



Australian CS Facility Licence (FinClear Pty Ltd) 2024

Corporations Act 2001

I, Amanda Zeller, Senior Executive Leader, Australian Securities and Investments Commission grant this Licence under subsection 824B(1) of the *Corporations Act 2001* (the Act) and impose conditions on this Licence under subsection 825A(1) of the Act.

Dated 11 September 2024

A handwritten signature in black ink, appearing to read 'A. Zeller', is written over a horizontal line.

Signed

as a delegate of the Minister under section 1101J of the Act

1. Name

This Licence is the *Australian CS Facility Licence (FinClear Pty Ltd) 2024*.

Note: This instrument should be read in conjunction with the Corporations (FinClear Pty Ltd) CS Facility Exemption Notice 2024.

2. Commencement

This Licence commences when it is granted.

3. Definitions

In this Licence, unless the contrary intention appears, terms defined in the Act have the same meaning in this Licence and:

Act means the *Corporations Act 2001*.

Business Day means a day other than a Saturday, Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day or Boxing Day.

Client Money means money paid to the Licensee in the circumstances specified in subsection 981A(1) of the Act (subject to subsections 981A(2), (3) and (4)), regardless of whether the Licensee is a financial services licensee.

Client Money Account means an account maintained for the purposes of section 981B of the Act, including such an account maintained because of subcondition 13(1).

Client Money Conditions means the conditions referred to in conditions 13, 14, 15, 16, and 17 of this Licence.

Client Money Requirements means the following:

- (a) sections 981A, 981B, 981C, 981E, 981F and 981H of the Act;
- (b) regulations 7.8.01, 7.8.02, 7.8.03 and 7.8.04 of the Regulations.

Facility means the clearing and settlement facility that the Licensee is authorised to operate under this Licence that effects the settlement of FCX market transactions.

FCX market means the financial market the Licensee is authorised to operate under the Australian Market Licence (FinClear Pty Ltd) 2024 Licence.

FCX market transaction means a transaction to acquire or dispose of financial products entered on or through the FCX market.

Licensee means FinClear Pty Ltd ACN 607 164 714.

Regulations means the *Corporations Regulations 2001*.

reporting period means each period of 3 months, or part thereof, during which the Facility is operated in Australia, ending on 31 March, 30 June, 30 September, or 31 December.

retail client: a person is a **retail client** in relation to the FCX market if a financial service provided to the person in relation to the trading or proposed trading of a financial product by the person on the FCX market is or would be provided to the person as a retail client (within the meaning of sections 761G and 761GA of the Act).

retail participant means a participant that is a retail client in relation to the FCX market.

wholesale client: a person is a **wholesale client** in relation to the FCX market if the person is not a retail client in relation to the FCX market.

wholesale participant means a participant that is a wholesale client in relation to the FCX market.

Note: the following terms are defined in the Act:

- (a) ASIC;
- (b) clearing and settlement facility;
- (c) deal;
- (d) licensed market;
- (e) financial market;
- (f) financial product;
- (g) financial service;
- (h) financial services licensee;
- (i) participant;
- (j) trade.

4. Grant of Licence

This Licence is granted to the Licensee under subsection 824B(1) of the Act and authorises the Licensee to operate a facility that effects the settlement of FCX market transactions.

Note: This Licence does not authorise the provision of central counterparty services.

5. Classes of financial products

The classes of financial products in respect of which the Licensee may operate the Facility under this Licence are:

- (a) shares in a company; and
- (b) interests in a managed investment scheme that is structured as a unit trust;

other than shares or interests that are able to be traded on a licensed market other than the FCX market.

6. Services

The Licensee may operate the Facility under this Licence only in respect of the financial products referred to in condition 5 of this Licence and in respect of trades that are entered into through the FCX market.

7. Participants

It is a condition of this Licence that the Licensee must not allow a person to participate in the Facility unless the person is a participant in the FCX market, and:

- (a) the person is a wholesale participant that only deals in the FCX market on their own behalf; or
- (b) the person is a retail participant that only deals on the FCX market on their own behalf and only participates in the FCX market to dispose of their financial products through the FCX market, but does not acquire any financial products through the FCX market.

8. Conditions which must be satisfied before the Licensee begins to operate the Facility

- (1) The Licensee must not commence operating the Facility unless 14 days have elapsed since the day on which the conditions in subsections (2) to (4) are all satisfied.
- (2) The Licensee must give ASIC written confirmation by one or more persons approved in writing by ASIC and engaged on terms and conditions acceptable to ASIC, including as to the scope of the person's work:
 - (a) of the adequacy of the Licensee's governance framework for testing technology systems; and
 - (b) of the adequacy and results of the Licensee's testing of its technology systems, including testing of all necessary external connections which the Licensee needs to have in place to operate the Facility, according to the governance framework; and
 - (c) of the adequacy of the Licensee's resources (including financial, technological, and human resources) and arrangements for managing and overseeing cyber security risks; and
 - (d) that is dated no more than 30 days before it is given to ASIC.
- (3) The Licensee must confirm to ASIC in writing that it has employed or engaged all necessary people in all of the positions described in its application under subsection 824A(1) of the Act, and that as a result, it has sufficient human resources to operate the Facility properly in accordance with paragraph 821A(1)(d) of the Act.

- (4) The Licensee must give to ASIC an attestation in writing on behalf of the Board of Directors of the Licensee that is dated no more than 30 days before it is given to ASIC confirming that:
- (a) the Licensee has sufficient resources (including financial, technological, and human resources) to operate the Facility in compliance with Part 7.3 of the Act and this Licence; and
 - (b) the Licensee is ready to commence operating the Facility in compliance with Part 7.3 of the Act and this Licence.

9. Disclosure of information about the operation of the Facility

- (1) It is a condition of this Licence that the Licensee must ensure that a person who is a potential participant in the Facility does not participate in the Facility unless the Licensee has made available to the person in writing, at the time of admitting the participant to the Facility:
- (a) a copy of the operating rules and procedures; and
 - (b) an information guide that describes the operation of the Facility and includes information relating to the finality of settlement of FCX market transactions settled through the Facility, and any risks that may impact settlement finality.
- (2) The Licensee must at all times make available to participants the information set out under subsection (1), including updated information, about the operation of the Facility (including, without limitation, via the Licensee's website).

10. Quarterly Notifications

It is a condition of this Licence that the Licensee must notify ASIC of the details of the following matters, within 30 days after the end of each reporting period:

- (a) details of any new class of financial service provided by the Licensee that is incidental to the operation of the Facility; and
- (b) details of any kind of disciplinary action taken by the Licensee against a participant, including the participant's name and the reason for and nature of the action taken.

11. Record keeping

It is a condition of this Licence that the Licensee must:

- (1) have adequate arrangements in place for the recording of trades that are settled through the Facility; and
- (2) keep for a period of at least 7 years the records of trades that are settled through the Facility.

12. Facility ceases to operate

It is a condition of this Licence that, where the Licensee intends to cease operating the Facility, the Licensee must:

- (a) establish, document and implement adequate arrangements for ensuring, as applicable, the orderly cessation of the Facility;
- (b) notify ASIC:
 - (i) that the Licensee intends to cease operating the Facility in this jurisdiction, as soon as reasonably practicable;
 - (ii) of the arrangements referred to in paragraph (a), at least 4 weeks before ceasing to operate the Facility; and
 - (iii) of any changes to the arrangements referred to in paragraph (a) following the notification in subparagraph (ii), as soon as reasonably practicable after making those changes.

13. Client money obligations

- (1) It is a condition of this Licence that if the Licensee is not a financial services licensee or, but for this condition, the Client Money Requirements would otherwise not apply in relation to Client Money paid to the Licensee, the Licensee must comply with the Client Money Requirements and use its best endeavours to ensure that the Client Money Requirements apply in relation to Client Money as if:
 - (a) the Licensee were an Australian financial services licensee; and
 - (b) Client Money were money to which Subdivision A of Division 2 of Part 7.8 of the Act applied; and
 - (c) the circumstances in which regulation 7.8.03 of the Regulations applies included the following:
 - (i) the Licensee ceasing to be a CS facility licensee;
 - (ii) the Licensee's CS facility licensee's licence being suspended or cancelled.

Note: For example, the Licensee must use its best endeavours to ensure that Client Money is held on trust for the relevant client in the circumstances specified in subsection 981H(1) of the Act.

- (2) It is a condition of this Licence that the Licensee must at all times keep accurate records of the amount of Client Money it has received from, on behalf of, or for the benefit of a person and is required under the Client Money Requirements or subcondition (1) to hold in a Client Money Account for that person.
- (3) It is a condition of this Licence that the Licensee must at all times keep accurate records of the total amount of Client Money it has received from, on behalf of, or for the benefit of all persons and is required under the Client Money Requirements or subcondition (1) to hold in a Client Money Account for those persons.
- (4) It is a condition of this Licence that the Licensee must retain records made under subconditions (2) and (3) for at least 7 years from the date the record is made.

14. Reconciliation requirements

- (1) It is a condition of this Licence that the Licensee must perform an accurate reconciliation (***Daily Reconciliation***) as at the end of each Business Day of:
 - (a) the amount of Client Money held in the Client Money Account for each person and the amount recorded in the Licensee's records for each person, as required by subcondition 13(2); and
 - (b) the total amount of Client Money held in the Client Money Account for all persons and the total amount recorded in the Licensee's records for all persons, as required by subcondition 13(3).

The Daily Reconciliation must be performed by 7.00pm on the next Business Day.

- (2) It is a condition of this Licence that the Licensee must perform an accurate reconciliation (***Monthly Reconciliation***) as at end of each calendar month of:
 - (a) the amount of Client Money held in the Client Money Account for each person and the amount recorded in the Licensee's records for each person, as required by subcondition 13(2); and
 - (b) the total amount of Client Money held in the Client Money Account for all persons and the total amount recorded in the Licensee's records for all persons, as required by subcondition 13(3).

The Monthly Reconciliation must be performed by 7.00pm on the first Business Day of the following month.

- (3) It is a condition of this Licence that the Monthly Reconciliation required by subcondition (2) must include a statement signed by a director of the Licensee, or a person authorised by a director of the Licensee, stating that the signatory believes, and has no reason not to believe, that the reconciliation is accurate in all respects.
- (4) It is a condition of this Licence that the Licensee must retain a written record of the Daily Reconciliation required by subcondition (1) and the Monthly Reconciliation required by subcondition (2) for at least 7 years from the date the record is made.

15. Schedule of client money amounts

It is a condition of this Licence that the Licensee must prepare a schedule showing the total amounts held in each Client Money Account maintained by the Licensee as at the end of each reporting period (***Client Money Schedule***) by no later than five Business Days after the end of the reporting period. The Client Money Schedule must include the names of each person for whom the Licensee holds money in the Client Money Account and the relevant amount held in the Client Money Account for that person.

16. Reporting requirements

It is a condition of this Licence that the Licensee must notify ASIC in writing within two Business Days if:

- (a) the Licensee fails to perform a reconciliation as required by condition 1414; or
- (b) a reconciliation performed under condition 14 identifies a deficiency between the amount held in a Client Money Account and the amount recorded in the Licensee's records; or
- (c) the Licensee fails to prepare a Client Money Schedule as required by condition 15.

17. Annual declarations—Directors and auditors

- (1) It is a condition of this Licence that for each financial year ending after 30 June 2024, the Licensee must prepare and give to ASIC within three calendar months of the end of the financial year of the Licensee:
 - (a) a directors' declaration that states whether, in the directors' opinion, the Licensee has complied with the Client Money Conditions during the financial year; and
 - (b) an external auditor's report which:
 - (i) states whether, subject to any relevant qualifications, the Licensee maintained, in all material respects during the financial year, suitably designed and effective internal controls to comply with the requirements of the Client Money Conditions; and
 - (ii) is signed by a partner or director of the auditor.
- (2) For the purpose of subcondition (1)(a), the declaration must:
 - (a) be made in accordance with a resolution of the directors;
 - (b) specify the date on which the declaration is made; and
 - (c) be signed by a director.

18. Integrity of register

It is a condition of this Licence that in operating the Facility the Licensee has adequate arrangements to ensure that:

- (a) there is no unauthorised creation or deletion of shares in a company or interests in a managed investment scheme in the register maintained by the Licensee in connection with the operation of the Facility; and
- (b) the register maintained by the Licensee in connection with the operation of the Facility is a complete and accurate record of the shares in a company or

interests in a managed investment scheme to which a person has legal or beneficial entitlement.



Corporations (FinClear Pty Ltd) CS Facility Exemption Notice 2024

Corporations Act 2001

I, Amanda Zeller, Senior Executive Leader, Australian Securities and Investments Commission make this notice under subsection 820C(1) of the *Corporations Act 2001* (the Act).

Dated 11 September 2024

A handwritten signature in black ink, appearing to read 'A Zeller', is written over a light grey circular watermark that contains the word 'Zeller'.

Signed

as a delegate of the Minister under section 1101J of the Act

1. Name

This is the *Corporations (FinClear Pty Ltd) CS Facility Exemption Notice 2024*.

Note: This instrument should be read in conjunction with the *Australian CS Facility Licence (FinClear Pty Ltd) 2024*.

2. Authority

This instrument is made under subsection 820C(1) of the *Corporations Act 2001*.

3. Commencement

This instrument commences on the later of:

- (a) commencement of the *Australian CS Facility Licence (FinClear Pty Ltd) 2024*; and
- (b) the date this instrument is made.

4. Definitions

Act means the *Corporations Act 2001*.

Regulations means the *Corporations Regulations 2001*.

Licensee means FinClear Pty Ltd ACN 607 164 714.

Facility means the clearing and settlement facility operated by the Licensee under the *Australian CS Facility Licence (FinClear Pty Ltd) 2024*.

5. Exemption - Notifications to ASIC

The Licensee does not have to comply with any of the following provisions of the Act in relation to the Facility:

- (a) paragraph 821B(2)(a) (notifying ASIC of a new class of financial service incidental to the operation of the Facility);
- (b) paragraph 821B(2)(b) (notifying ASIC of disciplinary action taken against a participant).

6. Exemption – Content of written procedures

The Licensee does not have to comply with paragraph 7.3.06(d) of the Regulations (requirement for written procedures relating to the exchange of information in relation to the Facility).