

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

#### *Corporations Act 2001*

#### *Corporations (Derivatives) Determination 2023*

Part 7.5A of the *Corporations Act 2001* (the Act) provides for the regulation of derivative transactions and derivative trade repositories. Under section 901A of the Act the Australian Securities and Investments Commission (ASIC) may make derivative transaction rules (DTRs) imposing certain requirements in relation to derivatives. However, such requirements can only be imposed in relation to derivatives covered by a determination under section 901B.

Subsection 901B(2) provides that the Minister may, by legislative instrument, determine one or more classes of derivatives in relation to which execution requirements, reporting requirements, or clearing requirements may be imposed under DTRs.

The purpose of the *Corporations (Derivatives) Determination 2023* (the proposed Determination) is to repeal and remake the *Corporations (Derivatives) Determination 2013* (the Determination) before the instrument sunsets. The *Legislation Act 2003* provides that legislative instruments registered after 1 January 2005, other than exempt instruments, are automatically repealed on 1 April or 1 October on or immediately following the tenth anniversary of their registration. The Determination is due to sunset on 1 October 2023.

The proposed Determination repeals and remakes the Determination in the same terms.

Over the past decade, rapid growth in OTC derivatives markets has been accompanied by an increasing awareness of the systemic importance and risks inherent in these markets. The Australian Government implemented reforms, including reporting and central clearing, to the regulation of OTC derivatives markets. These reforms were part of a coordinated effort by G20 jurisdictions to improve transparency and risk management in these important markets.

The Determination empowered ASIC to make DTRs necessary for the implementation of Australia's derivative transaction regime, in line with the accepted international practice. There are currently two types of DTRs. DTRs in relation to reporting are rules that impose obligations on relevant entities to report information about their transactions and positions in OTC derivatives to a licensed or prescribed trade repository. DTRs in relation to clearing are rules that mandate a central clearing regime in Australia for OTC interest rate derivatives denominated in specified currencies.

The Determination, when it was made, empowered ASIC to develop DTRs which set out the scope of the obligations and how they can be complied with. The proposed Determination will have the same effect.

Subsection 901B(4) of the Act provides that the Minister must not make a determination of this type without consulting ASIC, the Australian Prudential Regulatory Authority (APRA) and the Reserve Bank of Australia about the proposed determination.



Details of the proposed Determination are set out in Attachment A.

The proposed Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Determination commences on 1 October 2023.

The Office of Impact Analysis has been (OIA) consulted (OIA ref: 23-05074) and agreed that, subject to consultation, Treasury may self-assess whether the instrument is operating efficiently and effectively. The measure has no impact on compliance costs.



**Details of the Corporations (Derivatives) Determination 2023**

**Section 1 – Name**

This section provides that the name of the Determination is the *Corporations (Derivatives) Determination 2023* (the proposed Determination).

**Section 2 – Commencement**

The proposed Determination commences on 1 October 2023.

**Section 3 – Authority**

The proposed Determination is made under subsection 901B(2) of the *Corporations Act 2001* (the Act).

**Section 4 – Schedules**

This section provides that each instrument that is specified in the Schedule to this instrument is amended or repealed as set out in the applicable item in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

**Section 5 – Definitions**

This section contains definitions of terms used in the Instrument.

**Section 6 – Derivatives for which rules may impose reporting requirements**

Section 6 sets out the classes of derivatives in relation to which reporting requirements may be imposed. The purpose of this section is to empower ASIC to make rules requiring the reporting of interest rate, foreign exchange, credit, equity and all commodity derivatives (with the exception of electricity derivatives) to licensed derivative trade repositories or other prescribed facilities.

**Section 7 – Derivatives for which rules may impose clearing requirements**

Section 7 sets out the classes of derivatives in relation to which clearing requirements may be imposed. The purpose of this section is to empower ASIC to make rules imposing clearing requirements for over-the-counter (OTC) interest rate derivatives denominated in Australian dollars and four global currencies (being US dollars, euros, British pounds and Japanese yen). The effect of this section is to improve transparency and risk management for the market.

**Schedule 1 – Repeals**

Schedule 1 repeals the *Corporations (Derivatives) Determination 2013* (the Determination). The Determination is due to sunset on 1 October 2023. The proposed Determination replaces the Determination before the sunset date. The inclusion of Schedule 1 ensures the existing Determination is repealed concurrently with the commencement of the proposed Determination.



**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Corporations (Derivatives) Determination 2023***

This 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*.

**Overview of the Legislative Instrument**

The purpose of the *Corporations (Derivatives) Determination 2023* (the proposed Determination) is to repeal and remake the *Corporations (Derivatives) Determination 2013* (the Determination) before the instrument sunsets. The Determination is due to sunset on 1 October 2023. The proposed Determination remakes the Determination in the same terms.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.