



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### ***ASIC Market Integrity Rules (Securities Markets) Class Waiver (Amendment) Instrument 2021/926***

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) Class Waiver (Amendment) Instrument 2021/926*.

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

#### **Summary**

1. This instrument extends the term of *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2020/870 (Class Waiver 2020/870)* to 30 November 2023. Class Waiver 2020/870 exempts Market Participants of securities markets from certain obligations in Part 2.4 of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Waived 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. This transition period is intended to allow ASIC further time to progress amendments to the Waived Rules as proposed in Consultation Paper 342 *Proposed amendments to the ASIC market integrity rules and other ASIC-made rules (CP 342)* and to allow sufficient time for the Minister to consider whether to consent to the rule amendments.

#### **Purpose of the instrument**

3. The purpose of this instrument is to provide further transitional relief to Notionally Accredited Advisers from the Waived Rules until 30 November 2023.
4. ASIC granted a waiver of 1 year duration to relieve Market Participants from the need to renew the accreditations of their Representatives by submitting a written application to ASIC prior to the Renewal Date of 30 November 2020. This waiver is Class Waiver 2020/870.
5. The extension of the term of relief provided for in Class Waiver 2020/870 for 2 years is intended to:

- a. 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 2021;
  - b. Provide ASIC with sufficient time to progress amendments to the Waived Rules as proposed in CP 342 and to allow sufficient time for the Minister to consider whether to consent to the rule amendments;
  - c. Continue to facilitate Market Participants and ASIC to devote their resources to immediate priorities as a result of the COVID-19 pandemic.
6. To continue to maintain existing retail protections to the extent possible, reliance on this amended 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

7. As part of a consultation process, ASIC has provided:
- a. the industry bodies, Australian Financial Markets Association (AFMA) and Stockbrokers and Financial Advisers Association (SAFAA); and
  - b. the three market participants who together employ more than 50% of all Accredited Derivatives Advisers;

an opportunity to respond to the proposed extended term of Class Waiver 2020/870 prior to making *ASIC Market Integrity Rules (Securities Markets) Class Waiver (Amendment Instrument) 2021/926 (Amendment Instrument)*. ASIC did not receive any objection to the proposal.

8. A Regulation Impact Statement is not required for this instrument as the extension proposal is unlikely to have a more than minor regulatory impact on business, individuals or community organisation. 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

9. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Securities Markets) Class Waiver (Amendment) Instrument 2021/926*.
10. Section 2 of the instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

11. 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.
12. The instrument amends Class Waiver 2020/870 by substituting the expiration date stated in subsection 10 of “30 November 2021”, with “30 November 2023”, thereby extending the term of the waiver by a further two years.

#### Legislative instrument and primary legislation

13. 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 are a specific amendment to an existing legislative instrument (Class Waiver 2018/258) that are designed to ensure the application of that legislative instrument remains appropriate while ASIC is progressing amendments to the Waived Rules as proposed in CP 342 and to allow sufficient time for the Minister to consider whether to consent to the rule amendments.

#### **Legislative authority**

14. ASIC makes this instrument under subrule 1.2.1(1) and Rule 1.2.3 of the Rules. 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.
15. Under subsection 33(3) of the *Acts Interpretation Act 1901* (**Interpretation Act**), 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* (**Legislation Act**), if enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then unless the contrary intention appears, the Interpretation Act 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 Rules to make a written waiver relieving a person or class of persons from the obligation to comply with a provision of the Rules, includes a power to amend that waiver.
16. This instrument is subject to disallowance under section 42 of the Legislation Act.

#### **Statement of Compatibility with Human Rights**

17. 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.

## 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 2021/926***

#### Overview

1. The Australian Securities and Investments Commission (**ASIC**) makes the instrument under subrule 1.2.1(1) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**).
2. 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, either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit.
3. This instrument extends the term of *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2020/870* (**Class Waiver 2020/870**) to 30 November 2023. Class Waiver 2020/870 exempts Market Participants of securities markets from certain obligations in Part 2.4 of the *ASIC Market Integrity Rules (Securities Markets) 2017* (**Waived 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**).

#### Assessment of human rights implications

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

#### Conclusion

5. 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*.