

Contacts

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Executive summary

ASX's submission in response to ASIC Consultation Paper No 222 '*Reducing red tape: Proposed amendments to the market integrity rules*' focuses on the proposal relating to prohibitions on certain transactions during takeovers, schemes of arrangement and buy-backs

ASX supports ASIC's objective of clarifying and simplifying the existing prohibitions that apply through the market integrity rules (MIRs). The prohibitions contained in the MIRs go beyond the provisions of the Corporations Act and unnecessarily restrict normal trading activities by investors who are not meant to be captured by the provisions. This restricts the ability of these investors to transact in the most efficient manner and also imposes unnecessary compliance and operational costs on participants.

ASX believes that Option 2 in the consultation paper (i.e. repealing those parts of the MIRs that deal with the prohibited transactions) is the preferred solution. While amending the rules to clarify that the prohibitions only apply when a participant is acting on behalf of a restricted party (Option 1) is an improvement on the current situation there is no practical reason why additional requirements are needed in the MIRs as the Corporation Act requirements are clear on the restrictions to trading in these circumstances.

Regardless of the specific option chosen, the narrowing of (or removing) the MIR requirement will significantly reduce the amount of trading unnecessarily restricted by the current prohibition.

In addition to the proposed changes to the MIRs, there would be benefit in ASIC providing clear guidance as to what constitutes 'on market' trading in the context of the Corporations Act requirements.

The policy rationale for the requirements is to ensure that, as far as practicable, all target shareholders have a reasonable and equal opportunity to participate in any benefits accruing to shareholders from a takeover or share buyback. ASX believes that the overriding principle should be that the trading on behalf of acquirers or issuers (or their associates) should only be permitted where the transactions are open to all traders.

Other order/transaction types conducted through an order book of a market and open to all, whether pre-trade transparent or not, would still be permitted.

Attachment A: Responses to ASIC questions

Questions from CP 222	ASX responses
<p>Do you think that Part 6.5 (ASX), (Chi-X) and (APX), in its current form, creates uncertainty about the types of trades that can be executed during takeovers and schemes? If so, please give reasons for your view.</p>	<p>Yes there is confusion in the market about the prohibitions as there is a discrepancy between the requirements set out in the Corporations Act and those contained in the MIRs. ASX regularly fields questions from participants on these issues.</p>
<p>Do you think that Part 6.6 (ASX), (Chi-X) and (APX), in its current form, creates uncertainty about the types of trades that can be executed during buy-backs? If so, please give reasons for your view.</p>	<p>Yes. See answer above.</p>
<p>In relation to Option 1:</p> <p>a) Do you agree that Parts 6.4 and 6.5 (ASX), (Chi-X) and (APX) should be amended so that they only apply to market participants acting on behalf of the bidder or their associate (proposal D1(a)(i))? Please give reasons for your view. Does your answer differ for takeovers and schemes? If so, please provide your views for both takeovers and schemes.</p> <p>b) Do you agree that Rule 6.5.1(ASX), (Chi-X) and (APX) and Rule 6.5.2(ASX) should be amended so that they only restrict special crossings in an off-market bid during the offer period rather than the bid period (proposal D1(a)(ii))? Please give reasons for your view. Does your answer differ for takeovers and schemes? If so, please provide your views for both takeovers and schemes.</p> <p>c) Do you agree that Part 6.6 (ASX), (Chi-X) and (APX) should be retained in its current form (proposal D1(a)(iii))? Please give reasons for your view.</p> <p>d) What do you consider to be the estimated cost savings (itemise your costs where possible (e.g. staff costs, transaction costs, system costs)) or other benefits to market participants and investors from:</p> <p>(i) proposal D1(a)(i) (if your answer differs substantially for takeovers and schemes, please give reasons and provide separate estimates for takeovers and schemes); and</p> <p>(ii) proposal D1(a)(ii) (if your answer differs substantially for takeovers and schemes, please give reasons and provide separate estimates for takeovers and schemes).</p>	<p>ASX prefers Option 2 –comments in this section are predicated on Option 1 being chosen</p> <p>a) The amendments improve the current rule by clarifying that the prohibition only applies to participants acting on behalf of specific clients – not all clients. This is consistent with the underlying corporations Act prohibition. The treatment for takeovers and buybacks should be similar.</p> <p>b) Yes. Restricting the prohibition to the offer period appears to better align with the underlying Corporations Act prohibition.</p> <p>c) Yes. Special crossings can be conducted under the MIRs at any price and so are potentially able to provide special treatment to certain counterparties.</p> <p>d) The change will not have a material impact on ASX's costs. There will be operational changes required as ASX currently has systems in place to prohibit off-market trade reports during takeovers and buybacks and these would be removed.</p>

In relation to Option 2:

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| <p>a) Do you agree with the proposal to repeal Part 6.4 (ASX), (Chi-X) and (APX) (proposal D1(b)(i))? Please give reasons for your view. Does your answer differ for takeovers and schemes? If so, please provide your views for both takeovers and schemes.</p> <p>b) Do you agree with the proposal to repeal Part 6.5 (ASX), (Chi-X) and (APX) (proposal D1(b)(ii))? Please give reasons for your view. Does your answer differ for takeovers and schemes? If so, please provide your views for both takeovers and schemes.</p> <p>c) Do you agree with the proposal to repeal Part 6.6 (ASX), (Chi-X) and (APX) (proposal D1(b)(iii))? Please give reasons for your view.</p> <p>d) What do you consider to be the estimated cost savings (itemise your costs where possible (e.g. staff costs, transaction costs, system costs)) or other benefits to market participants and investors from:</p> <ul style="list-style-type: none">(i) proposal D1(b)(i) (if your answer differs substantially for takeovers and schemes, please give reasons and provide separate estimates for takeovers and schemes); and(ii) proposal D1(b)(ii) (if your answer differs substantially for takeovers and schemes, please give reasons and provide separate estimates for takeovers and schemes).(iii) proposal D1(b)(iii). | <p>a) Yes for both takeovers and schemes. The Corporations Act prohibitions are clear on what trading activity is not permitted. There is no compelling reason they need to be restated in the MIRs – participants should be aware when acting on behalf of a restricted client they are not able to use certain transaction types.</p> <p>b) Yes. The Corporations Act prohibitions are clear on what trading activity is not permitted. There is no compelling reason they need to be restated in the MIRs.</p> <p>c) Yes. The Corporations Act prohibitions are clear on what trading activity is not permitted. There is no compelling reason they need to be restated in the MIRs.</p> <p>d) The change will not have a material impact on ASX's costs. There will be operational changes required as ASX currently has systems in place to prohibit off-market trade reports during takeovers and buybacks and these would be removed.</p> |
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<p>Do you have any concerns about retaining Parts 6.4–6.6 (ASX), (Chi-X) and (ASX), as is. Please give reasons for your view.</p>	<p>Yes. The prohibitions contained in the MIRs go beyond the provisions of the Corporations Act and unnecessarily restrict normal trading activities by investors who are not meant to be captured by the provisions. This restricts the ability of these investors to transact in the most efficient manner and also imposes unnecessary compliance and operational costs on participants.</p>
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<p>Can you suggest any alternative approaches to Options 1 and 2 regarding Parts 6.4–6.6 (ASX), (Chi-X) and (APX). If so, please give a detailed explanation of your preferred approach(s) and reasons for your view.</p>	<p>No.</p>
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