

**EXPLANATORY STATEMENT for**  
**ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303**

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 2018/303 (the **instrument**) under subrule 1.2.1(1) and Rule 1.2.3 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.

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

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.

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.

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 (ASX Market) 2010 (ASX 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Market Integrity Rules, ASIC Waivers made under the Pre-Commencement Market Integrity Rules will also be repealed, including ASIC Class Waiver [CW 14/1091].

In January 2017, in Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules (CP 277)*, ASIC consulted on a proposal to revoke the relief in [CW 14/1091]. While several respondents to CP 277 were supportive of the proposal, there was significant disagreement concerning the proposal and uncertainty about its merits.

In Report 547 *Response to submissions on CP 277 Proposals to consolidate the ASIC market integrity rules (REP 547)* ASIC announced it would not revoke the relief in [CW 14/1091] at this time and would extend relief until 30 June 2020 from Market Participants' obligation under Rule 3.4.1 of the Rules to provide a confirmation (or alternative notifications under paragraph 3.4.3(1)(b) of the Rules, if applicable) to a wholesale client for a market transaction in a derivatives market contract.

## **2. Purpose of the instrument**

The purpose of this instrument is to provide conditional class waiver relief from Rule 3.4.1 of the Rules that is consistent with the relief given from the ASX Rules in [CW 14/1091] that will be repealed on 7 May 2018 upon the repeal of the Pre-Commencement Market Integrity Rules.

The instrument provides relief until 30 June 2020 from Market Participants' obligation under Rule 3.4.1 of the Rules to provide a confirmation (or alternative notifications under paragraph 3.4.3(1)(b) of the Rules, if applicable) to a wholesale client for a market transaction in a derivatives market contract.

The relief in the instrument does not relieve a Market Participant from its obligations under Rule 3.4.1 (or alternative notifications permitted under Rule 3.4.3) to notify a wholesale client if the Market Participant entered into the client's Market transaction in relation to a Cash Market Product as Principal or if the client's Market transaction in relation to a Cash Market Product was executed as a crossing.

Before the relief in the instrument ceases to apply at the end of 30 June 2020, ASIC intends to again review the circumstances of the market for derivatives market contracts to consider whether the relief remains appropriate. Examples of changing circumstances which may affect ASIC's view of the appropriateness of continuing the relief in the instrument include changes in market liquidity, commencement of alternative trading venues and product innovation.

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

### **Name of the legislative instrument**

Section 1 of the instrument provides that it is the ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303.

### **Commencement**

Section 2 of the instrument provides that it commences on 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.

## **Waiver from requirements of Rule 3.4.1**

Section 5 of the instrument provides that a Market Participant does not have to comply with Rule 3.4.1 of the Rules in respect of a Client and a Market transaction if:

- (a) the Client is not a retail client; and
- (b) the Market transaction is in respect of a financial product which is a Derivatives Market Contract; and
- (c) the Market Participant has notified the Client before entering a Trading Message on the Client's behalf that Market Transactions effected for the client are subject to:
  - (i) the directions, decisions and requirements of the Market operator, the *ASIC Market Integrity Rules (Securities Markets) 2017*, the operating rules of the Market, the Clearing Rules and where relevant, the Settlement Rules; and
  - (ii) the customs and usages of the Market; and
  - (iii) the correction of errors and omissions.

## **Conditions**

Section 6 of the instrument provides that a Market Participant must keep a record of the client notification referred to in subparagraph 5(c) of the instrument.

## **Period during which the relief applies**

Section 7 of the instrument provides that the relief in section 5 of the instrument applies until the end of 30 June 2020.

## **4. Consultation**

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 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 feedback from CP 277 highlighted uncertainty about the intended benefits provided by the two elements of the alternative disclosure which may be given to a client under Rule 3.4.3, whether or not the Market Participant entered into the Market Transaction as principal, and the venue of execution of the Market Transaction. The reasons given for this uncertainty were:

- (a) The exchange traded options market on ASX are the only Derivative Market Contracts that this disclosure would affect;
- (b) Derivative Market Contract crossings transacted on ASX's exchange traded options market most often involve trading against principal. This is particularly the case if the wholesale client is seeking liquidity and therefore generally assumes the liquidity provider is acting as principal.
- (c) Given there is currently only one functioning trading platform for exchange traded options, detailing the venue of execution is not needed at this point in time. Crossing rules for Derivatives Market Contracts also currently exclude these financial products from crossing systems as alternative execution venues.

ASIC maintains the view that it is important for retail and wholesale clients to understand the capacity in which a Market Participant has filled their order, particularly where the transaction is with the Market Participant as principal. This helps ensure conflicts of interest arising from information asymmetry are appropriately managed by way of disclosure.

ASIC acknowledges that the issue of information asymmetry is mitigated somewhat at present due to the different characteristics of the market for derivatives market contracts when compared with other securities markets. While improved disclosure remains ASIC's ultimate goal, in this instance it considers the benefits are less clear.

## **5. Regulatory Impact Statement**

The Office of Best Practice Regulation (**OBPR**) 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 was required (OBPR ID 22449 and 22519).

OBPR considered that because the market for Derivatives Market Contracts has relatively few participants and only one execution venue, the risk of information asymmetry between market participants is limited.

OBPR noted that continued uncertainty for market participants over the long-term application of [CW 14-1091] and this instrument to Derivatives Market Contracts was not likely to aid development of the market, and encouraged ASIC to permanently apply (or exempt participants from) Rule 3.4.1 after 30 June 2020, subject to appropriate review mechanisms.

## 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 2018/303

ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303 (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 instrument under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**). Under Rule 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 Rule 1.2.3, ASIC may specify the period or specific event during which any relief from an obligation to comply with a provision of the Rules may apply.

The instrument provides relief until 30 June 2020 from Market Participants' obligation under Rule 3.4.1 of the Rules to provide a confirmation (or alternative notifications under paragraph 3.4.3(1)(b) of the Rules, if applicable) to a wholesale client for a market transaction in a derivatives market contract.

A Market Participant does not get the benefit of the relief unless it has notified the client before entering a trading message on the client's behalf that Market transactions effected for the client are subject to:

- (i) the directions, decisions and requirements of the Market operator, the *ASIC Market Integrity Rules (Securities Markets) 2017*, the operating rules of the Market, the Clearing Rules and where relevant, the Settlement Rules; and
- (ii) the customs and usages of the Market; and
- (iii) the correction of errors and omissions.

It is a condition of the relief that a Market Participant keeps a record of these notifications to the Client.

#### Human rights implications

This 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**