



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets) BNP Paribas SA Waiver 2022/811

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) BNP Paribas SA Waiver 2022/811*.

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

Summary

1. BNP Paribas SA (ARBN 000 000 117), Australian financial services (AFS) licence number 238043 (**BNPP**) is the parent company of BNP Paribas Securities Services (ARBN 149 440 291), AFS licence number 402467 (**BP2S**).
2. BP2S was a trading participant of the ASX market with restricted access to the ASX trading platform for the purposes of its clearing activities. BP2S was not subject to the ASIC Market Integrity Rules (Securities Markets) 2017 (**Securities Markets Rules**) due to a conditional waiver granted by ASIC under Rule 1.2.1 of the Securities Markets Rules (ASIC Waiver 18/300, the **Previous Waiver**).
3. Under the Securities Markets Rules, since 6 April 2022 a waiver granted to any person, or a class of persons by ASIC under Rule 1.2.1 of the Securities Markets Rules is by legislative instrument. The Previous Waiver was not a legislative instrument.
4. Due to a merger between BP2S and BNPP (**Merger**), BNPP now carries out those activities covered by the Previous Waiver, instead of BP2S which ceased to exist from 1 October 2022.
5. The *ASIC Market Integrity Rules (Securities Markets) BNP Paribas SA Waiver 2022/811* (**the instrument**) grants a conditional waiver to BNPP from the requirement to comply with any of the provisions of the Securities Markets Rules, effective from the date after this instrument is registered. The instrument grants a waiver in substantially the same terms as the Previous Waiver, in the form of a legislative instrument.

Purpose of the instrument

6. The conditional relief under the Previous Waiver was first granted by ASIC to BP2S on 28 February 2017, (effective from 1 March 2017) which exempted BP2S from the requirement to comply with any of the provisions of the *ASIC Market Integrity Rules (ASX Market) 2010* and the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*, where certain restrictions apply to BP2S' trading permission (**ASIC Waiver [17/0170]**).
7. Following consolidation of the market integrity rule books, ASIC remade ASIC Waiver [17/0170] as the Previous Waiver on 27 April 2018 (effective from 7 May 2018). The Previous Waiver exempted BP2S from the requirement to comply with any of the provisions of the Securities Markets Rules, where the same restrictions apply to BP2S' trading permission as specified in ASIC Waiver [17/0170], and subject to the same conditions imposed by ASIC Waiver [17/0170].
8. ASIC had granted BP2S the Previous Waiver from the Securities Markets Rules, because although it was admitted as a trading participant of the ASX market, its access was restricted and only for discrete requirements in relation to its clearing activities. Most of the Securities Markets Rules were not relevant to BP2S's activities in its limited capacity as a trading participant.
9. Following the Merger, BNPP now performs the activities previously undertaken by BP2S and is a clearing participant of ASX Clear Pty Limited (ACN 001 314 503) (**ASX Clear**) to act as a third-party clearer of equities and exchange-traded options (**ETOs**) for a number of ASX trading participants.
10. As a clearing participant BNPP needed to be admitted as a trading participant of the ASX market solely for the purposes of complying with two discrete requirements of ASX Clear in order to provide its clearing activities in relation to ETOs. Specifically:
 - (a) being allocated a Participant Identification Number (Participant ID or PID) to enable ASX Clear to report to ASIC transactions in cash market products arising from the exercise of an ETO for which BNPP is a general clearing participant, under ASX Clear Operating Rule 20.3.3; and
 - (b) accepting allocations of ETOs as a general clearing participant from another clearing participant under ASX Clear Operating Rule 11.1.
11. The conditions of BNPP's admission as a trading participant of the ASX market is restricted, so that it has no connectivity to the ASX trading platform and therefore cannot access the platform or place orders. This is identical to the conditions of BP2S's admission as a trading participant when ASIC had granted the Previous Waiver.
12. The instrument continues the relief under the Previous Waiver, while reflecting that BNPP now undertakes the clearing activities that require it to have limited access as a trading participant, not BP2S.

Consultation

13. ASIC consulted with BNPP and with ASX about the relief under this instrument. As this instrument only confers relief on BNPP, ASIC did not conduct any wider consultation.
14. A Regulation Impact Statement is not required for this instrument as it does not alter the existing requirements for market participants and is only relevant to BNPP's specific circumstance as a trading participant of the ASX market with restricted access.

Operation of the instrument

15. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Securities Markets) BNP Paribas SA Waiver 2022/811*.
16. Section 2 of the instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
17. Section 3 of the instrument provides that the instrument is made under subrule 1.2.1(1) of the Securities Markets Rules.
18. Sections 5 and 6 of the instrument exempts BNPP from the requirement to comply with any of the provisions of the Securities Markets Rules, provided that:
 - (a) BNPP's trading permission in respect of cash market products is restricted to reporting on a trading platform of ASX any cash market transactions arising from the exercise of a derivatives market contract;
 - (b) BNPP is not permitted by ASX to have arrangements for connectivity to the trading platform of ASX; and
 - (c) BNPP's trading permission and clearing arrangements in respect of derivative market transactions is restricted to receiving allocations as second participant.
19. Subsection 7(a) of the instrument provides that it is a condition of the waiver in section 5 that BNPP must notify ASIC of any changes to:
 - (a) the conditions imposed by ASX on the admission or trading permission of BNPP and
 - (b) the business model for the business that BNPP carries on in relation to the ASX market.
20. Subsection 7(b) of the instrument provides that BNPP must notify ASIC of any changes referred to in subsection 7(a) at least 10 business days before those changes take effect, or if it is not reasonably practicable to notify ASIC by that time, as soon as reasonably practicable after that time.

Legislative instrument and primary legislation

21. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument (in the form of a waiver granted to BNPP) rather than primary legislation or through an amendment to the Securities Markets Rules because the matters contained in the instrument are a specific exemption from the Securities Markets Rules designed to apply to one entity only and in highly specific circumstances. Further, the Securities Markets Rules is not primary legislation and is made by ASIC under subsection 798G(1) of the Corporations Act 2001.

Duration of the instrument

22. The instrument will automatically sunset in accordance with section 50 of the *Legislation Act 2003* (i.e. on the first 1 April or 1 October falling on or after the tenth anniversary of registration of the instrument). This duration is appropriate given that, although the relief is by way of legislative instrument due to the requirements of the Securities Markets Rules, the relief is individual in nature, only applying to a single entity.

Legislative authority

23. ASIC makes this instrument under subrule 1.2.1(1) of the Securities Markets Rules.
24. Under subrule 1.2.1(1) of the Securities Markets Rules, ASIC may, by way of legislative instrument, relieve any person or class of persons from the obligation to comply with a provision of the rules, either unconditionally or subject to such conditions as ASIC thinks fit.
25. This instrument is subject to disallowance under section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

26. 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) BNP Paribas SA Waiver 2022/811

Overview

1. The *ASIC Market Integrity Rules (Securities Markets) BNP Paribas SA Waiver 2022/811* (the **instrument**) conditionally exempts BNP Paribas SA (ARBN 000 000 117) (**BNPP**) from the ASIC Market Integrity Rules (Securities Markets) 2017 (**Securities Markets Rules**).
2. The instrument is identical to the waiver granted by the Australian Securities and Investments Commission (**ASIC**) under Rule 1.2.1 of the Securities Markets Rules to the subsidiary of BNPP, BNP Paribas Securities Services (ARBN 149 440 291) (**BNP2S**) (ASIC Waiver 18/300, the **Previous Waiver**).
3. ASIC had granted BP2S the Previous Waiver from the Securities Markets Rules, because although it was admitted as a trading participant of the ASX market, its access was restricted and only for discrete requirements in relation to its clearing activities. Most of the Securities Markets Rules were not relevant to BP2S's activities in its limited capacity as a trading participant.
4. Due to a merger between BP2S and BNPP (**Merger**), BNPP now carries out those activities covered by the Previous Waiver, instead of BP2S which ceased to exist from 1 October 2022.
5. The instrument is identical to the relief under the Previous Waiver while reflecting that BNPP now undertakes the clearing activities that require it to have limited access as a trading participant, not BP2S.

Assessment of human rights implications

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

Conclusion

7. 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*.