



ASIC
Australian Securities &
Investments Commission

19 September 2022

Estimate of regulatory compliance burden of changes to the ASIC Derivative Transaction Rules (Reporting)

1. In November 2020, the Australian Securities and Investments Commission (**ASIC**) proposed, in broad policy terms, changes to the ASIC Derivative Transaction Rules (Reporting) 2013 (**current ASIC Rules**) and in May 2022 we proposed specific implementing text changes to the current ASIC Rules.
2. We have estimated the regulatory compliance burden of the proposed rules. We prepared the estimates under the Regulatory Impact Analysis (**RIA**) framework, administered by the Office of Best Practice Regulation, a branch of the Department of Prime Minister and Cabinet.
3. Under the RIA framework, the Regulatory Burden Measurement (**RBM**) framework must be used by policy makers to estimate the regulatory compliance burden of policy proposals (a subset of the broader costs in an assessment). The RBM framework is a standardised method for calculating the compliance costs (administrative and substantive) and delay costs of regulation.

A. Background to the proposed changes to the current ASIC Rules

4. On 9 July 2013, ASIC made the current ASIC Rules, which require the mandatory reporting of over-the-counter derivatives transactions by businesses licensed by ASIC or otherwise authorised to deal in derivatives in Australia. Mandatory reporting was intended to address a range of the reforms agreed to by the leaders of the Group of Twenty (**G20**) in response to the global financial crisis. All but one G20 member and 3 other member jurisdictions of the Financial Stability Board (**FSB**) have implemented mandatory derivatives transaction reporting.
5. Between 2012 and 2018, in various multi-jurisdictional fora, international standards were developed for legal entity identifiers, transaction identifiers, product identifiers and critical data elements for reporting with a view to common adoption across G20 and FSB jurisdictions. This is to streamline and simplify reporting requirements for businesses and to enable regulatory authorities to more readily aggregate information about internationally traded derivatives. In addition to standardising the content of reports, a standardised technical data exchange message definition is being finalised under ISO 20022 'Financial Services – Universal financial industry message scheme' – this is a widely used

standard with more than 700 types of ISO 20022 message definitions having applications in the financial services sector.

6. Since 2020, various jurisdictions have updated, or are in the process of updating, their derivatives reporting regulations to adopt these international standards. The US and the EU finalised their regulations changes in September 2020 and December 2020 respectively. Other jurisdictions have released consultation papers about adopting the standards, including Hong Kong (April 2019), Singapore (June 2021), the UK (November 2021) and Canada (June 2022).
7. ASIC's proposals to update the current ASIC Rules focussed on:
 - harmonising to these 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 and aggregation;
 - simplifying the current ASIC Rules by removing outdated transitional provisions and by consolidating a number of the associated exemptions within the rules; and
 - ensuring the rules are fit-for-purpose as to the scope of reporting entities, derivative products and types of transactions that are subject to the rules and making clear the roles and responsibilities of entities submitting derivative transaction reports.

B. Summary of policy options assessed under the RIA framework

8. The policy options introduced in [Consultation Paper 334 Proposed changes to simplify the ASIC Derivative Transaction Rules \(Reporting\): First consultation \(CP 334\)](#) and detailed in [Consultation Paper 361 Proposed changes to simplify the ASIC Derivative Transaction Rules \(Reporting\): Second consultation \(CP 361\)](#) are summarised below.
9. On 27 November 2020, we published CP 334, in which we sought feedback on 40 proposals to change the current ASIC Rules. We received 40 submissions from reporting entities, global Legal Entity Identifiers (LEI) system entities, industry bodies and associations, a derivative trade repository, a central clearing counterparty, and a reporting services provider.
10. On 16 May 2022, we published CP 361 in which, having regard to the feedback to CP 334, we set out the specific text of proposed changes to the current ASIC Rules. We sought feedback on thirteen proposals and received 11 submissions from reporting entities, global LEI system entities, industry bodies and associations, a derivative trade repository and reporting services providers.
11. In CP 361, we consulted on a two-stage process to effect updates to the rules as:
 - upon the sunset of the current ASIC Rules on 1 October 2023, the provisions for LEIs, Unique Transaction Identifiers (UTIs), extended reporting of intra-day trades ('lifecycle reporting'), some partial implementation of the data elements changes and other changes would commence; and

- six months later on 1 April 2024, the remainder of the proposed rules changes would commence.
12. We consulted on the costs of the options discussed below in Section K 'Regulatory and financial impact' of CP 361. Whilst we did not receive any direct feedback to the costs consulted on in this section, respondents indicated that the two-stage implementation would add complexity, risk and associated IT costs. Following further bilateral consultation with the industry association that raised this concern, it was determined that a shift to a single implementation date would resolve the concerns raised in relation to a duplication of costs and effort. We did not receive any other feedback on costs and most of the respondents were supportive of the proposed changes.
13. In response to this feedback, we are now proposing to remake the current ASIC Rules without any changes to continue in their current state and to then make all the changes in one stage only with effect from 1 October 2024. We have also decided to make this change in response to industry feedback seeking increased implementation time and supporting a single implementation date to address the concerns raised regarding additional costs, complexity and risks associated with a two-stage process.
14. We are now proposing that the rules would be made as follows:
- ASIC Derivative Transaction Rules (Reporting) 2022 repeals the current ASIC Rules and remakes the current ASIC Rules without any changes; and
 - ASIC Derivative Transaction Rules (Reporting) 2024 repeals ASIC Derivative Transaction Rules (Reporting) 2022 and makes new rules with all the proposed changes.

Option 1 (recommended): Implement the proposed rules

15. The proposed rules would implement changes to the current ASIC Rules as summarised in Table 1.

Table 1: Option 1 – Summary of the proposed rules changes

<p>Implement international standards for entity, transaction and product identifiers, critical data elements and reporting in ISO 20022 format</p>	<p>Fully implement the LEI in ISO 17442 format under a global entity identifier system</p> <p>Implement the UTI in ISO 23897 format for common transaction identifiers in internationally traded and reported derivatives</p> <p>Implement the Unique Product Identifier ('UPI' in ISO 4914 format) under a global system for categorising derivative products</p> <p>Adopt preferred Critical Data Elements ('CDE' per the Regulatory Oversight Committee's technical guidance) as data elements of derivative transactions with standardised definitions, formats and allowable values, supplemented with additional data elements</p> <p>Require reporting to a derivative trade repository to conform to the technical standard of ISO 20022</p> <p>Require re-reporting to update transactions reported under the current ASIC Rules to the data element requirements of the changed rules</p>
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<p>Making fit-for-purpose in the scope of entities and types of transactions and the responsibilities of reporting entities</p>	<p>Clarify that trades by foreign AFS licensees with Australian retail clients are always reportable</p> <p>Implement lifecycle reporting for all derivative products</p> <p>Align the compliance obligations of entities that use outsourced reporting services with all other regulatory provisions for outsourcing i.e. remove the delegated reporting 'safe harbour'</p> <p>Curtail duplicative reporting of the repetitive reporting of all outstanding transactions rather than just the new or changed transactions since the last report of transactions</p> <p>Exempt small-scale buy side entities from certain of the extended reporting requirements in the changed rules</p>
<p>Remove outdated provisions and consolidate exemptions in the rules</p>	<p>Remove outdated transitional provisions relating to the original phasing-in of reporting obligations under the current ASIC Rules</p> <p>Consolidate exemptions, or a similar form of the exemptions, into the rules relating to transactions with short terms to maturity, involving end-users, agents as well as principals or foreign subsidiaries of Australian entities and allowing a 'grace period' to obtain an LEI for reporting</p>
<p>Provide certainty for various reporting practices</p>	<p>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</p> <p>Recognise that a derivative trade repository may create derivative transaction information for reporting entities' reports that is derived from other information</p> <p>Recognise the form of reporting whereby a 'transaction' is re-reported as a 'position'</p>

16. Option 1 is our preferred option. The feedback we received in response to CP 334 and CP 361 indicated that industry is broadly supportive of the proposed rules and recognises the importance of international harmonisation of derivative transaction reporting requirements.

Option 2: Implement the proposed rules but do not implement ISO 20022

17. Under this option, we would implement the ASIC data elements, UTI, UPI and LEI as proposed in CP 361 but would not implement the ISO 20022 report messaging standard.

18. 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.

19. 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.

20. 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 estimate that the cost of maintaining an ASIC bespoke reporting system would rise to be approximately 50% higher than the system synergies cost savings otherwise available. We consulted on this estimate in CP361.
21. 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.

Option 3: Implement the proposed rules but implement UPI as a 'conversion obligation' and do not implement ISO 20022

22. Under this option, we would implement the ASIC data elements, UTI and LEI as proposed in CP 361 but not implement the UPI and implement the ISO 20022 report messaging standard.
23. If the UPI was not implemented in the ASIC Rules as a reported data element:
- additional reportable data elements would need to be added-back to the ASIC Rules to provide the derivative product information that is otherwise discoverable by reference to the UPI code; and
 - to properly support cross-border aggregation by foreign regulators in keeping with the G20 initiatives, an ASIC-licensed derivative trade repository would be required to convert 'non-UPI' product identifier data to a UPI code that can be accessed by foreign regulators.
24. In addition to the regulatory burden costs of not implementing the ISO 20022 report messaging standard per Option 2, we think that the implementation elements of Option 3 for reporting entities would be:
- 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;
 - 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.
25. A derivative trade repository would need to implement systems and/or processes to obtain and handle UPIs.

Option 4: Remake the ASIC Rules without any changes to the current ASIC Rules (status quo)

26. Under this option, we would make no policy change. We would remake the current ASIC Rules without any changes.
27. In relation to Option 4, which is not our preferred option, the ASIC Rules would not be harmonised to the international standards more than they are in the current ASIC Rules. For the UTI, 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 standards. However, 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.

28. Similarly, industry stakeholders—reporting entities and derivative trade repositories—could adopt using UPI codes from the UPI system. However, there would be no certainty that they would do so and industry stakeholders may decide to continue with existing reporting practices of UPIs.
29. If UPI codes from the UPI system was not adopted for reporting, this would likely lead to:
 - the need for reporting entities to continue to report data elements that are otherwise embedded in the reference data for a UPI code;
 - the need for reporting entities to continue to use and maintain a bespoke system for transaction reporting under the ASIC Rules; and
 - a material barrier to the ready aggregation of cross-jurisdictional data.
30. 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.
31. 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.
32. 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.
33. 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.

C. Assessment of regulatory compliance burden

34. As part of our public consultation in CP 334 and CP 361, we requested information about how our proposals would affect respondents, including the likely compliance costs, the likely effect on competition and other impacts, costs

and benefits. We also asked respondents to set out this information for any alternative approaches they proposed.

35. We have estimated the regulatory compliance burden of Options 1–4 under the RBM framework, and we consulted on these costs in CP 361.

36. Our approach to estimating the regulatory compliance burden is to:

- group reporting entities by the common factors applicable to their circumstances;
- for each component of implementation – i.e. the ASIC data elements, UTI, UPI, LEI and the ISO 20022 report messaging standard - take as a reference case the reporting entity group or implementation element with the largest estimated costs and benefits;
- apply adjustments to the reference case for the generally cumulative effect of the factors applicable to the other reporting entity groups.

Option 1 (recommended): Implement the proposed rules

37. Table 2 sets out the regulatory burden estimate for implementing Option 1. It represents an approximate change in annual regulatory costs of \$3.722 million per year, averaged over a 10-year period. This is the estimated cost to the entire industry, not to individual entities. We have modelled this cost based on our approach outlined in paragraph 36 above.

Table 2: Annual regulatory costs for Option 1, averaged over 10 years

Sector	Change in costs
Business	\$3.722 m
Community organisations	\$0
Individuals	\$0
Total change in costs	\$3.722 m

38. We expect costs in the first year to be the highest, due to one-off implementation costs. For example, this could include:

- sourcing additional data elements from front-office, middle-office and/or post-trade systems
- creation of new systems, processes and procedures in relation to UTI receipt and generation;
- implementation of systems and processes to obtain and receive UPIs;
- engagement with counterparties to communicate LEI requirements and updating counterparty reference data; and
- creation of systems and processes for self-reporting entities to submit to trade repositories in the ISO 20022 messaging standard.

39. In subsequent years, we expect all reporting entities to benefit from recurring cost savings in avoiding maintaining bespoke systems for ASIC reporting. However, we have estimated that for 3 of the 31 reporting entity groups (being medium to large dealers), their user fees payable to the UPI system operator will exceed their system costs savings.
40. We consulted on the regulatory burden estimate for implementing Option 1 as a two-staged approach and received feedback that a two-staged implementation would result in additional complexity, risks and associated costs. As such, we conducted further consultation with industry in relation to implementing Option 1 as a single-staged approach and received feedback that there would be no issues with a single-go live date and that this would resolve the concerns with the added complexity, risks and associated costs.
41. It is our view that the regulatory benefits of implementing Option 1 outweigh the estimated regulatory costs to industry. In particular, a regulatory offset exists for reporting entities that are required to report in other jurisdictions as they would benefit from the elimination of jurisdiction-specific reporting systems.

Option 2: Implement the proposed rules but do not implement ISO 20022

42. Table 3 sets out the regulatory burden estimate if ASIC were to implement Option 2. It would represent an approximate change in annual regulatory costs of \$5.233 million per year, averaged over a 10-year period. This is the estimated cost to the entire industry. We have modelled this cost based on our approach outlined in paragraph 36 above.

Table 3: Annual regulatory costs for Option 2, averaged over 10 years

Sector	Change in costs
Business	\$5.233 m
Community organisations	\$0
Individuals	\$0
Total change in costs	\$5.233 m

43. 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.
44. We further assume that reporting entities would have fewer bespoke systems to maintain but at higher costs per system, as ISO 20022 reporting in other jurisdictions becomes the norm—we estimate that the cost of maintaining an ASIC bespoke reporting system would rise to be 50% higher than the system synergies cost savings otherwise available.
45. 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.

46. 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. For all reporting entities combined, the annual regulatory costs, averaged over a 10-year period, would be \$1.512 million per year higher under Option 2 than Option 1.

Option 3: Implement the proposed rules but implement UPI as a 'conversion obligation' and do not implement ISO 20022

47. Table 4 sets out the regulatory burden estimate if ASIC were to implement Option 3. It would represent an approximate change in annual regulatory costs of \$5.500 million per year, averaged over a 10-year period. This is the estimated cost to the entire industry. We have modelled this cost based on our approach outlined in paragraph 36 above.

Table 4: Annual regulatory costs for Option 3, averaged over 10 years

Sector	Change in costs
Business	\$5.500 m
Community organisations	\$0
Individuals	\$0
Total change in costs	\$5.500 m

48. As with Option 2, reporting entities would not incur the first year costs of implementing ISO 20022 but would face higher ongoing costs from the need to maintaining an ASIC bespoke reporting system.

49. We also assume that:

- any savings in not removing 'UPI-embedded' data elements are equally offset by the need to source and report the additional reportable data elements that are reference data elements in the UPI system;
- large-scale reporting entities would still require UPI handling capabilities for reporting in other jurisdictions and continue to be fee-paying users of the UPI system;
- to meet a UPI conversion obligation, 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 (representing a large UPI data handling implementation) would recover these costs in increased fees to all reporting entities.

50. 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. For all reporting entities combined, the annual regulatory costs, averaged over a 10-year period, would be \$1.779 million per year higher under Option 3 than Option 1.

51. 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.

Option 4: Remake the ASIC Rules without any changes to the current ASIC Rules (status quo)

52. Table 5 sets out the regulatory burden estimate if ASIC were to implement Option 4, which is maintaining the status quo, including not implementing ISO 20022. It would represent an approximate change in annual regulatory costs of \$2.198 million per year, averaged over a 10-year period. This is the estimated cost to the entire industry. We have modelled this cost based on our approach outlined in paragraph 36 above.

Table 5: Annual regulatory costs for Option 4, averaged over 10 years

Sector	Change in costs
Business	\$2.198 m
Community organisations	\$0
Individuals	\$0
Total change in costs	\$2.198 m

53. Similar to Option 2, by not implementing ISO 20022, reporting entities would face higher ongoing costs from the need to maintain ASIC bespoke reporting systems.
54. However, Option 4 is not our preferred option, as the ASIC Rules would not be further harmonised to international standards any more than they are in the current ASIC Rules.
55. Potential negative impacts were identified prior to the introduction of the current ASIC Rules of remaining unaligned with derivative transaction reporting changes introduced in other jurisdictions.¹ These considerations remain relevant to the current circumstances and proposed adoption of the international data standards.

D. Conclusion as to appropriate policy option

56. We have considered each of the above options, the associated costs and benefits, and the feedback from industry. As a result of this analysis, we consider Option 1 to be the best option.
57. Option 2 and Option 3 have higher compliance costs than Option 1. Option 4 has lower compliance costs than Option 1, but under each of these options the

¹ [ASIC Derivative Transaction Rules \(Reporting\) 2013 \(legislation.gov.au\)](http://legislation.gov.au)

ASIC Rules would not be harmonised with international standards and would not reduce complexity for industry, or provide improved data quality for the Australian regulators, more comprehensive and fit-for-purpose trade details and improved inter-jurisdictional data handling and aggregation.

58. We have set out further detailed reasons and costings for recommending the proposed rules in [CP 361](#).

E. Implementation

59. As a result of the current ASIC Rules sunsetting on 1 October 2023, we are proposing a single-stage implementation to update the ASIC Rules:

- subject to the Minister's consent, a new legislative instrument—the ASIC Derivative Transaction Rules (Reporting) 2022—would remake the rules as is with no changes to the rules framework or structure.
- subject to the Minister's consent, a new legislative instrument—the ASIC Derivative Transaction Rules (Reporting) 2024 would implement the UPI, UTI, LEI and fully implement the additional data elements (amongst the other proposals summarised in Table 1).

60. We intend to issue a third consultation paper in or around H1 2023 to cover any outstanding issues.

61. Following the making of the proposed rules, we intend to publish:

- updated Regulatory Guide 251 Derivative transaction reporting (RG 251);
- updated Regulatory Guide 249 Derivative trade repositories (RG 249); and
- Schedule 1 Technical Guidance.