

EXPLANATORY STATEMENT for
ASIC Market Integrity Rules (NSXA Market) Repeal Instrument
2018/1157

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (**ASIC**) makes the ASIC Market Integrity Rules (NSXA Market) Repeal Instrument 2018/1157 (the **instrument**) under subsection 798G(1) of the *Corporations Act 2001* (the **Act**).

Under subsection 798G(1) of the Act, ASIC may, by legislative instrument, make rules (market integrity rules) that deal with:

- (a) the activities or conduct of licensed markets;
- (b) the activities or conduct of persons in relation to licensed markets;
- (c) the activities or conduct of persons in relation to financial products traded on licensed markets.

Under subsection 798G(3) of the Act, ASIC must not make a market integrity rule unless the Minister has consented, in writing, to the making of the rule.

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.

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

1. Background

The ASIC Market Integrity Rules (NSXA Market) 2010 (**NSXA Rules**) apply to the market (the **NSXA Market**) operated by National Stock Exchange of Australia Limited (**NSXA**) under Australian Market Licence (Stock Exchange of Newcastle Limited) 2002 and to participants of the NSXA Market.

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.

In Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules* (CP 277), ASIC proposed to consolidate its market integrity rules to create a single set of market integrity rules for the licensed markets known as the ASX, Chi-X, IR Plus, NSX and SSX Markets. ASIC also proposed to grant waivers to provide transitional relief to NSXA and participants of the NSXA Market from their obligations to comply with certain provisions of the consolidated rules.

In November 2017 ASIC made the ASIC Market Integrity Rules (Securities Markets) 2017 (**Securities Markets Rules**) and released Report 547 Response to submissions on CP 277 *Proposals to consolidate the ASIC market integrity rules* (**REP 457**).

As proposed in CP 277 and announced in REP 457, ASIC also granted transitional relief to:

- NSXA in ASIC Waiver 18/260, which among other things relieved NSXA from its obligation to comply with the Securities Markets Rules until 5 November 2018; and
- NSXA participants in ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258, which among other things relieved a participant of the NSXA Market (other than an NSXA AOP Participant (as defined in Rule 1.4.3 of the Securities Markets Rules)) from its obligations to comply with the Securities Markets Rules until Monday 5 November 2018 in connection with its activities or conduct in relation to the NSXA Market. The class waiver provided similar transitional relief to an NSXA AOP Participant except that, in connection with the use of the NSXA AOP Participant's system for automated order processing on the NSXA Market, the NSXA AOP Participant is not given relief from its obligations under the provisions of Part 5.5, 5.6 or 5.7 of the Securities Markets Rules.

NSXA and its participants have been required to comply with their obligations under the Securities Markets Rules since the end of the transition period on 5 November 2018. Accordingly, the NSXA Rules may now be repealed.

2. Purpose of the instrument

The purpose of the instrument is to repeal the NSXA Rules, which are superseded by the Securities Markets Rules.

3. Operation of the instrument

Name

Section 1 of the instrument provides that the instrument is the *ASIC Market Integrity Rules (NSXA Market) Repeal Instrument 2018/1157*.

Commencement

Section 2 of the instrument provides that the instrument commences on 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 subsection 798G(1) of the *Corporations Act 2001*.

Schedule

Section 4 of the instrument provides that each instrument that is specified in Schedule 1 to the 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 (NSXA Market) 2010 is repealed.

4. Consultation

ASIC consulted extensively with market operators, market participants and industry bodies before making the instrument.

The consultation period for CP 277 occurred between 24 January 2017 and 7 March 2017. ASIC held over 25 meetings with stakeholders during and following that period. In addition, ASIC consulted ASIC's Market Advisory Panel on the proposals. ASIC received five non-confidential submissions and six confidential submissions to CP 277 from a broad range of stakeholders including from market participants, market operators and industry associations.

Consultation feedback from NSXA and other respondents supported the proposed transitional arrangements before repeal of the NSXA Rules.

The Office of Best Practice Regulation has assessed the proposals implemented by the Securities Markets Rules and the instrument as having a minor impact on business, community organisations or individuals and confirmed that no further analysis, in the form of a Regulatory Impact Statement is required (OBPR ID 22449).

The Minister consented in writing to the making of the instrument on 20 December 2018.

Statement of Compatibility with Human Rights

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

ASIC Market Integrity Rules (NSXA Market) Repeal Instrument 2018/1157

ASIC Market Integrity Rules (NSXA Market) Repeal Instrument 2018/1157 (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

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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.

The Instrument repeals the ASIC Market Integrity Rules (NSXA Market) 2010, which are superseded by the ASIC Market Integrity Rules (Securities Markets) 2017.

Human rights implications

These legislative instruments do not engage any of the applicable rights or freedoms.

Conclusion

These legislative instruments are compatible with human rights as they do not raise any human rights issues.

Australian Securities and Investments Commission