

Australian Securities and Investments Commission

Corporations Act 2001 — Subsection 901A(1) and section 901M — Amendment

1. Enabling legislation

I, Oliver Harvey, with the written consent of the Minister, make the following instrument under subsection 901A(1) and section 901M of the *Corporations Act 2001*.

Dated this 9th day of February 2015.

Signed by Oliver Harvey
as a delegate of the Australian Securities and Investments Commission.

2. Title

This instrument is *ASIC Derivative Transaction Rules (Reporting) Amendment 2015 (No.1)*.

3. Commencement

This instrument commences on the day after the day on which the instrument is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (FRLI) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of register). The FRLI may be accessed at <http://www.frli.gov.au/>.

4. Amendments

Schedule 1 amends the *ASIC Derivative Transaction Rules (Reporting) 2013*.

Schedule 1

[1] Rule 1.2.3 (definition of "Regulated Foreign Market")

omit

subrule 1.2.4(3)

substitute

Rule 1.2.4

[2] Rule 1.2.4, after subrule 1.2.4(2)

insert

(2A) For the purposes of subrule (2), ***Regulated Foreign Market*** means any financial market:

- (a) that is registered by the United States Commodity Futures Trading Commission as a "Designated Contract Market" under section 5h of *Commodity Exchange Act 1936* (US);
- (b) that is a "Regulated market" as defined in Article 4(1)(21) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (in this Rule, the ***Directive***); or
- (c) that is a financial market, or is in a class of financial markets, that has been determined by ASIC as a Regulated Foreign Market under subrule (3).

[3] Rule 1.2.4(3)

after the words "a financial market", insert

, or a financial market in a class of financial markets,

[4] Rule 1.2.4(3)

omit

a Part 7.2A Market is subject in this jurisdiction

substitute

:

- (a) a facility referred to in paragraph (2A)(a) is subject in the United States;
- (b) a facility referred to in paragraph (2A)(b) is subject in the European Union; or
- (c) a Part 7.2A Market is subject in this jurisdiction.

[5] Rule 1.2.4(4)

omit

following publication on ASIC's website

substitute

specified in the determination

[6] Rule 1.2.4(5)

omit

by notice published on ASIC's website

[7] Rule 1.2.4(5)

omit

the notification

substitute

a notice of withdrawal

[8] Rule 1.2.4(5)

omit

given

substitute

registered under the *Legislative Instruments Act 2003*

[9] Rule 1.2.4, Note

after the word "Note", insert

1

[10] Rule 1.2.4, Note

after the Note, insert

Note 2: Determinations and notices of withdrawal under this Rule will be registered by ASIC on the Federal Register of Legislative Instruments (FRLI) and take effect under the *Legislative Instruments Act 2003*.

[11] Subrule 2.2.1(1)

after the words "subrules (2) and (3)", insert

", Rule 2.2.8"

[12] Paragraphs 2.2.1(3)(a) and (b)

omit the paragraphs, substitute

- (a) the Reporting Entity is subject to reporting requirements (*Alternative Reporting Requirements*) in one or more foreign jurisdictions (in this Rule, each, a *Foreign Jurisdiction*) that are substantially equivalent to the Reporting Requirements under these Rules; and
- (b) either:
 - (i) the Reporting Entity or another entity has:
 - (A) reported information about the Reportable Transaction or the Reportable Position to a Prescribed Repository, in compliance with the Alternative Reporting Requirements in at least one Foreign Jurisdiction; and
 - (B) designated the information reported under paragraph (a) as information that has been reported under these Rules; or
 - (ii) the Reporting Entity is exempt from the requirement in all of the Foreign Jurisdictions to report information about the Reportable Transaction or the Reportable Position, or there is no requirement in any of the Foreign Jurisdictions to report information about the Reportable Transaction or Reportable Position.

[13] Rule 2.2.1, after subrule 2.2.1(3)

insert

(4) Sub-subparagraph (3)(b)(i)(B) does not apply until 13 April 2015.

[14] Rule 2.2.7

omit the Rule, substitute

2.2.7 Derivative Transaction Information—Delegation of reporting

- (1) A Reporting Entity may appoint one or more persons (in this Rule, each a *Delegate*) to report on behalf of the Reporting Entity in accordance with Rules 2.2.1 to 2.2.5 and 2.2.8.
- (2) A Reporting Entity that appoints a Delegate in accordance with subrule (1) is taken to have complied with Rules 2.2.1 to 2.2.5 in relation to each Reportable Transaction and Reportable Position which the Delegate has been appointed to report, if:
 - (a) the terms of the Delegate's appointment and any related agreements or arrangements are documented in writing; and
 - (b) the Reporting Entity makes regular enquiries reasonably designed to determine whether the Delegate is discharging its obligations under the terms of its appointment.

Note 1: For example, the Reporting Entity may appoint a counterparty of the Reporting Entity, central counterparty, trading platform, service provider, broker or any other third party.

Note 2: While other forms of reporting delegation are permitted under the Rules, a Reporting Entity will only be taken under this Rule 2.2.7 to have complied with the reporting obligations in Rules 2.2.1 to 2.2.5 for those Reportable Transactions and Reportable Positions reported by a Delegate in accordance with this Rule 2.2.7.

[15] After Rule 2.2.7

insert

2.2.8 Lifecycle or snapshot reporting

(1) A Reporting Entity may comply with Rule 2.2.1 in relation to a Reportable Transaction in an OTC Derivative (***Relevant OTC Derivative***), other than a Derivative that is an Excluded Derivative or that is in a class of Excluded Derivatives at the time the Reportable Transaction is entered into, that takes place on a day (***Relevant Day***) by:

- (a) reporting Derivative Transaction Information for each Reportable Transaction in the Relevant OTC Derivative; or
- (b) reporting Derivative Transaction Information in relation to the Relevant OTC Derivative on its terms as of the Relevant Day,

and otherwise reporting the information in accordance with the Rules.

(2) Where a Reporting Entity complies with Rule 2.2.1 in relation to a Reportable Transaction that is a modification of an OTC Derivative in accordance with paragraph (1)(b), the Reporting Entity does not have to comply with Rules 2.2.1 and 2.2.2 in relation to that Reportable Transaction to the extent those Rules require a Reporting Entity to report Derivative Transaction Information in Item 55 of Table S2.1(1).

(3) ASIC may determine from time to time that an OTC Derivative, or a derivative product class, is an ***Excluded Derivative*** for the purposes of subrule (1), where, in the opinion of ASIC, making that determination will:

- (a) enhance the transparency of information available to relevant authorities and the public;
- (b) promote financial stability; or
- (c) support the detection and prevention of market abuse.

(4) A determination by ASIC for the purposes of subrule (3):

- (a) will be published on ASIC's website; and
- (b) takes effect on the day specified in the determination that is not less than 90 calendar days after the date the determination is published on ASIC's website.

(5) A determination by ASIC for the purposes of subrule (3):

- (a) may be withdrawn by ASIC, from a date specified in a notice of withdrawal that is not less than 90 calendar days after the date the notice is published on ASIC's website; and
- (b) once withdrawn ceases to have effect.

(6) A determination under subrule (3) is not a legislative instrument.

[16] Table S1.1

omit (wherever occurring)

A Reporting Entity must report, for each Reportable Transaction, the Derivative Transaction Information set out in Part S2.1 of Schedule 2 to a Licensed Repository.

substitute

A Reporting Entity must report, for each Reportable Transaction, the Derivative Transaction Information set out in Part S2.1 of Schedule 2 to a Licensed Repository, or, if there is no Licensed Repository, to a Prescribed Repository.

[17] Rule S1.2.1(2)(a)

omit

column 2

substitute

column 4

[18] Rule S1.2.1(2)(b)

omit

column 5

substitute

column 4

[19] Table S1.2

omit (wherever occurring)

A Reporting Entity must report, for all Reportable Positions, the Derivative Position Information set out in Part S2.2 of Schedule 2 to a Licensed Repository.

substitute

A Reporting Entity must report, for all Reportable Positions, the Derivative Position Information set out in Part S2.2 of Schedule 2 to a Licensed Repository, or, if there is no Licensed Repository, to a Prescribed Repository.

[20] Rule S2.1A.1, before the definition of Non-Reporting Counterparty

insert

Designated Business Identifier means:

- (a) on or before 12 April 2015, an Australian Business Number (ABN); and
- (b) on or after 13 April 2015, an international business entity identifier issued by Avox Limited (AVID).

[21] Table S2.1(1)

omit (wherever occurring)

an Australian Business Number (ABN) or, if no ABN is available

substitute

a Designated Business Identifier or, if no Designated Business Identifier is available

[22] Table S2.1(1), item 54

omit

An

substitute

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

[23] Table S2.1(3)

omit (wherever occurring)

an Australian Business Number (ABN) or, if no ABN is available

substitute

a Designated Business Identifier or, if no Designated Business Identifier is available

[24] Table S2.1(5)

omit (wherever occurring)

an Australian Business Number (ABN) or, if no ABN is available

substitute

a Designated Business Identifier or, if no Designated Business Identifier is available

[25] Table S2.2(1)

omit (wherever occurring)

an Australian Business Number (ABN) or, if no ABN is available

substitute

a Designated Business Identifier or, if no Designated Business Identifier is available

[26] Table S2.2(3)

omit (wherever occurring)

an Australian Business Number (ABN) or, if no ABN is available

substitute

a Designated Business Identifier or, if no Designated Business Identifier is available

[27] Table S2.2(5)

omit (wherever occurring)

an Australian Business Number (ABN) or, if no ABN is available

substitute

a Designated Business Identifier or, if no Designated Business Identifier is available