

EXPLANATORY STATEMENT for

ASIC Market Integrity Rules (Securities Markets) Determination

2018/765 and ASIC Market Integrity Rules (Securities Markets)

Repeal Instrument 2018/766

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) Determination 2018/765 (the **Determination**) and ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/766 (the **Repeal Instrument**) under subrule 6.2.1(4) of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**).

Under subrule 6.2.1(4), ASIC may determine Tier 1 Equity Market Products and Tier 2 Equity Market Products in writing.

Under subrule 6.2.1(5), an instrument referred to in subrule (4) takes effect from 20 business days following the date 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 subrule 6.2.1(4) of the Rules to determine Tier 1 Equity Market Products and Tier 2 Equity Market Products in writing, includes a power to repeal such a determination.

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

1. Background

Chapter 6 of the Rules sets out market integrity rules relating to pre-trade transparency of Orders and post-trade transparency of transactions executed on or

reported to a Market, including in relation to Equity Market Products. A 'Block Trade' is a key concept in Chapter 6 and has the meaning given by subrule 6.2.1(1).

For a transaction to be a Block Trade, among other things, the consideration for the transaction may not be less than consideration thresholds set out in paragraph 6.2.1(1)(c) of the Rules, which differ according to whether the Relevant Product is a Tier 1 Equity Market Product, Tier 2 Equity Market Product, Tier 3 Equity Market Product or a CGS Depository Interest.

Under subrule 6.2.1(4) of the Rules, ASIC may determine Tier 1 Equity Market Products and Tier 2 Equity Market Products by instrument in writing.

The Determination maintains ASIC's policy of determining the allocation of Equity Market Products to tiers based on a periodic calculation of 2.5% of each product's average daily value transacted in the preceding six-month period (or other material number of Trading Days if the product was not quoted during the entire period).

The Repeal Instrument, together with the Determination, supersede and repeal the determinations in *ASIC Market Integrity Rules (Securities Markets) Determination 2018/445 (Superseded Determination)*.

2. Purpose of the instruments

The purpose of the Determination is to determine, for the purposes of paragraph 6.2.1(1)(c) of the Rules and with effect from its commencement, the Tier 1 Equity Market Products and the Tier 2 Equity Market Products.

The purpose of the Repeal Instrument is to repeal the Superseded Determination, which will be superseded by the Determination upon its commencement.

The Determination and the Repeal Instrument maintain the existing policy settings under *ASIC Market Integrity Rules (Securities Markets) Determination 2018/546*.

3. Operation of the instruments

ASIC Market Integrity Rules (Securities Markets) Determination 2018/765

Name of legislative instrument

Section 1 provides that the instrument is the ASIC Market Integrity Rules (Securities Markets) Determination 2018/765.

Commencement

Section 2 of the instrument provides that the instrument commences on the later of:

- (a) 8 October 2018; and
- (b) 20 business days after the day the instrument is registered on the Federal Register of Legislation.

Authority

Section 3 of the instrument provides that the instrument is made under subrule 6.2.1(4) of the *ASIC Market Integrity Rules (Securities Markets) 2017*.

Interpretation

Section 4(1) of the instrument provides that, unless the contrary intention appears, capitalised terms have the same meaning as in the Rules.

Subsection 4(2) of the instrument provides that ‘stock code’, in relation to an Equity Market Product, means the unique symbol assigned to the Equity Market Product under Rule 9.2.3 of the Rules.

Tier 1 Equity Market Products and Tier 2 Equity Market Products

Subsection 5(1) of the instrument provides that each Equity Market Product whose stock code is set out in the table in Schedule 1 to the instrument is a Tier 1 Equity Market Product.

Subsection 5(2) of the instrument provides that each Equity Market Product whose stock code is set out in the table in Schedule 2 to the instrument is a Tier 2 Equity Market Product.

Schedule 1

Schedule 1 provides that a specified Equity Market Product (referred to by its stock code) is a Tier 1 Equity Market Product.

Schedule 2

Schedule 2 provides that a specified Equity Market Product (referred to by its stock code) is a Tier 2 Equity Market Product.

ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/766

Name

Section 1 of the instrument provides that the instrument is the *ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/766*.

Commencement

Section 2 of the instrument provides that the instrument commences on the day that is the later of:

- (a) 8 October 2018; and
- (b) the day that is 20 business days after the day the instrument is registered on the Federal Register of Legislation.

Authority

Section 3 of the instrument provides that the instrument is made under subrule 6.2.1(4) 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 2018/546 is repealed.

4. Consultation

In November 2010 and October 2011, ASIC consulted on its policy of determining the allocation of Equity Market Products to tiers based on a periodic calculation of average daily value in Consultation Paper 145 *Australian equity market structure: Proposals* and with further refinements in Consultation Paper 168 *Australian equity market structure: Further proposals* respectively.

There has been no consultation on the Determination or the Repeal Instrument because they are minor and machinery in nature.

A Regulatory Impact Statement is not required for the instruments as they maintain the existing policy settings in force under *ASIC Market Integrity Rules (Securities Markets) Determination 2018/546* and its predecessors.

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) Determination 2018/765 and ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/766

ASIC Market Integrity Rules (Securities Markets) Determination 2018/765 (the **Determination**) and ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2018/766 (the **Repeal Instrument**) are 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

Chapter 6 of the *ASIC Market Integrity Rules (Securities Markets) 2017* (the **Rules**) sets out market integrity rules relating to pre-trade transparency of Orders and post-trade transparency of transactions executed on or reported to a Market, including in relation to Equity Market Products. A 'Block Trade' is a key concept in Chapter 6 and has the meaning given by subrule 6.2.1(1).

For a transaction to be a Block Trade, among other things, the consideration for the transaction may not be less than consideration thresholds set out in paragraph 6.2.1(1)(c) of the Rules, which differ according to whether the Relevant Product is a Tier 1 Equity Market Product, Tier 2 Equity Market Product, Tier 3 Equity Market Product or a CGS Depository Interest.

Under subrule 6.2.1(4) of the Rules, ASIC may determine Tier 1 Equity Market Products and Tier 2 Equity Market Products by instrument in writing.

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 subrule 6.2.1(4) of the Rules to determine Tier 1 Equity Market Products and Tier 2 Equity Market Products in writing, includes a power to repeal such a determination.

The Determination maintains ASIC's policy of determining the allocation of Equity Market Products to tiers based on a periodic calculation of 2.5% of each product's average daily value transacted in the preceding six-month period (or other material number of Trading Days if the product was not quoted during the entire period).

The Repeal Instrument repeals the ASIC Market Integrity Rules (Securities Markets) Determination 2018/546 (***Superseded Determination***). The Determination will supersede the Superseded Determination upon its commencement.

Human rights implications

These legislative instruments do not engage any of the applicable rights or freedoms.

Conclusion

These legislative instruments are compatible with human rights as they do not raise any human rights issues.

Australian Securities and Investments Commission