

## **Class Rule Waiver [CW 13/1448]**

### **Explanatory Statement**

**Prepared by the Australian Securities and Investments Commission**

#### ***ASIC Market Integrity Rules (Competition in Exchange Markets) 2011***

The Australian Securities and Investments Commission (**ASIC**) makes this instrument under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (the **ASIC Market Integrity Rules (Competition)**).

Under subrule 1.2.1(1), ASIC may relieve any person or class of persons from the obligation to comply with a provision of the ASIC Market Integrity Rules (Competition).

Capitalised terms in this explanatory statement refer to defined terms in the ASIC Market Integrity Rules (Competition).

#### **1. Background**

##### *ASIC Market Integrity Rules (Competition)*

On 29 April 2011, ASIC made the ASIC Market Integrity Rules (Competition), which form part of the regulatory framework for competition between exchange markets.

The ASIC Market Integrity Rules (Competition) apply to a Participant or a Market on or through which offers to acquire or dispose of certain financial products, including Equity Market Products (as defined in Rule 1.4.3), are made or accepted, the operator of which is licensed under subsection 795B(1) of the *Corporations Act 2001*. These Markets currently include the financial market operated by ASX Limited (**ASX**).

##### *Pre-trade transparency exceptions*

Subrule 4.1.1(1) of the ASIC Market Integrity Rules (Competition) provides that, subject to subrule 4.1.1(2), a Participant must not enter into a transaction unless the transaction is entered into by matching of a “Pre-Trade Transparent” order (being an order for which information such as price and volume is made available before execution) on an order book of a Market.

Subrule 4.1.1(1) reflects the importance of pre-trade transparency to the price formation process and fair and efficient markets.

Subrule 4.1.1(2) of the ASIC Market Integrity Rules (Competition) lists the exceptions to the requirements of Subrule 4.1.1(1). Participants are not required to comply with Rule 4.1.1(1) in relation to:

- (a) Block Trades;
- (b) Large Portfolio Trades;
- (c) a Trade with Price Improvement;
- (d) a Permitted Trade during the Post-Trading Hours Period;

- (e) a Permitted Trade during the Pre-Trading Hours Period; and
- (f) Out of Hours Trades.

Subrule 4.2.3(1)(a) of the ASIC Market Integrity Rules (Competition) defines a Trade with Price Improvement where the Transaction is executed at a price per Relevant Product which is:

- (i) higher than the Best Available Bid and lower than the Best Available Offer for the Relevant Product by one or more Price Steps; or
- (ii) at the Best Mid-Point.

### *Auction Imbalance Orders (AIO)*

AIOs are orders that trade against any surplus volume remaining at the end of the open and closing auctions of the ASX at the equilibrium price set by the auction.

ASX has made changes to its operating rules to introduce AIOs. AIO has the meaning given by Rule 7100 of the ASX Operating Rules and the procedure for how an AIO will be dealt with is outlined in Procedure 4026 of the ASX Operating Rules Procedures.

An AIO is not Pre-Trade Transparent on an order book of the ASX Market. A Participant that enters into a transaction as a result of an AIO may therefore breach subrule 4.1.1(1) of the ASIC Market Integrity Rules (Competition).

## **2. Purpose of this Class Rule Waiver**

This Class Rule Waiver enables Participants to execute AIOs without breaching subrule 4.1.1(1) of the ASIC Market Integrity Rules (Competition).

ASIC is granting this Class Rule Waiver on the basis that the equilibrium price at the end of the auction, at which AIOs execute, can be viewed as analogous to the 'Best Mid-Point' which falls within the definition of a Trade with Price Improvement (subrule 4.2.3(1)).

ASIC intends that this relief will apply for an indefinite period of time.

## **3. Operation of this Class Rule Waiver**

Paragraph 4 of the Class Rule Waiver provides relief to Participants from the obligation to comply with subrule 4.1.1(1) of the ASIC Market Integrity Rules (Competition).

Paragraph 5 of the Class Rule Waiver provides that this relief only applies in the case where the Participant enters into a Transaction by matching an AIO on the ASX Market, in accordance with Procedure 4026 of the ASX Operating Rules Procedures.

The relief applies for an indefinite period of time.

## **4. Consultation**

ASIC did not consult on the making of this class rule waiver. However, the decision to grant it was based on discussions with stakeholders including potential users of AIOs. A key consideration in granting the waiver was the explanations from these potential users about the

likely motivations and purposes of participants for using auction imbalance orders. The conclusion from these discussions is that AIOs are not likely to result in detrimental effects to price discovery during the auction, while adding efficiencies to the auction process.

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

A Statement of Compatibility with Human Rights is included in this Explanatory Statement as Attachment A.

## **ATTACHMENT A – Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.*

### **ASIC CLASS RULE WAIVER [CW 13/1448]**

This Class Rule Waiver 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*.

#### **1. Overview of the Legislative Instrument**

This Legislative Instrument provides relief to Participants of the financial market operated by ASX Limited (**ASX**) from subrule 4.1.1(1) of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (ASIC Market Integrity Rules (Competition))*, in the case where the Participant enters into an 'Auction Imbalance Order' (**AIO**).

Subrule 4.1.1(1) of the ASIC Market Integrity Rules (Competition) requires Participants to enter into transactions in Equity Market Products by matching of a 'Pre-Trade Transparent Order' (being an order for which information such as price and volume is made available before execution) on an order book of a market. Subrule 4.1.1(1) reflects the importance of pre-trade transparency to the price formation process and fair and efficient markets.

An AIO is a new order type on the ASX. AIOs are orders that trade against any surplus volume remaining at the end of the open and closing auctions of the ASX at the equilibrium price set by the auction. An AIO is not Pre-Trade Transparent on the ASX Market.

This Legislative Instrument enables Participants to execute AIOs without breaching subrule 4.1.1(1) of the ASIC Market Integrity Rules (Competition).

#### **2. Human rights implications**

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

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.