



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets) Class Waiver Amendment Instrument 2020/877

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) Class Waiver Amendment Instrument 2020/877*.

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

Summary

1. This instrument extends the term of *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 (Class Waiver 2018/258)* to 16 November 2022. Class Waiver 2018/258 exempts market participants of the National Stock Exchange of Australia Limited (**NSXA**) and the Sydney Stock Exchange Limited (**SSX**) markets from their obligations to comply with Parts 3.8, 3.9, 3.10, 3.11, 5.1AA, 5.9A, 6.1, 6.3 and 7.4 (**Waived Rules**) of the *ASIC Market Integrity Rules (Securities Market) 2017 (Rules)* that were derived from the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (Competition Rules)*.
2. This transition period is intended to allow ASIC further time to review, consult and consider amendments to the Waived Rules so that they operate as intended in securities markets other than ASX Limited (**ASX**) and Chi-X Australia Pty Ltd (**Chi-X**) that are subject to the Rules.

Purpose of the instrument

3. The purpose of this instrument is to provide further transitional relief to NSXA's and SSX's market participants from the Waived Rules until 16 November 2022.
4. In Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules (CP 277)*, ASIC proposed to consolidate the Pre-Commencement Market Integrity Rules (**MIRs**) to create a single set of MIRs for the ASX, Chi-X, IR Plus, NSX and SSX markets. Following CP 277 the Competition Rules have been consolidated in the MIRs. ASIC also proposed to grant waivers to provide transitional relief to market participants of NSXA and SSX from their obligations to comply with certain provisions of the consolidated rules.

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5. The proposal to grant waivers providing for an appropriate transition period acknowledged that:
 - the Competition Rules do not apply to SSX participants;
 - there are the significant differences between the drafting and structure of the *ASIC Market Integrity Rules (NSXA Market) 2010* and the Rules; and
 - consultation feedback from NSXA and other respondents supported the transitional arrangements and highlighted some practical difficulties in applying many of the rules that derived from the Competition Rules to the NSXA and SSX markets and their participants. They submitted that many of these rules are closely adapted to the Equity Market Products traded on the ASX and Chi-X markets, and would require adjustment to operate as intended in other securities markets (e.g. settings for volatility controls, Block Trade size thresholds and application of the best execution requirements to financial products traded solely on one market).
 6. ASIC granted a waiver of 2 years' duration to participants of the NSXA and SSX markets from their obligations to comply with many of the provisions of the MIRs that were derived from the Competition Rules. This waiver is Class Waiver 2018/258.
 7. The extension of the term of relief provided for in Class Waiver 2018/258 for 2 years is intended to provide:
 - ASIC sufficient time to review, consult and consider how the Rules should apply to securities markets (e.g. NSXA and SSX) other than ASX and Chi-X and consider relevant amendments to the Rules, if required having regard to the size and operation of these securities markets;
 - Market participants of NSXA and SSX sufficient time to make the appropriate system, organisational and technological changes to comply with the Rules (and any applicable amendments) and/or obligations; and
 - ASIC and NSXA's and SSX's market participants an opportunity to allocate their respective resources to critical matters raised by the COVID-19 pandemic in the short term before addressing issues concerning the Rules.

Given the ongoing disruption caused by the COVID-19 pandemic, it would not be appropriate to require participants to commence necessary adjustments by 16 November 2020 (the expiry date of Class Waiver 2018/258). By extending the term of the relief in Class Waiver 2018/258, market participants of NSXA and SSX will be better placed to focus on their immediate priorities and the needs of their clients and other pressing priorities during the COVID-19 pandemic.

Consultation

8. As part of a consultation process, ASIC has provided NSXA's and SSX's market participants an opportunity to respond to the proposed extended term of Class Waiver 2018/258 prior to making *ASIC Market Integrity Rules (Securities*

Markets) Class Waiver Amendment Instrument 2020/877 (Amendment Instrument). ASIC did not receive any objection to the proposal.

9. A Regulation Impact Statement is not required for this instrument as the extension proposal is unlikely to have a more than minor regulatory impact on business, individuals or community organisation.

Operation of the instrument

10. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Securities Markets) Class Waiver Amendment Instrument 2020/877*.
11. Section 2 of the instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
12. 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.
13. The instrument amends Class Waiver 2018/258 by substituting the expiration date stated in subsections 7(2) and 7(3) of “16 November 2020”, with “16 November 2022”, thereby extending the term of the waiver by a further two years.

Legislative instrument and primary legislation

14. 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 to an existing legislative instrument (Class Waiver 2018/258) that are designed to ensure the application of that legislative instrument remains flexible to adapt to market developments and applies in a way consistent with the intended policy and the enabling provisions in the Rules; 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.

Legislative authority

15. ASIC makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of 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. 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.
16. Under subsection 33(3) of the *Acts Interpretation Act 1901 (Interpretation Act)*, 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* (**Legislation Act**), if enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then unless the contrary intention appears, the Interpretation Act 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 Rules to make a written waiver relieving a person or class of persons from the obligation to comply with a provision of the Rules, includes a power to amend that waiver.

17. This instrument is subject to disallowance under section 42 of the Legislation Act.

Statement of Compatibility with Human Rights

18. 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*.

ASIC Market Integrity Rules (Securities Markets) Class Waiver Amendment Instrument 2020/877

Overview

1. 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)*.
2. 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.
3. This instrument extends the term of *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 (Class Waiver 2018/258)* to 16 November 2022. Class Waiver 2018/258 exempts market participants of the National Stock Exchange of Australia Limited (**NSXA**) and the Sydney Stock Exchange Limited (**SSX**) markets from their obligations to comply with Parts 3.8, 3.9, 3.10, 3.11, 5.1AA, 5.9A, 6.1, 6.3 and 7.4 (**Waived Rules**) of the *ASIC Market Integrity Rules (Securities Market) 2017 (Rules)* that were derived from the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (Competition Rules)*.

Assessment of human rights implications

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

Conclusion

5. 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*.