

EXPLANATORY STATEMENT for

ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/304

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 2018/304 (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.

Unless the contrary intention appears, 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* (the *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Market Integrity Rules, ASIC Waivers made under the Pre-Commencement Market Integrity Rules will also be repealed, including ASIC Class Waiver [CW 14/6].

[CW 14/6] provides conditional relief from subrules 4A.2.1(1) and 4A.3.1(1) of the Competition Rules. Subrules 4A.2.1(1) and 4A.3.1(1) of the Competition Rules correspond to subrules 5A.1.1(1) and 5A.2.1(1) 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.

‘Crossing Systems’ are automated services provided by a Market Participant that match or execute Orders of the Market Participant’s clients with Orders of:

- (a) the Market Participant;
- (b) other clients of the Market Participant; or

(c) any other person whose Orders access the automated service, otherwise than on an Order Book.

The purpose of the disclosure requirements in subrules 5A.1.1(1) and 5A.2.1(1) of the Rules is to improve transparency about Crossing Systems and to ensure there is publicly available information about, among other things, where client Orders may be matched or executed (i.e. in the Crossing System operated by the Market Participant, or in other Crossing Systems operated by third parties).

Under the Rules, a Market Participant is required to make disclosures about each of its Crossing Systems by providing certain information to ASIC in a 'Crossing System Initial Report' (Rule 5A.1.1) and also by making certain information available free of charge on a publicly accessible website (Rule 5A.2.1).

The information required to be disclosed under Rules 5A.1.1 and 5A.2.1 includes information about Order flows between Crossing Systems.

2. Purpose of the Class Rule Waiver

The purpose of this instrument is to provide conditional class waiver relief that is consistent with the relief given from the corresponding Competition Rules in [CW 14/6] that will be repealed on 7 May 2018 upon the repeal of the Pre-Commencement Market Integrity Rules.

The relief in the instrument applies in instances where a Market Participant *receives* Orders via another person (an *Aggregator*), and it is not possible to disclose information about the other Crossing Systems and Market Participants that operate Crossing Systems that transmit Orders to the Aggregator. Under the conditions of the relief, the Market Participant must instead disclose the full legal name of the Aggregator and the code that uniquely identifies any Crossing System operated by the Aggregator.

The relief in the instrument does not apply in relation to Orders *transmitted* by the Market Participant to other Crossing Systems or Market Participants that operate Crossing Systems via the Aggregator. Accordingly, a Market Participant is required by the Rules to identify those Crossing Systems and Market Participants in its Crossing System Initial Report and Publicly Available Crossing System Information.

3. Operation of the Class Rule Waiver

Name of legislative instrument

Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/304*.

Commencement

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

Authority

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

Definitions

Subsection 4(1) of the instrument provides that, 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, **Received Aggregation Information** means, in relation to a Market Participant, the following information that is required by item 5, column 3 of the table in subrule 5A.2.1(2) of the Rules because Orders may be executed or matched in the Market Participant's Crossing System with Orders received via another person (**Aggregator**) from a Crossing System operated by another Market Participant, or from a Market Participant that operates a Crossing System:

- (a) a code identifying the other Crossing System;
- (b) the legal name of the Market Participant that operates the other Crossing System; and
- (c) for each Crossing System and Market Participant identified under paragraphs (a) and (b), that Orders are received from the other Crossing System or Market Participant.

Waiver from obligations in subrules 5A.1.1(1) and 5A.2.1(1)

Subsection 5(1) of the instrument provides that a Market Participant does not have to comply with subrule 5A.1.1(1) of the Rules to the extent that subrule requires the Market Participant to describe Received Aggregation Information in a Crossing System Initial Report.

Subsection 5(2) of the instrument provides that a Market Participant does not have to comply with subrule 5A.2.1(1) of the Rules to the extent that subrule requires the Market Participant to make Received Aggregation Information available on a website that is publicly accessible and free of charge.

Subsection 5(3) of the instrument provides that the relief in subsections 5(1) and 5(2) of the instrument applies where the Market Participant is not reasonably able to identify the other Crossing System or Market Participant in relation to the Received Aggregation Information because Orders are received from that Crossing System or Market Participant via an Aggregator.

Conditions

Subsection 6(1) of the instrument provides that it is a condition of the relief in subsection 5(1) of the instrument that the Market Participant must:

- (a) describe in the relevant Crossing System Initial Report lodged with ASIC under Rule 5A.1.1 of the Rules:
 - (i) the legal name of the Aggregator; and
 - (ii) a statement that Orders in the Market Participant's Crossing System may be executed or matched with Orders received via the Aggregator; and

- (iii) a unique code identifying each Crossing System operated by the Aggregator; and
- (b) for the purposes of the requirement in Rule 5A.1.2 of the Rules to prepare and provide to ASIC a Crossing System Monthly Report, treat any change during a calendar month to the information provided in compliance with paragraph (a):
 - (i) as a change required to be set out in a Crossing System Monthly Report; and
 - (ii) if the Market Participant is not otherwise required to prepare and provide to ASIC a Crossing System Monthly Report in relation to that calendar month, as a change requiring the preparation and provision to ASIC of a Crossing System Monthly Report.

Subsection 6(2) of the instrument provides that it is a condition of the relief in subsection 5(2) of the instrument that the Market Participant must:

- (a) make available the information referred to in subparagraphs 6(1)(a)(i) to (iii) of the instrument:
 - (i) on a website that is publicly accessible; and
 - (ii) free of charge; and
- (b) comply with Rules 5A.2.1 and 5A.2.2 of the Rules as if the information referred to in subparagraphs 6(1)(a)(i) to (iii) of the instrument were Publicly Available Crossing System Information for the purposes of those Rules.

4. Consultation

Before making [CW 14/6], ASIC consulted on its proposal to make the *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2013 (No. 2)* (an instrument that amended the crossing system disclosure requirements for Market Participants that operate Crossing Systems) in *Consultation Paper 202 Dark liquidity and high-frequency trading: Proposals* (CP 202) released on 18 March 2013. As part of that consultation process, ASIC also held meetings with industry stakeholders and information sessions for members of the Australian Financial Markets Association, the Financial Services Council and the Stockbrokers Association of Australia.

At that time, ASIC consulted on its proposal to clarify the operation of the Crossing System obligations through direct discussions with Market Participants that operate Crossing Systems. Following those discussions, ASIC published guidance about the intended operation of Rules 4A.2.1 and 4A.3.1 of the Competition Rules and then formalised that guidance in [CW 14/6].

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 2018/304

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

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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.

Under the Rules, a Market Participant is required to make disclosures about each of its Crossing Systems by providing certain information to ASIC in a ‘Crossing System Initial Report’ (Rule 5A.1.1) and also by making certain information available free of charge on a publicly accessible website (Rule 5A.2.1).

The relief in the instrument applies in instances where a Market Participant receives Orders via another person (an *Aggregator*), and it is not possible to disclose information about the other Crossing Systems and Market Participants that operate Crossing Systems that transmit Orders to the Aggregator. Under the conditions of the relief, the Market Participant must instead disclose the full legal name of the Aggregator and the code that uniquely identifies any Crossing System operated by the Aggregator.

The relief in the instrument does not apply in relation to Orders transmitted by the Market Participant to other Crossing Systems or Market Participants that operate Crossing Systems via the Aggregator. Accordingly, a Market Participant is required by the Rules to identify those Crossing Systems and Market Participants in its Crossing System Initial Report and Publicly Available Crossing System Information.

Human rights implications

This Legislative Instrument does not have any effect on human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because it does not engage any of the applicable rights or freedoms.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission