



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 215

Guidance on ASIC market integrity rules for IMB, NSXA and SIM VSE markets

November 2015

About this guide

This guide is for market participants of the IMB, National Stock Exchange of Australia (NSXA) and SIM Venture Securities Exchange (SIM VSE) (formerly Bendigo Stock Exchange) markets.

It gives guidance on how market participants can comply with their obligations under ASIC market integrity rules for these markets.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in November 2015 and is based on legislation and regulations as at the date of issue. It has been amended to include information on the submission of applications and notifications using ASIC's Market Entity Compliance System (MECS) portal.

Previous version:

- Superseded Regulatory Guide 215, issued 1 August 2010, reissued 5 August 2013 and May 2015

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

A Overview	4
Supervision of domestic licensed financial markets	4
ASIC market integrity rules	5
Regulatory Guide 214	6
Scope of this regulatory guide	6
Transitional arrangements	7
Waivers	8
B Complying with ASIC market integrity rules.....	10
Significant breach reporting to ASIC	10
Notifications to ASIC	10
Requests for approvals from ASIC	11
How ASIC and the market operators will work together	12
C Contacting ASIC	13
Contacting ASIC	13
When to contact ASIC	14
Where to find further information	14
Key terms	15
Related information.....	17

A Overview

Key points

ASIC is responsible for supervising domestic licensed financial markets in Australia.

As part of its supervisory responsibilities, ASIC makes market integrity rules and monitors compliance by market participants with those rules.

This regulatory guide is intended for market participants of the IMB market (operated by IMB Ltd), the NSXA market (operated by National Stock Exchange of Australia Limited) and the SIM VSE market (operated by SIM Venture Securities Exchange) (formerly the Bendigo Stock Exchange).

It should be read in conjunction with Regulatory Guide 214 *Guidance on ASIC market integrity rules for the ASX and ASX 24 markets* (RG 214), which covers broader topics such as:

- background information on the supervision of domestic licensed financial markets;
- ASIC's approach in making market integrity rules; and
- ASIC's approach to supervising compliance with those rules.

Supervision of domestic licensed financial markets

RG 215.1 On 24 August 2009, the Australian Government announced its decision to transfer the responsibility for supervising Australia's domestic licensed financial markets from market operators to the Australian Securities and Investments Commission (ASIC).

Note: This is in addition to ASIC's existing supervision of Australian financial services (AFS) licensees under the *Corporations Act 2001* (Corporations Act).

RG 215.2 To support this decision, the *Corporations Amendment (Financial Market Supervision) Act 2010* (Financial Market Supervision Act) was enacted in March 2010 to provide that responsibility for supervising trading on Australian domestic licensed financial markets be transferred from the operators of those markets to ASIC.

RG 215.3 The Financial Market Supervision Act, which commenced on 1 August 2010, inserted a new Pt 7.2A into the Corporations Act. From this date, ASIC had responsibility for supervising trading activities and conduct of business by market participants in relation to domestic licensed markets (i.e. those operated by persons licensed under s795B(1) of the Corporations Act).

Note: Transfer of supervision did not take place on 1 August 2010 for the following markets: BGC Partners (Australia) Pty Limited, Bloomberg Tradebook Australia Pty

Ltd, Mercari Pty Ltd and Yieldbroker Pty Limited: see reg 10.14.02 of the Corporations Regulations 2001 (Corporations Regulations).

- RG 215.4 Australian market licensees continue to be responsible for the operation of their markets and for monitoring and enforcing compliance with their market's operating rules, which include their listing rules.
- RG 215.5 Under the Financial Market Supervision Act, a number of transitional arrangements are in place to make the transfer as smooth as possible.

ASIC market integrity rules

- RG 215.6 Part 7.2A of the Corporations Act established a new rule-making regime whereby ASIC is able to make market integrity rules dealing with activities and conduct in relation to licensed financial markets, including market participants of the relevant market.

Note: In this guide 'ASIC Market Integrity Rules (IMB)' refers to the ASIC Market Integrity Rules (IMB Market) 2010; 'ASIC Market Integrity Rules (NSXA)' refers to the ASIC Market Integrity Rules (NSXA Market) 2010; and 'ASIC Market Integrity Rules (SIM VSE)' refers to the ASIC Market Integrity Rules (SIM VSE Market) 2010.

- RG 215.7 ASIC is responsible for supervising compliance with these rules. We are also responsible for granting waivers from the obligation to comply with a provision of the market integrity rules. We will consider and determine all requests for a waiver of a market integrity rule on the basis of the facts, circumstances and merits of each request.
- RG 215.8 Our approach in making market integrity rules has been to not change at this time the substance of the pre-existing obligations that apply to market participants of the IMB, NSXA and SIM VSE. Where a market operator adds to, or significantly amends, its operating rules dealing with market participant obligations, and ASIC recommends to the Minister not to disallow the changes, we will generally amend market integrity rules to account for the changes to permitted market participant activities or conduct.

Future reviews and additions to the market integrity rules

- RG 215.9 We will review the market integrity rules on an ongoing basis and may make adjustments as required as a result of our experience in administering the rules, the developments in the market and the international regulatory environment.

Consultation

- RG 215.10 We have consulted with stakeholders on the introduction of the market integrity rules. Similarly, we expect to consult on future amendments of these rules.

Ministerial consent to market integrity rules

- RG 215.11 ASIC may not make a market integrity rule unless it has the written consent of the Minister. An exception applies for the making of emergency rules that are necessary, or are in the public interest, to protect people dealing in a financial product.

Legislative instrument

- RG 215.12 The market integrity rules are legislative instruments and, as such, are subject to parliamentary scrutiny and possible disallowance by Parliament.

Regulatory Guide 214

- RG 215.13 ASIC has published Regulatory Guide 214 *Guidance on ASIC market integrity rules for the ASX and ASX 24 markets* (RG 214), which is aimed at market participants of ASX and ASX 24 (formerly the Sydney Futures Exchange).
- RG 215.14 RG 214 gives guidance on how ASX and ASX 24 market participants can comply with their obligations under ASIC market integrity rules for those markets.
- RG 215.15 RG 214 also provides commentary on the following broader topics, which are of equal relevance to market participants of the IMB, NSXA and SIM VSE:
- (a) background information on the supervision of domestic licensed financial markets (see Section B of RG 214);
 - (b) ASIC's approach in making market integrity rules (see Section C of RG 214); and
 - (c) ASIC's approach to supervising compliance with the market integrity rules (see Section E of RG 214).

Scope of this regulatory guide

- RG 215.16 This regulatory guide covers the ASIC market integrity rules for the IMB, NSXA and SIM VSE markets only. This guide does not cover the operating rules of clearing and settlement facility operators.

Note: RG 214 covers the ASIC market integrity rules for ASX and ASX 24 markets. Market participants of the IMB, NSXA and SIM VSE should read this regulatory guide in conjunction with RG 214 for ASIC commentary on broader topics, as noted in RG 215.15.

- RG 215.17 This regulatory guide provides guidance on a number of topics, which will be expanded on with the benefit of experience, including:
- (a) significant breach reporting to ASIC;
 - (b) notifications to ASIC;

- (c) requests for approvals from ASIC;
- (d) how ASIC and the market operators will work together; and
- (e) how and when to contact ASIC.

RG 215.18 The disciplinary process for breaches of the market integrity rules is contained in a separate ASIC regulatory guide: see Regulatory Guide 216 *Markets Disciplinary Panel* (RG 216). The Markets Disciplinary Panel (MDP) will exercise ASIC's power to issue infringement notices and accept enforceable undertakings relating to breaches of the market integrity rules. RG 216 provides guidance on the processes by which matters will be referred to, and dealt with by, the MDP.

Transitional arrangements

RG 215.19 ASIC is responsible for any investigation and action in relation to an alleged breach of the market integrity rules occurring on and from the date of handover of supervisory responsibilities to us. Breaches of operating rules that occurred before that handover remain the responsibility of the market operator.

RG 215.20 The amendments to the Corporations Regulations, which took effect on 1 August 2010, sought to make the transfer of supervisory responsibility to ASIC as smooth as possible. For that reason they provide that:

- (a) any written waiver, exemption, consent, recognition, accreditation, approval, determination or notification given by market operators to market participants under the operating rules of a market, where such rules are incorporated into the market integrity rules, are to be taken as given by ASIC and will continue in their prior form and effect unless we determine otherwise;
- (b) any written notifications or certifications given by market participants to market operators, under the operating rules of a market, where those rules are incorporated into the market integrity rules, are taken to be given to ASIC and will continue in their prior form and effect unless we determine otherwise; and
- (c) any breach under the Corporations Act should still be notified to ASIC as normal in line with market participants' obligations under s912D of the Corporations Act and as outlined in Regulatory Guide 78 *Breach reporting* (RG 78).

Waivers

Power to grant a waiver of a market integrity rule

- RG 215.21 ASIC has responsibility for granting waivers from the obligation to comply with a provision of the market integrity rules.
- RG 215.22 Any such waiver may be general, or limited to a particular case or category, and may be limited by such conditions as we think fit. If conditions are imposed on a waiver, all of the conditions must be complied with for the waiver to be effective. Failure to comply with a condition imposed on a waiver is a contravention of Rule 1.22 of the ASIC Market Integrity Rules (IMB), ASIC Market Integrity Rules (NSXA) and ASIC Market Integrity Rules (SIM VSE). Further, failure to comply with a condition on a waiver may amount to a possible breach of the relevant market integrity rule waived.

Note: In this guide 'Rule 1.22 (IMB)' (for example) refers to a particular rule of the ASIC Market Integrity Rules (IMB) (in this example numbered 1.2.2); 'Rule 1.22 (NSXA)' (for example) refers to a particular rule of the ASIC Market Integrity Rules (NSXA) (in this example numbered 1.2.2); and 'Rule 1.22 (SIM VSE)' (for example) refers to a particular rule of the ASIC Market Integrity Rules (SIM VSE) (in this example numbered 1.2.2).

- RG 215.23 We may amend or withdraw a waiver at any time. Should we propose to make a determination that a waiver is no longer appropriate, and amend or revoke the waiver, we will give reasonable notice to the market participant before making such a determination. The waiver will cease to be effective from the time it is expressed to be withdrawn in writing. We will not grant a waiver retrospectively.

Approach to a market integrity rule waiver

- RG 215.24 We will consider and determine all requests for a waiver of a market integrity rule on the basis of the facts, circumstances and merits of each request. In determining whether such a request should be granted, we will take into account commercial considerations against the need to maintain the integrity of the market.
- RG 215.25 Where appropriate, we may grant a waiver to a class of persons.

The process of requesting a waiver

- RG 215.26 Any request for a waiver must be in writing. It should also include details of the market integrity rule to be waived, the requested start and end dates, the rationale for the waiver, all relevant facts and circumstances in support of the request, and any other relevant information.
- RG 215.27 A market participant may be refused a request if they fail to address all of the relevant issues and, similarly, failure to supply relevant information may cause a delay in finalising the request.

- RG 215.28 Should a commercially time-sensitive situation arise, we can consider such requests on an urgent basis, providing the market participant has clearly demonstrated that the urgency results from factors beyond their reasonable control and that those factors could not reasonably have been foreseen. Self-imposed deadlines will not be a sufficient basis for urgent consideration.
- RG 215.29 In time, we may consider a uniform approach for applications for relief that is more in line with Regulatory Guide 51 *Applications for relief* (RG 51). We expect to consult on any changes to the current approach at the relevant time. In the meantime, RG 51 provides practical guidance and should be consulted in the first instance.
- RG 215.30 Applications for waivers should be made in writing and emailed to:
Senior Executive Leader, Market and Participant Supervision, ASIC,
market.participants@asic.gov.au.

Publication of waivers

- RG 215.31 We may publish notice of a waiver on our website at www.asic.gov.au. We maintain a public register of waivers on our website that contains details of:
- (a) the date a waiver takes effect;
 - (b) the person or persons relieved from the obligation in the market integrity rule;
 - (c) the provision of the market integrity rule to which the waiver applies;
 - (d) brief reasons for the waiver; and
 - (e) any conditions that apply to the waiver.

B Complying with ASIC market integrity rules

Key points

This section provides guidance on reporting and notification requirements that are applicable to IMB, NSXA and SIM VSE market participants under the ASIC market integrity rules. This guidance will be expanded on with the benefit of experience.

Where we have not provided guidance on a topic, market participants should maintain compliance functionality as required under the pre-existing operating rules for each market before commencement of the ASIC market integrity rules.

Significant breach reporting to ASIC

RG 215.32 Breaches (or likely breaches) of market integrity rules may constitute reportable breaches for AFS licensees under s912D. If certain breaches of the market integrity rules are required to be reported under s912D, they need to be reported to ASIC. The process for reporting breaches to ASIC under s912D and reporting breaches of market integrity rules to ASIC is the same.

RG 215.33 Guidance on how to notify ASIC of significant breaches (or likely breaches) by AFS licensees under s912D is set out in RG 78. Written breach reports may be:

- (a) Lodged at any ASIC office, addressed to:
Stakeholder Services, Misconduct and Breach Reporting, ASIC.
- (b) Emailed to:
fsr.breach.reporting@asic.gov.au.

Note: See RG 78 for further guidance on the process for reporting breaches to ASIC, and what happens if you notify us of a breach as required under s912D.

Notifications to ASIC

RG 215.34 The market integrity rules require market participants to provide ASIC with various pieces of information in certain circumstances and other notifications.

RG 215.35 SIM VSE market participants should also note the specific obligation that Rule 3.2.2 (SIM VSE) imposes on them to notify ASIC in writing if they fail to carry out a reconciliation of the trust account, as required by Rule 3.2.1 (SIM VSE). The information required to be notified to ASIC can be found in Rule 3.2.2 (SIM VSE). Notifications made to ASIC under this rule should be as set out in RG 215.36. However, in making the notification SIM VSE

market participants should consider their obligations to assess breaches under s912D of the Corporations Act.

- RG 215.36 These notifications can be submitted using the relevant form on the Market Entity Compliance System (MECS), which can be accessed through [our website](#). Alternatively, a market participant may send notifications by email to market.participants@asic.gov.au with the subject line ‘Attention: Senior Executive Leader, Market and Participant Supervision, ASIC’.
- RG 215.37 Under the existing operating rules of NSXA and SIM VSE, market participants will continue to be required to provide notifications to the respective market operator in relation to the matters listed in Table 1.
- RG 215.38 Since 1 August 2010, market participants have been required to notify both ASIC and the respective market operator. However, we will review this arrangement, in consultation with the market operators, if we form the view that it results in unnecessary regulatory burden.

Table 1: What market participants should notify ASIC about

All market participants	Significant breaches	Section 912D
NSXA market participants	Market participant restrictions: Director for more than one market participant	Rule 2.1.1 (NSXA)
	Common ownership of market participant: Market participant association notification	Rule 4.2.2 (NSXA)
	Insurance: Claims	Rule 4.3.3 (NSXA)
	Legal proceedings: Market participant to give written particulars	Rule 8.1.1 (NSXA)
SIM VSE market participants	Record keeping: Trust account schedule—requirement to notify ASIC if reconciliation not complete	Rule 3.2.2 (SIM VSE)
	Insurance: Insurance requirement	Rule 5.3.1 (SIM VSE)
	Insurance: Notification of claims	Rule 5.3.2 (SIM VSE)
	Insurance: Notification of action against the market participant	Rule 5.3.3 (SIM VSE)

Requests for approvals from ASIC

- RG 215.39 NSXA market participants should note that Rule 2.1.1(c) (NSXA) requires that, where a director of a market participant is a director of another market participant, the director is not to be given access to the records of orders

received for the purchase or sale of securities by market participants other than the primary market participant without prior written approval from ASIC.

- RG 215.40 Requests for approvals from us should be made in writing and emailed to:
Senior Executive Leader, Market and Participant Supervision, ASIC,
market.participants@asic.gov.au.
- RG 215.41 We will consider requests for approvals on a case-by-case basis.
- RG 215.42 Any written approval previously given by NSXA to a market participant under their operating rules, where such rules are incorporated into the market integrity rules, are to be taken as given by ASIC and will continue in their prior form and effect unless ASIC determines otherwise. Should ASIC propose to make a determination that an approval is no longer appropriate and amend or revoke the approval, we will give reasonable notice to the market participant before making the determination.
- RG 215.43 Market participants must seek approvals as required by Rule 2.1.1(c) (NSXA) from both ASIC and the NSXA. However, we will review this arrangement, in consultation with the NSXA, if we form the view that it results in unnecessary regulatory burden.

How ASIC and the market operators will work together

- RG 215.44 ASIC will work with IMB, NSXA and SIM VSE on an ongoing basis to ensure that there is no undue regulatory burden placed on market participants.
- RG 215.45 There will be an ongoing dialogue between ASIC and the market operators to ensure cooperation on managing supervision and establishing protocols on the monitoring and enforcement of market integrity rules and market operating rules to minimise unnecessary duplication.

C Contacting ASIC

Key points

Market participants can contact ASIC directly to ensure that market integrity matters are known and addressed in an efficient and timely manner.

Contact points include MECS, direct email and telephone access to the relevant ASIC teams to communicate issues and queries in relation to markets, trading and market participant conduct.

Breaches of the market integrity rules and/or provisions of the Corporations Act should not be reported using the direct contact points listed in this section. For procedures for breach reporting, see RG 215.32–RG 215.33.

Contacting ASIC

- RG 215.46 The market integrity rules require market participants to provide ASIC with various pieces of information in certain circumstances and other notifications. Information should be provided in the manner detailed in the relevant market integrity rule.

Written applications and requests

- RG 215.47 Where certain requests and applications are to be made to ASIC, these should specifically identify the market the application relates to. These requests or applications can be made using the relevant form on MECS (where that form is available), which can be accessed through [our website](#). Alternatively, these can be submitted by email to market.participants@asic.gov.au with the subject line ‘Attention: Senior Executive Leader, Market and Participant Supervision, ASIC’.

MECS

- RG 215.48 Market participants can submit a range of applications and notifications using the forms available on MECS, which can be accessed through [our website](#). Where a form is available on MECS, it is our preference that applications and notifications are made using MECS.

Telephone hotline

- RG 215.49 Market participants are able to directly contact the relevant ASIC teams on a hotline between 9 am and 5 pm Eastern Standard Time on market trading days. This is for communicating with ASIC about live markets trading issues, non-live markets queries, general market participant queries, notifications and exemptions. Market participants can also call ASIC on 1300 300 630.

Email

RG 215.50 There are two email addresses set up for use by market participants for all domestic licensed financial markets for the purposes of market and market participant related matters: see Table 2.

Table 2: ASIC email addresses for use by market participants

Email address	To be used for:	Examples
markets@asic.gov.au	Matters relating to markets and trading	Concerns or queries about trading anomalies. Queries about unexplained market events. Reports of suspicious market trades or behaviour. Concerns about misconduct in the market.
market.participants@asic.gov.au	Participant-related matters	Applications and requests, including requests for approval and waivers applications. Notifications. Other information relating to the market participant.

When to contact ASIC

- RG 215.51 As stated above, we are responsible for supervising trading activities by market participants to ensure market integrity. As such, we can be contacted in relation to activities and conduct that occur on domestic licensed financial markets.
- RG 215.52 Australian market licensees retain responsibility for the operation of their markets. Queries pertaining to the operations and processes of markets should be directed to the relevant market operator.
- RG 215.53 In general terms, if your issue relates to an obligation or conduct covered by the market integrity rules or provisions of the Corporations Act, you should contact ASIC.

Where to find further information

- RG 215.54 For up-to-date information about the transfer of market surveillance powers to ASIC, market participants should refer to www.asic.gov.au/markets.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A of the Corporations Act.
ASIC	Australian Securities and Investments Commission
ASIC Market Integrity Rules (IMB)	ASIC Market Integrity Rules (IMB Market) 2010—rules made by ASIC under s798G of the Corporations Act for trading on IMB
ASIC Market Integrity Rules (NSXA)	ASIC Market Integrity Rules (NSXA Market) 2010—rules made by ASIC under s798G of the Corporations Act for trading on NSXA
ASIC Market Integrity Rules (SIM VSE)	ASIC Market Integrity Rules (SIM VSE Market) 2010—rules made by ASIC under s798G of the Corporations Act for trading on SIM VSE
ASX	ASX Limited or the exchange market operated by ASX Limited
ASX 24	The market formerly known as the Sydney Futures Exchange (SFE), operated by Australian Securities Exchange Limited
Australian domestic licensed financial market	A financial market licensed under s795B(1) of the Corporations Act
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
commencement date	The commencement date of the Financial Market Supervision Act (i.e. 1 August 2010)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
enforceable undertaking	An enforceable undertaking that may be accepted by ASIC under reg 7.2A.01 of the Corporations Regulations

Term	Meaning in this document
Financial Market Supervision Act	<i>Corporations Amendment (Financial Market Supervision) Act 2010</i>
IMB	The market known as IMB, operated by IMB Ltd
infringement notice	An infringement notice issued under reg 7.2A.04 of the Corporations Regulations
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
market licensee	Holder of an Australian market licence
market participant	As defined in s761A of the Corporations Act
MDP (Markets Disciplinary Panel)	ASIC's Markets Disciplinary Panel, through which ASIC exercises its power to issue infringement notices and to accept enforceable undertakings in relation to breaches of the market integrity rules
MECS (Market Entity Compliance System)	Our online regulatory compliance portal that provides market participants with tools and information to assist them in complying with their regulatory obligations Note: MECS can be accessed through our website .
NSXA	The market known as the National Stock Exchange of Australia, operated by National Stock Exchange of Australia Limited
reg 7.2A.02 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.2A.02), unless otherwise specified
RG 214 (for example)	An ASIC regulatory guide (in this example numbered 214)
s912 (for example)	A section of the Corporations Act (in this example numbered 912), unless otherwise specified
SFE	The market formerly known as Sydney Futures Exchange (now ASX 24)
SIM VSE	The market known as the SIM Venture Securities Exchange (formerly known as the Bendigo Stock Exchange), operated by SIM Venture Securities Exchange Ltd

Related information

Headnotes

financial markets, licensed financial markets, IMB, market integrity rules, market operators, market participants, NSXA, SIM VSE, supervision, transitional arrangements

Regulatory guides

RG 51 Applications for relief

RG 78 Breach reporting

RG 214 Guidance on ASIC market integrity rules for ASX and ASX 24 markets

RG 216 Markets Disciplinary Panel

Consultation papers and reports

CP 222 Reducing red tape: Proposed amendments to the market integrity rules

REP 432 Response to submissions on CP 222 Reducing red tape: Proposed amendments to the market integrity rules

Legislation

Corporations Act, Pt 7.2A, Pt 9.4B, s5, 791A, 793B, 795B(1), 795B(2), 798G, 912D, 913B

Corporations Regulations, reg 7.2.07, 7.2A.01, 7.2A.04, 10.14.02

Financial Market Supervision Act

Market integrity rules

ASIC Market Integrity Rules (IMB)

ASIC Market Integrity Rules (NSXA)

ASIC Market Integrity Rules (SIM VSE)