
ASIC Corporations (Amendment) Instrument 2018/172

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 **2018/172** (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 (refer ASIC Instruments [13/1173], [13/1175], [13/1176] and [13/1178]).

ASIC has also previously granted time-limited transitional exemptions (*Phase 2 Exemptions*) to all Phase 2 Reporting Entities (refer ASIC Instrument [14/0234]).

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*). 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].

Among other things, the Exemption Instrument 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. The relief was granted because Reporting Entities were experiencing issues implementing the requirement. The relief was originally due to expire on 31 January 2016.

In January 2016, ASIC issued ASIC Corporations (Amendment and Repeal) Instrument 2016/0043 (ASIC Instrument 2016/0043) which amended the Exemption Instrument to extend the Identifier Reporting Relief under the Exemption Instrument until 31 January 2017, in light of ongoing implementation issues.

In January 2017, ASIC issued ASIC Corporations (Amendment) Instrument 2017/0036 (ASIC Instrument 2017/0036) which amended the Exemption instrument to extend the Identifier Reporting Relief under the Exemption Instrument until 30 September 2017, in light of ongoing implementation issues, and acknowledging that the establishment of a globally consistent format for such identifiers, including the implementation of guidance on a universal transaction from global standard setting bodies, such as the Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO), is an issue that will be resolved at an international level and is outside the control of any one Reporting Entity.

In September 2017, ASIC issued ASIC Corporations (Amendment) Instrument 2017/861 (ASIC Instrument 2017/861) which amended the Exemption instrument to extend the Identifier Reporting Relief under the Exemption Instrument until 31 March 2018, due to the need for clarifications at the international level, particularly with regards to the implementation of unique transaction identifier requirements into trade reporting regimes in global jurisdictions.

In December 2017 the Financial Stability Board (FSB) published a paper on governance arrangements for the Unique Transaction Identifier, together with a recommended implementation plan for the recommended governance arrangements. Following the publication of the paper by the FSB, ASIC liaised with certain global regulators, particularly in the APAC region, and certain industry groups in relation to implementation considerations. Following those discussions, ASIC has determined that a further twenty four month extension to the relief provided by the Exemption Instrument is appropriate. Accordingly, the Legislative Instrument therefore provides continued time-limited Identifier Reporting Relief for the industry which was scheduled to expire on 31 March 2018, providing sufficient time to permit finalisation of governance arrangements and implementation requirements associated with the requirement to report a trade identifier that is a 'universal transaction identifier' or a 'single transaction identifier', which the relief in the Exemption Instrument sought to address..

2. Purpose of the Legislative Instrument

The purpose of the Legislative Instrument is to amend the Exemption Instrument to extend the Identifier Reporting relief under the Exemption instrument until 31 March 2020 to address implementation issues.

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

- relief from the requirement to report a trade identifier that is a 'universal transaction identifier' or 'single transaction identifier', where the Reporting Entity reports other specified identifiers.

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 consulted industry groups including 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.

5. Regulation Impact Statement

No Regulation Impact Statement (*RIS*) was prepared in relation to the Legislative Instrument since the change is minor or machinery in nature and does not substantially alter existing arrangements.

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 the Exemption Instrument because it assessed the proposal as having a minor impact on business. OBPR advised that no further RIS was required for the Legislative Instrument as it extends a commencement date set out in the Exemption Instrument, again with a minor impact on business.

6. Detailed operation of the Instrument

Attachment A provides a detailed explanation of the operation of the changes made to the Exemption Instrument 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

Section 1 – Name of legislative instrument

This section provides that the title of the Legislative Instrument is *ASIC Corporations (Amendment) Instrument 2018/172*.

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Amendments

Subsection 4(1) provides that Schedule 1 amends ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844.

Schedule 1 - Amendments

Item 1–Subsection 11(1) of the Exemption Instrument

Item 1 of Schedule 1 to the Legislative Instrument amends subsection 11(1) of the Exemption Instrument by omitting the words "31 March 2018" and substituting "31 March 2020".

The exemptive relief in subsection 11(1) of the Exemption Instrument provides that 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 a trade identifier that is a 'universal transaction identifier' or a 'single transaction identifier', where the Reporting Entity reports other specified identifiers. The extension is for a period of twenty four months, to 31 March 2020.

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 2018/172

The *ASIC Corporations (Amendment) Instrument 2018/172* (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

The *ASIC Corporations (Amendment) Instrument 2018/172* (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 provides 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. The relief was granted because Reporting Entities were experiencing issues implementing the requirement. The relief was due to expire on 31 March 2018.

The Legislative Instrument amends the Exemption Instrument to extend the Identifier Reporting Relief under the Exemption Instrument for a period of twenty four months until 31 March 2020, in light of ongoing implementation issues and 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. 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.