



ASIC

Australian Securities & Investments Commission

REPORT 547

Response to submissions on CP 277 Proposals to consolidate the ASIC market integrity rules

November 2017

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 277 *Proposals to consolidate the ASIC market integrity rules* (CP 277) and details our responses to those issues.

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.

Disclaimer

This report 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.

This report does not contain ASIC policy. Please see:

- [Regulatory Guide 214](#) *Guidance on ASIC market integrity rules for ASX and ASX 24 markets* (RG 214);
- [Regulatory Guide 215](#) *Guidance on ASIC market integrity rules for IMB, NSXA and SIM VSE markets* (RG 215);
- [Regulatory Guide 223](#) *Guidance on ASIC market integrity rules for competition in exchange markets* (RG 223);
- [Regulatory Guide 224](#) *Guidance on ASIC market integrity rules for Chi-X and APX markets* (RG 224); and
- [Regulatory Guide 226](#) *Guidance on ASIC market integrity rules for capital and related requirements: ASX, ASX 24, Chi-X and APX markets* (RG 226).

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A Overview/Consultation process

- 1 In [Consultation Paper 277](#) *Proposals to consolidate the ASIC market integrity rules* (CP 277), we consulted on proposals to consolidate 13 of the 14 market integrity rule books into four rule books covering:
- (a) ASX, Chi-X, IR Plus, NSXA, SSX and competition between securities markets;
 - (b) ASX 24, FEX and competition between futures markets;
 - (c) capital requirements for participants of the ASX, Chi-X, IR Plus, NSXA and SSX markets; and
 - (d) capital requirements for participants of the ASX 24 and FEX markets.

Note: See the *ASIC Market Integrity Rules (APX Market) 2013* (ASIC Market Integrity Rules (APX)), *ASIC Market Integrity Rules (APX Market-Capital) 2014* (ASIC Market Integrity Rules (APX-Capital)), *ASIC Market Integrity Rules (ASX Market) 2010* (ASIC Market Integrity Rules (ASX)), *ASIC Market Integrity Rules (ASX Market-Capital) 2014* (ASIC Market Integrity Rules (ASX-Capital)), *ASIC Market Integrity Rules (ASX 24 Market) 2010* (ASIC Market Integrity Rules (ASX 24)), *ASIC Market Integrity Rules (ASX 24 Market-Capital) 2014* (ASIC Market Integrity Rules (ASX 24-Capital)), *ASIC Market Integrity Rules (Chi-X Australia Market) 2011* (ASIC Market Integrity Rules (Chi-X)), *ASIC Market Integrity Rules (Chi-X Australia Market-Capital) 2014* (ASIC Market Integrity Rules (Chi-X-Capital)), *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (ASIC Market Integrity Rules (Competition)), *ASIC Market Integrity Rules (FEX Market) 2013* (ASIC Market Integrity Rules (FEX)), *ASIC Market Integrity Rules (FEX Market-Capital) 2014* (ASIC Market Integrity Rules (FEX-Capital)), *ASIC Market Integrity Rules (NSXA Market) 2010* (ASIC Market Integrity Rules (NSXA)), *ASIC Market Integrity Rules (SIM VSE Market) 2010* (ASIC Market Integrity Rules (SIM VSE)).

IMB was not included in the consolidation process because of the unique nature of the IMB market (i.e. offers trading solely in IMB securities) and the bespoke nature of the *ASIC Market Integrity Rules (IMB Market) 2010*.

- 2 As outlined in CP 277, we are of the view that this will create a single point of reference for market integrity rules that are common between markets. It will also simplify the review and amendment of the market integrity rules in the future.
- 3 In CP 277, we also consulted on the following five priority areas to provide greater clarity to industry about complying with these obligations:
- (a) management requirements and responsible executives;
 - (b) carving out certain trustees from the meaning of dealing ‘as principal’;
 - (c) aggregation of orders for block trades and large portfolio trades;
 - (d) derivatives market contracts and wholesale client disclosure; and
 - (e) record keeping for market operators.

- 4 This report highlights the key issues that arose out of the submissions received on CP 277 and our responses to those issues.
- 5 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 277. We have limited this report to the key issues.
- 6 For a list of the non-confidential respondents to CP 277, see the appendix. Copies of these submissions are currently on the ASIC website under [CP 277](#).

Responses to consultation

- 7 We received five non-confidential submissions and six confidential submissions to CP 277 from market participants, market operators, industry associations and other interested parties. We are grateful to respondents for taking the time to send us their comments.
- 8 We have held over 25 meetings with stakeholders since the consultation paper was published on 24 January 2017. In addition, we consulted ASIC's Market Advisory Panel on the proposals.
- 9 The submissions we received were largely supportive of the proposals in CP 277. This report highlights the key issues that arose out of the submissions received on CP 277 and our responses to those issues.
- 10 In CP 277, we also sought additional proposals from stakeholders to help us to plan and prioritise our future work to review and improve the consolidated market integrity rules. We received several such proposals for amendments to the market integrity rules (not directly relating to consolidation), for example:
- (a) certain similar rules could be further consolidated (e.g. Rules 2.2.5(b)(iv) and 7.2.4 of the draft ASIC Market Integrity Rules (Futures Markets)) (AFMA and ASX);
 - (b) additional market-specific terms and frameworks could be described more generically without any particular market operator, proprietary technology, business practice or product type in mind (Chi-X);
 - (c) client trust account and client segregated account reconciliation rules and guidance should be reviewed (ASX and another respondent);
 - (d) prohibitions on employment in Rule 2.2.3 of the draft ASIC Market Integrity Rules (Futures Markets) are unfair and need revision (AFMA);
 - (e) the definition of 'Client' in the draft ASIC Market Integrity Rules (Futures Markets), inherited from the existing rules, is overly complex and confusing and is in need of revision (AFMA);

- (f) differences between the margining requirements in Chapter 7 of the draft ASIC Market Integrity Rules (Futures Markets), including the definition of 'Approved Securities', and the operating rules of clearing and settlement facilities should be reviewed (AFMA and SAFAA); and
- (g) rules for synchronisation of clocks should be updated to be consistent with global practice (see Part 9.3 of the draft ASIC Market Integrity Rules (Securities Markets)).

11 We will prioritise and consider these and other proposals in our future reviews of the market integrity rules, with particular focus on making further adjustments where necessary to:

- (a) provide further clarity to a rule;
- (b) strengthen a rule so that it will achieve its objectives; or
- (c) provide a demonstrated commercial benefit while not unduly reducing the fairness and efficiency of Australia's financial markets.

B Consolidating the market integrity rules

Key points

This section outlines the submissions on our proposals, and our response to those submissions, to consolidate 13 of the 14 market integrity rule books into four rule books covering:

- ASX, Chi-X, IR Plus, NSXA, SSX and competition between securities markets (see paragraphs 12–27);
- ASX 24, FEX and competition between futures markets (see paragraphs 28–36);
- capital requirements for participants of the ASX, Chi-X, IR Plus, SSX and NSXA markets (see paragraphs 37–40); and
- capital requirements for participants of the ASX 24 and FEX markets (see paragraphs 37–40).

ASIC market integrity rules for securities markets

Scope of the ASIC Market Integrity Rules (Securities Markets)

- 12 In CP 277, we sought feedback on the proposal to:
- (a) consolidate the ASIC Market Integrity Rules (APX), ASIC Market Integrity Rules (ASX), ASIC Market Integrity Rules (Chi-X), ASIC Market Integrity Rules (SIM VSE) and ASIC Market Integrity Rules (Competition) into a single rule book;
 - (b) in the ASIC Market Integrity Rules (Securities Markets), apply the rules that derive from ASIC Market Integrity Rules (Competition) to SSX, IR Plus and their participants; and
 - (c) waive the requirement for SSX, IR Plus and their participants to comply with obligations in the ASIC Market Integrity Rules (Securities Markets) that derive from the ASIC Market Integrity Rules (Competition), until a specified date in the future.
- 13 As outlined in CP 277, we are of the view that consolidation of the ASIC market integrity rules will create a single point of reference for market integrity rules that are common between markets. It will also simplify the review and consideration of substantive amendments to the market integrity rules in the future.

- 14 All of those who responded to this proposal supported consolidation of the ASIC Market Integrity Rules (APX), (ASX), (Chi-X), (SIM VSE) and (Competition) into a single rule book for securities markets—the ASIC Market Integrity Rules (Securities Markets). Respondents also generally agreed that the ASIC Market Integrity Rules (Securities Markets) should commence at least six months after the rule book is made.
- 15 Generally, respondents listed benefits of consolidation such as removing inconsistencies and reducing the regulatory burden of having to comply with different and potentially conflicting rules. Respondents also agreed that consolidation of the rules would simplify the review and amendment of the rules in the future. Further, Chi-X was of the view that consolidation would remove potential compliance cost disincentives for market participants to trade in competing markets.
- 16 AFMA and another respondent suggested removal of futures-related rules from the ASIC Market Integrity Rules (Securities Markets). ASX agreed in principle to the removal of futures-related rules from the ASIC Market Integrity Rules (Securities Markets) so that any futures product quoted on the ASX market in the future would be governed by the ASIC Market Integrity Rules (Futures Markets).
- 17 In relation to the application of the rules that derive from ASIC Market Integrity Rules (Competition) to SSX, IR Plus and their participants, AFMA, SAFAA and another respondent agreed that the competition rules should apply to all securities markets in order to support standardisation and a level playing field (noting that many competition rules only have application where a product is traded on more than one market). However, the feedback from NSXA and other respondents highlighted some practical difficulties in applying many of the rules that derived from the ASIC Market Integrity Rules (Competition) to the IR Plus, NSXA and SSX markets and their participants. They submitted that many of these rules are closely adapted to the equity market products traded on the ASX and Chi-X markets, and would require adjustment to operate as intended in other securities markets (e.g. settings for volatility controls, block trade size thresholds and application of the best execution requirements to products traded solely on one market).

ASIC's response

We intend to proceed with the proposal to consolidate the ASIC Market Integrity Rules (APX), ASIC Market Integrity Rules (ASX), ASIC Market Integrity Rules (Chi-X), ASIC Market Integrity Rules (SIM VSE) and ASIC Market Integrity Rules (Competition) into a single rule book: the ASIC Market Integrity Rules (Securities Markets).

Once made, the ASIC Market Integrity Rules (Securities Markets) will commence on Monday 4 December 2017 unless they are registered on the Federal Register of Legislation after that date, in which case they will commence on the date of registration. Only participants of the NSXA market who use their systems for automated order processing (AOP) on the NSXA market (NSXA AOP Participants) will have to comply with some parts of the ASIC Market Integrity Rules (Securities Markets) from commencement. Other participants and market operators do not have to comply with the ASIC Market Integrity Rules (Securities Markets) until Monday 7 May 2018.

The staged transition periods for the NSXA market are explained at paragraph 20 below.

Trading in futures products will be subject solely to the ASIC Market Integrity Rules (Futures Markets). We intend to remove the futures-related rules from the ASIC Market Integrity Rules (Securities Markets), with the exception of rules relating to Accredited Futures Advisers in Part 2.4 and client segregated accounts in Part 3.5. We will prioritise review of those rules in our future reviews of the consolidated market integrity rules.

In addition, for foreign market participants, we intend to amend Rule 2.6.1 of the ASIC Market Integrity Rules (Securities Markets) to facilitate ASIC cost recovery under legislation made in June 2017. The rule amendments will require a foreign market participant to provide ASIC with a deed which provides, among other things, that the foreign market participant covenants to comply with any order of an Australian court including in relation to its obligations under the *ASIC Supervisory Cost Recovery Levy Act 2017* and the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*.

We intend to proceed with including rules that derive from ASIC Market Integrity Rules (Competition) in the ASIC Market Integrity Rules (Securities Markets), and apply them to SSX, IR Plus and their participants.

However, we also intend to grant SSX, IR Plus and their market participants a waiver from the obligation to comply with many of the ASIC Market Integrity Rules (Securities Markets) that derive from the ASIC Market Integrity Rules (Competition). The waiver will not apply to:

- (a) Part 3.4A—Multiple Markets—Single trade confirmations;
- (b) Part 5.4A—Managing confidential Order information;
- (c) Part 5.4B—Order incentives;
- (d) Chapter 5A—Crossing Systems; or
- (e) Part 7.3—Material changes to operating rule procedures.

The market integrity rules in these Chapters and Parts excluded from the waiver promote market integrity but do not impose obligations specific to competition between markets. As such, we intend for them to apply to IR Plus, SSX (and NSXA—see paragraphs 18–20) and their participants from commencement.

The duration of the waiver will be for a period of three years. However, in the event that a proposal for competition involving other markets arises, we may bring forward our consideration and further consultation of these issues.

We aim to reissue existing individual and class waivers under the consolidated rules before 7 May 2018.

In addition, we plan to publish a regulatory guide for market participants that are subject to the ASIC Market Integrity Rules (Securities Markets) by merging our guidance in RG 214, RG 223, RG 224 and RG 226.

We will make minimal changes as necessary to ensure the guidance reflects the consolidated market integrity rules.

Application of the ASIC Market Integrity Rules (Securities Markets) to NSXA

- 18 In CP 277, we sought feedback on the proposal to:
- (a) apply the ASIC Market Integrity Rules (Securities Markets) to NSXA and participants of NSXA;
 - (b) waive the requirement for NSXA and participants of NSXA to comply with the ASIC Market Integrity Rules (Securities Markets) until a specified date in the future, with the exception of the rules in (c) below;
 - (c) apply, from commencement, the following rules to participants that may undertake AOP on the NSXA market or provide their clients with such capability:
 - (i) AOP rules and associated rules (i.e. Parts 5.5, 5.6 and 5.7 of the draft ASIC Market Integrity Rules (Securities Markets)); and
 - (ii) the ASIC Market Integrity Rules (Securities Markets – Capital) (in the same way as they would apply to Chi-X and SSX).
- 19 As outlined in CP 277, while the activities that the current ASIC Market Integrity Rules (NSXA) address are similar to other securities markets, the drafting and structure of those rules are significantly different. It is for this reason that we have proposed to apply the consolidated rules to the NSXA market in stages in order to allow time for NSXA and its participants to transition to the consolidated rules and for NSXA to make consequential amendments to its operating rules.
- 20 We received four responses to this proposal and all of these responses were generally in support of the proposal. In its submission, NSXA did, however, make a number of comments about the application of the rules, including that the AOP rules should not apply to NSXA participants that do not use AOP. NSXA also submitted that certain aspects of the rules derived from the ASIC Market Integrity Rules (Competition) should apply in a modified way for NSXA.

ASIC's response

We intend to proceed with the proposal to apply the ASIC Market Integrity Rules (Securities Markets) to NSXA and its participants.

The ASIC Market Integrity Rules (Securities Markets) will apply to NSXA and its participants in stages in order to allow time for the transition and for NSXA to make consequential amendments to its operating rules.

For NSXA AOP Participants, we intend for Parts 5.5, 5.6 and 5.7 of the ASIC Market Integrity Rules (Securities Markets) and the ASIC Market Integrity Rules (Securities Markets – Capital) to apply from the commencement of the rules. As explained in CP 277, we consider it is important that common requirements (including base-level capital requirements) are in place for all markets that allow AOP.

Otherwise, to facilitate transition to the consolidated rules, we intend to grant NSXA and its participants a waiver from their obligations to comply with:

- the ASIC Market Integrity Rules (Securities Markets) until Monday 5 November 2018;
- the ASIC Market Integrity Rules (Securities Markets – Capital) until Monday 6 May 2019.

As for the IR Plus and SSX markets and their participants, we intend to grant NSXA and its participants a waiver for three years from the obligation to comply with certain provisions of the ASIC Market Integrity Rules (Securities Markets) that derive from the ASIC Market Integrity Rules (Competition).

Definitions in the ASIC Market Integrity Rules (Securities Markets)

- 21 In CP 277, we sought feedback on the proposal to:
- (a) omit the defined terms in Table 1 from the ASIC Market Integrity Rules (Securities Markets):
 - (i) that are defined in the *Corporations Act 2001* (Corporations Act) and will have the same meaning;
 - (ii) where it is possible and appropriate to use generic or descriptive terms instead of proprietary terms; or
 - (iii) that do not aid interpretation or are derived from or based on other defined terms we propose to omit; and
 - (b) adopt or materially modify the defined terms in Table 2 for use in the ASIC Market Integrity Rules (Securities Markets).
- 22 As outlined in CP 277, we have sought to accommodate and resolve differences in defined terms with minimal changes and to apply consistent defined terms across securities markets in the ASIC Market Integrity Rules

- (Securities Markets). Where necessary, we have adopted terms and expressions that describe activities and functions in a generic manner, rather than in specific terms used by any particular market operator.
- 23 All of the respondents to this proposal supported the removal of definitions for terms defined in the Corporations Act so as to avoid overlap, duplication, ambiguity or confusion.
- 24 ASX, AFMA and two other respondents raised some technical drafting questions for us to consider. Some relate to potentially inadvertent changes or unintended consequences and others relate to existing issues in the rules which are unaffected by consolidation.
- 25 AFMA also pointed out the potential ambiguity of the compound term ‘Market Participant’.
- 26 Chi-X noted that its operating rules use the definition of ‘Equity Market Product’ in the ASIC Market Integrity Rules (Competition) to define the products which may be traded on the Chi-X market. As such, our changes to the definition will necessitate changes to Chi-X’s operating rules.
- 27 Chi-X also stated that it would support any steps to remove standalone requirements from defined terms (e.g. any definition of a particular financial product that purports to include the required features of a product), preferring the requirements to be in a rule.

ASIC’s response

We intend to proceed with the proposal to omit, adopt or materially modify the defined terms in the ASIC Market Integrity Rules (Securities Markets).

Our intention is to make the ASIC Market Integrity Rules (Securities Markets) without any particular market operator, proprietary technology, business practice or product type in mind, and to avoid overlap, duplication, ambiguity or confusion with the Corporations Act.

We have carefully considered technical drafting issues raised in the consultation responses, seeking to avoid potentially inadvertent changes or unintended consequences arising from consolidation. In general, we have sought to make minimal changes to apply the market integrity rules to multiple markets. As explained in Section A, we will consider proposals for substantive changes in our future reviews of the consolidated market integrity rules.

We will also clarify in the Explanatory Statement that the compound term ‘Market Participant’ has the same meaning as ‘Participant of a Market’.

ASIC market integrity rules for futures markets

Scope of the ASIC Market Integrity Rules (Futures Markets)

- 28 In CP 277, we sought feedback on the proposal to:
- (a) consolidate the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX) into a single set of ASIC market integrity rules; and
 - (b) where requirements in the ASIC Market Integrity Rules (ASX) or (Competition) currently apply to ASX 24 and/or FEX, replicate them in the ASIC Market Integrity Rules (Futures Markets).
- 29 As outlined in CP 277, we do not intend to change the substantive obligations in the existing market integrity rules for ASX 24 and FEX. Our proposal is simply to streamline compliance with the requirements by introducing a single, consolidated set of ASIC market integrity rules for all market operators and participants in exchange traded futures. This will also reduce our administrative burden when amending market integrity rules in the future.
- 30 All of the respondents to this proposal supported consolidation of the ASX 24, FEX and competition rules into a single rule book for futures markets—the ASIC Market Integrity Rules (Futures Markets).
- 31 As for securities markets, respondents listed benefits of consolidation such as removing inconsistencies and reducing the regulatory burden of having to comply with different and potentially conflicting rules.
- 32 As stated above, AFMA and another respondent also suggested that ASIC ensure that all rules in relation to futures products (also including any futures products traded on the ASX market) are set out only in the ASIC Market Integrity Rules (Futures Markets). ASX has agreed in principle to the removal of futures-related rules from the ASIC Market Integrity Rules (Securities Markets) so that any futures product quoted on the ASX market in the future would be governed by the ASIC Market Integrity Rules (Futures Markets).

ASIC's response

We intend to proceed with the proposal to consolidate the ASIC Market Integrity Rules (ASX 24), ASIC Market Integrity Rules (FEX) and ASIC Market Integrity Rules (Competition) into a single rule book: the ASIC Market Integrity Rules (Futures Markets), commencing on Monday 7 May 2018.

Consistent with our proposal, we intend to insert into the ASIC Market Integrity Rules (Futures Markets) the crossing systems rules that currently apply in respect of the ASX 24 market in Chapter 4A of the ASIC Market Integrity Rules (Competition).

In addition, for foreign market participants, we intend to amend Rule 2.4.1 of the ASIC Market Integrity Rules (Futures Markets) to facilitate ASIC cost recovery under legislation made in June 2017. The rule amendments will require a foreign market participant to provide ASIC with a deed which provides, among other things, that the foreign market participant covenants to comply with any order of an Australian court including in relation to its obligations under the *ASIC Supervisory Cost Recovery Levy Act 2017* and the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*.

As stated above, we intend to remove futures-related rules from the ASIC Market Integrity Rules (Securities Markets) so that trading in futures products will be subject solely to the ASIC Market Integrity Rules (Futures Markets).

We also intend to reissue existing individual and class waivers under the consolidated rules before 7 May 2018.

In addition, we plan to publish a regulatory guide for market participants that are subject to the ASIC Market Integrity Rules (Futures Markets) by merging our guidance in RG 214, RG 223 and RG 226. We will make minimal changes as necessary to ensure the guidance reflects the consolidated market integrity rules.

Definitions in the ASIC Market Integrity Rules (Futures Markets)

- 33 In CP 277, we sought feedback on the proposal to:
- (a) omit the defined terms in Table 3 of CP 277 from the ASIC Market Integrity Rules (Futures Markets):
 - (i) that are defined in the Corporations Act and will have the same meaning;
 - (ii) where it is possible and appropriate to use generic or descriptive terms instead of proprietary terms; or
 - (iii) that do not aid interpretation or are derived from or based on other defined terms we propose to omit;
 - (b) adopt or materially modify the defined terms in Table 4 for use in the ASIC Market Integrity Rules (Futures Markets).
- 34 As outlined in CP 277, we have sought to accommodate and resolve differences in defined terms with minimal changes and to apply consistent defined terms across futures markets in the ASIC Market Integrity Rules (Futures Markets). Where necessary, we have adopted terms and expressions that describe activities and functions in a generic manner, rather than in specific terms used by any particular market operator.
- 35 All of the respondents to this proposal supported the removal of definitions for terms defined in the Corporations Act so as to avoid overlap, duplication, ambiguity or confusion.

- 36 As stated above, ASX, AFMA and two other respondents raised some technical drafting questions for us to consider. Some relate to potentially inadvertent changes or unintended consequences and others relate to existing problems in the rules which are unaffected by consolidation. AFMA and another respondent also pointed out the potential ambiguity of the compound term ‘Market Participant’.

ASIC’s response

We intend to proceed with the proposal to omit, adopt or materially modify the defined terms in the ASIC Market Integrity Rules (Futures Markets).

Our intention is to make the ASIC Market Integrity Rules (Futures Markets) without any particular market operator, proprietary technology, business practice or product type in mind, and to avoid overlap, duplication, ambiguity or confusion with the Corporations Act.

We have carefully considered any technical drafting issues raised in the consultation responses, seeking to avoid potentially inadvertent changes or unintended consequences arising from consolidation. In general, we have sought to make minimal changes to apply the market integrity rules to multiple markets. As explained in Section A, we will consider proposals for substantive changes in our future reviews of the consolidated market integrity rules.

We will also clarify in the Explanatory Statement that the compound term ‘Market Participant’ has the same meaning as ‘Participant of a Market’.

ASIC market integrity rules for capital requirements

- 37 In CP 277, we sought feedback on the proposal to:
- (a) consolidate the ASIC Market Integrity Rules (ASX-Capital), ASIC Market Integrity Rules (Chi-X-Capital) and ASIC Market Integrity Rules (APX-Capital) to create a single capital rule book that applies to participants of the ASX, Chi-X, IR Plus, NSXA and SSX markets;
 - (b) waive the requirement for participants of NSXA who do not offer AOP services to comply with the ASIC Market Integrity Rules (Securities Markets – Capital) until a specified date in the future; and
 - (c) consolidate the ASIC Market Integrity Rules (ASX 24-Capital) and ASIC Market Integrity Rules (FEX-Capital) to create a single capital rule book that applies to participants of the ASX 24 and FEX markets.

- 38 As outlined in CP 277, our proposal is simply to streamline compliance with the market integrity rules for capital requirements. The ASIC Market Integrity Rules (Securities Markets – Capital) and ASIC Market Integrity Rules (Futures Markets – Capital) will also reduce our administrative burden when amending market integrity rules in the future.
- 39 Most of the respondents to these proposals were generally in support of them.
- 40 In its submission, NSXA expressed the view that its existing capital rules are appropriate for its participants who do not offer AOP services, having regard to its participants’ trading volumes and risk profiles.

ASIC’s response

We intend to consolidate the ASIC Market Integrity Rules (ASX-Capital), ASIC Market Integrity Rules (Chi-X-Capital) and ASIC Market Integrity Rules (APX-Capital) to create a single capital rule book: the ASIC Market Integrity Rules (Securities Markets – Capital), which will apply to participants of the ASX, Chi-X, IR Plus, NSXA and SSX markets.

Once made, the ASIC Market Integrity Rules (Securities Markets – Capital) will commence on Monday 4 December 2017 unless they are registered on the Federal Register of Legislation after that date, in which case they will commence on the date of registration. A transition period will apply such that market participants (other than NSXA AOP Participants) do not have to comply with the ASIC Market Integrity Rules (Securities Markets – Capital) until Monday 7 May 2018.

The staged transition periods for participants of the NSXA market to comply with the ASIC Market Integrity Rules (Securities Markets – Capital) are explained at paragraph 20 above.

We also intend to remove futures-related capital requirements from the ASIC Market Integrity Rules (Securities Markets – Capital).

We also intend to consolidate the ASIC Market Integrity Rules (ASX 24-Capital) and ASIC Market Integrity Rules (FEX-Capital) to create a single capital rule book: the ASIC Market Integrity Rules (Futures Markets – Capital), which will apply to participants of the ASX 24 and FEX markets and commence on Monday 7 May 2018.

C Clarifying existing market integrity rules

Key points

This section outlines the submissions on our proposals to clarify the operation of the market integrity rules in relation to the following obligations and our response to those submissions:

- management requirements and responsible executives (see paragraphs 41–51);
- dealing ‘as principal’ (see paragraphs 52–61);
- block trades and large portfolio trades (see paragraphs 62–72);
- notifications about derivatives market contracts (see paragraphs 73–79); and
- record-keeping requirements for market operators (see paragraphs 80–83).

Management requirements and responsible executives

- 41 In CP 277, we proposed to remove duplicative requirements and unnecessary administrative burdens from the responsible executive framework. As outlined in CP 277, these changes aimed to give market participants greater flexibility to carry out their supervisory arrangements. This is consistent with the general, principles-based Australian financial services (AFS) licensee obligations in the Corporations Act. We also proposed to provide greater clarity to industry about complying with management requirements through regulatory guidance.

Responsible executives and red-tape reduction

- 42 In CP 277, we sought feedback on the proposal to:
- (a) remove the following requirements of the market integrity rules that market participants must:
 - (i) notify ASIC of the appointment or cessation of a responsible executive (Rule 2.3.1(1) of the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X));
 - (ii) not appoint a responsible executive unless specific competence and continuing education standards are met (Rule 2.3.1(2) and (3) of the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X));
 - (iii) ensure that responsible executives complete an annual review of their allocated supervision and control procedures (Rule 2.3.3 of the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X));

- (iv) ensure that responsible executives meet annual continuing education requirements (Rule 2.3.4 of the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X)); and
 - (v) notify ASIC annually about its responsible executives and self-assess responsible executives' satisfaction of competence, character and continuing education requirements (Rule 2.3.5 of the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X)); and
- (b) not require staff allocated supervisory responsibilities to carry the title 'responsible executive'.

43 Respondents were broadly supportive of the proposals that sought to remove the administrative overhead associated with the current responsible executive framework including resigning the term 'responsible executive' for supervisory staff. Generally, respondents recognised that removing unnecessary duplication of obligations would allow market participants greater flexibility to carry out their supervisory arrangements.

44 However, two respondents expressed reservations about the proposals to remove the self-assessment of satisfaction of competence, character and continuing education requirements (proposals C1(a)(ii) to (v)) for the following reasons:

- (a) some firms do not have robust procedures in place for ensuring that their responsible executives are suitably qualified;
- (b) the reliance on s912A(1) of the Corporations Act which requires representatives of an AFS licensee to be adequately trained and competent is not as effective as the existing specific competence and continuing education standards for responsible executives. One respondent also noted that the responsible executive regime is important for ensuring suitably qualified people are employed in positions of responsibility and oversight;
- (c) the removal of the eight hours of specific continuing education requirements for responsible executives is inconsistent with amendments to the Corporations Act announced by the Government to raise the education, training and ethical standards of financial advisers; and

Note: The announced Corporations Act amendments will require a person who is authorised to provide personal financial advice to retail clients in relation to relevant financial products, to hold a degree, undertake a professional year, pass an exam, undertake continuous professional development and comply with a Code of Ethics.

- (d) an annual review by the responsible executive of their allocated supervision and control procedures is considered best practice so the requirement should remain.

ASIC's response

We intend to proceed with removing Rules 2.3.1(1), (2) and (3), 2.3.3, 2.3.4 and 2.3.5 from the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X) to give market participants greater flexibility to carry out their supervisory arrangements. This is consistent with the general, principles-based AFS licensee obligations in the Corporations Act. We consider that strong industry standards and consumer protections will be upheld by compliance with these principles-based licensee obligations in the Corporations Act and the market integrity rules, along with market participants' commitment to appropriate supervision.

A market participant will still need to satisfy itself that any individual involved in supervising its business has the relevant skills, knowledge and experience for the role they are performing. Completion of examinations and continuing education should remain key considerations, but we consider market participants are best placed to make an overall assessment of the supervisory skills, knowledge and experience of supervisory staff. A market participant's responsibilities are not diminished. Market participants will still require robust management and supervisory arrangements, and supervisory staff will need to have the appropriate skills, knowledge and experience to perform their assigned duties. We articulated these expectations in CP 277. In light of the feedback received, we will reflect these expectations in ASIC guidance.

We do not consider that removing the requirement for a responsible executive (i.e. management staff allocated supervisory responsibilities by a market participant) to complete eight hours of continuing education related to their supervisory responsibilities is at odds with the proposed educational requirements to improve the competence of financial advisers. The purpose of appointing qualified 'supervisory staff' is to ensure that these people supervise the design and implementation activities and the functioning and review of the operations and processes to help the market participant achieve compliance with the obligations of the market integrity rules, market operating rules, the clearing rules and the settlement rules. Therefore, 'supervisory staff' should undertake continuing education that has specific relevance to their management responsibilities as set by their market participant. Further, the removal of Rules 2.3.1(2) and (3), 2.3.4 and 2.3.5 from the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X) does not affect the continuing professional education requirements for Accredited Advisers in Part 2.4 of the draft ASIC Market Integrity Rules (Securities Markets).

We will no longer require staff with supervisory responsibilities allocated by a market participant to carry the title 'responsible executive'. This does not preclude a market participant from using that title for its supervisory staff if it wishes to continue doing so.

Notification of management structures

- 45 In CP 277, we sought feedback on the proposal to remove the requirement for market participants to submit a management structure to ASIC within 10 business days if there has been a significant change in the management structure or the allocation of responsibilities among its responsible executives (Rule 2.1.2(3) of the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X)).
- 46 A significant change may be determined by one of, but not limited to, the following circumstances;
- (a) a change in its supervisory staff, directors, or key staff including staff responsible for the compliance function;
 - (b) a new business model;
 - (c) new products;
 - (d) rapid growth and expansion; and
 - (e) takeovers and mergers.
- 47 All of the respondents to this proposal supported the proposal with the general view that it removed an unnecessary administrative burden.

ASIC's response

We intend to proceed with removing Rule 2.1.2(3) from the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X).

Market participants must continue to have appropriate, up-to-date management structures in place as part of their supervisory framework. We may review management structures from time to time as part of ASIC's regular risk assessments of market participants' businesses.

Proposed guidance on management structures

- 48 In CP 277, we sought feedback on:
- (a) the proposal to update RG 214 and RG 224 to provide guidance on our expectations of a market participant's management structure; and
 - (b) our outline of the content of the proposed guidance.
- 49 As outlined in CP 277, we have observed significant variation in management structures submitted to ASIC under Rule 2.1.2 of the ASIC Market Integrity Rules (APX), (ASX) and (Chi-X). For this reason, we considered that additional guidance would help market participants to develop management structures that better reflect the internal operational management of the market participant and its regulatory obligations.

- 50 Respondents were generally supportive of ASIC providing guidance on our expectations of the content of compliant management structure documentation. Some respondents, including NSXA, noted that providing updated guidance would promote consistency across markets, help market participants in their decision-making and encourage best practice.
- 51 Some respondents, including AFMA and SAFAA, also expressed a strong interest in providing comments on the updated regulatory guides. SAFAA raised the concern that, without full consultation, there may be ‘regulation by guidance note’. Another respondent was concerned that without industry consultation, market participants may be benchmarked against guidance that is too prescriptive.

ASIC’s response

We intend to proceed with our proposal to provide principles-based guidance on the content of a market participant management structure.

In line with our proposal, at a minimum, we expect a market participant to have:

- an overview of its business model and business objectives, including the types of services and products offered by the organisation and physical office addresses;
- if the market participant is part of a conglomerate group, a group structure chart which shows the relationship between the market participant, its parent company and other related bodies corporate;
- the internal structure of its business, including a chart showing the individuals responsible for managing the market participant’s business, their titles, responsibilities, roles and reporting lines (including alternative arrangements for when these individuals are on leave or out of the office);
- a description of internal committees;
- details of its clearing and settlement arrangements;
- details of any outsourcing arrangements;
- frameworks for supervision, risk management, corporate governance and complying with its regulatory obligations;
- monitoring, review and control processes and responsibilities; and
- escalation and reporting processes.

Carving out certain trustees from the meaning of dealing ‘as principal’

The meaning of dealing ‘as principal’

- 52 In CP 277, we sought feedback on the proposal to adopt in the ASIC Market Integrity Rules (Securities Markets) a narrower meaning of dealing ‘as principal’ by carving out market participants and related bodies corporate acting or trading as trustees of a trust, if:
- (a) the trustee has no beneficial interest in the trust or a beneficial interest in the trust of less than 5%; and
 - (b) all of that interest was acquired by the trustee in lieu of fees for administering the trust.
- 53 SAFAA and AFMA were supportive of the proposal. AFMA stated that it accurately reflects the position of related entities acting only in a trustee capacity rather than as beneficial holders of securities.
- 54 In response to our question about whether there are other suggested carve-outs from the definition of dealing ‘as principal’, AFMA suggested that there is scope to include several more carve-outs from the definition of dealing ‘as principal’ where the market participant or related body corporate receives, at most, a proportionately minor benefit for the trading. For example, where the related body is acting in the capacity of custodian, agent or broker and receives at most a proportionately minor benefit for the trading. AFMA noted that this had been part of our rationale in paragraph 89 of CP 277 for the carve-out for trustees, and that if there is a policy reason for limiting the carve-out to trustees then it should be explained further.

ASIC’s response

We intend to proceed with amending the definition of dealing ‘as principal’ to carve out trustees of a trust that have less than 5% beneficial interest in the trust all of which was acquired by the trustee in lieu of fees for administering the trust.

As outlined in paragraph 85 of CP 277, the existing carve-out from the meaning of dealing ‘as principal’ comes from the legal obligations placed on trustees (and in particular, responsible entities) to manage conflicts of interest.

Our current proposal is an extension of this, in that we recognise that some related responsible entities may fall outside the existing carve-out where they have small holdings in a scheme. This is why any holdings are limited to less than 5% and must have been acquired in lieu of fees.

Therefore, at this stage, we do not believe that the carve-out should be extended beyond our proposal (such as AFMA’s suggestions of custodians, agents or brokers) because these do not have the same strict legal obligations (i.e. responsible entity

duties under s601FC of the Corporations Act and duties of officers of responsible entities under s601FD of the Corporations Act). These duties make clear that a responsible entity must prioritise a member's interest over their own where there is a conflict.

Exceptions to the trustee carve-out

- 55 In CP 277, we sought feedback on the proposal to not apply the trustee carve-out (see paragraph 52 above) to Rule 5.1.7 of the ASIC Market Integrity Rules (Securities Markets).
- 56 The operation of Rule 5.1.7 of the ASIC Market Integrity Rules (ASX) and (Chi-X) in our draft ASIC Market Integrity Rules (Securities Markets) is affected by our proposal to carve out certain trustees from the meaning of 'principal'. That is, a bid or offer to enter into an options market transaction made by a market participant (or related body corporate) will not be made 'as principal' where they are acting as trustee for a trust, if they meet our proposed carve-out.
- 57 In CP 277, we indicated our intention to preserve the current scope of the prohibition under Rule 5.1.7 of the ASIC Market Integrity Rules (ASX) and (Chi-X) to ensure that a material client order in an underlying market will have priority over subsequent orders in related options markets by a trading participant (or related body corporate) who is acting as trustee and has an interest in the trust, even where that interest is less than 5% of units.
- 58 SAFAA advised that their members did not have a strong view as to whether the carve-out should be applied for the purposes of Rule 5.1.7 of the ASIC Market Integrity Rules (ASX) and (Chi-X). AFMA advised that they did not understand our rationale for not applying the trustee carve-out to this rule and sought further explanation.

ASIC's response

We have reconsidered our proposal. Weighing up the regulatory benefits of this proposal against the costs of the additional complexity of applying a different meaning of 'as principal' to Rule 5.1.7 of the ASIC Market Integrity Rules (ASX) and (Chi-X), we have decided at this stage not to proceed with this proposal. As such, we intend that a common meaning of 'as principal' will apply throughout the ASIC Market Integrity Rules (Securities Markets).

Application of Rule 3.2.4 of the ASIC Market Integrity Rules (ASX) and (Chi-X) to other securities markets

- 59 In CP 277, we proposed to apply the clarified prohibition in Rule 3.2.4 of the ASIC Market Integrity Rules (ASX) and (Chi-X) to all securities markets in the ASIC Market Integrity Rules (Securities Markets).
- 60 In 2013, we had made a minor amendment to Rule 3.2.4 of the ASIC Market Integrity Rules (ASX) and (Chi-X) to clarify that the prohibitions in this rule on charging a client brokerage, commission or other fees where a market participant enters into a market transaction ‘as principal’, should be read with reference to the meaning of dealing ‘as principal’ in Rule 3.2.5 of the ASIC Market Integrity Rules (ASX) and (Chi-X).
- 61 The two submissions on this proposal, from AFMA and SAFAA, supported the proposal on the basis that it ensured consistency among markets.

ASIC’s response

We intend to proceed with applying the clarified prohibition in Rule 3.2.4 of the ASIC Market Integrity Rules (ASX) and (Chi-X) to all securities markets in the ASIC Market Integrity Rules (Securities Markets).

Aggregation of orders for block trades and large portfolio trades

Aggregation of client orders for block trades

- 62 In CP 277, we sought feedback on the proposal to adopt the definition of block trade in Rule 4.2.1 of the ASIC Market Integrity Rules (Competition) with amendments to clarify that a block trade:
- (a) cannot include orders from more than one client on both sides of the transaction; and
 - (b) may have ‘multiple clients’ on one side of the transaction and a ‘principal’ on the other side of the transaction.
- 63 All respondents to this feedback supported the proposal.

ASIC’s response

We intend to proceed with amending the definition of block trade in Rule 4.2.1 of the ASIC Market Integrity Rules (Competition) to clarify that a block trade:

- cannot include orders from more than one client on both sides of the transaction; and
- may have ‘multiple clients’ on one side of the transaction and a ‘principal’ on the other side of the transaction.

Clarification of the pre-trade transparency exception for large portfolio trades

64 In CP 277, we sought feedback on the proposal to adopt the definition of large portfolio trade in Rule 4.2.2 of the ASIC Market Integrity Rules (Competition) with amendments to clarify that a large portfolio trade may only be executed off-order book as a crossing with a single party on each side of the transaction.

65 All respondents to this feedback supported the proposal.

ASIC's response

We intend to proceed with amending the definition of large portfolio trade in Rule 4.2.2 of the ASIC Market Integrity Rules (Competition). This will provide greater certainty to market participants that a large portfolio trade may only be executed off-order book as a crossing with a single party on each side of the transaction.

Aggregation of client and principal orders for block trades

66 In CP 277, we sought feedback on the proposal to take one of the following options for Rule 4.2.1:

- (a) Option 1—amend Rule 4.2.1 of the ASIC Market Integrity Rules (Competition) to allow aggregation of client and principal orders on the same side of a block trade transaction.
- (b) Option 2—amend Rule 4.2.1 of the ASIC Market Integrity Rules (Competition) to allow aggregation of client and principal orders on the same side of a block trade transaction once the block trade consideration threshold has been met by the client orders on each side of the transaction.
- (c) Option 3—maintain the status quo (i.e. a market participant cannot use the pre-trade transparency exception for block trades in Rule 4.1.1(2)(a) of the ASIC Market Integrity Rules (Competition) if principal and client orders are aggregated on the same side of an off-order book crossing).

67 Of the seven respondents to this proposal, three supported Option 2 for the following reasons:

- (a) This option would mitigate signalling risk, which would provide fairness and efficiency and there would be price protection.
- (b) This option would improve the timely reporting of block trades taken on as principal by brokers, especially when there is a shortfall in facilitating large block transactions and undertaking client swap orders. This is because the volume difference between one side and the other may not be special crossing size, making it difficult to handle volume disparities between the two sides of the crossing.

- (c) The volume of block trades executed is believed to remain unchanged.
- (d) Existing protections for clients who transact with a participant as principal (in particular, with respect to notification and consent of the principal's position) would continue to operate. Therefore, there is no additional benefit to the client in separating the reporting of block trades.

68 SAFAA further commented that, as a matter of principle, it does not make sense to be concerned about trades occurring as block trades when the threshold would not have been reached without the principal order, when the same could be said about a block trade when the principal order comprises the entire (unaggregated) side. The latter trades would not have occurred either but for the principal order. There is no difference between a principal facilitation order whether it is the entire side of a block trade or whether it is one order in the aggregated side (as long as the principal is not on both sides). In both cases the position is taken on at risk by the firm.

69 ASX and Chi-X supported Option 3 (i.e. maintaining the status quo). A reason given for this was that exceptions to the pre-trade transparency requirements should be limited to enhance fairness and efficiency in the operation of markets and encourage on-market liquidity to improve the quality of price formation.

70 One respondent indicated a preference for Option 1, with Option 2 as second preference.

71 NSXA preferred an option that would minimise the occurrence of adverse market impacts while ensuring appropriate transparency for the market.

72 In addition to the above feedback, AFMA and another respondent raised a further proposal to allow aggregation of multiple clients on both sides of a block trade (which may or may not have a principal on one side to cover a volume mismatch).

ASIC's response

We intend to proceed with Option 2: amend Rule 4.2.1 (Competition) to allow aggregation of client and principal orders on the same side of a block trade transaction once the block trade consideration threshold has been met by the client orders on each side of the transaction.

We prefer Option 2 to Option 1 because it will not permit a market participant to lift a trade into block size by combining a principal order with smaller client orders that would not otherwise meet the block trade consideration threshold.

We intend to monitor the effects of this change on on-market liquidity and the quality of price formation as part of our regular reviews of dark liquidity.

We consider that allowing aggregation of multiple orders on both sides of a block trade goes beyond the intention of Rule 4.2.1.

Derivatives market contracts and wholesale client disclosure

- 73 In CP 277, we sought feedback on the proposal to remove class waiver relief provided in [ASIC Class Rule Waiver \[CW 14-1091\]](#) and apply Rule 3.4.3(1)(b) of the ASIC Market Integrity Rules (Securities Markets) to all securities markets and financial products, including derivatives market contracts.
- 74 While several respondents were supportive of greater disclosure to wholesale clients, there was significant disagreement concerning this proposal.
- 75 The benefits provided by the two elements of the disclosure, whether or not the transaction was undertaken against principal and the venue of execution, were broadly seen as uncertain. The reasons given for this uncertainty were:
- (a) Exchange traded options on the ASX market are the only derivatives market contracts that this disclosure would affect.
 - (b) Derivatives market contract crossings transacted on the ASX's exchange traded options market most often involve trading against principal. This is particularly the case if the wholesale client is seeking liquidity and therefore generally assumes the liquidity provider is acting as principal.
 - (c) Given there is currently only one functioning trading platform for exchange traded options, detailing the venue of execution is not needed at this point in time. Crossing rules for derivatives market contracts also currently exclude these financial products from crossing systems as alternative execution venues.
- 76 Furthermore, several respondents suggested that the issue of information asymmetry is mitigated somewhat due to the different characteristics of the market for derivatives market contracts when compared with cash market securities. For example, fair value calculators for exchange traded options are widely available which allows clients the opportunity to approximate pricing and compare price quotes when making decisions.
- 77 In principle, respondents on the buy-side supported equivalent transparency across exchange traded products. However, for the reasons outlined above, the usefulness of additional disclosure from exchange traded option transactions is unclear.

- 78 Respondents did not adequately quantify the cost of implementing the proposal.
- 79 Respondents considered six months an adequate and appropriate transition period to allow for implementation of any necessary technology changes if the proposal was to proceed.

ASIC's response

We have extended the class waiver relief provided in [CW14-1091] until 30 June 2020, thereby continuing to relieve market participants from providing a confirmation (or alternative notification) under Rule 3.4.3(1)(b) of the ASIC Market Integrity Rules (Securities Markets) to a wholesale client for a market transaction in a derivatives market contract.

We maintain the view that it is important for retail and wholesale clients to understand the capacity in which a market participant has filled their order, particularly where the transaction is with the market participant as principal. This helps to ensure that conflicts of interest arising from information asymmetry are appropriately managed by way of disclosure.

We acknowledge that the issue of information asymmetry is mitigated somewhat at present due to the different characteristics of the market for derivatives market contracts when compared with other securities markets.

After careful consideration, we are of the view that while improved disclosure remains the ultimate goal, in this instance the benefits are less clear.

Before 30 June 2020, we will again review the circumstances of the market for derivatives market contracts to consider whether the relief in [CW 14-1091] remains appropriate. Examples of changing circumstances which may affect ASIC's view of the appropriateness of continuing the relief in [CW 14-1091] include changes in market liquidity, commencement of alternative trading venues and product innovation.

Record keeping for market operators

- 80 In CP 277, we sought feedback on the proposal to make a new market integrity rule requiring a market operator to keep records for a period of at least seven years to demonstrate that it has complied with its obligations under the ASIC market integrity rules and Pt 7.2 of the Corporations Act.
- 81 Respondents were generally supportive of the proposal, with the exception of Chi-X which argued that the case for the proposed rule had not been made. Some respondents and representatives of ASIC's Market Advisory Panel were surprised that an explicit record-keeping obligation was not already in place and strongly supported the proposal.

82 ASX and Chi-X sought clarity about what records would be required to be retained. Chi-X also commented that it was not clear how the proposal applied to records that were protected by claims of confidentiality or privilege.

83 There was general consensus that seven years was an appropriate time frame and consistent with current practice for market operators and other ASIC-regulated entities.

ASIC's response

We intend to proceed and make market integrity rules requiring a market operator to keep records:

- (a) to demonstrate it has complied with its obligations under the ASIC market integrity rules and Pt 7.2 of the Corporations Act; and
- (b) for a period of at least seven years from the date the record is made or amended.

We intend to issue guidance to clarify the types of records required to be retained after consulting with market operators.

A market operator's obligation to keep a record under Part 9.5 of the draft ASIC Market Integrity Rules (Securities Markets) would not be affected by any claim of legal professional privilege which may apply to the record. However, a market operator may have a reasonable excuse for not producing a record that is protected by legal professional privilege to ASIC in response to a notice of direction. [Information Sheet 165](#) *Claims of legal professional privilege* (INFO 165) explains how we approach claims of legal professional privilege.

Appendix: List of non-confidential respondents

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- ASX Limited
 - Australian Financial Markets Association
 - Chi-X Australia Pty Ltd
 - National Stock Exchange of Australia Limited
 - Stockbrokers and Financial Advisers Association Limited
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