



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### ***ASIC Market Integrity Rules (Capital, Securities Markets) Barclays Capital Asia Limited Waiver (Amendment) Instrument 2025/153***

This is the Explanatory Statement for *ASIC Market Integrity Rules (Capital, Securities Markets) Barclays Capital Asia Limited Waiver (Amendment) Instrument 2025/153*.

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

#### **Summary**

1. In 2019, ASIC Waiver 2019/576 (the **Previous Waiver**) was granted to Barclays Capital Asia Limited (**BCAL**):
  - a. under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets – Capital) 2017 (Old Capital Rules)*; and
  - b. under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Securities Markets Rules)*(ASIC Waiver 2019/576 was subsequently amended by ASIC Waiver 2021/166.)
2. On 7 April 2022, BCAL lodged an application for an extension of the Previous Waiver. ASIC granted an extension of the Previous Waiver under ASIC Waiver 2022/516 (**Existing Waiver**). The Existing Waiver ceases to have effect on 1 July 2025.
3. The *ASIC Market Integrity Rules (Capital, Securities Markets) Barclays Capital Asia Limited Waiver (Amendment) Instrument 2025/153 (this instrument)* grants a waiver to BCAL, effective from the later of the date this instrument is registered and 1 July 2025 and operating until 1 July 2030. The waiver exempts BCAL from certain reporting requirements in the *ASIC Market Integrity Rules (Capital) 2021 (Capital Rules)* and the Securities Markets Rules. This instrument grants a waiver in substantially the same terms as the Existing Waiver.

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## Purpose of the instrument

4. BCAL is a company incorporated in Hong Kong. It is a member of the Barclays Group of companies of which Barclays PLC is the parent. BCAL is registered as a foreign company in Australia (ARBN 625 731 295). BCAL is licensed by the Securities and Futures Commission of Hong Kong (SFC) to deal in securities and futures contracts, and to advise on securities and on corporate finance. BCAL is a participant of the financial market operated by ASX Limited, having been admitted on 22 August 2019.
5. In June 2019, ASIC granted the Previous Waiver relieving BCAL from certain rules in the Old Capital Rules and the Securities Markets Rules, relating to the calculation of foreign exchange exposure risks, and periodic (and contingent) reporting requirements. ASIC extended this waiver in 2022. The Previous Waiver and Existing Waiver were given in recognition that the reports required by the Capital Rules are based on Australian accounting standards, which are not used in Hong Kong where BCAL is based. For BCAL to retain professional accounting and auditing services for the small part of its business relating to the Australian securities markets would be overly burdensome and expensive. The waivers also recognise that the risk of BCAL holding positions in currencies denominated other than in Hong Kong dollars was more comparable to an Australian domiciled market participant holding positions in currencies denominated other than in Australian dollars.
6. The Existing Waiver is subject to conditions that BCAL:
  - a. uses an alternative calculation method for foreign exchange exposure under which currencies other than Hong Kong dollars are considered “foreign” to BCAL, rather than currencies other than Australian dollars;
  - b. develops an alternative net capital calculation; and
  - c. complies with alternative reporting mechanisms comprising periodic financial reports BCAL lodges in its home jurisdiction, as well as contingent reports related to any triggering of the alternative net capital calculation.
7. Due to the upcoming expiry of the Existing Waiver on 1 July 2025, BCAL applied to ASIC in February 2025 for an extension to the waiver from the Capital Rules and the Securities Markets Rules. BCAL sought this waiver extension on substantially the same terms as the Existing Waiver and for a further five years. The purpose of this instrument is to grant that waiver extension to BCAL in the form of a legislative instrument.

## Consultation

8. ASIC consulted with BCAL about its original application for the Existing Waiver. As this instrument only confers relief on BCAL, ASIC did not conduct any wider consultation.

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9. A Regulation Impact Statement is not required for this instrument as it is minor or machinery in nature and does not alter the existing requirements for market participants. The substituted or alternative requirements for BCAL as a market participant are not material or significant; they are unlikely to have more than minor regulatory impact.

### **Operation of the instrument**

10. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Capital, Securities Markets) Barclays Capital Asia Limited Waiver (Amendment) Instrument 2025/153*.
11. Section 2 of the instrument provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.
12. Section 3 of the instrument provides that the instrument is made under subrule 1.2.1(1) and Rule 1.2.3 of each of the Capital Rules and the Securities Markets Rules.
13. Section 4 of the instrument provides each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.
14. Item 1 of Schedule 1 of the instrument amends section 8 of the Previous Waiver, to omit “1 July 2025” and substitute “1 July 2030”.

### **Legislative instrument and primary legislation**

15. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument (in the form of a waiver granted to BCAL) rather than primary legislation or through an amendment to the Capital Rules and the Securities Markets Rules. This is because:
- a. the matters contained in the instrument are a specific exemption designed to ensure that BCAL’s compliance with certain reporting requirements in the Capital Rules and the Securities Markets Rules are appropriate for its circumstances, without compromising the operation of existing requirements for market participants to maintain adequate financial capital and notify ASIC of certain significant financial events; and
  - b. the matters contained in the instrument are highly technical and detailed, and specific to one entity only. Incorporation of these matters would unnecessarily add to the length and complexity of the primary legislation and/or ASIC market integrity rules.

### **Duration of the instrument**

16. The instrument’s ceases to have effect end of 1 July 2030.

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### **Legislative authority**

17. ASIC makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of the Capital Rules and of the Securities Markets Rules.
18. Under subrule 1.2.1(1) of the Capital Rules and of the Securities Markets Rules, ASIC may, by way of legislative instrument, relieve any person or class of persons from the obligation to comply with a provision of the rules, either unconditionally or subject to such conditions as ASIC thinks fit (including the duration of such relief).
19. Under Rule 1.2.3 of the Capital Rules and of the Securities Markets Rules, ASIC may specify the period during which any relief from the obligation to comply with a provision of the rules may apply.
20. This instrument is subject to disallowance under section 42 of the *Legislation Act 2003*. Section 44 of the *Legislation Act 2003* does not apply to this legislative instrument.

### **Statement of Compatibility with Human Rights**

21. 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 Market Integrity Rules (Capital, Securities Markets) Barclays Capital Asia Limited Waiver (Amendment) Instrument 2025/153***

#### Overview

1. This instrument extends a waiver granted to Barclay's Capital Asia Limited (**BCAL**), effective from the date this instrument is registered until 1 July 2030. This waiver conditionally exempts BCAL from certain reporting requirements in the *ASIC Market Integrity Rules (Capital) 2021* and the ***ASIC Market Integrity Rules (Securities Markets) 2017***. This instrument grants a waiver on substantially the same terms as ASIC Waiver 2022/516.

#### 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*.