

ASIC Corporations (Amendment) Instrument 2019/169

I, Nathan Bourne, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated 11 March 2019

Nathan Bourne

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Amendment) Instrument 2019/169*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

3 Authority

This instrument is made under paragraph 907D(2)(a) of the *Corporations Act 2001*.

4 Schedule

The instrument specified in Schedule 1 to this instrument is amended as set out in Schedule 1.

Schedule 1—Amendments

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

**1 Subsection 4(1) (definition of *Relevant Foreign Jurisdiction*)**

Repeal the definition, substitute:

***Relevant Foreign Jurisdiction*** means each of the following foreign jurisdictions:

(a) People’s Republic of China;

(b) Saudi Arabia.

**2 Subsection 5(1)**

Repeal paragraphs (a) and (b), substitute:

(a) the entry into of the arrangement that is the Derivative takes place on a financial market that is not operated in this jurisdiction and the following apply:

(i) the entry into of the arrangement that is the Derivative is in accordance with the operating rules of the financial market;

(ii) the terms of the Derivative are documented under or prescribed by the operating rules of the financial market;

(iii) the Derivative is made available in one or more series in accordance with the operating rules of the financial market and the terms of the arrangement constituting the Derivative are the same as for every other Derivative in the same series, with the exception of price; or

(b) the Derivative is:

(i) able to be traded (within the meaning of section 761A of the Act) on a Relevant Financial Market; and

(ii) the entry into of the arrangement that is the Derivative takes place on the Relevant Financial Market.

**3 After subsection 5(3)**

Insert:

(3A) Subject to subsection (3B), a Reporting Entity that relies on the exemption in paragraph (1)(a) in relation to a Derivative entered into on a financial market must, within 10 business days after entering into the Derivative, give ASIC a written notice (***Opt-In Notice***) containing the following information:

(a) the name of the Reporting Entity;

(b) the name of the financial market;

(c) the Market Identifier Code (MIC) issued in accordance with ISO 10383:2012 for the financial market;

(d) the date the Reporting Entity entered into the Derivative.

(3B) The condition in subsection (3A) does not apply to a Reporting Entity in relation to a financial market if:

(a) the Reporting Entity has previously given ASIC an Opt-in Notice in relation to the financial market: or

(b) the financial market is:

(i) a Relevant Financial Market; or

(ii) a Regulated Foreign Market for the purposes of the Rules.

(3C) In this section:

***ISO 10383:2012*** means ISO 10383:2012 *Securities and related financial instruments—Codes for exchanges and market identification (MIC)* published by the International Organisation for Standardization as in force on the date of this instrument.

**4 Subsection 6(1)**

Omit “31 March 2019”, substitute “the Exemption End Date”.

**5 After subsection 6(1)**

Insert:

(1A) In subsection (1), ***Exemption End Date*** means:

(a) 30 September 2019 if the Relevant Entity:

(i) is incorporated or formed in this jurisdiction; or

(ii) is a counterparty to the OTC Derivative to which the Reportable Transaction or Reportable Position relates as the result of a transaction entered into by a branch of the Relevant Entity that is located in this jurisdiction; and

(b) otherwise, 31 March 2020.

**6 After subsection 6(2)**

Insert:

*Conditions*

(3) The Reporting Entity must use its best efforts to obtain the Entity Information as soon as reasonably practicable, including by maintaining and following documented procedures for one or both of the following:

(a) requesting that Relevant Entities obtain Entity Information and provide it to the Reporting Entity;

(b) obtaining the Entity Information on behalf of Relevant Entities.

(4) As soon as reasonably practicable after Entity Information for a Relevant Entity is available, including on a public website, the Reporting Entity must use all reasonable endeavours to report the Entity Information to the Trade Repository, unless the Derivative to which the Entity Information relates has been terminated or has expired.

(5) The Reporting Entity must, on written request by ASIC, provide ASIC with a written statement reporting on the Reporting Entity’s compliance with the conditions in subsections (3) and (4) during the period specified in the request.

(6) The Reporting Entity must provide the statement under subsection (5) within the time specified in the written request by ASIC or, if no time is specified, within a reasonable time.

**7 Subsection 8(1)**

Omit “31 March 2019”, substitute “30 September 2020”.

**8 Subsection 9(1)**

Omit “31 March 2019”, substitute “30 September 2020”.