

Dear Rhonda,

RESPONSE TO CONSULTATION PAPER 293: Revising the market licence regime for domestic and overseas operators

The National Stock Exchange of Australia (NSX) welcomes the opportunity to provide input to the consultation on revision of the market licence regime for domestic and overseas operators.

NSX is the second largest cash equity market in Australia and its business strategy is formed on the belief that a truly competitive, innovative and dynamic marketplace provides the only platform for the Australian equity market to compete globally.

NSX's response to the Consultation Paper is attached.

NSX looks forward to continuing discussions with ASIC regarding the proposed changes and contributing further to the review.

Yours sincerely,

(sent electronically without signature)

John Williams
Head of Admissions

31 August 2017

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PROPOSAL	QUESTION	RESPONSE
<p>B1 We propose to establish two tiers within the market licence regime, with the second tier capable of being used for specialised and emerging market venues. This will apply to domestic and overseas licensees (see proposals B8-B9 for details relating to overseas licensees)</p>	<p>B1Q1 Do you agree with the proposed two-tiered approach?</p> <p>B1Q2 Do you have an alternative proposal for facilitating specialised and emerging market venues with proportionate regulation?</p>	<p>Yes</p> <p>No</p>
<p>B2 We propose to differentiate between tiers based on a risk assessment of the market or class of market:</p> <p>(a) tier 1 market venues will include those that are or are expected to become significant to the Australian economy, as well as venues that are or are expected to become significant to the efficiency and integrity of, and investor confidence in, the financial system;</p> <p>Note: This tier will include exchanges and a small number of non-exchange venues. A small retail exchange would be expected to be, or become, significant to investor confidence in the financial system, and would therefore be a tier 1 venue.</p> <p>(b) tier 2 would apply to most other market venues, including a broad range of specialised and emerging venues that do not meet the risk – based criteria.</p>	<p>B2Q1 Is the risk-based approach to market licence tiers sufficiently clear?</p> <p>B2Q2 Do you have comments on the proposed criteria?</p>	<p>Yes</p> <p>No</p>
<p>B3 We promise that the distinction between the tiers of licences, including differences in regulatory oversight, should be clear to current and potential users of market venues. Therefore:</p> <p>(a) We propose to adopt naming conventions for tiers of licences based on naming conventions adopted in other major jurisdictions:</p> <p>(i) tier 1 venues would be “Designated Specialised Markets” (for significant non-exchanges); and</p> <p>(ii) tier 2 venues would be “Specialised Markets”</p> <p>(b) We also propose that tier 2 venues would not be permitted to use “exchange”, “stock/securities/ future market” in their title or in other documentation, including marketing material.</p>	<p>B3Q1 Do you have comments on the proposal for identifying or branding tiers?</p> <p>B3Q2 Do you have other proposals for distinguishing between tiers?</p>	<p>Agree</p> <p>No</p>

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<p>B4 We propose to licence tier 2 market venues on the basis that the licensees comply with a specified subset of core licence obligations but are exempt from other licence obligations.</p> <p>Note: The list of proposed licence obligations for tier 2 licensees is set out in Section D of the draft updated regulatory guide.</p>	<p>B4Q1 Do you agree with the proposal for tier 2 licensees to be required to comply with a specified subset of licence obligations, as a starting point?</p>	<p>Yes</p>
<p>B5 We propose that, if we identify a regulatory risk for a specific venue, we will seek to address that risk through a licence condition or otherwise consider the appropriateness of giving a particular exemption. This would necessarily be determined on a case-by-case basis.</p>	<p>B5Q1 Do you have comments to address risks identified for specific venues on a case-by-case basis?</p> <p>B5Q2 Do you have alternative or other proposals?</p>	<p>No</p> <p>No</p>
<p>B6 We propose to:</p> <p>(a) Update the explanations about licensee’s obligations to supervise participant conduct to reflect the changes made at the time of the transfer of market supervision to ASIC (see draft RG 172.106 – RG 172.113);</p> <p>(b) Consolidate into the draft updated regulatory guide our public statements about how licensees may comply with licence obligations. These include:</p> <p>(i) adequate financial resources (see draft RG 172.77 – RG 172.83)</p> <p>(ii) adequate human resources (see draft RG 172.85-RG 172.93)</p> <p>(iii) use of outsourcing arrangements to comply with licence obligations (see draft RG 172.114-RG172.122); AND</p> <p>(iv) listing principles (see Appendix 1 of the draft updated regulatory guide)</p> <p>(c) clarify</p> <p>(i) when we may recommend that the Minister consider the suspension or revocation of a licence or an exemption (see draft RG 172.2017 – RG 172 .209); and</p>	<p>B6Q1 Do you agree with the proposal to update and clarify the explanations in the draft guidance?</p> <p>B6Q2 Do you have comments about other areas of the law that could be clarified?</p>	<p>Yes</p> <p>No comments.</p>

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(ii) how would we assess a change of control in an operator (see draft RG 172.210).		
B7 We propose to maintain our guidance in the addendum to RG 172 in Appendix 2 and update our guidance to market licensees on outsourcing arrangements and described in proposal B6(b)(iii)	<p>B7Q1 Do you think there are further key risk areas that should be addressed in Appendix 2 “Market licensee systems and controls”?</p> <p>B7Q2 Should we consider giving guidance on other aspects of a licensee’s obligation to have adequate technology resources?</p>	<p>No.</p> <p>Yes it would be beneficial to clarifying ASIC’s expectations.</p>
B8 We propose that the two – tiered licence will be applied to overseas operators, also based on the risk-based approach. In addition to the criteria set out in proposals B3-B5, we propose to consider whether the trading venue is regulated as an exchange (or similar) in its home jurisdiction.	B8Q1 Do you agree with the proposal to apply the two-tiered approach to overseas operators, based on the risk-based tiered approach, as well as by taking into account how the trading venue is regulated in its home jurisdiction?	Yes
B9 We propose to repeal RG 177 and consolidate the information contained in RG 177 into the draft updated RG 172.	B9Q1 Do you agree with the proposed consolidation?	Yes
C1 See paragraphs 45-51 for commentary on questions C1Q1 and C1Q2.	<p>C1Q1 Are these circumstances when on-sale to retail investors within 12 months of shares being issued under CSF offers should be permitted?</p> <p>C1Q2 Since continuous disclosure does not apply, what disclosure requirements should apply to secondary trading of shares in eligible CSF companies to facilitate informed trading? Please elaborate. For example:</p> <ul style="list-style-type: none"> (a) what information should be disclosed to facilitate informed trading? (b) What timing requirements for disclosure should apply, for example if secondary trading occurs periodically? (c) Are there other investor protection obligations that should apply? <p>C1Q3 Are there any circumstances when secondary trading of shares in eligible CSF companies should not be permitted?</p>	We have not yet formed a final view.
D1 We will review the legal status of each exempt operator after the draft updated regulatory guide has been finalised.	D1Q1 Do you agree with the proposed way forward for existing exempt professional markets?	Yes

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Professional market operators that currently have the benefit of an exemption will be asked to transition to a licence under a streamlined and expedited arrangement.		
D2 If we receive a new application for a similar trading venue before the draft updated regulatory guide is finalised, we will consider and discuss with the applicant whether to process the application based on the approach set out in this paper and the draft updated regulatory guide.	D2Q1 Do you agree with the proposed approach for new applications?	Yes
D3 We propose to discuss with Treasury whether reg 10.15.02 should be repealed to provide for consistent treatment of like trading venues. If Treasury agrees, this would be the subject of a separate consultation.	D3Q1 Do you have preliminary feedback on this proposal (noting that separate consultation is likely to be undertaken before any changes are made to the regulations)?	Yes