



**ASIC**

Australian Securities & Investments Commission

# **ASIC Market Integrity Rules (SIM VSE Market) 2010**

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# Chapter 1: Introduction

## Part 1.1 Preliminary

### 1.1.1 Enabling legislation

ASIC makes this instrument under subsection 798G(1) of the Corporations Act.

### 1.1.2 Title

This instrument is *ASIC Market Integrity Rules (SIM VSE Market) 2010*.

### 1.1.3 Commencement

This instrument commences on the later of:

- (a) the day the instrument is registered under the *Legislative Instruments Act 2003*; and
- (b) the commencement of Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010*.

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/>.

### 1.1.4 Scope of these Rules

These Rules apply to:

- (a) the activities or conduct of the Market;
- (b) the activities or conduct of persons in relation to the Market;
- (c) the activities or conduct of persons in relation to financial products traded on the Market.

Note: There is no penalty for this Rule.

### 1.1.5 Entities that must comply with these Rules

The following entities must comply with these Rules:

- (a) the Market Operator;
- (b) Market Participants; and
- (c) Other Regulated Entities;

as specified in each Rule.

Note: There is no penalty for this Rule.

### 1.1.6 Conduct by officers, employees or agents

In these Rules, conduct engaged in on behalf of a person:

- (a) by an officer, Employee, or other agent of the person, and whether or not within the scope of the actual or apparent authority of the officer, Employee, or other agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an officer, Employee, or other agent of the person, and whether or not the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, Employee, or other agent,

is deemed to have been engaged in by the person.

Note: There is no penalty for this Rule.

### 1.1.7 State of mind of a person

(1) If for the purposes of these Rules in respect of conduct engaged in by a person, it is necessary to establish the state of mind of the person, it is sufficient to show that an officer, Employee, or other agent of the person, being an officer, Employee, or other agent by whom the conduct was engaged in and whether or not the conduct was within the scope of the actual or apparent authority of that officer, Employee, or other agent, had that state of mind.

(2) In subrule (1), a reference to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

Note: There is no penalty for this Rule.

## Part 1.2 Waivers

### 1.2.1 Waiver of Rules

(1) ASIC may provide a waiver from all or any of these Rules to an entity.

(2) A waiver may be given subject to conditions.

(3) A waiver, and an application for a waiver, must be in writing.

(4) In this Part 1.2 "waiver" means a waiver under this Rule 1.2.1.

Note: There is no penalty for this Rule.

### 1.2.2 Compliance with conditions

Failure to comply with a condition imposed under Rule 1.2.1 is a contravention of this Rule.

Maximum penalty: \$1,000,000

### 1.2.3 Period during which relief applies

ASIC may specify that a waiver applies for a specified period.

Note: There is no penalty for this Rule.

### 1.2.4 Register

(1) ASIC may establish and maintain a register for recording details of relief granted under Rule 1.2.1 and may enter the following details in the register:

- (a) the date that the relief takes effect;
- (b) the person or class of person relieved from the obligation;
- (c) the provision to which the relief applies;
- (d) brief reasons for the relief; and
- (e) any conditions that apply to the relief.

(2) ASIC may publish the register referred to in subrule (1).

Note: There is no penalty for this Rule.

## Part 1.3 Notice, notification and service of documents

### 1.3.1 Market Participant to have email system

A Market Participant must acquire and maintain an operating email system for the purposes of receiving notices under these Rules.

Note: There is no penalty for this Rule.

### 1.3.2 Methods of giving notice in writing

Unless otherwise specified in a Rule, ASIC may give notice under these Rules by any of the following methods:

- (a) delivering it to the recipient personally;
- (b) leaving it at or by sending it by courier or post to the address of the recipient last notified to ASIC;
- (c) sending it by facsimile to the recipient's facsimile number last notified to ASIC;
- (d) a circular or bulletin addressed to a class of persons and delivered or communicated by any means permitted under this Rule;
- (e) specific email by any method which identifies a person or person's title as addressee and no notice of non-delivery has been received;
- (f) broadcast email by any method which identifies the addressee and which, having regard to all the relevant circumstances at the time, was as reliable as appropriate for the purposes for which the information was communicated.

Note: There is no penalty for this Rule.

## Part 1.4 Interpretation

### 1.4.1 References to time

In these Rules a reference to time is to the time in Sydney, Australia.

Note: There is no penalty for this Rule.

### 1.4.2 Words and expressions defined in the Corporations Act

Words and expressions defined in the Corporations Act will unless otherwise defined or specified in these Rules or the contrary intention appears, have the same meaning in these Rules.

Note: There is no penalty for this Rule.

### 1.4.3 Definitions

**“As Principal”** means dealing in Securities on behalf of a Prescribed Person.

**“AFSL”** means an Australian financial services licence granted under section 913B of the Corporations Act.

**“Approved Representative”** means an authorised representative or Employee of a Market Participant who holds a written notice from the Market Participant authorising them to act for or by arrangement in connection with a Securities business carried on by the Market Participant and who is registered as an approved representative by the Market Operator.

**“ASIC”** means the Australian Securities and Investments Commission.

**“Associate”** includes a Prescribed Person.

**“Authorised Trading Representative”** means a natural person appointed by a Market Participant under Part 5.5 of these Rules.

**“Bid”** means a price and quantity of Securities to be purchased.

**“Business Day”** means Monday to Friday inclusive, except New Year’s Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and any other day that the Market Operator notifies Market Participants is not a business day.

**“Corporations Act”** means the *Corporations Act 2001* (Cth).

**“Employee”** of a Market Participant includes an independent contractor who acts for or by arrangement with a Market Participant in the conduct of its Securities business.

**“Entity”** means an entity that has applied for admission to, or is admitted to, the Official List of the Market.

**“Family Company”** in relation to a person, means a corporation controlled by the person or the Immediate Family of the person.

**“Family Trust”** in relation to a person, means a trust in which the person or the Immediate Family of the person is the only or major beneficiary.

**“Immediate Family”** in relation to a person means the person’s spouse and any non adult children.

**“Market”** means the market operated by the Market Operator under *Australian Market Licence (SIM Venture Securities Exchange Ltd) 2002*.

**“Market Operator”** means SIM VSE.

**“Market Participant”** means a participant in the Market admitted under the Market Operating Rules.

**“Offer”** means a price and quantity of Securities to be sold.

**“Official List”** means the list of entities that have been admitted and not removed from listing on the Market.

**“Other Regulated Entities”** means entities prescribed by regulations made for the purposes of paragraph 798H(1)(c) of the Corporations Act, that must comply with these Rules.

**“Person”** includes any corporation or association or body or persons, whether corporate or unincorporated.

**“Prescribed Person”** in relation to a Market Participant means:

- (a) in the case of a corporate Market Participant, a director, company secretary, other officer, employee or consultant of the Market Participant;
- (b) in the case of a natural person Market Participant, an Employee or consultant of the Market Participant;
- (c) Immediate Family of any of the persons referred to in paragraphs (a) and (b);
- (d) Family Companies or Family Trusts of any of the persons referred to in paragraphs (a), (b) and (c);
- (e) in the case of a corporate Market Participant, a Substantial Shareholder in the Market Participant.

**“Rules”** means these market integrity rules.

**“Securities”** has the meaning given by subsection 92(1) of the Corporations Act.

**“SIM VSE”** means SIM Venture Securities Exchange Ltd (ACN 087 708 898).

**“Substantial Shareholder”** means a person who has a substantial holding within the meaning of Part 6C.1 of the Corporations Act.

**“Transaction”** means a transaction or trade that results from the process of matching bids and offers.

**“Takeover”** means a Takeover Offer or a Takeover Announcement.

**“Takeover Announcement”** means a takeover announcement under the Corporations Act.

**“Takeover Offer”** means a takeover offer under the Corporations Act.

**“Underwriting”** includes sub-underwriting.

## Chapter 2: The Market Participants

### Part 2.1 Good Character

#### 2.1.1 Good Character Requirement for companies

A Market Participant which is a company must ensure that each director and each Person who is a Substantial Shareholder of the Market Participant or its holding company is of good character and high business integrity.

Maximum penalty: \$1,000,000

#### 2.1.2 Market Participants which are natural persons

A Market Participant which is a natural person:

- (a) must ensure they are capable of carrying out their obligations under these Rules efficiently, honestly and fairly; and
- (b) must be of good character and high business integrity.

Maximum penalty: \$1,000,000

#### 2.1.3 Good Character Requirements for natural persons

For the purpose of determining if a director or a Person is of good character under this Part 2.1:

- (a) any conviction of a director or a Person for any offence at any time (other than a traffic offence) and any adverse mention of the person at any time in a report made by or at the request of any government or governmental authority or agency should be taken into account; and
- (b) if a director or a Person who has been prohibited under the Corporations Act from being a director or promoter of, or being in any way concerned in or taking part in the management of a corporation this should be taken into account.

Note: There is no penalty for this Rule.

## Chapter 3: Financial records and arrangements

### Part 3.1 Trust account

#### 3.1.1 Trust account requirement

A Market Participant must maintain at least one trust account in accordance with Chapter 7 of the Corporations Act.

Maximum penalty: \$1,000,000

#### 3.1.2 Requirements for deposits and withdrawals

All deposits and withdrawals of funds from a trust account maintained by a Market Participant must be made in accordance with Chapter 7 of the Corporations Act.

Maximum penalty: \$1,000,000

#### 3.1.3 Requirements for funds received out-of-hours

All funds required to be deposited into a trust account maintained by a Market Participant and received by the Market Participant after bank trading hours must be paid into the trust account on the first bank trading day following the day the funds are received.

Maximum penalty: \$1,000,000

### Part 3.2 Record Keeping—Trust account schedule

#### 3.2.1 Trust account reconciliation requirement

On the first Business Day of each week a Market Participant must reconcile the balance held in the Market Participant's trust account on the last Business Day of the preceding week with the corresponding balance in the Market Participant's accounting records.

Maximum penalty: \$1,000,000

#### 3.2.2 Requirement to notify ASIC if reconciliation not completed

If a Market Participant fails to carry out a reconciliation as required by Rule 3.2.1 during any week they must immediately notify ASIC.

Maximum penalty: \$100,000

### 3.2.3 Trust account schedule requirements

Within five (5) Business Days of 31 March, 30 June, 30 September and 31 December in each year a Market Participant must prepare, or cause to be prepared, a schedule showing the respective amounts held in the Market Participant's trust account on behalf of clients together with the name of the particular client in relation to each amount as at the above dates.

Maximum penalty: \$1,000,000

## Part 3.3 Underwriting register

### 3.3.1 Underwriting register information

A Market Participant that participates in Underwriting activities must maintain a register containing the following information in relation to each Underwriting agreement entered into by the Market Participant:

- (a) the number of Securities covered by the Underwriting agreement;
- (b) the gross amount the Market Participant is liable for under the Underwriting agreement;
- (c) the dates of commencement, termination and/or crystallisation of the Market Participant's Underwriting obligations under the Underwriting agreement; and
- (d) the number of Securities disposed of or allocated to sub underwriters by the Market Participant during the period of the Underwriting agreement.

Maximum penalty: \$100,000

## Chapter 4: Trading requirements

### Part 4.1 Market Participant acting As Principal

#### 4.1.1 Requirement to maintain a register

A Market Participant must keep a register of Prescribed Persons.

Maximum penalty: \$100,000

### Part 4.2 Prohibition on advice to Client

#### 4.2.1 Client and Chinese Wall definition

For the purposes of this Part 4.2:

- (a) “**Client**” includes a shareholder in a Market Participant; and
- (b) “**Chinese Walls**” means an arrangement of the type described in sections 1043F and 1043G of the Corporations Act.

Note: There is no penalty for this Rule.

#### 4.2.2 Non disclosure requirement

Subject to Rules 4.2.3 and 4.2.4, if as a result of their relationship with a Client, a Market Participant is in possession of information in relation to a security that is not generally available and which would be likely to materially affect the price of the security if the information was generally available, the Market Participant must not give any advice to any other Client of a nature that would damage the interests of either Client.

Maximum penalty: \$1,000,000

#### 4.2.3 Where not regarded as having confidential information

A Market Participant is not regarded as having possession of information described in Rule 4.2.2 if:

- (a) the Market Participant has Chinese Walls in place; and
- (b) the Person actually advising the Client is not in possession of that information.

Note: There is no penalty for this Rule.

#### 4.2.4 Client information exception

A Market Participant who informs a Client they are precluded from giving the Client advice is not, for the purposes of Rule 4.2.2, regarded as giving advice.

Note: There is no penalty for this Rule.

## Part 4.3 Expenses

### 4.3.1 Expenses incurred in the purchase or sale of Securities

A Market Participant which charges a client for additional expenses incurred in the purchase or sale of Securities must not cover the charge with an increase or decrease in the price for the Securities.

Maximum penalty: \$100,000

## Part 4.4 Nominee shareholdings

### 4.4.1 Nominee company requirement

A Market Participant must not register Securities that are beneficially owned by clients of the Market Participant in a nominee company unless the nominee company:

- (a) is incorporated in Australia;
- (b) is beneficially owned and operated by the Market Participant;
- (c) includes the word “nominee” in its name; and
- (d) includes provisions in its constitution that prohibit the nominee company from beneficially owning any Securities or other property except cash.

Maximum penalty: \$100,000

### 4.4.2 Beneficial ownership requirement

A Market Participant must not register Securities it does not beneficially own in its own name or in the name of any of its Associates.

Maximum penalty: \$100,000

## Part 4.5 Underwriting

### 4.5.1 Disclosure of Underwriting shortfall

Where a Market Participant acquires Securities as an underwriter or sub-underwriter they must not offer such Securities to a client unless:

- (a) they first inform the client of the closing date of the issue or offering of the Securities and the reasons for their acquisition of the Securities; or
- (b) the offer to the client is made more than 90 days after the closing date of the relevant issue or offering of Securities.

Maximum penalty: \$100,000

## Part 4.6 Contract notes

### 4.6.1 Contract notes content

A Market Participant must ensure that a contract note issued to a client states that it is subject to:

- (a) the rules, customs and usages of the Market; and
- (b) the correction of errors and omissions.

Maximum penalty: \$100,000

## Part 4.7 Discretionary accounts

### 4.7.1 Authorisation

A Market Participant must not manage or operate a discretionary account for a client unless the client has provided a written authorisation to the Market Participant setting out the terms and conditions of operation of the discretionary account, including the rates of brokerage which may be charged by the Market Participant.

Maximum penalty: \$100,000

### 4.7.2 Excessive Transactions on discretionary accounts

A Market Participant that manages or operates a discretionary account for a client must not enter into a number of Transactions on behalf of the client which is excessive in the circumstances.

Maximum penalty: \$1,000,000

## Part 4.8 Discretionary account reporting

### 4.8.1 Discretionary account information to clients

A Market Participant that manages or operates a discretionary account on behalf of a client must, if requested by the client, prepare and forward to the client a report on the client's discretionary account made up to the end of each quarter in each year setting out:

- (a) the value of Transactions in Securities entered into on behalf of the client; and
- (b) the total brokerage, commission, management fees and other fees charged to the client.

Maximum penalty: \$100,000

## 4.8.2 Discretionary account report requirement

A Market Participant must forward a report prepared under Rule 4.8.1 to the client within fourteen (14) days of the date to which the report is made up.

Maximum penalty: \$100,000

## 4.8.3 Register

A Market Participant that operates a discretionary account for a client must keep a written register including the following information:

- (a) the date on which the account commenced;
- (b) the name and address of the client;
- (c) the date the client gave the written authorisation referred to in Rule 4.7.1;
- (d) the client's account number or numbers; and
- (e) any qualifications, limitations or other client directions as to the disposition of the discretionary account.

Maximum penalty: \$100,000

## Chapter 5: Market Participant business

### Part 5.1 Carrying on business

#### 5.1.1 Market Participant requirements

A Market Participant:

- (a) must hold an AFSL which authorises the holder to engage in the business of stockbroking; and
- (b) must not carry on business in partnership with any other person.

Maximum penalty: \$1,000,000

### Part 5.2 Approved Representatives

#### 5.2.1 Responsibility for Approved Representatives

A Market Participant is responsible for the conduct of its Approved Representatives under these Rules.

Note: There is no penalty for this Rule.

### Part 5.3 Insurance

#### 5.3.1 Insurance requirement

A Market Participant must:

- (a) take out and maintain in full force and effect at all times insurance policies covering and indemnifying the Market Participant against liability for negligence, errors, omissions, mis statements, statutory warranties and indemnities, civil liability, infidelity of staff and loss, destruction or deprivation of cash, Securities or other documents of title;
- (b) ensure that the insurance obtained under paragraph 5.3.1(a), is of a type and amount that a reasonable stockbroker would regard as adequate having regard to the nature and extent of business carried on by the Market Participant;
- (c) provide ASIC with a copy of the certificate of currency for each such insurance policy within 14 business days of the end of each financial year.

Maximum penalty: \$100,000

### **5.3.2 Notification of claims**

If a Market Participant becomes aware of a claim or potential claim being made against them in relation to any of the matters referred to in paragraph 5.3.1(a), they must immediately notify ASIC of:

- (a) the existence of the claim or potential claim;
- (b) the receipt of a notice from any person of any intention to make a claim; and
- (c) the details of any claim or potential claim.

Maximum penalty: \$100,000

### **5.3.3 Notification of action against the Market Participant**

A Market Participant must notify ASIC by the end of the next Business Day if they are advised by the Market Operator of any action that may be taken against them.

Maximum penalty: \$100,000

## **Part 5.4 Complaints**

### **5.4.1 Records of complaints and responses**

A Market Participant must maintain records of complaints and responses including:

- (a) copies of any written complaints received from clients;
- (b) records of verbal complaints received from clients; and
- (c) copies of the Market Participant's responses to such complaints.

Maximum penalty: \$1,000,000

### **5.4.2 Records of complaints and responses**

A Market Participant must maintain the records of complaints and responses referred to in Rule 5.4.1 for a period of not less than five years from the date of the last correspondence in relation to the relevant complaint.

Maximum penalty: \$1,000,000

## **Part 5.5 Authorised Trading Representatives**

### **5.5.1 Requirement to appoint an Authorised Trading Representative**

A Market Participant must appoint one or more Authorised Trading Representatives to deal on the Market on their behalf.

Maximum penalty: \$1,000,000

## 5.5.2 Requirements in relation to an Authorised Trading Representative

A Market Participant must ensure its Authorised Trading Representative:

- (a) is at least 20 years of age and has been engaged in the securities industry for a period of not less than nine months;
- (b) holds a written notice issued by the Market Participant that allows the person to deal in securities;
- (c) has not less than one month's supervised training on the rules and procedures of the Market; and
- (d) has knowledge of the rules and procedures of the Market and all relevant provisions of the Corporations Act.

Maximum penalty: \$1,000,000

## 5.5.3 Responsibility of Market Participants for Authorised Trading Representatives

A Market Participant is responsible for all Transactions entered into by its Authorised Trading Representatives.

Note: There is no penalty for this Rule.

# Part 5.6 Trading Responsibilities

## 5.6.1 Market Participant responsibility

A Market Participant is responsible for the accuracy of details of all Bids and Offers made through the Market Participant's systems.

Note: There is no penalty for this Rule.

## 5.6.2 Identification processes requirements

A Market Participant must have adequate arrangements in place so the Market Participant can at all times determine the origin of all orders, Bid and Offers, including:

- (a) the different stages of processing each order;
- (b) the identity and capacity of the Person placing the order; and
- (c) whether the order was submitted As Principal or for a client.

Maximum penalty: \$1,000,000

## **Part 5.7 Orderly Market**

### **5.7.1 Responsibility for conduct of orderly market**

A Market Participant must ensure that neither it nor its Authorised Trading Representatives do anything which is inconsistent with the conduct of an orderly market.

Maximum penalty: \$1,000,000

### **5.7.2 Prohibition on false or misleading trading**

A Market Participant must not make Bids and/or Offers for Securities with the intention of creating a false or misleading appearance with respect to the market for, or the price of, any Securities.

Maximum penalty: \$1,000,000

### **5.7.3 Change of beneficial ownership requirement**

A Market Participant must not knowingly engage in a Transaction or give an order for the purchase or sale of securities, the execution of which would involve no change of beneficial ownership.

Maximum penalty: \$1,000,000