

EXPLANATORY STATEMENT for

ASIC Corporations (NZD Denominated Client Money) Instrument 2018/152

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (NZD Denominated Client Money) Instrument 2018/152* under paragraph 992B(1)(c) of the *Corporations Act 2001* (Corporations Act). Paragraph 992B(1)(c) provides that ASIC may declare that Part 7.8 of the Corporations Act applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions of Part 7.8 were omitted, modified or varied as specified in the declaration.

1. Background

Subparagraph 981B(1)(a)(ii) of the Corporations Act and paragraph 7.8.01(2)(a) of the *Corporations Regulations 2001* (Corporations Regulations) together require Australian financial services licensees to ensure client money is paid into an account with either an Australian ADI, an approved foreign bank or a cash management trust. These requirements protect client money by limiting exposure to the credit risk of the licensee.

An ASX 24 participant applied for relief from s981B(1)(a)(ii) and paragraph 7.8.01(2)(a) which would permit it to hold money in relation to New Zealand dollar denominated futures contracts (**NZD contract**) quoted on the ASX 24 market in an account with a non-ADI New Zealand bank. This participant demonstrated to ASIC that despite multiple attempts, it was ultimately unable to open a compliant bank account with an Australian ADI in relation to NZD contracts.

In considering this participant's application, ASIC made enquiries of other ASX 24 participants to determine which bank accounts they use for client money held in relation to NZD contracts. From these enquiries, it was evident that there were structural issues impeding ASX 24 participants from opening compliant bank accounts with Australian ADIs. In particular, it was submitted to ASIC that the supply of these accounts is limited as maintaining them is a highly manual process and offering the account to certain clients does not provide a sufficient benefit to the providing bank.

2. Purpose of the instrument

This instrument is necessary to address structural issues which are impeding ASX 24 participants from accessing NZD denominated client money accounts with Australian ADIs.

The purpose of this instrument is to allow ASX 24 participants to hold client money relating to NZD contracts in an account with any bank that is incorporated in New Zealand and which is prudentially regulated by the Reserve Bank of New Zealand. This will allow ASX 24 participants which are not otherwise able to maintain a compliant account with an Australian ADI to offer their clients access to NZD contracts. This instrument will therefore contribute to the fairness and efficiency of financial markets by providing investors with greater access to NZD contracts.

3. Operation of the instrument

This instrument declares that s981B is amended such that a licensee may comply with s981B(1)(a) by ensuring that money to which Part 7.8 applies is paid into an account with a bank that is incorporated in New Zealand and prudentially regulated by the Reserve Bank of New Zealand. This declaration only applies in relation to money that is paid to an ASX 24 participant by, on behalf of, or for the benefit of, a client of the ASX 24 participant in connection with either a dealing in a NZD contract that has been provided or that will or may be provided to the client or a NZD contract held by the client.

4. Consultation

ASIC has engaged with the ASX 24 participants which will be affected by the proposed class relief and have confirmed that many of them require the relief in order hold client money related to NZD contracts in compliance with the Act.

ASIC consulted with the Office of Best Practice Regulation which assessed that a Regulatory Impact Statement is not necessary for the instrument as the instrument is of a machinery nature.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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ASIC Corporations (NZD Denominated Client Money) Instrument 2018/152 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*.

Overview

This instrument is necessary to address structural issues which are impeding ASX 24 participants from accessing New Zealand dollar denominated client money accounts with Australian ADIs.

The purpose of this instrument is to allow ASX 24 participants to hold client money relating to New Zealand dollar denominated futures contracts (**NZD contracts**) quoted on the ASX 24 Market in any bank which is incorporated in New Zealand and prudentially regulated by the Reserve Bank of New Zealand. This will allow ASX 24 participants which are not otherwise able to maintain a compliant account with an Australian ADI to offer their clients access to these products. This instrument will therefore contribute to the fairness and efficiency of financial markets by providing investors with greater access to NZD contracts.

Human rights implications

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

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission