

Australian Securities and Investments Commission

Corporations Act 2001 — Subsection 798G(1) — Variation

1. Enabling legislation

I, Mark Adams, with the written consent of the Minister, make the following instrument under subsection 798G(1) of the *Corporations Act 2001*.

Dated this 27th day of October 2011

Signed by Mark Adams

as a delegate of the Australian Securities and Investments Commission

2. Title

This instrument is *ASIC Market Integrity Rules (ASX Market) Amendment 2011 (No. 3)*.

3. Commencement

This instrument commences on the later of:

- (a) 31 October 2011; and
- (b) the day after the instrument is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (FRLI) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of register). The FRLI may be accessed at <http://www.frli.gov.au/>.

4. Amendments

Schedule 1 amends the *ASIC Market Integrity Rules (ASX Market) 2010*.

Schedule 1 Amendments

[1] Rule 1.4.3, after definition of “ASIC”

insert

“ASIC Act” means the *Australian Securities and Investments Commission Act 2001* as amended from time to time.

[2] Rule 1.4.3, after definition of “Central Orderbook”

insert

“**CHESSE Depository Interest**” has the meaning given to the term “CDI” by Rule 2.13.1 of the Operating Rules of ASX Settlement Pty Limited (ACN 008 504 532).

[3] Rule 1.4.3, after definition of “Company Announcements Office”

insert

“**Competition Market Integrity Rules**” means the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* as amended from time to time.

[4] Rule 1.4.3, after definition of “Equilibrium Price”

insert

“**Equity Market**” means a Financial Market, on or through which offers to acquire or dispose of Equity Market Products are made or accepted, the operator of which is licensed under subsection 795B(1) of the Corporations Act.

“**Equity Market Operator**” means an entity that is licensed under subsection 795B(1) of the Corporations Act to operate an Equity Market.

“**Equity Market Product**” means:

- (a) a share in a body;
- (b) a financial product referred to in subparagraph 764A(1)(b)(i) or subparagraph 764A(1)(ba)(i) of the Corporations Act; or
- (c) a right (whether existing or future and whether contingent or not) to acquire, by way of issue, the following under a rights issue:
 - (i) a share covered by paragraph (a); or
 - (ii) a financial product covered by paragraph (b); or
- (d) a CHESSE Depository Interest,

admitted to quotation on ASX.

[5] Rule 1.4.3, after definition of “Family Trust”

insert

“**Financial Market**” has the meaning given by section 767A of the Corporations Act.

[6] Rule 1.4.3, definition of “On-Market”, paragraph (a)

omit

Open Session State or CSPA Session State

insert

Trading Hours

[7] Rule 1.4.3, definition of “On-Market”, paragraph (b)

omit

Open Session State

insert

Trading Hours (excluding a time during which an auction is conducted on the Market)

[8] Rule 1.4.3, definition of “On-Market”, paragraph (d)

omit

after CSPA Session State on a Trading Day and up to 15 minutes prior to commencement of the Open Session State on the next Trading Day

insert

outside of Trading Hours

[9] Rule 1.4.3, after definition of “Order”, paragraph (d)

“**Order Book**” means an electronic list of Orders, maintained by or on behalf of an Equity Market Operator, on which those Orders are matched with other Orders in the same list.

[10] Rule 1.4.3, definition of “Special Crossing”

substitute

“**Special Crossing**”:

- (a) in relation to an Equity Market Product, means a block trade or a large portfolio trade, within the meaning of the Competition Market Integrity Rules, entered into other than by matching of Orders on an Order Book of an Equity Market; and
- (b) in relation to a Product other than an Equity Market Product, has the meaning given by the Market Operating Rules.

[11] Rule 1.4.3, after definition of “Trading Day”

insert

“**Trading Hours**”, in relation to the Market, means the times during which:

- (a) Orders may be entered, amended or cancelled on the Order Books of the Market; and
- (b) Orders are matched and transactions are executed on a continuous basis on the Market,

and includes a time during which an auction is conducted on the Market.

[12] Rule 1.4.3, after definition of “Trading Status”

insert

“**Trading Suspension**” means a halt or suspension in trading on an Equity Market pursuant to the exercise of a power by an Equity Market Operator under the Operating Rules of the Equity Market, during which Orders may not be matched or executed on the relevant Equity Market, but does not include a halt or suspension caused by a technical problem (including a power outage) affecting the technical infrastructure used by the operator of the Equity Market for the purposes of receiving Trading Messages, matching and executing Orders and reporting transactions.

[13] After Part 2.5

insert

Part 2.6 Foreign Participants

2.6.1 Minimum presence requirements

- (1) This Rule applies to a Market Participant (“**Foreign Market Participant**”) that:
 - (a) is a foreign entity; and
 - (b) does not hold an AFSL.
- (2) Before entering into a Market Transaction, a Foreign Market Participant must provide ASIC with a deed of the Foreign Market Participant for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Corporations Act, which deed provides that:
 - (a) the deed is irrevocable except with the prior written consent of ASIC;
 - (b) the Foreign Market Participant submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise;
 - (c) the Foreign Market Participant covenants to comply with any order of an Australian court in respect of any matter relating to the activities or conduct of the Foreign Market Participant in relation to the Market or in relation to Financial Products traded on the Market, including but not limited to any matter relating to the Foreign Market Participant’s obligations under:
 - (i) the ASIC Act;
 - (ii) the Corporations Act; and
 - (iii) the *Corporations (Fees) Act 2001*;

- (d) if the Foreign Market Participant is not registered under Division 2 of Part 5B.2 of the Corporations Act:
 - (i) the Foreign Market Participant must have at all times an agent who is:
 - (A) a natural person or a company;
 - (B) resident in this jurisdiction; and
 - (C) authorised to accept, on behalf of the Foreign Market Participant, service of process and notices; and
 - (ii) the Foreign Market Participant must notify ASIC of any change to:
 - (A) the agent; or
 - (B) the name and address of the agent (if the agent is a company, address means the address of the registered office of the company); and
 - (iii) service of process on the Foreign Market Participant in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act), and in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise, can be effected by service on the agent;
- (e) the deed applies notwithstanding that the Foreign Market Participant may have ceased to be a Market Participant; and
- (f) such additional terms notified by ASIC to the Foreign Market Participant.

Maximum penalty: \$1,000,000

[14] Rule 3.3.1, paragraph (a)

after

these Rules

insert

, the Competition Market Integrity Rules

[15] Rule 3.3.1, paragraph (d)

after

these Rules

insert

, the Competition Market Integrity Rules

[16] Rule 5.10.4

omit

prior written approval has been given by the Market Operator

insert

the Cash Market Product is an Equity Market Product that is quoted on another Equity Market and is not in a Trading Suspension on that Equity Market

[17] Part 6.4, heading

omit

Late, Overseas and Overnight Crossings

insert

Crossings outside of Trading Hours

[18] Rule 6.4.1, heading

omit

Late, overseas and overnight Crossings

insert

Crossings outside of Trading Hours

[19] Subrule 6.4.1(2)

omit

after CSPA Session State on a Trading Day and up to 15 minutes prior to commencement of the Open Session State on the next Trading Day in accordance with the Market Operating Rules

insert

outside of Trading Hours and reported to the Market Operator

[20] Rule 6.4.3, heading

omit

Late, overseas and overnight Crossings

insert

Crossings outside of Trading Hours

[21] Subrule 6.4.3(2)

omit

after CSPA Session State on a Trading Day and up to 15 minutes prior to commencement of the Open Session State on the next Trading Day in accordance with the Market Operating Rules

insert

outside of Trading Hours and reported to the Market Operator