

Trade Reporting Regime - Transitional Exemptive Relief

The following is a summary of exemptions from ASIC Derivative Transaction Rules (Reporting) 2013 granted to Australian and New Zealand Banking Group Limited, Commonwealth Bank of Australia, Macquarie Bank Limited, National Australia Bank Limited and Westpac Banking Corporation ("the Banks"), effective 1 October 2013.

Delayed start to reporting for certain products

Except as otherwise stated, transaction reporting start date is 1 October 2013 for the banks

Asset Class	Products within asset class subject to delayed start to reporting	Delayed reporting start date
Credit	Single-name CDSs	23 December 2013
	Credit Derivatives confirmed on DS Match	23 December 2013
	Credit Derivatives confirmed on ICE Link (Macquarie, NAB and Westpac)	31 March 2014
	Credit Derivatives outside scope of CFTC reporting ¹ (other than single-name CDS)	1 July 2014
Commodities	Commodity Derivatives based on Carbon (Westpac only)	2 December 2013
	Commodity Derivatives confirmed on ICE eConfirm (Macquarie only)	31 March 2014
Equity	Equity Derivatives confirmed on MarkitWire	5 May 2014
	Equity Derivatives outside scope of CFTC reporting ²	1 October 2014
FX	FX Derivatives executed in the Cook Islands, East Timor (Timor-Leste), Fiji, Solomon Islands, Tonga and Vietnam (ANZ only)	1 March 2014
	FX Derivatives executed in India and Vietnam (CBA only)	1 October 2014
Interest Rates	Interest Rate Derivatives that are Vanilla interest rate products confirmed on MarkitWire	27 January 2014
	Interest Rate Derivatives that are Exotic interest rate products confirmed on MarkitWire	3 March 2014

¹ generally instruments based on the yield or value of a single security, loan or narrow-based security index, known as 'security-based swaps'

² See fn 1

Scope of delayed start to reporting of certain products

Products	Trades over which exemptive relief has been granted
Products outside scope of CFTC reporting	Trades with both US and non-US Persons
Products within scope of CFTC reporting but where relief has been granted for particular confirmation platforms	Trades with non-US Persons

Other transitional exemptive relief granted

Exchange-traded Derivatives

On 13 September 2013, ASIC made the Regulated Foreign Markets Determination.³ This provides an ongoing exemption from the reporting of trades entered into on the markets listed in the Determination, which are set out in Annex 1.

Under the transitional exemptive relief, trades undertaken on the Relevant Financial Markets listed in Annex 2 do not need to be reported until 3 March 2015, even though they are not listed in the Regulated Foreign Markets Determination.

Privacy/Masking

In order to ensure that the Banks do not breach privacy laws in certain jurisdictions, transitional relief has been granted until 30 September 2014 to allow the Banks to 'mask' or not report the following fields that could identify their counterparty to the trade ('Identifying Information'):

1. Identifier of Non-Reporting Counterparty;
2. Name of Non-Reporting Counterparty;
3. Identifier of beneficiary;
4. Name of beneficiary or structure;
5. Identifier of counterparty purchasing protection (Equity and Credit derivatives);
6. Name of counterparty purchasing protection (Equity and Credit derivatives);
7. Identifier of counterparty selling protection (Equity and Credit derivatives);
8. Name of counterparty selling protection (Equity and Credit derivatives);
9. Payer (fixed rate) (interest rate derivatives);
10. Name of payer (fixed rate) (interest rate derivatives);
11. Payer (floating rate leg 1) (interest rate derivatives);
12. Name of payer (floating rate leg 1) (interest rate derivatives);
13. Payer (floating rate leg 2) (interest rate derivatives); and

³ <http://www.comlaw.gov.au/Details/F2013L01710>

14. Name of payer (floating rate leg 2) (interest rate derivatives).

The relief has been granted in respect of the following jurisdictions:

1. Algeria;
2. Argentina;
3. Austria;
4. Bahrain
5. Belgium;
6. France;
7. Hungary;
8. Indonesia;
9. India;
10. Luxembourg;
11. Pakistan;
12. People's Republic of China;
13. Samoa;
14. Singapore;
15. South Korea;
16. Switzerland; and
17. Taiwan.

In order to gain the benefit of this relief, the relevant Bank must be of the reasonable view that it would breach a law or regulation of the jurisdiction to report the Identifying Information to the Trade Repository and it has a written opinion of external legal counsel that supports this view (which it must provide to ASIC on request). The Banks must still report all other information in relation to the transaction and once the privacy barrier no longer exists in relation to a particular jurisdiction, the Bank must use all reasonable endeavours to report the Identifying Information to a Trade Repository (unless the transaction has since been terminated or has expired).

Further, transitional relief has been granted until 1 April 2014 at latest to allow the Banks to not report Identifying Information listed above, where the express consent of the counterparty has not been obtained or notification of the counterparty has not been given, and as a result, the Bank may breach an actionable duty of confidence or contractual duty to the client, or a law of a foreign jurisdiction. This relief is conditional on the relevant Bank reporting all other information in relation to the transaction, using all reasonable endeavours to obtain consent from or notifying the relevant counterparty, and reporting the Identifying Information to a Trade Repository once consent has been obtained (unless the transaction has since been terminated or has expired).

Snapshot reporting

Under the Rules, 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 Banks have been granted relief to allow them to report on a 'snapshot' basis (whereby 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.

Historic trade reporting from 1 October 2014

Under the Rules, instead of reporting the ASIC data fields, for the first 12 months the Banks can report data fields that are substantially the same as ASIC data fields. However this relief only applies for derivatives transaction information (and not derivatives position information) that needs to be reported by 1 October 2014.

The Banks have been granted relief to allow them to also report position information substantially the same as the ASIC data fields by 1 October 2014. After this date, derivative transaction information needs to be reported using ASIC fields.

No 'pairing and sharing' requirement

The Banks have been granted relief 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.

General Conditions

A general condition of the waivers is that each Bank keeps records that enable it to demonstrate it has complied with the conditions for each element of the relief for at least five years and to provide ASIC on request with records that demonstrate there has been compliance with the conditions for each element of the relief.

More details

The full text of the transitional exemptive relief instruments is set out in the ASIC Special Gazette, No. A45/13, Tuesday, 1 October 2013, available at the following web address:

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/A45_13.pdf/\\$file/A45_13.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/A45_13.pdf/$file/A45_13.pdf)

Annex 1 – Regulated Foreign Markets Determination (as made on 13 September 2013⁴) - List of Regulated Foreign Markets

- (a) Athens Exchange Derivatives Market;
- (b) BM&FBOVESPA;
- (c) Bourse de Montreal;
- (d) Budapesti Értéktozsde (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 (Marche des Options Negociables 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;

⁴ <http://www.comlaw.gov.au/Details/F2013L01710>

- (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 2 – Transitional Exemptive Relief – List of Relevant Financial Markets

- (a) BSE Limited (Bombay Stock Exchange);
- (b) Borsa Istanbul;
- (c) Bursa Malaysia;
- (d) CEGH Gas Exchange of Vienna Stock Exchange;
- (e) Chicago Mercantile Exchange;
- (f) China Financial Futures Exchange;
- (g) Dalian Commodities Exchange;
- (h) Dubai Gold & Commodities Exchange;
- (i) Dubai Mercantile Exchange;
- (j) EPEX Spot SE;
- (k) European Energy Exchange;
- (l) European Exchange;
- (m) HUPX Ltd Hungarian Power Exchange;
- (n) ICE Endex;
- (o) Jakarta Futures Exchange;
- (p) Johannesburg Stock Exchange;
- (q) Korea Exchange;
- (r) LCH Enclear - OTC Emissions;
- (s) LCH Enclear - OTC Freight FCM;
- (t) LCH Enclear - OTC Freight;
- (u) LCH Enclear - Precious Metals;
- (v) Mexican Derivatives Exchange;
- (w) Minneapolis Grain Exchange;
- (x) Moscow Stock Exchange;
- (y) NASDAQ OMX Armenia;
- (z) NASDAQ OMX Iceland;
- (aa) National Stock Exchange of India;
- (bb) New York Board of Trade;
- (cc) New Zealand Exchange;
- (dd) Nodal Exchange;
- (ee) NYSE Arca Europe;
- (ff) Power Exchange Central Europe;
- (gg) Powernext;

- (hh) South African Futures Exchange (SAFEX);
- (ii) Taiwan Futures Exchange;
- (jj) The Stock Exchange of Thailand;
- (kk) Tokyo Commodity Exchange; and
- (ll) Tokyo Financial Exchange.