

EXPLANATORY STATEMENT for
ASIC Market Integrity Rules (Securities Markets) Class Waiver
2018/258

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258* under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Rules)*.

Subrule 1.2.1(1) provides that ASIC may relieve any person or class of persons from the obligation to comply with a provision of these Rules, either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit.

Rule 1.2.3 provides that ASIC may specify the period or specific event during which any relief from an obligation to comply with a provision of these Rules may apply.

1. Background

As part of its supervisory responsibilities, ASIC reviewed the 14 market integrity rule books in force in late 2016 and identified the need to consolidate certain market integrity rule books which covered substantively similar existing obligations across like domestic licensed markets.

In Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules (CP 277)*, ASIC proposed to consolidate the Pre-Commencement Market Integrity Rules to create a single set of market integrity rules for the ASX, Chi-X, IR Plus, NSX and SSX Markets. ASIC also proposed to grant waivers to provide transitional relief to Participants of the NSXA and SSX Markets from their obligations to comply with certain provisions of the consolidated rules.

The proposals to grant waivers providing for longer transition periods acknowledged that:

- the Competition Rules do not apply to Participants of the SSX Market; and
- there are the significant differences between the drafting and structure of the ASIC Market Integrity Rules (NSXA Market) 2010 and the Rules.

In November 2017, ASIC made the Rules and released Report 547 *Response to submissions on CP 277 Proposals to consolidate the ASIC market integrity rules (REP 457)*. Among other things, ASIC announced in REP 547 that:

- Parts 5.5, 5.6 and 5.7 of the Rules would apply to NSXA AOP Participants from commencement;
- otherwise, Participants of the NSXA Market would have the benefit of a waiver from their obligations to comply with the Rules until Monday 5 November 2018 to facilitate their transition to compliance with the Rules;
- ASIC would grant a waiver of three years' duration to Participants of the NSXA and SSX Markets from their obligations to comply with many of the provisions of the Rules that were derived from the Competition Rules. ASIC specified that the waiver would not apply to Chapter 5A or Parts 3.4A, 5.4A, 5.4B or 7.3 of the Rules as those rules promote market integrity but do not impose obligations specific to competition between markets.

2. Purpose of the instrument

The purpose of this instrument is to provide to Participants of the NSXA and SSX Markets transitional relief from certain provisions of the Rules.

The instrument relieves a Participant of the NSXA Market, other than an NSXA AOP Participant, from its obligations to comply with the Rules until Monday 5 November 2018 in connection with its activities or conduct in relation to the NSXA Market.

The instrument provides similar transitional relief to an NSXA AOP Participant except that, in connection with the use of the NSXA AOP Participant's system for Automated Order Processing on the NSXA Market, the NSXA AOP Participant is not given relief from its obligations under the provisions of Part 5.5, 5.6 or 5.7 of the Rules.

The instrument also provides transitional relief until 16 November 2020 to Participants of the NSXA and SSX Markets from their obligations to comply with the Waived Rules, being specified provisions of the Rules that were derived from the Competition Rules. This transition period is intended to allow ASIC time to review, consult and consider amendments to the Waived Rules so that they operate as intended in securities markets other than ASX and Chi-X that are subject to the Rules.

3. Operation of the instrument

Name of the legislative instrument

Section 1 of the instrument provides that it is the ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258.

Commencement

Section 2 of the instrument provides that it commences the day after it is registered on the Federal Register of Legislation.

Authority

Section 3 provides that the instrument is made under subrule 1.2.1(1) and Rule 1.2.3 of the Rules.

Interpretation

Subsection 4(1) of the instrument provides that, in the instrument, ‘Waived Rules’ means the following Parts of the Rules:

- (a) Part 3.8 [Best execution obligation];
- (b) Part 3.9 [Policies and procedures];
- (c) Part 3.10 [Disclosure of best execution obligation];
- (d) Part 3.11 [Evidencing execution performance];
- (e) Part 5.1AA [Transactions to be under the operating rules of a Market operator];
- (f) Part 5.9A [Trading Suspensions];
- (g) Part 6.1 [Orders must be Pre-Trade Transparent];
- (h) Part 6.3 [Transactions must be post-trade transparent]; and
- (i) Part 7.4 [Requirement to record and provide Regulatory Data].

Subsection 4(2) of the instrument provides that in the instrument, unless the contrary intention appears, capitalised terms have the same meaning as in the Rules.

Subsection 4(3) of the instrument provides that in the instrument a reference to time is to the time in Sydney, Australia.

Transitional arrangements for Participants of the NSXA Market

Subsection 5(1) of the instrument provides that a Participant of the NSXA Market, other than an NSXA AOP Participant, does not have to comply with any provision of the Rules in connection with its activities or conduct in relation to the NSXA Market.

Subsection 5(2) of the instrument provides that an NSXA AOP Participant does not have to comply with any provision of the Rules in connection with its activities or conduct in relation to the NSXA Market other than, in connection with the use of the Participant’s system for Automated Order Processing on the NSXA Market, a provision of Part 5.5, 5.6 or 5.7 of the Rules.

Subsection 5(3) of the instrument provides that a Participant of the NSXA Market does not have to comply with any provision of the Waived Rules in connection with its activities or conduct in relation to the NSXA Market.

Transitional arrangements for Participants of the SSX Market

Section 6 of the instrument provides that a Participant of the SSX Market does not have to comply with any provision of the Waived Rules in connection with its activities or conduct in relation to the SSX Market.

Period during which the relief applies

Subsection 7(1) of the instrument provides that the relief in subsections 5(1) and 5(2) of the instrument applies until 5 November 2018.

Subsection 7(2) provides that the relief in subsection 5(3) of the instrument applies from 5 November 2018 until 16 November 2020.

Subsection 7(3) of the instrument provides that the relief in section 6 of the instrument applies until 16 November 2020.

4. Consultation

ASIC consulted extensively with market operators, market participants and industry bodies before making the instrument.

The consultation period for CP 277 occurred between 24 January 2017 and 7 March 2017. ASIC held over 25 meetings with stakeholders during and following that period. In addition, ASIC consulted ASIC's Market Advisory Panel on the proposals. ASIC received five non-confidential submissions and six confidential submissions to CP 277 from a broad range of stakeholders including from market participants, market operators and industry associations.

Consultation feedback from NSXA and other respondents supported the transitional arrangements and highlighted some practical difficulties in applying many of the rules that derived from the Competition Rules to the NSXA and SSX markets and their Participants. They submitted that many of these rules are closely adapted to the Equity Market Products traded on the ASX and Chi-X markets, and would require adjustment to operate as intended in other securities markets (e.g. settings for volatility controls, Block Trade size thresholds and application of the best execution requirements to financial products traded solely on one Market).

The Office of Best Practice Regulation has assessed the proposals implemented by the Rules and the instrument as having a minor impact on business, community organisations or individuals and confirmed that no further analysis, in the form of a Regulatory Impact Statement is required (OBPR ID 22449).

Statement of Compatibility with Human Rights

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

ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258

ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 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

The Australian Securities and Investments Commission (**ASIC**) makes the instrument under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**).

Under subrule 1.2.1(1) of the Rules, ASIC may relieve any person or class of persons from the obligation to comply with a provision of the Rules, either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit.

The instrument provides to Participants of the NSXA and SSX Markets transitional relief from certain provisions of the Rules.

The instrument relieves a Participant of the NSXA Market, other than an NSXA AOP Participant, from its obligations to comply with the Rules until Monday 5 November 2018 in connection with its activities or conduct in relation to the NSXA Market.

The instrument provides similar transitional relief to an NSXA AOP Participant except that, in connection with the use of the NSXA AOP Participant's system for Automated Order Processing on the NSXA Market, the NSXA AOP Participant is not given relief from its obligations under the provisions of Part 5.5, 5.6 or 5.7 of the Rules.

The instrument also provides transitional relief until 16 November 2020 to Participants of the NSXA and SSX Markets from their obligations to comply with the Waived Rules, being specified provisions of the Rules that were derived from the Competition Rules.

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.

Australian Securities and Investments Commission