

ASIC MARKET INTEGRITY RULES (IMB MARKET) 2010

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes the *ASIC Market Integrity Rules (IMB Market) 2010* (the *Market Integrity Rules*) under subsection 798G(1) of the *Corporations Act 2001* (the *Act*).

Subsection 798G(1) of the Act provides that ASIC may, by legislative instrument, make rules that deal with:

- (a) the activities or conduct of licensed markets;
- (b) the activities or conduct of persons in relation to licensed markets;
- (c) the activities or conduct of persons in relation to financial products traded on licensed markets.

Subsection 798G(1) of the Act is inserted by Schedule 1 of the *Corporations Amendment (Financial Market Supervision) Act 2010* (the *Amending Act*).

On 24 August 2009, the Australian Government announced that it had decided to transfer the responsibility for supervision of Australia's domestic licensed financial markets from market operators to ASIC. The Amending Act gave effect to this decision and received Royal Assent on 25 March 2010. On 8 July 2010, the commencement date for Schedule 1 to the Amending Act was fixed by proclamation as 1 August 2010 (the *Commencement Date*).

These Market Integrity Rules apply to the market (the *Market*) operated by IMB Limited (the *Market Operator*) under *Australian Market Licence (IMB Ltd) 2005*.

The main purpose of the Market Integrity Rules is to promote market integrity, protect investors and enable ASIC to perform the functions contemplated by the transfer of real-time supervision of the Market.

The Market Integrity Rules are based on a subset of the IMB Business Rules that were in existence prior to the Commencement Date (the pre-commencement IMB Business Rules). The split between the pre-commencement IMB Business Rules and the Market Integrity Rules was agreed between ASIC and the Market Operator. The main guiding principles in adopting some of the IMB Business Rules as Market Integrity Rules were that:

- (a) existing operational and mechanical style rules, including the core operational functioning of the Market, should be the responsibility of the Market Operator;
- (b) admission of participants should be the responsibility of the Market Operator;
- (c) rules relating to market integrity should be the responsibility of ASIC;
- (d) rules that assist the real-time monitoring of trading and market conduct should be the responsibility of ASIC; and

- (e) rules relating to general participant conduct, including participant conduct with clients, should be the responsibility of ASIC.

Targeted consultation on the Market Integrity Rules was conducted during the first half of calendar year 2010. The Market Integrity Rules reflect amendments which were made as a result of this consultation.

To ensure market certainty and minimise impact on participants on the Commencement Date, ASIC has, to the extent possible, maintained the substance of the regulatory regime embodied in the pre-commencement IMB Business Rules on which the Market Integrity Rules are based. Amendments were made to the drafting of those rules to reflect the transfer of supervisory responsibility for those rules to ASIC.

Details of the Market Integrity Rules are contained in the Attachment.

Subsection 798G(1) of the Act provides that market integrity rules are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

Subsection 798G(2) of the Act provides that market integrity rules may include a penalty amount for a rule. A penalty amount must not exceed \$1,000,000. The penalty amount set out below a Market Integrity Rule is the penalty amount for that Market Integrity Rule.

The Market Integrity Rules will commence on the later of the day they are registered on the Federal Register of Legislative Instruments or the Commencement Date.

ATTACHMENT

Chapter 1: Introduction

Part 1.1 Preliminary

Rule 1.1.1 Enabling legislation

Rule 1.1.1 provides that the enabling legislation for these Rules is subsection 798G(1) of the Corporations Act.

Rule 1.1.2 Title

Rule 1.1.2 provides that the title for these Rules is *ASIC Market Integrity Rules (IMB Market) 2010*.

Rule 1.1.3 Commencement

Rule 1.1.3 provides that these Rules commence on the later of

- (a) the day the instrument is registered under the *Legislative Instruments Act 2003*; and
- (b) the commencement of Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010*.

The commencement of Schedule 1 of the *Corporations Amendment (Financial Market Supervision) Act* has been fixed by proclamation as 1 August 2010.

Rule 1.1.4 Scope of these Rules

Rule 1.1.4 provides that these Rules apply to:

- (a) the activities or conduct of the Market;
- (b) the activities or conduct of persons in relation to the Market;
- (c) the activities or conduct of persons in relation to Financial Products traded on the Market.

Rule 1.1.5 Entities that must comply with these Rules

Rule 1.1.5 provides that the following entities must comply with these Rules:

- (a) the Market Operator;
- (b) Market Participants; and
- (c) Other Regulated Entities;

as specified in each Rule.

Rule 1.1.6 Conduct by officers, employees or agents

Paragraph 1.1.6(a) provides that in these Rules, conduct engaged in on behalf of a person by officers, Employees or other agents of the person is deemed to have been engaged in by the person. Paragraph 1.1.6(b) provides that in these Rules, conduct engaged in on behalf of a person by any other person at the direction or with the consent or agreement (express or implied) of an officer, employee or other agent of the person, is deemed to have been engaged in by the person.

Rule 1.1.6 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

Rule 1.1.7 State of mind of a person

Subrule 1.1.7(2) provides that, if for the purposes of these Rules in respect of conduct engaged in by a person, it is necessary to establish the state of mind of the person, it is sufficient to show that an officer, Employee or other agent of the person had that state of mind.

Subrule 1.1.7(2) provides that, in subrule (1), a reference to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

Rule 1.1.7 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

Part 1.2 Waiver

Rule 1.2.1 Waiver of Rules and procedures

Subrule 1.2.1(1) provides that ASIC may relieve any person or class of persons from the obligation to comply with a provision of these Rules, either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit. Subrule 1.2.1(2) provides that if any conditions on a waiver are imposed, all of the conditions must be complied with for the waiver to be effective. Subrule 1.2.1(3) provides that ASIC may withdraw a waiver in writing at any time. Subrules 1.2.1(4) to (6) provide that a waiver, conditions on a waiver and a request by a person for a waiver must be in writing.

Rule 1.2.1 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

Rule 1.2.2 Compliance with conditions

Rule 1.2.2 provides that failure to comply with a condition imposed under Rule 1.2.1 is a contravention of Rule 1.2.2.

Rule 1.2.2 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

Rule 1.2.3 Period during which relief applies

Rule 1.2.3 provides that ASIC may specify the period or specific event during which any relief from an obligation to comply with a provision of these Rules may apply.

Rule 1.2.3 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

Rule 1.2.4 Register

Subrule 1.2.4(1) provides that ASIC may establish and maintain a register for recording details of relief granted under Rule 1.2.1 and sets out the details that may be entered in the register. Subrule 1.2.4(2) provides that ASIC may publish the register.

Rule 1.2.4 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

Part 1.3 Definitions

Rule 1.3.1 Definitions

Rule 1.3.1 provides definitions for terms used in the Rules. Rule 1.3.1 includes new definitions for:

- "Corporations Act";
- "Australian Financial Services Licence";
- "Market";
- "Market Operator";
- "Market Operating Rules";
- "Operating Rules"; and
- "Other Regulated Entities".

The other definitions in Rule 1.3.1 reflect definitions in IMB Market Operating Rule 2.1.

Chapter 2: Market Participants

Part 2.1 Conduct of Market Participants

Rule 2.1.1 Conduct of Market Participants

Rule 2.1.1 provides that Market Participants must act honestly and fairly at all times when trading in the Market.

Rule 2.1.1 reflects IMB Market Operating Rule 6.1.

Part 2.2 Market Participant Obligations

Rule 2.2.1 Market Participant Obligations

Rule 2.2.1 provides that a Market Participant must not:

- (a) do anything which results in the Market not being fair and orderly;
- (b) take advantage of any situation arising as a result of a breakdown or malfunction in the Market or any error in a confirmation of trade sent to the Market Participant; and
- (c) do anything else in relation to the Market which may be regarded by a reasonable person as inconsistent with just and equitable principles in the transaction of business.

Rule 2.2.1 reflects IMB Market Operating Rule 9.1.