



ASIC
Australian Securities &
Investments Commission

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

I, Natalie Boulizos, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 10 June 2022

Natalie Boulizos

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Part 1—Preliminary

1 Name of legislative instrument

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

2 Commencement

This instrument commences on the later of:

- (1) the day this instrument is registered on the Federal Register of Legislation; and
- (2) 17 June 2022.

Note: The Federal Register of Legislation may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under:

- (1) subrule 1.2.1(1) and rule 1.2.3 of the *ASIC Market Integrity Rules (Capital) 2021*; and
- (2) subrule 1.2.1(1) and rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017*.

Note: The *ASIC Market Integrity Rules (Capital) 2021* and the *ASIC Market Integrity Rules (Securities Markets) 2017* may be accessed on the Federal Register of Legislation at www.legislation.gov.au.

4 Definitions

- (1) In this instrument:

Alternative FX Position Risk Calculation means a calculation (including a calculation that is a component of another 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 Hong Kong dollars.

BCAL means Barclays Capital Asia Limited (ARBN 625 731 295).

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Hong Kong, China.

Capital Rules means the *ASIC Market Integrity Rules (Capital) 2021*.

Financial Resources Return has the meaning given by paragraph 7(4)(d).

FX Position Risk Calculation 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.

Limit has the meaning given by paragraph 7(1)(a).

SFC means the Securities and Futures Commission of Hong Kong.

- (2) In this instrument, a reference to time is to the time in Sydney, Australia.
- (3) 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.
- (4) 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.

Note: Other capitalised terms used in this instrument are defined in the Capital Rules.

Part 2—Waivers

5 Waivers

Subject to section 6, BCAL does not have to comply with:

- (1) a provision of the 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;
- (2) paragraph 9.2.2(1)(b) and subparagraphs 9.2.2(2)(b)(i) and (ii) of the Capital Rules;
- (3) subparagraph 9.2.2(2)(b)(iii) of the Capital Rules
- (4) rule 9.2.3 of the Capital Rules;
- (5) subrule 9.2.4(1) of the Capital Rules; or
- (6) paragraph 4.3.2(1)(a) of the *ASIC Market Integrity Rules (Securities Markets) 2017*.

6 Where waivers apply

The waivers in section 5 apply where all of the following are satisfied:

- (1) BCAL is a company incorporated in Hong Kong, China;
- (2) BCAL is licensed by the SFC for Type 1 regulated activity (dealing in securities);
- (3) BCAL is a Participant of one or more Markets;
- (4) BCAL acts as a Participant of a Market only as agent on behalf of Barclays PLC or any of its subsidiaries.

7 Conditions

- (1) It is a condition of the waiver in subsection 5(2) that BCAL must:
 - (a) develop and maintain a **Limit** (taking into account the historical size of the margin calls received from relevant clearing houses and any available counterparty risk mitigation measures) designed to monitor its Liquid Capital and its Total Risk Requirement;

- (b) if the Limit maintained in accordance with paragraph (a) is exceeded—immediately prepare a calculation of its Liquid Margin;
 - (c) notify ASIC immediately if the calculation of Liquid Margin performed in accordance with paragraph (b) indicates that BCAL's Liquid Capital divided by its Total Risk Requirement is less than or equal to 1.4;
 - (d) by no later than one Business Day after giving notice to ASIC in accordance with paragraph (c), provide ASIC with an Ad Hoc Risk-Based Return, authorised by a director of BCAL, disclosing the amount of its Liquid Margin;
 - (e) for so long as the Limit is exceeded and BCAL's Liquid Capital divided by its Total Risk Requirement 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 divided by its Total Risk Requirement 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.
- (2) 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.
- (3) 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, the following documents and information:
- (a) a Monthly Risk-Based Return, which accurately reflects BCAL's accounts and financial position on the last Business Day of the previous calendar month which are prepared in accordance with accounting standards and principles which are generally accepted in Hong Kong; and
 - (b) a Risk-Based Return Declaration relating to the Monthly Risk-Based Return, authorised by one director of BCAL.

- (4) It is a condition of the waivers 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, including directors' declaration and auditor's report as required under the laws of Hong Kong, which:
 - (i) give a true and fair view of the financial position and performance of BCAL's business as at the end of the financial year; and
 - (ii) which are prepared in accordance with accounting standards and principles which are generally accepted 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 provided under paragraph 7(4)(b), 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 Capital Rules, dated and signed by a director of BCAL; and
 - (f) a group structure chart showing BCAL's corporate ownership structure starting at the ultimate parent, the immediate parent, BCAL, any subsidiaries (including nominee companies of BCAL) and any related/associated companies of BCAL that are involved in activities related to BCAL acting as a Participant of a Market.

Note: The conditions imposed on a waiver must be complied with in order for the waiver to be effective: subrule 1.2.1(2) of both the Capital Rules and the *ASIC Market Integrity Rules (Securities Markets) 2017*.

8 Expiry

This instrument ceases to have effect at the end of 1 July 2025.