



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 118

Responsible handling of rumours

September 2009

About this paper

This consultation paper proposes some basic principles for the handling of rumours, whether positive or negative. It sets out ASIC's proposed guidelines to assist Australian financial services (AFS) licensees when they are the recipients of rumours.

We are seeking views from the market, including AFS licensees (in particular market participants and those who deal in or advise on securities) on our proposed approach.

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 paper was issued on 15 September 2009 and is based on the Corporations Act as at 15 September 2009.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

Submissions on any issues relating to our proposals, and which are not the subject of specific questions in this Consultation Paper, are also welcome.

Your comments will help us develop our policy on how participants in the Australian financial markets handle the receipt and passing on of rumours. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Business Cost Calculator Report and/or a Regulation Impact Statement: see Section D, 'Regulatory and financial impact'.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by Monday 9 November 2009 to:

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What will happen next?

Stage 1	15 September 2009	ASIC consultation paper released
Stage 2	9 November 2009	Comments due on the consultation paper
Stage 3	ASIC to publish its final position	

A Background to the proposals

Key points

Confidence in the integrity of the markets may be undermined if participants believe security prices are improperly influenced by rumours.

Rumours, and appropriate treatment of them, have been the subject of recent regulatory focus in Australia and overseas.

In many instances, spreading rumours falls short of breaching the current market misconduct prohibitions, however the market is still compromised.

ASIC intends to develop guidelines for the responsible handling of rumours by holders of AFS licences. The principles apply to both positive and negative rumours. We consider that AFS licensees need to comply with these guidelines to be sure that they are meeting their obligations to act efficiently, honestly and fairly. The guidelines will also assist AFS licensees to comply with financial services laws generally, including the obligations to have adequate risk management systems and to ensure their representatives are adequately trained and competent.

While this paper focuses on AFS licensees, it may also be relevant to, and inform discussion by, other groups that communicate to the market.

- 1 In an efficient market, participants rely on the flow of reliable information to establish prices for securities. The price of a security should reflect all facts available to the market and all opinions of market participants as to value, based on their understanding of those publicly available facts.
- 2 A rumour can damage the market by creating inefficiencies in this pricing mechanism. Rumours may introduce information into the market that distorts the market by suggesting there is relevant information affecting price that is not in the public domain.
- 3 Rumours therefore undermine confidence in the integrity of markets and, in a volatile market, the dissemination of rumours has the potential to further destabilise markets.
- 4 ASIC is proposing a set of guidelines that will assist firms in exercising judgement about the responsible handling of rumours. These principles stem from the obligations imposed on an AFS licensee to do all things necessary to ensure that the financial services covered by their licence are provided efficiently, honestly and fairly, and to have adequate risk management systems and to ensure their representatives are adequately trained and competent. The guidelines will also assist AFS licensees comply with financial services laws generally.

- 5 These guidelines apply to rumours that are both positive and negative in that they may cause the value of a security to be higher or lower than it should be in the absence of the rumour.

Market events of 2008

Project Mint

- 6 In March 2008, ASIC formed Project Mint following concerns that there was an increase in false rumours associated with short selling. ASIC reminded the market of the laws that restrict this type of conduct: Media Release (MR 08-47) *False or misleading rumours*. On 11 March ASIC advised it had started formally seeking information about trading in some securities: Media Release (MR 08-48) *ASIC seeks information on trading activities in heavily sold securities*. In the initial stages of the Project ASIC's focus was principally investigative—receiving and reviewing considerable amounts of trading data.
- 7 Project Mint has progressed from an enforcement activity to broader work designed to improve market conduct practices. This consultation paper is concerned with the conduct of AFS licensees. It will apply to stockbrokers, investment advisers and also investment institutions. ASIC has a separate project reviewing practices for the handling of confidential information by listed entities and their advisers.

CAMAC review

- 8 In November 2008, the Corporations and Markets Advisory Committee (CAMAC) was requested by the then Minister of Superannuation and Corporate Law, the Hon. Senator Nick Sherry, to conduct a review of a range of market practices with a view to further enhancing the integrity and transparency of the Australian market. One of the practices reviewed included the spreading of 'false or misleading information in respect of certain securities in order to take advantage of artificial changes in their price'—referred to as 'rumourtrage'.
- 9 The report, *Aspects of Market Integrity* (CAMAC Report), was released on 30 July 2009. The report examined the regulation of rumours in some overseas jurisdictions and considered whether the current regulatory framework in Australia required amendment to deal with the spreading of rumours. CAMAC recommended a number of measures to assist in enforcing the law and to prevent and detect the spreading of rumours. In this regard, CAMAC was supportive of ASIC's proposal to provide guidelines for the market on how to respond to market rumours.

Overseas developments

- 10 Some overseas jurisdictions are also reviewing their approach to the treatment of rumours. This section summarises developments in the USA and UK.

United States—Financial Industry Regulatory Authority

- 11 In June 2009, the US Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 09-29 ‘Origination and circulation of rumours’ seeking comments on a proposed rule relating to the origination and circulation of rumours (FINRA Rule 2030). This rule forms part of FINRA’s current work on developing a new consolidated rulebook.
- 12 FINRA had sought comments on an earlier version of the proposed rule in December 2008, however substantial changes were made following that consultation.
- 13 The current version of FINRA Rule 2030 proposes a general prohibition on the origination or circulation of rumours and retains an amended reporting requirement for firms that are the recipients of rumours. Proposed FINRA Rule 2030 further requires firms to report promptly to FINRA any circumstance which reasonably would lead the firm to believe that any rumour covered by the rule might have been originated or circulated. The proposed Supplementary Material to the rule includes a definition of ‘rumour’ for the purposes of FINRA Rule 2030. The rule specifies three forms of permissible communications as exceptions to the general prohibition:
- (a) rumours that have been published by widely circulated public media provided the source of the rumour and its unsubstantiated nature are disclosed;
 - (b) discussions of rumours among market participants when necessary to explain market or trading conditions and one’s view of the validity of the information where possible, without embellishment and presenting the information in as neutral and balanced a way as practicable under the circumstances;
 - (c) internal firm discussions undertaken solely for the purpose of verifying or inquiring into the truthfulness or accuracy of a rumour provided the unsubstantiated nature of the information and, where possible, the source of the information are disclosed.
- 14 FINRA also proposed requiring a member firm to adopt written policies and supervisory procedures to identify and address the circulation of rumours as follows:

.04 Written Policies and Procedures. Members must maintain adequate written policies and supervisory procedures reasonably designed to identify and address the circulation of rumours. Members must also develop and document appropriate training policies and programs reasonably designed to ensure that associated persons of the member comply with their responsibilities and obligations surrounding the origination and circulation of rumours. Members must clearly identify who is responsible for issuing guidance when responding to rumours, including pertinent escalation procedures and reporting obligations.

- 15 Consultation on this version of FINRA Rule 2030 concluded on 16 July 2009. The outcome of the consultation was not known as at the date of this publication. A copy of FINRA Regulatory Notice 09-29 ‘Origination and circulation of rumours’ is available at www.finra.org.

United Kingdom—Financial Services Authority

- 16 In November 2008, the UK Financial Services Authority (FSA) published the results of its thematic review of market practices regarding dissemination of rumours in *Market Watch* (Issue No. 30). In addition to providing examples of good and bad practices, this paper outlines the FSA’s views on industry best practices for handling rumours. The three key elements of the FSA’s industry best practices were:
- (a) the adoption of relevant formal guidelines and policies on handling rumours;
 - (b) the provision of adequate training to employees; and
 - (c) adequate monitoring of firms’ communications and trading.
- 17 A copy of the Summary page of the review is attached at Appendix 1. A full copy of the report is available at www.fsa.gov.au.

What are the legislative requirements in Australia?

- 18 The *Corporations Act 2001* (Corporations Act) contains provisions aimed at addressing market misconduct and other forms of prohibited conduct relating to financial products and services. Each of s1041E to 1041G is important in ensuring that false or misleading statements do not affect market integrity. Breaches of these provisions give rise to criminal offences. Section 1041H, which imposes civil liability only, also plays a role in this respect.
- 19 Table 1 summarises the current prohibitions under the Corporations Act.

Table 1: Market misconduct provisions

Corporations Act reference	Prohibition
s1041E	False or misleading statements
s1041F	Inducing persons to deal
s1041G	Dishonest conduct
s1041H	Misleading or deceptive conduct

20 Of particular relevance to handling rumours is s1041E which prohibits the making or disseminating of false or misleading statements. This provision applies irrespective of whether or not the persons are AFS licensees, their employees or representatives.

21 In some circumstances the communication of rumours could breach the prohibitions on communicating inside information (s1043A) and trading following communication of rumours could breach the prohibitions on insider trading (s1043A), possibly the prohibition against market manipulation (s1041A) and also the general prohibition against misleading or deceptive conduct in trade or commerce (s12DA of the *Australian Securities and Investments Commission Act 2001*).

Proposals to develop guidelines

22 Although the Corporations Act contains some prohibitions on market misconduct that may apply to conduct regarding rumours, in many instances conduct may fall short of satisfying those legal requirements but may still have the effect of distorting the market and damaging market integrity.

23 As mentioned in our submissions to the CAMAC Report, we are proposing to develop guidelines to assist market participants who are the originators or recipients of rumours. The discussion in this paper focuses on a set of principles and procedures to be applied by AFS licensees in the handling of rumours.

24 ASIC has developed and is consulting on these guidelines to assist firms in exercising judgement about the responsible handling of rumours.

25 In developing these guidelines we have taken into account the approach of the FSA in the United Kingdom and of FINRA in the USA.

26 It is ASIC's view that compliance with these proposals is necessary for AFS licensees to be sure that they are complying with their obligations to act efficiently, honestly and fairly, to have adequate risk management systems and to ensure their representatives are adequately trained and competent:

s912A. Compliance with the guidelines will also assist AFS licensees comply with financial services laws generally.

Media and associated groups

- 27 We recognise the media may play a role in the dissemination of rumours in the market. The provisions of s1041E, 1041F, 1041H and s1043(2) may apply to the media, though s1041G and, more particularly, s912A do not. This is consistent with the general scheme of the Corporations Act that deals with the provision of financial services and market integrity and which imposes more rigorous standards on AFS licensees than on other participants in the financial markets.
- 28 The purpose of this paper is to consult on and encourage adoption of relevant guidelines by AFS licensees, their representatives and staff. Some of this paper's discussion may be relevant to, and inform discussion by, other groups that communicate to the market, such as the media, investor relations and public relations advisers, and industry commentators. ASIC would encourage discussion in these groups about their practices and whether those practices should be reviewed consistent with the principles in this paper.

B What is a rumour?

Key points

This section of the consultation paper seeks feedback on our approach to responsible handling of rumours by AFS licensees.

We propose to define a rumour as a statement containing ‘unverified information, purporting to be fact, that a reasonable person would expect to have a material effect on the price of a security if it were widely circulated’.

Rumours are distinguished from opinions. Opinions should have a demonstrable and rational basis and be clearly stated as the opinion of the author.

- 29 The term ‘rumour’ is not defined in the Corporations Act. The term ‘rumour’ needs to be defined in order that rumours may be identified and treated by recipients accordingly.

How a ‘rumour’ is defined overseas

- 30 In forming the proposed definition of ‘rumour’, we have considered the approach taken in some overseas jurisdictions: see Table 2.

Table 2: Rumours defined

Jurisdiction	Definition	Source
United States (FINRA)	A false or misleading statement or a statement without a reasonable basis	Proposed FINRA Rule 2030
United Kingdom (FSA)	Information that is circulated purporting to be fact but which has not yet been verified	FSA’s <i>Market Watch</i> publication (Issue No. 30)

How we propose to define the term ‘rumour’

Proposal

- B1 We propose to define the term ‘rumour’ as a statement containing ‘unverified information, purporting to be fact, that a reasonable person would expect to have a material effect on the price of a security if it were widely circulated’.

For this purpose ‘a security’ includes securities, derivatives, interests in a managed investment scheme, debentures, stocks or bonds issued or proposed to be issued by a government, certain superannuation

products, and any other financial products that can be traded on a financial market.

Your feedback

- B1Q1 Do you agree with this definition of rumour in the context of its proposed application in our guidance? If not, why not?
- B1Q2 Are there particular aspects of this definition that you feel require particular guidance?
- B1Q3 Do you think there should be a specific carve-out for opinions? If so, how would you deal with an opinion where the speaker has no knowledge on which to base an opinion?

Rationale

A ‘security’ is a financial product noted in s1042A

31 The insider trading prohibition applies to securities, derivatives, interests in a managed investment scheme, debentures, stocks or bonds issued or proposed to be issued by a government, certain superannuation products, and any other financial products that can be traded on a financial market: s1042A of the Corporations Act.

32 We have adopted the same coverage for the purposes of this consultation paper when referring to a ‘security’.

Unverified information, purporting to be fact

33 ‘Information’ may be conveyed in verbal or written form.

34 In the proposed definition, we use the term ‘unverified’. This contrasts with the approach taken by FINRA, which requires the statement to be ‘false or misleading’. Information that is unverified (and fulfils the other aspects of our definition) may still have the effect of distorting the market price of a security, even though the information is not altogether false or misleading.

35 We use the phrase ‘purporting to be fact’ because rumours cause particular damage to the market when people believe them to be true. This phrase also distinguishes a rumour from an opinion. Opinions do not purport to be fact but express the view of the author. The phrase excludes from the definition of rumour bona fide speculation or discussion of opinions which is an important part of price discovery in the market. See our further discussion of opinions at paragraphs 43–45.

Note: Presenting information as fact when it is unverified may, in itself, amount to misleading or deceptive conduct. Further, if a statement is about a future matter it is taken to be misleading unless there are reasonable grounds to make it: s769C.

Material effect

- 36 ‘Material effect’ is defined in the Corporations Act for the purposes of the insider trading prohibitions. In that context, ‘a reasonable person would be taken to expect information to have a *material effect* on the price or value of particular ... financial products if (and only if) the information would, or would be likely to, influence persons who commonly acquire ... financial products in deciding whether or not to acquire or dispose of the first-mentioned financial products’: see s1042D.

Note: Section 1042D has been judicially considered. See *R v Hannes* (2000) 158 FLR 359 and *R v Rivkin* (2004) 59 NSWLR 284.

- 37 We consider this definition is also appropriate for the purposes of defining a rumour. We consider that licensees will need to form a view on whether the existence of the rumour itself, if it were to be widely circulated, would have a material effect on price, as well as whether the content of the rumour, if true, would have that effect. There may be instances where the fact there is a rumour circulating about an entity has a material effect on price, even though the content of the rumour would not appear to be price material in a wholly rational market. This is particularly so in a falling market where participants seek to profit from the short term opportunities available in a volatile market.

- 38 The definition is also wide enough to encompass a statement about the existence of rumour that includes the purported facts that are the subject of the rumour (e.g. there is a rumour that X has a margin call at \$Y). The fact there is a rumour circulating to that effect may well be true and readily capable of verification, but the factual issue of the existence of the loan may be neither true nor able to be verified. The whole statement should be considered as a rumour for the purpose of the guidelines.

Widely circulated

- 39 The proposed definition does not require the information in the statement to be in wide circulation but uses the concept to assist in determining whether a reasonable person would expect the statement or the information in the statement to have a material effect on the price of a security.
- 40 Determining when a rumour is in ‘wide circulation’ is, however, relevant to the proposed assessment of whether to pass on a rumour: see our proposals below at C2. An example of a rumour that is ‘widely circulated’ would be one published in a national or metropolitan daily newspaper or on radio. A rumour might also be in ‘wide circulation’ throughout a market without having been broadcast or published by the mass media.

Improper influence on price

- 41 We considered, but have not proposed adopting, the definition of the term ‘rumour’ as ‘information that could improperly influence the market price of a security’. This definition was originally proposed by FINRA in December 2008, but not included in the June 2009 release.
- 42 The difficulty with this option is that the expression ‘improperly influence’ is of uncertain ambit for market participants and regulators.

Opinions

- 43 We do not want our proposed approach to constrain participants from forming, discussing or disseminating bona fide views or opinions about a security.
- 44 We believe that rumours are distinguishable from opinions. An opinion is a view about an entity derived from actual information provided by the entity or others, and may include matters of supposition derived from analysis of that information. However, opinions should have a demonstrable and rational basis and be clearly stated as the opinion of the author.

Note: Examples of an opinion include research or dealer notes.

- 45 We recognise there may be circumstances where there is only a fine distinction between a rumour and an opinion. However ASIC believes market participants, dealers and advisors should be able, through the exercise of professional judgement, to determine whether information they receive is a bona fide opinion about a security or is simply a rumour expressed as ‘opinion’ to avoid the restrictions on communicating rumours. In our view this latter example should be dealt with as a rumour.

C How to deal with rumours

Key points

We believe that the financial services industry should adopt and uphold standards for dealing with rumours.

The proposed principles and attendant policies and procedures are aimed at protecting market integrity. This includes a prohibition on the origination of rumours and limitations on when rumours may be communicated.

Training and compliance monitoring are essential support to these policies and procedures.

Principles for dealing with rumours

Proposal

- c1 We propose that the following high level principles should apply:
- (a) AFS licensees should have in place written policies and procedures which provide clear guidance to employees and representatives about how to deal with rumours. Those policies and procedures would stipulate that:
 - (i) AFS licensees, their employees and representatives should not under any circumstances be involved in the origination of a rumour; and
 - (ii) a rumour may only be communicated if it is already 'widely circulated' and it is reasonable to pass it on, given all the circumstances (see Table 3).
 - (b) AFS licensees should ensure employees and representatives receive formal training in the policies and procedures applicable to rumours.
 - (c) AFS licensees should have arrangements to monitor compliance by employees and representatives with the policies and procedures.

Your feedback

C1Q1 Do you agree with these proposed principles? If not, why not?

C1Q2 Are there any other principles that should be included?

C1Q3 What additional costs might be associated with implementing these principles? Can you quantify such costs?

Rationale

- 46 The proposed principles stem from the obligations imposed on AFS licensees to do all things necessary to ensure that the financial services covered by their licence are provided efficiently, honestly and fairly (s912A(1)(a)), that they and their representatives comply with financial services laws (s912A(1)(c) and (ca)), and the obligation to ensure that representatives are adequately trained, and are competent to provide those financial services (s912A(1)(f)).

Policies and procedures

- 47 Policies and procedures should cover origination, receipt and dissemination of rumours both internally and externally. Policies and procedures, as opposed to legislation, allow companies to take into account their own specific circumstances.

Origination

- 48 The origination of rumours should be prohibited.
- 49 We consider that the origination of a rumour is contrary to an AFS licensee's obligation to act efficiently, honestly and fairly. It may also be contrary to s1041E, 1041F, 1041G and 1041H and 1043A.

Training and monitoring compliance

- 50 An essential support to written policies and procedures is educating employees and representatives about them. In order to implement the policies and procedures, AFS licensees should train staff and representatives.
- 51 In addition, we expect AFS licensees to be able to demonstrate compliance with those policies and procedures by, for example, retaining records of attempts made to verify information received that might be classified as a rumour, and conducting monitoring of staff communications from time to time. We also expect AFS licensees to monitor for suspicious trading in circumstances where rumours are known to be circulating.

Policies and procedures

Proposal

- c2 Having regard to the principles above, we propose that AFS licensees should adopt policies and procedures for dealing with rumours. These policies and procedures should cover the following items in Table 3.

Table 3: Proposed rumour-handling policies and procedures for AFS licensees

Prohibition	A prohibition on the origination of rumours.
Guidance	<ul style="list-style-type: none"> • Guidance on the recognition of rumours, including distinguishing a rumour from an opinion. • Guidelines on deciding whether, and in what form, the rumour can be passed on including: <ul style="list-style-type: none"> – a determination as to the extent to which the rumour is already in wide circulation; – a determination as to the impact it may have on the price of a security if it were to be widely circulated; and – a written explanation of the basis on which a reasonable view can be formed that the further dissemination of the rumour is reasonable in all the circumstances (e.g. the dissemination would not unduly distort the market).
Processes	<ul style="list-style-type: none"> • A process for recording, in writing, details of the rumour including: <ul style="list-style-type: none"> – the content of the rumour; – the disseminator (who and where did the rumour come from); – the originator (if known); and – the time and date of receipt. • A process for attempting to verify the rumour with the company concerned (without further dissemination), together with evidence of those attempts. • A process for ensuring any dissemination of a ‘widely circulated’ rumour includes the following information: <ul style="list-style-type: none"> – that the information is an unverified rumour; and – how and where the rumour is in wide circulation.
Procedural requirements	<ul style="list-style-type: none"> • A stipulation that suitably senior representatives of the licensee are required to make decisions in respect of communication of a rumour. • A requirement that rumours that are passed on will not be altered or embellished, but may include bona fide opinion on the accuracy of the rumour. • A requirement that the further communication of a rumour should include reference to any obvious basis for doubting its veracity (e.g. denial by the company). • A requirement that communication of an opinion includes the name of the person whose opinion it is. The opinion must also have a demonstrable and rational basis otherwise it should be treated as a rumour.

Your feedback

C2Q1 Do you agree with the proposed policies and procedures?
If not, why not?

C2Q2 Are there any other policies or procedures that should be included apart from those listed in Table 3?

C2Q3 To what extent do AFS licensees’ current practices reflect these procedures?

C2Q4 What additional costs might be associated with this proposal? Can you quantify such costs?

C2Q5 Do you agree that a process for recording rumours is an important part of the compliance process? Is it an undue cost burden?

Rationale

Prohibition on originating rumours

- 52 The policies and procedures must prohibit the origination of rumours because of the damaging effect a rumour can have on the market.

Recognising and verifying rumours

- 53 In order to deal with rumours appropriately, the policies and procedures should provide guidance to staff and representatives as to what constitutes a rumour. This will necessarily involve a process for verifying the information received and may involve contacting the company that is the subject of the rumour, though this needs to be handled in a way that does not promote further dissemination.
- 54 The policies and procedures should also assist staff to distinguish between a rumour and an opinion.

Retaining a log of rumours

- 55 Retaining a log of rumours received will have the benefit of raising awareness about rumours and encouraging appropriate treatment of those rumours.
- 56 We do not expect the introduction of a log will dramatically change existing practices or impose an unreasonable compliance burden given the definition of rumour we propose. We believe the benefit of raising awareness about the existence and handling of rumours, by keeping a log, will itself assist in containing the damage to market integrity that can be caused by rumours. The log provides a systematic approach to handling rumours and assists ASIC in tracing rumours back through the market to the originators. A log also provides a useful tool for AFS licensees to monitor their employees' and representatives' compliance with their policies and procedures.

Passing on rumours

- 57 We recognise that there will be circumstances where it is reasonable for a rumour to be communicated to another person, within the licensee's office or to its clients.
- 58 We believe that a rumour may be able to be passed on only if it is reasonable to do so given all the circumstances, and that will depend on the reasons why it is passed on.
- 59 Factors that may impact on a determination as to whether or not to pass on a rumour to the market would include: the likely impact of the rumour (e.g. will it generate directional trading?), its plausibility, the opportunity afforded the subject of the rumour to verify it and whether it was denied, the

reliability of the source, any obvious motive in the source to impact the price of the security, and the state of the market in general.

- 60 For example, it may be reasonable to communicate a rumour where a client asks its broker directly to explain particular movements in a particular security and the movement in that security is most plausibly attributed to a widely circulated rumour. However, a determination about the reasonableness of passing on the rumour would also be affected by other circumstances existing at that time. For instance, market volatility may be such that there is a risk that a rumour may be given greater weight than would be the case in a more stable environment, risking further dislocation to the market generally or to the price of the relevant security in particular.
- 61 ASIC recognises, broadly, that there will need to be some discussion within an office to determine whether it is appropriate to communicate the rumour more widely. That discussion should be confined to those who need to know to make that decision. Whether broader communication to the market is reasonable in the circumstances will depend on the rumour itself, its traction in the market, and the condition of the market.
- 62 Principles and policies applying to the passing on of rumours should deal with permissible internal communications for the purpose of verification and/or establishing whether the circumstances warrant the further external distribution of the rumour. Without controls placed on the dissemination of rumours within an organisation, there is a higher risk of unauthorised external communication, internal trading on the rumour and confusion about the status of rumours.
- 63 We do not believe that it is acceptable or reasonable to simply identify a rumour as a rumour and then pass it on without further consideration. This conduct still disseminates the substance of the rumour. While the statement regarding the existence of a rumour may be true (e.g. 'there is market talk that X will do Y'), our concern relates to the conveyance of the unverified information that is the subject of the rumour (i.e. the statement that 'X will do Y').
- 64 Appendix 2 (Table 4) contains some examples and a discussion of some of the issues arising out of those scenarios.

D Regulatory and financial impact

- 65 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:
- (a) ensuring confidence in the integrity of markets; and
 - (b) constraining the formulation, discussion or dissemination of bona fide views or opinions.
- 66 Before settling on a final policy, we will comply with the requirements of the Office of Best Practice Regulation (OBPR) by:
- (a) considering all feasible options;
 - (b) if regulatory options are under consideration, undertaking a preliminary assessment of the impacts of the options on business and individuals or the economy;
 - (c) if our proposed option has more than low impact on business and individuals or the economy, consulting with OBPR to determine the appropriate level of regulatory analysis; and
 - (d) conducting the appropriate level of regulatory analysis, that is, complete a Business Cost Calculator report (BCC report) and/or a Regulation Impact Statement (RIS).
- 67 All BCC reports and RISs are submitted to the OBPR for approval before we make any final decision. Without an approved BCC Report and/or RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 68 To ensure that we are in a position to properly complete any required BCC report or RIS, we ask you to provide us with as much information as you can about:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits,
- of our proposals or any alternative approaches: see ‘The consultation process’ p. 4.

Appendix 1: FSA *Market Watch*, Issue No. 30 (Summary page)

Summary

Industry best practices on handling rumours

There are three key elements of an effective regime to address the issue of handling rumours:

1. Adoption of relevant formal guidelines and policies on handling rumours. Such policies should include:
 - definition (where possible) and most common examples of rumours found in the market;
 - clear prohibition on originating rumours;
 - clear prohibition of spreading rumours about competitors to attract new business and customers;
 - limitations on whom, in what circumstances and with what disclaimers rumours can be passed; and
 - internal procedures that need to be adhered to and compliance / senior management involvement needed (where practical) when acting on the basis of or communicating rumours.
 - a warning that in nervous and volatile markets when unsubstantiated information is more likely to be present, extra caution needs to be taken when handling rumours. Firms may wish to consider adding additional procedures on handling rumours in such cases.

It is particularly important that if rumours are passed on (both inside and outside the firm), they are passed on by ensuring that:

 - the origin of the information is sourced (where possible);
 - the information is clearly stated to be a rumour;
 - no additional credence or embellishment is given to the rumour; and
 - the information is clearly stated to be unsubstantiated/not verified.
2. Provision of adequate training. This can be done in a formalised way through inclusion of modules on handling of rumours in annual market abuse training. Such training can be delivered to groups of employees or on a one-to-one basis. It can include both e-learning modules and case studies based on the most common situations in which staff encounter rumours in their everyday job. Senior management attention should also emphasise the importance of the training to increase/maintain staff awareness and ensure that they have in place ways of monitoring staff non-attendance at such training. Staff need to be reminded about the obligation to comply with rules on handling rumours, particularly in nervous and volatile markets when unsubstantiated information is more likely to be present in the markets.
3. Adequate monitoring of firms' communications and trading. Most common approaches include proactive monitoring of communication (e.g. routine sampling of phone calls, emails, instant messages and Bloomberg messages) and retrospective reviews after suspicious price movements and trades. The FSA should be involved whenever relevant compliance breaches are detected. Encouraging regular interaction with compliance staff can also reduce the risks of mishandling rumours.

This is not FSA guidance.

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Appendix 2: Examples and discussion

Table 4: Examples and discussion of statements that may be rumours

Example statement	Discussion
<p>Example 1: Qualifying a rumour before passing it on</p> <p>‘There is a rumour that XYZ Mining is to raise capital at a 15% discount’</p>	<p>This statement would fall within our definition of a rumour. It is not sufficient to simply label a factual statement as a rumour in order to pass it on. The licensee will need to consider if it is in wide circulation, which will include addressing the likely price impact if it is circulated. It will need to consider how the underlying facts can be verified. It will need to address factors such as its source, likely veracity and the possible impact on the market and on the entity or person concerned.</p> <p>It will also consider the circumstances where the information may be passed on. It may be reasonable to pass a rumour to a client who has a holding in a security and has made an enquiry about a specific transaction in the security, but not reasonable to broadcast the rumour to all clients. If it is approved to be passed on, then the best disclosure would be:</p> <p>‘There is an unverified rumour circulating in [the Sydney institutions/retail brokers/XYZ newsletter] since [date/time] that XYZ Mining is to raise capital. XYZ Mining says [insert]. This rumour could explain the recent price move. Our view on the substance of the rumour is [insert].’</p>
<p>Example 2: ‘Reasonable basis’</p> <p>‘In my opinion X will face a margin call at \$Y’</p>	<p>This is a statement of opinion. If the opinion is genuinely held and has a reasonable basis then it will not fall within our definition of rumour. In this case however it is difficult to see how this statement has a reasonable basis without actual knowledge of the facts. If the originator of this statement would not reasonably be expected to know the facts then the statement may be regarded as a rumour. Obviously, X’s holdings would have to be large to be material.</p>
<p>Example 3: Unverified information purporting to be fact</p> <p>‘The CEO of XYZ Mining has been telling employees that the company’s new lease in West Australia will treble company reserves of gold’</p>	<p>This information is unverified, purporting to be fact, likely to be material and should be regarded as a rumour. The recipient of this rumour should seek verification from the company concerned that the CEO has made that statement to employees. This should be done in a manner that did not further disseminate the rumour.</p> <p>If the company confirmed the statement then the information could be passed on. ASIC would expect the company would have immediately made an announcement and that would be the information circulated by the licensee.</p> <p>If the company denied the rumour, but the licensee determines it is reasonable to pass it on in all the circumstances in accordance with the guidelines, the person should clearly note that the information is unverified and how and where the rumour is in wide circulation. The person must also note the fact that the company has denied the rumour.</p>

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 out a financial services business to provide financial services Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
CAMAC	Corporations and Markets Advisory Committee
CAMAC Report	CAMAC, <i>Aspects of Market Integrity</i> , 30 July 2009
Corporations Act	<i>Corporations Act 2001</i> as amended, including regulations made for the purposes of the Corporations Act
Corporations Regulations	Corporations Regulations 2001
Div 3 (for example)	A division of the Corporations Act (in this example, numbered 3)
financial product	A Div 3 financial product, that is generally a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B) • manages financial risk (see s763C) • makes non-cash payments (see s763D) Note: See Div 3 of Pt 7.1 for the exact definition.
financial service	Has the meaning given in Div 4 of Pt 7.1
FINRA	Financial Industry Regulation Authority of the USA
FSA	Financial Services Authority of the UK
licensee	A person who holds an AFS licence
Pt 7 (for example)	A part of the Corporations Act (in this example, numbered 7)
reg 7.7.10A	A regulation of the Corporations Regulations (in this example, numbered 7.7.10A)
RG 148	An ASIC regulatory guide (in this example, numbered 148)
rumour	A statement containing unverified information, purporting to be fact, that a reasonable person would expect to have a material effect on the price of a security if it were widely circulated
s766E	A section of the Corporations Act, or another specified Act (in this example, numbered 766E)

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to define the term 'rumour' as a statement containing 'unverified information, purporting to be fact, that a reasonable person would expect to have a material effect on the price of a security if it were widely circulated'.</p> <p>For this purpose 'a security' includes securities, derivatives, interests in a managed investment scheme, debentures, stocks or bonds issued or proposed to be issued by a government, certain superannuation products, and any other financial products that can be traded on a financial market.</p>	<p>B1Q1 Do you agree with this definition in the context of its proposed application in our guidance? If not, why not?</p> <p>B1Q2 Are there particular aspects of this definition that you feel require particular guidance?</p> <p>B1Q3 Do you think there should be a specific carve-out for opinions? If so, how would you deal with an opinion where the speaker has no knowledge on which to base an opinion?</p>
<p>C1 We propose that the following high level principles should apply:</p> <p>(a) AFS licensees should have in place written policies and procedures which provide clear guidance to employees and representatives about how to deal with rumours. Those policies and procedures would stipulate that:</p> <p>(i) AFS licensees, their employees and representatives should not under any circumstances be involved in the origination of a rumour; and</p> <p>(ii) a rumour may only be communicated if it is already 'widely circulated' and it is reasonable to pass it on, given all the circumstances (see below).</p> <p>(b) AFS licensees should ensure employees and representatives receive formal training in the policies and procedures applicable to rumours.</p> <p>(c) AFS licensees should have arrangements to monitor compliance by employees and representatives with the policies and procedures.</p>	<p>C1Q1 Do you agree with the proposed principles? If not, why not?</p> <p>C1Q2 Are there any other principles that should be included?</p> <p>C1Q3 What additional costs might be associated with implementing these principles? Can you quantify such costs?</p>
<p>C2 Having regard to the principles above, we propose that AFS licensees should adopt policies and procedures for dealing with rumours. These policies and procedures should cover the items in Table 3.</p>	<p>C2Q1 Do you agree with the proposed policies and procedures? If not, why not?</p> <p>C2Q2 Are there any other policies or procedures that should be included apart from those listed in Table 3?</p> <p>C2Q3 To what extent do AFS licensees' current practices reflect these procedures?</p> <p>C2Q4 What additional costs might be associated with this proposal? Can you quantify such costs?</p> <p>C2Q5 Do you agree that a process for recording rumours is an important part of the compliance process? Is it an undue cost burden?</p>