

ASIC Corporations (Derivative Transaction Clearing Exemption) Instrument 2016/258

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes the *ASIC Corporations (Derivative Transaction Clearing Exemption) Instrument 2016/258* (the **Legislative Instrument**) under paragraph 907D(2)(c) of the *Corporations Act 2001 (Act)*.

Under paragraph 907D(2)(c) of the Act, ASIC may exempt a person or class of persons from all or specified provisions of the *ASIC Derivative Transaction Rules (Clearing) 2015 (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.

1. Background

In December 2015, 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 clearing requirements in relation to certain 'Clearing Transactions'.

Under Rule 2.1.1 of the Rules, 'Clearing Entities' are required to ensure that each of their Clearing Transactions is Cleared Through a Clearing Facility as soon as reasonably practicable after a Clearing Transaction is entered into.

2. Purpose of the Legislative Instrument

The purpose of the Legislative Instrument is to provide transitional exemptive relief from the Clearing Requirements under the Rules in relation to swaptions containing embedded options over Clearing Derivatives. The relief applies to swaptions that have been entered before commencement of the Rules on 4 April 2016.

The Legislative Instrument is described in more detail in [Attachment A](#).

3. Commencement of Legislative Instrument

The Legislative Instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

4. Consultation

Consultation on Legislative Instrument

ASIC consulted on the Legislative Instrument through discussions and correspondence with several Clearing Entities, the International Swaps and Derivatives Association (*ISDA*) and the Australian Financial Markets Association (*AFMA*).

5. Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared in relation to the Rules and approved by the Office of Best Practice Regulation (OBPR). An amended RIS has been prepared to take account of the relief granted by the Legislative Instrument and the amended RIS has been approved by OBPR.

The Legislative Instrument substantially reduces the short-term regulatory impact of the Rules on Clearing Entities and is consistent with the clearing treatment of OTC Derivatives of a similar nature in the US and Europe. The impact on ASIC's regulatory objectives is considered to be minimal.

6. 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

Section 1 – Name of legislative instrument

This section provides that the title of the instrument is the *ASIC Corporations (Derivative Transaction Clearing Exemption) Instrument 2016/258*.

Section 2 – Commencement

This section provides that the instrument commences on the day after it is registered of the Federal Register of Legislation.

Section 3 - Authority

This section provides that ASIC makes the instrument under paragraph 907D(2)(c) of the Act.

Section 4 - Definitions

Section 4 of the instrument provides for definitions of terms used in the instrument.

Sections 5– Exemption 1 (Swaption)

Section 5 of the instrument provides that Rule 2.1.1 of the Rules does not apply to a Clearing Transaction that is the entry into a Clearing Derivative where:

- (a) the Clearing Derivative was entered into as a result of a party to a Swaption exercising the option granted to the party under the Swaption; and
- (b) the Swaption was entered into before 4 April 2016.

ATTACHMENT B – Statement of Compatibility with Human Rights

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

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The above 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

The *ASIC Corporations (Derivative Transaction Clearing Exemption) Instrument 2016/0258* (the **Legislative Instrument**), made by ASIC under paragraph 907D(2)(c) of the *Corporations Act 2001* (the **Act**), provides transitional exemptive relief from the clearing requirements under the *ASIC Derivative Transaction Rules (Clearing) 2015* (the **Rules**).

The Rules impose requirements (referred to in the Rules as 'Clearing Requirements') on 'Clearing Entities' to ensure their 'Clearing Transactions' are Cleared Through a Clearing Facility as soon as reasonably practicable after the Clearing Transaction is entered into.

The purpose of the Legislative Instrument is to provide limited transitional exemptive relief from the Clearing Requirements under the Rules in relation to swaptions containing embedded options over Clearing Derivatives. The relief applies to swaptions that have been entered before the commencement of the Rules on 4 April 2016.

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 as it does not raise any human rights issues.