

EXPLANATORY STATEMENT for

ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/310

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 2018/310 (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Market Integrity Rules, ASIC Waivers made under the Pre-Commencement Market Integrity Rules will also be repealed, including ASIC Class Waiver [CW 13/1543] and ASIC Waiver [13/1544].

[CW 13/1543] relieves a Market Participant from the prohibition under subrule 4.1.1(1) of the Competition Rules from entering into a transaction unless the transaction is entered into by matching of a Pre-Trade Transparent Order on an Order Book or other exception applies. The relief applied in circumstances where the Market Participant enters into a transaction as a result of placing a Market on Close Order on the Chi-X Market. A Market on Close Order is a Hidden Order (volume and price information is not available) and is not Pre-Trade Transparent. ASIC granted [CW 13/1543] on the basis that ASIC considered Market on Close Orders would result in

investors receiving a fair price, being the ASX closing single price auction (commonly known as CSPA) price. This price is transparent to the market.

[13/1544] relieves Chi-X from its obligation under subrule 4.1.2(1) of the Competition Rules to make available Pre-Trade Information about Market on Close Orders it receives.

Subrules 4.1.1(1) and 4.1.2(1) of the Competition Rules correspond to subrules 6.1.1(1) and 6.1.2(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.

2. Purpose of the instrument

The purpose of this instrument is to provide class waiver relief under the Rules that is consistent with the relief given from the Competition Rules in [CW 13/1543] and [13/1544] that will be repealed on 7 May 2018 upon the repeal of the Pre-Commencement Market Integrity Rules.

The relief in the instrument in effect permits Participants of the Chi-X Market to enter into a transaction in an Equity Market Product using a Market on Close Order which but for the relief would be prohibited by subrule 6.1.1(1) of the Rules. The relief is granted on the basis that ASIC considers a Market on Close Order would result in an investor receiving a fair price, being the closing price of ASX's CSPA Session State. This price is transparent to the market.

The instrument also provides corresponding relief to Chi-X from its obligation under subrule 6.1.2(1) of the Rules to make available Pre-Trade Information for Market on Close Orders.

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 2018/310.

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, ***Market on Close Order***, in relation to an Equity Market Product admitted to quotation on the ASX Market, means a Hidden Order of that name available on the Chi-X Market, with the following features:

- (a) submittable from the opening of the Chi-X Market until 4:20 pm;
- (b) matchable only with another Market on Close Order;
- (c) either:
 - (i) priced at the closing price (***CSPA Price***) of the relevant Equity Market Product published by ASX at the conclusion of the CSPA Session State on the ASX Market on the Trading Day on which the Order was entered; or
 - (ii) in the event there is no CSPA Price published by ASX for the relevant Equity Market Product for the relevant Trading Day, priced at the last traded price on the ASX Market for the relevant Equity Market Product on that Trading Day;
- (d) even if matched, does not result in a transaction if:
 - (i) there is no CSPA Price and no last traded price on the ASX Market for the relevant Equity Market Product on the relevant Trading Day; or
 - (ii) there is a trading halt or suspension that prevents ASX from publishing a CSPA Price for the relevant Equity Market Product for the relevant Trading Day.

Subsection 4(3) of the instrument provides that in the instrument, a reference to time is to the time in Sydney, Australia.

Waiver from subrule 6.1.1(1) of the Rules

Section 5 of the instrument provides that a Participant of the Chi-X Market does not have to comply with subrule 6.1.1(1) of the Rules where the Participant enters into a transaction as a result of placing a Market on Close Order on the Chi-X Market.

Waiver from subrule 6.1.2(1) of the Rules

Section 6 of the instrument provides that Chi-X does not have to comply with subrule 6.1.2(1) of the Rules in relation to a Market on Close Order it receives.

4. Consultation

Before making [CW 13/1543] and [13/1544], ASIC consulted with Chi-X. Chi-X conducted a consultation process with its Participants in relation to its proposal to introduce Market on Close Orders. Chi- X advised ASIC that there were no objections or concerns raised with respect to the proposed Market on Close Orders.

Similarly, Chi-X supported making the instrument. 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 2018/310

ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/310 (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 instrument

The Australian Securities and Investments Commission (*ASIC*) makes 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), 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 that a Participant of the Chi-X Market does not have to comply with subrule 6.1.1(1) of the Rules where the Participant enters into a transaction as a result of placing a Market on Close Order on the Chi-X Market. It also provides that Chi-X does not have to comply with subrule 6.1.2(1) of the Rules in relation to a Market on Close Order it receives.

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