

---

# ASIC Corporations (Amendment) Instrument 2016/0030

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Amendment) Instrument 2016/0030 (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 *ASIC Derivative Transaction Rules (Reporting) 2013 (Rules)*.

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.

The Legislative Instrument amends *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 (Instrument 2015/844)*.

### 1. Background

In July 2013, ASIC, acting with the consent of the Minister under section 901K of the Act, made the Rules. Unless explained otherwise, capitalised terms used in this Explanatory Statement have the meaning given by the Rules.

The Rules impose reporting requirements in relation to OTC Derivatives on ‘Reporting Entities’.

Under Rule 2.2.1 of the Rules, ‘Reporting Entities’ are required to report information about their Derivative Transactions in ‘OTC Derivatives’ (referred to in the Rules as ‘Reportable Transactions’), and positions (referred to in the Rules as ‘Reportable Positions’) in relation to OTC Derivatives, to a Licensed Repository or a Prescribed Repository. These requirements are referred to in the Rules as the ‘Reporting Requirements’.

ASIC has previously granted time-limited exemptions (**Phase 1 Exemptions**) to each of the Phase 1 Reporting Entities to facilitate their transition into the derivatives trade reporting regime.<sup>1</sup>

---

<sup>1</sup> See ASIC Instruments [13-1173], [13-1175], [13-1176], [13-1177] and [13-1178] published in the ASIC Gazette on 1 October 2013 and varied by ASIC Instrument [14/0232] published in the ASIC Gazette on 1 April 2014.

---

ASIC has also previously granted time-limited transitional exemptions (*Phase 2 Exemptions*) to all Phase 2 Reporting Entities.<sup>2</sup> Phase 2 entities commenced reporting credit and interest rate derivatives on 1 April 2014, and commenced reporting the remaining asset classes (equity derivatives, foreign exchange derivatives and commodity derivatives that are not electricity derivatives) on 1 October 2014.

In September 2014, ASIC provided further time-limited exemptive relief extending elements of the Phase 1 Exemptions and Phase 2 Exemptions through a legislative instrument applying to all Reporting Entities, ASIC Instrument [14/0952] (*All Reporting Entity Exemptions*).<sup>3</sup> The majority of the relief under ASIC Instrument [14/0952] expired on 30 September 2015.

In September 2015, ASIC provided further time-limited exemptive relief extending elements of the All Reporting Entity Exemptions through a legislative instrument applying to all Reporting Entities, Instrument 2015/844. ASIC also issued a Repealing Legislative Instrument that repealed ASIC Instrument [14/0952] given that the relief in ASIC Instrument [14/0952] was superseded by the relief in ASIC Instrument 2015/844.

Many of the underlying issues which the relief in ASIC Instrument 2015/844 sought to address are continuing issues. The Legislative Instrument provides continued time-limited exemptive relief for the industry in relation to the reporting of a 'universal transaction identifier' or a 'single transaction identifier', acknowledging that the establishment of a globally consistent format for such identifiers is an issue that will be resolved at an international level and is outside the control of any one Reporting Entity.

## **2. Purpose of the Legislative Instrument**

Among other things, ASIC Instrument 2015/844 provided exemptive relief (*identifier reporting relief*) from the requirement to report a trade identifier that is a 'universal transaction identifier' or a 'single transaction identifier', where the Reporting Entity reports other specified identifiers. This relief was originally to expire on 31 January 2016.

The purpose of the Legislative Instrument is to amend ASIC Instrument 2015/844 to extend the trade identifier reporting relief under ASIC Instrument 2015/844 until 31 January 2017, in light of ongoing implementation issues.

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

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

## **4. Consultation**

In making this Legislative Instrument, ASIC has consulted industry groups including the the Australian Financial Markets Association (*AFMA*), and the International Swaps and Derivatives Association (*ISDA*). The members of the industry working groups are current or prospective Reporting Entities, including Phase 1, Phase 2 and Phase 3 Reporting Entities. ASIC took into account the feedback provided by these bodies, together with ASIC's regulatory objectives, in the final terms of the Legislative Instrument.

---

<sup>2</sup> See ASIC Instrument [14/0234], registered on the Federal Register of Legislative Instruments (FRLI)..

<sup>3</sup> See ASIC Instrument [14/0952], registered on FRLI.

---

## **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 (RIS) was required for ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 because it assessed the proposal as having a minor impact on business. OBPR has advised that no further RIS is required for this Legislative Instrument as it extends a commencement date set out in ASIC Instrument 2015/844, again with a minor impact on business.

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

Attachment A provides a detailed explanation of the changes made to ASIC Instrument 2015/844 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 – Provision-by-provision description of the legislative instruments**

Capitalised terms used in this Attachment have the same meaning as in the Rules.

### **Legislative Instrument**

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

This paragraph provides that the title of the Legislative Instrument is the *ASIC Corporations (Amendment) Instrument 2016/0030*.

#### **Paragraph 2 – Commencement**

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

#### **Paragraph 3 – Authority**

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

#### **Paragraph 4 – Amendments**

This paragraph provides that Schedule 1 amends ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844.

### **Schedule 1 - Amendments**

#### **Item 1 – Paragraph 11, subsection (1)**

Item 1 of Schedule 1 of the Legislative Instrument amends paragraph 11, subsection (1) of Instrument 2015/844 by omitting the words "31 January 2016" and substituting "31 January 2017".

This amendment to Instrument 2015/844 extends the period by which 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'. The extension in the Legislative Instrument is for a period of 12 months, to 31 January 2017.

---

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

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

### ***ASIC Corporations (Amendment) Instrument 2016/0030***

The ASIC *Corporations (Amendment) Instrument 2016/0030* (the **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**

In July 2013, ASIC, acting with the consent of the Minister under section 901K of the Act, made the *ASIC Derivative Transaction Rules (Reporting) 2013 (Rules)*. The Rules impose reporting requirements in relation to OTC Derivatives on ‘Reporting Entities’.

Under Rule 2.2.1 of the Rules, ‘Reporting Entities’ are required to report information about their Derivative Transactions in ‘OTC Derivatives’ (referred to in the Rules as ‘Reportable Transactions’), and positions (referred to in the Rules as ‘Reportable Positions’) in relation to OTC Derivatives, to a Licensed Repository or a Prescribed Repository.

ASIC has previously granted time-limited exemptions (**All Reporting Entity Exemptions**) to Reporting Entities to facilitate their transition into the derivatives trade reporting regime

In September 2015, ASIC provided time-limited exemptive relief extending elements of the All Reporting Entity Exemptions through a legislative instrument applying to all Reporting Entities, *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 (Instrument 2015/844)*. Among other things, Instrument 2015/844 provides transitional time-limited exemptive relief (**identifier reporting relief**) from the requirement for a Reporting Entity to report a trade identifier that is a ‘universal transaction identifier’ or a ‘single transaction identifier’, where the Reporting Entity reports other specified identifiers.

The Legislative Instrument amends Instrument 2015/844 by extending the identifier reporting relief for a period of 12 months, to 31 January 2017.

#### **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.