

ASIC MARKET INTEGRITY RULES (ASX MARKET) AMENDMENT 2013 (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 (ASX Market) Amendment 2013 (No. 1)* (the *Instrument*) under subsection 798G(1) of the *Corporations Act 2001* (the *Corporations Act*). Capitalised terms used in this Explanatory Statement (e.g. “Participant”) are defined in the *ASIC Market Integrity Rules (ASX Market) 2010* (the *ASIC Market Integrity Rules (ASX)*).

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 Instrument extends the scope of the ASIC Market Integrity Rules (ASX) to include depository interests in Commonwealth Government Securities (CGS) trading on the Australian Securities Exchange (ASX).

The amendments form part of the implementation of the Australian Government's initiative to facilitate retail trading in CGS depository interests which will be similar to trading in equity market products on the ASX Market.

For the avoidance of doubt, the Instrument amends the definitions of “Cash Market Product” and “Trading Status” in Rule 1.4.3 (ASX) to expressly include a CGS depository interest.

These amendments will ensure that the ASIC Market Integrity Rules (ASX) applicable to a trade in a “Cash Market Product” will apply to a CGS depository interest. This approach is also consistent with the approach ASX has taken to the application of the ASX Operating Rules to CGS depository interests.

A market participant will be subjected to general obligations under the ASIC Market Integrity Rules (ASX) regarding the conduct and supervision of their business, when dealing in CGS depository interests.

Details of the Instrument are contained in [Attachment A](#).

3. Consultation

In January 2013, ASIC wrote to stakeholders seeking feedback on the proposed amendments and including a marked up amendment to the ASIC Market Integrity Rules (ASX). ASIC engaged in a targeted consultation process by writing to all interested stakeholders, including those who had engaged in a related consultation process (outlined below), rather than issuing a formal consultation paper. This targeted method of consultation was used because the nature and impact of the proposed amendments were minor, proposed to be made for the avoidance of doubt and to ensure consistency with the ASX's amendments to its operating rules.

ASIC received three responses to the invitation to provide comments on the proposed amendments. All respondents agreed with the proposed amendments.

The amendments to the ASIC Market Integrity Rules (ASX) are part of a broader set of changes to the existing regulatory framework which enable the Australian Government's initiative to facilitate retail trading in CGS depository interests. These broader changes include amendments to existing ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (**ASIC Market Integrity Rules (Competition)**). ASIC has consulted on its package of amendments to the ASIC Market Integrity Rules (Competition) through the following steps:

- a) ASIC Consultation Paper 181 *Retail trading in Commonwealth Government Securities* (CP 181) was released on 20 July 2012. CP 181 proposed amendments to the ASIC Market Integrity Rules (Competition) which ASIC considered necessary to implement the Australian Government's decision to facilitate retail trading of CGS Depository Interests on public exchanges. Draft market integrity rules reflecting these proposals, were attached to CP 181 – *Attachment to CP181: Retail trading in Commonwealth Government Securities*.
- b) In the lead up to, and during, the consultation ASIC:
 - (i) held a number of meetings with various local stakeholders; and
 - (ii) sought information from overseas regulators and market operators, and
- c) CP 181 was built on the findings of Consultation Paper 168 *Australian equity market structure: Further proposals*, issued in October 2011, to the extent that they were considered relevant to CGS Depository Interests traded on public exchanges. It also adopted the proposals in Consultation Paper 179 *Australian market structure: Draft market integrity rules and guidance* (CP 179) and tailored them to CGS Depository Interests. In settling its final position, ASIC has also taken into consideration submissions to CP 179 where they affect CGS Depository Interests.

In CP 181 ASIC stated that it considered that each public exchange on which CGS depository interests are traded should be subject to market integrity rules specifically dealing with the activities or conduct of the market operator and market participants in relation to those products. ASIC noted that, where appropriate, it may propose new or amended market integrity rules specific to the relevant public exchange and would undertake a separate consultation in relation to any such proposals. The targeted consultation process for ASIC Market Integrity Rules (ASX) was consistent with this statement.

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. A penalty amount must not exceed \$1,000,000. The penalty amount set out below a rule in the ASIC Market Integrity Rules (ASX) is the penalty amount for that 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 has not been prepared in relation to the Instrument. ASIC has complied with the Government's regulatory impact analysis process and submitted a Preliminary Assessment Form to the Office of Best Practice Regulation (OBPR). The OBPR considers that the proposed changes have a 'minor' impact on business or the not-for-profit sector and no further analysis (in the form of a Regulation Impact Statement) is required.

ATTACHMENT A

Capitalised terms used in this attachment are defined in the ASIC Market Integrity Rules (ASX).

Schedule 1

Item [1] Rule 1.4.3

Item [1] of Schedule 1 to the Instrument amends the definition of “Cash Market Product” to insert, after the words “AQUA Quote Display Board”, the words “, a CGS Depository Interest admitted to Trading Status”.

This amendment expressly provides that a CGS Depository Interest (see item [2] below) falls within the definition of “Cash Market Product” in Rule 1.4.3 ASIC Market Integrity Rules (ASX).

Item [2] Rule 1.4.3

Item [2] of Schedule 1 to the Instrument inserts, after the definition of “Central Orderbook”, a new definition of “CGS Depository Interest”. The new definition provides that “CGS Depository Interest” has the meaning given by section 761A of the Corporations Act.

Section 761A of the Corporations Act, as amended by the *Commonwealth Government Securities Legislation Amendment (Retail Trading) Act 2012*, defines “CGS depository interest” to mean “a depository interest, as defined in the *Commonwealth Inscribed Stock Act 1911*, that can be transferred through a licensed CS facility”. The *Commonwealth Inscribed Stock Act 1911* in turn defines “depository interest” to mean a beneficial interest in stock issued by a depository nominee (as a depository nominee).

Item [3] Rule 1.4.3

Item [3] of Schedule 1 to the Instrument amends the definition of “Trading Status” to insert, after the word “for”, the words “a CGS Depository Interest,”.

This amendment complements the amendment made by item [1] above, by expressly providing that a CGS Depository Interest, in addition to a AQUA Product and a Warrant, may be admitted to Trading Status under the Market Operating Rules.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

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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*.

1. Overview of the Legislative Instrument

The Instrument extends the scope of the *ASIC Market Integrity Rules (ASX Market) 2010* (the **ASIC Market Integrity Rules (ASX)**) to include depository interests in Commonwealth Government Securities (CGS) trading on the Australian Securities Exchange (ASX).

The amendments form part of the implementation of the Australian Government's initiative to facilitate retail trading in CGS depository interests which will be similar to trading in equity market products on the ASX Market.

For the avoidance of doubt, the Instrument amends the definitions of “Cash Market Product” and “Trading Status” in Rule 1.4.3 (ASX) to expressly include a CGS depository interest.

These amendments will ensure that the ASIC Market Integrity Rules (ASX) applicable to a trade in a “Cash Market Product” will apply to a CGS depository interest.

2. Human rights implications

This Instrument does not have any effect on human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This instrument does not create any new powers or obligations but clarifies that some existing powers or obligations apply in relation to CGS Depository Interests.

3. Conclusion

This Instrument is compatible with human rights as it does not raise any human rights issues.