



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Corporations (DDRS Class Exemption) Instrument 2024/557 and ASIC Corporations (Repeal) Instrument 2024/556*

This is the Explanatory Statement for *ASIC Corporations (DDRS Class Exemption) Instrument 2024/557 (DDRS Class Exemption)* and *ASIC Corporations (Repeal) Instrument 2024/556 (Repeal Instrument)*.

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

#### Summary

1. The Repeal Instrument and DDRS Class Exemption are made under paragraph 907D(2)(a) of the Corporations Act 2001 (the *Corporations Act*). The Repeal Instrument, together with the DDRS Class Exemption (together, *Superseding DDRS Class Exemption*), repeal and replace *ASIC Instrument [14/0911] (Instrument [14/0911])* in substantively like manner and subject to like conditions. Instrument [14/0911] was due to sunset on 1 October 2024.

#### Purpose

2. The purpose of the Superseding DDRS Class Exemption is to continue the policy settings under Instrument [14/0911], whereby Officers of DTCC Data Repository (Singapore) Pte Ltd (ARBN 601 601 021) (*DDRS*) are exempt from the requirements of Rule 2.1.1 of the *Derivative Trade Repository Rules 2023 (DTRRs)* to take all reasonable steps to ensure that DDRS complies with an obligation under a provision of the DTRRs (*the Relevant Rule*), in the circumstance where ASIC has granted an exemption to DDRS from the obligation to comply with the Relevant Rule, subject to certain conditions.

#### Background

3. In September 2023, ASIC, acting with consent of the Minister under section 903H of the Corporations Act, made the DTRRs under s 903A(1) of the Corporations Act. Capitalised terms used in this Explanatory Statement have the meaning given by the DTRRs.
4. The DTRRs impose obligations on Operators and Officers of Derivative Trade Repositories that are licensed by ASIC under section 905C of the Corporations Act. Derivative Trade Repositories are facilities to which information about Derivative Transactions can be reported under the *ASIC Derivative Transaction*

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*Rules (Reporting) 2022*, and commencing from 21 October 2024, the *ASIC Derivative Transaction Rules (Reporting) 2024*.

5. The DTRRs impose obligations on the Operators of Licensed Derivative Trade Repositories, including requirements relating to:
  - a. the manner in which Licensed Derivative Trade Repositories provide their services;
  - b. the handling or use of Derivative Trade Data by Licensed Derivative Trade Repositories;
  - c. the governance, management and resources of Licensed Derivative Trade Repositories;
  - d. the disclosure of conditions on which Licensed Derivative Trade Repositories provide their services; and
  - e. the reporting to ASIC or other regulators of matters related to Licensed Derivative Trade Repositories.
6. The DTRRs also imposes obligations on the Officers of Licensed Derivative Trade Repositories. Rule 2.1.1 requires an Officer of a Licensed Derivative Trade Repository to take all reasonable steps to ensure the Operator of the Licensed Derivative Trade Repository complies with its obligations under the DTRRs.
7. On 15 September 2014, ASIC granted a Licence (***Australian Licence***) to DDRS under section 905C of the Corporations Act. DDRS is an entity incorporated in Singapore and licensed by the Monetary Authority of Singapore (***MAS***) to operate a Derivative Trade Repository in Singapore. DDRS is subject to the *Securities and Futures Act 2001 (Singapore)* (***SFA***), the *Securities and Futures (Trade Repositories) Regulations 2013 (Singapore)* (***SF Regulations***), and the conditions and restrictions imposed on its derivative trade repository licence in Singapore (***Singapore Licence***).
8. Under subsection 902A(2) of the Corporations Act, when supervising a Licensed Derivative Trade Repository that is wholly or partly operated in a foreign country, ASIC may, to such extent as ASIC considers appropriate, perform the function of supervising the Licensed Derivative Trade Repository by satisfying itself:
  - a. that the regulatory regime that applies in relation to the repository in that country provides for adequate supervision of the repository; or
  - b. that adequate cooperative arrangements are in place with an appropriate authority of that country to ensure that the repository will be adequately supervised by that authority.

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9. ASIC's Regulatory Guide 249 *Derivative trade repositories* describes how ASIC may exercise its power under section 970D of the Corporations Act to grant an exemption to the Operator or Officers of a Licensed Derivative Trade Repository from their obligations under the DTRRs where ASIC considers that the regulatory regime that applies to the Licensed Derivative Trade Repository in that foreign country is adequate.
  10. In September 2023, ASIC remade *ASIC Instrument [14/0913]* in substantively like manner and subject to like conditions as *ASIC Corporations (Derivative Trade Repository Rules—DDRS) Instrument 2023/725 (DDRS Substituted Compliance Exemption)* under paragraph 907D(2)(a) of the Corporations Act. The DDRS Substituted Compliance Exemption relieves DDRS from obligations to comply with specific Rules in the DTRRs where ASIC is appropriately satisfied that the supervision of the Derivative Trade Repository provided by the MAS regulatory regime in Singapore is adequate. The DDRS Substituted Compliance Exemption is subject to conditions that DDRS comply with specified provisions of the SFA, SF Regulations and Singapore Licence. ASIC has imposed additional conditions on the DDRS Substituted Compliance Exemption, as well as on DDRS's Australian Licence, that ASIC considers appropriate to ensure the regulatory objectives of the DTRRs are otherwise achieved.

### **Consultation**

11. ASIC has consulted directly with DDRS and the Officers of DDRS concerning the Superseding DDRS Class Exemption.
12. An Impact Analysis is not required for the Superseding DDRS Class Exemption. The Superseding DDRS Class Exemption provides individual relief that applies to Officers of DDRS only and is made under the framework of the existing law.

### **Operation of the instrument**

#### ***ASIC Corporations (DDRS Class Exemption) Instrument 2024/557***

##### Part 1—Preliminary

13. Section 1 of Part 1 provides that the name of the DDRS Class Exemption is the *ASIC Corporations (DDRS Class Exemption) Instrument 2024/557*.
14. Section 2 of Part 1 provides that the DDRS Class Exemption commences on the day after it is registered on the Federal Register of Legislation.
15. Section 3 of Part 1 provides that the DDRS Class Exemption is made under paragraph 907D(2)(a) of the Corporations Act.
16. Section 4 of Part 1 defines the terms used in the DDRS Class Exemption.

##### Part 2—Exemption

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17. Subsection 5(1) of Part 2 of the DDRS Class Exemption relieves an Officer of DDRS from complying with Rule 2.1.1 of the DTRRs to the extent that Rule 2.1.1 requires the Officer to take all reasonable steps to ensure that DDRS complies with its obligations under a provision of the DTRRs in the circumstance where ASIC has granted DDRS an exemption under paragraph 907D(2)(a) of the Corporations Act from the requirement to comply with the Relevant Rule.
  18. Subsection 5(2) of Part 2 of the DDRS Class Exemption provides that the relief provided under subsection 5(1) applies for so long as the Officers of DDRS take all reasonable steps to ensure that DDRS complies with the conditions (if any) of the exemption from the Relevant Rule.
  19. Section 6 of Part 2 of the DDRS Class Exemption provides that it is a condition of the exemption in subsection 5(1) that the Officer of DDRS must take all reasonable step to ensure that DDRS complies with the conditions of its Australian licence.

### Part 3—Repeal

20. Section 7 of Part 3 of the DDRS Class Exemption provides that the instrument is repealed at the start of 1 October 2029.

### ***ASIC Corporations (Repeal) Instrument 2024/556***

#### Part 1—Preliminary

21. Section 1 of Part 1 provides that the name of the DDRS Repeal Instrument is the *ASIC Corporations (Repeal) Instrument 2024/556*.
22. Section 2 of Part 1 provides that the DDRS Repeal Instrument commences on the day after it is registered on the Federal Register of Legislation.
23. Section 3 of Part 1 provides that the DDRS Repeal Instrument is made under paragraph 907D(2)(a) of the Corporations Act.
24. Section 4 of Part 1 of the DDRS Repeal Instrument provides that each instrument that is specified in Schedule 1 to this instrument is repealed as set out in the applicable items in the Schedule.

#### Schedule 1—Repeal

25. Item 1 of Schedule 1 of the DDRS Repeal Instrument provides that Instrument [14/0911] is repealed.

#### Legislative instrument and primary legislation

26. The subject matter and policy implemented by the Superseding DDRS Class Exemption is more appropriate for a legislative instrument rather than primary legislation because it:

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- a. repeals and remakes Instrument [14/0911], which is itself a legislative instrument;
  - b. applies solely to the Officers of DDRS; and
  - c. utilises powers given by Parliament to ASIC to provide a tailored and flexible regulatory approach to the DTRRs.

### **Legislative authority**

27. ASIC makes the Superseding DDRS Class Exemption under paragraph 907D(2)(a) of the Corporations Act.
28. Under paragraph 907D(2)(a) of the Corporations Act, ASIC may exempt a person or class of persons from all or specified provisions of the DTRRs made under Part 7.5A of the Corporations Act.
29. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (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.

### **Statement of Compatibility with Human Rights**

30. 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 (DDRS Class Exemption) Instrument 2024/557 and ASIC Corporations (Repeal) Instrument 2024/556***

#### Overview

1. The *ASIC Corporations (DDRS Class Exemption) Instrument 2024/557* (the ***Instrument***) is made under paragraph 907D(2)(a) of the Corporations Act 2001 (the ***Corporations Act***). The instrument remakes ASIC Instrument [14/0911] (***Instrument [14/0911]***) in substantively like manner and subject to like conditions. Instrument [14/0911] was due to sunset on 1 October 2024.
2. The *ASIC Corporation (Repeal) Instrument 2024/556* (the ***Repeal Instrument***) is made under paragraph 907D(2)(a) of the Corporations Act and repeals Instrument [14-0911].
3. The purpose of the Instrument, together with the Repeal Instrument, is to continue the policy settings of Instrument [14/0911] whereby Officers of DTCC Data Repository (Singapore) Pte Ltd (ARBN 601 601 021) (***DDRS***) continue to be exempt in respect of their requirements under Rule 2.1.1 of the *Derivative Trade Repository Rules 2023 (DTR Rules)* to take all reasonable steps to ensure that DDRS complies with an obligation under a provision of the DTR Rules (***the Relevant Rule***), in the circumstance where ASIC has granted an exemption to DDRS from the obligation to comply with the Relevant Rule, subject to certain conditions.
4. In September 2023, ASIC granted DDRS relief under paragraph 907D(2)(a) of the Corporations Act from certain provisions of the DTR Rules, conditional on DDRS complying with substituted Singaporean law requirements and other specified conditions under *ASIC Corporations (Derivative Trade Repository Rules—DDRS) Instrument 2023/725 (Instrument 2023/725)*. The Instrument exempts DDRS Officers, as a class of person, from obligations under provisions of the DTR Rules in respect of relief granted under Instrument 2023/725.

#### Assessment of human rights implications

5. The Instrument and the Repeal Instrument does not engage any of the applicable rights or freedoms.

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## Conclusion

6. The 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*.