



6 August 2021

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## CP 342 – PROPOSED AMENDMENTS TO THE MARKET INTEGRITY RULES AND OTHER ASIC MADE RULES

Dear Mr Dworjanyn,

Thank you for the opportunity to comment on the proposed amendments to Market Integrity Rulebooks and other ASIC made rules.

Our key submissions are as follows:

- > Accredited derivatives advisers - ASX submits that if the list of prescribed exams is not to be updated and maintained ASIC should instead provide minimum standards or criteria for courses to be completed by derivatives advisers.
- > Pre-Trade transparency exception – ASX submits that MIR 6.2.3 should be amended to clarify that orders may not be aggregated on either side of a transaction, to encourage on-market liquidity and improve the quality of price formation and thereby enhance investor confidence and stimulate competitive pricing.
- > Regulatory data intermediary - ASX seeks confirmation that there will be no impact on the number of characters currently permitted.
- > Fit and Proper Test - ASX supports the drafting of the proposed rule which clearly states the matters to be considered and also allows for practical application of the test.
- > Merits review by the Administrative Appeals Tribunal - ASX supports the proposed changes to allow a merits review of administrative decisions that may affect the interests of a person.

We have set out these matters in detail in Annexure A.

If you have any queries on these matters please contact Catherine Sullivan or Sally Palmer.

Yours faithfully,

**Catherine Sullivan**  
Head of Legal Delivery & Senior Legal Counsel

**Sally Palmer**  
Deputy General Counsel

## Annexure A – Detailed submissions on proposed amendments

Topic	MIR Amendment	ASX submission
<b>Securities MIRs</b>		
Accredited derivatives advisers	Remove the requirement in Part 2.4 for derivatives advisers to sit a prescribed exam	<p>The current requirement to sit a prescribed exam ensures that advisers complete a course which covers material specific to derivatives in sufficient detail. ASIC notes that most derivatives advisers comply with the Professional Standards for Financial Advisers. However, these standards may not cover the same amount of material on derivatives.</p> <p>ASX submits that if the list of prescribed exams is not to be updated and maintained ASIC should instead provide minimum standards or criteria for courses to be completed by derivatives advisers. This will assist to ensure that derivatives advisers are suitably qualified and experienced.</p>
Pre-trade transparency exceptions	<p>Amend Rule 6.2.3 to clarify that a trade with price improvement:</p> <p>(a) cannot include orders from more than one client on both sides of the transaction; and</p> <p>(b) where the participant is acting as 'principal', there cannot be multiple parties on both sides of the transaction.</p>	<p>It is important to encourage on-market liquidity to improve the quality of price formation and thereby enhance investor confidence and stimulate competitive pricing. Allowing aggregation of orders on either side of the transaction detracts from this.</p> <p>Hence, ASX does not support the proposed change to MIR 6.2.3, and submits that the MIRs should be clarified to confirm that a trade with price improvement:</p> <p>(a) cannot include orders from more than one client on either side of the transaction; and</p> <p>(b) where a participant is acting as 'principal' there cannot be multiple parties on either side of the transaction.</p> <p>If ASIC does not accept ASX's submission, ASX considers that the proposed change is preferable to an approach which would allow aggregation on both sides of the transaction.</p>
Regulatory data – intermediary ID	<p>Amend Rule 7.4.4 to clarify that intermediary ID data is required for all orders and transactions:</p> <p>(a) submitted by the AFS licence holder as intermediary for the underlying client; and</p> <p>(b) if there is an arrangement in place under which the AFS licence holder is permitted to submit trading messages into the market participant's system as intermediary for its own clients.</p>	<p>ASX has no issue with the clarification, but seeks confirmation that there will be no impact on the number of characters currently permitted in this field and that there will be no changes to the field. If there is a change to the length or nature of the field then ASX will need to make technical changes, and would need to analyse these changes and the time and cost required for implementation.</p>

<b>Futures MIRs</b>		
Replacing employment rules with fit and proper person test	Extend the 'good fame and character' test to include employees and other persons involved in the business of a market operator with the addition of Rule 4.4.1.	<p>ASX considers that the way the rule is expressed, so that a market operator may have regard to certain factors, is appropriate. It clearly states the matters that a market operator should consider but also allows an element of discretion which supports the practical application of the test. For example, if someone was convicted of a minor traffic offence many years ago this may not be a determining factor in their character later in life, and the rule allows this type of consideration to be taken into account.</p> <p>ASX seeks clarification as to whether ASIC intends to impose the same obligation on market operators in the Securities MIRs. If not, it would be useful to understand the rationale for limiting this obligation to operators of futures markets.</p>
<b>Merits review of ASIC decisions under the Securities and Futures Markets Rules</b>		
Merits review of ASIC decisions	Amend the Securities Markets Rules and the Futures Markets Rules to provide that certain decisions made by ASIC are subject to merits review by the Administrative Appeals Tribunal (AAT)	ASX supports these proposed changes. We agree that administrative decisions that will, or are likely to, affect the interests of a person should be subject to a review on the merits.