

Summary of transitional exemptive relief given in connection with the commencement of Phase 2 of the trade reporting obligation

Overview

On 1 April 2014, Phase 2 Reporting Entities were required to begin reporting OTC derivative transactions to trade repositories under the ASIC Derivative Transaction Rules (Reporting) 2013 (**the Rules**). As well, certain transitional exemptive relief provided to Phase 1 Reporting Entities relating to counterparty masking was due to expire.

In connection with the 1 April start date, ASIC granted four sets of transitional exemptive relief, as follows:

1. **Phase 2 Reporting Entities – Class exemption:** transitional exemptive relief for Phase 2 Reporting Entities, by way of a class exemption, similar in scope and nature to that granted to the Phase 1 Reporting Entities in October 2013;
2. **Phase 1 Reporting Entities - Extension of masking and middleware relief :** further individual relief to five Phase 1 Reporting Entities (i.e. Australian and New Zealand Banking Group Limited, Commonwealth Bank of Australia, Macquarie Bank Limited, National Australia Bank Limited and Westpac Banking Corporation), extending for a further 6 months their ability to mask counterparty identifiers in certain strictly defined circumstances and with respect to certain transactions dependent on certain middleware providers;
3. **New Zealand subsidiaries – delayed reporting relief:** individual relief for three New Zealand subsidiaries of ANZ, CBA and NAB, granting them a 6-month delay on the commencement of their reporting obligations as Phase 2 Reporting Entities; and
4. **UBS AG – alternative reporting relief:** relief for UBS AG (a Phase 2 Reporting Entity) from certain aspects of the alternative reporting regime set out in Rule 2.2.1(3).

The relief referred to in this summary, in conjunction with a number of existing transitional provisions in the Rules, will in ASIC's estimation substantially reduce the short-term regulatory impact of the Rules on Reporting Entities. In addition, the impact on ASIC's regulatory objectives is considered to be minimal, having regard to the fact that the relief is temporary and conditional.

Further information on each of the four sets of transitional exemptive relief is set out below.

1. Phase 2 Reporting Entities – Class exemption

Background

On 1 April 2014, under Phase 2 of the Rules, certain Reporting Entities were required to commence reporting credit and interest rate OTC derivative transactions to trade repositories (**TRs**).

Following an application for relief from the Australian Financial Markets Association (**AFMA**) on behalf of Phase 2 Reporting Entities, we granted transitional exemptive relief in the form of Class Exemption (14/0234). As a legislative instrument this was published in the Federal Register of Legislative Instruments, together with an Explanatory Statement.¹

Below is a summary of each of the forms of relief under the Class Exemption that has been provided to Phase 2 Reporting Entities as defined in the class exemption. Such entities are listed in **Annex 1**.

Reporting of Exchange Traded Derivatives on foreign markets

The intent of the ASIC trade reporting regime is to exclude exchange-traded derivatives.

To implement this intent, on 13 September 2013, ASIC made the Regulated Foreign Markets Determination² (**RFM Determination**). This provides an ongoing exemption from the reporting of trades entered into on the markets listed in the RFM Determination, which are set out in **Annex 2**.

Under the Class Exemption, trades undertaken on the Relevant Financial Markets listed in **Annex 3** do not need to be reported until 3 March 2015, even though they are not listed in the RFM Determination. This extension will give ASIC further time to consider whether such markets should be listed in the RFM Determination.

Foreign privacy/masking – jurisdictions with blocking statutes

In order to ensure that the Phase 2 Reporting Entities are not obliged to breach foreign blocking statutes, the Class Exemption allows Phase 2 Reporting Entities to 'mask' or not report certain fields that could identify their counterparty to the trade (**Identifying Information**) until 30 September 2014. The Class Exemption has been granted in respect of the following jurisdictions:

- a) Algeria;
- b) Argentina;
- c) Austria;
- d) Bahrain
- e) Belgium;
- f) France;
- g) Hungary;
- h) India;
- i) Indonesia;
- j) Israel;
- k) Luxembourg;
- l) Pakistan;
- m) People's Republic of China;
- n) Samoa;
- o) Saudi Arabia;
- p) Singapore;
- q) South Korea;
- r) Switzerland; and
- s) Taiwan.

¹ The Class Order Exemption and Explanatory Statement are available on [ComLaw](#).

² The RFM Determination is available on [ComLaw](#).

In order to gain the benefit of this Class Exemption, the relevant Phase 2 Reporting Entity must be of the reasonable view that it would breach a law or regulation of the jurisdiction to report the Identifying Information to the TR and has a written opinion of external legal counsel that supports this view (which it must provide to ASIC on request). It must also be reasonably satisfied that the law or regulation the subject of the written legal opinion has not changed in any relevant respect since the date the opinion was issued. The Phase 2 Reporting Entities must still report all other information in relation to the transaction and once the confidentiality or privacy barrier is no longer in place in relation to a particular jurisdiction, the Phase 2 Reporting Entities must use all reasonable endeavours to report the Identifying Information to a TR (unless the transaction has since been terminated or has expired).

Foreign privacy/masking – Counterparty consents and notices

The Class Exemption allows for masking Identifying Information until 1 October 2014 where the Phase 2 Reporting Entity has not obtained consent from or provided notice to foreign clients to allow the Phase 2 Reporting Entity to report identifying information about the foreign client to a TR.

The Class Exemption places a number of conditions on the relief including the Phase 2 Reporting Entity:

- reporting all other information in relation to the transaction;
- using all reasonable endeavours to obtain consent from or notify the relevant counterparty, and reporting the Identifying Information to a TR once consent has been obtained (unless the transaction has since been terminated or has expired);
- where only notice is required to be given to the counterparty (rather than consent being required), providing this notice by 30 April, or a month after the Phase 2 Reporting Entity determines that notice rather than consent is required;
- where the Phase 2 Reporting Entity is trading with a new client, ensuring it has the consent to report that client's Identifying Information before it trades with them (effective from 1 June or 1 August, depending on whether the relationship with the client is direct or indirect); and
- having a compliance plan in place that described how the Phase 2 Reporting Entity will obtain the necessary consents, and on request providing the plan to ASIC and reporting to ASIC progress on obtaining the necessary consents.

Snapshot reporting

Under the Rules, Phase 2 Reporting Entities need to report each entry into, modification, termination or assignment of an OTC derivative, including where multiple events occurred in a single day. The Class Exemption grants relief to Phase 2 Reporting Entities to allow them to report on a 'snapshot' basis (whereby Phase 2 Reporting Entities report a 'snapshot' at the end of each day of each OTC derivative position outstanding, without reporting each individual transaction) until 30 September 2014.

Transaction identifiers

The Class Exemption provides relief to Phase 2 Reporting Entities until 30 September 2014 from any requirement under the Rules to report a 'universal transaction identifier' or 'single transaction identifier' for executed trades, and can instead use alternative identifiers. This relief is conditional on the reporting of:

- a) the trade identifier created by the Swap Execution Facility on which the Reportable Transaction was executed (if applicable);
- b) the trade identifier created by the provider of any of the Confirmation Platforms on which the Reportable Transaction was confirmed (if applicable); or
- c) if the information in paragraphs (a) and (b) is not available, the internal trade identifier used by the Reporting Counterparty.

Nexus Transactions

The Class Exemption provides relief to foreign Phase 2 Reporting Entities from the requirement to report trades that are *entered into* in Australia until 1 February 2015, where they are not booked to an Australian branch profit and loss account. Phase 2 Reporting Entities will still need to report trades which are booked in Australia from 1 April 2014.

As a condition of the Class Exemption, Phase 2 Reporting Entities are required to tag reportable 'booked in' transactions from 1 October 2014 and 'entered into' transactions from 2 February 2015 as available to ASIC, so that ASIC may have access to information about these trades held in prescribed trade repositories.

2. Phase 1 Reporting Entities - Extension of masking and middleware relief

Background

ASIC granted transitional exemptive relief to certain Phase 1 Reporting Entities ahead of the start of Phase 1 Reporting under the Rules on 1 October 2013.³

Following discussions with the Phase 1 Reporting Entities and the Australian Bankers' Association (**ABA**), the ABA submitted an application for relief on behalf of the Phase 1 Reporting Entities to ASIC on 17 March 2014.

ASIC granted an extension (Instrument 14/0232)⁴ of the previously granted relief for a further transitional period in two areas.

Foreign privacy/masking – Counterparty consents and notices

The first area of relief was in respect of foreign privacy/masking. Relief was set to expire on 1 April 2014 and would have required the Phase 1 Reporting Entities to cease masking of counterparty identifying information from this day. This relief was extended until 1 October 2014.

The relief includes strict conditions in order to ensure the Phase 1 Reporting Entities take accelerated steps to obtain the necessary consents and provide the relevant notifications, as follows:

³ Refer [ASIC Special Gazette A45/13](#) Instruments 13/1173, 13/1175, 13/1176, 13/1177 and 13/1178 and [Summary of transitional exemptive relief 1 October 2013](#).

⁴ Refer [ASIC Gazette A13/14](#) Instrument 14/0232. This single instrument varies the five original instruments (referred to in footnote 4) in similar ways.

- where only notice is required to be given to the counterparty (rather than consent being required), the Phase 1 Reporting Entities must provide this notice by 30 April, or from one month after it is determined that a notification is sufficient;
- where the Phase 1 Reporting Entity is trading with a new client, it must ensure it has the consent to report that client's identifying information before it trades with them (effective from 1 June or 1 August, depending on the nature of the relationship with the client); and
- Reporting Entities must have a compliance plan in place that describes how the Phase 1 Reporting Entities will obtain the necessary consents and provide the necessary notifications, and must on request provide the plan to ASIC and report to ASIC progress in obtaining the necessary consents/notifications.

ASIC have included these conditions in the class exemption for the Phase 2 Reporting Entities summarised above, and so the conditions on the relief extension granted to the Phase 1 Reporting Entities are the same as those applicable to the corresponding relief for the Phase 2 Reporting Entities.

Middleware provider dependencies

The second area of relief was in respect of the readiness of certain middleware providers to support reporting by the Phase 1 Reporting Entities of certain trades to TRs. This relief was due to MarkitWire and ICE Link not being ready to support reporting at the expiry of previous relief, and so transitional extensions of the original relief have been granted. The particular relief is summarised in the table below:

Asset Class	Products within asset class subject to delayed start to reporting	Banks benefiting from relief	Delayed reporting start date
Credit	Credit Derivatives confirmed on ICE Link	Macquarie, NAB and Westpac	The earlier of: <ul style="list-style-type: none"> • 30 September 2014, or • one month after ICE Link indicates to the Phase 1 Bank it is ready to support reporting (or the first Monday following that date, should that date not be a Monday).
Equity	Equity Derivatives confirmed on MarkitWire	Macquarie	30 June 2014

3. New Zealand subsidiaries – delayed reporting relief

ASIC granted relief to three New Zealand subsidiaries of ANZ, CBA and NAB, delaying by 6 months the start of their reporting obligations with regards to credit and interest rate derivatives (Instruments 14/0233, 14/0236 and 14/0237)⁵. This followed an application for relief on behalf of ANZ Bank New Zealand Limited (a subsidiary of ANZ), ASB Bank Limited (a subsidiary of CBA) and

⁵ Refer [ASIC Gazette A14/14](#) (Instruments 14/0233, 14/0236 and 14/0237).

Bank of New Zealand (a subsidiary of NAB) (together, the **NZ Banks**). The NZ Banks would otherwise have fallen with phase 2 of the reporting obligation under the Rules.

Relief was requested to enable the NZ Banks to complete necessary systems work to facilitate reporting.

As a condition of this relief, ASIC required the NZ Banks to prepare a compliance plan detailing how they will come into compliance with the Reporting Rules by 1 October 2014, and have placed conditions in respect of foreign privacy/masking that are substantially the same as the conditions placed on the Phase 1 and 2 Reporting Entities with respect to the same issue. The intent is that the NZ Banks will be in a position to start reporting on 1 October 2014 with masking issues having been fully resolved.

4. UBS AG – alternative reporting relief

ASIC granted transitional exemptive relief to UBS AG (**UBS**), which allows UBS to comply with the alternative reporting requirements as a Swap Dealer in a similar manner to Swap Dealers who are US persons (Instrument 14/0238)⁶. The relief followed an application for relief submitted by UBS on 18 March 2014.

UBS sought this relief given its position as a Swiss-domiciled entity that, due to its provisional registration with the CFTC as a Swap Dealer, is subject to certain CFTC reporting requirements. There are currently no reporting obligations in Switzerland. The relief allows UBS to rely on its CFTC reporting obligations, to the extent they are substantially equivalent to Australian reporting obligations, even though the prescribed data repository to which reports are submitted is not located in the jurisdiction of incorporation of UBS. It also allows UBS SB not to report trades relating to instruments that are outside the scope of CFTC reporting requirements, until SEC rulemaking carves those instruments in, subject to a backstop date of 31 December 2015. The relief also means that UBS AG can take advantage of no-action relief granted to it by the CFTC that allows it to not report trades between UBS AG and non-US Persons until 1 December 2014.

As a condition of this relief, UBS AG is required to provide ASIC with monthly aggregated information relating to its OTC derivatives exposures and major counterparties, as well as a requirement to tag those trades that it is required to report under Australian rules as available to ASIC.

⁶ Refer [ASIC Gazette A14/14](#) (Instrument 14/0238).

Annex 1 – List of Reporting Entities covered by the class exemption

These entities are all Phase 2 Reporting Entities as defined in the class exemption. Unless otherwise noted, they qualify as Phase 2 Reporting Entities under paragraph (a) of that definition (which relates to certain entities that as at 31 December 2013 held total gross notional outstanding of AUD \$50 billion or more).

- ANZ Bank of New Zealand Limited
- ASB Bank Limited
- Bank of America N.A.
- Bank of New Zealand Limited
- Barclays Bank PLC
- Citibank N.A., Sydney Branch
- Deutsche Bank AG
- Goldman Sachs Financial Markets Pty Limited *
- Hongkong and Shanghai Banking Corporation, Sydney Branch
- HSBC Bank Australia Limited **
- JPMorgan Chase Bank N.A.
- Merrill Lynch International
- Suncorp–Metway Limited
- UBS AG
- Westpac New Zealand Limited

* This entity qualifies as a Phase 2 Reporting Entity as defined in the class exemption under paragraph (b) of that definition (which relates to a Phase 1 entity that was granted an exemption from Phase 1 on condition that it comply with the Rules as if it is a Phase 2 Reporting Entity).

** This entity qualifies as a Phase 2 Reporting Entity as defined in the class exemption under paragraph (c) of that definition (which relates to certain opted-in Reporting Entities).

Annex 2 – Regulated Foreign Markets Determination (as made on 13 September 2013) - List of Regulated Foreign Markets

- (a) Athens Exchange Derivatives Market;
- (b) BM&FBOVESPA;
- (c) Bourse de Montreal;
- (d) Budapesti Értéktőzsde (Budapest Stock Exchange);
- (e) CBOE Futures Exchange;
- (f) Chicago Board of Trade;
- (g) Chicago Board Options Exchange;
- (h) CME Direct;
- (i) CME Globex;
- (j) The Commodity Exchange, operated by Commodity Exchange, Inc. (US);
- (k) Eurex Deutschland;
- (l) Euronext Paris MATIF (Marché à Terme International de France);
- (m) Euronext Paris MONEP (Marché des Options Négociables de Paris);
- (n) The financial market operated by Hong Kong Futures Exchange Limited;
- (o) ICE Futures Canada;
- (p) ICE Futures Europe;
- (q) ICE Futures U.S.;
- (r) International Securities Exchange;
- (s) Italian Derivatives Market;
- (t) Kansas City Board of Trade;
- (u) London Metal Exchange;
- (v) London Stock Exchange;
- (w) Mercado Español de Futuros Financieros;
- (x) NASDAQ OMX BX;
- (y) NASDAQ OMX Commodities;
- (z) NASDAQ OMX Copenhagen;
- (aa) NASDAQ OMX Futures Exchange;
- (bb) NASDAQ OMX Helsinki;
- (cc) NASDAQ OMX Nordic Derivatives Markets;
- (dd) NASDAQ OMX PHLX;
- (ee) NASDAQ OMX PSX;
- (ff) NASDAQ OMX Riga;
- (gg) NASDAQ OMX Stockholm;
- (hh) NASDAQ OMX Tallinn;
- (ii) NASDAQ OMX Vilnius;
- (jj) NASDAQ Options Market;
- (kk) NYSE Euronext Amsterdam;
- (ll) NYSE Euronext Brussels;
- (mm) NYSE Euronext Lisbon;
- (nn) NYSE Euronext London;
- (oo) NYSE Euronext Paris;
- (pp) NYSE Liffe US;
- (qq) NYSE.Liffe;
- (rr) Osaka Securities Exchange;
- (ss) Oslo Børs ASA;
- (tt) SGX-DT;
- (uu) The financial market operated by The Stock Exchange of Hong Kong Limited;
- (vv) Tokyo Stock Exchange;
- (ww) Toronto Stock Exchange;
- (xx) Warsaw Stock Exchange; and
- (yy) Wiener Börse.

Annex 3 – Class Order Exemption – list of Relevant financial markets

- (a) BSE Limited (Bombay Stock Exchange);
- (b) Boston Options Exchange;
- (c) Borsa Istanbul;
- (d) Bursa Malaysia - Bursa Malaysia Derivatives;
- (e) CEGH Gas Exchange of Vienna Stock Exchange;
- (f) Chicago Mercantile Exchange;
- (g) China Financial Futures Exchange;
- (h) Dalian Commodities Exchange;
- (i) Dubai Gold & Commodities Exchange;
- (j) Dubai Mercantile Exchange;
- (k) Electronic Liquidity Exchange operated by ELX Futures LP;
- (l) EPEX Spot SE;
- (m) European Climate Exchange;
- (n) European Energy Exchange;
- (o) European Exchange;
- (p) Hong Kong Exchange & Clearing Ltd;
- (q) HUPX Ltd Hungarian Power Exchange;
- (r) ICE Endex;
- (s) Jakarta Futures Exchange;
- (t) Johannesburg Stock Exchange;
- (u) Korea Exchange;
- (v) LSE Derivatives Market;
- (w) Mexican Derivatives Exchange;
- (x) Minneapolis Grain Exchange;
- (y) Montreal Exchange;
- (z) Moscow Stock Exchange;
- (aa) NASDAQ OMX Armenia;
- (bb) NASDAQ OMX Iceland;
- (cc) National Stock Exchange of India;
- (dd) New York Mercantile Exchange;
- (ee) New Zealand Exchange;
- (ff) Nodal Exchange;
- (gg) NYSE Arca Europe;
- (hh) OneChicago (Single stock futures);
- (ii) Power Exchange Central Europe;
- (jj) Powernext;
- (kk) Russian Trading System;
- (ll) Singapore Commodity Exchange SGX-DT;
- (mm) South African Futures Exchange (SAFEX), including SAFEX APD Agricultural Products as part of JSE Limited;
- (nn) Taiwan Futures Exchange;
- (oo) Tel Aviv Stock Exchange Ltd;
- (pp) Thailand Futures Exchange as part of Stock Exchange of Thailand;
- (qq) Tokyo Commodity Exchange;
- (rr) Tokyo Financial Exchange; and
- (ss) Turkish Derivatives Exchange.