

**EXPLANATORY STATEMENT for**  
**ASIC Market Integrity Rules (Securities Markets) Class Waiver**  
**2018/266**

Prepared by the Australian Securities and Investments Commission

*ASIC Market Integrity Rules (Securities Markets) 2017*

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/266 (the *instrument*) under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the *Rules*).

Under Rule 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.

Capitalised terms in this Explanatory Statement have the same meaning as in the Rules.

## **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.

Following public consultation, ASIC made the Rules in November 2017. Generally, the Rules maintain the substance of the regulatory regime embodied in market integrity rules (the **Pre-Commencement Market Integrity Rules**) applicable prior to the commencement of the Rules, including the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (Competition Rules)*. The Rules will repeal the Pre-Commencement Market Integrity Rules on 7 May 2018.

Upon the repeal of the Pre-Commencement Market Integrity Rules, ASIC Waivers made under the Pre-Commencement Market Integrity Rules will also be repealed, including ASIC Class Waiver [CW 13/1073].

[CW 13/1073] provides conditional relief to a Participant from the obligation to comply with paragraph 4A.3.2(1)(a) and subrule 4A.3.2(2) of the Competition Rules to provide information about its Crossing Systems to its clients. The relief only applies in relation to a client whose orders are not matched or executed in the Crossing System operated by the Participant.

Paragraph 4A.3.2(1)(a) and subrule 4A.3.2(2) of the Competition Rules correspond to paragraph 5A.2.2(1)(a) and subrule 5A.2.2(2) of the Rules respectively.

In Report 547 *Response to submissions on CP 277 Proposals to consolidate the ASIC market integrity rules (REP 457)* ASIC announced that as part of its project to consolidate the market integrity rules it would remake existing individual and class waivers under the Rules before 7 May 2018.

## **2. Purpose of the class rule waiver**

The purpose of this instrument is to provide conditional class waiver relief under the Rules that is consistent with the relief given from the Competition Rules in [CW 13/1073] that will be repealed on 7 May 2018 upon the repeal of the Pre-Commencement Market Integrity Rules.

The instrument is made on the basis that a Market Participant should not be required to disclose information relating to a Crossing System to a client who does not use the Crossing System.

## **3. Operation of the class rule waiver**

### **Name of legislative instrument**

Section 1 of the instrument provides that it is the ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/266.

### **Commencement**

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

### **Authority**

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

### **Interpretation**

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

### **Waiver from paragraph 5A.2.2(1)(a) of the Rules**

Subsection 5(1) of the instrument provides that a Market Participant that operates a Crossing System does not have to comply with paragraph 5A.2.2(1)(a) of the Rules.

Subsection 5(2) of the instrument provides that the relief in subsection 5(1) of the instrument is subject to the condition that the Market Participant must, prior to accepting an Order from a client for the first time which may be matched on the Participant's Crossing System, provide the client with a copy of the Publicly

Available Crossing System Information or inform the client of the website address where that information is available.

#### **Waiver from subrule 5A.2.2(2) of the Rules**

Subsection 6(1) of the instrument provides that a Market Participant that operates a Crossing System does not have to comply with subrule 5A.2.2(2) of the Rules.

Subsection 6(2) of the instrument provides that the relief in subsection 6(1) of the instrument is subject to the condition that the Market Participant must:

- (a) prior to accepting an Order from a client for the first time which may be matched on the Participant's Crossing System; and
- (b) prior to accepting an Order from a client which may be matched on the Participant's Crossing System after the Non-Public Crossing System Information has been updated under subrule 5A.2.2(3) of the Rules;

provide that client with a document containing the Non-Public Crossing System Information, in relation to that Crossing System.

#### **4. Consultation**

Before making [CW 13/1073], in Consultation Paper 202 *Dark liquidity and high-frequency trading: Proposals (CP 202)* ASIC sought feedback on the proposal to make a market integrity rule requiring a Market Participant to provide information to users and prospective users of Crossing Systems. The relief in [CW 13/1073] confirms ASIC's intention to limit the obligation on the Market Participant to disclose information to users or prospective users of Crossing Systems only, and not all clients in general.

The instrument is part of a wider project to consolidate the market integrity rules. ASIC consulted extensively with market operators, market participants and industry bodies before making the Rules and the instrument.

The consultation period for Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules (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.

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 2018/266**

This Legislative Instrument 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 of the legislative instrument**

The Australian Securities and Investments Commission (*ASIC*) makes this Legislative Instrument under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (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 Rules, either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit.

The instrument grants conditional relief to a Market Participant from requirements in paragraph 5A.2.2(1)(a) and subrule 5A2.2(2), with the effect that the Market Participant does not have to provide information relating to a Crossing System to a client who does not use the Crossing System.

#### **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**