



ASIC
Australian Securities &
Investments Commission

ASIC Market Integrity Rules (Securities Markets) Class Waiver Instrument 2020/870

I, Anthony Graham, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 27 October 2020

Anthony Graham

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Market Integrity Rules (Securities Markets) Class Waiver Instrument 2020/870*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subrule 1.2.1(1) and rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Rules)*.

4 Definitions and interpretation

(1) In this instrument:

notionally accredited: a person is ***notionally accredited*** as:

- (a) a ***Level One Notionally Accredited Derivatives Adviser*** if:
 - (i) the person was a Level One Accredited Derivatives Adviser immediately before the Renewal Date in relation to the person; and
 - (ii) the person's notional accreditation as a Level One Notionally Accredited Derivatives Adviser has not ceased, and is not suspended, under section 5; and
- (b) a ***Level Two Notionally Accredited Derivatives Adviser*** if:
 - (i) the person was a Level Two Accredited Derivatives Adviser immediately before the Renewal Date in relation to the person; and
 - (ii) the person's notional accreditation as a Level Two Notionally Accredited Derivatives Adviser has not ceased, and is not suspended, under section 5; and
- (c) a ***Notionally Accredited Futures Adviser*** if:
 - (i) the person was an Accredited Futures Adviser immediately before the Renewal Date in relation to the person; and

- (ii) the person's notional accreditation as a Notionally Accredited Futures Adviser has not ceased, and is not suspended, under section 5.

Notionally Accredited Adviser means a person who is notionally accredited as:

- (a) a Level One Notionally Accredited Derivatives Adviser; or
 - (b) a Level Two Notionally Accredited Derivatives Adviser; or
 - (c) a Notionally Accredited Futures Adviser.
- (2) In this instrument, unless the contrary intention appears, capitalised terms have the same meaning as in the Rules.

5 Cessation and suspension as Notionally Accredited Adviser

Automatic cessation as Notionally Accredited Adviser

- (1) A person ceases to be a Notionally Accredited Adviser if the person ceases to be a Representative of the Market Participant that made the application for the person to be accredited as an Accredited Adviser.

Voluntary cessation as Notionally Accredited Adviser

- (2) A person ceases to be a Notionally Accredited Adviser in a category of notional accreditation on a Trading Day if the Market Participant in relation to whom the person is a Notionally Accredited Adviser gives ASIC a written notice:
- (a) stating that the person will cease to be a Notionally Accredited Adviser in that category of notional accreditation on the Trading Day; and
 - (b) that is made in accordance with subsection (3).
- (3) A notice referred to in subsection (2) is made in accordance with this subsection if the notice:
- (a) includes the following:
 - (i) the name and date of birth of the Notionally Accredited Adviser;
 - (ii) the name and business address of the Market Participant;
 - (iii) the category of the notional accreditation which is to cease;
 - (iv) the Trading Day on which the cessation will take effect;
 - (v) the reasons for cessation of the notional accreditation;

- (vi) the name, position and contact telephone number of the director, partner, senior manager or Compliance Manager of the Market Participant referred to in subparagraph (b)(i); and
- (b) is signed and dated by:
 - (i) a director, partner, senior manager or Compliance Manager of the Market Participant; and
 - (ii) the Notionally Accredited Adviser.

Cessation or suspension by ASIC

- (4) The notional accreditation of a person who is a Notionally Accredited Adviser in a category of notional accreditation ceases or is suspended (as the case may be) if ASIC gives the person and the Market Participant notice in writing that:
 - (a) the notional accreditation of the person in that category of notional accreditation has ceased or is suspended (as the case may be) as a result of ASIC having reason to believe that the person does not have the requisite skill, knowledge or integrity to provide financial product advice of the kind covered by the relevant category of accreditation; and
 - (b) includes the reasons for the cessation or suspension.
- (5) A cessation or suspension in a category of notional accreditation as a result of ASIC giving notice under subsection (4):
 - (a) takes effect on the Trading Day specified in the notice; and
 - (b) in the case of a suspension, continues for the period specified in the notice.

Part 2—Waivers

6 Accreditation Requirements and Notionally Accredited Advisers

- (1) A Market Participant does not have to comply with any of the following in relation to a Representative of the Market Participant:
 - (a) subrule 2.4.1(1) of the Rules;
 - (b) subrule 2.4.2(1) of the Rules;
 - (c) subrule 2.4.4(1) of the Rules;
 - (d) Rule 2.4.5 of the Rules.

- (2) A Market Participant does not have to comply with subrule 2.4.1(2) of the Rules to the extent that the subrule would otherwise:
 - (a) prohibit the Market Participant from holding out that a Representative holds a type of accreditation under the Rules that corresponds to a type of notional accreditation held by the Representative; or
 - (b) require the Market Participant to ensure that a Representative does not hold out that the Representative holds a type of accreditation under the Rules that corresponds to a type of notional accreditation held by the Representative.
- (3) A Market Participant does not have to comply with Rule 2.4.22 of the Rules in relation to the operation of a Managed Discretionary Account by a Representative of the Market Participant.

Where waivers apply

- (4) The waiver in subsection (1) applies:
 - (a) in relation to paragraph 2.4.1(1)(a), (b) or (c) (as the case may be) of the Rules—where the Representative is a Notionally Accredited Adviser in a category of notional accreditation that corresponds to the category of accreditation required in relation to paragraph 2.4.1(1)(a), (b) or (c) (as the case may be); and
 - (b) in relation to subrule 2.4.2(1) of the Rules—where the Representative is a Level One Notionally Accredited Derivatives Adviser or a Level Two Notionally Accredited Derivatives Adviser; and
 - (c) in relation to subrule 2.4.4(1) of the Rules—where the Representative is a Level Two Notionally Accredited Derivatives Adviser; and
 - (d) in relation to Rule 2.4.5 of the Rules—where the Representative is a Notionally Accredited Futures Adviser.
- (5) The waiver in subsection (3) applies where the Representative is a Notionally Accredited Adviser in a category of notional accreditation that corresponds to the category of accreditation required by Rule 2.4.22 of the Rules.

7 Conditions

A Market Participant that relies on a waiver in section 6 in relation to a Representative:

- (a) if the Representative ceases to be a Representative of the Market Participant and as a consequence ceases to be a Notionally

Accredited Adviser because of subsection 5(1)—must notify ASIC in writing of the following within five Business Days of the Representative ceasing to be a Representative:

- (i) the name and date of birth of the Representative;
 - (ii) the date the Representative ceased to be a Representative; and
- (b) must not hold out that the Representative, and must ensure that the Representative does not hold themselves out, as holding a type of notional accreditation if the Representative does not hold that type of notional accreditation; and
 - (c) if the Representative is notionally accredited only as a Level One Notionally Accredited Derivatives Adviser—must ensure that the Representative does not advise or make recommendations in relation to LEPOs; and
 - (d) must ensure that the Representative complies with any continuing professional education requirements under Rule 2.4.21 as if the Representative were an Accredited Adviser holding the type of accreditation under the Rules that corresponds to the type of notional accreditation held by the Representative.

Note: The conditions imposed on a waiver must be complied with in order for the waiver to be effective: subrule 1.2.1(2) of the Rules

8 Application for review by Administrative Appeals Tribunal

- (1) Subject to this section, applications may be made to the Tribunal for review of a decision made by ASIC ceasing or suspending the notional accreditation of a person under subsection 5(4).
- (2) An application under subsection (1) may only be made by:
 - (a) the person whose notional accreditation has been ceased or suspended; or
 - (b) the Market Participant for which the person is a Representative;
- (3) In this section and in section 9:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

9 Notice of reviewable decision and review rights

- (1) This section applies if ASIC makes a decision to which section 8 applies.

- (2) ASIC must take such steps as are reasonable in the circumstances to give to each person who may make an application for review of the decision under section 8 notice, in writing or otherwise:
 - (a) of the making of the decision; and
 - (b) of the person's right to have the decision reviewed by the Tribunal.
- (3) A failure to comply with this Rule does not affect the validity of the decision.

10 Cessation

The waivers in section 6 cease to apply at the end of 30 November 2021.