus maintenance cost increase	UPI (indirect)—increased TR fees ongoing costs
S5	\$0	\$3,000	\$0	(\$2,100)	(\$1,800)
S6	\$57,000	\$19,000	\$0	(\$0)	(\$900)
S7	\$57,000	\$4,000	\$0	(\$0)	(\$900)
S8	\$28,500	\$19,000	\$0	(\$8,500)	(\$900)
S9	\$28,500	\$4,000	\$0	(\$8,500)	(\$900)
S10	\$0	\$19,000	\$0	(\$1,500)	(\$900)
S11	\$0	\$3,000	\$0	(\$1,500)	(\$900)
VS1	\$11,000	\$14,000	\$0	(\$6,800)	(\$700)
VS2	\$0	\$14,000	\$0	(\$1,500)	(\$700)
VS3	\$0	\$2,000	\$0	(\$1,500)	(\$700)
VS4	\$23,000	\$14,000	\$0	(\$0)	(\$400)
VS5	\$23,000	\$14,000	\$0	(\$0)	(\$400)
VS6	\$11,000	\$14,000	\$0	(\$3,400)	(\$400)
VS7	\$11,000	\$3,000	\$0	(\$3,400)	(\$400)
VS8	\$0	\$14,000	\$0	(\$1,500)	(\$400)
VS9	\$0	\$3,000	\$0	(\$1,500)	(\$400)

- 872 From Table 51, over a 10-year period, eight groups of reporting entities would have lower costs under Option 3 compared to Option 1, with an average cost reduction of \$5,718 per annum. However, 23 groups of reporting entities would have higher costs, with an average cost increase of \$9,448 per annum.
- 873 We also think that Option 3 is a complex option with considerable uncertainty about the technical feasibility of implementing a product identifier-to-UPI conversion process whenever access to the trade repository data is provided to another jurisdiction's regulator.
- 874 In relation to Option 4, which is not our preferred option, the ASIC Rules would not be further harmonised to international standards any more than they are in the current ASIC Rules, which is as:
- (a) *UTI*—at item 1 of Table S2.1(1) 'Common data', the unique transaction identifier is defined as '[t]he universal transaction identifier for the Reportable Transaction' followed by provisions applicable if no universal transaction identifier is available;
  - (b) *UPI*—at item 2 of Table S2.1(1) 'Common data', the unique product identifier is defined as '[t]he universal product identification code for the Derivative to which the Reportable Transaction relates' followed by provisions applicable if no universal product identification code is available;
  - (c) *LEI*—for the various entity identifier data elements in Table S2.1(1) 'Common data', an LEI is specified, but if an LEI is not available for an entity other types of entity identifiers may be reported; and
  - (d) *ASIC data elements*—there is limited alignment of the ASIC data elements with the CDE Guidance and the data elements of other jurisdictions.
- 875 The UTI of the current ASIC Rules could be read as referring to a UTI as intended by the UTI Guidance, but unchanged ASIC Rules would not include the requirements of Rule 2.2.9, in particular the requirement on reporting entities to generate a UTI and provide it to other counterparties.
- 876 In the absence of an ASIC Rules requirement, reporting entities could adopt common conventions that would provide for UTI generation in the manner intended by the UTI Guidance, but we think there is a material risk that there would not be a comprehensive adoption of such conventions. This would lead to a lack of cohesion, predictability and efficiency in UTI generation and reporting, particularly for cross-border transactions.
- 877 Similarly, the UPI of the current ASIC Rules could be read as referring to a UPI code as intended by the UPI Guidance and in accordance with ISO 4914, and industry stakeholders—reporting entities and derivative trade repositories

—could adopt using UPI codes from the UPI system. However, there is a lack of certainty that a ‘universal product identification code’ refers to a UPI code from the UPI system and industry stakeholders may decide to continue with existing reporting practices of UPIs.

878 If UPI codes from the UPI system was not adopted for reporting, this would likely lead to:

- (a) the need for reporting entities to continue to report data elements that are otherwise embedded in the reference data for a UPI code;
- (b) the need for reporting entities to continue to use and maintain a bespoke system for transaction reporting under the ASIC Rules; and
- (c) a material barrier to the ready aggregation of cross-jurisdictional data.

879 In relation to the reporting of LEIs as entity identifiers, current reporting practices indicate that an LEI is not the voluntary first choice for a material number of reporting entities as the entity identifier of their counterparties. In the absence of an ASIC Rules requirement, it seems unlikely that LEIs would be universally reported as entity identifiers.

880 Finally, in the current ASIC Rules there is limited alignment of the ASIC data elements with the CDE Guidance and the data elements of other jurisdictions. In addition to these ASIC data elements being less than fit-for-purpose for our regulatory purposes, a very significant issue with this misalignment is the need for reporting entities to continue to use and maintain a bespoke system for transaction reporting under the ASIC Rules.

881 The [Regulation Impact Statement](#) accompanying the introduction of the current ASIC Rules described a number of potential negative impacts of not implementing a transaction reporting rule framework and allowing the industry to self-regulate. These included potential negative impacts of market access, increased implementation and compliance burdens and regulatory and legal uncertainty related to remaining unaligned with derivative transaction reporting changes introduced in other jurisdictions.

882 This is also relevant to the current circumstances of the adoption of the international standards for UTI, UPI, LEI and data elements for derivatives transaction reporting in other jurisdictions, but which, under Option 4, would not be adopted, or fully adopted, in this jurisdiction.



## Appendix 1: Data elements by rules version

- 883 Table 52 lists the data elements in the current ASIC Rules and their equivalent, or near equivalent, in the draft remade ASIC Rules and the draft amended ASIC Rules. Please note that:
- the data elements are listed in the order they appear in the current ASIC Rules;
  - a change in ‘Table’ is indicated by an inserted table heading row;
  - some data elements of the draft amended ASIC Rules (e.g. Notional amount—Leg 1) are listed multiple times because they map from multiple data elements in the current ASIC Rules and the draft remade ASIC Rules but are only one data element in the draft amended ASIC Rules; and
  - new data elements in the draft amended ASIC Rules that are not equivalent, or near equivalent, to a data element in the current ASIC Rules or the draft remade ASIC Rules are listed at the end of Table 52.

**Table 52: Data elements for each version of the rules**

<b>Current ASIC Rules</b> <b>From now</b> <b>to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023</b> <b>to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Table S2.1(1) Common data	Table S1.1(1) Common data	Table S1.1(1) Transaction information
Unique transaction identifier	Unique transaction identifier	Unique transaction identifier
Unique product identifier	Unique product identifier	Unique product identifier
Contract type	Not applicable	Not applicable
Underlying	Underlying	Underlier ID—non-UPI for commodity & equity asset classes only
Not applicable	Not applicable	Underlier ID source—non-UPI for commodity & equity asset classes only
Not applicable	Not applicable	Reporting Entity
Identifier of Reporting Counterparty	Counterparty 1	Counterparty 1
Name of Reporting Counterparty	Not applicable	Not applicable

<b>Current ASIC Rules</b> <b>From now</b> <b>to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023</b> <b>to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Identifier of Non-Reporting Counterparty	Counterparty 2	Counterparty 2
Not applicable	Not applicable	Counterparty 2 identifier type
Not applicable	Not applicable	Country of Counterparty 2
Name of Non-Reporting Counterparty	Not applicable	Not applicable
Trading capacity of Reporting Counterparty	Not applicable	Not applicable
Identifier of beneficiary	Beneficiary 1	Beneficiary 1
Not applicable	Not applicable	Beneficiary 1 identifier type
Name of beneficiary or structure	Not applicable	Not applicable
Identifier of person making report	Report submitting entity	Report submitting entity
Name of person making report	Not applicable	Not applicable
Domicile of Reporting Counterparty	Not applicable	Not applicable
Identifier of broker	Broker	Broker
Name of broker	Not applicable	Not applicable
Not applicable	Not applicable	Execution agent of Counterparty 1
Whether the Derivative has been centrally cleared (to be amended if cleared after initial report made)	Cleared	Cleared
Name of central clearing facility	Central counterparty	Central counterparty
Identifier of clearing member	Clearing member	Clearing member
Name of clearing member	Not applicable	Not applicable
Whether the Derivative has been confirmed	Not applicable	Not applicable
Form of confirmation	Not applicable	Not applicable
Confirmation timestamp	Not applicable	Not applicable
Execution venue	Platform identifier	Platform identifier

<b>Current ASIC Rules</b> <b>From now to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023 to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Master agreement type	Not applicable	Not applicable
Master agreement date	Not applicable	Not applicable
Derivative-effective date or start date	Effective date	Effective date
Maturity, termination or end date including end date of swap underlying a swaption	Expiration date including end date of swap underlying a swaption	Expiration date excluding end date of swap underlying a swaption including option expiration date
Not applicable	Not applicable	Maturity date of the underlying
Delivery type	Not applicable	Not applicable
		Table S1.1(2) Valuation information
Not applicable	Not applicable	Unique transaction identifier
Not applicable	Not applicable	Reporting Entity
Not applicable	Not applicable	Counterparty 1
Not applicable	Not applicable	Counterparty 2
Mark-to-market/mark-to-model/other value of Derivative	Valuation amount	Valuation amount
Currency used for mark-to-market/mark-to-model/other valuation	Valuation currency	Valuation currency
Valuation type (mark-to-market/mark-to-model/other)	Valuation method	Valuation method
Not applicable	Not applicable	Valuation timestamp
Not applicable	Not applicable	Delta
Not applicable	Not applicable	Next floating reference reset date—Leg 1 Next floating reference reset date—Leg 2
Not applicable	Not applicable	Action type
Not applicable	Not applicable	Reporting timestamp
Not applicable	Not applicable	Report submitting entity

<b>Current ASIC Rules</b> <b>From now to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023 to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
		Table S1.1(1) Transaction information
Counterparty side (buy/sell)	Counterparty side (buy/sell)	Direction 1
Not applicable	Not applicable	Direction 2—Leg 1 Direction 2—Leg 2
	Table S1.1(3) Equity derivative and credit derivative data	
Basis	Day count convention—Leg 2	Day count convention—Leg 2 for all asset classes
	Table S1.1(2) Commodity derivative data	
Settlement rate or index	Settlement rate or index	Not applicable
	Table S1.1(3) Equity derivative and credit derivative data	
Settlement rate or index	Identifier of the floating rate—Leg 2	Identifier of the floating rate—Leg 2 for all asset classes, except interest rates
Not applicable	Not applicable	Floating rate reference period—Leg 2 Floating rate reference period multiplier—Leg 2
	Table S1.1(1) Common data	
Expiry conventions/cut	Not applicable	Not applicable
Execution timestamp	Execution timestamp	Execution timestamp
Not applicable	Not applicable	Event timestamp
Clearing timestamp	Clearing timestamp	Clearing timestamp
Reporting timestamp	Reporting timestamp	Reporting timestamp
		Table S1.1(3) Collateral information
Not applicable	Not applicable	Unique transaction identifier
Not applicable	Not applicable	Reporting Entity
Not applicable	Not applicable	Counterparty 1

<b>Current ASIC Rules</b> <b>From now to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023 to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Not applicable	Not applicable	Counterparty 2
Not applicable	Not applicable	Collateral timestamp
Collateralisation	Collateralisation category	Collateralisation category
Collateral portfolio	Collateral portfolio indicator	Collateral portfolio indicator
Not applicable	Not applicable	Portfolio containing non-reportable component indicator
Collateral portfolio code	Collateral portfolio code	Collateral portfolio code (initial margin) Collateral portfolio code (variation margin)
Value of collateral	Value of collateral	Initial margin posted by the Reporting Entity (pre-haircut) Initial margin posted by the Reporting Entity (post-haircut) Variation margin posted by the Reporting Entity (pre-haircut)
Not applicable	Not applicable	Initial margin collected by the Reporting Entity (pre-haircut) Initial margin collected by the Reporting Entity (post-haircut) Variation margin collected by the Reporting Entity (pre-haircut)
Currency of collateral value	Currency of collateral value	Currency of initial margin posted Currency of variation margin posted
Not applicable	Not applicable	Currency of initial margin collected Currency of variation margin collected
Not applicable	Not applicable	Action type
Not applicable	Not applicable	Reporting timestamp
Not applicable	Not applicable	Report submitting entity
		Table S1.1(1) Transaction information
Option type	Option type	Not applicable—in UPI

<b>Current ASIC Rules</b> <b>From now to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023 to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Option expiration date	Option expiration date	Not applicable—reported in Expiration date
Option premium	Option premium amount	Option premium amount
Option premium currency	Option premium currency	Option premium currency
Not applicable	Not applicable	Option premium payment date
Option style	Option style	Not applicable—in UPI
Strike price (cap/floor rate)	Strike price	Strike price
Not applicable	Not applicable	Strike price currency/currency pair Strike price notation
Barrier type	Not applicable	Not applicable
Barrier value	Not applicable	Not applicable
	Table S1.1(3) Equity derivative and credit derivative data	
Rate reset frequency	Rate reset frequency	Not applicable
	Table S1.1(1) Common data	
Hedging transaction	Not applicable	Not applicable
Action type	Action type	Action type
Not applicable	Not applicable	Event type
Table S2.1(2) Commodity derivative data	Table S2.1(2) Commodity derivative data	
Notional amount	Notional amount—Leg 1	Notional amount—Leg 1
Not applicable	Not applicable	Notional amount—Leg 2
Notional currency	Notional currency—Leg 1	Notional currency—Leg 1
Not applicable	Not applicable	Notional currency—Leg 2
Grade	Not applicable	Not applicable
Amount of upfront payment, if any	Other payment amount upfront payments only	Other payment amount upfront & unwind payments

<b>Current ASIC Rules</b> <b>From now to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023 to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Payment frequency	Payment frequency	Payment frequency period—Leg 1 Payment frequency period multiplier—Leg 1
Quantity unit	Quantity unit of measure	Quantity unit of measure—Leg 1
Not applicable	Not applicable	Quantity unit of measure—Leg 2
Quantity	Quantity	Notional quantity—Leg 1
Not applicable	Not applicable	Notional quantity—Leg 2
Quantity frequency	Not applicable	Not applicable
Total quantity	Total quantity	Total notional quantity—Leg 1
Not applicable	Not applicable	Total notional quantity—Leg 2
Delivery point or zone	Not applicable	Not applicable
Delivery start date and time	Not applicable	Not applicable
Delivery end date and time	Not applicable	Not applicable
Derivative capacity	Not applicable	Not applicable
Commodity base	Not applicable	Not applicable
Table S2.1(3) Equity derivative and credit derivative data	Table S1.1(3) Equity derivative and credit derivative data	
Identifier of counterparty purchasing protection	Not applicable	Not applicable
Name of counterparty purchasing protection	Not applicable	Not applicable
Identifier of counterparty selling protection	Not applicable	Not applicable
Name of counterparty selling protection	Not applicable	Not applicable
Information identifying the reference entity	Not applicable	Not applicable
Name of the reference entity	Not applicable	Not applicable
Notional amount	Notional amount—Leg 1	Notional amount—Leg 1 Notional amount—Leg 2

<b>Current ASIC Rules</b> <b>From now to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023 to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Not applicable	Not applicable	Total notional quantity—Leg 1 Total notional quantity—Leg 2 Notional quantity—Leg 1 Notional quantity—Leg 2 Quantity unit of measure—Leg 1 Quantity unit of measure—Leg 2
Notional currency	Notional currency—Leg 1	Notional currency—Leg 1
Not applicable	Not applicable	Notional currency—Leg 2
Amount of upfront payment, if any	Other payment amount upfront payments only	Other payment amount upfront & unwind payments
Description of the payment stream of Reporting Counterparty	Not applicable	Not applicable
Description of the payment stream of Non-Reporting Counterparty	Not applicable	Not applicable
Payment frequency	Payment frequency	Payment frequency period—Leg 1 Payment frequency period multiplier—Leg 1
Not applicable	Not applicable	CDS index attachment point CDS index detachment point Index factor
Table S2.1(4) Foreign exchange derivative data	Table S1.1(4) Foreign exchange derivative data	
Notional amount 1	Notional amount—Leg 1	Notional amount—Leg 1
Notional amount 2	Notional amount—Leg 2	Notional amount—Leg 2
Currency 1	Currency 1	Notional currency—Leg 1
Currency 2	Currency 2	Notional currency—Leg 2
Not applicable	Not applicable	Call amount Put amount Call currency Put currency
Exchange rate	Exchange rate	Exchange rate
Not applicable	Not applicable	Exchange rate basis
Forward exchange rate	Not applicable	Not applicable



<b>Current ASIC Rules</b> <b>From now to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023 to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Table S2.1(5) Interest rate derivative data	Table S1.1(5) Interest rate derivative data	
Notional amount for leg 1	Notional amount—Leg 1	Notional amount—Leg 1
Notional amount for leg 2	Notional amount—Leg 2	Notional amount—Leg 2
Notional currency for leg 1	Notional currency—Leg 1	Notional currency—Leg 1
Notional currency for leg 2	Notional currency—Leg 2	Notional currency—Leg 2
Amount of upfront payment, if any	Other payment amount upfront payments only	Other payment amount upfront & unwind payments
Payer (fixed rate)	Payer (fixed rate leg 1)	Direction 2—Leg 1
Not applicable	Payer (fixed rate leg 2)	Direction 2—Leg 2
Name of payer (fixed rate)	Not applicable	Not applicable
Payer (floating rate leg 1)	Payer (floating rate leg 1)	Direction 2—Leg 1
Name of payer (floating rate leg 1)	Not applicable	Not applicable
Payer (floating rate leg 2)	Payer (floating rate leg 2)	Direction 2—Leg 2
Name of payer (floating rate leg 2)	Not applicable	Not applicable
Direction	Not applicable	Not applicable
Fixed rate	Fixed rate (leg 1)	Fixed rate—Leg 1
Not applicable	Fixed rate (leg 2)	Fixed rate—Leg 2
Fixed rate day count fraction	Fixed rate day count fraction	Day count convention—Leg 1
Fixed leg payment frequency	Fixed leg payment frequency (leg 1)	Payment frequency period—Leg 1 Payment frequency period multiplier—Leg 1
Not applicable	Fixed leg payment frequency (leg 2)	Payment frequency period—Leg 2 Payment frequency period multiplier—Leg 2
Floating rate payment frequency	Floating rate payment frequency (leg 1)	Payment frequency period—Leg 1 Payment frequency period multiplier—Leg 1

<b>Current ASIC Rules</b> <b>From now to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023 to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Not applicable	Floating rate payment frequency (leg 2)	Payment frequency period—Leg 2 Payment frequency period multiplier—Leg 2
Floating rate index name (leg 1)	Floating rate index identifier (leg 1)	Not applicable—in UPI
Floating rate index name (leg 2)	Floating rate index identifier (leg 2)	Not applicable—in UPI
Floating rate reset frequency	Floating rate reset frequency (leg 1)	Not applicable
Not applicable	Floating rate reset frequency (leg 2)	Not applicable
		Table S1.1(1) Transaction information
Not applicable	Not applicable	Notional amount schedule effective date—Leg 1 Notional amount schedule end date—Leg 1 Notional amount schedule amount—Leg 1 Notional amount schedule effective date—Leg 2 Notional amount schedule end date—Leg 2 Notional amount schedule amount—Leg 2
Not applicable	Not applicable	Price Price currency Price notation Price unit of measure
Not applicable	Not applicable	Spread—Leg 1 Spread—Leg 2 Spread currency—Leg 1 Spread currency—Leg 2 Spread notation—Leg 1 Spread notation—Leg 2
Not applicable	Not applicable	Day count convention—Leg 1 Day count convention—Leg 2
Not applicable	Not applicable	Payment frequency period—Leg 2 Payment frequency period multiplier—Leg 2

<b>Current ASIC Rules</b> <b>From now</b> <b>to 30 September 2023</b>	<b>Draft remade ASIC Rules</b> <b>From 1 October 2023</b> <b>to 31 March 2024</b>	<b>Draft amended ASIC Rules</b> <b>From 1 April 2024</b>
Not applicable	Not applicable	Settlement currency—Leg 1 Settlement currency—Leg 2
Not applicable	Not applicable	Other payment amount Other payment type Other payment currency Other payment date Other payment payer Other payment receiver
Not applicable	Not applicable	Custom basket code Identifier of the basket's constituents Source of the identifier of the basket constituents
Not applicable	Not applicable	Package identifier Package transaction price Package transaction price currency Package transaction price notation Package transaction spread Package transaction spread currency Package transaction spread notation
Not applicable	Not applicable	Prior UTI Event identifier

## Key terms

Term	Meaning in this document
ABN	Australian Business Number
ADI	An authorised deposit-taking institution—a corporation that is authorised under the <i>Banking Act 1959</i> . ADIs include: <ul style="list-style-type: none"> <li>• banks;</li> <li>• building societies; and</li> <li>• credit unions</li> </ul>
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
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
ANNA	Association of National Numbering Agencies
ASATP	As soon as technologically possible
ASIC	Australian Securities and Investments Commission
ASIC Rules	<i>ASIC Derivative Transaction Rules (Reporting) 2013</i>
AVID	An entity identifier issued by Avox Limited
BIC	An entity identifier issued by SWIFT, the Society for Worldwide Interbank Financial Telecommunication
CCP (central counterparty)	An entity that interposes itself between counterparties to trades, becoming the buyer to every seller and the seller to every buyer
CDE	Critical data elements
CDE Guidance	CPMI IOSCO, <a href="#">Technical guidance: Harmonisation of critical OTC derivatives data elements (other than UTI and UPI)</a> (PDF 1.01 MB)
CDIDE	Committee on Derivative Identifiers and Data Elements of the ROC

Term	Meaning in this document
CFD	A contract for difference
CFI	ISO Classification of Financial Instruments
CFTC	US Commodity Futures Trading Commission
clearing member	A person who is allowed to directly participate in a CS facility under the facility's operating rules
confirmation platform	An electronic trade confirmation platform
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
CPMI	Committee on Payments and Market Infrastructures of the Bank for International Settlements
CPMI IOSCO	CPMI and IOSCO acting as joint publishers
cross-jurisdictional transaction	A transaction that is reportable under the rules of two or more jurisdictions
CS facility	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
DSB	The Derivatives Service Bureau (DSB) Limited
ESMA	European Securities and Markets Authority
FSB	Financial Stability Board
FX	Foreign exchange
G20	Group of Twenty
GLEIF	Global Legal Entity Identifier Foundation
GLEIS	Global LEI system
IGB	International governance body
IOSCO	International Organization of Securities Commissions
ISDA	International Swaps and Derivatives Association
ISIN	International securities identification number
ISO	International Organization for Standardization
ISO 23897 (for example)	A standard maintained and published by ISO (in this example numbered 23897), unless otherwise specified

Term	Meaning in this document
LEI	Legal entity identifier
lifecycle reporting	Reporting derivative transaction information separately for each reportable transaction in the relevant OTC derivative, including where there are multiple reportable transactions on a day
LOU	Local operating unit accredited by the GLEIF to register and renew LEIs
NRCP	Non-reporting counterparty (counterparty 2)
OTC	Over the counter
OTC derivative	A derivative that has the meaning given by Rule 1.2.4 of the ASIC Rules
Part 2.2 (for example)	A part of the ASIC Rules (in this example numbered 2.2)
phase 3 reporting entity	A Phase 3 Reporting Entity within the meaning of <a href="#">ASIC Instrument [14/0633]</a> as in force on 1 October 2015  Generally, this means a reporting entity with the latest reporting commencement dates because it held less than A\$50 billion of outstanding derivatives positions as at 31 December 2013
Pt 7.5A (for example)	A part of the Corporations Act (in this example numbered 7.5A), unless otherwise specified
reg 7.5A.50 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.5A.50), unless otherwise specified
reportable transaction	A transaction in an OTC derivative that has the meaning given by Rule 1.2.5 of the ASIC Rules
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
ROC	Regulatory Oversight Committee
Rule 2.2.1 (for example)	A rule of the ASIC Rules (in this example numbered 2.2.1)
s901J (for example)	A section of the Corporations Act (in this example numbered 901J), unless otherwise specified
SEC	US Securities and Exchange Commission
single-jurisdictional transaction	A transaction that is solely reportable under the rules of just one jurisdiction
snapshot reporting	Reporting derivative transaction information in relation to the relevant OTC derivative on its terms as of the relevant day
T+1	The business day following the transaction date

Term	Meaning in this document
trading platform	A financial market, as defined in s767A of the Corporations Act, through which offers to acquire or dispose of financial products are regularly made or accepted
UPI	Unique product identifier
UPI Guidance	CPMI IOSCO, <a href="#">Technical guidance: Harmonisation of the unique product identifier</a> (PDF 602 KB)
UTI	Unique transaction identifier
UTI Guidance	CPMI IOSCO, <a href="#">Technical guidance: Harmonisation of the unique transaction identifier</a> (PDF 570 KB)
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 make new draft Rule 2.2.9 ‘Reporting requirement—Unique transaction identifier’ in the draft remade ASIC Rules (see Attachment 1) setting out UTI requirements for a reporting entity to:</p> <ul style="list-style-type: none"> <li>(a) apply the rule if the reporting entity is required to report a UTI for a new transaction (Rule 2.2.9(1));</li> <li>(b) determine the UTI generating entity according to the steps set out in Table 2: UTI generating entity for specified reportable transactions of Rule 2.2.9—this is the draft ASIC UTI waterfall (Rule 2.2.9(3));</li> <li>(c) if the reporting entity is the UTI generating entity, generate the UTI and provide the UTI to the other counterparty in a timely manner and no later than 10 am Sydney time on the next business day (Rule 2.2.9(5));</li> <li>(d) if the reporting entity does not receive a UTI from the other UTI generating entity in sufficient time for reporting: <ul style="list-style-type: none"> <li>(i) if the reporting entity reasonably believes that it will, at a later time, receive the UTI—a ‘temporary’ non-receipt of a UTI—generate its own UTI for reporting; or</li> <li>(ii) if the reporting entity reasonably believes that it will not receive the UTI—a ‘permanent’ non-receipt of a UTI—use its best endeavours to determine the UTI generating entity according to the next applicable method in the draft ASIC UTI waterfall; but</li> <li>(iii) if the UTI generating entity determined according to the next applicable method does not provide the UTI, the reporting entity must generate and report its own UTI (Rule 2.2.9(6)).</li> </ul> </li> </ul>	<p>B1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>B1Q2 Do you consider that you would have any issues of interpretation of the definitions or text of draft Rule 2.2.9? In your response, please give detailed reasons for your answer.</p>



Proposal	Your feedback
<p>B2 We also propose that new Rule 2.2.9 provides that:</p> <ul style="list-style-type: none"> <li>(a) a reference to a reporting entity that is a responsible entity or trustee includes a person appointed by the reporting entity to enter into OTC derivatives on behalf of the reporting entity—for example, a fund manager (Rule 2.2.9(2));</li> <li>(b) a reporting entity may, subject to conditions, appoint a service provider to generate the UTI (Rule 2.2.9(7));</li> <li>(c) if the UTI requirements are met by another person on behalf of the reporting entity; the reporting entity remains responsible for the obligations of the reporting entity (Rule 2.2.9(8)); and</li> <li>(d) for the purposes of Rule 2.2.9, the reporting deadline in this jurisdiction is the end of the next business day in Sydney (Rule 2.2.9(4)).</li> </ul>	<p>B2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>B2Q2 Do you consider that you would have any issues of interpretation of the definitions or text of draft Rule 2.2.9? In your response, please give detailed reasons for your answer.</p>
<p>C1 We propose to include in the draft remade ASIC Rules the non-UPI data elements set out in Table 17: see Attachment 1.</p>	<p>C1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>

Proposal	Your feedback
<p>E1 We propose that the remade ASIC Rules (see Attachment 1) include:</p> <ul style="list-style-type: none"> <li>(a) new Rule 1.2.5(1)(b)(iv) and amended Rule S1.3.1(1)(a) recognising transaction-to-position conversion reporting practices;</li> <li>(b) new Rule 2.2.1(1A) to curtail duplicative reporting;</li> <li>(c) new Rule 2.2.1(1B) to recognise that reporting entities comply with their reporting obligations where derivative trade repositories derive derivative transaction information for the reporting entity from other information they receive;</li> <li>(d) a definition of a 'Small-scale Buy-side Entity' in Rule 1.2.3 and amendments to Rule 2.2.8 such that small-scale buy-side entities are not required to report, on a lifecycle basis, reportable transactions that are not equity derivative transactions;</li> <li>(e) new Part S1.1 rule allowing that requirements of a reporting entity that is a responsible entity or trustee may be met by a person appointed to deal on behalf of the responsible entity or trustee; and</li> <li>(f) new Rule S1.3.1(3) only requiring adherence to the new formats and allowable values for the data elements that are being changed or updated in a report made under Rule 2.2.2.</li> </ul>	<p>E1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>
<p>E2 We propose that the amended ASIC Rules (see Attachment 2) include:</p> <ul style="list-style-type: none"> <li>(a) new Rule S1.3.1(4) providing that small-scale buy-side entities are not required to report delta and some of the extended collateral information;</li> <li>(b) amended Rule S1.3.1(3) requiring adherence to the new formats and allowable values for all the data elements reported, other than entity identifier data elements; and</li> <li>(c) new Rule 2.4.1 requiring the re-reporting of transactions reported prior to the commencement of the amended ASIC Rules in order to update the data elements for the transactions to the new specifications.</li> </ul>	<p>E2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E2Q2 Do you consider that, from the commencement of the amended ASIC Rules, a trade state report should be structured on a 'carried forward/enlarged' basis, a 'converted' basis or on some other basis: see paragraphs 411–417? In your response, please give detailed reasons for your answer.</p>

Proposal	Your feedback
<p>E3 We propose that the remade ASIC Rules (see Attachment 1) include:</p> <p>(a) the meanings, formats and allowable values for derivative transaction information set out in Tables S1.1.(1)–(5).</p>	<p>E3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>
<p>E4 We propose that the remade ASIC Rules (see Attachment 1) include:</p> <p>(a) the new data elements ‘Payer (fixed rate leg 2)’, ‘Fixed rate (leg 2)’, ‘Fixed leg payment frequency (leg 2)’, ‘Floating rate payment frequency (leg 2)’ and ‘Floating rate reset frequency (leg 2)’ with the meanings, formats and allowable values of items 7, 11, 14, 16 and 20 respectively in Table S1.1(5) ‘Interest rate derivative data’;</p> <p>(b) the relocation and renaming of ‘Basis’ from item 34 in Table S2.1(1) ‘Common data’ in the current ASIC Rules to ‘Day count convention—Leg 2’ as item 5 in Table S1.1(3) ‘Equity and credit derivatives data’ in the remade ASIC Rules with a changed meaning, format and allowable values;</p> <p>(c) the relocation, for commodity derivatives of ‘Settlement rate or index’ from item 35 in Table S2.1(1) ‘Common data’ in the current ASIC Rules to item 8 in Table S1.1(2) ‘Commodity derivative data’ with a changed meaning, format and allowable values;</p> <p>(d) the relocation and renaming, for equity and credit derivatives, of ‘Settlement rate or index’ from item 35 in Table S2.1(1) ‘Common data’ in the current ASIC Rules to ‘Identifier of the floating rate—Leg 2’ as item 6 in Table S1.1(3) ‘Equity and credit derivatives data’ in the remade ASIC Rules with a changed meaning, format and allowable values; and</p> <p>(e) the relocation, for equity and credit derivatives of ‘Rate reset frequency’ from item 53 in Table S2.1(1) ‘Common data’ in the current ASIC Rules to item 7 in Table S1.1(3) ‘Equity and credit derivatives data’ with a changed meaning, format and allowable values.</p>	<p>E4Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>

Proposal	Your feedback
<p>E5 We propose that the amended ASIC Rules (see Attachment 2) include:</p> <ul style="list-style-type: none"> <li>(a) the meanings, formats and allowable values for transaction information set out in Table S1.1.(1) 'Transaction information';</li> <li>(b) the meanings, formats and allowable values for valuation information set out in Table S1.1.(2) 'Valuation information'; and</li> <li>(c) the meanings, formats and allowable values for transaction information set out in Table S1.1.(3) 'Collateral information'.</li> </ul>	<p>E5Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E5Q2 Do you consider that the explanations of data elements in this consultation paper are an appropriate basis for guidance in a Schedule 1 Technical Guidance document? Are there particular data elements for which you consider additional guidance is required and what is the nature of the additional guidance required?</p>
<p>E6 We propose that the amended ASIC Rules (see Attachment 2) include:</p> <ul style="list-style-type: none"> <li>(a) the new data elements 'Underlier ID—non-UPI' and 'Underlier ID source—non-UPI' with the meanings, formats and allowable values of items 81 and 82 respectively in Table S1.1(1) 'Transaction information';</li> <li>(b) the new data elements 'Identifier of the floating rate—Leg 2', 'Floating rate reference period—Leg 2' and 'Floating rate reference period multiplier—Leg 2' with the meanings, formats and allowable values of items 84, 85 and 86 respectively in Table S1.1(1) 'Transaction information';</li> <li>(c) the new data elements 'Next floating reference reset date—Leg 1' and 'Next floating reference reset date—Leg 2' with the meanings, formats and allowable values of items 10 and 11 respectively in Table S1.1(2) 'Valuation information'; and</li> <li>(d) the new data element 'Collateral timestamp' with the meaning, format and allowable values of item 5 in Table S1.1(3) 'Collateral information'.</li> </ul>	<p>E6Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>
<p>F1 We propose to amend Rule 2.2.4 in the draft amended ASIC Rules to insert a requirement, with effect from 1 April 2024, that reporting entities report information in an ISO 20022 XML message.</p>	<p>F1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>

Proposal	Your feedback
<p>G1 We are making new proposals to:</p> <ul style="list-style-type: none"> <li>(a) clarify the meaning of a Part 7.2A Market;</li> <li>(b) exclude from scope AFS licensees without relevant derivatives authorisations, consistent with reg 7.5A.50;</li> <li>(c) exclude from scope clearing members in certain circumstances of an agency clearing model; and</li> <li>(d) clarify that the OTC derivative transactions of a CCIV are reportable transactions.</li> </ul>	<p>G1Q1 Do you agree with these proposals? In your response, please give detailed reasons for your answer.</p>
<p>H1 We propose to revise Rule 2.2.7 in the draft remade ASIC Rules (see Attachment 1) to remove the 'safe harbour' provisions.</p>	<p>H1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>H1Q2 What elements of revised RG 251 guidance would better assist reporting entities to understand their responsibilities and oversee their delegated reporting arrangements?</p> <p>H1Q3 Do you agree that revised RG 251 guidance outlining our approach to reporting errors and breaches can assist in reducing reporting entities' concerns about delegated reporting breaches in the absence of a 'safe harbour'?</p> <p>H1Q4 Are there any elements of revised RG 251 guidance that should be aligned with other regulatory requirements for outsourcing arrangements?</p> <p>Note: In our first consultation we sought to gather further information to inform this proposal. We note some respondents have pre-emptively addressed similar feedback questions in CP 334. This second consultation is intended to provide more information for your consideration and further feedback.</p>
<p>I1 We propose to change Rule 2.2.8 in the draft remade ASIC Rules to require that transactions in all products are reported on a lifecycle basis, except that small-scale buy-side entities may report transactions in other than equity derivatives on a snapshot basis.</p>	<p>I1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>