



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Project Acacia Participation Exemption) Instrument 2025/425

This is the Explanatory Statement for *ASIC Corporations (Project Acacia Participation Exemption) Instrument 2025/425* (the **Instrument**).

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

Summary

1. The Instrument provides conditional class exemptive relief from the *Corporations Act 2001* (the **Act**) with respect to the requirement to hold an Australian Financial Services Licence, Australian Markets Licence and/or an Australian CS facility licence under Chapter 7 of the Act, for project participants (**Project Participants**) or project collaborators (**Project Collaborators**) providing financial services and/or operating a use case facility in Project Acacia (**Project Acacia**) administered by the Reserve Bank of Australia (**RBA**) and the Digital Finance Cooperative Research Centre (**DFCRC**).

Purpose of the instrument

2. The Act provides that a person must only provide a financial service, operate a financial market or operate a clearing and settlement facility in this jurisdiction if the person has Australian Financial Services Licence, Australian Markets Licence and/or an Australian CS facility licence that authorises the person to provide those services or operate the facility in this jurisdiction or the facility is exempt from relevant parts of the Act.
3. The purpose of the Instrument is to exempt Project Participants and Project Collaborators in Project Acacia providing financial services, involving a financial market or involving the operation of a clearing and settlement facility from the requirement to hold an Australian Financial Services, Australian Markets or an Australian CS facility licence by exempting them from the operation of relevant parts of the Act, subject to the conditions set out in the Instrument.
4. To rely on the relief, a Project Participant is required to provide ASIC with a written notice (**Opt-In Notice**) that meets the requirements set out in section 8 of the Instrument. The Opt-In Notice is intended to provide certainty to ASIC and

the Project Participant and Project Collaborators as to when a Project Participant and Project Collaborator is relying on the exemption in sections 5 to 7 of the Instrument, and when the Project Participant and Project Collaborators is required to comply with the conditions in section 9 of the Instrument.

Consultation

5. In making the Instrument, ASIC has consulted directly with prospective Project Participants of Project Acacia whose use cases involve the potential provision of a financial service, operation of a financial market and/or operation of a CS Facility.
6. Further, ASIC has consulted bilaterally with the RBA's Project Acacia team in its capacity as one of the entities jointly conducting Project Acacia and with the Financial Market Infrastructure team at the RBA in its capacity as the co-regulator of clearing and settlement facilities. APRA and Treasury were also consulted as members of the Project Acacia Steering Committee and members of the Project Acacia Regulator Working Group.
7. The Instrument responds to concerns that:
 - (a) There is a significant burden on Project Participants and Project Collaborators in terms of the costs associated with applying for one or more ASIC administered licences as well as the costs of ongoing compliance with those licences;
 - (b) There is limited regulatory benefit in requiring Project Participants and Project Collaborators to hold these licences for conduct during Project Acacia due to the limited time Project Acacia will operate for and the controlled segregated environment of Project Acacia; and
 - (c) The costs of requiring Project Participants and Project Collaborators to acquire these licences significantly outweighs the benefits of the regulatory outcomes achieved as the potential delay in acquiring the licences would impact on timelines for and the costs of applying for and granting these licenses would limit potential learnings from Project Acacia through lower participation.
8. ASIC has consulted with the Office of Impact Analysis (**OIA**) in relation to whether an Impact Analysis (**IA**) is required. OIA advised that the preparation of an IA was not required because it assessed the proposal as unlikely to have a more than minor regulatory impact.

Operation of the instrument

Part 1 – Preliminary

Commencement

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

Authority

10. Section 3 of the Instrument provides that the Instrument is made under subsections 791C(7), 820C(7) and 926A(2) of the Act.

Part 2 – Exemption

Australian financial services licence exemption

11. Section 5 of the Instrument provides that a Project Participant and a Project Collaborator do not have to comply with subsection 911A(1) of the Act for the provision of a specified financial service to a Project Client as a wholesale client as part of the Project Participant's or the Project Collaborator's participation in Project Acacia.

Australian markets licence exemption

12. Section 6 of the Instrument provides that a Project Participant and a Project Collaborator do not have to comply with Part 7.2 of the Act in relation to a use case facility in Project Acacia that is, or includes, a financial market.

Australian CS facility licence exemption

13. Section 7 of the Instrument provides that a Project Participant and a Project Collaborator do not have to comply with Part 7.3 of the Act in relation to a use case facility in Project Acacia that is, or includes, a clearing and settlement facility.

Opt-In Notice

14. Section 8 of the Instrument provides that the exemptions in sections 5, 6 and 7 only applies to a Project Participant and a Project Collaborator if, at least 5 business days before a Project Participant or a Project Collaborator first provides the specified financial service or operates the use case facility (as the case may be), the Project Participant has given ASIC a written notice which includes the following information:
 - (a) the Project Participant and each Project Collaborator in relation to the Project Participant
 - (b) a copy of the signed Project Participation Agreement in relation to the

Project Participant; and

- (c) a description of the use case facility, including a description of the following:
 - (i) the proposed number and value of transactions of tokenised assets to be undertaken through the use case facility;
 - (ii) the class of persons who will be Project Clients in relation to the use case facility; and
 - (iii) the technology to be used in the operation of the use case facility.
- 15. Paragraph 8(c)(i) of the Instrument provides that a Project Participant giving an Opt-In Notice to ASIC has to include information about the proposed size of the use case facility in the Opt-In Notice. ASIC considers that the information about the proposed size of the use case facility would include the volume, or number, and value of transactions that the Project Participant considers would be processed through their use case facility in Project Acacia, categorised according to asset type and provided both on an aggregate basis and on a per counterparty and per product type basis if available.
- 16. Paragraph 8(c)(ii) of the Instrument provides that a Project Participant giving an Opt-In Notice to ASIC has to include information about the class of persons who will be Project Clients in relation to the specified financial services and use case facility during Project Acacia. ASIC considers that information about the class of persons would include whether the Project Clients are wholesale investors or wholesale participants.
- 17. Paragraph 8(c)(iii) of the Instrument provides that a Project Participant giving an Opt-In Notice to ASIC has to include information about the technology to be used in the operation of the use case facility in the Opt-In Notice. ASIC considers that information about the technology to be used in the operation of the use case facility would include information about the settlement model utilised by the Project Participant or the Project Collaborator (as the case may be) in their use case facility.

Conditions

- 18. Section 9 of the Instrument provides the conditions that a Project Participant and a Project Collaborator relying on the exemption in sections 5, 6 and 7 of the Instrument must comply with.

Information to be given to new users

- 19. Subsection 9(3) of the Instrument provides that before allowing a Project Client to access the use case facility for the first time, the Project Participant must notify the Project Client in writing of the following:
 - (a) the use case facility is covered by an exemption under this Instrument;

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- (b) the Project Participant or the Project Collaborator (as the case may be) is not licensed under Chapter 7 of the Act for the operation of the use case facility;
 - (c) the Project Participant or Project Collaborator operating the use case facility is not subject to the legal obligations that apply to the operator of a licensed financial market or clearing and settlement facility, including the requirement, to the extent that it is reasonably practicable to do so, to do all things to ensure that:
 - (i) in the case of a financial market—the facility is fair, orderly and transparent; and
 - (ii) in the case of a clearing and settlement facility—the facility’s services are provided in a fair and effective way;
 - (d) the expected cessation date of the use case facility in Project Acacia.
20. Subsection 9(4) of the Instrument that before a Project Participant or Project Collaborator provides specified financial services in Project Acacia, the Project Participant must notify a Project Client in writing of the following before the first time the services are provided:
- (a) the provision of the specified financial services is covered by an exemption under this instrument;
 - (b) the Project Participant or Project Collaborator (as the case may be) is not licensed under Chapter 7 of the Act for the provision of the specified financial services;
 - (c) the Project Participant or Project Collaborator (as the case may be) is not subject to the legal obligations that apply to a financial services licensee;
 - (d) the expected cessation date of the provision of the specified financial services in Project Acacia.

ASIC to be informed of changes to use case platform

21. Subsection 9(5) of the Instrument provides that the Project Participant must inform ASIC, by notice in writing, of any material change to the use case facility from that set out in the Project Participation Agreement or in a notice under this subsection at least 5 business days before the change occurs, including any material change to:
- (a) the operation of the use case facility; or
 - (b) the specified financial services provided by the Project Participant or a Project Collaborator in relation to the Project Participant.

Notifying ASIC about non-compliance with conditions

22. Subsection 9(6) of the Instrument provides that the Project Participant must notify ASIC in writing if the Project Participant, or a Project Collaborator in relation to the Project Participant, fails to comply with any of the conditions in this section. The Project Participant must notify ASIC as soon as practicable after the Project Participant becomes aware of the failure.

Assistance to ASIC and the RBA

23. Subsection 9(7) of the Instrument provides that each of the Project Participant and the Project Collaborator must provide such assistance to ASIC and the RBA in relation to its participation in Project Acacia as ASIC or the RBA reasonably requests.

Project Clients to be wholesale participants

24. Subsection 9(8) of the Instrument provides that if the use case facility of the Project Participant, or a Project Collaborator in relation to the Project Participant, is or includes a financial market or a clearing and settlement facility, the Project Participant must ensure that a Project Client does not access the use case facility unless the Project Client:

- (a) is a wholesale participant in relation to the use case facility; and
- (b) only participates in the use case facility on its own behalf or on behalf of a person who would be a wholesale participant if they participated in the use case facility directly.

Notifying ASIC about non-compliance with conditions – Project Collaborator

25. Subsection 9(9) provides that a Project Collaborator must notify ASIC in writing if they fail to comply with any of the conditions in section 9 of the Instrument, unless the Project Participant has done so under subsection 9(6). The Project Collaborator must notify ASIC as soon as practicable after the Project Collaborator becomes aware of the failure.

Part 3 – Repeal

26. Section 10 of the Instrument provides that the Instrument is repealed at the start of 28 February 2026.

Legislative instrument and primary legislation

27. 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 Project Acacia. The Instrument provides 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 ASIC to provide

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 Project Acacia.

Duration of the instrument

- 28. The Instrument is repealed at the start of 28 February 2026, by section 10 of the Instrument.
- 29. ASIC considers that the duration of the Instrument is appropriate as the Instrument is intended to provide relief for the duration of Project Acacia and only for conduct within Project Acacia.
- 30. ASIC will consider whether to extend the operation of the Instrument if ASIC is advised of changes to the duration of Project Acacia.

Legislative authority

- 31. The delegate of ASIC makes the Instrument under subsections 791C(7), 820C(7) and 926A(2) of the Act.
- 32. This legislative instrument is disallowable under section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

- 33. 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*.

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Overview

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2. The Act provides that a person must only provide a financial service, operate a financial market or operate a clearing and settlement facility in this jurisdiction if the person has Australian Financial Services Licence, Australian Markets Licence and/or an Australian CS facility licence that authorises the person to provide those services or operate the facility in this jurisdiction or the facility is exempt from relevant parts of the Act.
3. The purpose of the Instrument is to exempt Project Participants and Project Collaborators in Project Acacia providing financial services, involving a financial market or involving the operation of a clearing and settlement facility from the requirement to hold an Australian Financial Services, Australian Markets or an Australian CS facility licence by exempting them from the operation of relevant parts of the Act, subject to the conditions set out in the Instrument.
4. To rely on the relief, a Project Participant is required to provide ASIC with a written notice (***Opt-In Notice***) that meets the requirements set out in section 8 of the Instrument. The Opt-In Notice is intended to provide certainty to ASIC and the Project Participant and Project Collaborators as to when a Project Participant and Project Collaborator is relying on the exemption in sections 5 to 7 of the Instrument, and when the Project Participant and Project Collaborators is required to comply with the conditions in section 9 of the Instrument.

Assessment of human rights implications

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

Conclusion

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6. 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*.