

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 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 1 March 2021 to:

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What will happen next?

| | | |
|----------------|------------------|---|
| Stage 1 | 27 November 2020 | ASIC's first consultation paper released |
| Stage 2 | 1 March 2021 | Comments due on the first consultation paper |
| Stage 3 | 30 April 2021 | ASIC's second consultation paper released |
| Stage 4 | 30 June 2021 | Comments due on the second consultation paper |
| Stage 5 | Q3–Q4 2021 | Amended rules made, feedback report released and regulatory guide amended |
| Stage 6 | Q3–Q4 2022 | Amended rules come into force |

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. This has provided transparency to regulators of trading activity and positions and counterparty exposures that assists regulators in identifying financial system vulnerabilities, conducting market surveillance, monitoring market metrics and practices, and informing policy developments and assessing outcomes.

In recent years, international standards have been developed for entity identifiers, transaction identifiers, product identifiers and common data elements for transaction terms and valuation and collateral information. Several overseas regulators have made proposals and/or finalised rules to implement these standards.

We are likewise proposing to implement these internationally harmonised standards: see Sections B–F.

We have also reviewed the structure, scope and operation of the rules and are proposing changes to simplify the rules and improve their fitness for purpose: see Sections G–J.

For international harmonisation, there are inherent interdependencies among jurisdictions and most overseas regulators have not yet finalised their revised rules. In light of this, we have planned two rounds of consultation to 30 June 2021. This first consultation presents our current state proposals and the second consultation in Q2 2021 intends to present our final proposals which will take into account responses to this consultation and further rules development in overseas jurisdictions.

The G20 OTC derivatives reforms

- 1 In response to the global financial crisis, the leaders of the Group of Twenty (G20) agreed to a range of reforms to over-the-counter (OTC) derivatives markets at the 2009 Pittsburgh summit. These reforms included:
 - (a) mandatory reporting of OTC derivative transactions to trade repositories;
 - (b) requiring all standardised OTC derivative transactions to be made on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties; and

- (c) requiring non-centrally cleared transactions to be subject to higher capital requirements.

Note: In November 2011, the G20 leaders also agreed that international standards should be developed for margin requirements of non-centrally cleared OTC derivatives.

What is transaction reporting?

- 2 Transaction reporting is the mandatory reporting of information about OTC derivative transactions to a derivative trade repository. A trade repository acts as a centralised registry that maintains an electronic database of records of transactions. The trade repositories then make these transaction records available to regulators.

Implementation of transaction reporting in Australia

- 3 In 2012, Parliament passed the *Corporations Legislation Amendments (Derivative Transactions) Act 2012* inserting Pt 7.5A 'Regulation of derivative transactions and derivative trade repositories' into the *Corporations Act 2001* (Corporations Act). The legislation provided a framework for the Minister to mandate requirements for derivative transactions, and for ASIC to make rules in respect of these requirements. The legislation came into force on 3 January 2013.
- 4 On 2 May 2013, the Minister made a determination (the Corporations (Derivatives) Determination 2013) under s901B(2) of the Corporations Act that the classes of derivatives in relation to which reporting requirements may be imposed are:
 - (a) commodity derivatives that are not electricity derivatives;
 - (b) credit derivatives;
 - (c) equity derivatives;
 - (d) foreign exchange derivatives;
 - (e) interest rate derivatives.
- 5 On 9 July 2013, ASIC made the ASIC Derivative Transaction Rules (Reporting) 2013 (ASIC Rules).
- 6 The operation of the ASIC Rules has since been affected by amendments to the Corporations Regulations 2001 (Corporations Regulations) and the ASIC Rules, the ASIC Regulated Foreign Markets Determination [OTC DET 13/1145] and ASIC exemption instruments: see Table 1.

Table 1: Instruments affecting the ASIC Rules

| Instrument | Summary effect on ASIC Rules |
|---|---|
| Corporations Regulations, reg 7.5A.50 | Precludes imposing requirements on end users |
| Corporations Regulations, regs 7.5A.71–7.5A.74 | <p>Exempts entities with small-scale gross notional outstanding positions from reporting transactions where their counterparty reports the transactions</p> <p>Note: Regulation 7.5A.73 specifies that the exemption ceases to apply to an entity where the entity has total gross notional outstanding positions of A\$5 billion or more on two successive quarter-end days</p> |
| ASIC Derivative Transaction Rules (Reporting) Amendment 2015 (No. 1) | <p>Adds US Commodity Futures Trading Commission (CFTC) ‘designated contract markets’ and EU ‘regulated markets’ as markets whose derivative contracts are not reportable OTC derivatives (in addition to the existing Pt 7.2A markets and ASIC-determined ‘regulated foreign markets’)</p> <p>Adds ‘safe harbour’ provisions regarding reasonable steps taken by a reporting entity to ensure the accuracy of information reported by their outsourced delegate reporter</p> <p>Note: The ‘safe harbour’ provisions relate to having terms of a delegate’s appointment documented in writing and making regular inquiries reasonably designed to determine that the delegate is meeting its obligations under these terms</p> <p>Adds ‘snapshot’ reporting as a compliant form of transaction reporting, except for transactions in ASIC-determined excluded derivatives for which ‘lifecycle’ reporting applies</p> <p>Replaces ABN with AVID as a valid entity identifier</p> |
| ASIC Regulated Foreign Markets Determination [OTC DET 13/1145] | Lists 32 individual foreign financial markets as ‘regulated foreign markets’ and Securities and Exchange Commission (SEC) ‘regulated markets’ and UK ‘regulated markets’ |
| ASIC Derivative Transaction Rules (Reporting) Determination 2018/1096 (PDF 105 KB) | Determines equity derivatives, contracts for difference (CFD) derivatives, margin FX (foreign exchange) derivatives and CFD-like derivatives as excluded derivatives for which ‘lifecycle’ reporting applies |
| ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015 | 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 |
| ASIC Corporations (Derivative Transaction Reporting Exemption) 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 |

| Instrument | Summary effect on ASIC Rules |
|--|---|
| ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 | <p>Until 30 September 2022, transaction reporting exemptions for:</p> <ul style="list-style-type: none"> • exchange-traded derivatives traded on other than a regulated foreign market • entity name information where entity identifiers of certain types are reported • unique transaction identifiers other than identifiers generated under CFTC rules or by certain trading platforms or confirmation platforms • short-dated foreign exchange transactions entered into to facilitate settlement of transactions in foreign currency denominated securities <p>Also, transaction reporting exemptions for:</p> <ul style="list-style-type: none"> • entity identifiers where entity identifiers of certain types are applied for within two business days • entity identifiers for certain types of foreign counterparties in transactions entered into by NZ registered banks • entity identifiers for counterparties who have entered into transactions as joint or joint and several counterparties • reference entity identifiers for certain types of credit derivatives where an identifier of a certain type is reported |

What we are doing now

- 7 We are proposing to update the 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 ASIC Rules; and
 - (c) fit-for-purpose as to the scope of reporting entities, derivative products and lifecycle transaction events that are subject to the ASIC Rules and clear as to the roles and responsibilities of entities submitting derivative transaction reports.
- 8 Our proposals principally focus on rule changes to fully implement the harmonised international transaction identifiers, product identifiers, common transaction data elements and entity identifiers of the:
- (a) unique transaction identifier (UTI);
 - (b) unique product identifier (UPI);
 - (c) critical data elements (CDE); and
 - (d) legal entity identifier (LEI).

These proposed changes are in line with Australia's G20 commitments and the Financial Stability Board (FSB)'s expectations.

- 9 Our proposals also consider rule changes to make the ASIC Rules more fit for purpose in terms of:
- (a) removal of outdated transitional implementation provisions;
 - (b) consolidating reporting exemptions within the ASIC Rules;
 - (c) coverage scope of reporting entities;
 - (d) coverage scope of reportable transactions;
 - (e) coverage scope of lifecycle reporting;
 - (f) alternative reporting provisions; and
 - (g) delegated reporting provisions.

Our two-round consultation plans

- 10 Section 901J of the Corporations Act provides that ASIC must not make a derivative transaction rule unless it has consulted the public about the proposed rule and has also consulted the Australian Prudential Regulation Authority and the Reserve Bank of Australia.
- 11 Section 901K of the Corporations Act provides that ASIC must not make a derivative transaction rule unless the Minister has consented, in writing, to making the rule.
- 12 The scope of our proposals is dominated by international harmonisation objectives but there is an inherent interdependency among all the jurisdictions with trade reporting obligations—for example, a globally unique UTI depends on all jurisdictions' rules in all circumstances producing the outcome that both parties to a transaction, in complying with their relevant jurisdiction's rules, clearly know which of the parties will generate the UTI.
- 13 However, given that the final rules of most international jurisdictions are still to be settled, we are planning for two rounds of consultation over the next year. This first consultation sets out our current proposals. The second consultation in Q2 2021 intends to present our final proposals which will take into account responses to this consultation and further rules development in overseas jurisdictions and any developments in the international standards themselves.
- 14 The timeframe for this first consultation is November 2020 to February 2021, with a second round of consultation in May 2021 to June 2021. We plan to make the updated ASIC Rules by Q3–Q4 2021, effective from Q3–Q4 2022.

- 15 We welcome your feedback on the proposals in this consultation paper, in particular where we are requesting information from stakeholders to inform the development or refinement of proposals that we may make in the second round of consultation. We also welcome your feedback on any additional proposals you may have to improve the ASIC Rules.

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.

CFTC means the United States Commodity Futures Trading Commission.

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.

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).

B Development of the UTI, UPI, CDE and LEI

Key points

International regulatory guidance has been developed for the use of standardised entity identifiers, transaction identifiers, product identifiers and common data elements in derivative transaction reporting.

More recently, governance and operational arrangements have been established for each of these identifiers and data elements.

ASIC represents the Australian regulators as a member of the Regulatory Oversight Committee which is the international governance body for these identifiers and data elements.

Background

- 17 As initiated by the G20, international regulatory bodies have developed guidance for the standardisation of entity identifiers, transaction identifiers, product identifiers and common data elements for derivative transaction reporting.
- 18 In June 2012, the Financial Stability Board (FSB) published *A global legal entity identifier for financial markets*, which set out 15 global LEI system high-level principles and 35 recommendations for the development of a unique identification system for parties to financial transactions. The FSB recommendations were endorsed by the G20 at the Los Cabos Summit in June 2012.
- 19 The global LEI system (GLEIS) has since been established and over 1.7 million LEIs have been issued.
- 20 In September 2014, the FSB published *Feasibility study on approaches to aggregate OTC derivatives data* which identified international data standardisation and harmonisation needs in terms of LEIs, important data elements (now known as the CDE) and the UTI and UPI.
- 21 The FSB asked the Committee on Payments and Market Infrastructures (CPMI) of the Bank for International Settlements and the International Organization of Securities Commissions (IOSCO) to develop global guidance on the harmonisation of derivative transactions data elements.
- 22 CPMI IOSCO has subsequently published technical guidance on the UTI, UPI and CDE:
- (a) CPMI IOSCO, [*Technical guidance: Harmonisation of the unique transaction identifier*](#) (PDF 570 KB), February 2017 (UTI Guidance);

- (b) CPMI IOSCO, [Technical guidance: Harmonisation of the unique product identifier](#) (PDF 602 KB), September 2017 (UPI Guidance); and
- (c) CPMI IOSCO, [Technical guidance: Harmonisation of critical OTC derivatives data elements \(other than UTI and UPI\)](#) (PDF 1.01 MB), April 2018 (CDE Guidance).

Governance and operation of the UTI, UPI, CDE and LEI

- 23 Governance and operational arrangements have been established for each of the UTI, UPI, CDE and LEI. These arrangements are summarised in Table 2 and comprise:
- (a) a data standard and maintenance body;
 - (b) service providers that create and issue or disseminate the data elements to users;
 - (c) an international governance body that provides overall oversight and coordinates between the service providers, standards maintenance bodies and other stakeholders; and
 - (d) regulatory authorities in individual jurisdictions who are responsible for their jurisdictional implementation.

Table 2: Main components of governance and operational arrangement

| Component | UTI | UPI | CDE | LEI |
|-------------------------------|---|--|---------------------|------------------|
| Data standard | ISO ISO 23897 | ISO ISO/CD 4914 under development | ISO In ISO 20022 | ISO ISO 17442 |
| Service provider | n/a | DSB | n/a | GLEIF LOUs |
| International governance body | Regulatory Oversight Committee (ROC) Committee on Derivative Identifiers and Data Elements (CDIDE) | | | |
| Jurisdictions' authorities | Responsible for jurisdictional implementation | | | |

- 24 The International Organization for Standardization (ISO) is the data standard and maintenance body for each of the data elements and standards have been adopted or are under development.
- 25 For the UPI, The Derivatives Service Bureau (DSB) Limited has been designated as the service provider for the UPI system. The DSB is a subsidiary of the Association of National Numbering Agencies (ANNA) and currently issues international securities identification numbers (ISINs) for OTC derivative products.

- 26 The Global Legal Entity Identifier Foundation (GLEIF), a not-for-profit organisation established by the FSB, is the service provider for the LEI. LEI registration and renewal services are provided by 37 organisations accredited by the GLEIF as local operating units (LOUs).
- 27 The Regulatory Oversight Committee (ROC) is the international governance body for each of the data elements. 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 GLEIS. The ROC's expanded mandate is supported by its Committee on Derivative Identifiers and Data Elements (CDIDE).
- 28 ASIC represents the Australian regulators as a member of the ROC and the CDIDE.

C 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.

As with other jurisdictions, we propose to implement the UTI Guidance to specify which of the parties to the transaction will generate the UTI in which circumstances.

However, especially in cross-jurisdictional transactions with inherent inter-jurisdictional dependencies, we think there may be uncertainties of interpretation and intended practices in other jurisdictions.

At this time, we are proposing some elements of UTI implementation in the ASIC Rules and outline possible approaches to resolving the uncertainties.

Background

- 29 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.
- 30 The UTI structure and format is specified in ISO 23897 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.
- 31 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).
- 32 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.

33 We seek to implement UTI requirements in the ASIC Rules that align with international practices and do not introduce bespoke Australian requirements.

34 The Hong Kong Monetary Authority and the Hong Kong Securities and Futures Commission jointly consulted on implementing the UTI in 2019 and the CFTC and ESMA have likewise consulted on implementing the UTI in early 2020. We expect that the UTI will also be implemented in the United Kingdom, Singapore, Japan and other jurisdictions.

Note: The CFTC issued its final rules in September 2020.

35 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.

When is a UTI required?

36 The UTI Guidance states that new UTIs should be used for the initial reports of new reportable transactions and should remain as the identifier for that transaction throughout its life.

37 When a transaction is terminated and replaced with one or more other transactions, the UTI Guidance sets out that new UTIs should be used. This could occur when:

- (a) the transaction is replaced by another transaction (e.g. due to compression or netting); or
- (b) the transaction is split into different transactions.

38 The approach is therefore as follows:

- (a) for subsequent reports of new information about a previously reported transaction, the new information reports should use the same UTI as previously. Examples of situations where the previous UTI should be maintained include:
 - (i) a revaluation or similar is reported;
 - (ii) some previously reported information, such as whether the trade has been confirmed, has changed;

- (iii) the contract is an amortising swap or similar and the notional has changed in accordance with the contractual terms;
 - (iv) reporting of end-of-life events such as early termination; or
 - (v) some information that was previously reported was incorrect and is being corrected, unless the incorrect information is the UTI itself;
- (b) otherwise, a new UTI should be used. Examples of this include:
- (i) a change to either counterparty, including the transaction being cleared and a counterparty becomes the central counterparty (CCP) or clearing participant; or
 - (ii) where a transaction is replaced by one or more other transactions, whether or not they involve the same or different counterparties.

39 If there is more than one such change to be applied to a report at the same time, then if any one of these changes would require a new UTI, a new UTI should be used.

40 The above approach should apply irrespective of the clearing model used in any particular jurisdiction and irrespective of the applicable rules defining which entities have to report a cleared transaction.

41 We propose to follow the UTI Guidance on the format and structure of the UTI, as well as the guidance concerning the impact of the transaction events on the UTI. We propose to set out the UTI structure and format in a technical specification: see paragraphs 334–338. We propose to set out the text of UTI rules for transaction events in the ASIC Rules in the second round of consultation.

Proposal

- c1** We propose to set out the UTI structure and format in a technical specification and the text of UTI rules for transaction events in the ASIC Rules.

Your feedback

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

C1Q2 Do you consider that the UTI Guidance concerning the impact of the transaction events on the UTI is sufficiently clear or are there uncertainties that we should take into account when drafting the text for the ASIC Rules? In your response, please give detailed reasons for your answer.

Determining the UTI generator—Overall approach

- 42 The UTI Guidance is framed around a number of principles, including:
- (a) a ‘first-touch’ concept where the UTI generator is the first entity in the transaction lifecycle that could reasonably generate a UTI;
 - (b) facilitation of automation of UTI determination and of its generation and distribution from one entity to another; and
 - (c) that the UTI is available in time for the soonest reporting requirement of the counterparties to the reportable transaction.
- 43 The UTI Guidance essentially sets out three streams by which the UTI generator is determined, with a fourth stream as the ultimate determinant: see Table 3. The UTI Guidance takes a waterfall approach which determines the UTI generator at the highest point within each stream.
- 44 The first stream follows the ‘first touch’ and automation principles in transaction process workflows involving trading platforms, CCPs and clearing members. The UTI Guidance intends the steps in this stream to be applied by all jurisdictions—we have labelled this stream ‘globally common’.
- 45 After the ‘globally common’ stream, the UTI Guidance branches to either a ‘single-jurisdictional transaction’ stream or a ‘cross-jurisdictional transaction’ stream.
- (a) A ‘single-jurisdictional transaction’ is a transaction that is solely reportable under, for example, the ASIC Rules, whether reportable by one or both counterparties.
 - (b) A ‘cross-jurisdictional transaction’ is a transaction that is reportable under the rules of two or more jurisdictions, such as under the ASIC Rules and the final CFTC rules.
- 46 Finally, if a UTI generator is not determined from among the first three streams, a fourth stream provides for the ‘ultimate determinant’ of the UTI generator.

Table 3: High-level summary of the UTI Guidance streams

| Stream | UTI Guidance steps | UTI generator outcomes |
|-----------------------------------|---------------------|---|
| Globally common | Steps 1–3 Step 4 | One of CCP, clearing member or trading platform Branch to ‘single-jurisdictional transaction’ stream or to ‘cross-jurisdictional transaction’ stream |
| Single-jurisdictional transaction | Steps 5–9 & 11–12 | Confirmation platform or one of the counterparties according to various determining rules or by agreement between the counterparties |

| Stream | UTI Guidance steps | UTI generator outcomes |
|----------------------------------|--------------------|---|
| Cross-jurisdictional transaction | Step 10 & 11–12 | According to the rules of the jurisdiction with the sooner reporting deadline But if no jurisdiction is sooner, by agreement between the counterparties or by the confirmation platform |
| Ultimate determinant | Step 13 | If the UTI generator is not determined from the above streams, the trade repository or else the counterparty whose reversed LEI is ranked higher when sorted with the other counterparty's reversed LEI |

47 For a cross-jurisdictional transaction, determining the UTI generator according to the rules of the jurisdiction with the sooner reporting deadline would generally mean determining the UTI generator as if the transaction was a single-jurisdictional transaction under that jurisdiction's rules.

48 However, as noted in paragraph 32, the UTI Guidance is not prescriptive and allows for variations according to individual jurisdictional circumstances. Thus, the applicable jurisdiction's rules for a cross-jurisdictional transaction may be special purpose rules rather than the same as the single-jurisdictional transaction rules.

Jurisdictional variations from the UTI Guidance

49 Given this allowance for variations according to individual jurisdictional circumstances, there may be other aspects of a jurisdiction's rules that vary from the UTI Guidance.

50 We think the UTI proposals and/or rules of other jurisdictions may include a number of uncertainties as to their interpretation and/or practical operation. These uncertainties may make it difficult to implement UTI rules within the ASIC Rules that do not conflict with other jurisdictions' rules and are without unintended consequences.

51 As noted in Section B, ASIC is a member of the ROC, which is the international governance body for the UTI, UPI, CDE and LEI. A committee of the ROC—the CDIDE—is the key technical advisory body to the ROC on, among other things, implementation issues across jurisdictions. ASIC is also a member of the CDIDE.

52 ASIC is working within the CDIDE to encourage discussion and resolution of these issues.

Determining the UTI generator—CCP, clearing member, trading platform

Step 1. CCP

53 The UTI Guidance sets out:

| Step | Factor to consider | UTI generator |
|------|--|---|
| 1. | Is a CCP a counterparty to this transaction? | If so, the CCP. Otherwise, see step 2. |

54 A CCP is not ordinarily the first step in a derivative transaction process workflow but, for UTI generation, it is a first step for the transaction that is created upon novation of a prior transaction that is traded bilaterally between two counterparties and subsequently cleared.

55 CCPs currently identified in ASIC derivative transaction reporting are either:

- (a) CCPs that are ASIC reporting entities and would be subject to UTI rules within the ASIC Rules; or
- (b) CCPs that are in a jurisdiction that is expected to implement UTI rules with CCPs within the ‘globally common’ stream.

56 We propose to implement this UTI Guidance step 1 as step 1 in the ASIC Rules for UTI generation and reporting.

57 However, for such a UTI to be uniquely reported, at a future point in time, by both counterparties to a transaction:

- (a) the jurisdictions to which each counterparty has a reporting obligation must all require that the UTI generated by that CCP be reported; and
- (b) the home jurisdiction of the CCP, at that point in time, must require that the CCP generate the UTI.

58 We currently think there are uncertainties about whether:

- (a) all jurisdictions’ rules recognise, or intend to recognise, that same set of CCPs as being CCPs from whom their reporting entities are obliged to receive and report a UTI; and
- (b) there may be rules implementation timing differences such that, at the relevant point in time, a CCP does not generate a UTI because it is not yet obliged to do so under its jurisdiction’s rules yet a reporting entity of another jurisdiction is obliged to receive and report a UTI from that CCP under its jurisdiction’s rules.

- 59 In relation to the uncertainty about whether all jurisdictions recognise the same set of CCPs as being UTI generators, we are working within the CDIDE to encourage discussion and resolution of this uncertainty.
- 60 In relation to the uncertainty about rules implementation timing differences, this may diminish as the implementation timing of jurisdictions becomes clearer. However, we think it may be appropriate to cover potential timing differences by providing temporary exemption in the ASIC Rules from the requirement to report a UTI generated by a CCP that is not subject to UTI generation obligations in its home jurisdiction.
- 61 This could be analogous to the UTI Guidance’s approach to UTIs generated by a confirmation platform. Recognising that confirmation platforms are not ordinarily regulated infrastructure in jurisdictions, the UTI Guidance’s specification that a confirmation platform generate a UTI is subject to the confirmation platform being ‘able, willing and permitted to generate a UTI’. A similar provision could be used to temporarily require that a CCP-generated UTI only needs to be reported where the CCP is required to be the UTI generator under the rules of its home jurisdiction.

Step 2. Clearing member

- 62 Under the principal clearing model, if the transaction involves a client of a clearing member, then the rights and obligations of the client may be reflected in a transaction between the clearing member and the client on terms that mirror the terms of the transaction between the clearing member and the CCP.
- 63 In this case, the UTI Guidance sets out:

| Step | Factor to consider | UTI generator |
|------|--|---|
| 2. | Is a counterparty to this transaction a clearing member of a CCP, and if so is that clearing member acting in its clearing member capacity for this transaction? | If so, the clearing member. Otherwise, see step 3. |

- 64 As with CCPs, clearing members currently identified in ASIC derivative transaction reporting are either:
- (a) clearing members that are ASIC reporting entities and would be subject to UTI rules within the ASIC Rules; or
 - (b) clearing members that are in a jurisdiction that is expected to implement UTI rules with CCPs within the ‘globally common’ stream.
- 65 We propose to implement this UTI Guidance step 2 as step 2 in the ASIC Rules for UTI generation and reporting.

66 However, the same uncertainties apply to clearing members as UTI generators as apply to CCPs as UTI generators—that is, globally common recognition of a clearing member as a UTI generator and potential rules implementation timing differences.

67 We would likely address these uncertainties in the same manner as for CCPs by working within the CDIDE and potentially applying a temporary exemption to the ASIC Rules.

Step 3. Trading platform

68 The UTI Guidance sets out:

| Step | Factor to consider | UTI generator |
|------|---|--|
| 3. | Was the transaction executed on a trading platform? | If so, the trading platform. Otherwise, see step 4. |

69 We propose to implement this UTI Guidance step 3 as step 3 in the ASIC Rules for UTI generation and reporting.

70 However, there are a number of issues in implementing globally consistent UTI rules where trading platforms are UTI generators:

- (a) ‘trading platform’ is not defined in the UTI Guidance and there is no common regulatory definition of the term across all jurisdictions;
- (b) there is no common understanding of a trading platform among ASIC reporting entities—for example, some ASIC reporting entities identify a trading platform as the e-trading systems provided by individual financial institutions to their clients (commonly known as ‘single-dealer platforms’); and
- (c) trading platforms are not ordinarily subject to derivative transaction rules in most jurisdictions and the robustness of approaches of the home regulators of trading platforms to oblige them to generate UTIs has generally not been finalised.

71 At this time, it is difficult to shape our approach as we do not have sufficient information about how other jurisdictions intend to address these issues. We are therefore working within the CDIDE to encourage discussion and resolution of these issues.

Proposal

c2 We propose to implement UTI Guidance step 1 (CCP), UTI Guidance step 2 (clearing member) and UTI Guidance step 3 (trading platform) as steps 1, 2 and 3 respectively in the ASIC Rules for UTI generation and reporting.

Your feedback

C2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

C2Q2 Do you consider that, in addition to uncertainties about the globally common recognition, for UTI rules' purposes, of CCPs, clearing members and trading platforms and the manner and timing of implementing UTI generation obligations, there are other uncertainties or implementation risks in relation to implementing these steps 1, 2 and 3 as UTI rules within the ASIC Rules? In your response, please give detailed reasons for your answer.

C2Q3 Do you consider that, in addition to considering temporary exemptions for jurisdictional implementation timing differences, there are other steps that ASIC could take or other provisions or exemptions that ASIC could consider to resolve or minimise the uncertainties or implementation risks? In your response, please give detailed reasons for your answer.

Determining the UTI generator—Single-jurisdictional transactions

72 If the transaction is a single-jurisdictional transaction, the UTI Guidance sets out:

| Step | Factor to consider | UTI generator |
|------|---|---|
| 4. | 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. Otherwise, see step 5. |
| 5. | Do both counterparties have reporting obligations? | If so, see step 6. Otherwise, see step 7. |
| 6. | Has the transaction been electronically confirmed or will it be and, if so, is the confirmation platform able, willing and permitted to generate a UTI within the required time frame under the applicable rules? | If so, the confirmation platform. Otherwise, see step 7. |
| 7. | Does the jurisdiction employ a counterparty-status-based approach (e.g. rule definition or registration status) for determining which entity should have responsibility for generating the UTI? | If so, see step 8. Otherwise, see step 11. |

| Step | Factor to consider | UTI generator |
|------|---|--|
| 8. | Do the counterparties have the same regulatory status for UTI generation purposes under the relevant jurisdiction? | If so, see step 11. Otherwise, see step 9. |
| 9. | Do the applicable rules determine which entity should have responsibility for generating the UTI? | If so, the assigned entity. Otherwise, see step 12. |
| 11. | Do the counterparties have an agreement governing which entity should have responsibility for generating the UTI for this transaction? | If so, the agreed entity. Otherwise, see step 12. |
| 12. | Has the transaction been electronically confirmed or will it be and, if so, is the confirmation platform able, willing and permitted to generate a UTI within the required time frame under the applicable rules? | If so, the confirmation platform. Otherwise, see step 13. |

Step 5 where one of the counterparties does not have a reporting obligation

73

In a transaction that is solely reportable under the ASIC Rules and not under the rules of another jurisdiction, one of the counterparties does not have a reporting obligation in situations where:

- (a) one counterparty is an ASIC reporting entity and the other counterparty is an ‘end user’ (see paragraph 75);
- (b) one counterparty is an ASIC reporting entity and the other counterparty is a ‘small-scale, single-sided’ ASIC reporting entity (see paragraph 76);
- (c) one counterparty is a ‘small-scale, single-sided’ ASIC reporting entity and the other counterparty is a ‘small-scale, single-sided’ ASIC reporting entity that will report the transaction (see paragraph 80).

Note 1: An ASIC reporting entity, ‘small-scale, single-sided’ ASIC reporting entity or an ‘end user’ may be an Australian entity or a foreign entity and the above would apply where neither counterparty has a reporting obligation under the rules of another jurisdiction.

Note 2: An ASIC reporting entity that is a foreign entity is exempt from reporting a transaction under the ASIC Rules if it is subject to alternative reporting requirements in another jurisdiction but does not have an obligation to report the transaction under those requirements: see Rule 2.2.1(3). In the situation of paragraph 73(b), if the foreign ASIC reporting entity is exempt, the ‘small-scale, single-sided’ ASIC reporting entity would have the reporting obligation under the ASIC Rules.

- 74 Under the ASIC Rules, an entity does not have a reporting obligation if:
- (a) it is an end user as defined by reg 7.5A.50 of the Corporations Regulations; or
 - (b) it is exempt from reporting as a small-scale, single-sided reporting entity per the qualifying requirements and conditions of Subdivision 2.1B of Pt 7.5A of the Corporations Regulations.
- 75 Regulation 7.5A.50 provides that the ASIC Rules cannot impose requirements on an end user, being a person who is not:
- (a) an Australian authorised deposit-taking institution (ADI); or
 - (b) a clearing and settlement (CS) facility licensee; or
 - (c) a financial services licensee; or
 - (d) a person:
 - (i) who, in this jurisdiction, provides financial services relating to derivatives to wholesale clients only; and
 - (ii) whose activities, relating to derivatives, are regulated by an overseas regulatory authority.
- 76 Subdivision 2.1B of Pt 7.5A of the Corporations Regulations provides an exemption from the ASIC Rules reporting requirements for a derivative transaction of an entity, where:
- (a) the entity is a phase 3 reporting entity;

Note: A phase 3 reporting entity means a Phase 3 Reporting Entity within the meaning of the [ASIC Instrument \[14/0633\]](#) 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.
 - (b) the entity's total gross notional outstanding positions in derivatives does not exceed A\$5 billion on each of the two most recent quarter-end days;
 - (c) the entity's counterparty in the derivative transaction has represented to the entity that it is an ASIC reporting entity that is required to report the transaction under the ASIC Rules;
 - (d) the entity makes regular inquiries reasonably designed to determine whether the representation is correct; and
 - (e) the entity has no reason to suspect that the representation is incorrect.
- 77 For a transaction involving an end user or a small-scale, single-sided reporting entity, the UTI Guidance points to—at steps 7 to 9—the jurisdiction's rules taking a status-based approach to determining the UTI generator.
- 78 We propose to introduce a status-based rule that determines that the entity assigned as UTI generator in such a transaction is the ASIC reporting entity with the obligation to report the transaction.

- 79 Note that, in a transaction between two end users, neither entity has a reporting obligation and a UTI is not required.
- 80 In a transaction between two entities who would each be a small-scale, single-sided reporting entity, then either:
- (a) one of the entities represents to the other entity that it is a reporting entity that will report the transaction information in accordance with the ASIC Rules and the other entity is not required to report; or
- Note: The other entity must make regular inquiries reasonably designed to determine whether the representation is correct, and have no reason to suspect that the representation is incorrect.
- (b) both entities are required to report the transaction and the UTI generator will be determined as set out in paragraphs 83–98.
- 81 Subdivision 2.1B of Pt 7.5A of the Corporations Regulations also provides an exemption from the ASIC Rules reporting requirements for a derivative transaction of a small-scale, single-sided ASIC reporting entity where the entity’s counterparty is a foreign entity:
- (a) subject to reporting requirements in one or more foreign jurisdictions (alternative reporting requirements) who will report the transaction to an ASIC-prescribed trade repository; or
 - (b) that will report the transaction to an ASIC-licensed trade repository.
- Note: The small-scale, single-sided ASIC reporting entity must make regular inquiries reasonably designed to determine whether the representation is correct, and have no reason to suspect that the representation is incorrect.
- 82 We consider these types of transactions should be treated, for the purposes of UTI generator rules, as transactions in the jurisdiction of the sole counterparty with the reporting obligation and the UTI generator determined under the rules of that jurisdiction.

Step 5 where both counterparties have reporting obligations

- 83 Where both counterparties have ASIC reporting obligations, the UTI Guidance first points—at step 6—to the confirmation platform as the UTI generator where the confirmation platform is ‘able, willing and permitted to generate a UTI’.
- 84 The condition of being ‘able, willing and permitted to generate a UTI’ recognises that confirmation platforms are not ASIC reporting entities or reporting entities in other jurisdictions and are not otherwise regulated by ASIC or, generally, by authorities in other jurisdictions. Generally, there are no existing legislative powers by which an obligation to generate a UTI can be imposed on a confirmation platform.

- 85 Confirmation platforms do currently generate transaction identifiers and market conventions and client services imperatives will likely be factors in confirmation platforms' decisions to be able and willing to generate a UTI.
- 86 If a confirmation platform is not able, willing and permitted to generate a UTI, the UTI Guidance points to—at steps 7 to 9—the jurisdiction's rules taking a status-based approach to determining the UTI generator.
- 87 A status-based approach is, broadly, that different types of reporting entities can be identified—such as 'dealer' versus 'client' or 'major dealer' versus 'non-major dealer'—and that, in transactions between counterparties of different types or status, UTI generator obligations are imposed on one type in priority to the other type.
- 88 Status-based approaches are apparent in other jurisdictions' current and/or proposed UTI rules:
- (a) the final CFTC status-based UTI rules provide that the UTI generator is determined from a waterfall of swap dealer, major swap participant and financial entity;
 - (b) ESMA's proposed status-based UTI rules provide that the UTI generator is determined from a waterfall of financial counterparty, non-financial counterparty (subject to a clearing obligation) and other non-financial counterparty.
- 89 Australian financial services laws do not ordinarily classify ASIC reporting entities in a way that is equivalent to US swap dealers or major swap participants. Consequently, we consider there is little merit in introducing entity classifications that seek to mirror the US status-based approach.
- 90 However, other than CCP reporting entities, all ASIC reporting entities are essentially equivalent to an EU financial counterparty and we think that effective and efficient UTI rules within the ASIC Rules do not require any further sub-categorisation. This aligns with ESMA's approach of not distinguishing between financial counterparties of different types. This would also mean that the ASIC Rules would not introduce another jurisdictionally unique status-based approach.
- 91 ESMA's proposed UTI rules for same-status financial counterparties proposed two options for consultation feedback:
- (a) option 1 would be a tie-breaker for UTI generator being the entity that is the 'seller' or the 'payer of leg 1' in the transaction, where 'seller' is used for transactions of a type that have a clear buyer and seller and 'payer of leg 1' is used in all other cases;
 - (b) option 2 would exclude a tie-breaker and rely on the UTI generator being determined by agreement between the counterparties, or else the counterparty whose reversed LEI is higher-ranked when sorted with the other counterparty's reversed LEI.

- 92 We consider there are benefits for industry in aligning the ASIC UTI generator rules for single-jurisdictional transactions with the UTI generator rules for single-jurisdictional transactions in other jurisdictions.
- 93 This is because, for a cross-jurisdictional transaction, following the UTI generator rules of the jurisdiction with the sooner reporting deadline would generally mean following the UTI generator rules for a single-jurisdictional transaction in that jurisdiction.
- 94 An ASIC reporting entity would then be able to have an internal UTI generator determination logic that is common for its single-jurisdictional transactions and its cross-jurisdictional transactions, where this is also the same determination logic used by its counterparty in a cross-jurisdictional transaction.
- 95 ESMA has not yet finalised the UTI generator rules proposed to be adopted in regulation by the European Union. In relation to option 1 and option 2, we can only identify the International Swaps and Derivatives Association (ISDA) as having made a public submission on the proposed options and stating that it supported option 1. We consider either option is capable of being implemented as UTI rules within the ASIC Rules, though we note that option 1 would not allow the UTI generator to be determined by agreement between the transaction's counterparties.
- 96 In principle, subject to the final EU rules, we currently intend to propose to adopt, as closely as practical, as UTI rules within the ASIC Rules an equivalent form of the EU UTI rules for same-status financial counterparties.
- 97 The ESMA proposals also include that step 6 'Confirmation platform as UTI generator' applies to all transactions. 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 confirmed via a confirmation platform, we consider it would simplify the intended UTI rules alignment to take the same approach in the ASIC Rules.

Table 4: Single-jurisdiction transactions—Summary of in-principle proposals

| Factor to consider | ASIC UTI generator outcome |
|--|---|
| Has the transaction been electronically confirmed? | If so, the confirmation platform Otherwise |
| Does only one of the counterparties have a reporting obligation? | If so, the counterparty with the reporting obligation (i.e. not the end user or small-scale, single-sided reporting entity) Otherwise, option 1 or option 2a/2b |

| Factor to consider | ASIC UTI generator outcome |
|--------------------|---|
| Option 1 | The counterparty that is the 'seller' or the 'payer of leg 1' in the transaction |
| Option 2a | The counterparty as agreed between the counterparties Otherwise |
| Option 2b | After sorting the LEIs of the counterparties with the characters of the identifiers reversed, the counterparty that comes first in this sort sequence (reverse LEI sorting) |

98 A feature of this proposal is that for each of the cases of transactions between:

- (a) an Australian entity and another Australian entity;
- (b) an Australian entity and an EU financial counterparty;
- (c) an Australian reporting entity and an EU financial counterparty; and
- (d) an EU financial counterparty that is an ASIC reporting entity and another EU financial counterparty that is an ASIC reporting entity,

we consider the UTI generator logic that needs to be followed by the counterparties would be the same whether under the proposed ASIC Rules or under the ESMA proposals for EU rules, as each may be applicable to the transaction.

Proposal

c3 In principle, we propose to implement the elements of Table 4 as the steps of UTI rules for single-jurisdictional transactions within the ASIC Rules. As these steps are intended to align with the EU rules, our proposal is subject to the final EU rules.

Your feedback

- c3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.
- c3Q2 Do you consider that either option 1 or option 2 or both should not be adopted in the ASIC Rules? In your response please give detailed reasons for your answer.
- c3Q3 Noting that the proposal would not include the step of a UTI generator determination by agreement between the counterparties under option 2, do you consider that this form of UTI generator determination should be a step in the UTI rules within the ASIC Rules? In your response please give detailed reasons for your answer.

- C3Q4 Noting that the proposal focuses on aligning with the final EU rules, do you consider there are other specific jurisdictions where aligning with UTI rules should be of greater focus? In your response please give detailed reasons for your answer.
- C3Q5 Do you consider there are combinations of types of counterparties to a single-jurisdictional transaction where the UTI generator may not be determinable or would determine the UTI generator as a type of counterparty that is not your preferred UTI generator outcome? In your response please give detailed reasons for your answer.
- C3Q6 Do you have any other comments about the proposal?

Determining the UTI generator—Cross-jurisdictional transactions

99 If the transaction is a cross-jurisdictional transaction, the UTI Guidance sets out:

| Step | Factor to consider | UTI generator |
|------|---|--|
| 4. | 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. Otherwise, see step 5. |
| 10. | 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. Otherwise, see step 11. |
| 11. | Do the counterparties have an agreement governing which entity should have responsibility for generating the UTI for this transaction? | If so, the agreed entity. Otherwise, see step 12. |
| 12. | Has the transaction been electronically confirmed or will it be and, if so, is the confirmation platform able, willing and permitted to generate a UTI within the required time frame under the applicable rules? | If so, the confirmation platform. Otherwise, see step 13. |

Is the transaction cross-jurisdictional?

- 100 The UTI Guidance explains a cross-jurisdictional transaction as one where ‘the counterparties to the transaction [are] subject to more than one jurisdiction’s reporting rules’.
- 101 We are aware of industry concerns that the scope of reportable transactions for foreign entities under the ASIC Rules can introduce uncertainties in determining the jurisdictions to which a transaction is reportable and thus the set of jurisdictions from which the jurisdiction with the sooner deadline for reporting needs to be identified.
- 102 A principle of the UTI Guidance is that the approach ‘should make it straightforward to identify which entity is responsible for generating the UTI, using information that should be available at or before the point in the process when the UTI is needed’.
- 103 It follows that both counterparties to a transaction should only be required to rely on the information about each counterparty’s jurisdictional reporting requirements that is inherent in the information they convey to each other about the capacity in which they are acting for that transaction.
- 104 We consider the UTI Guidance should be read with a focus on the jurisdictional reporting requirements of the ‘counterparties’ to the transaction—in particular, how each counterparty identifies itself to the other counterparty in a transaction—for example, as the Sydney branch of a foreign entity or as the ‘head office’ of a foreign entity and/or as having a relevant status that would overarchingly impact on a UTI generator determination (e.g. a US swap dealer).
- 105 Under this approach, if an ASIC Rules reporting requirement applies to a counterparty to a transaction, solely because that entity has opted-in to reporting ‘nexus’ transactions under the ASIC Rules, this would be disregarded by both counterparties to the transaction for the purposes of determining the UTI generator.
- 106 Similarly, if an ASIC Rules reporting requirement applies to a counterparty to a transaction, solely because that entity has entered into the transaction in this jurisdiction or booked the transaction to the account of its branch in this jurisdiction but has only identified itself to the other counterparty as its ‘head office’, this would also be disregarded by both counterparties to the transaction.
- 107 Counterparties to transactions would not be required to know more about the other counterparty’s jurisdictional reporting requirements than is inherent in the information they convey to each other about the capacity in which they are acting for that transaction.

- 108 ASIC reporting entities would be expected to acquire and maintain information about the jurisdictional reporting requirements of their counterparties but only down to any applicable branch location information and not down to any trader location information.
- 109 We note that in a cross-jurisdictional transaction, it is necessary that both counterparties take a sufficiently similar approach to determining the set of jurisdictions from which the jurisdiction with the sooner deadline for reporting needs to be identified.
- 110 For example, notwithstanding that ‘Foreign Bank (Sydney branch)’ only identifies itself to its Country X counterparty as ‘Foreign Bank (head office)’, the reporting rules of Country X may require that the Country X counterparty interpret that an ASIC Rules reporting requirement applies to the transaction. The effect would then be that the counterparties would be considering different sets of jurisdictions and potentially determine a different jurisdiction that has the sooner deadline in reporting, which may then lead to the counterparties determining a different UTI generator.
- 111 In light of the cross-jurisdictional interpretive alignment that is inherent in assuring a common UTI generator outcome among counterparties in different jurisdictions, we are not currently able to formally propose the above approach.
- 112 The Australian regulators have been engaged with our regional peer regulators and we consider there is merit in more fully assessing this approach, including further scenario analysis of cross-jurisdictional generic counterparty pairings in transactions. We are also working within the CDIDE to encourage discussion and resolution of such issues.

Proposal

- c4** We are not making a formal proposal in relation to a UTI cross-jurisdictional test at this time but we seek your feedback as set out below.

Your feedback

- C4Q1 Do you consider that the approach outlined in paragraphs 103–107 would assist in clarifying the determination of a UTI generator? In your response, please give detailed reasons for your answer.
- C4Q2 Do you consider that the capacity in which a counterparty is acting should include any status information that would overarchingly impact on a UTI generator determination? In your response, please give detailed reasons for your answer.

- C4Q3 Do you consider there are significant impediments for you in obtaining such capacity information from your counterparties or conveying such capacity information to them? In your response, please give detailed reasons for your answer.
- C4Q4 Do you consider there are particular transaction circumstances (such as counterparty domicile/branch location/status combinations) where the approach outlined in paragraphs 103–107 would not assist in clarifying how to determine a UTI generator? In your response, please give detailed reasons for your answer.
- C4Q5 Do you have any other comments about the approach outlined in paragraphs 103–107?

Does one of the jurisdictions have a sooner deadline for reporting?

- 113 Having determined that a transaction is cross-jurisdictional, the UTI Guidance then considers at step 10 ‘Does one of the jurisdictions have a sooner deadline for reporting than the other(s)?’ and, if so, ‘the UTI generation rules of the jurisdiction with the sooner reporting deadline should be followed’.
- 114 We consider it is unclear how jurisdictions interpret the UTI Guidance’s ‘sooner deadline for reporting’ test.
- 115 Rule 2.2.3 of the ASIC Rules specifies a reporting deadline as ‘the end of the next Business Day after the requirement to report the information or change arises’—the requirement arises when a reportable transaction occurs which is, per Rule 1.2.5, the entry into, modification, termination or assignment of an OTC derivative.
- 116 This is a ‘T+1’ reporting deadline, as is the reporting deadline in the European Union, the United Kingdom, Canada and other jurisdictions.
- 117 As we understand the final CFTC rules, the vast majority of CFTC reportable transactions are subject to a real-time public reporting requirement to report the transactions ‘as soon as technologically possible’ (ASATP). Some types of CFTC reportable transactions are not subject to this ASATP requirement, such as transactions created by clearing or following portfolio compression of CCP default management processes—these types of transactions are subject to, generally, a T+1 reporting deadline.
- 118 Where a cross-jurisdictional transaction is subject to more than one jurisdiction’s reporting rules and this involves more than one jurisdiction with a T+1 reporting deadline, we consider that the possible interpretations

for determining which jurisdiction has the sooner deadline for reporting include:

- (a) a ‘semantic’ interpretation such that all T+1 reporting deadlines are the same deadline;
- (b) 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
- (c) an ‘execution clock’ interpretation such that the next occurring actual reporting deadline is sooner than, in turn, each of the successive actual reporting deadlines.

119 By ‘execution clock’ interpretation, we mean that, at the time of execution of a transaction, there is a known number of hours until midnight on the day that is T+1 in each relevant jurisdiction and the jurisdiction in which this number of hours is the lowest number is the jurisdiction with the soonest deadline for reporting. For example:

- (a) a transaction is executed between an Australian entity and an EU entity at 4 pm Sydney time Tuesday/7 am Paris time Tuesday. The Australian reporting deadline is 32 hours later and the EU reporting deadline is 41 hours later. Therefore, Australia is the jurisdiction with the sooner reporting deadline;
- (b) a transaction is executed 10 hours later between an Australian entity and an EU entity at 2 am Sydney time Wednesday/5 pm Paris time Tuesday. The Australian reporting deadline is 46 hours later and the EU reporting deadline is 31 hours later. Therefore, the European Union is the jurisdiction with the sooner reporting deadline.

120 In practice, at a particular point in time, there would be a ‘queue’ of T+1 jurisdictions according to the amount of time remaining until each jurisdiction’s actual reporting deadline. As midnight passes in the jurisdiction at the front of the ‘queue’, that jurisdiction would move to the back of the queue. This cycling would occur through the course of the day and adjusting for changes in ‘summertime’ in each jurisdiction.

121 An ‘execution clock’ interpretation would be a literal interpretation of the UTI Guidance—that is, ‘sooner’ as measured in the time remaining until an actual reporting deadline occurs. However, it would seem to require a significant degree of clock synchronisation among counterparties to assure that the ‘queue’ is commonly understood at all points in time.

122 A ‘follow the sun’ interpretation is also a ‘queue’ but it is a static ‘queue’ with the positions of the relevant jurisdictions never changing. Note that such a ‘queue’ need not be sunrise-based—it could be in any order but with the key feature that is forever static and readily and commonly understood by counterparties.

- 123 Under this approach, there are circumstances where the UTI generator would be determined by the rules of the jurisdiction that does not actually have the sooner reporting deadline and there may be some lack of incentive or compulsion for the prompt generation and transmission of the UTI. However, this potential risk is prevalent in all approaches and underscores the importance for regulators in all jurisdictions to provide the right incentives or compulsion for the prompt generation and transmission of the UTI.
- 124 A ‘semantic’ interpretation that all T+1 reporting deadlines are the same reporting deadline is allowed for in the UTI Guidance—the answer to the step 10 question would be ‘No’ and the UTI Guidance then points to steps 11 to 13, as required.
- 125 We do not have a strong regulatory preference for any particular approach, except that we anticipate that industry would not favour the ‘semantic’ interpretation as it would lead to UTI steps that bear little alignment with the single-jurisdictional transaction models of the UTI Guidance and as proposed or implemented in other jurisdictions.
- 126 Our regulatory preference is rather that the approach is readily and commonly understood among counterparties, supports unambiguous UTI generator outcomes and minimises complexity.
- 127 In light of the cross-jurisdictional interpretive alignment that is inherent in assuring a common UTI generator outcome among counterparties in different jurisdictions and to take into account stakeholders’ views and preferences, we are not currently able to formally propose a particular approach.
- 128 However, we are also working within the CDIDE to encourage discussion and resolution of these issues.

Proposal

- c5** We are not making a formal proposal in relation to a method for determining the jurisdiction with the sooner deadline for reporting at this time but we seek your feedback as set out below.

Your feedback

- C5Q1 Do you consider there is uncertainty in how the UTI Guidance’s ‘sooner deadline for reporting’ test is interpreted? In your response, please give detailed reasons for your answer.
- C5Q2 Do you consider we have correctly identified the possible interpretations? In your response, please give detailed reasons for your answer.
- C5Q3 Do you have a preferred single interpretation? In your response, please give detailed reasons for your answer.
- C5Q4 Do you have any other comments about this issue?

What are the rules when Australia is the jurisdiction with the sooner deadline for reporting?

129 Whichever is the final approach to determining the jurisdiction with the sooner deadline for reporting, there will be circumstances where Australia is the sooner jurisdiction and the UTI generator will be determined according to the ASIC Rules.

130 In principle, we propose that the UTI generator rules for a cross-jurisdictional transaction are the same rules as for a single-jurisdictional transaction (noting that our proposal for a single-jurisdictional transaction includes a yet to be finalised choice among two options), namely:

- (a) if applicable, the confirmation platform; otherwise
- (b) under option 1, the counterparty that is the ‘seller’ or the ‘payer of leg 1’ in the transaction; or
- (c) under option 2:
 - (i) if applicable, the counterparty as agreed between the counterparties; otherwise
 - (ii) after sorting the LEIs of the counterparties with the characters of the identifiers reversed, the counterparty that comes first in this sort sequence.

131 These proposed rules would apply in the same manner for a transaction between an Australian entity and a foreign entity as for a transaction between two Australian entities.

132 We consider these proposed rules will provide the same UTI generator outcome in a transaction between an Australian entity and an EU financial counterparty, whether under the ASIC Rules or the ESMA proposals for EU rules. This illustrates that the way in which the sooner jurisdiction is determined is unimportant if the UTI generator outcomes are the same in either jurisdiction anyway.

133 We consider the above rules will likewise provide the same UTI generator outcome in a transaction between an Australian entity and an EU non-financial counterparty, whether under the ASIC Rules or the ESMA proposals for EU rules.

134 However, there appear to be circumstances of difference between the above UTI generator outcome (under either jurisdiction’s rules) and the UTI generator outcome in a different transaction between an EU financial counterparty and an EU non-financial entity (i.e. an EU single-jurisdictional transaction) under option 1 in the ESMA proposal for EU rules.

- (a) In this case, the EU status rule would require the EU financial counterparty to be the UTI generator.

- (b) However, in the absence of a status rule that recognises ASIC reporting entities as ‘equivalent’ EU financial counterparties, the cross-jurisdictional transaction UTI generator outcome would be that the EU non-financial counterparty is the UTI generator where it is the ‘seller’ or ‘payer of leg 1’.

135 If the desired UTI generator outcome is that EU non-financial counterparties are not the UTI generator in transactions with either an EU financial counterparty or a foreign entity ‘equivalent’ EU financial counterparty—and taking into account that either jurisdiction could be the sooner jurisdiction—it appears that a solution may be that:

- (a) the EU rules include a form of foreign entity ‘equivalent’ EU financial counterparty within their status rules; and
- (b) the ASIC Rules include—possibly as a ‘special purpose’ cross-jurisdictional transaction rule—an equivalent status rule that assigns as UTI generator the ASIC reporting entity.

Proposal

- c6** In principle, we propose that the UTI generator rules for a cross-jurisdictional transaction are the same rules as for a single-jurisdictional transaction.

Your feedback

- C6Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.
- C6Q2 Do you agree that the above rules will provide the same UTI generator outcome in a transaction between an Australian entity and an EU financial counterparty, whether under the ASIC Rules or the ESMA proposals for EU rules? In your response, please give detailed reasons for your answer.
- C6Q3 Do you agree that there can be the outcome (described in paragraph 134) that an EU non-financial counterparty is the UTI generator in a transaction with an Australian reporting entity but not in a transaction with an EU financial counterparty? In your response, please give detailed reasons for your answer.
- C6Q4 Do you consider there are other particular transaction circumstances (such as counterparty domicile/branch location/status/jurisdictional combinations) where there may be similar differences in a UTI generator outcome? In your response, please give detailed reasons for your answer.
- C6Q5 Do you have any other comments about the proposal?

Other possible ‘special purpose’ cross-jurisdictional transaction rules

- 136 Though there appear to be types of transactions that are T+1 reportable transactions under the final CFTC rules which would also be cross-jurisdictional transactions when they involve an Australian entity as a counterparty, these appear likely to be a minority of CFTC reportable transactions. In addition, the CFTC expects that, for example, CCPs would continue to report, as per existing practices, on an ASATP basis for transactions that may otherwise be T+1 reportable transactions.
- 137 In March 2020, the ASIC exemption for full UTI conformance was extended with the addition of a provision that made allowance for the introduction of CFTC UTI rules (as was then proposed). The provision allowed for the possibility that there would be transactions for which a future CFTC cross-jurisdictional test identified Australia as a jurisdiction with a sooner reporting deadline and required the counterparties to the transaction to determine a UTI according to the ASIC Rules. The current ASIC Rules are not sufficiently comprehensive to prescribe a conforming UTI generator and the provision has the effect of redirecting the counterparties to use the CFTC UTI rules.
- 138 Given the prevalence of CFTC reportable transactions that are required to be, or in practice would continue to be, reported on an ASATP basis, we are considering if a pragmatic and effective proposal would be to adopt the principles of the above ASIC exemption in the ASIC Rules. That is, whenever there is an ASIC reportable transaction that is cross-jurisdictional with the final CFTC rules, the UTI generator would be determined according to the final CFTC rules—in effect, that the CFTC is deemed to be the sooner jurisdiction in all such cross-jurisdictional transactions.
- 139 In furthering our considerations of such a proposal, we would need to consider the full range of scenarios where a transaction is cross-jurisdictional with the ASIC Rules, the final CFTC rules and one or more other jurisdictions’ rules (as may be proposed or anticipated). It is not currently clear to us that such a unilateral ‘special purpose’ provision in the ASIC Rules would not be unintentionally complex or conflict with other jurisdictions’ rules.
- 140 Finally, while we have discussed at paragraphs 135–139 possible ‘special purpose’ rules for transactions that are cross-jurisdictional with the EU and the CFTC jurisdictions, there are a number of other T+1 jurisdictions. However, we consider it would be problematic and complex for the ASIC Rules to include ‘special purpose’ provisions to accommodate multiple and diverse ‘special purpose’ situations.

Proposal

- c7 We are not making a formal proposal for ‘special purpose’ rules as discussed at paragraphs 135–139 at this time but we seek your feedback as set out below.

Your feedback

- C7Q1 Do you consider there is merit in considering a ‘special purpose’ rule that would, in effect, deem the CFTC to be the sooner jurisdiction in all such cross-jurisdictional transactions? In your response, please give detailed reasons for your answer.
- C7Q2 Do you consider there are particular transaction circumstances (such as counterparty domicile/branch location/status/jurisdictional combinations) where there may be unintended complexities or conflicts with other jurisdictions’ rules under this approach? In your response, please give detailed reasons for your answer.
- C7Q3 Do you consider there may be other cross-jurisdictional situations which may also merit a ‘special purpose’ UTI rule? In your response, please give detailed reasons for your answer.
- C7Q4 Do you have any other comments about this issue?

Determining the UTI generator—Ultimate determinant

- 141 If the UTI generator is not able to be determined under the globally common, single-jurisdictional transaction or cross-jurisdictional transaction streams, the UTI Guidance sets out:

| Step | Factor to consider | UTI generator |
|------|--|--|
| 13. | Is there a single [trade repository] to which reports relating to the transaction have to be made, and is that [trade repository] able, willing and permitted to generate UTIs under the applicable rules? | If so, the [trade repository]. Otherwise, one of the counterparties, based on sorting the identifiers of the counterparties with the characters of the identifier reversed and picking the counterparty that comes first in this sort sequence. |

- 142 Under the UTI rules that we are proposing or considering to propose, we intend that a UTI generator will be determined by one of the streams without invoking an ultimate determinant step—noting that ‘reverse LEI sorting’ would be included in the single-jurisdictional transaction or cross-jurisdictional transaction streams under option 2.

143 Notwithstanding, it is necessary as a completeness measure to ensure that the UTI rules within the ASIC Rules will produce a UTI generator outcome in all circumstances. In principle, we propose to provide for an ultimate determinant as per the UTI Guidance.

144 In particular, if the ‘semantic’ interpretation of T+1 is adopted internationally, the UTI Guidance sets out that the UTI generator would be determined by agreement between the counterparties (step 11), or else by the confirmation platform (step 12), or else by step 13. In this scenario, there would be reasonable prospects that step 13 would be invoked as the preceding steps would not necessarily be applicable to a wide range of transaction circumstances. The ESMA proposal includes these steps for the case where there is not a sooner jurisdiction among the jurisdictions to a cross-jurisdictional transaction.

Proposal

c8 In principle, we propose to provide for an ultimate determinant as per the UTI Guidance.

Your feedback

C8Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

Determining the UTI generator—Obligations of timeliness, UTI not received

Timely generation and provision of UTIs

145 In complying with the UTI rules within the ASIC Rules, there will be transaction situations where an ASIC reporting entity is required to receive and report a UTI generated by another entity. This other entity may be a CCP, clearing member, trading platform, confirmation platform, ASIC reporting entity or an entity that is not an ASIC reporting entity.

146 We intend to propose that the ASIC Rules require the ASIC reporting entities, when acting as a UTI generator, to generate a UTI and provide it to their counterparty with an obligation of timeliness.

147 As a single-sided reporting regime, the final CFTC rules appear to reflect that the non-reporting counterparty does not need to receive a UTI for use in reporting and the obligation of timeliness appears to range from ASATP to T+1, depending on the nature of the reporting counterparty.

148 As a dual-sided reporting regime, we note that the ESMA proposals include that ESMA ‘considers inclusion of a more specific provision on timely generation and communication of the UTI’—which is more specific than the requirement in the current EU rules that the UTI is communicated ‘in a timely

manner so that the [reporting counterparty] is able to meet its reporting obligation'. The ESMA proposals include 'The timing for the generation could be specified as a fixed deadline (e.g. T+1, 12:00 a.m. UTC) or as an amount of time following to the conclusion of the contract (e.g. 12 hours)'. We note that ISDA's feedback on this point included that UTI generation and communication is 'largely unproblematic' where there is electronic execution and confirmation but, for paper confirmations 'current industry processes for the communication of UTIs are not able to consistently meet a fixed timeline'.

- 149 For cross-jurisdictional transactions, the UTI generator may not be a regulated entity in the jurisdiction of the entity that needs to receive and report the UTI. In order to comply with its own reporting requirements, the UTI recipient relies on the UTI generation and provision performance of the UTI generator. It is important that regulatory authorities (including ASIC) in the jurisdictions of the UTI generator require timely UTI generation and provision performance to support the ability of UTI recipients to comply with their reporting requirements in other jurisdictions.
- 150 Therefore, for an obligation of timeliness under the ASIC Rules, we consider it should be, at a minimum, no less stringent than the obligations of timeliness in the other jurisdictions that are most commonly involved in a cross-jurisdictional transaction under the ASIC Rules. We will consider how such an obligation of timeliness may be expressed in light of further developments in the UTI rules of other jurisdictions.
- 151 For a single-jurisdictional transaction, where both counterparties do not have a reporting requirement under the rules of another jurisdiction, an obligation of timeliness may be expressed in a different manner—such as more explicitly or to a shorter timeframe—to that applicable to a cross-jurisdictional transaction. We will consider this issue as we consider an obligation of timeliness for cross-jurisdictional transactions.

Provisions where UTI is not received

- 152 As discussed at paragraphs 57–61 and 66–67, there are circumstances where a CCP or clearing member may not generate a UTI and provide it to an ASIC reporting entity. This may be because the CCP or clearing member is not required in its home jurisdiction to be a UTI generator or those requirements have not come into force.
- 153 This circumstance can also be extended to any entity that would be a UTI generator under the ASIC Rules and is not an ASIC reporting entity.
- 154 The non-receipt of a UTI by an ASIC reporting entity may also occur where the UTI generator has not generated and/or provided the UTI to the ASIC reporting entity, notwithstanding obligations to do so under the ASIC Rules or the rules of another jurisdiction.

- 155 We discuss at paragraph 60 the potential for a temporary exemption to provide for circumstances where the UTI generator requirements in other jurisdictions have not come into force. This concept may be generalised as provisions in the ASIC Rules that address the non-receipt of a UTI for any reason.
- 156 In the second round of consultation, we may propose that the ASIC Rules include requirements that could conceptually provide that:
- (a) if a reporting entity does not receive a UTI in time to use in reporting by the deadline for reporting, then:
 - (i) the reporting entity must generate its own UTI and use that UTI in reporting the transaction; and
 - (ii) on receiving the UTI, the reporting entity must make the reports necessary to exit the first reported transaction and report the transaction with the received UTI.

Proposal

- c9** We intend to propose that the ASIC Rules require that ASIC reporting entities, when acting as a UTI generator, generate a UTI and provide it to their counterparty with an obligation of timeliness.

Your feedback

- C9Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.
- C9Q2 Do you consider that an obligation of timeliness should refer to a fixed deadline (e.g. T+1, 12:00 a.m. Sydney) or as an amount of time after transaction execution (e.g. 12 hours) or as another timeliness reference? In your response, please give detailed reasons for your answer.
- C9Q3 Do you consider there should be different obligations of timeliness for single-jurisdictional transactions and cross-jurisdictional transactions? In your response, please give detailed reasons for your answer.

Proposal

- c10** We may propose in the second round of consultation that the ASIC Rules include requirements on reporting entities to report their own UTI when they do not receive the UTI from the other UTI generator and to re-report using that second UTI when it is received.

Your feedback

- C10Q1 Do you agree that we should propose such requirements? In your response, please give detailed reasons for your answer.
- C10Q2 What are the kinds of requirements that you consider we should take into account when drafting such a proposal? In your response, please give detailed reasons for your answer.

D 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.

As with other jurisdictions, we propose to implement the CPMI IOSCO UPI Guidance to specify UPIs in derivative transaction reporting.

The UPI will embed certain data element information but the UPI system is not currently operational. Our current approach is to specify a data element set that assumes the future operationalisation of the UPI system but to consider for our final ASIC Rules proposals including the data elements that are not, at that time, available as UPI-embedded information.

Background

157 The UPI is a product taxonomy for OTC derivatives. Other taxonomies are the ISDA taxonomy and the ISO Classification of Financial Instruments (CFI). ISINs are also used for individual OTC derivative instruments in some jurisdictions.

158 The granularity hierarchy of these taxonomies is the CFI as the least granular, followed by the UPI, with ISIN as the most granular.

159 For example, the CFI for a plain vanilla, interest rate swap is SRCCSP. The information content of the CFI, UPI and ISIN is set out in Table 5.

Table 5: Overview of the information content by taxonomy

| Taxonomy | Information content |
|----------|--|
| CFI | Interest rate asset class, swap instrument type, single-currency, fixed-floating, constant notional |
| UPI | As above plus, for example: Reference rate currency is e.g. AUD, reference rate is e.g. 3mth BBSW |
| ISIN | As above plus, for example: End date is e.g. 15 October 2025 |

160 The UPI Guidance provides a system design and suggested reference data elements and reference data values. The FSB has determined that the reference data elements and values should be to an ISO standard and that the DSB has

been designated as the service provider for the UPI system. The DSB is a subsidiary of ANNA and currently issues ISINs for OTC derivative products. The ROC is the international governance body for the UPI system.

- 161 The UPI intends to adopt an internationally common product schema, with its attendant simplification for reporting entities, cross-trade repository interoperability and regulatory authorities.
- 162 The UPI Guidance explains that a UPI code should be a semantically meaningless code—that is, that the individual characters in the code do not convey any information of themselves but which, as a whole code, maps 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).
- 163 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.

Operationalising the UPI system

- 164 Though the governance and operational arrangements have been established, as set out in Section B, the international operationalisation of the UPI is less well developed than for the UTI and the CDE and no UPIs have been issued to date.
- 165 As the designated service provider, the DSB needs to establish the technology systems to maintain the reference data library of reference data elements (the product attributes) and establish the access arrangements for the retrieval of UPI codes given product attributes and the retrieval of product attributes given codes.
- 166 The UPI Guidance sets out suggested allowable values for reference data elements but expects that the list of allowable values will be further refined during the implementation of the UPI system. The identifiers for underlying assets or benchmarks was highlighted as an area that needed to take into account applicable regulatory requirements in any given jurisdiction.
- 167 We currently anticipate significant advances in the development of the UPI system over the next year with a possible full operationalisation in the second half of 2022.

UPI-embedded information

- 168 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.
- 169 Under the uncertainty of UPI operationalisation, the CFTC has proposed that the redundant data elements continue to be reported until the CFTC ‘designates’ a UPI schema. ESMA has proposed that the redundant data elements remain specified in their rules data set but has sought consultation feedback on their future removal.
- 170 We envisage that the long-term position under the ASIC Rules would be that the ASIC Rules data element set would not duplicate information that is embedded in the UPI. We currently propose to make final ASIC Rules in Q3–Q4 of 2021 and we anticipate that the operationalisation of the UPI system will be significantly advanced by that time.
- 171 Our approach in this first round of consultation is to specify a data element set that assumes that the UPI system will be sufficiently operational by that time and not require additional data elements for information that is otherwise embedded within the UPI.
- 172 However, in the event that the UPI system is not sufficiently operational by that time, we are planning to adopt a conservative approach of ensuring that the additional data elements are specified in the ASIC Rules and re-evaluate their removal when they can be substituted by UPI-embedded information.

E The critical data elements (CDE)

Key points

We propose to implement the CPMI IOSCO CDE Guidance.

This will improve and simplify the ASIC Rules dataset and better align with the reporting requirements in other jurisdictions, as they also implement this technical guidance.

Our approach to implementing this technical guidance is to satisfy our regulatory needs while maximising the data elements that are common to overseas jurisdictions and minimising the data elements that are unique to the ASIC Rules.

Background

- 173 The CDE is a set of derivative transaction data elements in specified data types and formats and, where relevant, allowed values. It is intended to be the universe of data elements from which regulators can draw to form their individual datasets. Harmonising the datasets of jurisdictions internationally has been a clarion call from industry since the inception of trade reporting.
- 174 CPMI IOSCO has published the CDE Guidance which is in the process of being adopted as an ISO standard.
- 175 Implementing the CDE Guidance in the ASIC Rules will be beneficial to Australian regulators and reporting entities in:
- (a) expanding the dataset for important data elements not currently in the ASIC Rules;
 - (b) removing many data elements that are either unique to the ASIC Rules or are duplicative within the ASIC rules;
 - (c) minimising the need for reporting entities that report under the ASIC Rules and under the rules of one or more other jurisdictions to prepare and make transaction reports of differing content for the same transaction;
 - (d) 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.
- 176 The CDE Guidance is not prescriptive and allows for variations according to individual jurisdictional circumstances. ASIC's approach to implementing the CDE Guidance 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 ASIC Rules.

Overview of proposals

177 In this first round of consultation, we set out the data elements that we propose to include in the ASIC Rules, as well as the data elements that we are considering for inclusion in proposals in the second round of consultation.

178 Table 6 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 the ESMA proposals for EU rules.

Table 6: 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 |

179 We currently propose a data element set of 124 elements, of which:

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

180 The major changes proposed to the current ASIC rules data element set are:

- the removal of multiple ‘name’ elements;
- 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.

Current exclusion of UPI-embedded information

- 181 As we discuss at paragraphs 166–169, the UPI system is currently underdeveloped and there is uncertainty about the timing and scope of its full operationalisation. We currently propose to make final ASIC Rules in Q3–Q4 of 2021 to come into force in Q3–Q4 of 2022 and we anticipate that the operationalisation of the UPI system will be significantly advanced by that time.
- 182 Our approach in this first round of consultation is to specify a data element set that assumes that the UPI system will be sufficiently operational by that time and not require additional data elements for information that is otherwise embedded within the UPI.
- 183 However, in the event that the UPI system is not sufficiently operational by that time, we are planning to adopt a conservative approach of ensuring that the additional data elements are specified in the ASIC Rules and re-evaluate their removal when they can be substituted by UPI-embedded information.

Definitions, standards, formats and allowable values for data elements

- 184 In this first consultation, we have focused on setting out our proposals for the Australian regulators' preferred data elements.
- 185 For each data element, the CDE Guidance also sets out a definition, an existing industry standard (if applicable), a format and the allowable values for the data element.
- 186 For data elements drawn from the final CFTC rules or the ESMA proposals that are not CDEs, those sources also set out definitions, formats and allowable values.
- 187 We currently intend to propose that the ASIC Rules will likewise specify the data elements and their definitions in the ASIC Rules and the standards, formats and allowable values in a technical specification. We currently intend to make proposals of these specific details in the second round of consultation.
- 188 In general, we propose to adopt the definitions, standards, formats and allowable values for each data element as set out in the CDE Guidance, the final CFTC rules or the EU rules from which the data element is drawn. For the few data elements that are unique to the ASIC Rules or require a definition that varies from the definition in the CDE Guidance, the final CFTC rules or the EU rules, we intend to propose the comparable set of definitions, standards, formats and allowable values.

Treatment of existing transactions and other transitional issues

- 189 In the event that the ASIC Rules dataset is amended in the manner set out in this section, we currently anticipate that the reporting requirements will apply to new transactions entered into from a particular date.
- 190 We currently intend to consider making proposals in the second round of consultation that address matters such as:
- (a) enabling reporting entities to commence reporting from an earlier date than the date from which the amended ASIC Rules apply; and
 - (b) the treatment of transactions that were reported under the current ASIC Rules—for example, that such transactions:
 - (i) need not be reported again under the amended ASIC Rules;
 - (ii) need to be reported again but only in certain circumstances; and/or
 - (iii) need to be reported again in all circumstances.

Interpreting the data elements tables

191 The information and data elements tables in paragraphs 193–333 are organised according to the groupings by types of data elements as set out in the CDE Guidance.

192 In the data elements tables, the terms used have the following meanings:

| | |
|--|---|
| Data element | The name of the data element |
| Definition— Summary of key points | <p>{...} indicates the source of the definition as {CDE TG i.e. CDE Guidance}, {CFTC}, {ESMA} or {ASIC}</p> <p>The text of the definition is often summarised to key points—the full text definition is found in its source regulation or technical specification</p> <p>Note: We are not formally proposing specific definitions in this first round of consultation</p> |
| Element number references | <p>The cross-referencing to a data element's 'source'.</p> <p>'CDE' means the CDE Guidance</p> <ul style="list-style-type: none"> the number is the number as found in the CDE Guidance <p>'CFTC' means the final CFTC rules</p> <ul style="list-style-type: none"> the number is the number as found in Appendix 1 to Part 45—Swap Data Elements of the final CFTC rules <p>'ESMA' means the ESMA proposals</p> <ul style="list-style-type: none"> the number means a combination of the table number and the table row number as found in Annex IV of the ESMA proposals—e.g. 1.4 means row 4 in Table 1 <p>'ASIC' means the <i>current</i> ASIC Rules</p> <ul style="list-style-type: none"> the number means a combination of an abbreviation to the table number and the table item number as found in Part S2.1 of the ASIC Rules—e.g. 4.1 means item 1 in Table S2.1(4) where '4' is the abbreviation to Table S2.1(4) <p>In most cases, the cross-referencing is precise but, in some cases, it is to a 'like' data element</p> |

Data elements related to dates and timestamps

193 We propose to include the following data elements in the ASIC Rules. Except for 'event timestamp', all of these data elements are in the current ASIC Rules.

Table 7: Proposed data elements related to dates and timestamps

| Data element | Definition—Summary of key points | Element number references | | | |
|---------------------|---|---------------------------|--------------------|---------------|--------------|
| | | CDE | CFTC | ESMA | ASIC |
| Effective date | {CDE TG} Unadjusted date at which obligations under the OTC derivative transaction come into effect, as included in the confirmation. | 2.1 | 94 | 2.38 | 1.27 |
| Expiration date | {CDE TG} Unadjusted date at which obligations under the OTC derivative transaction stop being effective, as included in the confirmation. | 2.2 | 95 | 2.39 | 1.28 1.46 |
| Reporting timestamp | {CDE TG} Date and time of the submission of the report to the trade repository. | 2.4 | 97 | 1.1 | 1.39 |
| Execution timestamp | {CDE TG} Date and time a transaction was originally executed, resulting in the generation of a new UTI. This data element remains unchanged throughout the life of the UTI. | 2.5 | 96 | 2.37 | 1.37 |
| Event timestamp | {CFTC} Date and time of occurrence of the event as determined by the reporting counterparty or a service provider. | n/a | 30 date time | 2.151 date | n/a |
| Clearing timestamp | {ESMA} Time and date when clearing by a CCP took place. OR {ASIC} the time and date the Derivative was cleared. | n/a | 10 | 2.27 | 1.38 |

194 'Effective date' is clarified in the CDE Guidance as the date 'as included in the confirmation'. We interpret this to mean that this data element is not applicable to derivative transactions that do not have an 'effective date' included in the confirmation—for example, for an FX forward transaction that only includes an 'execution timestamp' and an 'expiration date' in its confirmation.

195 We note that the CFTC's technical specification includes 'For commodities swaps, report the pricing start date' and that stakeholder feedback to ESMA's consultation proposed that 'execution timestamp' should be reported as 'effective date' in addition to being reported as 'execution timestamp'.

196 We expect that the transaction information outcome should be that:

- (a) all transactions are reported with an 'execution timestamp'; and
- (b) for transactions where future cashflows or payouts are, or begin to be, first determined on, or from, a subsequent date—such as the accrual of interest amounts or the fixing of reference rates or prices—that subsequent date is reported as the 'effective date'.

- 197 We welcome feedback on whether:
- (a) there is a need to clarify the meaning of ‘effective date’;
 - (b) there are particular types of transactions for which determining ‘effective date’ is problematic; and
 - (c) in the absence of a determinable ‘effective date’, ‘execution timestamp’ should be reported instead.
- 198 ‘Expiration date’ is intended to apply to all types of transactions, including swaps, forwards and options. It would be a single data element used instead of both of the current ASIC Rules data elements of ‘maturity, termination or end date’ and ‘option expiration date’.
- 199 ‘Reporting timestamp’ and ‘execution timestamp’ replace the corresponding data elements in the current ASIC Rules. Note that in the second round of consultation we intend to propose that all timestamp data elements be UTC time rather than AEDT/AEST.
- 200 ‘Event timestamp’ is not in the CDE Guidance but it is in the final CFTC rules and the ESMA proposals and would be required with the related ‘event type’ data element. The ‘event type’ data element is a further explanation of ‘action type’, but only in relation to the ‘action type’ that makes a transaction a reportable transaction (i.e. entry into, modification, termination or assignment of a derivative) rather than, for example, an ‘error’ report.
- 201 For these ‘action type–event type’ combinations, a date-time ‘event timestamp’ is equivalent to ‘execution timestamp’.
- Note: ‘Event date’ in the ESMA proposals has a different meaning to ‘event timestamp’ in Table 7: ‘event date’ is defined as the ‘date on which the reportable event relating to the derivative contract and captured by the report took place or, in case of a modification, when the modification became effective’.
- 202 ‘Clearing timestamp’ is not in the CDE Guidance but is in the final CFTC rules, the ESMA proposals and the current ASIC Rules. As the definition in the ESMA proposals is almost identical to that in the current ASIC Rules, in the interests of minimising definitions proliferation, we currently propose to adopt the EU rules definition in the second round of consultation.

Proposal

- E1 We propose to include in the ASIC Rules the data elements related to dates and timestamps set out in Table 7.

Your feedback

- E1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.
- E1Q2 In relation to ‘effective date’, do you consider that:
- (a) there is a need to clarify the meaning of ‘effective date’;

- (b) there are particular types of transactions for which determining 'effective date' is problematic; or
- (c) in the absence of a determinable 'effective date', 'execution timestamp' should be reported instead?

In your response, please give detailed reasons for your answer.

E1Q3 Do you agree that 'event timestamp' should be a timestamp data element and not a date data element? In your response, please give detailed reasons for your answer.

E1Q4 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 7? In your response, please give detailed reasons for your answer.

Data elements related to counterparties and beneficiaries

203 We propose to include the following data elements in the ASIC Rules.

Table 8: Proposed data elements related to counterparties and beneficiaries

| Data element | Definition—Summary of key points | Element number references | | | |
|---|---|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Counterparty 1 (reporting counterparty) | <p>{CDE TG} Identifier (LEI) of the counterparty to an OTC derivative transaction who is fulfilling its reporting obligation via the report in question.</p> <p>In the case of a derivative transaction executed by a fund manager on behalf of a fund, the fund and not the fund manager is reported as the counterparty.</p> | 2.6 | 13 | 1.4 | 1.5 |
| Reporting entity | <p>{ASIC} Identifier (LEI) of the reporting entity.</p> <p>broadly equivalent to ESMA's data element 'entity responsible for reporting' that identifies the manager of a fund or a pension scheme.</p> | n/a | n/a | 1.3 | n/a |
| Counterparty 2 | <p>{CDE TG} Identifier of the second counterparty to an OTC derivative transaction.</p> <p>In the case of a derivative transaction executed by a fund manager on behalf of a fund, the fund and not the fund manager is reported as the counterparty.</p> <p>Identifier as LEI or 'CDE natural person identifier'.</p> <p>Note: At CDE TG 2.7, the identifier of a natural person who is acting as a private individual (i.e. not LEI-eligible) is specified as the LEI of the reporting counterparty followed by a unique identifier assigned and maintained consistently by the reporting counterparty for that natural person.</p> | 2.7 | 14 | 1.9 | 1.7 |

| Data element | Definition—Summary of key points | Element number references | | | |
|-----------------------------------|---|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Counterparty 2 identifier type | {CDE TG} Indicator of whether LEI was used to identify the counterparty 2. | 2.8 | 15 | 1.8 | n/a |
| Country of counterparty 2 | {ESMA} In case the counterparty 2 is a natural person, the code of country of residence of that person. | n/a | n/a | 1.10 | n/a |
| Nature of counterparty 2 | {ASIC} Indicator of the nature of counterparty. Note: See proposed schema set out in Table 9. | n/a | n/a | 1.11 | n/a |
| Intragroup | {ASIC} Indicates whether the derivative was entered into as an intragroup transaction, defined as a transaction with a related party that is not consolidated at the domestic book reporting level. Related parties include the parent entity, controlled entities, joint venture entities and other branches under the same parent entity. | n/a | n/a | 2.32 | n/a |
| Beneficiary 1 | {CDE TG} Identifier of the beneficiary of an OTC derivative transaction for counterparty 1. Identifier as LEI or 'CDE natural person identifier'. | 2.9 | n/a | 1.18 | 1.10 |
| Beneficiary 1 type | {CDE TG} Indicator of whether LEI was used to identify the beneficiary 1. | 2.10 | n/a | 1.17 | n/a |
| Broker ID | {ESMA} When a broker acts as intermediary for counterparty 1 without becoming a counterparty themselves, counterparty 1 shall identify this broker by a unique code (i.e. LEI). | n/a | n/a | 1.15 | 1.15 |
| Execution agent of counterparty 1 | {ASIC} Where an entity enters into a transaction as an agent of counterparty 1 without becoming a counterparty itself, the identifier (LEI) of the agent. | n/a | n/a | n/a | n/a |

204 'Counterparty 1 (reporting counterparty)' is the same as 'identifier of reporting counterparty' in the current ASIC Rules, except that '[i]n the case of a derivative transaction executed by a fund manager on behalf of a fund, the fund and not the fund manager is reported as the counterparty'.

205 The current ASIC Rules define reporting entity as, among other things, an Australian financial services (AFS) licensee, which includes responsible entities and trustees of funds or schemes. A reporting counterparty is a reporting entity in relation to a reportable transaction.

206 Actual transaction reporting under the current ASIC Rules has been a mixture of reporting counterparties identifying themselves as the responsible entity or trustee of a fund or scheme and identifying themselves as the fund or scheme itself.

- 207 We propose to adopt the CDE Guidance approach of specifying that the reporting counterparty is the fund or scheme in these cases.
- 208 However, to ensure that the entity with responsibility for reporting is identified in transaction reports, we also propose to include ‘reporting entity’ as a data element. This data element is broadly equivalent to the European Union’s proposed data element of the ‘entity responsible for reporting’ that identifies the manager of a fund or a pension scheme.
- 209 In addition to seeking feedback from stakeholders on the inclusion of this data element, we also seek feedback on whether it should be defined in terms of, for example, ‘where counterparty 1 is not the reporting entity, the identifier of the reporting entity’—that is, the data element is not required to be reported where counterparty 1 is also the reporting entity.
- 210 ‘Counterparty 2’ and ‘beneficiary 1’ directly substitute for the corresponding data elements in the current ASIC Rules. The identifier required to be reported is an LEI or the CDE Guidance natural person identifier.
- 211 ‘Counterparty 2 identifier type’ and ‘beneficiary 1 type’ are true or false values for whether an LEI was used to identify the party. This is broadly equivalent to the ‘identifier prefix’ data elements that are already within the scope of trade repositories’ in-bound data elements, except that, as we propose that there only be LEI and non-LEI identifier types, having true or false values for these data elements is appropriate.
- 212 ‘Country of counterparty 2’ is proposed to be adopted from the European Union’s proposed rules as, where counterparty 2 is a natural person, the ISO two-digit country code for the residence of that person. We consider this is an important data element that will enable ASIC to more clearly monitor the scope, nature and geographic spread of trading by reporting entities with retail clients.
- Note: Where counterparty 2 is identified with an LEI, the country of counterparty 2 is available from the LEI database.
- 213 ‘Nature of counterparty 2’ is proposed to be adopted in a similar manner to the EU rules to enable the Australian regulators to more clearly monitor inter-sectoral risk and exposures.
- 214 We propose the following schema with indicative indicator definitions:

Table 9: Schema for ‘nature of counterparty 2’

| Value | Indicative definition |
|-------|---|
| 1 | Major Australian bank |
| 2 | Other Australian ADI |
| 3 | Foreign bank—local branch or subsidiary |

| Value | Indicative definition |
|-------|--|
| 4 | Foreign bank—overseas |
| 5 | Australian superannuation fund |
| 6 | Foreign superannuation fund—local branch or subsidiary |
| 7 | Foreign superannuation fund—overseas |
| 8 | Other Australian financial institution |
| 9 | Other foreign financial institution—local branch or subsidiary |
| 10 | Other foreign financial institution—overseas |
| 11 | Non-financial institution |
| 12 | Natural person |

215 ‘Intragroup’ is proposed to be adopted in a similar manner to the EU rules to enable the Australian regulators to more clearly monitor intragroup risk and exposures.

216 ‘Broker ID’ directly substitutes for the corresponding data element in the current ASIC Rules. Though it is not a CDE data element, we consider it is important for market conduct monitoring purposes to identify parties involved in derivative transactions, such as brokers.

217 Likewise, though ‘execution agent of counterparty 1’ is neither a CDE nor a CFTC or ESMA data element, we consider it is important to identify such execution agents as parties involved in derivative transactions.

218 In addition, we understand that such execution agents often play a role in transaction reporting by either directly reporting transactions on behalf of counterparty 1 or arranging that a reporting services provider reports the transactions. This transaction reporting role may be limited to each new transaction or may also include ongoing valuation and/or collateral reporting. By identifying such execution agents, we have clearer insights into understanding, for example, the differing reporting practices and levels of reporting compliance observable within funds with multiple execution agents.

219 For a fund or scheme, the data elements of ‘reporting entity’, ‘counterparty 1’ and ‘execution agent of counterparty 1’ would identify each of the key parties as:

- (a) the responsible entity or trustee as the ‘reporting entity’;
- (b) the fund or scheme itself as ‘counterparty 1’; and
- (c) one or more in-house or external fund managers as ‘execution agent of counterparty 1’.

Proposal

E2 We propose to include in the ASIC Rules the data elements related to counterparties and beneficiaries set out in Table 8.

Your feedback

- E2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.
- E2Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 8? In your response, please give detailed reasons for your answer.
- E2Q3 In relation to 'reporting entity', do you consider that this should be reported in all circumstances or only reported where it is a different entity to 'counterparty 1 (reporting counterparty)'?

Data elements related to direction

- 220 In the CDE Guidance, 'direction' refers to the 'side' taken by each party to the transaction—i.e. buyer/seller, payer/receiver.
- (a) CDE Guidance model 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 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.
- 221 For each of model 1 and model 2, the CDE Guidance further provides for two options:
- (a) report the role of counterparty 1, for example:
 - (i) counterparty 1 is the buyer; or
 - (ii) counterparty 1 is the payer of leg 1; or
 - (b) report the party that has the role, for example:
 - (i) the buyer is counterparty 1; or
 - (ii) the payer of leg 1 is counterparty 1.
- 222 The ASIC Rules currently provide for a mixture of the above approaches, for example:
- (a) item 33 of Table S2.1(1): Common data [1.33] is 'Counterparty side (buy/sell)' requiring 'A notation to indicate whether the Reporting Counterparty is the buyer or seller of the Derivative to which the Reportable Transaction relates'—the value reported in this data element is, for example, 'B' or 'S' or 'buyer' or 'seller'—i.e. the role of counterparty 1;

- (b) item 6 of Table S2.1(5): Interest [5.6] is ‘Payer (fixed rate)’ requiring ‘An identifier of the counterparty that pays the fixed rate’—the party that has the role of payer (fixed rate).

Note: Also, 3.1 and 3.3 require ‘Identifier of the counterparty purchasing protection’ and ‘Identifier of the counterparty purchasing protection’; 5.7 and 5.9 require ‘The identifier of the counterparty that pays the floating rate leg 1’ and ‘The identifier of the counterparty that pays the floating rate leg 2’ and 5.11 requires ‘A notation to indicate whether the Reporting Counterparty is paying or receiving the fixed rate’.

- 223 The final CFTC rules adopt the identifier option as model 1 ‘Buyer identifier’/‘Seller identifier’ and model 2 ‘Payer identifier’/‘Receiver identifier’.
- 224 ESMA has proposed the indicator (or ‘role’) option as model 1 ‘Counterparty 1 is buyer/seller’ and model 2 ‘Counterparty 1 is Leg1 payer/receiver’ and ‘Counterparty 1 is Leg 2 payer/receiver’.

Table 10: CDE Guidance elections related to direction

| Data element | Definition—Summary of key points | Element number references | | | |
|--|--|---------------------------|------|------|------------|
| | | CDE | CFTC | ESMA | ASIC |
| Direction 1— Buyer identifier | {CDE TG} Identifier of the counterparty that is the buyer [and the counterparty that is the seller], as determined at the time of the transaction. | 2.13.1 | 18 | n/a | 3.1 |
| Direction 1— Seller identifier | {CDE TG} Identifier of [the counterparty that is the buyer and] the counterparty that is the seller, as determined at the time of the transaction. | 2.13.1 | 19 | n/a | 3.3 |
| Direction 2— Payer identifier— Leg 1 | {CDE TG} Identifier of the counterparty of the payer leg [and the counterparty of the receiver leg] as determined at the time of the transaction. | 2.13.2 | 20 | n/a | 5.6 5.7 |
| Direction 2— Payer identifier— Leg 2 | {CDE TG} Identifier of the counterparty of the payer leg [and the counterparty of the receiver leg] as determined at the time of the transaction. | 2.13.2 | 20 | n/a | 5.6 5.9 |
| Direction 2— Receiver identifier—Leg 1 | {CDE TG} Identifier of [the counterparty of the payer leg and] the counterparty of the receiver leg as determined at the time of the transaction. | 2.13.2 | 21 | n/a | n/a |
| Direction 2— Receiver identifier—Leg 2 | {CDE TG} Identifier of [the counterparty of the payer leg and] the counterparty of the receiver leg as determined at the time of the transaction. | 2.13.2 | 21 | n/a | n/a |
| Direction 1 | {CDE TG} Indicator of whether the reporting counterparty is the buyer or the seller as determined at the time of the transaction. Indicator as BYER = buyer, SLLR = seller. | 2.13.1 | n/a | 19 | 1.33 |

| Data element | Definition—Summary of key points | Element number references | | | |
|-----------------------|---|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Direction 2— Leg 1 | {CDE TG} Indicator of whether the reporting counterparty is the payer or the receiver of the leg as determined at the time of the transaction. Indicator as MAKE = payer, TAKE = receiver. | 2.13.2 | n/a | 20 | 5.11 |
| Direction 2— Leg 2 | {CDE TG} Indicator of whether the reporting counterparty is the payer or the receiver of the leg as determined at the time of the transaction. Indicator as MAKE = payer, TAKE = receiver. | 2.13.2 | n/a | 21 | 5.11 |

- 225 We propose to make elections for ‘direction’ as proposed by ESMA. We do so because:
- (a) less data elements are required under the ESMA approach;
 - (b) the information is more intuitively organised as the roles of counterparty 1 rather than which counterparty takes which role.

Proposal

- E3** We propose to include in the ASIC Rules the data elements for ‘direction’ that make the same elections as proposed by ESMA—that is, the data elements ‘Direction 1’, ‘Direction 2 —Leg 1’ and ‘Direction 2—Leg 2’: see Table 10.

Your feedback

- E3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.
- E3Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 10? In your response, please give detailed reasons for your answer.

Data elements related to clearing, trading, confirmation and settlement

- 226 We propose to include in the ASIC Rules the data elements set out in Table 11. All of these data elements are CDE Guidance data elements which are also common to the final CFTC rules and/or the ESMA proposals. Several of the data elements are also in the current ASIC Rules.

Table 11: Proposed data elements related to clearing, trading, confirmation and settlement

| Data element | Definition—Summary of key points | Element number references | | | |
|-----------------------------------|---|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Cleared | {CDE TG} Indicator of whether the transaction has been cleared, or is intended to be cleared, by a central counterparty. | 2.14 | 1 | 2.26 | 1.17 |
| Central counterparty | {CDE TG} Identifier of the central counterparty (CCP) that cleared the transaction. | 2.15 | 2 | 2.28 | 1.18 |
| Clearing member | {CDE TG} Identifier of the clearing member through which a derivative transaction was cleared at a central counterparty. This data element is applicable to cleared transactions under both the agency clearing model and the principal clearing model: see paragraph 228. | 2.16 | 4 | 1.16 | 1.19 |
| Platform identifier | {CDE TG} Identifier of the trading facility (e.g. exchange, multilateral trading facility, swap execution facility) on which the transaction was executed. | 2.17 | 98 | 2.36 | 1.24 |
| Final contractual settlement date | {CDE TG} Unadjusted date as per the contract, by which all transfer of cash or assets should take place and the counterparties should no longer have any outstanding obligations to each other under that contract. | 2.19 | 88 | 2.41 | n/a |
| Settlement currency—Leg 1 | {CDE TG} Currency for the cash settlement of the transaction when applicable. | 2.20 | 89 | 2.15 | n/a |
| Settlement currency—Leg 2 | {CDE TG} Currency for the cash settlement of the transaction when applicable. | 2.20 | 89 | 2.16 | n/a |
| Settlement location—Leg 1 | {CDE TG} Place of settlement of the transaction as stipulated in the contract. This data element is only applicable for transactions that involve an offshore currency (i.e. a currency which is not included in the ISO 4217 currency list, for example CNH). | 2.21 | 90 | n/a | n/a |
| Settlement location—Leg 2 | {CDE TG} Place of settlement of the transaction as stipulated in the contract. | 2.21 | 90 | n/a | n/a |

227 'Cleared', 'central counterparty' and 'platform identifier' directly substitute for the corresponding data elements in the current ASIC Rules.

228 'Clearing member' also directly substitutes for the corresponding data element in the current ASIC Rules. The CDE Guidance further clarifies that the use of this data element is under the agency clearing model and the principal clearing model.

- (a) In the case of the principal clearing model, the clearing member is identified as ‘clearing member’ and also as ‘counterparty 1’ or ‘counterparty 2’ in both transactions resulting from clearing:
 - (i) in the transaction between the central counterparty and the clearing member; and
 - (ii) in the transaction between the clearing member and the counterparty to the original alpha transaction.
- (b) In the case of the agency clearing model, the clearing member is identified as ‘clearing member’ but not as a counterparty to transactions resulting from clearing. Under this model, the counterparties are the central counterparty and the client.

229 ‘Final contractual settlement date’, ‘settlement currency—leg 1’ and ‘settlement currency—leg 2’ are in the CDE Guidance and adopted under both the final CFTC rules and the ESMA proposals. These are important fields for detailing the final residual term of exposures and the cashflows of transactions.

230 ‘Settlement location—leg 1’ and ‘settlement location—leg 2’ are in the CDE Guidance and adopted under the final CFTC rules. These are also important fields for detailing onshore/offshore risks in settlement payments.

Proposal

E4 We propose to include in the ASIC Rules the data elements related to clearing, trading, confirmation and settlement set out in Table 11.

Your feedback

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

E4Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 11? In your response, please give detailed reasons for your answer.

Data elements related to regular payments

231 We propose to include in the ASIC Rules the data elements set out in Table 12. All of these data elements are CDE Guidance data elements which are also common to the final CFTC rules and/or the ESMA proposals.

232 Several of the data elements are also in the current ASIC Rules but more in terms of equivalent information content. For example, ‘frequency’ in the current ASIC Rules does not separate the ‘frequency period’ from the ‘frequency period multiplier’—the current ASIC Rules require the reporting of, for example, ‘6M’ (for six-monthly) as a single data element rather than

the more common approach in other jurisdictions of requiring ‘6’ (for frequency period multiplier) and ‘M’ (for frequency period) as separate data elements.

233 By adopting the data elements in Table 12, the ASIC Rules would conform to a common multi-jurisdictional approach, including the more comprehensive separation of leg 1 and leg 2 information.

Table 12: Proposed data elements related to regular payments

| Data element | Definition—Summary of key points | Element number references | | | |
|---|--|---------------------------|------|---------------------------------|--|
| | | CDE | CFTC | ESMA | ASIC |
| Day count convention—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: day count convention (often also referred to as day count fraction or day count basis or day count method). | 2.22 | 53 | 2.76 (Fix) 2.82 (Flo) | 1.24 5.14 (Fix) |
| Day count convention—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: day count convention (often also referred to as day count fraction or day count basis or day count method). | 2.22 | 53 | 2.92 (Fix) 2.98 (Flo) | n/a |
| Payment frequency period—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: time unit associated with the frequency of payments, e.g. day, week, month, year or term of the stream. | 2.23 | 63 | 2.77 (Fix) 2.83 (Flo) | 2.5 (CO) 3.12 (EQ, CR) 5.15 (Fix) 5.16 (Flo) |
| Payment frequency period—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: time unit associated with the frequency of payments, e.g. day, week, month, year or term of the stream. | 2.23 | 63 | 2.93 (Fix) 2.99 (Flo) | 5.16 (Flo) |
| Payment frequency period multiplier—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: number of time units (as expressed by the payment frequency period) that determines the frequency at which periodic payment dates occur. | 2.24 | 64 | 2.78 (Fix) 2.84 (Flo) | n/a |
| Payment frequency period multiplier—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: number of time units (as expressed by the payment frequency period) that determines the frequency at which periodic payment dates occur. | 2.24 | 64 | 2.94 (Fix) 2.100 (Flo) | n/a |

Proposal

E5 We propose to include in the ASIC Rules the data elements related to regular payments set out in Table 12.

Your feedback

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

E5Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 12? In your response, please give detailed reasons for your answer.

Other data elements related to payments

234 We are also considering proposing, in the second round of consultation, the data elements related to the floating rate reset frequency: see Table 13.

235 For standard types of transactions where the ‘floating rate reset frequency (period/period multiplier)’ is the same as the floating rate reference rate (period/period multiplier)—for example, 3-monthly resets against 3-month BBSW—we currently anticipate that the relevant UPI that embeds the floating rate reference rate (period/period multiplier) can be relied on as also indicating the same ‘floating rate reset frequency (period/period multiplier)’.

236 However, we are currently uncertain as to whether it is intended that UPI development will extend to types of transactions where the ‘floating rate reset frequency (period/period multiplier)’ is different to the floating rate reference rate (period/period multiplier)—for example, 3-monthly resets against the 5-year Australian dollar constant maturity swap rate.

237 In the absence of the UPI system covering these types of transactions, the inclusion of these data elements would enable the regulators to fully identify the terms of such transactions. We anticipate that the UPI system will develop further in coming months, which will help to inform our consideration of these data elements.

238 We also seek feedback from stakeholders as to:

- (a) the incidence of these types of transactions in their own dealings; and
- (b) whether other data elements—for example, ‘payment frequency (period/period multiplier)’—could be relied on, in all cases or in most cases or in few cases, to infer the ‘floating rate reset frequency (period/period multiplier)’.

Table 13: Data elements to be considered for proposal in the second round of consultation

| Data element | Definition—Summary of key points | Element number references | | | |
|---|--|---------------------------|------|-------|--------------|
| | | CDE | CFTC | ESMA | ASIC |
| Floating rate reset frequency period—Leg 1 | {CFTC} For each floating leg of the swap transaction, where applicable, time unit associated with the frequency of resets, e.g. day, week, month, year or term of the stream. | n/a | 55 | 2.87 | 1.53 5.19 |
| Floating rate reset frequency period—Leg 2 | {CFTC} For each floating leg of the swap transaction, where applicable, time unit associated with the frequency of resets, e.g. day, week, month, year or term of the stream. | n/a | 55 | 2.103 | n/a |
| Floating rate reset frequency period multiplier—Leg 1 | {CFTC} For each floating leg of the swap transaction, where applicable, number of time units (as expressed by the floating rate reset frequency period) that determines the frequency at which periodic payment dates for reset occur. | n/a | 56 | 2.88 | n/a |
| Floating rate reset frequency period multiplier—Leg 2 | {CFTC} For each floating leg of the swap transaction, where applicable, number of time units (as expressed by the floating rate reset frequency period) that determines the frequency at which periodic payment dates for reset occur. | n/a | 56 | 2.104 | n/a |

Proposal

- E6** We are considering a proposal, in the second round of consultation, to include in the ASIC Rules the data elements related to the floating rate reset frequency set out in Table 13.

Your feedback

- E6Q1** Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.
- E6Q2** For transactions where the frequency of resets of the floating rate differ from the frequency of the reference rate itself, please provide feedback about:
- the incidence of these types of transactions in your own dealings; and
 - whether other data elements—for example, payment frequency—could be relied on, in all cases or in most cases or in few cases, to infer the ‘floating rate reset frequency (period/period multiplier)’.
- E6Q3** Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 13? In your response, please give detailed reasons for your answer.

Data elements related to valuation

239 We propose to include the following data elements in the ASIC Rules. Except for ‘valuation timestamp’, all of these data elements are in the current ASIC Rules.

Table 14: Proposed data elements related to valuation

| Data element | Definition—Summary of key points | Element number references | | | |
|---------------------|--|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Valuation amount | {CDE TG} Current value of the outstanding contract. Valuation amount is expressed as the exit cost of the contract or components of the contract, i.e. the price that would be received to sell the contract (in the market in an orderly transaction at the valuation date). | 2.25 | 110 | 2.17 | 1.30 |
| Valuation currency | {CDE TG} Currency in which the valuation amount is denominated. | 2.26 | 111 | 2.18 | 1.31 |
| Valuation timestamp | {CDE TG} Date and time of the last valuation marked to market. | 2.27 | 113 | 2.19 | n/a |
| Valuation method | {CDE TG} Source and method used for the valuation of the transaction by the reporting counterparty. | 2.28 | 112 | 2.20 | 2.32 |

240 ‘Valuation amount’, ‘valuation currency’ and ‘valuation method’ are in each of the CDE Guidance, the final CFTC rules, the ESMA proposals and the current ASIC Rules.

241 ‘Valuation timestamp’ is in the CDE Guidance, the final CFTC rules and the ESMA proposals. We consider this is an important data element (particularly in evaluating entity exposures) to confirm that the valuation is current.

Proposal

E7 We propose to include in the ASIC Rules the data elements related to valuation set out in Table 14.

Your feedback

E7Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E7Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 14? In your response, please give detailed reasons for your answer.

Data elements related to collateral and margins

- 242 We propose to include in the ASIC Rules the data elements set out in Table 15. The majority of these data elements are CDE Guidance data elements which are also common to the final CFTC rules and/or the ESMA proposals.
- 243 The current ASIC Rules only require the equivalent of ‘collateral portfolio indicator’, ‘collateral portfolio code’, ‘collateralisation category’ and a single value for the total amount of collateral posted (and the currency in which the collateral amount is denominated).
- 244 The inclusion in the ASIC Rules of the data elements that disaggregate collateral amounts by initial margin and variation margin and by posted and received is important to enable the Australian regulators to evaluate entity exposures to each other and the important potential and actual systemic risks that may be present.
- 245 We also propose to adopt the final CFTC rules variation to the CDE Guidance that provides for two collateral portfolio codes for a transaction—so that it can be clarified if the transaction is collateralised in a portfolio for initial margin purposes and/or in a different portfolio for variation margin purposes.
- 246 Further, we also propose to adopt the final CFTC rules data element of ‘portfolio containing non-reportable component indicator’ which is a true or false value of whether the collateral portfolio comprises transactions that are not reportable transactions under the ASIC Rules.

Table 15: Proposed data elements related to collateral and margins

| Data element | Definition—Summary of key points | Element number references | | | |
|--|---|---------------------------|-------------|-----------------|-----------------|
| | | CDE | CFTC | ESMA | ASIC |
| Collateral portfolio indicator | {CDE TG} Indicator of whether the collateralisation was performed on a portfolio basis. | 2.29 | n/a | 2.21 | 1.41 |
| Collateral portfolio code (initial margin) | {CDE TG} If collateral [as initial margin] is reported on a portfolio basis, a unique code assigned by the reporting counterparty to the portfolio. | 2.30 (IM+VM) | 116 (IM) | 2.22 (IM+VM) | 1.42 (IM+VM) |
| Collateral portfolio code (variation margin) | {CDE TG} If collateral [as variation margin] is reported on a portfolio basis, a unique code assigned by the reporting counterparty to the portfolio. | n/a | 124 (VM) | n/a | n/a |

| Data element | Definition—Summary of key points | Element number references | | | |
|--|--|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Initial margin posted by the reporting counterparty (pre-haircut) | {CDE TG} Monetary value of initial margin that has been posted by the reporting counterparty. This refers to the total current value of the initial margin rather than to its daily change. | 2.31 | 119 | 3.12 | n/a |
| Initial margin posted by the reporting counterparty (post-haircut) | {CDE TG} Monetary value of initial margin that has been posted by the reporting counterparty. This refers to the total current value of the initial margin after application of the haircut (if applicable), rather than to its daily change. | 2.32 | 121 | 3.13 | n/a |
| Currency of initial margin posted | {CDE TG} Currency in which the initial margin posted is denominated. | 2.33 | 120 | 3.14 | n/a |
| Initial margin collected by the reporting counterparty (pre-haircut) | {CDE TG} Monetary value of initial margin that has been collected by the reporting counterparty. | 2.34 | 122 | 3.20 | n/a |
| Initial margin collected by the reporting counterparty (post-haircut) | {CDE TG} Monetary value of initial margin that has been collected by the reporting counterparty. | 2.35 | 121 | 3.21 | n/a |
| Currency of initial margin collected | {CDE TG} Currency in which the initial margin collected is denominated. | 2.36 | 123 | 3.22 | n/a |
| Variation margin posted by the reporting counterparty (pre-haircut) | {CDE TG} Monetary value of the variation margin posted by the reporting counterparty. | 2.37 | 125 | 3.15 | n/a |
| Currency of variation margin posted | {CDE TG} Currency in which the variation margin posted is denominated. | 2.39 | 126 | 3.17 | n/a |
| Variation margin collected by the reporting counterparty (pre-haircut) | {CDE TG} Monetary value of the variation margin collected by the reporting counterparty. | 2.40 | 127 | 3.23 | n/a |
| Currency of variation margin collected | {CDE TG} Currency in which the variation margin collected is denominated. | 2.42 | 128 | 3.25 | n/a |

| Data element | Definition—Summary of key points | Element number references | | | |
|---|---|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Collateralisation category | <p>{CDE TG} Indicator of whether a collateral agreement (or collateral agreements) between the counterparties exists.</p> <p>There are nine 4 character codes indicating different types of collateralisation arrangements.</p> | 2.47 | 115 | 3.11 | 1.40 |
| Portfolio containing non-reportable component indicator | {CFTC} If collateral is reported on a portfolio basis, indicator of whether the collateral portfolio includes transactions exempt from reporting. | n/a | 117 | n/a | n/a |

- 247 Our proposal to separate the CDE Guidance data element ‘collateral portfolio code’ into two data elements, ‘collateral portfolio code (initial margin)’ and ‘collateral portfolio code (variation margin)’ reflects industry feedback to the original CFTC proposals and their adoption in the final CFTC rules.
- 248 ISDA submitted that the final CFTC rules should allow a reporting counterparty the option to report up to two collateral portfolio codes for each swap, one which would correspond to the variation margin requirement and the other to the initial margin requirement. ISDA submitted that this is important because each swap may be treated differently for purposes of margining depending on whether it is subject to regulatory variation margin and/or initial margin requirements and whether it is subject to non-regulatory variation margin or initial margin in accordance with a collateral agreement between the parties. An approach that uses a single portfolio code may provide misleading information, since a regulator would be unable to understand with certainty which transactions had been included in a particular margin calculation.
- 249 We agree that a two-portfolio code approach will enable the Australian regulators to more clearly understand the relationships between the valuation amounts for transactions and their more clearly segregated associated initial and variation margin amounts.
- 250 Our proposal also includes that initial margin posted and collected would be reported as both pre-haircut and post-haircut values. The pre-haircut value is the gross amount of collateral posted or collected and is the amount of collateral that a posting entity needs to find and fund. The post-haircut value is the pre-haircut value discounted by the amount—the ‘haircut’—that generally reflects the risk that the value of the collateral may decline due to market price movements in the time between the most recent posting and the collateral needing to be realised to meet the obligations that are

collateralised. Haircuts may be used where, for example, collateral is posted in the form of securities rather than monetary amounts or the collateral is posted as a monetary amount but in a currency that is different to the currency in which the collateralised obligations are denominated.

251 Reporting margins posted and collected as pre- and post-haircut values provide valuable information to the Australian regulators to identify emerging risks on derivatives markets due to changes in the applied haircuts, the level of haircuts applied per portfolio as well as their evolution over time. This enables assessment of the quality and quantity of the collateral in relation to leverage in the financial system and the potential build-up of stress and systemic risk, from a financial stability point of view.

252 We also propose to adopt the final CFTC rules field of ‘portfolio containing non-reportable component indicator’. This true or false value indicates that the collateral amount 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—the valuation amounts of the interest rate futures positions are not included in reporting under the ASIC Rules;
- (b) where the collateral portfolio is a global portfolio comprised of global transactions that are not all ASIC reportable transactions—the valuation amounts of those transactions that are not ASIC reportable transactions are not included in reporting under the ASIC Rules.

Proposal

E8 We propose to include in the ASIC Rules the data elements related to collateral and margins set out in Table 15.

Your feedback

E8Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E8Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 15? In your response, please give detailed reasons for your answer.

Data elements related to counterparty rating triggers

253 There are two data elements related to counterparty rating triggers in the CDE Guidance. These are adopted in the ESMA proposals but not in the final CFTC rules.

254 We also do not propose to adopt them in the ASIC Rules. While information on the pervasiveness and characteristics of collateral rating triggers can have significant value for authorities from a financial stability perspective, we consider there is sufficient exposure information provided in other data elements to not impose an additional reporting requirement of these data elements.

Table 16: Data elements related to counterparty rating triggers—Not proposed

| Data element | Definition—Summary of key points | Element number references | | | |
|---|--|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Counterparty rating trigger indicator | {CDE TG} Indicator of whether a counterparty rating trigger has been agreed by the counterparties for the collateral posted by reporting counterparty. | 2.48 | n/a | 3.28 | n/a |
| Counterparty rating threshold indicator | {CDE TG} Indicator of whether the counterparty rating trigger(s) include one that increases collateral requirements when the reporting counterparty falls below the threshold of single-A or equivalent. | 2.49 | n/a | 3.29 | n/a |

Proposal

E9 We do not propose to include in the ASIC Rules the data elements related to counterparty rating triggers set out in Table 16.

Your feedback

E9Q1 Do you agree with this proposal? If not, please give detailed reasons for your answer.

Data elements related to price

255 The CDE Guidance explains that the ‘price’ of a transaction is:

- (a) reported in the ‘price’ data element for particular types of derivatives; or
- (b) understood from information reported in various other data elements for other types of derivatives.

256 The CDE Guidance’s distinction between price information in the ‘price’ data element and price information from other data elements is summarised in Table 17.

Table 17: Sources of price information by type of derivative

| Type of derivative | 'Price' element information | Other elements providing 'price' information |
|---|--|--|
| Commodity fixed/float swaps and similar products with periodic payments | Fixed price of the fixed leg(s) | n/a |
| Commodity and equity forwards and similar products | Forward price of the underlying or reference asset | n/a |
| Equity swaps, portfolios swaps, and similar products | Initial price of the underlying or reference asset | n/a |
| Contracts for difference and similar products | Initial price of the underlier | n/a |
| Interest rate swaps and forward rate agreements | n/a | Fixed rate and spread |
| Interest rate options and interest rate swaptions | n/a | Strike price and option premium |
| Commodity basis swaps and the floating leg of commodity fixed/float swaps | n/a | Spread |
| Foreign exchange swaps, forwards and options | n/a | Exchange rate, strike price and option premium |
| Equity options | n/a | Strike price and option premium |
| Credit default swaps and credit total return swaps | n/a | Fixed rate, spread and upfront payment (other payment type: upfront payment) |
| Commodity options | n/a | Strike price and option premium |

- 257 We propose to include in the ASIC Rules the data elements set out in Table 18.
- 258 The current ASIC Rules include price information in relation to derivative transactions in foreign exchange, interest rates and options, but incompletely so, and do not include price information in relation to derivative transactions in the equity and commodities asset classes.
- 259 Price information is critical to understanding the terms of a transaction, the relative relationship to prevailing market prices at the time of execution and in validating valuation amounts.

Table 18: Proposed data elements related to price

| Data element | Definition—Summary of key points | Element number references | | | |
|-----------------------|---|---------------------------|------|-------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Price | {CDE TG} Price specified in the OTC derivative transaction. It does not include fees, taxes or commissions. [Note: The applicability to various types of derivatives is as summarised above.] | 2.50 | 69 | 2.43 | n/a |
| Price currency | {CDE TG} Currency in which the price is denominated. | 2.51 | 70 | 2.44 | n/a |
| Price notation | {CDE TG} Manner in which the price is expressed. | 2.52 | 71 | n/a | n/a |
| Price unit of measure | {CDE TG} Unit of measure in which the price is expressed. [Note: A list of allowable values and their format will be provided to the CDE maintenance and governance framework.] | 2.53 | 72 | n/a | n/a |
| Fixed rate—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments, per annum rate of the fixed leg(s). {CFTC} Notation as a decimal i.e. 2.57% as 0.0257. | 2.55 | 67 | 75 | 5.13 |
| Fixed rate—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments, per annum rate of the fixed leg(s). {CFTC} Notation as a decimal i.e. 2.57% as 0.0257. | 2.55 | 67 | 91 | n/a |
| Spread—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments (e.g. interest rate fixed/float swaps, interest rate basis swaps, commodity swaps). | 2.57 | 73 | 2.89 | n/a |
| Spread—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments (e.g. interest rate fixed/float swaps, interest rate basis swaps, commodity swaps). | 2.57 | 73 | 2.105 | n/a |
| Spread currency—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: currency in which the spread is denominated. | 2.58 | 74 | 2.90 | n/a |
| Spread currency—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: currency in which the spread is denominated. | 2.58 | 74 | 2.106 | n/a |

| Data element | Definition—Summary of key points | Element number references | | | |
|-------------------------------------|---|---------------------------|------|-------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Spread notation—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: manner in which the spread is expressed. | 2.59 | 74 | n/a | n/a |
| Spread notation—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: manner in which the spread is expressed. | 2.59 | 74 | n/a | n/a |
| Strike price | {CDE TG} For options, price at which the owner of an option can buy or sell the underlying asset of the option or receive a cash settlement payment. | 2.60 | 76 | 2.130 | 1.50 |
| Strike price currency/currency pair | {CDE TG} For equity options, commodity options, and similar products, currency in which the strike price is denominated. For foreign exchange options: currency pair and order in which the strike price is expressed. | 2.61 | 77 | n/a | n/a |
| Strike price notation | {CDE TG} Manner in which the strike price is expressed. | 2.62 | 78 | n/a | n/a |
| Option premium amount | {CDE TG} For options and swaptions of all asset classes, monetary amount paid by the option buyer. | 2.64 | 79 | 2.135 | 1.47 |
| Option premium currency | {CDE TG} For options and swaptions of all asset classes, currency in which the option premium amount is denominated. | 2.65 | 80 | 2.136 | 1.48 |
| Option premium payment date | {CDE TG} Unadjusted date on which the option premium is paid. | 2.66 | 81 | 2.137 | n/a |
| Exchange rate | {CDE TG} Exchange rate between the two different currencies specified in the OTC derivative transaction agreed by the counterparties at the inception of the transaction. | 2.68 | 65 | 2.109 | 4.6 |
| Exchange rate basis | {CDE TG} Currency pair and order in which the exchange rate is denominated, expressed as unit currency/quoted currency. | 2.69 | 66 | 2.111 | n/a |

260 In Table 18, a ‘notation’ data element ‘relates to the manner in which the [data element] is expressed’.

261 In the CDE Guidance, ‘notations’ are provided for as a simple schema of:

1 = a monetary amount

2 = a percentage—e.g. a rate of 2.57% is expressed as 2.57

3 = a decimal—e.g. a rate of 2.57% is expressed as 0.0257

4 = in basis points—e.g. a rate of 2.57% is expressed as 257.

262 Generally, the final CFTC rules preclude the use of percentages and require the use of decimals, whereas the ESMA proposals preclude the use of decimals and require the use of percentages.

263 We propose to adopt the approach of the final CFTC rules to require the use of decimals and preclude the use of percentages.

Proposal

E10 We propose to include in the ASIC Rules the data elements related to prices set out in Table 18.

Your feedback

E10Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E10Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 18? In your response, please give detailed reasons for your answer.

Other data elements related to price

264 We are also considering proposing, in the second round of consultation, the data elements set out in Table 19.

265 The CDE Guidance provides for data elements that are ‘schedules’ which detail how a particular data element varies in different time periods over the term of the derivative transaction.

Note: A ‘schedule’ is a term of a transaction that is agreed between the parties at the time of entering into the transaction and is fixed for the term of the transaction (unless renegotiated during the term). It does not apply to transactions with notional amounts that are condition- or event-dependent.

266 A common ‘schedule’ is a notional amount schedule where, for example, the notional amount amortises over the term of the transaction—the data element of a notional amount schedule is discussed under ‘data elements relating to notional amounts and quantities’.

267 The CDE Guidance also provides for ‘price schedules’ and ‘strike price schedules’ as described below. These are adopted in the ESMA proposals but not adopted in the final CFTC rules and are not included in the current ASIC rules.

268 While information about a ‘price schedule’ or a ‘strike price schedule’ will more clearly inform the Australian regulators about the terms of a transaction than without that information, if the incidence of such schedules is low, it would appear that each of the parties in the transaction reporting arrangements—namely, the reporting entities, their reporting service

providers, the trade repositories and the Australian regulators—would need to ensure that their data handling arrangements accommodate these data elements, even if they are not applicable.

269 Consequently, we seek feedback from stakeholders as to:

- (a) the incidence of these types of transactions in their own dealings; and
- (b) given that we consider the current ASIC Rules require a change in ‘price’ or ‘strike price’ to be reported as and when it occurs according to a ‘schedule’ as, under Rule 2.2.2, a reportable change to information previously reported—whether stakeholders would prefer to provide this information in their initial transaction report via a ‘schedule’ rather than reporting the changes according to the ‘schedule’.

270 In relation to ‘first exercise date’, the CDE Guidance definition explains that the value in this data element is the same as ‘expiration date’ for a European-style option and is the date within ‘execution timestamp’ for an American-style option. For knock-in options, where the first exercise date is not known when a new transaction is reported, the first exercise date is updated as it becomes available.

271 Otherwise, this data element clarifies the risk profile for options that are neither European-style nor American-style, such as Bermudan-style options. We seek feedback from stakeholders about including this data element in the ASIC Rules, including the incidence of options transactions in their own dealings that would require reporting of a value for this data element that is not otherwise reported in another data element.

Table 19: Data elements to be considered for proposal in second round of consultation

| Data element | Definition—Summary of key points | Element number references | | | |
|-----------------------|---|---------------------------|------|-------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Price schedule | {CDE TG} For OTC derivative transactions with prices varying throughout the life of the transaction: a schedule of periods with start date, end date and price prevailing in the period. | 2.54.1 | n/a | 2.45 | n/a |
| | | 2.54.2 | | 2.46 | |
| | | 2.54.3 | | 2.47 | |
| Strike price schedule | {CDE TG} For OTC derivative transactions with prices varying throughout the life of the transaction: a schedule of periods with start date, end date and strike price prevailing in the period. | 2.63.1 | n/a | 2.131 | n/a |
| | | 2.63.2 | | 2.132 | |
| | | 2.63.3 | | 2.133 | |
| First exercise date | {CDE TG} First unadjusted date during the exercise period in which an option can be exercised. | 2.67 | 82 | n/a | n/a |

Proposal

E11 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to prices set out in Table 19.

Your feedback

E11Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.

E11Q2 For transactions involving 'price schedules' or 'strike price schedules', please provide feedback about:

- (a) the incidence of such types of transactions in your own dealings; and
- (b) whether you prefer to provide this information in your initial transaction report as a 'schedule' rather than reporting the changes according to the 'schedule' in subsequent transaction reports.

E11Q3 For transactions where 'first exercise date' would be reported as a value that is not otherwise reported in another data element, please provide feedback about the incidence of such types of transactions in your own dealings and any other feedback.

E11Q4 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 19? In your response, please give detailed reasons for your answer.

Data elements related to notional amounts and quantities

272 We propose to include in the ASIC Rules the data elements set out in Table 20. A number of these data elements are common to the CDE Guidance, the final CFTC rules, the ESMA proposals and the current ASIC Rules. Other data elements are common to the CDE Guidance and the final CFTC rules and/or the ESMA proposals but are not included in the current ASIC Rules.

Table 20: Proposed data elements related to notional amounts and quantities

| Data element | Definition—Summary of key points | Element number references | | | |
|-------------------------|---|---------------------------|------|------|--------------------------|
| | | CDE | CFTC | ESMA | ASIC |
| Notional amount—Leg 1 | <p>{CDE TG} For each leg of the transaction, where applicable:</p> <p>For OTC derivative transactions negotiated in monetary amounts, amount specified in the contract.</p> <p>For OTC derivative transactions negotiated in non-monetary amounts:</p> <ul style="list-style-type: none"> • Options—strike price x non-monetary amount • Forwards—forward price x non-monetary amount • CFDs—initial price x non-monetary amount • Swaps—initial price or fixed price x non-monetary amount • Other—e.g. vega amount, variance amount etc. | 2.70 | 31 | 2.50 | 2.1 3.7 4.1 5.1 |
| Notional amount—Leg 2 | {CDE TG} For each leg of the transaction, where applicable, amounts determined as above. | 2.70 | 31 | 2.59 | 4.2 5.2 |
| Delta | {CDE TG} The ratio of the absolute change in price of an OTC derivative transaction to the change in price of the underlier. | 2.71 | 109 | 2.68 | n/a |
| Call amount | <p>{CDE TG} For foreign exchange options, the monetary amount that the option gives the right to buy.</p> <p>Note: At CDE TG 2.70 Notional amount, the CDE TG notes 'For OTC foreign exchange options, in addition to this data element, the amounts are reported using the data elements Call amount and Put amount'.</p> | 2.72 | 36 | n/a | n/a |
| Put amount | {CDE TG} For foreign exchange options, the monetary amount that the option gives the right to sell. | 2.73 | 38 | n/a | n/a |
| Notional currency—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: currency in which the notional amount is denominated. | 2.74 | 32 | 2.51 | 2.2 3.8 4.3 5.3 |
| Notional currency—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: currency in which the notional amount is denominated. | 2.74 | 32 | 2.60 | 4.4 5.4 |
| Call currency | {CDE TG} For foreign exchange options, the currency in which the Call amount is denominated. | 2.75 | 37 | n/a | n/a |
| Put currency | {CDE TG} For foreign exchange options, the currency in which the Put amount is denominated. | 2.76 | 39 | n/a | n/a |

| Data element | Definition—Summary of key points | Element number references | | | |
|--------------------------------|---|---------------------------|------|-------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Quantity unit of measure—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: unit of measure in which the Total notional quantity and the Notional quantity schedules are expressed. | 2.77 | 43 | 2.125 | 2.6 |
| Quantity unit of measure—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: unit of measure in which the Total notional quantity and the Notional quantity schedules are expressed. | 2.77 | 43 | n/a | n/a |
| Notional amount schedule—Leg 1 | {CDE TG} For each leg of the transaction, where applicable, for OTC derivative transactions negotiated in monetary amounts: a schedule of periods with start date, end date and notional amount prevailing in the period. | 2.78.1 | 34 | 2.52 | n/a |
| | | 2.78.2 | 35 | 2.53 | |
| | | 2.78.3 | 33 | 2.54 | |
| Notional amount schedule—Leg 2 | {CDE TG} For each leg of the transaction, where applicable, for OTC derivative transactions negotiated in monetary amounts: a schedule of periods with start date, end date and notional amount prevailing in the period. | 2.78.1 | 34 | 2.61 | n/a |
| | | 2.78.2 | 35 | 2.62 | |
| | | 2.78.3 | 33 | 2.63 | |
| Total notional quantity—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: aggregate notional quantity of the underlying asset for the term of the transaction. | 2.79 | 44 | 2.55 | 2.9 |
| Total notional quantity—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: aggregate notional quantity of the underlying asset for the term of the transaction. | 2.79 | 44 | 2.64 | n/a |
| Notional quantity—Leg 1 | {CFTC} For each leg of the swap transaction, where applicable, for swap transactions negotiated in non-monetary amounts with fixed notional quantity for each schedule period (i.e. 50 barrels per month). | n/a | 40 | n/a | n/a |
| Notional quantity—Leg 2 | {CFTC} For each leg of the swap transaction, where applicable, for swap transactions negotiated in non-monetary amounts with fixed notional quantity for each schedule period (i.e. 50 barrels per month). | n/a | 40 | n/a | n/a |
| 273 | ‘Notional amount—leg 1’, ‘notional amount—leg 2’, ‘notional currency—leg 1’, ‘notional currency—leg 2’, ‘quantity unit of measure—leg 1’ and ‘total notional quantity—leg 1’ effectively directly substitute for the corresponding data elements in the current ASIC Rules. | | | | |
| 274 | ‘Quantity unit of measure—leg 2’ and ‘total notional quantity—leg 2’ are data elements that provide for the remaining possible combinations of notional amount and notional quantity: (a) ‘notional amount—leg 1’ versus ‘total notional quantity—leg 2’; | | | | |

- (b) 'notional amount—leg 2' versus 'total notional quantity—leg 1'; and
- (c) 'total notional quantity—leg 1' versus 'total notional quantity—leg 2'.

275 As noted in the CDE Guidance, for foreign exchange options, the relevant 'notional amount' of leg 1 or leg 2 is also reported as the corresponding 'call amount' and 'put amount'. This is because '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.

276 'Call currency' and 'put currency' are data elements that follow 'call amount' and 'put amount' respectively.

277 'Notional amount schedule' is one of a number of data element 'schedules' that are provided for under the CDE Guidance. We consider a 'notional amount schedule' is a materially common feature in derivative transactions and the provision of this information is important for Australian regulators to fully understand the terms of the transaction and to correctly contribute to point in time analyses of market metrics.

278 This data element is adopted in the final CFTC rules and in the ESMA proposals. We note that industry feedback to the CFTC and EU consultations has supported the inclusion of this data element, in preference to obliging reporting entities to report updating changes to 'notional amount' as and when it occurs according to its 'schedule'.

279 We also note that, having detected apparently anomalous reports of valuation amounts in relation to the reported notional amount, reporting entities have responded that the valuation amounts are not anomalous in relation to the (unreported) current notional amount. We think that these instances may indicate that some reporting entities exhibit shortcomings in terms of ensuring 'that information it reports under subrule 2.2.2(1) ... is and remains at all times complete, accurate and current' as required by Rule 2.2.6.

280 In relation to 'delta', the CDE Guidance definition includes that it is the delta 'at the time a new transaction is reported or when a change in the notional amount is reported'. Thus, the CDE guidance does not envisage this value being updated over time.

281 However, both the final CFTC rules and the ESMA proposals adopt a modification of the CDE Guidance to require that an updated 'delta' value is reported with every valuation update report.

282 The Australian regulators concur with the CFTC's and ESMA's observations about the importance of reported updated 'delta' over time in contemporary assessments of exposures and related updated valuation and collateral information.

283 We also agree that an appropriate means of reporting updated ‘delta’ would be to incorporate this information in valuation update reports. We have not considered as proposals for this first consultation 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. We currently intend to consider making such proposals in the second round of consultation.

Proposal

E12 We propose to include in the ASIC Rules the data elements related to notional amounts and quantities set out in Table 20.

Your feedback

E12Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E12Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 20? In your response, please give detailed reasons for your answer.

E12Q3 Do you consider that the identification of which currency data elements are the call option/put option data elements in a foreign exchange option could, or should, be simplified by, for example, only specifying the call currency? In your response, please give detailed reasons for your answer.

Other data elements related to notional amounts and quantities

284 We are also considering proposing, in the second round of consultation, the data elements in Table 21.

285 Among the data elements that are ‘schedules’, the CDE Guidance provides for ‘notional quantity schedules’.

286 ‘Notional quantity schedules’ are adopted by the ESMA proposals but not by the final CFTC rules and are not included in the current ASIC Rules.

287 As with ‘price schedule’ or ‘strike price schedule’, while information about ‘notional quantity schedules’ will more clearly inform the Australian regulators about the terms of a transaction than without that information, we are unclear of the incidence of such schedules and the extent to which a ‘notional quantity schedule’ can be reliably inferred from the related ‘notional amount schedule’ and the relevant price of the transaction.

288 Consequently, we seek feedback from stakeholders as to:

- (a) the incidence of these types of transactions in their own dealings;
- (b) if the relationship between quantity, price and notional can be relied on to infer a ‘notional quantity schedule’ from a ‘notional amount schedule’; and

- (c) given that we consider the current ASIC rules require a change in ‘notional quantity’ to be reported as and when it occurs according to a ‘schedule’ as, under Rule 2.2.2, a reportable change to information previously reported—whether stakeholders would prefer to provide this information in their initial transaction report via a ‘schedule’ rather than reporting the changes according to the ‘schedule’.

Table 21: Data elements to be considered for proposal in second round of consultation

| Data element | Definition—Summary of key points | Element number references | | | |
|----------------------------------|--|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Notional quantity schedule—Leg 1 | {CDE TG} For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in non-monetary amounts: a schedule of periods with start date, end date and notional quantity prevailing in the period. | 2.80.1 | n/a | 2.56 | n/a |
| | | 2.80.2 | | 2.57 | |
| | | 2.80.3 | | 2.58 | |
| Notional quantity schedule—Leg 2 | {CDE TG} For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in non-monetary amounts: a schedule of periods with start date, end date and notional quantity prevailing in the period. | 2.80.1 | n/a | 2.65 | n/a |
| | | 2.80.2 | | 2.66 | |
| | | 2.80.3 | | 2.67 | |

Proposal

- E13** We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to notional quantities set out in Table 21.

Your feedback

- E13Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.
- E13Q2 For transactions involving ‘notional quantity schedules’, please provide feedback about:
- the incidence of such types of transactions in your own dealings; and
 - if the relationship between quantity, price and notional can be relied on to infer a ‘notional quantity schedule’ from a ‘notional amount schedule; and
 - whether you prefer to provide this information in your initial transaction report as a ‘schedule’ rather than reporting the changes according to the ‘schedule’ in subsequent transaction reports.
- E13Q3 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 21? In your response, please give detailed reasons for your answer.

Data elements related to CDS index transactions

- 289 We propose to include in the ASIC Rules the data elements set out in Table 22.
- 290 The ‘CDS index attachment/detachment point’ data elements are in the CDE Guidance and adopted in the final CFTC rules and the ESMA proposals.
- 291 These data elements are only applicable to credit derivative swap (CDS) tranche transactions and are important in detailing the ranking for loss absorption of a particular tranche among all tranches. Consequently, it clarifies the risk exposure of a reporting entity to that tranche.
- 292 The ‘index factor’ is not a CDE Guidance data element but is included in the final CFTC rules and the ESMA proposals.
- 293 ‘Index factor’ reflects the level of credit defaults that have been accounted for in a credit derivative index and is multiplied by the original ‘notional amount’ to give the actual ‘notional amount’ at a point in time. This is an important field that clarifies the actual risk exposure of a reporting entity in a transaction where the ‘index factor’ is less than 1.

Table 22: Proposed data elements related to CDS index transactions

| Data element | Definition—Summary of key points | Element number references | | | |
|----------------------------|--|---------------------------|------|-------|------|
| | | CDE | CFTC | ESMA | ASIC |
| CDS index attachment point | {CDE TG} Defined lower point at which the level of losses in the underlying portfolio reduces the notional of a tranche. | 2.81 | 83 | 2.147 | n/a |
| CDS index detachment point | {CDE TG} Defined point beyond which losses in the underlying portfolio no longer reduce the notional of a tranche. | 2.82 | 84 | 2.148 | n/a |
| Index factor | {CFTC} The index version factor or percent, expressed as a decimal value, that multiplied by the notional amount yields the notional amount covered by the seller of protection for credit default swap. | n/a | 85 | 2.145 | n/a |

Proposal

- E14** We propose to include in the ASIC Rules the data elements related to CDS index transactions set out in Table 22.

Your feedback

E14Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E14Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 22? In your response, please give detailed reasons for your answer.

Data elements related to other payments

- 294 We propose to include in the ASIC Rules the data elements in Table 23. These data elements are in the CDE Guidance and are adopted in the final CFTC rules and the ESMA proposals.
- 295 In the current ASIC Rules, ‘other payments’ are only required in relation to upfront payments paid or received by the reporting entity.
- 296 Including these data elements in the ASIC Rules would adopt the more comprehensive treatment of ‘other payments’ in the CDE Guidance, including:
- (a) adding ‘unwind or full termination’ and ‘principal exchange’ payment types to ‘upfront’ payment types;
 - (b) identifying the currency and the date of the payment; and
 - (c) identifying the payer and receiver of the payment (which may include an entity other than the counterparties to the transaction).

Table 23: Proposed data elements related to other payments

| Data element | Definition—Summary of key points | Element number references | | | |
|------------------------|---|---------------------------|------|------|-------------------|
| | | CDE | CFTC | ESMA | ASIC |
| Other payment amount | {CDE TG} Payment amounts with corresponding payment types to accommodate requirements of transaction descriptions from different asset classes. | 2.83 | 58 | 2.70 | 2.4 3.9 5.5 |
| Other payment type | {CDE TG} Type of other payment amount. | 2.84 | 57 | 2.69 | Upfront only |
| Other payment currency | {CDE TG} Currency in which the other payment amount is denominated. | 2.85 | 59 | 2.71 | n/a |
| Other payment date | {CDE TG} Unadjusted date on which the other payment amount is paid. | 2.86 | 60 | 2.72 | n/a |
| Other payment payer | {CDE TG} Identifier of the payer of the other payment amount. | 2.87 | 61 | 2.73 | n/a |
| Other payment receiver | {CDE TG} Identifier of the receiver of the other payment amount. | 2.88 | 62 | 2.74 | n/a |

Proposal

E15 We propose to include in the ASIC Rules the data elements related to other payments set out in Table 23.

Your feedback

E15Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E15Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 23? In your response, please give detailed reasons for your answer.

Data elements related to packages and links

- 297 We propose to include in the ASIC Rules the data elements in Table 24.
- 298 The ‘package’ data elements and the ‘prior UTI’ links data element are in the CDE Guidance and are adopted in the final CFTC rules and the ESMA proposals.
- 299 ‘Package’ data elements are important to regulators to fully understand the components comprising the package, particularly where the price and valuation information of the components, when considered individually, do not indicate the economic compensations that may be occurring between the components.
- 300 ‘Prior UTI’ is the UTI of the predecessor transaction that has given rise to the reportable transaction due to a lifecycle event:
- (a) in a one-to-one relation between transactions (e.g. an assignment); or
 - (b) in a one-to-many relation between transactions (e.g. in clearing).
- The ‘prior UTI’ of the predecessor transaction is reported in the report of each of the successor transactions.
- 301 For many-to-one or many-to-many relations between transactions (e.g. in the case of a compression), we propose to adopt the ‘event identifier’ data element of the final CFTC rules.
- 302 The ‘event identifier’ is a UTI-like identifier comprising the LEI of the identifier generator followed by up to 32 characters. The identifier generator may be the reporting entity or counterparty 1 or a service provider.
- 303 ‘Prior UTI’ and ‘event identifier’ are important data elements that enable regulators to form a clear understanding of the sequence of related predecessor/successor transactions.

Table 24: Proposed data elements related to packages and links

| Data element | Definition—Summary of key points | Element number references | | | |
|--|---|---------------------------|------|-------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Package identifier | <p>{CDE TG} Identifier (determined by the reporting counterparty) in order to connect</p> <ul style="list-style-type: none"> two or more transactions that are reported separately by the reporting counterparty, but that are negotiated together as the product of a single economic agreement two or more reports pertaining to the same transaction whenever a jurisdictional reporting requirement does not allow the transaction to be reported with a single report to [trade repositories]. | 2.89 | 46 | 2.6 | n/a |
| Package transaction price | {CDE TG} Traded price of the entire package in which the reported derivative transaction is a component. | 2.90 | 47 | 2.48 | n/a |
| Package transaction price currency | {CDE TG} Currency in which the package transaction price amount is denominated. | 2.91 | 48 | 2.49 | n/a |
| Package transaction price notation | {CDE TG} Manner in which the package transaction price is expressed. | 2.92 | 49 | n/a | n/a |
| Package transaction spread | <p>{CDE TG} Traded price of the entire package in which the reported derivative transaction is a component of a package transaction.</p> <p>Package transaction price when the price of the package is expressed as a spread, difference between two reference prices.</p> | 2.93 | 50 | 2.107 | n/a |
| Package transaction spread currency | {CDE TG} Currency in which the package transaction spread is denominated. | 2.94 | 51 | 2.108 | n/a |
| Package transaction spread currency notation | {CDE TG} Manner in which the package transaction spread currency is expressed. | 2.95 | 52 | n/a | n/a |
| Prior UTI | <p>{CDE TG} UTI assigned to the predecessor transaction that has given rise to the reported transaction due to a lifecycle event, in a one-to-one relation between transactions (e.g. in the case of a novation) or in a one-to-many relation between transactions (e.g. in clearing or if a transaction is split into several different transactions).</p> <p>This data element is not applicable when reporting many-to-one and many-to-many relations between transactions (e.g. in the case of a compression).</p> | 2.96 | 101 | 2.3 | n/a |

| Data element | Definition—Summary of key points | Element number references | | | |
|------------------|--|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Event identifier | {CFTC} Unique identifier to link swap transactions resulting from an event that may be, but is not limited to, compression, and credit event. The unique identifier may be assigned by the reporting counterparty or a service provider. | n/a | 29 | n/a | n/a |

Proposal

E16 We propose to include in the ASIC Rules the data elements related to packages and links set out in Table 24.

Your feedback

E16Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E16Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 24? In your response, please give detailed reasons for your answer.

Data elements related to custom baskets

- 304 We propose to include in the ASIC Rules the data elements set out in Table 25. These data elements are in the CDE Guidance.
- 305 To identify that an underlier is a basket, the final CFTC rules require a true or false value for ‘custom basket indicator’. The ESMA proposals specify that ‘B’ is reported for ‘underlying identification type’, as per the existing EU rules, and that constituents of the basket are reported as the ‘underlying custom basket identification’ data element.
- 306 We propose to adopt the CDE Guidance specification of a unique code for the basket as the structurer’s LEI followed by an alphanumeric string. This code for the custom basket would be used for each transaction involving the same custom basket.
- 307 For ‘source of the identifier of the basket constituents’, the ESMA proposals specify that an ISIN be used, noting that the ESMA proposal requires that only basket constituents that are financial instruments traded in a trading venue shall be specified.
- 308 We propose to adopt the generalised approach of the CDE Guidance that does not constrain the reporting of custom basket constituents to constituents of a particular type and consequently the ‘source of the identifier of the basket constituents’ data element provides for sources in line with the UPI Guidance.

Table 25: Proposed data elements related to custom baskets

| Data element | Definition—Summary of key points | Element number references | | | |
|---|---|---------------------------|---------------------|-------------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Custom basket code | {CDE TG} If the OTC derivative transaction is based on a custom basket, unique code assigned by the structurer of the custom basket to link its constituents. | 2.97 | 25 True False | 2.12 'B' | n/a |
| Identifier of the basket's constituents | {CDE TG} Underliers that represent the constituents of a custom basket. | 2.98 | n/a | 2.14 | n/a |
| Source of the identifier of the basket constituents | {CDE TG} Source of the underliers' identifiers that represent the constituents of a custom basket. | 2.101 | n/a | ISIN | n/a |

Proposal

E17 We propose to include in the ASIC Rules the data elements related to custom baskets set out in Table 25.

Your feedback

E17Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E17Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 25? In your response, please give detailed reasons for your answer.

Other data elements related to custom baskets

- 309 We are also considering proposing, in the second round of consultation, the data elements set out in Table 26.
- 310 These are CDE Guidance data elements that the text of ESMA proposals included as among the five CDE Guidance custom basket fields that ESMA proposed to include in the EU rules. However, we do not find these data elements in the 'Draft RTS' set out in Annex IV of the ESMA proposals.
- 311 Accordingly, given our intention to minimise the specification of data elements in the ASIC Rules that are not present in the rules of other jurisdictions, we will consider proposing the additional fields below in light of the final EU rules.

Table 26: Data elements to be considered for proposal in second round of consultation

| Data element | Definition—Summary of key points | Element number references | | | |
|------------------------------------|---|---------------------------|------|------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Basket constituent unit of measure | {CDE TG} Unit of measure in which the number of units of a particular custom basket constituent is expressed. | 2.99 | n/a | n/a | n/a |
| Basket constituent number of units | {CDE TG} The number of units of a particular constituent in a custom basket. | 2.100 | n/a | n/a | n/a |

Proposal

E18 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to custom baskets set out in Table 26.

Your feedback

E18Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.

E18Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 26? In your response, please give detailed reasons for your answer.

Data elements that are non-CDE data elements

- 312 We propose to include in the ASIC Rules the data elements set out in Table 27.
- 313 This includes the UTI and UPI as proposed in Sections C and D respectively and which directly substitute for the corresponding data elements in the current ASIC Rules.
- 314 ‘Report submitting entity ID’, ‘reporting timestamp’ and ‘action type’ directly substitute for the corresponding data elements in the current ASIC Rules.
- 315 ‘Event type’ is effectively a second level ‘action type’ that further clarifies and explains the nature of the ‘action type’ reported. It is a data element adopted in the final CFTC rules and the ESMA proposals and is already within the scope of trade repositories’ in-bound data elements.
- 316 We also propose to include a ‘jurisdiction’ data element and an ‘embedded option type’ within the ASIC Rules.

Table 27: Proposed data elements that are non-CDE data elements

| Data element | Definition—Summary key points | Element number references | | | |
|-----------------------------|--|---------------------------|------|-------|------|
| | | CDE | CFTC | ESMA | ASIC |
| UTI | Unique transaction identifier | n/a | 103 | 2.1 | 1.1 |
| UPI | Unique product identifier | n/a | 87 | 2.8 | 1.2 |
| Action type | {ASIC} A notation to indicate whether the report being made relates to a particular action e.g. new, modify, correct, error, terminate, revive, transfer out, valuation, collateral. | n/a | 26 | 2.149 | 1.55 |
| Event type | {ASIC} A notation to indicate the explanation or reason for the particular reporting action e.g. trade, novation, compression or risk reduction, early termination, clearing, exercise, allocation, clearing & allocation, credit event, transfer, misreporting. | n/a | 27 | 2.150 | n/a |
| Report submitting entity ID | {ASIC} Identifier of the entity submitting the data to the derivative trade repository, and will be: <ul style="list-style-type: none"> • counterparty 1 if it has reported on its own behalf; or • the entity that has reported on behalf of counterparty 1. | n/a | 22 | 1.2 | 1.12 |
| Reporting timestamp | The time and date the report about a reportable transaction is reported to the derivative trade repository. | n/a | 97 | 1.1 | 1.39 |
| Jurisdiction | {ASIC} The jurisdiction(s) that is requiring the reporting of the transaction by counterparty 1. Jurisdictions identified by ISO 3166 2-character country codes | n/a | 104 | n/a | n/a |
| Embedded option type | {CFTC} Type of option or optional provision embedded in a contract. | n/a | 86 | n/a | n/a |

317 'Jurisdiction' is a data element in the final CFTC rules with the definition of 'The jurisdiction(s) that is requiring the reporting of the swap transaction' and allowed values of:

CFTC = Commodity Futures Trading Commission
SECH = US Securities and Exchange Commission
MIXX = Mixed

318 As we understand it, the CFTC intends that 'MIXX' would apply to a transaction that is reportable under the rules of more than one jurisdiction by either or both of counterparty 1 and counterparty 2.

- 319 We consider a ‘jurisdiction’ data element is important to the Australian regulators for reasons such as:
- (a) assessment of the reporting benefits of maintaining alignment of the ASIC Rules data elements with those of other jurisdictions to which the transaction is also reported; and
 - (b) providing information about which jurisdiction’s rules may have applied to the generation of the UTI of the transaction.

320 However, we think a ‘jurisdiction’ data element should just refer to the jurisdictions to which counterparty 1 (reporting counterparty) is required to report the transaction, rather than also including the jurisdictions to which counterparty 2 is required to report the transaction.

321 As we understand it, some trade repositories require a jurisdiction flag on their in-bound reporting in order to direct the transaction report to the relevant jurisdiction. For simplicity, we propose that ‘jurisdiction’ is identified by a trade-repository-agnostic ISO 3166 2-character country code, rather than with any further granularity related to the particular regulatory authority within a country to whom the transaction is reported. It may be that the trade repository could maintain their existing jurisdiction flagging schema and translate these to ISO 3166 2-character country codes in their aggregate reporting to the Australian regulators.

322 We propose an ‘embedded option type’ data element in the ASIC Rules. This is drawn from the final CFTC rules and provides information about transaction terms that are not ordinarily identifiable from other reported data elements. We propose to adopt the same allowed values for this data element, which are set out in the final CFTC rules as one of five types:

MDET = Mandatory early termination
 OPET = Optional early termination
 CANC = Cancellable
 EXTD = Extendible
 OTHR = Other

323 We consider ‘embedded option type’ would enable the Australian regulators to more correctly understand the risk profile of an individual transaction and the potential for market disruption events if, for example, a large number of early termination provisions were triggered in the same short period of time.

Proposal

E19 We propose to include in the ASIC Rules the non-CDE data elements set out in Table 27.

Your feedback

E19Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E19Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 27? In your response, please give detailed reasons for your answer.

Other non-CDE data elements

324 We are also considering proposing, in the second round of consultation, the data elements set out in Table 28.

Table 28: Data elements to be considered for proposal in second round of consultation

| Data element | Definition—Summary key points | Element number references | | | |
|---------------------------------|---|---------------------------|---|-------|------|
| | | CDE | CFTC | ESMA | ASIC |
| Maturity date of the underlying | {ESMA} In the case of swaptions, maturity date of the underlying swap. | n/a | n/a | 2.138 | n/a |
| Non-reported term indicator | {ASIC} Indicator of whether the transaction has one or more additional economic term(s) or provision(s), other than the data elements reported. | n/a | 92 ‘non-standardised term indicator’ | n/a | n/a |

- 325 In relation to ‘maturity date of the underlying’, 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.
- 326 It is not currently clear that the UPI system will develop to include underlier information that will indicate the term or maturity date of the underlying swap in a swaption.
- 327 The scope of the granularity of information that is contained within underlier information of a UPI has not been fully prescribed. The UPI Guidance generally reflects concerns that there is not an undue proliferation of underliers, though recognising that the same underlier may have different identifiers from different identifier providers.
- 328 We consider there may be scope to specify existing swap rate reference rates as underliers in a swaption UPI for swaptions that are exercisable into a standard swap as meant by those reference rates. However, for non-standard swap underliers, there seems less scope to introduce bespoke underliers into the UPI system.

- 329 We seek feedback from stakeholders as to the utility of incorporating swap reference rates as swaption underliers in the UPI system as compared to reporting a distinct ‘maturity date of the underlying’ data element.
- 330 The data element ‘non-standardised term indicator’ in the final CFTC rules is a true or false value that is particular to indicating that a publicly disseminated transaction has terms or provisions that materially affect the price of the transaction—that is, the public is made aware that the price may not relate to the price of other transactions due to its unique terms.
- 331 We consider such an indicator could be reported under the ASIC Rules to more broadly indicate that the transaction contains terms or provisions that affect the understanding of the economics of the transaction and that are not otherwise apparent in the data elements reported.
- 332 We have described the data element as ‘non-reported term indicator’ that would be true where, for example:
- (a) the transaction has a price schedule but the price schedule is not required to be reported under the ASIC Rules;
 - (b) the transaction has a step-up fixed rate or floating rate that is either scheduled or condition- or event-dependent; or
 - (c) any other term that is not able to be reported in another data element.
- 333 An ‘economic term or provision’ may need further definition and could be a term or provision that is, for example:
- (a) related to dates or timestamps;
 - (b) related to regular payments or other payments;
 - (c) related to prices;
 - (d) related to notional amounts and quantities,
- but not for non-economic terms that are, for example:
- (e) related to counterparties and beneficiaries;
 - (f) related to clearing, trading, confirmation and settlement;
 - (g) related to valuation, collateral and margins.

Proposal

E20 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the other non-CDE data elements set out in Table 28.

Your feedback

E20Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.

E20Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 28? In your response, please give detailed reasons for your answer.

Technical specifications to the ASIC Rules

- 334 The current ASIC Rules do not comprehensively prescribe format and allowed values for the data elements. The requirements for the types of values required to be reported for each data element are not wholly ambiguous and there are inconsistencies in the types of values reported by reporting entities.
- 335 We propose to develop and prescribe technical specifications to the ASIC Rules that will set out the required formats and allowed values for each data element. We intend to propose such a technical specification in the second round of consultation.
- 336 This is an approach commonly adopted in other jurisdictions for derivative transaction reporting requirements and other requirements. This approach is also adopted under the ASIC Market Integrity Rules (Securities Markets) 2017—the securities markets electronic data provided to ASIC by the market operator must be in the format required by ASIC.
- 337 Section 907B of the Corporations Act provides that derivative transaction rules may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing:
- (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- A technical specification to the ASIC Rules may be a writing that is applied under the ASIC Rules as in force or existing from time to time. A technical specification may be amended without requiring any amendment to a reference in the ASIC Rules to the technical specification.
- 338 We have not yet developed any particular form of technical specification. We welcome feedback from stakeholders as to the preferred form of a technical specification, particularly any suggestions to model the form of a technical specification on an existing technical specification related to transaction reporting whether in this jurisdiction or another jurisdiction.

Proposal

E21 We propose to develop and prescribe technical specifications to the ASIC Rules as a writing that is applied under the ASIC Rules as in force or existing from time to time.

Your feedback

E21Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

E21Q2 Do you suggest that we should model the form of a technical specification on one or more existing technical specification related to transaction reporting? In your response, please give detailed reasons for your answer.

F The legal entity identifier (LEI)

Key points

We propose to update the ASIC Rules to require that a current, renewed LEI is the only allowable entity identifier in OTC derivative transaction reporting for all eligible relevant entities. For a natural person, not eligible to obtain an LEI, we propose that 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.

This proposal removes the ability for reporting entities to report using either an international business entity identifier issued by Avox Limited (AVID) or a SWIFT Business Identifier Code (BIC) where an LEI is not currently available. Further, it requires in most circumstances that the registration status of the reported LEI is duly issued and maintained, not lapsed.

Our proposal to amend the entity identifier requirements is in line with the CDE Guidance. LEIs are considered a crucial data element for the standardisation of identifying information for the relevant entities in derivative transactions. Further, they are part of a global effort to achieve consistency to allow for global data aggregation. Our proposal aligns with requirements in other major jurisdictions.

Background

- 339 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.
- 340 The ASIC Rules currently provide that, for other than an individual, an LEI is required to 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.
- 341 [Consultation Paper 205](#) *Derivative transaction reporting*, released 28 March 2013, outlined our proposals for making the ASIC Rules. In this paper 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'.

- 342 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.
- 343 The GLEIS has since been established and over 1.7 million LEIs have been issued to entities in over 225 countries and territories. There are currently in excess of 20,000 LEIs issued to Australian entities.
- 344 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 those times, the use of LEIs and AVIDs as entity identifiers has increased—Table 29 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 continued to increase, while the use of AVIDs has been decreasing over the last year.

Table 29: 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 |
|-------------|--------|--------|--------|--------|--------|
| LEI | 46.2% | 54.8% | 59.7% | 63.8% | 64.5% |
| AVID | 6.1% | 16.4% | 32.7% | 30.2% | 29.6% |
| Client code | 56.6% | 28.8% | 7.6% | 6.0% | 5.9% |

- 345 The growth in LEI issuance is also supported by efficiency and cost reduction initiatives of the GLEIF as the not-for-profit service provider to the GLEIS. For example, in September 2020, the GLEIF introduced a ‘validation agent’ role for financial institutions to obtain an LEI for their clients connected to client onboarding or review processes of those institutions.

LEI as the entity identifier type

- 346 We propose to amend the ASIC Rules to require all entity identifiers to be valid and duly renewed LEIs, other than for natural persons not acting in a business capacity. This would remove AVID and BIC as allowable entity identifiers.
- 347 This adopts the identifier requirements of the CDE Guidance and aligns with the requirements to report LEIs under the final CFTC rules and the ESMA proposals. LEIs are considered a crucial data element for the standardisation of identifying relevant entities in derivative transactions. They are an essential part of the global effort to achieve consistency to allow for global data aggregation.

- 348 In relation to an LEI renewal requirement, the final CFTC rules only require swap dealers, major swap participants, swap execution facilities, designated contract markets, derivatives clearing organisations and swap data repositories to maintain and renew their LEIs. The ESMA proposals require the LEIs reported for all entities to be duly renewed LEIs. We consider it is important that the accuracy of LEI information is maintained and we propose to require that the LEIs reported for all entities are duly renewed LEIs.
- 349 The requirement to use LEIs would apply to all ‘new’ transactions, and to transactions that had not matured or expired by the time the amended ASIC Rules come into force.
- 350 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 propose that, once the NRCP obtains an LEI, the reporting entity must report the LEI on existing transactions.
- 351 We estimate that there are currently 14 reporting entities reporting AVID identifiers for 1,777 NRCPs on 5,711 transactions with maturity or expiry dates that are later than 30 September 2022. Should the amended ASIC Rules be in force from 1 October 2022, this would be the level of reporting required to update to an LEI for those transactions, though this would be higher where NRCPs enter into new transactions using AVID before the amended ASIC Rules come into force. Overall, this compares to currently 849 reporting entities reporting LEIs for 13,727 NRCPs on 1,684,309 transactions of all maturity or expiry dates.
- 352 We also propose to repeal the existing exemptions (but see paragraph 355) that allow the reporting of an internal entity identifier for joint counterparties and where a non-internal entity identifier is applied for within two business days (the ‘grace period’) after the requirement to report the entity identifier arises.
- 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](#).
- 353 In relation to joint counterparties, we propose to 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.
- 354 In relation to the two-business-day grace period, this exemption is intended to apply to counterparties with infrequent dealings in derivatives—such as an end user rolling over an interest rate swap every two years—and not having prepared for the infrequent dealing by obtaining an LEI. Should the amended ASIC Rules come into force in Q3–Q4 2022, this exemption will have been in place for approximately three years and we consider it likely that many cases of infrequent dealings have occurred and a non-internal entity identifier has been obtained. We consider this exemption should not continue beyond the time that the amended ASIC Rules come into force.

355

These exemptions are also applicable to reporting entities that are foreign subsidiaries of Australian reporting entities. As discussed at paragraph 389, we have recently received an application for relief in relation to the scope of reportable transactions for such foreign subsidiaries. In light of this application, our current proposal is to repeal the exemptions in relation to reporting entities other than reporting entities that are foreign subsidiaries of Australian reporting entities.

Proposal

F1 We propose to amend the ASIC Rules to:

- (a) require that entity identifiers must be valid and duly renewed LEIs (other than for entities that are natural persons not acting in a business capacity); and
- (b) require that transactions that have been 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.

Your feedback

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

F1Q2 Do you consider that you will have particular interpretation or implementation issues with the proposed LEI requirements? In your response, please give detailed reasons for your answer.

F2 We propose to repeal section 6 'Exemption 2 (Entity Information)' and section 6B 'Exemption 2B (Joint Counterparties)' of [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#) in relation to reporting entities other than reporting entities that are foreign subsidiaries of Australian reporting entities.

Your feedback

F2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

F2Q2 Do you consider that you will have particular interpretation or implementation issues with the proposed LEI requirements? In your response, please give detailed reasons for your answer.

G Scope of reportable transactions and reporting entities

Key points

We propose to amend the ASIC Rules so that ‘spot contracts’ other than foreign exchange contracts, FX securities conversion transactions and exchange-traded derivatives are not reportable transactions.

For exchange-traded derivatives, we propose to adopt a generic meaning of an exchange-traded derivative, rather than maintaining lists of individual transactions.

We propose to amend the ASIC Rules to ensure that transactions with Australian retail clients are reportable transactions and to clarify the scope of reporting for foreign subsidiaries of Australian entities.

We will also consider the application of the ASIC Rules to transactions by foreign entities with Australian wholesale clients in the context of our review of the alternative reporting provisions.

Background

- 356 The ASIC Rules set out the types of transactions that must be reported and the types of entities that must report those transactions.
- 357 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.
- 358 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.

Rule 1.2.4 OTC derivatives

- 359 Rule 1.2.4 of the ASIC Rules broadly defines an OTC derivative as:
- (a) a derivative having the meaning given by section 761D of the Act;
 - (b) being in a class of derivatives in relation to which reporting requirements may be imposed as determined by the Minister; and
 - (c) not being an exchange-traded derivative under Rule 1.2.4(2).

360 A reportable transaction is, broadly, a dealing in an OTC derivative by a reporting entity where the dealing or the reporting entity has a relevant connection to Australia.

Note: The relevant connection to Australia of the dealings and reporting entities is summarised at paragraph 383.

361 The scope of reportable transactions is further narrowed, until 30 September 2022, under an exemption for the reporting of an ‘FX securities conversion transaction’. An FX securities conversion transaction is a foreign exchange transaction, settling not more than seven business days forward, that is entered into 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](#).

Comparable definitions in overseas jurisdictions

362 The general high-level framework that can be observed in a number of overseas jurisdictions is that a reportable OTC derivative transaction is a transaction in an OTC derivative product that is broadly within the principles definition of a derivative, but excluding:

- (a) products that are not derivatives;
- (b) products that are, or may be, both a derivative and something else;
- (c) transactions in commodities for commercial, day-to-day use;
- (d) transactions for spot settlement;
- (e) FX contracts for foreign currency securities settlement purposes; and
- (f) exchange-traded derivatives.

363 The corollary to this framework in Australia is set out in Table 30.

Table 30: Framework for reportable OTC derivative transactions—Australian corollary

| Framework element | Australian corollary |
|--|--|
| (a) Within the principles definition of a derivative | s761D(1) of the Corporations Act gives the principles definition of a derivative |
| (b) Excluding products that are not derivatives | s761D(3)(c) of the meaning of a derivative under the Corporations Act excludes financial products covered by s764A(1)—for example, a security, an interest in a scheme, an insurance contract or a government bond |
| (c) Excluding products that are, or may be, both a derivative and something else | Corporations Regulations also declare things not to be a derivative—see, for example, reg 7.1.04 (8)(a) (tradeable water rights) |

| Framework element | Australian corollary |
|--|---|
| (d) Excluding transactions in commodities for commercial, day-to-day use | s761D(3)(a) excludes transactions for tangible property subject to various conditions, including that they are not for cash settlement, set-off or usual market practices of close-out by matching |
| (e) Excluding transactions for spot settlement | For s761D(1)(b), reg 7.1.04(1) of the Corporations Regulations excludes foreign exchange contracts for less than T+3 settlement |
| (f) Excluding FX contracts for foreign currency securities settlement purposes | Excluded by the exemption described at paragraph 361 |
| (g) Excluding exchange-traded derivatives | Excluded by Rule 1.2.4(2) of the ASIC Rules and additionally, until 30 September 2022, by section 5 'Exemption 1 (Exchange-traded derivatives)' of ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 |

Transactions for spot settlement

- 364 The key products for which 'spot' settlement are common transaction types—such as foreign exchange, securities and commodities—are already excluded under provisions described above.
- 365 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.
- 366 We do not think there is sufficient regulatory benefit in ensuring that such transactions are captured by the ASIC Rules. This is consistent with the approach taken in overseas jurisdictions.
- 367 We propose to exclude from the meaning of a reportable transaction a transaction for spot settlement. We intend to propose the text of such an exclusion in the ASIC Rules in the second round of consultation and will consider the relevant texts in the rules of other jurisdictions, for example:
- (a) Singapore—'spot contract' means a contract or arrangement for the sale or purchase of any underlying thing at the spot price, where it is intended for a party to the contract or arrangement to take delivery of the underlying thing immediately or within a period which must not be longer than the period determined by the market convention for delivery of the underlying thing;
 - (b) Hong Kong—'spot contract' means a contract for the sale of any type or combination of types of securities, commodity, index, property, interest rate or currency exchange rate under the terms of which the settlement of the contract is scheduled to be made within the longest of the following periods:

- (i) if the contract is:
 - (A) entered into in Hong Kong, two business days after the date of entering into the contract; or
 - (B) settled outside Hong Kong, two days on which each settlement facility necessary to settle the transaction is open for business, after the date of entering into the contract;
- (ii) the period generally accepted in the market for that type or combination of types of securities, commodity, index, property, interest rate or currency exchange rate as the standard delivery period.

Excluding FX contracts for foreign currency securities settlement purposes

368 This type of contract is commonly exempted from reporting in overseas jurisdictions and is currently exempted—as an ‘FX securities conversion transaction’—until 30 September 2022 from reporting requirements under the ASIC Rules. As we do not anticipate any change in the exemptive approach in overseas jurisdictions, we think it is appropriate to provide for an ongoing exclusion within the ASIC Rules.

369 In principle, we propose to exclude from the meaning of a reportable transaction an ‘FX securities conversion transaction’. We intend to propose the text of such an exclusion in the ASIC Rules in the second round of consultation but currently foresee that this text will define an ‘FX securities conversion transaction’ in the same manner as is currently defined in the exemption:

- a foreign exchange contract:
 - (a) that is entered into by the reporting entity solely to facilitate the settlement of a transaction for the purchase or sale of a foreign currency denominated security; and
 - (b) under which consideration is provided to settle the transaction not more than 7 business days after the day on which the transaction is entered into.

Excluding exchange-traded derivatives

370 The current manner of exclusion of exchange-traded derivatives is a combination of:

- (a) exclusions for derivatives traded on particular classes of financial markets set out in the ASIC Rules;
- (b) exclusions for derivatives traded on particular financial markets and particular classes of financial markets set out in the [ASIC Regulated Foreign Market Determination \[OTC DET 13/1145\]](#); and

- (c) exclusions for derivatives with characteristics and a method of dealing that meets a generic definition of an exchange-traded derivative and whose financial market is notified to ASIC as set out in [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#).

- 371 This approach of effectively listing large numbers of individual financial markets has not fully met the need to inform reporting entities of the derivative transactions that are OTC derivatives, particularly where the names of financial markets have changed, financial markets have ceased to operate and the listings are not consolidated within a single instrument.
- 372 In September 2020, ASIC reviewed and updated the listings of the 113 financial markets in the determination and exemption, with outcomes including:
- (a) removing 53 financial markets that are otherwise covered by a class of financial markets definition;
 - (b) removing 24 financial markets that are not, or are no longer, financial markets;
 - (c) adding 24 financial markets to the determination and their corresponding removal from the exemption; and
 - (d) updating the name of nine financial markets to their current name.
- 373 We think a better solution to identifying and maintaining lists of individual financial markets whose derivative contracts are not OTC derivatives is to rely on a generic definition of an exchange-traded derivative in the ASIC Rules.
- 374 In principle, we propose to exclude from the meaning of an OTC derivative those derivatives that fall within a generic definition of an exchange-traded derivative. We intend to propose the text of such an exclusion in the ASIC Rules in the second round of consultation but currently foresee that the text will define an exchange-traded derivative in the same manner as is currently defined in the exemption:
- a Derivative (Exchange-Traded Derivative) where the entry into of the arrangement that is the Derivative takes place on a financial market that is not operated in this jurisdiction and the following apply:
 - (a) the entry into of the arrangement that is the Derivative is in accordance with the operating rules of the financial market;
 - (b) the terms of the Derivative are documented under or prescribed by the operating rules of the financial market;
 - (c) the Derivative is made available in one or more series in accordance with the operating rules of the financial market and the terms of the arrangement constituting the Derivative are the same as for every other Derivative in the same series, with the exception of price.

375

However, we will also consider if the design of this exclusion should include:

- (a) for the avoidance of doubt, references to certain classes of financial markets whose derivatives are exchange-traded derivatives, as is the current case in the ASIC Rules and the determination;
- (b) a requirement to notify ASIC of those financial markets that a reporting entity considers trades derivatives that meet the definition of exchange-trade derivatives, as is the current case in the exemption; and
- (c) a form of 'disallowance' determination that empowers ASIC to determine that some or all of the derivatives of a financial market are not exchange-traded derivatives, whether on being notified by a reporting entity of such a financial market or when ASIC identifies such a financial market of its own volition.

Proposal

G1 We propose to amend the ASIC Rules to:

- (a) exclude from 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.

Your feedback

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

G1Q2 Do you consider that the Singapore and Hong Kong definitions for a spot contract are an appropriate basis for an equivalent definition in the ASIC Rules? Are there other definitions that you consider we should also take into account? In your response, please give detailed reasons for your answer.

G1Q3 Do you consider that the existing generic definition in the exemption is an appropriate basis for an equivalent definition in the ASIC Rules? Are there other definitions that you consider we should also take into account? In your response, please give detailed reasons for your answer.

G1Q4 Do you consider that the design of this exclusion should include 'avoidance of doubt' references to certain classes of financial markets, a requirement to notify ASIC of financial markets that a reporting entity considers trades exchange-trade derivatives and/or a form of 'disallowance' determination that empowers ASIC to determine that certain derivatives are not exchange-traded derivatives? In your response, please give detailed reasons for your answer.

Rule 1.2.5 Reporting entities and reportable transactions

376 Table 1 of Rule 1.2.5 of the 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.

377 Rule 2.2.1 sets out the obligations of reporting entities to report reportable transactions in accordance with the transaction reporting requirements in Part S1.1. of Schedule 1.

Note: Rule 2.2.1 also sets out the reporting obligations for reportable positions in accordance with the position reporting requirements in Part S1.2 of Schedule 1.

378 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, differentiated broadly by the scale of their dealings in OTC derivatives.

379 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.

380 This is because:

- (a) reg 7.5A.50 of the Corporations Regulations provides that derivative transaction rules cannot impose requirements on end users; and
- (b) a transaction reporting requirement is not specified for the foreign subsidiaries of Australian entities who are ADIs or AFS licensees.

381 Further, 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.

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.

382 Also, 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.

383 The combined effect of the provisions described in paragraphs 376–382 is that the ASIC Rules reporting entities and their reportable transactions can be summarised in high-level terms as set out in Table 31.

Table 31: High-level summary of reporting entities and reportable transactions

| Reporting entity | Reportable transactions |
|---|---|
| An Australian entity that is: (a) an Australian ADI; (b) an AFS licensee; or (c) a CS facility licensee | 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) single-sided exempt; 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 |
| A foreign entity that is: (a) a foreign ADI; (b) an AFS licensee; (c) a CS facility licensee; or (d) an exempt foreign licensee—that is, broadly, a foreign-regulated financial services provider | All OTC derivatives: (a) booked to the profit or loss account of a branch of the reporting entity located in this jurisdiction; (b) entered into by the reporting entity in this jurisdiction; or (c) if opted-in instead of (b), that are ‘nexus’ transactions, 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 concerns with the scope of reporting entities

- 384 ASIC’s scope is less comprehensive than in some other jurisdictions, for example:
- (a) the CFTC rules capture all trades with US persons, albeit as single-sided reporting (i.e. reporting only by the ‘dealer’); and
 - (b) the EU rules oblige all EU entities to report, but with some single-sided exemptions for non-financial counterparties.
- 385 ASIC’s scope intentionally excludes end users and trades not entered into or booked in, or without a nexus to, this jurisdiction. There can be some interaction between these provisions in situations where:
- (a) foreign AFS licensees trade with Australian retail clients; and
 - (b) foreign financial services providers trade with Australian wholesale clients who are end users.
- 386 Some foreign subsidiaries of Australian reporting entities consider that they are a foreign reporting entity under the ASIC Rules but for the same scope of reportable transactions as their Australian parent entity. Table 1 of Rule 1.2.5

of the ASIC Rules sets out that the scope of reportable transactions for such foreign subsidiaries is the same as for an Australian reporting entity.

387 In relation to foreign AFS licensees trading with Australian retail clients, we consider it is appropriate that these transactions should be within the scope of reportable transactions so that Australian regulators can monitor, via derivative transaction reporting:

- (a) the scale and nature of the activities of those foreign AFS licensees with Australian retail clients;
- (b) the financial exposures of Australian retail clients to those foreign AFS licensees; and
- (c) the conduct in the markets of the Australian retail clients by their transactions with those foreign AFS licensees.

388 In principle, we propose to amend the scope of reportable transactions for foreign reporting entities to provide certainty that it includes transactions with Australian retail clients. We intend to propose the text of such a provision in the ASIC Rules in the second round of consultation but this may be, for example, an additional term related to ‘All OTC derivatives entered into with Australian retail clients’.

389 In relation to the scope of reportable transactions for the foreign subsidiaries of Australian reporting entities, we have recently received an application for relief that seeks to narrow the scope of reportable transactions to exclude transactions that are not connected to Australia in a similar manner as for other foreign reporting entities. We will consider this application and any implications for future proposals for changes to the ASIC Rules in the second round of consultation.

390 In relation to foreign financial services providers trading with Australian wholesale clients who are end users, we do not have complete information about whether there is a gap in reporting and the scale of any such gap.

391 We observe that less than 1% of non-CFD transactions are reported with a foreign financial services provider as the non-reporting counterparty and the foreign financial services provider does not appear as a reporting counterparty in the trade reports from trade repositories from whom ASIC currently receives trade reports.

392 We consider there are three potential explanations for this:

- (a) the foreign financial services provider does not consider that it is a reporting entity under the ASIC Rules—for example, it is not an exempt foreign licensee;
- (b) the foreign financial services provider does consider that it is a reporting entity under the ASIC Rules but considers that the

transactions are not reportable transactions or are not nexus transactions under the ASIC Rules; or

- (c) the foreign financial services provider considers that it is a reporting entity under the ASIC Rules, the transactions are reportable transactions under the ASIC Rules, the foreign financial services provider is complying with the ASIC Rules by reporting to a trade repository under the alternative reporting provisions of the ASIC Rules but that this is a trade repository from whom ASIC does currently receive trade reports.

Note: A foreign reporting entity may also be exempt from, or not subject to, requirements to report a reportable transaction in its foreign jurisdiction(s): see Rule 2.2.1(3)(b)(ii) of the ASIC Rules.

393 As we discuss in Section H, the alternative reporting provisions under the ASIC Rules do not require a foreign reporting entity that makes use of the provisions to notify ASIC that it is doing so. The range of foreign reporting entities that may make use of the provisions is also wider than in the limited number of other jurisdictions where there is a similar form of substituted compliance.

394 Given that 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 have not determined that there is a reporting problem that needs to be addressed. We think that our approach to reviewing alternative reporting will inform our further analysis: see Section H.

Proposal

G2 We propose to amend the ASIC Rules to:

- (a) ensure that transactions with Australian retail clients are reportable transactions with specific rules text to be proposed in the second round of consultation; and
- (b) 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.

Your feedback

G2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

H Alternative reporting and delegated reporting

Key points

We observe shortcomings in the operation of both the alternative reporting and delegated reporting frameworks.

Before forming specific proposals for the second round of consultation, we seek to gather industry feedback about the scope of reporting entities using these provisions and existing industry practices in relation to alternative reporting and delegated reporting.

Alternative reporting

395 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.

396 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.

ASIC’s concerns with alternative reporting

397 We have a number of concerns with the operation of alternative reporting.

398 There is no requirement to notify ASIC that a reporting entity is using alternative reporting—we are aware of entities that do so but only because of inquiries they have made to ASIC about the provision.

399 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.

400 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. This means that the transaction reporting that is not alternative reporting would not be subject to relevant validation against the ASIC Rules requirements.

401 In order to receive alternative reporting transaction reports, ASIC needs to connect to those prescribed repositories to whom such reports are being made. However, in the absence of a notification requirement to ASIC and an effective ‘designation’ to the prescribed repository, ASIC is not readily able to identify the prescribed repositories to whom we need to connect.

402 Notwithstanding the approaches of jurisdictions to adopt the CDE data elements as core elements within the transaction reporting requirements, it appears likely that material differences will persist in their data element requirements. This means that the wider the use of alternative reporting, the more we need to handle multiple and disparate datasets, which makes it more difficult and inefficient to consolidate information for our regulatory purposes.

403 Alternative reporting is also a provision in overseas jurisdictions, but it is generally not as widely applicable as under the ASIC Rules. It is our understanding that:

- (a) in the European Union, since June 2020, a form of alternative reporting has been available but only for non-financial counterparties below the clearing threshold in transactions with non-EU counterparties, who would be financial counterparties if formed in the European Union, and who report to a trade repository in an equivalent regime where the trade repository is obliged to give data access to EU regulators;
- (b) in the United States, under CFTC rules, substituted compliance for the entity-level requirement of swap data repository reporting is not available for transactions involving US persons but is available for transactions between non-US persons;
- (c) in Singapore and Hong Kong, alternative reporting is not available.

Approaches to addressing our concerns

404 We consider the approaches we can take to address our concerns with alternative reporting include:

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

405 However, in the absence of a notification requirement of the use of alternative reporting, we currently have insufficient information to enable us to properly evaluate our current concerns and consider what, if any, approaches we may propose to address those concerns.

Proposal

H1 In this first consultation we seek to gather information about the scope and practices of reporting entities undertaking alternative reporting in order to better inform any future proposals we may make in relation to alternative reporting in the second round of consultation.

Your feedback

H1Q1 We request that reporting entities that are current users of alternative reporting identify themselves to us and engage in discussion with us about their alternative reporting practices. In particular:

- (a) to which ASIC prescribed repository do you report?
- (b) how do you 'designate' the reporting as information that has been reported under the ASIC Rules?

Delegated reporting

406 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 enquiries reasonably designed' to determine if the delegate is complying with the terms of the agreement.

407 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 concerns with delegated reporting

408 From our own interactions with a variety of reporting entities that make use of delegated reporting, we generally concur with ESMA's comments about EU delegated reporting in the ESMA proposals (p. 17):

27. The current approach to delegation of reporting has shown a series of shortcomings.

28. Some of the reporting entities (mostly NFCs) who delegated their reporting to the other counterparty or to a third entity are often not capable to monitor whether their delegation agreement is abided by. In some instances delegating counterparties are not even aware that by delegating reporting they cannot transfer also their responsibility for the reporting. In

other cases delegating counterparties are aware of their obligations, but still unable to fully develop their technological knowhow to be actually capable to monitor the reporting and/or fully control the fulfilment of their delegation agreement.

- 409 We are likewise unconvinced that all reporting entities subject their delegated reporting arrangements to a level of oversight and rigour that sufficiently contributes to maintaining reported information as complete, accurate and current.
- 410 For example, we are unconvinced that reporting entities obtaining periodic attestations from their delegate as to the quality of the information reported on their behalf, or more frequent reporting from their delegate as to the number of transaction reports successfully submitted to a trade repository, can be considered as satisfying the ‘regular enquiries reasonably designed’ requirement of Rule 2.2.7 of the ASIC Rules.
- 411 Circumstances have also 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.

Proposal

- H2** In principle, we consider 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.

Your feedback

- H2Q1 In this first consultation we seek to gather information about the practices of reporting entities in overseeing their delegates in order to better inform any future proposals we may make in relation to delegated reporting in the second round of consultation. In particular:
- (a) What are the specific processes and practices that you rely on to determine if the delegate is complying with the terms of the delegation agreement and to ensure that complete, accurate and current reporting is being carried out on your behalf?

I Reporting requirements

Key points

We are proposing to repeal outdated transitional implementation provisions in relation to position reporting requirements in the ASIC Rules.

We are also proposing to amend the timing requirement in Rule 2.2.3 to implement a standardised T+1 requirement for the purposes of UTI generation.

Further, we are also proposing to amend the lifecycle or snapshot reporting requirement in Rule 2.2.8 to require lifecycle reporting for cleared trades.

- 412 Chapter 2 of the 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.
- 413 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.
- 414 In this consultation paper, we have focused on the key changes to the ASIC Rules that we are proposing in this first consultation or considering to propose in the second round of consultation. In addition, we have identified the following key provisions for inclusion in this consultation paper. We intend to further review the ASIC Rules and may make proposals in the second round of consultation on any other provisions in the ASIC Rules.

Rule 2.2.3 Reporting Requirement—Timing (generally, T+1)

- 415 Rule 2.2.3 of the ASIC Rules requires a reporting entity to report information about a reportable transaction or a change to information about a reportable transaction or reportable position by no later than the end of the next business day after the requirement to report the information or change arises.
- 416 At present, 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.
- 417 This means that there is not a single fixed deadline for reporting under the ASIC Rules and this may introduce a complexity under the UTI rules in determining the ‘jurisdiction with the sooner deadline for reporting’ for a cross-jurisdictional transaction.
- 418 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.
- 419 Therefore, we do not currently consider it is also necessary to fix the deadline for reporting for the actual reporting obligation, though we note that this would simplify the ASIC Rules and be in keeping with other jurisdictions.

Proposal

- 11 We propose to clarify in the ASIC Rules that the deadline for reporting for the purposes of the UTI rules within the ASIC Rules is a singular time referring to Sydney time.

Your feedback

- 11Q1 Do you agree with our proposal to clarify the deadline for reporting for the purposes of the UTI rules within the ASIC Rules? In your response, please give detailed reasons for your answer.
- 11Q2 Do you consider there should be a single deadline for reporting that is applicable to both the UTI rules and the actual reporting obligation? In your response, please give detailed reasons for your answers.
- 11Q3 Do you consider that such a singular time should be expressed as a precise time such as 11.59 pm or as the end of the day? In your response, please give detailed reasons for your answers.

Rule 2.2.8 Lifecycle or snapshot reporting

- 420 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 in an OTC derivative (relevant OTC derivative), other than a derivative that is an excluded derivative or that is in a class of excluded derivatives at the time the reportable transaction is entered into, on a day (relevant day) by:
- (a) reporting derivative transaction information separately for each reportable transaction in the relevant OTC derivative (i.e. ‘lifecycle reporting’); or
 - (b) reporting derivative transaction information in relation to the relevant OTC derivative on its terms as of the relevant day (i.e. ‘snapshot reporting’).
- 421 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.
- 422 On 30 November 2018, ASIC made an [excluded derivative determination](#) (PDF 105 KB) requiring transactions in contracts for difference (CFDs), margin FX and equity derivatives to be reported to derivative trade repositories on a ‘lifecycle’ method from 1 July 2019.
- 423 ASIC is currently of the opinion that determining 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). We note that many reporting entities currently report such types of transactions as lifecycle reporting.
- 424 In products other than CFDs, margin FX, equity derivatives and cleared transactions, there appears to be material termination and amendment transactional activity. For transaction reports in the month of October 2020, we estimate that terminations and amendments as a percentage of new uncleared transactions were 9% in commodity products, 18% in foreign exchange products, 54% in interest rate products and 78% in credit products, with terminations accounting for between about 30% to 70% across the various asset classes.
- 425 We also find that about 40–60% of terminations across the asset classes occur within two days of the execution date of the transactions. We consider 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.

426 Therefore, we are considering 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.

Proposal

12 We are considering a proposal in the second round of consultation to amend the ASIC Rules to require lifecycle reporting for all reportable transactions.

Your feedback

12Q1 Do you agree that we should propose such requirements? In your response, please give detailed reasons for your answer.

12Q2 Do you consider that you will have particular interpretation or implementation issues with ‘lifecycle reporting’ for all reportable transactions? In your response, please give detailed reasons for your answer.

Part 2.4 Transitional Matters and other transitional matters

427 Part 2.4 of the ASIC Rules deals with transitional matters generally in terms of deferring certain aspects of the ASIC Rules from the commencement date of the ASIC Rules to various future dates.

428 In addition, Schedule 1: Reporting Requirements—Phasing sets out the phased implementation of the obligations under the ASIC Rules for various types of reporting entities and various types of reportable transactions and reportable positions.

429 Furthermore, Part S2.2 Derivative Position Information sets out the information that must be reported for a reportable position. A reportable position is, broadly, an existing derivative transaction that was entered into before the commencement of obligations to report reportable transactions and has not matured or been terminated by the time reportable positions were required to be reported.

430 There are also definitions in Part 1.2 Interpretation of the ASIC Rules that solely apply to one or more of the above provisions.

431 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 has passed—we propose to simplify the ASIC Rules by repealing or amending the relevant outdated provisions of the ASIC Rules.

Proposal

- 13 We propose to repeal or amend the relevant outdated provisions of the ASIC Rules

Your feedback

- 13Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

J Outstanding matters

- 432 In this paper, we set out a number of matters to be considered for proposals in the second round of consultation.
- 433 There are also a number of other matters that we have not discussed, or not discussed in depth, in this paper that we currently intend to consider making proposals about in the second round of consultation.
- 434 These outstanding matters are set out in Table 32.
- 435 We also welcome feedback from stakeholders about any other matters that you suggest we should take into consideration in the second round of consultation.

Table 32: Outstanding matters for the second round of consultation

| Matter | Issues |
|---|--|
| Different types of reports | 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 |
| Commencement of transaction reporting under the new requirements | The new requirements should apply from 'not later than' a specified or determinable date and having regard to the applicable dates in other jurisdictions. To allow for the data handling readiness of reporting entities, trade repositories and the Australian regulators, the new requirements may also need to be not applicable before a date |
| Updating existing reported transactions to new requirements | The circumstances under which the information reported for existing transactions should be updated to conform to new reporting requirements for data elements |
| Other provisions of Part 2.2 Reporting Requirements not covered in this paper | This paper focuses on key proposed rule changes. We intend to further review the ASIC Rules and may make proposals in the second round of consultation on any other provisions in the ASIC Rules |
| Data messaging standard | Whether to specify a common data messaging standard such as ISO 20022 |

K Regulatory and financial impact

- 436 In developing the final proposals in the second round of consultation, we will carefully consider 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.

- 437 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).

- 438 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

- 439 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.

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"> • banks; • building societies; and • credit unions |
| 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 | ASIC Derivative Transaction Rules (Reporting) 2013 |
| 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, Technical guidance: Harmonisation of critical OTC derivatives data elements (other than UTI and UPI) (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 | Corporations Regulations 2001 |
| 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 ASIC Instrument [14/0633] 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 | 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, Technical guidance: Harmonisation of the unique product identifier (PDF 602 KB) |
| UTI | Unique transaction identifier |
| UTI Guidance | CPMI IOSCO, Technical guidance: Harmonisation of the unique transaction identifier (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>C1 We propose to set out the UTI structure and format in a technical specification and the text of UTI rules for transaction events in the ASIC Rules.</p> | <p>C1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>C1Q2 Do you consider that the UTI Guidance concerning the impact of the transaction events on the UTI is sufficiently clear or are there uncertainties that we should take into account when drafting the text for the ASIC Rules? In your response, please give detailed reasons for your answer.</p> |
| <p>C2 We propose to implement UTI Guidance step 1 (CCP), UTI Guidance step 2 (clearing member) and UTI Guidance step 3 (trading platform) as steps 1, 2 and 3 respectively in the ASIC Rules for UTI generation and reporting.</p> | <p>C2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>C2Q2 Do you consider that, in addition to uncertainties about the globally common recognition, for UTI rules' purposes, of CCPs, clearing members and trading platforms and the manner and timing of implementing UTI generation obligations, there are other uncertainties or implementation risks in relation to implementing these steps 1, 2 and 3 as UTI rules within the ASIC Rules? In your response, please give detailed reasons for your answer.</p> <p>C2Q3 Do you consider that, in addition to considering temporary exemptions for jurisdictional implementation timing differences, there are other steps that ASIC could take or other provisions or exemptions that ASIC could consider to resolve or minimise the uncertainties or implementation risks? In your response, please give detailed reasons for your answer.</p> |

| Proposal | Your feedback |
|--|--|
| <p>C3 In principle, we propose to implement the elements of Table 4 as the steps of UTI rules for single-jurisdictional transactions within the ASIC Rules. As these steps are intended to align with the EU rules, our proposal is subject to the final EU rules.</p> | <p>C3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>C3Q2 Do you consider that either option 1 or option 2 or both should not be adopted in the ASIC Rules? In your response please give detailed reasons for your answer.</p> <p>C3Q3 Noting that the proposal would not include the step of a UTI generator determination by agreement between the counterparties under option 2, do you consider that this form of UTI generator determination should be a step in the UTI rules within the ASIC Rules? In your response please give detailed reasons for your answer.</p> <p>C3Q4 Noting that the proposal focuses on aligning with the final EU rules, do you consider there are other specific jurisdictions where aligning with UTI rules should be of greater focus? In your response please give detailed reasons for your answer.</p> <p>C3Q5 Do you consider there are combinations of types of counterparties to a single-jurisdictional transaction where the UTI generator may not be determinable or would determine the UTI generator as a type of counterparty that is not your preferred UTI generator outcome? In your response please give detailed reasons for your answer.</p> <p>C3Q6 Do you have any other comments about the proposal?</p> |

| Proposal | Your feedback |
|--|---|
| <p>C4 We are not making a formal proposal in relation to a UTI cross-jurisdictional test at this time but we seek your feedback as set out below.</p> | <p>C4Q1 Do you consider that the approach outlined in paragraphs 103–107 would assist in clarifying the determination of a UTI generator? In your response, please give detailed reasons for your answer.</p> <p>C4Q2 Do you consider that the capacity in which a counterparty is acting should include any status information that would overarchingly impact on a UTI generator determination? In your response, please give detailed reasons for your answer.</p> <p>C4Q3 Do you consider there are significant impediments for you in obtaining such capacity information from your counterparties or conveying such capacity information to them? In your response, please give detailed reasons for your answer.</p> <p>C4Q4 Do you consider there are particular transaction circumstances (such as counterparty domicile/branch location/status combinations) where the approach outlined in paragraphs 103–107 would not assist in clarifying how to determine a UTI generator? In your response, please give detailed reasons for your answer.</p> <p>C4Q5 Do you have any other comments about the approach outlined in paragraphs 103–107?</p> |
| <p>C5 We are not making a formal proposal in relation to a method for determining the jurisdiction with the sooner deadline for reporting at this time but we seek your feedback as set out below.</p> | <p>C5Q1 Do you consider there is uncertainty in how the UTI Guidance’s ‘sooner deadline for reporting’ test is interpreted? In your response, please give detailed reasons for your answer.</p> <p>C5Q2 Do you consider we have correctly identified the possible interpretations? In your response, please give detailed reasons for your answer.</p> <p>C5Q3 Do you have a preferred single interpretation? In your response, please give detailed reasons for your answer.</p> <p>C5Q4 Do you have any other comments about this issue?</p> |

| Proposal | Your feedback |
|---|---|
| <p>C6 In principle, we propose that the UTI generator rules for a cross-jurisdictional transaction are the same rules as for a single-jurisdictional transaction.</p> | <p>C6Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>C6Q2 Do you agree that the above rules will provide the same UTI generator outcome in a transaction between an Australian entity and an EU financial counterparty, whether under the ASIC Rules or the ESMA proposals for EU rules? In your response, please give detailed reasons for your answer.</p> <p>C6Q3 Do you agree that there can be the outcome (described in paragraph 134) that an EU non-financial counterparty is the UTI generator in a transaction with an Australian reporting entity but not in a transaction with an EU financial counterparty? In your response, please give detailed reasons for your answer.</p> <p>C6Q4 Do you consider there are other particular transaction circumstances (such as counterparty domicile/branch location/status/jurisdictional combinations) where there may be similar differences in a UTI generator outcome? In your response, please give detailed reasons for your answer.</p> <p>C6Q5 Do you have any other comments about the proposal?</p> |
| <p>C7 We are not making a formal proposal for 'special purpose' rules as discussed at paragraphs 135–139 at this time but we seek your feedback as set out below.</p> | <p>C7Q1 Do you consider there is merit in considering a 'special purpose' rule that would, in effect, deem the CFTC to be the sooner jurisdiction in all such cross-jurisdictional transactions? In your response, please give detailed reasons for your answer.</p> <p>C7Q2 Do you consider there are particular transaction circumstances (such as counterparty domicile/branch location/status/jurisdictional combinations) where there may be unintended complexities or conflicts with other jurisdictions' rules under this approach? In your response, please give detailed reasons for your answer.</p> <p>C7Q3 Do you consider there may be other cross-jurisdictional situations which may also merit a 'special purpose' UTI rule? In your response, please give detailed reasons for your answer.</p> <p>C7Q4 Do you have any other comments about this issue?</p> |

| Proposal | Your feedback |
|---|---|
| C8 In principle, we propose to provide for an ultimate determinant as per the UTI Guidance. | C8Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer. |
| C9 We intend to propose that the ASIC Rules require that ASIC reporting entities, when acting as a UTI generator, generate a UTI and provide it to their counterparty with an obligation of timeliness. | C9Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer. |
| | C9Q2 Do you consider that an obligation of timeliness should refer to a fixed deadline (e.g. T+1, 12:00 a.m. Sydney) or as an amount of time after transaction execution (e.g. 12 hours) or as another timeliness reference? In your response, please give detailed reasons for your answer. |
| | C9Q3 Do you consider there should be different obligations of timeliness for single-jurisdictional transactions and cross-jurisdictional transactions? In your response, please give detailed reasons for your answer. |
| C10 We may propose in the second round of consultation that the ASIC Rules include requirements on reporting entities to report their own UTI when they do not receive the UTI from the other UTI generator and to re-report using that second UTI when it is received. | C10Q1 Do you agree that we should propose such requirements? In your response, please give detailed reasons for your answer. C10Q2 What are the kinds of requirements that you consider we should take into account when drafting such a proposal? In your response, please give detailed reasons for your answer. |

| Proposal | Your feedback |
|--|---|
| <p>E1 We propose to include in the ASIC Rules the data elements related to dates and timestamps set out in Table 7.</p> | <p>E1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E1Q2 In relation to 'effective date', do you consider that:</p> <ul style="list-style-type: none"> (a) there is a need to clarify the meaning of 'effective date'; (b) there are particular types of transactions for which determining 'effective date' is problematic; or (c) in the absence of a determinable 'effective date', 'execution timestamp' should be reported instead? <p>In your response, please give detailed reasons for your answer.</p> <p>E1Q3 Do you agree that 'event timestamp' should be a timestamp data element and not a date data element? In your response, please give detailed reasons for your answer.</p> <p>E1Q4 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 7? In your response, please give detailed reasons for your answer.</p> |
| <p>E2 We propose to include in the ASIC Rules the data elements related to counterparties and beneficiaries set out in Table 8.</p> | <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 you will have particular interpretation or implementation issues with the data elements set out in Table 8? In your response, please give detailed reasons for your answer.</p> <p>E2Q3 In relation to 'reporting entity', do you consider that this should be reported in all circumstances or only reported where it is a different entity to 'counterparty 1 (reporting counterparty)'?</p> |
| <p>E3 We propose to include in the ASIC Rules the data elements for 'direction' that make the same elections as proposed by ESMA—that is, the data elements 'Direction 1', 'Direction 2 —Leg 1' and 'Direction 2—Leg 2': see Table 10.</p> | <p>E3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E3Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 10? In your response, please give detailed reasons for your answer.</p> |

| Proposal | Your feedback |
|--|---|
| <p>E4 We propose to include in the ASIC Rules the data elements related to clearing, trading, confirmation and settlement set out in Table 11.</p> | <p>E4Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E4Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 11? In your response, please give detailed reasons for your answer.</p> |
| <p>E5 We propose to include in the ASIC Rules the data elements related to regular payments set out in Table 12.</p> | <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 you will have particular interpretation or implementation issues with the data elements in Table 12? In your response, please give detailed reasons for your answer.</p> |
| <p>E6 We are considering a proposal, in the second round of consultation, to include in the ASIC Rules the data elements related to the floating rate reset frequency set out in Table 13.</p> | <p>E6Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.</p> <p>E6Q2 For transactions where the frequency of resets of the floating rate differ from the frequency of the reference rate itself, please provide feedback about:</p> <ul style="list-style-type: none"> (a) the incidence of these types of transactions in your own dealings; and (b) whether other data elements—for example, payment frequency—could be relied on, in all cases or in most cases or in few cases, to infer the ‘floating rate reset frequency (period/period multiplier)’. <p>E6Q3 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 13? In your response, please give detailed reasons for your answer.</p> |
| <p>E7 We propose to include in the ASIC Rules the data elements related to valuation set out in Table 14.</p> | <p>E7Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E7Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 14? In your response, please give detailed reasons for your answer.</p> |

| Proposal | Your feedback |
|---|---|
| <p>E8 We propose to include in the ASIC Rules the data elements related to collateral and margins set out in Table 15.</p> | <p>E8Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E8Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 15? In your response, please give detailed reasons for your answer.</p> |
| <p>E9 We do not propose to include in the ASIC Rules the data elements related to counterparty rating triggers set out in Table 16.</p> | <p>E9Q1 Do you agree with this proposal? If not, please give detailed reasons for your answer.</p> |
| <p>E10 We propose to include in the ASIC Rules the data elements related to prices set out in Table 18.</p> | <p>E10Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E10Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements in Table 18? In your response, please give detailed reasons for your answer.</p> |
| <p>E11 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to prices set out in Table 19.</p> | <p>E11Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.</p> <p>E11Q2 For transactions involving ‘price schedules’ or ‘strike price schedules’, please provide feedback about:</p> <ul style="list-style-type: none"> (a) the incidence of such types of transactions in your own dealings; and (b) whether you prefer to provide this information in your initial transaction report as a ‘schedule’ rather than reporting the changes according to the ‘schedule’ in subsequent transaction reports. <p>E11Q3 For transactions where ‘first exercise date’ would be reported as a value that is not otherwise reported in another data element, please provide feedback about the incidence of such types of transactions in your own dealings and any other feedback.</p> <p>E11Q4 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 19? In your response, please give detailed reasons for your answer.</p> |

| Proposal | Your feedback |
|--|---|
| <p>E12 We propose to include in the ASIC Rules the data elements related to notional amounts and quantities set out in Table 20.</p> | <p>E12Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E12Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 20? In your response, please give detailed reasons for your answer.</p> <p>E12Q3 Do you consider that the identification of which currency data elements are the call option/put option data elements in a foreign exchange option could, or should, be simplified by, for example, only specifying the call currency? In your response, please give detailed reasons for your answer.</p> |
| <p>E13 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to notional quantities set out in Table 21.</p> | <p>E13Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.</p> <p>E13Q2 For transactions involving 'notional quantity schedules', please provide feedback about:</p> <ul style="list-style-type: none"> (a) the incidence of such types of transactions in your own dealings; and (b) if the relationship between quantity, price and notional can be relied on to infer a 'notional quantity schedule' from a 'notional amount schedule'; and (c) whether you prefer to provide this information in your initial transaction report as a 'schedule' rather than reporting the changes according to the 'schedule' in subsequent transaction reports. <p>E13Q3 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 21? In your response, please give detailed reasons for your answer.</p> |
| <p>E14 We propose to include in the ASIC Rules the data elements related to CDS index transactions set out in Table 22.</p> | <p>E14Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E14Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 22? In your response, please give detailed reasons for your answer.</p> |

| Proposal | Your feedback |
|---|---|
| <p>E15 We propose to include in the ASIC Rules the data elements related to other payments set out in Table 23.</p> | <p>E15Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E15Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 23? In your response, please give detailed reasons for your answer.</p> |
| <p>E16 We propose to include in the ASIC Rules the data elements related to packages and links set out in Table 24.</p> | <p>E16Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E16Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 24? In your response, please give detailed reasons for your answer.</p> |
| <p>E17 We propose to include in the ASIC Rules the data elements related to custom baskets set out in Table 25.</p> | <p>E17Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E17Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 25? In your response, please give detailed reasons for your answer.</p> |
| <p>E18 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to custom baskets set out in Table 26.</p> | <p>E18Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.</p> <p>E18Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 26? In your response, please give detailed reasons for your answer.</p> |
| <p>E19 We propose to include in the ASIC Rules the non-CDE data elements set out in Table 27.</p> | <p>E19Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E19Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 27? In your response, please give detailed reasons for your answer.</p> |

| Proposal | Your feedback |
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| <p>E20 We are considering proposing, in the second round of consultation, to include in the ASIC Rules the data elements related to custom baskets set out in Table 28.</p> | <p>E20Q1 Do you agree that we should consider a proposal, in the second round of consultation, to include these data elements in the ASIC Rules? In your response, please give detailed reasons for your answer.</p> <p>E20Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 28? In your response, please give detailed reasons for your answer.</p> |
| <p>E21 We propose to develop and prescribe technical specifications to the ASIC Rules as a writing that is applied under the ASIC Rules as in force or existing from time to time.</p> | <p>E21Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>E21Q2 Do you suggest that we should model the form of a technical specification on one or more existing technical specification related to transaction reporting? In your response, please give detailed reasons for your answer.</p> |
| <p>F1 We propose to amend the ASIC Rules to:</p> <ul style="list-style-type: none"> (a) require that entity identifiers must be valid and duly renewed LEIs (other than for entities that are natural persons not acting in a business capacity); and (b) require that transactions that have been 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. | <p>F1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>F1Q2 Do you consider that you will have particular interpretation or implementation issues with the proposed LEI requirements? In your response, please give detailed reasons for your answer.</p> |
| <p>F2 We propose to repeal section 6 'Exemption 2 (Entity Information)' and section 6B 'Exemption 2B (Joint Counterparties)' of ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 in relation to reporting entities other than reporting entities that are foreign subsidiaries of Australian reporting entities.</p> | <p>F2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>F2Q2 Do you consider that you will have particular interpretation or implementation issues with the proposed LEI requirements? In your response, please give detailed reasons for your answer.</p> |

| Proposal | Your feedback |
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| <p>G1 We propose to amend the ASIC Rules to:</p> <p>(a) exclude from meaning of a reportable transaction a transaction for spot settlement, with specific rules text to be proposed in the second round of consultation;</p> <p>(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.</p> | <p>G1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> <p>G1Q2 Do you consider that the Singapore and Hong Kong definitions for a spot contract are an appropriate basis for an equivalent definition in the ASIC Rules? Are there other definitions that you consider we should also take into account? In your response, please give detailed reasons for your answer.</p> <p>G1Q3 Do you consider that the existing generic definition in the exemption is an appropriate basis for an equivalent definition in the ASIC Rules? Are there other definitions that you consider we should also take into account? In your response, please give detailed reasons for your answer.</p> <p>G1Q4 Do you consider that the design of this exclusion should include 'avoidance of doubt' references to certain classes of financial markets, a requirement to notify ASIC of financial markets that a reporting entity considers trades exchange-trade derivatives and/or a form of 'disallowance' determination that empowers ASIC to determine that certain derivatives are not exchange-traded derivatives? In your response, please give detailed reasons for your answer.</p> |
| <p>G2 We propose to amend the ASIC Rules to:</p> <p>(a) ensure that transactions with Australian retail clients are reportable transactions with specific rules text to be proposed in the second round of consultation; and</p> <p>(b) 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.</p> | <p>G2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> |
| <p>H1 In this first consultation we seek to gather information about the scope and practices of reporting entities undertaking alternative reporting in order to better inform any future proposals we may make in relation to alternative reporting in the second round of consultation.</p> | <p>H1Q1 We request that reporting entities that are current users of alternative reporting identify themselves to us and engage in discussion with us about their alternative reporting practices. In particular:</p> <p>(a) to which ASIC prescribed repository do you report?</p> <p>(b) how do you 'designate' the reporting as information that has been reported under the ASIC Rules?</p> |

| Proposal | Your feedback |
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| <p>H2 In principle, we consider 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.</p> | <p>H2Q1 In this first consultation we seek to gather information about the practices of reporting entities in overseeing their delegates in order to better inform any future proposals we may make in relation to delegated reporting in the second round of consultation. In particular:</p> <p>(a) What are the specific processes and practices that you rely on to determine if the delegate is complying with the terms of the delegation agreement and to ensure that complete, accurate and current reporting is being carried out on your behalf?</p> |
| <p>I1 We propose to clarify in the ASIC Rules that the deadline for reporting for the purposes of the UTI rules within the ASIC Rules is a singular time referring to Sydney time.</p> | <p>I1Q1 Do you agree with our proposal to clarify the deadline for reporting for the purposes of the UTI rules within the ASIC Rules? In your response, please give detailed reasons for your answer.</p> <p>I1Q2 Do you consider there should be a single deadline for reporting that is applicable to both the UTI rules and the actual reporting obligation? In your response, please give detailed reasons for your answers.</p> <p>I1Q3 Do you consider that such a singular time should be expressed as a precise time such as 11.59 pm or as the end of the day? In your response, please give detailed reasons for your answers.</p> |
| <p>I2 We are considering a proposal in the second round of consultation to amend the ASIC Rules to require lifecycle reporting for all reportable transactions.</p> | <p>I2Q1 Do you agree that we should propose such requirements? In your response, please give detailed reasons for your answer.</p> <p>I2Q2 Do you consider that you will have particular interpretation or implementation issues with 'lifecycle reporting' for all reportable transactions? In your response, please give detailed reasons for your answer.</p> |
| <p>I3 We propose to repeal or amend the relevant outdated provisions of the ASIC Rules</p> | <p>I3Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p> |