

**ASIC MARKET INTEGRITY RULES (COMPETITION IN EXCHANGE MARKETS)
AMENDMENT 2012 (NO. 1)**

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 (Competition in Exchange Markets) Amendment 2012 (No. 1)* (the *Instrument*) under subsection 798G(1) of the *Corporations Act 2001* (the *Act*). Capitalised terms used in this Explanatory Statement (e.g. “Participant”) are defined in the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (the *Competition Rules*).

1. Enabling legislation

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

- (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.

2. Purpose of the legislative instrument

The purpose of the Instrument is to amend the Competition Rules to address regulatory issues resulting from recent market developments in Australia, including:

- (a) new risks to market integrity resulting from the growth of automated trading; and
- (b) risks to price formation and the quality of the public markets.

These risks are addressed by changes to Competition Rules in the following areas:

- (a) extreme price movements;
- (b) enhanced data for market surveillance; and
- (c) pre-trade transparency and price formation in the market.

Extreme price movements

The Instrument makes amendments to Chapter 2 of the Competition Rules (Extreme price movements) to introduce:

- (a) a requirement that Market Operators have an automated trade prevention control in Equity Market Products to prevent trades from executing in a price range beyond a specified range (the Extreme Trade Range); and
- (b) a requirement for ASX 24 to introduce an Anomalous Order Threshold and an Extreme

Trade Range to prevent trades in ASX SPI 200 Futures from executing in a price range beyond a specified range; and

- (c) other minor adjustments to align the Chapter 2 of the Competition Rules with industry practice.

The purpose of these amendments to Chapter 2 of the Competition Rules is to minimise the incidence and impact of sudden price distortions from non-fundamental factors and to ensure markets remain orderly and are able to cope with periods of volatility without major disruptions.

Given the speed of automated trading, the market requires an automated response to extreme price movements in addition to the existing controls. This is because order entry controls (e.g. filters) may not screen out every order or series of orders that may have the effect of disrupting the orderly operation of the market. In addition, Participants have said the cancellation of trades should be minimised.

Therefore, implementing automated volatility controls that prevent trades from occurring will deliver a more immediate and fair response to sudden price movements and it will provide greater certainty to investors because the controls will mitigate the occurrence of unwarranted volatility disrupting the market (e.g. episodes of volatility that follow a ‘fat finger’ error).

In addition, implementing mandatory and standardised preventative volatility controls will remove any potential incentives for Australia’s current and future exchanges to operate with diluted or sub-optimal volatility controls and will remove any potential inconsistencies in the operation of each market’s volatility controls.

Pre-trade and post-trade transparency

The Instrument makes amendments to Chapters 4 (Pre-Trade Transparency) and 5 (Post-Trade Transparency) of the Competition Rules to:

- (a) amend the “Trade At or Within the Spread” exception to pre-trade transparency to require dark trades below block size to provide meaningful price improvement (of one tick or at midpoint). This amendment seeks to address the impact of dark liquidity on price formation and market quality, by affecting the time priority of dark orders over lit orders at the same price;
- (b) amend the “Block Trade” exception to pre-trade transparency from a static \$1 million to a tiered threshold structure of \$1 million for the most liquid Equity Market Products, \$500,000 for comparatively liquid Equity Market Products and \$200,000 for all other Equity Market Products. This amendment aligns the Block Trade threshold with the different liquidity profiles of Equity Market Products; and
- (c) make other minor adjustments to align the Competition Rules with industry practice (including requiring Participants and Market Operators to have in place systems and controls to validate trades executed in reliance on a pre-trade transparency exception).

The purpose of these amendments is to promote investor confidence and allow market prices to reflect the maximum amount of information about market conditions. This promotes the objectives of:

- (a) ensuring the price discovery process is efficient; and
- (b) balancing the benefits of dark liquidity for larger sized orders with protecting the pre-trade price formation process, and the overall quality of the Australian market.

Enhanced data for market supervision

This Instrument inserts a new Chapter 5A into the Competition Rules to require Participants to provide additional data (“Regulatory Data”) on Order messages and/or Trade Reports to Market Operators and require Market Operators to record this information. The data requirement includes:

- (a) the execution venue;
- (b) the capacity in which the Participant is acting (agent, principal, or both);
- (c) the origin of the Order or Transaction (e.g. client account identifier);
- (d) the intermediary ID (i.e. AFS licence number); and
- (e) flagging of directed wholesale Orders or Transactions.

The purpose of these amendments is to ensure that ASIC is able to obtain sufficient and appropriate market data in a timely and efficient manner. This will assist ASIC to monitor and detect market misconduct in light of rapidly developing technology and increasingly complex trading strategies and preserve the integrity, fairness and orderliness of Australian equity markets.

Corresponding amendments are made to the *ASIC Market Integrity Rules (ASX Market) 2010* and *ASIC Market Integrity Rules (Chi-X Australia Market) 2011* to require ASX and Chi-X to pass this information to ASIC (see the *ASIC Market Integrity Rules (ASX Market) Amendment 2012 (No. 3)* and the *ASIC Market Integrity Rules (Chi-X Australia Market) Amendment 2012 (No. 3)*).

The enhanced regulatory data reflects a range of steps that are important for maintaining market confidence and for setting future market structure policies. These amendments bring Australia more in line with various initiatives and arrangements overseas, while minimising the impact on Participants (i.e. requiring the provision of information that Participants already routinely capture about their clients).

The purpose of the amendments made by the Instrument is described in more detail in the Regulation Impact Statement (*Australian equity market: Further proposals*).

Details of the Instrument are contained in Attachment A.

3. Consultation

ASIC has consulted on its package of amendments to the Instrument through:

- (a) ASIC Consultation Paper 145 *Australian equity market structure: Proposals* (CP 145), released on 4 November 2010, proposed rules for the introduction of competition between exchange markets as well as rules to keep pace with technological developments and global financial market trends. The rules necessary for the introduction of competition were made in May 2011. We deferred rule making on the wider market structure proposals to facilitate the early introduction of competition and to provide more time to consider some of the proposals;
- (b) ASIC Consultation Paper 168 *Australian equity market structure: Further proposals* (CP 168) released on 20 October 2011, built on the wider market structure proposals in CP145;
- (c) ASIC Consultation Paper 179 *Australian market structure: Draft market integrity rules and guidance* (CP 179) sought feedback on proposed rules and guidance refined to take into account feedback from CP 168; and

- (d) Meetings with stakeholders throughout the consultation process and information sessions for members of the Australian Financial Markets Association (AFMA), the Financial Services Council (FSC) and the Stockbrokers Association of Australia (SAA).

4. Penalties

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 Competition Rule is the penalty amount for that Competition Rule.

5. Commencement of the Instrument

The Instrument will commence in accordance with paragraph 3 of the Instrument.

6. Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is included in this Explanatory Statement at Attachment B.

7. Regulation Impact Statement

A Regulation Impact Statement (*Australian equity market: Further proposals*) has been prepared in relation to the Instrument.

ATTACHMENT A

Capitalised terms used in this Attachment (e.g. “Participant”) are defined in the Competition Rules.

Paragraph 1 – Enabling Legislation

This paragraph provides that the Instrument is made, with the written consent of the Minister, under subsection 798G(1) of the *Corporations Act 2001*.

Paragraph 2 – Title

This paragraph provides that the title of the Instrument is *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2012 (No. 1)*.

Paragraph 3 – Commencement

This paragraph sets out the commencement dates for the items in Schedule 1 of the Instrument.

Paragraph 4 – Amendments

This paragraph provides that Schedule 1 amends the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*.

Schedule 1– Amendments

Items [1] and [2] Rule 1.1.3

Items [1] and [2] of Schedule 1 to the Instrument amend Rule 1.1.3 to insert a second note. The second note clarifies that the commencement dates in Rule 1.1.3 relate only to the provisions of the Competition Rules as originally made. Rule 1.1.3 does not deal with any later amendments to the Competition Rules.

Item [3] Paragraph 1.1.4(1)(c) and Item [4] Rule 1.4.3

Item [3] amends Rule 1.1.4 to omit paragraph 1.1.4(1)(c) and substitute it with a new paragraph 1.1.4(1)(c). This amendment reflects that the scope of the Competition Rules is expanded to include the activities or conduct of persons in relation to all Financial Products (not just Equity Market Products). However, Chapters, Parts or Rules may apply to specified Financial Products (for example, in Chapter 2, ASX SPI 200 Futures and Equity Market Products, and in Chapter 5A, products quoted on ASX other than Options Market Contracts or Futures Market Contracts).

Item [4] amends the opening words of Rule 1.4.3 to reflect that some defined terms may have a narrower meaning within a Chapter, Part or Rule (for example, “Order”. in Chapter 3 (Best Execution) means an Order for Equity Market Products).

Item [5] Rule 1.4.3, after definition of “Act”

Item [5] inserts a new definition of “AFSL”. The defined term “AFSL” is used in new Rule 5A.2.3, in relation to Regulatory Data that must be provided to the Market Operator by a Participant where the client of the Participant is an AFSL holder.

Item [6] Rule 1.4.3, definition of “Anomalous Order”

Item [6] omits the existing definition of “Anomalous Order” in Rule 1.4.3 and substitutes a new definition of “Anomalous Order”. The new definition clarifies that a Market Operator’s controls under Rule 2.1.3 are only intended to prevent a Buy Order for which the price is above the maximum Anomalous Order Threshold, and a Sell Order for which the price is below the minimum Anomalous Order Threshold, from entering an Order Book. The new definition also reflects that Chapter 2 of the Competition Rules (Extreme price movements) will now apply to ASX SPI 200 Futures in addition to Equity Market Products.

Item [7] Rule 1.4.3, definition of “Anomalous Order Threshold”

Item [7] amends the existing definition of “Anomalous Order Threshold” to reflect that Chapter 2 of the Competition Rules (Extreme price movements) now applies to ASX SPI 200 Futures in addition to Equity Market Products.

Item [8] Rule 1.4.3, after definition of “Anomalous Order Threshold”

Item [8] inserts a new definition of “AOP Client”. The defined term “AOP Client” is used in new Rule 5A.2.3 in relation to Regulatory Data that must be provided to the Market Operator by a Participant where the client of the Participant is an AOP Client.

Item [9] Rule 1.4.3, after definition of “ASX”

Item [9] inserts new definitions of “ASX 24”, “ASX 24 Market”, “ASX Market”, “ASX SPI 200 Future”, “ASX Trade24”, “ASX TradeMatch” and “Auction”.

The defined terms “ASX 24”, “ASX 24 Market”, “ASX SPI 200 Future”, “ASX Trade 24” and “Auction” reflect that the Chapter 2 of the Competition Rules (Extreme price movements) will now apply to the ASX 24 Market and ASX SPI 200 Futures admitted to quotation on the ASX 24 Market, in addition to Equity Market Products.

The defined terms “ASX Market” and “ASX TradeMatch” are also introduced to allow ASIC to specify in a number of definitions and Rules the Market or Order Book to which the definition or Rule applies.

Items [10] and [11] Rule 1.4.3, definitions of “Best Available Bid” and “Best Available Offer”

Items [10] and [11] amend the definitions of “Best Available Bid” and “Best Available Offer” to refer to a Transaction “in Equity Market Products”. This amendment clarifies that, despite the expanded scope of the Competition Rules, these definitions only apply to Transactions in Equity Market Products.

Items [12] and [13] Rule 1.4.3, definition of “Bid”

Items [12] and [13] amend the definition of “Bid” to refer to a price or quantity of a Financial Product (rather than just an Equity Market Product), to reflect that some definitions and Rules in which “Bid” is used may now apply to other Financial Products (e.g. ASX SPI 200 Futures).

Item [14] Rule 1.4.3, definition of “Buy Order”

Item [14] amends the definition of “Buy Order” to extend to Financial Products other than Equity Market Products, to reflect that some definitions or Rules in which “Buy Order” is used may now apply to other Financial Products (e.g. ASX SPI 200 Futures).

Item [15] Rule 1.4.3, after definition of “Employee”

Item [15] inserts new definitions of “Equity Market”, “Equity Market Operator” and “Equity Market Participant”, to allow ASIC to specify in Chapters, Parts or Rules the Markets, Market Operators and Participants to which the Chapter, Part or Rule applies.

Items [16], [17] and [18] Rule 1.4.3, definition of “Equity Market Product”

Items [16] and [17] amend the definition of “Equity Market Product” to omit “financial product” and substitute “Financial Product”, to reflect that “Financial Product” is now an expressly defined term (clarifying the existing position that “financial product” when used in the Competition Rules has the meaning given by section 761A of the Act).

Item [18] further amends the definition of “Equity Market Product” to omit “the Listing Market” and substitute “the ASX Market”. This amendment clarifies the existing position that “the Listing Market” in this context means the ASX Market.

Item [19] Rule 1.4.3, after definition of “Equity Market Product”

Item [19] inserts a new definition of “ETR Event”. The defined term “ETR Event” is now used in Chapter 2 of the Competition Rules (Extreme price movements) (see items [50] to [102] below).

Item [20] Rule 1.4.3, definition of “Exchange-Traded Fund Special Trade”

Item [20] amends the definition of “Exchange-Trade Fund Special Trade” to clarify the existing position that “the Listing Market” in this context means ASX.

Item [21] Rule 1.4.3, definition of “Extreme Cancellation Range”

Item [21] omits the existing definition of “Extreme Cancellation Range” and inserts a new definition of “Extreme Trade Range”. The defined term “Extreme Trade Range” is now used in Chapter 2 of the Competition Rules (Extreme price movements) in place of “Extreme Cancellation Range” (see items [50] to [102] below).

Item [22] Rule 1.4.3, after definition of “Financial Market”

Item [22] inserts a new definition of “Financial Product”. This definition clarifies the existing position that “financial product” when used in the Competition Rules has the meaning given by section 761A of the Act. “Financial Product” is now used in a number of Rules, where the scope is expanded to include Financial Products that are not Equity Market Products (e.g. ASX SPI 200 Futures).

Item [23] Rule 1.4.3, after definition of “Funds Manager”

Item [23] inserts new definitions of “Futures Market”, “Futures Market Contract”, “Futures Market Operator” and “Futures Series”.

The defined terms “Futures Market” and “Futures Market Operator” reflect that the controls in Chapter 2 of the Competition Rules (Extreme price movements) will now apply to any Market on which offers to acquire or dispose of ASX SPI 200 Futures are made or accepted. At the time of making the Instrument,

the only Market on which offers to acquire or dispose of ASX SPI 200 Futures are made or accepted, is ASX 24.

The defined terms “Futures Market Contract” and “Futures Series” are used in new Chapter 5A (Regulatory Data) (see item [136] below). New Chapter 5A applies to Orders and Transactions in all Financial Products other than Futures Market Contracts and Options Market Contracts.

Item [24] Rule 1.4.3, after definition of “In Writing”

Item [24] inserts a new definition of “Invalid”. The defined term “Invalid” is now used in Chapter 2 of the Competition Rules (Extreme price movements) (see items [50] to [102] below).

Items [25] and [26] Rule 1.4.3, definitions of “Listing Market” and “Listing Market Operator”

Items [25] and [26] omit the definitions of “Listing Market” and “Listing Market Operator”. The terms “ASX”, “ASX Market” or “ASX TradeMatch” will instead be used throughout the Competition Rules, to clarify the existing position that “the Listing Market” or “Listing Market Operator” in the context of those Rules means “ASX” or the “ASX Market”, and to allow ASIC to specify in a number of Rules the Market or Order Book to which the Rules apply.

Item [27] Rule 1.4.3, definition of “Market”

Item [27] amends the definition of “Market” to omit “Equity Market Products” and substitute “Financial Products”. This amendment reflects that the scope of the Competition Rules has been expanded to include the activities or conduct of Markets other than Equity Markets (e.g. Futures Markets).

Item [28] Rule 1.4.3, definition of “Normal Trading Hours”

Item [28] amends the definition of “Normal Trading Hours” to omit “Equity Market Products” and substitute “Financial Products”. This amendment reflects that the scope of the Competition Rules has been expanded to include the activities or conduct of persons in relation to Financial Products other than Equity Market Products (e.g. ASX SPI 200 Futures) and Markets other than Equity Markets (e.g. Futures Markets).

Items [29] and [30] Rule 1.4.3, definition of “Offer”

Items [29] and [30] amends the definition of “Offer” to refer to a price or quantity of a Financial Product (rather than just an Equity Market Product), to reflect that some definitions and Rules in which “Offer” is used may now apply to other Financial Products (e.g. ASX SPI 200 Futures).

Item [31] Rule 1.4.3, after definition of “Off-Market Bid”

Item [31] inserts a new definition of “Opening Transaction”.

The defined term “Opening Transaction” is now used in Chapter 2 of the Competition Rules (Extreme price movements) (see items [50] to [102] below).

Item [32] Rule 1.4.3, after definition of “Operating Rules”

Item [32] inserts new definitions of “Options Market Contract” and “Options Series”.

The defined terms “Options Market Contract” and “Options Series” are used in new Chapter 5A (Regulatory Data). New Chapter 5A applies to Orders and Transactions in all Financial Products other than Futures Market Contracts and Options Market Contracts.

Item [33] Rule 1.4.3, definition of “Order”

Item [33] amends the definition of “Order” to extend to Financial Products other than Equity Market Products, to reflect that some definitions or Rules in which “Order” is used may now apply to other Financial Products (e.g. ASX SPI 200 Futures).

Item [34] Rule 1.4.3, definition of “Pre-Trading Hours Period”

Item [34] amends the definition of “Pre-Trading Hours Period” to omit “the Listing Market” (wherever occurring) and substitute “ASX TradeMatch”.

Since the Competition Rules were made, ASX now has more than one Order Book on which Equity Market Products are traded. This amendment clarifies that “Pre-Trading Hours Period” in the context of the Rules means the period on a Trading Day from three hours before the start of Trading Hours for ASX TradeMatch to 15 minutes before the start of Trading Hours for ASX TradeMatch (ASX’s central order book for trading Equity Market Products).

Item [35] Rule 1.4.3, definition of “Recognised Stock Exchange”

Item [35] amends the definition of “Recognised Stock Exchange” to omit “the Listing Market” and substitute “ASX”. The terms “ASX” or “ASX Market” will instead be used throughout the Rules, to clarify the existing position that “the Listing Market” in the context of that definition means “ASX”.

Items [36], [37] and [38] Rule 1.4.3, definitions of “Reference Bid”, “Reference Mid-Point” and “Reference Offer”

Items [36], [37] and [38] omit the definitions of “Reference Bid”, “Reference Mid-Point” and “Reference Offer”. These defined terms have been omitted because Rule 4.2.3, in which they were previously used, will be substituted with a new Rule (see item [118] below).

These amendments commence on the day that is 6 months after the day on which the Instrument is registered under the *Legislative Instruments Act 2003*.

Item [39] Rule 1.4.3, definition of “Reference Price”

Item [39] amends the definition of “Reference Price” to omit the words “has the meaning given by subrule 2.2.2(4)” and substitutes “means a price determined in accordance with Rule 2.2.2”. This amendment clarifies that Rule 2.2.2 does not define “Reference Price” but sets out how the “Reference Price” is determined from time to time.

Item [40] Rule 1.4.3, after definition of “Reference Price”

Item [40] inserts a new definition of “Regulatory Data”. The defined term “Regulatory Data” is used in new Chapter 5A of the Competition Rules (Regulatory Data) (see item [136] below).

Item [41] Rule 1.4.3, after definition of “Reporting Participant”

Item [41] inserts a new definition of “Responsible Market Operator”. The defined term “Responsible Market Operator” is now used in Chapter 2 of the Competition Rules (Extreme price movements) (see items [50] to [102] below).

Item [42] Rule 1.4.3, definition of “Sell Order”

Item [42] amends the definition of “Sell Order” to extend to Financial Products other than Equity Market Products, to reflect that some definitions or Rules in which “Sell Order” is used may now apply to other Financial Products (e.g. ASX SPI 200 Futures).

Item [43] Rule 1.4.3, definition of “Tick Size”

Item [43] omits the definition of “Tick Size” and substitutes it with a new definition of “Tick Size”. The new definition provides that “Tick Size” means:

- (a) in relation to an Equity Market Product, the minimum increment by which the price for the Equity Market Product may increase or decrease, in accordance with Rule 6.4.1; and
- (b) in relation to ASX SPI 200 Futures, one index point.

The new definition is required because the term “Tick Size” is now used in Chapter 2 of the Competition Rules (Extreme price movements) in relation to ASX SPI 200 Futures, as well as in relation to Equity Market Products.

Item [44] Rule 1.4.3, after definition of “Tick Size”

Item [44] inserts new definitions of “Tier 1 Equity Market Product”, “Tier 2 Equity Market Product” and “Tier 3 Equity Market Product”.

These defined terms are used in Chapter 4 (Pre-trade transparency), in the revised definition of “Block Trade” (see item [115] below).

This amendment commences on the day that is 6 months after the day on which the Instrument is registered under the *Legislative Instruments Act 2003*.

Item [45] Rule 1.4.3, after definition of “Total Consideration”

Item [45] inserts a new definition of “Trade Report”. The defined term “Trade Report” is used in new Chapter 5A (Regulatory Data) (see item [136] below).

Item [46] Rule 1.4.3, definition of “Trade At or Within the Spread”

Item [46] omits the definition of “Trade At or Within the Spread” and substitutes it with a definition of “Trade with Price Improvement”. The defined term “Trade with Price Improvement” will now be used in Chapter 4 (Pre-trade transparency) in place of “Trade At or Within the Spread” (see items [110], [112] and [118] below).

This amendment commences on the day that is 6 months after the day on which the Instrument is registered under the *Legislative Instruments Act 2003*.

Item [47] Rule 1.4.3, definition of “Trading Day”

Item [47] amends the definition of “Trading Day” to omit “Equity Market Products” and substitute “Financial Products”. This amendment reflects that the scope of the Rules has been expanded to include the activities or conduct of persons in relation to Financial Products other than Equity Market Products (e.g. ASX SPI 200 Futures) and Markets other than Equity Markets (e.g. Futures Markets).

Item [48] Rule 1.4.3, after definition of “Trading Messages”

Item [48] inserts new definitions of “Trading Pause” and “Trading Reset”.

These defined terms are used in Chapter 2 of the Competition Rules (Extreme price movements) (see items [50] to [102] below).

Item [49] Rule 1.4.3, definition of “Transaction”

Item [49] amends the definition of “Transaction” to omit “an Equity Market Product” and substitute “a Financial Product”. This amendment reflects that the scope of the Rules has been expanded to include the activities or conduct persons in relation to Financial Products other than Equity Market Products (e.g. ASX SPI 200 Futures).

Item [50] Before Part 2.1

Item [50] inserts into Chapter 2 (Extreme price movements), before Part 2.1, a new Part 2.1A.

Subrule 2.1A.1(1) provides that Chapter 2 of the Competition Rules applies to Equity Market Operators and, from the day that is 18 months after the day on which Rule 2.1A.1 commences, Futures Market Operators. Subrule 2.1A.1(2) provides, in Chapter 2 of the Rules, “Relevant Products” means Equity Market Products and ASX SPI 200 Futures.

The Rules will now require ASX 24 to have anomalous order entry controls for the ASX SPI 200 Future and an automated limit up–limit down volatility control that prevents trades from occurring in the ASX SPI 200 Future outside a specified price band when there is a significant price movement over a short period of time. At the time of making the Instrument, there are no other Futures Market Operators.

Items [51], [52] and [54] to [57] Rule 2.1.1

Items [51], [52] and [54] to [57] amend Rule 2.1.1 to omit references to “Equity Market Products” and substitute references to “Relevant Products”. These amendments reflect that Chapter 2 of the Competition Rules (Extreme price movements) now applies to ASX SPI 200 Futures, in addition to Equity Market Products.

Item [53] Subrule 2.1.1(2)

Item [53] amends subrule 2.1.1(2) to omit “45” and substitute “21”. This amendment reduces the minimum period that a Market Operator must wait before adopting an Anomalous Order Threshold for a Relevant Product, after notifying ASIC of the Anomalous Order Threshold. The period is reduced from 45 days to 21 days.

Item [58] Paragraph 2.1.1(5)(b)

Item [58] omits paragraph 2.1.1(5)(b) and substitutes a new paragraph 2.1.1(5)(b).

New paragraph 2.1.1(5)(b) provides that, in determining an Anomalous Order Threshold for a Relevant Product, a Market Operator must take into account the Tick Size (if the Relevant Product is an Equity Market Product) or the relevant index multiplier (if the Relevant Product is an ASX SPI 200 Future).

This amendment reflects that the requirement to have Anomalous Order Thresholds now applies to ASX SPI 200 Futures, and that “relevant index multiplier” is a more relevant consideration than “Tick Size” in determining an appropriate Anomalous Order Threshold for an ASX SPI 200 Future.

Item [59] Rule 2.1.3

Item [59] amends Rule 2.1.3 by inserting “each Order Book (**Relevant Order Book**) of” after “entering”. This amendment recognises that a Market Operator may have more than one Order Book for which the Market Operator must have in place the controls required by Rule 2.1.3.

Item [60] Rule 2.1.3

Item [60] amends Rule 2.1.3 to insert after “its Market”, “at all times on a Trading Day other than a time during which:

- (a) Orders are not matched and Transactions are not executed on a continuous basis on the Relevant Order Book; or
- (b) an auction is being conducted on the Relevant Order Book”.

This amendment clarifies that a Market Operator need only have in place the controls required by Rule 2.1.3 during continuous trading times for the Relevant Order Book and not at other times (e.g. during auctions and outside of normal trading hours) when order entry is not expected to lead to extreme price movements.

Item [61] Paragraph 2.1.4(1)(b)

Item [61] amends paragraph 2.1.4(1)(b) by omitting “Equity Market Product” and substituting “Relevant Product”.

This amendment reflects that the requirement to have Anomalous Order Thresholds now applies to ASX SPI 200 Futures.

Item [62] Paragraph 2.1.4(2)(a)

Item [62] amends paragraph 2.1.4(2)(a) by omitting “45” and substituting “21”.

Unamended, paragraph 2.1.4(2)(a) requires a Market Operator to notify ASIC in writing of arrangements in place for determining Anomalous Order Thresholds not less than 45 days before first adopting an Anomalous Order Threshold. This amendment reduces the period of 45 days to 21 days.

Item [63] Paragraph 2.1.4(2)(b)

Item [63] amends paragraph 2.1.4(2)(b) by inserting, after the words “paragraph (1)(a)”, the words “not less than two business days before adopting the revised arrangements for the purposes of paragraph (1)(a)”.

This amendment requires a Market Operator to notify ASIC in writing not less than two business days before adopting revised arrangements for determining Anomalous Order Thresholds. This ensures that ASIC has time to consider the potential impacts of the revisions before they are adopted.

Items [64] and [65] Subrule 2.1.4(4)

Item [64] amends subrule 2.1.4(4) by omitting “new” and substituting “revised.” This amendment changes the previous reference to “new arrangements” to “revised arrangements”, to align with the other language used in subrule 2.1.4(4) that the Market Operator “revise its arrangements”.

Item [65] further amends subrule 2.1.4(4) to insert, after “arrangements” (second occurring), “not less than two business days.” This amendment requires the Market Operator to notify ASIC of the revised arrangements not less than 2 business days before adopting the revised arrangements. This ensures that ASIC has time to consider the potential impacts of the revisions before they are adopted.

Item [66], [67] and [68] Part 2.2 (heading) and Rule 2.2.1 (heading)

Items [66] and [67] amend the headings to Part 2.2 and Rule 2.2.1 by omitting “Cancellation” and substituting “Trade”.

These amendments reflect that Market Operators will now be required to prevent Transactions in the defined “Extreme Trade Range”, rather than only cancelling Transactions in the “Extreme Cancellation Range” after they have occurred.

Item [68] further amends the heading to Rule 2.2.1 to omit “for Equity Market Products”. This amendment reflects that the requirement to prevent Transactions in the Extreme Trade Range now extends to Financial Products other than Equity Market Products (i.e. ASX SPI 200 Futures).

Item [69] Rule 2.2.1

Item [69] amends Rule 2.2.1 by omitting “The Extreme Cancellation Range” and substituting “(1) The Extreme Trade Range”.

This amendment reflects that Market Operators will now be required to prevent Transactions in the defined “Extreme Trade Range”, rather than only cancelling Transactions in the “Extreme Cancellation Range” after they have occurred. This amendment also accommodates new subrule 2.2.1(2) (see item [82] below) by making the existing Rule into subrule 2.2.1(1).

Item [70] Rule 2.2.1

Item [70] amends Rule 2.2.1 by omitting “or equal to”. This amendment simplifies the calculation of the Extreme Trade Range. A Market Operator will only be required to determine which prices are greater than, rather than equal to, the number of cents or the percentage set out in the table, away from the Reference Price for the Equity Market Product.

Item [71] Paragraph 2.2.1(a)

Item [71] amends paragraph 2.2.1(a) by omitting “Price Steps” and substituting “cents.” This amendment is required as the Extreme Trade Range for Reference Prices below \$2.00 will now be calculated by reference to an absolute dollar (cents) value, rather than “Price Steps”. This amendment clarifies and simplifies the calculation of the Extreme Trade Range.

Item [72] Rule 2.2.1 (table column 2)

Item [72] omits the second column of the table in Rule 2.2.1. This column is not required as Tick Sizes for the relevant price range are determined in accordance with Rule 6.4.1.

Item [72A] Rule 2.2.1 (heading to table column 3)

Item [72A] omits the heading to the third column of the table in Rule 2.2.1, and substitutes “Extreme Trade Range (cents or percentage away from Reference Price)”. This amendment reflects the change from “Extreme Cancellation Range” to “Extreme Trade Range” and that the Extreme Trade Range for Reference Prices below \$2.00 will now be calculated by reference to an absolute dollar (cents) value, rather than “Price Steps” (see item [73] below).

Items [73] to [81] Rule 2.2.1 (table column 3)

Items [73] – [81] amend the third column of the table in Rule 2.2.1 (table column 3) by making the following omissions and substitutions:

- omitting “ ≥ 21 Price Steps” and substituting “ >10 cents”;
- omitting “ ≥ 61 Price Steps” and substituting “ >30 cents”;
- omitting “ ≥ 101 Price Steps” and substituting “ >50 cents”;
- omitting “ $\geq 50.1\%$ ” and substituting “ $>50.0\%$ ”;
- omitting “ $\geq 40.1\%$ ” and substituting “ $>40.0\%$ ”;
- omitting “ $\geq 35.1\%$ ” and substituting “ $>35.0\%$ ”;
- omitting “ $\geq 30.1\%$ ” and substituting “ $>30.0\%$ ”;
- omitting “ $\geq 25.1\%$ ” and substituting “ $>25.0\%$ ”; and
- omitting “ $\geq 20.1\%$ ” and substituting “ $>20.0\%$ ”.

This amendment means that the Extreme Trade Range for Reference Prices below \$2.00 will now be calculated by reference to an absolute dollar (cents) value, rather than “Price Steps”. This amendment clarifies and simplifies the calculation of the Extreme Trade Range. This amendment also increases the variance in Equity Market Products priced in the 0.1-9.9c category from 2c to 10c, to address concern that the smaller variance did not accurately reflect genuine supply and demand, volatility and liquidity in this price bracket and unnecessarily caused frequent enforced cancellation of Transactions.

Item [82] Rule 2.2.1, after the table

Item [82] amends Rule 2.2.1, by inserting, after the table, a new subrule 2.2.1(2).

Subrule 2.2.1(2) provides that Extreme Trade Range for the ASX SPI 200 Future means all prices which are greater than 250 Price Steps away from the Reference Price for the ASX SPI 200 Future. This amendment reflects that the requirement to prevent Transactions in the Extreme Trade Range will apply to ASX SPI 200 Futures.

Item [83] Rule 2.2.2

Item [83] substitutes existing Rule 2.2.2 with new Rules 2.2.2, Rules 2.2.2A, 2.2.2B and 2.2.2C.

Extreme Trade Range Reference Price

New Rule 2.2.2 sets out how the Reference Price for the Extreme Trade Range is determined at the start of, and during, a Trading Day.

New subrule 2.2.2(1) requires the Responsible Market Operator (in the case of Equity Market Products, ASX, and in the case of the ASX SPI 200 Future, ASX 24) to determine a Reference Price for each Relevant Product after each Trading Reset. Trading Reset will be defined in Rule 1.4.3 as each of a Trading Pause, Trading Suspension, and the end of Trading Hours for the Relevant Product (see item [48]). Accordingly, the Responsible Market Operator must determine a new Reference Price at the start of each Trading Day, and after each interruption to trading in the Relevant Product during the Trading Day.

If there is an Auction in the Relevant Product (in the case of an Equity Market Product, an Auction on ASX TradeMatch and in the case of an ASX SPI 200 Future, an Auction on ASX 24 – see item [9] above) after a Trading Reset and before the Opening Transaction, the Responsible Market Operator must determine the Reference Price for Relevant Product as the price established by the Auction. “Opening Transaction” will be defined in Rule 1.4.3 to mean the first Transaction in a Relevant Product on an Order Book after a Trading Reset (see item [31] above).

If the Responsible Market Operator determines, acting reasonably, that the price established by the Auction is Invalid, or if the Auction does not establish a price, or if there is no Auction after the Trading Reset and before the Opening Transaction, the Market Operator must determine the Reference Price as the price of the Opening Transaction. If the price of the Opening Transaction is Invalid, the Reference Price is a price determined by the Responsible Market Operator, acting reasonably, to be not Invalid.

“Invalid” will be defined in Rule 1.4.3 to mean, in relation to a price established by an auction, or the price of a Transaction, that the price has resulted from an error, is materially different from the price of the last Transaction in the same Equity Market Product or ASX SPI 200 Future on the same Order Book and the difference in price is not, in the opinion of the Market Operator, readily attributable to an announcement that has been made to the Market or some other event, or the price has resulted from a Transaction that is otherwise required to be cancelled or amended by the Market Operator of the Market on which the Transaction is executed (see item [24] above).

New subrule 2.2.2(2) provides that the Responsible Market Operator must, each time it determines a new Reference Price for a Relevant Product in accordance with subrule 2.2.2(1), immediately use the Reference Price to determine the Extreme Trade Range for the Relevant Product in accordance with Rule 2.2.1, until the next Trading Reset for the Relevant Product.

The Responsible Market Operator must also notify ASIC, and, subject to subrules 6.2.1(1) and (6) (see item [138] below), the Market Operator of each other Market on which the Relevant Product is quoted, of the Reference Price for the Relevant Product. Under subrules 6.2.1(1) and (6), ASX (as the Responsible Market Operator for Equity Market Products) must provide notifications under paragraph 2.2.2(2)(b) to other Market Operators through an electronic data feed, and need only make a notification in relation to a particular Equity Market Product to a Market Operator that has notified ASX it will quote the Equity Market Product on its Market.

New subrule 2.2.2(3) provides that, subject to subrule 2.2.2(4), each Market Operator that receives a notification under paragraph 2.2.2(2)(b) of the Reference Price for a Relevant Product, must immediately use that Reference Price to determine the Extreme Trade Range for the Relevant Product in accordance with Rule 2.2.1, until the Market Operator next receives a notification from the Responsible Market Operator paragraph 2.2.2(2)(b) in relation to the Relevant Product.

New subrule 2.2.2(4) provides that a Market Operator that operates an Order Book other than ASX TradeMatch or ASX Trade24, must determine the Reference Price for each Relevant Product for that Order Book after each Trading Reset on that Order Book, at the price of the Opening Transaction. If the price of the Opening Transaction is Invalid (see item [24] above), the Reference Price for the other Order Book is a price determined by the Market Operator, acting reasonably, to be not Invalid. A Market Operator that operates an Order Book other than ASX TradeMatch or ASX Trade24 must only determine the Reference Price under subrule 2.2.2(4) until the Market Operator receives a notification of the new Reference Price for the Relevant Product from the Responsible Market Operator under paragraph 2.2.2(2)(b). This subrule accommodates a situation in which, for example, a Market such as Chi-X, or another ASX Order Book such as PureMatch opens for trading at the start of the Trading Day prior to ASX TradeMatch, or re-opens into continuous trading after a Trading Reset and before the new Reference Price is set by the ASX TradeMatch auction.

Extreme Trade Range Controls

New Rule 2.2.2A requires a Market Operator to have in place adequate controls to prevent a Transaction in a Relevant Product executing on an Order Book of its Market in the Extreme Trade Range for the Relevant Product, at all times during a Trading Day other than at a time during which Orders are not matched and Transactions are not executed on a continuous basis on the Relevant Order Book, or an auction is being conducted on the Relevant Order Book. These preventative controls replace the previous arrangements under which a Market Operator was required to cancel Transactions that occurred in the Extreme Trade Range.

Notification of ETR Events

New subrule 2.2.2B(1) requires a Market Operator to identify when an ETR Event occurs on its Market. An ETR event will be defined in Rule 1.4.3 as when a Market Operator receives:

- (a) a Buy Order for a Relevant Product for which the Bid price is both above the Reference Price and in the Extreme Trade Range for the Relevant Product; or
- (b) a Sell Order for a Relevant Product for which the Offer Price is both below the Reference Price and in the Extreme Trade Range for the Relevant Product,

that is not prevented from entering the Market by the controls the Market Operator has in place for complying with Rule 2.1.3 (see item [19] above).

An ETR Event will not be triggered by the rejection of an Anomalous Order.

Subrule 2.2.2B(2) provides that where a Market Operator (other than the Responsible Market Operator) identifies that an ETR Event has occurred on its Market, the Market Operator must immediately notify the Responsible Market Operator of the ETR Event, subject to subrule 6.2.1(1). Under subrule 6.2.1(1), a Market Operator must provide notifications under subrule 2.2.2B(2) to ASX (as the Responsible Market Operator for Equity Market Products) through an electronic data feed.

Subrule 2.2.2B(3) provides that where a technical problem (including a power outage) prevents a Market Operator from making a notification referred to in subrule 2.2.2B(2) immediately, the notification must be made to the Responsible Market Operator without delay by another appropriate means.

Requirement to impose Trading Pause

New subrule 2.2.2C(1) requires the Responsible Market Operator, when it identifies an ETR Event on its own Market, or receives a notification of an ETR Event from another Market Operator, to immediately impose a Trading Pause on the Relevant Product for a period of two minutes. The Responsible Market Operator must also notify ASIC and, subject to subrules 6.2.1(1) and (6), the Market Operator of each other Market on which the Relevant Product is quoted, that the Trading Pause has been imposed. Under subrule 2.2.2C(4), the Responsible Market Operator must also immediately notify ASIC and, subject to subrules 6.2.1(1) and (6), the Market Operator of each other Market on which the Relevant Product is quoted when it lifts or removes the Trading Pause imposed on the Relevant Product under subrule 2.2.2C(1). Under subrules 6.2.1(1) and (6), ASX (as the Responsible Market Operator for Equity Market Products) must provide notifications to other Market Operators under paragraph 2.2.2C(1)(d) and subrule 2.2.2C(4) through an electronic data feed, and need only make a notification in relation to a particular Equity Market Product to a Market Operator that has notified ASX it will quote the Equity Market Product on its Market.

Subrule 2.2.2C(2) requires a Market Operator that receives a notification under paragraph 2.2.2C(1)(d) that a Trading Pause has been imposed on a Relevant Product must immediately place the Relevant Product the subject of the notification into a Trading Pause on its own Market. Under subrule 2.2.2C(3), the same Market Operator may only lift or remove that Trading Pause after receives a notification under subrule 2.2.2C(4) from the Responsible Market Operator that the Trading Pause in the Relevant Product has been removed or lifted.

Subrule 2.2.2C(5) provides that where a technical problem (including a power outage) prevents the Responsible Market Operator from making a notification of the imposition, lifting or removal of a Trading Pause immediately, the notification must be made to ASIC and the Market Operator of each other Market on which the Relevant Product is quoted, without delay by another appropriate means.

Subrule 2.2.2C(6) requires the Responsible Market Operator to make publicly available information concerning:

- the fact that a Trading Pause will result from an ETR Event;
- the length of a Trading Pause resulting from an ETR Event (under paragraph 2.2.2C(1)(c), two minutes); and
- how the Responsible Market Operator will resume trading in the Relevant Product on its Market after a Trading Pause resulting from an ETR Event (for example, by way of Auction or straight into continuous trading).

Item [84] Rule 2.2.3 (heading)

Item [84] amends the heading to Rule 2.2.3 by omitting “Cancellation” and substituting “Trade”.

These amendments reflect that Market Operators will now be required to prevent Transactions in the defined “Extreme Trade Range”, rather than only cancelling Transactions in the “Extreme Cancellation Range” after they have occurred.

Item [85] Rule 2.2.3

Item [85] amends Rule 2.2.3 to omit “Cancellation” (wherever occurring) and substitute “Trade”. This amendment reflects that Market Operators will now be required to prevent Transactions in the defined “Extreme Trade Range”, rather than only cancelling Transactions in the “Extreme Cancellation Range” after they have occurred

While Market Operators are now required to have in place adequate controls to prevent Transactions in the Extreme Trade Range under new Rule 2.2.2A, the requirement to notify ASIC, other Market Operators and affected Participants of, and cancel Transactions in, the Extreme Trade Range is retained, in the event of a failure in these controls.

Items [86] to [88] Rule 2.2.3

Items [86] to [88] amend Rule 2.2.3 to replace references to “Equity Market Products” with references to “Relevant Products”. This amendment reflects that the requirement to notify of Transactions in the Extreme Trade Range now applies to ASX SPI 200 Futures, in addition to Equity Market Products.

Item [89] Rule 2.2.4 (heading)

Item [89] amends the heading to Rule 2.2.4 by omitting “Cancellation” and substituting “Trade.” This amendment reflects that Market Operators will now be required to prevent Transactions in the defined “Extreme Trade Range”, rather than only cancelling Transactions in the “Extreme Cancellation Range” after they have occurred.

Item [90] Subrule 2.2.4(1)

Item [90] amends Subrule 2.2.4(1) by omitting “Listing Market Operator” and substituting “Responsible Market Operator.” These amendments reflect that the requirement to have in place adequate arrangements for notifying ASIC and other Market Operators of Reference Prices now applies to ASX, in the case of Equity Market Products, and ASX 24, in the case of ASX SPI 200 Futures.

Item [91] Subrule 2.2.4(1)

Item [91] amends subrule 2.2.4(1) by inserting, after subrule 2.2.2(2), “, and the imposition and lifting or removal of a Trading Pause under paragraph 2.2.2C(1)(d) and subrule 2.2.2C(4).” These amendments reflect that the Responsible Market Operator has new obligations to notify other Market Operators of the imposition and lifting or removal of Trading Pauses in response to ETR Events, and must have in place adequate arrangements for complying with these obligations.

Item [92] Rule 2.2.4

Item [92] omits paragraph 2.2.4(2)(a) and substitutes it with a new paragraph 2.2.4(2)(a). New paragraph 2.2.4(2)(a) provides that a Market Operator must have in place adequate arrangements for identifying when an ETR Event occurs on its Market, in accordance with subrule 2.2.2B(1). This amendment reflects that Market Operators have a new obligation to identify ETR Events on their Markets, and must have in place adequate arrangements for complying with this obligation.

Item [93] Rule 2.2.4

Item [93] inserts a new paragraph 2.2.4(2)(ab). New paragraph 2.2.4(2)(ab) provides that a Market Operator must have in place adequate arrangements for notifying the Responsible Market Operator that an ETR Event has occurred on its Market, in accordance with subrule 2.2.2B(2), unless the Market Operator is the Responsible Market Operator.

This amendment reflects that Market Operators (other than the Responsible Market Operator) have a new obligation to notify the Responsible Market Operator for the Relevant Products of an ETR Event, and must have in place adequate arrangements for complying with this obligation.

Item [94] Paragraph 2.2.4(2)(b)

Item [94] amends paragraph 2.2.4(2)(b) by omitting “Cancellation” and substituting “Trade.” This amendment reflects that Market Operators will now be required to prevent Transactions in the defined “Extreme Trade Range”, rather than only cancelling Transactions in the “Extreme Cancellation Range” after they have occurred.

Item [95] Paragraph 2.2.4(2)(b)

Item [95] further amends paragraph 2.2.4(2)(b) by omitting the words “Rule 2.2.3” and substituting the words “paragraphs 2.2.3(a) and (b).” This amendment clarifies the specific paragraphs of Rule 2.2.3 that relate to notifying ASIC, other Market Operators and Relevant Participants once the Market Operator has become aware that a Transaction was executed on its Market in the Extreme Trade Range.

While Market Operators are now required to have in place adequate controls to prevent Transactions in the Extreme Trade Range under Rule 2.2.2A, the requirement to notify of, and cancel Transactions in the Extreme Trade Range is retained, in the event of a failure in these controls and a Market Operator must have in place adequate arrangements for complying with these requirements.

Item [96] Paragraph 2.2.4(2)(c)

Item [96] amends paragraph 2.2.4(2)(c) by omitting “Cancellation” and substituting “Trade.” This amendment reflects that Market Operators will now be required to prevent Transactions in the defined “Extreme Trade Range”, rather than only cancelling Transactions in the “Extreme Cancellation Range” after they have occurred.

Item [97] Paragraph 2.2.4(2)(c)

Item [97] further amends paragraph 2.2.4(2)(c) by omitting the words “Rule 2.2.3” and substituting the words “paragraph 2.2.3(c)” This amendment clarifies the specific paragraphs of Rule 2.2.3 that relate to making publicly available the price and time (or, where applicable, the range of prices and times, and total number) of Transactions executed in the Extreme Trade Range.

While Market Operators are now required to have in place adequate controls to prevent Transactions in the Extreme Trade Range under Rule 2.2.2A, the requirement to make available information about Transactions executed in the Extreme Trade Range in the event of a failure in these controls is retained and a Market Operator must have in place adequate arrangements for complying with these requirements.

Item [98] Subrule 2.3.1(1)

Item [93] amends subrule 2.3.1(1) by inserting, after “Transactions”, “in Relevant Products.” This amendment reflects that a Market Operator’s cancellation policies should apply to Equity Market Products and ASX SPI 200 Futures (where those products are quoted on the Market Operator’s Market), but are not required to apply to other Financial Products.

Item [99] Paragraph 2.3.1(2)(a)

Item [99] omits paragraph 2.3.1(2)(a) and substitutes a new paragraph 2.3.1(2)(a). New paragraph 2.3.1(2)(a) provides that a Market Operator's policies and procedures for the cancellation of Transactions in Relevant Products must include a policy that all Transactions executed on its Market within the Extreme Trade Range will be cancelled.

New paragraph 2.3.1(2)(a) is accompanied by a note which reminds the reader that under subrule 2.2.2B(1) and paragraph 2.2.4(2)(a), a Market Operator must identify when an ETR Event, including the execution of a Transaction in the Extreme Trade Range, occurs on its Market, and must have in place adequate arrangements for identifying when an ETR Event occurs on its Market. The requirement to have a cancellation policy that includes the cancellation of Transactions in the Extreme Trade Range is retained as a last resort.

Items [100], [101] and [102] Paragraphs 2.3.1(2)(b), (c) and (d)

Items [100], [101] and [102] amend paragraphs 2.3.1(2)(b), (c) and (d) by inserting "in Relevant Products" after "Transactions". These amendments recognise that a Market Operator is only required to have in place policies and procedures under Rule 2.3.1 in relation to Equity Market Products and ASX SPI 200 Futures (where those products are quoted on the Market Operator's Market) and not in relation to other Financial Products.

Item [103] Before Part 3.1

Item [103] inserts into Chapter 3 (Best execution), before Part 3.1, a new Part 3.1A.

New Rule 3.1A.1 provides that Chapter 3 of the Competition Rules applies to Equity Market Participants and Orders (including Client Orders) in relation to Equity Market Products. This new Rule recognises that while the scope of the Rules has been expanded, Chapter 3 continues to apply only to Equity Market Products.

Items [104], [105] and [106] Subrule 3.1.1(6)

Item [104] amends subrule 3.1.1(6) by omitting "31 October 2012" and substituting "1 March 2013".

Item [105] amends subrule 3.1.1(6) by omitting "the Listing Market" and substituting "ASX TradeMatch".

Item [106] amends subrule 3.1.1(6) by omitting "another Market" and substituting "another Order Book."

Subrule 3.1.1(6) provided for a 12 month transitional period whereby ASX participants could nominate to transmit orders only to ASX until 31 October 2012. This amendment extends this transitional period until 1 March 2013, as proposed in ASIC FAQ D2, and clarifies that ASX participants may nominate to only transmit orders to ASX's central Order Book for Equity Market Products, ASX TradeMatch, until that date.

Items [107] and [108] Subrule 3.2.3(2)

Item [107] amends subrule 3.2.3(2) by omitting the "Listing Market" and substituting "ASX TradeMatch".

Item [108] amends subrule 3.2.3(2) by omitting "31 October 2012" (wherever occurring) and substituting "1 March 2013."

These amendments complement the amendments to subrule 3.1.1(6) made by items [104], [105] and [106], by providing that a Participant who relies on subrule 3.1.1(6) to transmit Orders to ASX TradeMatch only for the period until 1 March 2013 must, prior to 1 March 2013, review its best execution policies and procedures for the purposes of ensuring those policies and procedures will continue to be adequate to ensure compliance with subrule 3.1.1(1) after that date, and disclose In Writing (i.e. in written or electronic form) to its clients any changes to its policies and procedures arising from that review.

Item [109] Before Part 4.1

Item [109] inserts into Chapter 4 (Pre-trade transparency), before Part 4.1, a new Part 4.1A.

New Rule 4.1A.1 provides that Chapter 4 of the Competition Rules applies to Equity Market Operators, Equity Market Participants, and Orders and Transactions in Equity Market Products. This new Rule recognises that while the scope of the Rules has been expanded, Chapter 4 continues to apply only to activities or conduct in relation to Equity Markets and Equity Market Products.

Item [110] Paragraph 4.1.1(2)(c)

Item [110] amends paragraph 4.1.1(2)(c) to omit “Trades At or Within the Spread” and substitute “Trade with Price Improvement”. This amendment reflects that the existing pre-trade transparency exception for “Trades At or Within the Spread” will be replaced with an exception for “a Trade with Price Improvement” (see item [118] below).

This amendment commences on the day that is 6 months after the day on which instrument is registered under the *Legislative Instruments Act 2003*.

Item [111] After subrule 4.1.1(2)

Item [111] inserts, after subrule 4.1.1(2), a new subrule 4.1.1(3) and a note.

New subrule 4.1.1(3) provides that a Participant that enters into a Transaction in reliance on a pre-trade transparency exception in subrule 4.1.1(2) must keep, for a period of seven years from the date of the Transaction, records that enable the Participant to demonstrate that the relevant Transaction met the criteria for the relevant exception. Subrule 4.1.1(3) specifies that a Participant that executes a Transaction in reliance on the exception in paragraph (2)(c) for a Trade with Price Improvement, must keep a record of the Best Available Bid and Best Available Offer, if applicable, at the time the Transaction was executed.

New subrule 4.1.1(3) is accompanied by a note which reminds the reader that the exception in paragraph 4.1.1(2)(c) for a Trade At or Within the Spread is replaced with an exception for a Trade with Price Improvement from the day that is 6 months after the day on which subrule 4.1.1(3) commences. After that time the Best Available Bid and Best Available Offer will be applicable in all cases in relation to a Transaction executed in reliance on the exception in paragraph 4.1.1(2)(c) and a record of the Best Available Bid and Best Available Offer must be made.

Item [112] Paragraph 4.1.2(2)(c)

Item [112] amends paragraph 4.1.2(2)(c) to omit “Trades At or Within the Spread” and substitute “Trade with Price Improvement”. This amendment reflects that the existing pre-trade transparency exception for

“Trades At or Within the Spread” will be replaced with an exception for “a Trade with Price Improvement” (see item [118] below).

This amendment commences on the day that is 6 months after the day on which instrument is registered under the *Legislative Instruments Act 2003*.

Item [113] After Rule 4.1.7

Item [113] inserts, after Rule 4.1.7, a new Rule 4.1.8. New Rule 4.1.8 provides, for the avoidance of doubt, that Part 4.1 (Orders must be Pre-Trade Transparent) does not apply to Transactions arising from:

- the terms of an Equity Market Product, including a redemption;
- primary market actions, including an issue or allotment of, or an application or subscription for, an Equity Market Product;
- acceptance of an offer under an Off-Market Bid; and
- the delivery of an Equity Market Product under a Securities Lending Arrangement.

This amendment clarifies that certain Transactions are exempt from the pre-trade transparency requirements of Chapter 4. Those Transactions were previously exempt under ASIC Class Rule Waiver [11/1103].

Item [114] Paragraph 4.2.1(1)(a)

Item [114] amends paragraph 4.2.1(1)(a) to insert, before “the Participant”, “if the Transaction is entered into other than by matching of Orders on an Order Book”. Rule 4.2.1 defines a “Block Trade” for the purposes of the pre-trade transparency exceptions in Rules 4.1.1(2)(a) and 4.1.2(2)(a).

Prior to this amendment the pre-trade transparency exception for Block Trades applied only to crossings (whether on an Order Book, or off-Order Book). This amendment differentiates between the Block Trade criteria for on-Order Book and off-Order Book Transactions. Off-Order Book Transactions must be crossings to qualify as a Block Trade. On-Order Book Transactions need not be crossings to qualify as a Block Trade. This amendment is consistent with terms of existing ASIC Waiver [11/1111] and Class Rule Waiver [11/1103], which provides for a pre-trade transparency exception for ASX’s VolumeMatch Order Book.

Item [115] Paragraph 4.2.1(1)(c)

Item [115] omits existing paragraph 4.2.1(1)(c) and substitutes it with a new paragraph 4.2.1(1)(c). New paragraph 4.2.1(1)(c) provides that a Block Trade means a Transaction where, among other things, the consideration for Transaction is

- \$1,000,000 or more for Tier 1 Equity Market Products;
- \$500,000 or more for Tier 2 Equity Market Products; and
- \$200,000 or more for Tier 3 Equity Market Products.

This amendment replaces the previous single Block Trade threshold of \$1,000,000 for all Equity Market Products with a tiered threshold that better reflects trading interest in Equity Market Products.

This amendment commences on the day that is 6 months after the day on which instrument is registered under the *Legislative Instruments Act 2003*.

Item [116] After subrule 4.2.1(2)

Item [116] inserts, after existing subrule 4.2.1(2), new subrules 4.2.1(3) and (4). Subrule 4.2.1(3) defines “Tier 1” and “Tier 2” Equity Market Products as those Equity Market Products notified by ASIC in accordance with subrule 4.2.1(4), and “Tier 3” Equity Market Products as all other Equity Market Products. Subrule 4.2.1(4) allows ASIC to allocate Equity Market Products to each Tier and publish a notice on its website of which Equity Market Products have been allocated to each Tier. A notification given by ASIC under subrule 4.2.1(4) takes effect from 20 business days following the date of the notification.

This amendment commences on the day that is 6 months after the day on which instrument is registered under the *Legislative Instruments Act 2003*.

Item [117] Paragraph 4.2.2(1)(a)

Item [117] amends paragraph 4.2.2(1)(a) to insert, before “the Participant”, “if the Transaction is entered into other than by matching of Orders on an Order Book,”.

Rule 4.2.2 defines a “Large Portfolio Trade” for the purposes of the pre-trade transparency exceptions in Rules 4.1.1(2)(b) and 4.1.2(2)(b). Prior to this amendment, the pre-trade transparency exception for Large Portfolio Trades applied only to crossings – that is, Transactions in which the Participant deals as Principal with a client or on behalf of both the buying and selling client. As for the amendment at item [114] above, by limiting the requirement for a Transaction to be a crossing to off-Order Book Transactions, the amendment effectively extends the Large Portfolio Trade exception to on-Order Book Transactions between Participants.

Item [118] Rule 4.2.3

Item [118] omits existing Rule 4.2.3 and substitutes it with a new Rule 4.2.3. New Rule 4.2.3 defines a “Trade with Price Improvement” for the purposes of the pre-trade transparency exceptions in Rules 4.1.1(2)(c) and 4.1.2(2)(c), and provides that a Transaction is a Trade with Price Improvement where:

- the Transaction is executed at a price per Equity Market Product which is either higher than the Best Available Bid and lower than the Best Available Offer by one or more Price Steps, or at the Best Mid-Point; or
- if the Transaction is entered into other than by matching of Orders on an Order Book, the Participant acts either on behalf of both buying and selling clients to that Transaction on behalf of a buying or selling client on one side of that Transaction and as Principal on the other side.

Subrule 4.2.3(2) provides that for the purposes of Rule 4.2.3, the Best Mid-Point is not limited to standard Price Steps for the Equity Market Product.

This amendment reflects that the previous pre-trade transparency exception for “Trades At or Within the Spread” has been replaced with an exception for a “Trade with Price Improvement”. This new exception requires that generally, off-Order Book Transactions other than Block Trades and Large Portfolio Trades (or on-Order Book Hidden Orders) must be executed with price improvement of at least one Price Step

above the Best Available Bid and below the Best Available Offer, or at the Best Mid-Point (i.e. Best Available Bid + Best Available Offer / 2).

This amendment commences on the day that is 6 months after the day on which instrument is registered under the *Legislative Instruments Act 2003*.

Item [119] Before Part 5.1

Item [119] inserts into Chapter 5 (Post-trade transparency), before Part 5.1, a new Part 5.1A.

New Rule 5.1A.1 provides that Chapter 5 of the Competition Rules applies to Equity Market Operators, Equity Market Participants, and Orders and Transactions in Equity Market Products. This new Rule recognises that while the scope of the Rules has been expanded, Chapter 5 continues to apply only to activities or conduct in relation to Equity Markets and Equity Market Products.

Item [120] Subrule 5.1.1(1)

Item [120] amends subrule 5.1.1(1) to correct a typographical error in the existing Rule.

Item [121] After subrule 5.1.1(4)

Item [121] inserts, after subrule 5.1.1(4), new subrules 5.1.1(4A) and (4B).

New subrule 5.1.1(4A) provides that, without limiting subrule 5.1.1(4) (the requirement to ensure Post-Trade Information is complete, accurate and up-to-date), a Reporting Participant must have in place systems and controls to ensure that each Transaction it reports under subrule 5.1.1(2) and (3) meets all of the criteria for:

- the exception in subrule 4.1.1(2) (e.g. Block Trade, Trade At or Within the Spread) relied upon by the Reporting Participant to enter into the Transaction other than in accordance with subrule 4.1.1(1); and
- the exception in paragraph 5.1.1(2)(b) (for Large Principal Transactions and facilitated Large Portfolio Trades), if the Reporting Participant has relied upon that exception to report the Transaction other than in accordance with the times set out in paragraph 5.1.1(2)(a) (i.e. on a delayed basis).

New subrule 5.1.1(4B) provides that a Reporting Participant that is notified by a Market Operator under paragraph 5.1.4A(3)(b) in relation to a Transaction it has reported (i.e. that the Market Operator will not accept the report of the Transaction because it does not meet some or all of the criteria set out in the table in subrule 5.1.4A(2)), must immediately amend or cancel the Transaction or take other appropriate measures in relation to the Transaction, having regard to the Reporting Participant's obligations under Rule 5.1.1 and Rule 4.1.1.

Items [122] and [123] Paragraphs 5.1.2(2)(a), (b) and (c)

Item [122] amends paragraph 5.1.2(2)(a) by inserting, after “;”, “or”.

Item [123] amends paragraphs 5.1.2(2)(b) and (c) (the definition of “Executing Participant”) by omitting the paragraphs, and inserting a new paragraph 5.1.2(2)(b) that provides:

“(b) if both Participants satisfy paragraph (a) (for example, Participants that manually negotiate a Transaction):

- (i) the Participant that is the seller, or is acting on behalf of the seller; or
- (ii) as otherwise agreed between the Participants.”

This amendment reformats existing paragraphs 5.1.2(2)(b) and (c) to clarify that the option of determining the Executing Participant by agreement between the parties is only available if both Participants satisfy paragraph (a).

Item [123A] Subrule 5.1.2(3)

Item [123A] amends subrule 5.1.2(3) by omitting the words “paragraph (2)(c)” and substituting the words “subparagraph (2)(b)(ii)”. The amendment is required as a consequence of the amendment effected by Item [123].

Item [124] After Rule 5.1.4

Item [124] inserts, after existing Rule 5.1.4, a new Rule 5.1.4A.

New subrule 5.1.4A(1) provides that, without limiting subrule 5.1.4(2) (the requirement to ensure Post-Trade Information is complete, accurate and up-to-date), a Market Operator that receives a report of Post-Trade Information for a Transaction from a Reporting Participant under Rule 5.1.1 must have in place arrangements to determine whether the Transaction as reported meets the criteria for:

- the exception in subrule 4.1.1(2) relied upon by the Reporting Participant to enter into the Transaction other than in accordance with subrule 4.1.1(1) (i.e. other than on a pre-trade transparent basis); and
- where applicable, the exception in paragraph 5.1.1(2)(b) (for Large Principal Transactions and facilitated Large Portfolio Trades) relied upon by the Reporting Participant to report the Transaction other than in accordance with the times set out in paragraph 5.1.1(2)(a) (i.e. on a delayed basis).

New subrule 5.1.4A(2) provides that, without limiting subrule 5.1.4A(1), the Market Operator must have in place arrangements that enable the Market Operator to determine that the applicable criteria set out in column 3 of the Table in subrule 5.1.4A(2) are met in relation to each Transaction of the kind set out in column 1, as follows:

- for all applicable criteria in relation to a Transaction, other than the criteria in items 3, 5 or 12, before accepting a report of Post-Trade Information for the Transaction; and
- for the applicable criteria in items 3, 5 or 12, as soon as practicable after the report of Post-Trade Information for the Transaction is received, and by no later than the end of the same Trading Day.

The Table in subrule 5.1.4A(2) sets out specific criteria to be validated against specific Transaction types (i.e. Block Trades, Large Portfolio Trades, a Trade At or Within the Spread or a Trade with Price Improvement, Permitted Trades During the Post-Trading Hours Period, Permitted Trades During the Pre-Trading Hours Period, Out of Hours Trades and Large Principal Transactions).

New subrule 5.1.4A(3) provides that where a Market Operator determines under Rule 5.1.4A that a Transaction reported to it under Rule 5.1.1 does not meet one or more of the applicable criteria set out in the Table in subrule 5.1.4A(2), other than the criteria in item 3, 5 or 12, the Market Operator:

- must not accept the report of Post-Trade Information for the Transaction;
- must notify the Reporting Participant that the Market Operator will not accept the report of Post-Trade Information for the Transaction; and
- must not make available Post-Trade Information for the Transaction under Rule 5.1.4.

Subrule 5.1.4A(4) provides that where a Market Operator determines under Rule 5.1.4A that a Transaction reported to it under Rule 5.1.1 does not meet one or more of the applicable criteria in items 3, 5 or 12 of the Table in subrule 5.1.4A(2), the Market Operator must take steps to cancel the Transaction or take other appropriate measures in relation to the Transaction, having regard to the Market Operator's obligations under Rule 5.1.4A and Rule 5.1.4.

Paragraph 5.1.4A(2)(b) and subrule 5.1.4A(4) recognise that it may be difficult for a Market Operator to validate a facilitated Large Portfolio Trade or Large Principal Transaction against the criteria in items 3, 5, and 12 before accepting a report of Post-Trade Information for the Transaction (i.e. in real-time). The Market Operator must validate relevant Transactions against the criteria as soon as possible and by no later than the end of the same Trading Day.

Items [125] to [131] Rule 5.1.6

Items [125] to [130] amend the Table in Rule 5.1.6 as follows:

- item 2 - by omitting “conducted;”
- item 3 - after “on”, by inserting “an Order Book of;”
- item 4 - after “on”, by inserting “an Order Book of;”
- item 5 - after “executed on”, by inserting “an Order Book of;”
- item 6 - after “executed on”, by inserting “an Order Book of;” and
- item 7 - by omitting “on” and substituting “executed on an Order Book of, or reported to,”.

Item [131] amends Rule 5.1.6, after the table by inserting a note which explains that items 2 to 6 of the Table refer to information in relation to prices, bids and offers on an Order Book and accordingly, the Trading Information made available by a Market Operator under items 2 to 6 of this Table must not include Transactions in Equity Market Products reported to the Market Operator under Rule 5.1.1 (Participants to report Transactions done other than on an Order Book of a Market).

These amendments clarify the Trading Information that a Market Operator must make available on a website on a delayed basis of no more than 20 minutes. Specifically, the fields for “last traded price”, “bid”, “offer”, “high” and “low” include only on-Order Book information of the Market Operator, while the “volume” field includes all Transactions executed on an Order Book of, or reported to, the Market Operator.

Items [132] and [133] Part 5.2 (heading) and Rule 5.2.1 (heading)

Items [132] and [133] amend the headings to Part 5.2 and Rule 5.2.1 by omitting in each “Exceptions” and substituting in each “Delayed reporting.”

This amendment clarifies that Rule 5.2.1 is a definition of a type of Transaction (i.e. a Large Principal Transaction) that may be reported on delayed basis, rather than an exception from the requirement to report.

Item [134] Rule 5.2.1

Item [134] amends Rule 5.2.1 by omitting “the Listing Market Operator” (wherever occurring) and substituting “ASX.”

This amendment replaces references to “the Listing Market Operator” with “ASX” to clarify the existing position that “the Listing Market Operator” means ASX.

Item [135] Paragraph 5.2.1(4)(a)

Item [135] amends Paragraph 5.2.1(4)(a) by omitting “and Participants.” This amendment clarifies that ASX is not required to make notifications to all Participants about changes the Equity Market Products allocated to “Category A” “Category B” and “Category C” for the purposes of the definition of “Large Principal Transaction”. ASX must continue to notify other Market Operators of the allocation, and publish notice of the allocation on its website.

Item [136] After Chapter 5

Item [136] inserts Chapter 5A (Regulatory Data) into the Rules.

New Part 5A.1 contains new Rule 5A.1.1. New Rule 5A.1.1 provides that Chapter 5A of the Competition Rules applies to Equity Market Operators from 28 October 2013, Equity Market Participants from 10 March 2014 and Orders and Transactions in Financial Products admitted to quotation on the ASX Market, other than Futures Market Contracts or Options Market Contracts.

New Part 5A.2.1 sets out the core requirements to record and provide Regulatory Data.

Regulatory Data to be provided and recorded in Orders, resulting Transactions, and Trade Reports

Under new subrules 5A.2.1(1) and (2), a Participant must provide Regulatory Data to a Market Operator in Orders and Trade Reports (for each side of Transaction for which the Participant acted as agent on behalf of a client, or as Principal).

Under new subrule 5A.2.2(1), a Market Operator must keep a record of Regulatory Data provided to it in records of new Orders received and existing Orders that are amended, matched, executed or cancelled, on an Order Book of the Market, Transactions on an Order Book of the Market, and Trade Reports accepted by the Market Operator. ASX and Chi-X will be required to provide Regulatory Data to ASIC under Chapter 7 of the *ASIC Market Integrity Rules (ASX Market) 2010* and Chapter 7 of the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011*.

“Trade Report” will be defined in Rule 1.4.3 to mean, in relation to an Equity Market Product, a report of Post-Trade Information required to be made to a Market Operator under Rule 5.1.1, and in relation to a Financial Product other than an Equity Market Product, a Futures Market Contract or an Options Market Contract, a report of information in relation to a Transaction entered into otherwise than by matching of Orders on an Order Book, required to be made to a Market Operator under the Operating Rules of a Market (see item [45] above).

Regulatory Data

The Table in Rule 5A.2.3 sets out the required “Regulatory Data” as follows:

- *Execution venue* (item 1) - a code identifying the Market, Crossing System or other facility on which the Orders were matched or the Transaction was executed – this information is not required in relation to an Order transmitted to an Order Book and any resulting Transaction;
- *Capacity of Participant* (item 2) - for each side (buy and/or sell) of the Order or Transaction a notation for which the Participant is required to provide Regulatory Data, a notation to identify whether the Participant acts as Principal, as agent for a client, or both;
- *Origin of Order or Transaction* (item 3)- or each side (buy/sell) of the Order or Transaction on which the Participant acts as agent for a client, a unique notation, code or number used by the Participant to identify the person on whose instructions the Order is submitted or Transaction was executed – this may be an ACN, account identifier or unique client ID;
- *Intermediary ID* (item 4) - for each side (buy and/or sell) of the Order or Transaction on which the Participant acts as agent for an AOP Client who is an AFSL Holder and that AFSL Holder has an arrangement with the Participant under which it is permitted to submit Trading Messages into the Participant’s system as intermediary for its own clients, the AFSL number;
- *Directed wholesale indicator* (item 5) - for each side (buy and/or sell) of the Order or Transaction on which the Participant acts as agent for an AOP Client who is a Wholesale Client and that Wholesale Client has an arrangement with the Participant under which it is permitted to submit Trading Messages into the Participant’s system with non-discretionary execution and routing instructions, a notation or code to indicate this.

The information in items 3 (Origin of Order or Transaction), 4 (Intermediary ID) and 5 (Directed wholesale indicator) does not need to be provided by a Participant if the Participant has taken all reasonable steps to determine the information and is unable to do so (new subrule 5A.2.3(2)). A Market Operator is not required to validate information provided in an Order or Trade Report under Chapter 5A.

Under new subrule 5A.2.3(3), ASIC may determine and publish on its website a notification of requirements for the format for Regulatory Data;

New subrule 5A.2.3(4) requires Participants and Market Operators to provide or record Regulatory Data in Orders and Trade Reports in accordance with requirements notified by ASIC under subrule 5A.2.3(3) within the timeframe specified in the notification, provided that the timeframe specified in the notification is reasonable.

New subrule 5A.2.3(5) provides that a Participant must take all reasonable steps to consistently provide the same code, notation or number to identify the same information across Orders or Trade Reports. For example, a Participant may use an ACN of a company to identify that company in an Order or Trade Report as the person on whose instructions the Order was submitted or Transaction was executed. The next time the Participant submits an Order or makes a Trade Report for which the company is again the person on whose instructions the Order was submitted or Transaction was executed, this subrule requires the Participant to take all reasonable steps to again use the company’s ACN to identify the company.

Confidentiality

Under new subrule 5A.2.1(3), a Participant must not disclose the Regulatory Data it provides to a Market Operator under subrules 5A.2.1(1) and (2) in connection with the Order or Trade Report other than:

- to ASIC;

- to the Market Operator;
- to a person acting as agent on behalf of the Participant, to the extent there is a legitimate business reason for the person to have access to the Regulatory Data;
- for the purposes of seeking legal advice; or
- as otherwise required or permitted by law.

If the Participant discloses Regulatory Data in connection with an Order or Trade Report to a person acting as its agent, the Participant must take reasonable steps to ensure the person does not disclose the Regulatory Data to any person other than ASIC, the Market Operator or another person acting as agent of the Participant, or for the purposes of seeking legal advice, or as otherwise required or permitted by law.

Under new subrule 5A.2.2(2), a Market Operator must not disclose Regulatory Data provided to it by a Participant other than by:

- providing the Regulatory Data to ASIC;
- disclosing the Regulatory Data to a person acting as agent for the Market Operator;
- making available the Regulatory Data to the Participant, or a person acting on behalf of the Participant, the Regulatory Data provided by that Participant;
- using or disclosing the Regulatory Data for a purpose that is otherwise required or permitted by law.

If a Market Operator discloses Regulatory Data to a person acting as agent for the Market Operator, the Market Operator must take all reasonable steps to ensure that person does not use or disclose the Regulatory Data other than in a manner that the Market Operator would be permitted to use or disclose the Regulatory Data under paragraphs 5A.2.2(2)(a), (c) or (d).

Item [137] Before Part 6.1

Item [137] inserts into Chapter 6 (Market Operators – Other obligations), before Part 6.1, a new Part 6.1A.

New Rule 6.1A.1 provides that Chapter 6 of the Competition Rules applies to Equity Market Operators, Equity Market Participants and Equity Market Products. This new Rule recognises that while the Rules now apply to a wider scope of Financial Products, Market Operators and Participants, Chapter 6 continues to apply only to activities or conduct in relation to Equity Markets and Equity Market Products.

Item [138] Paragraph 6.2.1(1)(a)

Item [138] amends paragraph 6.2.1(1)(a) by inserting, after the words “subrule 2.2.2(2)”, the words “and Rules 2.2.2B and 2.2.2C.”

This amendment ensures that notifications of an Extreme Trade Range Event and Trading Pauses under new Rules 2.2.2B and 2.2.2C (see item [83] above) must be made available as between Equity Market Operators through one or more electronic data feeds and in a machine-readable format, subject to the remainder of Rule 6.2.1.

Item [139] Paragraph 6.2.1(3)(a)

Item [139] omits existing paragraph 6.2.1(3)(a) and substitutes a new paragraph 6.2.1(3)(a).

New paragraph 6.2.1(3)(a) provides that, notwithstanding Rules 4.1.3 and 5.1.5 (the requirements to make available Pre- and Post-Trade Information on reasonable commercial terms and on a non-discriminatory basis), where a Market Operator makes available an electronic data feed referred to in subrule 6.2.1(1) ‘at cost’ in accordance subrule 6.2.1(2), that Market Operator may make that data feed available on terms that limit the purposes for which the other Market Operator may make use of the data feed to purposes directly related to, in the case of a notification referred to in paragraph (1)(a):

- determining the Extreme Trade Range for an Equity Market Product; or
- identifying an ETR Event in relation to an Equity Market Product; and
- placing an Equity Market Product into a Trading Pause, or lifting or removing that Trading Pause.

This amendment reflects that there are now a range of notifications that must be provided by electronic data feed for the purposes of Chapter 2 (Extreme price movements). It is appropriate that these notifications form part of the ‘at cost’ data feed but that Market Operators may limit the use to which the use to which the data feed so provided is put.

Items [140] to [144] Paragraph 6.2.1(3)(b), Subrule 6.2.1(6), Subrule 6.2.1(7) and Subrules 6.2.3(1) and 6.2.3(2)

Items [140] to [144] amend paragraph 6.2.1(3)(b), and subrules 6.2.1(6), 6.2.1(7) 6.2.3(1) and 6.2.3(2) by omitting “the Listing Market Operator” (wherever occurring) and substituting “ASX.”

These amendments recognise and clarify the existing position that “the Listing Market Operator” in this context means ASX.

Item [145] Subrule 6.4.1(2)

Item [145] amends subrule 6.4.1(2) to omit the words “at the Reference Mid-Point or”. This amendment is consequential to the removal of the pre-trade transparency exception for “Trades At or Within the Spread” (which permitted Transactions at the Reference Mid-Point) (see item [118] above).

This amendment commences on the day that is 6 months after the day on which the Instrument is registered under the *Legislative Instruments Act 2003*.

Item [146] Before Part 7.1

Item [146] amends the Rules by inserting in Chapter 7 (Market Participants – Other obligations), before Part 7.1, a new Part 7.1A.

New Rule 7.1A.1 provides that Chapter 7 of the Competition Rules applies to Equity Markets, Equity Market Participants and Orders and Transactions in Equity Market Products. This amendment recognises that while the Rules may now apply to a wider scope of Financial Products and persons, Chapter 7 continues to apply only in relation to Equity Markets.

ATTACHMENT B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2012 (No. 1)

This Legislative 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*.

Overview of the Legislative Instrument

The Legislative Instrument amends the *ASIC Market Integrity Rules (Competition In Exchange Markets) 2011 (Competition Rules)* to implement substantive amendments to the market integrity rules on extreme price movements, pre-trade transparency and price formation, and enhanced data for market surveillance. The purpose of these amendments is to address regulatory issues resulting from recent market developments in Australia, including:

- (a) new risks to market integrity resulting from the growth of automated trading; and
- (b) risks to price formation and the quality of the public markets.

Human rights implications

The Legislative Instrument may engage the right to privacy and reputation in Article 17 of the International Covenant on Civil and Political Rights (“Article 17”). Article 17 prohibits unlawful or arbitrary interferences with a person's privacy, family, home (which the UN Human Rights Committee has interpreted as including a person's workplace) and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to the protection of the law against such interference or attacks. The UN Human Rights Committee has not defined ‘privacy’. The Commonwealth Attorney-General's Department has provided guidance that privacy should be understood to comprise freedom from unwarranted and unreasonable intrusion into activities that society recognises as falling into the individual sphere of autonomy. To avoid being considered arbitrary, any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.¹

The Legislative Instrument inserts a new Chapter 5A into the Competition Rules. Chapter 5A requires a Participant to provide certain information (“Regulatory Data”) to Market Operators in the Participant's Orders and Trade Reports. Under Chapter 5A, Market Operators must record the information provided in records of Orders, Transactions and Trade Reports. Under Rule 7.1.1 of the *ASIC Market Integrity Rules (ASX Market) 2010*² and Rule 7.1.1 of the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011*³,

¹ Australian Government Attorney-General's Department : *Privacy and Reputation*
<http://www.ag.gov.au/Humanrightsandantidiscrimination/Humanrightsandthepublicsector/Humanrightsguidancesheets/Pages/Privacyandreputation.aspx>

² As amended by *ASIC Market Integrity Rules (ASX Market) Amendment 2012 (No. 3)*.

³ As amended by *ASIC Market Integrity Rules (Chi-X Australia Market) Amendment 2012 (No.3)*.

the Market Operators of the ASX and Chi-X Markets must include Regulatory Data in a live feed of electronic data items delivered to ASIC.

Regulatory Data includes, for each side (buy and/or sell) of the Order or Transaction on which the Participant acts as agent for a client, a unique notation, code or number used by the Participant to identify the person on whose instructions the Order is submitted or Transaction was executed (referred to as “Origin of Order or Transaction” information) (see Table item 3 in Rule 5A.2.3). “Regulatory Data” also includes “intermediary ID” information, being the AFSL number of a AOP Client that is an AFSL holder and that submits messages into a Participant’s system as intermediary for its own clients (see Table item 4 in Rule 5A.2.3).

“Origin of Order or Transaction”, or possibly “Intermediary ID” information (if an AFSL holder is a natural person) may contain ‘personal information’ as defined in the *Privacy Act 1988*, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. This may be the case where the client is an individual and the Participant elects to provide a notation, code or number to identify the individual from which the identity of the individual is apparent or can reasonably be ascertained.

The right in Article 17 is engaged by the Legislative Instrument by reason that the provision and recording of Regulatory Data in accordance with new Chapter 5A may:

- (a) involve the collection, storage, security, use or disclosure of personal information;
- (b) create confidentiality or secrecy provisions relating to personal information; and
- (c) provide for mandatory disclosure or reporting of information.

The Legislative Instrument is compatible with the rights recognised in Article 17 of the ICCPR by reason that any interference with a person’s privacy or reputation resulting from compliance with Chapter 5A will be lawful and not arbitrary. In particular:

- (a) Chapter 5A is made in accordance with ASIC’s power to make market integrity rules dealing with the activities or conduct of persons in relation to licensed markets and in relation to financial products traded on licensed markets (see subsection 798G(1) of the *Corporations Act 2001 (Act)*).
- (b) The Regulatory Data provided and recorded in accordance with Chapter 5A will assist ASIC to perform its function of supervising financial markets, the operators of which are licensed under subsection 795B(1) of the Act (see section 798F of the Act). In particular, it will assist ASIC to observe patterns of Orders or Transactions placed from a single source, and will therefore assist ASIC to detect and deter misconduct such as market manipulation and insider trading.
- (c) The Regulatory Data rule will further the objects of Chapter 7 of the Act, including promoting fair, orderly and transparent markets for financial products (see paragraph 760A(c) of the Act). A fair, orderly and transparent market is one in which market misconduct is minimised. Detection and deterrence of market misconduct contribute to minimising that misconduct, and the Regulatory Data rule will assist ASIC in detecting and deterring that misconduct.
- (d) The Regulatory Data rule is subject to a number of safeguards, including:
 - (i) Any personal information in Regulatory Data provided to ASIC, will be protected in accordance with ASIC’s legislative obligations under s127 of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*, and to, the extent the information is personal information, under the *Privacy Act 1988*;

- (ii) A Participant is not required under Chapter 5A to provide Regulatory Data that directly identifies any person, and may elect to provide a notation, code or number from which the identity of the person cannot be ascertained without further enquiry by ASIC (and subject to the legislative safeguards in the ASIC Act); and
- (iii) Participants and Market Operators will be required to maintain the confidentiality of Regulatory Data provided and recorded in accordance with Rule 5A.2.1(3) and 5A.2.2(2).

If the Legislative Instrument was considered to limit the right in Article 17 of the ICCPR, ASIC considers that the Legislative Instrument is nevertheless compatible with that right. The right in Article 17 is not absolute. As noted, the right has implied limitations ('unlawful' and 'arbitrary') and may be subject to a permissible limitation where that limitation aims to achieve a legitimate objective, there is a rational connection between the limitation and the objective and the limitation is reasonable, necessary and proportionate. Any limitation imposed on the right by the Legislative Instrument has a clear legal basis, in that it:

- (a) *Aims to achieve a legitimate objective.* The objective of obtaining enhanced data for surveillance is to ensure that ASIC is able to obtain sufficient and appropriate market data in a timely and efficient manner. Obtaining sufficient and appropriate data will ensure ASIC is able to continue to monitor and detect market misconduct in light of rapidly developing technology and increasingly complex strategies. This will assist ASIC to perform its function of supervising financial markets under Part 7.2A of the Act, and to further the statutory objects of Chapter 7 of the Act by promoting fair, orderly and transparent markets for all investors and participants (see s760A(c) of the Act.
- (b) *Has a rational connection with the objective* – Regulatory Data (including “Origin of Order” and “Intermediary ID”) information allows ASIC to detect and investigate market manipulation and insider trading with greater efficiency. Without this information, ASIC’s surveillance and deterrence functions may be constrained in Australia’s rapidly developing market. By ensuring that ASIC is able to obtain sufficient and appropriate Regulatory Data, the rule will enhance ASIC’s ability to detect, pursue and deter misconduct which may have an impact on the fairness, orderliness and transparency of Australia’s markets.
- (c) *Is reasonable, necessary and proportionate* – The Chapter is necessary to achieve the legitimate objective described above because it provides ASIC with a significant additional source of market intelligence, in a timely and efficient manner. The Chapter contains adequate safeguards by only requiring a Participant to provide certain information where it is reasonable to do so, and by requiring a Participant and a Market Operator to maintain the confidentiality of the Regulatory Data. Further safeguards are provided by ASIC’s statutory obligations to protect confidential and personal information contained in the Regulatory Data.