

# ASIC CLASS RULE WAIVER [CW 13-1073]

## 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 (the *Class Rule Waiver*) under Rules 1.2.1(1) and 1.2.3 of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (the *Competition Rules*).

Under Rule 1.2.1(1), 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.

Under Rule 1.2.3, ASIC may specify the period or specific event during which any relief from an obligation to comply with a provision of the Competition Rules may apply.

Capitalised terms in this Explanatory Statement refer to defined terms in the Competition Rules.

### 1. Background

On 5 August 2013, ASIC made *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2013 (No. 2)*, which amended the Competition Rules. The amendment introduced new rules to address regulatory issues raised by recent market structure developments including a lack of consistent and readily accessible information to the market and to users of a Crossing System about how Crossing Systems operate and when orders may be executed on a Crossing System..

#### *Disclosure requirements for Crossing Systems – information for users*

Part 4A.3 of the Competition Rules imposes disclosure requirements for Crossing Systems. In particular, Rule 4A.3.2(1) requires a Participant that operates a Crossing System to provide a client with a copy of the Publicly Available Crossing System Information or inform the client of the website address where that information is available.

Rule 4A.3.2(2) requires a Participant that operates a Crossing System, prior to accepting an Order from a client for the first time and prior to accepting an order from a client after the Non-Public Crossing System Information has been updated, to provide that client with a document containing the Non-Public Crossing System Information relating to that Crossing System.

#### *Monitoring activities in a Crossing System*

Rule 4A.5.1(1) requires a Participant that operates a Crossing System to monitor the use of its Crossing System for compliance with the obligations imposed on the user by the operator of the Crossing System and with the operating procedures of the Crossing System; and take action to ensure any breaches identified by the Participant during the course of monitoring do not recur.

Rule 4A.5.1(2) requires a Participant to notify ASIC, in writing, of all significant breaches identified by the Participant during the course of monitoring undertaken under Rule 4A.5.1 as soon as practicable after identification of the relevant breach.

Rule 4A.5.1(3) requires a Participant to keep records that demonstrate the monitoring activities it undertakes under Rule 4A.5.1, and of all breaches identified under Rule 4A.5.1 for a period of seven years.

Rule 4A.5.1(4) provides that a Participant does not have to comply with this Rule until 10 November 2013.

## **2. Purpose of the class rule waiver**

### *Paragraphs 4 and 5 – Disclosure requirements for Participants for client that use Crossing Systems*

Paragraphs 4 and 5 of the Class Rule Waiver ensure that a Participant who operates a Crossing System is only required to disclose information to a client who is a user or may be a user of the Crossing System rather than to all clients.

The Class Rule Waiver has been made on the basis that a Participant should not be required to disclose information relating to a Crossing System to a client who does not use the Crossing System.

### *Paragraph 6 – Monitoring Crossing Systems*

The purpose of paragraph 6 of the Class Rule Waiver is to extend the time for the commencement of Rule 4A.5.1 to allow Participants an additional implementation timeframe of six months.

## **3. Operation of the class rule waiver**

### *Paragraphs 4 and 5 – Disclosure requirements for Crossing Systems – information for users*

Paragraphs 4 and 5 of the Class Rule Waiver relieves a Participant from the obligation to comply with Rule 4A.3.2(1)(a) and Rule 4A.3.2(2) of the Competition Rules.

A Participant will only be able to rely on the Class Rule Waiver with respect to a client that does not use the Crossing System operated by the Participant.

The relief in paragraphs 4 and 5 of the Class Rule Waiver applies until withdrawn.

### *Paragraph 6 – Monitoring activities in a Crossing System*

Paragraph 6 of the Class Rule Waiver relieves a Participant from the obligation to comply with Rule 4A.5.1 of the Competition Rules for a period of six months.

The relief applies during until 9 May 2014.

## **4. Consultation**

### *Paragraphs 4 and 5 – Disclosure requirements for Crossing Systems – information for users*

ASIC did not consult specifically on paragraphs 4 and 5 of the Class Rule Waiver. However, in Consultation Paper 202 *Dark liquidity and high-frequency trading: Proposals (CP 202)* ASIC sought feedback on the proposal to make a market integrity rule requiring a Participant to provide information to users and prospective users of Crossing Systems.

The relief provided in paragraphs 4 and 5 of the Class Rule Waiver is to confirm the intention to limit the obligation on the Participant to disclose information to users or prospective users of Crossing Systems only and not all clients in general.

*Paragraph 6 – Monitoring activities in a Crossing System*

ASIC did not consult specifically on paragraph 6 of the Class Rule Waiver. However, ASIC consulted on the proposal to make a market integrity rule that would require a Participant to monitor order and trade activity on a Crossing System. ASIC considered the submissions on this obligation and in Report 364 *Response to submissions on CP 202 Dark liquidity and high-frequency trading: Proposals*, indicated the implementation time will be extended to nine months. This was communicated in Regulatory Guide 223: *Guidance on ASIC market integrity rules for competition in exchange markets* – see paragraph RG 233.471.

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

A Statement of Compatibility with Human Rights is included in this Explanatory Statement at [Attachment B](#).

## **ATTACHMENT B**

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

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.*

#### **ASIC CLASS RULE WAIVER [CW 13/1073]**

This Legislative 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*.

#### **1. Overview of the legislative instrument**

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

Under Rule 1.2.1(1), 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.

Under Rule 1.2.3, ASIC may specify the period or specific event during which any relief from an obligation to comply with a provision of the Competition Rules may apply.

The Legislative Instrument grants relief for a Participant from the requirement to provide disclosure information relating to a Crossing System to a client who does not use a Crossing System. It also extends to nine months the implementation timeframe for a Participant to monitor activities in a Crossing System..

#### **2. Human rights implications**

This Legislative Instrument does not have any effect on human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because it does not engage any of the applicable rights or freedoms.

#### **3. Consultation**

ASIC did not consult specifically on the Class Rule Waiver. However, in Consultation Paper 202 *Dark liquidity and high-frequency trading: Proposals (CP 202)* ASIC sought feedback on the proposal to make a market integrity rule requiring a Participant to provide information to users and prospective users of Crossing Systems. The relief provided in paragraphs 4 and 5 of the Class Rule Waiver is to confirm the intention to limit the obligation on the Participant to disclose information to users or prospective users of Crossing Systems only and not all clients in general.

ASIC considered the submissions on the proposal for a Participant to monitor activity on a Crossing System and in Report 364 *Response to submissions on CP 202 Dark liquidity and high-frequency trading: Proposals*, indicated that the implementation time will be extended to nine months. This has been communicated in Regulatory Guide 223: *Guidance on ASIC market integrity rules for competition in exchange markets* – see paragraph RG 233.471.