

# EXPLANATORY STATEMENT for

## ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/312

Prepared by the Australian Securities and Investments Commission

*ASIC Market Integrity Rules (Futures Markets) 2017*

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/312 (the **instrument**) under Rule 1.2.1(1) of the *ASIC Market Integrity Rules (Futures 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.

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 24 and FEX 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 24 Market) 2010 (ASX 24 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Market Integrity Rules, ASIC Waivers made under the Pre-Commencement Market Integrity Rules will also be repealed, including ASIC Class Waiver [CW 13/972].

[CW 13/972] relieves a Principal Trader from the obligation to comply with the risk management requirements in paragraphs 2.2.1(1)(ab), (b), (c) and (e) of the ASX 24 Rules, in the case where the principal trader is a client of another market participant and the principal trader accesses the market through that market participant. Paragraphs 2.2.1(1)(ab), (b), (c) and (e) of the ASX 24 Rules correspond with paragraphs 2.2.1(1)(ab), (b), (c) and (e) of the Rules.

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 the instrument is to relieve a Principal Trader from certain risk management obligations under subrule 2.2.1(1) of the Rules with respect to its House Account in circumstances where the Principal Trader accesses the market as a Client of another Market Participant.

The instrument has been made on the grounds that the Market Participant responsible for access to the Terminal must comply with its risk management obligations under subrule 2.2.1(1) with respect to the Principal Trader as its Client. In these circumstances, the Principal Trader may not have the capability to set, document and input into trading platform account maintenance pre-determined order or position limits on its House Account.

## **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 (Futures Markets) Class Waiver 2018/312*.

### **Commencement**

Section 2 of the instrument provides that the instrument commences on the later of 7 May 2018 and 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.

### **Interpretation**

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

### **Waiver from requirements in paragraphs 2.2.1(1)(ab), (b), (c) and (e)**

Section 5 of the instrument provides that a Principal Trader does not have to comply with paragraphs 2.2.1(1)(ab), (b), (c) (to the extent it relates to the limits determined in paragraphs (ab) and (b)) and (e) of the Rules where the Principal Trader is a Client of another Market Participant (the *Second Market Participant*) and the Second Market Participant either:

- (a) permits the Principal Trader to connect to a Terminal for the purposes of trading for the Principal Trader's House Account; or
- (b) enters Orders on the Principal Trader's House Account into the Trading Platform through the Second Market Participant's Order System.

#### 4. Consultation

ASIC made [CW 13/972] to address consultation feedback received from a respondent to Consultation Paper 195 *Proposed amendments to ASIC market integrity rules: ASX 24 and FEX markets (CP 195)* in relation to the risk management requirements in Rule 2.2.1 of the ASX 24 Rules. The respondent submitted that it may be difficult for a Principal Trader that accesses the ASX 24 Market through another Market Participant to comply with Rule 2.2.1 if the Principal Trader has no control over the trading limits that are set (see Report 343: *Response to submissions on CP 195 Proposed amendments to ASIC market integrity rules: ASX 24 and FEX markets* at paragraphs 15 to 17).

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 (Futures Markets) Class Waiver 2018/312**

ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/312 (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) of the *ASIC Market Integrity Rules (Futures Markets) 2017* (the *Rules*).

Under that rule, ASIC may relieve any person or class of persons from the obligation to comply with a provision of the Rules.

The instrument relieves a Principal Trader from the obligation to comply with the risk management requirements in paragraphs 2.2.1(1)(ab), (b), (c) and (e) of the Rules, in the case where the Principal Trader is a client of another Market Participant and the Principal Trader accesses the market through that Market Participant.

#### **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**