

# ASIC MARKET INTEGRITY RULES (ASX 24 MARKET) AMENDMENT 2013 (NO. 2) 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 24 Market) Amendment 2013 (No. 2)* (the **Instrument**) under subsection 798G(1) of the *Corporations Act 2001* (the **Corporations Act**).

## 1. Enabling legislation

Subsection 798G(1) of the Corporations 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.

The *ASIC Market Integrity Rules (ASX 24 Market) 2010* (**the ASIC Market Integrity Rules (ASX 24)**) were made under subsection 798G(1) of the Corporations Act on 1 August 2010. The ASIC Market Integrity Rules (ASX 24) deal with the activities or conduct of the licensed market operated by ASX Limited (the **ASX 24 Market**). Capitalised terms in this Explanatory Statement refer to defined terms in the ASIC Market Integrity Rules (ASX 24).

## 2. Purpose of the legislative instrument

Since the ASIC Market Integrity Rules (ASX 24) were adapted from the Sydney Futures Exchange Operating Rules (subsequently superseded by the ASX 24 Operating Rules) on 1 August 2010, there have been market structure developments including growth in automation and innovation in electronic trading in domestic markets.

The purpose of this Instrument is to amend the ASIC Market Integrity Rules (ASX 24) to address regulatory issues resulting from these recent market developments, including:

- (a) manipulative trading practices that may be effected using trading algorithms; and
- (b) inconsistencies between the regulatory provisions applicable to manipulative trading practices in our domestic futures and equities markets.

In response to these regulatory issues, the Instrument introduces the following amendments to the ASIC Market Integrity Rules (ASX 24):

- (a) the circumstances of the Order a Market Participant is required to consider including to

address manipulative trading practices that may be effected through trading algorithms;  
and

- (b) harmonise the provisions relating to manipulative activity, and specifically false or misleading appearance of active trading that are found in ASIC Market Integrity Rules (ASX Market) 2010 and ASIC Market Integrity Rules (Chi-X Australia Market) 2011, to those in the ASIC Market Integrity Rules (ASX 24).

Details of the Instrument are contained in Attachment A.

These amendments are required for ASIC to continue to effectively carry out its responsibility for market supervision in the context of a changing market environment.

### 3. Consultation

ASIC has consulted on the amendments effected by the Instrument. We have taken the results of the consultation process into account in preparing this Instrument, in which we have aimed to strike an appropriate balance between:

- (a) maintaining and facilitating fair and efficient markets;
- (b) promoting confident and informed investors and financial consumers; and
- (c) facilitating activity in the financial services industry, including not unreasonably burdening financial services providers and facilitating the international competitiveness of the Australian financial services industry.

Our consultation process included:

- (a) *Consultation Paper 202: Dark liquidity and high-frequency trading: Proposals (CP 202)* was released in March 2013 and proposed market integrity rules for the ASIC Market Integrity Rules (ASX 24). Submissions to CP 202 were received from: market operators, market participants, high-frequency traders, fund managers and retail investors. In addition we received submissions from various associations including Australian Financial Markets Association (AFMA), the Financial Services Council (FSC), the Stockbrokers Association of Australia (SAA), and the Australian Shareholders' Association (ASA) (25 written submissions).

We received some substantive comments on the proposals in CP 202 particularly relating to the removal of 'materiality' from the market manipulation rules. Based upon these comments, we have not proceeded to make rules in this area at this stage.

Submissions were generally receptive to the remainder of ASIC's proposals in CP 202 that we have proceeded with in relation to the ASX 24 Market. This Instrument amends the ASIC Market Integrity Rules (ASX 24) to include the amendments proposed in CP 202.

- (b) We also held meetings with industry stakeholders and information sessions for members of the AFMA, FSC and the SAA.

#### **4. Penalties**

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

Subsection 798G(2) of the Corporations 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 rule is the penalty amount for that rule.

#### **5. Commencement of the Instrument**

This instrument commences on the day after the end of the period of 6 months beginning on the day on which this 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/>.

#### **6. Statement of Compatibility with Human Rights**

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

## **ATTACHMENT A**

### **Paragraph 1 – Enabling Legislation**

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

### **Paragraph 2 – Title**

This paragraph provides that the title of the Instrument is the *ASIC Market Integrity Rules (ASX 24 Market) Amendment 2013 (No. 2)*.

### **Paragraph 3 – Commencement**

This paragraph provides that the Instrument commences on the day after the end of the period of 6 months beginning on the day on which this instrument is registered under the *Legislative Instruments Act*.

### **Paragraph 4 – Amendments**

This paragraph provides that Schedule 1 amends the *ASIC Market Integrity Rules (ASX 24 Market) 2010*.

## **Schedule 1 – Amendments to the ASIC Market Integrity Rules (ASX 24 Market) 2010**

### **Item [1] – Rule 3.1.2**

Item [1] omits existing Rule 3.1.2 ‘Market manipulation and misleading acts or practices regarding price’ and replaces it with a new Rule 3.1.2 ‘False or misleading appearance’. This has the effect of harmonising the market manipulation rules of the ASIC Market Integrity Rules (ASX 24) with the ASIC Market Integrity Rules (ASX Market) 2010 and ASIC Market Integrity Rules (Chi-X Market) 2011, specifically:

- new subrule 3.1.2(1) reflects the market integrity rule for the equities markets, Rule 5.7.1 in *ASIC Market Integrity Rules (ASX Market) 2010* and *ASIC Market Integrity Rules (Chi-X Market) 2011*;
- new subrule 3.1.2(2) reflects the market integrity rule for the equities markets, Rule 5.7.2 in *ASIC Market Integrity Rules (ASX Market) 2010* and *ASIC Market Integrity Rules (Chi-X Market) 2011* and as amended by *ASIC Market Integrity Rules (ASX Market) Amendment 2013(No. 2)* and *ASIC Market Integrity Rules (Chi-X Market) Amendment 2013 (No.1)*.

New paragraph 3.1.2 provides as follows:

(1) A Market Participant must not offer to purchase or sell a Contract or deal in any Contract:

(a) as Principal:

- (i) with the intention; or
  - (ii) if that offer to purchase or sell or dealing has the effect, or is likely to have the effect, of creating a false or misleading appearance of active trading in any Contract or with respect to the market for, or the price of, any Contract; or
- (b) on account of any other person where:
- (i) the Market Participant intends to create;
  - (ii) the Market Participant is aware that the person intends to create; or
  - (iii) taking into account the circumstances of the Order, a Market Participant ought reasonably suspect that the person has placed the Order with the intention of creating, a false or misleading appearance of active trading in any Contract or with respect to the market for, or the price of, any Contract.

(2) For the purposes of Rule 3.1.2(1)(a), a reference to a Market Participant offering to purchase or sell a Contract or deal in any Contract as Principal includes a reference to offering to purchase, sell or deal in any Contract on its own behalf or on behalf of the following persons;

- (a) a partner of the Market Participant;
- (b) a director of, company secretary of, or person who has a substantial holding in the Market Participant;
- (c) the spouse of, non-adult children of, family company of, or family trust of a partner, director, company secretary, or person who has a substantial holding in the Market Participant;
- (d) a body corporate in which the interests of one or more of the partners of the Market Participant singly or together constitute a controlling interest; and
- (e) a related body corporate of the Market Participant.

(3) For the purposes of Rule 3.1.2(1)(b)(iii), in considering the circumstances of the Order, the Market Participant must have regard to the following matters:

- (a) whether the Order or execution of the Order would be inconsistent with the history of or recent trading in that Contract;
- (b) whether the Order or execution of the Order would alter the market for, or the price of, the Contract;
- (c) the time the Order is entered or any instructions concerning the time of entry of the Order;
- (d) whether the person on whose behalf the Order is placed, or another person who the Market Participant knows to be a Related Party of that person, may have an interest in

creating a false or misleading appearance of active trading in any Contract or with respect to the market for, or the price of, any Contract;

- (e) whether the Order is accompanied by settlement, delivery or security arrangements which are unusual;
- (f) where the Order appears to be part of a series of Orders, whether when put together with other Orders which appear to make up the series, the Order or the series is unusual having regard to the matters referred to in this subrule;
- (g) whether there appears to be a legitimate commercial reason for that person placing the Order, unrelated to an intention to create a false or misleading appearance of active trading in or with respect to the market for, or price of, any Contract;
- (h) whether the proposed transaction, bid or offer which is proposed will involve no change of beneficial ownership;
- (i) the frequency with which Orders are placed by a person;
- (j) the volume of Contracts the subject of each Order placed by a person; and
- (k) the extent to which a person amends or cancels an instruction to purchase or sell a Contract relative to the number of Transactions executed for that person.

## **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 (ASX 24 Market) Amendment 2013 (No.2)**

This 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 Instrument**

#### **Background**

This Instrument amends the *ASIC Market Integrity Rules (ASX 24 Market) 2010 (ASIC Market Integrity Rules (ASX24))* to align the market integrity rules for the futures and equities markets in relation to manipulative trading practices and specifically the false or misleading appearance of active trading.

The Instrument makes the following amendments to the ASIC Market Integrity Rules (ASX 24):

- (a) provides for additional 'circumstances' of an Order that a Market Participant is required to consider to when determining whether and Order would create a false or misleading appearance of active trading, to address manipulative trading practices that may be effected through trading algorithms; and
- (b) harmonise the provisions relating to manipulative activity, and specifically false or misleading appearance of active trading that are found in ASIC Market Integrity Rules (ASX Market) 2010 and ASIC Market Integrity Rules (Chi-X Australia Market) 2011, to those in the ASIC Market Integrity Rules (ASX 24).

### **2. Human rights implications**

This Instrument does not engage any of the applicable human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

