

EXPLANATORY STATEMENT for ASIC Market Integrity Rules (Securities Markets) Determination 2018/317

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 2018/317 under subrules 2.4.6(4), 2.4.7(4) and 2.4.8(4) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**).

Under subrule 2.4.6(4) of the Rules, ASIC may determine in writing a list of the approved educational modules and subjects that are relevant to financial product advice of the kind covered by Rule 2.4.5 that may be given by Accredited Futures Advisers.

Under subrule 2.4.7(4) of the Rules, ASIC may determine in writing a list of the approved examinations, educational modules or subjects, or a series of educational modules or subjects, that are relevant to financial product advice of the kind covered by Rules 2.4.2 and 2.4.3 that may be given by Level One Accredited Derivatives Advisers.

Under subrule 2.4.8(4) of the Rules, ASIC may determine in writing a list of one or more approved examinations that are relevant to financial product advice of the kind covered by Rule 2.4.2, 2.4.3 and 2.4.4 that may be given by Level Two Accredited Derivatives Advisers.

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 Rules (ASX Market) 2010* (**ASX Rules**); and

(b) the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011 (Chi-X Rules)*.

The Rules will repeal the Pre-Commencement Market Integrity Rules on 7 May 2018.

Under subrules 2.4.6(1), 2.4.7(1) or 2.4.8(1) of the Rules, ASIC may accredit a person as an Accredited Futures Adviser (**AFA**), Level One Accredited Derivatives Adviser (**ADA1**) or Level Two Accredited Derivatives Adviser (**ADA2**) respectively for a period of time if, among other things, the person:

- (a) applying for accreditation as AFA has successfully completed an educational module or subject, or series of educational modules or subjects, approved by ASIC in writing in accordance with subrule 2.4.6(4) of the Rules; or
- (b) applying for accreditation as ADA1 has:
 - (i) obtained a score of 80% or more for an examination approved by ASIC in accordance with subrule 2.4.7(4) of the Rules; or
 - (ii) successfully completed an educational module or subject, or series of educational modules or subjects, approved by ASIC in writing in accordance with subrule 2.4.6(4) of the Rules; or
- (c) applying for accreditation as an ADA2 has obtained a score of 80% or more for each of the Accreditation Examinations for ADA1s and ADA2s approved by ASIC in accordance with subrule 2.4.8(4) of the Rules.

Rule 2.4.6 of the Rules is the successor to Rule 2.4.6 of the ASX Rules. Rules 2.4.7 and 2.4.8 of the Rules are the successors to subrules 2.4.7 and 2.4.8 of the ASX Rules and the Chi-X Rules. For the purposes of subrule 2.4.6(4) of the ASX Rules and subrules 2.4.7(4) and 2.4.8(4) of the ASX Rules and the Chi-X Rules, ASIC publishes a list of the approved examinations, educational modules and subjects on its website at <http://asic.gov.au/regulatory-resources/markets/supervision/retail-client-adviser-accreditation-and-responsible-executive-examinations/>

In the instrument, the determinations of approved examinations, educational modules and subjects under subrules 2.4.6(4), 2.4.7(4) and 2.4.8(4) of the Rules replicate the approvals published on ASIC's website.

2. Purpose of the instrument

The purpose of the instrument is to determine:

- (a) for the purposes of subrule 2.4.6(4) of the Rules, the approved educational modules and subjects that are relevant to financial product advice of the kind that may be given by Accredited Futures Advisers; and
- (b) for the purposes of subrule 2.4.7(4) of the Rules, the approved examinations, educational modules and subjects that are relevant to financial product advice

of the kind that may be given by Level One Accredited Derivatives Advisers;
and

- (c) for the purposes of subrule 2.4.8(4) of the Rules, the approved examinations that are relevant to financial product advice of the kind that may be given by Level Two Accredited Derivatives Advisers.

The instrument maintains the existing policy settings under the Pre-Existing Market Integrity Rules by replicating the approvals 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 2018/317.

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 2.4.6(4), 2.4.7(4) and 2.4.8(4) of the ASIC Market Integrity Rules (Securities Markets) 2017.

Interpretation

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

Accredited Futures Advisers—Approved educational modules and subjects

Section 5 of the instrument provides that the Futures Markets module of the AFMA Financial Markets Accreditation Program offered by the Australian Financial Markets Association is an educational module and subject approved by ASIC for the purposes of subparagraph 2.4.6(1)(b)(ii) of the Rules.

Level One Accredited Derivatives Advisers—Approved examinations, educational modules and subjects

Subsection 6(1) of the instrument provides that the ASX Level One Accreditation Examination administered by Kaplan Education Pty Ltd (offered before 1 August 2010) is an examination approved by ASIC for the purposes of subparagraph 2.4.7(1)(b)(i) of the Rules.

Subsection 6(2) of the instrument provides that the Accredited Derivatives Adviser Level 1 (ADA1) course offered by Kaplan Education Pty Ltd (offered after 1 August

2010) is an educational module and subject approved by ASIC for the purposes of subparagraph 2.4.7(1)(b)(ii) of the Rules.

Level Two Accredited Derivatives Advisers—Approved examinations

Subsection 7(1) of the instrument provides that, for the purposes of paragraph 2.4.8(1)(b) of the Rules, the ASX Level One Accreditation Examination administered by Kaplan Education Pty Ltd (offered before 1 August 2010) is an examination approved by ASIC as an Accreditation Examination for Level One Accredited Derivatives Advisers that is relevant to financial product advice of the kind covered by Rules 2.4.2 and 2.4.3 of the Rules.

Subsection 7(2) of the instrument provides that, for the purposes of paragraph 2.4.8(1)(b) of the Rules, the ASX Level Two Accreditation Examination administered by Kaplan Education Pty Ltd (offered before 1 August 2010) is an examination approved by ASIC as an Accreditation Examination for Level Two Accredited Derivatives Advisers that is relevant to financial product advice of the kind covered by Rule 2.4.4 of the Rules.

Unless a person is applying for, or has been granted an exemption under subrule 2.4.11(1) of the Rules, ASIC may not accredit the person as a Level Two Accredited Derivatives Adviser unless the person has obtained a score of 80% or more for each of the Accreditation Examinations for Level One Accredited Derivatives Advisers and Level Two Accredited Derivatives Advisers approved by ASIC in accordance with subrule 2.4.8(4) of the Rules: paragraph 2.4.8(1)(b) of the Rules.

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 2018/317

ASIC Market Integrity Rules (Securities Markets) Determination 2018/317 (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

The purpose of the instrument is to determine:

- (a) for the purposes of subrule 2.4.6(4) of the Rules, the approved educational modules and subjects that are relevant to financial product advice of the kind that may be given by Accredited Futures Advisers; and
- (b) for the purposes of subrule 2.4.7(4) of the Rules, the approved examinations, educational modules and subjects that are relevant to financial product advice of the kind that may be given by Level One Accredited Derivatives Advisers; and
- (c) for the purposes of subrule 2.4.8(4) of the Rules, the approved examinations that are relevant to financial product advice of the kind that may be given by Level Two Accredited Derivatives Advisers.

The instrument maintains the existing policy settings under the Pre-Existing Market Integrity Rules by replicating the approvals made under those rules published on ASIC's website at <http://asic.gov.au/regulatory-resources/markets/supervision/retail-client-adviser-accreditation-and-responsible-executive-examinations/>.

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