

# ASIC MARKET INTEGRITY RULES (ASX MARKET) AMENDMENT 2015 (NO. 2)

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

### Summary

*This Instrument amends the following provisions of the ASIC Market Integrity Rules (ASX Market) 2010 (ASIC Market Integrity Rules (ASX)):*

- (a) Rule 1.4.3; and*
- (b) Rules 2.4.1 and 3.1.8.*

*This Instrument amends Rule 1.4.3 to update the definition of “ETF” and “Managed Fund” to incorporate recent changes to the ASX Operating Rules.*

*Rules 2.4.1(3) and 3.1.8(4) have been introduced in the context of Chi-X Australia Pty Ltd (Chi-X) amending its Operating Rules for the Chi-X market to permit the quotation and trading of Warrants and ETFs under the Chi-X Operating Rules. The changes to the Chi-X Operating Rules necessitated amendments to the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 (ASIC Market Integrity Rules (Chi-X)) (see ASIC Market Integrity Rules (Chi-X Australia Market) Amendment 2015 (No.2). The amendments made by this Instrument to Rules 2.4.1(3) and 3.1.8(4) reflect that the obligations with respect to Level One Accredited Derivatives Advisers and Level Two Accredited Derivatives Advisers, and Client Agreement (Warrants), are now substantially the same in the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X). The introduction of Rules 2.4.1(3) and 3.1.8(4) recognise, for the ASIC Market Integrity Rules (ASX), accreditations and compliance with client agreement obligations under the ASIC Market Integrity Rules (Chi-X). The amendments made by this Instrument aim to achieve a sound balance between protecting retail investors, encouraging market competition, and minimising the impacts on industry.*

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

### 1. Operation of this instrument

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

#### **(a) Amendments to the definition of “ETF” and “Managed Fund”**

In May 2015, the ASX Operating Rules were amended to support the quotation of AQUA Products (i.e. ETFs, Managed Funds, and Structured Products) admitted to quotation on the ASX Market in accordance with Schedule 10A of the ASX Operating Rules. The amendments expanded the definition of “Managed Fund” to include a foreign company that has the characteristics of a managed investment scheme as defined in section 9 of the *Corporations Act*

2001 (*the Corporations Act*). The definition of ETF in the ASX Operating Rules was also slightly expanded to permit a subscriber to transfer cash, or a combination of Securities and cash to a Managed Fund.

This Instrument updates the definitions in the ASIC Market Integrity Rules (ASX) to ensure the Rules extend to capture, for market supervision purposes, all ETFs and Managed Funds that have been admitted to quotation on the ASX Market and traded on both the ASX and Chi-X markets.

## **(b) Amendments to Rules 2.4.1 and 3.1.8**

The Instrument amends ASIC Market Integrity Rules (ASX) to insert new subparagraphs 2.4.1(3)(a) and (b), and a new subrule 3.1.8(4) to reflect that the provisions relating to Level One Accredited Derivatives Advisers and Level Two Accredited Derivatives Advisers, and Client Agreement (Warrants), are now substantially the same in the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X). To minimise regulatory duplication for participants whilst maintaining relevant investor protection measures:

- Subparagraph 2.4.1(3)(a) provides that advisers who are accredited as a Level One Accredited Derivatives Adviser under the ASIC Market Integrity Rules (Chi-X) will not be required to also be accredited under the ASIC Market Integrity Rules (ASX) for the provision of Financial Product Advice to a Retail Client relating to subscribing for, buying, selling and exercising Warrants;
- Subparagraph 2.4.1(3)(b) provides that advisers who are accredited as a Level Two Accredited Derivatives Adviser under the ASIC Market Integrity Rules (Chi-X) will not be required to also be accredited under the ASIC Market Integrity Rules (ASX) for the provision of Financial Product Advice to a Retail Client relating to subscribing for, buying, selling and exercising Warrants, and in relation to all trading strategies relating to Warrants;
- Subrule 3.1.8(4) provides that a Market Participant does not need to comply with subrules (1) and (2) (which require a Market Participant to disclose, and a Retail Client to acknowledge, specified characteristics of Warrants) if the Market Participant is a participant of the market operated by Chi-X and the Market Participant has a written agreement with the Client under Rule 3.1.8 of the ASIC Market Integrity Rules (Chi-X).

## **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 with our proposal to not require a Market Participant to enter into a new written agreement with a Retail Client if they have an existing written agreement with the client under Rule 3.1.8 of the ASIC Market Integrity Rules (Chi-X). In response to industry feedback, we decided to amend the drafting of Rule 2.1.4(3) to clarify that advisers already accredited under the ASIC Market Integrity Rules (Chi-X) would not need to be accredited under the ASIC Market Integrity Rules (ASX) to give advice to a retail client in relation to Warrants on the ASX Market. 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 Clients, 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 (ASX).

The ASIC Market Integrity Rules (ASX) apply to:

- (a) the activities or conduct of the Financial Market operated by ASX Limited (ACN 008 624 691) (**ASX**);
- (b) the activities or conduct of persons in relation to the ASX Market; and
- (c) the activities or conduct of persons in relation to Financial Products traded on the ASX Market.

#### **4. Commencement of the Instrument**

The Instrument will commence on the day after the day it 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 – Name of the legislative instrument**

This paragraph provides that the title of the Instrument is the *ASIC Market Integrity Rules (ASX Market) Amendment 2015 (No.2)*.

### **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 (ASX Market) 2010*.

## **Schedule 1 - Amendments**

### **Item [1] Rule 1.4.3, definition of “ETF”**

Item [1] of Schedule 1 to the Instrument repeals the definition of “ETF”. Item [3] below inserts an expanded definition of ETF, in appropriate alphabetical order in the Rule 1.4.3 definitions.

### **Item [2] Rule 1.4.3, definition of “ETF Security”**

Item [2] of Schedule 1 to the Instrument repeals the definition of “ETF Security”. Item [3] below inserts a definition of ETF Security identical to the repealed definition, in appropriate alphabetical order in the Rule 1.4.3 definitions.

### **Item [3] Rule 1.4.3, after the definition of “Equity Securities”**

Item [3] of Schedule 1 to the Instrument reinserts definitions of “ETF” and “ETF Security” in alphabetical order. The definition in the reinserted definition of “ETF” is expanded from the repealed definition (see Item [1] above) in paragraph (c) to include circumstances where cash, or a combination of Securities and cash may be transferred by a subscriber. ETF means a Managed Fund:

- (a) which is listed on the ASX Market or admitted to trading status as an AQUA Product or which is admitted to quotation as an Investment Product (MIS) on the Chi-X Market;
- (b) with power and approval to continuously issue and have quoted on the ASX or Chi-X Market, Equity Securities in the Managed Fund;
- (c) which provides for the issue of new Equity Securities in return for the subscriber transferring to the Managed Fund a portfolio of Securities, cash, or a combination of Securities and cash; and

(d) for which the price of the Financial Product, index, foreign or Australian currency, commodity or other point of reference for determining the value of the Equity Securities is continuously disclosed or can be immediately ascertained .

“ETF Security” means a Financial Product issued by or provided pursuant to an ETF.

Item [4] Rule 1.4.3, definition of “Managed Fund”

Item [4] of Schedule 1 to the Instrument omits the definition of “Managed Fund” and replaces it with a definition that replicates the omitted definition and extends the definition to include a foreign company which has the economic features of a managed investment scheme, namely:

- a) investors contribute money or money’s worth to acquire rights to benefits produced by the collective investment;
- b) contributions of investors are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for investors holding Financial Products in the collective investment; and
- c) investors holding Financial Products issued in the collective investment do not have day to day control over the operation of the collective investment.

Item [5] After subrule 2.4.1(2)

Item [5] of Schedule 1 to the Instrument amends Rule 2.4.1 to insert a new subrule 2.4.1(3). Subparagraph 2.4.1(3)(a) provides that advisers who are accredited as a Level One Accredited Derivatives Adviser under the ASIC Market Integrity Rules (Chi-X) will not be required to also be accredited under the ASIC Market Integrity Rules (ASX) for the provision of Financial Product Advice to a Retail Client relating to subscribing for, buying, selling and exercising Warrants.

Subparagraph 2.4.1(3)(b) provides that advisers who are accredited as a Level Two Accredited Derivatives Adviser under the ASIC Market Integrity Rules (Chi-X) will not be required to also be accredited under the ASIC Market Integrity Rules (ASX) for the provision of Financial Product Advice to a Retail Client relating to subscribing for, buying, selling and exercising Warrants, and in relation to all trading strategies relating to Warrants.

Item [6] After subrule 3.1.8(3)

Item [6] of Schedule 1 to the Instrument amends Rule 3.1.8 to insert a new subrule 3.1.8(4) which states that a Market Participant is not required to comply with subrules 3.1.8(1) and 3.1.8(2), which require written agreements with, and acknowledgements from clients, if the Market Participant is a participant of the market operated by Chi-X Australia Pty Ltd and the Market Participant has a written agreement with the Client under Rule 3.1.8 of the ASIC Market Integrity Rules (Chi-X Australia Market) 2011.

## **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 Market) Amendment 2015 (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*.

#### **A. Overview of this Instrument**

1. The Legislative Instrument is made under subsection 798G(1) of the *Corporations Act 2001 (Corporations Act)*. The Legislative Instrument amends the *ASIC Market Integrity Rules (ASX Market) 2010 (ASIC Market Integrity Rules (ASX))* which apply to:
  - (a) the activities and conduct of a Financial Market operated by ASX Limited (ACN 008 624 691) (*ASX*);
  - (b) the activities or conduct of persons in relation to the ASX Market; and
  - (c) the activities or conduct of persons in relation to Financial Products traded on the ASX Market.
2. The purpose of the Legislative Instrument is to amend the ASIC Market Integrity Rules (ASX) to:
  - (a) reflect the expanded scope of Exchange Traded Funds (ETFs) and Managed Fund Products that may now be traded on the ASX Market as a result of recent amendments to the ASX Operating Rules; and
  - (b) recognise that the accreditation obligations of a Market Participant which has Representatives that provide Financial Product Advice to Retail Clients in relation to Warrants, and Client Agreement (Warrants) obligations, are the same under both the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X Australia Market) 2011 (*ASIC Market Integrity Rules (Chi-X)*).

#### **B. Human rights implications**

3. The Legislative 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**

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

## **D. Consultation**

5. 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)*.
6. In CP 235 we consulted on proposals to amend the definition of “ETF” and “Managed Fund” to the ASIC Market Integrity Rules (ASX) to reflect the recent amendments to the ASX Operating Rules, which allows a foreign company that has the characteristics of a managed investment scheme (as defined in section 9 of the Corporations Act to be an acceptable legal form for an ETF or Managed Fund for admission to quotation on the ASX Market.
7. We also consulted to introduce Rules 2.4.1(3) and 3.1.8(4) to exempt advisers from the need to comply with the accreditation obligations and Client Agreement (Warrants) obligations respectively, in the event that they already meet those obligations in accordance with Rules 2.4.1 and 3.1.8 of the ASIC Market Integrity Rules (Chi-X).
8. 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:
  - Clarification of whether accredited derivatives advisers who were accredited under the ASIC Market Integrity Rules (Chi-X) would only be able to give advice on ASX Warrants, rather than the broader suite of products available on the ASX; and
  - A preference for stand-alone client agreements who trade Warrants on each market;
  - a preference for a joint explanatory booklet for the Chi-X and ASX Warrant markets;
  - That the proposed definitions of 'ETF' and 'Managed Fund' were bespoke to the ASX market, rather than being market-neutral.
9. ASIC has considered the submissions to CP 235 and we made changes to clarify in Rule 2.1.4(3) that advisers already accredited as a level one or level two ADA under the ASIC Market Integrity Rules (Chi-X) would only be able to give advice to a retail client in relation to warrants on the ASX market. Our proposals in CP 235 otherwise aimed to:
  - apply a consistent regulatory framework for the quotation and trading of ETFs and warrants, in particular, for market participants and investors, who may seek to trade these products on either the ASX and/or Chi-X markets; and
  - ensure the ASIC Market Integrity Rules (ASX) extend to capture, for market supervision purposes, all ETFs and Managed Funds that have been admitted to quotation on the ASX Market and traded on both the ASX and Chi-X market,

while achieving a sound balance between protecting retail investors, encouraging market competition, and minimising the impact on industry. No human rights issues were raised.

## **Australian Securities and Investments Commission**