

EXPLANATORY STATEMENT for
ASIC Market Integrity Rules (Securities Markets) Repeal Instrument
2018/489

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) Repeal Instrument 2018/489 under subrule 6.2.1(4) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**).

Under subrule 6.2.1(4), ASIC may determine Tier 1 Equity Market Products and Tier 2 Equity Market Products in writing.

Under subrule 6.2.1(5), an instrument referred to in subrule (4) takes effect from 20 business days following the date the instrument is registered.

Under subsection 33(3) of the *Acts Interpretation Act 1901* where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Under subsection 13(1) of the *Legislation Act 2003*, if enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then unless the contrary intention appears, the *Acts Interpretation Act 1901* applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of the Act. Accordingly, the power under subrule 6.2.1(4) of the Rules to determine Tier 1 Equity Market Products and Tier 2 Equity Market Products in writing, includes a power to repeal such a determination.

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

1. Background

Chapter 6 of the Rules sets out market integrity rules relating to pre-trade transparency of Orders and post-trade transparency of transactions executed on or reported to a Market, including in relation to Equity Market Products. A ‘Block Trade’ is a key concept in Chapter 6 and has the meaning given by subrule 6.2.1(1).

In order for a transaction to be a Block Trade, among other things, the consideration for the transaction may not be less than consideration thresholds set out in paragraph 6.2.1(1)(c) of the Rules, which differ according to whether the Relevant Product is a Tier 1 Equity Market Product, Tier 2 Equity Market Product, Tier 3 Equity Market Product or a CGS Depository Interest.

Each quarter ASIC determines the allocation of Equity Market Products to the three tiers based upon a calculation using each product's average daily value transacted.

This instrument, together with *ASIC Market Integrity Rules (Securities Markets) Determination 2018/445 (New Determination)*, supersede and repeal the determinations in *ASIC Market Integrity Rules (Securities Markets) Determination 2018/206 (Superseded Determination)*.

2. Purpose of the instrument

The purpose of the instrument is to repeal the Superseded Determination, which will be superseded by the New Determination upon its commencement.

3. Operation of the instrument

Name

Section 1 of the instrument provides that the instrument is the *ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/489*.

Commencement

Section 2 of the instrument provides that the instrument commences on the day that is the later of:

- (a) 9 July 2018; and
- (b) the day that is 20 business days after the day the instrument is registered on the Federal Register of Legislation.

Authority

Section 3 of the instrument provides that the instrument is made under subrule 6.2.1(4) of the *ASIC Market Integrity Rules (Securities Markets) 2017*.

Schedule

Section 4 of the instrument provides that each instrument that is specified in Schedule 1 to this instrument is repealed as set out in the applicable items in the Schedule.

Schedule 1—Repeal

Item 1 of Schedule 1 to the instrument specifies that the whole of the *ASIC Market Integrity Rules (Securities Markets) Determination 2018/206* is repealed.

4. Consultation

In November 2010 and October 2011, ASIC consulted on its policy of determining the allocation of Equity Market Products to tiers based on a periodic calculation of average daily value in Consultation Paper 145 *Australian equity market structure: Proposals* and with further refinements in Consultation Paper 168 *Australian equity market structure: Further proposals* respectively.

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 does not change the existing policy settings under the 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) Repeal Instrument 2018/489

ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/489 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

Chapter 6 of the Rules sets out market integrity rules relating to pre-trade transparency of Orders and post-trade transparency of transactions executed on or reported to a Market, including in relation to Equity Market Products. A ‘Block Trade’ is a key concept in Chapter 6 and has the meaning given by subrule 6.2.1(1).

In order for a transaction to be a Block Trade, among other things, the consideration for the transaction may not be less than consideration thresholds set out in paragraph 6.2.1(1)(c) of the Rules, which differ according to whether the Relevant Product is a Tier 1 Equity Market Product, Tier 2 Equity Market Product, Tier 3 Equity Market Product or a CGS Depository Interest.

Each quarter ASIC determines the allocation of Equity Market Products to the three tiers based upon a calculation using each product’s average daily value transacted.

The instrument repeals the ASIC Market Integrity Rules (Securities Markets) Determination 2018/206 (***Superseded Determination***). ASIC Market Integrity Rules (Securities Markets) Determination 2018/445 (***New Determination***) will supersede the Superseded Determination upon its commencement.

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