



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment and Repeal) Instrument 2024/229

This is the Explanatory Statement for *ASIC Corporations (Amendment and Repeal) Instrument 2024/229* (the **Instrument**).

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

Summary

1. The Instrument repeals the *ASIC Corporations (Derivative Clearing Exemption) Instrument 2018/209* (**ASIC Instrument 2018/209**) as the exemption arrangement in ASIC Instrument 2018/209 has been formalised in the *ASIC Derivative Transaction Rules (Clearing) 2015* (the **Rules**). The Instrument repeals ASIC Instrument 2018/209, which has a built-in expiry date of 2 April 2024, but will otherwise continue to be identified as in force until it sunsets on 1 April 2028. The Instrument also repeals *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395* (**ASIC Instrument 2020/395**) and the *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451* (**ASIC Instrument 2020/451**). ASIC Instrument 2020/395 and ASIC Instrument 2020/451 both gave temporary financial reporting relief because of the impacts of COVID. That temporary relief applied to financial years ending in 2021 and 2022 and the relief therefore has no ongoing effect. ASIC Instrument 2020/395 and ASIC Instrument 2020/451 are due to sunset on 1 October 2030.
2. The Instrument also makes minor amendments to *ASIC Corporations (Takeover Bids) Instrument 2023/683* (**ASIC Instrument 2023/683**) and *ASIC Corporations (Warrants: Relevant Interests and Associations) Instrument 2023/687* (**ASIC Instrument 2023/687**) for consistency with definitions in the *Corporations Act 2001* (the **Act**).

Purpose of the instrument

3. The purpose of the Instrument is to repeal ASIC Instrument 2018/209, which has been allowed to expire because it is no longer necessary.
4. ASIC Instrument 2018/209 provides relief from compliance with Rule 2.1.1 of the Rules for contracts denominated in Australian dollars in the Forward Rate Agreements class (**AUD FRAs**) entered into before 2 April 2024.

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5. The *ASIC Derivative Transaction Rules (Clearing) Amendment Instrument 2023/726 (ASIC Instrument 2023/726)* removed AUD FRAs from the definition of a Clearing Derivative in Rule 1.2.3 of the Rules. The effect of this amendment was to formalise the exemption arrangement in ASIC Instrument 2018/209 because these products have never become suitable for mandatory central clearing as was expected at the time the Rules were originally made, despite the passage of time.
 6. While ASIC Instrument 2018/209 ceased to have any effect once AUD FRAs were removed from the definition of a Clearing Derivative by ASIC Instrument 2023/726, and also has a built-in expiry date of 2 April 2024, it is only due to sunset on 1 April 2028. The Instrument repeals ASIC Instrument 2018/209 in the interests of clarity, because it will otherwise continue to be identified as being in force until it sunsets on 1 April 2028, even though it will not be operative.
 7. The purpose of the Instrument is also to repeal ASIC Instrument 2020/395 and ASIC Instrument 2020/451. ASIC Instrument 2020/395 and ASIC Instrument 2020/451 both gave temporary financial reporting relief because of the impacts of COVID. That temporary relief applied to financial years ending in 2021 and 2022 and the relief therefore has no ongoing effect. ASIC Instrument 2020/395 and ASIC Instrument 2020/451 are due to sunset on 1 October 2030.
 8. The purpose of the Instrument is also to make minor amendments to ASIC Instrument 2023/683 and ASIC Instrument 2023/687 for consistency with definitions in the Act. The Instrument also amends ASIC Instrument 2023/683 by inserting in notional subparagraph 638(5)(d)(ii) the words “notified foreign passport fund” after “scheme”, to correspond with similar relief provided for bidders in notional subparagraph 636(3)(d)(ii).

Consultation

9. ASIC has not consulted on the Instrument on the basis that, first, it simply repeals a different instrument (ASIC Instrument 2018/209) which no longer has any legal effect, as this would otherwise continue to be identified as being in force until it sunsets on 1 April 2028. Secondly, the Instrument simply repeals ASIC Instrument 2020/395 and ASIC Instrument 2020/451, which both gave temporary financial reporting relief for financial years ending in 2021 and 2022, and the relief therefore has no ongoing effect. Thirdly, the Instrument gives effect to the policy intent of ASIC Instrument 2023/683 and ASIC Instrument 2023/684 as originally made.

Operation of the instrument

Part 1 – Preliminary

10. Section 1 provides that the name of the Instrument is the *ASIC Corporations (Amendment and Repeal) Instrument 2024/229*.

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11. Section 2 provides the commencement date for the items in the Schedule. It provides that the Instrument commences on the day that it is registered on the Federal Register of Legislation.
 12. Section 3 provides that the Instrument is made under subsections 341(1) and 601QA(1), paragraphs 655A(1)(b), 673(1)(b), and 907D(2)(a) and subsection 992B(1), and of the Act.
 13. Section 4 sets out that each instrument specified in the Schedule is amended, repealed, or has effect according to the applicable items in the Schedule.

Schedule 1 – Repeals

14. Item 1 in Schedule 1 repeals the whole of ASIC Instrument 2018/209.
15. Item 2 in Schedule 1 repeals the whole of the ASIC Instrument 2020/395.
16. Item 3 in Schedule 1 repeals the whole of the ASIC Instrument 2020/451.

Schedule 2 – Amendments

17. Item 1 in Schedule 2 makes a minor amendment to notional paragraphs 636(1)(ga) and (gaa), in paragraph 6(c) of ASIC Instrument 2023/683, to reflect the definition of “issue situation” in section 9 of the Act contained in those paragraphs. This amendment removes the parenthetical phrase “(within the meaning of section 1012B)” because it is unnecessary to state following the inclusion of the “issue situation” definition in section 9 of the Act.
18. Items 2 and 3 in Schedule 2 amend notional subparagraphs 636(1)(ga)(i) and (ii), 636(3)(d)(ii) and 638(5)(d)(ii) to substitute the phrase “managed investment scheme” with “registered scheme” for consistency with the Act.
19. Item 3 in Schedule 2 also amends notional s638(5)(d)(ii), in paragraph 6(f) of ASIC Instrument 2023/683, by inserting in the words “notified foreign passport fund” after “scheme”, to correspond with similar relief provided for bidders in notional subparagraph 636(3)(d)(ii). This amendment has the effect of expressly allowing a target’s statement to include or be accompanied by a statement without the requirements in paragraphs 638(5)(a) to (c) being met where the statement was made in a document lodged with the operator of a prescribed financial market by a listed notified foreign passport fund.
20. Item 4 in Schedule 2 makes a minor amendment to notional subsection 609(6F), in paragraph 5(2) of ASIC Instrument 2023/687, to clarify the definitions in subsection s609(6F) apply only to section 609(6) and sections 609(6A) to (6F). This amendment removes any uncertainty that may arise in respect of s609(3A) referring to a warrant “within the meaning of the regulations”, where notional subsection 609(6F) contains a separate limited definition of “warrant” for the call warrant and put warrant relief in ASIC Instrument 2023/687.

Legislative instrument and primary legislation

21. The subject matter and policy implemented by the Instrument is more appropriate for a legislative instrument rather than primary legislation because the Instrument amends and repeals the principal instruments, which are themselves legislative instruments.

Duration of the instrument

22. The duration of the Instrument aligns with the duration of the Rules.
23. The amendments made by the Instrument will cease to have effect on expiry of ASIC Instrument 2023/683 and ASIC Instrument 2023/687.

Legislative authority

24. The Instrument is made under subsections 341(1) and 601QA(1), paragraphs 655A(1)(b), 673(1)(b), and 907D(2)(a), and subsection 992B(1) of the Act.
25. Subsection 341(1) provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act.
26. Subsection 601QA(1) provides that ASIC may exempt a specified class of persons from a provision of Chapter 5C of the *Act* or declare that the Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
27. Paragraphs 655A(1)(b) and 673(1)(b) provide that ASIC may declare that Chapter 6 of the Act apply as if specified provisions were omitted, modified or varied as specified in the declaration.
28. Paragraph 907D(2)(a) the Act provides that ASIC may exempt a person or class of persons from all or specified provisions of the Rules. An exemption under paragraph 907D(2)(a) is a legislative instrument if it is expressed to apply in relation to a class of persons (see subsection 907D(4) of the Act).
29. Subsection 992B(1) provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.8 of the Act.
30. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal any such instrument.
31. The Instrument is subject to disallowance under section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

32. 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 and Repeal) Instrument 2024/229

Overview

1. The *ASIC Corporations (Repeal) Instrument 2024/229* (the **Instrument**), made by ASIC under paragraphs 655A(1)(b), 673(1)(b) and 907D(2)(a) of the *Corporations Act 2001*, repeals the *ASIC Corporations (Derivative Clearing Exemption) Instrument 2018/209* (ASIC Instrument **2018/209**) as the exemption arrangement in ASIC Instrument 2018/209 has been formalised in the *ASIC Derivative Transaction Rules (Clearing) 2015* (the **Rules**) and is no longer necessary. The Instrument repeals ASIC Instrument 2018/209, which has a built-in expiry date of 2 April 2024, but will otherwise continue to be identified as in force until it sunsets on 1 April 2028.
2. The Instrument also repeals the *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395* (ASIC **Instrument 2020/395**) and the *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451* (ASIC **Instrument 2020/451**). ASIC Instrument 2020/395 and ASIC Instrument 2020/451 both gave temporary financial reporting relief because of the impacts of COVID. That temporary relief applied to financial years ending in 2021 and 2022 and the relief therefore has no ongoing effect. ASIC Instrument 2020/395 and ASIC Instrument 2020/451 are due to sunset on 1 October 2030.
3. The Instrument also makes minor amendments to *ASIC Corporations (Takeover Bids) Instrument 2023/683* and *ASIC Corporations (Warrants: Relevant Interests and Associations) Instrument 2023/687* for consistency with definitions in the *Corporations Act 2001*. The Instrument also amends ASIC Instrument 2023/683 by inserting in notional subparagraph 638(5)(d)(ii) the words “notified foreign passport fund”, to correspond with similar relief provided for bidders in notional subparagraph 636(3)(d)(ii).

Assessment of human rights implications

4. This Instrument does not engage any of the applicable rights or freedoms.

Conclusion

5. 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*.