



31 January 2019

Markets Disciplinary Panel Secretariat  
Chief Legal Office  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000

By email: [mdp@asic.gov.au](mailto:mdp@asic.gov.au)

Dear Sir/Madam

**ASIC Consultation Paper 306 on Markets Disciplinary Panel (CP306 or CP)**

Chi-X Australia Pty Ltd (**Chi-X**) is grateful for the opportunity to provide a submission in response to CP306 “Markets Disciplinary Panel”.

Chi-X has some high level comments:

**Streamlining and simplification of guidance**

Chi-X agrees with ASIC that it is appropriate to revisit and streamline prior guidance in relation to the Markets Disciplinary Panel (**MDP**) and commends ASIC for the consolidation into a single, simplified guide.

Chi-X is supportive of ASIC streamlining and simplifying guidance wherever possible - this is consistent with the objectives of commercial certainty and reducing business costs under the Australian Securities and Investments Commission Act 2001 (the **ASIC Act**) and delivers significant benefits to stakeholders.

**Benefits of industry expertise, panel decision making and independence**

While Chi-X acknowledges the basis on which ASIC has reservations about some Panel members sitting in judgment on a market operator, it is also of the view that the following factors play an important role in the MDP’s decision making:

- **Industry expertise** - The MDP consists of industry experts, with significant market or professional experience.
- **Panel decision making** - Sitting panels of the MDP comprise three members and make decisions by majority vote.
- **Independence** – The MDP as far as practicable make decisions independently of ASIC.



Consequently, Chi-X has the following comments in relation to **Proposal B4** to exclude market operators from the MDP remit:

**Maintain panel decision making and independence from ASIC**

There are risks with a single body, including a regulator, having responsibility for every step in the disciplinary process: policy maker, legislator, supervisor, detection agent, investigation, prosecution and arbiter/judge. There are further risks from having a single decision maker in such a context.

While individual internal ASIC delegates may have the expertise and competence to consider alleged contraventions of the market integrity rules, Chi-X submits that decision making by a majority of an industry panel provides not only independence from the regulator but also checks and balances for independent and balanced outcomes.

**Increase appointments to the MDP of industry experts unaffiliated with participants**

As stated above, Chi-X acknowledges the conflicts of interest that arise from the MDP being predominantly comprised of individuals connected to market participants which are customers of, and subject to regulatory oversight by, market operators. Accordingly, there are conflicts to be managed for market operator matters. Equally, there are conflicts to be managed for participant matters as well due the various relations between firms and the size of the Australian market. Accordingly, the MDP has procedures for determining and managing conflicts which are invoked in relation to both.

Chi-X submits that an increase in the appointments of the industry experts unaffiliated with participants would be beneficial for managing conflicts for both market operator matters and participant matters.

**Limited cost impact of retaining market operators within the MDP remit**

Chi-X submits that given the low incidence of market operator matters coming before the MDP, retaining market operator matters within the MDP remit, but with increased appointments of industry experts unaffiliated with participants, that addresses conflict concerns and delivers benefits of industry expertise and panel decision making independent of ASIC which outweigh any cost efficiency of referring these few matters to an individual internal ASIC delegate.

Chi-X submits that keeping market operators within the MDP remit would be beneficial for the above reasons.

Yours sincerely

Chi-X Australia Pty Ltd