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Australian Securities and Investments Commission
GPO Box 9827
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Dear David

CONSULTATION PAPER 342: PROPOSED AMENDMENTS TO THE ASIC MARKET INTEGRITY RULES AND OTHER ASIC-MADE RULES

The Stockbrokers and Financial Advisers Association (SAFAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SAFAA welcomes the opportunity to provide feedback on ASIC *Consultation paper 342: Proposed amendments to the ASIC Market Integrity Rules and other ASIC-made rules* (Consultation Paper).

Detailed comments

Accredited derivatives advisers – enhancements to training and professional standards for financial advisers

B1Q1 Do you agree with the proposal to replace Part 2.4 of the Securities Markets Rules with principles-based rules that require market participants to ensure that:

- a) Their financial advisers are suitably qualified and experienced before providing personal advice to retail clients in relation to derivatives; and***
- b) Their qualifications relevant to providing advice on derivatives is noted on ASIC's Financial Advisers Register.***

SAFAA agrees with the proposal to replace Part 2.4 of the Securities Markets Rules with principles-based rules that require market participants to ensure their financial advisers are suitably qualified and experienced before providing personal advice to retail clients in relation to derivatives. We consider that the onus should be on the licensee to ensure that their derivatives advisers are suitably qualified and the current level of prescription is unnecessary.

As regards registration of advisers' derivatives qualifications, from a practical perspective our members don't find the ASIC MECs to be particularly user-friendly and they consider that from that perspective the FAR would be a more convenient location for advisers' educational qualifications.

However, we make the following additional points that we consider ASIC will need to take into account when implementing any change to the current accreditation regime.

Not all accredited derivatives advisers are financial advisers

The relevant Securities Markets Rules do not use the term 'financial adviser' or refer to the Financial Adviser Register (FAR). While many accredited derivatives advisers are on the FAR, not all are. Some advisers provide general advice to retail clients in relation to derivatives. We therefore disagree with ASIC's statement that '*arguably, general advice should not be given in relation to derivatives.*' ASIC will need to ensure that any changes to the rules do not overlook the fact that not all derivatives advisers fall under the Financial Adviser or FASEA regime in that they provide general not personal advice. As currently drafted there is no provision for this category of adviser in the proposed rules.

Back office, compliance staff and DTRs also obtain the Accredited Derivatives Adviser (ADA) qualifications to obtain the level of product knowledge necessary to carry out their operational, supervisory and monitoring roles. These staff members are not financial advisers and are not on the FAR. It is important for our members that these staff are able to continue to obtain ADA qualifications. Our view is that a register for the category of person who is ADA qualified but not providing personal advice needs to be maintained.

We recommend that ASIC engage with ASX and SAFAA on this issue as we consider that it would make sense for SAFAA to maintain a register of people who have gained ADA 1 and 2 accreditation. We currently maintain a National Register for DTR accreditations, and have done so since January 2012. We are of the view that we have proved to not only maintain high standards by offering DTR accreditation, once it was no longer mandated by ASIC, but also to maintain a register that is utilised by the industry in an ongoing fashion. In light of our experience with the DTR register, we recommend we maintain the register for persons who are not on the FAR.

The role of SAFAA in setting professional standards and training

We agree with ASIC that there is a risk that some participants may fail to introduce adequate arrangements for ensuring their derivatives advisers are suitably trained, potentially resulting in a fall in standards among those derivative advisers. That is why the availability of well-established industry courses is so important for the education and training of derivatives advisers.

SAFAA plays an important role in providing industry education and training. While SAFAA is not a Registered Training Organisation, we have successfully provided industry education across a number of areas for many years, in particular, training required by the Securities Markets Rules. SAFAA has offered the ADA level 1 and 2 courses to practitioner members and employees of principal member firms for over 10 years in conjunction with RTO partners as the training provider.¹

The course materials have been developed by industry experts who also assess the assignment and exams. Ninety candidates have enrolled in either the ADA 1 and ADA 2 course over the last two years. In light of ASIC's proposal to amend the Securities Markets Rules as proposed, SAFAA intends to continue to offer the ADA 1 and

¹ SAFAA is currently transitioning from partnership with one training provider to another.

2 courses as part of our role in setting professional standards and training. SAFAA's ADA 1 and 2 courses are highly regarded by the industry. The ASX offers scholarships for advisers to undertake SAFAA's ADA 1 and ADA 2 courses as it considers that competition for the courses helps advisers expand their knowledge and understanding of derivative products.

As an example of how industry standards continue to be maintained after ASIC no longer mandates training in a certain area, SAFAA also provides DTR accreditation to enable trading participants to satisfy Securities Markets Rule 2.5.5 (c) concerning the knowledge of its operators and maintains the National DTR Register on behalf of the industry. Again, the course and exam are prepared by industry experts (DTR governors) who are members of the SAFAA DTR working group. The DTR governors work to maintain industry standards. They conduct the oral exam of DTR candidates and meet at least twice a year to discuss matters of importance to the industry. Over the last two financial years, 114 candidates have successfully sat and passed the SAFAA DTR exam.

SAFAA therefore is of the view that ADA 1 and ADA 2 courses can be provided by the industry, licensees can continue to ensure their staff are suitably trained and standards of training will not decline.

B1Q2 What regulatory benefit, if any, do you believe would arise from maintaining (in the Securities Markets Rules) a separate set of training and qualification obligations for financial advisers who provide personal advice to retail clients in relation to derivatives – beyond what is already provided for in the FA standards, s912A (1) (e) to (f) of the Corporations Act and RG 146? In your response, please give detailed reasons for your answer.

SAFAA considers that there is a regulatory benefit to maintaining in the Securities Markets Rules a separate set of training and qualifications for derivatives product advice to retail clients beyond the general licensee obligations. Derivatives are a high-risk product and are governed by amongst other things, provisions of the ASX Clear Operating Rules. By way of example, ASX Clear Operating Rules (paragraph 5.3 of Schedule 5) require a client wishing to trade in derivatives to acknowledge that:

- they have read and understood the terms of the derivatives client agreement;
- dealing in derivatives incurs a risk of loss as well as a potential for profit; and
- they have given consideration to its objectives, financial situation and needs and formed the opinion that dealing in derivatives is suitable for their purposes.

We consider that appropriate arrangements that ensure derivatives advisers are adequately trained are important for retail client protection. We are of the view that the training and qualifications can continue to be provided by SAFAA, the industry body.

B1Q3 What cost savings do you believe would arise from this proposal (e.g. savings resulting from the removal of procedural elements such as submitting new accreditation applications, reaccreditation applications, renewals and other related notifications)? Please provide an estimate of future cost savings.

As a general comment, SAFAA's view is that removal of administrative 'red tape' is welcomed by the industry. Those seeking accreditation and their licensees would continue to enrol, sit exams and be issued with accreditation certificates by SAFAA, but there would not be the additional compliance obligations of seeking accreditation from ASIC.

B1Q4 Do you think the additional training and qualification obligations should be expanded to include other complex product classes traded on a licensed market (e.g. hybrids)? Please give detailed reasons for your answer.

We consider that additional training and qualification obligations should be expanded to product classes with unlimited loss profiles such as Contracts For Difference.

B1Q5 Do you consider that it would be preferable for ASIC to repeal Part 2.4 in its entirety and not rely solely on the Corporations Act in the regulation of these matters?

No. Please see our answer to question B1Q2.

Pre-trade transparency exception – trades with price improvement

B2Q1 Do you agree with our proposal to amend Rule 6.2.3 of the Securities Market Rules to clarify that a trade with price improvement:

- a) Cannot include orders from more than one client on both sides of the transaction (i.e. it will be possible to have one client to one client or one client to multiple clients); and***
- b) Where the participant is acting as ‘principal’, there cannot be multiple parties on both sides of the transaction (i.e. it will be possible to have multiple clients to principal or one client to principal aggregated with one or more clients).***

B2Q2 Do you consider the proposal will alleviate any uncertainty participants have about how this exception applies to aggregated orders?

While we support proposals that will improve transparency, our members require more clarification on the detail of the proposal and its context as well as an example before we can respond fully to this part of the Consultation Paper.

Confirmation to non-retail clients – Derivatives market contracts

B3Q1 Do you agree with our proposal to amend Rule 3.4.3 of the Securities Markets Rule to provide that a market participant is not required to give the notifications required by Rule 3.4.3 (1) (b) if the market transaction is in respect of a financial product which is a derivatives market contract?

B3Q2 Have changes in market liquidity, alternative trading venues or product innovation made the notification in Rule 3.4.3(1)(b) necessary?

B3Q3 Are you able to point to any information asymmetry or other issues that have become evident during the time that the waivers from providing the information in Rule 3.4.3(1)(b) have been in place?

B3Q4 If we do not proceed with the proposal, will you be in a position to comply with Rule 3.4.3 when the class waiver expires? If not, what are the estimated compliance costs(both one-off and ongoing), costs of any IT build and lead time for you to be able to comply with the rule?

SAFAA agrees with the proposal to make permanent the effect of ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303 and is not aware of any reason why the proposal should not proceed. Accordingly, we have not sought feedback from our members on whether they would be in a position to comply with Rule 3.4.3 if the class waiver is not made permanent.

Regulatory data reporting – Intermediary ID

B4Q1 Do you agree with our proposal to amend Rule 7.4.4 of the Securities Markets Rules to clarify that intermediary ID data is required for all orders and transactions:

- a) Submitted by the AFS licence holder as intermediary for the underlying client; and***
- b) If there is an arrangement in place under which the AFS licences holder is permitted to submit trading messages in to the market participant’s system as intermediary for its own clients.***

B4Q2 Do you consider that the proposal will remove any existing uncertainty that participants have about when the intermediary ID is required?

Our members report there has been confusion in the market for some time on the requirement for intermediary ID data and this has given rise to different practices. SAFAA agrees with the proposed amendment and hopes this provides the market with clarity.

Amending the Futures Markets Rules

We note that the proposed new Rules will:

- substitute the prohibition on employment with the ‘good fame and character’ requirement already in place for securities markets participants
- extend the suspicious activity reporting obligation currently in place for participants of securities markets to futures market participants
- remove legacy rules requiring authorisations to be in writing that are more appropriate for the traditional ‘open outcry’ system.

SAFAA is supportive of rule changes that improve consistency between markets and remove red tape.

Merits review of ASIC decisions under the Securities and Futures Markets Rules

SAFAA welcomes the proposed introduction of merits review of ASIC decisions that we hope will improve procedural fairness.

Amending ASIC-made rules – power to grant waivers

SAFAA is supportive of the proposed amendments that clarify ASIC’s power to grant waivers and remove the superseded penalty provisions. We consider that these changes will update and improve the rules and make them easier to understand.

Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SAFAA's policy manager, Michelle Huckel, at [REDACTED]

Kind regards



Judith Fox
Chief Executive Officer