



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets) Class Waiver Amendment Instrument 2020/586

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) Class Waiver Amendment Instrument 2020/586*.

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

Summary

1. This instrument extends the operation of *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303 (Class Waiver 2018/303)* to 31 January 2022. Class Waiver 2018/303 exempts a Market Participant of a securities market from having to comply with Rule 3.4.1 of the *ASIC Market Integrity Rules (Securities Market) 2017 (Rules)*. The exemption applies to the extent Rule 3.4.1 of the Rules requires a Market Participant to provide a confirmation (or alternative notifications under paragraph 3.4.3(1)(b) of the Rules, if applicable) to a wholesale client for a market transaction in a derivatives market contract.
2. This instrument applies only to a market transaction in a derivatives market contract. It does not apply to market transactions in Cash Market Products.

Purpose of the instrument

3. The purpose of this instrument is to extend the relief in Class Waiver 2018/303 until 31 January 2022. Class Waiver 2018/303 provides relief from Market Participants' obligation under Rule 3.4.1 of the Rules to provide a confirmation (or alternative notifications under paragraph 3.4.3(1)(b) of the Rules, if applicable) to a wholesale client for a market transaction in a derivatives market contract.
4. In January 2017, in Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules (CP 277)*, ASIC consulted on a proposal to revoke the relief in ASIC Class Rule Waiver (*Class Waiver 14-1091*). While several respondents to CP 277 were supportive of the proposal, there was significant disagreement concerning the proposal and uncertainty about its merits.
5. In Report 547 *Response to submissions on CP 277 Proposals to consolidate the ASIC market integrity rules (Report 547)*, ASIC stated it would not revoke

the relief in Class Waiver 14/1091 at this time and would extend relief until 30 June 2020. ASIC also stated in Report 547 that before the relief instrument Class Waiver 2018/303 ceased to apply at the end of 30 June 2020, it was ASIC's intention to again review the circumstances of the market for derivatives market contracts to consider whether the relief remained appropriate.

6. In March 2020, ASIC announced it would refocus its regulatory efforts in the context of the COVID-19 global pandemic. Specifically, ASIC announced that it would afford priority to matters where there is the risk of significant consumer harm, serious breaches of the law, risks to market integrity and time-critical matters. This has resulted in the immediate suspension of a number of near-term activities which are not time-critical. These activities include consultation, regulatory reports and reviews.
7. ASIC notes that the application of paragraph 3.4.1 to derivatives market contracts would require alterations to participant trading systems. Accordingly, even if ASIC were currently minded to remove the relief in Class Waiver 2018/303, transitional arrangements would be required to provide participants with sufficient time to make the necessary alterations. Given the ongoing disruption caused by the COVID-19 pandemic, it would be inappropriate for ASIC to require participants to commence such alterations to their trading systems at this time. By extending the relief in Class Waiver 2018/303, Market Participants will be better placed to focus on their immediate priorities and the needs of their customers during the COVID-19 pandemic.
8. The extension of the relief in Class Waiver 2018/303 for 19 months is intended to provide sufficient time:
 - (a) for both ASIC and Market Participants to devote their resources to matters raised by the COVID-19 pandemic in the short term;
 - (b) for ASIC to review the circumstances of the market for derivatives market contracts and consider whether the disclosure obligations in paragraph 3.4.1 of the Rules should now apply in the context of derivatives market contracts;
 - (c) if ASIC were to decide that the obligations of paragraph 3.4.1 of the Rules should be applied in the context of derivatives market contracts, for Market Participants to have sufficient time to make the necessary alterations to their trading systems.

Consultation

9. ASIC discussed the extension of the relief in Class Waiver 2018/303 with industry body, the Australian Financial Markets Association (AFMA), prior to the making of this instrument.
10. The Prime Minister has granted an exemption from the need to complete regulatory impact analysis in the form of Regulation Impact Statements for all Australian Government measures made in response to the COVID-19

pandemic. In any event, a Regulation Impact Statement would not be required for this instrument as it is minor or machinery in nature and does not alter the existing requirements for Market Participants.

Operation of the instrument

11. Section 1 of the instrument provides that the name of the instrument is the ASIC Market Integrity Rules (Securities Markets) Class Waiver Amendment Instrument 2020/586.
12. Section 2 of the instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
13. Section 3 of the instrument provides that the instrument is made under subrule 1.2.1(1) and Rule 1.2.3 of the Rules.
14. The instrument amends *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303* by substituting the expiration date stated in section 7 of “30 June 2020”, with “31 January 2022”, thereby extending the waiver by a further nineteen months.

Legislative instrument and primary legislation

15. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
 - (a) The matters contained in the instrument are a specific amendment to an existing legislative instrument (Class Waiver 2018/303) that are designed to ensure the application of that legislative instrument remains flexible to adapt to market developments and applies in a way consistent with the intended policy and the enabling provisions in the Rules; and
 - (b) the matters contained in the instrument are appropriately used to deal with specific, technical and machinery issues or where necessary to provide flexibility to keep pace with industry developments.

Legislative authority

16. ASIC makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017*. Under subrule 1.2.1(1) of the Rules, ASIC may relieve any person or class of persons from the obligation to comply with a provision of the Rules. Under Rule 1.2.3 of the Rules, ASIC may specify the period during which any relief from the obligation to comply with a provision of the Rules may apply.
17. 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 *ASIC Market Integrity Rules (Securities Markets) 2017* to make a written waiver relieving a person or class of persons from the obligation to comply with a provision of the *ASIC Market Integrity Rules (Securities Markets) 2017*, includes a power to amend that waiver.

18. This instrument is subject to disallowance under section 42 of the *Legislation Act 2003*.

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*.

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Overview

1. This Instrument extends the operation of *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303 (Class Waiver 2018/303)* to 31 January 2022. Class Waiver 2018/303 exempts a Market Participant of a securities market from having to comply with paragraph 3.4.1 of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Rules)*, to the extent it requires a Market Participant to provide a confirmation (or alternative notifications under paragraph 3.4.3(1)(b) of the Rules, if applicable) to a wholesale client for a market transaction in a derivatives market contract.

Assessment of human rights implications

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

Conclusion

3. 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*.