



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Capital, Securities Markets) Barclays Capital Asia Limited Waiver 2022/516

This is the Explanatory Statement for *ASIC Market Integrity Rules (Capital, Securities Markets) Barclays Capital Asia Limited Waiver Instrument 2022/516*.

This Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. In 2019, ASIC granted a waiver to Barclays Capital Asia Limited (**BCAL**):
 - a. under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets – Capital) 2017 (Existing Capital Rules)*; and
 - b. under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Securities Markets Rules)* (ASIC Waiver 2019/576 which was amended by ASIC Waiver 2021/166, the **Existing Waiver**).
2. The Existing Waiver exempts BCAL from certain reporting requirements under the Existing Capital Rules and the Securities Markets Rules, subject to conditions. The Existing Waiver expires at the end of 1 July 2022.
3. Effective from 17 June 2022, BCAL is required to comply with the ASIC Market Integrity Rules (Capital) 2021 (**New Capital Rules**). The New Capital Rules repeal the Existing Capital Rules from this date.
4. Under the New Capital Rules and the Securities Markets Rules, since 6 April 2022 a waiver granted to any person, or a class of persons by ASIC under Rule 1.2.1 of each respective rulebook is by legislative instrument. The Existing Waiver (and the amendment to it) were not legislative instruments.
5. The *ASIC Market Integrity Rules (Capital, Securities Markets) Barclays Capital Asia Limited Waiver Instrument 2022/516 (this instrument)* grants a waiver to BCAL, effective from the later of the date this instrument is registered and 17 June 2022 and for a period of three years, from certain reporting requirements in the New Capital Rules and the Securities Markets Rules. This instrument grants a waiver in substantially the same terms as the Existing Waiver.

Purpose of the instrument

6. BCAL is a company incorporated in Hong Kong. It is a subsidiary of Barclays Bank PLC and a member of the Barclays Group of companies of which Barclays PLC is the parent. BCAL is registered as a foreign company in Australia (ARBN 625 731 295). BCAL is licensed by the Securities and Futures Commission of Hong Kong (SFC) to deal in securities and futures contracts, and to advise on securities and on corporate finance. BCAL is a participant of the financial market operated by ASX Limited, having been admitted on 22 August 2019.
7. In June 2019, ASIC gave the Existing Waiver relieving BCAL from certain rules in the Existing Capital Rules and the Securities Markets Rules, relating to the calculation of foreign exchange exposure risks, and periodic (and contingent) reporting requirements. The Existing Waiver was given in recognition that the reports required by the Existing Capital Rules are based on Australian accounting standards, which are not used in Hong Kong where BCAL is based. For BCAL to retain professional accounting and auditing services for the small part of its business relating to the Australian securities markets would be overly burdensome and expensive. The Existing Waiver also recognises that the risk of BCAL holding positions in currencies denominated other than in Hong Kong dollars was more comparable to an Australian domiciled market participant holding positions in currencies denominated other than in Australian dollars.
8. The Existing Waiver is subject to conditions that BCAL:
 - a. uses an alternative calculation method for foreign exchange exposure under which currencies other than Hong Kong dollars are considered “foreign” to BCAL, rather than currencies other than Australian dollars;
 - b. develops an alternative net capital calculation; and
 - c. complies with alternative reporting mechanisms comprising periodic financial reports BCAL lodges in its home jurisdiction, as well as contingent reports related to any triggering of the alternative net capital calculation).
9. Due to the upcoming expiry of the Existing Waiver on 1 July 2022 and the repeal of the Existing Capital Rules by the New Capital Rules on 17 June 2022, BCAL applied to ASIC in April 2022 for a waiver from the New Capital Rules and the Securities Capital Rules. BCAL sought this waiver on substantially the same terms as the Existing Waiver and for a further three years. The purpose of this instrument is to grant that waiver to BCAL and in the form of a legislative instrument.

Consultation

10. ASIC consulted with BCAL about its original application for the Existing Waiver. As this instrument only confers relief on BCAL, ASIC did not conduct any wider consultation.
11. A Regulation Impact Statement is not required for this instrument as it is minor or machinery in nature and does not alter the existing requirements for market participants. The substituted or alternative requirements for BCAL as a market participant are not material or significant; they are unlikely to have more than minor regulatory impact.

Operation of the instrument

12. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Capital, Securities Markets) Barclays Capital Asia Limited Waiver 2022/516*.
13. Section 2 of the instrument provides that the instrument commences on the later of the day the instrument is registered on the Federal Register of Legislation and 17 June 2022.
14. Section 3 of the instrument provides that the instrument is made under subrule 1.2.1(1) and Rule 1.2.3 of each of the New Capital Rules and the Securities Markets Rules.
15. Section 4 of the instrument provides definitions applicable to terms used in the instrument, interpretative rules, and a note as follows:
 - a. *Alternative FX Position Risk Calculation* which means a calculation of a foreign exchange position risk amount for specified instruments, assets or liabilities in “a currency other than Hong Kong dollars”;
 - b. *BCAL* which means Barclays Capital Asia Limited (ARBN 625 731 295);
 - c. *Business Day* which means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Hong Kong, China;
 - d. *Capital Rules* which means the *ASIC Market Integrity Rules (Capital) 2021*;
 - e. *Financial Resources Return* which has the meaning given by paragraph 7(4)(d);
 - f. *FX Position Risk Calculation* which means a calculation of a foreign exchange position risk amount for a position in a Financial Instrument, other asset or liability (except a position which is an Excluded Asset or a foreign exchange contract hedging Excluded Assets) which is denominated in a currency other than Australian dollars.
 - g. *Limit* which has the meaning given by paragraph 7(1)(a);

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- h. *SFC* which means the Securities and Futures Commission of Hong Kong;
 - i. where there is a reference to time in the instrument, it is to the time in Sydney, Australia;
 - j. where a provision of this instrument requires BCAL to make or apply an *FX Position Risk Calculation* (including as a component of another calculation), BCAL may make or apply an *Alternative FX Position Risk Calculation* in respect of that *Financial Instrument*, other asset or liability in place of the *FX Position Risk Calculation*;
 - k. where a provision of this instrument requires BCAL to provide any document, return or declaration, BCAL may provide such document, return or declaration based on any information or calculation prepared in accordance with this instrument, and any statement by BCAL confirming compliance with the Capital Rules and ASIC Market Integrity Rules (Securities Markets) 2017 shall be construed to be qualified by this instrument; and
 - l. that other capitalised terms used in this instrument are defined in the Capital Rules.
 16. Subsection 5(1) of the instrument exempts BCAL from a provision of the New Capital Rules, only to the extent that the provision requires BCAL to make or apply an *FX Position Risk Calculation* (including as a component of another calculation), provided that BCAL instead makes or applies an *Alternative FX Position Risk Calculation* in respect of that *Financial Instrument*, other asset or liability in place of the *FX Position Risk Calculation*. This means that BCAL will calculate its foreign exchange position risk on the basis that currencies other than Hong Kong dollars are considered “foreign” to BCAL, rather than currencies other than Australian dollars. The term *Financial Instrument* is defined in Rule 1.4.3 of the New Capital Rules.
 17. Subsection 5(2) of the instrument exempts BCAL from paragraph 9.2.2(1)(b) and subparagraphs 9.2.2(2)(b)(i) and (ii) of the New Capital Rules.
 18. Paragraph 9.2.2(1)(b) of the New Capital Rules requires a market participant to notify ASIC immediately if its *Liquid Capital* divided by its *Total Risk Requirement* (its ***Liquid Capital Ratio***) is equal to or falls below 1.2. The terms *Liquid Capital* and *Total Risk Requirement* are defined in Rule 1.4.3 of the New Capital Rules.
 19. Subparagraphs 9.2.2(2)(b)(i) and (ii) of the New Capital Rules require a market participant to provide ASIC with, at the option of ASIC, an *Ad Hoc Risk-Based Return*, or a *Summary Risk-Based Return* and *Risk-Based Return Declaration*, disclosing the amount of its *Liquid Margin* by 10 am on:
 - a. the first business day of each week, showing the financial position of the market participant on the last business day of the prior week, for so

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- long as its liquid capital ratio is equal to or less than 1.2 but greater than 1.1; and
- b. each business day, showing the financial position of the market participant on the prior business day, for so long as its liquid capital ratio is 1.1 or less.
20. The terms *Ad Hoc Risk-Based Return*, *Summary Risk-Based Return*, *Risk-Based Return Declaration* and *Liquid Margin* are defined in Rule 1.4.3 of the New Capital Rules.
21. Subsection 5(3) of the instrument exempts BCAL from subparagraph 9.2.2(2)(b)(iii) of the New Capital Rules. Subparagraph 9.2.2(2)(b)(iii) of the New Capital Rules requires a market participant to provide ASIC with, at the option of ASIC, an *Ad Hoc Risk-Based Return*, or a *Summary Risk-Based Return* and *Risk-Based Return Declaration*, disclosing the amount of its *Liquid Margin* by 10 am on each business day, showing the financial position of the market participant on the prior business day, for so long as the amount referred to in paragraph 9.2.2(1)(c) – its net assets – is zero or less.
22. Subsection 5(4) of the instrument exempts BCAL from Rule 9.2.3 of the New Capital Rules. Rule 9.2.3 of the Capital Rules requires a market participant to prepare and deliver to ASIC within 10 business days of the end of each calendar month a *Monthly Risk-Based Return* and related *Risk-Based Return Declaration*. The term *Monthly Risk-Based Return* is defined in Rule 1.4.3 of the New Capital Rules.
23. Subsection 5(5) of the instrument exempts BCAL from subrule 9.2.4(1) of the New Capital Rules. Subrule 9.2.4(1) of the New Capital Rules requires a market participant to prepare and deliver to ASIC within three months following the end of the market participant’s financial year, prescribed financial returns and statements, and declarations.
24. Subsection 5(6) of the instrument exempts BCAL from paragraph 4.3.2(1)(a) of the Securities Markets Rules. Paragraph 4.3.2(1)(a) of the Securities Markets Rules requires a market participant to send, or cause to be sent, to Australia any records kept outside Australia which the market participant is required to maintain under Chapter 4 of the Securities Markets Rules which will enable true and fair financial statements to be prepared.
25. Section 6 of the instrument provides that the waivers in section 5 of the instrument apply where BCAL:
- a. is a company incorporated in Hong Kong, China;
 - b. is licensed by the SFC for Type 1 regulated activity (dealing in securities);
 - c. is a Participant of one or more Markets;

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- d. acts as a participant of a Market only as agent on behalf of Barclays Group companies.
26. Subsection 7(1) of the instrument provides that it is a condition of the waiver in subsection 5(2) that BCAL must:
- a. develop and maintain a **Limit** designed to monitor its *Liquid Capital* and its *Total Risk Requirement*;
 - b. immediately prepare a calculation of its *Liquid Margin* if the Limit is exceeded;
 - c. immediately notify ASIC if the calculated *Liquid Margin* indicates that BCAL's liquid capital ratio is less than or equal to 1.4;
 - d. provide ASIC with an *Ad Hoc Risk-Based Return*, authorised by a director of BCAL, disclosing the amount of its *Liquid Margin*, within one business day after giving notice to ASIC as required by paragraph c. above;
 - e. for so long as the Limit is exceeded and BCAL's liquid capital ratio is less than or equal to 1.4, by 9:00 pm on the first business day of each week, provide ASIC with an *Ad Hoc Risk-Based Return* disclosing the amount of its *Liquid Margin* as at the close of business in Hong Kong on the last business day of the prior week; and
 - f. for so long as the Limit is exceeded and BCAL's liquid capital ratio is less than or equal to 1.2, by 9:00 pm on each business day, provide ASIC with an *Ad Hoc Risk-Based Return* disclosing the amount of its liquid margin as at the close of business in Hong Kong on the prior business day.

The terms *Ad Hoc Risk-Based Return*, *Liquid Capital*, *Liquid Margin*, and *Total Risk Requirement* are defined in Rule 1.4.3 of the New Capital Rules. The term *Limit* has the meaning implied in paragraph 7(1)(a) of the instrument.

27. Subsection 7(2) of the instrument provides that it is a condition of the waiver in subsection 5(3) that BCAL must for so long as its net assets are at any time equal to or fall below zero, by 9:00 pm on each business day, provide ASIC with an *Ad Hoc Risk-Based Return* showing its financial position as at the close of business in Hong Kong on the prior business day. The term *Ad Hoc Risk-Based Return* is defined in Rule 1.4.3 of the New Capital Rules.
28. Subsection 7(3) of the instrument provides that it is a condition of the waiver in subsection 5(4) that BCAL must prepare and deliver to ASIC no later than the 21st day of each calendar month a *Monthly Risk-Based Return* and a related *Risk-Based Return Declaration* authorised by one director of BCAL. The terms *Monthly Risk-Based Return* and *Risk-Based Return Declaration* are defined in Rule 1.4.3 of the New Capital Rules.

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29. Subsection 7(4) of the instrument provides that it is a condition of the waiver in subsections 5(5) and (6) that BCAL must prepare and deliver to ASIC, within four months following the end of BCAL's financial year:
- a. BCAL's statutory accounts, directors' declaration and audit report as required in Hong Kong;
 - b. an unaudited return in substantially the same form as the *Annual Audited Risk-Based Return*, which accurately reflects BCAL's accounts and its financial position as at the end of BCAL's financial year;
 - c. a *Risk-Based Return Declaration* relating to the unaudited return, authorised by one director of BCAL;
 - d. the annual Financial Resources Return and the related audit report submitted by BCAL to the SFC in respect of the financial year;
 - e. a statement in the form set out in Form 6 of Schedule 1C to the New Capital Rules, dated and signed by a director of BCAL; and
 - f. a group structure chart showing BCAL's corporate ownership structure.
30. Section 8 of the instrument provides that the instrument ceases to have effect at the end of 1 July 2025. This is a period of three years following the nominal expiry of the Existing Waiver at the end of 1 July 2022.

Legislative instrument and primary legislation

31. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument (in the form of a waiver granted to BCAL) rather than primary legislation or through an amendment to the New Capital Rules and the Securities Markets Rules. This is because:
- a. the matters contained in the instrument are a specific exemption designed to ensure that BCAL's compliance with certain reporting requirements in the New Capital Rules and the Securities Markets Rules are appropriate for its circumstances, without compromising the operation of existing requirements for market participants to maintain adequate financial capital and notify ASIC of certain significant financial events; and
 - b. the matters contained in the instrument are highly technical and detailed, and specific to one entity only. Incorporation of these matters would unnecessarily add to the length and complexity of the primary legislation and/or ASIC market integrity rules.

Duration of the instrument

32. The instrument's ceases to have effect end of 1 July 2025.

Legislative authority

33. ASIC makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of the New Capital Rules and of the Securities Markets Rules.
34. Under subrule 1.2.1(1) of the New Capital Rules and of the Securities Markets Rules, ASIC may, by way of legislative instrument, relieve any person or class of persons from the obligation to comply with a provision of the rules, either unconditionally or subject to such conditions as ASIC thinks fit (including the duration of such relief).
35. Under Rule 1.2.3 of the New Capital Rules and of the Securities Markets Rules, ASIC may specify the period during which any relief from the obligation to comply with a provision of the rules may apply.
36. This instrument is subject to disallowance under section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

37. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the [Attachment](#).

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Market Integrity Rules (Capital, Securities) Barclays Capital Asia Limited Waiver 2022/516

Overview

1. In 2019, ASIC granted a waiver to Barclays Capital Asia Limited (**BCAL**):
 - a. under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets – Capital) 2017 (Existing Capital Rules)* and
 - b. under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Securities Markets Rules)* (ASIC Waiver 2019/576 which was amended by ASIC Waiver 2021/166, the **Existing Waiver**).
2. The Existing Waiver, which expires at the end of 1 July 2022, exempts BCAL from certain reporting requirements in the Existing Capital Rules and the Securities Markets Rules relating to the calculation of foreign exchange exposure risks, and periodic (and contingent) reporting requirements. The Existing Waiver is subject to conditions that BCAL:
 - a. uses an alternative calculation method for foreign exchange exposure under which currencies other than Hong Kong dollars are considered “foreign” to BCAL, rather than currencies other than Australian dollars;
 - b. develops an alternative net capital calculation; and
 - c. complies with alternative reporting mechanisms comprising periodic financial reports BCAL lodges in its home jurisdiction, as well as contingent reports related to any triggering of the alternative net capital calculation).
3. Effective from 17 June 2022, BCAL is required to comply with the ASIC Market Integrity Rules (Capital) 2021 (**New Capital Rules**). The New Capital Rules repeal the Existing Capital Rules from this date.
4. Under the New Capital Rules and the Securities Markets Rules, since 6 April 2022 a waiver granted to any person, or a class of persons by ASIC under Rule 1.2.1 of each respective rulebook is by legislative instrument. The Existing Waiver (and the amendment to it) were not legislative instruments.
5. This instrument grants a waiver to BCAL, effective from the later of the date this instrument is registered and 17 June 2022 and for a period of three years, from certain reporting requirements in the New Capital Rules and the Securities

Markets Rules. This instrument grants a waiver in substantially the same terms as the Existing Waiver.

Assessment of human rights implications

6. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

7. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.