



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2023/833

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2023/833*.

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

Summary

1. The instrument repeals the following waivers (together, the *Class Waivers*) made under the *ASIC Market Integrity Rules (Securities Markets) Rules 2017 (Securities Markets Rules)*:
 - (a) *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303 (Class Waiver 2018/303)*; and
 - (b) *ASIC Market Integrity Rules (Securities Markets) Class Waiver Instrument 2020/870 (Class Waiver 2020/870)*.
2. The Class Waivers are no longer required following certain amendments to the Securities Markets Rules by the *ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/117 (the Amendment Instrument)*.
3. The Class Waivers are otherwise due to expire at the end of 30 November 2023.

Purpose of the instrument

4. The purpose of this instrument is to repeal the Class Waivers, both of which are no longer required following certain amendments to the Securities Markets Rules.

Class Waiver 2018/303

5. Class Waiver 2018/303 provided conditional relief to Market Participants from their obligations under Rule 3.4.1 of the Securities Markets Rules to provide a confirmation (or alternative notifications under paragraph 3.4.3(1)(b) of the Securities Markets Rules, if applicable) to a wholesale client for a market

transaction in a derivatives market contract. This relief was due to expire on 30 June 2020.

6. *ASIC Market Integrity Rules (Securities Markets) Class Waiver Amendment Instrument 2020/586* extended the operation of Class Waiver 2018/303 to 30 June 2022 to allow Market Participants to focus on their immediate priorities and the needs of their customers during the COVID-19 pandemic.

Class Waiver 2020/870

7. Class Waiver 2020/870 provided conditional relief to Market Participants from certain obligations under Part 2.4 of the Securities Markets Rules in relation to their representatives who were accredited as a Level One Accredited Derivatives Adviser, Level Two Accredited Derivatives Adviser or Accredited Futures Adviser immediately before the renewal date of 30 November 2020 for those accreditations.
8. The effect of Class Waiver 2020/870 was to relieve Market Participants from the need to renew the accreditations of their representatives by submitting a written application to ASIC prior to the renewal date. This relief was due to expire on 30 November 2021.

Amendment Instrument

9. In June 2021, ASIC published Consultation Paper 342 *Proposed amendments to the ASIC market integrity rules and other ASIC-made rules (CP 342)* which set out proposals to amend the Securities Markets Rules and other ASIC-made rules.
10. This included, amongst other things, a proposal to:
 - (a) make permanent the effect of Class Waiver 2018/303;
 - (b) replace Part 2.4 of the Securities Markets Rules with principles-based rules.
11. *ASIC Market Integrity Rules (Securities Markets) Class Waiver (Amendment) Instrument 2022/25* and *ASIC Market Integrity Rules (Securities Markets) Class Waiver (Amendment) Instrument 2021/926* extended the operation of Class Waiver 2018/303 and Class Waiver 2020/870, respectively, to 30 November 2023 to:
 - (a) provide certainty by maintaining the status quo embodied in the Class Waivers, while ASIC progressed the amendments proposed in CP 342; and
 - (b) continue to allow Market Participants and ASIC to devote their resources to more immediate priorities because of the COVID-19 pandemic.

12. On 9 March 2022, ASIC made the Amendment Instrument which made various amendments to the Securities Markets Rules and other ASIC-made rules. This included, amongst other things, the following amendments which commenced on 6 April 2022:

- (a) making permanent the effect of Class Waiver 2018/303;
- (b) the repeal of Part 2.4 of the Securities Markets Rules.

Consultation

13. ASIC undertook relevant consultation:

- (a) when each Class Waiver was made, and when each Class Waiver was extended;
- (b) in CP 342 in relation to the relevant amendments made by the Amendment Instrument.

14. ASIC did not undertake consultation about the repeal of the Class Waivers, as the relief provided under the Class Waivers is no longer required.

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) Repeal Instrument 2023/833*.

16. Section 2 of the instrument provides that the instrument commences on the later of 1 December 2023 or the day after the instrument is registered on the Federal Register of Legislation. The Class Waivers are otherwise scheduled to lapse at the end of 30 November 2023.

17. Section 3 of the instrument provides that the instrument is made under subrule 1.2.1(3) of the Securities Markets Rules.

18. The instrument repeals Class Waiver 2018/303 and Class Waiver 2020/870 in their entirety.

Incorporation by reference

19. The instrument does not incorporate any matter by reference.

Retrospective application

20. The instrument does not have retrospective application.

Legislative instrument and primary legislation

21. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:

-
- (a) the Class Waivers it repeals were made under a power specifically delegated to ASIC which required a detailed, technical assessment that was best suited for ASIC to undertake rather than Parliament (the instruments operated to fill in a more comprehensive regulatory framework that sits alongside the primary law); and
 - (b) the matters contained in the Class Waivers being repealed were appropriately used to deal with specific, technical and machinery issues or were necessary to provide flexibility to keep pace with industry developments

Duration of the instrument

22. The repeal of the Class Waivers will take effect on commencement of the instrument. The instrument will then be automatically repealed following commencement in accordance with section 48A of the *Legislation Act 2003*.

Legislative authority

23. The instrument is made under subrule 1.2.1(3) of the Securities Markets Rules, which provides that ASIC may withdraw, by legislative instrument, a waiver given under subrule 1.2.1(1) of the Securities Markets Rules at any time.
24. The Securities Markets Rules are made under subsection 798G(1) of the *Corporations Act 2001*.
25. This instrument is a disallowable instrument under section 42 of the *Legislation Act 2003*. Subsection 45(3) of the *Legislation Act 2003* prevents revival of the instruments being repealed as these instruments contain provisions that will automatically cease their operation after 30 November 2023.

Statement of Compatibility with Human Rights

19. 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) Repeal Instrument 2023/833

Overview

1. The instrument repeals the following waivers (the ***Class Waivers***) made under the *ASIC Market Integrity Rules (Securities Markets) Rules 2017 (Securities Markets Rules)*:
 - (a) *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303*;
and
 - (b) *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2020/870*.
2. The Class Waivers are no longer required following certain amendments to the Securities Markets Rules by the *ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/117*.
3. The Class Waivers are otherwise due to expire at the end of 30 November 2023.

Assessment of human rights implications

4. This 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*.