



3 November 2021

Natalie Boulizos

Senior Manager
Market Supervision
Markets Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

By email: MIRsubmissions@asic.gov.au

CP 347 – PROPOSED AMENDMENTS TO THE PROHIBITION ON ORDER INCENTIVES IN THE ASIC MARKET INTEGRITY RULES

Dear Ms Boulizos

Thank you for the opportunity to comment on the proposed amendments to Part 5.4B of the Securities Markets Rules in relation to the prohibition on order incentives.

A summary of our submission is as follows:

- > The proposed rules - ASX strongly supports the proposed amendment to the Securities Market Rules.
- > Impact on systems - The changes have no impact on ASX systems.
- > Guidance on reasonable steps - ASX supports the proposed guidance in RG 265.
- > Soft dollar incentives - ASX supports enhanced guidance and would also support the inclusion of the controls within the rule framework to provide greater transparency to users and enhance market confidence.
- > ASX Market Makers - ASX submits that there should be clear guidance that the proposals do not impact arrangements between licensed market operators and market makers.

B1Q1 Do you agree with our proposal? Please give reasons for your answer.

ASX strongly supports the proposed amendment to the Securities Market Rules. ASX considers it is important to encourage on-market liquidity to improve the quality of price formation and thereby enhance investor confidence and stimulate competitive pricing. The clarity provided is a sensible measure to protect client interests and enhance market quality.

ASX continues to be supportive of ASIC's approach to payment for order flow. We note that payment for order flow in the US reached such a level that it is estimated over 90% of retail order flow from discount brokerages is sold to intermediaries and does not reach the public market. This may lead to conflicts of interest in order routing decisions such that retail investors do not get the best overall price for their orders. The Chairman of the SEC has recently referenced the 'inherent conflict' resulting from payment for order flow.

B1Q3 Will the proposal result in any changes to your systems and procedures or increased one-off or ongoing compliance or administrative costs? Please outline the impact and give an estimate of these costs.

These changes have no impact on ASX systems.

B2Q1 Do you agree with our guidance on what might constitute ‘reasonable steps’ for the purposes of draft Rule 5.4B.1(1)?

ASX supports the additional guidance in RG 265.

C1Q1 Do you think our current guidance on soft dollar incentives in RG 265 adequately addresses the risks and harms associated with soft dollar incentives for order flow?

ASX supports enhanced guidance and would also support the inclusion of the controls within the rule framework to provide greater transparency to users and enhance market confidence. Without effective disclosure, clients do not have sufficient information to make decisions on order routing.

We can see no reason why such information should not be more freely available to all market users. This would assist users to understand market structure, and increase confidence in the efficiency and fairness of the equity market.

ASX would welcome any additional guidance for retail clients so that they understand how their orders will be treated, what sort of order flow they might interact with, where their order flow is directed and the ramifications of how their order flow is dealt with off exchange. The end client should also understand that if they have no direct relationship with a trading participant the protections of a direct trading participant relationship, including access to the National Guarantee Fund, are absent.

Other matters – market making

ASX considers that it would be beneficial for the market if there was clear guidance that the proposals do not impact arrangements between licensed market operators and market makers.

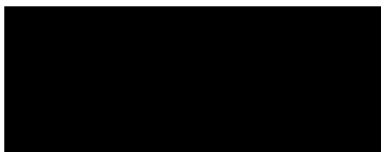
ASX seeks market makers in specific products or contract months where there is a need to improve price formation, transparency and risk transfer efficiencies. Market makers assist in the development of new products by providing the market with transparent prices and by providing liquidity that allows end users to open and close positions in the product.

ASX’s engagement of market makers is subject to ASIC requirements, included in ASIC correspondence dated 8 December 2011 and 30 October 2013, including requirements on the level of trading rebates and incentives as well as advising ASIC of changes to the terms of market making schemes.

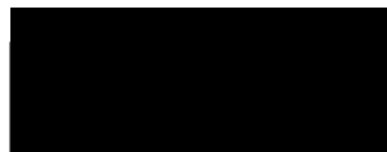
It would be beneficial for ASIC to include additional guidance that makes it clear that the payment for order flow prohibitions in the Market Securities Rules do not impact the market maker schemes undertaken by market operators to enhance market quality where needed and maintain fair, orderly and transparent markets. The UK Financial Conduct Authority (FCA) has guidance similar to this in place, which may be a useful reference point.

If you have any queries on these matters please contact Catherine Sullivan or Sally Palmer.

Yours faithfully,



Catherine Sullivan
Senior Manager & Senior Legal Counsel



Sally Palmer
Deputy General Counsel

