ASIC Corporations (Foreign Financial Services Providers—Institutional Investor Exemption) Instrument 2026/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2026

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

Contents

Part 1—Preliminary **3**

1 Name of legislative instrument 3

2 Commencement 3

3 Authority 3

4 Simplified outline of the instrument 3

5 Definitions 3

Part 2—Declaration **4**

6 Licensing exemption for foreign financial services providers 4

Part 3—Repeal **6**

7 Repeal 6

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Foreign Financial Services Providers —Institutional Investor Exemption) Instrument 2026/XX*.

2 Commencement

This instrument commences on the later of:

(a) the day after it is registered on the Federal Register of Legislation; and

(b) the day Schedule 2 to the *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Act 2026* commences.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 926A(2) of the *Corporations Act 2001*.

4 Simplified outline of the instrument

The Act exempts certain foreign financial services providers that provide financial services to professional investors from outside Australia from the requirement to have an Australian financial services licence.

This instrument provides additional licensing relief so that foreign financial services providers relying on the professional investor exemption are able to provide financial services to institutional investors through an Australian-based representative.

The relief is subject to specified requirements, including that the provider carries on its financial services business predominantly outside Australia and has a related body corporate that is a financial services licensee that has entered into a deed poll in favour of the institutional investors.

5 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

institutional investor means a person covered by the definition of ***professional investor*** in section 9 of the Act (except a person mentioned in paragraph (e) of the definition).

Part 2—Declaration

6 Licensing exemption for foreign financial services providers

(1) Part 7.6 of the of the Act (other than Divisions 4 and 8) applies in relation to a person who provides a financial service to an institutional investor as if that Part were modified or varied as follows:

(a) in subparagraph 911A(2)(eo)(ii), after "911E(1) (about marketing visits)", insert "or subsection 911EA(1) (about institutional investors)";

(b) omit subparagraph 911A(2)(eo)(v), substitute:

"(v) the person notifies ASIC in accordance with subsection (5AA) of this section that the person intends to rely on the exemption in this paragraph for providing:

(A) the financial service; and

(B) if subsection 911EA(1) applies to the financial service—a financial service to which subsection 911EA(1) does not apply;";

(c) after section 911E, insert:

"**911EA Exemption for financial services provided to professional investors—extends to financial services provided in Australia to institutional investors**

(1) For the purposes of subparagraph 911A(2)(eo)(ii), this subsection applies to a financial service provided by a person to an institutional investor if:

(a) the person carries on a financial services business predominantly from outside this jurisdiction; and

(b) the financial service is provided from this jurisdiction:

(i) by an individual (***Australian-based representative***) as a representative of the person; and

(ii) for reasons arising from differences in time zones; and

(iii) in circumstances where the financial service is provided together with one or more other services and, considered as a whole and taking into account their relative significance, the financial service and

those other services are predominantly provided from outside this jurisdiction; and

(c) the person has a related body corporate (***related licensee***) that holds an Australian financial services licence covering the provision of the financial service; and

(d) the related licensee is responsible and liable for the provision of the financial service by the Australian-based representative.

(2) However, subsection (1) does not apply to a financial service provided by the person if:

(a) the financial service is provided in relation to a financial product traded on a designated financial market or an investment located in this jurisdiction; or

(b) revenue and expenses arising from the provision of the financial service are booked to the profit or loss account of a person in this jurisdiction; or

(c) substantive responsibility for, or supervision of, the provision of the financial service occurs in this jurisdiction.

(3) In this section:

institutional investor means a person covered by the definition of ***professional investor*** in section 9 of the Act (except a person mentioned in paragraph (e) of the definition).";

(d) after subsection 911M(3), insert:

"(3A) If subsection 911EA(1) applies to a financial service provided by a person in reliance on the exemption under paragraph 911A(2)(eo), the person must do all things necessary to ensure that the financial service is provided efficiently, honestly and fairly.".

Part 3—Repeal

7 Repeal

This instrument is repealed at the start of 1 April 2032.