
ASIC Corporations (Amendment and Repeal) Instrument 2016/0043

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Corporations (Amendment and Repeal) Instrument 2016/0043 (the **Legislative Instrument**) under paragraph 907D(2)(a) of the *Corporations Act 2001* (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 *ASIC Derivative Transaction Rules (Reporting) 2013* (**Rules**).

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) is a legislative instrument if it is expressed to apply in relation to a class of persons (see subsection 907D(4) of the Act).

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.

The Legislative Instrument amends the *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844* (the **Exemption Instrument**) and repeals the *ASIC Corporations (Amendment) Instrument 2016/0030* (the **Amending Instrument**).

1. Background

On 27 January 2016, ASIC made the Amending Instrument which purported to amend the Exemption Instrument.

The Exemption Instrument was made on 21 September 2015. The Exemption Instrument provides time-limited exemptive relief from the requirement, imposed on 'Reporting Entities' under Rule 2.2.1 of the Rules, to report information about transactions and positions in 'OTC Derivatives' to a licensed or prescribed derivative trade repository.

Among other things, the Exemption Instrument provided exemptive relief (**Identifier Reporting Relief**) from the requirement to report a trade identifier that is a 'universal transaction identifier' or a 'single transaction identifier', where the Reporting Entity reports other specified identifiers. The relief was granted because Reporting Entities were experiencing issues implementing the requirement. The relief was originally due to expire on 31 January 2016.

The Amending Instrument purported to amend the Exemption Instrument to extend the Identifier Reporting Relief under the Exemption Instrument until 31 January 2017, in light of ongoing implementation issues and acknowledging that the establishment of a globally consistent format

for such identifiers is an issue that will be resolved at an international level and is outside the control of any one Reporting Entity.

However, since executing the Amending Instrument, ASIC has identified an issue with the manner in which the Amending Instrument was executed. As a result ASIC considers there may be doubt about the effectiveness of the Amending Instrument in amending the Exemption Instrument.

2. Purpose of the Legislative Instrument

The purpose of the Legislative Instrument is to remove doubt about the effectiveness of the Amending Instrument in amending the Exemption Instrument by:

- repealing the Amending Instrument; and
- making the amendments to the Exemption Instrument that the Amending Instrument purported to make.

3. Commencement of Legislative Instrument

The Legislative Instrument commences on the day after it is registered under the *Legislative Instruments Act 2003*.

4. Consultation

No consultation was undertaken on the Legislative Instrument since the change is minor or machinery in nature and does not substantially alter existing arrangements.

In making the Amending Instrument, ASIC consulted industry groups including the Australian Financial Markets Association (*AFMA*), and the International Swaps and Derivatives Association (*ISDA*). The members of the industry working groups are current or prospective Reporting Entities, including Phase 1, Phase 2 and Phase 3 Reporting Entities. ASIC took into account the feedback provided by these bodies, together with ASIC's regulatory objectives, in the final terms of the Amending Instrument.

5. Regulation Impact Statement

No Regulation Impact Statement (*RIS*) was prepared in relation to the Legislative Instrument since the change is minor or machinery in nature and does not substantially alter existing arrangements.

A Regulation Impact Statement (*G-20 OTC derivatives trade reporting regime*) was prepared in relation to the Rules and approved by Office of Best Practice Regulation (*OBPR*). OBPR advised that no further RIS was required for the Exemption Instrument because it assessed the proposal as having a minor impact on business. OBPR advised that no further RIS was required for the Amending Instrument as it extends a commencement date set out in the Exemption Instrument, again with a minor impact on business.

6. Detailed operation of the Instrument

Attachment A provides a detailed explanation of the operation of this Legislative Instrument.

7. Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is included in this Explanatory Statement at Attachment B.

ATTACHMENT A – Provision-by-provision description of the legislative instruments

Capitalised terms used in this Attachment have the same meaning as in the Rules.

Legislative Instrument

Paragraph 1 – Name of legislative instrument

This paragraph provides that the title of the Legislative Instrument is *ASIC Corporations (Amendment and Repeal) Instrument 2016/0043*.

Paragraph 2 – Commencement

This paragraph provides that the Legislative Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Paragraph 3 – Authority

This paragraph provides that the Legislative Instrument is made under subsection 907D(2)(a) of the Act.

Paragraph 4 – Amendments

Paragraph 4(1) provides that each instrument specified in a Schedule to the Legislative Instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Paragraph 4(2) provides that the amendments in item 1 of Schedule 1 to the Legislative Instrument only have effect to the extent that the amendments made to the Exemption Instrument by the Amending Instrument do not take effect on the day the Amending Instrument commences. To the extent that the amendments to the Exemption Instrument made by the Amending Instrument take effect despite the issue with the manner in which the Amending Instrument was executed, the amendments in item 1 of Schedule 1 to the Legislative Instrument will not be required.

Paragraph 4(3) provides that the repeal in item 1 of Schedule 2 to the Legislative Instrument only has effect to the extent that the Amending Instrument is not repealed by the operation of section 48A of the *Legislative Instruments Act 2003 (LIA)*. Section 48A of the LIA repeals a legislative instrument that is made on or after the commencement of section 48A and whose only legal effect is to amend or repeal one or more other legislative instruments (without making any application, saving or transitional provisions relating to the amendment or repeal). The repeal of an instrument by section 48A happens on the day after the last occurrence of one of the following events:

- the commencement of the instrument or of the last of its provisions to commence;
- the registration of the instrument.

To the extent that the amendments to the Exemption Instrument made by the Amending Instrument take effect despite the issue with the manner in which the Amending Instrument was executed, section 48A of the LIA will effect the repeal of the Amending Instrument on the day after the Amending Instrument commences and the repeal in item 1 of Schedule 2 to the Legislative Instrument will not be required.

Schedule 1 - Amendments

Item 1–Subsection 11(1) of the Exemption Instrument

Item 1 of Schedule 1 to the Legislative Instrument amends subsection 11(1) of the Exemption Instrument by omitting the words "31 January 2016" and substituting "31 January 2017".

Item 1 of Schedule 1 to the Legislative Instrument makes the amendments to the Exemption Instrument that the Amending Instrument purported to make, by extending the period during which the exemptive relief in subsection 11(1) of the Exemption Instrument applies to a Reporting Entity.

The exemptive relief in subsection 11(1) of the Exemption Instrument provides that a Reporting Entity does not have to comply with paragraphs 2.2.1(1)(a) and (c) of the Rules to the extent those paragraphs require the Reporting Entity to report a trade identifier that is a 'universal transaction identifier' or a 'single transaction identifier', where the Reporting Entity reports other specified identifiers. The extension is for a period of 12 months, to 31 January 2017.

Schedule 2 - Repeals

Item 1 - The whole of the Amending Instrument

Item 1 of Schedule 2 to the Legislative Instrument repeals the Amending Instrument.

ASIC has identified an issue with the manner in which the Amending Instrument was executed. As a result ASIC considers there may be doubt about the effectiveness of the Amending Instrument in amending the Exemption Instrument.

As item 1 of Schedule 1 to the Legislative Instrument now makes the amendments to the Exemption Instrument that the Amending Instrument purported to make, ASIC is repealing the Amending Instrument for the avoidance of doubt.

ATTACHMENT B – Statement of Compatibility with Human Rights

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

ASIC Corporations (Amendment and Repeal) Instrument 2016/0043

The *ASIC Corporations (Amendment and Repeal) Instrument 2016/0043* (the **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*.

1. Overview of the Legislative Instrument

On 27 January 2016, ASIC made the *ASIC Corporations (Amendment) Instrument 2016/0030* (the **Amending Instrument**) which purported to amend the *ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844* (the **Exemption Instrument**).

The Exemption Instrument was made on 21 September 2015 and provided time-limited exemptive relief from the requirement, imposed on 'Reporting Entities' under Rule 2.2.1 of the *ASIC Derivative Transaction Rules (Reporting) 2013* (the **Rules**), to report information about transactions and positions in 'OTC Derivatives' to a Licensed Repository or a Prescribed Repository.

Among other things, the Exemption Instrument provides exemptive relief (**Identifier Reporting Relief**) from the requirement to report a trade identifier that is a 'universal transaction identifier' or a 'single transaction identifier', where the Reporting Entity reports other specified identifiers. The relief was granted because Reporting Entities were experiencing issues implementing the requirement. The relief was originally due to expire on 31 January 2016.

The Amending Instrument purported to amend the Exemption Instrument to extend the Identifier Reporting Relief under the Exemption Instrument until 31 January 2017, in light of ongoing implementation issues and acknowledging that the establishment of a globally consistent format for such identifiers is an issue that will be resolved at an international level and is outside the control of any one Reporting Entity.

However, since executing the Amending Instrument, ASIC has identified an issue with the manner in which the Amending Instrument was executed. As a result ASIC considers there may be doubt about the effectiveness of the Amending Instrument in amending the Exemption Instrument.

The purpose of the Legislative Instrument is to remove doubt about the effectiveness of the Amending Instrument in amending the Exemption Instrument by:

- repealing the Amending Instrument; and
- making the amendments to the Exemption Instrument that the Amending Instrument purported to make.

2. Human rights implications

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

3. Human rights implications

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