



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Amendment) Instrument 2019/958

I, Nathan Bourne, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated 1 October 2019

Nathan Bourne

Contents

Part 1—Preliminary	3
1 Name of legislative instrument	3
2 Commencement	3
3 Authority	3
4 Schedule	3
Schedule 1—Amendments	4
ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844	4

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Amendment) Instrument 2019/0958*.

2 Commencement

This instrument commences on 1 October 2019.

Note: This instrument will be registered on the Federal Register of Legislation. The register may be accessed at www.comlaw.gov.au.

3 Authority

This instrument is made under paragraph 907D(2)(a) of the *Corporations Act 2001*.

4 Schedule

The instrument specified in Schedule 1 to this instrument is amended as set out in Schedule 1.

Schedule 1—Amendments

ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844

1 After subsection 6(1)

(1A) From the day after the Exemption End Date, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that:

- (a) Rule 2.2.1 requires the Reporting Entity to report Entity Information about an entity (the **Relevant Entity**) in relation to a Reportable Transaction or a Reportable Position to a Trade Repository;
- (b) the Reportable Transaction or Reportable Position relates to an OTC Derivative entered into on or before the Exemption End Date; and
- (c) the Entity Information is not available for the Relevant Entity.

(1B) From the day after the Exemption End Date, a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that:

- (a) Rule 2.2.1 requires the Reporting Entity to report Entity Information about an entity (**Relevant Entity**) in relation to a Reportable Transaction or Reportable Position to a Trade Repository;
- (b) the Relevant Entity is not a Reporting Entity referred to in column 2 of Table S1.1 of the Rules;
- (c) the Reportable Transaction or Reportable Position relates to an OTC Derivative entered into after the Exemption End Date; and
- (d) the Entity Information is not available for the Relevant Entity.

2 Subsection 6(1A)

Renumber as subsection 6(1C)

Omit “subsection (1)”, substitute “subsections (1), (1A) and (1B)”.

3 Subsection 6(2)

Omit “The exemption in subsection (1) applies”, substitute “The exemptions in subsections (1), (1A) and (1B) apply”.

4 Subsection 6(3)

Omit “The”, substitute “It is a condition of the exemptions in subsections (1) and (1A) that the”.

5 After subsection 6(3)

Insert:

(3A) It is a condition of the exemption in subsection (1B) that the Reporting Entity must use its best efforts to obtain the Entity Information as soon as reasonably practicable, including by maintaining and following documented procedures for one or both of the following:

- (a) requiring the Relevant Entity to:
 - (i) apply for the issue of Entity Information within 2 Business Days after the requirement to report the Entity Information arises, unless an application for the issue of Entity Information in relation to the Relevant Entity has already been made; and
 - (ii) provide the Entity Information to the Reporting Entity as soon as reasonably practical after it is issued to the Relevant Entity; or
- (b) apply for the issue of Entity Information on behalf of the Relevant Entity within 2 Business Days after the requirement to report the Entity Information arises, unless an application for the issue of Entity Information in relation to the Relevant Entity has already been made.

6 Subsection 6(5)

Omit “subsections (3) and (4)”, substitute “subsection (3) or (3A) (as applicable) and subsection (4)”.

7 After subsection 6(6)

Insert:

Exclusion

- (7) The exemption in subsection (1B) ceases to apply in relation to a Reporting Entity and a Relevant Entity if:
- (a) Rule 2.2.1 requires the Reporting Entity to report Entity Information in relation to the Relevant Entity after the Exemption End Date in relation to an OTC Derivative entered into after the Exemption End Date; and
 - (b) an application for the issue of Entity Information in relation to the Relevant Entity has not been made within 2 Business Days after the requirement to report the Entity Information arises.

8 After section 6

6A Exemption 2A (Reference Entity Information)

Relief

- (1) A Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule 2.2.1 requires the Reporting Entity to report the information in paragraph (a) of item 5 of Table S2.1(3) in the Rules (***Reference Entity Information***) about an entity (***Reference Entity***) in relation to a Reportable Transaction or Reportable Position to a Trade Repository.

Where relief applies

- (2) The exemption in subsection (1) applies where:
 - (a) the Reportable Transaction or Reportable Position relates to an OTC Derivative that is a credit default swap or a total return swap; and
 - (b) the Reporting Entity reports to the Trade Repository the CDS Reference Entity Database code (also known as a “RED code”) issued by IHS Markit for the Reference Entity.

6B Exemption 2B (Joint Counterparties)

Relief

- (1) A Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that.
 - (a) Rule 2.2.1 requires the Reporting Entity to report Entity Information about an entity (***Relevant Entity***) in relation to a Reportable Transaction or a Reportable Position to a Trade Repository;
 - (b) the Relevant Entity is comprised of two or more counterparties that entered into the OTC Derivative the subject of the Reportable Transaction or Reportable Position as joint or joint and several counterparties; and
 - (c) Entity Information is not available for the Relevant Entity.

Where relief applies

- (2) The exemption in subsection (1) applies where the Reporting Entity reports to the Trade Repository the internal entity identifier for the Relevant Entity used by the Reporting Entity.

Conditions

- (3) The Reporting Entity must maintain records of the counterparties that comprise the joint or joint and several counterparties to the OTC Derivative, and must be able to link those counterparties to the internal entity identifier reported by the Reporting Entity to the Trade Repository.
- (4) The Reporting Entity must, on written request by ASIC, provide ASIC with a written statement reporting on the Reporting Entity's compliance with the condition in subsection (3) during the period specified in the request.
- (5) The Reporting Entity must, on written request by ASIC, provide ASIC with a written statement identifying the counterparties that comprise the joint or joint and several counterparties that are linked to an internal entity identifier that has been reported by the Reporting Entity to the Trade Repository.
- (6) The Reporting Entity must provide a written statement under subsection (4) or (5) within the time specified in the written request by ASIC or, if no time is specified, within a reasonable time.