

**Australian Securities and Investments Commission
Corporations Act—Paragraph 907D(2)(a)— Class Exemption**

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under paragraph 907D(2)(a) of the *Corporations Act 2001 (Act)*.

Title

2. This instrument is ASIC Instrument [14/0234].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the *Legislative Instruments Act 2003*; and
 - (b) 1 April 2014.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, section 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Exemption 1 (Exchange-traded derivatives)

4. From 1 April 2014 to 2 March 2015 (inclusive), a Phase 2 Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Phase 2 Reporting Entity to report a Reportable Transaction or Reportable Position in relation to a Derivative (*Exchange-Traded Derivative*) where:
 - (a) the Derivative is able to be traded (within the meaning of section 761A of the Act) on a Relevant Financial Market; and
 - (b) the entry into of the arrangement that is the Derivative takes place on the Relevant Financial Market.
5. For the purposes of the exemption in paragraph 4, and subject to paragraph 6, each of the following financial markets is a *Relevant Financial Market*:
 - (a) BSE Limited (Bombay Stock Exchange);
 - (b) Boston Options Exchange;
 - (c) Borsa Istanbul;
 - (d) Bursa Malaysia - Bursa Malaysia Derivatives;
 - (e) CEGH Gas Exchange of Vienna Stock Exchange;
 - (f) Chicago Mercantile Exchange;
 - (g) China Financial Futures Exchange;
 - (h) Dalian Commodities Exchange;
 - (i) Dubai Gold & Commodities Exchange;
 - (j) Dubai Mercantile Exchange;
 - (k) Electronic Liquidity Exchange operated by ELX Futures LP;
 - (l) EPEX Spot SE;
 - (m) European Climate Exchange;
 - (n) European Energy Exchange;
 - (o) European Exchange;

- (p) Hong Kong Exchange & Clearing Ltd;
- (q) HUPX Ltd Hungarian Power Exchange;
- (r) ICE Endex;
- (s) Jakarta Futures Exchange;
- (t) Johannesburg Stock Exchange;
- (u) Korea Exchange;
- (v) LSE Derivatives Market;
- (w) Mexican Derivatives Exchange;
- (x) Minneapolis Grain Exchange;
- (y) Montreal Exchange;
- (z) Moscow Stock Exchange;
- (aa) NASDAQ OMX Armenia;
- (bb) NASDAQ OMX Iceland;
- (cc) National Stock Exchange of India;
- (dd) New York Mercantile Exchange;
- (ee) New Zealand Exchange;
- (ff) Nodal Exchange;
- (gg) NYSE Arca Europe;
- (hh) OneChicago (Single stock futures);
- (ii) Power Exchange Central Europe;
- (jj) Powernext;
- (kk) Russian Trading System;
- (ll) Singapore Commodity Exchange SGX-DT;
- (mm) South African Futures Exchange (SAFEX), including SAFEX APD Agricultural Products as part of JSE Limited;
- (nn) Taiwan Futures Exchange;
- (oo) Tel Aviv Stock Exchange Ltd;
- (pp) Thailand Futures Exchange as part of Stock Exchange of Thailand;
- (qq) Tokyo Commodity Exchange;
- (rr) Tokyo Financial Exchange; and
- (ss) Turkish Derivatives Exchange.

6. A financial market is not a Relevant Financial Market for the purposes of paragraphs 4 and 5 if ASIC determines that the financial market is a Regulated Foreign Market for the purposes of subrule 1.2.4(2) of the Rules and such determination has not been withdrawn.
7. It is a condition of the exemption in paragraph 4 that the Phase 2 Reporting Entity must report in accordance with the Rules:
 - (a) information about each of its Reportable Transactions in an Exchange-Traded Derivative starting from no later than 3 March 2015; and
 - (b) the Derivative Position Information set out in Part S2.2 of Schedule 2 of the Rules, about each of its outstanding positions in an Exchange-Traded Derivative as at 3 March 2015 or such earlier date as the Phase 2 Reporting Entity starts to report its Reportable Transactions in the Exchange-Traded Derivative, to a Licensed Repository by or on 2 September 2015.

Exemption 2 (Privacy – Foreign privacy restrictions)

8. From 1 April 2014 to 30 September 2014 (inclusive), a Phase 2 Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Phase 2 Reporting Entity to report Identifying Information in relation to a Reportable Transaction

or Reportable Position to a Trade Repository, where at the time the Identifying Information is required to be reported:

- (a) the Phase 2 Reporting Entity is of the reasonable view that the Phase 2 Reporting Entity would breach a law or regulation of a Relevant Foreign Jurisdiction if the Phase 2 Reporting Entity reported the Identifying Information to the Trade Repository;
- (b) the Phase 2 Reporting Entity has a written opinion of external legal counsel that supports the view referred to in paragraph (a); and
- (c) the Phase 2 Reporting Entity is reasonably satisfied that the law or regulation the subject of the written legal opinion referred to in paragraph (b) has not changed in any relevant respect since the date the opinion was issued.

9. It is a condition of the exemption in paragraph 8 that:

- (a) the Phase 2 Reporting Entity reports all Derivative Transaction Information in relation to the Reportable Transaction or all Derivative Position Information in relation to the Reportable Position (as applicable) other than the Identifying Information, in accordance with the Rules;
- (b) as soon as reasonably practicable after the Phase 2 Reporting Entity becomes reasonably satisfied that the Phase 2 Reporting Entity would no longer breach the law or regulation of the Relevant Foreign Jurisdiction if the Phase 2 Reporting Entity reported the Identifying Information to the Trade Repository, the Phase 2 Reporting Entity must use all reasonable endeavours to report the Identifying Information to the Trade Repository to which the Reportable Transaction or Reportable Position was reported, unless the OTC Derivative the subject of the Reportable Transaction or Reportable Position has been terminated or has expired; and
- (c) the Phase 2 Reporting Entity must, on request by ASIC and as soon as reasonably practicable following such request, give ASIC a copy of the written legal opinion referred to in paragraph 8(b) in respect of the Relevant Foreign Jurisdiction.

Exemption 3 (Privacy – Counterparty consents and notices)

10. For the period specified in paragraph 11 and subject to paragraphs 12 and 12A, a Phase 2 Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Phase 2 Reporting Entity to report Identifying Information in relation to a Reportable Transaction or Reportable Position to a Trade Repository, where at the time the Identifying Information is required to be reported:

- (a) the Phase 2 Reporting Entity is required to:
 - (i) obtain the express consent (***Consent***) of the counterparty (***Relevant Counterparty***) to which the Identifying Information relates before it reports the Identifying Information to the Trade Repository; or
 - (ii) give the Relevant Counterparty a notice (***Notice***) before it reports the Identifying Information to the Trade Repository;
- (b) if the Phase 2 Reporting Entity does not obtain the Consent or give the Notice before it reports the Identifying Information to the Trade Repository, a Phase 2 Reporting Entity may breach:

- (i) a duty of confidence owed by the Phase 2 Reporting Entity to the Relevant Counterparty which is actionable at law by the Relevant Counterparty;
 - (ii) a contractual duty owed by the Phase 2 Reporting Entity to the Relevant Counterparty; or
 - (iii) a provision of a law or regulation of a foreign jurisdiction that applies to the Phase 2 Reporting Entity in its dealings with the Relevant Counterparty; and
- (c) the Phase 2 Reporting Entity has not obtained the Consent of the Relevant Counterparty, or has not given the Relevant Counterparty the Notice (as applicable).
11. Subject to paragraphs 12 and 12A, the exemption in paragraph 10 applies from 1 April 2014 to the earlier of 1 October 2014 and the date the Phase 2 Reporting Entity obtains the Consent of the Relevant Counterparty, or gives the Relevant Counterparty the Notice (as applicable).
12. From 1 June 2014 to 31 July 2014, the exemption in paragraph 10 does not apply unless the Relevant Counterparty enters into the Reportable Transaction or Reportable Position pursuant to:
- (a) an Existing OTC Derivatives Agreement between the Relevant Counterparty and the Phase 2 Reporting Entity; or
 - (b) a legally binding agreement (*Agency Agreement*) between the Relevant Counterparty and an Intermediary that has an Existing OTC Derivatives (Intermediary) Agreement with the Phase 2 Reporting Entity.
- 12A. From 1 August 2014, the exemption in paragraph 10 does not apply unless the Relevant Counterparty enters into the Reportable Transaction or Reportable Position pursuant to:
- (a) an Existing OTC Derivatives Agreement between the Relevant Counterparty and the Phase 2 Reporting Entity; or
 - (b) an Agency Agreement that was in place as at 31 July 2014, under which the Relevant Counterparty had entered into one or more OTC Derivatives with the Phase 2 Reporting Entity through the Intermediary on or before 31 July 2014.
- 12B. For the purposes of paragraphs 12 and 12A:
- (a) *Existing OTC Derivatives Agreement* means a legally binding agreement between the Relevant Counterparty and the Phase 2 Reporting Entity that was in place as at 31 May 2014, under which the Relevant Counterparty:
 - (i) may enter into OTC Derivatives with the Phase 2 Reporting Entity; or
 - (ii) had entered into one or more OTC Derivatives with the Phase 2 Reporting Entity on or before 31 May 2014; and
 - (b) *Existing OTC Derivatives (Intermediary) Agreement* means a legally binding agreement between a person (the *Intermediary*) and the Phase 2 Reporting Entity that was in place as at 31 May 2014, under which the Intermediary:

- (i) may enter into OTC Derivatives with the Phase 2 Reporting Entity on behalf of other persons, pursuant to legally binding agreements between the Intermediary and those other persons; or
 - (ii) had entered into one or more OTC Derivatives with the Phase 2 Reporting Entity on behalf of other persons, on or before 31 May 2014.
- 13. It is a condition of the exemption in paragraph 10 that:
 - (a) the Phase 2 Reporting Entity reports all Derivative Transaction Information in relation to the Reportable Transaction or all Derivative Position Information in relation to the Reportable Position (as applicable) other than the Identifying Information, in accordance with the Rules;
 - (b) the Phase 2 Reporting Entity must use all reasonable endeavours to obtain the Consent from, or give the Notice to, the Relevant Counterparty, as soon as reasonably practicable; and
 - (c) as soon as reasonably practicable after the Relevant Counterparty gives the Consent, or is given the Notice, a Phase 2 Reporting Entity must use all reasonable endeavours to report the Identifying Information to the Trade Repository to which the Reportable Transaction or Reportable Position was reported, unless the OTC Derivative the subject of the Reportable Transaction or Reportable Position has been terminated or has expired.
- 14. From 1 April 2014, it is an additional condition to the exemption in paragraph 10 that where the Phase 2 Reporting Entity has determined that the exemption in paragraph 10 applies only because of subparagraph 10(a)(ii), the Phase 2 Reporting Entity must give the Relevant Counterparty the Notice by the later of:
 - (a) 30 April 2014; and
 - (b) the date which is one calendar month after the date on which the Phase 2 Reporting Entity determines that the exemption in paragraph 10 applies only because of subparagraph 10(a)(ii).
- 14A. From 30 April 2014, it is an additional condition of the exemption in paragraph 10 that the Phase 2 Reporting Entity must:
 - (a) have in place a written compliance plan which describes how the Phase 2 Reporting Entity will use all reasonable endeavours to obtain the Consent from, or give the Notice to, Relevant Counterparties as soon as reasonably practicable, as required by paragraph 13(b);
 - (b) on request by ASIC, provide ASIC with a copy of the compliance plan referred to in paragraph (a), within the time specified in the request or if no time is specified, within a reasonable time; and
 - (c) on request by ASIC, provide ASIC with a document reporting on the Phase 2 Reporting Entity's implementation of the compliance plan referred to in paragraph (a), within the time specified in the request or if no time is specified, within a reasonable time, covering the period up to the time of the request.

Exemption 4 (Intra-day modification reporting)

15. From 1 April 2014 to 30 September 2014 (inclusive), a Phase 2 Reporting Entity does not have to comply with:
- (a) paragraphs 2.2.1(1)(a) and (c) of the Rules to the extent those paragraphs require a Phase 2 Reporting Entity to report information about a Reportable Transaction that is a modification of an OTC Derivative (**Relevant OTC Derivative**) on a day (the **Relevant Day**), to a Trade Repository by no later than the end of the next Business Day following the Relevant Day; and
 - (b) Rule 2.2.6 to the extent that Rule requires a Phase 2 Reporting Entity to report an error or omission in information reported by the Phase 2 Reporting Entity pursuant to the Rules at any time prior to the end of the next Business Day following the day on which the Phase 2 Reporting Entity became aware of the error or omission.
16. It is a condition of the exemption in paragraph 15(a) that a Phase 2 Reporting Entity reports, for the Relevant OTC Derivative, information (**State Data**) about the Relevant OTC Derivative that is the same as, or substantially equivalent to, the Derivative Transaction Information set out in Part S2.1 of Schedule 2 of the Rules, and reports the State Data to a Trade Repository:
- (a) as at the end of the Relevant Day, by no later than the end of the next Business Day following the Relevant Day; and
 - (b) otherwise in accordance with the Rules as if the State Data was information reported under paragraph 2.2.1(1)(a) or (c) of the Rules (as applicable).
- 16A. It is a condition of the exemption in paragraph 15(b) that the Phase 2 Reporting Entity reports the error or omission by no later than the end of the next Business Day after the day on which the Phase 2 Reporting Entity has become aware of the error or omission.
17. The Phase 2 Reporting Entity is not required to comply with the condition in paragraph 16 to the extent that condition requires a Phase 2 Reporting Entity to report:
- (a) the Derivative Transaction Information in Items 30–32 (mark-to-market, mark-to-model, or other valuation), Items 40–44 (collateral) and Items 51–52 (barrier type and value) in Table S2.1(1) of the Rules, or substantially equivalent information; and
 - (b) Derivative Transaction Information referred to in Item 1 of Table S2.1(1) of the Rules that is a ‘universal transaction identifier’ or a ‘single transaction identifier’, subject to a Phase 2 Reporting Entity reporting a Trade Identifier within the meaning of paragraph 19 of this instrument.

Exemption 5 (Trade identifiers)

18. From 1 April 2014 to 30 September 2014 (inclusive), a Phase 2 Reporting Entity does not have to comply with paragraphs 2.2.1(1)(a) and (c) of the Rules to the extent those paragraphs require the Phase 2 Reporting Entity to report, for a Reportable Transaction, Derivative Transaction Information referred to in Item 1 of Table S2.1(1) of the Rules that is a ‘universal transaction identifier’ or a ‘single transaction identifier’.

19. It is a condition of the exemption in paragraph 18 that the Phase 2 Reporting Entity report, for the Reportable Transaction:
- (a) the trade identifier created by the Swap Execution Facility on which the Reportable Transaction was executed (if applicable);
 - (b) the trade identifier created by the provider of any of the Confirmation Platforms on which the Reportable Transaction was confirmed (if applicable); or
 - (c) if the information in paragraphs (a) and (b) is not available, the internal trade identifier used by the Reporting Counterparty,
- (each, a **Trade Identifier**) and reports the Trade Identifier otherwise in accordance with the Rules as if the Trade Identifier was information reported under paragraph 2.2.1(1)(a) or (c) of the Rules (as applicable).

Exemption 6 (Nexus Transactions)

20. For the period from 1 April 2014 to 1 February 2015 (inclusive), and subject to paragraph 21, a Phase 2 Reporting Entity does not have to comply with:
- (a) paragraphs 2.2.1(1)(a) and (c) of the Rules to the extent those paragraphs require a Phase 2 Reporting Entity that is:
 - (i) a Foreign ADI that has a branch located in this jurisdiction; or
 - (ii) a foreign company that is required to be registered under Division 2 of Part 5B.2 of the Act,
 to report information about a Reportable Transaction in an OTC Derivative entered into by the Phase 2 Reporting Entity in this jurisdiction (**Nexus Transaction**); and
 - (b) paragraph 2.2.1(1)(b) of the Rules to the extent that paragraph requires a Phase 2 Reporting Entity referred to in paragraph (a) to report information about an outstanding position in an OTC Derivative entered into by the Phase 2 Reporting Entity in this jurisdiction, by the applicable Position Reporting Date.
21. The exemption in paragraph 20 does not apply to:
- (a) a Phase 2 Reporting Entity that is a foreign subsidiary of an Australian Entity where that Australian Entity is an Australian ADI or AFS Licensee; or
 - (b) a Reportable Transaction in an OTC Derivative booked to the profit or loss account of a branch of the Phase 2 Reporting Entity located in this jurisdiction; or
 - (c) an outstanding position in relation to an OTC Derivative booked to the profit or loss account of a branch of the Phase 2 Reporting Entity located in this jurisdiction.
22. It is a condition of the exemption in paragraph 20 that:
- (a) a Phase 2 Reporting Entity must:
 - (i) report in accordance with the Rules information about each of its Nexus Transactions starting from no later than 2 February 2015; and

- (ii) for the period from 2 February 2015 to 1 August 2015 (inclusive), designate the information reported in accordance with subparagraph (i) as being able to be provided to ASIC by the Trade Repository to which that information is reported;
- (b) a Phase 2 Reporting Entity must:
- (i) report in accordance with the Rules the Derivative Position Information set out in Part S2.2 of Schedule 2 of the Rules, about each of its outstanding positions as at 2 February 2015 in an OTC Derivative entered into by the Phase 2 Reporting Entity in this jurisdiction on or after 1 October 2014, by or on 1 August 2015; and
 - (ii) designate the Derivative Position Information reported in accordance with subparagraph (i) as being able to be provided to ASIC by the Trade Repository to which the Derivative Position Information is reported; and
- (c) where a Phase 2 Reporting Entity is required to report information about:
- (i) a Reportable Transaction that is entered into on or after 1 October 2014 and that is booked to the profit or loss account of a branch of the Phase 2 Reporting Entity located in this jurisdiction; or
 - (ii) a Reportable Position in an OTC Derivative that was booked to the profit or loss account of a branch of the Phase 2 Reporting Entity located in this jurisdiction,

the Phase 2 Reporting Entity must, commencing on 1 October 2014, designate that information as being able to be provided to ASIC by the Trade Repository to which that information is reported.

Exemptions 1 to 6 – Other conditions (Record-keeping)

23. It is condition of this instrument that a Phase 2 Reporting Entity must:
- (a) keep records that enable the Phase 2 Reporting Entity to demonstrate it has complied with the conditions in paragraphs 7, 9, 13, 14, 14A, 16, 16A, 19 and 22 of this instrument;
 - (b) keep the records referred to in paragraph (a) for a period of at least five years from the date the record is made or amended; and
 - (c) on request by ASIC, provide ASIC with records or other information relating to compliance with or determining whether there has been compliance with the conditions in paragraphs 7, 9, 13, 14, 14A, 16, 16A, 19 and 22 of this instrument, within the time specified in the request or if no time is specified, within a reasonable time.
24. A request by ASIC under paragraph 23(c) must be in writing and give a Phase 2 Reporting Entity a reasonable time to comply.

Exemptions 1 to 6 – Interaction between exemptions

25. Each exemption in this instrument operates on its terms and does not limit the operation of any other exemption in this instrument.

Interpretation

26. In this instrument:

CEA means the *Commodity Exchange Act 1936* (US).

Confirmation Platform means an electronic trade confirmation platform.

Identifying Information means Derivative Trade Data referred to in the following table, or substantially equivalent information:

Table in Rules	Items in Table
Table S2.1(1) (Derivative Transaction Information - Common data)	7, 8, 10 and 11
Table S2.1(3) (Derivative Transaction Information - Equity derivative and credit derivative data)	1, 2, 3 and 4
Table S2.1(5) (Derivative Transaction Information - Interest rate derivative data)	6, 7, 8, 9, 10 and 11
Table S2.2(1) (Derivative Position Information – Common data)	6, 7, 8 and 9
Table S2.2(3) (Derivative Position Information – Equity derivative and credit derivative data)	1, 2, 3 and 4
Table S2.2(5) (Derivative Position Information - Interest rate derivative data)	5, 6, 7, 8, 9 and 10

Relevant Foreign Jurisdiction means each of the following foreign jurisdictions:

- (a) Algeria;
- (b) Argentina;
- (c) Austria;
- (d) Bahrain
- (e) Belgium;
- (f) France;
- (g) Hungary;
- (h) India;
- (i) Indonesia;
- (j) Israel;
- (k) Luxembourg;
- (l) Pakistan;
- (m) People’s Republic of China;

- (n) Samoa;
- (o) Saudi Arabia;
- (p) Singapore;
- (q) South Korea;
- (r) Switzerland; and
- (s) Taiwan.

Phase 2 Reporting Entity means:

- (a) a Reporting Entity that:
 - (i) is an Australian ADI, an AFS Licensee, a CS Facility Licensee, an Exempt Foreign Licensee or a Foreign ADI;
 - (ii) as at 31 December 2013 held total gross notional outstanding of AUD \$50 billion or more; and
 - (iii) was not required to report under Phase 1; or
- (b) a Reporting Entity that was granted an exemption from the requirement to report information about each of its Reportable Transactions and Reportable Positions under Phase 1 on condition that the Reporting Entity must comply with the Rules as if it is a Phase 2 Reporting Entity; or
- (c) a Reporting Entity that has lodged with ASIC an Opt-In Notice which provides for an Effective Date of on or prior to 30 September 2014.

Rules means the *ASIC Derivative Transaction Rules (Reporting) 2013*.

Swap Execution Facility means a ‘swap execution facility’ as defined in section 1a(50) of the CEA.

Trade Repository means a Licensed Repository or Prescribed Repository.

27. In this instrument, unless otherwise specified, capitalised terms have the meaning given by the Rules.

Dated this 26th day of March 2014

Signed by Oliver Harvey
as a delegate of the Australian Securities and Investments Commission