



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2022/934

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2022/934* (the *instrument*).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. The *ASIC Derivative Transaction Rules (Reporting) 2013* (the **Reporting Rules 2013**) have been repealed and remade in the same form, as the *ASIC Derivative Transaction Rules (Reporting) 2022* (the **Reporting Rules 2022**).
2. On 21 October 2024, the Reporting Rules 2022 will be repealed and remade as the *ASIC Derivative Transaction Rules (Reporting) 2024* (the **Reporting Rules 2024**), substantially amending the current requirements.
3. The *ASIC Derivative Transaction Rules (Clearing) 2015* (the **Clearing Rules**) and the *ASIC Derivative Trade Repository (Reporting) 2013* (the **Trade Repository Rules**) (together, the **other ASIC-made rules**) make references to the Reporting Rules 2013 in the definitions of certain terms in those rules.
4. This instrument amends the:
 - a. other ASIC-made rules, to replace references to the Reporting Rules 2013 with references to the Reporting Rules 2022; and
 - b. Clearing Rules, from 21 October 2024, to replace references to the Reporting Rules 2022 with references to the Reporting Rules 2024(together, the **consequential amendments**).

Purpose of the instrument

5. The purpose of the instrument is to make consequential amendments to the other ASIC-made rules to reflect the repeal and remaking of the Reporting Rules 2013 to become the Reporting Rules 2022, and, from 21 October 2024, in the Clearing Rules only, the repeal and remaking of the Reporting Rules 2022 to become the Reporting Rules 2024. The re-referencing of the Reporting Rules 2022 to Reporting Rules 2024 is not also applicable to the Trade Repository

Rules because they sunset on 1 October 2023, ahead of the commencement of the Reporting Rules 2024 on 21 October 2024.

6. The consequential amendments replace references in the other ASIC-made rules for ease of reference and to ensure consistency.

Background

7. In [Consultation Paper 334](#) *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation (CP 334)* ASIC outlined a range of initial proposals to update the Reporting Rules 2013 to:
 - a. harmonise to international standards;
 - b. remove outdated transitional provisions and consolidate the various exemptions that currently exist as separate instruments within the rules; and
 - c. ensure they are fit-for-purpose as to the scope of reporting entities, derivative products and requirements of relevant entities to over-the-counter (**OTC**) derivative transactions

(together, the **Reporting Rules Changes**).

8. ASIC published [Consultation Paper 361](#) *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation (CP 361)* in May 2022 outlining the final proposals to implement the Reporting Rules Changes.
9. Submissions to CP 361 strongly favoured that there be only one stage of significant changes to the Reporting Rules 2013, and that the changes be appropriately sequenced with the similar changes being made in other major jurisdictions.
10. The repeal and remake of the Reporting Rules 2013 in the same form – as the Reporting Rules 2022 – ensures that existing requirements for the reporting of OTC derivative transactions continues in the interim until the commencement of the new requirements under the Reporting Rules 2024.
11. Accordingly, this instrument makes the consequential amendments to the other ASIC-made rules to reflect the repeal and remaking of the Reporting Rules 2013 to become the Reporting Rules 2022 and, from 21 October 2024, in the Clearing Rules only, the repeal and remaking of the Reporting Rules 2022 to become the Reporting Rules 2024.

Consultation

12. On 27 November 2020 ASIC published CP 334, setting out a two-stage consultation process and making a mix of specific and in-principle proposals in relation to the Reporting Rules Changes. Submissions closed on 1 March 2021. Feedback to ASIC’s proposals to update the Reporting Rule 2013 was broadly supportive.

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13. On 16 May 2022, ASIC published CP 361. Submissions to CP 361 closed on 8 July 2022 and feedback was broadly supportive of many of the Reporting Rules Changes proposals, especially to harmonise to the international standards. However, there were a number of important concerns raised by stakeholders.
 14. ASIC undertook a further round of bilateral post-consultation engagement with respondents, including industry associations, ahead of finalising the Reporting Rules 2022 and the Reporting Rules 2024.
 15. In relation to the consequential amendments to the Trade Repository Rules, ASIC undertook bilateral consultation with the sole licensed Australian derivative trade repository and received feedback supporting the amendments.
 16. In relation to the consequential amendments to the Clearing Rules, ASIC consulted with industry via ISDA and the Australian Financial Markets Association (*AFMA*) without any objections being raised.
 17. ASIC has consulted with the Reserve Bank of Australia (*RBA*) and the Australian Prudential Regulation Authority (*APRA*) in relation to the repeal and remaking of the Reporting Rules 2013 with the Reporting Rules 2022 and the repeal and remaking of the Reporting Rules 2022 with the Reporting Rules 2024, commencing 21 October 2024.

Operation of the instrument

Part 1: Preliminary

18. Section 1 of Part 1 provides that the name of the instrument is the *ASIC Corporations (Amendment) Instrument 2022/934*.
19. Section 2 of Part 1 of the instrument provides for a staggered commencement of the amendments as follows:

- a. ***Replacement of Reporting Rules 2013 references***

The removal of the superseded Reporting Rules 2013 references in the other ASIC-made rules and substitution with Reporting Rules 2022, including by way of inserting a new definition into the Trade Repository Rules.

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

- b. ***Replacement of Reporting Rules 2022 references***

The removal of the superseded Reporting Rules 2022 references in the Clearing Rules and substitution with the Reporting Rules 2024 reference at the time the Reporting Rules 2024 commence.

This amendment commences on the later of, the day after this instrument is registered on the Federal Register of Legislation, and 21 October 2024.

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20. Section 3 of Part 1 provides that this instrument is made under sections 901M and 903K of the *Corporations Act 2001* (*Corporations Act*).

Schedule 1 Amendments

21. Item 1 of the instrument amends the definition of *Reporting Rules* in the Clearing Rules to replace the reference to the Reporting Rules 2013 with the Reporting Rules 2022.
22. Item 2 of the instrument amends the definition of *Reporting Rules* in the Clearing Rules to replace the reference to the Reporting Rules 2022 with the Reporting Rules 2024 from the commencement of the Reporting Rules 2024 on 21 October 2024.

Schedule 2 Amendments

23. Item 1 of the instrument amends Rule 1.2.3 of the Trade Repository Rules by inserting *Reporting Rules* as a defined term for references to the Reporting Rules 2022.
24. Items 2 to 7 of the instrument replace references to the Reporting Rules 2013 with the new defined term “Reporting Rules”, thereby updating all superseded references to the Reporting Rules 2022.

Legislative instrument and primary legislation

25. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
- a. the instrument utilises powers given by Parliament to ASIC that allow ASIC to make, amend and repeal rules relating to derivatives transactions and derivative trade repositories; and
 - b. the matters contained in the instrument are specific amendments to the other ASIC-made rules, to reflect the consequential changes from the repeal and remaking of the Reporting Rules 2013 as the Reporting Rules 2022, and the subsequent repeal and remaking of the Reporting Rules 2022 to become the Reporting Rules 2024.

Duration

26. The duration of the amendments made by this instrument align with the duration of the primary instruments that are being amended. The Clearing Rules are scheduled to sunset on 1 April 2026. The Trade Repository Rules are scheduled to sunset on 1 October 2023.

Legislative authority

27. The instrument is made under sections 901M and 903K of the Corporations Act.
28. Subsection 901M(1) of the Corporations Act provides that ASIC may amend a derivative transaction rule in like manner and subject to like conditions.

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29. Subsection 903K(1) of the Corporations Act provides that ASIC may amend a derivative trade repository rule in like manner and subject to like conditions.
 30. ASIC sought and received the Minister's consent to making the consequential amendments to the other ASIC-made rules in accordance with the corresponding provision of the Corporations Act. The Minister consented to the making of this instrument by written notice to ASIC dated 4 December 2022.

Statement of Compatibility with Human Rights

31. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations (Amendment) Instrument 2022/934

Overview

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4. The *ASIC Corporations (Amendment) Instrument 2022/934* (the **instrument**) amends the:
 - a. other ASIC-made rules, to replace references to the Reporting Rules 2013 with references to the Reporting Rules 2022; and
 - b. Clearing Rules, from 21 October 2024, to replace references to the Reporting Rules 2022 with references to the Reporting Rules 2024(together, **the consequential amendments**).
5. The consequential amendments are for ease of reference, and to ensure consistency across the other ASIC-made rules.

Assessment of human rights implications

6. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

7. This instrument does not engage any of the applicable rights or freedoms.