

ASIC MARKET INTEGRITY RULES (ASX 24 MARKET-CAPITAL) 2014 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-Capital) 2014* (the **ASIC Market Integrity Rules (ASX 24-Capital)**) under subsection 798G(1) of the *Corporations Act 2001* (the **Corporations Act**). Capitalised terms used in this Explanatory Statement (e.g. “Market Participant”) are defined in the ASIC Market Integrity Rules (ASX 24-Capital).

1. Enabling legislation

Subsection 798G(1) of the Corporations Act provides that ASIC may, by legislative instrument, make rules that deal with the activities or conduct of licensed markets and of persons in relation to licensed markets and financial products traded on licensed markets.

The ASIC Market Integrity Rules (ASX 24-Capital), along with the *ASIC Market Integrity Rules (ASX 24 Market) 2010* (the **ASIC Market Integrity Rules (ASX 24)**), deal with the activities and conduct of the licensed market (the **ASX 24 Market**) operated by Australian Securities Exchange Limited (ACN 000 943 377) (**ASX 24**). From 26 May 2014, Market Participants of the ASX 24 Market are required to comply with both the ASIC Market Integrity Rules (ASX 24) and the ASIC Market Integrity Rules (ASX 24-Capital).

2. Background

The ASIC Market Integrity Rules (ASX 24) were made by ASIC in August 2010. ASIC has amended the ASIC Market Integrity Rules (ASX 24) on a number of occasions, including in August 2011 to transfer responsibility for supervision of Market Participant capital requirements from ASX 24 to ASIC.

All market integrity rules made by ASIC under subsection 798G(1) of the Corporations Act are legislative instruments and must be lodged for registration on the Federal Register of Legislative Instruments (**FRLI**), the Commonwealth database of legislative instruments maintained by the Office of Parliamentary Counsel. Each time ASIC amends the market integrity rules, ASIC is required to prepare and lodge for registration a FRLI a 'compilation' showing the rules as in force as at the date of the amendments.

In July 2013, the FRLI fee structure changed to recognise the whole-of-life cost of making material available to agencies and the public. Under the revised fee structure, ASIC is now required to pay a lodgement fee and a fee per page for each compilation of the market integrity rules it lodges for registration with FRLI. ASIC's costs for lodging compilations of the ASIC Market Integrity Rules (ASX 24) have increased significantly under this new fee structure.

ASIC has reviewed the ASIC Market Integrity Rules (ASX 24) to identify ways in which it can manage its FRLI lodgement costs in respect of compilations of those rules and has concluded that the most effective way to manage these costs is to transfer the market participant capital requirements in the ASIC Market Integrity Rules (ASX 24) into a separate rulebook for that market.

The market integrity rules setting out market participant capital requirements and associated capital

forms comprise the bulk of the ASIC Market Integrity Rules (ASX 24) and accordingly will be a significant contributing factor in the overall increase in ASIC's FRLI lodgement costs in respect of compilations of those rules. The market integrity rules setting out the capital requirements and capital forms have not been amended since they were introduced, and ASIC does not propose to amend the substance of the capital requirements at this time. ASIC therefore considers that the costs of continuing to lodge compilations of the ASIC Market Integrity Rules (ASX 24) that include the market participant capital requirements and associated capital forms, significantly outweigh the benefits of maintaining all of those rules within the same rulebook.

ASIC has also concluded that further cost efficiencies could be gained by reducing the number of separate capital forms in the schedules to the market integrity rules, as part of the same process.

ASIC has aligned the commencement date for these changes, with the commencement date for similar amendments to the market integrity rules for the APX, ASX, Chi-X and FEX Markets that take effect on 26 May 2014.

3. Purpose of the legislative instrument

The ASIC Market Integrity Rules (ASX 24-Capital) repeals the capital requirements in Chapters 5 and 6 and Forms 2 to 8 of the Schedule of the ASIC Market Integrity Rules (ASX 24) and 're-makes' the capital requirements as Chapters 5 and 6 and the Forms 3, 4, 5 and 7 of the Schedule of the ASIC Market Integrity Rules (ASX 24-Capital). The purpose of this change is to enable ASIC to manage its FRLI lodgement costs in respect of compilations of the ASIC Market Integrity Rules (ASX 24). Details of the ASIC Market Integrity Rules (ASX 24-Capital) are contained in **Attachment A**.

4. Consultation

On 30 April 2014 ASIC wrote to Market Operators of the APX, ASX, ASX 24, Chi-X and FEX Markets, the Australian Bankers' Association (ABA), Australian Financial Markets Association (AFMA), the Financial Services Council (FSC) and the Stockbrokers Association of Australia (SAA), seeking feedback on the proposed changes to the market integrity rules to transfer market participant capital requirements into a separate rulebook for each market, and streamline the capital forms. Generally respondents were supportive of the proposal, with a number suggesting that ASIC take additional steps to 'consolidate' the capital rulebooks of the APX, ASX, ASX 24, Chi-X and FEX Markets into a single rulebook. No other significant issues were raised.

5. Penalties

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 ASIC Market Integrity Rules (ASX 24-Capital) maintain the same penalties that were payable in relation to breaches of the capital requirements under the ASIC Market Integrity Rules (ASX 24).

6. Commencement of the Instrument

The ASIC Market Integrity Rules (ASX 24-Capital) will commence on the later of 26 May 2014 and

the day on which the ASIC Market Integrity Rules (ASX 24-Capital) are registered under the *Legislative Instruments Act 2003*.

7. Statement of Compatibility with Human Rights

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

8. Regulation Impact Statement

A Regulation Impact Statement was not required for the ASIC Market Integrity Rules (ASX 24-Capital) as they are minor or machinery in nature and do not substantially alter the existing requirements for Market Participants.

ATTACHMENT A

Chapter 1: Introduction

Part 1.1: Preliminary

Part 1.1 of the ASIC Market Integrity Rules (ASX 24-Capital) reflects Part 1.1 of the ASIC Market Integrity Rules (ASX 24). ASIC makes the rules under subsection 798G(1) of the Corporations Act (Rule 1.1.1). The title of the rules is the *ASIC Market Integrity Rules (ASX 24 Market-Capital) 2014* (Rule 1.1.2). The rules will commence on the later of 26 May 2014 and the day the instrument is registered under the *Legislative Instruments Act 2003* (Rule 1.1.3).

The ASIC Market Integrity Rules (ASX 24-Capital) apply to the activities and conduct of the ASX 24 Market, and of persons in relation to the ASX 24 Market and in relation to Financial Products traded on the ASX 24 Market (Rule 1.1.4). The Market Operator, Market Participants, and any other entities prescribed by regulations made under section 798H of the Corporations Act as being required to comply with the market integrity rules must comply with the rules as specified in the rules (Rule 1.1.5).

Under the ASIC Market Integrity Rules (ASX 24-Capital), conduct engaged in on behalf of a person by officers, Employees or other agents of the person, or by any other person at the direction or with the consent or agreement (whether express or implied) of an officer, Employee or agent of the person, is deemed to have been engaged in by the person (Rule 1.1.6). Where it is necessary to establish the state of mind of a person for the purposes of the rules in respect of conduct engaged in by the person, it is sufficient to show that an officer, Employee or other agent of the person by whom the conduct was engaged in, had that state of mind (Rule 1.1.7).

Part 1.2: Waiver

Part 1.2 of the ASIC Market Integrity Rules (ASX 24-Capital) reflects Part 1.2 of the ASIC Market Integrity Rules (ASX 24). ASIC may relieve a person or any class of persons from the obligation to comply with provisions of the rules, either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASIC thinks fit (Rule 1.2.1), and may specify the period or specific event during which the relief will apply (Rule 1.2.3). If any conditions on a waiver are imposed, all of the conditions must be complied with for the waiver to be effective (Rule 1.2.1(2)) and failure to comply with a condition is a breach of Rule 1.2.2. ASIC may withdraw a waiver in writing at any time (Rule 1.2.1(3)).

A waiver, conditions on a waiver and a request by a person for a waiver must be in writing, and ASIC may publish notice of a waiver (subrules 1.2.1(4), (5) and (6)). ASIC may also establish, maintain and publish a register for recording details of relief, in accordance with Rule 1.2.4.

Part 1.3: Notice, notification and service of documents

Part 1.3 of the ASIC Market Integrity Rules (ASX 24-Capital) reflects Part 1.1 of the ASIC Market Integrity Rules (ASX 24). A Market Participant must have email for the purpose of receiving notices under the rules (Rule 1.3.1). ASIC may give notice to a Market Participant under the Rules by a number of methods set out in Rule 1.3.2.

Part 1.4: Interpretation

Part 1.4 of the ASIC Market Integrity Rules (ASX 24-Capital) reflects Part 1.1 of the ASIC Market Integrity Rules (ASX 24). In the rules, references to time are to the time in Sydney, Australia (Rule 1.4.1). Words and expressions defined in the Corporations Act will unless otherwise defined or specified in the rules or the contrary intention appears, have the same meaning in the rules (Rule 1.4.2).

Rule 1.4.3 provides definitions for terms used in the rules. Those defined terms reflect definitions in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX 24) that applied to Chapters 5 and 6 and the Schedule of the ASIC Market Integrity Rules (ASX 24). There are additional definitions specified in Chapters 5 and 6.

Part 1.5: Repeal

Part 1.5 of the rules provides for the repeal of the capital requirements from the ASIC Market Integrity Rules (ASX 24).

Rule 1.5.1 provides that Chapters 5 and 6, and Forms 2 to 8 of the Schedule of the ASIC Market Integrity Rules (ASX 24) are repealed. Those provisions are replaced by Chapters 5 and 6, and Forms 3, 4, 5 and 7 of the Schedule of the ASIC Market Integrity Rules (ASX 24-Capital).

Chapters 2 to 4

There is no Chapters 2 to 4 in the rules. To maximise consistency between the capital requirements under these rules and the ASIC Market Integrity Rules (ASX 24), the numbering of the capital requirements in the ASIC Market Integrity Rules (ASX 24) has been maintained.

Chapter 5: Capital requirements

Chapter 5 of the ASIC Market Integrity Rules (ASX 24-Capital) replaces, and is identical to, Chapter 5 of the ASIC Market Integrity Rules (ASX 24). Chapter 5 of the rules sets out the core obligation on a Trading Participant of the ASX 24 Market to comply with the NTA Requirements, unless the Market Participant is only a Principal Trader or is a Clearing Participant of ASX Clear (Futures) and complies with the capital requirements under the ASX Clear (Futures) Operating Rules.

Chapter 6: Accounts and audit

Chapter 6 of the ASIC Market Integrity Rules (ASX 24-Capital) replaces, and with the exception of a small number of references to the streamlined capital return forms is identical to, Chapter 6 of the ASIC Market Integrity Rules (ASX 24). Chapter 6 of the rules sets out the core reporting requirements for a Market Participant of the ASX 24 Market that complies with the NTA Requirements.

Chapter 6 requires Market Participants complying with the NTA Requirements to submit to ASIC Ad Hoc, Summary, Monthly and Annual NTA Returns and related NTA Return Declarations at the times specified.

ASIC was able to reduce three of the four different returns relating to the NTA Requirements in the Schedule to a single 'master' return from which other returns can be derived. In order to accommodate this

change, new Rule 6.2.1A sets out definitions for the Ad-Hoc, Summary, Monthly and Annual Audited NTA Returns and related NTA Return Declarations. These definitions act as signposts to the relevant sections of the streamlined 'master' returns and declaration in the Schedule. References to the form numbers in the Schedule throughout the remainder of Chapter 6 have been replaced with the defined terms.

A Market Participant may continue to submit certain of its returns and declarations using the ASX Return Lodgement and Monitoring System as provided in Rule 6.2.1. A Market Participant must continue to assist its auditor in any audit conducted under Rule 6.2.1(1)(c) (see Rule 6.2.2).

Schedule

The Schedule sets out the following forms:

- Form 3 (Part 1) – Directors' Declaration;
- Form 3 (Part 2) – Directors' Declaration (Annual Statement);
- Form 4 (Part 1) – Auditors' Report on the NTA Rules;
- Form 4 (Part 2) – Auditors' Report on the NTA Return;
- Form 5 – from which the Ad-Hoc, Annual Audited and Monthly NTA Returns are now derived;
- Form 7 – the Summary NTA Return.

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-Capital) 2014

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

The *ASIC Market Integrity Rules (ASX 24 Market-Capital) 2014* (the **Legislative Instrument**), along with the *ASIC Market Integrity Rules (ASX 24 Market) 2010* (the **ASIC Market Integrity Rules (ASX 24)**), deal with the activities and conduct of the licensed market (the **ASX 24 Market**) operated by Australian Securities Exchange Limited (ACN 000 943 377) (**ASX 24**).

The Legislative Instrument repeals the capital requirements Chapters 5 and 6, and Forms 2 to 8 in the Schedule of the ASIC Market Integrity Rules (ASX 24), and 're-makes' those capital requirements as Chapters 5 and 6, and Forms 3, 4, 5 and 7 of the Legislative Instrument.

The purpose of the Legislative Instrument is to reduce ASIC's costs for lodging compilations of the ASIC Market Integrity Rules (ASX 24). Those costs have increased significantly under the new fee structure for lodgements on the Federal Register of Legislative Instruments (FRLI) introduced in July 2013. The capital requirements under the Legislative Instrument, are the same as the capital requirements under the ASIC Market Integrity Rules (ASX 24).

Following the introduction of the new fee structure, ASIC conducted a review to identify ways in which ASIC could manage its FRLI lodgement costs in respect of compilations of the ASIC Market Integrity Rules (ASX 24). ASIC concluded the most straightforward and efficient way to manage those costs was to separate the capital requirements into a separate set of rules, and streamline the forms in the new rules. The Legislative Instrument achieves this outcome.

B. Human rights implications

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

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

D. Consultation

On 30 April 2014 ASIC wrote to Market Operators of the APX, ASX, ASX 24, Chi-X and FEX Markets, the Australian Bankers' Association (ABA), Australian Financial Markets Association (AFMA), the Financial Services Council (FSC) and the Stockbrokers Association of Australia (SAA), seeking feedback on the proposed changes to the market integrity rules to transfer market participant capital requirements into a separate rulebook for each market, and streamline the capital

forms. Generally respondents were supportive of the proposal, with a number suggesting that ASIC take additional steps to 'consolidate' the capital rulebooks of the APX, ASX, ASX 24, Chi-X and FEX Markets into a single rulebook. No other significant issues were raised.

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