



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC Corporations (Amendment) Instrument 2023/2*

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2023/0002 (Amendment Instrument)*.

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

### Summary

1. The *ASIC Corporations (NZD Denominated Client Money) Instrument 2018/152 (Principal Instrument)* provides class relief to participants of the licensed market operated by Australian Securities Exchange Limited (ACN 000 943 377) (**ASX 24 market**), from holding client money with an Australian authorised deposit-taking institution (**ADI**) for New Zealand dollar (**NZD**) denominated futures contracts quoted on the ASX 24 market. Under the Principal Instrument, ASX 24 market participants can instead hold this client money with any bank that is incorporated in New Zealand and which is prudentially regulated by the Reserve Bank of New Zealand.
2. The Amendment Instrument extends the class relief in the Principal Instrument to also include client money for NZD denominated over-the-counter derivatives that are cleared or to be cleared by ASX Clear (Futures) Pty Limited (ACN 050 615 864) (**OTC Clearing Contracts**). Over-the-counter derivatives refer to derivatives that are not able to be traded on a prescribed financial market as defined in section 9 of the *Corporations Act 2001*.
3. The Principal Instrument, as amended by this Amendment Instrument, allows ASX 24 market participants who are unable to open a NZD denominated client money account with an Australian ADI, to offer these NZD denominated futures and clearing products to their clients.

### Purpose of the instrument

4. This Amendment Instrument is necessary to address structural issues which are impeding ASX 24 market participants from accessing NZD denominated client money accounts with Australian ADIs.
5. The purpose of this Amendment Instrument is to allow ASX 24 market participants to hold client money relating to NZD OTC Clearing Contracts in an account with any bank that is incorporated in New Zealand and which is

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prudentially regulated by the Reserve Bank of New Zealand. This will allow ASX 24 market participants which are not otherwise able to maintain a compliant account with an Australian ADI to offer their clients access to NZD OTC Clearing Contracts. This instrument will therefore contribute to the fairness and efficiency of financial markets by providing investors with greater access to NZD OTC Clearing Contracts.

6. Subparagraph 981B(1)(a)(ii) of the *Corporations Act 2001* (***Corporations Act***) and paragraph 7.8.01(2)(a) of the *Corporations Regulations 2001* 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.
7. An ASX 24 market participant applied for relief to extend the Principal Instrument which would permit it to hold client money in relation to other NZD financial products in an account with a prudentially regulated 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 OTC Clearing Contracts.

### **Consultation**

8. ASIC has engaged with ASX 24 market participants, industry bodies and other stakeholders that actively operate in NZD products to determine whether there are structural difficulties opening NZD accounts with ADIs for client money held in relation to NZD OTC Clearing Contracts and any other NZD financial products offered by ASX 24 market participants.
9. We are satisfied that the structural issues addressed by the Principal Instrument are also applicable to NZD OTC Clearing Contracts offered by ASX 24 market participants. The Amendment Instrument will allow ASX 24 market participants which are not otherwise able to maintain a compliant account with an Australian ADI to offer their clients access to NZD OTC Clearing Contracts (in addition to NZD futures contracts quoted on the ASX 24 market).
10. Based on information provided by ASIC, the Office of Best Practice Regulation considers the proposal is likely to have no more than minor impacts on businesses, community organisations or individuals. As such, a Regulation Impact Statement is not required.

### **Operation of the instrument**

11. Section 1 of the Amendment Instrument provides that the title of the instrument is *ASIC Corporations (Amendment) Instrument 2023/0002*.
12. Section 2 of the Amendment Instrument provides that the Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

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13. Section 3 of the Amendment Instrument provides that the Amendment Instrument is made under paragraph 992B(1)(c) of the Corporations Act.
  14. Section 4 of the Amendment Instrument provides that each instrument that is specified in the Schedule (i.e. the *ASIC Corporations (NZD Denominated Client Money) Instrument 2018/152*) is amended as set out in the applicable items in the Schedule.
  15. Schedule 1 of the Amendment Instrument makes amendments to the Principal Instrument so that ASX 24 market participants are allowed to hold client money relating to a NZD OTC Clearing Contract in an account with any bank that is incorporated in New Zealand and which is prudentially regulated by the Reserve Bank of New Zealand.

#### Legislative instrument and primary legislation

16. The subject matter and policy implemented by this Amendment Instrument (and by the Principal Instrument which this Amendment Instrument amends) is more appropriate for a legislative instrument rather than primary legislation because The matters contained in the Amendment Instrument only affect a relatively small subset of Australian financial services licensees, namely ASX 24 market participants. The Amendment Instrument provides administrative relief in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result. If the matters in the Amendment Instrument were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of entities. This would result in additional cost and unnecessary complexity for other users of the primary legislation.
17. It will be a matter for the Government and for Parliament as to whether the Act or Regulations may be amended in future to include the relief in the Instrument.

#### **Duration of the instrument**

18. The duration of the Amendment Instrument aligns with the duration of the Principal Instrument, which this Amendment Instrument amends. The Principal Instrument is due to sunset on 1 April 2028, in accordance with section 50 of the *Legislation Act 2003*.

#### **Legislative authority**

19. ASIC makes the Amendment Instrument under paragraph 992B(1)(c) of the Corporations Act. Under paragraph 992B(1)(c) of the Corporations Act, ASIC may declare Part 7.8 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.
20. Under subsection 33(3) of the *Acts Interpretations Act 1901* (as applicable to the relevant powers because of section 5C of the Corporations Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power

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exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

21. An exemption may apply unconditionally or subject to specified conditions, and a person to whom a condition specified in an exemption applies must comply with the condition (see subsection 992B(3) of the Corporations Act).
22. The Amendment Instrument is a disallowable legislative instrument.

**Statement of Compatibility with Human Rights**

23. 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 2023/2*

#### Overview

1. The *ASIC Corporations (NZD Denominated Client Money) Instrument 2018/152 (Principal Instrument)* provides relief to a participant of the licensed market operated by Australian Securities Exchange Limited (ACN 000 943 377) (**ASX 24 market**), from holding client money with an Australian authorised deposit-taking institution (**ADI**) for New Zealand dollar (**NZD**) denominated futures contracts quoted on the ASX 24 market. Under the Principal Instrument, ASX 24 market participants can instead hold this client money with any bank that is incorporated in New Zealand and which is prudentially regulated by the Reserve Bank of New Zealand.
2. The *ASIC Corporations (Amendment) Instrument 2023/2 (Amendment Instrument)* extends the class relief in the Principal Instrument to also include client money for NZD denominated over-the-counter derivatives that are cleared or to be cleared by ASX Clear (Futures) Pty Limited (ACN 050 615 864).
3. The Principal Instrument, as amended by this Amendment Instrument, allows ASX 24 market participants who are unable to open a NZD denominated client money account with an Australian ADI, to offer these NZD denominated over-the-counter derivatives to their clients.

#### Assessment of human rights implications

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

#### Conclusion

5. This Amendment 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*.