



ASIC
Australian Securities &
Investments Commission

Corporations (CS Facility Exemption) Instrument 2023/18

I, Calissa Aldridge, delegate of the Minister, make the following legislative instrument.

Date 23 February 2023

Calissa Aldridge

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Part 1—Preliminary

1 Name of legislative instrument

This is the *Corporations (CS Facility Exemption) Instrument 2023/18*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 820C(1) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

CBDC Pilot means the central bank digital currency pilot project administered by the Reserve Bank of Australia and the Digital Finance Cooperative Research Centre.

CBDC Pilot Participation Agreement means, in relation to a Pilot Participant, an agreement between the Pilot Participant and the RBA that covers the terms and conditions of the Pilot Participant's participation in the CBDC Pilot in relation to a use case platform.

Opt-In Notice: see section 6.

Pilot Participant means an entity that has entered into a CBDC Pilot Participation Agreement with the RBA.

RBA means the Reserve Bank of Australia.

use case platform means, in relation to a Pilot Participant, the facility operated by the Pilot Participant in the CBDC Pilot and that involves the operation of a clearing and settlement facility.

Part 2—Exemption

5 Australian CS facility licence exemption—use case platforms

The use case platform of a Pilot Participant is exempt from the provisions of Part 7.3 of the Act in relation to the operation of the use case platform by the Pilot Participant in the CBDC Pilot.

6 Opt-In Notice

The exemption in section 5 only applies to a use case platform of a Pilot Participant if, at least 5 business days before operating the use case platform in the CBDC Pilot, the Pilot Participant has given ASIC a written notice (*Opt-In Notice*) which includes the following information:

- (a) the name and contact details of the Pilot Participant;
- (b) a description of the use case platform proposed to be operated by the Pilot Participant in the CBDC Pilot, including a description of the following:
 - (i) the structure of the use case platform;
 - (ii) the nature of the services to be provided by or through the use case platform;
 - (iii) the proposed size of the use case platform;
 - (iv) the type of financial products to which the use case platform will relate;
 - (v) the type of persons who will be participants in relation to the use case platform and whether those participants:
 - (A) in using the use case platform will be providing financial services to other persons; or
 - (B) will use the use case platform in respect of financial products they acquire or dispose of and, if so, whether the acquisition or disposals will be as retail clients or as wholesale clients; or
 - (C) will be participants in relation to a financial market or any other clearing and settlement facility in relation to the financial products to which the use case platform relates;
 - (vi) the technology to be used in the operation of the use case platform;

- (c) a copy of the signed CBDC Pilot Participation Agreement in relation to the Pilot Participant;
- (d) the date from which the Pilot Participant proposes to operate the use case platform in reliance on the exemption in section 5.

7 Conditions

Information to be given to new users

- (1) Before allowing a participant to access the use case platform for the first time, the Pilot Participant must notify the participant in writing of the following:
 - (a) the use case platform is covered by an exemption under section 820C of the Act;
 - (b) the Pilot Participant operating the use case platform is not licensed under Part 7.3 of the Act;
 - (c) the Pilot Participant operating the use case platform is not subject to the legal obligations that apply to the operator of a licensed clearing and settlement facility, including the requirement, to the extent that it is reasonably practicable to do so, to do all things to ensure that the facility's services are provided in a fair and effective way.

ASIC to be informed of changes to use case platform

- (2) The Pilot Participant must inform ASIC, by notice in writing, of any material change to the operation of the use case platform from that is set out in the Opt-In Notice or in a notice under this subsection at least 5 business days before the change occurs.

Notifying ASIC about non-compliance with conditions

- (3) The Pilot Participant must notify ASIC in writing if the Pilot Participant fails to comply with any of the conditions in this instrument. The Pilot Participant must notify ASIC as soon as practicable after the Pilot Participant becomes aware of the failure.

Assistance to ASIC and the RBA

- (4) The Pilot Participant must comply with sections 821C and 821D of the Act in relation to the use case platform as if the Pilot Participant held an Australian CS facility licence that authorised the Pilot Participant to operate the use case platform in this jurisdiction.

Report to ASIC

- (5) The Pilot Participant must provide a written report to ASIC, within 30 days after the conclusion of the CBDC Pilot, which sets out the operation

of the use case platform in the CBDC Pilot, including information in relation to:

- (a) the activities undertaken on the use case platform, including the total number and total value of transactions entered into on the use case platform; and
- (b) any divergences during the CBDC Pilot between the planned and actual activities undertaken on the use case platform; and
- (c) the clearing and settlement performance, including any failures or delays in settlement on the use case platform in the CBDC pilot.

Part 3—Repeal

8 Repeal

This instrument is repealed at the start of 1 June 2023.