

ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015



- F2015L00100

In force

-

Latest Version

[View Series](#)

Australian Securities and Investments Commission Corporations Act—Paragraph 907D(2)(a)— Class Exemption

Enabling legislation

1. The Australian Securities and Investments Commission (**ASIC**) makes this instrument under paragraph 907D(2)(a) of the *Corporations Act 2001 (Act)*.

Title

2. This instrument is *ASIC Derivative Transaction Rules (Nexus Derivatives) Class Exemption 2015*.

Commencement

3. This instrument commences on the date it is registered under *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*, section 4 (definition of **register**). The FRLI may be accessed at <http://www.frli.gov.au/>.

Interpretation

4. In this instrument, capitalised terms have the meaning given in the Rules and:

Relevant Reporting Entity means a Foreign ADI that has a branch located in this jurisdiction or a foreign company that is required to be registered under Division 2 of Part 5B.2 of the *Corporations Act 2001* but does not include a foreign subsidiary of an Australian Entity where that Australian Entity is an Australian ADI or AFS Licensed Entity.

Rules means the *ASIC Derivative Transaction Rules (Reporting Entities) Class Exemption 2013* as amended from time to time.

Exemption 1

A Relevant Reporting Entity does not have to comply with subrule 2.2.1(1) of the Rules to the extent that subrule requires the Relevant Reporting Entity to report a Reportable Transaction or outstanding position in an OTC Derivative that:

- (a) was entered into by the Relevant Reporting Entity in this jurisdiction; and
- (b) was not booked to the profit or loss account of a branch of the Relevant Reporting Entity located in this jurisdiction.

Opt-In to and Withdrawal from Exemption 1

A Relevant Reporting Entity may give to ASIC a written notice (an **Opt-In Notice**) setting out the following:

- (a) the name of the Relevant Reporting Entity;

- (b) the Prescribed Class or Prescribed Classes (each, an **Opt-In Class**) for which the Relevant Reporting Entity is giving the written notice; and
- (c) the date (**Effective Date**) from which the Relevant Reporting Entity will rely on the exemption in paragraph 5 in relation to each Opt-In Class named in the notice, being a date no earlier than the date the Opt-In Notice is given to ASIC.

Note: The Prescribed Classes as at the date of this instrument are commodity derivatives that are not electricity derivatives, credit derivatives, equity derivatives, foreign exchange derivatives and interest rate derivatives.

A Relevant Reporting Entity that has given an Opt-In Notice under paragraph 5 may withdraw the Opt-In Notice in relation to one or more Opt-In Classes, by giving to ASIC a written notice (the **Withdrawal Notice**) setting out all of the following:

- (a) the name of the Relevant Reporting Entity;
- (b) the name of each Opt-In Class for which the Relevant Reporting Entity is giving the written notice;
- (c) the date (**Withdrawal Effective Date**) from which the Relevant Reporting Entity will cease to rely on the exemption in paragraph 5 in relation to each Opt-In Class named in the notice, being a date not less than 30 calendar days from the date the Withdrawal Notice is given.

Where Exemption 1 applies

The exemption in paragraph 5 applies to:

- (a) all Relevant Reporting Entities from 2 February 2015 to 31 January 2015 (inclusive); and
- (b) a Relevant Reporting Entity in relation to an Opt-In Class from the Effective Date specified in an Opt-In Notice given by the Relevant Reporting Entity in accordance with paragraph 5 in relation to that Opt-In Class, until the Withdrawal Effective Date specified in the Withdrawal Notice (if any) given in accordance with paragraph 7 in relation to that Opt-In Class.

Conditions of Exemption 1

Requirement to report certain transactions having a certain geographical nexus with Australia ("sales or trader basis")

Subject to paragraph 11, a Relevant Reporting Entity to which the exemption in paragraph 5 applies must, commencing from the **(Relevant Reporting Date)** that is the later of 25 May 2015 and the Effective Date specified in the Opt-In Notice in relation to the Opt-In Class, report Derivative Transaction Information about each of the following Derivative Transactions in the Opt-In Class (each **Nexus Transaction**), as if the Nexus Transaction was a Reportable Transaction under the Rules:

- (a) the entry into of an arrangement that is an OTC Derivative (**Nexus Derivative**) to which the Relevant Reporting Entity has entered into a counterparty, where:
 - (i) one or more of the following functions in relation to the OTC Derivative:

- (A) determining the price, level, rate or other economic terms (collectively, **Terms**) on which the Relevant Reporting Entity is willing to enter into the OTC Derivative, including by determining the proposed Terms or range of proposed Terms which may be communicated to the proposed counterparty or agreeing the final Terms on which the Relevant Reporting Entity will enter into the OTC Derivative with the proposed counterparty;
- (B) communicating to the proposed counterparty one or more of the Terms on which the Relevant Reporting Entity is willing to enter into the OTC Derivative;
- (C) offering to enter into the OTC Derivative with the proposed counterparty or inviting the proposed counterparty to offer to enter into the OTC Derivative with the Relevant Reporting Entity;
- (D) agreeing to enter into the OTC Derivative with proposed counterparty;
- (E) managing the financial risk arising from the OTC Derivative;

is, or in the case of the function referred to in sub-subparagraph (E), will be, performed on behalf of the Relevant Reporting Entity by a person who is:

- (F) ordinarily resident or employed in this jurisdiction or
- (G) acting as part of a desk, office or branch of:
 - (I) the Relevant Reporting Entity; or
 - (II) an entity that is an associate of the Relevant Reporting Entity,

where that desk, office or branch is located in this jurisdiction; and

- (ii) if the OTC Derivative was executed through an automated electronic trading facility, one or more of the functions referred to in sub-subparagraphs (i)(A) and (i)(B) in relation to the OTC Derivative is, or in the case of the function referred to in sub-subparagraph (E), will be, performed on behalf of the Relevant Reporting Entity by a person who is:

- (A) ordinarily resident or employed in this jurisdiction or
- (B) acting as part of a desk, office or branch of:
 - (I) the Relevant Reporting Entity; or
 - (II) an entity that is an associate of the Relevant Reporting Entity,

where that desk, office or branch is located in this jurisdiction;

- (b) the modification or termination of an arrangement that is a Nexus Derivative; and
- (c) the assignment, by a party to an arrangement that is a Nexus Derivative, of some or all of the party's rights and obligations under the arrangement, where the Relevant Reporting Entity has actual knowledge of the assignment.

Subject to paragraph 11, a Relevant Reporting Entity to which the exemption in paragraph 5 applies must, by or on the Relevant Reporting Date in relation to an Opt-In Class, report in accordance with the Rules Derivative Position Information about each outstanding position (**Nexus Position**) in a Nexus Derivative in an Opt-In Class as at the Relevant Reporting Date, where the outstanding position was entered into by the Relevant Reporting Entity on or after 25 February 2015 and before the Relevant Reporting Date.

Exception for alternative reporting

A Relevant Reporting Entity to which the exemption in paragraph 5 applies is not required to comply with the conditions in paragraphs 9 and 10 that would otherwise apply to the Relevant Reporting Entity in relation to a Nexus Transaction or Nexus Position, if, at the time the Relevant Reporting Entity would otherwise be required to comply with the condition:

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

Exemption 2 - Tagging

A Relevant Reporting Entity does not have to comply with the conditions in paragraphs 22(a) and (b) of ASIC Instrument [14/0234].

13. The exemption in paragraph 12 applies to:

- (a) all Relevant Reporting Entities from 2 February 2015 to 1 February 2015 (inclusive); and
- (b) a Relevant Reporting Entity in relation to an Opt-In Class from the Effective Date specified in an Opt-In Notice given by the Relevant Reporting Entity in accordance with paragraph 11 in relation to that Opt-In Class, provided that:

in relation to that Opt-In Class, provided that:

- (i) the Effective Date specified in the Opt-In Notice in relation to that Opt-In Class is no later than 25 February 2015; and
- (ii) the Relevant Reporting Entity complies with the conditions of this instrument in relation to that Opt-In Class.

Dated this 29th day of January 2015

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