

EXPLANATORY STATEMENT for
ASIC Market Integrity Rules (Securities Markets – Capital) Class Waiver
2018/259

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 – Capital) Class Waiver 2018/259* under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets – Capital) 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 ASIC Market Integrity Rules (ASX Market–Capital) 2014, ASIC Market Integrity Rules (Chi-X Australia Market–Capital) 2014 and ASIC Market Integrity Rules (APX Market–Capital) 2014 (together, the ***Pre-Commencement Market Integrity Rules***) to create a single capital rule book that applies to Participants of licensed domestic markets for securities; and
- waive the requirement for Participants of NSXA (other than NSXA AOP Participants) to comply with the Rules until a specified date in the future (***Proposal B6***).

The proposals acknowledged that the Pre-Commencement Market Integrity Rules do not apply to Participants of the NSXA Market.

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 it would grant Participants of the NSXA Market (other than NSXA AOP

Participants) a waiver from their obligations to comply with the Rules until Monday 6 May 2019 to facilitate their transition to compliance with the Rules.

2. Purpose of the instrument

The purpose of this instrument is to provide to certain Participants of the NSXA Market transitional relief until 6 May 2019 from the obligation to comply with any provision of the Rules. A person who is an NSXA AOP Participant or a Participant of the NSXA Market and one or more other Markets does not have the benefit of the relief.

The relief in the instrument is consistent with Proposal B6 in CP 277 and ASIC's policy announcement in REP 547 (as described in the Overview).

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 – Capital) Class Waiver 2018/259.

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, unless the contrary intention appears, capitalised terms have the same meaning as in the Rules.

Subsection 4(2) 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, subject to subsection 5(2), a Participant of the NSXA Market does not have to comply with any provision of the Rules.

Subsection 5(2) of the instrument provides that the relief in subsection 5(1) does not apply to a person who is:

- (a) an NSXA AOP Participant; or
- (b) a Participant of the NSXA Market and one or more other Markets.

Period during which the relief applies

Section 6 of the instrument provides that the relief in subsection 5(1) applies until 6 May 2019.

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.

Most of the consultation responses to Proposal B6 were generally supportive. In its submissions, NSXA expressed the view that the existing capital rules in NSXA's operating rules are appropriate for Participants of the NSXA Market other than NSXA AOP Participants, having regard to Participants' trading volumes and risk profiles. NSXA also submitted that, if ASIC proceeded with Proposal B6, the proposed waiver for certain Participants of the NSXA Market should apply until 18 months after the commencement of the Rules.

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 – Capital) Class Waiver 2018/259

The *ASIC Market Integrity Rules (Securities Markets – Capital) Class Waiver 2018/259* 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 – Capital) 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 transitional relief until 6 May 2019 to certain Participants of the NSXA Market from the obligation to comply with any provision of the Rules. A person who is an NSXA AOP Participant or a Participant of the NSXA Market and one or more other Markets does not have the benefit of the relief.

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