

# **EXPLANATORY STATEMENT for**

## **ASIC Market Integrity Rules (Securities Markets) Determination**

### **2018/314**

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 2018/314 under subrules 3.4.3(4), 5A.2.1(5), 6.3.6A(4) and 7.4.4(3) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**).

Under subrule 3.4.3(4) of the Rules, and for the purposes of a notification which a Market Participant may give to a wholesale client in accordance with subparagraph 3.4.3(1)(b)(ii), ASIC may determine in writing the execution venue codes referred to in that subparagraph.

Under subrule 5A.2.1(5) of the Rules, and for the purposes of the obligation of a Market Participant who operates a Crossing System to make available Publicly Available Crossing System Information, ASIC may determine in writing the Crossing System codes referred to in subrule 5A.2.1(2).

Under subrule 6.3.6A(4) of the Rules, and for the purposes of a Market operator's obligation to make available Course of Sales Information, ASIC may determine in writing the execution venue codes referred to in item 9 of the table in subrule 6.3.6A(2).

Under subrule 7.4.4(3) of the Rules, for the purposes of a Market Participant's obligations under Rule 7.4.2 of the Rules to provide Regulatory Data to a Market operator, ASIC may determine in writing format or content requirements for a code, notation or number referred to in the table in Rule 7.4.4.

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:

- (a) the ASIC Market Integrity *ASIC Market Integrity Rules (ASX Market) 2010 (ASX Rules)*;
- (b) the ASIC Market Integrity *ASIC Market Integrity Rules (Chi-X Australia Market) 2011 (Chi-X Rules)*;
- (c) the ASIC Market Integrity *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.

#### *Confirmations and alternative notifications to wholesale clients*

Subrule 3.4.1(2) of the Rules requires that, subject to Rule 3.2.3, a Market Participant must give a confirmation to a client in respect of each Market transaction entered into on the client's instructions or on the client's Managed Discretionary Account.

Under Rule 3.4.3 of the Rules, a Market Participant is not required to comply with Rule 3.4.1 in respect of a client that is not a retail client, provided the Market Participant gives certain alternative notifications to the client. If the client's transaction was executed as a Crossing, an alternative notification under Rule 3.4.3 must include the execution code of the execution venue for the Crossing. Under subrule 3.4.3(4) of the Rules, the execution codes may be determined by ASIC in writing.

Rules 3.4.1 and 3.4.3 of the Rules are the successors to subrules 3.4.1 and 3.4.3 of the ASX Rules and the Chi-X Rules. Under subrule 3.4.3(4) of the ASX Rules and Chi-X Rules, ASIC may determine and publish on its website a notification of the execution venue codes referred to in subparagraph 3.4.3(1)(b)(ii) of the ASX Rules and Chi-X Rules). ASIC published such notification on its website at <http://www.asic.gov.au/crossing-systems>.

In the instrument, the determinations of execution venue codes under subrule 3.4.3(4) of the Rules replicate the determinations in the notification on ASIC's website.

#### *Crossing System codes in Publicly Available Crossing System Information*

Subrule 5A.2.1(1) of the Rules requires a Market Participant that operates a Crossing System to make available Publicly Available Crossing System Information on a website that is publicly accessible and free of charge. Publicly Available Crossing System Information is defined in subrule 5A.2.1(2) of the Rules and includes:

- (a) the code identifying the Crossing System; and
- (b) if Orders may be executed or matched in another Crossing System or in the Market Participant's Crossing System with Orders received from a Crossing

System operated by another Market Participant—the code identifying the other Crossing System.

Under subrule 5A.2.1(5) of the Rules, ASIC may determine in writing the Crossing System codes referred to in subrule 5A.2.1(2).

Rule 5A.2.1 of the Rules is the successor to Rule 4A.3.1 of the Competition Rules. Under subrule 4A.3.1(5) of the Competition Rules, ASIC may determine and publish on its website a notification of the Crossing System codes referred to in subrule 4A.3.1(2). ASIC published such notification on its website at <http://www.asic.gov.au/crossing-systems>.

In the instrument, the determinations of Crossing System codes under subrule 5A.2.1(5) of the Rules replicate the determinations in the notification on ASIC's website.

#### *Execution venue codes in Course of Sales Information*

Subrule 6.3.6A(1) of the Rules requires an Operator to make available Course of Sales Information for each transaction in a financial product executed on or reported to its Market. Course of Sales Information is defined in subrule 6.3.6A(2) of the Rules and includes the code identifying the market, Crossing System or other facility on which the transaction was executed.

Under subrule 6.3.6A(4) of the Rules, ASIC may determine in writing the execution venue codes referred to in subrule 6.3.6A(2).

Rule 6.3.6A of the Rules is the successor to Rule 5.1.6A of the Competition Rules. Under subrule 5.1.6A(4) of the Competition Rules, ASIC may determine and publish on its website a notification of the execution venue codes referred to in subrule 5.1.6A(2). ASIC published notification of execution venue codes in paragraph RG 223.265 of Regulatory Guide 223 *Guidance on ASIC market integrity rules for competition in exchange markets (RG 223)*. The notification provides that the execution venue code for a venue is:

- (a) the market identifier code under ISO 10383 *Market identifier codes (MIC)*<sup>1</sup> where one exists for the venue; or
- (b) where the venue does not have a MIC:
  - (i) if the venue is a crossing system, the crossing system ID published on ASIC's website at <http://www.asic.gov.au/crossing-systems>; or
  - (ii) if the venue is not a crossing system, a code allocated to the venue by ASIC on request.

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<sup>1</sup>The list of MICs under ISO 10383 is administered by S.W.I.F.T. SCRL and is available at [www.iso15022.org/MIC/homepageMIC.htm](http://www.iso15022.org/MIC/homepageMIC.htm).

In the instrument, the determinations of execution venue codes under subrule 6.3.6A(4) of the Rules are consistent with the determinations in the notification in RG 223.

### *Regulatory Data*

Rule 7.4.2 of the Rules requires a Participant to provide Regulatory Data to a Market operator. Regulatory Data is defined in Rule 7.4.4 of the Rules and includes the information in the table in that rule relating to the execution venue, the capacity of the participant and the directed wholesale indicator. Under subrule 7.4.4(3) of the Rules, ASIC may determine in writing format or content requirements for a code, notation or number referred to in the table.

Rule 7.4.4 of the Rules is the successor to Rule 5A.2.3 of the Competition Rules. Under subrule 5A.2.3(3) of the Competition Rules, ASIC may determine and publish on its website a notification of format and content requirements for a code, notation or number referred to in the table in Rule 5A.2.3 relating to certain items of Regulatory Data. ASIC published notification of format and content requirements in Table 16 of RG 223.

In the instrument, the determinations under subrule 7.4.4(3) of the Rules of format and content requirements for a code, notation or number referred to in the table in under that subrule are consistent with the determinations in the notification in RG 223.

## **2. Purpose of the instrument**

The purpose of the instrument is to determine:

- (a) for the purposes of subrules 3.4.3(4), 6.3.6A(4) and 7.4.4(3) of the Rules, the execution venue code for identifying a market;
- (b) for the purposes of subrules 3.4.3(4), 5A.2.1(5), 6.3.6A(4) and 7.4.4(3) of the Rules, the code for identifying Crossing Systems;
- (c) for the purposes of subrule 7.4.4(3) of the Rules, the format and content requirements for a notation referred to in item 2 (Capacity of Participant) of the table in Rule 7.4.4 for identifying that for an order or transaction the Participant is acting as Principal, as agent for a client or as both Principal and as agent for a client; and
- (d) for the purposes of subrule 7.4.4(3) of the Rules, the format and content requirements for a notation referred to in item 5 (Directed wholesale indicator) of the table in Rule 7.4.4 for indicating in relation to an order or transaction whether paragraphs (a) and (b) of item 5 are satisfied.

The instrument maintains the existing policy settings under the Pre-Existing Market Integrity Rules by replicating the determinations made under those rules.

### **3. Operation of the instrument**

#### **Name of legislative instrument**

Section 1 provides that the instrument is the ASIC Market Integrity Rules (Securities Markets) Determination 2018/314.

#### **Commencement**

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

#### **Authority**

Section 3 of the instrument provides that the instrument is made under subrules 3.4.3(4), 5A.2.1(5), 6.3.6A(4) and 7.4.4(3) of the ASIC Market Integrity Rules (Securities Markets) 2017.

#### **Interpretation**

Subsection 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 in this instrument, “ASX Centre Point” means the Order Book maintained by or on behalf of ASX and known as ASX Centre Point.

#### **Market identifier codes**

Section 5 of the instrument provides that, for the purposes of subrules 3.4.3(4), 6.3.6A(4) and 7.4.4(3) (as that subrule relates to item 1 (Execution venue) of the table in Rule 7.4.4) of the Rules:

- (a) the code for identifying ASX TradeMatch is ASXT;
- (b) the code for identifying ASX Centre Point is ASXC; and
- (c) the code for identifying the Chi-X Market is CHIA.

#### **Crossing System codes**

Section 6 of the instrument provides that, for the purposes of subrules 3.4.3(4), 5A.2.1(5), 6.3.6A(4) and 7.4.4(3) (as that subrule relates to item 1 (Execution venue) of the table in Rule 7.4.4) of the Rules, the code for identifying a Crossing System described in columns 2 and 3 of the table in Schedule 1 is the code specified in column 4 of the table.

The execution venue for a Crossing is the Crossing System on which the Crossing is matched or executed.

### **Capacity of Participant**

Section 7 of the instrument provides that, for the purposes of subrule 7.4.4(3) of the Rules, the notation referred to in item 2 (Capacity of Participant) of the table in Rule 7.4.4 of the Rules for identifying that in relation to an order or transaction the Participant is acting:

- (a) as Principal—is “P”; and
- (b) as agent for a client—is “A”; and
- (c) as both Principal and agent for a client—is “M”.

### **Directed wholesale indicator**

Section 8 of the instrument provides that, for the purposes of subrule 7.4.4(3) of the Rules, the notation referred to in item 5 (Directed wholesale indicator) of the table in Rule 7.4.4 of the Rules for indicating in relation to an order or transaction that:

- (a) paragraphs (a) and (b) of item 5 are both satisfied—is “Y”; and
- (b) that either or both of paragraphs (a) and (b) of item 5 are not both satisfied—is “N”.

### **Schedule 1**

Schedule 1 of the instrument sets out a table in which a code is specified in column 4 for each Crossing System described in columns 2 and 3 of the table.

## **4. Consultation**

There has been no consultation because the instrument is minor and machinery in nature.

A Regulatory Impact Statement is not required for this instrument as it maintains under the Rules the existing policy settings in force under the Pre-Existing Market Integrity 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 2018/314

ASIC Market Integrity Rules (Securities Markets) Determination 2018/314 (the **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*.

#### Overview

##### *Confirmations and alternative notifications to wholesale clients*

Subrule 3.4.1(2) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**) requires that, subject to Rule 3.2.3, a Market Participant must give a confirmation to a client in respect of each Market transaction entered into on the client's instructions or on the client's Managed Discretionary Account.

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### **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**