



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 166

# Market integrity rules for non-AFS licensee foreign participants and consequential amendments

August 2011

## About this paper

This consultation paper sets out our proposals for updating the ASIC Market Integrity Rules (ASX Market) 2010 and ASIC Market Integrity Rules (Chi-X Australia Market) 2011 to include:

- an additional ASIC market integrity rule for certain minimum presence requirements for non-AFS licensee foreign market participants trading on the ASX and/or Chi-X markets; and
- consequential amendments to the existing market integrity rules for these markets, resulting from the introduction of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011.

### 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 17 August 2011 and is based on the Corporations Act as at 17 August 2011.

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

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

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on the proposed ASIC market integrity rules. 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 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 9 September 2011 to:

Anastasia Zafeirakopoulos  
Exchange Markets Operators  
Australian Securities and Investments Commission  
GPO Box 9827  
Sydney NSW 2001  
facsimile: +61 2 9911 2414  
email: marketstructure@asic.gov.au

## What will happen next?

<b>Stage 1</b>	17 August 2011	ASIC consultation paper released with the proposed amendments to the ASIC market integrity rules
<b>Stage 2</b>	9 September 2011	Comments due on the consultation paper
<b>Stage 3</b>	October 2011	Amendments to the ASIC market integrity rules finalised
<b>Stage 4</b>	31 October 2011	Amendments to the ASIC market integrity rules take effect

The making of the proposed amendments to the market integrity rules is subject to Ministerial consent under s798G of the Corporations Act.

## A Background to the proposals

### Key points

Market participants dealing in equity market products quoted on the Australian Securities Exchange (ASX) must comply with the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011, together with the relevant market integrity rules of the market in which they participate.

This consultation paper sets out our proposals for updating the ASIC Market Integrity Rules (ASX Market) 2010 and ASIC Market Integrity Rules (Chi-X Australia Market) 2011 to include:

- an additional ASIC market integrity rule for certain minimum presence requirements for foreign market participants that trade on the ASX and/or Chi-X markets and do not hold an Australian financial services (AFS) licence; and
- consequential amendments to the existing market integrity rules for these markets, resulting from the introduction of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011.

### Existing market integrity rules

- 1 In April 2011 we made market integrity rules that apply to markets where equity market products admitted to quotation on the ASX are traded, and to participants dealing in those products. Those rules were designed to address some of the issues arising on the introduction of competition between exchange markets: see ASIC Market Integrity Rules (Competition). Some of the ASIC Market Integrity Rules (Competition) came into effect on 5 May 2011 and the remainder will come into effect on 31 October 2011.

Note: In this document 'ASIC Market Integrity Rules (Competition)' refers to the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011.

- 2 The ASIC Market Integrity Rules (Competition) supplement the ASIC Market Integrity Rules (ASX), which came into effect on 1 August 2010, and the ASIC Market Integrity Rules (Chi-X), which came into effect on 5 May 2011. The Chi-X market is expected to commence operating on a date not before 31 October 2011.

Note 1: In this document 'ASIC Market Integrity Rules (ASX)' refers to the ASIC Market Integrity Rules (ASX Market) 2010 and 'ASIC Market Integrity Rules (Chi-X)' refers to the ASIC Market Integrity Rules (Chi-X Australia Market) 2011.

Note 2: Existing market integrity rules can be downloaded at [www.asic.gov.au/markets](http://www.asic.gov.au/markets).

- 3 Participants of the ASX and Chi-X markets that trade in equity market products need to comply with the ASIC Market Integrity Rules

(Competition), ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X). We are proposing to make minor amendments to the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) to take effect on 31 October 2011 to ensure that these rules are consistent with each other and the ASIC Market Integrity Rules (Competition). This is because the ASIC Market Integrity Rules (ASX) were made before the ASIC Market Integrity Rules (Competition), and the ASIC Market Integrity Rules (Chi-X) were based on the ASIC Market Integrity Rules (ASX).

## Scope of this consultation paper

- 4 This consultation paper proposes updating the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) to include:
  - (a) an additional ASIC market integrity rule for certain minimum presence requirements for foreign market participants that trade on the ASX and/or Chi-X markets and do not hold an AFS licence; and
  - (b) consequential amendments to the existing market integrity rules for these markets, resulting from the introduction of the ASIC Market Integrity Rules (Competition).
- 5 We plan to have the proposed amendments to the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) take effect on 31 October 2011.
- 6 Appendices 1 and 2 set out our proposed amendments to the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X), which are presented as marked-up versions of the relevant sections of the current market integrity rules for these markets.
- 7 Consistent with previous statements, we intend to review at a later time the market integrity rules with a view to eliminating competing obligations and/or duplication so that only one set of ASIC market integrity rules applies to all like markets.
- 8 This consultation paper does not address market operator operating rule changes as a result of the ASIC Market Integrity Rules (Competition). Any necessary changes to operating rules will be dealt with by the relevant market operator.
- 9 We intend to consult further on a number of issues related to market developments later in 2011.

## B Minimum presence requirements for foreign market participants

### Key points

To facilitate enforcement actions in Australia for breaches of the ASIC market integrity rules and laws applying to market participants, we propose to impose minimum presence requirements on foreign market participants that do not hold an AFS licence.

ASIC's ability to take effective enforcement action is fundamental to supervision of the financial markets and ensuring that markets are fair and efficient.

- 10 Under the Corporations Act, market participants are required to comply with the relevant market integrity rules. This includes foreign market participants—that is, those participants that are foreign entities and are not required to hold an AFS licence.
- 11 To facilitate enforcement actions in Australia for breaches of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), the Corporations Act and the *Corporations (Fees) Act 2001* (Fees Act) by foreign market participants, we propose to include an additional market integrity rule in the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) to impose minimum presence requirements on foreign participants of these markets, where those foreign market participants do not hold an AFS licence. There are already minimum presence requirements in place to facilitate enforcement actions against those market participants that are foreign entities that do hold an AFS licence.
- 12 We previously consulted on the issue of minimum presence requirements for foreign participants of the Chi-X market in Consultation Paper 148 *Proposed market integrity rules: Chi-X market* (CP 148). The feedback on CP 148 raised no significant issues with the proposal.
- 13 At present, there are no foreign participants of the ASX market that are incorporated outside of Australia and do not hold an AFS licence. We note that the earliest the Chi-X market can start operating is 31 October 2011, which coincides with the date the proposed new requirements will take effect. Therefore, there is no need to create transitional arrangements for existing foreign market participants.
- 14 We recognise that some foreign market participants that do not hold an AFS licence are participants of Australian domestic financial markets other than ASX and Chi-X, including, for example, the ASX 24 market. We intend to consult further on extending the minimum presence requirement to participants of other markets in due course.



## Proposal

- B1** We propose that a foreign market participant who does not hold an AFS licence may trade on the ASX and/or Chi-X markets only if they have entered into and maintain at all times a deed for the benefit of, and enforceable by, ASIC and the other persons referred to in s659B(1) of the Corporations Act.

Note: See also Appendices 1 and 2 of this consultation paper.

### *Your feedback*

- B1Q1 Would this proposal result in any adverse or unintended consequences? Please provide details.
- B1Q2 Are there any other mechanisms that could achieve effective enforcement action by ASIC? If so, what are they?
- B1Q3 Does this proposal raise any compliance issues?

- B2** We propose that the deed will provide, at a minimum:

- (a) the deed is irrevocable except with the prior written consent of ASIC;
- (b) the Foreign Market Participant submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise;
- (c) the Foreign Market Participant covenants to comply with any order of an Australian court in respect of any matter relating to the activities or conduct of the Foreign Market Participant in relation to the Market or in relation to Financial Products traded on the Market, including but not limited to any matter relating to the Foreign Market Participant's obligations under:
  - (i) the ASIC Act;
  - (ii) the Corporations Act; and
  - (iii) the Fees Act;
- (d) if the Foreign Market Participant is not registered under Division 2 of Part 5B.2 of the Corporations Act:
  - (i) the Foreign Market Participant must have at all times an agent who is:
    - (A) a natural person or a company;
    - (B) resident in this jurisdiction; and
    - (C) authorised to accept, on behalf of the Foreign Market Participant, service of process and notices; and
  - (ii) the Foreign Market Participant must notify ASIC of any change to:
    - (A) the agent; or
    - (B) the name and address of the agent (if the agent is a company, address means the address of the registered office of the company); and
  - (iii) service of process on the Foreign Market Participant in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act), and in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name

of ASIC or the Crown or otherwise, can be effected by service on the agent;

- (e) the deed applies notwithstanding that the Foreign Market Participant may have ceased to be a Market Participant; and
- (f) such additional terms notified by ASIC to the Foreign Market Participant.'

*Your feedback*

B2Q1 Are there any other terms the deed should include?

- B3** We propose a maximum penalty amount of \$1 million for breaches of this proposed market integrity rule.

*Your feedback*

B3Q1 Is the proposed penalty amount appropriate? If not, why not?

## Rationale

15 This proposed market integrity rule:

- (a) facilitates enforcement action by ASIC against foreign market participants that trade on the ASX and/or Chi-X markets and do not hold an AFS licence;
- (b) is consistent with our proposals in CP 148; and
- (c) is founded on the minimum presence requirements in Regulatory Guide 176 *Licensing: Discretionary powers—Wholesale foreign financial services providers* (RG 176), which have been amended to reflect the regulatory framework and the nature of activities and conduct of foreign market participants in relation to the market and financial products traded on the market.

## C Consequential amendments to market integrity rules for ASX and Chi-X markets

### Key points

We are proposing to make minor consequential amendments to the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) to become effective on 31 October 2011 to ensure that these rules are consistent with each other and the ASIC Market Integrity Rules (Competition).

Our proposed amendments relate to:

- restrictions on crossings and trading outside of normal trading hours during takeovers and buybacks to ensure that existing restrictions operate effectively;
- the prohibition on dealing during a trading suspension; and
- market participant restrictions relating to client instructions.

### References to the pre-trade transparency regime

- 16 Under the ASIC Market Integrity Rules (Competition), we have introduced a pre-trade transparency regime that harmonises with the existing ASX pre-trade transparency exceptions to ensure consistent standards across competing markets from the commencement of competition on 31 October 2011: see Rule 4.1.1(2) and Part 4.2 of the ASIC Market Integrity Rules (Competition). These exceptions are described in Table 10 of Regulatory Guide 223 *Guidance on ASIC market integrity rules for competition in exchange markets* (RG 223).

Note: We consider that ASX's existing exceptions for block special crossings, facilitated specified size block special crossings, portfolio special crossings and priority crossings are consistent with the pre-trade transparency exceptions in the ASIC Market Integrity Rules (Competition).

- 17 Parts 6.4, 6.5 and 6.6 of Chapter 6 (Takeovers) of the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) place restrictions on crossings during takeovers and buybacks.
- 18 We propose to amend Parts 6.4, 6.5 and 6.6 of the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) to extend the restriction applicable to Special Crossings during takeovers and buybacks to include "Trades At or Within the Spread" (within the meaning of Rule 4.2.3 of the ASIC Market Integrity Rules (Competition)) that are conducted off-market. We propose to ensure that existing restrictions on crossings and trading outside normal trading hours during takeovers and buybacks operate

effectively in the context of the pre-trade transparency exceptions in the ASIC Market Integrity Rules (Competition).

### Prohibition on trading during trading suspensions

- 19 There is inconsistency between the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X), and the ASIC Market Integrity Rules (Competition), in relation to a trading participant's ability to deal during a trading suspension, as shown in Table 1.

**Table 1: Comparison of market integrity rules relating to dealing during a trading suspension**

Market integrity rules	Rule title	Description
ASIC Market Integrity Rules (ASX)	Dealings in cash market products suspended from official quotation (Rule 5.10.4)	This rule states that: A Trading Participant must not deal in Cash Market Products which have been suspended from quotation or trading unless prior written approval has been given by the Market Operator.
ASIC Market Integrity Rules (Chi-X)	Dealings in equity market products suspended from official quotation (Rule 5.10.4)	This rule states that: A Market Participant must not deal in Equity Market Products which have been suspended from quotation or trading unless prior written approval has been given by the Market Operator.
ASIC Market Integrity Rules (Competition)	Prohibition on trading during trading suspension (Rule 7.2.1)	This rule states that: A Participant must not match an Order or execute a Transaction in circumstances where the relevant Equity Market Product is in a Trading Suspension on all Markets on which that Equity Market Product is quoted.

- 20 We propose to amend the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) to address this inconsistency by clarifying the operation of the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) in circumstances where trading in an equity market product is only suspended on one of those markets, and removing the ability of a trading participant to obtain written approval from the market operator to deal during a trading suspension.

### Market participant restrictions relating to client instructions

- 21 We propose to amend Rule 3.3.1 of the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) to acknowledge that the ASIC Market Integrity Rules (Competition) now make provision in relation to dealing with client instructions under the best execution rule, and the ability to trade off-market under the pre-trade transparency exceptions.

## Proposal

- c1** We propose to amend the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) as follows:
- (a) Parts 6.4, 6.5 and 6.6—to extend the restrictions applicable to Special Crossings during takeovers and buybacks to include “Trades At or Within the Spread” (within the meaning of Rule 4.2.3 of the ASIC Market Integrity Rules (Competition)) that are conducted off-market and to ensure that restrictions on crossings and trading outside normal trading hours during takeovers and buybacks operate effectively in the context of the pre-trade transparency exceptions in the ASIC Market Integrity Rules (Competition);
  - (b) Rule 5.10.4—to deal with circumstances in which trading in an equity market product is only suspended on one of those markets; and
  - (c) Rule 3.3.1—to acknowledge that the ASIC Market Integrity Rules (Competition) now make provision in relation to dealing with client instructions under the best execution rule, and the ability to trade off-market under the pre-trade transparency exceptions.

Note: See also Appendices 1 and 2 of this consultation paper.

### *Your feedback*

- C1Q1 Are there any unintended consequences of these proposed amendments? Please provide details.
- C1Q2 Do you think there are any additional consequential amendments that need to be made to the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X)?

## Rationale

- 22 We consider that these proposed minor amendments to the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) are required as a consequence of making the ASIC Market Integrity Rules (Competition) and will not result in any changes to existing obligations under the market integrity rules.

## D Regulatory and financial impact

- 23 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) protecting the integrity of the Australian markets; and
  - (b) ensuring consistency between the ASIC Market Integrity Rules (ASX), ASIC Market Integrity Rules (Chi-X) and ASIC Market Integrity Rules (Competition).
- 24 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
  - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
  - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 25 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 26 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
  - (b) the likely effect on competition; and
  - (c) other impacts, costs and benefits,
- See 'The consultation process' p. 4.

## 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 of the Corporations Act.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC Market Integrity Rules (ASX)	ASIC Market Integrity Rules (ASX Market) 2010—rules made by ASIC under s798G of the Corporations Act for trading on ASX
ASIC Market Integrity Rules (Chi-X)	ASIC Market Integrity Rules (Chi-X Australia Market) 2011—rules made by ASIC under s798G of the Corporations Act for trading on the Chi-X market
ASIC Market Integrity Rules (Competition)	ASIC Market Integrity Rules (Competition in Exchange Markets) 2011—rules made by ASIC under s798G of the Corporations Act that are common to markets dealing in equity market products quoted on ASX
ASX	The exchange market operated by ASX Limited
ASX Limited	The market licensee that operates the exchange market known as 'ASX'
Australian domestic licensed financial market	A financial market licensed under s795B(1) of the Corporations Act
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
Chi-X	Chi-X Australia Pty Limited
Chi-X market	The exchange market known as Chi-X, operated by Chi-X
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
CP 148	ASIC consultation paper <i>Proposed market integrity rules: Chi-X market</i> , released 4 March 2011

Term	Meaning in this document
deed	An instrument under seal containing a written contractual arrangement between ASIC and the foreign market participant that is enforceable by a court
equity market products	Shares, managed investment schemes, the right to acquire by way of issue shares and managed investment schemes, and CDIs admitted to quotation on ASX
Fees Act	<i>Corporations (Fees) Act 2001</i>
financial market	As defined in s767A of the Corporations Act. It encompasses facilities through which offers to acquire or dispose of financial products are regularly made or accepted
financial product	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"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C); and</li> <li>• makes non-cash payments (see s763D)</li> </ul> <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>
foreign market participant	A market participant that is a foreign entity and does not hold an AFS licence
market	financial market
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on Australian domestic licensed markets
market operator	A holder of an Australian market licence that is the operator of a financial market on which financial products are traded
market participant	An entity that is a participant of a financial market on which financial products are traded
pre-trade transparency	Information on bids and offers being made publicly available before transactions occur (i.e. displayed liquidity)
RG 176 (for example)	An ASIC regulatory guide (in this example numbered 176)
s912 (for example)	A section of the Corporations Act (in this example numbered 912), unless otherwise specified
trading halt or suspension	A temporary pause in the trading of a product for a reason related to market integrity, such as when an announcement of price-sensitive information is pending (does not include a halt or suspension caused by a technical problem, including a power outage) affecting a market operator's trading system



## List of proposals and questions

Proposal	Your feedback
<p>B1 We propose that a foreign market participant who does not hold an AFS licence may trade on the ASX and/or Chi-X markets only if they have entered into and maintain at all times a deed for the benefit of, and enforceable by, ASIC and the other persons referred to in s659B(1) of the Corporations Act.</p> <p>Note: See also Appendices 1 and 2 of this consultation paper.</p>	<p>B1Q1 Would this proposal result in any adverse or unintended consequences? Please provide details.</p> <p>B1Q2 Are there any other mechanisms that could achieve effective enforcement action by ASIC? If so, what are they?</p> <p>B1Q3 Does this proposal raise any compliance issues?</p>
<p>B2 We propose that the deed will provide, at a minimum:</p> <p>‘(a) the deed is irrevocable except with the prior written consent of ASIC;</p> <p>(b) the Foreign Market Participant submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise;</p> <p>(c) the Foreign Market Participant covenants to comply with any order of an Australian court in respect of any matter relating to the activities or conduct of the Foreign Market Participant in relation to the Market or in relation to Financial Products traded on the Market, including but not limited to any matter relating to the Foreign Market Participant’s obligations under:</p> <p>(i) the ASIC Act;</p> <p>(ii) the Corporations Act; and</p> <p>(iii) the Fees Act;</p> <p>(d) if the Foreign Market Participant is not registered under Division 2 of Part 5B.2 of the Corporations Act:</p> <p>(i) the Foreign Market Participant must have at all times an agent who is:</p> <p>(A) a natural person or a company;</p> <p>(B) resident in this jurisdiction; and</p> <p>(C) authorised to accept, on behalf of the Foreign Market Participant, service of process and notices; and</p> <p>(ii) the Foreign Market Participant must notify ASIC of any change to:</p> <p>(A) the agent; or</p> <p>(B) the name and address of the agent (if the agent is a company, address means the address of the registered office of the company); and</p> <p>(iii) service of process on the Foreign Market Participant in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act), and in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise, can be effected by service on the agent;</p> <p>(e) the deed applies notwithstanding that the Foreign Market Participant may have ceased to be a Market Participant; and</p> <p>(f) such additional terms notified by ASIC to the Foreign Market Participant.’</p>	<p>B2Q1 Are there any other terms the deed should include?</p>

Proposal	Your feedback
<p>B3 We propose a maximum penalty amount of \$1 million for breaches of this proposed market integrity rule.</p>	<p>B3Q1 Is the proposed penalty amount appropriate? If not, why not?</p>
<p>C1 We propose to amend the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X) as follows:</p> <ul style="list-style-type: none"> <li>(a) Parts 6.4, 6.5 and 6.6—to extend the restrictions applicable to Special Crossings during takeovers and buybacks to include “Trades At or Within the Spread” (within the meaning of Rule 4.2.3 of the ASIC Market Integrity Rules (Competition)) that are conducted off-market and to ensure that restrictions on crossings and trading outside normal trading hours during takeovers and buybacks operate effectively in the context of the pre-trade transparency exceptions in the ASIC Market Integrity Rules (Competition);</li> <li>(b) Rule 5.10.4—to deal with circumstances in which trading in an equity market product is only suspended on one of those markets; and</li> <li>(c) Rule 3.3.1—to acknowledge that the ASIC Market Integrity Rules (Competition) now make provision in relation to dealing with client instructions under the best execution rule, and the ability to trade off-market under the pre-trade transparency exceptions.</li> </ul> <p>Note: See also Appendices 1 and 2 of this consultation paper.</p>	<p>C1Q1 Are there any unintended consequences of these proposed amendments? Please provide details.</p> <p>C1Q2 Do you think there are any additional consequential amendments that need to be made to the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (Chi-X)?</p>

## **Appendix 1: Proposed amendments to ASIC Market Integrity Rules (ASX)**

This appendix presents ASIC's proposed amendments to the ASIC Market Integrity Rules (ASX) as a marked-up version of the relevant sections of the existing ASIC Market Integrity Rules (ASX). Market integrity rules to which no change is proposed have not been reproduced in this appendix.

For more information, including the related ASIC advisory, go to [www.asic.gov.au/markets](http://www.asic.gov.au/markets).

# Chapter 1: Introduction

## Part 1.4 Interpretation

### 1.4.3 Definitions

**“ASIC Act”** means the *Australian Securities and Investments Commission Act 2001*.

**“Competition Market Integrity Rules”** means the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* as amended from time to time.

**“Equity Market”** means a Financial Market, on or through which offers to acquire or dispose of Equity Market Products are made or accepted, the operator of which is licensed under subsection 795B(1) of the Corporations Act.

**“Equity Market Product”** has the meaning given by Rule 1.4.3 of the Competition Market Integrity Rules.

**“Financial Market”** has the meaning given by section 767A of the Corporations Act.

**“Off-Market Trade At or Within the Spread”** means a Crossing entered into by a Market Participant other than on an Order Book of an Equity Market in reliance on paragraph 4.1.1(2)(c) of the Competition Market Integrity Rules.

**“On-Market”**, in relation to a transaction for the purpose of Chapter 6 of the Corporations Act, means a transaction by a Trading Participant for the acquisition of Cash Market Products which is:

- (a) effected during ~~Open Session State or CSPA Session State Trading Hours~~ by matching of Trading Messages on a Trading Platform (other than a Crossing) in accordance with the Market Operating Rules; or
- (b) a Crossing effected during ~~Open Session State Trading Hours (excluding a time during which an auction is conducted on the Market)~~ in accordance with the Market Operating Rules if:
  - (i) the Crossing is arranged solely by a Trading Participant and is not prearranged between the principals to the transaction; and
  - (ii) each principal is indifferent as to the identity of the other,
 where:
  - (iii) the expression “principal” includes the principal’s associates, advisers and advisers’ associates; and
  - (iv) the expression “adviser” does not include a person only providing services to the principal as a broker,

but does not include:

~~(c) an Off-Market Trade At or Within the Spread;~~

~~(d) Special Crossings; and~~

~~(b)(e)~~ Crossings (other than Special Crossings) that are effected outside of Trading Hours after CSPA Session State on a Trading Day and up to 15 minutes prior to commencement of the Open Session State on the next Trading Day.

**“Order Book”** means an electronic list of Orders, maintained by or on behalf of the operator of an Equity Market, on which those Orders are matched with other Orders in the same list.

**“Special Crossing”**:

- (a) in relation to an Equity Market Product, means a Crossing entered into by a Market Participant other than on an Order Book of an Equity Market in reliance on paragraphs 4.1.1(2)(a) or (b) of the Competition Market Integrity Rules; and
- (b) in relation to a Product other than an Equity Market Product, has the meaning given by the Market Operating Rules.

Note: Paragraphs 4.1.1(2)(a) and (b) of the Competition Market Integrity Rules provide exceptions from the pre-trade transparency requirements in relation to “Block Trades” and “Large Portfolio Trades”.

**“Trading Hours”**, in relation to the Market, means the times during which:

- (a) Orders may be entered, amended or cancelled on the Order Books of the Market; and
  - (b) Orders are matched and transactions are executed on a continuous basis on the Market,
- and includes a time during which an auction is conducted on the Market.

**“Trading Suspension”** means a halt or suspension in trading on an Equity Market pursuant to the exercise of a power by the operator of the Equity Market under its operating rules, during which Orders may not be matched or executed on the relevant Equity Market, but does not include a halt or suspension caused by a technical problem (including a power outage) affecting the technical infrastructure used by the operator of the Equity Market for the purposes of receiving Trading Messages, matching and executing Orders and reporting transactions.

## Chapter 2: Participants and Representatives

### Part 2.6 Foreign Participants

#### 2.6.1 Minimum presence requirements

(1) This Rule applies to a Market Participant (“**Foreign Market Participant**”) who:

- (a) is a foreign entity; and
- (b) does not hold an AFSL.

(2) Before entering into a Market Transaction, a Foreign Market Participant must provide ASIC with a deed of the Foreign Market Participant for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Corporations Act, which deed provides that:

- (a) the deed is irrevocable except with the prior written consent of ASIC;
- (b) the Foreign Market Participant submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise;
- (c) the Foreign Market Participant covenants to comply with any order of an Australian court in respect of any matter relating to the activities or conduct of the Foreign Market Participant in relation to the Market or in relation to Financial Products traded on the Market, including but not limited to any matter relating to the Foreign Market Participant’s obligations under:
  - (i) the ASIC Act;
  - (ii) the Corporations Act; and
  - (iii) the *Corporations (Fees) Act 2001*;
- (d) if the Foreign Market Participant is not registered under Division 2 of Part 5B.2 of the Corporations Act:
  - (i) the Foreign Market Participant must have at all times an agent who is:
    - (A) a natural person or a company;
    - (B) resident in this jurisdiction; and
    - (C) authorised to accept, on behalf of the Foreign Market Participant, service of process and notices; and
  - (ii) the Foreign Market Participant must notify ASIC of any change to:
    - (A) the agent; or
    - (B) the name and address of the agent (if the agent is a company, address means the address of the registered office of the company); and
  - (iii) service of process on the Foreign Market Participant in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act), and in relation to

proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise, can be effected by service on the agent;

(e) the deed applies notwithstanding that the Foreign Market Participant may have ceased to be a Market Participant; and

(f) such additional terms notified by ASIC to the Foreign Market Participant.

Maximum penalty: \$1,000,000

## Chapter 3: Client relationships

### Part 3.3 Client instructions

#### 3.3.1 Market Participant restrictions

A Market Participant must not:

- (a) accept or execute instructions from a person (a “**Client**”) to enter into a Market Transaction except in accordance with these Rules, [the Competition Market Integrity Rules](#) and the Market Operating Rules;
- (b) enter into a Market Transaction for a Client, except in accordance with the instructions of the Client, or of a person authorised in writing by a Client to give such instructions, or pursuant to an exercise of discretion in respect of that particular Client’s Managed Discretionary Account or as otherwise permitted by these Rules or the Market Operating Rules;
- (c) allocate a Market Transaction to a Client’s account unless the Market Transaction was entered into on the instructions of the Client, or of a person authorised in writing by a Client to give such instructions, or pursuant to an exercise of discretion in respect of that particular Client’s Managed Discretionary Account or as otherwise permitted by these Rules or the Market Operating Rules; or
- (d) except as permitted under these Rules or the ~~Market Operating Rules~~[Competition Market Integrity Rules](#), or in writing by ASIC, enter into or arrange a Market Transaction on the instructions of a Client unless the instructions are executed in such a manner that the Market Transaction is entered into on a Trading Platform.

Maximum penalty: \$1,000,000



## Chapter 5: Trading

### Part 5.10 Dealing in Cash Market Products

#### 5.10.4 Dealings in Cash Market Products suspended from Official Quotation

A Trading Participant must not deal in Cash Market Products which have been suspended from quotation or trading unless the Cash Market Product is an Equity Market Product that is quoted on another Equity Market and is not in a Trading Suspension on that Equity Market ~~or written approval has been given by the Market Operator.~~

Maximum penalty: \$100,000

## Chapter 6: Takeovers

### Part 6.4 Limitations on ~~Late, Overseas and Overnight~~ Crossings outside of Trading Hours during a Takeover Bid or Scheme

#### 6.4.1 ~~Late, overseas and overnight~~ Crossings outside of Trading Hours in Cash Market Products

(1) During the Offer Period under a Market Bid or Scheme, a Trading Participant must not effect a Crossing of the type set out in subrule (2) in a class of Cash Market Products where the Crossing is at a price which is at or below the offer price for that class of Cash Market Products.

(2) For the purposes of subrule (1), the type of Crossing is a Crossing (other than a Special Crossing ~~or an Off-Market Trade At or Within the Spread~~) that is effected outside of Trading Hours and reported to the Market Operator after CSPA Session State on a Trading Day and up to 15 minutes prior to commencement of the Open Session State on the next Trading Day in accordance with the Market Operating Rules.

Maximum penalty: \$100,000

#### 6.4.3 Crossings outside of Trading Hours ~~Late, overseas and overnight Crossings and Crossings after Trading Close~~ in Combinations

(1) A Trading Participant must not execute a Crossing in a Combination of the type set out in subrule (2) (at a price which is at or below the offer price for the relevant class of Cash Market Products) or of the type set out in subrule (3), if a component part of that Combination is:

- (a) a Cash Market Product (other than a Warrant); or
- (b) a Derivatives Market Contract over a Cash Market Product; or
- (c) a Warrant over a Cash Market Product;

in respect of which there is currently an Offer Period for a Takeover Bid or Scheme (in respect of a Crossing under subrule (3)) or an Offer Period for a Market Bid (in respect of a Combination under subrule (2)).

(2) For the purposes of subrule (1), the type of Crossing is a Crossing (other than a Special Crossing) in a Cash Only Combination that is effected outside of Trading Hours and reported to the Market Operator after CSPA Session State on a Trading Day and up to 15 minutes prior to commencement of the Open Session State on the next Trading Day in accordance with the Market Operating Rules.

(3) For the purposes of subrule (1), the type of Crossing is a Crossing (other than a Special Crossing) in a Derivatives Combination that is effected during Late Trading Session State in accordance with the Market Operating Rules.

Maximum penalty: \$100,000

## **Part 6.5 Special Crossings and Off-Market Trades At or Within the Spread Prohibited During Offer Period**

### **6.5.1 Special Crossings and Off-Market Trade At or Within the Spread in Cash Market Products (excluding Warrants)**

A Trading Participant must not effect:

(a) a Special Crossing; or

(b) an Off-Market Trade At or Within the Spread,

of any Cash Market Products (excluding Warrants) of an Issuer during a Bid Period for a Takeover Bid or Scheme for the Cash Market Products (excluding Warrants) of the Issuer.

Maximum penalty: \$100,000

## **Part 6.6 Limitations on Crossings during buy-back conducted On-Market**

### **6.6.1 Special Crossing or Off-Market Trade At or Within the Spread in Cash Market Products (excluding Warrants) on behalf of Issuer**

A Trading Participant must not effect:

(a) a Special Crossing; or

(b) an Off-Market Trade At or Within the Spread,

of any Cash Market Products (excluding Warrants) of an Issuer, on behalf of that Issuer during the term of a buy-back offer conducted On-Market by that Issuer.

Maximum penalty: \$100,000

## Appendix 2: Proposed amendments to ASIC Market Integrity Rules (Chi-X)

This appendix presents ASIC's proposed amendments to the ASIC Market Integrity Rules (Chi-X) as a marked-up version of the relevant sections of the existing ASIC Market Integrity Rules (Chi-X). Market integrity rules to which no change is proposed have not been reproduced in this appendix.

For more information, including the related ASIC advisory, go to [www.asic.gov.au/markets](http://www.asic.gov.au/markets).

# Chapter 1: Introduction

## Part 1.4 Interpretation

### 1.4.3 Definitions

**“ASIC Act”** means the *Australian Securities and Investments Commission Act 2001*.

**“Competition Market Integrity Rules”** means the *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* as amended from time to time.

**“Equity Market”** means a Financial Market, on or through which offers to acquire or dispose of Equity Market Products are made or accepted, the operator of which is licensed under subsection 795B(1) of the Corporations Act.

**“Equity Market Product”** has the meaning given by Rule 1.4.3 of the Competition Market Integrity Rules.

**“Financial Market”** has the meaning given by section 767A of the Corporations Act.

**“Off-Market Trade At or Within the Spread”** means a Crossing entered into by a Market Participant other than on an Order Book of an Equity Market in reliance on paragraph 4.1.1(2)(c) of the Competition Market Integrity Rules.

**“On-Market”**, in relation to a transaction for the purpose of Chapter 6 of the Corporations Act, means a transaction by a Market Participant for the acquisition of Equity Market Products which is:

- (a) effected during ~~the Continuous Trading Period~~ Trading Hours by matching of Trading Messages on a Trading Platform (other than a Crossing) in accordance with the Market Operating Rules; or
- (b) a Crossing effected during ~~the Continuous Trading Period~~ Trading Hours in accordance with the Market Operating Rules if:
  - (i) the Crossing is arranged solely by a Trading Participant and is not prearranged between the principals to the transaction; and
  - (ii) each principal is indifferent as to the identity of the other,
 

where:

    - (iii) the expression “principal” includes the principal’s associates, advisers and advisers’ associates; and
    - (iv) the expression “adviser” does not include a person only providing services to the principal as a broker,

but does not include:

- (c) an Off-Market Trade At or Within the Spread;

~~(a)~~(d) Special Crossings; and

~~(b)~~(e) Crossings (other than Special Crossings) that are effected outside of Trading Hours after the Post Trading Administration Period on a Trading Day and up to 15 minutes prior to commencement of the Continuous Trading Period on the next Trading Day.

“Order Book” means an electronic list of Orders, maintained by or on behalf of the operator of an Equity Market, on which those Orders are matched with other Orders in the same list.

“Special Crossing” means a ~~block trade or a large portfolio trade within the meaning of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011, reported to the Market Operator as an off-market transaction under the Market Operating Rules~~ Crossing entered into by a Market Participant other than on an Order Book of an Equity Market in reliance on paragraphs 4.1.1(2)(a) or (b) of the Competition Market Integrity Rules.

Note: Paragraphs 4.1.1(2)(a) and (b) of the Competition Market Integrity Rules provide exceptions from the pre-trade transparency requirements in relation to “Block Trades” and “Large Portfolio Trades”.

“Trading Hours”, in relation to the Market, means the times during which:

(a) Orders may be entered, amended or cancelled on the Order Books of the Market; and

(b) Orders are matched and transactions are executed on a continuous basis on the Market.

“Trading Suspension” means a halt or suspension in trading on an Equity Market pursuant to the exercise of a power by the operator of the Equity Market under its operating rules, during which Orders may not be matched or executed on the relevant Equity Market, but does not include a halt or suspension caused by a technical problem (including a power outage) affecting the technical infrastructure used by the operator of the Equity Market for the purposes of receiving Trading Messages, matching and executing Orders and reporting transactions.

## Chapter 2: Participants and Representatives

### Part 2.6 Foreign Participants

#### 2.6.1 Minimum presence requirements

- (1) This Rule applies to a Market Participant (“**Foreign Market Participant**”) who:
- (a) is a foreign entity; and
  - (b) does not hold an AFSL.
- (2) Before entering into a Market Transaction, a Foreign Market Participant must provide ASIC with a deed of the Foreign Market Participant for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Corporations Act, which deed provides that:
- (a) the deed is irrevocable except with the prior written consent of ASIC;
  - (b) the Foreign Market Participant submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise;
  - (c) the Foreign Market Participant covenants to comply with any order of an Australian court in respect of any matter relating to the activities or conduct of the Foreign Market Participant in relation to the Market or in relation to Financial Products traded on the Market, including but not limited to any matter relating to the Foreign Market Participant’s obligations under:
    - (i) the ASIC Act;
    - (ii) the Corporations Act; and
    - (iii) the Corporations (Fees) Act 2001;
  - (d) if the Foreign Market Participant is not registered under Division 2 of Part 5B.2 of the Corporations Act:
    - (i) the Foreign Market Participant must have at all times, an agent who is:
      - (A) a natural person or a company;
      - (B) resident in this jurisdiction; and
      - (C) authorised to accept, on behalf of the Foreign Market Participant, service of process and notices; and
    - (ii) the Foreign Market Participant must notify ASIC of any change to:
      - (A) the agent; or
      - (B) the name and address of the agent (if the agent is a company, address means the address of the registered office of the company); and
    - (iii) service of process on the Foreign Market Participant in relation to legal proceedings

conducted by ASIC (including under section 50 of the ASIC Act), and in relation to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise, can be effected by service on the agent;

- (e) the deed applies notwithstanding that the Foreign Market Participant may have ceased to be a Market Participant; and
- (f) such additional terms notified by ASIC to the Foreign Market Participant.

Maximum penalty: \$1,000,000



## Chapter 3: Client relationships

### Part 3.3 Client instructions

#### 3.3.1 Market Participant restrictions

A Market Participant must not:

- (a) accept or execute instructions from a person (a “**Client**”) to enter into a Market Transaction except in accordance with these Rules, [the Competition Market Integrity Rules](#) and the Market Operating Rules;
- (b) enter into a Market Transaction for a Client, except in accordance with the instructions of the Client, or of a person authorised in writing by a Client to give such instructions, or pursuant to an exercise of discretion in respect of that particular Client’s Managed Discretionary Account or as otherwise permitted by these Rules or the Market Operating Rules;
- (c) allocate a Market Transaction to a Client’s account unless the Market Transaction was entered into on the instructions of the Client, or of a person authorised in writing by a Client to give such instructions, or pursuant to an exercise of discretion in respect of that particular Client’s Managed Discretionary Account or as otherwise permitted by these Rules or the Market Operating Rules; or
- (d) except as permitted under these Rules or the ~~Market Operating Rules~~[Competition Market Integrity Rules](#), or in writing by ASIC, enter into or arrange a Market Transaction on the instructions of a Client unless the instructions are executed in such a manner that the Market Transaction is entered into on a Trading Platform.

Maximum penalty: \$1,000,000

## Chapter 5: Trading

### Part 5.10 Dealing in Cash Market Products

#### 5.10.4 Dealings in Cash Market Products suspended from Official Quotation

A Trading Participant must not deal in Equity Market Products which have been suspended from quotation or trading unless [the Equity Market Product is quoted on another Equity Market and is not in a Trading Suspension on that Equity Market](#) ~~prior written approval has been given by the Market Operator.~~

Maximum penalty: \$100,000

## Chapter 6: Takeovers

### Part 6.4 ~~Limitations on Late, Overseas and Overnight~~ Crossings outside of Trading Hours during a Takeover Bid or Scheme

#### 6.4.1 ~~Late, overseas and overnight~~ Crossings outside of Trading Hours in Equity Market Products

(1) During the Offer Period under a Market Bid or Scheme, a Market Participant must not effect a Crossing of the type set out in subrule (2) in a class of Equity Market Products where the Crossing is at a price which is at or below the offer price for that class of Equity Market Products.

(2) For the purposes of subrule (1), the type of Crossing is a Crossing (other than a Special Crossing ~~or an Off-Market Trade At or Within the Spread~~) that is effected outside of Trading Hours and reported to the Market Operator after the Post Trading Administration Period on a Trading Day up to 15 minutes prior to commencement of the Continuous Trading Period on the next Trading Day in accordance with the Market Operating Rules.

Maximum penalty: \$100,000

### Part 6.5 Special Crossings and Off-Market Trades At or Within the Spread Prohibited During Offer Period

#### 6.5.1 Special Crossings and Off-Market Trades At or Within the Spread in Equity Market Products

A Market Participant must not effect:

(a) a Special Crossing; or

(b) an Off-Market Trade At or Within the Spread.

of any Equity Market Products of an Issuer during a Bid Period for a Takeover Bid or Scheme for the Equity Market Products of the Issuer.

Maximum penalty: \$100,000

### Part 6.6 Limitations on Crossings during buy-back conducted On-Market

#### 6.6.1 Special Crossing and Off-Market Trade At or Within the Spread in Equity Market Products on behalf of Issuer

A Market Participant must not effect:

(a) a Special Crossing; or

(b) an Off-Market Trade At or Within the Spread,

of any Equity Market Products of an Issuer, on behalf of that Issuer during the term of a buy-back offer conducted on a Relevant Financial Market by that Issuer.

Maximum penalty: \$100,000