
ASIC Corporations (Amendment) Instrument 2016/913

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 2016/913 (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 the *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844* (the *Exemption Instrument*).

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.¹

¹ 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.²

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*).³ 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 therefore provides continued time-limited exemptive relief for the industry for a number of issues where the relief was originally to expire on 30 September 2016, acknowledging that these issues are issues that will be resolved at an international level and are outside the control of any one Reporting entity.

2. Purpose of the Legislative Instrument

The purpose of the Legislative Instrument is to amend the Exemption Instrument to extend some elements of the existing relief under the Exemption Instrument, to address ongoing implementation issues.

Broadly, the Legislative Instrument extends the transitional time-limited exemptive relief provided under the Exemption Instrument in the following areas:

- relief from reporting the legal names of entities. We are providing such relief because technological limitations at the Licensed Repository may prevent such reporting;
- relief from reporting of identity information (names and identifiers) in relation to counterparties and beneficiaries of OTC derivatives, where such reporting would breach a foreign law or regulation, an actionable duty of confidence owed to the client, or a contractual duty owed to the client; and
- relief from reporting of certain OTC Derivatives known as 'Foreign Exchange Security Conversion Transactions'.

3. Commencement of Legislative Instrument

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

4. Consultation

In making this Legislative Instrument, ASIC has consulted industry groups including the Australian Financial Markets Association (*AFMA*), Global Financial Market Association (*GFMA*) 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

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

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

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.

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 number of commencement dates 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 2016/913*

Paragraph 2 – Commencement

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

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 7, subsection (1)

Item 1 of Schedule 1 of the Legislative Instrument amends paragraph 7, subsection (1) of the Exemption Instrument by omitting the words "30 September 2016" and substituting "30 September 2018".

This amendment to the Exemption Instrument extends the period by which 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, in the case 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***). The extension in the Legislative Instrument is for a period of 24 months, to 30 September 2018.

Item 2 – Paragraph 9, subsection (1)

Item 2 of Schedule 1 of the Legislative Instrument amends paragraph 9, subsection (1) of the Exemption Instrument by omitting the words "30 September 2016" and substituting "31 December 2018".

This amendment to the Exemption Instrument extends the period by which 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 in certain circumstances. The extension in the Legislative Instrument is for a period of 27 months, to 31 December 2018.

Item 3 – Paragraph 13

Item 3 of Schedule 1 of the Legislative Instrument amends paragraph 13 of the Exemption Instrument by omitting the words "30 September 2016" and substituting "30 September 2018".

This amendment to the Exemption Instrument extends the period by which 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.

The extension in the Legislative Instrument is for a period of 24 months, to 30 September 2018.

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 (Amendment) Instrument 2016/913* (the **Legislative Instrument**), made by ASIC under paragraph 907D(2)(a) of the *Corporations Act 2001* (the **Act**), amends the *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844* (the **Exemption Instrument**).

The Exemption Instrument was made on 21 September 2015 and provided time-limited exemptive relief from the requirement, imposed on 'Reporting Entities' under Rule 2.2.1 of the *ASIC Derivative Transaction Rules (Reporting) 2013* (the **Rules**), to report information about transactions and positions in 'OTC Derivatives' to a Licensed Repository or a Prescribed Repository.

Among other things, the Exemption Instrument provided transitional time-limited exemptive relief from the requirement for a Reporting Entity to report information in relation to the following areas:

- relief from reporting the legal names of entities. We are providing such relief because technological limitations at the Licensed Repository may prevent such reporting;
- relief from reporting of identity information (names and identifiers) in relation to counterparties and beneficiaries of OTC derivatives, where such reporting would breach a foreign law or regulation, an actionable duty of confidence owed to the client, or a contractual duty owed to the client; and
- relief from reporting of certain OTC Derivatives known as 'Foreign Exchange Security Conversion Transactions'.

The Legislative Instrument amends the Exemption Instrument by extending the reporting relief in relation to the reporting of legal names of entities and Foreign Exchange Security Conversion Transactions for a period of 24 months, to 30 September 2018. The Legislative Instrument also amends the Exemption Instrument by extending the reporting relief in relation to the reporting of identity information for a period of 27 months, to 31 December 2018.

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.