

# ASIC MARKET INTEGRITY RULES (SIM VSE MARKET) AMENDMENT 2015 (NO. 1) EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

## **Summary**

*This Instrument repeals paragraph 5.3.1(c) of the ASIC Market Integrity Rules (SIM VSE Market) 2010 (ASIC Market Integrity Rules (SIM VSE)).*

*Paragraph 5.3.1(c) imposes an obligation upon a Market Participant to provide the Australian Securities and Investment Commission (ASIC) with a copy of the certificate of currency for the Market Participant's relevant insurance policy. Other obligations in relation to relevant insurance cover will remain.*

*A Market Participant will no longer be required to comply with paragraph 5.3.1(c).*

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

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

## **1. Operation of this Instrument**

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

### **Repeal of paragraph 5.3.1(c) of the ASIC Market Integrity Rules (SIM VSE)**

Paragraph 5.3.1(c) requires a Market Participant of the SIM VSE Market to provide ASIC with a copy of the certificate of currency for each insurance policy referred to in paragraph 5.3.1(a). Paragraph 5.3.1(a) requires a Market Participant to take out and maintain in full force and effect at all times insurance policies covering and indemnifying the Market Participant against liability for negligence, errors, omissions, misstatements, statutory warranties and indemnities, civil liability, infidelity of staff and loss, destruction or deprivation of cash, Securities of other documents of title. The copy of certificate of currency must be provided to ASIC within 14 business days of the end of each financial year.

Breach of paragraph 5.3.1(c) carries a maximum penalty of \$100,000.

We consider the requirement for a Market Participant to provide ASIC with a copy of the certificate of currency for its insurance policy to be an unnecessary administrative burden on Market Participants. Market Participants will continue to be required under paragraph 5.3.1(c) to take out, and maintain in full force and effect at all times insurance policies as specified above. Failure to comply with that obligation carries a maximum penalty of \$100,000.

Market Participants are also required to immediately notify ASIC if they become aware of any claim or potential claim being made against them in relation to any of the matters referred to in paragraph 5.3.1(a).

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 the required 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 of currency for 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 paragraph 5.3.1(c) of the ASIC Market Integrity Rules (SIM VSE).

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 paragraph 5.3.1(c).

## **3. Background**

### *Enabling legislation*

ASIC makes this Instrument under subsection 798G(1) of the Corporations Act. This Instrument amends the ASIC Market Integrity Rules (SIM VSE).

The ASIC Market Integrity Rules (SIM VSE) apply to:

- (a) the activities or conduct of the financial market operated by Sim Venture Securities Exchange Ltd (ACN 087 708 898) (***SIM VSE***);
- (b) the activities or conduct of persons in relation to the SIM VSE Market; and
- (c) the activities or conduct of persons in relation to financial products traded on the SIM VSE Market.

### *ASIC Market Integrity Rules (SIM VSE) 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 market 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 SIM VSE 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 (SIM VSE 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 (SIM VSE Market) 2010*.

## **Schedule 1 - Amendments**

### **Item [1] Paragraph 5.3.1(c)**

Item [1] of Schedule 1 to the Instrument repeals paragraph 5.3.1(c).

## **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 (SIM VSE 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 paragraph 5.3.1(c) of the *ASIC Market Integrity Rules (SIM VSE) 2010 (ASIC Market Integrity Rules (SIM VSE))*. 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.

*Paragraph 5.3.1(c) of the ASIC Market Integrity Rules (SIM VSE)*

3. Paragraph 5.3.1(c) requires a Market Participant to provide ASIC with a copy of the Market Participant's certificate of currency for the insurance policies referred to in paragraph 5.3.1(a). Paragraph 5.3.1(a) requires a Market Participant to take out and maintain in full force and effect at all times insurance policies covering and indemnifying the Market Participant against liability for negligence, errors, omissions, mis statements, statutory warranties and indemnities, civil liability, infidelity of staff and loss, destruction or deprivation of cash, Securities of other documents of title.
4. Market Participants will continue to be required under paragraph 5.3.1(a) to take out, and maintain in full force and effect at all times, insurance policies as stipulated above. 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.
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 of currency for insurance policies held by Market Participants. Accordingly, the provision to ASIC of copies of certificates of currency for insurance cover serves no 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 (SIM VSE) which apply to:

- (d) the activities or conduct of the financial market operated by Sim Venture Securities Exchange Ltd (ACN 087 708 898) (*SIM VSE*);
- (e) the activities or conduct of persons in relation to the SIM VSE Market; and
- (f) the activities or conduct of persons in relation to financial products traded on the SIM VSE Market.

- 7. This Instrument repeals paragraph 5.3.1(c) of the ASIC Market Integrity Rules (SIM VSE). A breach of paragraph 5.3.1(c) of the ASIC Market Integrity Rules (SIM VSE) 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 paragraph 5.3.1(c) of the ASIC Market Integrity Rules (SIM VSE).
- 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 paragraph 5.3.1(c).

#### **Australian Securities and Investments Commission**