



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### ***ASIC Market Integrity Rules (Futures Markets) Class Waiver Amendment Instrument 2022/139***

This is the Explanatory Statement for *ASIC Market Integrity Rules (Futures Markets) Class Waiver Amendment Instrument 2022/139*.

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 22 March 2024. 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 (Futures 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 [CW 17/251] was repealed with the repeal of the ASX 24 Rules following a consolidation and remaking of ASIC market integrity rules.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 Futures Rules.

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4. In November 2019 ASIC consulted informally with a number of key Market Participants to seek feedback on draft market integrity rules for automated order processing (AOP). Implementation of the new AOP rules for futures Market Participants were intended to address, among other things, the issue of Market Participants not being able to comply with the existing aggregate loss limit requirements. Most Market 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 AOP rules. As a result, in March 2020, ASIC extended Class Waiver 2018/313 for two years until 18 March 2022 (see *ASIC Market Integrity Rules (Futures Markets) Class Waiver Amendment Instrument 2020/229*).
  5. During this period, ASIC had planned on conducting further consultation with industry about the proposed AOP rules. However, as a result of the outbreak of the COVID-19 pandemic in March 2020, ASIC suspended this work. In coordination with the Council of Financial Regulators, ASIC decided to focus its regulatory efforts on challenges created by the COVID-19 pandemic, prioritising matters with a risk of significant consumer harm, serious breaches of the law, risks to market integrity and time-critical matters. ASIC therefore immediately suspended a number of near-term activities which were not time critical. These included planned consultation, regulatory reports and reviews.
  6. The extension of the relief in Class Waiver 2018/313 for an additional two years will maintain the status quo embodied in Class Waiver 2018/303 in the interests of certainty for Market Participants. It will also allow ASIC sufficient time to consult with industry about any future proposed changes to the AOP rules.

### **Consultation**

6. In February 2022, ASIC invited the largest participants of the ASX 24 Market to provide feedback on ASIC's proposed extension of Class Waiver 2018/313. One Market Participant declined to comment, whilst no other responses were received from the remaining Market Participants who were invited to comment.
7. 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**

8. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Futures Markets) Class Waiver Amendment Instrument 2022/139*.
8. Section 2 of the instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
9. 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.

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10. The instrument amends *ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313* by substituting the expiration date stated in section 7 of “18 March 2022”, with “22 March 2024”, thereby extending the waiver by a further two years.

#### Legislative instrument and primary legislation

11. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because the matters contained in the instrument are a specific amendment to an existing legislative instrument (Class Waiver 2018/313) that is designed to ensure the application of that legislative instrument and the Futures Rules remain appropriate, while allowing ASIC sufficient time to consult with industry about draft market integrity rules for automated order processing.

#### Duration of the amended instrument

12. The relief provided is intended to operate for a limited duration, during which time it should be sufficient for ASIC to reasonably consult with affected stakeholders about, and to allow a reasonable transition period to implement, a more permanent solution to the subject matter.

#### **Legislative authority**

13. ASIC makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of the Futures Rules. Under subrule 1.2.1(1) of the Futures Rules, ASIC may relieve any person or class of persons from the obligation to comply with a provision of the Futures Rules. Under Rule 1.2.3 of the Futures Rules, ASIC may specify the period during which any relief from the obligation to comply with a provision of the Futures Rules may apply.
14. 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 Futures Rules to make a written waiver relieving a person or class of persons from the obligation to comply with a provision of the Futures Rules includes a power to amend that waiver.
15. This instrument is subject to disallowance under section 42 of the *Legislation Act 2003*.

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## Statement of Compatibility with Human Rights

16. 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 (Futures Markets) Class Waiver Amendment Instrument 2022/139***

#### Overview

1. This instrument extends the operation of ASIC Market Integrity Rules (Futures Markets) Class Waiver 2018/313 (***Class Waiver 2018/313***) to 22 March 2024. 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*.