



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Market Integrity Rules (Amendment) Instrument 2024/774

This is the Explanatory Statement for *ASIC Market Integrity Rules (Amendment) Instrument 2024/774*.

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

Summary

1. This instrument updates references to the “Administrative Appeals Tribunal” (**AAT**) in four ASIC market integrity rule books to the “Administrative Review Tribunal” (**ART**) following the passing of the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (**ART Consequential Provisions Act**) which amends ASIC’s rulemaking power under s798G of the *Corporations Act 2001* (**Corporations Act**) and abolishes the AAT, and the *Administrative Review Tribunal Act 2024* (**ART Act**) which established the ART.

Purpose of the instrument

2. Section 2 of the ART Act provides that it commences on 14 October 2024. This includes the establishment of the ART by section 8 of the ART Act.
3. The instrument updates references from the AAT to the ART, coinciding with the abolition of the AAT and the commencement of the ART on 14 October 2024, in the following ASIC market integrity rulebooks:
 - (a) *ASIC Market Integrity Rules (Capital) 2021*;
 - (b) *ASIC Market Integrity Rules (Futures Markets) 2017*;
 - (c) *ASIC Market Integrity Rules (IMB Market) 2010*; and
 - (d) *ASIC Market Integrity Rules (Securities Markets) 2017*.
4. Updated references are appropriate to reflect the abolition of the AAT and the establishment of the ART.

Consultation

5. Consultation in relation to this instrument was not undertaken by ASIC as the instrument seeks only to make amendments consequential to the passing of the ART Consequential Provisions Act and the ART Act by Parliament.

Operation of the instrument

4. Section 1 of the instrument provides that the name of the instrument is the *ASIC Market Integrity Rules (Amendment) Instrument 2024/774*.
5. Section 2 of the instrument provides that the instrument commences on the day after the instrument is registered or on 14 October 2024 (when the AAT is abolished and the ART is established), whichever is later.
6. Section 3 of the instrument provides that the instrument is made under subsection 798G(1) of the Corporations Act.
7. Section 4 of the instrument provides that each instrument specified in the Schedule to the instrument is amended as set out in the Schedule.
8. Item 1 of Schedule 1 replaces “Administrative Appeals Tribunal” with “Administrative Review Tribunal” in the heading of rule 1.1.8 of the *ASIC Market Integrity Rules (Capital) 2021*.
9. Item 2 of Schedule 1 replaces “Administrative Appeals Tribunal Act 1975” with “Administrative Review Tribunal Act 2024” in subrule 1.1.8(3) of the *ASIC Market Integrity Rules (Capital) 2021*.
10. Item 3 of Schedule 1 replaces “Administrative Appeals Tribunal” with “Administrative Review Tribunal” in the heading of rule 1.1.8 of the *ASIC Market Integrity Rules (Futures Markets) 2017*.
11. Item 4 of Schedule 1 replaces “Administrative Appeals Tribunal Act 1975” with “Administrative Review Tribunal Act 2024” in subrule 1.1.8(3) of the *ASIC Market Integrity Rules (Futures Markets) 2017*.
12. Item 5 of Schedule 1 replaces “Administrative Appeals Tribunal” with “Administrative Review Tribunal” in the heading of rule 1.1.8 of the *ASIC Market Integrity Rules (IMB Market) 2010*.
13. Item 6 of Schedule 1 replaces “Administrative Appeals Tribunal Act 1975” with “Administrative Review Tribunal Act 2024” in subrule 1.1.8(3) of the *ASIC Market Integrity Rules (IMB Market) 2010*.
14. Item 7 of Schedule 1 replaces “Administrative Appeals Tribunal” with “Administrative Review Tribunal” in the heading of rule 1.1.8 of the *ASIC Market Integrity Rules (Securities Markets) 2017*.
15. Item 8 of Schedule 1 replaces “Administrative Appeals Tribunal Act 1975” with “Administrative Review Tribunal Act 2024” in subrule 1.1.8(3) of the *ASIC Market Integrity Rules (Securities Markets) 2017*.

Incorporation by reference

16. The instrument does not incorporate any matter by reference.

Legislative instrument and primary legislation

17. The matters contained in the instrument are a specific amendment designed to ensure consistent application with primary legislation and applies in a way consistent with the intended policy and the enabling provisions in primary legislation.

Duration of the instrument

18. The instrument will be automatically repealed in accordance with section 48A of the *Legislation Act 2003*.

Legislative authority

19. The ART Consequential Provisions Act (in Item 16 of Schedule 1) modifies ASIC's rulemaking power under section 798G of the Corporations Act by inserting:
- “(2) Without limiting subsection 798G(1), market integrity rules may:
- (a) provide for applications to be made to the ART for review of decisions made under the rules; and
- (b) contain provisions that apply:
- (i) in addition to the ART Act; or
- (ii) instead of that Act; or
- (iii) contrary to that Act.”
20. The amending instrument has been made under subsection 798G(1) of the Corporations Act, which provides that ASIC may, by legislative instrument, make rules (the market integrity rules) that deal with:
- (a) the activities or conduct of licensed markets;
- (b) the activities or conduct of persons in relation to licensed markets; and
- (c) the activities or conduct of persons in relation to financial products traded on licensed markets.
21. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (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. Accordingly, the power under subsection 798G(1) of the Corporations Act to make the market integrity rules includes a power to amend those rules.

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22. Subsection 798G(3) of the Corporations 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 in writing to the amendments to the Rules that are made by the instrument on 11 October 2024.
23. This instrument is subject to disallowance under section 42 of the *Legislation Act 2003*. Section 44 of the *Legislation Act 2003* does not apply to this instrument.

Statement of Compatibility with Human Rights

24. 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*.

ASIC Market Integrity Rules (Amendment) Instrument 2024/774

Overview

1. This instrument updates references to the “Administrative Appeals Tribunal” (AAT) in four ASIC market integrity rule books to the “Administrative Review Tribunal” (ART) following the passing of the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (ART Consequential Provisions Act)* which abolished the AAT and the *Administrative Review Tribunal Act 2024 (ART Act)* which established the ART.
2. Section 2 of the ART Act provides that it commences on the day after it is registered, or on 14 October 2024, whichever is later. Section 8 of the ART Act establishes the ART on 14 October 2024. Section 2 of the ART Consequential Provisions Act provides that the AAT is abolished at the same time as the ART commences.
3. The instrument intends to update references from the AAT to the ART in the following ASIC market integrity rulebooks:
 - (a) *ASIC Market Integrity Rules (Capital) 2021*;
 - (b) *ASIC Market Integrity Rules (Futures Markets) 2017*;
 - (c) *ASIC Market Integrity Rules (IMB Market) 2010*; and
 - (d) *ASIC Market Integrity Rules (Securities Markets) 2017*.
4. Updated references are appropriate to reflect the abolition of the AAT and the establishment of the ART.

Assessment of human rights implications

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

Conclusion

6. 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*.