



ASIC

Australian Securities & Investments Commission

REPORT 432

Response to submissions on CP 222 Reducing red tape: Proposed amendments to the market integrity rules

May 2015

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 222 *Reducing red tape: Proposed amendments to the market integrity rules* (CP 222) and details our responses in relation to those issues.

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.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy.

Contents

A	Overview/Consultation process	4
	Responses to consultation.....	4
B	Professional indemnity (PI) insurance	5
	Proposed removal of requirement to notify ASIC of PI insurance	5
C	The business connection rules	7
	Proposed removal of the business connection rules	7
D	Prohibitions on certain transactions during takeovers, schemes of arrangement and buy-backs	8
	Proposals concerning prohibitions on certain transactions	8
	Appendix: List of non-confidential respondents	10

A Overview/Consultation process

- 1 In Consultation Paper 222 *Reducing red tape: Proposed amendments to the market integrity rules* (CP 222), we consulted on proposals to repeal market integrity rules that require certain market participants to:
 - (a) notify ASIC of details of their professional indemnity (PI) insurance cover; and
 - (b) obtain ASIC's consent before sharing business connections.
- 2 We also consulted on two alternative proposals to either repeal or refine the market integrity rules that prohibit certain transactions during takeovers, schemes of arrangement and buy-backs.
- 3 This report identifies the themes and issues in the submissions to CP 222 and our responses. This report is not intended to be a comprehensive summary of all responses received. It is also not intended to be a detailed report on every question from CP 222. This report is limited to key themes and issues.
- 4 The appendix of this report lists the non-confidential respondents to CP 222. Copies of these submissions are on the ASIC website at www.asic.gov.au/cp under CP 222.

Responses to consultation

- 5 We received nine responses to CP 222 from a variety of stakeholders, including market operators, market participants and industry associations. We also met with stakeholders during the consultation period to discuss the proposals. We are grateful to respondents for taking the time to meet with us and provide submissions.
- 6 There was unanimous support for the proposals to repeal the requirements for market participants to:
 - (a) notify ASIC of details of their PI insurance cover; and
 - (b) obtain ASIC's consent before sharing business connections.
- 7 Where respondents provided submissions on the alternative proposals concerning the provisions prohibiting certain transactions during takeovers, schemes of arrangement and buy-backs, those respondents preferred option 2—the option to repeal those provisions.

B Professional indemnity (PI) insurance

Key points

This section outlines the submissions received on our proposal to repeal the market integrity rules requiring a market participant of APX, ASX, Chi-X, NSXA or SIM VSE to notify ASIC of their PI insurance.

All respondents who provided submissions on this issue supported the proposal to repeal these market integrity rules to reduce the regulatory burden on market participants. This section summarises our response to those submissions.

Proposed removal of requirement to notify ASIC of PI insurance

8 In CP 222, we proposed to repeal the market integrity rules that require a market participant of APX, ASX, Chi-X, NSXA and SIM VSE to notify ASIC of their PI insurance details. Specifically, we proposed to repeal:

- (a) Rule 2.2.3 (ASX), (Chi-X) and (APX);
- (b) Rule 4.3.2 (NSXA); and
- (c) Rule 5.3.1(c) (SIM VSE).

Note: In this document ‘Rule 2.2.3 (ASX), (Chi-X) and (APX)’ (for example) refers to a particular rule of the ASIC Market Integrity Rules (ASX Market) 2010, ASIC Market Integrity Rules (Chi-X Market) 2011 and ASIC Market Integrity Rules (APX Market) 2013, ‘Rule 4.3.2 (NSXA)’ (for example) refers to a particular rule of the ASIC Market Integrity Rules (NSXA Market) 2010, ‘Rule 5.3.1 (SIM VSE)’ (for example) refers to a particular rule of the ASIC Market Integrity Rules (SIM VSE Market) 2010 and ‘Rule 7.4.1 (Competition)’ (for example) refers to a particular rule of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011.

9 We do not propose to repeal the obligations requiring a market participant to maintain PI insurance and to notify ASIC of claims or potential claims.

Accordingly, a market participant will continue to be required to:

- (a) maintain PI insurance cover at all times (Rule 2.2.1 (ASX), (Chi-X) and (APX), Rule 4.3.1 (NSXA) and Rule 5.3.1(a) (SIM VSE)); and
- (b) notify ASIC of claims or potential claims, or circumstances that might give rise to a claim, under their PI insurance cover (Rule 2.2.4 (ASX), (Chi-X) and (APX), Rule 4.3.3 (NSXA) and Rule 5.3.2 (SIM VSE)).

10 All respondents that provided submissions on this issue supported the proposal to repeal the relevant market integrity rules (see paragraph 8(a)–8(c)) for the following reasons:

- (a) the rules are an unnecessary administrative burden and their repeal poses no detriment to investor protection;

- (b) the rules impose an obligation on market participants, but not on other Australian financial services (AFS) licensees that are also required to hold PI insurance. There is no policy rationale for imposing this additional requirement solely on market participants in circumstances where market participants are already required to hold PI insurance; and
- (c) although the compliance cost of notifying ASIC of the amount and period of cover may be relatively small, repeal of the rules will remove an unnecessary administrative compliance burden that requires ongoing monitoring and compliance by market participants.

11 Respondents also submitted that the proposal will not compromise investor protection.

12 A couple of respondents noted that if we proceed with the proposal, market participants will still be required to provide their PI insurance details under the market operator rules and procedures of ASX. We note that ASX proposes to remove the requirement for ASX and ASX 24 market participants to notify ASX of their PI insurance arrangements as part of standardising and streamlining ASX's admission process.

ASIC's response

We have obtained Ministerial consent to proceed with the proposal to repeal Rule 2.2.3 (ASX), (Chi-X) and (APX); Rule 4.3.2 (NSXA); and Rule 5.3.1(c) (SIM VSE). We will now proceed to repeal these rules.

We will proceed to amend Regulatory Guide 214 *Guidance on ASIC market integrity rules for ASX and ASX 24 markets* (RG 214), Regulatory Guide 215 *Guidance on ASIC market integrity rules for IMB, NSXA and SIM VSE markets* (RG 215), Regulatory Guide 223 *Guidance on ASIC market integrity rules for competition in exchange markets* (RG 223) and Regulatory Guide 224 *Guidance on ASIC market integrity rules for Chi-X and APX markets* (RG 224), to reflect these proposed amendments.

C The business connection rules

Key points

This section outlines the submissions received on our proposal to amend the ASIC Market Integrity Rules (ASX), (Chi-X) and (APX) to remove Part 5.2 (ASX), (Chi-X) and (APX), which prohibits certain business connections between market participants without ASIC's consent. This section also summarises our response to those submissions.

Respondents supported our proposal to repeal Part 5.2 (ASX), (Chi-X) and (APX) because the policy rationale for Part 5.2 (ASX), (Chi-X) and (APX) is more effectively fulfilled by other market integrity rules.

Proposed removal of the business connection rules

- 13 In CP 222, we proposed to repeal Part 5.2 (ASX), (Chi-X) and (APX), which requires market participants of ASX, Chi-X and APX to obtain ASIC consent before sharing business connections with other market participants of the same market (the business connection rules). We also proposed to amend RG 214 and RG 224 to remove references to the business connection rules.
- 14 All respondents that provided submissions on this issue supported the proposal for the following reasons:
- (a) The business connection rules impose an administrative burden with no regulatory benefit. The conditions that are routinely imposed on the consents are unnecessary because they reflect general law and relevant legislation.
 - (b) The original policy rationale for the business connection rules was to protect confidential information, particularly confidential client order information. ASIC has now made Rule 7.4.1(Competition) which deals more specifically with confidential client order information in the context of current trading practices and technology, such as automated order processing. Confidential information is also protected by the general law on confidentiality and privacy, and by s912A(1)(aa) of the *Corporations Act 2001* (Corporations Act) (the obligation for an AFS licensee to have adequate arrangements in place to manage conflicts of interest).

ASIC's response

We have obtained Ministerial consent to repeal Part 5.2 (ASX), (Chi-X) and (APX), which requires market participants to obtain written consent from ASIC before sharing business connections. We will now proceed to repeal Part 5.2 (ASX), (Chi-X) and (APX).

We will also proceed with the proposal to amend RG 214 and RG 224 to remove references to the business connection rules.

D Prohibitions on certain transactions during takeovers, schemes of arrangement and buy-backs

Key points

This section outlines the submissions received on two alternative proposals in relation to the prohibitions on certain transactions during takeovers, schemes of arrangement (schemes) and buy-backs.

Respondents that made submissions on this proposal preferred the option to repeal Parts 6.4, 6.5 and 6.6 (ASX), (Chi-X) and (APX) and rely on the existing provisions in the Corporations Act to regulate activity during takeovers, schemes and buy-backs.

However, respondents also noted that any form of deregulation is preferred to none at all. As such, all respondents supported the option to amend Parts 6.4 and 6.5 and retain Part 6.6 (ASX), (Chi-X) and (APX) should ASIC decide not to proceed with the repeal of Parts of 6.4, 6.5 and 6.6 (ASX), (Chi-X) and (APX) This section summarises our response to those submissions.

Proposals concerning prohibitions on certain transactions

- 15 In CP 222, we sought submissions on the following options:
- (a) *Option 1:* Amend Parts 6.4 and 6.5 (ASX), (Chi-X) and (APX) so that the restrictions in those rules only apply to market participants acting on behalf of a bidder or their associate rather than to all market participants; restrict special crossings during a takeover to the offer period rather than the bid period; and retain Part 6.6 (ASX), (Chi-X) and (APX).
 - (b) *Option 2:* Repeal Parts 6.4, 6.5 and 6.6 (ASX), (Chi-X) and (APX) on the basis that the Corporations Act adequately and appropriately regulates crossings during takeovers, schemes and buy-backs.
- 16 We received nine submissions in response to CP 222. Seven of these included a response on this proposal and indicated support for Option 2, for the following reasons:
- (a) the relevant provisions of the Corporations Act provide adequate protection to investors, and the market in general, and these market integrity rules are no longer necessary;
 - (b) the relevant provisions in the market integrity rules unnecessarily restrict trading in securities by reducing the ability of participants to transact in large lines of stock which, in turn, affects the efficiency of the market for those securities;

- (c) the current provisions in the market integrity rules have resulted in confusion in the marketplace (despite guidance from ASIC) and have led to differing interpretations and inconsistent market practices; and
 - (d) the market integrity rules are unnecessarily broad in their application to:
 - (i) all market participants, rather than a bidder or bidder's associate; and
 - (ii) in some cases, the bid period, rather than the offer period.
- 17 A majority of these respondents also indicated support for Option 1 if we did not proceed with Option 2—rather than the retention of Parts 6.4, 6.5 and 6.6 (ASX), (Chi-X) and (APX) in their current form.
- 18 A number of respondents also provided comments on the perceived unfairness arising from differing treatment of 'dark' transactions executed on market operators' order books, for example, broker preferencing in ASX's Centrepoint order book compared to transactions matched on a crossing system or 'dark pool' operated by a market participant. This difference in approach is outside the scope of these reforms because it arises from the differences between regimes for the regulation of market operators and crossing systems operated by market participants. To the extent that this different approach has any practical effect, it will be considerably reduced by the repeal of Parts 6.4, 6.5 and 6.6 (ASX), (Chi-X) and (APX). Following the repeal, only participants acting on behalf of a bidder or an associate during a takeover will be affected by this issue.
- 19 Although respondents favoured Option 2, one respondent raised concerns as to whether Option 2 may give an unfair advantage to non-associated bidders, who can accumulate significant holdings without prior disclosure to the market. In ASIC's view, this possibility is outweighed by the benefits of repealing Parts 6.4, 6.5 and 6.6 (ASX) (Chi-X) and (APX): see paragraph 16. No other respondents submitted any concerns regarding Option 2.

ASIC's response

We have obtained Ministerial consent to proceed with Option 2—to repeal Parts 6.4, 6.5 and 6.6 (ASX) (Chi-X) and (APX). We will now proceed to repeal Parts 6.4, 6.5 and 6.6 (ASX) (Chi-X) and (APX).

We will also proceed to amend RG 223 to remove references to Parts 6.4, 6.5 and 6.6 (ASX) (Chi-X).

Appendix: List of non-confidential respondents

- Australian Financial Markets Association
 - ASX Limited
 - Law Council of Australia
 - National Stock Exchange of Australia
 - Stockbrokers Association of Australia
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