

Attachment 1 to CP 342: Draft rules



ASIC
Australian Securities &
Investments Commission

Extracts of draft amendments to the ASIC Market Integrity Rules (Securities Markets) 2017

June 2021

These draft rules reflect the proposals in Consultation Paper 342 *Proposed amendments to the ASIC market integrity rules and other ASIC-made rules* (CP 342).

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Chapter 2: Market Participants and Representatives

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Part 2.4 Retail client derivatives advisers

2.4.1 Adviser qualifications and experience

(1) A Market Participant must ensure that each of its Representatives who provides Level One Derivatives Advice in relation to Options Market Contracts or Warrants to retail clients is suitably qualified and experienced to provide Level One Derivatives Advice.

(2) A Market Participant must ensure that each of its Representatives who is only qualified and experienced to provide Level 1 Derivatives Advice does not provide advice in relation to LEPOs to retail clients.

(3) A Market Participant must ensure that each of its Representatives who provides Level Two Derivatives Advice in relation to Options Market Contracts or Warrants to retail clients is suitably qualified and experienced to provide both:

- (a) Level One Derivatives Advice; and
- (b) Level Two Derivatives Advice.

Note: A Market Participant must provide to ASIC, and update, details of its Representatives who are authorised to provide personal advice to retail clients, including details of completed derivatives qualifications and training courses: see Subdivision B of Division 9 of Part 7.6 of the Corporations Act.

2.4.2 Meaning of *Level One Derivatives Advice*

For the purposes of this Part, *Level One Derivatives Advice* means personal advice in relation to one or more of the following:

- (a) taking Options Market Contracts;
- (b) writing Options Market Contracts, but only for the purpose of closing out a position or writing Covered Call Options under paragraph (e);
- (c) subscribing for and buying and selling Warrants;
- (d) exercising Warrants and Options Market Contracts;
- (e) the Covered Call Option writing strategies as set out in Rule 2.4.3.

2.4.3 Meaning of *Covered Call Option writing strategy*

(1) For the purposes of Rule 2.4.2, a *Covered Call Option writing strategy* entails either:

- (a) a client who already owns Underlying Financial Products in a particular Class writing Call Options over those Underlying Financial Products up to the number of Underlying Financial Products which the client owns and either prior to, or simultaneously with

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writing the Call Options, providing to the Clearing Facility those Underlying Financial Products as cover for the written Call Option obligations; or

- (b) a client buying a particular Class of Underlying Financial Products and simultaneously writing Call Options over those Underlying Financial Products on the understanding that the client will provide, to the Clearing Facility, within three Trading Days of entering into the strategy, the simultaneously purchased Underlying Financial Products as cover for the written Call Option obligations.

(2) For the purposes of subrule (1), *Call Option* means an Options Market Contract that gives the taker a right, but not an obligation, to buy the Underlying Financial Products.

2.4.4 Meaning of *Level Two Derivatives Advice*

For the purposes of this Part, *Level Two Derivatives Advice* means personal advice (other than Level One Derivatives Advice) in relation to one or more of the following:

- (a) taking, writing and exercising Derivatives Market Contracts;
- (b) subscribing for, buying, selling and exercising Warrants;
- (c) all trading strategies relating to Derivatives Market Contracts;
- (d) all trading strategies relating to Warrants.

2.4.5 Managed Discretionary Accounts—Derivatives Market Contracts and Warrants

A Market Participant must ensure that a Managed Discretionary Account for a retail client which involves dealing in Derivatives Market Contracts or Warrants is operated by a Representative that is suitably qualified and experienced to provide Level One Derivatives Advice and Level Two Derivatives Advice.

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Part 3.4 Reporting to Clients

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3.4.3 Confirmations—Clients other than retail clients

(1) A Market Participant is not required to comply with Rule 3.4.1 in respect of a client that is not a retail client, provided the Market Participant:

- (a) has notified the client before entering a Trading Message on the client's behalf that Market transactions effected for the client are subject to:
 - (i) the directions, decisions and requirements of the relevant Market operator, these Rules, the operating rules of the relevant Market, the Clearing Rules and where relevant, the Settlement Rules;
 - (ii) the customs and usages of the relevant Market; and
 - (iii) the correction of errors and omissions; and
- (b) subject to subrule (2), notifies the client as soon as practicable:
 - (i) if the Market Participant entered into the client's Market transaction as Principal; that the Market Participant entered into the Market transaction as Principal; and
 - (ii) if the client's Market transaction was executed as a Crossing, the execution code of the execution venue for the Crossing.

(2) A Market Participant does not have to give the notifications in paragraph (1)(b) to a client if:

- (a) the client has agreed not to receive such notifications; or
- (b) the Market transaction is in respect of a financial product which is a Derivatives Market Contract.

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Part 6.2 Pre-Trade Information—Exceptions

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6.2.3 Exception—Trades with Price Improvement

- (1) In these Rules, a transaction is a *Trade with Price Improvement* where:
- (a) the transaction is executed at a price per Relevant Product which is:
 - (i) higher than the Best Available Bid and lower than the Best Available Offer for the Relevant Product by one or more Price Steps; or
 - (ii) at the Best Mid-Point;
 - (b) if the transaction is entered into other than by matching of Orders on an Order Book, the Relevant Participant acts:
 - (i) on behalf of a buying or selling client on one side of that transaction and on behalf of one or more clients on the other side;
 - (ii) on behalf of one or more buying or selling clients on one side of that transaction and as Principal on the other side; or
 - (iii) on behalf of a buying or selling client (*first client*) on one side of that transaction and on the other side on behalf of one or more clients and as Principal; and
 - (c) the consideration for the transaction is greater than \$0.
- (2) For the purposes of this Rule, the Best Mid-Point is not limited to standard Price Steps for the Relevant Product.

Part 7.4 Requirement to record and provide Regulatory Data

7.4.4 Regulatory Data

- (1) In these Rules, *Regulatory Data* means:
- (a) in relation to a Trade Report, the information set out in items 1 to 5 of the following table; and
 - (b) in relation to an order transmitted to an Order Book and any transaction resulting from that order, the information set out in items 2 to 5 of the following table.
- (2) The information in items 3, 4 and 5 of the following table does not need to be provided by a Participant if the Participant has taken all reasonable steps to determine the information and is unable to do so.
- (3) ASIC may determine in writing format or content requirements for a code, notation or number referred to in the following table.

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(4) Participants and Market operators must provide or record Regulatory Data in orders, transactions and Trade Reports in accordance with requirements notified by ASIC under subrule (3) within the timeframe specified in the notification, if the timeframe specified in the notification is reasonable.

(5) Where a Participant provides a notation, code or number to identify information set out in items 1 to 5 of the following table in an Order or Trade Report, it must take all reasonable steps to consistently provide the same code, notation or number to identify the same information in subsequent orders or Trade Reports.

Item	Label	Regulatory Data
1	Execution venue	A code identifying the Market, Crossing System or other facility on which the orders were matched or the transaction was executed
2	Capacity of Participant	For each side (buy and/or sell) of the order or transaction on which the Participant is required to comply with subrule 7.4.2(1) or (2), a notation to identify whether the Principal is acting: <ul style="list-style-type: none"> (a) as Principal; (b) as agent for a client; or (c) as both Principal and agent for a client, in relation to the order or transaction
3	Origin of Order or transaction	For each side (buy and/or sell) of the order or transaction on which the Participant acts as agent for a client, a unique notation, code or number used by the Participant to identify the person on whose instructions the Order is submitted or transaction was executed
4	Intermediary ID	For each side (buy and/or sell) of the order or transaction on which: <ul style="list-style-type: none"> (a) the Participant acts as agent for an AOP Client that is an AFSL holder; and (b) the Participant has an arrangement with the AFSL holder under which the AFSL holder is permitted to submit Trading Messages into the Participant's system as intermediary for its own clients, the AFSL number of the AFSL holder
5	Directed wholesale indicator	For each side (buy and/or sell) of the order or transaction on which: <ul style="list-style-type: none"> (a) the Participant acts as agent for an AOP Client that is a wholesale client; and (b) the Participant has an arrangement with the wholesale client under which the wholesale client submits Trading Messages into the Participant's system with non-discretionary execution and routing instructions, a unique notation or code to indicate this

Note: Instruments made under subrule (3) are available on the Federal Register of Legislation. The register may be accessed at www.legislation.gov.au.

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