



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment and Repeal) Instrument 2023/36

This is the Explanatory Statement for the ASIC Corporations (Amendment and Repeal) Instrument 2023/36 (*Legislative Instrument*).

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

Summary

1. The Legislative Instrument is made under paragraph 907D(2)(a) of the *Corporations Act 2001* (the *Act*) and amends or repeals exemption instruments that provide transitional relief to reporting entities from certain requirements under the *ASIC Derivative Transaction Rules (Reporting) 2013* (**2013 TRRs**). On 16th December 2022, the 2013 TRRs were repealed and replaced by the *ASIC Derivative Transaction Rules (Reporting) 2022* (**2022 TRRs**) which remade the 2013 TRRs in the same form, so as to continue the requirements for reporting of over-the-counter (**OTC**) derivatives transactions beyond the 1 October 2023 sunset of the 2013 rules, until the commencement of the *ASIC Derivative Transaction Rules (Reporting) 2024* (**2024 TRRs**) on 21 October 2024 which will consolidate associated exemptions within the rules text of the 2024 TRRs.
2. Broadly, the Legislative Instrument amends exemption instruments to refer to the 2022 TRRs, extends time-limited exemptive relief where necessary, broadens the jurisdictional scope of exemptive relief for reporting of trade identifiers and repeals exemptive relief that has either expired or will be included in the 2024 TRRs.
3. The Legislative Instrument amends following exemption instruments:
 - (a) ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015;
 - (b) ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844;
 - (c) ASIC Corporations (Derivative Transaction Reporting Exemption) 2016/0688;

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- (d) ASIC Derivative Transaction Rules (ADI Foreign Subsidiaries) Class Exemption 2021/51.

(together, the *consequential amendments*).

- 4. The Legislative Instrument repeals the following exemptions and exemption instruments:
 - (a) ASIC Instrument [14/0234] immediately;
 - (b) ASIC Instrument [14/0633] immediately;
 - (c) Exemptions 2, 2A, 2B and 10 in ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 will be repealed upon the commencement of the 2024 TRRs;
 - (d) ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2016/0688 will be repealed upon the commencement of the 2024 TRRs;
 - (e) ASIC Derivative Transaction Rules (ADI Foreign Subsidiaries) Class Exemption 2021/51 will be repealed upon the commencement of the 2024 TRRs.

(together, the *consequential repeals*).

Purpose of the instrument

- 5. The purpose of the Legislative Instrument is to make consequential amendments and consequential repeals to exemption instruments that currently provide transitional relief to reporting entities from certain reporting requirements under the 2013 TRRs to:
 - (a) reflect the repeal and remaking of the 2013 TRRs to become the 2022 TRRs;
 - (b) address the transitional period between the commencement of the 2022 TRRs and the commencement of the 2024 TRRs;
 - (c) repeal outdated transitional exemptive relief; and
 - (d) repeal exemptive relief that is consolidated in the 2024 TRRs and will commence upon the commencement date of the 2024 TRRs.

Consultation

- 6. ASIC has consulted with industry associations (the International Swaps and Derivatives Association, Australian Financial Markets Association, and Global Financial Markets Association) on the draft Legislative Instrument. There were no objections raised by the industry associations to the draft Legislative Instrument.

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7. ASIC has consulted with the Office of Impact Analysis (**OIA**) in relation to whether an Impact Analysis (**IA**) would be required. OIA advised that the preparation of an IA was not required because it assessed the proposal as unlikely to have a more than minor regulatory impact.

Operation of the instrument

Part 1 – Preliminary

8. Section 2 of Part 1 of the instrument provides for a staggered commencement of the amendments and repeals such that:
 - (a) the amendments and repeals in schedules 1 and 2 of the instrument commence on the day after the instrument is registered on the Federal Register of Legislation; and
 - (b) the amendments and repeals in schedules 3 and 4 of the instrument commence on 21 October 2024. This is the commencement date of the 2024 TRRs and is intended to delay the repeal of exemptions that are consolidated in the 2024 TRRs until such time as the 2024 TRRs commence.

Schedule 1 – Amendments

ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015

9. Item 1 of Schedule 1 omits ‘ASIC Derivative Transaction Rules (Reporting) 2013 as amended from time to time’ and substitutes ‘ASIC Derivative Transaction Rules (Reporting) 2022’, to replace the reference to the 2013 TRRs with a reference to the 2022 TRRs.

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

10. Item 2 of Schedule 1 omits ‘2013’ and substitutes ‘2022’ to replace the reference to the 2013 TRRs with a reference to the 2022 TRRs.
11. Item 3 of Schedule 1 repeals the definition of a Swap Execution Facility in subsection 4(1), as this definition is no longer referred to in Exemption 7 (Trade Identifiers) since the jurisdictional scope of this exemption is being broadened.
12. Item 4 of Schedule 1 omits the end date of Exemption 1 (Exchange-traded derivatives) in subsection 5(1), as this exemption will continue pending the outcomes of an intended future ASIC consultation on consolidating the exemption for exchange-traded derivatives in the 2024 TRRs.
13. Item 5 of Schedule 1 omits ‘no later than 1 October 2023’ and substitutes ‘the date the Reporting Entity ceases to rely on the exemption’. This is a consequential amendment to allow reporting entities to continue to rely on Exemption 1 (Exchange-traded derivatives).

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14. Item 6 of Schedule 1 omits ‘1 October 2023’ and substitutes ‘the date’. This is a consequential amendment to allow reporting entities to continue to rely on Exemption 1 (Exchange-traded derivatives).
 15. Item 7 of Schedule 1 omits ‘30 September 2023’ and substitutes ‘20 October 2024’. This amendment extends the end date of Exemption 3 (Name Information) and Exemption 7 (Trade Identifiers) until the commencement date of the 2024 TRRs. Exemption 3 (Name Information) will no longer be required as the 2024 TRRs no longer require the reporting of name information. Exemption 7 (Trade Identifiers) will no longer be required as the requirements for reporting of unique transaction identifiers are set out in rule 2.2.9 and Tables S1.1(1)-(3) of the 2024 TRRs.
 16. Item 8 of Schedule 1 omits ‘requirements (*CFTC rules*) issued by the Commodity Futures Trading Commission of the United States of America’ and substitutes ‘laws or other rules (however described) in force in one or more foreign jurisdictions’. This amendment broadens the scope of Exemption 7 (Trade Identifiers) to allow reporting entities to report unique transaction identifiers generated under the laws or other rules in force in one or more foreign jurisdictions until the commencement date of the 2024 TRRs.
 17. The Explanatory Statement to ASIC Corporations (Amendment) Instrument 2020/242 that inserted the trade identifier provisions related to the CFTC rules stated ‘Should other jurisdictions release proposed amendments to facilitate UTI Technical Guidance implementation, ASIC will review the Principal Instrument for any further amendments that would facilitate alignment of reporting requirements for Reporting Entities’.
 18. The jurisdictions of the European Union, Japan and the United Kingdom have now finalised rules that implement the UTI Technical Guidance with effect from earlier than the commencement of the 2024 TRRs. The amendment to Exemption 7 (Trade Identifiers) facilitates alignment of reporting requirements for Reporting Entities with those jurisdictions and, more generally, with any other foreign jurisdictions that implement similar requirements with effect from earlier than the commencement of the 2024 TRRs.
 19. Item 9 of Schedule 1 makes minor consequential amendments to subparagraph 11(2)(a)(ii).
 20. Item 10 of Schedule 1 repeals the note in subparagraph 11(2)(a)(ii).
 21. Item 11 of Schedule 1 supports the broader scope of Exemption 7 (Trade Identifiers) by inserting the condition of the assumption that the reporting deadline in this jurisdiction for a reportable transaction is the end of the second business day in Sydney after the day on which the reportable transaction occurs.
 22. The 2024 TRRs will increase the reporting deadline from, generally, one business day to, generally, two business days after the day on which the reportable transaction occurs. This amendment facilitates alignment of reporting requirements with other jurisdictions that require identification of the jurisdiction with the earlier reporting deadline in a way that is consistent from

the amendment to broaden the jurisdictional scope of Exemption 7 (Trade Identifiers) as based on two business days in this jurisdiction, rather than be based on one business day and then later changing to two business days upon commencement of the 2024 TRRs.

23. Item 12 of Schedule 1 omits ‘Swap Execution Facility’ and substitutes ‘trading venue’ to broaden the scope of Exemption 7 (Trade Identifiers) to allow reporting entities to report unique transaction identifiers created by the trading venue on which the reportable transaction was executed.
24. Item 13 of Schedule 1 omits ‘30 September 2023’ and substitutes ‘20 October 2024’. This amendment extends the end date of Exemption 9 (FX Securities Conversion Transactions) until the commencement date of the 2024 TRRs as a form of this exemption is included in subrule 1.2.4(6) of the 2024 TRRs.

ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2016/0688

25. Item 14 of Schedule 1 omits ‘2013’ and substitutes ‘2022’ to replace the reference to the 2013 TRRs with a reference to the 2022 TRRs.

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

26. Item 15 of Schedule 1 omits ‘2013’ and substitutes ‘2022’ to replace the reference to the 2013 TRRs with a reference to the 2022 TRRs.

Schedule 2 – Repeals

ASIC Instrument [14/0234]

27. Item 1 of Schedule 2 repeals the ASIC Instrument [14/0234] as the time-limited relief provided by the instrument has lapsed.

ASIC Instrument [14/0633]

28. Item 2 of Schedule 2 repeals the ASIC Instrument [14/0633] as the time-limited relief provided by the instrument has lapsed.

Schedule 3 – Amendments

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

29. Item 1 of Schedule 3 repeals sections 6, 6A, 6B and 13A. This has the effect of repealing Exemption 2 (Entity Information), Exemption 2A (Reference Entity Information), Exemption 2B (Joint Counterparties) and Exemption 10 (Spot Settlement Transactions) upon the commencement of the 2024 TRRs. These exemptions are contained in the 2024 TRRs as summarised in the table below:

Exemption:	Exemption for:	In the 2024 TRRs:
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Exemption 2 (Entity Information)	<ul style="list-style-type: none"> entity identifiers where entity identifiers of certain types are applied for within two business days entity identifiers for certain types of foreign counterparties in transactions entered into by NZ registered banks 	<ul style="list-style-type: none"> a form of the exemption is incorporated in S1.3.1(2) of the 2024 TRRs the rules no longer have the scope for which the exemption was required
Exemption 2A (Reference Entity Information)	<ul style="list-style-type: none"> reference entity identifiers for certain types of credit derivatives where an identifier of a certain type is reported 	<ul style="list-style-type: none"> the rules no longer require reporting of reference entity identifiers
Exemption 2B (Joint Counterparties)	<ul style="list-style-type: none"> entity identifiers for counterparties who have entered into transactions as joint or joint and several counterparties 	<ul style="list-style-type: none"> the requirement for entity identifiers for joint or joint and several counterparties is set out in S1.3.1(2) of the 2024 TRRs
Exemption 10 (Spot Settlement Transactions)	<ul style="list-style-type: none"> reporting of spot settlement transactions 	<ul style="list-style-type: none"> a form of the exemption is incorporated in S1.2.4(7) of the 2024 TRRs

30. Item 2 of Schedule 3 omits ‘, 6B(3)’ from subsection 14(A). This is a consequential amendment to reflect the repeal of section 6B.

Schedule 4 – Repeals

31. Item 1 of Schedule 4 repeals the ASIC Derivative Transaction Rules (ADI Foreign Subsidiaries) Class Exemption 2021/51 upon the commencement of the 2024 TRRs.
32. Item 2 of Schedule 4 repeals the ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2016/0688 upon the commencement of the 2024 TRRs.

Legislative instrument and primary legislation

33. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
- the effect of the instrument is to amend or repeal exemptions from requirements in the 2022 TRRs. The 2022 TRRs themselves are a legislative instrument rather than primary legislation;
 - the instrument utilises powers given by Parliament to ASIC that allow ASIC to affect the operation of the Rules to provide a tailored and flexible regulatory environment that is fit for purpose for certain derivatives transactions; and
 - the matters contained in the instrument are designed to ensure the application of the 2022 TRRs remained flexible to adapt to market developments (in particular, international regulatory developments toward

harmonising derivatives transaction information across jurisdictions) and applied in a way consistent with the intended policy of the 2022 TRRs and the enabling provisions in the primary legislation.

Legislative authority

34. ASIC makes the Legislative Instrument under paragraph 907D(2)(a) of 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 Rules made under Part 7.5A of the Act.
35. 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.
36. 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) of the Act is a disallowable legislative instrument if it is expressed to apply in relation to a class of persons (see subsection 907D(4) of the Act).

Statement of Compatibility with Human Rights

37. 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 and Repeal) Instrument 2023/36

Overview

1. The Legislative Instrument is made under paragraph 907D(2)(a) of the *Corporations Act 2001* and amends or repeals exemption instruments that provides transitional relief to reporting entities from certain requirements under the ASIC Derivative Transaction Rules (Reporting) 2013 (**2013 TRRs**).
2. On 16th December 2022, the 2013 TRRs were repealed and replaced by the ASIC Derivative Transaction Rules (Reporting) 2022 (**2022 TRRs**) which remade the 2013 TRRs in the same form, so as to continue the requirements for reporting of over-the-counter (OTC) derivatives transactions beyond the 1 October 2023 sunseting of the 2013 rules, until the commencement of the ASIC Derivative Transaction Rules (Reporting) 2024 (**2024 TRRs**) on 21 October 2024 which will consolidate associated exemptions within the rules text of the 2024 TRRs.
3. The purpose of the instrument is to make consequential amendments and consequential repeals to the exemption instruments that currently provides transitional relief to reporting entities from certain reporting requirements under the 2013 TRRs to:
 - (a) reflect the repeal and remaking of the 2013 TRRs to become the 2022 TRRs;
 - (b) address the transitional period between the commencement of the 2022 TRRs and the commencement of the 2024 TRRs;
 - (c) repeal outdated transitional exemptive relief; and
 - (d) repeal exemptive relief that is consolidated in the 2024 TRRs and will commence upon the commencement date of the 2024 TRRs.

Assessment of human rights implications

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

Conclusion

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5. This 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*.