
ASIC MARKET INTEGRITY RULES (ASX 24 MARKET) AMENDMENT 2013 (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 24 Market) Amendment 2013 (No. 1)* (the **Instrument**) under subsection 798G(1) of the *Corporations Act 2001* (the **Corporations Act**).

1. Enabling legislation

Subsection 798G(1) of the Corporations Act provides that ASIC may, by legislative instrument, make rules that deal with the following:

- (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 24 Market) 2010 (ASX 24 Rules)* were made under subsection 798G(1) of the Corporations Act on 1 August 2010. The ASX 24 Rules deal with the activities or conduct of the licensed market operated by Australian Securities Exchange Limited (the **ASX 24 Market**). Capitalised terms in this Explanatory Statement refer to defined terms in the ASX 24 Rules.

2. Background

The ASX 24 Rules were adapted from the Sydney Futures Exchange Operating Rules (subsequently superseded by the ASX 24 Operating Rules) that were in existence prior to 1 August 2010.

In March 2011, we consulted on an application for an Australian market licence by Financial and Energy Exchange Limited to operate an exchange for energy, commodity and environmental derivatives, in Consultation Paper 149 *Application for an Australian market licence: Financial and Energy Exchange Limited* (CP 149)¹.

In May 2011, we consulted on proposed ASIC market integrity rules for the FEX market in Consultation Paper 157 *Proposed ASIC market integrity rules: FEX market* (CP 157). The proposed rules were modelled on the ASX 24 Rules with minor amendments to:

- (a) reflect the differences between the proposed FEX market and the ASX 24 Market;

¹ Since that time, the applicant for the market licence has changed to FEX Global Pty Ltd.

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- (b) correct drafting anomalies;
 - (c) include obligations from operating rules, procedures, determinations and practice notes that applied to the ASX 24 Market prior to 1 August 2010; and
 - (d) include a specific obligation on Market Participants to give priority to their clients' interests where there exists a conflict of interest.

In CP 157 we proposed making the same amendments to the ASX 24 Rules, with the exception of amendments relating to differences between the FEX and ASX 24 Market.

On 1 August 2011, the ASIC Market Integrity Rules (ASX 24 Market) Amendment 2011 No.1. amended the ASX 24 Rules to include rules on capital and related requirements.

Since the ASX 24 Rules were made on 1 August 2010, there has been change in market structure and growth in automation and innovation in electronic trading (in particular, proprietary trading) in domestic futures markets.

This Instrument amends the ASX 24 Rules to include the amendments proposed CP 157, together with further amendments relating to:

- (a) risk management obligations for House Accounts;
- (b) supervisory policies and procedures; and
- (c) minimum presence requirements for Foreign Market Participants that do not hold an Australian financial services (AFS) licence.

These amendments are required for ASIC to continue to effectively carry out its responsibility for market supervision in the context of a changing market environment.

3. Purpose of the legislative instrument

The purpose of this Instrument is to:

- (a) include obligations from operating rules, procedures, determinations and practice notes that applied to the ASX 24 Market prior to 1 August 2010, relating to disclosure, withholding orders, pre-negotiated business orders and block trades. This will ensure consistency with the proposed market integrity rules for the FEX market;
- (b) impose a specific obligation on Market Participants to give priority to their clients' interests where there exists a conflict of interest. This will ensure consistency with the proposed market integrity rules for the FEX market (see Rule 3.1.13(1A));
- (c) impose certain risk management requirements for Market Participants that trade on a House Account, including the obligation to set and maintain order and/or position limits, and requirements relating to connections to a terminal for the purpose of trading on a

House Account. Existing risk management rules only apply to client accounts. These amendments will ensure that set and documented limits, which are based on a Market Participant's financial situation, are also applied to House Accounts (see Rule 2.2.1);

- (d) impose a requirement for Market Participants to have appropriate supervisory policies and procedures to ensure compliance by the Market Participant and each person involved in its business as a Market Participant with the ASX 24 Rules, market operating rules and the Corporations Act. The introduction of this new rule will allow ASIC to take action where a Market Participant does not have adequate policies and procedures in place (see new Rule 2.2.8);
- (e) impose minimum presence requirements for foreign entities that are Market Participants of the ASX 24 Market and that are not required to hold an AFS licence. This will facilitate enforcement actions in Australia for breaches by those entities of the *Australian Securities and Investments Commission Act 2001*, the Corporations Act and the *Corporations (Fees) Act 2001* (see new Rule 2.4.1); and
- (f) correct drafting anomalies.

Details of the Instrument are contained in Attachment A.

4. Consultation

CP 157 was released in May 2011 and proposed market integrity rules for the FEX market. In CP 157 we proposed making the same amendments to the ASX 24 Rules, with the exception of amendments relating to differences between the FEX and ASX 24 Market. We did not receive any substantive comments on the proposals in CP 157.

Consultation Paper 195 *Proposed amendments to ASIC market integrity rules: ASX 24 and FEX markets* (CP 195) was released in November 2012, and outlined ASIC's proposed amendments to the ASX 24 Rules. The proposals related to risk management obligations for House Accounts, supervisory policies and procedures and minimum presence requirements. We proposed the same amendments to the market integrity rules for the FEX market.

Submissions for CP 195 were received from AFMA, ASX and a principal trader. Submissions were generally receptive to ASIC's proposals in CP 195. However respondents noted that the new obligations would impact some Market Participants more so than others, particularly principal traders where the directors are the only traders.

5. Penalties

Subsection 798G(1) of the Corporations Act provides that market integrity rules are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

Subsection 798G(2) of the Corporations Act provides that market integrity rules may include a penalty amount for a rule. A penalty amount must not exceed \$1,000,000. The penalty amount

set out below a rule is the penalty amount for that rule.

6. Commencement of the Instrument

The Instrument will commence on the day after it is registered under the *Legislative Instruments Act 2003*.

The Instrument inserts transitional provisions for the rules specified at (a) to (c) below, which provide that Market Participants that are Market Participants on the date those rules commence are not required to comply with those rules until a period of three (3) months have passed from the date the rules commence:

- (a) risk management obligations for House Accounts (see Rule 2.2.1);
- (b) supervisory policies and procedures (see new Rule 2.2.8); and
- (c) minimum presence requirements for foreign Market Participants that do not hold an AFS licence (see new Rule 2.4.1).

7. Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is included in this Explanatory Statement at Attachment B.

ATTACHMENT A

Paragraph 1 – Enabling Legislation

This paragraph provides that the Instrument is made under subsection 798G(1) of the *Corporations Act 2001*.

Paragraph 2 – Title

This paragraph provides that the title of the Instrument is the *ASIC Market Integrity Rules (ASX 24 Market) Amendment 2013 (No. 1)*.

Paragraph 3 – Commencement

This paragraph provides that the Instrument commences on the day after the day on which the Instrument is registered under the *Legislative Instruments Act 2003*.

Paragraph 4 – Amendments

This paragraph provides that Schedule 1 amends the *ASIC Market Integrity Rules (ASX 24 Market) 2010*.

Schedule - Amendments

Item [1] – Rule 1.4.3, after definition of “ASIC”

Item [1] of Schedule 1 to the Instrument amends Rule 1.4.3 to insert the following definition after the definition of “ASIC”:

“ASIC Act” means the *Australian Securities and Investments Commission Act 2001* (Cth).

The defined term “ASIC Act” is used in new Rule 2.4.1 in relation to minimum presence requirements for Foreign Market Participants (see item [26]).

Item [2] – Rule 1.4.3, definition of “Employee”

Item [2] of Schedule 1 to the Instrument amends the definition of “Employee” in Rule 1.4.3 by omitting the term “Employee” and substituting “employee”.

This amendment is made to correct a drafting anomaly.

Item [3] – Rule 1.4.3, after definition of “Expression of Interest”

Item [3] of Schedule 1 to the Instrument amends Rule 1.4.3 to insert the following definition after the definition of “Expression of Interest”:

“Financial Products” has the meaning given by Division 3 of Part 7.1 of the Corporations Act.

The defined term “Financial Products” is used in new Rule 2.4.1 in relation to minimum presence requirements for Foreign Market Participants (see item [26]).

Item [4] – Rule 1.4.3, definition of “Margin”

Item [4] of Schedule 1 to the Instrument amends the definition of “Margin” in Rule 1.4.3 by inserting “Initial Margin and” after “means”.

The term “Initial Margin” has been added to the definition of “Margin” for the avoidance of doubt about obligations in the rules expressed to apply to “Margin”.

Item [5] – Rule 1.4.3, definition of “Option or Option Contract”

Item [5] of Schedule 1 to the Instrument amends the definition of “Option or Option Contract” in Rule 1.4.3 by omitting “Option or Option Contract” and substituting “Option” or “Option Contract”.

This amendment is made to correct a drafting anomaly.

Item [6] – Rule 1.4.3, after definition of “Representative”

Item [6] of Schedule 1 to the Instrument amends Rule 1.4.3 to insert the following definition after the definition of “Representative”:

“Roll Business” means trading a position from the nearest delivery month to an equivalent position in a different delivery month.

The defined term “Roll Business” is used in new subrule 3.4.2(2) (see item [39]) in relation to prohibitions on the use of the Block Trade Facility.

Item [7] – Rule 1.4.3, definition of “Trading Platform”

Item [7] of Schedule 1 to the Instrument amends the definition of “Trading Platform” in Rule 1.4.3 by omitting “Trading Messages” and substituting “trading messages”.

This amendment is made to correct a drafting anomaly, as “Trading Messages” is not a defined term in the Rules.

Item [8] – Part 2.2 (heading)

Item [8] of Schedule 1 to the Instrument amends the heading of Part 2.2 by omitting “Risk management” and substituting “Supervision and risk management”.

This amendment is made due to new Rule 2.2.8 relating to supervisory procedures which has been added to Part 2.2 (see Item [24]).

Item [9] – Rule 2.2.1 (heading)

Item [9] of Schedule 1 to the Instrument amends the heading of Rule 2.2.1 by omitting “Client limits and Client connections” and substituting “Limits and connections”.

This amendment is made due to the new rules relating to risk management for House Accounts which have been added to Rule 2.2.1 (see Items [11] – [20]).

Item [10] – Subrule 2.2.1(1) (heading)

Item [10] of Schedule 1 to the Instrument amends the heading of subrule 2.2.1(1) by omitting “Client limits” and substituting “Limits”.

This amendment is made due to the new rules relating to risk management for House Accounts which have been added to Rule 2.2.1 (see Items [11] – [20]).

Item [11] - Subrule 2.2.1(1), after paragraph 2.2.1(1)(a)

Item [11] of Schedule 1 to the Instrument amends subrule 2.2.1(1) after paragraph 2.2.1(1)(a) by inserting a new paragraph 2.2.1(1)(ab) which requires a Market Participant to set and document appropriate pre-determined Order and/or position limits on each of its House Accounts, including a volume per Order limit, an aggregate loss limit and an aggregate net session limit, based on the Market Participant’s analysis of its financial resources or other relevant factors.

This new rule is modelled on the existing risk management requirements for client accounts (see Rule 2.2.1(1)(a)). The purpose of the amendment is to extend existing risk management requirements to proprietary trading by Market Participants.

Item [12] – Paragraph 2.2.1(1)(c)

Item [12] of Schedule 1 to the Instrument amends paragraph 2.2.1(1)(c) by inserting “, (ab)” after “Rule 2.2.1(a)”.

Paragraph 2.2.1(1)(c) requires the limits determined by the preceding paragraphs to be input by a Market Participant’s risk manager into Trading Platform account maintenance and will be established as preset accounts. This amendment extends this requirement to the limits that must be set for a Market Participant’s House Account.

Items [13] – [14] – Paragraph 2.2.1(1)(e)

Items [13] – [14] of Schedule 1 to the Instrument amend paragraph 2.2.1(1)(e) by omitting the words “in its absolute discretion” and after “limit” inserting:

“based on the Market Participant’s analysis of the Clients’ financial resources (in the case of a Client Account) or its financial resources (in the case of a House Account) or other relevant factors”

Where a Market Participant amends its pre-determined Order and/or position limits, this amendment requires the Market Participant to make these changes based on the Market

Participant's analysis of its Client's financial resources (with respect to Client accounts) or its financial resources (with respect to House Accounts) or other relevant factors.

Items [15] – [18] – Subrule 2.2.1(2)

Items [15] – [18] of Schedule 1 to the Instrument amend subrule 2.2.1(2) by:

- omitting “Client connections” and substituting “Connections” in the heading;
- after paragraph 2.2.1(2)(a) inserting: “(ab) Any Market Participant who has connected to a Terminal for the purposes of Trading for a House Account will be responsible under these Rules for any Orders entered through the Terminal.” ;
- in paragraph 2.2.1(2)(b) omitting “such” and substituting “a”; and
- in paragraph 2.2.1(2)(b) after “connection” inserting “referred to in paragraph (a) or (ab)”.

The amendments to subrule 2.2.1(2) align a Market Participant's obligations when trading on a House Account with existing Rules applicable to trading for a Client.

Items [19] – Subrule 2.2.1(3) (heading)

Item [19] of Schedule 1 to the Instrument amends the heading of subrule 2.2.1(3) by omitting “client” and substituting “Client”.

This amendment is made to correct a drafting anomaly, as “Client” is a defined term in the Rules.

Item [20] – after Subrule 2.2.1(3)

Item [20] of Schedule 1 to the Instrument amends Rule 2.2.1 after Subrule 2.2.1(3) by inserting new subrule 2.2.1(4). New subrule 2.2.1(4) imposes obligations on a Market Participant in relation to a proprietary connection.

New subrule 2.2.1(4) provides that, prior to connecting to a Terminal for the purpose of Trading for a House Account, and at all times while connected to a Terminal for the purpose of Trading for a House Account, a Market Participant must:

- (a) have the necessary skills, facilities and procedures to operate such a facility;
- (b) understand the risk and obligations attached to the use of such a facility;
- (c) ensure that each Order so placed, and any Order System, complies with the Rules;
- (d) provide appropriate controls on the access to passwords of the Market Participant and its Employees to such systems; and
- (e) ensure appropriate controls are implemented for the security of its premises and physical access of the Market Participant and its Employees to such systems.

This new rule is modelled on existing rules relating to client connections (see subrule 2.2.1(3)) and imposes certain obligations on Market Participants, prior to connecting to a terminal for the purposes of trading on a House Account and at all times while connected to a terminal for the purposes of trading on a House Account.

New subrule 2.2.1(5) is a transitional provision which provides that a Market Participant that is a Market Participant on the date Rule 2.2.1(5) commences, is not required to comply with Rule 2.2.1 in relation to its House Accounts, until a period of three (3) months has passed from the date Rule 2.2.1(5) commences.

Item [21] – Paragraph 2.2.3(1)(a)

Item [21] of Schedule 1 to the Instrument amends paragraph 2.2.3(1)(a) by omitting “the Rules” and substituting “these Rules or market integrity rules on substantially the same terms as and modelled on these Rules”.

This amendment is made to reflect that these rules are, in the near future, likely to be reflected in and the model for rules for other derivatives markets, such that the prohibition on employment ought to extend to a person who, to the knowledge of a Market Participant, has taken part or been concerned in any failure to comply with those rules.

Item [21A]

Item [21A] of Schedule 1 to the Instrument amends paragraph 2.2.4(4)(b) to insert "Margin" after "Initial" for consistency in the references to Initial Margin in the Rules.

Item [21B]

Item [21B] of Schedule 1 to the Instrument amends subparagraph 2.2.5(1)(b)(v) to insert "Variation" after "pay". This is a consequential amendment that flows from the amendment to the definition of Margin at Item [4].

Items [22] – [23] – Rule 2.2.6

Items [22] – [23] of Schedule 1 to the Instrument amend Rule 2.2.6 by:

- in subparagraph 2.2.6(f)(i) after “Initial” inserting “Margin”; and
- in paragraph 2.2.6(j) after “Initial” inserting “Margin”.

This amendment is made to clarify that the obligations under this Rule 2.2.6. apply to both Initial Margin and Variation Margin, as those terms are defined in Rule 1.4.3.

Item [24] – after Rule 2.2.7

Item [24] of Schedule 1 to the Instrument inserts a new Rule 2.2.8 which requires a Market Participant to have appropriate supervisory policies and procedures to ensure compliance by the

Market Participant and each person involved in its business as a Market Participant with the ASX 24 Rules, the market operating rules and the Corporations Act.

This new rule is modelled on existing rules for Market Participants of the ASX and Chi-X market (see for example Rule 2.1.3 of the ASIC Market Integrity Rules (ASX Market) 2010). The purpose of new Rule 2.2.8 is to ensure that Market Participants have appropriate supervisory policies and procedures that are documented.

Item [24] also inserts a transitional provision which provides that a Market Participant that is a Market Participant on the date Rule 2.2.8 commences, is not required to comply with Rule 2.2.8 until a period of three (3) months has passed from the date Rule 2.2.8 commences.

Item [25] – Rule 2.3.5

Item [25] of Schedule 1 to the Instrument amends Rule 2.3.5 by inserting a maximum penalty of \$1,000,000 for a breach of Rule 2.3.5.

This amendment is made to correct a drafting anomaly, as Rule 2.3.5 imposes a substantive obligation on Market Participants and should be subject to a penalty.

Item [26] – after Rule 2.3.6

Item [26] of Schedule 1 to the Instrument inserts a new Part 2.4 and Rule 2.4.1 into the ASX 24 Rules.

New Rule 2.4.1 provides that a Market Participant (***Foreign Market Participant***) that is a foreign entity and does not hold an AFS licence must provide ASIC with a deed of the Foreign Market Participant for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Corporations Act, before entering into a transaction on the ASX 24 Market.

The deed must provide that:

- (a) the deed is irrevocable except with the prior written consent of ASIC;
- (b) the Foreign Market Participant submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise;
- (c) the Foreign Market Participant covenants to comply with any order of an Australian court in respect of any matter relating to the activities or conduct of the Foreign Market Participant in relation to the ASX 24 Market or in relation to Financial Products traded on the ASX 24 Market, including but not limited to any matter relating to the Foreign Market Participant's obligations under:

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- (i) the ASIC Act;
 - (ii) the Corporations Act; and
 - (iii) the *Corporations (Fees) Act 2001*;
 - (d) if the Foreign Market Participant is not registered under Division 2 of Part 5B.2 of the Corporations Act:
 - (i) the Foreign Market Participant must have at all times an agent who is:
 - (A) a natural person or a company;
 - (B) resident in this jurisdiction; and
 - (C) authorised to accept, on behalf of the Foreign Market Participant, service of process and notices; and
 - (ii) the Foreign Market Participant must notify ASIC of any change to:
 - (A) the agent; or
 - (B) the name and address of the agent (if the agent is a company, address means the address of the registered office of the company); and
 - (iii) service of process on the Foreign Market Participant in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act), and in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise, can be effected by service on the agent;
 - (e) the deed applies notwithstanding that the Foreign Market Participant may have ceased to be a Market Participant; and
 - (f) such additional terms notified by ASIC to the Foreign Market Participant.

The minimum presence requirements in the deed are based existing rules for the ASX and Chi-X market, and on ASIC's Class Orders exempting certain foreign financial services providers from the requirement to hold an AFSL (see for example ASIC Class Orders CO 03/1099 UK FSA regulated financial service providers).

Item [26] also inserts a transitional provisions which provides that a Foreign Market Participant that is a Market Participant on the date Rule 2.4.1 commences, is not required to comply with Rule 2.4.1 until a period of three (3) months has passed from the date Rule 2.4.1 commences.

Items [27] – [29] – Rule 3.1.7

Items [27] – [29] of Schedule 1 to the Instrument amend Rule 3.1.7 by:

- in subrule 3.1.7(1) after “Orders” inserting “or Expressions of Interest”;
- in subrule 3.1.7(2) after “information” inserting “(including Expressions of Interest)”;
- and
- in subrule 3.1.7(2) after “Orders” inserting “and Expressions of Interest”.

These amendments to Rule 3.1.7 are for the purposes of including in these Rules substantive obligations that applied to the ASX 24 Market prior to 1 August 2010.

Items [30] – [31] – Rule 3.1.8

Items [30] – [31] of Schedule 1 to the Instrument amend Rule 3.1.8 by:

- before “Subject” inserting “(1)”; and
- before “Maximum penalty: \$1,000,000” inserting a new subrule 3.1.8(2) which requires that a Market Participant must not withhold two or more orders with the intent to avoid trading with the market.

These amendments to Rule 3.1.8 are for the purposes of including in these Rules substantive obligations that applied to the ASX 24 Market prior to 1 August 2010.

Items [32] – [34] – Rule 3.1.10

Items [32] – [34] of Schedule 1 to the Instrument amend Rule 3.1.10 by:

- in subrule 3.1.10(1) omitting “(1)” and “3.1.10(2)” and
- omitting subrule 3.1.10(2).

These amendments are made to correct a drafting anomaly and ensure these Rules more accurately reflect the obligations that applied to the ASX 24 Market prior to 1 August 2010.

Item [35] – after Subrule 3.1.13(1)

Item [35] of Schedule 1 to the Instrument inserts a new subrule 3.1.13(1A) which requires a Market Participant to give priority to the client’s instructions where there is a conflict between the client’s interests and the Market Participant’s interests.

This amendment imposes a specific obligation on Market Participants to give priority to their clients’ interests where there exists a conflict of interest.

Item [36] – after Rule 3.3.1

Item [36] of Schedule 1 to the Instrument inserts a new Rule 3.3.1A into Part 3.3 of the ASX 24 Rules relating to pre-negotiated business orders. New rule 3.3.1A provides that if counterparties have been solicited by a Market Participant pursuant to Rule 3.3.1(1)(a), the Market Participant must:

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- (a) make an enquiry through the message facility of the trading platform for a market in that contract month or strategy;
 - (b) wait until the period of time prescribed by the market operator in the market operating rules, or in the procedures to the market operating rules, has elapsed since the entry of the enquiry or, if no such time is prescribed, 30 seconds; and
 - (c) then immediately enter the order on the trading platform for execution.

An enquiry made by the Market Participant pursuant to the new rule must:

- (a) specify all information that is material to the pricing and trading of the orders to be executed;
- (d) where applicable, include a description of the contract, class and series of the option(s) that will form the strategy;
- (e) where applicable, include a description of the intended trade using common market terminology; and
- (f) if the trade involves a ratio of futures or options and/or a delta hedge, information that explicitly specifies the ratio, delta and the price basis for the hedge in the underlying commodity, as applicable.

Where a Market Participant (“**first Market Participant**”) holds opposing orders at a specific price, and a bid or offer is entered in the market by another Market Participant (“**other Market Participant**”) following the message sent under Rule 3.3.2(1)(a) that is at the same or better price than the opposing orders held by the first Market Participant, the first Market Participant must give priority to trading against the bid or offer entered by the other Market Participant.

This new rule 3.3.1A includes obligations from operating rules, procedures, determinations and practice notes that applied to the ASX 24 Market prior to 1 August 2010.

Item [37] – Rule 3.3.2

Item [37] of Schedule 1 to the Instrument amends Rule 3.3.2 by omitting “Trade” and substituting “Order”.

This amendment corrects a drafting anomaly.

Items [38] – [40] – Rule 3.4.2

Items [38] – [40] of Schedule 1 to the Instrument amend Rule 3.4.2 by:

- before “Market” inserting “(1)”;
- omitting “cannot” and substituting “must not”;
- after “Thresholds” inserting a new subrule 3.4.2(2) which states that a Market Participant must not use the Block Trade Facility to execute Roll Business;

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- omitting “Note: There is no penalty for this Rule” and inserting a maximum penalty of \$100,000.

These amendments to Rule 3.4.2 are for the purposes of including obligations from operating rules, procedures, determinations and practice notes that applied to the ASX 24 Market prior to 1 August 2010, and to more accurately reflect that the Rule contains prohibitions.

Items [41] – [43] – Paragraph 3.5.2(2)(a)

Items [41] – [43] of Schedule 1 to the Instrument amends paragraph 3.5.2(2)(a) by:

- after “updated” inserting “list of Representatives”;
- after “authorised” inserting “to register Exchange For Physical Transactions on behalf of the”; and
- omitting “signatory list for Exchange For Physical transactions”.

These amendments to paragraph 3.5.2(2)(a) correct a drafting anomaly and are made to clarify the obligation to retain and maintain a signatory list for Exchange for Physical transactions.

Item [44] – after Rule 3.5.2

Item [44] of Schedule 1 to the Instrument inserts a new Rule 3.5.3 relating to Client authorisations. Before executing an Exchange For Physical Order on behalf of a client, a Market Participant must be authorised in writing by the Client to do so either specifically or generally.

This amendment is made to require specific instructions in relation to an Exchange For Physical Order and to complement the obligation in Rule 3.1.13 in relation to acting on Client instructions.

Item [45] – Rule 7.2.9 (heading)

Item [45] of Schedule 1 to the Instrument amends the heading for Rule 7.2.9 by omitting “Margin Requirements for Trading on Financial Markets other than Markets operated by the Market Operator” and substituting “Margin Requirements – Trading on Financial Markets other than Markets operated by the Market Operator, Margin Action Book and Margin Default Register”.

This amendment is made to ensure that the heading refers to the existing subrules relating to Margin Action Book and Margin Default Register.

Item [45A] – Paragraph 7.2.10(b)

Item [45A] of Schedule 1 to the Instrument amends paragraph 7.2.10(b) to insert “Margins” after “Initial” and is made to ensure references to Margins in the Rules are consistent.

Items [46] – 48] – Paragraph 7.2.10(b)

Items [46] – 48] of Schedule 1 to the Instrument amend paragraph 7.2.10(b) by omitting subparagraph 7.2.10(b)(ii) and renumbering the remaining subparagraphs.

These amendments are made to correct a drafting anomaly and ensure these Rules more accurately reflect the obligations that applied to the ASX 24 Market prior to 1 August 2010.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

ASIC Market Integrity Rules (ASX 24 Market) Amendment 2013 (No.1)

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*.

1. Overview of the Instrument

Background

This Instrument amends the *ASIC Market Integrity Rules (ASX 24 Market) 2010 (ASX 24 Rules)* to:

- (a) include obligations from operating rules, procedures, determinations and practice notes that applied to the ASX 24 Market prior to 1 August 2010, relating to disclosure, withholding orders, pre-negotiated business orders and block trades;
- (b) impose a specific obligation on Market Participants to give priority to their clients' interests where there exists a conflict of interest;
- (c) impose certain risk management requirements for Market Participants that trade on a House Account, including the obligation to set and maintain order and/or position limits, and requirements relating to connections to a terminal for the purpose of trading on a House Account. Existing risk management rules only apply to client accounts. These amendments will ensure that set and documented limits, which are based on a Market Participant's financial situation, are also applied to House Accounts;
- (d) impose a requirement for Market Participants to have appropriate supervisory policies and procedures to ensure compliance by the Market Participant and each person involved in its business as a Market Participant with the ASX 24 Rules, market operating rules and the Corporations Act;
- (e) impose minimum presence requirements for foreign entities that are Market Participants of the ASX 24 Market and that are not required to hold an AFS licence. This will facilitate enforcement actions in Australia for breaches by those entities of the *Australian Securities and Investments Commission Act 2001*, the Corporations Act and the *Corporations (Fees) Act 2001* (see new Rule 2.4.1); and
- (f) correct minor drafting anomalies in the ASX 24 Rules.

2. Human rights implications

This Instrument does not engage any of the applicable human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.