

## EXPLANATORY STATEMENT for ASIC CLASS RULE WAIVER [CW 17/0370]

Prepared by the Australian Securities and Investments Commission

### *Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes ASIC Class Rule Waiver 17/0370 (**this instrument**) under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (the **Competition 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 Competition 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.

This instrument amends ASIC Class Rule Waiver 13/680 and is a continuance of ASIC Class Rule Waiver 15/0384.

### **1. Background**

On 4 May 2015, ASIC Class Rule Waiver [CW 15/0384] amended ASIC Class Rule Waiver [CW 13/680], providing 12 months relief to Participants of the Market operated by ASX Limited (ACN 008 624 691) (**ASX**) from subrule 4.1.1(1) of the Competition Rules. Subrule 4.1.1(1) of the Competition Rules provides that, subject to certain exceptions in subrule 4.1.1(2), a Participant must not enter into a Transaction unless the Transaction is entered into by matching of a Pre-Trade Transparent Order (being an Order for which information such as price and volume is made available before execution) on an Order Book. Relief was granted where a Participant enters into a Transaction in an Equity Market Product that is part of a Contingent Equity Transaction (**CET**).

A Participant that enters into a CET may breach subrule 4.1.1(1) without the relief granted by ASIC Class Rule Waiver [CW 15/0384].

On 29 April 2016, ASIC Class Rule Waiver [CW 16/0352] extended the relief under ASIC Class Rule Waiver [CW 15/0384] by another 12 months to midnight 4 May 2017.

*Reasons for granting the original Class Rule waiver*

The Waiver was originally granted in order to:

- a) facilitate CETs being entered into at a net price, which contributes to the efficiency of the broader market as it enables participants to effectively hedge their options transactions; and
- b) allow post-trade transparency of the OTC equity component of the CET, as that transaction will be reported automatically by ASX.

In granting the Waiver, ASIC concluded that because the number of CETs was expected to be relatively low (ASX did not, and still does not, expect CETs to exceed 5% of total FlexClear transactions), their introduction would be unlikely to have an adverse impact on fairness, efficiency of the market, liquidity or price formation.

Furthermore, it was expected that the number of CETs would be low, so the overall effect on pre-trade transparency would be negligible.

Following the granting of the Waiver, an uptake of CETs would have facilitated an assessment of their impact on the market. However, as there have been no CETs to date such an assessment remains unfeasible.

## **2. Purpose of the instrument**

This Class Rule Waiver varies [CW 13-680] by extending, for a further 12 months, the relief for a Participant from the pre-trade transparency obligation in subrule 4.1.1(1) of the Competition Rules. The current Waiver expires on 4 May 2017 and was originally granted to monitor the impact of CETs on the lit market with regard to price formation and the fairness, efficiency and liquidity of the market. No CETs have been transacted since this waiver was originally granted and no data is available to facilitate an assessment on market impact.

A 12 month extension of the Waiver will result in an expiration date of 4 May 2018. ASIC currently anticipates that an assessment of the market impact of this product can be undertaken during this period.

The extension will enable a Participant to enter into a Transaction in an Equity Market Product that is part of a CET, without being required to comply with subrule 4.4.1(1).

## **3. Operation of the instrument**

The instrument substitutes the expiration date stated in paragraph 7C of [CW 13/680] of "4 May 2017", with "4 May 2018", thereby extending the waiver by 12 months.

## **4. Consultation**

ASIC did not formally consult on this Class Rule Waiver as, since the relief was granted, no CETs have been traded and the circumstances have not changed since the granting of the original Class Rule Waiver 15/0384.

At the time of issuance of the original waiver, discussions were held with ASX acting on behalf of Participants who potentially would use CETs. ASX advised that these Participants were supportive of a new ASX clearing service of which CETs are an important part.

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 17/0370]

ASIC Class Rule Waiver CW 17/0370 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 amends ASIC Class Rule Waiver [CW 13/680] by extending the period of the relief in paragraph 7C of that waiver from 4 May 2017 to 4 May 2018. Paragraph 7C of [CW 13/680] provides relief for the Participants of the Market operated by ASX Limited (ACN 008 624 691) (**ASX**) from subrule 4.1.1(1) of the Competition Rules in the case where the Participant enters into a Transaction in an Equity Market Product that is part of a Contingent Equity Transaction (**CET**). Subrule 4.1.1(1) of the Competition Rules provides that, subject to certain exceptions in subrule 4.1.1(2), a Participant must not enter into a Transaction unless the Transaction is entered into by matching of a Pre-Trade Transparent Order (being an Order for which information such as price and volume is made available before execution) on an Order Book.

A CET is a single transaction consisting of two components or 'legs', namely:

- (a) an off-market transaction in an Equity Market Product (**the Equity Leg**); and
- (b) one or more over-the-counter (**OTC**) options transactions (**the Option Leg**).

As both the Equity Leg and the Option Leg are transacted simultaneously, the client agrees on a net price for the CET rather than pricing individual legs separately.

The Equity Leg of the CET is negotiated off-market and therefore will not meet the pre-trade transparency requirement of subrule 4.1.1(1). A Participant that enters into a CET may therefore breach subrule 4.1.1(1) without this Class Rule Waiver.

#### 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.