



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 195

Proposed amendments to ASIC market integrity rules: ASX 24 and FEX markets

November 2012

About this paper

This consultation paper sets out our proposals for amending the ASIC Market Integrity Rules (ASX 24 Market) 2010 and the proposed market integrity rules for the FEX Global Pty Ltd (FEX) market.

The proposed amendments relate to rules on:

- risk management requirements for market participants that trade on a house account on the ASX 24 and/or FEX markets;
- supervision policy and procedure requirements for market participants that trade on the ASX 24 and/or FEX markets;
- minimum presence requirements for foreign market participants that trade on the ASX 24 and/or FEX markets and that do not hold an Australian financial services (AFS) licence; and
- capital, reporting, margins and disclosure requirements in relation to clearing arrangements for market participants that trade on the FEX market.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 15 November 2012 and is based on the Corporations Act as at the date of issue.

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

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

Where possible, we are seeking both quantitative and qualitative information. We are also interested to hear about any other issues you consider important.

Your comments will help us develop our policy on 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 C, '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 21 December 2012 to:

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What will happen next?

Stage 1	15 November 2012	ASIC consultation paper released with proposed amendments to market integrity rules
Stage 2	21 December 2012	Comments due on the consultation paper
	First quarter 2013	ASIC market integrity rules finalised
Stage 3	3 months after the rules are made	Amendments to ASIC market integrity rules for the ASX 24 market take effect
Stage 4	If FEX licence is granted	ASIC market integrity rules for the FEX market are made to take effect before trading on the FEX market commences

A Background to the proposals

Key points

ASIC is responsible for supervising domestic licensed financial markets in Australia. As part of our supervisory responsibilities, we make market integrity rules and monitor compliance with those rules by market participants.

We are seeking feedback on our proposals for amending the ASIC Market Integrity Rules (ASX 24 Market) 2010 and the proposed market integrity rules for the FEX Global Pty Ltd (FEX) market.

The amendments relate to risk management, supervision policies and procedures, foreign market participants, and capital, reporting, margin and disclosure in relation to clearing arrangements.

ASIC's market supervisory function

- 1 Since 1 August 2010, ASIC has had responsibility for supervising trading activities and conduct of business by market participants in relation to domestic licensed financial markets—that is, those operated by persons licensed under s795B(1) of the *Corporations Act 2001* (Corporations Act).
- 2 Under Pt 7.2A of the Corporations Act, which was inserted by the *Corporations Amendment (Financial Market Supervision) Act 2010* from 1 August 2010, ASIC has power to make market integrity rules that deal with activities and conduct in relation to Australian domestic licensed financial markets, including of participants of the relevant market. We are responsible for supervising compliance with those rules.
- 3 ASIC market integrity rules are legislative instruments that are subject to Ministerial consent and Parliamentary scrutiny.

Market integrity rules for the ASX 24 and FEX markets

- 4 On 1 August 2010, ASIC made market integrity rules for the ASX 24 market: see the ASIC Market Integrity Rules (ASX 24 Market) 2010.

Note: In this paper 'ASIC Market Integrity Rules (ASX 24)' refers to the ASIC Market Integrity Rules (ASX 24 Market) 2010. 'Rule 3.1.12 (ASX 24)' (for example) refers to a particular rule of the ASIC Market Integrity Rules (ASX 24) (in this example numbered 3.1.12).

- 5 In March 2011, we consulted on an application for an Australian market licence by Financial and Energy Exchange Limited to operate an exchange market for energy, commodity and environmental derivatives: see

Consultation Paper 149 *Application for an Australian market licence: Financial and Energy Exchange Limited* (CP 149).

Note: Since that time, the applicant for the market licence has changed to FEX Global Pty Ltd.

- 6 In May 2011, we consulted on proposed ASIC market integrity rules for the FEX market in Consultation Paper 157 *Proposed ASIC market integrity rules: FEX market* (CP 157). The proposed rules were modelled on the ASIC Market Integrity Rules (ASX 24) with minor amendments to:
- (a) reflect the differences between the proposed FEX market and the ASX 24 market (see Rules 3.1.12 and 3.1.15 (FEX));
 - (b) correct drafting anomalies (see Rules 3.1.10, 3.4.2 and 3.5.3 (FEX));
 - (c) include obligations from procedures, determinations and practice notes that applied to the ASX 24 (formerly the Sydney Futures Exchange (SFE)) market prior to the transfer of supervision to ASIC (see Rules 3.1.7, 3.1.8, 3.3.1A and 3.4.2 (FEX)); and
 - (d) include a specific obligation on market participants to give priority to their clients' interests where there exists a conflict of interest (see Rule 3.1.13(1A) (FEX)).

Note: In this paper 'ASIC Market Integrity Rules (FEX)' refers to the proposed ASIC Market Integrity Rules (FEX Market) 2012. 'Rule 3.1.12 (FEX)' (for example) refers to a particular rule of the proposed ASIC Market Integrity Rules (FEX) (in this example numbered 3.1.12).

- 7 In CP 157, we proposed making the same amendments (other than the amendments relating to differences between the FEX and ASX 24 markets) to the ASIC Market Integrity Rules (ASX 24), at the same time as making the ASIC Market Integrity Rules (FEX). We did not receive any substantive comments on the proposals in CP 157.
- 8 On 1 August 2011, ASIC amended the ASIC Market Integrity Rules (ASX 24) to include rules on capital and related requirements: see ASIC Market Integrity Rules (ASX 24 Market) Amendment 2011 No. 1, Consultation Paper 161 *Proposed ASIC market integrity rules for capital and related requirements: ASX, ASX 24 and Chi-X markets* (CP 161) and Regulatory Guide 226 *Guidance on ASIC market integrity rules for capital and related requirements: ASX, ASX 24 and Chi-X markets* (RG 226).

Scope of this consultation paper

- 9 Section B of this consultation paper sets out our proposed amendments to the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX). The proposed amendments relate to rules on:

- (a) risk management for market participants that trade on a house account on the ASX 24 and/or FEX markets;
 - (b) supervision policy and procedure requirements for market participants that trade on the ASX 24 and/or FEX markets;
 - (c) minimum presence requirements for foreign market participants that trade on the ASX 24 and/or FEX markets and that do not hold an AFS licence; and
 - (d) capital, reporting, margins and disclosure requirements in relation to clearing arrangements for market participants of the FEX market.
- 10 We are also proposing to make a number of other minor amendments to the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX) to correct drafting anomalies.
- 11 Attachments 1 and 2 to this consultation paper set out our proposed amendments to the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX): see Table 1.

Table 1: Presentation of our proposed amendments

Attachment 1: ASX	A marked-up version of the relevant sections of the current ASIC Market Integrity Rules (ASX 24).
Attachment 2: FEX	A marked-up version of the proposed ASIC Market Integrity Rules (FEX) as consulted on in CP 157 and, for the proposed new Part 2.3, Chapters 5, 6 and 7, and the Schedule, a marked-up version of Part 2.3, Chapters 5, 6 and 7, and the Schedule to the ASIC Market Integrity Rules (ASX 24). Note: The making of the ASIC Market Integrity Rules (FEX) is subject to approval of FEX's Australian market licence application.

B Proposed amendments

Key points

We propose to amend the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX) to include rules on:

- risk management requirements for market participants that execute trades on behalf of a house account on the ASX 24 and/or FEX markets, to deal with changes occurring in the electronic market environment (see proposal B1);
- supervision policy and procedure requirements to ensure compliance by market participants of the ASX 24 and/or FEX markets with market integrity rules, operating rules and the Corporations Act (see proposal B2);
- minimum presence requirements for foreign market participants that trade on the ASX 24 and/or FEX markets and that do not hold an Australian financial services (AFS) licence, to facilitate enforcement actions in Australia for breaches of the ASIC market integrity rules and other laws applying to market participants (see proposal B3);
- capital, reporting and margin requirements for market participants that trade on the FEX market, to align the ASIC Market Integrity Rules (FEX) with the current ASIC Market Integrity Rules (ASX 24) (see proposal B4); and
- a requirement for market participants that trade on the FEX market to disclose to clients the differences between having their contracts cleared and settled by an overseas clearing and settlement (CS) facility and an Australian-based CS facility (see proposal B5).

We are also proposing to make a number of other minor amendments to the rules: see proposal B6.

Risk management

Proposal

B1 We propose to:

- (a) amend Rule 2.2.1 of the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX) to require a market participant of the ASX 24 and/or FEX markets that trades on a house account to meet certain risk management requirements (see Table 2); and

Note: In this document 'Rule 2.2.1 (ASX 24) and (FEX)' (for example) refers to a particular rule of the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX).

- (b) allow market participants that already trade on the ASX 24 market at the time the rules are made a transitional period of three months to comply with the new requirements.

Note: See Rule 2.2.1 (ASX 24) in Attachment 1 and Rule 2.2.1 (FEX) in Attachment 2 to this consultation paper.

Table 2: Proposed risk management requirements

Requirement	Description
Order and/or position limits	<p>A market participant must demonstrate prudent risk management procedures by setting and documenting appropriate pre-determined order and/or position limits on each of its house accounts, including a volume per order limit, an aggregate loss limit, and an aggregate net session limit.</p> <p>These limits must be:</p> <ul style="list-style-type: none"> • based on the market participant's analysis of its financial resources or other relevant factors; and • input into trading platform account maintenance by a representative of the market participant who is responsible for managing risk.
Maximum price change limits	<p>A market participant must set and document maximum price change limits in relation to house accounts.</p> <p>These limits must be input into trading platform account maintenance by a representative of the market participant who is responsible for managing risk.</p>
System requirements	<p>A market participant's order system for execution of trades on the house account must have the capability for:</p> <ul style="list-style-type: none"> • setting limits; and • rejecting orders that are in excess of the limits set.
Amendment of limits	<p>A market participant may amend the pre-determined order and/or position limits based on its analysis of financial resources or other relevant factors for both client and house accounts.</p>
Terminal connections	<p>Where a market participant has connected to a terminal for the purposes of allowing trading for a house account, it must:</p> <ul style="list-style-type: none"> • be responsible under the rules for any orders entered through the terminal on behalf of the house account; and • promptly take all steps necessary to terminate such a connection when notified to do so by ASIC.
Accessing terminal connections	<p>Before connecting to a terminal for the purposes of allowing trading for a house account, and at all times while so connected, a market participant must:</p> <ul style="list-style-type: none"> • have the necessary skills, facilities and procedures to operate such a facility; • understand the risks and obligations attached to the use of such a facility; • ensure that each order so placed, and any order system, complies with the rules; • provide appropriate controls on access to passwords of the market participant and its employees to such systems; and • ensure appropriate controls are implemented for the security of its premises and physical access of the market participant and its employees to such systems.

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 the desired outcomes? If so, what are they?
- B1Q3 Does this proposal raise any compliance issues?

Rationale

- 12 Rule 2.2.1 (ASX 24) and (FEX) (client limits and client connections) requires a market participant of the ASX 24 and/or FEX market to:
- (a) demonstrate prudent risk management requirements by, among other things, setting and documenting appropriate pre-determined order and/or position limits for each of its client accounts and rejecting orders in excess of those limits (see Rule 2.2.1(1) (ASX 24) and (FEX));
 - (b) where the market participant has permitted its client to connect to a terminal, be responsible under the rules for any orders entered through the terminal by the client, and terminate such connection in relation to a particular individual, client, system or device (or class of system or device) when notified to do so by ASIC (see Rule 2.2.1(2) (ASX 24) and (FEX)); and
 - (c) before permitting any client to connect to a terminal, satisfy itself that the client has the necessary skills, facilities and procedures to operate, and understand the risks and obligations attached to the use of, such a facility, and have appropriate controls on the connection including password and security controls (see Rule 2.2.1(3) (ASX 24) and (FEX)).
- 13 Rule 2.2.1 (ASX 24) was modelled on Rule 2.2.13 of the SFE Operating Rules, as they existed before 1 August 2010. Since Rule 2.2.13 of the SFE Operating Rules was made, there has been a change in market structure and growth in automation and innovation in electronic trading (in particular, proprietary trading) in the domestic futures markets.
- Note: Our approach to making market integrity rules at the time of the transfer of supervision on 1 August 2010 was to retain the substance of the obligations that applied to market participants of the ASX 24 market (formerly SFE) immediately before 1 August.
- 14 To deal with these changes occurring in the electronic market environment, we are proposing to extend Rule 2.2.1 (ASX 24) and (FEX) to market participants' house accounts. In this paper, we use the term 'house accounts' to mean all accounts other than client accounts.
- Note: The terms 'client account' and 'house account' are defined in Rule 1.4.3 (ASX 24) and (FEX).
- 15 Under proposal B1(a), we would amend Rule 2.2.1(1)(e) (ASX 24) and (FEX) so that a market participant may amend the pre-determined order

and/or position limit for its client and house accounts based on the market participant's analysis of the financial resources of the client (in the case of a client account) or the market participant (in the case of a house account), rather than in the market participant's absolute discretion.

- 16 The proposed amendments will ensure that all market participants demonstrate prudent risk management regardless of whether they are executing business for client accounts or for house accounts. This includes market participants who are principal trading participants only (i.e. who only trade on their own behalf) and representatives trading for a proprietary trading (house) account.
- 17 Under our proposal, ASX 24 market participants would have three months after the rules are made to comply with the new requirements. For the FEX market, these rules will apply once they are made, subject to FEX being granted an Australian market licence.

Supervision policies and procedures

Proposal

B2 We propose to:

- (a) make a new market integrity rule requiring market participants of the ASX 24 and/or FEX markets to have appropriate supervisory policies and procedures to ensure compliance by the market participant and each person involved in its business as a market participant with the market integrity rules, market operating rules and the Corporations Act.

Note: Similar rules apply to market participants of the ASX and Chi-X markets: see Rule 2.1.3 of the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 and Rule 2.1.3 of the ASIC Market Integrity Rules (ASX Market) 2010.

- (b) allow market participants that already trade on the ASX 24 market at the time the rules are made a transitional period of three months to comply with the new requirements.

Note: See Rule 2.2.8 (ASX 24) in Attachment 1 and Rule 2.2.8 (FEX) in Attachment 2 to this consultation paper.

Your feedback

B2Q1 Would this proposal result in any adverse or unintended consequences? Please provide details.

B2Q2 Are there any other mechanisms that could reinforce the importance of appropriate supervisory policies and procedures? If so, what are they?

B2Q3 Does this proposal raise any compliance issues?

Rationale

- 18 We consider it essential for market participants of any market to have written policies and procedures in place that document the supervisory system that has been established to ensure compliance with the regulatory framework in which the market participant operates. This will help the market participant prevent and detect prohibited practices, and will enhance market integrity. The introduction of this new rule allows us to take action where we consider a market participant's policies and procedures do not ensure compliance with the market integrity rules, the market operating rules and the Corporations Act.
- 19 Under the proposed rule, a market participant should be able to demonstrate that it has established, maintained and continues to enforce supervisory policies and procedures that are tailored to the nature, size and complexity of their business. Demonstration of sufficient personnel and systems resources to implement the policies and procedures, and periodic reassessment in light of changes to their business, would also be required under the proposed rule.
- 20 Under our proposal, existing market participants of the ASX 24 market would have three months after the rules are made to comply with the new requirements. The transitional period is given to allow ASX 24 market participants the opportunity to ensure that their documentation is in order. Under our proposal there would be no transitional period for the FEX market, and the rules would commence when the rules for the FEX market commence, subject to FEX being granted an Australian market licence.

Minimum presence requirements

Proposal

B3 We propose:

- (a) to make new market integrity rules requiring a foreign market participant that does not hold an AFS licence and that trades on the ASX 24 and/or FEX markets to enter into and maintain at all times a deed that is for the benefit of, and enforceable by, ASIC and the other persons referred to in s659B(1) of the Corporations Act; and

Note: Similar deeds are required for foreign market participants of the ASX and Chi-X markets: see Rule 2.6.1 of the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 and Rule 2.6.1 of the ASIC Market Integrity Rules (ASX Market) 2010.

- (b) to allow foreign market participants that do not hold an AFS licence and that already trade on the ASX 24 market at the time the rules are made a transitional period of three months to comply with the new requirements.

Note: See Part 2.4 (ASX 24) in Attachment 1 and Part 2.4 (FEX) in Attachment 2 to this consultation paper.

Your feedback

- B3Q1 Would this proposal result in any adverse or unintended consequences? Please provide details.
- B3Q2 Are there any other mechanisms that could achieve effective enforcement action by ASIC? If so, what are they?
- B3Q3 Does this proposal raise any compliance issues?

Rationale

- 21 Under the Corporations Act, market participants are required to comply with the market integrity rules that apply to the market(s) on which they trade. This includes foreign market participants—that is, those participants that are foreign entities.
- 22 To facilitate enforcement actions in Australia for breaches by foreign market participants of relevant market integrity rules, the *Australian Securities and Investments Commission Act 2001*, the Corporations Act more broadly and the *Corporations (Fees) Act 2001*, our proposal would amend the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX) to impose minimum presence requirements on foreign market participants of these markets if those foreign market participants do not hold an AFS licence.
- 23 Our ability to take effective enforcement action is fundamental to supervision of the financial markets and ensuring that markets are fair and efficient. The Corporations Act already facilitates enforcement actions against those market participants that are foreign entities that do hold an AFS licence.
- 24 The proposed rules are modelled on market integrity rules relating to minimum presence requirements for foreign market participants of the ASX and Chi-X markets that do not hold an AFS licence: see Rule 2.6.1 of the ASIC Market Integrity Rules (ASX Market) 2010, Rule 2.6.1 of the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 and Consultation Paper 166 *Market integrity rules for non-AFS licensee foreign participants and consequential amendments* (CP 166).
- 25 Under our proposal, existing foreign market participants of the ASX 24 market would have three months after the rules are made to comply with the new requirements. For the FEX market, the rules would commence after they are made, subject to FEX being granted an Australian market licence.

Capital, reporting and margins

Proposal

B4 For the FEX, market we propose to:

- (a) make market integrity rules for capital, reporting and margins modelled on the ASIC Market Integrity Rules (ASX 24), with only the minimum changes necessary to tailor those rules for the FEX market;
- (b) take a similar approach in setting maximum penalties, interpreting the proposed rules, granting waivers and varying AFS licences as we have taken for the ASX 24 market; and
- (c) require FEX market participants that are also ASX 24 market participants to lodge separate net tangible asset (NTA) returns and reconciliations of client funds for the FEX market.

Note: See Part 2.3, Chapters 5, 6 and 7, and the Schedule (FEX) in Attachment 2 to this consultation paper.

Your feedback

B4Q1 Would this proposal result in any adverse or unintended consequences? Please provide details.

B4Q2 Are there any other mechanisms that could achieve the desired outcomes? If so, what are they?

B4Q3 Does this proposal raise any compliance issues?

Rationale

26 Under our proposal, we would include in the ASIC Market Integrity Rules (FEX) requirements for capital, reporting and margins, modelled on the capital, reporting and margin requirements in Part 2.3, Chapters 5, 6 and 7, and the Schedule of the ASIC Market Integrity Rules (ASX 24).

27 Consistent with our approach in CP 157, this will ensure that both the ASX 24 and FEX markets, and their participants, are subject to the same market integrity rules, which will:

- (a) contribute to a consistent regulatory approach between ASX 24 and FEX in relation to requirements placed on participants of both markets;
- (b) minimise the opportunity for regulatory arbitrage by participants;
- (c) assist participants that participate in both markets to comply with their obligations; and
- (d) contribute to efficiency in our supervision and enforcement of the market integrity rules because the same standards of conduct will be applied.

28 In making the rules for capital, reporting and margins for the FEX market, we intend to make only the minimum changes necessary from the market integrity rules for the ASX 24 market.

29 The proposed rules for capital and reporting will only apply to non-clearing market participants of the FEX market. A market participant that is also a clearing entity will need to comply with the capital and reporting requirements of the CS facility for the FEX market.

30 The proposed rules for margins and client money reconciliations will apply to both clearing and non-clearing market participants. None of the proposed rules will apply to principal traders.

Dual participants

31 A market participant of both the ASX 24 and FEX markets will be able to comply with both the ASX 24 and FEX requirements by having the one amount of capital.

32 Under our proposals, where an entity is a market participant of both ASX 24 and FEX, it will be taken to have met the requirement in the ASIC Market Integrity Rules (FEX) to provide statutory accounts by providing those statutory accounts to ASIC in accordance with the ASIC Market Integrity Rules (ASX 24): see Rule 6.2.3 (FEX).

33 However, proposal B4(c) sets out that market participants of both the FEX and ASX 24 markets will need to lodge separate:

- (a) NTA returns for each market; and
- (b) reconciliations of client funds for each market.

AFS licence financial requirements

34 Market participants generally have conditions in their AFS licences requiring them to comply with financial requirements as set out in Regulatory Guide 166 *Licensing: Financial requirements* (RG 166). The financial requirements in the AFS licence will not apply if ASIC is satisfied that the financial requirements with which the AFS holder must comply as a market participant are an adequate substitute for the financial requirements in the AFS licence.

35 In the case of ASX 24 participants (that are not ASX market or ASX Clear participants), the exclusion of ASIC's AFS financial requirements applies only to those participants who restrict their financial services business to participating in the ASX 24 market and business incidental to participating in that market. This is because the financial requirements for the ASX 24 market are based on a minimum NTA amount and do not take into account exposures via other parts of the participant's business, or the financial resources that may be needed as a result of other business.

36 Affected non-clearing participants of ASX 24 and FEX should contact ASIC to discuss the financial requirements in their AFS licence conditions.

Breaches

- 37 While a breach of the capital, reporting and margin requirements for a participant of both markets would be a breach of both sets of rules, we intend to approach such situations in a manner consistent with that set out in Regulatory Guide 216 *Markets Disciplinary Panel* (RG 216).

Disclosure in relation to clearing arrangements

Proposal

- B5 We propose to include in the ASIC Market Integrity Rules (FEX) a requirement for market participants to disclose to clients the differences between having their contracts cleared and settled by LCH.Clearnet Limited (LCH) and an Australian-based CS facility.

Note: See Rule 2.2.8 (FEX) in Attachment 2 to this consultation paper.

Your feedback

- B5Q1 Would this proposal result in any adverse or unintended consequences? Please provide details.
- B5Q2 Are there any other mechanisms that could achieve the desired outcomes? If so, what are they?
- B5Q3 Does this proposal raise any compliance issues?

Rationale

- 38 As set out in CP 149, FEX proposes that transactions on the FEX market would be cleared and settled by an overseas clearing and settlement provider, LCH, using LCH's existing infrastructure, which is located in the United Kingdom. LCH is a Recognised Clearing House under the *Financial Services and Markets Act 2000* (UK) and is subject to that Act and other UK laws, rules and regulations. LCH is subject to oversight by the UK Financial Services Authority (FSA).
- 39 LCH has applied to ASIC under s824B(2) of the Corporations Act for an Australian CS facility licence to enable it to clear and settle transactions entered into on the FEX market. If granted a CS facility licence, LCH will be subject to primary regulation and supervision by the FSA (and any successor to the FSA). LCH will also be regulated by ASIC and the Reserve Bank of Australia under Pt 7.3 of the Corporations Act as an overseas CS facility operator.
- 40 Under our proposal, we would include a rule in the ASIC Market Integrity Rules (FEX) requiring a market participant of the FEX market to make a disclosure to each client, before accepting the first order from the client, of

the differences between a transaction being cleared and settled by LCH and an Australian-based CS facility.

- 41 The differences that must be disclosed include, without limitation, that:
- (a) LCH's principal place of business is located in the United Kingdom and it is primarily regulated under that regulatory regime; and
 - (b) the rights and remedies of investors whose transactions are cleared and settled through LCH may differ from the rights and remedies of investors whose transactions are cleared and settled by an Australian-based CS facility.
- 42 Under our proposal, a market participant must keep a record of each disclosure made for a period of five years.

Other amendments

Proposal

- B6** We propose to make other minor amendments to the ASIC Market Integrity Rules (ASX 24) and the ASIC Market Integrity Rules (FEX) to correct drafting anomalies.

Note: See Rules 2.3.5, 3.3.1A, 7.2.9 and 7.2.10 (ASX 24) in Attachment 1 and Rules 2.3.5, 3.3.1A, 7.2.9 and 7.2.10 (FEX) in Attachment 2 to this consultation paper.

Your feedback

- B6Q1 Are there any unintended consequences of these proposed amendments? Please provide details.
- B6Q2 Do you think there are any additional amendments that need to be made to the ASIC Market Integrity Rules (ASX 24) or the proposed ASIC Market Integrity Rules (FEX)?

Rationale

- 43 Under proposal B6, we would make a number of other minor amendments to the ASIC Market Integrity Rules (ASX 24) and the ASIC Market Integrity Rules (FEX) to correct drafting anomalies in the following rules:
- (a) proposed Rule 3.3.1A (ASX 24) and (FEX) (which we consulted on in CP 157), to provide that the period of time that the market participant must wait between entering the enquiry and entering the order, is the time specified by the relevant market operator in its market operating rules or procedures or, if no time is specified, 60 seconds;
 - (b) Rule 2.3.5 (ASX 24) and (FEX), to insert a penalty for a breach of those rules;

- (c) the heading to Rule 7.2.9 (ASX 24) and (FEX), to clarify that the rule does not only apply to margin requirements for trading on other financial markets; and
- (d) Rule 7.2.10 (ASX 24) and (FEX), to remove the requirement that where credit is provided to clients by a related entity of a trading participant to meet initial and variation margins, the related entity must be an Australian authorised deposit-taking institution.

Roll business

44 In CP 157, we consulted on an amendment to Rule 3.4.2 (ASX 24) and (FEX) to clarify that market participants are prohibited from executing roll business using a block trade facility.

Note: The terms 'block trade facility' and 'roll business' are defined in Rule 1.4.3 (ASX 24) and (FEX).

45 ASX 24 has recently consulted on proposals to change the structure of the roll market for ASX 3 and 10 Year Treasury Bond Futures, including a proposal to permit block trades for calendar spreads in the five business days leading up to quarterly expiry.

46 We will take into account the outcome of ASX 24's consultation process before deciding whether to proceed with amendments to Rule 3.4.2 (ASX 24) and (FEX), as set out in Attachments 1 and 2 to this consultation paper, or to make further amendments to permit certain block trades as outlined in the ASX 24 consultation paper.

Note: See ASX Consultation Paper *ASX 3 and 10 Year Treasury Bond Futures quarterly roll*, dated 20 August 2012, at www.asx.com.au. Comments closed on 28 September 2012.

C Regulatory and financial impact

- 47 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 Australian markets; and
 - (b) protecting investors.
- 48 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).
- 49 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.
- 50 To ensure that we are in a position to properly complete any required RIS, please give us 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 on a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act.
ASIC	Australian Securities and Investments Commission
ASIC Market Integrity Rules (ASX 24)	ASIC Market Integrity Rules (ASX 24 Market) 2010—rules made by ASIC under s798G of the Corporations Act for trading on ASX 24
ASIC Market Integrity Rules (FEX)	ASIC Market Integrity Rules (FEX Market) 2012—rules proposed to be made by ASIC under s798G of the Corporations Act for trading on the FEX market
ASX 24	The exchange market formerly known as the Sydney Futures Exchange (SFE), operated by Australian Securities Exchange Limited
ASX 24 Operating Rules	ASX Limited's new operating rules, which replace the pre-existing SFE Operating Rules
ASX Limited	The market licensee that operates the exchange market known as 'ASX'
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of the Act
CP 149 (for example)	An ASIC consultation paper (in this example numbered 149)
CS facility	A clearing and settlement facility as defined by s768A
CS facility licence	An Australian CS facility licence under s824B that authorises a person to operate a CS facility in Australia
domestic licensed market	A financial market licensed under s795B(1) of the Corporations Act
FEX	FEX Global Pty Ltd
FEX market	The market operated by FEX if the Minister grants FEX an Australian market licence
FSA	Financial Services Authority (UK)
LCH	LCH.Clearnet Limited

Term	Meaning in this document
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
market participant	As defined in s761A of the Corporations Act
NTA	Net tangible assets
RG 214	An ASIC regulatory guide (in this example, numbered 214)
Rule 3.1.12 (ASX 24) and (FEX) (for example)	A rule of the ASIC Market Integrity Rules (ASX 24) and the proposed ASIC Market Integrity Rules (FEX) (in this example numbered 3.1.12), unless otherwise specified
Rule 3.1.12 (ASX 24) (for example)	A rule of the ASIC Market Integrity Rules (ASX 24) (in this example numbered 3.1.12)
Rule 3.1.12 (FEX) (for example)	A rule of the proposed ASIC Market Integrity Rules (FEX) (in this example numbered 3.1.12)
s912D (for example)	A section of the Corporations Act (in this example, numbered 912D)
SFE Operating Rules	The operating rules of the Sydney Futures Exchange, now replaced by the ASX 24 Operating Rules