

EXPLANATORY STATEMENT for ASIC CLASS RULE WAIVER [CW 17/0586]

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Class Rule Waiver 17/0586 (**this instrument**) under subrule 1.2.1(1) of the ASIC Market Integrity Rules (APX Market) 2013 (the **APX 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 APX Rules.

Capitalised terms in this Explanatory Statement refer to defined terms in the APX Rules.

1. Background

Under APX Rule 2.3.3(1), a market participant must ensure that by 10 July each year, each of its responsible executives completes a review as of 30 June of that year, of their allocated supervision and control procedures.

Under APX Rule 2.3.4, a market participant must ensure that, during the period from 1 July each year until 30 June the following year, its responsible executives meet the compliance education requirements.

Under APX Rule 2.3.5(1), a market participant must notify ASIC by 31 July each year of its responsible executives and self-assessment of their responsible executives' satisfaction of requirements on competence, character and continuing education.

APX Rules 2.3.3, 2.3.4 and 2.3.5 to be repealed

The repeal of APX Rules 2.3.3, 2.3.4 and 2.3.5 was proposed in Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules* [CP 277] released on 2 January 2017.

In addition to these rules, in CP 277 we consulted on removing the following other requirements for market participants relating to responsible executives:

- (a) to notify ASIC of the appointment or cessation of a responsible executive (APX Rule 2.3.1(1));

- (b) not appoint a responsible executive unless specific competence and continuing education standards are met (APX Rules 2.3.1(2) and (3)); and
- (c) not require staff allocated supervisory responsibilities by a market participant to carry the title 'responsible executive'.

The repeal of the rules was proposed as it is ASIC's view that by removing several unnecessarily procedural requirements in those rules, market participants will have greater flexibility to carry out their supervisory arrangements. This is consistent with the general, principle-based Australian financial services (AFS) licensee obligations in s912A of the *Corporations Act 2001* (the **Act**).

With the removal of these rules, ASIC would no longer be responsible for approving examinations written by industry providers that assess the knowledge and competency of supervisory staff. Instead, a market participant will need to satisfy itself that any individual involved in the supervision of its business has the relevant skills, knowledge and experience for the role they are performing. ASIC would expect completion of examinations and continuing education should remain key considerations, but consider market participants are best placed to make an overall assessment.

Following this public consultation, ASIC has made the decision to repeal these rules. As it is ASIC's intention to repeal these rules, it is ASIC's view that market participants should not be required to comply with APX Rules 2.3.3(1), 2.3.4 and 2.3.5(1) for the 2016/17 financial year.

Without the benefit of the relief in this instrument, market participants would need to:

- (a) ensure that each of its responsible executives has completed its annual review of their allocated supervision and control procedures by 10 July 2017 (APX Rule 2.3.3(1)).
- (b) ensure that its responsible executives have met their annual compliance education requirements and notify ASIC regarding its responsible executives and self-assessment of their responsible executives' satisfaction of requirements on competence, character and continuing education by 31 July 2017 (APX Rule 2.3.4 and APX Rule 2.3.5(1)).

2. Purpose of this instrument

The purpose of this instrument is to relieve market participants from the obligation to:

- (a) ensure that its responsible executives complete an annual review of their allocated supervision and control procedures, in accordance with APX Rule 2.3.3(1);
- (b) ensure its responsible executives meet annual continuing education requirements in accordance with APX Rule 2.3.4; and
- (c) notify ASIC annually of its responsible executives and self-assessment of their responsible executives' satisfaction of requirements on competence, character and continuing education, in accordance with APX Rule 2.3.5(1).

The removal of these rules has been publicly consulted upon in CP 277 and the decision has been made by ASIC to repeal these rules following this consultation. This instrument ensures

that market participants are not required to comply with APX Rules 2.3.3(1), 2.3.4 and 2.3.5(1) for the 2016/17 financial year, consistent with the decision to repeal these rules. With relief from the obligations mentioned in paragraphs (a)-(c) above, there will be no obligation to retain documentation under APX subules 2.3.3(2) and 2.3.5(3), as that documentation will not need to be created in the first place. The relief does not affect the obligation to retain documentation for past periods.

Providing this instrument will save market participants a significant amount of time that would otherwise have been spent performing the annual review, obtaining representations from responsible executives and preparing the required notification to ASIC as required by ASX Rules 2.3.3(1), 2.3.4 and 2.3.5(1).

This instrument is an interim measure until APX Rules 2.3.3, 2.3.4 and 2.3.5 are repealed.

3. Operation of the instrument

This instrument relieves a market participant from the obligation to comply with:

- (a) APX Rule 2.3.3(1), the requirement that a market participant ensure that by 10 July each year, each of its responsible executives completes a review as of 30 June of that year, of their allocated supervision and control procedures.
- (b) APX Rule 2.3.4, the requirement that a market participant ensure that, during the period from 1 July each year until 30 June the following year, its responsible executives meet the compliance education requirements.
- (c) APX Rule 2.3.5(1), the requirement that a market participant notify ASIC by 31 July each year of its responsible executives and self-assessment of their responsible executives' satisfaction of requirements on competence, character and continuing education.

The relief conferred by this instrument is unconditional.

4. Consultation

ASIC consulted with market operators and market participants on the proposal to repeal APX Rules 2.3.3, 2.3.4 and 2.3.5 in CP 277.

ASIC received broad supportive for its proposals that sought to remove the administrative overhead associated with the current responsible executive framework. Generally, respondents recognised that removing unnecessary duplication of obligations would allow market participants greater flexibility to carry out their supervisory arrangements.

The proposals to remove the self-assessment of satisfaction of competence, character and continuing education requirements were not as well received by two respondents for the following reasons:

- (a) Concern that some firms do not have robust procedures in place for ensuring that their responsible executives are suitably qualified.

- (b) That the reliance on s912A(1) of the Act is not as effective as the existing specific competence and continuing education standards for responsible executives.
- (c) The removal of continuing education requirements for responsible executives was inconsistent with amendments to the Act announced by the Government to raise the education, training and ethical standards of financial advisers.
- (d) An annual review by the responsible executive of their allocated supervision and control procedures was considered best practice so the requirement should remain.

Following this public consultation, ASIC intends to repeal APX Rules 2.3.3, 2.3.4 and 2.3.5.

It is ASIC's view that:

- (a) market participants will still require robust supervisory arrangements and for supervisory staff to have appropriate knowledge and skills to perform their assigned duties.
- (b) removing the requirement for a responsible executive to complete compliance education is not at odds with the proposed education requirements for financial advisers.
- (c) currently, financial advisers must meet the minimum knowledge, skills and education requirements set out in ASIC guidance and that the new professional standards regime introduced by the Government will ensure that financial advisers are professionally competent and ethical.

Informal consultation with various market participants regarding the relief in this instrument indicated that they are very supportive of ASIC's proposal to provide market participants with this relief, in light of ASIC's formal consultation of the repeal of these rules. A number of market participants indicated that they intended to complete the annual review even if relief from those requirements was granted, as they consider it good practice.

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 17/0586]

ASIC Class Rule Waiver [CW 17/0586] 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

Under APX Rule 2.3.3(1), a market participant must ensure that by 10 July each year, each of its responsible executives completes a review as of 30 June of that year, of their allocated supervision and control procedures.

Under APX Rule 2.3.4, a market participant must ensure that, during the period from 1 July each year until 30 June the following year, its responsible executives meet the compliance education requirements.

Under APX Rule 2.3.5(1), a market participant must notify ASIC by 31 July each year of its responsible executives and self-assessment of their responsible executives' satisfaction of requirements on competence, character and continuing education.

ASIC Class Rule Waiver [CW 17/0586] relieves market participants from the obligation to:

- (a) ensure that its responsible executives complete an annual review of their allocated supervision and control procedures, in accordance with APX Rule 2.3.3(1);
- (b) ensure its responsible executives meet annual continuing education requirements in accordance with APX Rule 2.3.4; and
- (c) notify ASIC annually of its responsible executives and self-assessment of their responsible executives' satisfaction of requirements on competence, character and continuing education, in accordance with APX Rule 2.3.5(1).

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

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