17 March 2017

Mr Merrick Fox
Lawyer
Market Integrity Group, Legal & Policy
Australian Securities and Investments Commission
Level 5, 100 Market Street Sydney NSW 2000

By email: MIRconsolidation@asic.gov.au

Dear Mr Fox

Consultation Paper 277

The Australian Financial Markets Association (AFMA) welcomes the opportunity to make comment on the proposals to consolidate the ASIC market integrity rules set out in Consultation Paper 277 (CP277).

General observations

AFMA supports creating a set of consolidated market integrity rules common to each of the markets. This is development we have supported and argued for since the current market supervision regime was put in place. AFMA agrees that this initiative will simplify the review and consideration of substantive amendments made to market integrity rules over time. We also consider that a single set of market integrity rules covering a number of like markets will be of benefit to those participants who are members of multiple markets. In principle, consolidation of rules should reduce the regulatory burden of having to comply with different and potentially conflicting rules for essentially the same activity.

AFMA notes that ASIC continues to demonstrate poor practice with regard to time allowed for consultations. The Government's best practice consultation guide[1] should be followed. A short five week period coming out of the summer holiday period was given for this review. The time of compliance teams that have the expert knowledge to review complex draft rules is limited given the great demands placed on them on a daily basis to deal with market integrity issues and respond to the ASIC's request. These rules have had a development period of several years and are not time critical so a brief consultation period cannot be justified.

[1] https://www.dpmc.gov.au/sites/default/files/publications/best-practice-consultation.docx

The accompanying Regulatory Guidance to accompany these rules are very important in order to address implementation issues that may arise. AFMAs relevant compliance committees will monitor the implementation of the rules and if issues with the consolidation arise in practice we will raise them with ASIC and look to quick rectification.

Comments in response to the question posed in the CP277 are set out in **Part A**. Comments on drafting in the proposed market integrity rules are out in **Part B**.

Please contact David Love either on 02 9776 7995 or by email dlove@afma.com.au if further clarification or elaboration is desired.

Yours sincerely

David Love
General Counsel & International Adviser

Part A - Response to ASIC Questions

B1 - MIR for Securities Markets

We propose to:

a) *consolidate the ASIC Market Integrity Rules (APX), ASIC Market Integrity Rules (ASX), ASIC Market Integrity Rules (Chi-X), ASIC Market Integrity Rules (SIM VSE) and ASIC Market Integrity Rules (Competition) into a single rule book: see the draft ASIC Market Integrity Rules (Securities Markets) in Attachment 1;*

b) *in the ASIC Market Integrity Rules (Securities Markets), apply the rules that derive from ASIC Market Integrity Rules (Competition) to SSX, IR Plus and their participants; and*

c) *waive the requirement for SSX, IR Plus and their participants to comply with obligations in the ASIC Market Integrity Rules (Securities Markets) that derive from the ASIC Market Integrity Rules (Competition), until a specified date in the future.*

B1Q1 Do you agree with our proposals?

There is general support to bring rules for the exchanges into a common standard set around the existing requirements associated with ASX and Chi-X as well as the use of the Corporations Act definitions where possible.

Full segregation of Securities and Futures rule book - AFMA agrees with the proposal to segregate the MIRs by product class. However, it is inconsistent with this approach to include some rules with respect to futures products in the ASIC Market Integrity Rules (Securities Markets) 2017. We would suggest that any futures references be removed from the Securities rules to ensure the only applicable rules for futures products are the (Futures Markets) MIRs.

B1Q2 What benefits and/or costs do you believe would arise from having a consolidated rule book for securities markets?

There are ostensible benefits in consolidating 13 existing rule books into four rules. However, it is noted that the suggestion that there will be additions made to various Regulatory Guides (RGs) and that this could have direct impact on market participants. Before the commencement of these new rules AFMA will look to make comment on the draft RGs for conformance.

B1Q3 In consolidating these rules, have we inadvertently changed any substantive obligations? If so, what are the likely impacts, benefits and/or costs of that change? Please give reasons for your answer.

No comment

B1Q4 When should the ASIC Market Integrity Rules (Securities Markets) commence? Please give reasons for your answer

It is important that consultation on the RGs is adequate and that they be settled. Six months should be given from the time of publication of the final RGs to commencement time for the rules.

B1Q5 Are there any specific rules in the draft ASIC Market Integrity Rules (Securities Markets) derived from the ASIC Market Integrity Rules (Competition) that should not apply to SSX, IR Plus or their participants? Please give reasons for your answer.

None are identified.

B1Q6 What is an appropriate period to waive the requirement for SSX, IR Plus and their participants to comply with the ASIC Market Integrity Rules (Securities Markets) derived from the ASIC Market Integrity Rules (Competition)? Would a waiver of six months following commencement or to 31 December 2017 be sufficient? Please give reasons for your answer.

A six month period is an appropriate transition period following commencement in line with the response to B1Q4.

B2 - MIR for Securities Markets for NSXA

We propose to apply the ASIC Market Integrity Rules (Securities Markets) to NSXA and participants of NSXA; etc

B2Q1 Do you agree with our proposal? Please give reasons for your answer.

No issues have been identified with this proposal.

B3 - Definitions in the MIR Securities Markets

We propose to:
omit the defined terms in Table 1 from the ASIC Market Integrity Rules (Securities Markets):

- *a) that are defined in the Corporations Act and will have the same meaning;*
- *b) where it is possible and appropriate to use generic or descriptive terms instead of proprietary terms; or*
- *c) that do not aid interpretation or are derived from or based on other defined terms we propose to omit; and*
- d) *adopt or materially modify the defined terms in Table 2 for use in the ASIC Market Integrity Rules (Securities Markets).*

B3Q1 Do you agree with our proposal? Please give reasons for your answer.

AFMA supports the removal from the rulebook those definitions currently contained within the Corporations Act and the modified / new terms that are proposed to be adopted. The objective is to avoid any overlap, duplication, ambiguity or confusion.

B4 - MIR for Futures Markets

We propose to:

a) consolidate the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX) into a single set of ASIC market integrity rules (see the ASIC Market Integrity Rules (Futures Markets) in Attachment 2); and

b) where requirements in the ASIC Market Integrity Rules (ASX) or (Competition) currently apply to ASX 24 and/or FEX, replicate them in the ASIC Market Integrity Rules (Futures Markets) (e.g. the extreme price movement rules in the ASIC Market Integrity Rules (Competition)).

B4Q1 Do you agree with our proposal? Please give reasons for your answer.

AFMA agrees that market integrity rules relating to futures markets should be consolidated into one set of market integrity rules. There are, however, three futures markets - ASX24, ASX and FEX. The Consultation Paper does not address why, when undertaking the consolidation process, only two of the three markets have been included. In relation to ASX, the market integrity rules relating to its futures market continue to be contained in the proposed ASIC Market Integrity Rules (Securities Markets) 2017 rulebook (see, for example, rules contained within Parts 2.4, 3.1, 3.5, 4.1, 5.3, 5.8, 5.15 and 5.16). By not combining all three set of rules, the rationale, as stated in the Consultation Paper will not be met – that is, there will not be one single, consolidated set of ASIC market integrity rules for all market operators and market participants in exchange-traded futures.

Our view is that all three sets of market integrity rules should be consolidated into the proposed ASIC Market Integrity Rules (Futures Market) 2017 rulebook.

B3 - Definitions in the MIR Futures Markets

We propose to:

(a) omit the defined terms in Table 3 from the ASIC Market Integrity Rules (Futures Markets):

(i) that are defined in the Corporations Act and will have the same meaning;

(ii) where it is possible and appropriate to use generic or descriptive terms instead of proprietary terms; or

(iii) that do not aid interpretation or are derived from or based on other defined terms we propose to omit;

(b) adopt or materially modify the defined terms in Table 4 for use in the ASIC Market Integrity Rules (Futures Markets).

B5Q1 Do you agree with these proposals? Please give reasons for your answer.

AFMA supports these proposals. Conflicting definitions between the Corporations Act and the market integrity rules increases the regulatory risk for participants and therefore removing this potential for risk is welcome.

In relation to materially modified or new terms in Table 4, the introduction of the term Participant exacerbates the confusion already in the market integrity rules as to who those rules are intended to apply to. Rule 1.1.5 provides that the rules apply to, among others, Market Participants. There is, however, no definition of Market Participant and instead there are definitions for Participant, Clearing Participant, Trading Participant and Principal Trader, none of whom appear to be the 'Market Participants' to whom the rules apply, or if they are, it is not clear that that is the case.

We have previously noted in comments on CP 222 to the confusion in the rules regarding the regulated population. The introduction of the further term 'Participant' does not alleviate this confusion.

B6 - MIR for capital requirements

We propose to:

a) consolidate the ASIC Market Integrity Rules (ASX Market–Capital) 2014, ASIC Market Integrity Rules (Chi-X Australia Market–Capital) 2014 and ASIC Market Integrity Rules (APX Market–Capital) 2014 to create a single capital rule book that applies to participants of ASX, Chi-X, IR Plus, NSXA (for NSXA's AOP participants only) and SSX (see the draft ASIC Market Integrity Rules (Securities Markets – Capital) in Attachment 3); and

b) waive the requirement for participants of NSXA who do not offer AOP services to comply with the ASIC Market Integrity Rules (Securities Markets – Capital) until a specified date in the future (see also related proposal B2);

c) *consolidate the ASIC Market Integrity Rules (ASX 24 Market–Capital) 2014 and ASIC Market Integrity Rules (FEX Market–Capital) 2014 to create a single capital rule book that applies to participants of ASX 24 and FEX (see the draft ASIC Market Integrity Rules (Futures Markets – Capital) in Attachment 4)*

B6Q1 Do you agree with our proposals? Please give reasons for your answer.

In relation to paragraph (c) of the proposal - We agree with consolidating the capital rules for ASX24 and FEX. As noted above under B4, we are of the view that all three sets of market integrity rules should be consolidated.

C1 – Removing Responsible Executive concept

We propose to:

(a) remove the following requirements of the market integrity rules that require market participants to:

(i) notify ASIC of the appointment or cessation of a responsible executive (Rule 2.3.1(1) (APX), (ASX) and (Chi- X));

(ii) not appoint a responsible executive unless specific competence and continuing education standards are met (Rules 2.3.1(2) and (3) (APX), (ASX) and (Chi-X));

(iii) ensure that its responsible executives complete an annual review of their allocated supervision and control procedures (Rule 2.3.3 (APX), (ASX) and (Chi-X));

(iv) ensure its responsible executives meet annual continuing education requirements (Rule 2.3.4 (APX), (ASX) and (Chi-X)); and

(v) notify ASIC annually of its responsible executives and self- assess responsible executives' satisfaction of requirements on competence, character and continuing education (Rule 2.3.5 (APX), (ASX) and (Chi-X)); and

(b) not require staff allocated supervisory responsibilities by a market participant to carry the title 'responsible executive'.

C1Q1 Do you agree with proposal C1(a) to remove these obligations from the market integrity rules? If not, why not?

There is general support for the removal of the anomalous removal of the administrative overhead associated with the current Responsible Executive (RE) framework. It has been our longstanding position that the RE rules overlap with section 912A of the Corporations Act.

C1Q2 What (if any) cost savings would result from the removal of these obligations?

The removes unnecessary paperwork.

C1Q3 Do you think there could be any unforeseen consequences if these obligations are removed from the market integrity rules? If so, please give reasons for your concerns.

We do note a caveat. In the absence of further detail with respect to the updates ASIC is proposing to Regulatory Guide 214 and Regulatory Guide 224, it is difficult for participants to comment fully on the implications of this. AFMA will carefully examine the RG when ready to ensure requirements are not transferred from rules and placed in guidance.

C1Q4 Do you agree with proposal C1(b)? If not, why not?

This proposal is generally supported.

C2 – Change notification

We propose to omit Rule 2.1.2(3) (APX), (ASX) and (Chi-X) from the ASIC Market Integrity Rules (Securities Markets).

C2Q1 Do you agree with our proposal? Please give reasons for your answer.

AFMA supports omitting the rule.

C3 – Guidance on management structures

We propose to update RG 214 and RG 224 to provide guidance on our expectations of the content of a market participant's management structure.

C3Q1 Do you agree with our proposal to provide further guidance on the content of a management structure? If not, why not?

ASIC has suggested that spot reviews will be conducted to monitor each market participants' supervisory managements and controls. As a result, there will be a number of RG changes that will give market participants an insight into what is expected from them. Members would like to know what are ASIC expectations especially when undertaking spot reviews for Responsible Managers?

C4 - Meaning of dealing 'as principal'

We propose to adopt in the ASIC Market Integrity Rules (Securities Markets) a narrower meaning of dealing 'as principal' by carving out market participants and related body corporates acting or trading as a trustee of a trust, if:

(a) the trustee has no beneficial interest in the trust or a beneficial interest in the trust of less than 5%; and

(b) all of that interest was acquired by the trustee in lieu of fees for administering the trust.

C4Q1 Do you agree with our proposal? If not, why not?

AFMA supports the definition as it accurately reflects the position of related entities acting only in a trustee capacity rather than as beneficial holders of securities.

C4Q2 Are there any other dealings by entities that should be excluded from the meaning of dealing 'as principal'? If so, please give details.

In CP277 at paragraph 89 the rationale given for narrowing the meaning of dealing "as principal" is because trading by or on behalf of trustees in this situation is - "*more comparable to client trading than principal trading because the market participant or related body corporate receives, at most, a proportionately minor benefit for the trading*."

On this basis, we expect that there are several other carve outs that should be made to the definition. For example, where the related body corporate is acting in the capacity of custodian, agent or broker, and receives at most a proportionately minor benefit for the trading. Alternatively, if there is a policy reason for limiting the exemption to trustees, it would be useful for this to be explained.

C4Q3 Should the carve-out be limited to trustees of listed trusts, rather than apply to all trusts? Please give reasons for your answer.

No comment

C4Q4 Should the carve-out be limited to trustees who can satisfy both C4(a) and (b), or trustees who can satisfy one of C4(a) or (b)?

No comment

C5 – Exceptions to the trustee carve-out

We propose to not apply the trustee carve-out in proposal C4 to Rule 5.1.7 of the ASIC Market Integrity Rules (Securities Markets).

C5Q1 Do you agree with our proposal? Please give reasons for your answer.

The expressed rationale for the proposal to not apply the trustee carve-out is difficult to comprehend, therefore it is hard to provide comment on the logic for the proposal or support it.

C5Q2 Are there any other rules to which the trustee carve-out in proposal C4 should not apply? If so, please give reasons for your answer.

No comment.

C6 – Reference to 'dealing as principal'

We propose to apply the clarified prohibition in Rule 3.2.4 (ASX) and (Chi-X) to all securities markets in the ASIC Market Integrity Rules (Securities Markets).

C6Q1 Do you agree with our proposal? If not, why not?

AFMA supports this proposal in order to ensure consistency among markets.

C6Q2 Should a different meaning of dealing 'as principal' apply to Rule 3.2.4 of the ASIC Market Integrity Rules (Securities Markets)? If so, please give reasons for your answer.

No, a consistent meaning of dealing as principal should be applied throughout the MIRs

C7 - Aggregation of client orders for block trades

We propose to adopt the definition of block trade in Rule 4.2.1 (Competition) in the ASIC Market Integrity Rules (Securities Markets) with amendments to clarify that a block trade:

a) *cannot include orders from more than one client on both sides of the transaction; and*
b) *may have 'multiple clients' on one side of the transaction and a 'principal' on the other side of the transaction.*

C7Q1 Do you agree with our proposal? Please give reasons for your answer.

There is support for clarification of the rule around the point that a block trade on the one hand cannot include orders from more than one client on both sides of the transaction; and on the other hand may have 'multiple clients' on the one side of the transaction and a 'principal' on the other side of the transaction.

It is the view of AFMA that that the definition of block trade under Rule 4.2.1 should allow for the aggregation of client(s) order(s) with principal on one side of the transaction where the other side is one client.

C8 - Clarification of pre-trade transparency

We propose to adopt the definition of large portfolio trade in Rule 4.2.2 (Competition) in the ASIC Market Integrity Rules (Securities Markets) with amendments to clarify that a large portfolio trade may only be executed off-order book as a crossing with a single party on each side of the transaction.

C8Q1 Do you agree with our proposal? Please give reasons for your answer

Member feedback indicates that this reflects current market practice, so there would be no impact.

C9 - Aggregation of client and principal orders for block trades

We propose to take one of the following options for Rule 4.2.1 (Competition):

a) *Option 1—amend Rule 4.2.1 (Competition) to allow aggregation of client and principal orders on the same side of a block trade transaction.*
b) *Option 2—amend Rule 4.2.1 (Competition) to allow aggregation of client and principal orders on the same side of a block trade transaction once the block trade consideration threshold has been met by the client orders on each side of the transaction.*
c) *Option 3—maintain the status quo (i.e. a participant cannot use the pre-trade transparency exception for block trades in Rule 4.1.1(2)(a) (Competition) if principal and client orders are aggregated on the same side of an off-order book crossing).*

C9Q1 What is your preferred option? Please give reasons for your answer.

In relation to aggregation of client and principal orders for block trades AFMA supports Option 2 for the proposed amendments to Rule 4.2.1 (Competition) to allow aggregation of client and principal orders on the same side of a block trade transaction once the block trade consideration threshold has been met by the client orders on each side of the transaction. Option 1 would rate as a second preference. The preference is influenced in favour of Option 2 as it would mitigate signalling risk and to improve the timely reporting of blocks taken on as principal by brokers. This is especially the case when there is a short fall in facilitating large block transactions and undertaking client swap orders.

We also suggest that this same principle should be followed for client orders as well, i.e. once the threshold has been met, you can aggregate multiple clients on both sides of the trade (which may or may not have principal on one side as well to cover a volume mismatch)

Rationale:

- Benefits in executing special crossings in one line which better reflects the order instructions of the clients and the fact it was intended to be a large flow order;
- Removes signalling risk to the market by splitting a portion into principal;

- The differential between one side and the other may not be special crossing size, making it difficult to handle volume disparities between the two sides of the crossing.

C9Q3 Is signalling risk a concern for you? Will allowing aggregation of client and principal orders on one side of a block trade transaction alleviate your signalling risk?

Both Option 1 and Option 2 would reduce signalling risk which is desirable.

C9Q3 If options 1 or 2 are implemented what, if any, changes would you expect to see in the volume of block trades executed? What effect might this have on the fairness and efficiency of markets?

Member believe that the volume of block trades executed will remain unchanged.

These options will provide fairness and efficiency as signalling risk will be minimised and there will be price protection. As Option 2 will not affect protections for clients who transact with a participant as principal, in particular, with respect to notification and consent of the principal's position, there is no additional benefit to the client in separating the reporting of block trades.

C10 - Notifications about derivatives market contracts

We propose to remove class waiver relief provided in [CW 14-1091] and apply Rule 3.4.3(1)(b) of the ASIC Market Integrity Rules (Securities Markets) to all securities markets.

C10Q1 Do you agree with our proposal? Please give reasons for your answer.

AFMA does not agree with the removal of the class waiver in line with our longstanding view that it Rule 3.4.3(1)(b) is an unnecessary regulatory burden the need for which was ever objectively demonstrated. Its further extension has no regulatory justification.

C10Q2 Do the notifications in Rule 3.4.3(1)(b) (ASX) and (Chi-X) meet the needs of wholesale clients that are not provided with a confirmation for market transactions in cash market products? Please give reasons for your answer.

AFMA's position is that a mandatory rule is redundant as clients have the option to request trade confirmations each time they trade with a house account as a matter of practice. Good business practice dictates that a firm is responsive to client requests.

C10Q3 Should the provisions of Rule 3.4.3(1)(b) (ASX) and (Chi-X) apply equally to other securities markets? If not, why not?

As noted in CP277, the derivatives market is largely conducted on a Request for Quote basis. Clients are generally aware through information provided in the on-boarding process that trades through brokers are executed with the involvement of a market making desk. It needs be borne in mind that a prime motivation for clients executing such orders with brokers is to get access to liquidity. In addition, the majority of public crossing systems disclosures posted on the ASIC website are for the offering of cash equity market products, which do not include derivatives. Furthermore Chi-X Hidden and Centrepoint

do not include derivative products in their execution. Accordingly, notification of the execution venue for products that are primarily only traded on one venue (ASX) would not add discernible value for clients.

C10Q4 What, if any, additional information should be provided in a notification to a wholesale client, if:
(a) a market participant enters into a derivatives market contract transaction with a client as principal; and
(b) a client's derivatives market contract order is executed as a crossing?

The information provided to client should be same in both instances.

C10Q5 What would be the most practical and cost- effective method of transmitting the information required by Rule 3.4.3(1)(b) in the ASIC Market Integrity Rules (Securities Markets)?

End of day email that shows all the trades where the client has traded with the house.

C10Q6 What additional costs will you incur if our proposal is implemented? Please provide an estimate of the time and costs associated with technology and process changes necessary to comply with the notification requirements for:
(a) derivatives market contracts; and
(b) transactions on the SSX market and other securities markets.

Systems are in place for cash equity confirmations as required by the rules.

Extension to other products will require changes to existing systems and processes which will require the time of technology teams to implement. IT changes necessarily involve additional cost

C10Q7 What is an appropriate transition period to allow for implementation of any necessary technology changes? We suggest a 6 month period prior to commencement.

Access to very busy technology teams always requires appropriate planning and lead times. A minimum 6 month transition period is needed.

C11 Market Operator Record keeping

We propose to make market integrity rules requiring a market operator to keep records:

a) *to demonstrate it has complied with its obligations under the ASIC market integrity rules and Pt 7.2 of the Corporations Act (see Part 9.5 of the draft ASIC Market Integrity Rules (Securities Markets) in Attachment 1 and Part 4.3 of the draft ASIC Market Integrity Rules (Futures Markets) in Attachment 2); and*
b) *for a period of at least seven years from the date the record is made or amended (see Rules 6.1.2(1A), 6.3.4(1A), 6.3.6A(1A), 7.1AA.3(1A), 7.1.1(1A) and 9.5.2 in the draft ASIC Market Integrity Rules (Securities Markets) in Attachment 1 and Rules 4.1.1(1A) and 4.3.2 in the draft ASIC Market Integrity Rules (Futures Markets) in Attachment 2).*

C11Q1 Do you agree with our proposal? Please give reasons for your view.

AFMA supports this proposal. As a function of ASIC's market integrity supervisory role as the market regulator, it is appropriate to have access to information relating to that market and the market operator should have the obligation to provide that information.

C11Q2 Is seven years a reasonable period for records to be retained by market operators? If not, why not?

Seven years is generally consistent with the record keeping obligations under the Corporations Act.

Regulatory Impact Assessment

To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits.

Generally, as these are minimal changes to the rules there is not likely to be any great effect on participants.

However, in failing to consolidate all market integrity rules into the one rulebook, we do not believe that there has been a case made out for any reduction in the regulatory burden for participants in markets.

With regard to the futures market, while we accept that currently, only one market has listed futures contracts (ASX24), the fact that the other two markets still maintain Australian market licences means that there is a potential for them to list contracts in the future. We therefore recommend that the market integrity rules relating to all three markets be consolidated and harmonised.

Part B – Drafting comments

ASIC Market Integrity Rules (Futures Markets)

Definitions

Approved Foreign Bank	The definition of Approved Foreign Bank exists currently in the market integrity rules but there are concerns with it. The definition relies on the Corporations Regulation 1.0.02. That, in turn, provides that an approved foreign bank, in relation to a participant of a licensed market, means a bank in relation to which there is an approval given by the market licensee under the operating rules or by ASIC under the market integrity rules. Neither the operating rules nor the market integrity rules makes any provision for the approval of a foreign bank. Therefore, there is currently no means by which a participant may obtain approval to use a foreign bank. In a globalised futures market where AFS licensees and participants hold money for clients in a variety of currencies in order to settle transactions on offshore clearing houses, it is necessary that there be an efficient and timely process by which a participant can obtain such an approval. The proposed market integrity rules should include that process as part of the consolidation effort.
Approved Securities	While this issue exists in the current market integrity rules, it is not clear why there are potentially two meanings for an approved security. The definition of 'Approved Securities' refers to the operating rules of the Market. While the market in question (ASX24) has a definition of Approved Securities, it does not actually provide any instruments which fall within the definition. The operating rules of ASX Clear (Futures) do, however. This is an example of the confusion between the various sets of rules that causes difficulties for participants. A further issue arises under this definition – what is to occur when the two lists of 'Approved Securities' diverge? For example, it does not make sense to require a provision in the client agreement rules relating to Approved Securities for margins that may be different to the types of Approved Securities required under the margining rules in Part 7.
Bid	A new definition of 'Bid' has been introduced into the rules. Should all references to 'Bid' be capitalised? For example, in the definition of Expression of Interest, 'bid' is not capitalised. The same comment applies to 'Offer'.

Chess Depository Interest	There is a typographical error in the reference. It should be Chess Depositary Interest to match the term in the ASX Settlement Rules.
Chi-X Market	There is a typographical error in the definition with 'Chi-X Market means' being repeated
Client	The definition of client has become onerous and confusing and we would recommend that it be reviewed and revised. The definition in the current market integrity rules has been incorporated into paragraph (a) of the proposed rules. However, this original definition lacks clarity. Under the definition, a client can be a person on whose behalf the participant enters (etc.) or proposes to enter (etc.) into a contract, or a person from whom the participant accepts instructions to enter (etc.) into a contract. The difficulty is that on the basis of this definition there can potentially be more than one client in the same relationship. For example, an investment manager, acting as agent for a trustee, providing instructions to a participant. The client could be either the trustee (the person on whose behalf the contract is entered into) or the investment manager (the person from whom the participant accepts instructions to enter into a contract). Given that the identity of the client impacts other provisions in the market integrity rules, it is imperative that there is clarity in the definition as to who is supposed to be the participant's client. The simplest way to determine who the client is to look to the person for whom the participant holds an account, irrespective of who may provide instructions to the participant in relation to that account. A further issue with the definition of Client that has been raised in the AFMA Futures Steering Committee submission to CP222 is the position of related bodies corporate of a participant. As noted in that submission, the conflict between the market integrity rules and the Corporations Act should be addressed so that the protections, particularly in the client money rules, extend to all clients of a participant. In relation to the proposed drafting of the definition, there is currently attempts to consolidate the various references to 'client' throughout the rules. While generally, we would prefer to see all definitions included in the definitions section, the definition of 'client' is so subject to exceptions and additions that listing them all in the definition does not aid in interpretation but rather confuses. Subject to our comments generally on the definition, it may be better to include a statement such as "except where otherwise provided in a specific Rule, Client means….".

LCH.Clearnet	We assume that the various provisions relating to LCH Clearnet only apply where a participant is a participant of FEX. The drafting however, has the potential to apply more widely to any participant who happens to be a member of LCH.Clearnet other than as a result of its participation on FEX, or who uses a clearing member of LCH.Clearnet to clear contracts other than FEX contracts. For example, the definition of 'Deposits with LCH.Clearnet Client Account' is drafted widely enough to capture client funds lodged with LCH.Clearnet for non-FEX contracts. If our assumption is correct, the rules relating to LCH.Clearnet need to specify that they are in relation to a participant's FEX participation.
Participant	This is a new definition. Please see our comment above under B4Q1 regarding the introduction of this term.
Rules	
1.5.1	It is not quite clear what this rule means. What documents are covered by this rule?
1.6.1	This transitional provision deals with the status of notifications and certifications given by a market participant to ASIC under the old market integrity rules. What is the status of waivers etc given by ASIC to a market participant under the old rules? The rule should provide that these continue to apply to the new rules
2.2.3	We query why it is necessary to go back to breaches that may have occurred over 7 years ago. While this issue arises in the current rule, we query the fairness of a blanket rule that prevents the employment of a person in his or her industry for so long. We also query why paragraph (e) has been included if no other of the futures market integrity rules relating to the ASX futures market have been included. A further issues raised by this rule, which also exists in the current drafting of the rule, is how the participant get the requisite knowledge – is the participant expected to make independent inquiries about the person and if so, how does the participant get the necessary information?
2.2.6	As noted in the AFMA Futures Steering Committee submission to CP222, this rule should be deleted and reliance should be placed on the Corporations Act provisions.

2.3.1	All definitions should be contained in the definitions section. Generally it is preferable for participants to only need to go to one place for definitions. It also reduces the risk of conflict between definitions should amendments be made to the rules at a later date. For example, there is a definition of ASX Clear (Futures) in both rule 2.3.1 and in the definitions section
2.3.2	As the rules are being rewritten, it is an opportune time to incorporate class waiver 15/933 into the rules. It is not efficient to expect participants to search out waivers to interpret the rules.
Part 7	While this issue exists in the current market integrity rules, we query why Part 7 is contained in the market integrity rules when margining is a function of the clearing facility and not the market. The part refers to obligations placed on a Trading Participant, however, a Trading Participant, unless coincidentally also a clearing participant, does not have any obligations in relation to margining. This issue was highlighted in our response to CP 222 under the section entitled 'confusion regarding the regulated population'.
7.1.1	The definitions should be moved to the definitions section – see our comment above on rule 2.3.1. As an example of the issue of risk raised in our comment above, there are two definitions of 'Initial Margin' – one in 1.4.3 and the other in this rule. There is a difference between the definitions with the former referring to a Trading Participant and the latter referring to a Market Participant. It is not clear what the difference is between the two definitions but they should be harmonised and put into the definitions section instead of this part. There are also slight differences in the definitions of variation margin ('Contract' as opposed to 'contract'). These should also be harmonised and put into the definitions section. Please see also our comments in relation to the definition of 'Approved Securities'.
7.2.4	This rule repeats Rule 2.2.5(b)(iv) and (v) albeit in slightly different language although in this rule it is an obligation on a Trading Participant and in Rule 2.2.5 it is an obligation of a Market Participant. On the assumption that the Trading Participant and Market Participant are the same, this rule should be deleted as all rules relating to client agreements should be contained in the same place.
7.2.5	It would be preferable for this rule to be placed with the other requirements for client agreements in Rule 2.2.5.

	All rules relating to client agreements should be contained in the same place.
7.2.8(2)	It would be preferable for this rule to be placed with the other requirements for client agreements in Rule 2.2.5. All rules relating to client agreements should be contained in the same place.