

ASIC MARKET INTEGRITY RULES (CHI-X AUSTRALIA MARKET) AMENDMENT 2015 (NO. 2)

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Summary

This Instrument amends the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 (ASIC Market Integrity Rules (Chi-X)), as follows:

- (a) inserts the term "Cash Market Product";*
- (b) inserts a new Part 2.4;*
- (c) inserts new Rules 3.1.2 and 3.1.8; and*
- (d) amends Rules 3.1.3 and 3.1.4.*

ASIC is amending the ASIC Market Integrity Rules (Chi-X) to reflect that Chi-X Australia Pty Ltd (Chi-X) has made amendments to its Operating Rules that enable it to admit Warrants and exchange traded funds (ETFs) to quotation and trade on its market.

The term "Cash Market Product" has been introduced to reflect the expanded suite of products that may be quoted and traded on the Chi-X Market, which include Warrants and ETFs.

The new Part 2.4 and Rules 3.1.2 and 3.1.8 introduce accreditation, disclosure and Client Agreement (Warrant) obligations with the aim of applying consistent regulatory settings for the quotation and trading of Warrants and ETFs across markets.

The amendments to Rules 3.1.3 and 3.1.4 ensure that a Market Participant provides information about any material changes to their third party execution and/or clearing arrangements arising from the commencement of the quotation and trading of Warrants and ETFs on the Chi-X Market.

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

1. Operation of this instrument

Details of this Instrument are contained in [Attachment A](#).

(a) Insert the term 'Cash Market Products'

The introduction of the term "Cash Market Product", includes existing Equity Market Products and extends to two new Chi-X Investment Products (i.e. "Investment Product (MIS)" and "Investment Product (Warrant)"). This will ensure the ASIC Market Integrity Rules (Chi-X) cover these new products that may be quoted and traded on the Chi-X Market under the Chi-X

operating rules. In addition, this amendment ensures consistent regulatory settings apply to the trading of similar products across markets.

(b) Insert a new Part 2.4

The new Part 2.4 requires Representatives of Market Participants who provide Financial Product Advice to Retail Clients in relation to Warrants on the Chi-X Market to be accredited as either a Level One Accredited Derivatives Adviser or Level Two Accredited Derivatives Adviser, unless they are already accredited under the ASIC Market Integrity Rules (ASX).

Introducing these requirements to the Chi-X Market ensures the same level of investor protection applies to Warrants trading irrespective of the market on which they trade. To minimise regulatory duplication, advisers who are already accredited under the ASIC Market Integrity Rules (ASX) will not be required to obtain further accreditation in relation to Chi-X quoted and traded Warrants.

The accreditation requirements in the ASIC Market Integrity Rules (Chi-X) are supplementary to a Market Participant's general obligations as an Australian Financial Services licensee to ensure that its Representatives are competent to provide Financial Product Advice with respect to Warrants traded on the Chi-X Market.

(c) New Rules 3.1.2 and 3.1.8

These amendments are intended to provide a mechanism for assisting market transparency of Chi-X Warrants for retail investors.

The new Rule 3.1.2 requires advisers to provide Retail Clients a copy of any current Chi-X explanatory booklet for Warrants (including any published updates), prior to clients purchasing Warrants on the Chi-X Market for the first time.

The new Rule 3.1.8 requires advisers to obtain a written acknowledgement from Retail Clients who have not previously traded Warrants on the ASX or Chi-X Market, where the client acknowledges some of the standard features of Warrants and that they have received and read a copy of any current explanatory booklet about Warrants issued by the Market Operator. To avoid regulatory duplication, Rule 3.1.8(4) provides that a Market Participant does not need to comply with the new subrules 3.1.8(1) and (2) if the Market Participant is an ASX Participant that has a written agreement with a client under Rule 3.1.8 of the ASIC Market Integrity Rules (ASX).

(d) Amendments to Rules 3.1.3 and 3.1.4

Rules 3.1.3 and 3.1.4 ensure Market Participants provide written disclosure to clients about their third party execution and/or clearing arrangements, in the event there is a material change to the information they have previously provided.

The amendments to Rules 3.1.3 and 3.1.4 ensure clients are advised about any material changes to these arrangements arising from the commencement of quotation and trading of ETFs and Warrants on the Chi-X market.

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 (Chi-X).

The ASIC Market Integrity Rules (Chi-X) apply to:

- (a) the activities or conduct of the Financial Market operated by Chi-X Australia Pty Limited (ACN 129 584 667) (**Chi-X**);
- (b) the activities or conduct of persons in relation to the Chi-X Market; and
- (c) the activities or conduct of persons in relation to Financial Products traded on the Chi-X 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 (Chi-X Australia 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 (Chi-X Australia Market) 2011*.

Schedule 1 - Amendments

Item [1] Rule 1.4.3, before definition of "AFSL"

Item [1] of Schedule 1 to the Instrument inserts definitions of “Accreditation Examination” and “Accredited Adviser”. “Accreditation Examination” means an examination approved by ASIC in accordance with subrule 2.4.7(4) or 2.4.8(4). “Accredited Adviser” means a Level One Accredited Derivatives Adviser or a Level Two Accredited Derivatives Adviser.

Item [2] Rule 1.4.3, after definition of "Approved Rating Agency"

Item [2] of Schedule 1 to the Instrument inserts the definition of “AQUA Product”. “AQUA Product” means a Financial Product which is admitted to trading status as an AQUA product on the ASX Market.

Item [3] Rule 1.4.3, definition of “Bid”

Item [3] of Schedule 1 to the Instrument omits the definition of “Bid”, and substitutes a definition that refers to Cash Market Products rather than Equity Market Products. The new definition provides that ““Bid” means, in relation to a Cash Market Product, a price and quantity of the Cash Market Product to be purchased.”

Item [4] Rule 1.4.3, after definition of “Business Day”

Item [4] of Schedule 1 to the Instrument inserts definitions of “Cash Market Product” and “Cash Market Transaction”. “Cash Market Product” means an Equity Market Product and an Investment Product. “Cash Market Transaction” means a transaction between Market Participants for one or more Cash Market Products.

Item [5] Rule 1.4.3, after definition of “Clearing Rules”

Item [5] of Schedule 1 to the Instrument inserts the definition of “Client Agreement”. “Client Agreement” means an agreement between the Market Participant and a client, entered into under Rule 3.1.8 or 3.1.9.

Item [6] Rule 1.4.3, after definition of “Compliance Education Requirements”

Item [6] of Schedule 1 to the Instrument inserts the definition of “Compliance Manager”. “Compliance Manager” means a person who has responsibility for all or part of the compliance function in the business of the Market Participant in connection with the Chi-X Market.

Item [7] Rule 1.4.3, after definition of “Conditional Sale”

Item [7] of Schedule 1 to the Instrument inserts the definition of “Continuing Professional Education Requirements”. “Continuing Professional Education Requirements” means the requirements of Rule 2.4.21.

Item [8] Rule 1.4.3, definition of “ETF”

Item [8] of Schedule 1 to the Instrument repeals the definition of “ETF”. Item [10] below inserts a definition of ETF identical to the repealed definition, in appropriate alphabetical order in the Rule 1.4.3 definitions.

Item [9] Rule 1.4.3, definition of “ETF Security”

Item [9] of Schedule 1 to the Instrument repeals the definition of “ETF Security”. Item [10] below inserts a definition of ETF Security identical to the repealed definition, in appropriate alphabetical order in the Rule 1.4.3 definitions.

Item 10 Rule 1.4.3, after definition of “Equity Securities”

Item [10] of Schedule 1 to the Instrument reinserts definitions of "ETF" and "ETF Security" in alphabetical order. “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 11 Rule 1.4.3, after definition of “Financial Product”

Item [11] of Schedule 1 to the Instrument inserts the definition of “Financial Product Advice”. “Financial Product Advice” has the meaning given by section 766B of the Corporations Act.

Item [12] Rule 1.4.3, after definition of “In Price/Time Priority”

Item [12] of Schedule 1 to the Instrument inserts definitions of “Investment Product”, “Investment Product (MIS)”, “Investment Product (Warrant) and “Investment Product Issuer”. “Investment Product” means an Investment Product (MIS) and an Investment Product (Warrant). “Investment Product (MIS)” means an ETF Security admitted to quotation on the Chi-X Market. “Investment Product (Warrant)” means a Warrant admitted to quotation on the Chi-X Market. “Investment Product Issuer” means an entity which issues, distributes or makes available Investment Products and which has been registered by the Market Operator as a product issuer under the Operating Rules.

Item [13] Rule 1.4.3, definition of “Issuer”

Item [13] of Schedule 1 to the Instrument omits the definition of “Issuer” and substitutes a definition that refers to Cash Market Products rather than Equity Market Products. “Issuer” means in relation to a Cash Market Product, the legal entity which issues the Cash Market Product.

Item [14] Rule 1.4.3, after definition of “Issuer”

Item [14] of Schedule 1 to the Instrument inserts definitions of “Level One Accredited Derivatives Adviser” and “Level Two Accredited Derivatives Adviser”. “Level One Accredited Derivatives Adviser” means a person who has been accredited under Rule 2.4.7 and whose accreditation is current. “Level Two Accredited Derivatives Adviser” means a person who has been accredited under Rule 2.4.8 and whose accreditation is current.

Item [15] Rule 1.4.3, definition of “Managed Fund”

Item [15] 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 [16] Rule 1.4.3, after definition of “Market Bid”

Item [16] of Schedule 1 to the Instrument inserts the definition of “Market Maker”. “Market Maker” means a Market Participant registered by the Market Operator as a market maker, which has an obligation to make a market in assigned classes of Investment Products.

Item [17] Rule 1.4.3, definition of “Market Transaction”

Item [17] of Schedule 1 to the Instrument amends the definition of “Market Transaction”. It does this by changing references to “Equity Market Product” to “Cash Market Product”. “Market Transaction” means a transaction for one or more Cash Market Products, entered into on a Trading Platform or reported to the Market Operator under the Market Operating Rules.

Item [18] Rule 1.4.3, definition of “Offer”

Item [18] of Schedule 1 to the Instrument omits the definition of “Offer” and substitutes a definition that refers to Cash Market Products rather than Equity Market Products. “Offer” means in relation to a Cash Market Product, a price and quantity of the Cash Market Products to be sold.

Item [19] Rule 1.4.3, definition of “Order”

Item [19] of Schedule 1 to the Instrument omits the definition of “Order” and substitutes a definition that refers to Cash Market Products rather than Equity Market Products. “Order” means in relation to Cash Market Products, an instruction to purchase or sell Cash Market Products, or an instruction to amend or cancel a prior instruction to purchase or sell Cash Market Products..

Item [20] Rule 1.4.3, after definition of “Relevant Financial Market”

Item [20] of Schedule 1 to the Instrument inserts the definitions of “Renewal Date” and “Renewal Period”. “Renewal Date” means the date notified by ASIC to the Market Participant under paragraph 2.4.9(2)(b), subrule 2.4.14(2) or paragraph 2.4.20(5)(b), as the date on which a person will cease to be an Accredited Adviser, unless their accreditation is renewed before that date under subrule 2.4.14(2) or 2.4.15(3). “Renewal Period” means the period that commences 60 days prior to the Renewal Date and ends 7 days prior to the Renewal Date.

Item [21] Rule 1.4.3, after definition of “Target”

Item [21] of Schedule 1 to the Instrument inserts the definition of “Terms of Issue”. “Terms of Issue” means, in relation to Warrants, rights, conditions and obligations of the Warrant-Issuer and the holder of the Warrant.

Item [22] Rule 1.4.3, after definition of “Trading Suspension”

Item [22] of Schedule 1 to the Instrument inserts the definition of “Training Register”. “Training Register” means the list, published on ASIC’s website, of training courses and assessment services that meet ASIC’s training requirements under Regulatory Guide 146 Licensing: Training of financial product advisers.

Item [23] Rule 1.4.3, after definition of “Unprofessional Conduct”

Item [23] of Schedule 1 to the Instrument inserts the definitions of “Warrant” and “Warrant-Issuer”. “Warrant” has the meaning given by Corporations Regulation 1.0.02. “Warrant-Issuer” means an entity approved by the Market Operator to issue Warrants.

Item [24] After Rule 2.3.5

Item [24] of Schedule 1 to the Instrument inserts Part 2.4 (Retail Client Adviser Accreditation). Part 2.4 details the accreditation requirements for representatives of a Market Participant that provide Financial Product Advice to retail clients in relation to Warrants.

New Part 2.4 contains:

Rule 2.4.1 – relating to the requirement for a Market Participant to ensure that its Representatives who provide Financial Product Advice to Retail clients hold the accreditation required under the Rules, and prohibitions on holding out that a type of accreditation is held if it is not held. Subrule 2.4.1(3) provides that a person holding a Level One accreditation under the ASIC Market Integrity rules (ASX) is accredited as a Level One Accredited Derivatives Adviser under the ASIC Market Integrity Rules (Chi-X).

Rule 2.4.2 – relating to the advice able to be given by a Level One Accredited Derivatives Adviser (advice relating to subscribing for and buying and selling Chi-X Warrants and exercising Chi-X Warrants).

Rule 2.4.4 – relating to the advice able to be given by a Level Two Accredited Derivatives Adviser (advice relating to subscribing for and buying and selling and exercising Chi-X Warrants and all trading strategies relating to Chi-X Warrants).

Rules 2.4.7 and 2.4.8 – empowering ASIC to accredit a person as a Level One Accredited Derivatives Adviser or a Level Two Accredited Derivatives Adviser respectively, setting out the matters about which ASIC must be satisfied to so accredit, and setting out the process by which a Market Participant may apply to nominate a person as a Level One or a Level Two Accredited Derivatives Adviser.

Rule 2.4.9 – relating to when ASIC will accept an application to accredit a person as a Level One Accredited Derivatives Adviser or a Level Two Accredited Derivatives Adviser, and setting out how ASIC will give a Market Participant notice that a person has been accredited and what that notice must specify.

Rule 2.4.10 – relating to when ASIC will reject an application to accredit a person as a Level One Accredited Derivatives Adviser or a Level Two Accredited Derivatives Adviser, and setting out how ASIC will give a Market Participant notice that a person has been rejected, specifying the reasons why.

Rule 2.4.11 – relating to the circumstances in which ASIC may exempt a person, in writing, from the requirement to sit an Accreditation Examination (when they can demonstrate they have completed relevant training or have extensive industry experience).

Rule 2.4.12 – relating to the number of times a person may sit an Accreditation Examination without gaining the required pass mark (three times), and the circumstances in which the Market Participant may apply to ASIC for permission for the person to sit the Accreditation Examination again and the information that application must include.

Rule 2.4.13 – empowering ASIC to renew the accreditation of an Accredited Adviser, setting out the matters about which ASIC must be satisfied to so accredit, and setting out the process by which a Market Participant may apply to renew the accreditation of a person as a Level One or a Level Two Accredited Derivatives Adviser.

Rule 2.4.14 – relating to when ASIC will accept an application for renewal of accreditation of a person as a Level One Accredited Derivatives Adviser or a Level Two Accredited Derivatives Adviser, and setting out how ASIC will give a Market Participant notice that a person has had their accreditation renewed and what that notice must specify.

Rule 2.4.15 – relating to when ASIC may reject an application for renewal of accreditation of a person as a Level One Accredited Derivatives Adviser or a Level Two Accredited Derivatives Adviser, and setting out how ASIC will give a Market Participant notice that a person has been rejected, specifying the reasons why.

Rule 2.4.16 – relating to the effect of non-renewal of the accreditation of an Accredited Adviser (the person will cease to hold the relevant accreditation with effect from the Renewal Date).

Rule 2.4.17 – relating to the circumstances in which an Accredited Adviser’s accreditation will be automatically withdrawn (when the Accredited Adviser ceases to be a Representative of the Market Participant that made the application for the person to be accredited), and setting out how the Market Participant must notify ASIC of the Accredited Adviser ceasing to be a Representative of the Market Participant and what information that notification must contain.

Rule 2.4.18 – relating to the circumstances in which ASIC may accept the voluntary withdrawal of an Accredited Adviser’s accreditation (if the Market Participant of which the person is a Representative requests that ASIC withdraw the accreditation), and setting out how the Market Participant must request that ASIC withdraw the accreditation of the Accredited Adviser and what information that request must contain.

Rule 2.4.19 – empowering ASIC to suspend or withdraw the accreditation of an Accredited Adviser if ASIC has reason to believe that the person does not have the requisite skill, knowledge or integrity to provide Financial Product Advice of the kind covered by the relevant category of accreditation, and setting out how ASIC must notify the relevant Market Participant and Accredited Adviser of the suspension or withdrawal of accreditation.

Rule 2.4.20 – relating to when ASIC may accept an application to re-accredit a person whose accreditation has been withdrawn or has expired, without the person sitting another Accreditation Examination, and setting out how ASIC must notify the relevant Market Participant that the person has been re-accredited.

Rule 2.4.21 – relating to the requirement that a Market Participant ensure that all of its Accredited Advisers comply with any continuing professional education requirements approved

by ASIC, and setting out when ASIC may approve continuing professional education requirements for Accredited Advisers.

Rule 2.4.22 – relating to the requirement that a Market Participants ensure that a Managed Discretionary Account for a Retail Client which involves dealing in Investment Products (Warrants) is operated by an Accredited Adviser with the appropriate accreditation under these Rules.

Item [25] Rule 2.5.5(a)

Item [25] of Schedule 1 to the Instrument amends Rule 2.5.5(a). It does this by changing “Equity Market Product” to “Cash Market Product”. This ensures that Rule 2.5.5(a), which requires a Market Participant to ensure that each of its DTRs is authorised to deal in the products in respect of which the DTR submits orders on behalf of the Market Participant, extends to ensuring that its DTRs are authorised to deal in Investment Products.

Item [26] Rule 2.5.5(b)

Item [26] of Schedule 1 to the Instrument amends Rule 2.5.5(b). It does this by changing “Equity Market Product” to “Cash Market Product”. This ensures that Rule 2.5.5(b), which requires a Market Participant to ensure that each of its DTRs is suitably qualified and experienced, extends to ensuring qualification and experience in dealing in Investment Products.

Item [27] After Rule 3.1.1

Item [27] of Schedule 1 to the Instrument inserts Rule 3.1.2 (Documents to be given to a client: Investment Products (Warrants)). Rule 3.1.2 relates to the requirement for a Market Participant to, before accepting an Order from a person to purchase an Investment Product (Warrant), give the person a copy of any current explanatory booklet in respect of Investment Products (Warrants) published by the Market Operator, together with any updates to that explanatory booklet published by the Market Operator, if it is the first time an Order in respect of Investment Products (Warrants) is accepted from the person. Explanatory booklets for Warrants are intended to provide a mechanism for assisting market transparency of these products to retail investors. This amendment facilitates that transparency.

Items [28] and [29] Subrule 3.1.3(2)

Items [28] and [29] of Schedule 1 to the Instrument make amendments consequential to the amendment in Item [30] below, to ensure the punctuation and formatting of subrule 3.1.3(2) is appropriate for the amendment made by Item [30].

Item [30] Subrule 3.1.3(2)

Item [30] of Schedule 1 to the Instrument amends subrule 3.1.3(2) by introducing paragraph (e). New paragraph (e) provides that a Market Participant is exempt from complying with subrule 3.1.3(1) where, amongst other requirements to be satisfied, the Market Transaction is a Market Transaction in a Cash Market Product.

Items [31] to [33] Subrule 3.1.4(2)

Items [31] to [33] of Schedule 1 to the Instrument amend subrule 3.1.4(2). They do this by changing references to “Equity Market Product” to “Cash Market Product”. This ensures that subrule 3.1.4(2), which relates to the information to be given to a client by a Market Participant about clearing arrangements, extends to information about rights the Clearing Participant has against the client in relation to the clearing and settlement of Investment Products.

Items [34] and [35] Subrule 3.1.4(3)

Items [34] and [35] of Schedule 1 to the Instrument make amendments consequential to the amendment in Item [36] below, to ensure the punctuation and formatting of subrule 3.1.4(3) is appropriate for the amendment made by Item [36].

Item [36] Subrule 3.1.4(3)

Item [36] of Schedule 1 to the Instrument amends subrule 3.1.4(3) by introducing paragraph (e). New paragraph (e) provides that a Market Participant is exempt from complying with subrule 3.1.4(1) where, amongst other requirements to be satisfied, the Market Transaction is a Market Transaction in a Cash Market Product.

Item [37] After Rule 3.1.4

Item [37] of Schedule 1 to the Instrument inserts Rule 3.1.8 (Client Agreement for Investment Products (Warrants)). Rule 3.1.8 relates to the requirement for Market Participants to enter into written agreements with Retail Clients under which the Market Participant discloses, and the Client acknowledges that they are aware of certain specified information before entering into a Market Transaction in respect of Investment Products (Warrants) on behalf of that Retail Client.

Item [38] Rule 3.1.10

Item [38] of Schedule 1 to the Instrument amends Rule 3.1.10 to include a reference to Rule 3.1.8. Rule 3.1.10 as amended allows Client Agreements to contain terms not required by the ASIC Market Integrity Rules (Chi-X), so long as those terms are not inconsistent with Rules 3.1.8 and 3.1.9.

Items [39] and [40] Rule 3.2.5

Items [39] and [40] of Schedule 1 to the Instrument amend Rule 3.2.5(2) and (3), by omitting references to “Equity” and substituting “Cash”. The effect of these amendments is to amend the subrules to extend to Cash Market Products, and ensures that Rule 3.2.5, which lists the circumstances in which a Market Participant dealing or entering into a Market Transaction will be taken to have entered into or dealt in that Market Transaction as Principal, extends to transactions in Investment Products.

Item [41]

Item [41] of Schedule 1 to the Instrument amends subrule 3.4.1(3)(d)(i) by omitting references to "Equity" and substituting "Cash", to extend the requirements which apply to confirmations in the subrule, to include Investment Products.

Item [42] Subrule 3.4.1(3)(h)

Item [42] of Schedule 1 to the Instrument omits subrule 3.4.1(3)(h) and substitutes a subrule that extends the operation of the rule to Cash Market Products. This ensures that the content of confirmations required by subrule 3.4.1(3)(h), extends to transactions in Investment Products.

Item [43] Rule 3.4.2(b)

Item [43] of Schedule 1 to the Instrument amends Rule 3.4.2(b) by omitting references to "Equity" and substituting "Cash". This ensures that Rule 3.4.2(b), which permits accumulation and price averaging in confirmations given to clients in respect of Market Transactions, extends to transactions in Investment Products.

Item [44] Rule 3.5.1

Item [44] of Schedule 1 to the Instrument omits Rule 3.5.1, and substitutes a rule on similar terms that extends to Cash Market Products. This ensures that Rule 3.5.1, which requires a Market Participant to establish trust accounts for client money received in connection with dealings, applies to dealings in Investment Products.

Items [45] to [51] Rule 4.2.1

Items [45] to [51] of Schedule 1 to the Instrument amends Rule 4.2.1, by omitting references to "Equity" and substituting "Cash". This ensures that Rule 4.2.1, which relates to the general record keeping requirements of Market Participants, extends to records relating to Investment Products.

Item [52] Rule 5.1.1

Item [52] of Schedule 1 to the Instrument amends Rule 5.1.1. It does this by omitting references to "Equity" and substituting "Cash". This ensures that Rule 5.1.1, which outlines the application and meaning of dealing on "Own Account", extends to orders in relation to Investment Products.

Items [53] Rule 5.1.4

Item [53] of Schedule 1 to the Instrument amends Rule 5.1.4(1)(e), by omitting "Equity" and substituting "Cash". This ensures that Rule 5.1.4(1)(e) which lists the factors relevant to determine whether a Market Participant has dealt fairly and in due turn includes factors relating to Investment Products.

Item [54] Rule 5.1.4(2)

Item [54] of Schedule 1 to the Instrument amends Rule 5.1.4(2) to omit "Equity" and substitute "Cash". This ensures Rule 5.1.4(2), which clarifies the reference to giving preference to an order of a client in Rule 5.1.4(1)(e), applies to clarify that reference in respect of Investment Products.

Items [55] – [56] Subrules 5.1.4(2)(a) and (b)

Items [55] – [56] amend subrules 5.1.4(2)(a) and (b), by omitting "The Equity" and substituting "the Cash" and omitting "Equity" and substituting "Cash" wherever occurring, respectively. This ensures that the clarification about the operation of subrule 5.1.4(1)(e) in 5.1.4(2) applies to Investment Products.

Item [57] Rule 5.1.7

Item [57] of Schedule 1 to the Instrument omits Rule 5.1.7, and substitutes a rule on similar terms to the omitted Rule that extends to Cash Market Products. This ensures that Rule 5.1.7, which relates to Orders to buy or sell products underlying a Derivatives Market Contract in the Underlying Market, extends to Investment Products.

Item [58] Subrule 5.4.2(3)

Item [58] of Schedule 1 to the Instrument amends subrule 5.4.2(3), by omitting "Equity" and substituting "Cash". This extends the operation of the subrule to Cash Market Products and ensures that subrule 5.4.2(3), which relates to the internal consent required for trading by the connected persons of a Market Participant, extends to considering whether the Market Transaction contemplated might materially affect the price of Investment Products.

Item [59] Subparagraph 5.6.3(1)(d)(iii)

Item [59] of Schedule 1 to the Instrument amends subparagraph 5.6.3(1)(d)(iii) by omitting "Equity" and substituting "Cash". This extends the operation and requirements of subparagraph 5.6.3(1)(d)(iii), which relates to system requirements for Automated Order Processing, to Automated Order Processing of Investment Products.

Item [60] Subparagraph 5.6.12(2)(b)(iv)

Item [60] of Schedule 1 to the Instrument amends subrule 5.6.12(2) at subparagraph (b)(iv) by omitting "Equity" and substituting "Cash". This extends the operation of subrule 5.6.12(2), which relates to ASIC's power to direct a Market Participant to immediately suspend, limit or prohibit the conduct of Automated Order Processing, extend to circumstances where the Automated Order Processing is in respect of Investment Products.

Items [61] Rule 5.7.1

Item [61] of Schedule 1 to the Instrument amends Rule 5.7.1 by omitting "Equity" and substituting "Cash". This extends the operation of the Rule, which prohibits Market Participants from creating a false or misleading appearance of active trading or market price, to Investment Products.

Item [62] Subparagraph 5.7.1(a)

Item [62] of Schedule 1 to the Instrument amends subparagraph 5.7.1(a) by omitting "Equity" and substituting "Cash". This extends the operation of the subparagraph, which prohibits creating a false or misleading appearance of active trading, to Investment Products.

Items [63] to [68] Subrules 5.7.2(a), (b), (d), (g), (j) and (k)

Items [63] to [68] of Schedule 1 to the Instrument modify Rule 5.7.2 (a), (b), (d), (g), (j) and (k). They do this by omitting "Equity" and substituting "Cash" wherever occurring. This ensures that the circumstances of the orders set out in those subrules and to be considered by a Market Participant in forming a reasonable suspicion that a person has placed an Order with the intention of creating a false or misleading appearance of active trading or market price, extend to Investment Products.

Item [69] Rule 5.9.1

Item [69] of Schedule 1 to the Instrument amends Rule 5.9.1. It does this by omitting "an Equity" and substituting "a Cash". This ensures that Rule 5.9.1, which relates to a Market Participant's obligation to not do anything which results in a market not being both fair and orderly, extends to markets for Investment Products.

Item [70] Rule 5.10.4

Item [70] of Schedule 1 to the Instrument omits Rule 5.10.4 and substitutes a rule in similar terms to the omitted rule, but which extends to "Cash Market Product". This ensures that Rule 5.10.4, which prohibits Market Participants from dealing in products that have been suspended from quotation or trading, extends to Investment Products.

Item [71] Rule 5.10.6

Item [71] of Schedule 1 to the Instrument amends Rule 5.10.6 by omitting "Equity" and substituting "Cash". This ensures that Rule 5.10.6, which prohibits Market Participants from covering out-of-pocket expenses involved in the purchase or sale of products from covering that charge by increasing or reducing the price of the product, extends to Investment Products.

Items [72] to [76] subparagraph 5.11.1(1)(a), (b)(i), (b)(ii), (b)(iii) and (b)(iv)

Items [72] to [76] of Schedule 1 to the Instrument modify subrule 5.11.1(1) (a), (b)(i), (b)(ii), (b)(iii) and (b)(iv) by inserting "Chi-X" before "transaction on the" in subparagraph(1)(a), and after "products on the" in each of subparagraphs (b)(i), (b)(ii), (b)(iii) and (b)(iv). These amendments clarify that the notification requirements contained in Rule 5.11.1 apply to transactions on the Chi-X Market.

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 (Chi-X Australia 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 (Chi-X Australia Market) 2011 (ASIC Market Integrity Rules (Chi-X))* which apply to:
 - (a) the activities and conduct of a Financial Market operated by Chi-X Australia Pty Limited (ACN 129 584 667) (**Chi-X**);
 - (b) the activities or conduct of persons in relation to the Chi-X Market; and
 - (c) the activities or conduct of persons in relation to Financial Products traded on Chi-X Market.
2. The purpose of the Legislative Instrument is to amend the (ASIC Market Integrity Rules (Chi-X) to cover products that may be traded on the Chi-X Market due to amendments to the Chi-X Operating Rules that enable it to admit Warrants and exchange traded funds (**ETFs**) to quotation and trade on its market.
 - (a) The term “Cash Market Product” has been introduced to reflect the expanded suite of products that may be admitted to trade on the Chi-X Market under the Chi-X Operating Rules, which include Warrants and ETFs.
 - (b) The new Part 2.4 and Rules 3.1.2 and 3.1.8 are aimed to apply consistent regulatory settings for the trading of Warrants by extending the accreditation, disclosure and Client Agreement (Warrant) obligations in the ASIC Market Integrity Rules (ASX Market) 2010 (*ASIC Market Integrity Rules (ASX)*) to the ASIC Market Integrity Rules (Chi-X).
 - (c) The amendments to Rules 3.1.3 and 3.1.4 ensure that a Market Participant provides information about any material changes to their third party execution and/or clearing arrangements arising from the commencement of the quotation and trading of Warrants and ETFs on the Chi-X Market.

B. Human rights implications

3. 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

4. The amended ASIC Market Integrity Rules (Chi-X) impose an obligation on Market Participants relating to notifications to ASIC that may engage the right to privacy and reputation in Article 17. Specifically the amended ASIC Market Integrity Rules (Chi-X) impose obligations on financial market participants to:
 - (a) Rule 2.4.7 (Accreditation – Level One Accredited Derivatives Adviser) requires personal information including the full name, date of birth, business and email addresses of a person who seeks to be registered with ASIC as a Level One Accredited Derivatives Adviser.
 - (b) Rule 2.4.8 (Accreditation – Level Two Accredited Derivatives Adviser) requires personal information including the full name, date of birth, business and email addresses of a person who seeks to be registered with ASIC as a Level Two Accredited Derivatives Adviser.
 - (c) Rule 2.4.11 (Exemption for other accreditation and experience) requires personal information including the details of courses, training or experience of a person who seeks to be exempt from the requirement to sit an Accreditation Examination in order to be registered with ASIC as an Accredited Derivatives Adviser. This information may enable the identification of an individual.
 - (d) Rule 2.4.13 (Renewal of accreditation) requires personal information including the full name and business addresses of:
 - (i) a person who seeks the renewal of their accreditation as an Accredited Adviser; and
 - (ii) A director, partner, Responsible Executive or Compliance Manager of the Market Participant who signs the application for renewal of accreditation of an Accredited Adviser.

This information may enable the identification of an individual.

- (e) Rule 2.4.18 (Voluntary withdrawal of accreditation) requires personal information including the full name, date of birth and business of a person who is an Accredited Adviser of a Market Participant, and that Market Participant seeks to withdraw the accreditation of this Accredited Adviser.
- (f) Rule 2.4.20 (Re-accreditation after withdrawal or expiry) requires personal information including the full name, date of birth, business and email addresses of a person who seeks to be registered with ASIC as a Level One Accredited Derivatives Adviser.

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

5. The right in Article 17 is engaged by the amended ASIC Market Integrity Rules (Chi-X) by reason that they:
 - (a) involve the collection, storage, security, use or disclosure of personal information; and
 - (b) create confidentiality or secrecy provisions relating to personal information.

6. The amended ASIC Market Integrity Rules (Chi-X) are 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 amended ASIC Market Integrity Rules (Chi-X) will be lawful and not arbitrary. In particular:
 - (a) The amended ASIC Market Integrity Rules (Chi-X) are 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), and with the consent of the Minister.
 - (b) The amended ASIC Market Integrity Rules (Chi-X) will assist ASIC to perform its function of supervising financial markets, the operators of which are licensed under subsection 795B(1) of the Act (see section 798F of the Act), and the participants of which are required to comply with the market integrity rules associated with a market (see section 798H).
 - (c) The amended ASIC Market Integrity Rules (Chi-X) will further the objects of Chapter 7 of the Act, including:
 - (i) promoting confident and informed decision making by consumers of financial products and services whilst facilitating efficiency, flexibility and innovation in the provision of those products and services (see section 760A(a) of the Act); and
 - (ii) Promoting fairness, honesty and professionalism by those who provide financial services (see section 760A(b) of the Act).
 - (d) The amended ASIC Market Integrity Rules (Chi-X) will assist ASIC to perform its function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system (see section 12A(2) of the *Australian Securities and Investments Commission Act 2001 (The ASIC Act)*).
 - (e) Information is provided to ASIC under the amended ASIC Market Integrity Rules (Chi-X) will be protected in accordance with ASIC's legislative obligations under s127 of the ASIC Act, and to, the extent the information is personal information, under the *Privacy Act 1988*.

7. If the amended ASIC Market Integrity Rules (Chi-X) were considered to limit the right in Article 17 of the ICCPR, ASIC considers that the amended ASIC Market Integrity Rules (Chi-X) are 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.

8. The obligations imposed by the amended ASIC Market Integrity Rules (Chi-X) which may be considered to impose on the right in Article 17 fall in to the below category. Any limitation imposed on the right in Article 17 by the amended ASIC Market Integrity Rules (Chi-X) has a clear legal basis:

(a) *Aims to achieve a legitimate objective*

These rules require provision of personal information of a factual nature to ASIC to enable ASIC to maintain a register of Accredited Advisers. 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 confident and informed decision making by consumers of financial products and services, and fairness, honesty and professionalism by those who provide financial services.

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

By ensuring that ASIC can maintain a register of accredited derivatives advisors, these rules will enhance ASIC's ability to promote confident and informed decision making by consumers of financial products and services, and fairness, honesty and professionalism by those who provide financial services.

(c) *Is reasonable, necessary and proportionate*

The rules are necessary to achieve the legitimate objective described above because they provide ASIC with the ability to maintain a register of current accredited derivatives advisors. There are safeguards in place with respect to the information required to be given to ASIC in these rules through ASIC's statutory obligations to protect confidential and personal information contained in the notifications.

C. Consultation

9. 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)*.
10. In CP 235 we consulted on proposals to amend the ASIC market integrity rules and instruments that are considered necessary to enable Chi-X to admit ETFs and Warrants to quotation on its market. Specifically, we consulted on proposals to:
- (a) Introduce the term "Cash Market Product" – To reflect the expanded suite of products that may be quoted and traded on the Chi-X Market, which include Warrants and ETFs.
 - (b) Insert a new Part 2.4 – To require Representatives of Market Participants who provide Financial Product Advice to Retail Clients in relation to Warrants on the Chi-X Market to be accredited as either a Level One Accredited Derivatives Adviser or Level Two Accredited Derivatives Adviser, unless they are already accredited under the ASIC Market Integrity Rules (ASX).
 - (c) Insert a new Rule 3.1.2 and Rule 3.1.8 – Rule 3.1.2 requires advisers to provide Retail Clients a copy of any current Chi-X explanatory booklet for Warrants (including any

published updates), prior to clients purchasing Warrants on the Chi-X Market for the first time. Rule 3.1.8 requires advisers to obtain a written acknowledgement (which form part of the Client Agreement) from Retail Clients who have not previously traded Warrants on the ASX or Chi-X Market, where the client acknowledges the features of warrants and that they have read and understood the explanatory booklet (except where they already have a written agreement with the client in accordance with the ASIC Market Integrity Rules (ASX)).

(d) Amend Rules 3.1.3 and 3.1.4 – To ensure that Market Participants provide information about any material changes to their third party execution and/or clearing arrangements arising from the commencement of the quotation and trading of Warrants and ETFs on the Chi-X Market.

11. 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 who trade Warrants on each market.

12. ASIC has considered the submissions to CP 235. 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, 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. No human rights issues were raised.

Australian Securities and Investments Commission