

EXPLANATORY STATEMENT for

ASIC CLASS RULE WAIVER [CW 16/0359]

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Class Rule Waiver 16-0359 (**this instrument**) under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (ASX Market) 2010* (the **Rules**). 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 Competition Rules. Under Rule 1.2.3 ASIC may specify the period during which any relief from the obligation to comply with a provision of the Rules may apply.

This instrument amends ASIC Class Rule Waiver [14-1091].

1. Background

On 27 October 2014, ASIC granted Class Rule Waiver [CW 14-1091], providing relief to Participants of the Market operated by ASX Limited (ACN 008 624 691) (**ASX**) from Rule 3.4.1 in relation to Derivatives Markets Contracts only, subject to certain conditions.

Reasons for granting the original Class Rule Waiver

On 5 August 2013, ASIC amended Rule 3.4.3 to address regulatory issues arising from recent market developments, including the growing number of Market Participants establishing and operating automated services (referred to as 'Crossing Systems') that match or execute orders of their clients otherwise than on an Order Book of an exchange market (see the *ASIC Market Integrity Rules (ASX Market) Amendment 2013 (No. 2)*).

The Waiver was originally granted because Participants queried whether it was ASIC's intention for Rule 3.4.3(1)(b) to apply to Derivative Market Contracts, as well as Cash Market Products. Rule 3.4.3 refers to Market Transactions, which is defined as "*a transaction for one or more Products, entered into on a Trading Platform or reported to the Market Operator under the Market Operating Rules.*" Further, "Product" is defined as a "*Cash Market Product or a Derivatives Market Contract, as*

applicable." Rule 3.4.3(1)(b), by virtue of the definition of Product, does apply to Derivatives Markets Contracts.

The Class Rule Waiver was therefore granted to allow for consultation, particularly in relation to the intended operation of the rule, the need for IT development and time for that IT development to occur.

Reasons for extending the original Class Rule Waiver

The consultation in relation to Rule 3.4.3(1)(b) now forms part of a broader package of regulatory reform. As a result, an extension to the waiver was deemed necessary to allow sufficient time for the reform package to become operational.

2. Purpose of the instrument

This Class Rule Waiver varies [CW 14-1091] by extending the relief from the obligation to comply with the notification requirements in relation to Derivative Market Contracts only in subrule 3.4.3(1)(b) of the Rules until 30 June 2017. The current Class Rule Waiver expires on 30 April 2016 and was originally granted to allow ASIC to consult with stakeholders in relation to:

- (a) the operation of the notification requirements in subrule 3.4.3(1)(b); and
- (b) allow sufficient time for any necessary IT development to occur before the Rule becomes operational in relation to Derivatives Market Contracts.

As the consultation forms part of a broader package of reform, further time is required to complete the consultation. This instrument will extend the expiration date of CW [14-1091] to 30 June 2017 by which time any necessary changes to the Rule can be made and Participants can complete, and test, IT systems necessary to comply with the rule.

3. Operation of the instrument

The instrument substitutes the expiration date stated in paragraph 6 of [CW 14/1091] of "30 April 2016", with "30 June 2017".

4. Documents Incorporated by reference

The Class Rule Waiver [14-1091] which this instrument amends, and accompanying Explanatory Statement, can be found at:

<https://www.legislation.gov.au/Details/F2014L01425>.

5. Consultation

ASIC did not formally consult on this Class Rule Waiver as circumstances have not changed since the granting of the original Class Rule Waiver [CW 14/1091]. Further, the instrument is minor and machinery in nature. A Regulation Impact Statement was not required for this instrument as it is minor or machinery in nature and does not alter the existing requirements for Market Participants.

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

Statement of Compatibility with Human Rights

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

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ASIC Class Rule Waiver CW 16/0359 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*.

Overview

This Legislative Instrument amends ASIC Class Rule Waiver [CW 14-1091] by extending the relief from 30 April 2016 to 30 June 2017.

Class Rule Waiver [CW 14-109]

1 grants relief for a Market Participant from the requirement to notify clients, other than Retail clients, both:

- (a) when it enters into the client's Market Transaction as Principal; and
- (b) the execution code of the execution venue for the Crossing if the Market Transaction was executed as a Crossing.

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.

Conclusion

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

[Greg Yanco, delegate of the Australian Securities and Investments Commission]