

EXPLANATORY STATEMENT for ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/401

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/401 under paragraph 1.4.5(1)(b) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**).

Under paragraph 1.4.5(1)(b), ASIC may determine in writing that a Market operator is the Responsible Market Operator in relation to an Equity Market Product that is able to be traded on more than one Market.

Under subrule 1.4.5(2), an instrument referred to in paragraph 1.4.5(1)(b) takes effect on the later of the date specified in the instrument or 60 business days after the instrument is registered.

Under subsection 33(3) of the *Acts Interpretation Act 1901* where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Under subsection 13(1) of the *Legislation Act 2003*, if enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then unless the contrary intention appears, the *Acts Interpretation Act 1901* applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of the Act. Accordingly, the power under paragraph 1.4.5(1)(b) of the Rules to determine in writing that a Market operator is the Responsible Market Operator in relation to an Equity Market Product that is able to be traded on more than one Market, includes a power to repeal such a determination.

Capitalised terms in this Explanatory Statement refer to defined terms in the Rules.

1. Background

ASIC Market Integrity Rules (Securities Markets) Determination 2018/208 (**Determination**) determines, for the purposes of the Rules, the Responsible Market Operator in relation to each Equity Market Product which is able to be traded on more

than one Market. The Determination uses market-neutral language to reflect the pre-existing policy settings under the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (repealed on 7 May 2018).

The Determination does not commence until 60 business days after 3 April 2018.

On 2 May 2018, with the consent of the Minister, ASIC made the ASIC Market Integrity Rules (Securities Markets and Futures Markets) Amendment 2018 (No. 1) (***Amendment Instrument***). Among other things, on 4 May 2018 the Amendment Instrument amended Rule 1.4.5 of the Rules so as incorporate the substantive effect of the Determination. As such, the Amendment Instrument rendered the Determination redundant.

2. Purpose of the instrument

The purpose of the instrument is to repeal the Determination, which is rendered redundant by the Amendment Instrument.

3. Operation of the instrument

Name

Section 1 of the instrument provides that the instrument is the *ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/401*.

Commencement

Section 2 of the instrument provides that the instrument commences on the day that is 60 business days after it is registered on the Federal Register of Legislation.

Authority

Section 3 of the instrument provides that the instrument is made under paragraph 1.4.5(1)(b) of the *ASIC Market Integrity Rules (Securities Markets) 2017*.

Schedule

Section 4 of the instrument provides that each instrument that is specified in Schedule 1 to this instrument is repealed as set out in the applicable items in the Schedule.

Schedule 1—Repeal

Item 1 of Schedule 1 to the instrument specifies that the whole of the ASIC Market Integrity Rules (Securities Markets) Determination 2018/208 is repealed.

4. Consultation

There has been no consultation because the instrument is minor and machinery in nature.

A Regulatory Impact Statement is not required for this instrument as it does not change the existing policy settings under the Rules.

Statement of Compatibility with Human Rights

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

ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/401

ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/401 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*.

Overview

The instrument repeals the ASIC Market Integrity Rules (Securities Markets) Determination 2018/208 (***Determination***). The Determination is no longer necessary because of amendments to Rule 1.4.5 of the ASIC Market Integrity Rules (Securities Markets) 2017 made by ASIC Market Integrity Rules (Securities Markets and Futures Markets) Amendment 2018 (No. 1) which incorporate the substantive effect of the Determination.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission