

ASIC MARKET INTEGRITY RULES (ASX MARKET) AMENDMENT 2011 (NO. 1)

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes the *ASIC Market Integrity Rules (ASX Market) Amendment 2011 (No. 1)* under subsection 798G(1) of the *Corporations Act 2001* (the *Act*).

1. Background

Subsection 798G(1) of the Act provides that ASIC may, by legislative instrument, make 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.

The *ASIC Market Integrity Rules (ASX Market) 2010 (Rules)* were made under subsection 798G(1) of the Act on 1 August 2010.

Subrule 2.1.4(1) of the Rules provides:

“A Market Participant must ensure that any Employee or other person who is or will be involved in the business of the Market Participant in connection with the Market and, in the case of a body corporate, each director or Controller, is of good fame and character and high business integrity having regard to subrule (2).”

Subrule 2.1.4(2) of the Rules relevantly provides that a person may not be of good fame and character and high business integrity for the purposes of subrule (1) if the person has been “charged with or convicted of any offence”. Subrule 2.1.4(2) was based on rules 3.3.2 and 3.4.2 of the ASX Market Rules that were in existence prior to 1 August 2010.

2. Purpose of the legislative instrument

The purpose of the legislative instrument is to address concerns raised by the Senate Standing Committee on Regulations and Ordinances during the process of Parliamentary scrutiny of the Rules. The function of the Committee is to examine all legislative instruments subject to disallowance or disapproval by the Senate to ensure they comply with broad principles of personal rights and parliamentary propriety.

The Committee expressed concern that under subrule 2.1.4(2), where a person has been charged with (but not convicted of) an offence, that offence could count against their good fame and character regardless of whether a conviction has followed from that

charge. The Committee noted the possible detrimental impact for a person that may arise out of such an assessment.

3. Operation of the legislative instrument

The legislative instrument amends subparagraph (2)(b)(i) of rule 2.1.4 of the Rules to delete the words “charged with or”.

4. Consultation

ASIC did not engage in consultation before making the legislative instrument.

Before making the Rules, ASIC engaged in a period of public consultation. The consultation process included the publication of Consultation Paper 131 *Proposed ASIC Market Integrity Rules – ASX and SFE markets* in February 2010 which outlined ASIC’s proposals for market integrity rules.