



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets) Class Waiver Instrument 2020/870

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) Class Waiver Instrument 2020/870*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. This instrument waives Market Participants of securities markets from certain obligations in Part 2.4 of the *ASIC Market Integrity Rules (Securities Market) 2017 (Rules)* in relation to their Representatives who were accredited as a Level One Accredited Derivatives Adviser, Level Two Accredited Derivatives Adviser or Accredited Futures Adviser immediately before the Renewal Date of 30 November 2020 for those accreditations (***Notionally Accredited Advisers***).
2. The relief is subject to various conditions, including that Market Participants must advise ASIC if a Representative ceases to be a Notionally Accredited Adviser. ASIC can cease or suspend a notional accreditation in certain circumstances by giving written notification (including reasons for the cessation or suspension) to the Notionally Accredited Adviser and the Market Participant.
3. The effect of the instrument is to relieve Market Participants from the need to renew the accreditations of their Representatives by submitting a written application to ASIC prior to the current Renewal Date of 30 November 2020.
4. The waivers provided by the instrument cease to apply at the end of 30 November 2021.

Purpose of the instrument

5. The purpose of this instrument is to relieve Market Participants from the need to renew the accreditation of each of their Accredited Advisers by submitting a written application to ASIC during the current Renewal Period for those accreditations. This is achieved by waiving the Market Participants' obligations to comply with the Rules described in paragraphs 18 and 19 below and creating a new class of Notionally Accredited Advisers.

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6. In the first quarter of 2020, ASIC intended to consult on various amendments to the Rules. One of the proposed amendments was to reduce the administrative burden on Market Participants and ASIC arising from the Derivatives Advisers accreditation process. This consultation was put on hold due to COVID-19.
 7. In March 2020, ASIC announced it would refocus its regulatory efforts in the context of the COVID-19 global pandemic. Specifically, ASIC announced that it would afford priority to matters where there is the risk of significant consumer harm, serious breaches of the law, risks to market integrity and time-critical matters. This has resulted in the suspension of a number of near-term activities which are not time-critical, including consultation, regulatory reports and reviews.
 8. ASIC notes that the application of part 2.4.9 of the Rules to Accredited Advisers, in the context of the COVID-19 global pandemic, would require Market Participants and ASIC to undertake substantive, costly and burdensome administrative processes in order to meet the reaccreditation requirements prior to 30 November 2020.
 9. The granting of the relief in this instrument for 12 months is intended to provide sufficient time for:
 - (a) Market Participants and ASIC to devote their resources to immediate priorities raised by the COVID-19 pandemic in the short term;
 - (b) ASIC to consult on the proposed amendments to the Rules more broadly, including rules to reduce the administrative burden on Market Participants and ASIC as a result of the current accreditation process.
 10. To maintain existing retail protections to the extent possible, reliance on this instrument is conditional upon Market Participants complying with all relevant rules as if the Representative were an Accredited Adviser, for example, Rules going to continuing professional education requirements. This instrument also preserves the right of an affected person to make an application to the Administrative Decisions Tribunal for review of a decision made by ASIC to cease or suspend the notional accreditation of that person.

Consultation

11. Prior to making the instrument, ASIC consulted on the relief provided in this instrument with:
 - (a) the three market participants who together employ more than 50% of all Accredited Derivatives Advisers; and
 - (b) the industry bodies, Australian Financial Markets Association (AFMA) and Stockbrokers and Financial Advisers Association (SAFAA).
12. A Regulation Impact Statement is not required for this instrument as the changes are minor or machinery in nature and designed to preserve the status

quo for the next 12 months while Market Participants are managing the effects of COVID-19 and to allow ASIC time to consult on proposed amendments to the Rules. It does not alter the existing requirements for Market Participants, save for removing the administrative process of applying for re-accreditation of each of their advisers during the current Renewal Period.

Operation of the instrument

13. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Securities Markets) Class Waiver Instrument 2020/870*.
14. Section 2 of the instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
15. Section 3 of the instrument provides that the instrument is made under subrule 1.2.1(1) and Rule 1.2.3 of the Rules.
16. Section 4 of the instrument provides definitions for the following terms “notionally accredited” and “Notionally Accredited Adviser” used in the instrument and that, unless the contrary intention appears, capitalised terms have the same meaning as in the Rules.

Cessation and suspension as Notionally Accredited Adviser

17. Section 5 of the instrument provides that a person ceases to be a Notionally Accredited Adviser if they cease to be a Representative of the Market Participant that made the application for the person to be accredited or if the Market Participant gives notice to ASIC that the person will cease to be a Notionally Accredited Adviser. Section 5 also provides that if ASIC has reason to believe a person does not have the requisite skill, knowledge or integrity to provide the financial advice covered by the notional accreditation, ASIC may either cease or suspend the notional accreditation of a Notionally Accredited Adviser by giving notice in writing, including reasons for the cessation or suspension, to the Market Participant.

Waivers

18. Section 6 of the instrument provides that a Market Participant does not have to comply with the following in relation to a Representative of the Market Participant: subrules 2.4.1(1), 2.4.2(1) and 2.4.4(1); and Rule 2.4.5 of the Rules. These are the requirements to ensure Representatives are accredited as a Level One Accredited Derivatives Adviser, a Level Two Accredited Derivatives Adviser or Accredited Futures Adviser, as applicable to the type of advice given by the Representative. A Market Participant does not have to comply with subrule 2.4.1(2) of the rules to the extent that subrule prohibits the Market Participant from holding out, or requires the Market Participant to ensure that a Representative does not hold out, that the Representative holds a type of accreditation under the rules that corresponds to a type of notional accreditation held by the Representative. A Market Participant does not have

to comply with Rule 2.4.22 of the rules in relation to a Managed Discretionary Account operated by one of its Representatives.

19. The waivers in section 6 of the instrument apply where the Representative is a Notionally Accredited Adviser in a category of notional accreditation that corresponds to the category of accreditation required by the Rule.

Conditions

20. Section 7 of the instrument provides that a Market Participant that relies on a waiver in section 6 of the instrument in relation to a Representative must comply with the following conditions:
- (a) notify ASIC in writing within 5 Business Days that a person has ceased to be a Notionally Accredited Adviser because the person has ceased to be a Representative of the Market Participant;
 - (b) not hold out that a Representative, and must ensure that the Representative does not hold themselves out, as holding a type of notional accreditation if the Representative does not hold that type of notional accreditation;
 - (c) ensure that a Representative notionally accredited only as a Level One Notionally Accredited Derivatives Adviser does not advise or make recommendations in relation to LEPOS; and
 - (d) ensure that the Representative complies with any continuing professional education requirements under Rule 2.4.21 as if the Representative were an Accredited Adviser holding the type of accreditation under the Rules that corresponds to the Representative's notional accreditation.

AAT Review

21. Section 8 of the instrument provides that applications may be made to the Administrative Appeals Tribunal for review of a decision made by ASIC to cease or suspend the notional accreditation of a person under subsection 5(4) of the instrument.
22. Section 9 provides that ASIC must take reasonable steps to give each person who may make an application for merit review of the decision notice in writing of the making of the decision and the person's right to have the decision reviewed by the Tribunal.

Cessation

23. The instrument expires at the end of 30 November 2021.

Legislative instrument and primary legislation

24. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because the matters contained in the instrument:

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- (a) relate to an existing legislative instrument (the Rules) in a manner that is designed to ensure the application of the Rules remains flexible to adapt to market developments and applies in a way consistent with the intended policy and the enabling provisions in the Rules; and
 - (b) are appropriately used to deal with a specific subset of technical and machinery issues under the Rules that apply for a specified period of time in relation to a subset of Representatives of Market Participants.

Legislative authority

- 25. ASIC makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of the *ASIC Market Integrity Rules (Securities Markets) 2017*. Under subrule 1.2.1(1) of the Rules, ASIC may relieve any person or class of persons from the obligation to comply with a provision of the Rules. Under Rule 1.2.3 of the Rules, ASIC may specify the period during which any relief from the obligation to comply with a provision of the Rules may apply.
- 26. This instrument is subject to disallowance under section 42 of the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

- 27. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Market Integrity Rules (Securities Markets) Class Waiver Amendment Instrument 2020/870

Overview

1. This instrument exempts a Market Participant of a securities market from having to comply with certain obligations in Part 2.4 of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Rules)*, to the extent it requires a Market Participant to ensure each of its Representatives holds “relevant accreditations” in order to provide advice to retail clients in relation to Option Market Contracts, Futures Market Contracts or Warrants. The exemptions are conditional on Representatives holding “notional accreditations” to the same effect. The combined operation of the provisions in the instrument obviate the need to complete the administrative process of applying for a renewal of the accreditation for a 12 month period.

Assessment of human rights implications

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

Conclusion

3. This 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*.