



A dense grid of three-letter alphanumeric codes (trigrams) is displayed across the page. The codes are arranged in a regular pattern, with some codes appearing in a larger font size than others. The background is dark blue with a subtle, glowing map of Australia in the lower right quadrant.

Achieving more efficient regulatory outcomes

Submission to ASIC Report 391: ASIC's Deregulation Initiatives

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Introduction

ASX appreciates the opportunity to comment on the deregulation proposals referenced in the paper as well as identifying additional proposals that can generate improved efficiencies for both the regulator and financial market.

This submission supports a number of the proposed initiatives identified in Report 391 including: OTC substituted compliance; market stabilisation; electronic disclosure; investor self-assessment; and harmonising market integrity rulebooks. ASX looks forward to working closely with ASIC through future public consultations to progress these opportunities.

ASX also suggests three further proposals for consideration. These relate to rule approval processes, the annual licence assessments for market and post-trade facility operators, and arrangements for paying ASIC fees. These measures offer the scope to improve the processes for developing policy and to reduce compliance costs for business and ASIC of administering licence requirements. These proposals would not involve any lessening in regulatory standards.

Savings to business as a result of ASIC's international work

OTC substituted compliance

It is important that in implementing global standards, such as the *CPSS-IOSCO Principles for financial market infrastructures* Australia complies in such a way that ensures it can satisfy requirements for regulatory equivalence with other major partner countries. This will deliver significant and ongoing compliance cost savings to Australian financial services businesses and, through them, to end customers.

ASX acknowledges the important work Australian regulators, such as ASIC and the RBA, continue to do in this area. Implementation of the pre-conditions for regulatory recognition from regulators in the jurisdictions where our customers are headquartered, in particular the United States (CFTC) and Europe (ESMA), has been important to ensure that Australian markets remain globally connected and are able to provide a full suite of services.

New ASIC initiatives

Market stabilisation

ASIC indicates that it may consider consulting on legislative amendments to allow market stabilisation activities in certain circumstances. This would replace the current approach which relies on ASIC issuing no-action relief in defined circumstances.

The existing arrangements around market stabilisation are quite cumbersome for both market participants and market operators. Market operators have to put in place arrangements to support market stabilisation activities including identifying when such trading has taken place.

In practice, participants rarely approach ASX to put in place arrangements to facilitate potential market stabilisation activities (generally less than once a year) and even in these cases it seems to be only established as a contingency measure. ASX is not aware of any participant recently undertaking market stabilisation activity for a new listing.

ASX agrees that any market stabilisation activities need to be appropriately disclosed to the regulators (to monitor for market integrity purposes) and the market.

The introduction of requirements under the Market Integrity Rules for participants to indicate if orders entered into a trading system are made on a principal or agency basis and that the order also include a unique customer identifier may remove the need for market operators to put in place separate, and cumbersome, arrangements to identify any market stabilisation activities.

The current multi-market environment for trading in ASX-listed securities has made the effectiveness of any market stabilisation activity more problematic. It has also made it impractical for a market operator to try and monitor such trading. ASIC assuming responsibility for the supervision of real-time trading and the conduct of markets participants in August 2010 and having developed a new market surveillance system means the regulator is best placed to ensure such whole-of-market areas are effectively policed.

ASX supports ASIC conducting a fulsome review, in consultation with industry, around the need for specific market stabilisation arrangements and the most efficient mechanism for monitoring and policing any such arrangements.

Electronic disclosure

ASX supports ASIC examining the regulatory and commercial barriers that may inhibit electronic delivery of disclosure material. To the extent that any barriers can be removed and greater use of electronic delivery facilitated there will be tangible benefits for both issuers and consumers through decreased costs and enhanced access to information.

Combined with improvements in electronic payment systems, electronic distribution of information can also potentially deliver more efficient processes that significantly reduce the time and risks involved in completing transactions such as certain types of capital raisings.

Investor self-assessment and key facts sheets

ASX agrees that enabling issuers of simple managed investment schemes to give investors fact sheets and access to other practical tools is a good initiative. The proposal offers the scope to reduce compliance costs for issuers while improving the quality of disclosure to investors to assist them in making decisions about the appropriateness of particular financial products.

The proposed pilot program should provide useful information on the effectiveness of such disclosure before consulting more broadly on it.

ASX believes simplified disclosure can complement other initiatives, such as ASX's mFund service, to provide efficient access for investors to a range of managed funds.

Harmonising ASIC market integrity rules

ASX supports the ASIC proposal to harmonise the various market integrity rulebooks for all market operators, participants and exchange-traded products into a single integrated rulebook.

Other issues to reduce compliance costs and enhance outcomes

Rules and new approval processes

ASX believes there is scope to deliver a more efficient rule amendment process that can enable licensed markets to better respond to customer needs and to provide an innovative and competitive service both domestically and globally. The process would rely more heavily on self-certification and analysis by licensed markets to attest to the appropriateness of rules within the context of their obligation to operate fair, orderly and transparent markets. Greater reliance on self-certification can reduce the workload of ASIC in conducting detailed due diligence of rule changes while ensuring that market operators are held accountable for the impact of their rule changes on the delivery of fair and efficient markets.

The rule lodgement process currently involves a number of steps:

- A public consultation on rule changes that seeks feedback from market users and other stakeholders;
- Informal lodgement of rule amendments with ASIC, including a detailed checklist of questions to be answered;
- An extended period in which ASIC reviews informal lodgement documents and often generates further questions;
- Formal lodgement of the rule amendments under the *Corporations Act* which triggers a 'non-disallowance' period of up to 28 days within which the Minister can disallow the rules.

The cumulative time involved from initial contact to final rule approval can be anywhere between around two months to well over a year. It is often significantly longer than in other major jurisdictions (see table below), although recent approvals have been towards to lower end of the range. Other jurisdictions often have either set timelines for consideration of rule changes or place greater reliance on self-certification.

Country	Regulator	Time (days)	Description
United States	Commodity Futures Trading Commission	1-90	<ul style="list-style-type: none"> • 1 day self-certification process for products • 10 day self-certification process for rules • Complex and novel rules approval takes 45 days, which can be extended to 90 days.
	Securities Exchange Commission	45-180	<ul style="list-style-type: none"> • 45 day period to consider rules. The SEC may convene a hearing up to 180 days after publication of the rules.
Canada	Ontario Securities Commission	45	<ul style="list-style-type: none"> • Use best endeavours to complete a review of a rule change within 45 days.
Hong Kong	Securities and Futures Commission	42	<ul style="list-style-type: none"> • Requirement to decide on a rule change within 6 weeks, although scope to extend this period.
United Kingdom	Financial Conduct Authority	No formal approval	<ul style="list-style-type: none"> • Exchanges to consult users on rule changes and then notify the FCA of rules changes.
Singapore	Monetary Authority of Singapore	No formal approval	<ul style="list-style-type: none"> • Consult participants on rule change and notify MAS 21 days before change comes into effect.

Given the globalisation of markets, the rule amendment process in Australia needs to be competitive with timeframes in other equivalent regimes. The role of ASIC in the rulemaking process should be made clearer and needs to recognise that

financial market operators are required to conduct transparent consultations with stakeholders on proposed rule changes and to self-certify that rule amendments are consistent with their licence obligations.

The consequences of the extended time taken for rule amendments in Australia is that licensed markets:

- can miss the window to successfully innovate and launch new products;
- may be unable to respond to customer's needs or delays may create uncertainty for end-users who may defer business decisions until the final regulatory approval is granted;
- face the following obstacles in competing domestically and globally:
 - exchanges in other jurisdictions have a faster rule amendment process and can introduce new products more quickly;
 - service providers in Australia that do not operate under a market licence can introduce products more quickly in a less regulated environment; and
 - the need to consult at the beginning of the regulatory approval process means that competitors (both global and domestic) will have considerable advance notice of new initiatives before those initiatives gain regulatory approval and can be launched.

The current legislative framework means the Minister must have regard to certain matters in not disallowing a rule amendment. ASX recommends that this be reviewed along with the role of ASIC in this process.

Annual licence assessment

As a holder of Australian market licences as well as licences to operate clearing and settlement facilities ASX is subject to a range of annual assessments designed to ensure that the licence holder is meeting its licence obligations.

To date, ASIC has conducted wide-ranging annual assessments across market operators and clearing and settlement facilities.

The current assessment process is very time consuming (both for the regulator and the licensee) compared to the assessment process for unlicensed markets and AFSL holders. It is conducted over a number of months and requires a significant amount of senior executive/management time for both parties. There are a substantial number of documents provided (e.g. almost 10,000 pages in the course of the 2013 assessment) including an annual self-assessment report prepared by ASX (60 pages + numerous attachments).

The process could be streamlined through a system of annual self-certification/attestations by Senior Executives of the licence holder that they have met their licence obligations, supported by the provision of an annual self-assessment report as currently occurs, within 3 months of the end of the financial year.

This would continue to be supplemented by real-time reporting of critical incidents (such a technical outages, market disturbances, etc), regular meetings to discuss any matters of concern with the regulators, and the development of a common list of key information that could be provided to the regulators on a regular, monthly or quarterly, basis.

Rather than an intensive and wide-ranging annual assessment process a more efficient approach could be to conduct annual thematic reviews across all market operators and C&S facilities where market-wide issues could be considered. In addition, ad hoc reviews on specific topics could be conducted whenever it is considered necessary.

However, if a regular assessment is to be retained, ASX believes that the current annual (ASIC & RBA) assessment cycles for market and clearing and settlement facility operators should be made biennial where the licence holder has a proven track record of compliance with its licence obligations (for example, over five years) with the option for more frequent assessments where that track record is not available.

Payment of ASIC fees

ASX suggests that ASIC modernise their payment options to move away from cheque based payments and allow electronic funds transfer options.

ASX makes a number of payments to ASIC for rule amendments and regulatory relief. Payments must be made by cheque, resulting in an inefficient and time consuming process for quite small payments. ASIC should accept payments by credit card or direct debits.

