

# ASIC MARKET INTEGRITY RULES (ASX MARKET) AMENDMENT 2014 (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 2014 (No. 1)* (the **Instrument**) under subsection 798G(1) of the *Corporations Act 2001* (the **Corporations Act**). Capitalised terms used in this Explanatory Statement (e.g. “Participant”) are defined in the *ASIC Market Integrity Rules (ASX Market) 2010* (the **ASIC Market Integrity Rules (ASX)**).

## 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) deal with the activities and conduct of the licensed market (the **ASX Market**) operated by ASX Limited (ACN 008 624 691) (**ASX**).

## 2. Background

On 12 July 2012, ASIC made the *ASIC Market Integrity Rules (ASX Market) Amendment 2012 (No. 2)*. That instrument amended the ASIC Market Integrity Rules (ASX) by inserting a new Part 5.12.

Rule 5.12.1 requires a Market Participant of the ASX Market that short-sells section 1020B products (as defined in the Corporations Act) to specify the quantity of a sell order that is short at the time the sell order is placed or the quantity of an off-market trade that is short at the time the trade is reported (known as **Short Sale Tagging**).

Rule 5.12.2 of ASIC Market Integrity Rules (ASX) provided that an ASX Market Participant is not required to comply with the Short Sale Tagging obligation in Rule 5.12.1, until 10 March 2014 (the **Compliance Start Date**).

## 3. Purpose of the legislative instrument

The purpose of the Instrument is to amend Rule 5.12.2 to extend the Compliance Start Date for the Short Sale Tagging obligation in Rule 5.12.1, to 28 July 2014. This change will give Market Participants and the Market Operator, ASX, more time to make the necessary system changes and also coincides with relevant enhancements to ASIC's market surveillance system.

Details of the Instrument are contained in **Attachment A**.

#### **4. Consultation**

ASIC consulted at length on its proposal to introduce the Short Sale Tagging obligation through ASIC Consultation Paper 145 *Australian equity market structure: Proposals* (CP 145) released on 4 November 2010, and discussions with ASIC's Market Supervision Advisory Panel, the Australian Financial Markets Association, the Stockbrokers Association of Australia, and Market Participants.

ASIC consulted on the proposal to extend the Compliance Start Date for the Short Sale Tagging obligation to 28 July 2014, through direct discussions with ASX, Chi-X and Market Participants. There was broad support for the change. Furthermore the change was made in response to Market Participants requesting an extension of time to implement the Short Sale Tagging obligations.

#### **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. The Instrument does not affect the penalties payable in relation to any Rule.

#### **6. Commencement of the Instrument**

The Instrument will commence in accordance with the commencement information in the Instrument, being the later of the day after the day on which the Instrument is registered under the *Legislative Instruments Act 2003* and 9 February 2014. ASIC intends that the Instrument commence on 9 February 2014 to align with the existing commencement date for other changes to the ASIC Market Integrity Rules (ASX).

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

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

#### **7. Regulation Impact Statement**

The Short Sale Tagging obligation was the subject of Regulation Impact Statement: *Short Sale Tagging* in July 2012. The Regulation Impact Statement: *Short Sale Tagging* was lodged on the Federal Register of Legislative Instruments with the *ASIC Market Integrity Rules (ASX Market) Amendment 2012 (No. 2)*. A further Regulation Impact Statement was not required for this Instrument as it is minor or machinery in nature and does not substantially alter the existing requirements for Market Participants.

## **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 Market) Amendment 2014 (No. 1)*.

### **Paragraph 3 – Commencement**

This paragraph provides that the Instrument commences on the later of the day after the day on which this instrument is registered under the *Legislative Instruments Act 2003* and 9 February 2014.

### **Paragraph 4 – Amendments**

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

### **Schedule 1 - Amendments**

#### **Item [1] Rule 5.12.2**

Item [1] of Schedule 1 to the Instrument replaces the date “10 March” in Rule 5.12.2 with the date “28 July”.

## **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 Market) Amendment 2014 (No. 1)**

This Legislative 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*.

##### **A. Overview of the Instrument**

1. The Legislative Instrument is made under subsection 798G(1) of the *Corporations Act 2001 (Corporations Act)* and amends the *ASIC Market Integrity Rules (ASX Market) 2010 (ASIC Market Integrity Rules (ASX))* that apply to:
  - (a) the activities and conduct of a financial market operated by ASX Limited (ACN 008 624 691) (*ASX*);
  - (b) the activities or conduct of persons in relation to ASX; and
  - (c) the activities or conduct of persons in relation to financial products traded on ASX.
2. Rule 5.12.1 requires an ASX Market Participant that short-sells section 1020B products (as defined in the *Corporations Act*) to specify the quantity of a sell order that is short at the time the sell order is placed or the quantity of an off-market trade that is short at the time the trade is reported (known as *Short Sale Tagging*).
3. The purpose of the Legislative Instrument is to amend ASIC Market Integrity Rules (ASX) by extending the compliance start date for Rule 5.12.1 from 10 March 2014 to 28 July 2014.

##### **B. Human rights implications**

4. The Legislative 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*.

##### **C. Conclusion**

5. The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

##### **D. Consultation**

6. ASIC consulted at length on its proposal to introduce the Short Sale Tagging obligation through ASIC Consultation Paper 145 *Australian equity market structure: Proposals* (CP 145), released on 4 November 2010, and through discussions with ASIC's Market Supervision Advisory Panel, the Australian Financial Markets Association, the Stockbrokers Association of Australia, and Market Participants.
7. ASIC consulted on the proposal to extend the Compliance Start Date for the Short Sale Tagging obligation to 28 July 2014, through direct discussions with ASX, Chi-X and Market Participants. There was broad support for the change. Furthermore the change was made in response to Market Participants requesting an extension of time to implement the Short Sale Tagging obligations.

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