



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets) Determination 2021/135 and ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2021/136

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets) Determination 2021/135* (the **Determination**) and *ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2021/136* (the **Repeal Instrument**).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. Chapter 6 of the *ASIC Market Integrity Rules (Securities Markets) 2017* (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).
2. 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.
3. Under subrule 6.2.1(4) of the Rules, ASIC may determine Tier 1 Equity Market Products and Tier 2 Equity Market Products by instrument in writing.
4. The Determination maintains ASIC's policy of determining the allocation of Equity Market Products to Tier 1 and Tier 2 based on a periodic calculation of 2.5% of each product's average daily value transacted in the preceding six-month period, of at least \$1 million for Tier 1 Equity Market Products and \$500,000 for Tier 2 Equity Market Products (or other material number of Trading Days if the product was not quoted during the entire period).
5. The Repeal Instrument, together with the Determination, supersede and repeal the determinations in *ASIC Market Integrity Rules (Securities Markets) Determination 2020/1102* (**Superseded Determination**).

Purpose of the instrument

6. The purpose of the Determination is to determine, for the purposes of paragraph 6.2.1(1)(c) of the Rules and with effect from its commencement, the Tier 1 Equity Market Products and the Tier 2 Equity Market Products.
7. The purpose of the Repeal Instrument is to repeal the Superseded Determination, which will be superseded by the Determination upon its commencement.
8. The Determination and the Repeal Instrument maintain the existing policy settings under *ASIC Market Integrity Rules (Securities Markets) Determination 2020/1102*.

Consultation

9. 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.
10. There has been no consultation on the Determination or the Repeal Instrument because they are minor and machinery in nature.
11. A Regulatory Impact Statement is not required for the instruments as they maintain the existing policy settings in force under *ASIC Market Integrity Rules (Securities Markets) Determination 2020/1102* and its predecessors.

Operation of the instrument

ASIC Market Integrity Rules (Securities Markets) Determination 2021/135

12. *Name of legislative instrument*

Section 1 provides that the instrument is the *ASIC Market Integrity Rules (Securities Markets) Determination 2021/135*.

13. *Commencement*

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

- (a) 6 April 2021; and
- (b) 20 business days after the day the instrument is registered on the Federal Register of Legislation.

14. *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* (the **Rules**).

15. *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 ‘stock code’, in relation to an Equity Market Product, means the unique symbol assigned to the Equity Market Product under Rule 9.2.3 of the Rules.

16. *Tier 1 Equity Market Products and Tier 2 Equity Market Products*

Subsection 5(1) of the instrument provides that each Equity Market Product whose stock code is set out in the table in Schedule 1 to the instrument is a Tier 1 Equity Market Product.

Subsection 5(2) of the instrument provides that each Equity Market Product whose stock code is set out in the table in Schedule 2 to the instrument is a Tier 2 Equity Market Product.

17. *Schedule 1*

Schedule 1 provides that a specified Equity Market Product (referred to by its stock code) is a Tier 1 Equity Market Product.

18. *Schedule 2*

Schedule 2 provides that a specified Equity Market Product (referred to by its stock code) is a Tier 2 Equity Market Product.

ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2021/136

19. *Name of legislative instrument*

Section 1 of the instrument provides that the instrument is the *ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2021/136*.

20. *Commencement*

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

- (a) 6 April 2021; and

(b) the day that is 20 business days after the day the instrument is registered on the Federal Register of Legislation.

21. *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*.

22. *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.

23. *Schedule 1—Repeal*

Item 1 of Schedule 1 to the instrument specifies that the whole of the *ASIC Market Integrity Rules (Securities Markets) Determination 2020/1102* is repealed.

Legislative authority

24. ASIC makes the Determination and the Repeal Instrument under subrule 6.2.1(4) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**).

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

26. 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.

27. 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.

28. 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.

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

-
30. The Determination and the Repeal Instrument are disallowable legislative instruments.

Statement of compatibility with human rights

31. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Market Integrity Rules (Securities Markets) Determination 2021/135 and ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2021/136

Overview

1. *ASIC Market Integrity Rules (Securities Markets) Determination 2021/135* (the **Determination**) maintains ASIC's policy of determining the allocation of Equity Market Products to tiers based on a periodic calculation of 2.5% of each product's average daily value transacted in the preceding six-month period (or other material number of Trading Days if the product was not quoted during the entire period).
2. *ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2021/136*, together with the Determination, supersede and repeal the determinations in *ASIC Market Integrity Rules (Securities Markets) Determination 2020/1102 (Superseded Determination)*.

Assessment of human rights implications

3. These legislative instruments do not engage any of the applicable rights or freedoms. They do not raise any human rights issues.

Conclusion

4. The instruments are 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*.