

# ASIC MARKET INTEGRITY RULES (SIM VSE 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 (SIM VSE 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 SIM Venture Securities Exchange Ltd (the *Market Operator*) under *Australian Market Licence (SIM Venture Securities Exchange Ltd) 2002*.

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 a subset of the rules applicable to the SIM VSE Market (the *SIM VSE Business Rules*). The subset of SIM VSE Business Rules which have become Market Integrity Rules will remain in the SIM VSE rulebook until the Market Operator amends that rulebook. The main guiding principles in adopting some of the SIM VSE 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 Market Integrity Rules;
- (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.

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 SIM VSE Business Rules. Amendments were made to the drafting of those rules to reflect the ASIC's supervisory responsibility..

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

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.

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 (SIM VSE 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**

Rule 1.1.6 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.

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**

Rule 1.1.7 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.

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

## **Part 1.2 Waivers**

### **Rule 1.2.1 Waiver of Rules**

Subrule 1.2.1(1) provides that ASIC may provide a waiver from all or any of the Rules. Subrule 1.2.1(2) provides that a waiver may be given subject to conditions. Subrule 1.2.1(3) provides that a waiver and an application 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 Notice, notification and service of documents**

### **Rule 1.3.1 Market Participant to have email system**

Rule 1.3.1 provides that a Market Participant must acquire and maintain an operating email system for the purposes of receiving notices under the Rules.

Rule 1.3.1 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

### **Rule 1.3.2 Methods of giving notice in writing**

Rule 1.3.2 provides for methods by which ASIC may give a notice under the Rules.

Rule 1.3.2 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

## **Part 1.4 Interpretation**

### **Rule 1.4.1 References to time**

Rule 1.4.1 provides that in the Rules, references to time are to the time in Sydney, Australia.

Rule 1.4.2 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

### **Rule 1.4.2 Words and expressions defined in the Corporations Act**

Rule 1.4.2 provides that words and expressions defined in the Corporations Act will unless otherwise defined or specified in these Rules or the contrary intention appears, have the same meaning in the Rules.

Rule 1.4.2 is a new Rule made to ensure consistency between these Rules and those applying to other domestic licensed financial markets.

### **Rule 1.4.3 Definitions**

Rule 1.4.3 provides definitions for terms used in the Rules. Rule 1.4.3 includes new definitions for:

- “AFSL”;
- "Market Operator";
- "Market Participant";
- "Other Regulated Entities";
- "SIM VSE"; and
- "Substantial Shareholder".

The other definitions in Rule 1.4.3 reflect definitions SIM VSE Business Rule 10.12.

## **Chapter 2: The Market Participants**

### **Part 2.1 Good Character**

#### **Rule 2.1.1 – Good Character Requirement for companies**

Rule 2.1.1 requires that a Market Participant which is a company must ensure that each director and each person who is a substantial holder of the Market Participant or its holding company, is of good character and high business integrity.

Rule 2.1.1 reflects SIM VSE Business Rule 1.2.

#### **Rule 2.1.2 - Market Participants which are natural persons**

Rule 2.1.2 provides that a Market Participant which is a natural person must ensure they are capable of carrying out their obligations under these Rules efficiently, honestly and fairly; and must be of good character and high business integrity, having regard to the factors set out in Rule 2.1.3.

Rule 2.1.2 reflects SIM VSE Business Rule 1.5.

#### **Rule 2.1.3 - Good Character Requirements for natural persons**

Rule 2.1.3 sets out the factors to be taken into account for the purpose of determining good character under Part 2.1 of the Rules.

Rule 2.1.3 reflects SIM VSE Business Rule 1.6.

## **Chapter 3: Financial records and arrangements**

### **Part 3.1 Trust account**

#### **Rule 3.1.1 Trust account requirement**

Rule 3.1.1 provides that a Market Participant must maintain at least one trust account in accordance with Chapter 7 of the Corporations Act.

Rule 3.1.1 reflects SIM VSE Business Rule 2.2.

#### **Rule 3.1.2 Requirements for deposits and withdrawals**

Rule 3.1.2 provides that all deposits and withdrawals of funds from a trust account maintained by a Market Participant must be made in accordance with Chapter 7 of the Corporations Act.

Rule 3.1.2 reflects existing SIM VSE Business Rule 2.3.

#### **Rule 3.1.3 Requirements for funds received out-of-hours**

Rule 3.1.3 provides for when funds are required to be deposited into a trust account if they are received by a Market Participant after bank trading hours.

Rule 3.1.3 reflects SIM VSE Business Rule 2.4.

## **Part 3.2. Record Keeping—Trust account schedule**

### **Rule 3.2.1 Trust account reconciliation requirement**

Rule 3.2.1 requires a Market Participant to reconcile trust accounts, and the timing of that reconciliation.

Rule 3.2.1 reflects SIM VSE Business Rule 2.20.

### **Rule 3.2.2 Requirement to notify ASIC if reconciliation not completed**

Rule 3.2.2 requires a Market Participant to immediately notify ASIC if it fails to carry out the reconciliation required by Rule 3.2.1.

Rule 3.2.2 reflects SIM VSE Business Rule 2.21.

### **Rule 3.2.3 Trust account schedule requirements**

Rule 3.2.3 requires a Market Participant to prepare or cause to be prepared, a schedule showing the respective amounts held in the Market Participant's trust account on behalf of clients, and of the name of the particular client in relation to each amount as at the above dates.

Rule 3.2.3 reflects SIM VSE Business Rule 2.22.

## **Part 3.3 Underwriting register**

### **Rule 3.3.1 - Underwriting register information**

Rule 3.3.1 requires a Market Participant that participates in underwriting activities to maintain a register containing information as set out in the Rule in relation to each Underwriting agreement entered into by the Market Participant.

Rule 3.3.1 reflects SIM VSE Business Rule 2.23.

## **Chapter 4: Trading requirements**

### **Part 4.1 Market Participant acting As Principal**

#### **Rule 4.1.1 Requirement to maintain a register**

Rule 4.1.1 requires a Market Participant to keep a register of prescribed persons.

Rule 4.1.1 reflects SIM VSE Business Rule 4.1.

## **Part 4.2 Prohibition on advice to Client**

### **Rule 4.2.1 Client and Chinese Wall definition**

Rule 4.2.1 provides definitions of "Client and "Chinese Walls" for the purposes of Part 4.2 of the Rules.

Rule 4.2.1 reflects SIM VSE Business Rule 4.2.

### **Rule 4.2.2 Non disclosure requirement**

Rule 4.2.2 provides that, subject to Rules 4.2.3 and 4.2.4, if as a result of their relationship with a Client, a Market Participant is in possession of information in relation to a security that is not generally available and which would be likely to materially affect the price of the security if the information was generally available, the Market Participant must not give any advice to any other Client of a nature that would damage the interests of either Client.

Rule 4.2.2 reflects SIM VSE Business Rule 4.3.

### **Rule 4.2.3 Where not regarded as having confidential information**

Rule 4.2.3 provides that a Market Participant is not regarded as having possession of information described in Rule 4.2.2 if the Market Participant has Chinese Walls in place and the person actually advising the Client is not in possession of that information.

Rule 4.2.3 reflects SIM VSE Business Rule 4.4.

### **Rule 4.2.4 Client information exception**

Rule 4.2.4 provides that a Market Participant who informs a Client they are precluded from giving the Client advice is not, for the purposes of Rule 4.2.2, regarded as giving advice.

Rule 4.2.4 reflects existing SIM VSE Business Rule 4.5.

## **Part 4.3 Expenses**

### **Rule 4.3.1 Expenses incurred in the purchase or sale of Securities**

Rule 4.3.1 provides that a Market Participant which charges a client for additional expenses incurred in the purchase or sale of securities must not cover the charge with an increase or decrease in the price for the securities.

Rule 4.3.1 reflects SIM VSE Business Rule 4.7.



## **Part 4.4 Nominee shareholdings**

### **Rule 4.4.1 Nominee company requirement**

Rule 4.4.1 provides that a Market Participant must not register securities that are beneficially owned by clients of the Market Participant in a nominee company unless the nominee company meets criteria contained in Rule 4.4.1.

Rule 4.4.1 reflects SIM VSE Business Rule 4.8.

### **Rule 4.4.2 Beneficial ownership requirement**

Rule 4.4.2 provides that a Market Participant must not register securities it does not beneficially own in its own name or in the name of any of its associates.

Rule 4.4.2 reflects SIM VSE Business Rule 4.9.

## **Part 4.5 Underwriting**

### **Rule 4.5.1 Disclosure of Underwriting shortfall**

Rule 4.5.1 provides that where a Market Participant acquires securities as an underwriter or sub-underwriter, they must not offer such securities to a client unless they first inform the client of the closing date of the issue or offering of the securities and the reasons for their acquisition of the Securities; or the offer to the client is made more than 90 days after the closing date of the relevant issue or offering of securities.

Rule 4.5.1 reflects SIM VSE Business Rule 4.10.

## **Part 4.6 Contract notes**

### **Rule 4.6.1 Contact notes content**

Rule 4.6.1 provides that a Market Participant must ensure that a contract note issued to a client states that it is subject to the rules, customs and usages of the Market and the correction of errors and omissions.

Rule 4.6.1 reflects SIM VSE Business Rule 4.11.

## **Part 4.7 Discretionary accounts**

### **Rule 4.7.1 Authorisation**

Rule 4.7.1 provides that a Market Participant must not manage or operate a discretionary account for a client unless the client has provided a written authorisation to the Market Participant setting out the terms and conditions of operation of the discretionary account, including the rates of brokerage which may be charged by the Market Participant.

Rule 4.7.1 reflects SIM VSE Business Rule 4.12.

### **Rule 4.7.2 Excessive Transactions on discretionary accounts**

Rule 4.7.2 provides that a Market Participant that manages or operates a discretionary account for a client must not enter into a number of transactions on behalf of the client which is excessive in the circumstances.

Rule 4.7.2 reflects SIM VSE Business rule 4.13.

## **Part 4.8 Discretionary account reporting**

### **Rule 4.8.1 Discretionary account information to clients**

Rule 4.8.1 provides that a Market Participant that manages or operates a discretionary account on behalf of a client must, if requested by the client, prepare and forward to the client a report on the client's discretionary account made up to the end of each quarter in each year setting out particulars contained in the Rule.

Rule 4.8.1 reflects SIM VSE Business Rule 4.14.

### **4.8.2 Discretionary account report requirement**

Rule 4.8.2 provides that a Market Participant must forward a discretionary account report prepared under Rule 4.8.1 to the client within 14 days of the date to which the report is made up.

Rule 4.8.2 reflects SIM VSE Business Rule 4.15.

### **4.8.3 Register**

Rule 4.8.3 provides that a Market Participant that operates a discretionary account for a client must keep a written register which includes certain information specified in Rule 4.8.3.

Rule 4.8.3 reflects SIM VSE Business Rule 4.16.

## **Chapter 5: Market Participant business**

### **Part 5.1. Carrying on business**

#### **Rule 5.1.1 Market Participant requirements**

Rule 5.1.1 provides that a Market Participant must hold an AFSL which authorises the holder to engage in the business of stockbroking and must not carry on business in partnership with any other person.

Rule 5.1.1 reflects SIM VSE Business Rule 5.1.

## **Part 5.2 Approved Representatives**

### **Rule 5.2.1 Responsibility for Approved Representatives**

Rule 5.2.1 provides that a Market Participant is responsible for the conduct of its approved representatives under the Rules.

Rule 5.2.1 reflects SIM VSE Business Rule 5.2.

## **Part 5.3 Insurance**

### **Rule 5.3.1 Insurance requirement**

Rule 5.3.1 provides that a Market Participant must take out and maintain in full force and effect at all times insurance policies covering and indemnifying the Market Participant against liability for the matters set out in the Rule, ensure that the insurance is of a type and amount that a reasonable stockbroker would regard as adequate having regard to the nature and extent of business carried on by the Market Participant, and provide ASIC with a copy of the certificate of currency for each such insurance policy within 14 business days of the end of each financial year.

Rule 5.3.1 reflects SIM VSE Business Rule 5.3.

### **Rule 5.3.2 Notification of claims**

Rule 5.3.2 provides that if a Market Participant becomes aware of the matters set out in the Rule, the Market Participant must immediately notify ASIC of the matters set out in the Rule.

Rule 5.3.2 reflects SIM VSE Business Rule 5.4.

### **Rule 5.3.3 Notification of action against the Market Participant**

Rule 5.3.3 provides that a Market Participant must notify ASIC by the end of the next Business Day if they are advised by the Market Operator of any action that may be taken against them.

Rule 5.3.3 reflects SIM VSE Business Rule 5.6(c).

## **Part 5.4 Complaints**

### **Rule 5.4.1 - Records of complaints and responses**

Rule 5.4.1 provides that a Market Participant must maintain records of complaints (both written and verbal) and responses to those complaints.

Rule 5.4.1 reflects SIM VSE Business Rule 5.15.

### **Rule 5.4.2 Records of complaints and responses**

Rule 5.4.2 provides that a Market Participant must maintain the records referred to in Rule 5.4.1 for a period of not less than five years from the date of the last correspondence in relation to the relevant complaint.

Rule 5.4.2 reflects SIM VSE Business Rule 5.16.

## **Part 5.5 Authorised Trading Representatives**

### **Rule 5.5.1 Requirement to appoint an Authorised Trading Representative**

Rule 5.5.1 provides that a Market Participant must appoint one or more authorised trading representative to deal on the Market on their behalf.

Rule 5.5.1 reflects SIM VSE Business Rule 6.3.

### **Rule 5.5.2 Requirements in relation to an Authorised Trading Representative**

Rule 5.5.2 provides that a Market Participant must ensure its Authorised Trading Representatives meet the knowledge and related criteria set out in the Rule.

Rule 5.5.2 reflects existing SIM VSE Business Rule 6.5.

### **Rule 5.5.3 Responsibility of Market Participants for Authorised Trading Representatives**

Rule 5.5.3 provides that a Market Participant is responsible for all transactions entered into by its Authorised Trading Representatives.

Rule 5.5.3 reflects SIM VSE Business Rule 6.8.

## **Part 5.6 Trading Responsibilities**

### **Rule 5.6.1 Market Participant responsibility**

Rule 5.6.1 provides that a Market Participant is responsible for the accuracy of details of all bids and offers made through the Market Participant's systems.

Rule 5.6.1 reflects SIM VSE Business Rule 6.10.

### **Rule 5.6.2 Identification processes requirements**

Rule 5.6.2 provides that a Market Participant must have adequate arrangements in place so the Market Participant can at all times determine the origin of all orders, bids and offers.

Rule 5.6.2 reflects SIM VSE Business Rule 6.11.

## **Part 5.7 Orderly Market**

### **Rule 5.7.1 Responsibility for conduct of orderly market**

Rule 5.7.1 provides that a Market Participant must ensure that neither it nor its Authorised Trading Representatives do anything which is inconsistent with the conduct of an orderly market.

Rule 5.7.1 reflects SIM VSE Business Rule 6.12.

**Rule 5.7.2 - Prohibition on false or misleading trading**

Rule 5.7.2 provides that a Market Participant must not make bids and/or offers for securities with the intention of creating a false or misleading appearance with respect to the market for, or the price of, any securities.

Rule 5.7.2 reflects SIM VSE Business Rule 6.13.

**Rule 5.7.3 - Change of beneficial ownership requirement**

Rule 5.7.3 provides that a Market Participant must not knowingly engage in a transaction or give an order for the purchase or sale of securities, the execution of which would involve no change of beneficial ownership.

Rule 5.7.3 reflects SIM VSE Business Rule 6.14.