



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2023/160

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2023/160*.

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

Summary

1. *ASIC Corporations (Amendment) Instrument 2023/160* amends *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* to determine a foreign financial market for the purposes of section 1100K of the *Corporations Act 2001 (Corporations Act)*.
2. ASIC Instrument 2023/160 also updates ASIC Instrument 2017/669 and two other instruments so that they refer to *ASIC Corporations (Financial Requirements for Issuers of Retail OTC Derivatives) Instrument 2022/705* rather than to ASIC Class Order [CO 12/752], which is no longer current.

Purpose of the instrument

3. The instrument determines a foreign financial market for the purposes of section 1100K of the Corporations Act.

Consultation

4. ASIC consulted on technical relief in relation to the employee share scheme (**ESS**) provisions in Division 1A of Part 7.8 of the Corporations Act in *Consultation Paper 364 Modifications to the ESS regime (CP 364)*. In CP 364, we noted that for the purposes of subsection 1100K(2), we intended to determine the foreign financial markets consistent with *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*; see, for example, the note to paragraph 18 of CP 364. Submissions in response to CP 364 did not object to this proposal.
5. The determination is also consistent with the transitional arrangements provided by subsection 1696(1) of the Corporations Act, as inserted by *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*. Section 1696 will cease to apply when ASIC determines a foreign market under subsection 1100K(2): subsection 1696(2).

Operation of the instrument

6. Section 4 of the instrument states that each instrument specified in the Schedule is amended as set out in the applicable items in the Schedule.
7. Item 1 of the Schedule to the instrument amends ASIC Class Order [CO 13/761] so that it refers to *ASIC Corporations (Financial Requirements for Issuers of Retail OTC Derivatives) Instrument 2022/705* rather than ASIC Class Order [CO 12/752], which is no longer current.
8. Item 2 of the Schedule to the instrument amends *ASIC Corporations (Financial Requirements for CSF Intermediaries) Instrument 2017/339* so that it refers to *ASIC Corporations (Financial Requirements for Issuers of Retail OTC Derivatives) Instrument 2022/705* rather than ASIC Class Order [CO 12/752].
9. Item 3 of the Schedule to the instrument amends section 3 of *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* to add subsection 1100ZK(2) as an authority for that instrument.
10. Item 4 of Schedule to the instrument amends the definition of ‘applicable ASIC legislative instrument’ in paragraph 4(b) of *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* so that it refers to *ASIC Corporations (Financial Requirements for Issuers of Retail OTC Derivatives) Instrument 2022/705* rather than ASIC Class Order [CO 12/752].
11. Item 5 of the Schedule to the instrument adds a new Part 3 Determination and section 6 to *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*. Section 6 provides that, for the purposes of section 1100K, each approved foreign market (within the meaning of section 5 of *ASIC Instrument 2017/669*) is determined.
12. The instrument will commence on the day after it is registered on the Federal Register of Legislation.

Legislative instrument and primary legislation

13. The subject matter and policy implemented by this instrument are more appropriate for a legislative instrument rather than primary legislation because the instrument is made under a power specifically delegated to ASIC which requires a detailed, technical assessment that is best suited for ASIC to undertake rather than Parliament. The instrument operates to fill in a more comprehensive regulatory framework that sits alongside the primary law.

Duration of the instrument

14. The duration of amendments made by ASIC Instrument 2023/160 aligns with the duration of the instruments amended.

Legislative authority

15. The instrument is made under subsections 283GA(1), 601QA(1), 655A(1), 741(1), 926A(2), 992B(1), 1020F(1) and 1100K(2) of the Corporations Act.
16. The instrument amends *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*, *ASIC Corporations (Financial Requirements for Issuers of Retail OTC Derivatives) Instrument 2022/705* and *ASIC Corporations (Financial Requirements for CSF Intermediaries) Instrument 2017/339*. Where an Act confers a power to make an instrument, the power is to be construed as including a power to amend the instrument: see subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005, per section 5C of the Corporations Act).
17. The instrument is a disallowable instrument.

Statement of Compatibility with Human Rights

18. 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 Corporations (Amendment) Instrument 2023/160

Overview

1. This instrument amends *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669* to determine a foreign financial market for the purposes of section 1100K of the *Corporations Act 2001*.
2. The instrument also updates *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*, *ASIC Corporations (Financial Requirements for Issuers of Retail OTC Derivatives) Instrument 2022/705* and *ASIC Corporations (Financial Requirements for CSF Intermediaries) Instrument 2017/339* so that those instruments refer to *ASIC Corporations (Financial Requirements for Issuers of Retail OTC Derivatives) Instrument 2022/705* rather than ASIC Class Order [CO 12/752], which is no longer current.

Assessment of human rights implications

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

Conclusion

4. 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*.