

CP 386 – Feedback to ASIC

B1Q1 Do you agree with our definition of 'Trading Algorithm'? If not, please give reasons why.

■ feedback:

We would appreciate clarity around whether it extends to all forms of automated logic, e.g. simple smart order routers, execution management system etc

We suggest trading algorithms cover systems that make material trading decisions such as price quantity, timing, or strategy without continuous human intervention, while explicitly excluding purely administrative or routing tools.

The definition of trading algorithm has to be specific of algo characteristics.

MiFID defines "algorithmic trading" as (39) 'algorithmic trading' means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions.

Questions:

Can ASIC please provide clarity/ confirmation that this trading algorithms definition **does not** include simple timed orders, time slice, etc.

Can ASIC please elaborate or provide definitions of "trading parameter" and / or "automatically determines with limited or no human intervention"?

B1Q2 Do you agree with our proposal to require a trading participant to:

(a) have appropriate controls and governance arrangements for the development, approval, deployment, testing and monitoring of trading algorithms; and

(b) test trading algorithms; and

(c) have controls that enable immediate suspension or limitation of the operation of trading algorithms?

If not, please give reasons why. Should these requirements extend to client algorithms?

■ feedback:

■ agrees the requirements to be applied to trading algos developed by ■ and third party developed algos (e.g. Fidessa algos) offered by ■ to clients. ■ disagrees that the testing and monitoring requirements extend to client algos, given ■ does not own, develop nor provide those algos for client use, and is fully reliant on the clients to provide information for assessment. All child orders from client

algos will pass through the Trading System Controls designed to ensure that there is no impact to the efficiency and integrity of the market mitigating the need for additional practical due diligence.

MIFID II and RTS 6 explicitly recognizes that firms remain ultimately responsible for compliance with algorithmic trading requirements even when using third party systems. However, where the firm lacks direct control over those systems, it appears that ESMA allows compliance through some sort of *contractual mechanisms* requiring the third-party provider to commit to compliance with the regulatory standards. It appears that ESMA recognizes the practical limitations of the use of third-party algos. We recommend ASIC takes a similar stance, not requiring direct technical control or code level oversight as it is not feasible especially where firms use off the shelf vendor technology or hosted environments. Instead, compliance obligations can be satisfied through robust due diligence and contractual arrangements with vendors.

Questions:

What about TT multi-broker platform where clients may use the same algos to route to multiple participants memberships?

Extending existing obligations to have controls that enable immediate suspension – does ASIC expect this capability for all algorithms, including vendor supplied or client provided algorithms, or only proprietary algorithms controlled by the Participant? Should the suspension be system wide, per algo, per strategy, or per client account?

Definition of “immediate” is immediate interpreted as milli-seconds/real time or simply as soon as operationally possible. Are there specific expectations on the mechanism i.e. kill switch, circuit breaker, etc. should this suspension control automatically trigger from real time monitoring alerts or is manual intervention acceptable?

B1Q3 To what extent are your trading algorithms currently tested before use and before implementing a material change?

■ feedback:

All in house developed algos go through detailed testing and stepped production roll out prior to release to the broader client population. Key stages of this testing process include:

- Full testing in test environment to ensure new features operate as expected
- Partial transfer to a production environment, limited scope of markets and products (this may include production testing in non-trading periods)
- Stepped roll out to production:
 - o Small scale release to pilot user(s) for limited period

- Further validation prior to extension to other markets

Questions:

Clarification of scope – ASIC should clarify whether these requirements apply equally to: a) [REDACTED]-developed proprietary algorithms or also b) third party vendor algorithms that are used but not materially altered by the participant?

Testing standards – we recommend ASIC provide further guidance on what constitutes adequate “testing before use” and material change” for instance, does testing require simulation against live market data and material change what thresholds define change to core logic or even parameter updates?

B1Q4 When would you consider a change to an algorithm to be material?

[REDACTED] feedback:

Generally any change that impacts the core code of the algo is considered as material. Additional factors that may trigger a change to be treated as material include:

- Changes that modify the strategy significantly
- Changes that modify the trading logic
- Significant changes to the technical architecture
- Changes to the usage

Questions:

Can ASIC provide specific examples as to what participants should consider as material (e.g. changes to algo strategy, changes to trading logic, etc)?

B1Q5 What standard of testing of trading algorithms should be required?

[REDACTED] feedback:

Testing algos to ensure they are operating as intended

Testing algos on a regular basis

Documents that relating to the design, development, modifications, full specifications and the testing scenarios of the algorithm trading system

B1Q7 If you are a trading participant, how will these proposed rules affect your business? Please provide an estimate of the time and costs to implement each proposed arrangement. In providing this estimate, please compare this with your expenditure on your current arrangements in relation to algorithmic trading.

■ feedback:

Significant resources required around testing, certification, controls, governance, documentation, etc

The effort to implement these changes represents a significant undertaking. Even where existing policies might meet or exceed the requirements there will need to be a robust gap analysis performed.

Interpretation of the MIR rules will be a significant component of this effort, early publication of the associated guidance notes is critical to minimize this effort and assist all participants in implementing enhancements in line with ASIC's intentions.

Single market enhancements are not desirable as they add complexity and reduce sustainability. Where the new MIR proposals require additive controls, these would likely impact global standards.

C1Q2 Are there any additional rules or obligations that should apply specifically to the futures markets? Please give reasons for your answer.

■ feedback:

We request that ASIC provides rules and further guidance around the use/misuse of UCP into its wash trades rules in ASIC MIR.

Also to incorporate considerations of DSP methodology (for illiquid products) into its false and misleading appearance rules, and provide further guidance with illustrative examples.

C1Q4 Do you agree with introducing Rule 2.2B.3 to explicitly require futures participants to have adequate monitoring systems to enable the trading participant to conduct real time and post trading monitoring? Please give reasons for your answer.

■ feedback:

Typically, trading participants set pre trade controls such as fat finger, position limits, price deviation controls to ensure the integrity of the market. These controls are blocking controls, that help to ensure that there are no market integrity issues.

These controls do not pick up on a series of orders/trades that have been entered into over a period of time, that could lead to market dominance. However these orders happen over a time horizon and difficult to monitor in real time. It would be helpful therefore to better define real time, in this instance – so that controls and monitoring can be calibrated accordingly.

On post-trade, trading participants' surveillance teams are monitoring client trading behavior to detect market manipulation, using pattern alerts and automated processes to ensure clients are compliant. This is typically done on a T+1 basis with a feedback loop over a period of time. It is not correct for this surveillance function to be conducted on a real time basis.

Questions:

We require clarify around real-time monitoring - what is the definition of real-time? At-trade? Shortly after post-trade?

Is real-time monitoring on market impact or market manipulation expected - is it focus on trading messages, algorithm monitoring, and detection of potentially problematic trades on a real-time basis? Manipulative patterns are very difficult to detect on a real-time basis.

C1Q5 Do you agree with our proposal to require futures participants to undertake initial certification (before using a trading system), annual and material change reviews of their trading systems (see proposed Rules 2.2B.5 to 2.2B.9)? Please give reasons for your answer.

■ feedback:

Further details are needed on the certification process to assess this fully. Given market participants are obligated to comply with the ASIC MIR rules in relation to their trading platforms its not clear what this additional certification and assessment adds.

■ owned and operated trading systems are subject to UAT and testing prior to any material changes being implemented at a global level. An ASX specific approval is not additive in this context

■ is of the view that it would be more productive to share with ASIC participants' policies and procedures around testing, deployment and material changes to trading systems, as opposed to certification requirements on individual change releases. The operational burden on certification is heavy as participants are trading global exchanges and Australia is the only major market that requires this.

C1Q6 Do you agree with our proposal to introduce testing and responsibility requirements regarding the use of a trading participant's algorithm (see proposed Rule 2.2B.4)? Please give reasons for your answer.

■ feedback:

Whilst in agreement with the overall intention of this rule the requirement on futures trading participant not to do anything that would impact the efficiency and integrity of a market is too broad. It would be beneficial if ASIC can provide some illustrative examples.

ASIC should consider referencing MIFID II and RTS 6 which explicitly recognizes that participants may lack direct control over third party algos, and should allow participants to comply with the requirement through some sort of *contractual mechanisms* requiring the third-party providers to commit to compliance with the regulatory standards.

It appears that ESMA recognizes the practical limitations of the use of third-party algos. We recommend ASIC takes a similar stance, not requiring direct technical control or code level oversight as it is not feasible especially where firms use off the shelf vendor technology or hosted environments. Instead, compliance obligations can be satisfied through robust due diligence and contractual arrangements with vendors.

C1Q7 If you are a futures trading participant, how will these proposed rules affect your business? Please provide an estimate of the time and costs you will incur to implement the proposed rules. In providing this estimate, please compare this with your expenditure on your current arrangements.

■ feedback:

Resource and cost burden – concern implementing new rules, monitoring documentation and algorithm certification will require significant time and IT resources

Testing, documentation around certification, documentation around material changes, governance and oversight that involves various teams across multiple functions, e.g. Front Office, Compliance, Surveillance, IT, etc

Firms may require ASX24 specific/ dedicated roles in these teams which is costly and resources-intensive.

C3Q1 Do you agree with our proposal? Please give reasons for your answer.

■ feedback:

Our understanding of the rules in the way it is written is that if a trading participant has an intermediary client who has underlying clients who will send the orders to the intermediary who then utilizes the participant's membership, the trading participant does not have information of the underlying clients' intention nor an understanding of the underlying client's trading behavior and trading patterns.

It is therefore, impossible for Trading participants to ascertain the intention of the underlying client which has no direct relationship with the trading participant, and therefore, not to offer to place their orders onto the market, as the participant has limited visibility.

C3Q2 If you are a market participant, how will these proposed rule changes affect your business? Please provide an estimate of the time and costs to implement these rule changes. In providing this estimate, please compare this with your expenditure on your current arrangements.

■ feedback:

It would be impossible for us to support broker clients that send trades to us via an omnibus structure, as we don't think we can meet the rules proposed.

Therefore, there would be a reduction in participation of market participants in ASX, and a lowering of liquidity and traded volume.

D1Q1 Do you agree with the 12-month transition period. In your response, please provide detailed reasons for your answer.

■ feedback:

The industry relies on the updated RG 266 to provide regulatory guidance - hence publishing RG 266 post March 2026 is not helpful.

Enforcement timing – concerns around ASIC's intention to enforce some rules immediately upon the effective date, even if guidance is pending.

The industry would appreciate more time - ideally 18 months transition period (i.e. Sept 2027) given the amount of work required and the need to reach out to the few numbers of trading system developers/ algo developers in the futures markets space.

Most participants would already have priorities/ budget targets lined up around this time of the year (Q4) for deliverables next year (in 2026). Given the timing of the release of CP 386, the current budget plans have not factored in the significant time and costs involved in ensuring participants comply with all proposed changes in CP 386 for 2026.

Questions:

The new rules will become effective on March 2026 - does that mean any non-compliance of the new rules in March 2026 would become a breach? or does it start only in March 2027 after the 12-month transition period has lapsed?

Other changes that ASIC should consider:

- The industry requires changes to the existing wash trades rules (MIR 3.1.12) - clarify the scope and re-write, e.g. "and"/ "or" as the current language is unclear and subject to different interpretation
- Suggestions to include in RG 266 around wash trades rules - to include ASIC's warning on UCP misuse and overlapping orders in the auction period - the industry would require elaboration from ASIC on what that means and would be good to have illustrative examples
- Clarity around what ASIC expects us to perform before granting clients DMA access? Participants perform due diligence on our clients before granting them DMA access, however, if ASIC adopts a look-through approach to the intermediary, where do we stop with our due diligence – as we do not have relationship to the intermediary's underlying clients