



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets) Class Waiver 2025/512 and ASIC Market Integrity Rules (Futures Markets) Class Waiver 2025/513

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2025/512* and *ASIC Market Integrity Rules (Futures Markets) Class Waiver 2025/513*.

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

Summary

1. These instruments waive some of the obligations regarding outsourcing arrangements related to the supply of energy or communications services in Chapters 8A and 8B of the *ASIC Market Integrity Rules (Securities Markets) 2017 (Securities Rules)* and the *ASIC Market Integrity Rules (Securities Markets) 2017 (Futures Rules)* (together the **Rules**).
2. These waivers apply to both market operators and market participants of securities and futures markets.

Purpose of the instruments

3. The purpose of the instruments is to waive the following requirements with respect to partially exempt outsourcing arrangements related to the supply of energy or communications:
 - a. to have specific contractual terms relating to subcontracting of the arrangements (Rule 8A.3.3(1)(b)(ii) and Rule 8B.2.3(1)(b)(ii));
 - b. to have specific contractual terms regarding the orderly transfer of services in the event of termination (Rule 8A.3.3(1)(b)(iv) and Rule 8B.2.3(1)(b)(iv));
 - c. to monitor the performance of service providers (Rule 8A.3.3(1)(c) and Rule 8B.2.3(1)(c));
 - d. to manage and identify potential conflicts of interest in relation to the service provider or their sub-contractors (Rule 8A.3.3(1)(d) and Rule 8B.2.3(1)(d));

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- e. to ensure prompt access to the books and records of the services provider for the market participant, market operator or ASIC (Rule 8A.3.3(1)(f)-(g) and Rule 8B.2.3(1)(f)-(g));
 - f. for a written attestation by board or senior management regarding compliance of the partially exempt outsourcing arrangement with the Rules (Rule 8A.3.3(1)(h) and Rule 8B.2.3(1)(h));
 - g. to give consideration to whether the service provider provides the relevant services to other market participants or market operators (Rule 8A.3.3(3) and Rule 8B.2.3(3)).

Reasons for the instruments

- 4. To address unintended consequences of how Chapters 8A and 8B of the Rules applies to energy and communications suppliers given they are standard utilities that are required for any business, these instruments waive some of the obligations that apply to partially exempt outsourcing arrangements.
- 5. ASIC received feedback from some market operators and market participants that they have identified energy or communications services as outsourced arrangements under Chapter 8A or 8B, as they are or support a critical business service.
- 6. ASIC considers that some of the obligations in relation to outsourcing arrangements are unnecessary or difficult to apply to energy and communications suppliers given:
 - a. market operators and market participants have minimal relevant expertise to provide effective oversight of these arrangements;
 - b. market operators and market participants have negligible market power to negotiate the additional contractual terms required by the Rules with these utility services providers;
 - c. these services are already subject to regulation and industry standards which govern their technological and operational resilience.

Consultation

- 7. Following Consultation Paper 314 *Market Integrity rules for technological and operational resilience*, ASIC inserted Chapters 8A and 8B relating to technological and operational resilience into the Securities Rules and the Futures Rules in March 2023.
- 8. ASIC engaged in further bi-lateral consultation with several market operators, market participants and industry bodies, including the Australian Financial Markets Association and the Stockbrokers and Investment Advisers Association.

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9. These stakeholders advised that some of the Rules were impractical to apply to outsourcing arrangements that related to large infrastructure items, such as energy, internet, and telecommunications.
 10. ASIC conducted targeted consultation with stakeholders regarding the scope of the class waivers to address their concerns.

Operation of the instruments

11. Section 1 of each instrument provides that the name of each instrument is the *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2025/512* or *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2025/513* respectively.
12. Section 2 of each instrument provides that each instrument commences on the day after each instrument is registered on the Federal Register of Legislation.
13. Section 3 of each instrument provides that the instrument is made under subrule 1.2.1(1) of the Securities Rules and Futures Rules respectively.
14. Section 4 of each instrument provides that in the instrument, unless the contrary intention appears, capitalised terms have the same meaning as in the Rules.
15. Section 4 of each instrument provides a definition of Energy Service and Communications Service. It further defines a carriage service as this forms part of the definition of Communications Service. These definitions have been drafted with reference to similar definitions in the *Security of Critical Infrastructure Act 2018* and the *Telecommunications Act 1997*.
16. Section 4 of each instrument defines parts of Rule 8A.3.3 as the Operator Waived Rules or the Market operator Waived Rules.
17. Section 4 of each instrument defines part of Rule 8B.2.3 as the Participant Waived Rules or the Market Participant Waived Rules.
18. Section 5 of each instrument states that a market operator does not have to comply with the Operator Waived Rules or the Market operator Waived Rules in relation to a Partially Exempt Outsourcing Arrangement.
19. Section 6 of each instrument states that a market participant does not have to comply with the Participant Waived Rules or the Market Participant Waived Rules in relation to a Partially Exempt Outsourcing Arrangement.
20. Sections 5 and 6 have notes which make it clear that market operators and market participants must still have adequate arrangements for a Partially Exempt Outsourcing Arrangement.

Incorporation by reference

21. The instrument does not incorporate any matter by reference.

Legislative instrument and delegated legislation

22. The subject matter and policy implemented by these instruments are more appropriate for inclusion in legislative instruments (or delegated legislation) than in primary legislation because:
- a. the matters contained in the instrument are relief from specific obligations in existing delegated legislation that are designed to ensure the application of the Securities and Futures Market 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. the matters contained in the instrument are appropriately used to deal with specific, technical and machinery issues or where necessary to provide flexibility to keep pace with industry developments.

Duration of the instruments

23. Section 7 repeals the instruments after 5 years from the date that it is signed.

Legislative authority

24. ASIC makes these instruments under subrule 1.2.1(1) of the Securities Rules and subrule 1.2.1(1) of the Futures 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.
25. 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 *ASIC Market Integrity Rules (Securities Markets) 2017* allows ASIC to make a written waiver relieving a person or class of persons from the obligation to comply with a provision of the *ASIC Market Integrity Rules (Securities Markets) 2017*.
26. These instruments are 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*.

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Overview

1. These instruments waive some of the obligations regarding outsourcing arrangements related to the supply of energy or communications services in Chapters 8A and 8B of the *ASIC Market Integrity Rules (Securities Markets) 2017* and the *ASIC Market Integrity Rules (Securities Markets) 2017*.

Assessment of human rights implications

2. These instruments do not engage any of the applicable rights or freedoms.

Conclusion

3. These instruments are 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*.