ASIC INSTRUMENT [14/0911]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Instrument [14/0911] (the **Legislative Instrument**) under paragraph 907D(2)(a) of the *Corporations Act 2001* (**Act**).

Under paragraph 907D(2)(a) of the Act, ASIC may exempt a person or class of persons from all or specified provisions of the derivative trade repository rules. 'Derivative trade repository rules' are rules made by ASIC under subsection 903A(1) of the Act.

An exemption may apply unconditionally or subject to specified conditions, and a person to whom a condition specified in an exemption applies must comply with the condition (see subsection 907D(3) of the Act). An exemption under paragraph 907D(2)(a) is a legislative instrument if it is expressed to apply in relation to a class of persons (see subsection 907D(4) of the Act).

1. Background

In July 2013, ASIC, acting with the consent of the Minister under section 903H of the Act, made the *ASIC Derivative Trade Repository Rules 2013* (**DTRRs**) under subsection 903A(1) of the Act. Capitalised terms used in this Explanatory Statement have the meaning given by the DTRRs.

The DTRRs impose obligations on Operators and Officers of derivative trade repositories that are licensed by ASIC under section 905C of the Act. Derivative trade repositories are facilities to which information about derivative transactions, or about positions relating to derivative transactions, can be reported under the *ASIC Derivative Transaction Rules (Reporting) 2013*.

The DTRRs impose obligations on the Operators of licensed derivative trade repositories, including requirements relating to:

- the manner in which licensed derivative trade repositories provide their services;

- the handling or use of derivative trade data by licensed derivative trade repositories;

- the governance, management and resources of licensed derivative trade repositories;

- the disclosure of conditions on which licensed derivative trade repositories provide their services; and

- the reporting to ASIC or other regulators of matters related to licensed derivative trade repositories.

The DTRRs also imposes obligations on the Officers of licensed derivative trade repositories. Rule 2.1.1 requires an Officer of a licensed derivative trade repository to take all reasonable steps to ensure the Operator of the licensed derivative trade repository complies with its obligations under the DTRRs.

On 15 September 2014, ASIC granted a derivative trade repository licence (***Australian Licence***) to DTCC Data Repository (Singapore) Pte Ltd (ARBN 601 601 021) (***DDRS***) under section 905C of the Act. DDRS is an entity incorporated in Singapore and licensed by the Monetary Authority of Singapore (***MAS***) to operate a derivative trade repository in Singapore. DDRS is subject to the Securities and Futures Act (Singapore) (***SFA***), the Securities and Futures (Trade Repositories) Regulations (Singapore) (***SF Regulations***), and the conditions and restrictions imposed on its derivative trade repository licence in Singapore (***Singapore Licence***).

Under section 902A the Act, when supervising a licensed derivative trade repository that is wholly or partly operated in a foreign country, ASIC may, to such extent as ASIC considers appropriate, perform the function of supervising the repository by satisfying itself:

- that the regulatory regime that applies in relation to the repository in that country provides for adequate supervision of the repository; or

- that adequate cooperative arrangements are in place with an appropriate authority of that country to ensure that the repository will be adequately supervised by that authority.

Further, in accordance with ASIC's policy in Regulatory Guide 249: *Derivative trade repositories* (RG 249), ASIC may grant an exemption to the Operator or Officers of a licensed derivative trade repository from their obligations under the DTRRs where ASIC considers that the regulatory regime that applies to the licensed derivative trade repository in a foreign country is sufficiently equivalent to the Australian regulatory regime under the DTRRs.

ASIC has granted an exemption (***DDRS Exemption***) under paragraph 907D(2)(a) of the Act to DDRS from the obligations to comply with specific Rules in the DTRRs where ASIC considers that the SFA, SF Regulations and Singapore Licence are sufficiently equivalent to the Australian regulatory regime under the DTRRS. The DDRS Exemption is subject to conditions that DDRS comply with the sufficiently equivalent provisions of the SFA, SF Regulations and Singapore Licence. ASIC has imposed additional specific conditions on the DDRS Exemption, as well as on DDRS's Australian Licence, that ASIC considers appropriate to ensure the regulatory objectives of the DTRRs are achieved without regulation under the DTRRs.

2. Purpose of this Legislative Instrument

ASIC grants, by this Legislative Instrument, an exemption under paragraph 907D(2)(a) of the Act to the Officers of DDRS in respect of their obligation under Rule 2.1.1 of the DTRRs to take all reasonable steps to ensure DDRS complies with an obligation under a provision of the DTRRs, where ASIC has granted an exemption to DDRS from the obligation to comply with that provision. ASIC has imposed conditions on the exemption for the Officers of DDRS.

Paragraph 1 of the Legislative Instrument provides that ASIC makes the instrument under paragraph 907D(2)(a) of the Act.

Paragraph 2 of the Legislative Instrument provides that the title of the Legislative Instrument is ASIC Instrument [14/0911].

Paragraph 3 of the Legislative Instrument provides that the Legislative Instrument commences on the date it is registered under the *Legislative Instruments Act 2003*. The note to this paragraph explains that a Legislative Instrument is registered when it is recorded on the Federal Register of Legislative Instruments (FRLI) in electronic form.

Paragraphs 4 to 6 of the Legislative Instrument set out the exemption from the DTRRs, and associated conditions, that apply to the Officers of DDRS. 'Officer' means an officer within the meaning of section 9 of the Act and will include a director, secretary, and a person who makes or participates in decisions that affect the whole, or a substantial part of the business of DDRS.

Paragraph 4 of the Legislative Instrument provides that an Officer of DDRS does not have to comply with Rule 2.1.1 of the DTRRs to the extent that:

- Rule 2.1.1 requires the Officer to take reasonable steps to ensure that DDRS complies with its obligations under a provision (*Relevant Rule*) of the DTRRs; and

- ASIC has granted DDRS an exemption under paragraph 907D(2)(a) of the Act from the requirement to comply with the Relevant Rule.

Paragraph 5 of the Legislative Instrument provides that the exemption in paragraph 4 of the Legislative Instrument applies in relation to a Relevant Rule for so long as the Officer of DDRS takes all reasonable steps to ensure that DDRS complies with the conditions (if any) of its exemption from the Relevant Rule. Accordingly, where, for example, it is a condition of the exemption granted to DDRS from a DTRR that DDRS comply with specified provisions of the SFA, SF Regulations or its Singapore Licence, the Officer of DDRS will be required to take all reasonable steps to ensure that DDRS complies with the specified provisions of the SFA or SF Regulations or its Singapore Licence.

Paragraph 6 of the Legislative Instrument provides that it is a condition of the exemption given in paragraph 4 of the Legislative Instrument that the officer of DDRS must take all reasonable steps to ensure that DDRS complies with the conditions of its Australian Licence.

Paragraph 7 of the Legislative Instrument provides that in the Legislative Instrument, 'DTRRs' means the *ASIC Derivative Trade Repository Rules 2013* as in force from time to time and 'Officer' means an officer within the meaning of section 9 of the Act.

3. Commencement of Legislative Instrument

The Legislative Instrument commences on the date it is registered under the *Legislative Instruments Act* 2003.

4. Consultation

In the course of considering DDRS's application for an Australian Licence, ASIC has consulted directly with DDRS and the Officers of DDRS concerning the exemptions and conditions in the DDRS Exemption and in this Legislative Instrument.

5. Regulation Impact Statement

A Regulation Impact Statement is not required for this Legislative Instrument. This is an individual relief instrument that applies to Officers of one entity only and is made under the framework of the existing law. Individual relief instruments are not rules and consequently a Regulation Impact Statement is not required.

6. Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is included in this Explanatory Statement at Attachment A.

ATTACHMENT A – Statement of Compatibility with Human Rights

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

ASIC Instrument [14/0911]

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

1.   Overview of the Legislative Instrument

ASIC Instrument [14/0911] (the **Legislative Instrument**), made by ASIC under paragraph 907D(2)(a) of the *Corporations Act 2001* (the **Act**), provides a limited conditional exemption to Officers of the licensed derivative trade repository operated by DTCC Trade Repository (Singapore) Pte Ltd (**DDRS**) from the *ASIC Derivative Trade Repository Rules 2013* (the **DTRRs**).

The DTRRs, which were made by ASIC under section 903A(1) of the Act acting with the consent of the Minister under section 903H of the Act, impose requirements on Operators and Officers of derivative trade repositories that are licensed by ASIC under section 905C of the Act.

DDRS is licensed by ASIC under section 905C of the Act. DDRS is incorporated in Singapore and is also licensed by the Monetary Authority of Singapore (**MAS**) to operate a derivative trade repository in Singapore. DDRS is subject to the Securities and Futures Act (Singapore) (**SFA**), the Securities and Futures (Trade Repositories) Regulations (Singapore) (**SF Regulations**), and the conditions and restrictions imposed on its derivative trade repository licence in Singapore (**Singapore Licence**).

ASIC has granted an exemption (**DDRS Exemption**) under paragraph 907D(2)(a) of the Act to DDRS from its obligations to comply with specific Rules in the DTRRs where ASIC considers that the SFA, SF Regulations and Singapore Licence are sufficiently equivalent to the DTRRS. The DDRS Exemption is subject to conditions that DDRS comply with specified provisions of the SFA, SF Regulations and Singapore Licence. ASIC has imposed additional specific conditions on the exemption, as well as on DDRS's Australian derivative trade repository licence, that ASIC considers appropriate to ensure the regulatory objectives of the DTRRs are achieved without regulation under the DTRRs.

ASIC grants, by this Legislative Instrument, an exemption under paragraph 907D(2)(a) of the Act to the Officers of DDRS in respect of their obligation under Rule 2.1.1 of the DTRRs to take all reasonable steps to ensure DDRS complies with an obligation under a provision of the DTRRs, where ASIC has granted an exemption to DDRS from the obligation to comply with that provision. ASIC has imposed conditions on the exemption for the Officers of DDRS, which require the Officers to take all reasonable steps to ensure DDRS complies with the conditions of the DDRS Exemption and the conditions of DDRS's Australian derivative trade repository licence.

2.   Human rights implications

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

3.   Conclusion

The Legislative Instrument is compatible with human rights because it does not raise any human rights issues.

Australian Securities and Investments Commission