

## **Class Rule Waiver [CW 12-1520]**

### **Explanatory Statement**

**Prepared by the Australian Securities and Investments Commission**

#### **ASIC Market Integrity Rules (Competition in Exchange Markets) 2011**

The Australian Securities and Investments Commission (**ASIC**) makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (Competition Rules)*.

Under that rule, ASIC may relieve any person or class of persons from the obligation to comply with a provision of the Competition Rules either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit.

#### **Background**

On 29 April 2011, ASIC made the Competition Rules which formed part of the regulatory framework for competition between exchange markets. Chapter 3 of the Competition Rules, which relates to Best Execution, commenced on 31 October 2011.

##### Rule 3.1.1 of the Competition Rules

Rule 3.1.1(1) provides that *Subject to subrules (3), (4) and (6), when handling and executing an Order for a client a Participant must take reasonable steps to obtain the best outcome for that client.*

Rule 3.1.1(2) provides that:

*For the purposes of subrule (1), when handling and executing an Order for:*

- (a) a Retail Client who has not given an instruction under subrule (3), the best outcome means the best Total Consideration; and*
- (b) a Wholesale Client who has not given an instruction under subrule (4), the best outcome may be price, costs, Total Consideration, speed, likelihood of execution or any other relevant outcome, or any combination of those outcomes.*

Rule 3.1.1 (3) sets out the circumstances in which the Participant must take reasonable steps to handle and execute an Order in a way which satisfies instructions provided by a Retail Client which are inconsistent with the Participant obtaining the best Total Consideration under subrule (1) for the Retail Client.

Rule 3.1.1 (4) sets out the circumstances in which the Participant must take reasonable steps to handle and execute an Order in a way which satisfies instructions provided by a Wholesale Client which may be standing instructions or specific Order by Order instructions and which are inconsistent with the Participant obtaining the best outcome under subrule (1) for the Wholesale Client.

Rule 3.1.1(5) requires a periodic review of any standing instruction received from a Wholesale Client and provides that, if the instruction provides that the Participant is not required to comply with subrule (1), they must only be acted on by the Participant for a period of 12 months.

Rule 3.1.1(6) provides that *For the period from commencement of this Rule to 31 October 2012, a Participant may decide to transmit Orders only to the Listing Market, notwithstanding that the Participant may have been able to obtain the best outcome required by this Rule by transmitting Orders to another Market.*

Rule 3.2.3(2) of the Competition Rules

Rule 3.2.3(2) provides that:

*A Participant who relies on subrule 3.1.1(6) to transmit Orders to the Listing Market only for the period until 31 October 2012 must, prior to 31 October 2012:*

- (a) review the policies and procedures and implementation of them required by Rule 3.2.1 for the purposes of ensuring they will continue to be adequate to ensure compliance with subrule 3.1.1(1) in the period after 31 October 2012; and*
- (b) disclose In Writing to its clients any changes to its policies and procedures arising from the review it undertakes under paragraph (a).*

Rule 3.2.1 provides that:

*(1) A Participant must establish, document and implement adequate policies and procedures to ensure that it complies with Rule 3.1.1.*

*(2) A Participant's policies and procedures under subrule (1) must, without limitation, set out a description of:*

- (a) the Order Books, and (in reliance on an exception to subrule 4.1.1(1)) any place other than an Order Book, to which the Participant may transmit Client Orders;*
- (b) how Client Orders will be handled and executed, including the circumstances in which Client Orders will be transmitted for matching or execution to an Order Book or elsewhere (in reliance on an exception to subrule 4.1.1(1)) and the circumstances in which that transmission will be automatic and the circumstances in which that transmission will be manual; and*
- (c) arrangements to monitor the policies, procedures and implementation required by subrule (1) to ensure they continue to be adequate to ensure compliance with subrule 3.1.1(1).*

**This class rule waiver**

Rule 3.1.1(6) has the effect of providing a 12 month transitional period whereby Participants may nominate to transmit orders only to the Listing Market until 31 October 2012. This was intended to allow sufficient time for Participants to change their processes and procedures to ensure compliance with Part 3.1 of the Competition Rules.

Rule 3.2.3(2) currently provides that, where a Participant relies on the 12 month transitional period, the Participant must ensure that their policies and procedures are adequate to comply with Rule 3.1.1 by 31 October 2012.

ASIC notified Participants in Issue 19 of the ASIC Market Supervision Update dated 7 March 2012, that it would extend the transitional period for compliance with Rule 3.1.1 of the Competition Rules. Information relating to the extension of the transition period was also added to Competition FAQ D2 'What transitional arrangements are in place for best execution?' A further update was provided to Participants in Issue 24 of the ASIC Market Supervision Update dated 6 August 2012. Both the relevant ASIC Market Supervision Update and the Competition FAQ are available on ASIC's website.

Consistent with these public statements, this class rule waiver extends the transitional implementation period for ASX Participants by an additional 5 months, by waiving the obligation to comply with Rule 3.1.1 and Rule 3.2.3(2) of the Competition Rules until 1 March 2013.

### **Consultation**

ASIC did not consult specifically on the making of this class rule waiver. However, the decision to extend the transitional implementation period was based on discussions with stakeholders and ASIC's ongoing monitoring of trading activity on the order books of licensed markets.

Key considerations in extending the transitional period were that:

- (a) Participants indicated that a lead time of several months was necessary to build multi-market trading capability. If a Participant decided to access a new order book from 31 October 2012 they would have needed to start development of appropriate systems from March 2012; and
- (b) In March 2012 the level of liquidity available on alternative order books was not significant and unlikely to result in better outcomes on a consistent basis for the large majority of Participants.

### **Statement of Compatibility with Human Rights**

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This Class Rule Waiver 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*.

This Legislative Instrument does not engage any of the applicable rights or freedoms.

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.