



ASIC
Australian Securities &
Investments Commission

REPORT 720

Response to submissions on CP 342 Proposed amendments to the ASIC market integrity rules and other ASIC-made rules

March 2022

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 342](#) *Proposed amendments to the ASIC market integrity rules and other ASIC-made rules* (CP 342) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see:

- [Regulatory Guide 146](#) *Licensing: Training of financial product advisers* (RG 146);
- [Regulatory Guide 172](#) *Financial markets: Domestic and overseas operators* (RG 172);
- [Regulatory Guide 265](#) *Guidance on ASIC market integrity rules for participants of securities markets* (RG 265); and
- [Regulatory Guide 266](#) *Guidance on ASIC market integrity rules for participants of futures markets* (RG 266).

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A Overview and consultation process

- 1 In [Consultation Paper 342](#) *Proposed amendments to the ASIC market integrity rules and other ASIC-made rules* (CP 342), we consulted on proposals to amend the rule books made by ASIC in the following areas:
- (a) in the *ASIC Market Integrity Rules (Securities Markets) 2017* (Securities Markets Rules):
 - (i) accredited derivatives advisers (ADA);
 - (ii) pre-trade transparency exception—trades with price improvement;
 - (iii) confirmations to non-retail clients—derivatives market contracts; and
 - (iv) regulatory data reporting—intermediary ID;
 - (b) in the *ASIC Market Integrity Rules (Futures Markets) 2017* (Futures Markets Rules):
 - (i) prohibited employment;
 - (ii) suspicious activity reporting (SAR); and
 - (iii) client authorisations—block trade and exchange for physical orders;
 - (c) in the Securities Markets Rules and the Futures Markets Rules, merits review by the Administrative Appeals Tribunal (AAT) of decisions made by ASIC under those rules;
 - (d) in the market integrity rules, ASIC’s power to grant waivers from the market integrity rules; and
 - (e) in all ASIC-made rule books, superseded penalty provisions.
- 2 This report highlights the key issues that arose out of the submissions received on CP 342 and our responses to those issues.
- 3 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 342. We have limited this report to the key issues.
- 4 For a list of the non-confidential respondents to CP 342, see the appendix. Copies of these submissions are currently on the [CP 342](#) page on the ASIC website.

Responses to consultation

- 5 We received four non-confidential and three confidential responses to [CP 342](#) from a range of interested parties including market participants, market operators and industry bodies.
- 6 The responses we received were largely supportive of our proposals.
- 7 The main feedback and issues raised by respondents related to the proposals to:
- (a) replace Part 2.4 of the Securities Markets Rules with principles-based rules (Proposal B1) or, alternatively, repeal Part 2.4 in its entirety (B1Q5); and
 - (b) amend the definition of a trade with price improvement in Rule 6.2.3 of the Securities Markets Rules to permit the aggregation of client orders on either side but not both sides of a transaction (Proposal B2).

B Securities Markets Rules

Key points

This section outlines the feedback received on our proposed changes to the Securities Markets Rules and our response to those submissions, covering four priority areas:

- ADAs (see paragraphs 8–13);
- pre-trade transparency exception—trades with price improvement (see paragraphs 14–17);
- confirmations to non-retail clients—derivatives market contracts (see paragraphs 18–20); and
- regulatory data reporting—intermediary ID (see paragraphs 21–23).

Accredited derivatives advisers

- 8 In [CP 342](#), we proposed to replace Part 2.4 of the Securities Markets Rules with principles-based rules that require market participants to ensure that:
- (a) their financial advisers are suitably qualified and experienced before providing personal advice to retail clients in relation to derivatives; and
 - (b) their qualifications relevant to providing advice on derivatives are noted on ASIC’s Financial Advisers Register (FAR) (Proposal B1).
- 9 Under Proposal B1, ASIC would no longer be required to approve examinations written by training providers that assess the knowledge and competency of derivatives advisers. Instead, a market participant would need to satisfy itself that, at all times, any individual involved in providing derivatives advice on its behalf to retail clients has the relevant skills, knowledge and experience for the role they are performing.
- 10 We also asked industry whether it would be preferable for ASIC to repeal Part 2.4 of the Securities Markets Rules in its entirety, without the proposed principles-based rules, and instead rely solely on the *Corporations Act 2001* (Corporations Act) to regulate derivatives advisers (B1Q5). This would mean relying on the FAR and the general obligations for Australian financial services (AFS) licensees.
- 11 Four of the five respondents to these proposals indicated a preference for the alternative proposal in B1Q5 to repeal Part 2.4 on the basis that:
- (a) the existing training and qualification requirements in the Corporations Act and [Regulatory Guide 146](#) *Licensing: Training of financial product advisers* (RG 146) are adequate—that is, either equivalent or superior to the principles-based rules proposed in CP 342; and

- (b) retaining an additional set of rules for derivatives advisers in the Securities Markets Rules would not add any value or benefit to clients—indicating that repealing Part 2.4 would not cause consumer detriment.
- 12 Two of the above respondents also accepted the proposal for principles-based rules to be implemented, although it was noted that this proposal would not result in any material regulatory benefit beyond what is already provided for in the Financial Advisers standards, the Corporations Act and [RG 146](#).
- 13 One respondent was supportive of Proposal B1 and not the alternative proposal in B1Q5.

ASIC's response

As proposed in B1Q5, we have repealed Part 2.4 of the Securities Markets Rules, as we consider that:

- most advisers accredited under Part 2.4 are captured by the Professional standards for financial advisers—the result of the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, which commenced on 15 March 2017;
- the above-mentioned 2017 amendments to the Corporations Act raise the education, training and ethical standards of financial advisers that provide personal advice to retail clients of relevant financial products. Financial advisers that provide personal advice to retail clients of relevant financial products must be registered on the FAR;
- with the winding up of the Financial Adviser Standards and Ethics Authority (FASEA), advisers accredited under Part 2.4, along with all other financial advisers, will fall under the remit of the Financial Services and Credit Panel (FSCP) within ASIC, which will operate as the single disciplinary body for financial advisers from 1 January 2022. The panel will be able to hear complaints about an adviser's compliance with the financial services laws and the Code of Ethics (see [Better Advice Bill passes parliament](#), Treasury media release, 21 October 2021);
- advisers who do not provide personal advice are still covered under the general obligations of an AFS licensee in s912A(1)(e)–(f) of the Corporations Act. These provisions require AFS licensees to ensure that their representatives are adequately trained and competent; and
- ASIC has existing guidance in place for the professional standards for financial advisers, and the general obligations of a licensee with respect to minimum training standards that apply to advisers (see [Professional standards for financial advisers](#) and [RG 146](#) respectively). We will cross-reference this existing guidance in an update to [Regulatory Guide 265 Guidance on ASIC market integrity rules for participants of securities markets](#) (RG 265) to set out our expectations for

the standards of training and competency of derivatives advisers who provide personal advice to retail clients. We strongly encourage derivatives advisers to continue taking specialist derivatives training courses in order to be suitably trained and qualified.

We are implementing a short 20-business-day commencement period for this amendment. This commencement period provides market participants with adequate time to familiarise themselves with the rule amendments and to communicate these changes to their staff.

Pre-trade transparency exception—Trades with price improvement

- 14 In [CP 342](#), we proposed to amend Rule 6.2.3 of the Securities Markets Rules to clarify that a trade with price improvement:
- (a) cannot include orders from more than one client on both sides of the transaction (i.e. it will be possible to have one client to one client or one client to multiple clients); and
 - (b) where the participant is acting as ‘principal’, there cannot be multiple parties on both sides of the transaction (i.e. it will be possible to have multiple clients to principal or one client to principal aggregated with one or more clients) (Proposal B2).
- 15 We received four responses to this proposal. Two respondents broadly agreed with the proposal on the basis that it would ensure greater consistency in the application of the rule and bring the exception in line with the previous changes made to the definition of a block trade in Rule 6.2.1.
- 16 One respondent proposed that the amendment to Rule 6.2.3(1)(b) should go even further to explicitly prohibit aggregation on either side of a trade, on the basis that allowing order aggregation detracts from encouraging on-market liquidity, which is important for improving the quality of price formation, enhancing investor confidence and stimulating competitive pricing.
- 17 Another respondent questioned why it should not be possible to aggregate orders on both sides of a trade. This respondent suggested that allowing aggregation on both sides helps participants to find liquidity and trading opportunities for investors, and that breaking trade reports up into multiple smaller trade reports to comply with the proposed changes could increase the complexity and difficulty of executing trades for investors. The respondent welcomed certainty about how the rules apply but noted that this was not in itself a rationale for what it perceived as a substantive policy change.

ASIC's response

We have decided not to amend Rule 6.2.3 at this point in time because:

- there was mixed feedback on the proposal;
- our trade data shows that most market participants do not aggregate orders when executing trades with price improvement under Rule 6.2.3, and that the vast majority of trades over the past three years are not aggregated on either side of a trade. This indicates that the industry is broadly applying the existing rule consistently;
- we need to further consider the implications for ASIC's market surveillance, including the challenges posed with identifying the unique end clients behind trades, if market participants are permitted to aggregate orders on either or both sides of a trade when relying on this exception under Rule 6.2.3; and
- we plan to consider the impact of those changes in the context of broader evolving market practices such as the increasing use of off-market business models.

We will continue to monitor the market and the use of this exception by market participants. We plan to reconsider potential amendments to Rule 6.2.3 at a later date, which will likely include further industry consultation.

Confirmations to non-retail clients—Derivatives market contracts

- 18 In [CP 342](#), we proposed to amend Rule 3.4.3 of the Securities Markets Rules to provide that a market participant is not required to give the notifications required by Rule 3.4.3(1)(b) if the market transaction is in respect of a financial product which is a derivatives market contract.
- 19 We received two responses to this proposal. Both respondents supported the proposal on the basis that the confirmations no longer provide any demonstrable regulatory benefit, and that the changes in the market and participant trading systems over time have made the notification far less relevant for clients.
- 20 One respondent requested that we consider whether this exception should be extended to cash market as well as derivatives market contracts. This respondent stated that its members have reported limited queries being received from clients since the rule came into effect, with some members reporting no access to these reports by any client for three years.

ASIC's response

As proposed in [CP 342](#), we have amended Rule 3.4.3 of the Securities Markets Rules to provide that a market participant is not required to give the notifications required by Rule 3.4.3(1)(b) if the market transaction is in respect of a financial product which is a derivatives market contract.

This amendment has not been extended to cover cash market contracts at this time. Further review and consultation are required before making these additional amendments.

We are implementing a short 20-business-day commencement period for this amendment. This commencement period provides market participants with adequate time to familiarise themselves with the rule amendments and to communicate these changes to their staff.

Regulatory data reporting—Intermediary ID

- 21 In [CP 342](#), we proposed to amend Rule 7.4.4 of the Securities Markets Rules to clarify that intermediary ID data is required for all orders and transactions:
- (a) submitted by the AFS licence holder as intermediary for the underlying client; and
 - (b) if there is an arrangement in place under which the AFS licence holder is permitted to submit trading messages into the market participant’s system as intermediary for its own clients.
- 22 We received five responses to this proposal. All respondents were supportive on the basis that the proposal ensured greater consistency in the application of the rule.
- 23 One respondent queried whether there will be any changes to the length or nature of the intermediary ID field. Another respondent queried the reliability of intermediary ID data collected to date for the purposes of ASIC’s industry funding model for securities dealers.

ASIC’s response

As proposed in [CP 342](#), we have amended Rule 7.4.4 of the Securities Markets Rules to clarify that intermediary ID data is required for all orders and transactions:

- submitted by the AFS licence holder as intermediary for the underlying client; and
- if there is an arrangement in place under which the AFS licence holder is permitted to submit trading messages into the market participant’s system as intermediary for its own clients.

There will be no changes to the length or nature of the intermediary ID field.

Previously, ASIC has worked facilitatively with market participants to populate the intermediary ID field accurately and to fix any errors. We also requested securities dealers to verify their business metrics for the financial year. This amendment will provide market participants with ongoing certainty about when an intermediary ID is required.

We are implementing a short 20-business-day commencement period for this amendment. This commencement period provides market participants with adequate time to familiarise themselves with the rule amendments and to communicate these changes to their staff.

C Futures Markets Rules

Key points

This section outlines the feedback received on our proposed changes to the Futures Markets Rules and our response to those submissions, covering three priority areas:

- prohibited employment (see paragraphs 24–28);
- suspicious activity reporting (see paragraphs 29–32); and
- client authorisations—block trade and exchange for physical orders (see paragraphs 33–36).

Prohibited employment

- 24 In [CP 342](#), we proposed to replace the prohibited employment condition in Rule 2.2.3 of the Futures Markets Rules with a ‘good fame and character’ test that mirrors Rule 2.1.4 of the Securities Markets Rules.
- 25 We also proposed to extend the ‘good fame and character’ test to include employees and other persons involved in the business of a market operator with the addition of Rule 4.4.1, which has the same drafting as the proposed Rule 2.2.3.
- 26 We received four responses to these proposals and all respondents were supportive of these amendments.
- 27 One respondent was concerned that the limb in Rule 2.2.3(2)(b)(i) ‘*convicted of any offence*’ may have the effect of banning any individual employed by a market participant, or otherwise preventing a market participant from employing an individual, that has been convicted of a minor offence such as a parking or traffic offence. This respondent proposed that this limb should be amended to ‘*convicted of any indictable or serious offence*’.
- 28 One respondent queried why the extension of the ‘good fame and character’ test to market operators in the Futures Markets Rules was not also being extended to market operators in the Securities Markets Rules.

ASIC’s response

As proposed in [CP 342](#), we have replaced the prohibited employment condition in Rule 2.2.3 of the Futures Markets Rules with a ‘good fame and character’ test that mirrors Rule 2.1.4 of the Securities Markets Rules.

We have also extended the 'good fame and character' test to include employees and other persons involved in the business of a market operator with the addition of Rule 4.4.1 which has the same drafting as Rule 2.2.3.

The new rules require market participants and market operators to have regard to whether the person has been convicted of any offence '*in assessing*' whether a person is of good fame and character.

We consider that a minor parking or traffic offence would have limited weight in a market participant's or market operator's assessment of whether a person is of good fame and character and high business integrity.

The requirement for a market participant or market operator to have regard to whether a person has been '*convicted of any offence*' is only one consideration of many under new Rule 2.2.3(2)(b) or Rule 4.4.1(2)(b) respectively.

We will provide guidance on this in RG 172 and RG 266.

In [CP 342](#), we did not consult on a proposal to extend the 'good fame and character' test to market operators in the Securities Markets Rules. Following the feedback received to CP 342, we conducted a targeted consultation of all securities market operators on this proposal.

We have also inserted new Rule 9.6.1 to extend the 'good fame and character' test in Rule 2.1.4 of the Securities Markets Rules to include employees and other persons involved in the business of a securities market operator. New Rule 9.6.1 will have the same drafting as Rule 4.4.1 of the Futures Markets Rules.

We will also update our guidance in RG 265.

A three-month transition period applies for Rules 2.2.3 and 4.4.1 of the Futures Markets Rules, and Rule 9.6.1 of the Securities Markets Rules. The purpose of this transition period is to allow adequate time for market participants and market operators to update their policies and procedures, and implement any other necessary system changes.

Suspicious activity reporting

29 In [CP 342](#), we proposed to add Rules 3.6.1 and 3.6.2 to the Futures Markets Rules to require a market participant to notify ASIC (unless the same information has already been reported to AUSTRAC) in a form prescribed by ASIC as soon as practicable if it has reasonable grounds to suspect that a person is:

- (a) trading with inside information; or
- (b) engaging in manipulative trading.

- 30 A market participant must not disclose to other parties that it has notified ASIC of suspicious activity.
- 31 We received three responses to this proposal and all respondents were supportive of these amendments. One respondent noted that the proposal promotes consistency across market reporting requirements and does not mandate specific information to be included in the report.
- 32 One respondent queried whether AFS licensees can use the same reporting platform to report breaches under the Corporations Act and the ASIC market integrity rules so that they are not required to submit duplicate reports to ASIC.

ASIC's response

As proposed in [CP 342](#), we have inserted Rules 3.6.1 and 3.6.2 into the Futures Markets Rules to require a market participant to notify ASIC (unless the same information has already been reported to AUSTRAC) in a form prescribed by ASIC as soon as practicable if it has reasonable grounds to suspect that a person is:

- trading with inside information; or
- engaging in manipulative trading.

A market participant must not disclose to other parties that it has notified ASIC of suspicious activity.

Reports of suspicious activity can be lodged through the [MECS portal](#) or by email to markets@asic.gov.au. See [Report suspicious activity](#) for more information.

We will update RG 266 to provide guidance on lodging these reports to ASIC.

A three-month transition period applies for Rules 3.6.1 and 3.6.2 to allow adequate time for market participants to update their policies and procedures, and implement any other necessary system changes.

Client authorisations—Block trade and exchange for physical orders

- 33 In [CP 342](#), we proposed to amend Rule 3.4.4 of the Futures Markets Rules to remove the requirement that:
- (a) client authorisations must be ‘in writing’; and
 - (b) the authorisation must include acknowledgements from the client.
- 34 We also proposed to amend Rule 3.5.3 of the Futures Markets Rules to remove the requirement that client authorisations must be ‘in writing’.

35 We received two responses to this proposal. Both respondents were supportive on the basis that there is no regulatory or business purpose to the requirement for the instructions to be 'in writing'.

36 One respondent suggested that we adopt the drafting in Rule 3.3.2 rather than our proposed wording for new Rule 3.4.4(2).

ASIC's response

As proposed in [CP 342](#), we have amended Rule 3.4.4 of the Futures Markets Rules to remove the requirement that:

- client authorisations must be 'in writing'; and
- the authorisation must include acknowledgements from the client.

We did not adopt the drafting in Rule 3.3.2 for new Rule 3.4.4(2), as this would remove the requirement to keep a separate record of the identity of the authoriser and the date and time of the authorisation, and only require that the client authorisation in writing is given.

We are implementing a short 20-business-day commencement period for this amendment. This commencement period provides market participants with adequate time to familiarise themselves with the rule amendments and to communicate these changes to their staff.

D Merits review of ASIC decisions under the Securities and Futures Markets Rules

Key points

This section outlines the key issues highlighted by the submissions received in relation to our proposal for certain decisions made by ASIC under the Securities Markets Rules and the Futures Markets Rules to be subject to merits review by the AAT, and our response to those submissions.

Reviewable ASIC decisions

- 37 In [CP 342](#), we proposed to amend the Securities Markets Rules and the Futures Markets Rules to provide that an application may be made to the AAT for merits review of certain ASIC decisions made under the rules.
- 38 We conducted a review of decisions that we may make under the Securities Markets Rules and the Futures Markets Rules in accordance with the guidance issued in 1999 by the Administrative Review Council and the Attorney-General's Department on merits review: [What decisions should be subject to merit review?](#)
- 39 We proposed that most decisions made by ASIC under the Securities Markets Rules and the Futures Markets Rules will be subject to merits review.
- 40 All three respondents were supportive of our proposals.
- 41 One respondent asked us to clarify why some rules (e.g. Rule 1.2.2) were not identified in the appendices as either being subject to merits review or not. This respondent also proposed that market participants should be given a right of appeal against a Markets Disciplinary Panel (MDP) decision.

ASIC's response

As proposed in [CP 342](#), we have amended the Securities Markets Rules and the Futures Markets Rules to provide that an application may be made to the AAT for merits review of certain ASIC decisions made under the rules.

We conducted a review of decisions made by ASIC under the Securities Markets Rules and the Futures Markets Rules to determine which decisions should be subject to merits review. Rules that do not involve a decision made by ASIC were not included in our review.

The proposal has not been extended to cover a right of appeal against an MDP decision. An MDP decision is not a decision that ASIC makes under the market integrity rules.

We are implementing a short 20-business-day commencement period for this amendment. This commencement period provides market participants with adequate time to familiarise themselves with the rule amendments and to communicate these changes to their staff.

E Amending ASIC-made rules—Power to grant waivers

Key points

This section outlines the key issues highlighted by the submissions received in relation to our proposal to amend all ASIC-made rule books under s798G of the Corporations Act to clarify ASIC’s power to grant waivers to relieve a person from the obligation to comply with the market integrity rules. This section also includes our response to those submissions.

Waivers under the ASIC market integrity rules

- 42 In [CP 342](#), we proposed to amend Rule 1.2.1 of the market integrity rule books made under s798G to clarify that ASIC may, by way of disallowable legislative instrument, relieve a person from the obligation to comply with the market integrity rules or withdraw that relief.
- 43 Two respondents were supportive of the proposals on the basis that ensuring the validity of waivers is critical to providing certainty to those who have been granted relief under the ASIC market integrity rules.
- 44 One respondent disagreed with the proposal due to confidentiality concerns. This respondent argued that individual waivers may encompass proprietary information which may place the relief recipient at a competitive disadvantage if the information is made publicly available to industry peers. The respondent believes that the disadvantages of this proposal with respect to confidentiality outweigh the advantages of market transparency and do not contribute to the promotion of a flat structure for market participants.

ASIC’s response

As proposed in [CP 342](#), we have amended Rule 1.2.1 of the market integrity rule books made under s798G to clarify that ASIC may, by way of disallowable legislative instrument, relieve a person from the obligation to comply with the market integrity rules or withdraw that relief. This amendment is required to rectify a technical defect in ASIC’s power to grant waivers.

This amendment to Rule 1.2.1 is prospective and is not intended to affect the status of existing individual waivers granted by ASIC.

ASIC will work with market participants to ensure that future legislative instruments granting individual relief will be carefully and appropriately tailored to give effect to the relief, without having to unnecessarily disclose any confidential proprietary

information that would place a relief recipient at a competitive disadvantage to its industry peers.

We are implementing a short 20-business-day commencement period for this amendment. This commencement period provides market participants with adequate time to familiarise themselves with the rule amendments.

F Removing superseded penalty rules from ASIC-made rules

Key points

This section outlines the key issues highlighted by the submissions received in relation to our proposal to remove the references to penalties contained in all rule books made by ASIC, and our response to those submissions.

Superseded penalty rules

- 45 In [CP 342](#), we proposed to repeal the superseded penalty amounts specified under each of the ASIC-made rules and other notes stating that there is no penalty for breach of an ASIC-made rule.
- 46 The penalty references in the ASIC-made rules have been superseded by the passage of the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (amending Act). The amending Act relevantly:
- (a) amended s1317G of the Corporations Act to set out a new method for calculating the maximum civil penalty applicable to a contravention of a civil penalty provision;
 - (b) removed ASIC's powers to specify the maximum penalty amount for an ASIC-made rule; and
 - (c) amended the Corporations Act to provide for maximum penalty amounts that can be specified by ASIC as an alternative to civil penalty proceedings for an alleged contravention of an ASIC-made rule (e.g. in an infringement notice).
- 47 We received two responses, and all respondents were supportive of this proposal.

ASIC's response

As proposed in [CP 342](#), we have repealed the penalty amounts specified under each of the ASIC-made rules and other notes stating that there is no penalty for breach of an ASIC-made rule.

These penalty references have been superseded by the amending Act, which now operates to determine the penalty for breaches of ASIC-made rules. The removal of these penalty references from the ASIC-made rules will have no legal or policy effect.

Appendix: List of non-confidential respondents

- Australian Financial Markets Association
- Association of Securities and Derivatives Advisers of Australia Ltd
- ASX Limited
- Stockbrokers and Financial Advisers Association Limited