



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2023/368

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2023/368* (the *Instrument*).

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

Summary

1. This Instrument amends the *Corporations (CS Facility Exemption) Instrument 2023/18 (Exemption Instrument)* under subsection 820C(2) of the *Corporations Act 2001* (the *Act*) to extend the operation of the Exemption Instrument until the start of 1 August 2023.

Purpose of the instrument

2. The purpose of the Instrument is to extend the operation of the Exemption Instrument to accommodate for the increased duration of the CBDC Pilot. The Exemption Instrument exempts use case platforms in the CBDC Pilot involving the operation of a clearing and settlement facility from the provisions of Part 7.3 of the Act, subject to the conditions set out in the Exemption Instrument.

Consultation

3. In making the Instrument, ASIC has consulted with the operator of each clearing and settlement facility known to be covered by the Exemption Instrument. For completeness, ASIC has also consulted with operators that intend to utilise the relief provided by the Exemption Instrument but have not yet provided an opt-in notice under the Exemption Instrument.
4. Further, ASIC has published a notice on the [Exempt clearing and settlement facilities operating in Australia](#) webpage allowing a reasonable period within which the operator of each clearing and settlement facility covered by the Exemption Instrument may make submissions on the proposed action to amend the Exemption Instrument.
5. ASIC has consulted with the Office of Impact Analysis (*OIA*) in relation to whether an Impact Analysis (*IA*) is required for this proposed change. OIA advised that the preparation of an IA was not required because the proposal is still considered no more than minor, and their advice remained current.

Operation of the instrument

Part 1 – Preliminary

Commencement

6. Section 2 of the Instrument provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation.

Authority

7. Section 3 of the Instrument provides that the Instrument is made under subsection 820C(2) of the Act.

Schedule 1 – Amendments

Corporations (CS Facility Exemption) Instrument 2023/18

8. Item 1 of Schedule 1 omits “1 June 2023” and substitutes “1 August 2023”, which changes the repeal date of the Exemption Instrument from the start of 1 June 2023 to the start of 1 August 2023.

Legislative instrument and primary legislation

9. The subject matter and policy implemented by this Instrument is more appropriate for a legislative instrument rather than primary legislation because:
 - (a) The matters contained in the Instrument only affect a relatively small subset of entities, namely those participating in the CBDC Pilot. The Instrument amends the Exemption Instrument to extend administrative relief in circumstances where strict compliance with the primary legislation produces a significant regulatory burden. On this basis, it is appropriate for the delegate of the Minister to amend the Exemption Instrument to extend exemptive relief, as the matters contained in this particular instrument are of a highly specific and temporary nature which are more appropriate for a legislative instrument rather than primary legislation.
 - (b) There is a need to move more quickly than Parliamentary processes allow due to the timeline of the CBDC Pilot.

Legislative authority

10. The delegate of the Minister makes the Instrument under subsection 820C(2) of the Act. Under subsection 820C(2) of the Act, the Minister may, at any time, vary an exemption or revoke an exemption.
11. Under subsection 820C(3) of the Act, the Minister may only take action under subsection 820C(2) after:

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- (a) giving notice, and an opportunity to make submissions on the proposed action, to the operator of each clearing and settlement facility known by the Minister to be covered by the exemption; and
 - (b) if the exemption covers a class of clearing and settlement facilities—a notice has been published on ASIC’s website allowing a reasonable period within which the operator of each clearing and settlement facility covered by the exemption may make submissions on the proposed action, and that period has ended.
 12. The requirements under subsection 820C(3) of the Act have been satisfied, as ASIC has provided notice, and an opportunity to make submissions to operators of each clearing and settlement facility known to be covered by the Exemption Instrument. A notice has also been published on ASIC’s website allowing a reasonable period within which the operator of each clearing and settlement facility covered by the exemption may make submissions on the proposed action.
 13. This legislative instrument is disallowable under section 42 of the Legislation Act 2003.

Statement of Compatibility with Human Rights

14. 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 2023/368

Overview

1. This Instrument amends the *Corporations (CS Facility Exemption) Instrument 2023/18* (Exemption Instrument) under subsection 820C(2) of the Corporations Act 2001 (the Act) to extend the operation of the Exemption Instrument until the start of 1 August 2023.

Assessment of human rights implications

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

Conclusion

3. 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*.