



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets) Class Waiver (Amendment) Instrument 2022/25

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) Class Waiver (Amendment) Instrument 2022/25*.

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 (Securities Markets) Class Waiver 2018/303 (Class Waiver 2018/303)* to 30 November 2023. Class Waiver 2018/303 exempts a Market Participant of a securities market from having to comply with Rule 3.4.1 of the *ASIC Market Integrity Rules (Securities Market) 2017 (Rules)*. The exemption applies to the extent Rule 3.4.1 of the Rules requires a Market Participant 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. Class Waiver 2018/303 and the amendment made by this instrument applies only to a market transaction in a derivatives market contract, and not to market transactions in Cash Market Products.

Purpose of the instrument

3. The purpose of this instrument is to extend the relief in Class Waiver 2018/303 until 30 November 2023. Class Waiver 2018/303 provides relief 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.
4. The waiver in Class Waiver 2018/303 was previously conferred by ASIC Class Rule Waiver [CW 14-1091] (**Class Waiver 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 ASIC Class Waiver 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.

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5. In Report 547 *Response to submissions on CP 277 Proposals to consolidate the ASIC market integrity rules (Report 547)*, ASIC stated it would not revoke the relief in Class Waiver 14-1091 at that time and would extend the waiver until 30 June 2020. The extension was embodied in Class Waiver 2018/303. ASIC also stated in Report 547 that before the relief in Class Waiver 2018/303 ceased to apply, it was ASIC's intention to again review the circumstances of the market for derivatives market contracts to consider whether the waiver remained appropriate.
 6. In June 2020, ASIC extended the waiver in Class Waiver 2018/303 for 19 months to provide sufficient time:
 - (a) for both ASIC and Market Participants to devote their resources to matters raised by the COVID-19 pandemic;
 - (b) for ASIC to review the circumstances of the market for derivatives market contracts and consider whether the disclosure obligations in Rule 3.4.1 of the Rules should now apply in the context of derivatives market contracts;
 - (c) if ASIC were to decide that the obligations of Rule 3.4.1 of the Rules should be applied in the context of derivatives market contracts, for Market Participants to have sufficient time to make the necessary alterations to their trading systems.
 7. In June 2021, in Consultation Paper 342 *Proposed amendments to the ASIC market integrity rules and other ASIC-made rules (CP 342)*, ASIC consulted on a proposal to amend Rule 3.4.3 of the Rules to make permanent the effect of Class Waiver 2018/303. The proposal aims to ensure that Market Participants do not incur unnecessary costs or regulatory burden associated with complying with client reporting obligations that have no demonstrable regulatory benefit or benefit to clients.
 8. The extension of the relief in Class Waiver 2018/303 for 22 months will:
 - (a) maintain the status quo embodied in Class Waiver 2018/303 in the interests of certainty for Market Participants pending any amendment to the Rules to make permanent the effect of Class Waiver 2018/303; and
 - (b) continue to allow Market Participants and ASIC to devote their resources to immediate priorities as a result of the COVID-19 pandemic.

Consultation

9. A Regulation Impact Statement is not required for this instrument as it is minor or machinery in nature and does not alter the existing requirements for Market Participants.

Operation of the instrument

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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 2022/25*.
 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 2018/303 by substituting the expiration date stated in section 7 of “31 January 2022”, with “30 November 2023”, thereby extending the waiver by a further 22 months.

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 2018/303) that are designed to maintain the status quo embodied in Class Waiver 2018/303 in the interests of certainty for Market Participants pending any amendment to the Rules to make permanent the effect of Class Waiver 2018/303; 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 2022/25

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 operation of *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303* (**Class Waiver 2018/303**) to 30 November 2023. Class Waiver 2018/303 exempts a Market Participant of a securities market from having to comply with paragraph 3.4.1 of the Rules, to the extent it requires a Market Participant 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.

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*.