



8 August 2019

Andrew McPherson
Senior Specialist
Market Infrastructure
Australian Securities and Investments Commission
Level 5, 100 Market Street, Sydney, NSW 2000

By email: rules.resilience@asic.gov.au

Dear Mr McPherson

Market integrity rules for technological and operational resilience

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

ASA welcomes the opportunity to comment on the consultation paper, *Market integrity rules for technological and operational resilience* (the consultation paper).

Overview

We support ASIC's statement in the consultation paper that "Under existing obligations for market licensees in the Corporations Act, market operators are required to do all things necessary to ensure that their market is fair, orderly and transparent (s792A(a)) and to have sufficient resources (financial, technological and human) to operate the market (s792A(d))."

We further support the statement in the consultation paper that ASIC considers "... 'technological resources' to be a broad concept that includes the requirement to apply robust IT governance arrangements, and have adequate controls to ensure the delivery of critical services and ensure critical services are resilient to system failures and security breaches".

ASA also agrees with the statement in the consultation paper that "ASIC guidance does not properly address the increased risks and the systemic vulnerability arising from market operators' and market participants' growing reliance on increasingly complex, interrelated systems".

In relation to this point, ASA points to concerns it has raised with both ASIC and ASX concerning the CHES replacement system. In particular our concern that at present there is no clarity as to

the vision for the Australian market that ASX believes the CHES Replacement Project will achieve. The current consultation approach embeds a fragmented view of the objectives of the CHES Replacement Project, so that it remains unclear to market participants what the post trade settlement market environment (and associated matters) will look like once CHES is replaced. In turn, this means that market participants cannot ensure that they have adequate risk management systems in place to deal with the new, complex, interrelated system. Yet this is the very issue that the consultation paper seeks to address.

The consultation paper sets out proposals to ensure consistency in approach between market operators and market participants in meeting their general obligations in relation to risk management, in order to secure market integrity. However, the challenge for market participants is to establish how to meet these obligations without clarity as to the market operator's vision of the market post-CHES replacement and consequent impact on market participants. The capacity for market participants to undertake a review of their existing arrangements to determine whether any additional arrangements need to be put in place to ensure compliance with the proposed rules set out in the consultation paper is therefore difficult to achieve in these circumstances.

Critical systems

The consultation paper is clear that:

A market operator's or market participant's system is considered a 'critical system' if, in the event the system fails to operate effectively, it would be likely to) cause significant disruption to their operations or materially affect provision of their services.

and that critical systems include:

for market participants—that deliver or support order acceptance, routing and entry, clearing and settlement of transactions, payments and deliveries of financial products and funds, accounting for or reconciling client money, trust accounts, financial products and funds, confirmations and regulatory data reporting. Critical systems are client or market facing and exclude systems, functions, infrastructure and processes which are non-essential to the operation of the market or a market participant's capacity to deliver market services to its clients.

Therefore, while ASA supports the proposals in the paper to:

- introduce the definition of 'critical systems' and 'critical systems
- require market participants and market operators to have rules that require them to have in place adequate arrangements for critical systems
- require certain types of arrangements that market participants and market operators should have to ensure the continued reliability of their critical systems
- require testing of such arrangements, and
- have rules that require them to have in place adequate arrangements for change management of critical systems

we note that until such time as market participants have clarity as to how the post trade settlement market environment (and associated matters) will operate once CHES has been replaced, it will be difficult for many stakeholders to implement a range of these proposed obligations.

Outsourcing arrangements

ASA has no comment on this section but leaves it to other parties to provide comment.

Risk management — data, cyber security, incident management and business continuity and governance arrangements

In relation to the risk management of data and cyber security, ASA supports the proposed

- requirement for market operators to notify ASIC of any unauthorised access to or use of their critical systems and market-sensitive, confidential or personal data (and by extension market participants)
- requirement for market operators and participants to have in place incident management and business continuity arrangements as set by rules rather than by guidance
- rule that requires market operators to have governance arrangements and adequate financial, technological and human resources to support all of the arrangements outlined in the consultation paper.

Fair access to the market and trading controls

Given our concerns as outlined above as to the implications of the CHES replacement project for the post trade settlement market environment and any competition in that market environment, ASA strongly supports the proposed rule for market operators requiring them to provide access to their market and to their associated products, data and services:

- on reasonable commercial terms, and
- on a non-discriminatory basis.

We further support the proposed rule for market operators requiring them to have controls, including automated controls, that enable immediate suspension, limitation or prohibition of the entry by a participant of trading messages ('kill switch') where required for the purposes of ensuring the market is fair, orderly and transparent.

Yours sincerely



Fiona Balzer
Policy & Advocacy Manager

