



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Class Rule Waiver [CW 17/740]**

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I, Greg Yanco, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 3 October 2017

Greg Yanco

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## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is ASIC Class Rule Waiver [17-740].

### 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](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (ASX 24 Market) 2010*.

### 4 Definitions

(1) In this instrument:

***Approved Collateral*** means securities or other collateral or property accepted by ASX Clear under the Clearing Rules.

***Cover*** means cash and/or Approved Collateral held by a Market Participant against a Client's liability from time to time.

(2) In this instrument, unless the contrary intention appears, capitalised terms have the meaning given by the *ASIC Market Integrity Rules (ASX 24 Market) 2010*.

## Part 2—Waiver

### 5 Calling Initial Margin

- (1) A Trading Participant which has agreed to accept and has received Cover by way of Approved Collateral is relieved from the obligation to comply with subrule 7.2.2(4).

Note: This waiver does not affect a Trading Participant's obligations in subrule 7.2.2(1) – (3).

### 6 Satisfaction of Calls for Margin

- (1) A Trading Participant which has agreed to accept Cover by way of Approved Collateral:
  - (a) is relieved from the obligation to comply with subrule 7.2.5(1) subject to the condition in paragraph 9(1) of this instrument;
  - (b) is relieved from the obligation to comply with subrule 7.2.5(2) subject to the condition in paragraph 9(2) of this instrument;
  - (c) is relieved from the obligation to comply with subrule 7.2.5(3) subject to the condition in paragraph 9(3) of this instrument.

### 7 Time for payment of Margins

- (1) A Trading Participant which has agreed to accept Cover by way of Approved Collateral is relieved from the obligation to comply with Rule 7.2.6 subject to the condition in paragraph 9(4) of this instrument.

### 8 Obligation to Close Out

- (1) A Trading Participant which has agreed to accept Cover by way of Approved Collateral is relieved from the obligation to comply with Rule 7.2.8 subject to the conditions in paragraph 9(5) of this instrument.

### 9 Conditions

- (1) It is a condition of the waiver in paragraph 6(1)(a) that the Trading Participant's Client agreement must provide that Calls for Initial Margin and Variation Margin must be satisfied by payment unless the Trading Participant agrees to accept, in lieu of payment, Approved Collateral.
- (2) It is a condition of the waiver in paragraph 6(1)(b) that the Trading Participant's Client agreement must provide that:
  - (a) Approved Collateral received as Cover shall be retained by the Trading Participant until such time as the liability of the Client is extinguished either by the relevant contracts being Closed Out or

- payment being made by a Buyer or delivery in accordance with the Rules being effected by a Seller; and
- (b) if the liability of the Client is not extinguished, as set out in paragraph 9(2)(a) of this instrument, then the Approved Collateral may be realised by the Trading Participant and the proceeds applied against that liability.
- (3) It is a condition of the waiver in paragraph 6(1)(c) that the Trading Participant must ensure liability of a Client for Initial Margin is Covered at all times.
- (4) It is a condition of the waiver in paragraph 7(1) that:
- (a) where a Call is made for Initial or Variation Margin, the Trading Participant must stipulate the time for payment or lodgement of Approved Collateral, which must not be greater than:
    - (i) 24 hours if the Client's address is within Australia; or
    - (ii) 48 hours if the Client's address is outside Australia;
  - (b) the Trading Participant must not provide credit for a Client beyond the periods specified in paragraphs 9(3)(i) and (ii) of this instrument unless:
    - (i) permitted by Rule 7.2.10 of the Rules; or
    - (ii) the Trading Participant exercises a reasonable discretion not to Close Out having regard to:
      - (A) the expertise and financial status of the Client;
      - (B) any genuine attempts by the Client to meet the Call within the time prescribed; and
      - (C) whether relevant actions or omissions of third parties resulted in the Client failing to pay the Call; and
  - (c) the Trading Participant's Client agreement must provide that time shall be of the essence in respect of payment or lodgement under Part 7.2 of the Rules;
- (5) It is a condition of the waiver in paragraph 8(1) that:
- (a) where a Client is in default by failing to pay a Call (or lodge Approved Collateral) within the time stipulated by the Trading Participant, the Trading Participant must, immediately upon expiry of that time period, Close Out to the extent necessary to counter the Call, all or any existing Open Positions in any Market held by the Trading Participant on account of the Client unless the Trading

Participant exercises a reasonable discretion to not Close Out having regard to:

- (i) the expertise and financial status of the Client;
  - (ii) any genuine attempts by the Client to meet the Call within the time prescribed; and
  - (iii) whether relevant actions or omissions of third parties resulted in the Client failing to pay the Call; and
- (b) the Trading Participant's Client agreement must provide that the Trading Participant shall not be liable to the Client for any loss sustained by the Client as a result of the Trading Participant Closing Out in accordance with paragraph (9)(5)(a) of this instrument.