



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Derivative Transaction Rules (Reporting and Clearing) Amendment Instrument 2024/416

This is the Explanatory Statement for *ASIC Derivative Transaction Rules (Reporting and Clearing) Amendment Instrument 2024/416 (Amending Instrument)*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. The Amending Instrument is made under section 901M of the *Corporations Act 2001* (the *Corporations Act*) and amends the *ASIC Derivative Transaction Rules (Reporting) 2024 (2024 Reporting Rules)* and the *ASIC Derivative Transaction Rules (Clearing) 2015 (Clearing Rules)*.
2. On 21 October 2024, the 2024 Reporting Rules will repeal and replace the *ASIC Derivative Transaction Rules (Reporting) 2022*, substantially amending the current over-the-counter (*OTC*) derivative transaction reporting requirements to align with international reporting standards, consolidate existing transitional provisions and exemptions within the rules and ensure they remain fit for purpose. The 2024 Rules were made on 19 December 2022 providing industry with a 22-month implementation period ahead of commencement for systems and processes changes to be made.
3. The Amending Instrument addresses outstanding policy matters about reporting rule changes introduced in earlier public consultations. The Amending Instrument also addresses other minor and administrative amendments to data elements, to align with other major jurisdictions, and to correct prior errors and omissions. Further, the Amending Instrument makes consequential and administrative changes to the Clearing Rules.
4. The Amending Instrument amends the 2024 Reporting Rules and the Clearing Rules to:
 - (a) in the 2024 Reporting Rules:
 - (i) substitute a generic definition of an excluded exchange-traded derivative (*ETD*) in place of the existing list of specified financial markets and classes of financial markets, but with a determination power to adjust for any unanticipated definitional uncertainties;

-
- (ii) substitute dealings in ‘nexus derivatives’ as the scope test for foreign entities reporting requirements in place of the existing ‘entered into’ scope test, and simplify the scope of foreign central counterparties reporting requirements;
 - (iii) remove the provisions for alternative reporting¹;
 - (iv) make other minor amendments, largely to data elements to align with other major jurisdictions and to correct prior errors and omissions; and
- (b) in the Clearing Rules:
- (i) make consequential amendments to exclude ETDs by reference to the 2024 Reporting Rules; and
 - (ii) make consequential amendments for the effect of *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023 (Law Improvement Package No. 1)* that changed the location of some definitions in the Corporations Act and other minor amendments
- (together, the *rules amendments*).

Purpose

5. The key purpose of the Amending Instrument is to amend the 2024 Reporting Rules to ensure they are harmonised to international standards, simplified by the consolidation of related instruments and exemptions within the rules, and fit for purpose as to the scope of reporting entities and reportable transactions that are subject to the rules. Since making the 2024 Reporting Rules, the rules amendments have been informed by ASIC’s ongoing engagement with stakeholders.

Background

6. Following two rounds of consultation Consultation Paper 334 *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation* released on 27 November 2020 and Consultation Paper 361 *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation* released on 16 May 2022), ASIC made the 2024 Reporting Rules on 19 December 2022. The 2024 Reporting Rules will commence on 21 October 2024.
7. Following a further round of consultation², ASIC made amendments to the 2024 Reporting Rules under *ASIC Derivative Transaction Rules (Reporting) 2024*

¹ ‘Alternative reporting’ is a form of substituted compliance where a foreign entity’s report to a Prescribed Repository for its home jurisdiction reporting requirements also satisfies its reporting requirements under the 2024 Reporting Rules – ASIC would access these reports under international data access arrangements

² *ASIC Derivative Transaction Rules (Reporting) 2024: Follow-on consultation on changes to data elements and other minor amendments*, released 15 November 2023

Amendment Instrument 2024/1 (Amendment Instrument 2024/1) to make minor and technical changes to the data elements under the 2024 Reporting Rules and other administrative updates.

8. The public consultations and rule-making to date has prioritised implementing the international harmonised standards for entity, product and transaction identifiers and ISO 20022 ‘Financial Services – Universal financial industry message scheme’ (*ISO 20022 message definition*) as the technical standard for reporting, as well as more closely aligning the reportable data elements with those of other major jurisdictions. These priority elements require the longest lead times for system and process changes and impact all reporting entities. The rules amendments conclude the substantive review of rule changes designed to consolidate provisions and exemptions within the rules and ensure they are fit for purpose.

Consultation

9. On 15 February 2024, ASIC published Consultation Paper 375 *Proposed changes to the ASIC Derivative Transaction Rules (Reporting): Third consultation (CP 375)*. The consultation period closed on 28 March 2024. CP 375 made proposals to:
 - (a) simplify and permanently exclude ETDs wholly by provisions within the 2024 Reporting Rules, but with a determination power to adjust for any unanticipated definitional uncertainties;
 - (b) reflect the overwhelming mainstream interpretation by foreign reporting entities of an in-scope reportable transaction as a ‘nexus derivative’ by adapting its definition under the *ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015 (Nexus Derivative Exemption)* into the 2024 Reporting Rules;
 - (c) address our concerns with the operation of alternative reporting by removing the provision from the 2024 Reporting Rules and de-prescribing the currently Prescribed Repositories;
 - (d) make changes that clarify the exclusion of FX securities conversion transactions and add additional allowable values that may be reported for some data elements; and
 - (e) make minor consequential changes to the 2015 Clearing Rules to reflect the proposed amendments to the 2024 Reporting Rules and the effect of Law Improvement Package No. 1 that changed the location of some definitions in the Corporations Act and other minor amendments.

(together, the *proposals*).
10. ASIC’s proposals were largely supported by industry feedback to CP 375, with some mixed feedback in response to the proposed removal of the alternative reporting provisions. ASIC received eight submissions in total from industry associations, a trade repository, reporting entities and service providers.

-
11. ASIC has consulted with the Reserve Bank of Australia (*RBA*) and the Australian Prudential Regulation Authority (*APRA*) in relation to the proposals. The RBA and APRA support the rules amendments.
 12. ASIC has consulted with the Office of Impact Analysis (*OIA*) in relation to whether an Impact Analysis (*IA*) would be required. OIA advised that the preparation of an IA was not required because it assessed the proposals as unlikely to have a more than minor regulatory impact.

Operation of the instrument

Part 1: Preliminary

13. Section 1 of Part 1 provides that the name of the Amending Instrument is the *ASIC Derivative Transaction Rules (Reporting and Clearing) Amendment Instrument 2024/416*.
14. Section 2 of Part 1 provides for a staggered commencement of the amendments as follows:
 - (a) Part 1 and Schedules 1, 2, 3 and 5 of the Amending Instrument commence on the later of:
 - (i) 21 October 2024; and
 - (ii) the day after it is registered on the Federal Register of Legislation; and
 - (b) Schedule 4 of the Amending Instrument commences on the later of:
 - (i) 20 October 2025; and
 - (ii) the day after it is registered on the Federal Register of Legislation.
15. Section 3 of Part 1 provides that the Amending Instrument is made under sections 901M of the Act.
16. Section 4 of Part 1 provides that each instrument that is specified in a Schedule to the Amending Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amending Instrument has effect according to its terms.

Schedule 1 Amendments

17. Broadly, schedule 1, items 1 and 2 make changes to Amendment Instrument 2024/1 commencing 21 October 2024 to update the exemption for reporting derivative transaction information using an ISO 20022 message definition to provide for an implementation time where there is a change to the ISO 20022 message definition.
18. Item 1 of the Amending Instrument amends item 12 of Amendment Instrument 2024/1 to extend the heading of subrule 2.2.1(4) from “Exception for

incomplete ISO 20022 message definition” to “Exception for incomplete ISO 20022 message definition, delay for changed message definition”.

19. Item 2 of the Amending Instrument amends item 12 of Amendment Instrument 2024/1 to update subrule 2.2.1(4) to include that the exception to complying with the reporting requirements continues to apply in the circumstance that an approved change to an ISO 20022 message definition has been in effect for a period of less than 7 months. A reporting entity has until the first Monday that occurs 7 months after the date of an approved change to the ISO 20002 message definition to, for example, implement system and process changes for reporting in respect of a change in the ISO 20022 message definition.
20. Item 3 of the Amending Instrument removes item 15 of Amendment Instrument 2024/1 to correct a previous drafting error. Item 15 purported to omit the text “where available” from paragraph 2.2.4(2)(b) of the 2024 Rules, however, the text is not in the 2024 Rules and item 15 of Amendment Instrument 2024/1 has no effect.

Schedule 2 Amendments

21. Schedule 2 amendments amend the 2024 Reporting Rules to:
 - (a) simplify the definitional exclusion of ETDs from the scope of the 2024 Reporting Rules;
 - (b) make changes to derivative transaction information included in Rule S1.3.1, Tables S1.1(1): Transaction information, S1.1(2): Valuation information and S1.1(3): Collateral information; and
 - (c) make other administrative updates.
22. Items 1 to 4 of Schedule 2 of the Amending Instrument make the following changes to the definitions under Rule 1.2.3:
 - (a) Item 1 capitalises the term “Operating Rules” within the definition of “clearing member”;
 - (b) Item 2 relocates the definition of “Operating Rules” to its appropriate alphabetical position; and
 - (c) Item 3 repeals the definition of “Part 7.2A Market”, including the note; and
 - (d) Item 4 repeals the definition of “Regulated Foreign Market” to reflect amendments to simplify the definitional exclusion of ETDs from the scope of the 2024 Reporting Rules.
23. Items 5 to 7 of Schedule 2 of the Amending Instrument make changes to simplify the definitional exclusion of ETDs from the scope of the 2024 Reporting Rules.

-
24. Item 5 of Schedule 2 of the Amending Instrument repeals and replaces subrule 1.2.4(2) with a generic definition of an ETD which is based on paragraph 5(1) of ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 (*Exemption Instrument 2015/844*). Further to making the Amending Instrument, ASIC will consequentially:
- (a) withdraw ASIC Regulated Foreign Markets Determination 2023/346 with effect from 21 October 2024 as Regulated Foreign Markets would cease to be required to be determined; and
 - (b) repeal paragraph 5 of the Exemption Instrument 2015/844 with effect from 21 October 2024 as its provisions are superseded by the provisions of subrules 1.2.4(2) - (5).
25. Paragraph 1.2.4(2)(a) provides for the exclusion of Derivatives able to be traded on, and entered into or reported to, an authorised financial market, in accordance with the Operating Rules of the authorised financial market, and determined by ASIC under subrule 1.2.4(3) as not an OTC Derivative.
26. Paragraph 1.2.4(2)(b) provides for the exclusion of Derivatives able to be traded on, and entered into or reported to, an authorised financial market, in accordance with the Operating Rules of the authorised financial market, and meeting the generic definition of an ETD which:
- (a) Under subparagraph (ii), is in accordance with the Operating Rules of the authorised financial market; and
 - (b) Under subparagraph (iii), the terms of the Derivatives are documented under or prescribed by the Operating Rules of the authorised market; and
 - (c) Under subparagraph (iv), the Derivative is available in one or more series in accordance with the Operating Rules of the authorised financial market and the terms of the Derivative, including the amount or size, are the same for every other derivative in the same series, with the exception of the price; and
- under subparagraph 1.2.4(2)(b)(v) has not been determined by ASIC under subrule 1.2.4(3) as an OTC Derivative.
27. The features of the generic definition of an ETD set out in subparagraphs 1.2.4(2)(b)(ii) – (iv) identify ‘standardisation features’ in terms of:
- (a) in accordance with, and with terms documented under or prescribed by, the Operating Rules of the authorised financial market; and
 - (b) available in one or more series; and
 - (c) the terms of the Derivative, including the amount or size, are the same for every other derivative in the same series, with the exception of the price.

-
28. A Derivative within the meaning of paragraph 1.2.4(2)(a) may or may not have these ‘standardisation features’. If it does not, the Derivative is only *not* an OTC Derivative if it is determined as such by ASIC under subrule 1.2.4(3).
- (a) Such a Derivative may be, for example, an interest rate swap, that is, under international norms and in ASIC’s view, not ordinarily to be treated as an exchange-traded derivative for derivative transaction reporting purposes – it is not likely to be determined by ASIC under subrule 1.2.4(3) as *not* an OTC Derivative; or
 - (b) Alternatively, such a Derivative may be an existing exchange-traded derivative for which the operator of the authorised financial market has relaxed its ‘standardisation features’ to the point that it is ‘OTC-like’ – subject to the particular circumstances, ASIC may determine under subrule 1.2.4(3) that the Derivative is continued to be treated as *not* an OTC Derivative.
29. If a Derivative within the meaning of paragraph 1.2.4(2)(a) does have the ‘standardisation features’, then 1.2.4(2)(b) applies and the Derivative is not an OTC Derivative unless ASIC makes a determination to the contrary under subrule 1.2.4(3).
- (a) Such a Derivative may be, for example, a commodity futures contract, that is, under international norms and in ASIC’s view, ordinarily to be treated as an exchange-traded derivative for derivative transaction reporting – it is not likely to be determined by ASIC under subrule 1.2.4(3) as an OTC Derivative; or
 - (b) Alternatively, such a Derivative may be an existing OTC Derivative for which the operator of the authorised financial market upon which it is traded tightens its ‘standardisation features’ to the point that it is ‘exchange traded-like’ – subject to the particular circumstances, ASIC may determine under subrule 1.2.4(3) that the Derivative is continued to be treated as an OTC Derivative.
30. Item 6 of Schedule 2 of the Amending Instrument repeals subrule 1.2.4(2A), which removes the meaning of “Regulated Foreign Market”, which is no longer required.
31. Item 7 of Schedule 2 of the Amending Instrument repeals and replaces the ASIC determination provision in subrule 1.2.4(3) to be a power to specify certain derivatives for the purposes of subrule 1.2.4(2) with the effect that they are, or are not, ETDs. As illustrated in paragraphs 28-29, the note to subrule 1.2.4(3) clarifies that:
- (a) a determination specifying a Derivative or class of Derivatives for the purposes of paragraph 2(a) means the Derivative or class of Derivatives *is not* an OTC derivative if it is traded on an authorised financial market; and
 - (b) a determination specifying Derivative or class of Derivatives for the purposes of paragraph 2(b) means that despite meeting the requirements

of subparagraphs 2(b)(i)-(iv), the derivative or class of derivatives *is* an OTC derivative.

32. The replacement provision is intended to provide an efficient means to resolve any unanticipated definitional uncertainties, which may arise, for example, where the terms of ETDs become more customisable or, conversely, the terms of OTC derivatives become more standardised. There have been no current circumstances identified which could warrant use of the power, and it is expected that this power would only need to be used sparingly, if at all, in the future.
33. The replacement provision is applicable to derivatives in relation to any authorised financial market, and not just ‘Regulated Foreign Markets’ as is the case under the 2024 Reporting Rules prior to the amendment. This is because the 2024 Reporting Rules no longer separately identify classes of financial markets – for example, a Part 7.2A Market – as the circumstances of the terms of ETDs become more customisable or, conversely, the terms of OTC derivatives become more standardised, may arise in relation to any authorised financial market or class of authorised financial market.
34. Item 8 of Schedule 2 of the Amending Instrument replaces Note 2 under paragraph 1.2.4(5)(b) to update references to refer to the “Federal Register of Legislation (FRL)” and the “Legislation Act 2003”.
35. Item 9 of Schedule 2 of the Amending Instrument amends paragraph 1.2.4(6)(a) to include a provision that the Reporting Entity “reasonably believes”, rather than knows with certainty, that a foreign exchange contract between, or by one of the counterparties, is to facilitate settlement of a foreign currency denominated security or portfolio transaction and hence is not an OTC Derivative under subrule 1.2.4(6), subject to paragraph (b).
36. Consequently, a reporting entity is not required to conclusively determine that a foreign exchange contract must not be reported, and may report the transaction if it does not have a reasonable belief that it is not reportable.
37. Item 10 of Schedule 2 of the Amending Instrument makes an administrative amendment to replace “operating rules” with the capitalised term “Operating Rules” for consistency with the definition included in Rule 1.2.3.
38. Item 11 of Schedule 2 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 19 (Execution timestamp), under the column headed “3. Derivative Transaction Information” to narrow the requirement for the timestamp to be included from “all reports including a report about the termination of the OTC Derivative” to the lesser set of Action types being “reports where the Action type (item 101 below) is reported as NEWT, MODI, TERM, CORR or REVI”.
39. Item 12 of Schedule 2 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 20 (Event timestamp), under the column headed “3. Derivative Transaction Information” by replacing the cell with: “The date, or date and time, of the occurrence of the event of the Action type (item

101 below).” – this widens the requirement to report to all Action types, in line with the international guidance for critical data elements (**CDE Technical Guidance**)³ and the requirements of other major jurisdictions.

40. Item 13 of Schedule 2 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 74 (Other payment amount), under the column headed “5. Allowable Values” by replacing the cell of “Any numeric value greater than zero” with: “Any numeric values greater than or equal to zero.”, in line with the CDE Technical Guidance and the requirements of other major jurisdictions.
41. Item 14 of Schedule 2 of the Amending Instrument amends Rule S1.3.1, Table S1.1(2): Valuation information, item 9 (Valuation method), under the column headed “5. Allowable Values” by replacing the cell with: “(a) MTMA—if the Valuation amount (item 7 above) was determined using a mark-to-market method; (b) MTMO—if the Valuation amount (item 7 above) was determined using a mark-to-model method; or (c) CCPV—if the Valuation amount (item 7 above) was determined by the Central counterparty reported for item 23 in Table S1.1(1) above.” – this adds ‘CCPV’ as an allowable value for reporting.
42. Items 15 to 18 of Schedule 2 of the Amending Instrument make amendments to ensure consistency of reporting requirements in respect of a single amount of margin that does not distinguish between initial margin and variation margin, and is reportable as variation margin.
43. Prior to the amendment, the collateral portfolio code reported for such a single amount of margin is reported as a variation margin portfolio code, whereas the single amount of margin is reported as an initial margin amount – the amendments realign the reporting of the single amount of margin as a variation margin amount.
44. Item 15 of Schedule 2 of the Amending Instrument amends Rule S1.3.1, Table S1.1(3): Collateral information, item 12 (Initial margin posted by the Reporting Entity (pre-haircut)), under the column headed “3. Derivative Transaction Information” by removing the paragraph beginning “Where a single amount of margin”.
45. Item 16 of Schedule 2 of the Amending Instrument amends Rule S1.3.1, Table S1.1(3): Collateral information, item 15 (Initial margin collected by the Reporting Entity (pre-haircut)), under the column headed “3. Derivative Transaction Information” by removing the paragraph beginning “Where a single amount of margin”.
46. Item 17 of Schedule 2 of the Amending Instrument amends Rule S1.3.1, Table S1.1(3): Collateral information, item 18 (Variation margin posted by the Reporting Entity (pre-haircut)), under the column headed “3. Derivative

³ CPMI-IOSCO, Technical guidance: Harmonisation of critical OTC derivatives data elements (other than UTI and UPI), April 2018 (**CDE Technical Guidance**) — the Regulatory Oversight Committee published a first update to the CDE Technical Guidance in September 2021 and a second update in September 2023.

Transaction Information” by inserting “Where a single amount of margin is posted that does not distinguish between margin that is initial margin and margin that is variation margin, the single amount of margin is reported for this data element.” after the paragraph ending “its daily change.”.

47. Item 18 of Schedule 2 of the Amending Instrument amends Rule S1.3.1, Table S1.1(3): Collateral information, item 20 (Variation margin collected by the Reporting Entity (pre-haircut)), under the column headed “3. Derivative Transaction Information” by inserting “Where a single amount of margin is posted that does not distinguish between margin that is initial margin and margin that is variation margin, the single amount of margin is reported for this data element.” after the paragraph ending “its daily change.”.

Schedule 3 Amendments

48. Schedule 3 amends the 2024 Reporting Rules to make changes to derivative transaction information included in Rule S1.3.1, Tables S1.1(1): Transaction information by repealing and replacing entire items.
49. Item 1 of Schedule 3 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 41 (Notional amount schedule end date—Leg 1) by repealing and replacing the entire item. The amendment provides that an end date is not required to be reported if it is “back-to-back” with the effective date of the next period of the schedule, rather than, prior to the amendment, ‘the same date’ as the effective date of the next period of the schedule. The amendment is in line with the CDE Technical Guidance and the requirements of other major jurisdictions and responds to industry representations that “back-to-back” is commonly understood by industry to refer to consecutive dates or the same date.
50. Item 2 of Schedule 3 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 44 (Notional amount schedule end date—Leg 2) by repealing and replacing the entire item. As for item 1, the amendment provides that an end date is not required to be reported if it is “back-to-back” with the effective date of the next period of the schedule.
51. Item 3 of Schedule 3 of the Amending Instrument amends Rule S1.3.1, Table S1.1(1): Transaction information, item 75 (Other payment type) by repealing and replacing the entire item. The amendment adds “PEXH” as an optional additional allowable value where the payment amount reported under item 74 (Other payment amount) is an exchange of a notional amount and the Unique product identifier (*UPI*) (item 2) is a UPI for a cross-currency swap. Reporting entities that report cross-currency interest rate swap transactions may, but are not required to, report the PEXH allowable value and up to 24 data elements that are associated with the notional amount exchanges of cross-currency interest rate swap transactions. The addition of PEXH is to facilitate international alignment and ISO 20022 XML message formation processes for multijurisdictional reporters where they are required to report PEXH and its associated data elements in other jurisdictions.

Schedule 4 Amendments

52. Broadly, Schedule 4 amendments amend the 2024 Reporting Rules, commencing 20 October 2025, to:
- (a) substitute dealings in ‘Nexus Derivatives’ as the scope test for foreign entities’ reportable transactions in place of the ‘entered into’ scope test, and separately specify an ‘entered into’ scope test for foreign central counterparties’ reportable transactions (items 1 – 3); and
 - (b) remove the provisions for alternative reporting (items 4 – 8).
53. Further to making the Amending Instrument, ASIC will consequentially extend the policy settings provided under the Nexus Derivative Exemption to 20 October 2025, to align with the commencement of schedule 4.
54. Item 1 of Schedule 4 of the Amending Instrument amends Rule 1.2.3 to insert a new definition of a “Nexus Derivative” which closely follows its definition in the Nexus Derivative Exemption Instrument. Broadly, a Nexus Derivative is an OTC Derivative in relation to which Australian-located staff of a foreign entity are involved in one or more functions of pricing, seeking or providing quotes, structuring, offer and/or acceptance or managing its financial risks and a Reporting Entity is a counterparty. More specifically, a Nexus Derivative is defined as an OTC Derivative to which the Reporting Entity is a counterparty, where:
- (a) one or more of the following functions in relation to the OTC Derivative:
 - (i) determining the price, level, rate or other economic terms (collectively, *Terms*) on which the Reporting Entity is willing to enter into the OTC Derivative, including by determining the proposed Terms or range of proposed Terms which may be communicated to the proposed counterparty or agreeing the final Terms on which the Reporting Entity will enter into the OTC Derivative with the proposed counterparty;
 - (ii) communicating to the proposed counterparty one or more of the Terms on which the Reporting Entity is willing to enter into the OTC Derivative;
 - (iii) offering to enter into the OTC Derivative with the proposed counterparty or inviting the proposed counterparty to offer to enter into the OTC Derivative with the Reporting Entity;
 - (iv) agreeing to enter into the OTC Derivative with the proposed counterparty;
 - (v) managing the financial risk arising from the OTC Derivative; is, or in the case of the function referred to in subparagraph (v), will be, performed on behalf of the Reporting Entity by a person who is:
 - (vi) ordinarily resident or employed in this jurisdiction; or

-
- (vii) acting as part of a desk, office or branch of:
- (A) the Reporting Entity; or
 - (B) an entity that is an associate of the Reporting Entity,
where that desk, office or branch is located in this jurisdiction; and
- (b) if the OTC Derivative was executed through an authorised financial market, one or more of the functions referred to in subparagraphs (a)(i) - (v) in relation to the OTC Derivative is, or in the case of the function referred to in subparagraph (a)(v), will be, performed on behalf of the Reporting Entity by a person who is:
- (i) ordinarily resident or employed in this jurisdiction; or
 - (ii) acting as part of a desk, office or branch of:
 - (A) the Reporting Entity; or
 - (B) an entity that is an associate of the Reporting Entity,
where that desk, office or branch is located in this jurisdiction.
55. As was stated in the Explanatory Statement to the Nexus Derivative Exemption: the test for determining whether an OTC Derivative is a Nexus Derivative is based on the functions performed by the persons involved in executing the relevant derivative transaction. The test is designed to capture functions which would typically be performed by a person who is commonly referred to as a 'salesperson' or 'trader'. The test is not intended to capture functions performed by persons sitting in non-sales or trader functions such as management, counterparty risk, operational risk, finance and treasury. The person's role in the organisation or job title is not definitive in determining whether an OTC Derivative is a Nexus Derivative.
56. In accordance with Rule 1.2.2, an 'associate' is defined in section 9 of the Corporations Act, referring to sections 10 – 17 – see, for example, subsection 11(b) referring to a 'related body corporate'.
57. Items 2 and 3 of Schedule 4 of the Amending Instrument amend Table 1: Reporting Entities and OTC Derivatives under Rule 1.2.5 (**Table 1**).
58. Item 2 of Schedule 4 of the Amending Instrument amends Table 1 to insert a new item 2 which specifies that a foreign entity that is a CS Facility Licensee is required to report all OTC Derivatives entered into with an Australian Entity.
59. Item 3 of Schedule 4 of the Amending Instrument repeals the existing item 2 of Table 1 and replaces it as item 3 to make changes to:
- (a) Substitute an element of scoping reportable transactions by foreign entities from all OTC Derivatives “entered into by the Reporting Entity in this jurisdiction” to all OTC Derivatives “that are a Nexus Derivative”, as defined by amending item 1; and

-
- (b) remove a CS Facility Licensee as a kind of foreign Reporting Entity to reflect that a foreign CS Facility Licensees is now included by the Amending Instrument as a distinct Reporting Entity kind at item 2 of Table 1. The foreign CS Facility Licensees scope test for reportable transactions retains an “entered into” concept since the substituted concept of a “Nexus Derivative” would not apply to foreign CS Facility Licensees without the local staffing presence and activities that would fall within the meaning of a “Nexus Derivative”.
60. Item 4 of Schedule 4 of the Amending Instrument amends subrule 2.2.1(3), in relation to the alternative reporting provisions, to replace all the words after “in relation to a Reportable Transaction” with “referred to in subparagraphs 1.2.5(1)(b)(ii)-(iv) if, at the time the Reporting Entity is required to comply with the requirements, information about the OTC Derivative to which the Reportable Transaction relates has been reported to a Prescribed Repository before 20 October 2025.”. The effect of the amendment is to:
- (a) remove the alternative reporting provisions as a form of substituted compliance; and
- (b) provide an exemption for a Reportable Transaction that is a modification, termination or assignment, or a change to the way a Reporting Entity records an OTC Derivative in its books and records, under paragraph 1.2.5(1)(b), that was reported to a Prescribed Repository before the removal of the alternative reporting provisions.
61. Broadly, items 5-7 of Schedule 4 of the Amending Instrument insert into Rule 2.2.2 a comparable exemption to that in the amended subrule 2.2.1(3) in relation to reports made under Rule 2.2.2. Item 7 inserts the substantive exemption provisions at new subrule 2.2.2(4), and items 5 and 6 make consequential changes to preceding subrules of Rule 2.2.2.
62. Item 5 of Schedule 4 of the Amending Instrument amends subrule 2.2.2(1) to replace “Where” with “Subject, to subrule (4), where”.
63. Item 6 of Schedule 4 of the Amending Instrument amends subrule 2.2.2(2) to replace the reference to “subrule (3)” with “subrules (3) and (4)”.
64. Item 7 of Schedule 4 of the Amending Instrument amends Rule 2.2.2 to insert new an exemption at subrule (4) in respect of reporting changes to an OTC Derivative reported under the alternative reporting provisions prior to 20 October 2025; “(4) A Reporting Entity is not required to comply with the requirements of subrule (1) in relation to information about an OTC Derivative that has been reported to a Prescribed Repository before 20 October 2025.”.
65. Item 8 of Schedule 4 of the Amending Instrument amends subrule 2.2.9(1), in relation to the reporting requirements for a unique transaction identifier, to remove the note referring to a report under the alternative reporting provisions.

Schedule 5 Amendments

66. Broadly, Schedule 5 amendments amend the Clearing Rules, commencing 21 October 2024, to:
- (a) make consequential amendments to align the exclusion of ETDs from the 2024 Reporting Rules with the exclusion of ETDs from the Clearing Rules; and
 - (b) make consequential administrative amendments for the effects of:
 - (i) Law Improvement Package No. 1 that changed the location of some definitions in the Corporations Act; and
 - (ii) Corporations (Derivatives) Determination 2023 (*Derivatives Determination*) that renumbered the location of the determined derivatives for which clearing requirements may be imposed.
67. Items 1-8 of Schedule 5 of the Amending Instrument amend definitions in Rule 1.2.1 to update references and include and remove definitions for consistency with the 2024 Reporting Rules.
68. Item 1 of Schedule 5 of the Amending Instrument amends Rule 1.2.1 to replace “section 761A” with “section 9” in the definition of “Derivative Transaction” to reflect the changed location under Law Improvement Package No. 1.
69. Item 2 of Schedule 5 of the Amending Instrument amends Rule 1.2.1 to replace “section 5” with “section 7” in the definition of “Determined Clearing Class” to reflect the changed location under the Derivatives Determination.
70. Item 3 of Schedule 5 of the Amending Instrument amends Rule 1.2.1 to replace “2013” with “2023” in the definition of “Determined Clearing Class” to refer to the current Derivatives Determination.
71. Item 4 of Schedule 5 of the Amending Instrument amends Rule 1.2.1 to repeal the definition of “Exempt Financial Market”.
72. Item 5 of Schedule 5 of the Amending Instrument amends Rule 1.2.1 to replace “section 761A” with “section 9” in the definition of “Licensed CS Facility” to reflect the changed location under Law Improvement Package No. 1.
73. Item 6 of Schedule 5 of the Amending Instrument amends Rule 1.2.1 to repeal the definition of “Part 7.2A Market”.
74. Item 7 of Schedule 5 of the Amending Instrument amends Rule 1.2.1 to insert a new definition of “OTC Derivative”, after “Overnight Index Swap”, which refers to Rule 1.2.4 of the 2024 Reporting Rules for use of a consistent definition.
75. Item 8 of Schedule 5 of the Amending Instrument amends Rule 1.2.1 to repeal the definition of “Regulated Foreign Market”.

-
76. Broadly, items 9-10 of Schedule 5 of the Amending Instrument amend Rule 1.2.3 to revise the meaning of a “Clearing Derivative” to include a condition that it is an OTC Derivative by way of reference to the definition in the 2024 Reporting Rules, repeal subrule (7) which was intended to exclude ETDs from the meaning, and consequentially renumber subrule references.
77. Item 9 of Schedule 5 of the Amending Instrument replaces subrule 1.2.3(1) with: “(1) Subject to subrules (6) to (7), a Derivative is a Clearing Derivative if the Derivative:
- (a) is an OTC Derivative; and
 - (b) is in a Determined Clearing Class; and
 - (c) is a Basis Swap, Fixed-to-Floating Swap, Forward Rate Agreement or Overnight Index Swap; and
 - (d) meets the IRD Class Specifications.”.
78. Item 10 of Schedule 5 of the Amending Instrument repeals subrule 1.2.3(7).
79. Item 11 of Schedule 5 of the Amending Instrument re-references subrule (8) as subrule (7).

Legislative instrument and primary legislation

80. The subject matter and policy implemented by the Amending Instrument is more appropriate for a legislative instrument rather than primary legislation because:
- (a) the effect of the Amending Instrument is broadly to simplify the regulatory framework and scoping elements of reporting requirements to ensure the 2024 Reporting Rules facilitate comprehensive, high quality data that is fit for regulatory purposes. Both the 2024 Reporting Rules and the Clearing Rules are themselves legislative instruments rather than primary legislation;
 - (b) the Amending Instrument utilises powers given by Parliament to ASIC that allow ASIC to make, amend and repeal rules relating to derivatives transactions, including reporting and clearing requirements; and
 - (c) the matters contained in the Amending Instrument are designed to ensure the:
 - (i) the 2024 Reporting Rules provide clearer scoping in respect of reporting entities and reportable transactions, as well as reporting requirements and derivative transaction information; and
 - (ii) the Clearing Rules align the definition of OTC Derivatives with the 2024 Reporting Rules changes and to reflect administrative updates for clarity and readability.

-
81. The duration of the amendments made by this Amending Instrument align with:
- (a) the duration of the 2024 Reporting Rules, which are scheduled to sunset on 1 April 2033; and
 - (b) the duration of the Clearing Rules, which are scheduled to sunset on 1 April 2026.

Legislative authority

82. The Amending Instrument is made under section 901M of the Act.
83. Subsection 901M(1) of the Corporations Act provides that ASIC may amend a derivative transaction rule in like manner and subject to like conditions.
84. Subsection 901K(1) of the Corporations Act provides that ASIC must receive the Minister's consent to making the amendments. The Minister consented to the making of the Amending Instrument by written notice to ASIC dated 11 August 2024.
85. Section 901H of the Corporations Act describes matters to which ASIC must have regard when making derivative transaction rules. ASIC considers that the amendments to the 2024 Reporting Rules do not introduce any reporting obligations that would negatively affect the efficiency, integrity and stability of the Australian financial system. The amendments to the 2024 Reporting Rules:
- (a) simplify the regulatory architecture for the exclusion of ETDs that enables reporting entities to more easily identify and understand their reporting obligations;
 - (b) apply a singular, mainstream scope test for reporting by foreign entities that also improves coverage of reportable transactions for the Australian regulatory agencies;
 - (c) improve the alignment of the 2024 Reporting Rules requirements with those of other major international jurisdictions;
 - (d) provide more than 12 months implementation lead time for the amendments with the most impact on affected reporting entities' systems and processes; and
 - (e) have been finalised after carefully considering, and responding to, matters raised in consultation in accordance with section 901J of the Corporations Act (see paragraphs 9–12, above).

Statement of Compatibility with Human Rights

86. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the [Attachment](#).

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Derivative Transaction Rules (Reporting and Clearing) Amendment Instrument 2024/416

Overview

1. The *ASIC Derivative Transaction Rules (Reporting and Clearing) Amendment Instrument 2024/416* (the **Amending Instrument**) is made by ASIC under section 901M of the *Corporations Act 2001* (the **Corporations Act**), acting with the consent of the Minister under section 901K of the *Corporations Act*.
2. The Amending Instrument amends the *ASIC Derivative Transaction Rules (Reporting) 2024 (2024 Reporting Rules)* and makes consequential and administrative updates to the *ASIC Derivative Transaction Rules (Clearing) 2025 (Clearing Rules)* for consistency. The 2024 Reporting Rules require the reporting of the terms and ongoing valuations and collateral exchanged for over-the-counter (**OTC**) derivative transactions by businesses licensed by ASIC or otherwise authorised to deal in derivatives in Australia. The Clearing Rules require central clearing of OTC interest rate derivatives denominated in Australian dollars, US dollars, euros, British pounds, and Japanese yen by Australian and foreign financial institutions that meet the clearing threshold.
3. The requirements to report and clear OTC derivatives transactions were introduced in Australia in 2013 and 2015 respectively as key components of the comprehensive OTC derivatives reform agenda agreed by the G20 leaders in response to the global financial crisis given the significant economic and social damage that was experienced. The OTC derivatives market reform agenda was developed with the objectives of improving transparency to regulators, mitigating systemic risk, and protecting against market abuse.
4. The Amending Instrument makes amendments to:
 - (a) in the 2024 Reporting Rules:
 - (i) substitute a generic definition of an excluded exchange-traded derivative (**ETD**) in place of the existing list of specified financial markets and classes of financial markets, but with a determination power to adjust for any unanticipated definitional uncertainties;
 - (ii) substitute dealings in ‘nexus derivatives’ as the scope test for foreign entities reporting requirements in place of the existing

‘entered into’ scope test, and simplify the scope of foreign central counterparties reporting requirements;

- (iii) remove the provisions for alternative reporting⁴;
 - (iv) make other minor amendments, largely to data elements to align with other major jurisdictions and to correct prior errors and omissions; and
- (b) In the 2015 Clearing Rules:
- (i) make consequential amendments to exclude ETDs by reference to the 2024 Reporting Rules; and
 - (ii) make consequential amendments for the effect of Law Improvement Package No. 1 that changed the location of some definitions in the Corporations Act and other minor amendments.
5. The Amending Instrument:
- (a) imposes reporting and clearing requirements as permitted by paragraph 901A(2)(b) and (c) and subsection 901A(6) and (7) of the Corporations Act;
 - (b) deals with the manner and form in which persons are required to comply with the reporting and clearing requirements imposed by the 2024 Reporting Rules and Clearing Rules as permitted by paragraph 901A(3)(f) of the Corporations Act; and
 - (c) deals with the circumstances in which persons are relieved from complying with the reporting and clearing requirements in the 2024 Reporting Rules and Clearing Rules that would otherwise apply to them as permitted by paragraph 901A(3)(g) of the Corporations Act.

Assessment of human rights implications

6. The Amending Instrument does not engage any of the applicable rights or freedoms.

Conclusion

7. The Amending Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

¹ ‘Alternative reporting’ is a form of substituted compliance where a foreign entity’s report to a Prescribed Repository for its home jurisdiction reporting requirements also satisfies its reporting requirements under the 2024 Reporting Rules – ASIC would access these reports under international data access arrangements