

3 December 2025

Australian Securities and Investment Commission
100 Market Street
Sydney 2000

By email: otcd@asic.gov.au

ISDA response to ASIC's Simple Consultation 33 – Proposed Remake of the ASIC Derivative Transaction Rules (Clearing 2015)

Dear Sir / Madam,

The International Swaps and Derivatives Association ("ISDA")¹ would like to thank the Australian Securities and Investment Commission ("ASIC") for the opportunity to provide feedback on ASIC's Simple Consultation 33² on the proposed remake of the ASIC Derivative Transaction Rules (Clearing 2015) ("the 2015 Rules"). We are generally supportive of the draft ASIC Derivative Transaction Rules (Clearing) 2026³ ("the draft 2026 Rules"), which broadly includes limited, minor and administrative updates to the 2015 Rules.

The draft 2026 Rules also proposes one policy update to extend exemptive relief to clearing derivative transactions resulting from post-trade risk reduction exercises. In this regard, we would like to respectfully suggest certain amendments to Rule 2.1.5 as set out below to align ASIC's framework with international practice as well as improve clarity and consistency across Rule 2.1.5.

Suggested amendments to the draft 2026 Rules	Rationale
2.1.5 Exceptions to Clearing Requirement—Multilateral portfolio compression and pPost-trade risk reduction exercises	Suggest classifying multilateral portfolio compression as a post-trade risk reduction ("PTRR") exercise/service (and not treat it separately), in line with EU ⁴ and UK ⁵ definitions.

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 76 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

² <https://www.asic.gov.au/regulatory-resources/find-a-document/consultations/cs-33-proposed-remake-of-the-asicderivative-transaction-rules-clearing-2015/>

³ <https://download.asic.gov.au/media/ttaddooj/attachment-1-to-cs33-published-28-october-2025.pdf>

⁴ <https://www.esma.europa.eu/publications-and-data/interactive-single-rulebook/emir/article-4b-post-trade-risk-reduction>

⁵ <https://handbook.fca.org.uk/handbook/mar12?timeline=true>

(1) A Clearing Entity is not required to comply with Rule 2.1.1 in relation to a Clearing Transaction if: (a) the Clearing Transaction is entered into by the Clearing Entity as a result of the Clearing Entity modifying or terminating and replacing Derivatives under a Multilateral Portfolio Compression Cycle; and (b) for each of the Derivatives that was modified, or terminated and replaced—entry into the Derivative was not a Clearing Transaction that was required to be Cleared Through a Clearing Facility in accordance with Rule 2.1.1 or subrule 2.1.6(2); and (c) the Clearing Transactions entered into by the Clearing Entity as a result of the Multilateral Portfolio Compression Cycle are only entered into with persons who were counterparties to those Derivatives; and (d) the Multilateral Portfolio Compression Cycle was conducted in accordance with the rules of a third party operator of Multilateral Portfolio Compression Cycles and involved more than two participants, none of which was the operator; and (e) the Multilateral Portfolio Compression Cycle was conducted in compliance with the counterparty credit risk tolerance levels set by the participants in the Multilateral Portfolio Compression Cycle.	(1): Portfolio compression is covered as a Post-trade Risk Reduction Exercise in section (4), suggest deleting section (1) to avoid duplication.
(2) In subrule (1), Multilateral Portfolio Compression Cycle means a process under which portfolios of Derivatives between participants in the process are modified to reduce their notional value or terminated and replaced with new Derivatives providing for reduced notional exposures between the participants, conducted for the purposes of reducing operational risk or counterparty credit risk for the participants.	(2): This is covered under suggested revisions to section (4), whereby compression is included in the scope of a Post-trade Risk Reduction Exercise. Hence, we suggest for all of section (2) to be deleted.
(3) A Clearing Entity is not required to comply with Rule 2.1.1 in relation to a Clearing Transaction if: (a) the Clearing Transaction is entered into by the Clearing Entity as a result of the Clearing Entity participating in modifying or terminating and replacing Derivatives under a Post-trade Risk Reduction Exercise; and	(3): Suggested amendments to provide better clarity and ensure consistency across the rules.

(b) for each of the Derivatives that was modified, or terminated and replaced—entry into the Derivative was not a Clearing Transaction that was required to be Cleared Through a Clearing Facility in accordance with Rule 2.1.1 or subrule 2.1.6(2); and (c) the Clearing Transactions entered into by the Clearing Entity as a result of the Post-trade Risk Reduction Exercise are only entered into with persons who are participants in the Post-trade Risk Reduction Exercise—were counterparties to those Derivatives; and (d) the Post-trade Risk Reduction Exercise was conducted in accordance with the rules of a third-party service provider operator of a Post-trade Risk Reduction service and involved at least more than two participants, none of which was the service provider operator.	3(b): Please refer to our clarification below.
(4) In subrule (3), <i>Post-trade Risk Reduction Exercise</i> means a process: (a) operated by a third-party service provider; and (b) under which portfolios of Derivatives or positions between, and submitted by, participants are submitted to the service provider; in the process are: (i) modified to reduce their notional value; or (ii) terminated and replaced with new Derivatives providing for reduced notional exposures between the participants; or (iii) terminated and replaced with new Derivatives providing for redistributed counterparty risk between the participants; or (iv) terminated and replaced with new Derivatives providing for reduced basis risk between the participants; and (e) conducted for the purposes of reducing operational risk or counterparty credit risk for the participants; and (d) in relation to which the following apply:	4(b)(i)-(iv): These elements create unnecessary restrictions and could limit the operation of the exemption as Post Trade Risk Reduction Services (PTRRS) develop in the future. 4(c): Not needed as this is covered under 4(d)(i).

(i) the process achieves a reduction in operational risk or counterparty credit risk in relation to each of the submitted portfolios; (ii) a participant is not able to choose which Derivatives or positions are modified, or terminated, and replaced, or created as offsetting Derivatives, and where acceptance is required from participants, a participant under the process, but may only choose to accept or reject the result of the process in its entirety as it relates to their submitted Derivatives or positions; (iii) once the process commences, no further Derivatives may be added to the process; (iv) the process is market risk neutral within pre-defined tolerances; (v) the process does not contribute to price formation; (vi) the process takes the form of a compression, rebalancing or optimisation exercise or a combination of those exercises; (vii) under the process, Derivatives may be modified, or terminated, and replaced, and/or offsetting Derivatives may be created on a bilateral or multilateral basis.	4(d)(i): Removed to allow for flexibility in the scope and development of PTRRS (also in line with EMIR Article 4b Post-trade risk reduction services⁶). 4(d)(iv): Amended to reflect that some PTRRS may carry de minimis market risk adjustments.
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Clarification for paragraph 3(b)

We would like to query about the policy intent of paragraph 3(b), which is currently drafted as “*for each of the Derivatives that was modified, or terminated and replaced—entry into the Derivative was not a Clearing Transaction that was required to be Cleared Through a Clearing Facility in accordance with Rule 2.1.1 or subrule 2.1.6(2)*”.

Our understanding is that the policy intention of paragraph 3(b) was to ensure an exemption only applies where the original trades entering the PTRR process are not required to be mandatory cleared in accordance with Rule 2.1.1 or subrule 2.1.6(2) (i.e. where the original trades are uncleared or cleared but not in-scope of the clearing obligation). While we appreciate that paragraph 3(b) may be intended to ensure that PTRR service is not used to circumvent

⁶ <https://www.esma.europa.eu/publications-and-data/interactive-single-rulebook/emir/article-4b-post-trade-risk-reduction>

clearing obligation, the drafting significantly narrows the practical application of the exemption.

In practice, many PTRR cycles include cleared derivatives, such as cleared compression runs carried out at CCPs or facilitated by PTRR service providers, and PTRR exercises may also generate new trades as part of the optimisation. Future PTRR services might optimise portfolios between cleared and uncleared portfolios. These features are integral to risk reduction. Under the current drafting of 3(b), PTRR services involving cleared portfolios may fall outside the scope of the exemption, potentially limiting the operational value of the PTRR service. The Australian framework would also diverge from established international practices.

For example, under the EU regime, paragraph 1 of Article 4b states that the clearing obligation shall not apply to an OTC derivative contract that is initiated and concluded as the result of an eligible PTRR exercise. The Article then states a set of safeguards to ensure that PTRR services are not used to circumvent clearing obligation. This includes characteristics which an eligible PTRR exercise must have⁷ as well as obligations of a PTRR service provider, involving record keeping and monitoring⁸ for the resulting contract to be exempted. Notably, Article 4b does not impose a backward-looking test whether the original trades of a PTRR exercise are in-scope of the clearing obligation but mandates that PTRR exercises “achieve a reduction in risk in each of the portfolios submitted to the PTRR exercise”.

Hence, we suggest that ASIC consider removing paragraph 3(b) of Rule 2.1.5 to reflect practical feasibility and align with international standards.

Thank you for considering our response. Should you have any questions, please do not hesitate to reach out to Shule Peh (speh@isda.org) and Ulrich Karl (ukarl@isda.org) at ISDA.

Yours faithfully,

For the **International Swaps and Derivatives Association, Inc.**

⁷ See paragraphs 3(a)-(h) of Article 4b

⁸ See paragraphs 4(a)-(f) of Article 4b. Paragraph 4(f) states that a PTRR service provider shall “monitor the transactions resulting from the PTRR exercise in order to ensure, to the extent possible, that the PTRR exercise does not result in any misuse or circumvention of the clearing obligation.”