ASIC CLASS RULE WAIVER [CW 13/972]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

ASIC Market Integrity Rules (ASX 24 Market) 2010

The Australian Securities and Investments Commission (***ASIC***) makes this instrument under Rule 1.2.1(1) of the *ASIC Market Integrity Rules (ASX 24 Market) 2010* (the ***ASX 24 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 ASX 24 Rules.

Capitalised terms in this Explanatory Statement refer to defined terms in the ASX 24 Rules.

# 1. Background

On 4 May 2013, ASIC made the *ASIC Market Integrity Rules (ASX 24 Market) Amendment 2013 (No. 1)*, which amended Rule 2.2.1(1) of the ASX 24 Rules by extending the existing risk management requirements to proprietary trading by Market Participants. Prior to this amendment, the risk management requirements under Rule 2.2.1(1) applied only to Client Accounts.

In particular, Rule 2.2.1(1) was amended by:

1. inserting a new paragraph 2.2.1(1)(ab) which requires a Market Participant to set and document appropriate pre-determined Order and/or position limits on each of its House Accounts, including a volume per Order limit, an aggregate loss limit and an aggregate net session limit, based on the Market Participant’s analysis of its financial resources or other relevant factors;
2. amending existing paragraph 2.2.1(1)(c) to require that the House Account limits determined under new paragraph 2.2.1(1)(ab) be input by a Market Participant’s risk manager into Trading Platform account maintenance and will be established as preset accounts; and
3. amending existing paragraph 2.2.1(1)(e) to require that, where a Market Participant amends the House Account limits referred to in new paragraph 2.2.1(1)(ab), the Market Participant must make these changes based on an analysis of the Market Participant’s financial resources or other relevant factors.

In addition to this, Rule 2.2.1(2) was also amended and a new subrule 2.2.1(4) was inserted, both of which impose new obligations on a Market Participant that connects to a Terminal for the purposes of Trading on a House Account.

A Principal Trader is a Market Participant that trades only on its own behalf. A Principal Trader engages in Trading on its House Account and must therefore comply with the new risk management obligations under Rule 2.2.1(1).

In some circumstances, a Principal Trader is a Client of another Market Participant (the ***Second Market Participant***), and the Second Market Participant either:

* 1. permits the Principal Trader to connect to a Terminal for the purposes of Trading for the Principal Trader’s House Account; or
  2. enters Orders on the Principal Trader’s House Account into the Trading Platform through the Second Market Participant’s Order System.

The Second Market Participant must comply with the risk management requirements under Rule 2.2.1(1) with respect to the Principal Trader as its Client. The Second Market Participant will set, document and input into trading platform account maintenance, limits on each of its Client Accounts, including those Clients that are Principal Traders.

# 2. Purpose of the class rule waiver

The purpose of this Class Rule Waiver is to relieve a Principal Trader from certain risk management obligations under Rule 2.2.1(1) with respect to its House Account in circumstances where the Principal Trader accesses the market as a Client of another Market Participant.

This Class Rule Waiver has been made on the grounds that the Market Participant responsible for access to the Terminal must comply with its risk management obligations under Rule 2.2.1(1) with respect to the Principal Trader as its Client. In these circumstances, the Principal Trader may not have the capability to set, document and input into trading platform account maintenance pre-determined order and/or position limits on its House Account.

# 3. Operation of the class rule waiver

Paragraph 4 of the Class Rule Waiver relieves a Principal Trader (within the meaning of Rule 1.4.3) from the obligation to comply with Rules 2.2.1(1)(ab), (b), (c) and (e).

A Principal Trader will only be able to rely on the Class Rule Waiver if the Principal Trader is a Client of the Second Market Participant and the Second Market Participant either:

1. permits the Principal Trader to connect to a Terminal for the purposes of Trading for the Principal Trader’s House Account; or
2. enters Orders on the Principal Trader’s House Account into the Trading Platform through the Second Market Participant’s Order System.

# 4. Consultation

ASIC consulted on the proposed amendments to the risk management requirements in Rule 2.2.1 in Consultation Paper 195 *Proposed amendments to ASIC market integrity rules: ASX 24 and FEX markets* (CP 195) in November 2012.

One respondent to CP 195 submitted that, to date, the risk management obligations have been the responsibility of the Market Participant that provides its Clients and Principal Traders with access to the exchange. That Market Participant would generally set trading limits for those Clients and Principal Traders. The respondent submitted that it may be difficult for a Principal Trader that accesses the exchange through another Market Participant to comply with the proposed rules if the Principal Trader has no control over the trading limits that are set (see Report 343: *Response to submissions on CP 195 Proposed amendments to ASIC market integrity rules: ASX 24 and FEX markets* (REP 343) at paragraphs 15 to 17).

As a result of ASIC’s consideration of the submissions to CP 195, ASIC decided to give this Class Rule Waiver to Principal Traders that access the market as a Client of another Market Participant.

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

A Statement of Compatibility with Human Rights is included in this Explanatory Statement at Attachment A.

**ATTACHMENT A**

**Statement of Compatibility with Human Rights**

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

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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 instrument under Rule 1.2.1(1) of the *ASIC Market Integrity Rules (ASX 24 Market) 2010* (the ***ASX 24 Rules***).

Under that rule, ASIC may relieve any person or class of persons from the obligation to comply with a provision of the ASX 24 Rules.

A principal trader is a market participant of the ASX 24 market that trades only on its own behalf. A principal trader engages in trading on a house account and must therefore comply with the new risk management obligations under Rule 2.2.1(1) of the ASX 24 Rules which we made by ASIC pursuant to the *ASIC Market Integrity Rules (ASX 24 Market) Amendment 2013 (No. 1)* .

In some circumstances, a principal trader is a client of another market participant (the ***Second Market Participant***), and the Second Market Participant either:

1. permits the principal trader to connect to a terminal for the purposes of trading for the principal trader’s house account; or
2. enters orders on the principal trader’s house account into the trading platform through the Second Market Participant’s order system.

The Second Market Participant must comply with the risk management requirements under Rule 2.2.1(1) with respect to the principal trader as its client. The Second Market Participant will set, document and input into trading platform account maintenance, limits on each of its client accounts, including those clients that are principal traders. The principal trader may not have the capability to set, document and input into trading platform account maintenance pre-determined order and/or position limits on its house account.

The Legislative Instrument relieves a principal trader from certain risk management obligations under Rule 2.2.1(1) with respect to its house account in these circumstances where the principal trader accesses the market as a client of another market participant.

1. **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.

1. **Consultation**

ASIC consulted on the proposed amendments to the risk management requirements in Rule 2.2.1 in Consultation Paper 195 *Proposed amendments to ASIC market integrity rules: ASX 24 and FEX markets* (CP 195) in November 2012. As a result of ASIC’s consideration of the submissions to CP 195, ASIC decided to give the relief in the Legislative Instrument to principal traders that access the market as a client of another market participant.