



**ASIC**  
Australian Securities &  
Investments Commission

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## **ASIC Derivative Transaction Rules (ADI Foreign Subsidiaries) Class Exemption 2021/51**

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

Date            11 February 2021

Nathan Bourne

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## Part 1—Preliminary

### 1 Name of legislative instrument

This is the *ASIC Derivative Transaction Rules (ADI Foreign Subsidiaries) Class Exemption 2021/51*.

### 2 Commencement

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

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

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

### 4 Definitions

(1) In this instrument:

**Effective Date** has the meaning given by section 7.

**Opt-In Class** has the meaning given by section 7.

**Opt-In Notice** has the meaning given by section 7.

**Relevant Reporting Entity** means a foreign subsidiary of an Australian Entity where that Australian Entity is an Australian ADI.

**Rules** means the *ASIC Derivative Transaction Rules (Reporting) 2013*.

**Withdrawal Effective Date** has the meaning given by section 7.

**Withdrawal Notice** has the meaning given by section 7.

(2) In this instrument capitalised terms that are not otherwise defined have the meaning given by the Rules.

## Part 2—Exemption

### 5 Reportable Transactions and Reportable Positions not booked to the profit or loss account of a branch located in this jurisdiction

(1) A Relevant Reporting Entity does not have to comply with subrule 2.2.1(1) of the Rules to the extent that subrule requires the Relevant Reporting Entity to report a Reportable Transaction or Reportable Position

that is not booked to the profit or loss account of a branch of the Relevant Reporting Entity located in this jurisdiction.

- (2) A Relevant Reporting Entity does not have to comply with rule 2.2.2 of the Rules to the extent that rule requires the Relevant Reporting Entity to report changes to information about a Reportable Transaction or Reportable Position that is not booked to the profit or loss account of a branch of the Relevant Reporting Entity located in this jurisdiction.

## 6 Where Exemption applies

The exemption in section 5 applies to a Relevant Reporting Entity in relation to an Opt-In Class from the Effective Date specified in an Opt-In Notice given by the Relevant Reporting Entity in accordance with subsection 7(1) in relation to that Opt-In Class, until the Withdrawal Effective Date specified in the Withdrawal Notice (if any) given in accordance with subsection 7(2) in relation to that Opt-In Class.

## 7 Opt-In to and Withdrawal from Exemption

- (1) A Relevant Reporting Entity may give to ASIC a written notice (an **Opt-In Notice**) setting out all of the following:
  - (a) the name of the Relevant Reporting Entity;
  - (b) the Prescribed Class or Prescribed Classes (each, an **Opt-In Class**) for which the Relevant Reporting Entity is giving the Opt-In Notice;
  - (c) the date (**Effective Date**) from which the Relevant Reporting Entity will rely on the exemption in section 5 in relation to each Opt-In Class named in the Opt-In Notice, being a date no earlier than the date the Opt-In Notice is given to ASIC.

Note: The Prescribed Classes as at the date of this instrument are commodity derivatives that are not electricity derivatives, credit derivatives, equity derivatives, foreign exchange derivatives and interest rate derivatives.

- (2) A Relevant Reporting Entity that has given an Opt-In Notice under subsection 7(1) may withdraw the Opt-In Notice in relation to one or more Opt-In Classes, by giving to ASIC a written notice (the **Withdrawal Notice**) setting out all of the following:
  - (a) the name of the Relevant Reporting Entity;
  - (b) the name of each Opt-In Class for which the Relevant Reporting Entity is giving the Withdrawal Notice;
  - (c) the date (**Withdrawal Effective Date**) from which the Relevant Reporting Entity will cease to rely on the exemption in section 5 in relation to each Opt-In Class named in the Withdrawal Notice, being

a date not less than 30 calendar days from the date the Withdrawal Notice is given.

## 8 Conditions of Exemption

*Requirement to report certain transactions having a certain geographic nexus with Australia (“sales or trader basis”)*

- (1) Subject to subsection 8(3), a Relevant Reporting Entity to which the exemption in section 5 applies must, commencing from the Effective Date specified in the Opt-In Notice in relation to the Opt-In Class, report Derivative Transaction Information about each of the following Derivative Transactions in the Opt-In Class (each, a ***Nexus Transaction***) that was entered into in this jurisdiction and not booked to the profit or loss account of a branch of the Relevant Reporting Entity located in this jurisdiction, as if the Nexus Transaction was a Reportable Transaction under the Rules:
  - (a) the entry into of an arrangement that is an OTC Derivative (***Nexus Derivative***) to which the Relevant Reporting Entity is a counterparty, where:
    - (i) one or more of the following functions in relation to the OTC Derivative:
      - (A) determining the price, level, rate or other economic terms (collectively, ***Terms***) on which the Relevant Reporting Entity is willing to enter into the OTC Derivative, including by determining the proposed Terms or range of proposed Terms which may be communicated to the proposed counterparty or agreeing the final Terms on which the Relevant Reporting Entity will enter into the OTC Derivative with the proposed counterparty;
      - (B) communicating to the proposed counterparty one or more of the Terms on which the Relevant Reporting Entity is willing to enter into the OTC Derivative
      - (C) offering to enter into the OTC Derivative with the proposed counterparty or inviting the proposed counterparty to offer to enter into the OTC Derivative with the Relevant Reporting Entity;
      - (D) agreeing to enter into the OTC Derivative with the proposed counterparty;
      - (E) managing the financial risk arising from the OTC Derivative;

is, or in the case of the function referred to in sub-subparagraph (E), will be, performed on behalf of the Relevant Reporting Entity by a person who is:

- (F) ordinarily resident or employed in this jurisdiction; or
- (G) acting as part of a desk, office or branch of
  - (I) the Relevant Reporting Entity; or
  - (II) an entity that is an associate of the Relevant Reporting Entity;

where that desk, office or branch is located in this jurisdiction;

- (ii) if the OTC Derivative was executed through an automated electronic trading facility, one or more of the functions referred to in sub-subparagraphs (i)(A) and (E) in relation to the OTC Derivative is, or in the case of the function referred to in sub-subparagraph (E), will be, performed on behalf of the Relevant Reporting Entity by a person who is:

- (A) ordinarily resident or employed in this jurisdiction; or
- (B) acting as part of a desk, office or branch of:
  - (I) the Relevant Reporting Entity; or
  - (II) an entity that is an associate of the Relevant Reporting Entity;

where that desk, office or branch is located in this jurisdiction;

- (b) the modification or termination of an arrangement that is a Nexus Derivative;
- (c) the assignment, by a party to an arrangement that is a Nexus Derivative, of some or all of the party's rights and obligations under the arrangement, where the Relevant Reporting Entity has actual knowledge of the assignment.

*Requirement to report changes to outstanding positions*

- (2) Subject to subsection 8(3), a Relevant Reporting Entity to which the exemption in section 5 applies must, commencing from the Effective Date specified in the Opt-In Notice in relation to an Opt-In Class, report the following changes in information in accordance with rule 2.2.2 of the Rules about each outstanding position (***Nexus Position***) in a Nexus Derivative in the Opt-In Class as at the Effective Date that was entered

into in this jurisdiction and not booked to the profit or loss account of a branch of the Relevant Reporting Entity located in this jurisdiction:

- (a) where the Nexus Position was reported as a Reportable Position, changes to Derivative Position Information in relation to the Nexus Position; and
- (b) where the Nexus Position was reported as a Reportable Transaction, changes to the Derivative Transaction Information in relation to the Nexus Position.

*Exception for alternative reporting*

- (3) A Relevant Reporting Entity to which the exemption in section 5 applies is not required to comply with the conditions in subsection 8(1) and subsection 8(2) that would otherwise apply to the Relevant Reporting Entity in relation to a Nexus Transaction or Nexus Position, if, at the time the Relevant Reporting Entity would otherwise be required to comply with the condition:
  - (a) the Relevant Reporting Entity is subject to reporting requirements (***Alternative Reporting Requirements***) in one or more foreign jurisdictions (each, a ***Foreign Jurisdiction***) that are substantially equivalent to the Reporting Requirements under the Rules and that cover OTC derivatives of the same Prescribed Class as the Nexus Transaction or the Nexus Position; and
  - (b) either:
    - (i) the Relevant Reporting Entity or another entity has:
      - (A) reported information about the Nexus Transaction or the Nexus Position to a Prescribed Repository, in compliance with the Alternative Reporting Requirements in at least one Foreign Jurisdiction; and
      - (B) designated the information reported under sub-subparagraph (A) as information that was reported under the Rules or under the conditions of this exemption; or
    - (ii) the Relevant Reporting Entity is exempt from the requirement in all of the Foreign Jurisdictions to report information about the Nexus Transaction or the Nexus Position, or there is no requirement in any of the Foreign Jurisdictions to report information about the Nexus Transaction or the Nexus Position.