

ASIC CLASS RULE WAIVER [CW 14/6]

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 Rule 1.2.1(1) of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (the *ASIC Market Integrity Rules (Competition)*). Capitalised terms in this Explanatory Statement refer to defined terms in the *ASIC Market Integrity Rules (Competition)*.

1. Enabling legislation

Subsection 798G(1) of the Corporations Act provides that ASIC may, by legislative instrument, make rules that deal with the following:

- (a) the activities or conduct of licensed markets;
- (b) the activities or conduct of persons in relation to licensed markets;
- (c) the activities or conduct of persons in relation to financial products traded on licensed markets.

The *ASIC Market Integrity Rules (Competition)* deal with the activities and conduct of licensed markets on which certain Financial Products (Equity Market Products, CGS Depository Interests and ASX SPI 200 Futures) are traded. Those Financial Products are currently traded on the licensed markets operated by ASX Limited (*ASX*), Chi-X Australia Pty Ltd (*Chi-X*) and Australian Securities Exchange Limited (*ASX 24*). The *ASIC Market Integrity Rules (Competition)* apply as specified in the Rules to Participants and Market Operators of those markets.

Under Rule 1.2.1(1) of the *ASIC Market Integrity Rules (Competition)*, ASIC may relieve any person or class of persons from the obligation to comply with a provision of the *ASIC Market Integrity Rules (Competition)*, either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit.

2. Background

On 5 August 2013, ASIC made the *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2013 (No. 2)*. That instrument amended the disclosure requirements under the *ASIC Market Integrity Rules (Competition)* for a Participant that operates one or more Crossing Systems.

‘Crossing Systems’ are automated services provided by a Participant that match or execute Orders of the Participant’s clients with Orders of:

- (a) the Participant;
- (b) other clients of the Participant; or
- (c) any other person whose Orders access the automated service,

otherwise than on an Order Book.

The purpose of the amendments to the disclosure requirements, which took effect in November

2013, was to improve transparency about Crossing Systems and to ensure there is publicly available information about, among other things, where client Orders may be matched or executed (i.e. in the Crossing System operated by the Participant, or in other Crossing Systems operated by third parties).

Under the ASIC Market Integrity Rules (Competition) as amended, a Participant is required to make disclosures about each of its Crossing Systems by providing certain information to ASIC in a 'Crossing System Initial Report' (Rule 4A.2.1) and also by making certain information available free of charge on a publicly accessible website (Rule 4A.3.1).

The information to be disclosed under Rules 4A.2.1 and 4A.3.1 includes information about Order flows between Crossing Systems. Participants sought clarification from ASIC about whether those Rules also require disclosure of information about Order flows between Participants that operate Crossing Systems, and about Order flows that occur via another person ('Aggregator') (e.g. another Participant that operates an aggregation algorithm and transmits Orders between Crossing Systems and Participants that operate Crossing Systems). In November 2013, ASIC released FAQ A1¹ clarifying that all such Order flows should be disclosed under the Rules.

FAQ A1 also stated that in circumstances where a Participant *receives* Orders via an Aggregator, and it is not possible to disclose information about the Crossing Systems and Participants that operate Crossing Systems that transmit Orders to the Aggregator, then the Participant should disclose the full legal name of the Aggregator and the code that uniquely identifies any Crossing System operated by the Aggregator.

On 29 January 2014, ASIC made the *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2014 (No. 1)* (**Amending Instrument**). The Amending Instrument amended the ASIC Market Integrity Rules (Competition) to clarify the operation of Rules 4A.2.1 and 4A.3.1 in accordance with FAQ A1.

In particular, column 3, item 5 of the Table in Rule 4A.3.1(2) was replaced with a revised item 5 that provides that if Orders may be executed or matched in another Crossing System because they are transmitted by the Participant or by the Participant's Crossing System:

- (a) to one or more other Crossing Systems or to a Participant that operates a Crossing System; or
- (b) to another person (an **Aggregator**) who further transmits the Orders to one or more other Crossing Systems or to a Participant that operates a Crossing System,

or if Orders may be executed or matched in the Participant's Crossing System with Orders received (whether directly, or via an Aggregator) from a Crossing System operated by another Participant, or from a Participant that operates a Crossing System, then the Participant must include the following information in its Publicly Available Crossing System Information:

- (c) the code identifying the other Crossing System;
- (d) the legal name of the Participant that operates the other Crossing System; and
- (e) for each Crossing System and Participant identified under paragraphs (c) and (d), whether Orders are transmitted to, or received from the other Crossing System or Participant (whether directly, or via an Aggregator), or both.

¹ <http://asic.gov.au/asic/ASIC.NSF/byHeadline/FAQs-Market-structure>

Rule 4A.2.1(1) was also revised to add a new paragraph (ba) requiring that the Crossing System Initial Report must include, if applicable, the information required under column 3, item 5 of the Table in Rule 4A.3.1(2).

3. Purpose of the Class Rule Waiver

The Class Rule Waiver is designed to implement the guidance in FAQ A1 that where a Participant *receives* Orders via an Aggregator, and it is not possible to disclose information about the other Crossing Systems and Participants that operate Crossing Systems that transmit Orders to the Aggregator, then the Participant should instead disclose the full legal name of the Aggregator and the code that uniquely identifies any Crossing System operated by the Aggregator.

The relief in the Class Rule Waiver does not apply in relation to Orders *transmitted* by the Participant to other Crossing Systems or Participants that operate Crossing Systems via the Aggregator. Accordingly, a Participant would be required to identify those Crossing Systems and Participants in its Crossing System Initial Report and Publicly Available Crossing System Information.

4. Operation of the Class Rule Waiver

Enabling provision - Paragraph 1

Paragraph 1 of the Class Rule Waiver provides that the enabling provision for the instrument is Rule 1.2.1(1) of the ASIC Market Integrity Rules (Competition).

Title – Paragraph 2

Paragraph 2 of the Class Rule Waiver provides that the title of the instrument is ASIC Class Rule Waiver [CW 14/6].

Commencement - Paragraph 3

Paragraph 3 of the Class Rule Waiver provides that the instrument commences on the later of the following days:

- (a) the day on which the instrument is registered under the *Legislative Instruments Act 2003 (LIA)*;
- (b) the day after the day on which the Amending Instrument is registered under the LIA (being the same day on which the Amending Instrument commences).

Relief from Rule 4A.2.1(1)(ba) – Paragraphs 4, 6 and 7

Paragraph 4 of the Class Rule Waiver relieves a Participant from the obligation to comply with Rule 4A.2.1(1)(ba) of the ASIC Market Integrity Rules (Competition). The relief applies to the extent that Rule requires a Participant to describe in a Crossing System Initial Report:

- (a) a code identifying a Crossing System operated by another Participant;
- (b) the legal name of a Participant that operates a Crossing System; and
- (c) information about whether Orders are received from a Crossing System or Participant identified under paragraph (a) or (b),

because Orders may be executed or matched in the Participant's Crossing System with Orders received via another person (the 'Aggregator') from the other Crossing System or Participant.

The note to paragraph 4 explains that an Aggregator may be, for example, another Participant that receives Orders and operates an aggregation algorithm that transmits received Orders to one or more other execution venues (licensed markets, or other Crossing Systems).

The relief applies in the circumstances set out in paragraph 6 of the Class Rule Waiver. Those circumstances are where the Participant is not reasonably able to identify the other Crossing System or Participant required to be identified by Rule 4A.2.1(1)(ba), because Orders are received from that Crossing System or Participant via the Aggregator.

The relief is subject to the conditions in paragraph 7 of the Class Rule Waiver. The first limb of the conditions is that the Participant must instead describe in the relevant Crossing System Initial Report lodged with ASIC under Rule 4A.2.1 of the ASIC Market Integrity Rules (Competition):

- (a) the legal name of the Aggregator;
- (b) a statement that Orders in the Participant's Crossing System may be executed or matched with Orders received via the Aggregator; and
- (c) a unique code identifying each Crossing System operated by the Aggregator.

The second limb of the conditions in paragraph 7 is that the Participant must, for the purposes of the requirement in Rule 4A.2.2 of the ASIC Market Integrity Rules (Competition) to prepare and provide to ASIC a Crossing System Monthly Report, treat any change during a calendar month to the information provided in compliance with the first limb of the conditions, as a change required to be set out in a Crossing System Monthly Report.

From 28 October 2014, Rule 4A.2.2 will be amended to require that a Participant prepare and lodge with ASIC a Crossing System Monthly Report only where there is a change during a calendar month to information last provided to ASIC in a Crossing System Monthly Report or Crossing System Initial Report. Accordingly, the second limb of the condition also provides that if the Participant is not otherwise required to prepare and provide to ASIC a Crossing System Monthly Report in relation to a calendar month, the Participant must treat any change to the information as a change requiring the preparation and provision to ASIC of a Crossing System Monthly Report.

Relief from Rule 4A.3.1(1) – Paragraphs 5, 6 and 8

Paragraph 5 of the Class Rule Waiver relieves a Participant from the obligation to comply with Rule 4A.3.1(1) of the ASIC Market Integrity Rules (Competition). The relief applies to the extent that Rule requires a Participant to make available on a publicly accessible website and free of charge:

- (a) a code identifying a Crossing System operated by another Participant;
- (b) the legal name of a Participant that operates a Crossing System; and
- (c) information about whether Orders are received from a Crossing System or Participant identified under paragraph (a) or (b),

because Orders may be executed or matched in the Participant's Crossing System with Orders received via another person (the Aggregator) from the other Crossing System or Participant.

The relief applies in the circumstances set out in paragraph 6 of the Class Rule Waiver. Those circumstances are where the Participant is not reasonably able to identify the other Crossing System or Participant required to be identified by Rule 4A.3.1(1), because Orders are received from that Crossing System or Participant via the Aggregator.

The relief is subject to the conditions in paragraph 8 of the Class Rule Waiver. The first limb of the conditions is that the Participant must instead make available on a website that is publicly accessible and free of charge:

- (a) the legal name of the Aggregator;
- (b) a statement that Orders in the Participant's Crossing System may be executed or matched with Orders received via the Aggregator; and
- (c) a unique code identifying each Crossing System operated by the Aggregator.

The second limb of the conditions in paragraph 8 is that the Participant must comply with Rules 4A.3.1 and 4A.3.2 of the ASIC Market Integrity Rules (Competition) as if the information provided under the first limb of the conditions was 'Publicly Available Crossing System Information' for the purposes of those Rules. This ensures that the Participant is required to give ASIC and the Participant's clients a copy of that information, and any updates to that information, in accordance with the requirements of Rules 4A.3.1 and 4A.3.2.

5. Consultation

ASIC consulted on its proposal to make the *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2013 (No. 2)* (the instrument that amended the disclosure requirements for Participants that operate Crossing Systems) through *Consultation Paper 202 Dark liquidity and high-frequency trading: Proposals* (CP 202) released on 18 March 2013. As part of that consultation process, ASIC also held meetings with industry stakeholders and information sessions for members of the Australian Financial Markets Association, the Financial Services Council and the Stockbrokers Association of Australia.

ASIC has consulted on its proposal to clarify the operation of the Crossing System obligations through direct discussions with Participants that operate Crossing Systems. Following those discussions, ASIC clarified the intended operation of Rules 4A.2.1 and 4A.3.1 in FAQ A1. The Class Rule Waiver implements the guidance in FAQ A1 that applies where a Participant receives Orders via an Aggregator and it is not possible to disclose information about the other Crossing Systems and Participants that operate Crossing Systems that transmit Orders to the Aggregator.

6. 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

ASIC Class Rule Waiver [CW 14/6]

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*.

A. Overview of the legislative instrument

1. The Legislative Instrument is made under Rule 1.2.1(1) of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (ASIC Market Integrity Rules (Competition))*. The ASIC Market Integrity Rules (Competition) are made under subsection 798G(1) of the Corporations Act and apply to the activities and conduct of licensed markets on which certain Financial Products (Equity Market Products, CGS Depository Interests and ASX SPI 200 Futures) are traded. Those Financial Products are currently traded on the licensed markets operated by ASX Limited (*ASX*), Chi-X Australia Pty Ltd (*Chi-X*) and Australian Securities Exchange Limited (*ASX 24*). The ASIC Market Integrity Rules (Competition) apply as specified in the Rules to Participants and Market Operators of those markets.
2. On 5 August 2013, ASIC made the *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2013 (No. 2)*. That instrument amended the disclosure requirements under the ASIC Market Integrity Rules (Competition) for a Participant that operates one or more Crossing Systems². The purpose of the amendments, which took effect in November 2013, was to improve transparency about Crossing Systems and to ensure there is publicly available information about, among other things, where client Orders may be matched or executed (i.e. in the Crossing System operated by the Participant, or in other Crossing Systems operated by third parties).
3. In November 2013, ASIC released FAQ A1³ clarifying that the information to be disclosed under Rules 4A.2.1 and 4A.3.1 includes information about Order flows between Participants that operate Crossing Systems, and about Order flows that occur via another person (an ‘Aggregator’)⁴, in addition to Order flows between Crossing Systems.
4. On 29 January 2014, ASIC made the *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2014 (No. 1) (Amending Instrument)*. The Amending Instrument amended Rules 4A.2.1 and 4A.3.1 to clarify the operation of those Rules in accordance with FAQ A1.
5. This Legislative Instrument provides conditional relief from the requirement to disclose the source of Orders *received* via an Aggregator under Rules 4A.2.1 and 4A.3.1 (as amended by the Amending Instrument), in circumstances where it is not possible to identify the other Crossing Systems, and Participants that operate Crossing Systems, that were the source of

² ‘Crossing Systems’ are automated services provided by a Participant that match or execute Orders of the Participant’s clients with Orders of the Participant, other clients of the Participant, or any other person whose Orders may access the service, otherwise than on an Order Book.

³ <http://asic.gov.au/asic/ASIC.NSF/byHeadline/FAQs-Market-structure>

⁴ An ‘Aggregator’ may be, for example, another Participant that operates an aggregation algorithm and transmits Orders between Crossing Systems and Participants that operate Crossing Systems.

those Orders. The purpose of this relief is to implement the guidance in FAQ A1 as to what should be disclosed under those Rules in those circumstances.

B. Human rights implications

6. 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.

C. Conclusion

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

D. Consultation

8. ASIC consulted on its proposal to make the *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2013 (No. 2)* (the instrument that amended the disclosure requirements for Participants that operate Crossing Systems) through *Consultation Paper 202 Dark liquidity and high-frequency trading: Proposals* (CP 202) released on 18 March 2013. As part of that consultation process, ASIC also held meetings with industry stakeholders and information sessions for members of the Australian Financial Markets Association, the Financial Services Council and the Stockbrokers Association of Australia.
9. ASIC has consulted on its proposal to clarify the operation of the Crossing System obligations through direct discussions with Participants that operate Crossing Systems. Following those discussions, ASIC clarified the intended operation of Rules 4A.2.1 and 4A.3.1 in FAQ A1.

Australian Securities and Investments Commission