

# ASIC Corporations (Derivative Transaction Reporting) Amendment Instrument 2015/0925

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Derivative Transaction Reporting) Amendment Instrument 2015/0925 (the **Legislative Instrument**) under paragraph 907D(2)(a) of the *Corporations Act 2001* (the **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 transaction rules. 'Derivative transaction rules' are rules made by ASIC under subsection 901A(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).

Under subsection 33(3) of the Acts Interpretations Act 1901 (as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

ASIC Corporations (Derivative Transaction Reporting) Amendment Instrument 2015/0925 amends ASIC Class Order [CO 14/0633] (**CO 14/0633**).

### 1. Background

On 9 July 2013, ASIC made the *ASIC Derivative Transaction Rules (Reporting) 2013 (Rules)*, implementing the over-the-counter 'OTC' derivative transaction reporting reforms agreed by the G20 leaders at the 2009 Pittsburgh summit.

The Rules provided for the implementation of reporting obligations in three phases for different types of reporting entities. 'Phase 1' and 'Phase 2' Reporting Entities have commenced reporting. Under existing relief in CO 14/0633, 'Phase 3' Reporting Entities are due to commence reporting in 2015 in two sub-phases: Phase 3A and Phase 3B. Phase 3B is due to commence reporting on 12 October 2015.

### 2. Purpose of the Legislative Instrument

The purpose of the Legislative Instrument is to amend CO 14/0633. The Legislative Instrument amends the date by which Phase 3B Reporting Entities must commence reporting from 12 October 2015 to 4 December 2015, or a date before 4 December 2015 if a Phase 3B Reporting

Entity determines to commence reporting for all Exempt Derivatives or some classes of Exempt Derivatives, before 4 December 2015.

The Legislative Instrument also makes some consequential changes to the Revised Position Reporting Date and the date by which valuations, collateral and barrier information needs to be reported in CO 14/0633, to take into account the changes to the Revised Transaction Reporting date for Phase 3B Reporting Entities.

### **3. Commencement of Legislative Instrument**

The Legislative Instrument commences on the day on which the instrument is registered under the *Legislative Instruments Act 2003*.

### **4. Consultation**

In making this Legislative Instrument, ASIC has consulted industry groups including the Financial Services Council (*FSC*), the Australian Financial Markets Association (*AFMA*), as well as interested market infrastructures and market participants. ASIC took into account the feedback provided by these bodies, together with ASIC's regulatory objectives, in the final terms of the Legislative Instrument.

### **5. Regulation Impact Statement**

A Regulation Impact Statement (*G-20 OTC derivatives trade reporting regime*) was prepared in relation to the Rules and approved by Office of Best Practice Regulation (*OBPR*). OBPR advised that no further Regulatory Impact Statement was required for CO 14/0633 because it assessed the proposal as having a minor impact on business. This Legislative Instrument extends a commencement date set out in CO 14/0633, again with a minor impact on business.

### **6. Detailed operation of the Instrument**

Attachment A provides a detailed explanation of the changes made to CO 14/0633 by this Legislative Instrument.

### **7. Statement of Compatibility with Human Rights**

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

## **ATTACHMENT A**

### **Paragraph 1 – Name of legislative instrument**

This paragraph provides that the title of the Legislative Instrument is the *ASIC Corporations (Derivative Transaction Reporting) Amendment Instrument 2015/0925*.

### **Paragraph 2 – Commencement**

This paragraph provides that the Legislative Instrument commences on the day it is registered on the Federal Register of Legislative Instruments.

### **Paragraph 3 – Authority**

This paragraph provides that the Instrument is made under subsection 907D(2)(a) of the Act.

### **Paragraph 4 – Amendments**

This paragraph provides that Schedule 1 amends CO 14/0633.

## **Schedule 1 - Amendments**

### **Item 1 - Table 1, last row, Column D**

Item 1 of Schedule 1 of the Legislative Instrument omits all the text in the last row of Column D of Table 1 of CO 14/0633, and substitutes

"Either:

- (a) 4 December 2015; or
- (b) A date before 4 December 2015 for all Exempt Derivatives, if a Phase 3B Reporting Entity determines to commence reporting on that earlier date for all Exempt Derivatives; or
- (c) A date before 4 December 2015 for a class of Exempt Derivatives if a Phase 3B Reporting Entity determines to commence reporting on that earlier date for a class of Exempt Derivatives."

This amendment extends the Revised Transaction Reporting date for Phase 3B Reporting Entities from 12 October 2015 to 4 December 2015, but allows a Phase 3B Reporting Entity to determine to commence reporting before 4 December 2015 for all Exempt Derivatives, or for a class of Exempt Derivatives.

### **Item 2 - Table 1, last row, Column E**

Item 2 of Schedule 1 of the Legislative Instrument omits the words "the Revised Transaction Reporting Date" and substitutes "4 December 2015". This amendment extends the Revised Position Reporting Date for Phase 3B Reporting Entities, to take into account the extension of the Revised Transaction Reporting Date amendment made by Item 1 of Schedule 1 of the Legislative Instrument. The extension of the Revised Position Reporting date gives all Phase 3B Reporting Entities a new Revised Position Reporting date as specified, irrespective of whether the Phase 3B Reporting Entity has determined to commence reporting on a date earlier than 4 December 2015.

### Item 3 – Paragraph 8

Item 3 of Schedule 1 of the Legislative Instrument amends paragraph 8 of CO 14/0633 by inserting, after "7 calendar months after the Revised Transaction Reporting Date", the words "for a Phase 3A Reporting Entity, and to the day before the first Monday that is a Business Day of the month that is 7 calendar months after 4 December 2015 for a Phase 3B Reporting Entity".

This amendment to CO 14/0633 extends the date by which a Phase 3B Reporting Entity needs to report 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) of Table S2.1(1) of the Rules. The extension is to a date that is 7 calendar months after 4 December 2015 for a Phase 3B Reporting Entity.

## **ATTACHMENT B – Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.*

### ***ASIC Corporations (Derivative Transaction Reporting) Amendment Instrument 2015/0925***

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

#### **1. Overview of the Legislative Instrument**

On 9 July 2013, ASIC made the *ASIC Derivative Transaction Rules (Reporting) 2013 (Rules)*, implementing the over-the-counter 'OTC' derivative transaction reporting reforms agreed by the G20 leaders at the 2009 Pittsburgh summit.

The Rules provided for the implementation of reporting obligations in three phases for different types of reporting entities. 'Phase 1' and 'Phase 2' Reporting Entities have commenced reporting. Under existing relief in Class Order [CO 14/0633], 'Phase 3' Reporting Entities are due to commence reporting in 2015 in two sub-phases: Phase 3A and Phase 3B. Phase 3B is due to commence reporting on 12 October 2015.

*ASIC Corporations (Derivative Transaction Reporting) Amendment Instrument 2015/0925 (the **Legislative Instrument**)*, made by ASIC under paragraph 907D(2)(a) of the *Corporations Act 2001*, amends ASIC Class Order [CO 14/0633].

The Legislative Instrument amends the date by which Phase 3B Reporting Entities must commence reporting from 12 October 2015 to 4 December 2015, or a date before 4 December 2015 if a Phase 3B Reporting Entity determines to commence reporting for all Exempt Derivatives or some classes of Exempt Derivatives, before 4 December 2015.

The Legislative Instrument also makes some consequential changes to the Revised Position Reporting Date and the date by which valuations, collateral and barrier information needs to be reported in CO 14/0633, to take into account the changes to the Revised Transaction Reporting date for Phase 3B Reporting Entities.

#### **2. Human rights implications**

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

#### **3. Human rights implications**

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