

**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 [14/0633].

Commencement

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

Exemptions and conditions

Transaction and position reporting

4. A Phase 3 Reporting Entity referred to in column A of Table 1 does not have to comply with:
 - (a) paragraphs 2.2.1(1)(a) and (c) of the *ASIC Derivative Transaction Rules (Reporting) 2013 (Rules)* to the extent those paragraphs require the Phase 3 Reporting Entity to report information about a Reportable Transaction in an OTC Derivative (***Exempt Derivative***) in a class of OTC Derivatives referred to in column B of Table 1 of this instrument, during the corresponding period set out in column C of Table 1; and
 - (b) paragraph 2.2.1(1)(b) of the Rules to the extent that paragraph requires the Phase 3 Reporting Entity to report information about a Reportable Position in an Exempt Derivative, by the applicable Position Reporting Date.
5. It is a condition of the exemption set out in paragraph 4 that the Phase 3 Reporting Entity must report in accordance with the Rules:
 - (a) Derivative Transaction Information about each of its Reportable Transactions in the Exempt Derivative starting from no later than the corresponding date (***Revised Transaction Reporting Date***) set out in column D of Table 1; and
 - (b) Derivative Position Information about each of its outstanding positions in the Exempt Derivative as at the Revised Transaction Reporting Date or such earlier date as the Phase 3 Reporting Entity starts to report its Reportable Transactions in the Exempt Derivative, by or on the corresponding date (***Revised Position Reporting Date***) set out in column E of Table 1.

Table 1

A. Exempt Reporting Entity	B. Exempt Derivatives (classes)	C. Period of exemption	D. Revised Transaction Reporting Date	E. Revised Position Reporting Date
Phase 3A Reporting Entity	Credit derivatives and interest rate derivatives	From 1 October 2014 to the day before the Revised Transaction Reporting Date (inclusive)	<p>If an Opt-In Notice has been given by the Phase 3A Reporting Entity:</p> <p>(a) the Effective Date specified in that Opt-In Notice in relation to the class of Exempt Derivatives the subject of the Opt-In Notice.</p> <p>If no Opt-in Notice has been given by the Phase 3A Reporting Entity for a class of Exempt Derivatives, and the Licensing Date is on or before 13 October 2014:</p> <p>(b) 13 April 2015.</p> <p>If no Opt-in Notice has been given by the Phase 3A Reporting Entity for a class of Exempt Derivatives, and the Licensing Date is after 13 October 2014:</p> <p>(c) the first Monday that is a Business Day of the month that is 7 calendar months after the Licensing Date.</p>	The first Monday that is a Business Day after the end of the period of 6 calendar months beginning on the Revised Transaction Reporting Date
A Phase 3A Reporting Entity	Equity derivatives, foreign exchange derivatives and commodity derivatives that are not electricity derivatives	From 1 April 2015 to the day before the Revised Transaction Reporting Date (inclusive)	<p>The earlier of the following dates:</p> <p>(a) 12 October 2015;</p> <p>(b) the first Monday that is a Business Day of the month that is 13 calendar months after the Licensing Date; and</p> <p>(c) the Effective Date specified in an Opt-In Notice given by the Phase 3A</p>	The first Monday that is a Business Day after the end of the period of 6 calendar months beginning on the Revised Transaction Reporting Date

A. Exempt Reporting Entity	B. Exempt Derivatives (classes)	C. Period of exemption	D. Revised Transaction Reporting Date	E. Revised Position Reporting Date
			Reporting Entity in relation to the class of Exempt Derivatives.	
Phase 3B Reporting Entity	Credit derivatives, interest rate derivatives, equity derivatives, foreign exchange derivatives and commodity derivatives that are not electricity derivatives	From 1 October 2014 to the day before the Revised Transaction Reporting Date (inclusive)	<p>The earlier of the following dates:</p> <p>(a) 12 October 2015;</p> <p>(b) the first Monday that is a Business Day of the month that is 13 calendar months after the Licensing Date; and</p> <p>(c) the Effective Date specified in an Opt-In Notice given by the Phase 3B Reporting Entity in relation to the class of Exempt Derivatives.</p>	The first Monday that is a Business Day after the end of the period of 6 calendar months beginning on the Revised Transaction Reporting Date

6. It is a condition of the exemption set out in paragraph 4 that the Phase 3 Reporting Entity must report the information referred to in paragraph 5 of this instrument to a Licensed Repository, or if there is no Licensed Repository at the time the information is required to be reported, to a Prescribed Repository.

'Tagging' requirements

7. It is a condition of the exemption set out in paragraph 4 that where, on a day prior to the Licensing Date, a Phase 3 Reporting Entity complies with the conditions in paragraphs 5 and 6 of this instrument, by reporting Derivative Transaction Information or Derivative Position Information about an Exempt Derivative to a Prescribed Repository, the Phase 3 Reporting Entity must designate the Derivative Transaction Information and Derivative Position Information reported as being able to be provided to ASIC by the Prescribed Repository to which the information is reported.

Valuations, collateral and barriers

8. A Phase 3 Reporting Entity is not required to comply with the Rules, or the conditions in paragraph 5, 6 and 7 of this instrument, during the period from the Revised Transaction Reporting Date (as it applies to the Reporting Entity in relation to an Exempt Derivative) to the day before the first Monday that is a Business Day, of the month that is 7 calendar months after the Revised Transaction Reporting Date, to the extent the Rules or those conditions require the Phase 3 Reporting Entity to report

the following items of Derivative Transaction Information in Table S2.1(1) of the Rules about a Reportable Transaction or outstanding position in an Exempt Derivative:

- (a) Items 30–32 (mark-to-market, mark-to-model, or other valuation);
- (b) Items 40–44 (collateral); and
- (c) Items 51–52 (barrier type and value).

Counterparty consent and notices – Phase 3A Reporting Entities

9. It is a condition of the exemption set out in paragraph 4 that a Phase 3A Reporting Entity that is a Qualifying Phase 3A Reporting Entity must:
- (a) from the Licensing Date, use all reasonable endeavours to obtain as soon as reasonably practicable the express consent of the counterparty to which Identifying Information required to be reported relates, to ensure that the Qualifying Phase 3A Reporting Entity is able to comply with the conditions in paragraph 5, 6 and 7 of this instrument by reporting Identifying Information; and
 - (b) where the Qualifying Phase 3A Reporting Entity has determined that it will be required to give a notice to a counterparty before reporting Identifying Information, give the notice by the date (***Notice Date***) which is one calendar month after the date on which the Phase 3A Reporting Entity determines that it will be required to give the notice. If the Notice Date calculated under this subparagraph is on or before 3 November 2014, the Notice Date is 3 November 2014.

Record-keeping and reporting – Phase 3A Reporting Entities

10. It is a condition of the exemption set out in paragraph 4 that a Phase 3 Reporting Entity that is a Phase 3A Reporting Entity must:
- (a) keep records that enable the Phase 3A Reporting Entity to demonstrate it has complied with the conditions in paragraphs 5, 6, 7 and 9 of this instrument that apply to the Reporting Entity;
 - (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 5, 6, 7, and 9 of this instrument, within the time specified in the request or if no time is specified, within a reasonable time.
11. A request by ASIC under paragraph 10(c) must be in writing and give the Phase 3A Reporting Entity a reasonable time to comply.

Interpretation and definitions

Calculation of total gross notional outstanding

12. A reference in this instrument to the total gross notional outstanding positions held by a Phase 3 Reporting Entity is a reference to the Phase 3 Reporting Entity's total gross notional outstanding positions aggregated across:
- (a) all OTC Derivatives; and
 - (b) all Derivatives that would be OTC Derivatives but for the fact that the Derivatives are not in a Prescribed Class,
- but does not include positions in OTC Derivatives:
- (c) held by a related body corporate of the Reporting Entity; or
 - (d) where the entry into, modification, termination or assignment of the OTC Derivative to which the position relates is not a Reportable Transaction in relation to the Reporting Entity within the meaning of Rule 1.2.5 (other than by reason that the Derivatives are not in a Prescribed Class).

Application of phases to REs and Trustees

13. A Phase 3 Reporting Entity that is an RE or Trustee may determine whether it is a Phase 3A Reporting Entity or a Phase 3B Reporting Entity in relation to each managed investment scheme or trust for which the Phase 3 Reporting Entity is RE or Trustee, by determining whether the Phase 3 Reporting Entity holds total gross notional outstanding positions of \$5 billion or more separately in relation to that managed investment scheme or trust.
14. Where, a Phase 3 Reporting Entity has determined in accordance with paragraph 13 that the Phase 3 Reporting Entity holds total gross notional outstanding positions of \$5 billion or more as at 30 June 2014 in relation to a managed investment scheme or trust (in this paragraph, the **Reporting Scheme or Trust**) for which the Phase 3 Reporting Entity is RE or Trustee, the Phase 3 Reporting Entity:
- (a) may rely on the exemptions in paragraphs 4 and 8 of this instrument, and must comply with the conditions in paragraphs 5, 6, 7, 9 and 10 of this instrument, that apply to a Phase 3A Reporting Entity in relation to Reportable Transactions entered into and Reportable Positions held in its capacity as RE or Trustee of the Reporting Scheme or Trust; and
 - (b) may rely on the exemptions in paragraph 4 and 8 of this instrument, and must comply with the conditions in paragraphs 5, 6, 7, 9 and 10 of this instrument that apply to a Phase 3B Reporting Entity in relation to Reportable Transactions entered into and Reportable Positions held in its capacity as RE or Trustee of each managed investment scheme or trust that is not a Reporting Scheme or Trust.

Opt-in

15. A Phase 3 Reporting Entity may lodge a notice (an **Opt-In Notice**) with ASIC setting out:
- (a) the name of the Phase 3 Reporting Entity;
 - (b) one or more classes of Exempt Derivatives specified in column B of Table 1; and
 - (c) the date (**Effective Date**) or series of Effective Dates from which the Phase 3 Reporting Entity will report Exempt Derivatives in the class or classes set out in the Opt-In Notice.

Note: Under paragraph 5 of this instrument, the Effective Date specified in the Opt-In Notice in relation to an Exempt Derivative or class of Exempt Derivative will be the Revised Transaction Reporting Date in relation to Reportable Transactions in that Exempt Derivative or class of Exempt Derivative provided the Effective Date is the earliest of the dates specified in column D of Table 1 in relation to that class. This applies unless the Opt-In Notice is withdrawn with the consent of ASIC under paragraph 17 of this instrument.

16. An Effective Date in an Opt-In Notice must be a date that falls on or after 1 October 2014 and on or after the date on which the Opt-In Notice has been lodged.
17. A Phase 3 Reporting Entity that has lodged an Opt-In Notice under paragraph 15 of this instrument may withdraw the notice only with the consent of ASIC.
18. A Phase 3 Reporting Entity that is an RE or a Trustee may lodge an Opt-In Notice under paragraph 15 in relation to each managed investment scheme or trust for which the Phase 3 Reporting Entity is RE or Trustee.

Definitions

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

calendar month means a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of the next month.

A reference to a period of ***calendar months*** is a reference to a period:

- (a) starting at the start of a day of one of the calendar months (***starting month***); and
- (b) ending:
 - (i) immediately before the start of the corresponding day of the calendar month that is that number of calendar months after the starting month; or
 - (ii) if there is no such day – at the end of the calendar month that is that number of calendar months after the starting month.

Effective Date has the meaning given by paragraph 15 of this instrument.

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 in Rules	Items in Table
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

Licensing Date means the day on which ASIC grants a derivative trade repository licence under section 905C of the Act for the first time.

Note: If ASIC grants an applicant an Australian derivative trade repository licence, ASIC must publish a notice in the Gazette stating the name of the licensee, when the licence was granted, and the conditions on the licence: section 905D of the Act.

Opt-In Notice means a notice given under paragraph 15 of this instrument that has not been withdrawn under paragraph 17 of this instrument.

Phase 3 Reporting Entity means a Reporting Entity that:

- (a) is an Australian ADI, an AFS Licensee, a CS Facility Licensee, an Exempt Foreign Licensee or a Foreign ADI;
- (b) was not required to report under Phase 1 or Phase 2; and
- (c) did not opt-in to reporting during Phase 1 or Phase 2 by lodging an Opt-In Notice with ASIC under Rule 2.4.1 of the Rules.

Phase 3A Reporting Entity means a Phase 3 Reporting Entity that as at 30 June 2014 holds total gross notional outstanding positions of AUD \$5 billion or more, calculated in accordance with paragraphs 12 to 14 of this instrument

Phase 3B Reporting Entity means a Phase 3 Reporting Entity that is not a Phase 3A Reporting Entity.

Qualifying Phase 3A Reporting Entity means a Phase 3A Reporting Entity that:

- (a) will or may be required to comply with the conditions in paragraphs 5 and 6 of this instrument by reporting Identifying Information to a Trade Repository on or after the Revised Transaction Reporting Date; and
- (b) will or may be required to:
 - (i) obtain the express consent (**Consent**) of the counterparty (**Relevant Counterparty**) to which 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; and

- (c) if the Phase 3A Reporting Entity does not obtain the Consent or give the Notice before it reports the Identifying Information to the Trade Repository, the Phase 3A Reporting Entity may breach:
 - (i) a duty of confidence owed by the Phase 3A Reporting Entity to the Relevant Counterparty which is actionable at law by the Relevant Counterparty;
 - (ii) a contractual duty owed by the Phase 3A Reporting Entity to the Relevant Counterparty; or
 - (iii) a provision of a law or regulation of a foreign jurisdiction that applies to the Phase 3A Reporting Entity in its dealings with the Relevant Counterparty; and
- (d) has not obtained the Consent of the Relevant Counterparty, or has not given the Relevant Counterparty the Notice (as applicable).

Trade Repository means a Licensed Repository or Prescribed Repository.

Dated this 27th day of June 2014

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