

Class Rule Waiver [CW 13/1543]**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 Rule 1.2.1(1) of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (the "**ASIC Market Integrity Rules (Competition)**").

Under Rule 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) either generally or in a particular case or category and either unconditionally or subject to such conditions as ASIC thinks fit.

Capitalised terms in this Explanatory Statement refer to the 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 a part of the regulatory framework for competition between exchange markets.

The ASIC Market Integrity Rules (Competition) apply to:

- (a) the activities or conduct of a Market;
 - (b) the activities or conduct of persons in relation to a Market; and
 - (c) the activities or conduct of persons in relation to Financial Products;
- as specified in each chapter, part or rule of the ASIC Market Integrity Rules (Competition).

The Markets to which the ASIC Market Integrity Rules (Competition) apply currently include the Financial Market operated by Chi-X Australia Pty Ltd (ACN 129 584 667) ("**Chi-X Australia**"). The Financial Products to which the ASIC Market Integrity Rules (Competition) apply currently include Equity Market Products.

Pre-trade transparency requirements.

Rule 4.1.1(1) of the ASIC Market Integrity Rules (Competition) provides that, subject to rule 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 on an Order Book.

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

An Order is Pre-Trade Transparent where Pre-Trade Information is made available for the Order by the Market Operator, in this instance Chi-X Australia. Pre-Trade Information in relation to an Order for an Equity Market Product is set out in Rule 4.1.4, and includes: -

- a) Order date (Item 1);
- b) Order time (Item 2);
- c) Product identification (Item 3);
- d) Volume (Item 4);
- e) Order side (Item 5);
- f) Price (Item 6); and
- g) Currency (Item 7).

Rule 4.1.1(2) of the ASIC Market Integrity Rules (Competition) lists the exceptions to the requirement in Rule 4.1.1(1).

"Market on Close" Orders

Chi-X Australia has made changes to its Operating Rules Procedures to introduce "Market on Close" Orders. Market on Close Orders are Orders which result in Transactions where the price of the relevant Equity Market Product is the official closing price for the day on the Financial Market operated by ASX Limited ("**ASX**").

This Class Rule Waiver defines a Market on Close Order as a Hidden Order of that name available on the Chi- X Market, with the following features:-

- a. submittable from the opening of the Chi- X Market until 4:20pm AEST;
- b. matchable only with another Market on Close Order;
- c. either:-
 - i) priced at the closing price ("**CSPA Price**") of the relevant Equity Market Product published by ASX Limited at the conclusion of the Closing Single Price Auction ("**CSPA**") on the Trading Day on which the Market on Close Order was entered; or
 - ii) subject to paragraph d. ii) below, in the event there is no CSPA Price published by ASX for the relevant Equity Market Product for the relevant Trading Day, priced at the last traded price for the relevant Equity Market Product for that Trading Day from ASX;
- d. even if matched, does not result in a Transaction if:-
 - i) there is no CSPA Price and no last traded price for the relevant Equity Market Product for the relevant Trading Day; or
 - ii) there is a trading halt or suspension that prevents the ASX publishing a CSPA Price for the relevant Equity Market Product for the relevant Trading Day.

Market on Close Orders are not Pre-Trade Transparent. In particular, items 4 (volume) and 6 (price) of the Pre Trade Information are not made available for the Order. A Participant that enters into a Transaction as a result of a Market on Close Order may therefore breach Rule 4.1.1(1) of the ASIC Market Integrity Rules (Competition).

ASIC Class Rule Waiver [CW 13/1479]

On 20 November 2013, ASIC made ASIC Class Rule Waiver [CW 13/1479] relieving the Participants from the obligation to comply with Rule 4.1.1(1) of ASIC Market Integrity Rules

(Competition) in relation to Market on Close Orders, provided that the Market on Close Orders were placed in accordance with Chi-X Australia's Operating Rules Procedures version 1.5, applicable as at 25 November 2013. [CW 13/1479] commenced on 25 November 2013.

Due to technical issues, Chi-X Australia was not able to offer Market on Close Orders on 25 November 2013. Consequentially, Chi-X Australia's Operating Rules Procedures version 1.5 were not published and put into effect on 25 November 2013. This renders [CW 13/1479] ineffective.

ASIC has accordingly withdrawn [CW 13/1479] and replaced it with this Class Rule Waiver.

2. Purpose of this Class Rule Waiver

This Class Rule Waiver replaces [CW 13/1479]. It allows the Participants to place Market on Close Orders as and when they become available on Chi-X Australia's Financial Market and independent of publication or modification of Chi-X Australia's Operating Rules Procedures version 1.5.

This Class Rule Waiver waives a Participant's obligation to comply with rule 4.1.1(1) of the ASIC Market Integrity Rules (Competition) in circumstances where the Participant enters a Transaction as a result of placing a Market on Close Order.

ASIC is granting this Class Rule Waiver on the basis that we consider Market on Close Orders would result in investors receiving a fair price, being the ASX closing single price auction (commonly known as CSPA) price. This price is already transparent to the Market.

3. Operation of this Class Rule Waiver

Paragraphs 5 and 6

Paragraph 5 of the Class Rule Waiver provides relief to Participants from the obligation to comply with Rule 4.1.1(1) of the ASIC Market Integrity Rules (Competition). Paragraph 6 states that the Class Rule Waiver applies to a Transaction entered into by the Participant as a result of placing a Market on Close Order on the Chi-X Market.

This relief only applies to a Market on Close Order as defined in the Class Rule Waiver.

The relief applies for an indefinite period of time.

4. Consultation

ASIC has consulted with Chi-X Australia in relation to this Class Rule Waiver. Chi-X Australia conducted a consultation process with its Market Participants in relation to its proposal to introduce Market on Close Orders. Chi-X Australia has advised ASIC that there

has been no objections or concerns raised with respect to the proposed Market on Close Orders.

5. 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 13/1543]

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 Chi-X Australia Pty Ltd, ACN 129 584 667 ("**Chi-X Australia**") from Rule 4.1.1(1) of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (the "**ASIC Market Integrity Rules (Competition)**"), in the case where the Participant enters into a Transaction by placing a "Market on Close" Order.

Rule 4.1.1(1) of the ASIC Market Integrity Rules (Competition) prohibits a Participant from entering into a Transaction unless the Transaction is entered into by matching of a Pre-Transparent Order on an Order Book of a Market. Rule 4.1.1(1) reflects the importance of Pre-Trade Transparency to the price formation process and fair and efficient markets.

This Legislative Instrument waives a Participant's obligation to comply with Rule 4.1.1(1) of the ASIC Market Integrity Rules (Competition) in circumstances where the Participant enters into a Transaction as a result of placing a "Market on Close Order".

A Market on Close Order is a new order type on the market operated by Chi-X Australia. This is a type of Hidden Order where the price of the relevant equity securities is linked to the official closing price for the day on the Financial Market operated by ASX Ltd ("**ASX**"). A Market on Close Order is not Pre-Trade Transparent and, in particular, details of the price and volume of the Order are not available. ASIC is granting this Class Rule Waiver on the basis that we consider Market on Close Orders would result in investors receiving a fair price, being the ASX closing single price auction (commonly known as CSPA) price. This price is already transparent to the Market.

2. Human rights implications

This Instrument does not have any effect on human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This instrument does not create any new powers or obligations.

3. Conclusion

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

Australian Securities and Investments Commission