

ASIC MARKET INTEGRITY RULES (NSXA MARKET) AMENDMENT 2015 (NO. 1) EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Summary

This Instrument repeals Rule 4.3.2 of the ASIC Market Integrity Rules (NSXA Market) 2010 (ASIC Market Integrity Rules (NSXA)).

Rule 4.3.2 imposes an obligation upon a Market Participants to provide the Australian Securities and Investments Commission (ASIC) with a copy of a certificate evidencing the Market Participant's relevant insurance policy. Other obligations in relation to the insurance of a Market Participant (including the requirement to take out and maintain a relevant insurance policy) will remain.

A Market Participant will no longer be required to comply with Rule 4.3.2.

ASIC is repealing this rule because it considers that it poses an unnecessary regulatory burden. ASIC considers that this rule no longer provides a commensurate regulatory benefit.

Capitalised terms used in this Explanatory Statement (e.g. "Market Participant") are defined in the ASIC Market Integrity Rules (NSXA).

1. Operation of this Instrument

Details of the Instrument are contained in **Attachment A**.

Rule 4.3.2 requires a Market Participant of the NSXA Market to provide ASIC with a copy of a certificate evidencing the insurance policy referred to in Rule 4.3.1. Rule 4.3.1 requires a Market Participant to take out and maintain in full force and effect an insurance policy or policies covering and indemnifying the Market Participant against liability for negligence, errors, omissions, misstatements, statutory warranties and indemnities, and loss, destruction or deprivation of Securities or other documents of title. The certificate must be provided to ASIC as soon as practicable after renewal of an insurance policy.

Breach of Rule 4.3.2 carries a maximum penalty of \$100,000.

We consider the requirement for a Market Participant to provide ASIC with a copy of a certificate evidencing its insurance policy to be an unnecessary administrative burden on Market Participants. Market Participants will continue to be subject to the obligation in Rule 4.3.1 to take out, and maintain in full force and effect, an insurance policy as specified above.. Failure to comply with the obligation in Rule 4.3.1 carries a maximum penalty of \$100,000.

Market Participants are also required to immediately notify ASIC in writing of the existence of any claim or the receipt of a notice from any person of any intention to make a claim under the insurance policy referred to in Rule 4.3.1.

ASIC does not consider that there is a need for an additional requirement to confirm a Market Participant's ongoing compliance with the requirement to hold insurance.

It is not ASIC's practice to assess the adequacy of insurance and, as such, there is no utility for ASIC to receive copies of certificates evidencing insurance policies held by Market Participants.

2. Consultation

ASIC consulted on the amendments made by this Instrument in Consultation Paper 222 *Reducing red tape: Proposed amendments to the market integrity rules (CP 222)*. In CP 222 we consulted on proposals to repeal certain market integrity rules including Rule 4.3.2 of the ASIC Market Integrity Rules (NSXA).

Submissions to CP 222 were received from a variety of stakeholders, including market operators, Market Participants and industry associations such as the Australian Financial Markets Association, Law Council of Australia and Stockbrokers Association of Australia.

There was unanimous support for the proposal to repeal Rule 4.3.2.

3. Background

Enabling legislation

ASIC makes this Instrument under subsection 798G(1) of the Corporations Act.

The ASIC Market Integrity Rules (NSXA) apply to:

- (a) the activities or conduct of the financial market operated by National Stock Exchange of Australia Ltd (ACN 000 902 063) (*NSXA*);
- (b) the activities or conduct of persons in relation to the NSXA Market; and
- (c) the activities or conduct of persons in relation to financial products traded on the NSXA Market.

ASIC Market Integrity Rules (NSXA) modelled on market operator rules

On 24 August 2009, the Australian Government announced its decision to transfer the responsibility for supervising Australia's domestic licensed financial markets from market operators to ASIC. To support this decision, the *Corporations Amendment (Financial Market Supervision) Act 2010* commenced on 1 August 2010. It inserted a new Part 7.2A into the Corporations Act which grants ASIC the power to make market integrity rules dealing with activities and conduct in relation to licensed financial markets, including participants of the relevant market.

During the transfer of responsibility for market supervision, ASIC's public policy was to refrain from making substantive policy changes to obligations that applied to market participants of the various existing financial markets including the NSXA Market. This facilitated a streamlined transfer of supervision with minimal disruption to industry.

Harmonisation of market integrity rules

ASIC is currently undertaking a project to 'harmonise' some or all of the market integrity rulebooks. The amendments in this Instrument form part of this initiative.

4. Commencement of the Instrument

The Instrument will commence on the day after the day on which the Instrument is registered under the *Legislative Instruments Act 2003*.

5. Statement of Compatibility with Human Rights

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

6. Regulation Impact Statement

A Regulation Impact Statement is not required for the Instrument because it will have a minor regulatory impact.

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 (NSXA Market) Amendment 2015 (No. 1)*.

Paragraph 3 – Commencement

This paragraph provides that the Instrument commences on the day after the day on which this Instrument is registered under the *Legislative Instruments Act 2003*.

Paragraph 4 – Amendments

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

Schedule 1 - Amendments

Item [1] Rule 4.3.2

Item [1] of Schedule 1 to the Instrument repeals Rule 4.3.2.

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 (NSXA Market) Amendment 2015 (No. 1)

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*.

A. Overview of the Instrument

1. This Instrument repeals Rule 4.3.2 of the *ASIC Market Integrity Rules (NSXA Market) 2010 (ASIC Market Integrity Rules (NSXA))*. A Market Participant will no longer be required to comply with this market integrity rule.
2. The Australian Securities and Investments Commission (*ASIC*) is repealing this rule because it considers that it poses an unnecessary regulatory burden. ASIC considers that this rule no longer provides a commensurate regulatory benefit.

Rule 4.3.2 of the ASIC Market Integrity Rules (NSXA)

3. Rule 4.3.2 imposes the obligation upon a Market Participant to provide ASIC with a copy of certificate evidencing the Market Participant's insurance policy referred to in Rule 4.3.1. Rule 4.3.1 requires a Market Participant to take out and maintain in full force and effect an insurance policy or policies covering and indemnifying the Market Participant against liability for negligence, errors, omissions, misstatements, statutory warranties and indemnities, and loss, destruction or deprivation of Securities or other documents of title.
4. Market Participants will continue to be subject to the obligation under Rule 4.3.1 to take out and maintain in full force and effect an insurance policy as specified above. ASIC does not consider that there is an additional need for ASIC to receive a copy of a certificate evidencing the insurance policy to confirm a Market Participant's ongoing compliance with the requirement to hold insurance.
5. It is not ASIC's practice to assess the adequacy of insurance and, as such, there is no utility for ASIC to receive copies of certificates evidencing insurance policies held by Market Participants.. Accordingly, this rule no longer serves a regulatory benefit.

Further Background

6. This Instrument is made under subsection 798G(1) of the Corporations Act. This Instrument amends the ASIC Market Integrity Rules (NSXA) which apply to:
 - (a) the activities or conduct of the financial market operated by National Stock Exchange of

Australia Ltd (ACN 000 902 063) (*NSXA*);

(b) the activities or conduct of persons in relation to the NSXA Market; and

(c) the activities or conduct of persons in relation to financial products traded on the NSXA Market.

7. This Instrument repeals Rule 4.3.2 of the ASIC Market Integrity Rules (NSXA). A breach of Rule 4.3.2 of the ASIC Market Integrity Rules (NSXA) incurs a penalty.

B. Human rights implications

8. The 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*.

C. Conclusion

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

D. Consultation

10. ASIC consulted on the amendments effected by this Instrument in Consultation Paper 222 *Reducing red tape: Proposed amendments to the market integrity rules (CP 222)*. In CP 222 we consulted on proposals to repeal certain market integrity rules including Rule 4.3.2 of the ASIC Market Integrity Rules (NSXA).
11. Submissions to CP 222 were received from a variety of stakeholders, including market operators, market participants and industry associations such as the Australian Financial Markets Association, Law Council of Australia and Stockbrokers Association of Australia.
12. There was unanimous support for the proposal to repeal Rule 4.3.2.

Australian Securities and Investments Commission