



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/248

This is the Explanatory Statement for *ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/248*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. On 9 March 2022, ASIC made the *ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/117* (the ***amendment instrument***). The amendment instrument makes a number of amendments to market integrity rulebooks made by ASIC, including the ASIC Market Integrity Rules (Securities Markets) 2017 (***Securities Markets Rules***) and the ASIC Market Integrity Rules (Futures Markets) 2017 (***Futures Markets Rules***). Section 2 of the amendment instrument provides for a staggered commencement of the amendments made under the amendment instrument.
2. The *ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/248* (***this instrument***) amends the amendment instrument to correct:
 - (a) the amendment to Rule 3.5.3 of the Futures Markets Rules made in the amendment instrument, to ensure that the form of Rule 3.5.3 accords with the form ASIC consulted on in [Consultation Paper 342 Proposed amendments to the ASIC market integrity rules and other ASIC-made rules \(CP 342\)](#) and the form consented to by the Minister on 31 January 2022; and
 - (b) three other minor typographical errors identified in the numbering of some items in the amendment instrument.
3. The provisions of the amendment instrument affected by this instrument will not have commenced at the time this instrument takes effect.

Purpose of the instrument

4. The purpose of this instrument is to correct drafting errors in the amendment instrument as follows:

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- (a) the amendment instrument (at item 10 of Schedule 2) amends Rule 3.5.3 of the Futures Markets Rules, but that amendment does not remove the requirement for client authorisations to be in writing for ‘exchange for physical’ transactions. This instrument removes the “in writing” requirement in Rule 3.5.3;
 - (b) the amendment instrument (at item 10 of Schedule 2) also purports to insert a subrule 3.5.3(2) after Rule 3.5.3(1) of the Futures Markets Rules. At the time the amendment instrument was made, Rule 3.5.3(1) did not exist. This instrument ensures the subrule numbering of Rule 3.5.3 is accurate, and contains a subrule (1) and a subrule (2);
 - (c) removing a full stop in a rule reference, and renumbering two sub-subrules, so they commence at (i), rather than (ii).

Background

- 5. ASIC is responsible for supervising domestic licensed markets and making market integrity rules.
- 6. On 9 March 2022, ASIC made the amendment instrument. The amendment instrument makes a number of amendments to rulebooks made by ASIC, including the Securities Markets Rules and the Futures Markets Rules.
- 7. Section 2 of the amendment instrument provides that the amendments under the amendment instrument commence under a staggered arrangement. Relevantly:
 - (a) Item 6 of Schedule 1 commences 20 business days after the instrument is registered on the Federal Register of Legislation.
 - (b) Item 10 of Schedule 2 (the amendment to Rule 3.5.3 of the Futures Markets Rules) commences 20 business days after the amendment instrument is registered on the Federal Register of Legislation.
 - (c) Items 8 and 12 of Schedule 2 commence 3 months after the instrument is registered on the Federal Register of Legislation.

Consultation

- 8. In CP 342, ASIC consulted on proposed amendments to the market integrity rule books and other ASIC-made rules on ten priority areas. The removal of the requirement for client authorisations to be in writing for ‘exchange for physical’ transactions in Rule 3.5.3 of the Futures Markets Rules was one of the proposals in CP 342.
- 9. ASIC received seven written responses to CP 342 from market participants, market operators and industry bodies. The responses broadly supported ASIC’s proposed amendments.

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10. Following publication of CP 342, ASIC also consulted directly with market participants, market operators and industry bodies in relation to other minor amendments to the market integrity rule books.
 11. Following consideration of the feedback received, ASIC refined the proposed rule amendments and published Report 720 *Response to submissions on CP 342 Proposed amendments to the ASIC market integrity rules and other ASIC-made rules*.

Operation of the instrument

12. Section 1 of this instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Securities Markets and other ASIC-Made Rules) Amendment Instrument 2022/248*.
13. Section 2 of this instrument provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
14. Section 3 of this instrument provides that the instrument is made under section 798G of the *Corporations Act 2001* (the **Act**).
15. Section 4 of this instrument provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items of the Schedule.
16. Schedule 1 of this instrument amends the amendment instrument as follows:
 - (a) in item 1, amending item 6 of Schedule 1 of the amendment instrument by omitting “paragraph 7.1.1.(4)(a)” and substituting “paragraph 7.1.1(4)(a)”;
 - (b) in item 2, amending item 8 of Schedule 2 of the amendment instrument by omitting the sub-paragraph numbering of paragraph 2.2.3(2)(b) and substituting sub-paragraph numbering that commences at (i) and not (ii);
 - (c) in items 3 and 4, omitting item 10 of Schedule 2 of the amendment instrument, and substituting the following:

“Repeal the rule, substitute:

3.5.3 Client authorisation

(1) Before executing an Exchange For Physical Order on behalf of a Client, a Market Participant must be authorised by the Client to do so either specifically or generally.

(2) The Market Participant must keep a record of the identity of the authoriser, and the date and time of the authorisation.”

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- (d) in item 5, amending Item 12 of Schedule 2 of the amendment instrument by omitting the sub-paragraph numbering of paragraph 4.4.1(2)(b) and substituting sub-paragraph numbering that commences at (i) and not (ii).

Legislative instrument and primary legislation

17. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation. The matters contained in the instrument are specific amendments to an existing legislative instrument (being the amendment instrument), to correct drafting and other minor typographical errors in that amendment instrument.

Duration

18. The duration of the amendment made by this instrument aligns with the duration of the Securities Markets Rules and the Futures Markets Rules being amended. The market integrity rule books, which include the Securities Markets Rules and the Futures Markets Rules, are exempt from sunseting under item 18 of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. Market integrity rules regulate the operation of financial markets. As noted in the Explanatory Statement to the *Legislation (Exemptions and Other Matters) Regulation 2015*, commercial certainty would be undermined by the sunseting of these rules.

Legislative authority

19. The instrument is made under sections 798G of the Act.
20. Subsection 798G(3) of the Act provides that ASIC must not make a market integrity rule unless the Minister has consented, in writing, to the making of the rule. The Minister consented to the making of the amendment instrument by written notice to ASIC dated 31 January 2022. This amending instrument brings the amendment instrument into alignment with the Minister's consent, and corrects three other minor typographical errors relating to rule numbering in the amendment instrument.
21. Subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act) provides that "Where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, 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." Subsection 33(3) of the *Acts Interpretation Act 1901* applies to this instrument.
22. Sections 798G of the Act provides that rules respectively made under this section are by way of legislative instrument. This means that such rules are subject to disallowance in accordance with section 42 of the *Legislation Act 2003*. Section 44 of the *Legislation Act 2003* does not apply to this instrument. This instrument is subject to disallowance.

Statement of Compatibility with Human Rights

23. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Overview

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 - (b) three other minor typographical errors identified in the numbering of some items in the amendment instrument; specifically, removing a full stop, and renumbering two subparagraph provisions so the sub-paragraph provisions commence at (i), and not (ii).

Assessment of human rights implications

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

Conclusion

4. This 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*.