



Summary of feedback to CP 386 and ASIC's response

In Consultation Paper 386 *Proposed amendments to the ASIC market integrity rules: Trading systems and automated trading* ([CP 386](#)), ASIC sought feedback on proposed amendments to the trading systems obligations in the *ASIC Market Integrity Rules (Securities Markets) 2017* and the *ASIC Market Integrity Rules (Futures Markets) 2017*.

We received seven confidential submissions and nine non-confidential submissions from a range of stakeholders, including a market operator, market participants and industry bodies. ASIC also engaged in further targeted consultation with a number of respondents to clarify feedback and refine the amendments. Most respondents supported our proposed reforms but requested greater clarity through guidance on how the amended obligations would be applied in practice.

The proposed amendments aim to modernise the trading systems obligations to reflect current trading practices, technology and risks; drive greater consistency between the trading systems rules for securities and futures markets; and clarify and reduce complexity in certain rules. This document summarises the key feedback we received and ASIC's response to that feedback. It is not intended to be a comprehensive summary of all feedback or all changes to our regulatory approach.

Note: Non-confidential submissions are published on the CP 386 landing page.

Modernisation and streamlining of the rules

Feedback	ASIC's response
Most respondents supported modernising the securities and futures rules so they better reflect current trading practices, technologies and risks. Respondents strongly supported ASIC's approach of aligning the rules with comparable international frameworks. They noted that global consistency is especially important in the regulation of trading algorithms, as these are often deployed across multiple jurisdictions. The feedback broadly supported removal of outdated terminology and a shift towards a principles-based approach. Many respondents also asked for further guidance on how the amended rules would apply to their business models.	After considering the feedback, we have retained the principles-based approach to the amended rules, which is intended to give participants flexibility to apply the obligations in a way that is appropriate to the nature, scale and complexity of their business, while also supporting the adoption of new technologies. We have also proceeded with amendments to simplify and modernise the rules, remove outdated terminology and align the securities and futures rules where appropriate. ASIC's response to feedback on guidance and implementation is set out below under 'Updated guidance to support implementation of the amended rules'.

Trading algorithms and testing obligations

Feedback	ASIC's response
Most respondents agreed with our proposal to require trading participants to have appropriate controls and governance arrangements for the development, approval, deployment, testing and monitoring of trading algorithms. However, respondents also submitted the following feedback, namely, that the proposal for the responsibility and testing of trading algorithms: • should not extend to client's own algorithms due to the commercial and intellectual proprietary interests of the client; • should account for reliance on use of trading algorithms provided by external vendors; and • should be proportionate and risk-based, rather than prescriptive. Some respondents sought further clarity on the scope of the trading algorithm definition.	After considering the feedback, we will provide guidance on the scope, governance and testing of trading algorithms. The guidance will also clarify that a market participant must test a trading algorithm before first using it or providing it to a client, and before any material change, but that this does not apply to algorithms deployed by a client and not provided by the participant to that client.

Trading systems and testing

Feedback	ASIC's response
Most respondents agreed with the proposal to require the testing of trading systems before first use, after a material change and annually. However respondents also submitted that the review of trading system requirements should: • be applied proportionally, having regard to the scale, nature and complexity of the trading participant's activities; • avoid prescribing specific testing methodologies; • minimise unnecessary operational burden associated with annual testing; • clarify the scope of the material change review requirement for trading systems; and • have less prescriptive timeframes for the written confirmation by a responsible officer of the material and annual reviews of the trading system. While respondents were generally supportive of the definition of 'trading system', some sought further clarity on its scope. Respondents supported our proposal to repeal the annual notification to ASIC in relation to the annual review. There was no support for mandating independent third-party testing of trading algorithms or systems, given the high costs involved. However, most respondents confirmed that their compliance or risk functions already conduct internal validation by independent internal teams.	We have amended the material change and annual review requirements for trading systems to clarify that: (a) the material change review is in relation to the controls, arrangements and resources that are related to or impacted by the material change; and (b) the annual review requires an assessment of the participant's controls, arrangements and resources in relation to the trading system, including any necessary testing and documentation review. We will provide guidance explaining that participants may determine the scope and nature of annual testing, having regard to the risks and nature of the participant's business. For example, a participant may adopt a testing program that operates over a multiyear cycle, with different components and controls tested in different years. We have also removed the 10 business day timeframe to make a written confirmation by a responsible officer upon completion of the material change review and increased this to 20 business days for the annual review. We have also made minor amendments to the definition of 'trading system' to clarify that it refers to a system that registers trading messages for submission into a trading platform. After considering the feedback, we have decided not to require independent third-party testing.

Designated Trade Representatives (DTRs)

Feedback	ASIC's response
Some submissions expressed concern about the removal of the explicit references to DTRs in the rules. These submissions emphasised the critical oversight function DTRs perform, which cannot be replicated by automated systems.	We recognise the important role that experienced and well-trained staff, including DTRs, play in overseeing trading systems. The principles-based approach for appropriate controls and oversight allows participants to determine the level of human involvement that is appropriate for their business. There continues to be a role for experienced and well-trained staff, including in administering manual controls and, particularly, in reviewing exceptions. The amended rules will allow participants to continue having DTRs perform the same oversight functions that they currently perform. We will include a note in the Securities Rules that DTRs are one example of representatives who may perform functions under Rule 5.5.1. We will provide guidance that, for most participants, appropriately trained representatives will be important for effective control and oversight over a trading system.

False or misleading appearance

Feedback	ASIC's response
Most respondents supported our objective of clarifying and modernising the false or misleading appearance provisions. Several respondents raised concerns that the proposed requirement to consider 'any other relevant matter' was too broad and may be difficult to apply in practice, particularly in real time decision-making or during trade surveillance. A respondent also queried how the amendment would apply to persons other than the direct clients of the market participant within an omnibus structure. Respondents also suggested that clearer, more prescriptive criteria would assist participants in applying the rule consistently and reduce the risk of inadvertent breaches.	We acknowledge the feedback that participants need sufficient clarity to apply the false or misleading appearance provisions in practice. After considering the feedback, we have retained the requirement to consider 'any other relevant matter' in Rule 5.7.2 of the Securities Rules and Rule 3.1.2A of the Futures Rules because the listed matters are intended to guide, and not limit a participant's assessment of the circumstances of an order. The obligation is not a general obligation to identify every circumstance that could give rise to a false or misleading appearance. It applies where, having regard to the matters in Rule 5.7.2 and Rule 3.1.2A, and the information available to the participant at the time, the participant ought reasonably suspect that the person placing the order, or an underlying person, intends to create a false or misleading appearance. When an underlying client of a client trades through an omnibus arrangement, a participant may not know the identity of the underlying clients. However, the nature, timing or pattern of the client's orders may still reasonably give rise to the relevant suspicion.

Feedback	ASIC's response
A number of stakeholders, including Australian Financial Markets Association (AFMA), Futures Industry Association (FIA) and Stockbrokers and Investment Advisers Association (SIAA) also provided feedback on a further proposed change to address trading activity generated or optimised by emerging technologies, including agentic AI. These stakeholders provided feedback to assist ASIC in refining the drafting of the rule, including on how the rule would apply where trading activity has the <i>effect</i> of creating a false or misleading appearance.	Given recent developments in AI, including agentic AI systems that may initiate, adapt or optimise trading activity in ways that are not directly specified by a person at the time an order is generated, ASIC has amended the rule to include an effect-based limb. The amended rule requires a participant to consider whether they ought reasonably suspect that an order would have the <i>effect</i> of creating a false or misleading appearance in the relevant circumstances. This limb sits alongside the existing client intention test and ensures the rule can apply where trading activity creates a false or misleading appearance, even if that outcome was not directly intended by a person. This amendment is not intended to introduce new obligations beyond what a market participant should already be doing to prevent trades that create false or misleading appearances.

Monitoring and surveillance

Feedback	ASIC's response
The majority of respondents raised concerns about the feasibility and proportionality of requiring 'real-time' monitoring of trading messages in all circumstances. Some respondents suggested amending real-time to 'near real-time' monitoring to recognise inherent system latency. Respondents also noted that identifying manipulative patterns often requires historical context and analysis that cannot reliably occur in real time. Several respondents also highlighted the practical limitations of the surveillance and monitoring technology that was available to the industry, particularly for the futures market.	We acknowledge the concerns raised about the feasibility and proportionality of real-time monitoring in all circumstances. We have amended the rule to clarify that monitoring and surveillance are separate activities with different objectives and expectations. We have also removed the reference to 'real-time' monitoring. Instead, a trading participant should have adequate monitoring systems that enable it to immediately identify (i.e. promptly and without delay) trading messages that are likely to interfere or have interfered with the efficiency or integrity of a market or the proper functioning of a trading platform. A trading participant must also have adequate post-trade surveillance arrangements to identify trading messages that may have created or may have been intended to create false or misleading appearances.

Harmonisation of the securities and futures rules

Feedback	ASIC's response
Respondents generally supported the harmonisation of securities and futures rules, although several respondents working in the futures market emphasised that the unique features of the futures market mean that the rules cannot be applied in the same way for both markets.	We acknowledge that securities and futures markets have different features and that implementation may differ across markets and business models. The principle-based nature of the rules will allow participants with different business models to apply the rules in a way that is relevant to their business. This means implementation will naturally differ between participants and across markets. For example: • a large securities participant may have more automated controls than a small futures participant, but both may satisfy the rules if they have assessed that their controls are effective and appropriate for the size, complexity and nature of their business; • a participant that conducts all trading through a trading representative (also known as a DTR in securities markets) may have fewer automated controls and filters than a participant that allows clients to trade directly, but would need to ensure those trading representatives are adequately trained and resourced; and • futures and securities participants may have very different surveillance arrangements, reflecting differences in product types, trading practices and client profiles.

Sponsored Direct Market Access (SDMA) – Futures rules only

Feedback	ASIC's response
Several respondents noted that sponsored direct market access (SDMA) supports liquidity and participation in the futures market, such as by market-making and price-formation. These respondents queried whether our proposed amendments would prohibit SDMA services.	The amended rules do not prohibit SDMA services in futures markets. We will provide guidance to make clear that, for a trading participant to comply with Rules 2.2B.2 and 2.2A.2, the authorised client would need to be a principal trader, consistent with the current position.

Updated guidance to support implementation of the amended rules

Feedback	ASIC's response
Although respondents were supportive of principle-based rules, many submissions asked us to provide further guidance to supplement the rules, given the challenges in applying the rules across the range of market participants. Respondents also requested sufficient implementation time, including a longer transition period than the proposed 12 months, to assess the final rules and incorporate ASIC's updated guidance into their implementation plans. They noted that implementation timelines will need to account for the availability of IT and technology subject matter experts, whose review and support will be critical. These resources are already committed to a range of internally and externally driven initiatives scheduled over the next 12 months, creating capacity constraints that will need to be managed.	We understand that guidance will assist participants to implement the amended rules efficiently. Therefore, we have released our consultation on updated guidance together with the final rules. Updated guidance will be provided early to help participants undertake a compliance gap analysis and understand how the amended rules will work in practice. We have also taken into account that many of the obligations reflect existing ASIC guidance, comparable international requirements or controls already applied by participants in practice. However, given feedback that there are multiple system and technical priorities ahead for many participants, we have decided to provide an 18-month transition period. This should provide sufficient time for participants to update their systems, controls, governance arrangements and documentation with the benefit of that guidance. We are proposing to: • update RG 265 and RG 266 to reflect the new market integrity rules for securities and futures markets; • incorporate relevant guidance from RG 241 into RG 265 and RG 266, so that RG 241 can be retired; • align the guidance between RG 265 and RG 266 where applicable; and • simplify and clarify the updated sections of our existing guidance. ASIC is conducting a simple consultation on our draft updated regulatory guidance: CS 63 <i>Proposed updates to RG 265 and RG 266 and withdrawal of RG 241</i>.