

Australian Securities and Investments Commission

Corporations Act 2001 — Subsection 798G(1) — Variation

1. Enabling legislation

I, Oliver Harvey, with the written consent of the Minister, make the following instrument under subsection 798G(1) of the *Corporations Act 2001*.

Dated this 29th day of July 2013

Signed by Oliver Harvey

as a delegate of the Australian Securities and Investments Commission.

2. Title

This instrument is *ASIC Market Integrity Rules (APX Market) Amendment 2013 (No. 1)*.

3. Commencement

This instrument commences on the later of:

- (a) 26 May 2014; and
- (b) the day after the instrument is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (FRLI) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of register). The FRLI may be accessed at <http://www.frli.gov.au/>.

4. Amendments

Schedule 1 amends the *ASIC Market Integrity Rules (APX Market) 2013*.

Schedule 1 Amendments

[1] Rule 1.4.3, after the definition of “AFSL”

insert

“**AOP Annual Notification**” has the meaning given by subrule 5.6.8B(1).

“**AOP Annual Review**” has the meaning given by Rule 5.6.8A.

“**AOP Annual Review Date**” means 1 November each calendar year.

“**AOP Initial Certification**” has the meaning given by Rule 5.6.6.

“**AOP Material Change Review**” has the meaning given by subrule 5.6.8(1).

[2] Rule 5.6.3

before “A Market Participant”, insert

(1)

[3] Rule 5.6.3(b)

after “;”, omit

and

[4] Rule 5.6.3(c)

omit

markets provided by the Market Participant

insert

the APX Market

[5] Rule 5.6.3(c)

omit

.

substitute

;

[6] Rule 5.6.3, after paragraph (c)

insert

(d) controls, including automated controls, that enable immediate suspension, limitation or prohibition of the conduct of all Automated Order Processing or Automated Order Processing in respect of:

(i) one or more Authorised Persons or clients;

- (ii) Automated Client Order Processing; or
- (iii) one or more APX Products; and
- (e) controls that enable immediate:
 - (i) suspension of, limitation of, or prohibition on, the entry into the APX Market of Trading Messages in a series of related Trading Messages where the Market Participant has identified that Trading Messages in the series have entered the APX Market and have interfered with or are likely to interfere with the efficiency or integrity of the APX Market; and
 - (ii) cancellation of Trading Messages in a series that have already entered the APX Market where the entry of further messages in the series has been suspended, limited or prohibited under subparagraph (i).

[7] Rule 5.6.3

add, before "Maximum penalty: \$1,000,000"

(2) A Market Participant that uses its system for Automated Order Processing must have direct control over all automated filters and the filter parameters for those filters.

[8] Rule 5.6.4

omit

Subject to Rule 5.6.6A, before

substitute

(1) Before

[9] Rule 5.6.4

after "these Rules.", insert

(2) A Market Participant that was not required to comply with Rule 5.6.4 in relation to a system for Automated Order Processing because of the operation of Rule 5.6.6A is not required to conduct the review referred to in subrule (1) in relation to that system for Automated Order Processing.

Note: Rule 5.6.6A was omitted by the *ASIC Market Integrity Rules (APX Market) Amendment 2013 (No.1)* from 26 May 2014. Rule 5.6.6A stated that Market Participants who complied with ASX Market Integrity Rule 5.6.4 or Chi-X Australia Market Integrity Rule 5.6.4, did not need to comply with this Rule 5.6.4.

[10] Subrule 5.6.5(1)

omit

Subject to Rule 5.6.6A, before

substitute

Before

[11] Subrule 5.6.5(1)

omit

their Automated Order Processing system meets the requirements of each of paragraphs 5.6.3(a), (b) and (c)

substitute

the Market Participant has in place organisational and technical resources, arrangements and controls in relation to the system for Automated Order Processing that meet the requirements of Rule 5.6.3

[12] Subrule 5.6.5(2)

after “subrule (1)”, insert

must

[13] Paragraph 5.6.5(2)(a)

omit

must

[14] Paragraph 5.6.5(2)(a)

after “the” (first occurring), insert

organisational and technical resources, arrangements and

[15] Rule 5.6.5, after subrule 5.6.5(2)

insert

(3) A Market Participant that was not required to comply with Rule 5.6.5 in relation to a system for Automated Order Processing because of the operation of Rule 5.6.6A is not required to obtain the representations referred to in subrule (1) in relation to that system for Automated Order Processing.

Note: Rule 5.6.6A was omitted by the *ASIC Market Integrity Rules (APX Market) Amendment 2013 (No. 1)* from 26 May 2014. Rule 5.6.6A stated that Market Participants who complied with ASX Market Integrity Rule 5.6.5 or Chi-X Australia Market Integrity Rule 5.6.5, did not need to comply with this Rule 5.6.5.

[16] Subrule 5.6.6(1)

omit

Subject to Rule 5.6.6A, before

substitute

Before

[17] Paragraph 5.6.6(1)(a)

after “certification”, insert

(“AOP Initial Certification”).

[18] Paragraph 5.6.6(1)(b)

omit

certification

substitute

AOP Initial Certification

[19] Subrule 5.6.6(2)

omit

written certification

substitute

AOP Initial Certification

[20] Subparagraph 5.6.6(2)(d)(iii)

after “the” (third occurring), insert

organisational and technical resources, arrangements and

[21] Rule 5.6.6, after subrule 5.6.6(3)

insert

(4) A Market Participant that was not required to comply with Rule 5.6.6 in relation to a system for Automated Order Processing because of the operation of Rule 5.6.6A is not required to give the certification referred to in subrule (1) in relation to that system for Automated Order Processing.

Note: Rule 5.6.6A was omitted by the *ASIC Market Integrity Rules (APX Market) Amendment 2013 (No. 1)* from 26 May 2014. Rule 5.6.6A stated that Market Participants who complied with ASX Market Integrity Rule 5.6.6 or Chi-X Australia Market Integrity Rule 5.6.6 did not need to comply with this Rule 5.6.6.

[22] Rule 5.6.6A

omit the rule

[23] Rule 5.6.7

omit the rule

[24] Rule 5.6.8 (heading)

omit

Material change review

substitute

AOP Material Change Review

[25] Rule 5.6.8

before “Before”, insert

(1)

[26] Rule 5.6.8

after “resources”, insert

, arrangements or controls

[27] Rule 5.6.8

omit

, for the purposes of providing the confirmation referred to in Rule 5.6.9 or the further certification referred to in Rule 5.6.10,

[28] Rule 5.6.8

after “review”, insert

(“AOP Material Change Review”)

[29] Rule 5.6.8

after “these Rules.”, insert

(2) Before implementing a material change the subject of an AOP Material Change Review the Market Participant must, for the purposes of providing the AOP Annual Notification, obtain written representations from the person who performed the AOP Material Change Review that nothing came to the attention of the person during the course of the AOP Material Change Review that would indicate that the Market Participant is unable to comply with Part 5.6 of these Rules.

(3) The representations referred to in subrule (2) must:

- (a) include the name of the person making the representation; and
- (a) be signed and dated by the person making the representation.

[30] After Rule 5.6.8

insert

5.6.8A AOP Annual Review

(1) Where a Market Participant has not performed an AOP Material Change Review in relation to an Automated Order Processing system in the 12 months before the AOP Annual Review Date, the Market Participant must, for the purposes of providing the AOP Annual Notification in relation to that Automated Order Processing system, ensure that an appropriately qualified person performs a review (“**AOP Annual Review**”) of the Automated Order Processing system, the Market Participant’s policies, procedures, system design documentation, including the Market Participant’s procedures for implementation of changes to the Automated Order Processing software, filters and filter parameters and other relevant documentation concerning the Market Participant’s compliance with Part 5.6 of these Rules.

(2) The Market Participant must, for the purposes of providing the AOP Annual Notification in relation to an Automated Order Processing system, obtain written representations from the person who performed the AOP Annual Review in relation to the Automated Order Processing system, that nothing came to the attention of the person during the course of the AOP Annual Review that would indicate that the Market Participant is unable to comply with Part 5.6 of these Rules.

(3) The representations referred to in subrule (2) must:

- (a) include the name of the person making the representation; and
- (a) be signed and dated by the person making the representation.

Maximum penalty: \$100,000

5.6.8B AOP Annual Notification

(1) A Market Participant must, within 10 Business Days of each AOP Annual Review Date, given a written notice (“**AOP Annual Notification**”) to ASIC that includes:

- (a) the name of the Market Participant; and
- (a) the version number and name of the Market Participant’s Automated Order Processing system; and
- (b) a confirmation by the Market Participant that nothing came to the attention of the Market Participant during the 12 months before the AOP Annual Review date that would indicate that the Market Participant is unable to comply with Part 5.6 of these Rules; and
- (c) the name of the directors of the Market Participant referred to in subrule (2).

(2) At least two directors of the Market Participant must sign and date the AOP Annual Notification.

Maximum penalty: \$100,000

[31] Rule 5.6.9

omit the rule

[32] Rule 5.6.10

omit the rule