

## **EXPLANATORY STATEMENT for ASIC Class Rule Waiver [CW 18/140]**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes ASIC Class Rule Waiver [CW 18/140] (the **Amendment Instrument**) under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (ASX 24 Market) 2010* (the **ASX 24 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 ASX 24 Rules.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Under subsection 13(1) of the *Legislation Act 2003*, if enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then unless the contrary intention appears, the *Acts Interpretation Act 1901* applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of the Act. Accordingly, the power under the ASX 24 Rules to make a written waiver relieving a person or class of persons from the obligation to comply with a provision of the ASX 24 Rules, includes a power to amend that waiver.

The Amendment Instrument amends ASIC Class Rule Waiver [17-740].

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

### **1. Background**

Rules 7.2.2(4), 7.2.5, 7.2.6 and 7.2.8 (the **Relevant Rules**) of the ASX 24 Rules impose various obligations on Trading Participants to Call Margins from their Clients. Margin Calls can be satisfied by the Trading Participant accepting either cash or Approved Securities from their Clients. 'Approved Securities' is defined under Rule 7.1.1 of the ASX 24 Rules with a prescribed list.

Trading Participants that are Clearing Participants also have an obligation under the Operating Rules of ASX Clear to post Margins. ASX Clear publishes a list of securities, collateral and other property that it will accept as Margin, which is amended by ASX Clear as required.

There are some inconsistencies between ASX Clear's current list and the definition of 'Approved Securities' in Rule 7.1.1 of the ASX 24 Rules. This causes confusion and complexity for Trading Participants that are also Clearing Participants.

ASIC Class Rule Waiver [17-740], which commenced on 5 October 2017, provides relief from the Relevant Rules to the extent that those rules apply the definition of 'Approved Securities'. It introduces a new term 'Approved Collateral' which refers to securities, collateral and other property accepted by ASX Clear. This allows Trading Participants to rely on the list of accepted collateral published by ASX Clear to meet their obligations under the Relevant Rules.

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

The Amendment Instrument amends ASIC Class Rule Waiver [17-740], by correcting a typographical error in paragraph 9(4)(b) of ASIC Class Rule Waiver [17-740].

Paragraph 9(4)(b) of ASIC Class Rule Waiver [17-740] includes a cross-reference to paragraphs "9(3)(i) and (ii)", when it should be a cross-reference to paragraphs "9(4)(a)(i) and (ii)".

## **3. Operation of the Amendment Instrument**

### **Part 1 – Preliminary**

#### **Name of legislative instrument**

Item 1 of Part 1 of the Amendment Instrument provides that the name of the Amendment Instrument is ASIC Class Rule Waiver [CW 18/140].

#### **Commencement**

Item 2 of Part 1 of the Amendment Instrument provides that the Amendment Instrument commences on the day after registration.

#### **Authority**

Item 3 of Part 1 of the Amendment Instrument provides that the Amendment Instrument is made under subrule 1.2.1(1) of the ASX 24 Rules.

#### **Schedules**

Item 4 of Part 1 of the Amendment Instrument provides that the Amendment Instrument amends ASIC Class Rule Waiver [17-740] as set out in item 1 of Schedule 1 of the Amendment Instrument.

## **Schedule 1 – Amendments**

### **ASIC Class Rule Waiver [17-740]**

Item 1 of Schedule 1 of the Amendment Instrument provides that the Amendment Instrument amends paragraph 9(4)(b) of ASIC Class Rule Waiver [17-740] by omitting “9(3)(i) and (ii)” and substituting “9(4)(a)(i) and (ii)”.

## **4. Consultation**

ASIC did not consult on making this Amendment Instrument given that its only purpose is to correct a typographical error in ASIC Class Rule Waiver [17-740].

## 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 18/140]

ASIC Class Rule Waiver [CW 18/140] (the **Amendment 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*.

#### Overview

Rules 7.2.2(4), 7.2.5, 7.2.6 and 7.2.8 (the **Relevant Rules**) of the ASIC Market Integrity Rules (ASX 24 Market) 2010 (**ASX 24 Rules**) impose various obligations on trading participants to call margins from their clients. Margin calls can be satisfied by the trading participant accepting either cash or ‘Approved Securities’ from their clients. ‘Approved Securities’ is defined under Rule 7.1.1 of the ASX 24 Rules with a prescribed list.

Trading participants that are clearing participants also have an obligation under the operating rules of ASX Clear (Futures) Pty Limited (**ASX Clear**) to post margins to ASX Clear. ASX Clear publishes a list of securities, collateral and other property that it will accept as margin, which is amended by ASX Clear as required.

There are some inconsistencies between ASX Clear’s current list and the definition of ‘Approved Securities’ in Rule 7.1.1 of the ASX 24 Rules. This causes confusion and complexity for trading participants that are also clearing participants.

ASIC Class Rule Waiver [17-740], which commenced on 5 October 2017, provides relief from the Relevant Rules to the extent that those rules apply the definition of ‘Approved Securities’ in Rule 7.1.1. It introduces a new term ‘Approved Collateral’ which refers to securities, collateral and other property accepted by ASX Clear. It allows trading participants to rely on the list of accepted collateral published by ASX Clear, to meet their obligations under the Relevant Rules.

The Amendment Instrument amends ASIC Class Rule Waiver [17-740], by correcting a typographical error in paragraph 9(4)(b) of ASIC Class Rule Waiver [17-740].

#### Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Australian Securities and Investments Commission**