

ASIC MARKET INTEGRITY RULES (ASX 24 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 24 Market) Amendment 2014 (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 activities or conduct of licensed markets, and of persons in relation to licensed markets and in relation to financial products traded on licensed markets.

The *ASIC Market Integrity Rules (ASX 24 Market) 2010 (the ASIC Market Integrity Rules (ASX 24))* were made under subsection 798G(1) of the *Corporations Act* on 1 August 2010. The *ASIC Market Integrity Rules (ASX 24)* deal with the activities or conduct of the licensed market (the **ASX 24 Market**) operated by Australian Securities Exchange Limited (ACN 000 943 377).

Capitalised terms in this Explanatory Statement refer to defined terms in the *ASIC Market Integrity Rules (ASX 24)*.

2. Background

On 5 August 2013, ASIC made the *ASIC Market Integrity Rules (ASX 24 Market) Amendment 2013 (No. 2) (Amending Instrument)*. The Amending Instrument amended the *ASIC Market Integrity Rules (ASX 24)* to address regulatory issues arising from recent market structure developments, including growth in automation and innovation in electronic trading in domestic markets. In particular, the Amending Instrument was designed to address:

- (a) manipulative trading practices that may be effected using trading algorithms; and
- (b) inconsistencies between the regulatory provisions applicable to manipulative trading practices in Australia's domestic futures and equities markets.

To achieve these outcomes, the Amending Instrument substituted former Rule 3.1.2 of the *ASIC Market Integrity Rules (ASX 24)* with a revised Rule 3.1.2 to:

- (a) include circumstances of the Order a Market Participant is required to consider, including to address manipulative trading practices that may be effected through trading algorithms; and
- (b) harmonise the provision relating to manipulative activity in the *ASIC Market Integrity Rules (ASX 24)*, with the provisions relating to manipulative activity in the *ASIC Market Integrity Rules (ASX Market) 2010 (ASIC Market Integrity Rules (ASX))* and *ASIC Market Integrity Rules (Chi-X Australia Market) 2011 (ASIC Market Integrity Rules (Chi-X))*.

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

However, in substituting former Rule 3.1.2 with a revised Rule 3.1.2, ASIC inadvertently omitted the maximum penalty for revised Rule 3.1.2.

3. Purpose of the legislative instrument

The purpose of the Instrument is to correct the inadvertent omission of the penalty amount in revised Rule 3.1.2, by adding, in revised Rule 3.1.2, a penalty amount of "maximum penalty of \$1,000,000". The maximum penalty for Rule 3.1.2 inserted by the Instrument is:

- (a) the same as the maximum penalty for former Rule 3.1.2, which also dealt with manipulative trading;
- (b) the same as the maximum penalty set out in the version of revised Rule 3.1.2 proposed in the draft market integrity rules set out in the Attachment to *Consultation Paper 202: Dark liquidity and high-frequency trading: Proposals (CP 202)*; and
- (c) consistent with proposal E3(c) of CP 202, in which ASIC said that it would replace Rule 3.1.2 (ASX 24) with a new rule that is identical to Rules 5.7.1 and 5.7.2 of the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) (including amendments to Rule 5.7.2 as proposed by CP 202), in circumstances where the maximum penalty for Rules 5.7.1 and 5.7.2 is \$1,000,000.

Details of the Instrument are contained in Attachment A.

4. Consultation

ASIC consulted on the amendments effected by the Amending Instrument, including the penalty. ASIC's consultation process included CP 202 released in March 2013, and meetings with industry stakeholders and information sessions for members of the Australian Financial Markets Association (AFMA), the Financial Services Council (FSC) and the Stockbrokers Association of Australia (SAA).

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 commences on the later of 26 May 2014 and the day on which the Instrument is 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

The amendments to Rule 3.1.2 effected by the Amending Instrument were the subject of Regulation Impact Statement: *Australian market structure: further proposals* in June 2013, which was lodged on FRLI with the *ASIC Market Integrity Rules (ASX 24 Market) Amendment 2013 (No. 2)*.

A further Regulation Impact Statement was not required for the Instrument as it is minor or machinery in nature.

ATTACHMENT A

Paragraph 1 – Enabling Legislation

This paragraph provides that the Instrument is made, with the written consent of the Minister, 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 2014 (No. 1)*.

Paragraph 3 – Commencement

This paragraph provides that the Instrument commences on the later of 26 May 2014 and the day on which the instrument is registered under the *Legislative Instruments Act*.

Paragraph 4 – Amendments

This paragraph provides that the *ASIC Market Integrity Rules (ASX 24 Market) 2010* are amended by inserting, after Rule 3.1.2, a penalty amount of "Maximum penalty: \$1,000,000."

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 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*.

1. Overview of the Legislative Instrument

Background

The *ASIC Market Integrity Rules (ASX 24 Market) Amendment 2014 (No. 1) (Legislative Instrument)* is made under subsection 798G(1) of the *Corporations Act 2001* and amends the *ASIC Market Integrity Rules (ASX 24 Market) 2010 (ASIC Market Integrity Rules (ASX 24))*.

The ASIC Market Integrity Rules (ASX 24) deal with the activities or conduct of the licensed market (the *ASX 24 Market*) operated by Australian Securities Exchange Limited (ACN 000 943 377).

The Legislative Instrument makes an amendment to the ASIC Market Integrity Rules (ASX 24) to correct an inadvertent omission, by inserting a penalty for Rule 3.1.2 on manipulative trading practices.

On 5 August 2013, ASIC made the *ASIC Market Integrity Rules (ASX 24 Market) Amendment 2013 (No. 2) (Amending Instrument)*. The Amending Instrument amended the ASIC Market Integrity Rules (ASX 24) to address regulatory issues resulting from recent market structure developments, including growth in automation and innovation in electronic trading in domestic markets.

The Amending Instrument substituted former Rule 3.1.2 of the ASIC Market Integrity Rules (ASX 24) with a revised Rule 3.1.2 to:

- (a) include circumstances of the Order a Market Participant is required to consider, including to address manipulative trading practices that may be effected through trading algorithms; and
- (b) harmonise the provision relating to manipulative activity in the ASIC Market Integrity Rules (ASX 24), with the provisions relating to manipulative activity in the *ASIC Market Integrity Rules (ASX Market) 2010 (ASIC Market Integrity Rules (ASX))* and *ASIC Market Integrity Rules (Chi-X Australia Market) 2011 (ASIC Market Integrity Rules (Chi-X))*.

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

However, in substituting former Rule 3.1.2 with a revised Rule 3.1.2, ASIC inadvertently omitted the maximum penalty for revised Rule 3.1.2. The maximum penalty for Rule 3.1.2 inserted by the Legislative Instrument is:

- (a) the same as the maximum penalty for former Rule 3.1.2, which also dealt with manipulative

trading;

- (b) the same as the maximum penalty set out in the version of revised Rule 3.1.2 proposed in the draft market integrity rules set out in the Attachment to *Consultation Paper 202: Dark liquidity and high-frequency trading: Proposals (CP 202)*; and
- (c) consistent with proposal E3(c) of CP 202, in which ASIC said that it would replace Rule 3.1.2 (ASX 24) with a new rule that is identical to Rules 5.7.1 and 5.7.2 of the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) (including amendments to Rule 5.7.2 proposed by CP 202), in circumstances where the maximum penalty for Rules 5.7.1 and 5.7.2 is \$1,000,000.

2. 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*.

3. Conclusion

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

4. Consultation

ASIC consulted on the amendments made by the Amending Instrument, including the penalty. ASIC's consultation process included CP 202, released in March 2013, and meetings with industry stakeholders and information sessions for members of the Australian Financial Markets Association (AFMA), the Financial Services Council (FSC) and the Stockbrokers Association of Australia (SAA).

Australian Securities and Investments Commission