



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2023/504

This is the Explanatory Statement for ASIC Corporations (Amendment) Instrument 2023/504 (*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 the *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844* (*Principal Instrument*) to insert a new conditional time-limited exemption. The purpose of the Principal Instrument (as amended) is to provide conditional exemptions to reporting entities from certain reporting requirements under the *ASIC Derivative Transaction Rules (Reporting) 2022* (*2022 TRRs*). Broadly, the exemption inserted by the Legislative Instrument exempts reporting entities from reporting certain items of derivative trade data under the 2022 TRRs that will not be required to be reported from the commencement of the *ASIC Derivative Transaction Rules (Reporting) 2024* (*2024 TRRs*) on 21 October 2024.

Purpose of the instrument

2. The purpose of the Legislative Instrument is to introduce conditional time-limited exemptive relief in new section 13B (Exemption 11) of the Principal Instrument. Section 13B provides conditional time-limited exemptive relief to Reporting Entities from the reporting requirement in Rule 2.2.1 of the 2022 TRRs for certain items of Derivative Transaction Information defined as the 2024 Transitional Information and item 21 ('Whether the Derivative has been confirmed') or item 22 ('Form of confirmation') of Table S2.1(1) in Schedule 2 to the 2022 TRRs. The 2024 Transitional Information are items of Derivative Trade Data in Table S2.1(1) and Table S2.2(1) of the 2022 TRRs that are not specified as items of Derivative Transaction Information under the 2024 TRRs.
3. The items of 2024 Transitional Information are set out below:

Table S2.1(1): Common data

1. Item	2. Label	3. Derivative Transaction Information
9	Trading capacity of Reporting Counterparty	A notation to indicate whether the Reporting Counterparty has concluded the Derivative to which the Reportable Transaction relates: (a) as principal on its own account (on its own behalf or on behalf of a client); or (b) as agent for the account of and on behalf of a client.
23	Confirmation timestamp	The time and date (expressed as AEDT/AEST as applicable – see Rule 1.2.1) the terms of the Derivative to which the Reportable Transaction relates were confirmed by both counterparties (if applicable).
25	Master agreement type	The type of master agreement that was executed in relation to the Derivative to which the Reportable Transaction relates (e.g. ISDA Master Agreement, Master Power Purchase and Sale Agreement, International ForEx Master Agreement, European Master Agreement or any local Master Agreements).
26	Master agreement date	The year of the version of the master agreement identified under item 25.
36	Expiry conventions/cut	Place of time zone and time of expiry of the Derivative to which the Reportable Transaction relates (e.g. 3 pm, Tokyo; 10 am, New York).
51	Barrier type	If the Derivative to which the Reportable Transaction relates includes a barrier, the type of barrier in the Derivative (“European”, “American”, “Bermudan” or “other”).
52	Barrier value	If the Derivative to which the Reportable Transaction relates includes a barrier or barriers, the rate or level of the barrier or barriers.
54	Hedging transaction	If the Reporting Entity is not an Australian ADI, an AFS Licensee, a CS Facility Licensee, an Exempt Foreign Licensee or a Foreign ADI, an indication of whether the Derivative to which the Reportable Transaction relates is entered into by the Reporting Entity for the purpose of managing a financial risk that arises in the ordinary course of business.

Table S2.1(2): Commodity derivative data

1. Item	2. Label	3. Derivative Transaction Information
3	Grade	The grade of product being delivered.

1. Item	2. Label	3. Derivative Transaction Information
10	Delivery point or zone	The location of the delivery of the commodity underlying the Derivative to which the Reportable Transaction relates.
11	Delivery start date and time	The start date and time (expressed as AEDT/AEST as applicable - see Rule 1.2.1) of delivery of the commodity underlying the Derivative to which the Reportable Transaction relates.
12	Delivery end date and time	The end date and time (expressed as AEDT/AEST as applicable - see Rule 1.2.1) of delivery of the commodity underlying the Derivative to which the Reportable Transaction relates.
13	Derivative capacity	The quantity per delivery time interval of the commodity underlying the Derivative to which the Reportable Transaction relates.

Table S2.2(1): Common data

1. Item	2. Label	3. Derivative Position Information
17	Whether the Derivative has been confirmed	A notation to indicate whether the terms of the Derivative to which the Reportable Position relates have been confirmed by both counterparties to the Derivative.
26	Expiry Conventions/Cut	Place of time zone and time of expiry of the Derivative to which the Reportable Position relates (e.g. 3 pm, Tokyo; 10 am, New York).

Consultation

4. ASIC received an application for relief from the industry associations seeking relief for reporting entities to report certain fields under the 2022 TRRs that will no longer be required under the 2024 TRRs.
5. In making the Legislative Instrument, ASIC has consulted bilaterally with industry associations (the International Swaps and Derivative Association, Australian Financial Markets Association and the Global Financial Markets Association-FX division), reporting entities, and the sole Australian derivative trade repository.
6. 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

7. Section 2 of Part 1 of the instrument provides for a staggered commencement of the amendments such that:
 - (a) the amendments in schedule 1 of the instrument commences on the day after the instrument is registered on the Federal Register of Legislation; and
 - (b) the amendment in schedule 2 of the instrument commences on 21 October 2024.

Schedule 1 – Amendments

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

8. Item 1 of Schedule 1 of the instrument amends the Principal Instrument to insert the definition of 2024 Transitional Information in subsection 4(1). 2024 Transitional Information means specified items of Derivative Trade Data set out in Table S2.1(1), S2.1(2) and S.2.2(1) of the 2022 TRRs.
9. Item 2 of Schedule 2 of the instrument amends the Principal Instrument to insert a new section 13B. Section 13B provides conditional time-limited exemptive relief to Reporting Entities from the reporting requirement in Rule 2.2.1 of the 2022 TRRs for certain items of Derivative Transaction Information defined as the 2024 Transitional Information and item 21 or item 22 of Table S2.1(1) in Schedule 2 to the 2022 TRRs.
10. Subsection 13B(1) provides a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Reporting Entity to report 2024 Transitional Information.
11. Subsection 13B(2) provides that the exemption in subsection 13B(1) does not apply in relation to an item (relevant item) of 2024 Transitional Information if the systems of the Derivative Trade Repository to which the Reporting Entity reports Derivative Trade Data require the reporting of:
 - (a) the relevant item; or
 - (b) another item of Derivative Trade Data, the reporting of which requires the reporting of the relevant item.
12. Subsection 13B(3) provides that a Reporting Entity does not have to comply with Rule 2.2.1 of the Rules to the extent that Rule requires the Reporting Entity to report Derivative Trade Data referred to as item 21 ('Whether the Derivative has been confirmed') or item 22 (Form of confirmation) of Table S2.1(1) in Schedule 2 to the Rules.
13. Subsection 13B(4) provides that the exemption in subsection 13B(3) applies if:

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- (a) the systems of the Derivative Trade Repository to which the Reporting Entity reports Derivative Trade Data do not require the reporting of item 21 or item 22 (as applicable); or
 - (b) the Reporting Entity has reported ‘not confirmed’ in relation to item 21 or item 22 (as applicable) to the Derivative Trade Repository.
 14. Subsection 13B(5) provides that a Reporting Entity that relies on the exemption in subsection 13B(1) must maintain records of the 2024 Transitional Information in accordance with Rule 2.3.1 of the Rules.
 15. Subsection 13B(6) provides that a Reporting Entity that relies on the exemption in subsection 13B(3) must maintain records of the Derivative Trade Data referred to in item 21 or item 22 (as applicable) in accordance with Rule 2.3.1 of the Rules.
 16. This instrument does not compel a Derivative Trade Repository to set its systems in such a way as to ensure that items of 2024 Transitional Information are not required to be reported. If a Derivative Trade Repository’s systems continue to require reporting of an item of 2024 Transitional Information in order to accept a report as validly complete, subsection 13B(2) provides that Reporting Entities must continue to report such items.
 17. Similarly, subsection 13B(4) provides that an indicator of ‘not confirmed’ may be reported in relation to confirmation information as this is the least amount of confirmation information that a Derivative Trade Repository’s systems may continue to require reporting of for confirmation information.
 18. Item 3 of Schedule 2 of the instrument omits ‘10’ and substitutes ‘11’ in the heading of section 14 of the Principal Instrument to reflect the insertion of section 13B (Exemption 11).
 19. Item 4 of Schedule 2 of the instrument omits ‘and 11(2)’ and substitutes ‘, 11(2) and 13B(2)’ in paragraph 14(A) of the Principal Instrument to reflect the insertion of the record-keeping condition in subsection 13B(4).

Schedule 2 – Amendments

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

20. Item 1 of Schedule 2 of the instrument repeals the definition of 2024 Transitional Information that was inserted in Section 1 of Schedule 1, as this definition is no longer required upon the repeal of section 13B.
21. Item 2 of Schedule 2 of the instrument repeals section 13B that was inserted in Section 2 of Schedule 1. This has the effect of repealing Exemption 11 (2024 Transitional Information Reporting) upon the commencement of the 2024 TRRs on 21 October 2024.

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22. Item 3 of Schedule 2 of the Instrument omits “11” and substitutes “10” in the heading of section 14 of the Principal Instrument, to reflect the repeal of section 13B (Exemption 11).
 23. Item 4 of Schedule 2 of the Instrument omits “, 11(2), 13B(5) and 13B(6)” and substitutes “and 11(2)” in paragraph 14(a) of the Principal Instrument, to reflect the repeal of section 13B (Exemption 11).

Legislative instrument and primary legislation

22. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
 - (a) the effect of the instrument is to insert a new conditional time-limited exemption from requirements in the 2022 TRRs. The 2022 TRRs are themselves a legislative instrument rather than primary legislation;
 - (b) the instrument utilises powers given by Parliament to ASIC that allow ASIC to affect the operation of the 2022 TRRs to provide a tailored and flexible regulatory environment that is fit for purpose; and
 - (c) 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, changes to reporting systems of reporting entities to prepare for commencement of the 2024 TRRs) and applied in a way consistent with the intended policy of the 2022 TRRs.

Legislative authority

23. 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.
24. 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.
25. 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

26. 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 2023/504

Overview

1. The *ASIC Corporations (Amendment) Instrument 2023/504* (the **Instrument**) is made under paragraph 907D(2)(a) of the Corporations Act 2001 and provides conditional time-limited exemptive relief to reporting entities from reporting specified items of Derivative Trade Data under the *ASIC Derivative Transaction Rules (Reporting) 2022 (2022 TRRs)* that are not specified as items of Derivative Transaction Information under the ASIC Derivative Transaction Rules (Reporting) 2024.
2. The 2022 TRRs requires reporting entities to report Derivative Transaction Information for Reportable Transactions, as set out in Schedule 2 of the 2022 TRRs.
3. The purpose of the Legislative Instrument is to introduce conditional time-limited exemptive relief in new section 13B (Exemption 11) of the *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844*. Section 13B provides conditional time-limited exemptive relief to Reporting Entities from the reporting requirement in Rule 2.2.1 of the 2022 TRRs for certain items of Derivative Transaction Information defined as the 2024 Transitional Information and item 21 or item 22 of Table S2.1(1) in Schedule 2 to the 2022 TRRs. The 2024 Transitional Information are items of Derivative Trade Data in Table S2.1(1) and Table S2.1(2) and Derivative Position Information in Table S2.2(1) of the 2022 TRRs that are not specified as items of Derivative Transaction Information under the ASIC Derivative Transaction Rules (Reporting) 2024.

Assessment of human rights implications

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

Conclusion

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*.