**EXPLANATORY STATEMENT for**

**ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/269**

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 2018/269 (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.

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Market Integrity Rules, ASIC Waivers made under the Pre-Commencement Market Integrity Rules will also be repealed, including ASIC Class Waiver [CW 13/1448].

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.

[CW 13/1448] relieves a Participant of the ASX Market from its obligation to comply with pre-trade transparency obligations in subrule 4.1.1(1) of the Competition Rules where the Participant enters into a transaction by matching an Auction Imbalance Order on the ASX Market.

Subrule 4.1.1(1) of the Competition Rules corresponds to subrule 6.1.1(1) of the Rules.

Subrule 6.1.1(1) of the Rules provides that, subject to subrule 6.1.1(2), a Relevant Participant must not enter into a transaction unless the transaction is entered into by matching of a Pre-Trade Transparent Order (being an order for which information such as price and volume is made available before execution) on an Order Book.

Subrule 6.1.1(1) reflects the importance of pre-trade transparency to the price formation process and fair and efficient markets.

Subrule 6.1.1(2) of the Rules lists the exceptions to the requirements of subrule 6.1.1(1). A Relevant Participant is not required to comply with subrule 6.1.1(1) in relation to:

1. Block Trades;
2. Large Portfolio Trades;
3. a Trade with Price Improvement;
4. a Permitted Trade during the Post-Trading Hours Period;
5. a Permitted Trade during the Pre-Trading Hours Period; and
6. Out of Hours Trades.

Subrule 6.2.3(1)(a) of the Rules provides that a Trade with Price Improvement is executed at a price per Relevant Product which is:

1. higher than the Best Available Bid and lower than the Best Available Offer for the Relevant Product by one or more Price Steps; or

(ii) at the Best Mid-Point.

Auction Imbalance Orders (***AIOs***) are orders that trade against any surplus volume remaining at the end of the open and closing auctions of the ASX Market at the equilibrium price set by the auction.

AIO has the meaning given by Rule 7100 of the operating rules of the ASX Market in force at the date of the instrument (***ASX Operating Rules***) and the procedure for how an AIO will be dealt with is outlined in Procedure 4026 of the procedures to the ASX Operating Rules.

An AIO is not Pre-Trade Transparent on an Order Book of the ASX Market. A Relevant Participant that enters into a transaction as a result of an AIO may therefore breach subrule 6.1.1(1) of the Rules.

**2. Purpose of the instrument**

The instrument enables a Relevant Participant to execute AIOs without breaching subrule 6.1.1(1) of the Rules.

ASIC grants the relief on the basis that the equilibrium price at the end of the auction, at which AIOs execute, can be viewed as analogous to the 'Best Mid-Point' which falls within the definition of a Trade with Price Improvement (subrule 6.2.3(1)).

ASIC intends that this relief will apply for an indefinite period of time.

**3. Operation of the instrument**

**Name of legislative instrument**

Section 1 of the instrument provides that it is the ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/269.

**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**

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:

* “ASX Operating Rules” means the operating rules of ASX Market as at the date of this instrument.
* “ASX Operating Rules Procedures” means the procedures to the ASX Operating Rules as at the date of this instrument.
* “Auction Imbalance Order” has the meaning given by Rule 7100 of the ASX Operating Rules.

Waiver from subrule 6.1.1(1) of the Rules

Section 5 of the instrument provides that a Participant of the ASX Market does not have to comply with subrule 6.1.1(1) of the Rules where the Participant enters into a transaction by matching an Auction Imbalance Order on the ASX Market, in accordance with Procedure 4026 of the ASX Operating Rules Procedures.

**4. Consultation**

ASIC did not conduct formal consultation on the making of [CW 13/1448]. However, ASIC’s decision to grant the relief in 2013 was based on discussions with stakeholders including potential users of AIOs. A key consideration in granting the relief was the explanations from these potential users about the likely motivations and purposes of Participants of the ASX Market for using AIOs. The conclusion from these discussions was that AIOs were not likely to result in detrimental effects to price discovery during the Auction, while adding efficiencies to the Auction process.

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).

**5. Documents incorporated by reference**

The instrument incorporates by reference the ASX Operating Rules and the ASX Operating Rules Procedures, as in force on the day the instrument is made. These rules and procedures govern the manner in which the trading platform and relevant trading services are provided by the ASX. The ASX Operating Rules and the ASX Operating Rules Procedures may be obtained through ASX’s website at asx.com.au/regulation.

**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 2018/269**

ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/269 (the ***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) 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 relief to Participants of the ASX Market from subrule 6.1.1(1) of the Rules where the Participant enters into a transaction by matching an ‘Auction Imbalance Order’ (***AIO***) on the ASX Market.

Subrule 6.1.1(1) of the Rules prohibits a Relevant Participant from entering into a transaction in Relevant Products unless the transaction is entered into by matching of a Pre-Trade Transparent Order (being an order for which information such as price and volume is made available before execution) on an Order Book. Subrule 6.1.1(1) reflects the importance of pre-trade transparency to the price formation process and fair and efficient markets.

AIOs are orders on the ASX Market that trade against any surplus volume remaining at the end of the opening and closing auctions of the ASX Market at the equilibrium price set by the Auction. An AIO is not Pre-Trade Transparent on the ASX Market.

The instrument gives Participants of the ASX Market relief so that they can execute AIOs without breaching subrule 6.1.1(1) of the Rules.

**Human rights implications**

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

**Conclusion**

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

**Australian Securities and Investments Commission**