

**ASIC MARKET INTEGRITY RULES (COMPETITION IN EXCHANGE MARKETS)
AMENDMENT 2015 (NO. 1)**

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Summary

This Instrument amends the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (ASIC Market Integrity Rules (Competition)) to facilitate the proposal by Chi-X Australia Pty Ltd (Chi-X) to begin quoting and trading warrants and exchange traded funds (ETFs) on its Market.

The amendments in the Instrument:

- (a) extend the application of Chapters 2-4, and 5, 6 and 7 of the ASIC Market Integrity Rules (Competition) to ETFs that are admitted to quotation under the Chi-X Operating Rules and traded on the Chi-X Market.; and*
- (b) extend the application of Chapter 5A of the ASIC Market Integrity Rules (Competition) to warrants and ETFs that are admitted to quotation under the Chi-X Operating Rules and traded on the Chi-X Market.*

Chapter 4A of the ASIC Market Integrity Rules (Competition) (Crossing Systems) will also extend to warrants and ETFs admitted to quotation under the Chi-X Operating Rules. This extension did not require an amendment because the Chapter applies to Orders and Transactions in Financial Products able to be traded on the ASX Market and to Financial Products able to be traded on the Chi-X Market.

Capitalised terms used in this Explanatory Statement (e.g. “Trading Participant”) are defined in the ASIC Market Integrity Rules (Competition).

1. Operation of this instrument

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

The Instrument amends the definition of “Equity Market Product” in the ASIC Market Integrity Rules (Competition) so that it extends to Equity Market Products that are admitted to quotation on the Chi-X Market under the Chi-X Operating Rules. ETFs admitted to quotation under the Chi-X Operating Rules will be Equity Market Products under the amended definition.

The Instrument also amends the application of Chapter 5A so that it applies to Orders and Transactions in Financial Products that are admitted to quotation on the Chi-X Market under the Chi-X Operating Rules. Orders and Transactions in ETFs and warrants admitted to quotation under the Chi-X Operating Rules will be subject to Chapter 5A under the amendments.

Prior to the amendments made by this Instrument the definition of "Equity Market Product" in the ASIC Market Integrity Rules (Competition) applied to specific financial products admitted to quotation on the ASX Market, and Chapter 5A applied to Orders and Transactions in Financial Products admitted to quotation on the ASX Market, other than Futures Market Contracts or Options Market Contracts.

The amendments made by this Instrument ensure that consistent regulatory settings apply Financial Products and Participants trading these Financial Products, irrespective of the market on which the Financial Product is quoted or traded. This approach minimises the opportunity for regulatory arbitrage by Participants and Market Operators, and contributes to efficient supervision and enforcement of the market integrity rules by ASIC—because the same standards of conduct will apply to both markets.

The effect of extending the definition of Equity Market Product to ETFs admitted to quotation under the Chi-X Operating Rules is summarised below.

Chapter 2: Extreme price movements

Chi-X will need to ensure that it:

- sets and makes publicly available an Anomalous Order Threshold for each ETF it admits to quotation on the Chi-X Market under the Chi-X Operating Rules;
- has adequate controls to prevent Anomalous Orders entering its Market (including for ETFs it admits to quotation on the Chi-X Market under the Chi-X Operating Rules);
- monitors and reviews these thresholds and adjusts them when necessary;
- makes the appropriate notifications to ASIC in relation to its Anomalous Order Thresholds for each ETF it admits to quotation on the Chi-X Market under the Chi-X Operating Rules; and
- has automated controls to prevent extreme price movements in ETFs admitted to quotation and traded on the Chi-X Market under the Chi-X Operating Rules (including by establishing a Reference Price for these products, having in place adequate arrangements for identifying and notifying when an ETR Event occurs, and imposing a Trading Pause in these products in an ETR Event).

Chapter 3: Best execution

Although Chapter 3 will apply in relation to Orders for ETFs admitted to quotation under the Chi-X Operating Rules, until such time as those ETFs are available for trading on another market, Participants will only need to consider the pricing of the ETF on the Chi-X Market when meeting their best execution obligations to clients for these products.

Chapter 4: Pre-trade transparency

Chi-X will need to ensure it makes Pre-Trade Information available immediately for ETFs it admits to quotation on the Chi-X Market under the Chi-X Operating Rules (subject to the pre-

trade transparency exceptions in Rule 4.1.2(2) (Competition)). This information must also be available on reasonable commercial terms and on a non-discriminatory basis.

Participants will be required to enter into Transactions for ETFs that are admitted to quotation on the Chi-X Market under the Chi-X Operating Rules —on Pre-Trade Transparent Order Books, subject to the same exceptions to the obligation as exist for Equity Market Products that are admitted to quotation on the ASX Market.

Chapter 4A: Crossing Systems

The provisions of Chapter 4A did not require amendment to extend the Chapter to Orders and Transactions in Warrants and ETFs that are admitted to quotation under the Chi-X Operating Rules. This is the case because the Chapter applies to Orders and Transactions in Financial Products able to be traded on the ASX Market and to Financial Products able to be traded on the Chi-X Market.

Rule 4A.3.1 (Competition) requires a Crossing System operator to make freely available (on a publicly accessible website) information in relation to that Crossing System, including the types of Financial Products traded on the Crossing System. If a Crossing System Operator seeks to introduce new types of Financial Products to its Crossing System that includes warrants or ETFs that are admitted to quotation on the Chi-X Market under the Chi-X Operating Rules, then this information will need to be made available in accordance with Rule 4A.3.1 (Competition).

Chapter 5: Post-trade transparency

Participants that transact off-Order Book in an ETF admitted to quotation on the Chi-X Market will be required to report details of the executed Transaction to a Market Operator. At the time of making this Instrument, Chi-X will be the only Market Operator that provides facilities for trading these products, and accordingly, the only Market Operator that will accept Post-Trade information in relation to them. Chi-X will be required to verify Post Trade information and include it in the Trading Information available on its website. In the future, if ETFs or warrants admitted to quotation on the Chi-X Market under the Chi-X Operating Rules become available to trade on another Market, Participants may report off-Order Book Transactions to such other Market(s).

Rule 5.1.6A (Competition) which requires Market Operators to make Course of Sales information available within three days, will now apply to warrants and ETFs that are admitted to quotation on the Chi-X Market under the Chi-X Operating Rules.

Chapter 5A: Regulatory Data

Participants that trade warrants or ETFs admitted to quotation on Chi-X Market under the Chi-X Operating Rules will need to comply with the Regulatory Data obligations for these products.

Chi-X will need to record all Regulatory Data it receives in relation to warrants and ETFs admitted to quotation on Chi-X Market under the Chi-X Operating Rules and, in accordance with Chapter 7 of the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011*, it will need to provide this data to ASIC.

Chapter 6: Market Operators (other obligations)

Although Chapter 6 will now apply to ETFs that are admitted to quotation on the Chi-X Market under the Chi-X Operating Rules, until another Market Operator quotes those ETFs, Chi-X will not need to make the notifications to other Market Operators, or share information with other Market Operators, as required by Chapter 6 (Competition).

Chi-X will need to assign each ETF admitted to quotation on its Market under the Chi-X Operating Rules with a unique symbol for the purposes of identifying that ETF in records of Orders, Transactions and other Trading Messages in its Market.

Chapter 7: Market participant (other obligations)

These obligations continue to apply when trading ETFs admitted to quotation on the Chi-X Market under the Chi-X Operating Rules.

2. Consultation

ASIC consulted on the amendments made by this Instrument in Consultation Paper 235 *Proposed amendments to ASIC market integrity rules and instruments for the Chi-X investment product market (CP 235)*.

The consultation package proposed amendments to the ASIC market integrity rules and instruments that ASIC considered necessary to ensure ETFs and warrants admitted to quotation on the Chi-X market are subject to an appropriate regulatory regime.

The package included:

- (a) *CP 235*;
- (b) Attachment 1 to *CP 235 Draft amended ASIC Market Integrity Rules (Chi-X)*;
- (c) Attachment 2 to *CP 235 Draft amended ASIC Market Integrity Rules (Competition)*; and
- (d) Attachment 3 to *CP 235 Draft amended ASIC Market Integrity Rules (ASX)*.

Submissions to CP 235 were received from a variety of stakeholders, including market operators, market participants and an industry association. We received some substantive comments on the proposals, particularly relating to the following areas:

- Accredited derivative advisers being required to obtain additional accreditation to ensure they can demonstrate an understanding of differences between ASX and Chi-X rules and products;

- Potential costs associated with issuing Chi-X explanatory booklets to retail clients;
- A preference for stand-alone client agreements relating to warrants traded on each market.

Commenters were otherwise supportive of ASIC's proposals. We have taken the results of the consultation process into account in preparing this Instrument, and we have decided to proceed as proposed. Our proposals in CP 235 aimed to apply a consistent regulatory framework for the quotation and trading of ETFs and warrants, in particular, for Market Participants and investors, and striving to achieve a sound balance between protecting retail investors, encouraging market competition, and minimising impacts on industry.

3. Background

Enabling legislation

ASIC makes the Instrument under subsection 798G(1) of the *Corporations Act 2001* (**Corporations Act**). The Instrument amends the ASIC Market Integrity Rules (Competition).

The ASIC Market Integrity Rules (Competition) apply to:

- (a) the activities and conduct of a Financial Market operated by an Australian market licensee;
- (b) the activities or conduct of persons in relation to a Financial Market; and
- (c) the activities or conduct of persons in relation to Financial Products traded on a Financial Market.

4. Commencement of the Instrument

The Instrument will commence on the day after the day it is registered on the Federal Register of Legislative Instruments.

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 – Name of legislative instrument

This paragraph provides that the title of the Instrument is the *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2015 (No.1)*.

Paragraph 2 – Commencement

This paragraph provides that the Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Paragraph 3 – Authority

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

Paragraph 4 – Amendments

This paragraph provides that Schedule 1 amends the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011*.

Schedule 1 - Amendments

Item [1] Rule 1.4.3, after the definition of "CHESS Depository Interest"

Item [1] of Schedule 1 to the Instrument inserts definitions for “Chi-X” and “Chi-X Market”. “Chi-X” means Chi-X Australia Pty Ltd (ACN 129 584 667). “Chi-X Market” means the Financial Market operated by Chi-X under Australian Market Licence (Chi-X Australia Pty Ltd) 2011.

Item [2] Rule 1.4.3, definition of “Equity Market Product”

Item [2] of Schedule 1 to the Instrument amends the definition of “Equity Market Product”. It does this by expanding the definition to include products admitted to quotation on the Chi-X Market under the Chi-X Operating Rules. This ensures that Equity Market Products admitted to quotation on the Chi-X Market under the Chi-X Operating Rules are subject to the ASIC Market Integrity Rules (Competition).

Item [3] Rule 1.4.3, definition of “Exchange-Traded Fund Special Trade”

Item [3] of Schedule 1 to the Instrument amends the definition of “Exchange-Traded Fund Special Trade”. It does this by expanding the definition to include Exchanged-Traded Fund Special Trade as defined by the Chi-X Operating Rules.

Item [4] Rule 1.4.3, definition of “Responsible Market Operator”

Item [4] of Schedule 1 to the Instrument modifies the definition of “Responsible Market Operator”. It does this by modifying paragraph (a) of the definition to read “in relation to Equity Market Products admitted to quotation on the ASX Market, ASX;”, rather than “in relation to Equity Market Products, ASX;”. This reflects that Equity Market Products may now also be admitted on the Chi-X Market.

Items [5] and [6] Rule 1.4.3, definition of “Responsible Market Operator”

Items [5] and [6] of Schedule 1 to the Instrument make amendments consequential to the amendment in Item [7] below, to ensure the punctuation and formatting of the definition of “Responsible Market Operator” is appropriate for the amendment made by Item [7].

Item [7] Rule 1.4.3, definition of “Responsible Market Operator”

Item [7] of Schedule 1 to the Instrument amends the definition of “Responsible Market Operator” by introducing paragraph (e). New paragraph (e) expands the definition of “Responsible Market Operator” to include in relation to Equity Market Products admitted to quotation on the Chi-X Market under the Chi-X Operating Rules, Chi-X. This ensures that Chi-X will be the Responsible Market Operator for Equity Market Products admitted to quotation on the Chi-X Market.

Item [8] Subrule 2.2.2(4)

Item [8] of Schedule 1 to the Instrument modifies subrule 2.2.2(4) by amending paragraph (a). This ensures that the exception in subrule 2.2.2(4)(a) operates appropriately in circumstances where some Equity Market Products are admitted to quotation on the Chi-X Market under the Chi-X Operating Rules. The amendment limits the operation of the exemption for TradeMatch in paragraph (a) to Equity Market Products admitted to quotation on the ASX Market.

Items [9] and [10] Subrule 2.2.2(4)

Items [9] and [10] of Schedule 1 to the Instrument make amendments consequential to the amendment in Item [11] below, to ensure the punctuation and formatting of subrule 2.2.2(4) is appropriate for the amendment made by Item [11].

Item [11] Subrule 2.2.2(4)

Item [11] of Schedule 1 to the Instrument amends subrule 2.2.2(4), by introducing paragraph (cb). New paragraph (cb) includes the central order book of Chi-X (in the case of Equity Market Products admitted to quotation under the Chi-X Operating Rules) in the list of Order Books for which Market Operators are relieved of some obligations to determine and notify Reference Prices.

Item [12] Rule 2.2.2 (Note)

Item [12] of Schedule 1 to the Instrument omits the Note to Rule 2.2.2, and substitutes a note that does not refer to ASX as the Responsible Market Operator for Equity Market Products. This amendment recognises that the Responsible Market Operator for Equity Market Products may be Chi-X (see the amendments made by Item [7] above).

Item [13] Rule 2.2.2C (Note)

Item [13] of Schedule 1 to the Instrument omits the Note to Rule 2.2.2C and substitutes a note that does not refer to ASX as the Responsible Market Operator for Equity Market Products. This amendment recognises that the Responsible Market Operator for Equity Market Products may be Chi-X.

Item [14] Subrule 3.1.1(6)

Item [14] of Schedule 1 to the Instrument repeals subrule 3.1.1(6). Subrule 3.1.1(6) was a transitional provision, in relation to the best execution obligations, which ceased to have any operation after 1 March 2013.

Item [15] Rule 4A.1.1

Item [15] of Schedule 1 to the Instrument amends Rule 4A.1.1 at paragraph (a). This amendment reflects that Chi-X Market is a defined term (see the amendments made by Item [1]).

Items [16] and [17] Subrule 5A.1.1(2)

Items [16] and [17] of Schedule 1 to the Instrument make amendments consequential to the amendment in Item [18] below, to ensure the punctuation and formatting of subrule 5A.1.1(2) is appropriate for the amendment made by Item [18].

Item [18] Subrule 5A.1.1(2)

Item [18] of Schedule 1 to the Instrument amends subrule 5A.1.1(2) by introducing paragraph (c). This ensures that the Regulatory Data requirements in Chapter 5A of the ASIC Market Integrity Rules (Competition) apply to Financial Products admitted to quotation on the Chi-X Market under the Operating Rules of Chi-X.

Item 19 Subrule 6.2.1(6)

Item [19] of Schedule 1 to the Instrument amends subrule 6.2.1(6). It does this by omitting “ASX” and substituting “a Market Operator”. This ensures that if an Equity Market Product admitted to quotation under the Operating Rules of a Market Operator, is made available to trade on another Market that the appropriate notifications about Reference Price, ETR Events, Trading Pauses and Trading Suspensions for a Reference Product are made between Markets.

Item 20 Subrule 6.2.1(7)

Item [20] of Schedule 1 to the Instrument omits subrule 6.2.1(7) and substitutes a new market-neutral subrule for Equity Market Product notifications. The new subrule ensures that a Market Operator that intends to trade an Equity Market Product that has been admitted to quotation under the Operating Rules of another Market Operator, that it notifies that other Market Operator of that Equity Market Product it intends to trade. This ensures that the Market Operator that has admitted an Equity Market Product to quotation under the Operating Rules of its Market can make the required notifications to any other Market that may trade the Equity Market Products as required in Subrule 6.2.1(6) as amended by item [19].

Item 21 Subrule 6.2.3(1)

Item [21] of Schedule 1 to the Instrument amends subrule 6.2.3(1). It does this by inserting "admitted to quotation on the ASX Market" after each reference to Equity Market Products in the subrule. This ensures that ASX is only required to assign unique symbols to Equity Market Products admitted to quotation on the ASX Market.

Item 22 Rule 6.2.3

Item [22] of Schedule 1 to the Instrument amends Rule 6.2.3 by introducing subrule 6.2.3(1A). New subrule 6.2.3(1A) requires Chi-X to assign each Equity Market Product admitted to quotation under the Operating Rules of the Chi-X Market a unique symbol for the purposes of identifying that Equity Market Product in records of Orders, Transactions and other Trading Messages on its Market.

Item 23 Subrule 6.2.3(2)

Item [23] of Schedule 1 to the Instrument amends subrule 6.2.3(2). It does this by inserting the words "admitted to quotation on the ASX Market" after "each Equity Market Product". This reflects that Equity Market Products may be admitted to quotation on the Chi-X Market under the Chi-X Operating Rules and limits the operation of the subrule requiring Chi-X to use ASX symbols to products admitted to quotation on the ASX Market.

Item 24 Rule 6.2.3

Item [24] of Schedule 1 to the Instrument amends Rule 6.2.3 by introducing subrule 6.2.3(2A). New subrule 6.2.3(2A) requires a Market Operator other than Chi-X to, for each Equity Market Product admitted to quotation under the Operating Rules of the Chi-X Market that is quoted on its Market, assign the same unique symbol assigned by Chi-X under subrule (1A) to that Equity Market Product for the purposes of identifying that Equity Market Product in records of Orders, Transactions and other Trading Messages on its Market.

Item 25 Subrule 7.4.1(4)

Item [25] of Schedule 1 to the Instrument repeals subrule 7.4.1(4). Subrule 7.4.1(4) was a transitional provision which ceased to have any operation after February 2014.

Item 26 Subrule 7.5.1(3)

Item [26] of Schedule 1 to the Instrument repeals subrule 7.5.1(3). Subrule 7.5.1(3) was a transitional provision which ceased to have any operation after February 2014.

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 (Competition in Exchange Markets) 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 this Instrument

1. The *ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2015 (No. 1)* (the **Legislative Instrument**) is made under subsection 798G(1) of the *Corporations Act 2001 (Corporations Act)* and amends the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (ASIC Market Integrity Rules (Competition))* that apply to:
 - (a) the activities and conduct of a Financial Market operated by an Australian market licensee;
 - (b) the activities or conduct of persons in relation to a Financial Market; and
 - (c) the activities or conduct of persons in relation to Financial Products traded on a Financial Market.
2. The purpose of the Legislative Instrument is to amend the ASIC Market Integrity Rules (Competition) to facilitate the proposal by Chi-X Australia Pty Ltd (**Chi-X**) to begin quoting and trading warrants and exchange traded funds (**ETFs**) that are admitted to quotation under the Chi-X Operating Rules, commencing with the quotation and trading of warrants in November 2015 and ETFs in February 2016.
3. In response to the Chi-X's proposal, the Legislative Instrument amends the ASIC Market Integrity Rules (Competition) so that:
 - (a) Chapters 2–5, 6 and 7 will also apply to ETFs that are admitted to quotation under the Chi-X Operating Rules and traded on the Chi-X Market; and
 - (b) Chapter 5A will also apply to warrants and ETFs that are admitted to quotation under the Chi-X Operating Rules and traded on the Chi-X Market.

B. Human rights implications

4. The Legislative Instrument may engage the right to privacy and reputation in Article 17 of the International Covenant on Civil and Political Rights (**Article 17**). Article 17 prohibits unlawful or arbitrary interferences with a person's privacy, family, home (which the UN Human Rights Committee has interpreted as including a person's workplace) and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that

persons have the right to the protection of the law against such interference or attacks. The UN Human Rights Committee has not defined ‘privacy’. The Commonwealth Attorney-General’s Department has provided guidance that privacy should be understood to comprise freedom from unwarranted and unreasonable intrusion into activities that society recognises as falling into the individual sphere of autonomy. To avoid being considered arbitrary, any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.¹

Regulatory Data

5. The Legislative Instrument amends the application of Chapter 5A of the ASIC Market Integrity Rules (Competition) in Rule 5A.1.1(2), as it is expanded to now apply to Orders and Transactions in Financial Products that are admitted to quotation on the Chi-X Market under the Chi-X Operating Rules.
6. This means that the amended ASIC Market Integrity Rules (Competition) introduces obligations on Participants to provide Regulatory Data to a Market Operator in the Participant’s Orders, Transactions and Trade Reports with respect to Financial Products that are admitted to quotation on the Chi-X Market under the Chi-X Operating Rules. Under Chapter 5A, a Market Operator must record the information provided in records of Orders, Transactions and Trade Reports. Under Rule 7.1.1 of the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011*, the Market Operator of Chi-X must include Regulatory Data in a live feed of electronic data items delivered to ASIC.
7. Regulatory Data includes, for each side (buy and/or sell) of the Order or Transaction on which the Participant acts as agent for a client, a unique notation, code or number used by the Participant to identify the person on whose instructions the Order is submitted or Transaction was executed (referred to as ‘Origin of Order or Transaction’ information) (see Table item 3 in Rule 5A.2.3). Regulatory Data also includes ‘Intermediary ID’ information, being the AFSL number of an AOP Client that is an AFSL holder that submits messages into a Participant’s system as intermediary for its own clients (see Table item 4 in Rule 5A.2.3).
8. ‘Origin of Order or Transaction’, and possibly ‘Intermediary ID information’ (if an AFSL holder is a natural person) may contain ‘personal information’ as defined in the Privacy Act 1988, being information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. This may be the case where the client is an individual and the Participant elects to provide a notation, code or number to identify the individual from which the identity of the individual is apparent or can reasonably be ascertained.
9. The right in Article 17 is engaged by the Legislative Instrument by reason that the provision and recording of Regulatory Data in accordance with Chapter 5A may:
 - (a) involve the collection, storage, security, use or disclosure of personal information;

¹ Australian Government Attorney-General’s Department: *Privacy and Reputation*
<http://www.ag.gov.au/Humanrightsandantidiscrimination/Humanrightsandthepublicsector/Humanrightsguidancesheets/Pages/Privacyandreputation.aspx>

- (b) create confidentiality or secrecy provisions relating to personal information; and
- (c) provide for mandatory disclosure or reporting of information.

Compatibility the Legislative Instrument with the rights recognised in Article 17

10. The Legislative Instrument is compatible with the rights recognised in Article 17 of the ICCPR by reason that any interference with a person's privacy or reputation resulting from compliance with the Legislative Instrument will be lawful and not arbitrary. In particular:
- (a) Chapter 5A is made in accordance with ASIC's power to make market integrity rules dealing with the activities or conduct of persons in relation to licensed Markets and in relation to Financial Products traded on licensed Markets (see subsection 798G(1) of the Corporations Act).
 - (b) The Regulatory Data provided and recorded in accordance with Chapter 5A will assist ASIC to perform its function of supervising Financial Markets, the operators of which are licensed under subsection 795B(1) of the Corporations Act (see section 798F of the Corporations Act). In particular, it will assist ASIC to observe patterns of Orders or Transactions placed from a single source, and will therefore assist ASIC to detect and deter misconduct such as market manipulation and insider trading.
 - (c) The Regulatory Data rule will further the objects of Chapter 7 of the Corporations Act, including promoting fair, orderly and transparent markets for Financial Products (see paragraph 760A(c) of the Act). A fair, orderly and transparent market is one in which market misconduct is minimised. Detection and deterrence of market misconduct contribute to minimising that misconduct, and the Regulatory Data rule will assist ASIC in detecting and deterring that misconduct.
 - (d) The Regulatory Data rule is subject to a number of safeguards, including:
 - (i) Any personal information in Regulatory Data provided to ASIC will be protected in accordance with ASIC's legislative obligations under s127 of the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**), and to the extent the information is personal information, under the *Privacy Act 1988*;
 - (ii) A Participant is not required under Chapter 5A to provide Regulatory Data that directly identifies any person, and may elect to provide a notation, code or number from which the identity of the person cannot be ascertained without further inquiry by ASIC (and subject to the legislative safeguards in the ASIC Act); and
 - (iii) Participants and Market Operators will be required to maintain the confidentiality of Regulatory Data provided and recorded in accordance with subrules 5A.2.1(3) and 5A.2.2(2) of the ASIC Market Integrity Rules (Competition).
11. If the Legislative Instrument was considered to limit the right in Article 17 of the ICCPR, ASIC considers that the Legislative Instrument is nevertheless compatible with that right. The right in Article 17 is not absolute. As noted, the right has implied limitations ('unlawful' and 'arbitrary') and may be subject to a permissible limitation where that limitation aims to achieve a legitimate objective, there is a rational connection between the limitation, and the objective and the limitation is reasonable, necessary and proportionate.
12. Any limitation imposed on the right by the Legislative Instrument has a clear legal basis, in that it:

(a) *Aims to achieve a legitimate objective*

The objective of obtaining enhanced data for surveillance is to ensure that ASIC is able to obtain sufficient and appropriate market data in a timely and efficient manner. Obtaining sufficient and appropriate data will ensure ASIC is able to continue to monitor and detect market misconduct in light of rapidly developing technology and increasingly complex strategies. This will assist ASIC to perform its function of supervising Financial Markets under Part 7.2A of the Corporations Act, and to further the statutory objects of Chapter 7 of the Corporations Act by promoting fair, orderly and transparent markets for all investors and Participants (see s760A(c) of the Act).

(b) *Has a rational connection with the objective*

Regulatory Data (including 'Origin of Order' or 'Transaction' and 'Intermediary ID') information allows ASIC to detect and investigate market manipulation and insider trading with greater efficiency. Without this information, ASIC's surveillance and deterrence functions may be constrained in Australia's rapidly developing market. By ensuring that ASIC is able to obtain sufficient and appropriate Regulatory Data, the rule will enhance ASIC's ability to detect, pursue and deter misconduct which may have an impact on the fairness, orderliness and transparency of Australia's Markets.

(c) *Is reasonable, necessary and proportionate*

Chapter 5A is necessary to achieve the legitimate objective described above because it provides ASIC with a significant additional source of market intelligence, in a timely and efficient manner. The Chapter contains adequate safeguards by only requiring a Market Participant to provide certain information where it is reasonable to do so, and by requiring a Market Participant and a Market Operator to maintain the confidentiality of the Regulatory Data. Further safeguards are provided by ASIC's statutory obligations to protect confidential and personal information contained in the Regulatory Data.

C. Consultation

13. ASIC consulted on the amendments effected by this Instrument in Consultation Paper 235 *Proposed amendments to ASIC market integrity rules and instruments for the Chi-X investment product market (CP 235)*.
14. The proposals in CP 235 relating to the admission and quotation of warrants and ETFs on the Chi-X Market seek to apply a consistent regulatory framework for the quotation and trading of warrants and ETFs (in particular, for Participants and investors, who may seek to trade these products on either the ASX and/or Chi-X Markets), while achieving a sound balance between protecting retail investors, encouraging market competition, and minimising the impact on industry.
15. Submissions to CP 235 were received from a variety of stakeholders, including market operators, market participants and an industry association. Commenters were supportive of the proposals in CP 235. No human rights issues were raised.

Australian Securities and Investments Commission