



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844**

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I, Oliver Harvey, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated 21 September 2015

Oliver Harvey

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## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is the *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844*.

### 2 Commencement

This instrument commences on the later of:

- (a) the day after it is registered on the Federal Register of Legislative Instruments; and

Note: The register may be accessed at <http://www.comlaw.gov.au>.

- (b) 1 October 2015.

### 3 Authority

This instrument is made under paragraph 907D(2)(a) of the *Corporations Act 2001*.

### 4 Definitions

- (1) In this instrument:

**Act** means the *Corporations Act 2001*.

**Confirmation Platform** means an electronic trade confirmation platform.

**Entity Information** means Derivative Trade Data referred to in the following table:

Table in Rules	Items in Table
Table S2.1(1) (Derivative Transaction Information - Common data)	Part (a) of Items 7, 10, 15 and 19
Table S2.1(3) (Equity Derivative and Credit Derivative Data)	Part (a) of Items 1, 3 and 5
Table S2.1(5) (Interest rate derivative data)	Part (a) of Items 6, 8 and 10
Table S2.2(1) (Derivative Position Information – Common data)	Part (a) of Items 6, 8 and 15
Table S2.2(3) (Credit Derivative and Equity Derivative Data)	Part (a) of Items 1, 3 and 5
Table S2.2(5) (Interest rate derivative data)	Part (a) of Items 5, 7 and 9

**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

**Name Information** means Derivative Trade Data referred to in the following table:

Table in Rules	Items in Table
Table S2.1(1) (Derivative Transaction Information - Common data)	8, 11, 16, 20
Table S2.1(3) (Equity Derivative and Credit Derivative Data)	2, 4 and 6
Table S2.1(5) (Interest rate derivative data)	7, 9 and 11
Table S2.2(1) (Derivative Position Information – Common data)	7, 9 and 16
Table S2.2(3) (Credit Derivative and Equity Derivative Data)	2, 4 and 6
Table S2.2(5) (Interest rate derivative data)	6, 8 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;
- (s) Taiwan.

**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 *Commodity Exchange Act 1936 (US)*.

- (2) In this instrument, unless otherwise specified, capitalised terms have the meaning given by the Rules.

## Part 2—Exemption

### 5 Exemption 1 (Exchange-traded derivatives)

#### *Relief*

- (1) From 1 October 2015 to 30 September 2018, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules 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.
- (2) A Reporting Entity does not have to comply with subsection 907D(3) of the Act in relation to the condition in paragraph 7 of ASIC Instrument [14/0952].

#### *Condition*

- (3) A Reporting Entity that relies on the exemption in subsection (1) or (2) 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 1 October 2018; 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 1 October 2018 or such earlier date as the Reporting Entity starts to report its Reportable Transactions in the Exchange-Traded Derivative.

#### *Meaning of Relevant Financial Market*

- (4) For the purposes of the exemption in subsection (1), and subject to subsection (5), each of the following financial markets is a ***Relevant Financial Market***:
  - (a) BATS Options;
  - (b) Borsa Istanbul;
  - (c) Boston Options Exchange;
  - (d) BSE Limited (Bombay Stock Exchange);
  - (e) Bursa Malaysia - Bursa Malaysia Derivatives;

- (f) CEGH Gas Exchange of Vienna Stock Exchange;
- (g) Chicago Climate Futures Exchange;
- (h) Chicago Mercantile Exchange;
- (i) China Financial Futures Exchange;
- (j) Dalian Commodities Exchange;
- (k) Dubai Gold & Commodities Exchange;
- (l) Dubai Mercantile Exchange;
- (m) EDGX Exchange, Inc;
- (n) Electronic Liquidity Exchange operated by ELX Futures LP;
- (o) EPEX Spot SE;
- (p) European Climate Exchange;
- (q) European Energy Exchange;
- (r) European Exchange;
- (s) Hong Kong Exchange & Clearing Ltd;
- (t) HUPX Ltd Hungarian Power Exchange;
- (u) ICE Endex;
- (v) Jakarta Futures Exchange;
- (w) Johannesburg Stock Exchange;
- (x) Korea Exchange;
- (y) LSE Derivatives Market;
- (z) Mexican Derivatives Exchange;
- (aa) Minneapolis Grain Exchange;
- (bb) Montreal Climate Exchange;
- (cc) Montreal Exchange;
- (dd) Moscow Exchange MICEX-RTS (Moscow Exchange);
- (ee) Moscow Stock Exchange;
- (ff) NASDAQ OMX Armenia;

- (gg) NASDAQ OMX Iceland;
- (hh) NASDAQ OMX NLX;
- (ii) National Stock Exchange of India;
- (jj) New York Mercantile Exchange;
- (kk) New York Stock Exchange;
- (ll) New Zealand Exchange;
- (mm) Nodal Exchange;
- (nn) NYMEX Emissions;
- (oo) NYSE Amex LLC;
- (pp) NYSE Amex Option;
- (qq) NYSE Arca Europe;
- (rr) NYSE Arca;
- (ss) NYSE Brussels;
- (tt) NYSE LIFFE Amsterdam;
- (uu) NYSE LIFFE London;
- (vv) NYSE LIFFE Paris;
- (ww) OneChicago (Single stock futures);
- (xx) Oslo Bors;
- (yy) Power Exchange Central Europe;
- (zz) Powernext;
- (aaa) Shanghai Futures Exchange;
- (bbb) Singapore Commodity Exchange SGX-DT;
- (ccc) South African Futures Exchange (SAFEX), including SAFEX APD Agricultural Products as part of JSE Limited;
- (ddd) Taiwan Futures Exchange;
- (eee) Tel Aviv Stock Exchange Ltd;
- (fff) Thailand Futures Exchange as part of Stock Exchange of Thailand;



- (ggg) Tokyo Commodity Exchange;
  - (hhh) Tokyo Financial Exchange;
  - (iii) Turkish Derivatives Exchange.
- (5) A financial market is not a Relevant Financial Market if the financial market is a Regulated Foreign Market for the purposes of the Rules.

## 6 Exemption 2 (Entity Information)

### *Relief*

- (1) From 1 October 2015 to 30 September 2018, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that:
- (a) Rule 2.2.1 requires the Reporting Entity to report Entity Information about an entity (**Relevant Entity**) in relation to a Reportable Transaction or Reportable Position to a Trade Repository; and
  - (b) the Entity Information is not available for the Relevant Entity.

### *Where relief applies*

- (2) The exemption in subsection (1) applies where the Reporting Entity reports to the Trade Repository the internal entity identifier for the Relevant Entity used by the Reporting Entity.

## 7 Exemption 3 (Name Information)

### *Relief*

- (1) From 1 October 2015 to 30 September 2016, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Reporting Entity to report Name Information about an entity (**Relevant Entity**) in relation to a Reportable Transaction or Reportable Position to a Trade Repository.

### *Where relief applies*

- (2) The exemption in subsection (1) applies where the Reporting Entity reports to the Trade Repository an identifier for the Relevant Entity that is a Legal Entity Identifier (**LEI**), interim entity identifier, Designated Business Identifier or Business Identifier Code (**BIC Code**).

## 8 Exemption 4 (Privacy – Consent for historical counterparties)

### *Relief*

- (1) From 1 October 2015 to 30 September 2018, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule

requires the Reporting Entity to report Identifying Information in relation to a Historic Reportable Position to a Trade Repository, where at the time the Identifying Information is required to be reported:

- (a) the Reporting Entity has not obtained the express consent (***Consent***) of the counterparty (***Relevant Counterparty***) to which the Identifying Information relates to the Identifying Information being reported; and
- (b) the Reporting Entity is of the reasonable view that if the Reporting Entity reported the Identifying Information without obtaining the Consent, the Reporting Entity would breach:
  - (i) a duty of confidence owed by the Reporting Entity to the Relevant Counterparty which is actionable at law by the Relevant Counterparty; or
  - (ii) a contractual duty owed by the Reporting Entity to the Relevant Counterparty; or
  - (iii) a provision of a law or regulation of a foreign jurisdiction that applies to the Reporting Entity in its dealings with the Relevant Counterparty.

#### *Conditions*

- (2) The Reporting Entity must use all reasonable endeavours to obtain the Consent from the Relevant Counterparty as soon as reasonably practicable.
- (3) As soon as reasonably practicable after the Relevant Counterparty gives the Consent, the Reporting Entity must use all reasonable endeavours to report the Identifying Information to the Trade Repository to which the Historic Reportable Position was reported, unless the OTC Derivative the subject of the Historic Reportable Position has been terminated or has expired.
- (4) The Reporting Entity must, on written request by ASIC, provide ASIC with a document reporting on the Reporting Entity's reasonable endeavours to obtain the Consent from the Relevant Counterparty, 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.

#### *Exclusion*

- (5) The exemption in subsection (1) does not apply if the Reporting Entity has entered into one or more OTC Derivatives with the Relevant Counterparty on or after 1 January 2015.

#### *Definitions*

- (6) For the purposes of this section:

**Agency Agreement** means a legally binding agreement between the Relevant Counterparty and an Intermediary that has an Historic OTC Derivatives (Intermediary) Agreement with the Reporting Entity.

**Historic OTC Derivatives Agreement** means a legally binding agreement between the Relevant Counterparty and the Reporting Entity that was in place as at 31 May 2014, under which the Relevant Counterparty:

- (a) may enter into OTC Derivatives with the Reporting Entity; or
- (b) had entered into one or more OTC Derivatives with the Reporting Entity on or before 31 May 2014.

**Historic OTC Derivatives (Intermediary) Agreement** means a legally binding agreement between a person (the **Intermediary**) and the Reporting Entity that was in place as at 31 May 2014, under which the Intermediary:

- (a) may enter into OTC Derivatives with the Reporting Entity on behalf of other persons, pursuant to legally binding agreements between the Intermediary and those other persons; or
- (b) had entered into one or more OTC Derivatives with the Reporting Entity on behalf of other persons, on or before 31 May 2014.

**Historic Reportable Position** means a Reportable Position that was entered into:

- (a) before 1 January 2015; and
- (b) pursuant to:
  - (i) an Historic OTC Derivatives Agreement between the Relevant Counterparty and the Reporting Entity; or
  - (ii) 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 Reporting Entity through the Intermediary on or before 31 July 2014.

## 9 Exemption 5 (Privacy – Foreign privacy restrictions)

### *Relief*

- (1) From 1 October 2015 to 30 September 2016, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the 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 Reporting Entity is of the reasonable view that the Reporting Entity would breach a law or regulation of a Relevant Foreign Jurisdiction if the Reporting Entity reported the Identifying Information to the Trade Repository; and
- (b) the Reporting Entity has a written opinion of external legal counsel that supports the view referred to in paragraph (a); and
- (c) the 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.

#### *Conditions*

- (2) As soon as reasonably practicable after the Reporting Entity becomes reasonably satisfied that the Reporting Entity would no longer breach the law or regulation of the Relevant Foreign Jurisdiction if the Reporting Entity reported the Identifying Information to the Trade Repository, the 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.
- (3) The 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 (1)(b) in respect of the Relevant Foreign Jurisdiction.

## **10 Exemption 6 (Privacy – Identifying Information of Government Entities)**

### *Relief*

- (1) From 1 October 2015 to 30 September 2016, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Reporting Entity to report Identifying Information about a Government Entity 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, the Reporting Entity has not obtained the consent (***Consent***) of the Government Entity to the Identifying Information being reported.

### *Conditions*

- (2) Before relying on the exemption in subsection (1) the Reporting Entity must have given ASIC a written notice (an ***Opt-In Notice***) containing the following information:
  - (a) the name of the Reporting Entity;

- (b) each Prescribed Class for which the Reporting Entity intends to rely on the exemption;
  - (c) for each Government Entity in relation to which the Reporting Entity intends to rely on the exemption:
    - (i) the paragraph of the definition of **Government Entity** in subsection (6) which applies in relation to the Government Entity;
    - (ii) the geographic region where the Government Entity is located;
- Note: For example, the country or the continent in which the Government Entity is located.
- (d) the total number of Government Entities for which the Reporting Entity intends to rely on the exemption;
  - (e) the date from which the Reporting Entity intends to rely on the exemption, being a date no earlier than the date the Opt-In Notice is given to ASIC.
- (3) The Reporting Entity must give ASIC a replacement Opt-In Notice as soon as practicable after it becomes aware that the information in its most recent Opt-In Notice is no longer up to date.

Note: For example, if the Reporting Entity has obtained the Consent from a Government Entity covered by the Opt-In Notice, it will need to give ASIC a replacement Opt-In Notice.

- (4) The Reporting Entity must use all reasonable endeavours to obtain the Consent from the Government Entity, as soon as reasonably practicable.
- (5) As soon as reasonably practicable after the Government Entity gives the Consent:
  - (a) the 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
  - (b) must give ASIC written notice that the Government Entity has given the Consent.

#### *Definition of Government Entity*

- (6) For the purposes of this section, **Government Entity** means each of the following:
  - (a) a government;
  - (b) a sovereign wealth fund;

- (c) a central bank;
- (d) an agency of a government whose functions include managing public debt or providing funds for development or reconstruction purposes;
- (e) a financial institution of which:
  - (i) 2 or more countries; or
  - (ii) the governments of 2 or more countries; or
  - (iii) 2 or more agencies of the governments of 2 or more countries; are members.

## 11 Exemption 7 (Trade identifiers)

### *Relief*

- (1) From 1 October 2015 to 31 January 2016, a 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 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’.

### *Condition*

- (2) The Reporting Entity must report, for the Reportable Transaction:
  - (a) the trade identifier created by the Swap Execution Facility on which the Reportable Transaction was executed (if applicable); or
  - (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 subparagraphs (a) and (b) is not available, the internal trade identifier used by the Reporting Counterparty;

(each, a **Trade Identifier**) and must report the Trade Identifier otherwise in accordance with the Rules as if the Trade Identifier were information reported under paragraph 2.2.1(1)(a) or (c) of the Rules (as applicable).

## 12 Exemption 8 (Collateral Reporting)

### *Relief*

- (1) From 1 October 2015 to 30 October 2015, a Reporting Entity does not have to comply with subrules 2.2.1(1) or 2.2.2(1) of the Rules to the extent those subrules require the Reporting Entity to report:
  - (a) the Derivative Transaction Information in items 40-44 (collateral) of Table S2.1(1) of the Rules, or any changes to that information; or
  - (b) the Derivative Position Information in items 27-31 (collateral) of Table S2.2(1) of the Rules, or changes to that information;(each, *Collateral Information*).

### *Condition*

- (2) The Reporting Entity uses its best endeavours to comply with subrules 2.2.1(1) and 2.2.2(1) of the Rules in relation to reporting the Collateral Information.

## 13 Exemption 9 (FX Securities Conversion Transactions)

### *Relief*

From 1 October 2015 to 30 September 2016, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Reporting Entity to report a Reportable Transaction or Reportable Position in 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.

## 14 Exemption 1 to 9 – Other conditions (Record-keeping)

It is a condition of each exemption in this instrument that the Reporting Entity must:

- (a) keep records that enable the Reporting Entity to demonstrate it has complied with the conditions in subsections 5(3), 8(2) to (4), 9(2) and (3), 10(2) to (5), 11(2) and 12(2) (as applicable) of this instrument; and
- (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 written request by ASIC, provide ASIC with records or other information relating to compliance with or determining whether there has been compliance with the conditions referred to in paragraph (a), within the time specified in the request or if no time is specified, within a reasonable time.