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Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

Attn: Andrew McPherson

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

Dear Mr McPherson,

ASIC Consultation Paper 314: NSX Response to strengthen the ASIC market integrity rules for technological and operational resilience.

PUBLIC SUBMISSION

The National Stock Exchange of Australia (NSX) welcomes the opportunity to contribute to the consultation on the proposed changes to the ASIC Market Integrity Rules and appreciates ASIC engaging with NSX to discuss the key themes in more detail.

NSX is a licensed market operator and is the second largest listing exchange in Australia. As a Tier 1 marketplace, the fundamental purpose of NSX is capital formation; that is, bringing together companies which require capital to fund growth, with investors who have capital and are looking for investment opportunities. Through its role as a securities exchange and as an alternative market providing competition to ASX, NSX sees itself as facilitating innovation, diversification of investment, economic growth and job creation in the Australian economy due to its focus on companies with a sub $50m market capitalisation.

The aims of NSX are facilitated by a diverse and effective base of market participants who act as the essential intermediaries in matching investors with opportunities. NSX makes this submission against a background and ambition of ensuring the existence and longevity of a viable listed company and participant community which is able to cater to the needs of a diverse range of investors and issuers.

NSX's response to the Consultation Paper is attached.

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

Yours sincerely,

(sent electronically without signature)

John Williams
Head of Admissions

National Stock Exchange of Australia

Responses to Proposals and Questions:

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B1	We propose introducing rules that: (a) define 'critical system' to mean functions, infrastructure, processes or systems which in the event of failure to operate effectively, would or would be likely to cause significant disruption to the market operator's or market participant's market related operations and services; (b) require market operators and market participants to have adequate arrangements in place to ensure the resilience, reliability, integrity and security of their critical systems; (c) require critical systems arrangements to include: (i) identifying the critical systems; (ii) identifying, assessing, managing and monitoring risks to the resilience, reliability, integrity and security of the critical systems; (iii) ensuring the critical systems have sufficient and scalable capacity for ongoing and planned operations and services; (iv) preventing unauthorised access to or use of critical systems; (v) managing the implementation of new critical systems and changes to existing critical systems; (vi) dealing with an incident or major event affecting the critical systems; and (vii) managing outsourcing arrangements in relation to critical systems; (d) require market operators and market participants to: (i) review their critical systems arrangements following each material change to their critical systems, and at least annually; and (ii) change the critical systems arrangements as required to ensure they continue to comply with the above obligations; and(e) require market operators and market participants to: (i) document their critical systems arrangements; (ii) document the scope and results of reviews of their critical systems arrangements; (iii) document any changes to the critical systems arrangements; and (iv) maintain that documentation for a	NSX considers that that the definitions of *adequate*, *reliability* and *security*, in the context of what is proposed would benefit from further explanation. Broadly NSX considers that what is proposed is acceptable, however clarification regarding the boundaries would be beneficial. For example, network access to market infrastructure is critical to access to the market, however control of it is mostly with the telecommunications providers. A market operator may provide multiple network options, but the participant community may not be able to operate effectively in the event of failure of one of those options. Compare this with a trading engine, where the market operator can design a system where failure scenarios can be defined and have known recovery times. Considering question 4, additions that would require enhanced reporting would be the identification of systems and showing the ongoing management of risk. A best practice framework for market operators to follow, with specific recommendations would be useful guidance and consistent with what ASIC has published in conjunction with other Regulatory Guides in the past. NSX notes that the cost impact for smaller market operators could make it challenging to adopt the proposed changes in the timelines indicated and suggests that consideration be given to extending the implementation period.
B2	We propose introducing rules that: (a) require market operators and market participants to ensure their critical systems arrangements remain adequate following the implementation of a new critical system or a change to an existing critical system; (b) require additional arrangements that include: (i) testing new critical systems or changes to the existing critical system before implementation; (ii) communicating with anyone that may be materially affected by the implementation to ensure they are adequately informed about the nature, timing and impact of the implementation before it occurs; (iii) ensuring, to the extent reasonably practicable, that anyone materially affected by the	NSX accepts that with any evolving critical system, change occurs frequently across multiple and interdependent systems and this needs to be adequately managed. However, this is only one aspect of providing a stable, secure and reliable platform. NSX considers that definitions of the requirements for providing a system should state that the change should not disrupt the service, rather than having this listed separately. From the rules that are proposed, we consider that the proposed changes in B2(a) and (b) (i) would be better served by way of inclusion in the rules proposed in B1. NSX considers that the proposed changes in B2 (ii) and (iv) are appropriate. The proposed wording in (iii) would benefit from

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	implementation is adequately prepared for the implementation before it occurs; and (iv) providing written notice of the proposed implementation to ASIC in a reasonable time before the implementation (market operators only).	further clarification over what is proposed in (ii). NSX also highlights concerns around the subjective language used throughout the proposed changes in this section.
B3	We propose introducing rules that: (a) define an 'outsourcing arrangement' as an arrangement under which a third party provides, supports or operates a critical system; (b) require market operators and market participants to conduct due diligence prior to entering into an outsourcing arrangement to ensure the service provider has the ability to provide the services effectively; (c) require market operators and market participants to ensure that an outsourcing arrangement is covered by a legally binding written contract with the service provider that: (i) sets out the nature, scope and quality of services to be provided; (ii) requires a service provider to obtain approval before outsourcing any of the services already outsourced to them to another party and before making any other material change to the manner in which the services covered by the outsourcing arrangement are provided; and (iii) includes termination provisions, including a provision for the orderly transfer of services following termination of a contract; (d) requires market operators and market participants to: (i) monitor the service provider's performance in providing the outsourced services and ensure it has the ability and capacity to continue to provide those services effectively; (ii) have in place arrangements to identify and manage any conflicts of interest involving the service provider or related party; (iii) in relation to any outsourced critical systems, have in place adequate arrangements to ensure they can comply with their obligations under the Corporations Act and market integrity rules; (iv) ensure that they and their auditors can promptly, upon request, access books, records and other information relating to the critical systems from the service provider; (v) ensure that ASIC has the same access to all books, records and other information relating to the critical systems and maintained by the service provider, that ASIC would have if not for the outsourcing arrangement; and (vi) ensure that for each outsourcing arrangement, the market operator's and market participant's board and senior management have confirmed they have complied with their obligations above and have made a written attestation to that effect; (e) requires market operators and market participants to: (i) comply with all of the above requirements in a manner appropriate to the nature, complexity, risks and materiality of the outsourcing arrangement; and (ii) in determining whether the service provider has the ability and capacity to provide the outsourced services, consider the extent to which the	Whilst NSX is broadly supportive of the requirement for an outsourcing arrangement to be covered by a legally binding contract, NSX considers that the proposed rules, specifically, c (ii), d (iv), d (v), d (vi), e (ii) and f , are unnecessarily onerous and provide no distinct benefit over and above a contract that is well-defined and sets out the services, service levels and conditions that the third party is required to comply with. Further, if implemented, such an outcome could also dramatically reduce the number of third-party contracts that could be signed, particularly with large third parties who may sub contract part of their service. For example, a SaaS provider who changes the support and maintenance provider of their hardware on which the service runs would require approval from the user. In this case the third party would be unlikely to sign a contract that gives one of its customer's approval over how it runs its business. In considering what is proposed in relation to the requirements detailed in (c), how might it work in practice: at the start of a contract or on renewal? How would subscription contracts that do not have an end date be handled? Most participants utilise software and services from the same firms - trading engines, back office systems, data centres, networks etc. As many systems are outsourced, this would be very onerous. Moreover, would the same trigger points for (d) (vi) apply? Where it would be useful to see further guidance is on newer models of business, such as: data residing in different, changing locations (e.g. cloud-based services), security implications of a service that can be accessed from any location via Internet; security implications of a service that is segregated from other competitors etc. Considering Q2, what is proposed highlights the broad nature and use of outsourced systems, which may warrant a different approach to how the final rules are formulated. There is a potential for a cost premium to be imposed by the outsource provider to deliver what is proposed, which would have a financial impact on the market operator or participant and ability to be commercially competitive. Overall, there would be a large administrative load to compile all the information required for existing third-party contracts, validate, renegotiate if certain conditions are not met (e.g. approval of use of third parties by third party). Once in place there would also be a significant ongoing workload for negotiating new contracts and limitations placed on the types of contracts that could be agreed to which removes elements of

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	service provider is providing the same or similar services to other market operators or market participants; and (f) requires a market operator to give written notice to ASIC before entering into an outsourcing arrangement.	control and flexibility that are crucial to NSX's business
B4	We propose introducing rules that require: (a) market operators and market participants to have adequate arrangements to ensure the confidentiality, integrity and security of data obtained, held or used by a market operator or market participant in connection with their operations or services, including: (i) controls, including automated controls, designed to prevent unauthorised access to data; (ii) controls for identifying, assessing, managing and monitoring unauthorised access to data; and (iii) arrangements designed to prevent the theft, loss or corruption of data; (b) market operators and market participants to have adequate arrangements to ensure the availability of access to data obtained, held or used by a market operator or market participant in connection with their operations or services, including arrangements for backup and the timely recovery of data in the event of theft, corruption or loss of the data; (c) market operators to notify ASIC in writing, as soon as practicable on becoming aware of any unauthorised access to or use of: (i) their critical systems that affect the effective functioning of those systems; and (ii) market-sensitive, confidential or personal data; and (d) market participants to maintain, for a period of at least seven years after the relevant event, records of any unauthorised access to or use of: (i) their critical systems that affect the effective functioning of those systems; and (ii) market-sensitive, confidential or personal data.	In considering what is proposed NSX suggests that further information be provided regarding ASIC's expectations on when a potential breach is required to be notified will enable the industry to focus on the key elements to improve the security of critical systems. Further guidance regarding what is considered an automated control would be helpful in understanding how to create and classify controls. Overall, NSX is supportive of what is proposed in this section of the new rules.
B5	We propose introducing rules that: (a) define an 'incident' and a 'major event'; (b) require market operators and market participants to establish, maintain and implement plans for dealing with incidents (incident management plans) and major events (business continuity plans); (c) require market operators and market participants to design their incident management and business continuity plans to enable: (i) continuation of the usual operation of their critical systems, operations and services during an incident or major event; or (ii) if continuation of the usual operations of critical systems, operations and services is not possible, the timely and orderly restoration of operations following the incident or major event; (d) require market operators' and market participants' incident management plans and business continuity plans to be appropriate to the nature, scale and complexity of	NSX's view is that the testing of a Business Continuity Plan (BCP) every three months is not practicable and would be extremely onerous in terms of time, cost and resources for NSX to implement. Effective testing involves multiple tests, with varying levels of disruption to production systems. Tests are typically conducted outside of production hours, and involve changes to systems to operate at these unusual hours, the removal of data entered during the test, and the return of the system to being ready for next trading date. These tests impose change management risk to the operation of the market and have to be undertaken carefully. Furthermore, to be effective full BCP tests require the participation of other market participants and as a result are even more disruptive. If a comprehensive change management procedure is applied, changes that impact BCP will be identified and accommodated for. In NSX's view, therefore a review every year to make sure nothing was missed seems appropriate, and would be in line with

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	the critical systems, operations, services and their structure and location; (e) require market operators and market participants to identify and address in their incident management plans and business continuity plans: (i) the types of incidents and major events that may impact their critical systems, operations and services; (ii) the potential impact incidents and major events may have on their critical systems, operations and services; (iii) the classification of types of incidents and major events according to potential severity of the impacts; (iv) escalation procedures; (v) the actions, arrangements and resources required to achieve continuation or restoration of the usual operation of critical systems, operations and services, including specific time objectives to achieve this outcome; and (vi) procedures for communicating during an incident or major event with persons that may be affected by the incident or major event to ensure they are adequately informed about the nature and impact of, and steps being taken to manage, the incident or major event; likely timing for restoration of critical systems, operations and services; and (vii) any relevant operational dependencies that may affect the matters in (i) to (vi) above; (f) require market operators and market participants to have adequate arrangements to ensure they can carry out incident management or business continuity plans for any outsourced critical systems; (g) require market operators to notify ASIC as soon as they become aware of an incident or major event that may interfere with the fair, orderly or transparent operation of any market and notify other market operators, operators of clearing and settlement facilities and participants that may be affected. A subsequent report must be provided detailing the circumstances and steps taken to manage the incident or major event; (h) require market participants to notify ASIC as soon as they become aware of a major event and, within seven days of the notification, provide a report to ASIC detailing the circumstances of the major event and steps taken to manage the major event; (i) require market operators and market participants to review and test their incident management and business continuity arrangements: (i) at a frequency and in a manner appropriate to the nature, scale and complexity of their critical systems, operations and services, structure and location; and each time there is a material change to the critical systems, operations or services, structure or location; and in the case of the business continuity plans, at a minimum once every three months for market operators and once every 12 months for market participants; and (ii) update the incident management plans and business continuity plans as required; and (j) require market operators and market participants to	an annual comprehensive test.

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	document: (i) incident management and business continuity plans; (ii) the scope and results of reviews and testing performed; and (iii) maintain that documentation for at least seven years.	
B6	We propose to introduce a rule that requires market operators and market participants to: (a) have governance arrangements and adequate financial, technological and human resources to comply with all the obligations in these proposed rules; and (b) have arrangements for their board and senior management to have oversight of the establishment, maintenance, implementation, review, testing and documentation of their incident management plans and business continuity plans.	The requirement adequate financial, technological and human resources are already fundamental to Market Licences granted to market operators. NSX appreciates and supports the extension of these requirements to market participants. It would be helpful for guidance to be provided that articulates what constitutes effective board oversight and ASIC's expectations in ensuring that it is appropriate, considering varying scale and levels of operations of the entities that are regulated.
B7	We propose introducing a rule (for market operators only) that requires a market operator to provide access to their market and to their associated products, data and services: (a) on reasonable commercial terms; and (b) on a non-discriminatory basis.	NSX is supportive of the proposed rules however, consider that the terms "reasonable commercial terms" and "non-discriminatory basis" would benefit from further clarification to be meaningful. For example, is provision of high-speed access to order management and market data at an increased cost to low speed access reasonable? Similarly, regarding services that can only be acquired from one physical location, and therefore require the purchase of additional infrastructure, would this be considered reasonable?
B8	We propose introducing a rule (for market operators only) that requires a market operator to have controls, including automated controls, that enable immediate suspension, limitation or prohibition of the entry by a participant of trading messages where required for the purposes of ensuring the market is fair, orderly and transparent.	NSX is supportive of the proposed rule, however notes that automated controls imply a control that is applied by software without human intervention. The interruption of trading via this method needs to be considered very carefully to ensure that there are no false positives in the automation that have been implemented.
	General Observations	Overall, NSX considers that the proposed rules are an enhancement to the current regulatory framework and will assist with ensuring that, across the market, BCP and incident management plans are contemporary, relevant and tested. NSX notes the proposed transition period of six months and believes that this is not a sufficient period of time in which to implement the new requirements and submits that twelve months would be a more reasonable period of time.