



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets) NSXA and SSX Markets (Operators and Participants) Class Waiver 2022/881

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) NSXA and SSX Markets (Operators and Participants) Class Waiver 2022/881*.

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

Summary

1. The *ASIC Market Integrity Rules (Securities Markets) NSXA and SSX Markets (Operators and Participants) Class Waiver 2022/881* (the **instrument**):
 - a. remakes the existing waivers granted by ASIC under the *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 (Class Waiver 2018/258)*, ASIC Waiver 18/260 and ASIC Waiver 18/261 (together, the **Existing Waivers**), each of which expire on 16 November 2022, and consolidates them into a single legislative instrument; and
 - b. extends the operation of the relief granted under the Existing Waivers to 16 November 2024.
2. Class Waiver 2018/258 exempts participants of the markets operated by the National Stock Exchange of Australia Limited (**NSXA**) and the Sydney Stock Exchange Limited (**SSX**) 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 of the *ASIC Market Integrity Rules (Securities Market) 2017 (Securities Markets Rules)*.
3. ASIC Waiver 18/260 and ASIC Waiver 18/261 each exempts (respectively) the NSXA and SSX from their obligations as market operators to comply with Parts 6.1, 6.3, 7.4, 9.1, 9.2, 9.3 and 9.4 and Chapter 8 of the Securities Markets Rules.
4. This period of extension is intended to allow ASIC further time to review, consult and consider amendments to the Securities Markets Rules so that they operate as intended in smaller securities markets.

Purpose of the instrument

5. The purpose of this instrument is to remake and consolidate the Existing Waivers into a single legislative instrument, and to extend their operation for a further two years.
6. In Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules (CP 277)*, ASIC proposed to consolidate several ASIC market integrity rules into a single set of ASIC market integrity rules for the markets operated by each of the following entities:
 - a. ASX Limited (**ASX**);
 - b. Cboe Australia Pty Ltd (previously Chi-X Australia Pty Ltd) (**Cboe**);
 - c. IR Plus Securities Exchange Limited (no longer operating);
 - d. NSXA; and
 - e. SSX.
7. In CP 277, ASIC also proposed to grant waivers to provide transitional relief to NSXA, SSX and the participants of those markets, from their obligations to comply with certain provisions of the consolidated rules which were derived from the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (Competition Rules)*. This was to allow sufficient time for NSXA and SSX to amend their respective operating rules, and for participants in those markets to comply with the new requirements.
8. Consultation feedback from NSXA, SSX 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 Cboe 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).
9. Following CP 277, ASIC made the consolidated rules (which included the Securities Markets Rules) and granted the Existing Waivers with a two-year duration, expiring 16 November 2020.
10. On 30 October 2020, ASIC extended the Existing Waivers for a further two-year period, to 16 November 2022. This was largely due to the disruption caused by the COVID-19 pandemic, and was intended to allow NSXA, SSX and the participants of those markets to focus on their other pressing priorities during the COVID-19 pandemic.
11. Following this disruption, a further two-year period of relief is required to facilitate:

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- a. sufficient time for ASIC to review, consult and consider how the Securities Markets Rules should apply to smaller securities markets and consider relevant amendments to the Securities Markets Rules, if required, having regard to the size and operation of these securities markets; and
 - b. participants of NSXA and SSX markets having sufficient time to make the appropriate system, organisational and technological changes to comply with the Securities Markets Rules (and any applicable amendments) and/or obligations.
12. 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. ASIC Waiver 18/260 and ASIC Waiver 18/261 are not legislative instruments.
 13. This instrument remakes and consolidates the Existing Waivers into a single legislative instrument, and extends their operation for a further two years, to 16 November 2024.

Consultation

14. ASIC consulted with NSXA, SSX and their respective market participants about the proposal to extend the relief granted under the Existing Waivers for a further two years. ASIC did not receive any objections to this proposal.
15. A Regulation Impact Statement is not required for this instrument as the Office of Best Practice Regulation considers the consolidation and extension of the relief granted under the Existing Waivers is unlikely to have a more than minor regulatory impact.

Operation of the instrument

16. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Securities Markets) NSXA and SSX Markets (Operators and Participants) Class Waiver 2022/881*.
17. Section 2 of the instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation or 17 November 2022, whichever is later.
18. Section 3 of the instrument provides that the instrument is made under subrule 1.2.1(1) and Rule 1.2.3 of the Securities Markets Rules.
19. Section 4 of the instrument provides definitions applicable to terms used in the instrument and interpretative rules.
20. Section 5 of the instrument specifies the provisions of the Securities Markets Rules with which the NSXA and the SSX need not comply. These are:
 - a. Part 6.1 [Orders must be Pre-Trade Transparent];

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- b. Part 6.3 [Transactions must be post-trade transparent];
 - c. Part 7.4 [Requirement to record and provide Regulatory Data];
 - d. Chapter 8 [Extreme price movements];
 - e. Part 9.1 [Trading Suspensions];
 - f. Part 9.2 [Information Sharing];
 - g. Part 9.3 [Synchronised clocks]; and
 - h. Part 9.4 [Tick Sizes].
21. Section 6 of the instrument specifies the provisions of the Securities Markets Rules with which a participant in the markets operated by each of the NSXA and the SSX need not comply. These are:
- a. Part 3.8 [Best execution obligation];
 - b. Part 3.9 [Policies and procedures];
 - c. Part 3.10 [Disclosure of best execution obligation];
 - d. Part 3.11 [Evidencing execution performance];
 - e. Part 5.1AA [Transactions to be under the operating rules of a Market operator];
 - f. Part 5.9A [Trading Suspensions];
 - g. Part 6.1 [Orders must be Pre-Trade Transparent];
 - h. Part 6.3 [Transactions must be post-trade transparent]; and
 - i. Part 7.4 [Requirement to record and provide Regulatory Data].
22. Section 7 of the instrument provides that the instrument expires at the end of 16 November 2024, thereby extending the terms of the Existing Waivers by a further two years.

Legislative instrument and primary legislation

23. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument (in the form of a class waiver granted to NSXA, SSX and to participants of those markets) rather than primary legislation or an amendment to the Securities Markets Rules, because the matters contained in this instrument are the subject of existing instruments (being the Existing Waivers), which are due to expire on 16 November 2022. This instrument extends their operation for a further two years to allow ASIC

time to review, consult and consider amendments to the Securities Markets Rules in future, so that they operate as intended in smaller securities markets.

Duration of the instrument

24. The instrument ceases to have effect at the end of 16 November 2024.

Legislative authority

25. ASIC makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of the Securities Markets Rules.
26. Under subrule 1.2.1(1) of the Securities Markets Rules, ASIC may, by legislative instrument, relieve any person or class of persons from the obligation to comply with a provision of the Securities Markets Rules either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit.
27. Under Rule 1.2.3 of the Securities Markets Rules, ASIC may specify the period during which any relief from the obligation to comply with a provision of the Securities Markets Rules may apply.
28. This instrument is subject to disallowance under section 42 of the Legislation Act.

Statement of Compatibility with Human Rights

29. 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) NSXA and SSX Markets (Operators and Participants) Class Waiver 2022/881

Overview

1. The Australian Securities and Investments Commission (**ASIC**) makes the *ASIC Market Integrity Rules (Securities Markets) NSXA and SSX Markets (Operators and Participants) Class Waiver 2022/881* (the **instrument**) under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Securities Markets Rules**).
2. Under subrule 1.2.1(1) of the Securities Markets Rules, ASIC may, by legislative instrument, relieve any person or class of persons from the obligation to comply with a provision of the Securities Markets Rules, either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit.
3. Under Rule 1.2.3 of the Securities Markets Rules, ASIC may specify the period during which any relief from the obligation to comply with a provision of the Securities Markets Rules may apply.
4. This instrument:
 - a. remakes the existing waivers granted by ASIC under the *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 (Class Waiver 2018/258)*, ASIC Waiver 18/260 and ASIC Waiver 18/261 (together, the **Existing Waivers**), each of which expire on 16 November 2022, and consolidates them into a single legislative instrument; and
 - b. extends the operation of the relief granted under the Existing Waivers to 16 November 2024.
5. Class Waiver 2018/258 exempts participants of the markets operated by the National Stock Exchange of Australia Limited (**NSXA**) and the Sydney Stock Exchange Limited (**SSX**) 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 of the Securities Markets Rules.
6. ASIC Waiver 18/260 and ASIC Waiver 18/261 each exempts (respectively) NSXA and SSX from their obligations as market operators to comply with Parts 6.1, 6.3, 7.4, 9.1, 9.2, 9.3 and 9.4 and Chapter 8 of the Securities Markets Rules.

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7. This period of extension is intended to allow ASIC further time to review, consult and consider amendments to the Securities Markets Rules so that they operate as intended in smaller securities markets.

Assessment of human rights implications

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

Conclusion

9. 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*.