



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/117*

This is the Explanatory Statement for ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/117.

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

#### Summary

1. The ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/117 (the *instrument*) amends the following:
  - a. ASIC Market Integrity Rules (Securities Markets) 2017 (*Securities Markets Rules*);
  - b. ASIC Market Integrity Rules (Futures Markets) 2017 (*Futures Markets Rules*);
  - c. ASIC Market Integrity Rules (Capital) 2021 (*Capital Rules*); and
  - d. ASIC Market Integrity Rules (IMB Market) 2010 (*IMB Rules*)  
(collectively, *market integrity rule books*); and
  - e. ASIC Derivative Transaction Rules (Clearing) 2015;
  - f. ASIC Derivative Transaction Rules (Reporting) 2013;
  - g. ASIC Derivative Trade Repository Rules 2013;
  - h. ASIC Client Money Reporting Rules 2017;
  - i. ASIC Financial Benchmark (Administration) Rules 2018; and
  - j. ASIC Financial Benchmark (Compelled) Rules 2018  
(collectively, *other ASIC-made rules*).

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2. The instrument amends the:

- a. market integrity rule books, to provide that rule waivers granted by ASIC are made only by way of legislative instrument, which are subject to parliamentary scrutiny and possible disallowance by Parliament.

This amendment resolves any technical issues raised by the operation of section 14(2) of the *Legislation Act 2003* regarding the validity of waivers (or conditions attached to those waivers) issued by ASIC that are not legislative instruments. This amendment is prospective in nature and is not intended to affect the status of existing individual waivers that have already been granted by ASIC;

- b. market integrity rule books, to clarify which decisions made by ASIC under the market integrity rules are subject to merits review by the Administrative Appeals Tribunal (*AAT*) and the persons who may make such an application.

This amendment ensures the availability of merits review by the AAT of certain decisions made by ASIC under the market integrity rule books. Following a review of the decisions that may be made by ASIC under the market integrity rule books, and consistent with guidance issued by the Administrative Review Council and the Attorney-General's Department, ASIC has determined that most decisions made by ASIC under the market integrity rule books will be subject to merits review.

This amendment also specifies that only a market participant or a market operator affected by a relevant decision may make such an application. In doing so, ASIC seeks to remove any potential ambiguity that another third party indirectly affected by a relevant decision could apply for a review of the relevant decision.

ASIC's view is that the indirect impact of any relevant decision on a third party would be marginal and limited, the efficacy of the review would be limited and the costs of a review by the AAT cannot be justified; and

- c. market integrity rule books and other ASIC-made rules, to remove references to penalties for certain rule contraventions (except the Capital Rules, which do not contain penalty references) and to insert a new rule referencing section 1317G of the *Corporations Act 2001* (the *Act*) into each of the rulebooks.

This amendment has no legal or policy effect. The penalty references in the market integrity rule books and other ASIC-made rules have been superseded by the new civil penalty calculation methods set out in section 1317G of the Act, as a result of the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*. This legislation removes ASIC's power to specify penalty amounts for ASIC-made rules, and introduces civil penalty calculation methods that apply in relation to a contravention of a civil penalty provision to conduct that occurs wholly on or after 13 March 2019.

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***Additional amendments contained in the instrument for individual market integrity rule books***

3. The instrument further amends the Securities Markets Rules to:

- a. remove the prescriptive requirements of ‘retail client adviser accreditation’ (Part 2.4).

This regime has largely been superseded by the Professional standards for financial advisers who provide personal advice to retail clients on relevant financial products – the result of the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, which commenced on 15 March 2017. Financial advisers who do not provide personal advice are already covered under the general obligations of a licensee in sections 912A(1)(e) – (f) of the Act;

- b. remove the requirement to provide confirmations to non-retail clients in respect of ‘derivatives market contract’ transactions (Rule 3.4.3).

This amendment aims to ensure that market participants do not incur unnecessary costs or regulatory burden associated with complying with client reporting obligations that have no demonstrable regulatory benefit or benefit to clients;

- c. clarify when intermediary ID data is required for regulatory data reporting purposes (Rule 7.4.4).

This amendment aims to provide the market with certainty in the application of the requirement, and ensure that ASIC captures accurate data for its surveillance; and

- d. introduce a ‘good fame and character’ requirement for persons involved in the business of a market operator in connection with operating the relevant market (new Part 9.6).

This amendment formalises ASIC’s expectations with respect to market operators of securities markets in the employment and retention of their staff, and provides consistency in ASIC’s approach across market participants and market operators.

4. The instrument further amends the Futures Markets Rules to:

- a. replace the prohibited employment rule with a ‘good fame and character’ requirement for persons involved in the business of a market participant in connection with the relevant market (Rule 2.2.3).

This amendment aims to strike a more appropriate balance between ensuring the integrity of the market through due diligence by employers and imposing a de facto life ban on certain individuals without due process, and provides consistency in ASIC’s approach across market participants in the securities markets and futures markets;

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- b. remove the requirement for client authorisations to be in writing for ‘block trades’ (Rule 3.4.4) and ‘exchange for physical’ transactions (Rule 3.5.3).

This amendment removes the legacy rules originally in place for the traditional ‘open outcry’ system that has now been replaced by 24-hour screen trading and a range of electronic and telephonic means by which participants may receive orders. The requirements that are being repealed are an unnecessary impediment to the efficient operation of the market in circumstances where other means of communication may be used by a client to provide authorisations;

- c. introduce suspicious activity reporting requirements (new Part 3.6).

This amendment formalises ASIC’s expectations for futures markets participants to report suspicious activity to ASIC, and provides consistency in ASIC’s approach across market participants in the securities markets and futures markets; and

- d. introduce a ‘good fame and character’ requirement for persons involved in the business of a market operator in connection with operating the relevant market (new Part 4.4).

This amendment formalises ASIC’s expectations with respect to market operators of futures markets in the employment and retention of their staff, and provides consistency in ASIC’s approach across market participants and market operators.

5. The Capital Rules is further amended to correct minor typographical errors and omissions and to ensure better consistency with other references in the Capital Rules and the ASIC Portal.

### **Purpose of the instrument**

6. ASIC is responsible for supervising domestic licensed markets and making market integrity rules. ASIC is also responsible for supervising other entities involved in the Australian financial system and for making relevant rules.
7. The purpose of the instrument is to update and refine the market integrity rule books and other ASIC-made rules in line with ASIC’s stated policy objectives.

### **Background**

8. In January 2017, ASIC proposed in [Consultation Paper 277](#) *Proposals to consolidate the ASIC market integrity rules (CP 277)* to review the market integrity rules in detail to make any further adjustments required as a result of:
  - a. ASIC’s experience in administering the market integrity rules;
  - b. developments in the market;
  - c. evolving international regulatory requirements; and

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- d. feedback from market operators and participants (including the feedback and proposals received by ASIC before this consultation).
9. In November 2017, ASIC consolidated 13 of 14 market integrity rule books into four rule books and announced the commencement of a review of the consolidated rules to prioritise areas for potential amendment.
  10. In June 2021, ASIC:
    - a. consolidated the ASIC Market Integrity Rules (Securities Markets – Capital) 2017 and ASIC Market Integrity Rules (Futures Markets – Capital) 2017 into the Capital Rules. Following this consolidation, ASIC proposed to amend the Capital Rules to:
      - i. clarify which decisions made by ASIC under the Capital Rules are subject to merits review by the AAT; and
      - ii. make very minor amendments to correct typographical errors and omissions, to ensure consistency with other references in the Capital Rules and the ASIC Portal, and to ensure that defined terms are capitalised; and
    - b. published [Consultation Paper 342](#) *Proposed amendments to the ASIC market integrity rules and other ASIC-made rules (CP 342)*. CP 342 was in response to the review, and sought to consult industry on proposed amendments to the market integrity rule books and other ASIC-made rules on ten priority areas.
  11. ASIC also undertook a review of its decisions made under the Capital Rules and IMB Rules, which were not subject to merits review by the AAT. ASIC determined that some decisions made by ASIC could potentially affect the interests of a person and therefore should be subject to merits review by the AAT as reflected in the instrument.

## **Consultation**

12. CP 342 covered ten priority areas for amendment in the market integrity rule books and the other ASIC-made rules.
13. ASIC received seven written responses to CP 342 comprising of market participants, market operators and industry bodies. The responses broadly supported ASIC's proposed amendments. Following consideration of the feedback received, ASIC refined the proposed rule amendments and published Report 720 *Response to submissions on CP 342 Proposed amendments to the ASIC market integrity rules and other ASIC-made rules*.
14. Following publication of CP 342, ASIC further consulted directly with market participants, market operators and industry bodies in relation to proposed amendments to the Capital Rules. ASIC had identified that some of the additional proposed amendments were not contained in CP 342 (except for the proposal that rule waivers are to be made only by way of legislative instrument).

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15. ASIC received two responses to its proposed amendments to the Capital Rules. One respondent formally declined to submit any comment, and the other supported ASIC's proposed amendments.
  16. ASIC also consulted directly with IMB Ltd, the operator of the IMB Market, about ASIC's proposed amendments to the ASIC Market Integrity Rules (IMB Market) 2010. The market operator supported ASIC's proposed amendments.
  17. Following consultation and feedback received in CP 342, ASIC undertook further direct consultation with market operators to extend the 'good fame and character' test proposed in CP 342 in respect of the Futures Markets Rules to market operators of securities markets as well, in order to promote consistency regarding the market operators' obligations in these two markets.
  18. The market operators were generally supportive of the introduction of the new 'good fame and character' test into the Securities Markets Rules. ASIC received two responses expressing concerns about potential anti-competitive behaviour. Following further communications with these market operators, it appears that there was some misunderstanding as to the practical application of the proposed new rule.
  19. ASIC consulted with the Commonwealth Attorney-General's Department about the amendments to provide merits review rights in respect of certain decisions made by ASIC under the market integrity rule books, and the likely impact on the workload of the AAT. The Department supported ASIC's proposed amendments, as it is consistent with the Department's general policy in support of the availability of merits review for administrative decisions that are likely to affect the interests of a person. The Department also agreed that the anticipated increase in the workload of the AAT as a result of these amendments would be minimal.
  20. The Department raised a concern that Rule 1.1.9 may have the unintended effect of creating a practical barrier to seeking AAT review at all. ASIC noted that Rule 1.1.9 was inserted to reflect subsection 27A(3) of the *Administrative Appeals Tribunal Act 1975 (AAT Act)* and that it was not intended to curtail a person's right to have a relevant decision reviewed by the AAT. Further, ASIC noted that section 29 of the AAT Act applies to set out the manner of applying for a review and the prescribed time for making an application to the AAT. Where Rule 1.1.9 applies, ASIC confirmed with the Department that the prescribed time will not commence until the applicant is notified by ASIC of the relevant decision. The Department indicated that it was satisfied with ASIC's response.

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## Operation of the instrument

### *Commencement*

21. Section 2 of Part 1 of the instrument provides for a staggered commencement of the amendments as follows:

a. ***Removal of redundant penalty references***

The removal of the superseded penalty provisions in the market integrity rule books and other ASIC-made rules (as amended) and the insertion of rules in each of the rulebooks making reference to section 1317G of the Act has no legal or policy effect, as the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* already operates to determine the penalty for breaches of ASIC-made rules where the offending conduct occurs wholly on or after 13 March 2019.

This amendment commences on the day after the instrument is registered on the Federal Register of Legislation.

b. ***‘Good fame and character’ requirement***

- i. **Securities market operators** – Part 9.6 (inserted) introduces new ‘good fame and character’ requirements for persons associated with securities market operators; and
- ii. **Futures market operators** – Rule 2.2.3 is replaced with new ‘good fame and character’ requirements for persons associated with futures market participants in Part 4.4 (inserted), which introduces new ‘good fame and character’ requirements for persons associated with futures market operators.

These amendments commence **three months** after the instrument is registered on the Federal Register of Legislation. This will allow sufficient time for market operators and market participants to make any relevant changes to their business’ processes and procedures to comply with the new requirements of these rules.

c. ***Suspicious activity reporting***

Part 3.6 (inserted) requires futures market participants to report suspicious activities. This amendment commences **three months** after the instrument is registered on the Federal Register of Legislation. This will allow sufficient time for market operators and market participants to make any relevant changes to their business’ processes and procedures to comply with the new requirements of these rules.

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d. *All other amendments*

All amendments to the Capital Rules, and all other remaining amendments to the Securities Markets Rules, Futures Markets Rules, IMB Rules and other ASIC-made rules relating to:

- i. insertion of rules relating to the making of waivers by legislative instrument;
- ii. insertion of rules relating to decisions by ASIC which are to be subject to merits review by the AAT;
- iii. repeal of Part 2.4 relating to retail client derivatives advisers;
- iv. removal of the requirement to give confirmations to non-retail clients in respect of ‘derivatives market contract’ transactions;
- v. clarification regarding when intermediary ID data is required for regulatory data reporting purposes; and
- vi. substitution of rules relating to block trade orders and exchange for physical orders for futures markets clients;

commence **20 business days** after the instrument is registered on the Federal Register of Legislation. This will allow sufficient time for market participants to make any relevant changes to their business’ processes and procedures.

*Instrument – items and schedules*

22. Removal of penalty provisions:

- a. Items 1 to 4 and 11 and 12 of Schedule 1,
- b. Items 1 to 4 of Schedule 2,
- c. Items 1 and 2 of Schedule 4,
- d. Item 1 of Schedule 5,
- e. Item 1 of Schedule 6,
- f. Item 1 of Schedule 7,
- g. Item 1 of Schedule 8,
- h. Item 1 of Schedule 9, and
- i. Item 1 of Schedule 10 of the instrument

remove unnecessary penalty provisions in those Rules.



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23. Maximum pecuniary penalty:

- a. Item 5 of Schedule 1,
- b. Item 5 of Schedule 2,
- c. Item 3 of Schedule 4,
- d. Item 2 of Schedule 5,
- e. Item 2 of Schedule 6,
- f. Item 2 of Schedule 7,
- g. Item 2 of Schedule 8,
- h. Item 2 of Schedule 9, and
- i. Item 2 of Schedule 10 of the instrument

insert or substitute (as the case may be) a rule which provides that the maximum pecuniary penalty payable for a contravention of a provision of those Rules is an amount determined by the Court under section 1317G of the Act.

24. AAT Review:

Item 6 of Schedule 1, Item 6 of Schedule 2, Item 1 of Schedule 3, and Item 4 of Schedule 4 of the instrument each insert:

- a. a Rule specifying the Rules with regards to which applications may be made to the AAT for review of a decision made by ASIC, and identifying the person who may make such an application; and
- b. a Rule specifying that, in relation to each ASIC decision which may be subject to AAT review, ASIC must take reasonable steps to give to each person who may make an application for review of the decision notice, in writing or otherwise, of the making of the decision and of the person's right to have the decision reviewed by the Tribunal. The Rule also provides that failure by ASIC to comply with the notice requirement does not affect the validity of the decision.

25. Waivers:

Item 7 of Schedule 1, Item 7 of Schedule 2, Item 2 of Schedule 3, and Item 5 of Schedule 4 of the instrument provides that, in relation to each amendment to Rule 1.2.1 of those Rules in relation to waivers, ASIC may exercise its powers under this rule to grant a waiver (either unconditionally or subject to conditions) or withdraw a waiver by legislative instrument only. This amendment is prospective in nature and is not intended to affect the status of existing individual waivers that have already been granted by ASIC.

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26. Good fame and character requirement – equivalent requirement:

Item 8 of Schedule 1 of the instrument adds a note that securities market operators are subject to an equivalent ‘good fame and character’ test for persons involved with a market operator’s business of operating the relevant market (as inserted by new Part 9.6).

27. Accredited derivatives advisers:

Item 9 of Schedule 1 of the instrument repeals Part 2.4 of the Securities Markets Rules in its entirety. Part 2.4 dealt with numerous requirements and processes for the accreditation and registration of market participant representatives advising retail clients in relation to derivatives.

28. Notifications:

Item 10 of Schedule 1 of the instrument repeals subrule 3.4.3(2) of the Securities Markets Rules and substitutes it with a provision providing that a market participant does not have to give to a client the notifications required by paragraph 3.4.3(1)(b) (where a client other than a retail client has entered into a market transaction with a market participant acting as a principal, or where a client’s market transaction was executed as a crossing) if the client has agreed not to receive such notifications or if the market transaction is in respect of a derivatives market contract.

29. Regulatory data:

Item 13 of Schedule 1 of the instrument makes a minor correction to clarify the regulatory data required in relation to an arrangement between a market participant and an Australian financial services (*AFS*) licence holder when submitting trading messages through the market participant’s system by omitting the word ‘submits’ and substituting it with the phrase ‘is permitted to submit’.

30. Good fame and character requirement – securities market operators:

Item 14 of Schedule 1 of the instrument inserts a new Part 9.6 ‘Supervision and risk management’ into the Securities Markets Rules. Part 9.6 consists of only Rule 9.6.1, which deals with a ‘good fame and character’ requirement for persons involved in a securities market operator’s business of operating the relevant market. Rule 9.6.1 is analogous to Rule 2.1.4, which deals with a ‘good fame and character’ requirement for persons involved in a securities market participant’s business.

Subrule 9.6.1(1) provides that a market operator must ensure that any employee or other person who is or will be involved in the business of operating the market (and, in the case of a body corporate, each director or controller), is of good fame and character and high business integrity.

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Paragraph 9.6.1(2)(a) provides that, in assessing whether a person is of good fame and character and high business integrity, a person will not be of good fame and character if he or she is disqualified from managing a corporation or is an insolvent under administration (or its equivalent in another country).

Paragraph 9.6.1(2)(b) provides that a person may not be of good fame and character or high business integrity if the person has been:

- (i) convicted of any offence;
- (ii) disciplined by or adversely mentioned in a report made by, or at the request of, any government or governmental authority or agency;
- (iii) adversely mentioned in a report made by, or at the request of, a market operator, a clearing facility, a settlement facility or any other exchange, market operator or clearing and settlement facility; or
- (iv) disciplined by a market operator, a clearing facility, a settlement facility or any other exchange, market operator or clearing and settlement facility.

31. Good fame and character requirement – futures market participants:

Item 8 of Schedule 2 of the instrument repeals the ‘prohibited employment’ requirement in Rule 2.2.3 and substitutes a ‘good fame and character’ requirement for persons involved in a futures market participant’s business in connection with that market. Rule 2.2.3 is analogous to Rule 2.1.4 of the Securities Markets Rules.

Subrule 2.2.3(1) provides that a market participant must ensure that any employee or other person who is or will be involved in the business of the market participant (and, in the case of a body corporate, each director or controller), is of good fame and character and high business integrity.

Paragraph 2.2.3(2)(a) provides that, in assessing whether a person is of good fame and character and high business integrity, a person will not be of good fame and character if he or she is disqualified from managing a corporation or is an insolvent under administration (or its equivalent in another country).

Paragraph 2.2.3(2)(b) provides that a person may not be of good fame and character or high business integrity if the person has been:

- (i) convicted of any offence;
- (ii) disciplined by or adversely mentioned in a report made by, or at the request of, any government or governmental authority or agency;
- (iii) adversely mentioned in a report made by, or at the request of, a market operator, a clearing facility, a settlement facility or any other exchange, market operator or clearing and settlement facility; or

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- (iv) disciplined by a market operator, a clearing facility, a settlement facility or any other exchange, market operator or clearing and settlement facility.

32. Client authorisations:

- a. Item 9 of Schedule 2 of the instrument repeals the requirement in Rule 3.4.4 of the Futures Markets Rules for client authorisations to be in writing in relation to block trade orders. The amendment requires that, before executing a block trade order on behalf of a client on a futures market, a futures market participant must be authorised by the client to do so either specifically or generally, and must keep a record of the identity of the authoriser, and the date and time of the authorisation.
- b. Item 10 of Schedule 2 of the instrument repeals the requirement in Rule 3.5.3 of the Futures Markets Rules for client authorisations to be in writing in relation to exchange for physical orders. The amendment is analogous to Rule 3.4.4, and provides that, before executing an exchange for physical order on behalf of a client, a futures market participant must be authorised by the client to do so either specifically or generally, and must keep a record of the identity of the authoriser, and the date and time of the authorisation.

33. Suspicious activity reporting:

Item 11 of Schedule 2 of the instrument inserts a new Part 3.6 ‘Suspicious activity reporting’ into the Futures Markets Rules. Rules 3.6.1 and 3.6.2 are analogous to Rules 5.11.1 and 5.11.2 respectively of the Securities Markets Rules.

Paragraph 3.6.1(1)(a) provides that, if a market participant has reasonable grounds to suspect that a person (the Insider) has placed an order into (or entered into a transaction on) a market in relation to a financial product while in possession of inside information (within the meaning of section 1042A of the Act), and whether or not the market participant is aware of the identity of the Insider or all of the details of the order or transaction, the market participant must, as soon as practicable, notify ASIC (in writing) of the details of the transaction or order (to the extent known to the market participant) and the reasons it suspects the matter.

Paragraph 3.6.1(1)(b) provides that a market participant must similarly notify ASIC if a market participant has reasonable grounds to suspect that a transaction or an order transmitted to a trading platform of a market has (or is likely to have) the effect of:

- (i) creating an artificial price for trading in financial products on a market;
- (ii) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a market;
- (iii) creating, or causing the creation of, a false or misleading appearance of active trading in financial products on a market;

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- (iv) creating, or causing the creation of, a false or misleading appearance with respect to the market for, or the price for trading in, financial products on a market.

This is whether or not the market participant is aware of the intention of any party to the transaction or order, or all of the details of the transaction or order.

Subrule 3.6.1(2) provides that a market participant is not required to make the notification to ASIC under subrule 3.6.1(1) if the market participant has reported the information that would otherwise be required to be notified to ASIC to the Australian Transaction Reports and Analysis Centre (*AUSTRAC*) under section 41 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* or under section 16 of the *Financial Transaction Reports Act 1988*.

Rule 3.6.2 provides that a participant who notifies ASIC under subrule 3.6.1(1) must not disclose that the notification was made, or the information contained in the notification, to any person other than for the purposes of seeking legal advice or as required by law.

34. Good fame and character requirement – futures market operators:

Item 12 of Schedule 2 of the instrument inserts a new Part 4.4 ‘Supervision and risk management’ into the Futures Markets Rules. Part 4.4 consists of only Rule 4.4.1, which deals with a ‘good fame and character’ requirement for persons involved in a futures market operator’s business of operating the market. Rule 4.4.1 is analogous to Rule 2.2.3, which deals with a ‘good fame and character’ requirement for persons involved in a futures market participant’s business in connection with that market.

35. Miscellaneous:

Items 3 to 26 of Schedule 3 of the instrument deal with a number of minor typographical errors and omissions, including the capitalisation of defined terms, and make amendments to ensure better consistency between the forms in the Capital Rules and the forms used by market participants on the *ASIC Portal* electronic lodgement system.

Incorporation by reference

36. The instrument does not incorporate any matter by reference.

Retrospective application

37. The instrument does not have retrospective application.

Legislative instrument and primary legislation

38. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:

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- a. the substantive amendments made by the instrument utilises powers given by Parliament to ASIC that allow ASIC to make rules that deal with activities or conduct of licensed markets, and of persons in relation to, and financial products traded on, those licensed markets. The instrument also amends other ASIC-made rules utilising powers given by Parliament to ASIC to remove superseded references to penalties for certain rule contraventions under the ASIC-made rules and to ensure consistency with the new civil penalty regime set out in the Act.
  - b. the matters contained in the instrument contain technical detail that would otherwise introduce unnecessary complexity to the primary legislation. As a consequence, if the matters in the instrument were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of provisions that are highly specific in nature and may become redundant over time due to the pace of technological and market developments.

### Duration

39. The duration of the amendments made by this instrument align with the duration of the primary instruments that are being amended. The market integrity rule books are exempt from sunseting under item 18 of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. Market integrity rules regulate the operation of financial markets. As noted in the Explanatory Statement to the *Legislation (Exemptions and Other Matters) Regulation 2015*, commercial certainty would be undermined by the sunseting of these rules.

### **Legislative authority**

40. The instrument is made under sections 798G, 901A, 903A, 908CA, 908CD and 981J of the Act.
41. Subsection 798G(3) of the Act provides that ASIC must not make a market integrity rule unless the Minister has consented, in writing, to the making of the rule.
42. Subsection 901K(1) of the Act provides that ASIC must not make a derivative transaction rule unless the Minister has consented, in writing, to the making of the rule.
43. Subsection 903H(1) of the Act provides that ASIC must not make a derivative trade repository rule unless the Minister has consented, in writing, to the making of the rule.
44. Subsection 908CM(2) of the Act provides that ASIC must not make a financial benchmark rule or compelled financial benchmark rule unless the Minister has consented, in writing, to the making of the rule.
45. Section 981L of the Act provides that ASIC must not make a client money reporting rule unless ASIC has consulted with the public about the making of

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the rule. The Act does not require the Minister's consent for ASIC to make a client money reporting rule.

46. ASIC sought and received the Minister's consent (where required) to making amendments to each rule in accordance with the corresponding provision of the Act. The Minister consented to the making of this instrument by written notice to ASIC dated 31 January 2022.
47. Subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act) provides that "Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, 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." Subsection 33(3) of the *Acts Interpretation Act 1901* applies to this instrument.
48. Sections 798G, 901A, 903A, 908CA, 908CD and 981J of the Act each provide that rules respectively made under them are by way of legislative instrument. This means that such rules are subject to disallowance in accordance with section 42 of the *Legislation Act 2003*. Section 44 of the *Legislation Act 2003* does not apply to this instrument. This instrument is subject to disallowance.

#### **Statement of Compatibility with Human Rights**

49. 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 and other ASIC-Made Rules) Amendment Instrument 2022/117***

#### Overview

1. The ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/117 (the ***instrument***) amends a number of ASIC-made rule books, including the market integrity rules, derivative transaction rules, derivative trade repository rules, financial benchmark rules, and client money reporting rules.
2. The instrument amends the market integrity rules to provide that rule waivers are made only by way of legislative instrument, which are subject to parliamentary scrutiny and possible disallowance by Parliament. The instrument also amends the market integrity rules to clarify which decisions made by ASIC under the market integrity rules are subject to merits review by the Administrative Appeals Tribunal, and to clarify the persons who may make such an application.
4. The instrument amends all ASIC-made rule books (except the ASIC Market Integrity Rules (Capital) 2021) to remove references to penalties for certain rule contraventions, and to insert a new rule referencing section 1317G of the *Corporations Act 2001* (the ***Act***) into each of the rulebooks.
5. The instrument further amends the ASIC Market Integrity Rules (Securities Markets) 2017 to:
  - a. remove the prescriptive requirements of ‘retail client adviser accreditation’ (Part 2.4);
  - b. remove the requirement to provide confirmations to non-retail clients in respect of ‘derivatives market contract’ transactions (Rule 3.4.3);
  - c. clarify when intermediary ID data is required for regulatory data reporting purposes (Rule 7.4.4); and
  - d. introduce a ‘good fame and character’ requirement for persons involved in the business of a market operator in connection with operating the relevant market (new Part 9.6).



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6. The instrument further amends the ASIC Market Integrity Rules (Futures Markets) 2017 to:
    - a. replace the prohibited employment rule with a ‘good fame and character’ requirement for persons involved in the business of a market participant in connection with the relevant market (Rule 2.2.3);
    - b. remove the requirement for client authorisations to be in writing for ‘block trades’ (Rule 3.3.4) and ‘exchange for physical’ transactions (Rule 3.5.3);
    - c. introduce suspicious activity reporting requirements (new Part 3.6); and
    - d. introduce a ‘good fame and character’ requirement for persons involved in the business of a market operator in connection with operating the relevant market (new Part 4.4).
  7. The instrument further amends the ASIC Market Integrity Rules (Capital) 2021 to correct minor typographical errors and omissions and to ensure better consistency with other references in the ASIC Market Integrity Rules (Capital) 2021 and the ASIC Portal.

#### Assessment of human rights implications

##### *Right to work*

8. This instrument may engage the right to freely choose and accept work under Article 6(1) of the International Convention on Economic, Social and Cultural Rights (ICESCR), by providing that a person will not be able to be involved in a market operator’s business of operating a relevant market, or a futures markets participant’s business in connection with the relevant market, unless they are of good fame and character.
9. The right to work provides that everyone must be able to freely accept or choose their work and not to be unfairly deprived of work. This right must be available in a non-discriminatory manner pursuant to article 2(1) of the ICESCR.
10. The good fame and character requirement ensures that individuals who meet a minimum standard of trustworthiness and integrity are employed or involved in the business of a market operator or a market participant in connection with the relevant market. These requirements are justified since they are intended to protect investors and consumers and the integrity of the operation of the markets against misconduct.
11. The amendments also provide consistency in application across market participants and market operators, as they are in line with the existing good fame and character requirements in place for market participants of securities markets in Rule 2.1.4 of the ASIC Market Integrity Rules (Securities Markets) 2017.

##### *Right to privacy*

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12. The instrument may also engage the right to protection from unlawful or arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political rights (ICCPR), as the good fame and character requirement may implicitly require the collection of personal or sensitive information of a person by a market participant or market operator in assessing whether the person is of good fame and character.
  13. ‘Personal information’ is defined in the *Privacy Act 1988* as information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. ‘Sensitive information’ is defined in section 6 of the *Privacy Act 1988* as personal information that includes certain information or an opinion about an individual, such as an individual’s criminal record.
  14. The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. In order for the interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UN Human Rights Committee has interpreted the requirement of ‘reasonableness’ to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.
  15. The good fame and character requirement for market participants and market operators is compatible with the rights recognised in Article 17 of the ICCPR as it is proportional to the ends sought and is necessary in the circumstances to ensure the integrity of the market. The associated guidance provides that, in undertaking this due diligence, market participants and market operators are required to consider the facts and circumstances as a whole, and ensure that they meet all procedural fairness and due process requirements that they have to employees and other persons involved in their business in connection with the relevant market or of operating the relevant market respectively, when assessing whether the person is of good fame and character.
  16. The amendments also provide consistency in application across market participants and market operators, as they are in line with the existing good fame and character requirements in place for market participants of securities markets in Rule 2.1.4 of the ASIC Market Integrity Rules (Securities Markets) 2017.

### Conclusion

17. Accordingly, to the extent that the instrument may engage rights under Article 17 of the International Covenant on Civil and Political Rights and Article 6 of the International Convention on Economic, Social and Cultural Rights, it 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* as the limitations are appropriate, proportionate and achieve and legitimate objective.