

EXPLANATORY STATEMENT for ASIC CLASS RULE WAIVER [CW 18/0143]

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Class Rule Waiver 18/0143 (**Instrument**) under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (ASX 24 Market) 2010* (the **ASX 24 Rules**). Under subrule 1.2.1(1), ASIC may relieve any person or class of persons from the obligation to comply with a provision of the ASX 24 Rules. Under Rule 1.2.3 ASIC may specify the period during which any relief from an obligation to comply with a provision of the Rules may apply.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Under subsection 13(1) of the *Legislation Act 2003*, if enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then unless the contrary intention appears, the *Acts Interpretation Act 1901* applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of the Act. Accordingly, the power under the ASX 24 Rules to make a written waiver relieving a person or class of persons from the obligation to comply with a provision of the ASX 24 Rules, includes a power to amend that waiver.

This Instrument amends ASIC Class Rule Waiver [17-0251].

1. Background

On 15 March 2017 ASIC made ASIC Class Rule Waiver [17-0251], which provided 12 months relief to Market Participants of the licensed market (**ASX 24 Market**) operated by Australian Securities Exchange Limited (ACN 000 943 377) (**ASX 24**) from:

- subrule 2.2.1(1)(a) of the ASX 24 Rules to the extent it requires a Market Participant to set and document an appropriate pre-determined aggregate loss limit on each of its Client Accounts;

- subrule 2.2.1(1)(ab) of the ASX 24 Rules to the extent it requires a Market Participant to set and document an appropriate pre-determined aggregate loss limit on each of its House Accounts; and
- subrule 2.2.1(1)(c) of the ASX 24 Rules to the extent it requires a Market Participant's risk manager to input the aggregate loss limits set and determined by the Market Participant in accordance with subrules 2.2.1(1)(a) and 2.2.1(1)(ab) into Trading Platform account maintenance.

The waiver imposed conditions requiring Market Participants relying on it to implement appropriate processes to monitor the aggregate loss limit on each of its Client Accounts and House Accounts.

Reasons for granting the original Class Rule waiver

ASIC originally made ASIC Class Rule Waiver [17-0251] to take into account the replacement, from 20 March 2017, of the ASX 24 Market's ASX Trade24 trading platform with an upgraded new derivatives trading platform, known as the ASX 24 New Trading Platform (NTP). Because the NTP would not have functionality enabling a Market Participant to input aggregate loss limits into the Trading Platform, Market Participants would have difficulties in complying with subrules 2.2.1(1)(a), (ab) and (c) of the ASX 24 Rules once the NTP went live.

ASIC granted the relief in ASIC Class Rule Waiver [17-0251] because it accepted that:

- the requirement in subrules 2.2.1(1)(a) and (ab) to set and document appropriate pre-determined aggregate loss limits is part of a suite of controls mandated to ensure Market Participants manage their risk across multiple platforms, order management and overlaying risk systems. Relief from the obligation to comply with just one of the suite of controls will not adversely affect a Market Participant's overall risk management processes, nor will it undermine the intended purpose of these subrules; and
- the NTP does not have the necessary functionality to allow Market Participants to fully comply with subrule 2.2.1(1)(c) in respect of aggregate loss limits.

Accordingly, in order to address this incompatibility, while still giving effect to the intended purpose of the subrules, ASIC Class Rule Waiver [17-0251] was given on condition that Market Participants monitor the aggregate loss limit on each of its Client Accounts and House Accounts.

ASIC noted that the requirement to set and document aggregate loss limits did not contemplate potential Trading Platform upgrades, such as the NTP, and reflected the functionality of the ASX 24 systems in existence at the time the ASX 24 Rules were made. ASIC Class Rule Waiver [17-0251] gave effect to the intended purpose of these requirements by making the relief conditional on a Market Participant implementing its own appropriate arrangements to monitor the aggregate loss limit on each of its Client Accounts and House Accounts. ASIC considered that this approach addressed the incompatibility resulting from the introduction of the NTP, while maintaining a principles based alternate protection for market integrity.

ASIC Class Rule Waiver [17-0251] was an interim measure and was originally intended to apply for a period of one year to enable ASIC to more fully consider how the ASX 24 Rules should be amended to appropriately account for these issues in the long term.

2. Purpose of the instrument

This Instrument varies ASIC Class Rule Waiver [17-0251] by extending, for a further two years, the relief for a Market Participant from the aggregate loss limit obligations in subrules 2.2.1(1)(a), 2.2.1(ab) and 2.2.1(1)(c) of the ASX 24 Rules.

ASIC's consultations with Market Participants in relation to the operation of this waiver, alternative methods of achieving the protections mentioned in the subrules and the need for more permanent relief, are ongoing. A two year extension will result in an expiration date of 20 March 2020. ASIC currently anticipates that an appropriate amendment to the ASX 24 Rules can be fully considered and implemented during this period.

The extension will enable a Market Participant to continue to comply with these aggregate loss limit requirements by implementing appropriate processes to monitor the aggregate loss limit on each of its Client Accounts and House Accounts.

3. Operation of the instrument

The instrument substitutes the expiration date stated in paragraph 7 of ASIC Class Rule Waiver [17-0251] of "20 March 2018", with "20 March 2020", thereby extending the waiver by two years.

4. Consultation

ASIC did not formally consult on this Instrument as the relevant circumstances leading to the original decision to grant ASIC Class Rule Waiver [17-0251] have not changed.

ASIC approached some Market Participants to test that the conditions of ASIC Class Rule Waiver [17-0251] were being adequately complied with.

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

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 18/0143]

ASIC Class Rule Waiver [CW 18/0143] 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*.

Overview

This Legislative Instrument varies ASIC Class Rule Waiver [17-0251] by extending, for a further two years, the relief for a Market Participant from the aggregate loss limit obligations in subrules 2.2.1(1)(a), 2.2.1(ab) and 2.2.1(1)(c) of the ASX 24 Rules. ASIC Class Rule Waiver [17-0251] expires on 20 March 2018 and was originally granted as an interim measure to enable ASIC to more fully consider how the ASX 24 Rules should be amended to appropriately account for these issues in the long term.

A two year extension of the Waiver will result in an expiration date of 20 March 2020. ASIC currently anticipates that an appropriate amendment to the market integrity rules can be fully considered and implemented during this period.

The extension will enable a Market Participant to continue to comply with these aggregate loss limit requirements by implementing appropriate processes to monitor the aggregate loss limit on each of its Client Accounts and House Accounts.

Human rights implications

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.

Conclusion

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

Australian Securities and Investments Commission