



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Regulated Foreign Markets Determination (Amendment) Instrument 2024/605 and ASIC Corporations (Repeal) Instrument 2024/604

This is the Explanatory Statement for *ASIC Regulated Foreign Markets Determination (Amendment) Instrument 2024/605* (the ***Foreign Markets Amendment Instrument***) and *ASIC Corporations (Repeal) Instrument 2024/604* (the ***Exemption Repeal Instrument***).

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

Summary

1. The Foreign Markets Amendment Instrument is made under subrule 1.2.4(5) of the *ASIC Derivative Transaction Rules (Reporting) 2024* (the ***2024 Reporting Rules***) and the effect of the amendments is to repeal *ASIC Regulated Foreign Markets Determination 2023/346* (the ***2023 Foreign Markets Determination***) on 21 October 2024.
2. The Exemption Repeal Instrument is made under paragraph 907D(2)(a) of the *Corporations Act 2001* and repeals *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844* (the ***2015 Exemption***) on 21 October 2024.
3. On 21 October 2024, *ASIC Derivative Transaction Rules (Reporting and Clearing) Amendment Instrument 2024/416* (***Amendment Instrument 2024/416***) amends the 2024 Reporting Rules to substitute a generic definition of an excluded exchange-traded derivative (***ETD***) in place of the existing list of specified financial markets and classes of financial markets for which the derivatives traded on those financial markets are prescribed as excluded ETDs.
4. The generic definition under the 2024 Reporting Rules is based on subsection 5(1) of the 2015 Exemption and, in effect, supersedes:
 - (a) The provisions of section 5 of the 2015 Exemption, and, as all other provisions of the 2015 Exemption cease to have effect on 21 October 2024, the 2015 Exemption is repealed on 21 October 2024; and

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- (b) The determinations made in the 2023 Foreign Markets Determination, and this determination is repealed on 21 October 2024.

Purpose of the instruments

5. The key purpose of the Foreign Markets Amendment Instrument and the Exemption Repeal Instrument is to repeal instruments whose purposes are no longer consistent with, or supported by, the 2024 Reporting Rules from 21 October 2024.

Background to the instruments

6. ASIC made the 2024 Reporting Rules on 19 December 2022 following two rounds of consultation: Consultation Paper 334 *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation* (released on 27 November 2020); and Consultation Paper 361 *Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): Second consultation* (released on 16 May 2022). The 2024 Reporting Rules will commence on 21 October 2024.
7. Following a further round of consultation¹, ASIC made amendments to the 2024 Reporting Rules under *ASIC Derivative Transaction Rules (Reporting) 2024 Amendment Instrument 2024/1* to make minor and technical changes to the data elements under the 2024 Reporting Rules and other minor updates.
8. These public consultations and rulemaking prioritised implementing the international harmonised standards for entity, product and transaction identifiers under ISO 20022 ‘*Financial Services – Universal financial industry message scheme*’ as the technical standard for trade reporting, as well as more closely aligning the reportable data elements with those of other major jurisdictions. These priority elements require the longest lead times for system and process changes and impact all reporting entities.
9. Following a final round of consultation, Consultation Paper 375 *Proposed changes to the ASIC Derivative Transaction Rules (Reporting): Third consultation (CP 375)*, with the Minister’s consent, on 11 August 2024, ASIC made Amendment Instrument 2024/416. This instrument includes amending the 2024 Reporting Rules on 21 October 2024 to substitute a generic definition of an excluded ETD in place of the existing classes of financial markets for which the derivatives traded on those financial markets are excluded ETDs – thus making the purposes of the 2023 Foreign Markets Determination and section 5 of the 2015 Exemption Instrument no longer consistent with, or supported by, the 2024 Reporting Rules.

Consultation

10. On 15 February 2024, ASIC released CP 375. The consultation period closed on 28 March 2024. CP 375 made proposals to, among other things:

¹ *ASIC Derivative Transaction Rules (Reporting) 2024: Follow-on consultation on changes to data elements and other minor amendments*, released 15 November 2023

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- (a) simplify and permanently exclude ETDs wholly by provisions within the 2024 Reporting Rules, but with a determination power to adjust for any unanticipated definitional uncertainties; and
 - (b) on 21 October 2024, withdraw the 2023 Foreign Markets Determination and repeal section 5 of the 2015 Exemption Instrument.
- 11. ASIC’s proposals were supported by industry feedback to CP 375. ASIC received eight submissions in total from industry associations, a trade repository, reporting entities and service providers.
 - 12. ASIC has consulted with the Reserve Bank of Australia (**RBA**) and the Australian Prudential Regulation Authority (**APRA**) in relation to the CP 375 proposals to amend the 2024 Reporting Rules. The RBA and APRA support the rules amendments.
 - 13. 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 proposals as unlikely to have a more than minor regulatory impact.

Operation of the instruments

ASIC Regulated Foreign Markets Determination (Amendment) Instrument 2024/605

Part 1: Preliminary

- 14. Section 1 of Part 1 provides that the name of the instrument is the *ASIC Regulated Foreign Markets Determination (Amendment) Instrument 2024/605*.
- 15. Section 2 of Part 1 provides that the instrument commences on the later of:
 - (a) 21 October 2024;
 - (b) the day after it is registered on the Federal Register of Legislation.
- 16. Section 3 of Part 1 provides that the instrument is made under 1.2.4(5) of the *ASIC Derivative Transaction Rules (Reporting) 2024*.
- 17. Section 4 of Part 1 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 Amendments

- 18. Item 1 of Schedule 1 provides that subsection 7(3) of the 2023 Foreign Markets Determination, is amended to change the date of repeal from “1 April 2033” to “21 October 2024” to coincide with the commencement of the 2024 Reporting Rules.

ASIC Corporations (Repeal) Instrument 2024/604

Part 1: Preliminary

19. Section 1 of Part 1 provides that the name of the instrument is the *ASIC Corporations (Repeal) Instrument 2024/604*.
20. Section 2 of Part 1 provides that the instrument commences on the later of 21 October 2024 and the day after it is registered on the Federal Register of Legislation.
21. Section 3 of Part 1 provides that the instrument is made under 907D(2)(a) of the *Corporations Act 2001*.
22. Section 4 of Part 1 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 Repeal

23. Item 1 of Schedule 1 provides that *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844* is repealed.

Legislative instrument and primary legislation

24. The subject matter and policy implemented by the Foreign Markets Amendment Instrument and the Exemption Repeal Instrument is more appropriate for a legislative instrument rather than primary legislation because the effect of the instruments is to repeal instruments that are themselves legislative instruments rather than primary legislation.
25. The duration of the instruments is until 21 October 2024, which aligns with the commencement of the 2024 Reporting Rules.

Legislative authority

26. The Foreign Markets Amendment Instrument is made under subrule 1.2.4(5) of the 2024 Reporting Rules. Under subrule 1.2.4(5), a determination by ASIC may be withdrawn by ASIC, from a date specified in a notice of withdrawal that is not less than 1 calendar month after the date the notice of withdrawal is registered under the *Legislation Act 2003*. The Foreign Markets Amendment Instrument amends the self-repealing provision in the 2023 Foreign Markets Determination to effectively withdraw the Foreign Markets Determination on 21 October 2024.
27. The Exemption Repeal Instrument is made under paragraph 907D(2)(a) of the *Corporations Act 2001*. 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.

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28. 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.

Statement of Compatibility with Human Rights

29. 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 Regulated Foreign Markets Determination (Amendment) Instrument 2024/605 and ASIC Corporations (Repeal) Instrument 2024/604

Overview

1. The *ASIC Regulated Foreign Markets Determination (Amendment) Instrument 2024/605* is made under subrule 1.2.4(5) of the *ASIC Derivative Transaction Rules (Reporting) 2024* (the **2024 Reporting Rules**) and the effect of the amendments is to repeal *ASIC Regulated Foreign Markets Determination 2023/346* (the **2023 Foreign Markets Determination**) on 21 October 2024.
2. The *ASIC Corporations (Repeal) Instrument 2024/604* is made under paragraph 907D(2)(a) of the *Corporations Act 2001* and repeals *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844* (the **2015 Exemption**) on 21 October 2024.
3. On 21 October 2024, *ASIC Derivative Transaction Rules (Reporting and Clearing) Amendment Instrument 2024/416* amends the 2024 Reporting Rules to substitute a generic definition of an excluded exchange-traded derivative (**ETD**) in place of the existing list of specified financial markets and classes of financial markets for which the derivatives traded on those financial markets are prescribed as excluded ETDs.
4. The generic definition is based on subsection 5(1) of the 2015 Exemption and, in effect, supersedes:
 - (a) The provisions of section 5 of the 2015 Exemption, and, as all other provisions of the 2015 Exemption cease to have effect on 21 October 2024, the 2015 Exemption is repealed on 21 October 2024; and
 - (b) The determinations made in the 2023 Foreign Markets Determination, and this determination is repealed on 21 October 2024.

Assessment of human rights implications

5. The *ASIC Regulated Foreign Markets Determination (Amendment) Instrument 2024/605* and the *ASIC Corporations (Repeal) Instrument 2024/604* do not engage any of the applicable rights or freedoms.

Conclusion

6. The *ASIC Regulated Foreign Markets Determination (Amendment) Instrument 2024/605* and the *ASIC Corporations (Repeal) Instrument 2024/604* are 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*.