Australian Securities and Investments Commission
Corporations Act—Paragraph 907D(2)(a)—Class Exemption 14/0633

Staggered and Delayed Start to Phase 3 of the
OTC Derivative Transaction Reporting Obligation

Summary

Purpose

The purpose of this note is to summarise ASIC Class Exemption 14/0633 (**Class Exemption**), which provides for a staggered and delayed start to Phase 3 of the OTC derivative transaction reporting obligations under the *ASIC Derivative Transaction Rules (Reporting) 2013* (**Rules**).

This note is a summary for the convenience of readers only and has no official status. The official Explanatory Statement to the Class Exemption is published under the Legislative Instruments Act 2003 alongside the Class Exemption in the Federal Register of Legislative Instruments.

Details of the delay

The Class Exemption delays the start date for trade reporting for Phase 3 Reporting Entities, and staggers the delayed start dates by splitting Phase 3 into 'Phase 3A' and 'Phase 3B'.

A Phase 3 Reporting Entity will be a Phase 3A Reporting Entity if it holds **$5bn** or more total gross notional outstanding in reportable OTC positions as at 30 June 2014. All other Phase 3 Reporting Entities will be Phase 3B Reporting Entities. However, a Phase 3 Reporting Entity that is a Responsible Entity (**RE**) of a managed investment scheme or trustee (**Trustee**) of a trust may determine whether it is a Phase 3A or Phase 3B Reporting Entity separately in relation to each managed investment scheme or trust.

The Class Exemption delays the start of Phase 3 trade reporting for Phase 3A and Phase 3B Reporting Entities as set out in the below table. Some requirements have been linked to the date the first derivative trade repository is licensed by ASIC (**Licensing Date**).

Class of OTC derivatives	Previous start date of trade reporting under the Rules	Amended transaction reporting start date (“Phase 3A” entities)	Amended transaction reporting start date (“Phase 3B” entities)
Interest rate and credit derivatives	1 October 2014	7 calendar months after the Licensing Date; *But not before* 13 April 2015	The *earlier of:* 13 calendar months after the Licensing Date; *or* 12 October 2015, the 'backstop date'.
Equity, FX and commodity derivatives, other than electricity derivatives	1 April 2015	The *earlier of:* 13 calendar months after the Licensing Date; *or* 12 October 2015, the 'backstop date'.	

Note: The specified dates are the first Monday of the relevant month that is a Business Day as defined.

Position reporting

Positions for outstanding transactions are required to be reported by the first Monday that is a Business Day 6 calendar months after the amended transaction reporting start date in each case.

For example, if a Phase 3A Reporting Entity is required to start reporting trades in interest rate derivatives from 13 April 2015, it will need to report outstanding positions as at that date in those asset classes, at the latest by 19 October 2015.

Opting-in to reporting

Phase 3A and Phase 3B Reporting Entities can also opt-in to start mandatory reporting of a particular class of OTC derivatives in advance of these dates, by providing an "opt-in" notice to ASIC. Details of the information that must be set out in an opt-in notice are set out in the Class Exemption.

Collateral, barriers and valuation

Reporting of information relating to collateral, barriers and valuation will start on the first Business Day that is a Monday of the month that is 7 months after the initial reporting dates listed in the table above, for each asset class and category of Phase 3 Reporting Entity.

For example, if a Phase 3A Reporting Entity is required to start reporting trades in interest rate derivatives from 13 April 2015, it will need to start reporting collateral, barriers and valuations information for its trades in interest rate derivatives from 2 November 2015.

Conditions on the Class Exemption

It is a condition of the Class Exemption that Phase 3 Reporting Entities start to report their trades and positions in the relevant classes of OTC derivatives from the revised trade and position reporting dates referred to above. Phase 3 Reporting Entities are also required to report modifications, terminations and assignments of positions in OTC derivatives that occur after the relevant revised trade reporting date, but before the revised position reporting date for that OTC derivative.

The Class Exemption includes some other conditions, similar to the conditions in the earlier class exemption provided for Phase 2 Reporting Entities, as follows:

- *Reporting to a licensed or prescribed TR*: A Phase 3 Reporting Entity must report their trades and positions to a licensed TR from the revised reporting dates, or if there is no licensed TR at the time the information is required to be reported, to a TR that has been prescribed by regulation. There are currently 9 overseas TRs prescribed by regulation until 30 June 2015.
- *Tagging:* If there is no TR licensed by the 'backstop' dates and a Phase 3 Reporting Entity reports to a prescribed repository, it is required to 'tag' trades as reported under the Australian regime.
- *Consents and notifications*: Phase 3A Reporting Entities must take reasonable steps to obtain consents from, or give notices to, counterparties authorising the disclosure of identifying information in respect of that counterparty, when they are under a legal obligation to do so.

  Note: Where an Australian Reporting Entity is reporting identifying information for an Australian client, it should consider whether the statutory immunity from liability arising under Australian law (including privacy and confidentiality law) in s907C of the *Corporations Act 2001* applies to obviate the need to obtain client consent.

- *Record-keeping*: Phase 3A Reporting Entities must keep records that allow them to demonstrate they have complied with the conditions of the Exemption and provide these to ASIC on request.