



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets and Futures Markets) Amendment Instrument 2022/329

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets and Futures Markets) Amendment Instrument 2022/329*.

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

Summary

1. On 9 March 2022 ASIC made the following three instruments (together, the ***amendment instruments***), all of which were registered on the Federal Register of Legislation on 9 March 2022:
 - (a) ASIC Market Integrity Rules (Securities Markets) Amendment 2022/73 (***Instrument 2022/73***), which amends the ASIC Market Integrity Rules (Securities Markets) 2017 (***Securities Markets Rules***) commencing three months after the day of registration;
 - (b) ASIC Market Integrity Rules (Securities Markets and Futures Markets) Amendment Instrument 2022/74 (***Instrument 2022/74***), which amends the Securities Markets Rules and the ASIC Market Integrity Rules (Futures Markets) 2017 (***Futures Markets Rules***) commencing on the day that is 12 months after the day of registration; and
 - (c) ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/117 (***Instrument 2022/117***), which (among other amendments) amends the Securities Markets Rules and the Futures Markets Rules commencing three months after the day of registration.
2. The *ASIC Market Integrity Rules (Securities Markets and Futures Markets) Amendment Instrument 2022/329* (***this instrument***) amends section 2 of each of the amendment instruments to give certainty and clarity to industry about the actual commencement date for those amendments.

Purpose of the instrument

3. The purpose of this instrument is to amend each of the amendment instruments to provide for a specific date of commencement, instead of a date specified by reference to the elapsing of a period of months for certain amendments to the

Securities Markets Rules and the Futures Markets Rules. The specified dates in this instrument do not materially alter the period of months originally referred to in the commencement provisions of the amendment instruments.

4. Specifically, this instrument amends section 2 of:
 - (a) Instrument 2022/73, to clarify that the amendments to Rule 5.4B.1 of the Securities Markets Rules commence on 10 June 2022;
 - (b) Instrument 2022/74, to clarify that the following amendments commence on 10 March 2023:
 - (i) inserting Chapter 8A and 8B into the Securities Markets Rules and the Futures Markets Rules; and
 - (ii) repealing Rule 9.1.3 of the Securities Markets Rules;
 - (c) Instrument 2022/117, to clarify that the following amendments commence on 10 June 2022:
 - (i) inserting a good fame and character requirement for market operators into the Securities Markets Rules, and for market operators and participants into the Futures Markets Rules; and
 - (ii) inserting a suspicious activity reporting requirement into the Futures Markets Rules.
5. The amendments made by this instrument do not materially alter the periods of months originally referred to in the commencement provisions of the amendment instruments and align the commencement dates with ASIC's public statements about commencement of the amendment instruments, made after the amendment instruments were registered.

Consultation

6. We did not consult with industry on the amendments in this instrument, as they are minor machinery amendments made, as noted above, to provide clarity to industry by aligning the commencement dates of the amendment instruments with ASIC's public statements about commencement of the amendment instruments, made after the amendment instruments were registered.

Operation of the instrument

7. Section 1 of this instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Securities Markets and Futures Markets) Amendment Instrument 2022/329*.
8. Section 2 of this instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
9. Section 3 of this instrument provides that the instrument is made under section 798G of the *Corporations Act 2001* (the *Act*).

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10. Section 4 of this instrument provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items of the Schedule.
 11. Schedule 1 of this instrument amends section 2 of Instrument 2022/73 to clarify that the amendments set out in Schedule 1 of Instrument 2022/73 commence on 10 June 2022. It also removes the note in section 2 which referred to the Federal Register of Legislation, as the amendment removes any reference to that Register in the section.
 12. Schedule 2 of this instrument amends section 2 of Instrument 2022/74 to clarify that the amendments set out in Schedules 1 and 2 of Instrument 2022/74 commence on 10 March 2023. It also removes the note in section 2 which referred to the Federal Register of Legislation, as the amendment removes any reference to that Register in the section.
 13. Schedule 3 of this instrument amends subsection 2(c) of Instrument 2022/117 to clarify that the amendments set out in items 8 and 14 of Schedule 1 and items 8,11,12 of Schedule 2 of Instrument 2022/74 commence on 10 June 2022.
 14. The amendments made by this instrument do not materially alter the periods of months originally referred to in the commencement provisions of the amendment instruments and align the commencement dates with ASIC's public statements about commencement of the amendment instruments, made after the amendment instruments were registered.

Legislative instrument and primary legislation

15. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation. The matters contained in the instrument are specific amendments to existing legislative instruments, being the amendment instruments. The purpose of this instrument is to give certainty and clarity to industry about the actual commencement date for amendments made by the amendment instruments to the Securities Markets Rules and Futures Market Rules.

Duration

16. The duration of the amendments made by this instrument aligns with the duration of the Securities Markets Rules and the Futures Markets Rules being amended.
17. The market integrity rule books, which include the Securities Markets Rules and the Futures Markets Rules, 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

18. This instrument is made under sections 798G of the Act.
19. 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. The Minister consented to the making of the amendment instruments by written notice to ASIC dated 31 January 2022. This instrument clarifies the actual commencement dates for some of the amendments in the amendment instruments.
20. 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.
21. Sections 798G of the Act provides that rules respectively made under this section 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

22. 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*.

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Overview

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2. The *ASIC Market Integrity Rules (Securities Markets and Futures Markets) Amendment Instrument 2022/329* (***this instrument***) amends section 2 of each of the amendment instruments to provide for a specific date of commencement, instead of a date specified by reference to the elapsing of a period of months. The specified dates in this instrument do not materially alter the period of months originally referred to in the commencement provisions of the amendment instruments. This instrument also removes references in notes to the commencement provisions to the Federal Register of Legislation. Those references are redundant once this instrument commences.

Assessment of human rights implications

3. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. This 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*.