

EXPLANATORY STATEMENT for ASIC Market Integrity Rules (Securities Markets) Determination 2018/208

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Market Integrity Rules (Securities Markets) Determination 2018/208 under paragraph 1.4.5(1)(b) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**).

Under paragraph 1.4.5(1)(b), ASIC may determine in writing that a Market operator is the Responsible Market Operator in relation to an Equity Market Product that is able to be traded on more than one Market.

Under subrule 1.4.5(2), an instrument referred to in paragraph 1.4.5(1)(b) takes effect on the later of the date specified in the instrument or 60 business days after the instrument is registered.

Capitalised terms in this Explanatory Statement refer to defined terms in the Rules.

1. Background

As part of its supervisory responsibilities, ASIC reviewed the 14 market integrity rule books in force in late 2016 and identified the need to consolidate certain market integrity rule books which covered substantively similar existing obligations across like domestic licensed markets.

Following public consultation, ASIC made the Rules in November 2017. Generally, the Rules maintain the substance of the regulatory regime embodied in market integrity rules (the **Pre-Commencement Market Integrity Rules**) applicable prior to the commencement of the Rules, including the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (**Competition Rules**). The Rules will repeal the Pre-Commencement Market Integrity Rules on 7 May 2018.

Under Rule 1.4.3 of the Competition Rules, Responsible Market Operator means, relevantly in relation to Equity Market Products:

- (a) in relation to Equity Market Products admitted to quotation on the ASX Market, ASX;

...

(e) in relation to Equity Market Products admitted to quotation on the Chi-X Market under the Chi-X Operating Rules, Chi-X.

The current policy settings under the Competition Rules acknowledge the ASX Market as a listing market and make it the Responsible Market Operator for quoted ED securities quoted on its market. In addition, the Competition Rules make ASX the Responsible Market Operator for all other Equity Market Products admitted to quotation on the ASX Market. This recognises that admission to quotation on the ASX Market is subject to the Issuer of the Equity Market Product agreeing with ASX to be bound by certain operating rules (e.g. Schedule 10A of the ASX's operating rules in the case of an "AQUA Product").

Many Equity Market Products admitted to quotation on the ASX Market are also quoted on the Chi-X Market without being admitting to quotation under Chi-X's operating rules. In order for an Equity Market Product to be admitted to quotation under Chi-X's operating rules, the Issuer of the Equity Market Product must likewise agree to be bound by certain applicable operating rules (e.g. Section 14 of the Chi-X operating rules). At present, there are no Equity Market Products which are admitted to quotation on the ASX Market and admitted to quotation on the Chi-X Market under its operating rules.

The instrument is consistent with the existing policy settings in the Competition Rules, using market-neutral language.

Rule 1.4.5 of the Rules provides a definition for the term "Responsible Market Operator", as relevant for Equity Market Products. Paragraph 1.4.4(1)(b) provides that for the purposes of these Rules, Responsible Market Operator in relation to an Equity Market Product means, if the Equity Market Product is able to be traded on more than one Market, the Market operator determined by ASIC in writing.

The instrument determines that in relation to an Equity Market Product that is able to be traded on more than one Market and is a quoted ED security (as defined in s111AM of the Corporations Act, e.g. a share of a listed entity), the Responsible Market Operator is the operator of the listing market (as defined in section 9 of the Corporations Act) in relation to the Issuer of the Equity Market Product or the undertaking to which the Equity Market Product relates (as the case may be).

For an Equity Market Product that is able to be traded on more than one Market and is not a quoted ED security (e.g. a unit in an exchange-traded fund), the instrument provides that the Responsible Market Operator is the Market operator (and if more than one, the first such Market operator) with whom the Issuer or scheme operator (as applicable) of the Equity Market Product has an agreement in force under which the Issuer or scheme operator agrees to be bound by operating rules of the Market that deal with admission of that class of financial product to quotation.

If the Issuer or scheme operator does not have any such agreement in force, then the instrument provides that the Responsible Market Operator in relation to the Equity

Market Product is the first of those Markets on which the Equity Market Product is admitted to quotation.

2. Purpose of the instrument

The purpose of the instrument is to determine, for the purposes of the Rules, the Responsible Market Operator in relation to each Equity Market Product which is able to be traded on more than one Market. The instrument uses market-neutral language, consistent with ASIC's consolidation of the market integrity rules, to reflect the existing policy settings under the Competition Rules.

3. Operation of the instrument

Name

Section 1 of the instrument provides that the instrument is the *ASIC Market Integrity Rules (Securities Markets) Determination 2018/208*.

Commencement

Section 2 of the instrument provides that the instrument commences on the day that is 60 business days after it is registered on the Federal Register of Legislation.

Authority

Section 3 of the instrument provides that the instrument is made under paragraph 1.4.5(1)(b) of the *ASIC Market Integrity Rules (Securities Markets) 2017*.

Interpretation

Section 4(1) of the instrument provides that, unless the contrary intention appears, capitalised terms have the same meaning as in the Rules

Subsection 4(2) of the instrument provides that:

- Act means the the Corporations Act 2001;
- listing market has the same meaning as in section 9 of the Act;
- quoted ED security has the same meaning as in section 111AM of the Act.

Responsible Market Operator for Equity Market Products

Subsection 5(1) of the instrument provides that the Responsible Market Operator in relation to an Equity Market Product that is able to be traded on more than one Market and is a quoted ED security is the operator of the listing market in relation to:

- (a) if the Equity Market Product is a quoted ED security because of subsection 111AE(1) of the Act—the Issuer of the Equity Market Product; and

- (b) if the Equity Market Product is a quoted ED security because of subsection 111AE(1A) of the Act—the undertaking to which the Equity Market Product relates.

Subsection 5(2) of the instrument provides that the Responsible Market Operator in relation to an Equity Market Product that is able to be traded on more than one Market and is not a quoted ED security is:

- (a) the Market operator (and if more than one, the first such Market operator) with whom:
 - (i) if the Equity Market Product is an interest in a managed investment scheme—the operator of the scheme;
 - (ii) otherwise—the Issuer of the Equity Market Product;has an agreement in force under which the Issuer or operator of the scheme agrees to be bound by operating rules of the Market that deal with admission of that class of financial product to quotation; or
- (b) otherwise, the operator of the first of those Markets on which the Equity Market Product is admitted to quotation.

4. Consultation

ASIC consulted with ASX Limited and Chi-X Australia Pty Ltd in relation to the instrument. Both ASX Limited and Chi-X Australia Pty Ltd support ASIC making the instrument.

A Regulatory Impact Statement is not required for this instrument as it is consistent with the existing policy settings under the Competition Rules.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Market Integrity Rules (Securities Markets) Determination 2018/208

ASIC Market Integrity Rules (Securities Markets) Determination 2018/208 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*.

Overview

The instrument reflects the existing policy settings for Responsible Market Operators in relation to Equity Market Products in the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (Competition Rules), using market-neutral language.

Rule 1.4.5 of the Rules provides a definition for the term “Responsible Market Operator”, as relevant for Equity Market Products. Paragraph 1.4.4(1)(b) provides that for the purposes of these Rules, Responsible Market Operator in relation to an Equity Market Product means, if the Equity Market Product is able to be traded on more than one Market, the Market operator determined by ASIC in writing.

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If the Issuer or scheme operator does not have any such agreement in force, then the instrument provides that the Responsible Market Operator in relation to the Equity Market Product is the first of those Markets on which the Equity Market Product is admitted to quotation.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission