



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Futures Markets) Class Waiver Amendment Instrument 2020/229

This is the Explanatory Statement for *ASIC Market Integrity Rules (Futures Markets) Class Waiver Amendment Instrument 2020/229*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. This Instrument extends the operation of *ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313 (Class Waiver 2018/313)* to 20 March 2022. Class Waiver 2018/313 exempts a Market Participant of a futures market from having to comply with paragraphs 2.2.1(1)(a), (ab) and (c) of the *ASIC Market Integrity Rules (Futures Markets) 2017 (Rules)*, to the extent these require a Market Participant to set and document appropriate, pre-determined, aggregate loss limits on each of its Client Accounts and House Accounts and to input these aggregate loss limits into Trading Platform account maintenance. These exemptions are conditional upon a Market Participant implementing appropriate processes to monitor the aggregate loss limits on each of its Client Accounts and House Accounts.

Purpose of the instrument

2. On 20 March 2017 ASX 24 replaced its ASX Trade24 derivatives trading platform with the ASX 24 New Trading Platform (*NTP*). While the NTP has greater functionality in many respects, it does not have functionality which will enable a Market Participant to input aggregate loss limits into the Trading Platform. As a result, Market Participants were unable to comply with paragraphs 2.2.1(1)(a), (ab) and (c) of the *ASIC Market Integrity Rules (ASX 24 Market) 2010 (the ASX 24 Rules)*.
3. *ASIC Class Rule Waiver [CW 17/251] (JCW 17/251)* relieved a Market Participant from the obligations in paragraphs 2.2.1(1)(a), (ab) and (c) of the ASX 24 Rules. [CW 17/251] was repealed with the repeal of the ASX 24 Rules following a consolidation and remaking of ASIC market integrity rules. Class Waiver 2018/313 was made in substantively identical terms as [CW 17/251] as paragraphs 2.2.1(1)(a), (ab) and (c) of the ASX 24 Rules corresponded respectively to paragraphs 2.2.1(1)(a), (ab) and (c) of the Rules.

Consultation

4. In November 2019 ASIC conducted soft soundings with a number of key participants to seek feedback on draft market integrity rules for automated order processing (*AOP*) and to determine the amount of time it would take for participants to make the appropriate system, organisational and technological changes to comply with new rules. Implementation of the AOP rules, and associated guidance, for futures market participants will address the current issue by requiring participants to have appropriate filters and controls that more closely reflect the participant's business models such as, the nature, scale and complexity of the business and the particular risks that the participant assesses as relevant to its business, including aggregate loss limits. Most participants indicated that they would welcome a harmonisation of AOP principles across markets but would require a minimum of 12 months to ensure full compliance with new rules.

Operation of the instrument

5. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Futures Markets) Class Waiver Amendment Instrument 2020/229*.
6. Section 2 of the instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
7. Section 3 of the instrument provides that the instrument is made under subrule 1.2.1(1) and Rule 1.2.3 of the Rules.
8. The instrument amends *ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313* by substituting the expiration date stated in section 7 of "20 March 2020", with "18 March 2022", thereby extending the waiver by a further two years.

Legislative instrument and primary legislation

9. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
 - (a) The matters contained in the instrument are a specific amendment designed to ensure the application of primary legislation remained flexible to adapt to market developments and applies in a way consistent with the intended policy and the enabling provisions in the primary legislation; and
 - (b) the matters contained in the instrument are appropriately used to deal with specific, technical and machinery issues or where necessary to provide flexibility to keep pace with industry developments. As a consequence, if the matters in the instrument were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of market participants. This would result in

additional cost and unnecessary complexity for other users of the primary legislation.

Legislative authority

10. ASIC makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Futures Markets) 2017*. 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. Under Rule 1.2.3 of the Rules, ASIC may specify the period during which any relief from the obligation to comply with a provision of the Rules may apply.
11. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Under subsection 13(1) of the *Legislation Act 2003*, if enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then unless the contrary intention appears, the *Acts Interpretation Act 1901* applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of the Act. Accordingly, the power under the *ASIC Market Integrity Rules (Futures Markets) 2017* to make a written waiver relieving a person or class of persons from the obligation to comply with a provision of the *ASIC Market Integrity Rules (Futures Markets) 2017*, includes a power to amend that waiver.
12. This instrument is subject to disallowance under section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

13. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the [Attachment](#).

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Overview

1. This Instrument extends the operation of ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313 (***Class Waiver 2018/313***) to 20 March 2022. Class Waiver 2018/313 exempts a Market Participant of a futures market from having to comply with paragraphs 2.2.1(1)(a), (ab) and (c) of the *ASIC Market Integrity Rules (Futures Markets) 2017*, to the extent these require a Market Participant to set and document appropriate, pre-determined, aggregate loss limits on each of its Client Accounts and House Accounts and to input these aggregate loss limits into Trading Platform account maintenance. These exemptions are conditional upon a Market Participant implementing appropriate processes to monitor the aggregate loss limits on each of its Client Accounts and House Accounts.

Assessment of human rights implications

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

Conclusion

3. This 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*.