

EXPOSURE DRAFT



EXPOSURE DRAFT (20/05/2015)

Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015

Select Legislative Instrument No. , 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 2015

Peter Cosgrove
Governor-General

By His Excellency's Command

Josh Frydenberg [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Treasurer

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1 Name

This is the *Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1, Part 1	The day after this instrument is registered.	
3. Schedule 1, Parts 2 and 3	1 October 2015.	1 October 2015
4. Schedule 1, Part 4	At the same time as Schedules 1 to 3 to the <i>Acts and Instruments (Framework Reform) Act 2015</i> commence.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

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3 Authority

This instrument is made under the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Amendments **Schedule 1**
Amendments commencing day after registration **Part 1**

Schedule 1—Amendments

Part 1—Amendments commencing day after registration

Corporations Regulations 2001

1 Regulation 7.5A.30 (heading)

Repeal the heading, substitute:

7.5A.30 Reporting requirements—prescribed facilities

2 After subregulation 7.5A.50(2)

Insert:

- (2A) Also, the derivative transaction rules cannot impose requirements relating to a class of derivatives on financial services licensees:
- (a) who are taken not to be end users only because of paragraph (3)(c); and
 - (b) whose Australian financial services licences do not authorise them to provide financial services in relation to that class of derivatives.

3 At the end of regulation 7.5A.50

Add:

- (4) This regulation does not apply to a provision of any derivative transaction rules to the extent that the provision imposes clearing requirements or requirements that are incidental or related to clearing requirements.

4 After Subdivision 2.1 of Division 2 of Part 7.5A

Insert:

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Schedule 1 Amendments

Part 1 Amendments commencing day after registration

Subdivision 2.1A—Derivative transaction rules imposing clearing requirements

7.5A.60 Definitions for Subdivision

- (1) In this Subdivision:

Australian clearing entity, in relation to a derivative transaction, has the meaning given by regulation 7.5A.61.

Derivative Transaction Rules (Reporting) means the *ASIC Derivative Transaction Rules (Reporting) 2013*.

foreign clearing entity, in relation to a derivative transaction, has the meaning given by regulation 7.5A.62.

representative capacity: an entity is a party to a derivative transaction, or holds a position relating to a derivative transaction, in a *representative capacity* if the entity is such a party, or holds such a position, in a capacity as the responsible entity for a registered scheme, or as the trustee of a trust.

total gross notional outstanding positions, in relation to an entity, means an amount worked out for the entity under derivative transaction rules, in accordance with subregulation (2).

- (2) For the purposes of this Subdivision, derivative transaction rules may:
- (a) set out a method for working out the total gross notional outstanding positions held by an entity in a representative capacity, or otherwise; and
 - (b) provide for an entity that starts, or stops, meeting a threshold referred to in subparagraph 7.5A.61(1)(a)(ii), 7.5A.62(1)(a)(ii) or 7.5A.62(1)(b)(iv) to be taken to meet, or not to meet, the threshold for transitional purposes specified by the rules.

7.5A.61 Definition of *Australian clearing entity*

- (1) An entity is an *Australian clearing entity*, in relation to a derivative transaction to which it is a party otherwise than in a representative capacity, if:

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- (a) the entity is an Australian ADI, or a financial services licensee, that:
 - (i) is incorporated or formed in Australia; and
 - (ii) holds \$100 billion or more in total gross notional outstanding positions otherwise than in a representative capacity; or
 - (b) the entity is any other entity that:
 - (i) is incorporated or formed in Australia; and
 - (ii) has, in accordance with any derivative transaction rules, opted to be treated, for the purposes of those rules, as an Australian clearing entity in relation to derivative transactions to which the entity is a party otherwise than in a representative capacity.
- (2) An entity is an *Australian clearing entity* in relation to a derivative transaction to which it is a party in a representative capacity in the circumstances set out in derivative transaction rules.

7.5A.62 Definition of *foreign clearing entity*

- (1) An entity is a *foreign clearing entity*, in relation to a derivative transaction to which it is a party otherwise than in a representative capacity, if:
- (a) the entity is an ADI, or a financial services licensee, that:
 - (i) is incorporated or formed outside Australia; and
 - (ii) holds \$100 billion or more in total gross notional outstanding positions otherwise than in a representative capacity; or
 - (b) the entity:
 - (i) is incorporated or formed outside Australia; and
 - (ii) provides financial services relating to derivatives to wholesale clients, and not to any other kind of clients; and
 - (iii) is exempt under the Act (including these Regulations, or another instrument made under or for the purposes of the Act) from the requirement to hold a financial services licence for those financial services; and
 - (iv) is an entity whose activities relating to derivatives are regulated by an overseas regulatory authority; and

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- (v) holds \$100 billion or more in total gross notional outstanding positions otherwise than in a representative capacity; or
- (c) the entity is any other entity that:
 - (i) is incorporated or formed outside Australia; and
 - (ii) has, in accordance with any derivative transaction rules, opted to be treated, for the purposes of those rules, as a foreign clearing entity in relation to derivative transactions to which it is a party otherwise than in a representative capacity.
- (2) An entity is a *foreign clearing entity* in relation to a derivative transaction to which it is a party in a representative capacity in the circumstances set out in the derivative transaction rules.

7.5A.63 Clearing requirements—prescribed facilities

- (1) This regulation is made for paragraph 901A(7)(b) of the Act.
- (2) Each facility in the following list is prescribed in relation to all derivatives:
 - (a) CME Clearing Europe Limited;
 - (b) Eurex Clearing AG;
 - (c) Japan Securities Clearing Corporation;
 - (d) NASDAQ OMX Clearing AB.
- (3) A facility determined by ASIC for the purposes of this subregulation is prescribed in relation to the class of derivatives specified in the determination.
- (4) ASIC may, in writing, determine a facility for the purposes of subregulation (3) in relation to a specified class of derivatives, but only if ASIC is satisfied that:
 - (a) the facility's principal place of business is located in a foreign country; and
 - (b) the facility is authorised to operate as a central counterparty for the specified class of derivatives in that country; and
 - (c) the regulatory regime in the facility's principal place of business has substantially implemented the CPSS-IOSCO Principles applicable to the regulation of central counterparties; and

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- (d) adequate arrangements exist for ASIC and the Reserve Bank of Australia to have access to information about the level of clearing activity by participants that are incorporated or formed in Australia, in relation to derivatives that are subject to clearing requirements under the derivative transaction rules.
- (5) A determination under subregulation (4) must be published by ASIC on its website.
- (6) In this regulation:
 - CPSS-IOSCO Principles** means the principles for financial market infrastructures:
 - (a) issued in April 2012 by the Committee on Payment and Settlement Systems (the CPSS) and the International Organization of Securities Commissions (the IOSCO); and
 - (b) as supplemented, superseded or modified from time to time by principles, recommendations or standards issued by the CPSS or IOSCO (or a successor of the CPSS or IOSCO).

7.5A.64 Persons on whom clearing requirements cannot be imposed

- (1) This regulation is made for paragraph 901D(a) of the Act.
- (2) The derivative transaction rules cannot impose clearing requirements in relation to a derivative transaction on a person who is not:
 - (a) an Australian clearing entity in relation to the transaction; or
 - (b) a foreign clearing entity in relation to the transaction.

Example: This regulation prevents the derivative transaction rules imposing clearing requirements on, among other things, a range of foreign public entities including the following (subject to paragraphs (2)(a) and (b)):

- (a) central banks;
- (b) Government debt offices;
- (c) multilateral development banks;
- (d) the Bank for International Settlements and other similar international organisations.

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Schedule 1 Amendments

Part 1 Amendments commencing day after registration

7.5A.65 Circumstances in which clearing requirements can be imposed

- (1) This regulation is made for paragraph 901D(b) of the Act.
- (2) The derivative transaction rules can only impose clearing requirements in relation to a derivative transaction on an entity that is an Australian clearing entity in relation to the transaction if the other party to the transaction is:
 - (a) an Australian clearing entity in relation to the transaction; or
 - (b) a foreign clearing entity in relation to the transaction; or
 - (c) a foreign internationally active dealer.
- (3) The derivative transaction rules can only impose clearing requirements in relation to a derivative transaction on an entity that is a foreign clearing entity in relation to the transaction if the other party to the transaction is:
 - (a) an Australian clearing entity in relation to the transaction; or
 - (b) a foreign clearing entity in relation to the transaction; or
 - (c) a foreign internationally active dealer.
- (4) In this regulation:

foreign internationally active dealer means any foreign entity, other than a foreign clearing entity, that is registered or provisionally registered as:

 - (a) a swap dealer with the Commodity Futures Trading Commission of the United States of America; or
 - (b) a securities-based swap dealer with the Securities Exchange Commission of the United States of America.

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Amendments Schedule 1
Amendments commencing 1 October 2015 Part 2

Part 2—Amendments commencing 1 October 2015

Corporations Regulations 2001

5 After Subdivision 2.1A of Division 2 of Part 7.5A

Insert:

Subdivision 2.1B—Phase 3 reporting entities: exemption from OTC derivative reporting requirements

7.5A.70 Definitions for Subdivision

In this Subdivision:

ASIC exemption instrument means *ASIC Instrument [14/0633]*.

Derivative Transaction Rules (Reporting) means the *ASIC Derivative Transaction Rules (Reporting) 2013*.

OTC derivative (short for over-the-counter derivative) means an OTC Derivative within the meaning of the Derivative Transaction Rules (Reporting).

OTC derivative position means a position relating to an OTC derivative transaction.

OTC derivative position information means Derivative Position Information within the meaning of the Derivative Transaction Rules (Reporting), as in force on 1 October 2015, about positions relating to OTC derivative transactions.

OTC derivative transaction means a derivative transaction (within the meaning of Chapter 7 of the Act) relating to an OTC derivative.

phase 3 reporting entity means a Phase 3 Reporting Entity within the meaning of the ASIC exemption instrument as in force on 1 October 2015.

reporting entity means a Reporting Entity within the meaning of the Derivative Transaction Rules (Reporting), as in force on 1 October 2015.

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representative capacity: an entity is a party to an OTC derivative transaction, or holds an OTC derivative position, in a **representative capacity** if the entity is such a party, or holds such a position, in a capacity as the responsible entity for a registered scheme, or as the trustee of a trust.

total gross notional outstanding positions, in relation to a phase 3 reporting entity, has a meaning affected by the ASIC exemption instrument, as in force on 1 October 2015.

7.5A.71 Exemption—single-sided transaction reporting

- (1) This regulation is made for paragraph 907E(2)(a) of the Act.

Transactions involving Australian entities

- (2) A phase 3 reporting entity is exempt from a provision of the Derivative Transaction Rules (Reporting) requiring the entity, at a particular time, to report information about an OTC derivative transaction to which the entity is a party if:
- (a) regulation 7.5A.73 applies to the entity at that time; and
 - (b) the other party to the transaction is a reporting entity that:
 - (i) is required to report information about the transaction under the Derivative Transaction Rules (Reporting), and is not exempt under this subregulation from that requirement; or
 - (ii) reports information about the transaction in accordance with the Derivative Transaction Rules (Reporting).

Transactions involving foreign entities

- (3) A phase 3 reporting entity is also exempt from a provision of the Derivative Transaction Rules (Reporting) requiring the entity, at a particular time, to report information about an OTC derivative transaction to which the entity is a party if:
- (a) regulation 7.5A.73 applies to the entity at that time; and
 - (b) the other party to the transaction is a foreign entity that:
 - (i) is subject to reporting requirements in one or more foreign jurisdictions that are substantially equivalent to requirements under the Derivative Transaction Rules (Reporting); and

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Amendments **Schedule 1**
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- (ii) reports information about the transaction, in accordance with the requirements that apply in one or more of those foreign jurisdictions, to a facility prescribed by or under subregulation 7.5A.30(2); and
- (iii) designates the information reported to that facility as information that has been reported to ASIC under the Derivative Transaction Rules (Reporting).

ASIC reporting exemptions

- (4) Subregulation (5) applies during a period in which a phase 3 reporting entity would be exempt under this regulation from any requirement to report information under a provision of the Derivative Transaction Rules (Reporting).
- (5) During the period mentioned in subregulation (4), the entity is also exempt from subsection 907D(3) of the Act in relation to a provision of the ASIC exemption instrument that imposes a requirement to report any information as a condition of an exemption under that instrument.

7.5A.72 Exemption—single-sided position reporting

- (1) This regulation is made for paragraph 907E(2)(a) of the Act.

Positions involving Australian entities

- (2) A phase 3 reporting entity is exempt from a provision of the Derivative Transaction Rules (Reporting) requiring the entity, at a particular time, to report OTC derivative position information in relation to a position if:
 - (a) regulation 7.5A.73 applies to the entity at that time; and
 - (b) either or both of the following apply:
 - (i) a reporting entity is required to report information about the position under the Derivative Transaction Rules (Reporting), and is not exempt under this subregulation from that requirement;
 - (ii) a reporting entity reports information about the position in accordance with the Derivative Transaction Rules (Reporting).

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Positions involving foreign entities

- (3) A phase 3 reporting entity is also exempt from a provision of the Derivative Transaction Rules (Reporting) requiring the entity, at a particular time, to report OTC derivative position information in relation to a position if:
- (a) regulation 7.5A.73 applies to the entity at that time; and
 - (b) a foreign entity that is subject to reporting requirements in one or more foreign jurisdictions that are substantially equivalent to requirements under the Derivative Transaction Rules (Reporting):
 - (i) reports information about the position, in accordance with the requirements that apply in one or more of those foreign jurisdictions, to a facility prescribed by or under subregulation 7.5A.30(2); and
 - (ii) designates the information reported to that facility as information that has been reported to ASIC under the Derivative Transaction Rules (Reporting).

ASIC reporting exemptions

- (4) Subregulation (5) applies during a period in which a phase 3 reporting entity would be exempt under this regulation from any requirement to report information, at a particular time, under a provision of the Derivative Transaction Rules (Reporting).
- (5) During the period mentioned in subregulation (4), the entity is also exempt from subsection 907D(3) of the Act in relation to a provision of the ASIC exemption instrument that imposes a requirement to report any information as a condition of an exemption under that instrument.

7.5A.73 Application of exemptions

New phase 3 reporting entities

- (1) For the purposes of regulations 7.5A.71 and 7.5A.72, this regulation applies to a new phase 3 reporting entity, in relation to an OTC derivative transaction or an OTC derivative position, at all times during a period:

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- (a) starting on the day the entity becomes a phase 3 reporting entity; and
- (b) ending at the end of the quarter day that next follows 2 successive disqualifying quarter days for the entity.

Example: An entity becomes a phase 3 reporting entity on 1 November 2015. However, 31 December 2015 and 31 March 2016 are both disqualifying quarter days for the entity.

This regulation applies to the entity during a period starting on 1 November 2015 and ending at the end of 30 June 2016 (the quarter day that next follows the disqualifying quarter days on 31 December 2015 and 31 March 2016).

Continuing phase 3 reporting entities

- (2) For the purposes of regulations 7.5A.71 and 7.5A.72, this regulation applies to a continuing phase 3 reporting entity, in relation to an OTC derivative transaction or an OTC derivative position, at all times during a period:

- (a) starting on the day after the quarter day that next follows 2 successive qualifying quarter days for the entity; and
- (b) ending at the end of the quarter day that next follows 2 successive disqualifying quarter days for the entity.

Example: An entity becomes a phase 3 reporting entity on 1 November 2015. However, 31 December 2015 and 31 March 2016 are both disqualifying quarter days for the entity, so this regulation stops applying under subregulation (1) at the end of 30 June 2016.

30 June 2016 and 30 September 2016 are qualifying quarter days for the entity. This regulation applies to the entity again during the period starting on 1 January 2017 (the day after the quarter day that next follows the qualifying quarter days) and ending as provided for by paragraph (2)(b).

- (3) In this regulation:

continuing phase 3 reporting entity means:

- (a) an entity that was a phase 3 reporting entity on 30 September 2015; or
- (b) a new phase 3 reporting entity for which the period mentioned in subregulation (1) has ended.

Note: For when this regulation first applies to an entity that was a phase 3 entity on 30 September 2015, see regulation 10.21.01.

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Schedule 1 Amendments

Part 2 Amendments commencing 1 October 2015

disqualifying quarter day, for an entity, means a quarter day at the end of which the total gross notional outstanding positions held by the entity in the relevant capacity is 5 billion Australian dollars or more.

new phase 3 reporting entity means an entity that becomes a phase 3 reporting entity on or after 1 October 2015.

qualifying quarter day, for an entity, means a quarter day at the end of which the total gross notional outstanding positions held by the entity in the relevant capacity is less than 5 billion Australian dollars.

quarter day has the same meaning as in the Act.

Note: Under the Act, ***quarter days*** are 31 March, 30 June, 30 September and 31 December.

relevant capacity: a position is held by the entity in the ***relevant capacity***, for the purpose of the definition of ***qualifying quarter day*** or ***disqualifying quarter day*** in this subregulation, if:

- (a) the position is held by the entity otherwise than in a representative capacity, in the following circumstances:
 - (i) in a case in which the relevant definition is applied in relation to an OTC derivative transaction to which the entity is a party otherwise than in a representative capacity;
 - (ii) in a case in which the relevant definition is applied in relation to an OTC derivative held by the entity otherwise than in a representative capacity; or
- (b) the position is held by the entity in a representative capacity in relation to a particular registered scheme or trust, in the following circumstances:
 - (i) in a case in which the relevant definition is applied in relation to an OTC derivative transaction to which the entity is a party in that capacity;
 - (ii) in a case in which the relevant definition is applied in relation to an OTC derivative held by the entity in that capacity.

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Amendments **Schedule 1**
Amendments commencing 1 October 2015 **Part 2**

7.5A.74 Reporting requirement—exemption stops applying

Scope

- (1) This regulation applies to a phase 3 reporting entity, in relation to an OTC derivative transaction or an OTC derivative position, if:
 - (a) regulation 7.5A.73 applies in relation to the entity, in relation to the transaction or position, during a particular period, and the period has ended (at the *exemption end time*); and
 - (b) the entity is a counterparty to the relevant OTC derivative (including the derivative as modified) at the exemption end time; and
 - (c) in reliance on an exemption under regulation 7.5A.71 or 7.5A.72 (the *applicable exemption*), the entity does not report OTC derivative position information (the *exempt information*) in relation to the transaction or position during that period; and
 - (d) if it were not for the applicable exemption, the entity would have been required to report the exempt information under:
 - (i) the Derivative Transaction Rules (Reporting); or
 - (ii) subsection 907D(3) of the Act, in relation to a provision of the ASIC exemption instrument that imposes a requirement, as a condition of an exemption under that instrument, to report that information.

Single-sided reporting requirement

- (2) Despite the applicable exemption, the entity must report OTC derivative position information in relation to the OTC derivative, as at the exemption end time, in accordance with the Derivative Transaction Rules (Reporting), within 6 months after the exemption end time.
- (3) If the entity fails to comply with subregulation (2), the applicable exemption is taken never to have applied to the entity in relation to the transaction or position.

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Schedule 1 Amendments

Part 3 Application

Part 3—Application

Corporations Regulations 2001

6 After Part 10.20

Insert in its appropriate numerical position:

Part 10.21—Application provisions relating to the Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015

10.21.01 First application of 7.5A.73—existing phase 3 reporting entities

Main rule

- (1) Subject to subregulations (2) and (3), for the purposes of regulations 7.5A.71 and 7.5A.72, regulation 7.5A.73 first applies to an entity that was a phase 3 reporting entity on 30 September 2015, in relation to an OTC derivative transaction or an OTC derivative position, at all times during a period:
 - (a) starting on 1 October 2015; and
 - (b) ending at the end of the quarter day that next follows 2 successive disqualifying quarter days for the entity, counting disqualifying quarter days on or after 30 June 2015.

Entities with disqualifying quarter days on 31 March 2015 and 30 June 2015

- (2) Subregulation (3) applies in relation to an entity that was a phase 3 reporting entity on 30 September 2015, if:
 - (a) the entity became a phase 3 reporting entity on or before 31 March 2015; and
 - (b) 31 March 2015 and 30 June 2015 were disqualifying quarter days for the entity.

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Application **Part 3**

- (3) For the purposes of regulations 7.5A.71 and 7.5A.72, regulation 7.5A.73 first applies to the entity, in relation to an OTC derivative transaction or an OTC derivative position, at all times during a period:
- (a) starting on the day after the quarter day that next follows 2 successive qualifying quarter days for the entity, counting qualifying quarter days on or after 30 September 2015; and
 - (b) ending at the end of the quarter day that next follows 2 successive disqualifying quarter days for the entity.

Interpretation

- (4) A term used in this regulation has the same meaning as in regulation 7.5A.73.

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Schedule 1 Amendments

Part 4 Amendments relating to notifiable instruments

Part 4—Amendments relating to notifiable instruments

Corporations Regulations 2001

7 Subregulation 7.5A.63(4)

Omit “in writing”, substitute “by notifiable instrument”.

8 Subregulation 7.5A.63(5)

Repeal the subsection.