



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 265

Guidance on ASIC market integrity rules for participants of securities markets

August 2022

About this guide

This guide is for market participants subject to the *ASIC Market Integrity Rules (Securities Markets) 2017* and *ASIC Market Integrity Rules (Capital) 2021*.

It gives guidance on how market participants can comply with their obligations under these rules.

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.

Document history

This guide was issued in August 2022 and is based on legislation, regulations and market integrity rules as at the date of issue.

Previous version

- Superseded Regulatory Guide 265, issued May 2018

Disclaimer

This guide 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.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

We are responsible for supervising domestic licensed financial markets in Australia.

As part of our supervisory responsibilities, we make market integrity rules and monitor compliance by market participants with those rules.

Supervision of trading on domestic licensed financial markets

- RG 265.1 We are responsible for supervising the activities and the conduct of market participants in relation to domestic licensed markets (i.e. financial markets operated by persons licensed under s795B(1) of the *Corporations Act 2001* (Corporations Act)).
- RG 265.2 We are also responsible for supervising compliance with the Corporations Act and for making and supervising compliance with market integrity rules.
- RG 265.3 Australian market licensees are responsible for the operation of their markets and for monitoring and enforcing compliance with their markets' operating rules, which include their listing rules.

ASIC market integrity rules

- RG 265.4 Under Pt 7.2A of the Corporations Act, we are able to make market integrity rules dealing with activities and conduct in relation to domestic licensed financial markets, including the activities and conduct of market participants. We are also responsible for granting waivers from the obligation to comply with a provision of the market integrity rules.

Communicating with ASIC

- RG 265.5 Market participants can contact ASIC directly to ensure that market integrity matters are known and addressed in an efficient and timely manner.
- RG 265.6 You may contact ASIC by direct email or by telephone to the relevant ASIC teams to communicate issues and queries about markets, trading and participant conduct. For contact details see RG 265.43–RG 265.47. See Table 3 for a list of email addresses you can use to contact ASIC about different market- and participant-related matters.
- RG 265.7 In Table 2 we have listed some of the information which must be provided to ASIC under the market integrity rules.

Scope of this regulatory guide

RG 265.8 This regulatory guide provides guidance for market participants on the *ASIC Market Integrity Rules (Securities Markets) 2017* and *ASIC Market Integrity Rules (Capital) 2021*.

Note 1: In this guide, ‘Securities Markets Rules’ refers to the *ASIC Market Integrity Rules (Securities Markets) 2017*. The Securities Markets Rules replaced the *ASIC Market Integrity Rules (APX Market) 2013*, *ASIC Market Integrity Rules (ASX Market) 2010*, *ASIC Market Integrity Rules (Chi-X Australia Market) 2011*, *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* and the *ASIC Market Integrity Rules (SIM VSE Market) 2010*. The Securities Markets Rules can be downloaded from the [Federal Register of Legislation](#).

Note 2: In this guide, ‘Capital Rules’ refers to the *ASIC Market Integrity Rules (Capital) 2021*. The Capital Rules replaced the *ASIC Market Integrity Rules (Securities Markets—Capital) 2017* and *ASIC Market Integrity Rules (Futures Markets—Capital) 2017*. The Capital Rules can be downloaded from the [Federal Register of Legislation](#).

Note 3: Guidance on the *ASIC Market Integrity Rules (Futures Markets) 2017* for market participants can be found in [Regulatory Guide 266](#) *Guidance on ASIC market integrity rules for participants of futures markets* (RG 266).

RG 265.9 This guide also explains how we expect market participants to comply with requirements about:

- (a) the operation of market participants and representatives, specifically:
 - (i) management structures;
 - (ii) professional indemnity (PI) insurance; and
 - (iii) designated trading representatives (DTRs);
- (b) client relationships, specifically:
 - (i) client agreements;
 - (ii) client detail record keeping; and
 - (iii) best execution;
- (c) trading, specifically:
 - (i) suspicious activity reporting;
 - (ii) crossing systems;
 - (iii) pre- and post-trade transparency;
 - (iv) regulatory data; and
 - (v) trades under rules of a market operator;
- (d) capital requirements; and
- (e) technological and operational resilience, specifically:
 - (i) adequate arrangements for critical business services;
 - (ii) change management;
 - (iii) outsourcing;

- (iv) information security;
- (v) business continuity plans; and
- (vi) governance

RG 265.10 This guide does not cover the operating rules of market operators or clearing and settlement (CS) facility operators.

Related guidance

RG 265.11 Table 1 identifies other regulatory guides that may be relevant to market participants. This is not an exhaustive list.

Note 1: Guidance on various obligations under the Securities Markets Rules that apply to market operators can be found in [Regulatory Guide 172](#) *Financial markets: Domestic and overseas operators* (RG 172).

Note 2: Guidance on the professional standards for financial advisers who provide personal advice on relevant financial products to retail clients under the Corporations Act (as introduced by the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*) can be found on our website—see [Professional standards for financial advisers](#).

Table 1: Related guidance

Topic	ASIC regulatory guide
The disciplinary process for breaches of all market integrity rules, the function of the Markets Disciplinary Panel (MDP) and the policies that the MDP will take into account when making decisions about alleged contraventions of the market integrity rules	Regulatory Guide 216 <i>Markets Disciplinary Panel</i> (RG 216)
Notifying ASIC of a range of conduct by Australian financial services (AFS) licensees known as ‘reportable situations’: see s912DAA	Regulatory Guide 78 <i>Breach reporting by AFS licensees and credit licensees</i> (RG 78)
Our approach to supervising compliance with the AFS licensing obligations	Regulatory Guide 104 <i>AFS licensing: Meeting the general obligations</i> (RG 104) and Regulatory Guide 105 <i>AFS licensing: Organisational competence</i> (RG 105)
Our minimum training standards that apply to persons who provide financial product advice to retail clients	Regulatory Guide 146 <i>Licensing: Training of financial product advisers</i> (RG 146)
Information on electronic forms of disclosure	Regulatory Guide 221 <i>Facilitating digital financial services disclosures</i> (RG 221)
Guidance on electronic trading and automated order processing (AOP)	Regulatory Guide 241 <i>Electronic trading</i> (RG 241)
Guidance on an AFS licensee’s statutory obligation to manage conflicts of interest (s912A(1)(aa))	Regulatory Guide 181 <i>Licensing: Managing conflicts of interest</i> (RG 181)

B Supervision of trading on domestic licensed financial markets

Key points

We are responsible for supervising trading on Australian domestic licensed financial markets.

We take a risk-based approach to surveillance of compliance with the market integrity rules and market participants' obligations under the Corporations Act.

ASIC's supervisory responsibilities

RG 265.12 We are responsible for supervising market participants, market operators and other prescribed entities for compliance with the market integrity rules. This is in addition to our role in supervising compliance by market participants with the market misconduct provisions of the Corporations Act (e.g. the prohibitions against insider trading, market manipulation and making false and misleading statements) and with the general obligations of AFS licensees.

Note 1: For our approach to supervising compliance with the general obligations of AFS licensees under s912A of the Corporations Act, see [RG 104](#) and [RG 105](#).

Note 2: Guidance on market operators' obligations under the Securities Markets Rules can be found in [RG 172](#).

Note 3: Our supervisory responsibilities do not extend to foreign-based markets that are licensed to operate in Australia under s795B(2) or to financial markets that are exempt from being licensed.

Supervision of compliance with market integrity rules

RG 265.13 We take a risk-based approach to surveillance of compliance with the market integrity rules and market participants' obligations under the Corporations Act. In doing so, we consider the *Objectives and principles of securities regulation* set out by the International Organization of Securities Commissions (IOSCO).

Note: IOSCO, [Objectives and principles of securities regulation](#) (PDF 187 KB), report, 10 June 2010.

RG 265.14 We perform risk assessments of participants and, where necessary, conduct targeted surveillance of suspected misconduct.

RG 265.15 We are responsible for any investigation and action in relation to an alleged breach of the market integrity rules.

Guidance notes

- RG 265.16 In assessing a market participant's compliance with the market integrity rules, we will seek to follow existing relevant published interpretation contained in old ASX guidance notes. The old ASX guidance notes that remain relevant are listed in the appendix.

Market surveillance

- RG 265.17 To promote market integrity, we monitor on-market trading activity, including activity in relation to cash market products, options market contracts and futures market contracts, through a variety of computerised systems.
- RG 265.18 Our Market Surveillance team makes inquiries of market operators, participants, listed entities, clients and others, using compulsory powers where necessary.

Disciplinary process

- RG 265.19 The disciplinary process for breaches of the market integrity rules is contained in [RG 216](#). The MDP exercises ASIC's power to issue infringement notices and accept court enforceable undertakings relating to breaches of the market integrity rules. RG 216 provides guidance on the processes by which matters will be referred to, and dealt with by, the MDP.

How ASIC works together with market licensees

- RG 265.20 Australian market licensees are responsible for the operation of their markets and are required to set operating rules for their markets. These operating rules govern how trading can take place on the market and may, where relevant, deal with entities trading on the market's official list. Market licensees are responsible for monitoring and enforcing compliance with their operating rules.

Note: Guidance on market licensee obligations under the Corporations Act and, for domestic licensees, under the Securities Markets Rules and Futures Markets Rules, can be found in [RG 172](#).

- RG 265.21 ASIC and market licensees conduct site visits of market participants and, where appropriate, share information on supervisory practices.

Status of notifications, consents, waivers, etc., given before 1 August 2010

RG 265.22 Unless ASIC determines that it should be amended or revoked, any written:

- (a) waiver, exemption, consent, recognition, accreditation, approval, determination or notification given by a market operator to a participant under the operating rules of a market, where those rules are incorporated into the market integrity rules; and
- (b) notification or certification given by market participants to market operators under the operating rules of a market, where those rules are incorporated into the market integrity rules,

is grandfathered and taken to be given by ASIC so as to continue in its existing form, and continue to have the same effect as given under the operating rules: reg 10.15.04 of the *Corporations Regulations 2001* (Corporations Regulations).

Note: Rule 1.6.1 of the Securities Markets Rules provides additional transitional arrangements to ensure the continuity of the status of notifications and certifications given by a market participant to ASIC in accordance with the market integrity rules in force immediately prior to 7 May 2018.

C ASIC market integrity rules

Key points

The market integrity rules are made by ASIC and apply to market operators, market participants, other prescribed entities and financial products traded on a licensed market.

We will consult on future amendments to the market integrity rules as required.

We are responsible for supervising compliance with the market integrity rules. We are also responsible for granting waivers from the obligation to comply with a provision of the market integrity rules.

ASIC market integrity rules

- RG 265.23 We are able to make market integrity rules under Pt 7.2A of the Corporations Act dealing with the activities or conduct of:
- (a) licensed markets;
 - (b) persons in relation to licensed markets; and
 - (c) persons in relation to financial products traded on licensed markets.
- RG 265.24 The market integrity rules are legislative instruments and are subject to parliamentary scrutiny and possible disallowance by Parliament.

Ministerial consent to market integrity rules

- RG 265.25 We may not make a market integrity rule unless we have the written consent of the Minister. An exception applies for making emergency rules that are necessary, or are in the public interest, to protect people dealing in a financial product.

Future review and amendment to the market integrity rules

- RG 265.26 We will review the market integrity rules from time to time to make any adjustments required as a result of our experience in administering the rules; developments in the market and the international regulatory environment; and feedback from market operators, participants and clients.
- RG 265.27 We expect to consult on any future amendment of these rules.

Waivers

Power to grant a waiver of a market integrity rule

RG 265.28 We are able to grant waivers from the obligation to comply with a provision of the market integrity rules.

RG 265.29 Any such waiver may be general, or limited to a particular case or category, and may be limited by such conditions as we think fit. If conditions are imposed on a waiver, all of the conditions must be complied with for the waiver to be effective. Failure to comply with a condition imposed on a waiver is a contravention of Rule 1.2.2. Further, failure to comply with a condition on a waiver may amount to a possible breach of the relevant market integrity rule waived.

Note: In this guide, ‘Chapter 4’, ‘Part 4.2’ and ‘Rule 4.2.1’ (for example) refer to a chapter, part or rule (respectively) of the Securities Markets Rules, unless otherwise specified.

RG 265.30 We will make a waiver by way of legislative instrument. All legislative instruments, including waivers, are registered on the [Federal Register of Legislation](#) and are publicly available.

RG 265.31 We may withdraw, by legislative instrument, a waiver at any time. We will not grant a waiver retrospectively.

Approach to considering a market integrity rule waiver

RG 265.32 We will consider and determine all requests for a waiver of a market integrity rule on the basis of the facts, circumstances and merits of each request. In determining whether such a request should be granted, we will take into account commercial considerations against the need to maintain the integrity of the market.

RG 265.33 Where appropriate, we may grant a waiver to a class of persons.

The process of requesting a waiver

RG 265.34 Any request for a waiver must be in writing. It should also include details of the market integrity rule to be waived, the person or class of persons seeking the waiver, the requested start date and duration of the waiver, the rationale for the waiver, all relevant facts and circumstances in support of the request, and any other relevant information.

RG 265.35 Market participants may be refused a request if they fail to address all of the relevant issues. Similarly, failure to supply relevant information may cause a delay in finalising the request.

RG 265.36 Should a commercially time-sensitive situation arise, we can consider such requests on an urgent basis, providing the participant has clearly

demonstrated that the urgency results from factors beyond their reasonable control and that those factors could not reasonably have been foreseen. Self-imposed deadlines will not be a sufficient basis for urgent consideration.

RG 265.37 Applications for waivers should be submitted through the [ASIC Regulatory Portal](#). Market participants will need to pay fees for their application. We have provided details about payment options in the portal. For more information, see [how to apply for relief](#).

Publication of waivers

RG 265.38 All waivers will be publicly available on the [Federal Register of Legislation](#).

RG 265.39 We may also publish notice of a waiver on our website. We maintain a public [register of waivers](#) on our website that contains details of:

- (a) the date a waiver takes effect;
- (b) the person or class of persons relieved from the obligation in the market integrity rule;
- (c) the provision of the market integrity rule to which the waiver applies;
- (d) brief reasons for the waiver; and
- (e) any conditions that apply to the waiver.

D Communicating with ASIC

Key points

Market participants can contact ASIC directly to ensure that market integrity matters are known and addressed in an efficient and timely manner.

Market participants should use the forms available on the [ASIC Regulatory Portal](#) to submit certain information to us, as required under the market integrity rules.

Other contact points include direct email and telephone access to the relevant ASIC teams to communicate issues and queries about markets, trading and participant conduct.

Breaches of the market integrity rules and/or provisions of the Corporations Act should be reported in accordance with the reportable situations procedures set out in [RG 78](#).

Forms

- RG 265.40 Details about the type of information that is required to be submitted to ASIC in writing are contained in the market integrity rules.
- RG 265.41 Market participants should use the forms available on the [ASIC Regulatory Portal](#) to submit certain information to us, as required under the market integrity rules. If you encounter issues while using the portal, contact market.participants@asic.gov.au.
- RG 265.42 Table 2 lists some of the matters market participants will need to notify ASIC about. Note that this list is not exhaustive.

Table 2: What market participants must notify ASIC about

All market participants	Reportable situations (s912DAA)
Securities markets participants	Trust account reconciliation breaches (Rule 3.5.10)
	Management structure (Rule 2.1.2)
	PI insurance: With related body corporate (Rule 2.2.2)
	PI insurance: Claims (Rule 2.2.4)
	Legal proceedings (Rule 2.2.5)
	Suspicious activity reports (Rule 5.11.1)
	Crossing systems (Chapter 5A)
	Capital requirements (Capital Rules)
	Becoming aware of a major event (Rule 8B.4.1(6))

Contacting ASIC

RG 265.43 The market integrity rules require market participants to provide ASIC with information and other notifications in certain circumstances. Information should be provided in the manner detailed in the relevant market integrity rule.

Written applications and requests

RG 265.44 Requests and applications should be made to ASIC using the relevant form on the [ASIC Regulatory Portal](#). If you encounter issues while using the portal, contact market.participants@asic.gov.au.

ASIC Regulatory Portal

RG 265.45 Market participants can submit a range of applications and notifications using the forms available on the [ASIC Regulatory Portal](#). Where a form is available on the portal, participants should use the portal to make the application or notification.

Telephone hotline

RG 265.46 Market participants can directly contact the relevant ASIC teams by calling our markets-related hotline on 1300 029 454 between 9 am and 5 pm Eastern Standard Time on market trading days. The hotline is for communicating with ASIC about live markets trading issues, non-live markets queries, general participant queries, notifications and exemptions. Participants can also call ASIC's Client Contact Centre on 1300 300 630.

Email

RG 265.47 There are three email addresses set up for use by market participants for market- and participant-related matters: see Table 3 for details.

Table 3: ASIC email addresses for use by market participants

Email address	To be used for:	Examples of information, applications and notifications
feedback.breach@asic.gov.au	Reportable situations under s912D of the Corporations Act	Queries regarding reportable situations Market participants must lodge notifications of reportable situations under s912DAA via the ASIC Regulatory Portal . Further guidance is given in RG 78

Email address	To be used for:	Examples of information, applications and notifications
markets@asic.gov.au	Matters relating to markets and trading	Concerns or queries about trading anomalies Queries about unexplained market events Concerns about misconduct in the market
market.participants@asic.gov.au	Participant-related matters	General participant queries

When to contact ASIC

- RG 265.48 As stated above, we are responsible for supervising trading activities by market participants to ensure market integrity. As such, we can be contacted about conduct and activities that occur on domestic licensed financial markets.
- RG 265.49 Australian market licensees retain responsibility for the operation of their markets. Queries about the operations and processes of markets should be directed to the relevant market operator.
- RG 265.50 In general terms, if your issue relates to an obligation or conduct covered by the market integrity rules or provisions of the Corporations Act, you should contact ASIC. The following examples indicate the sorts of matters that might arise and who to contact.

Example 1: Crossings

Participant A has a trading-related query about conducting crossings.

- Participant A should contact the relevant market operator as this is an operational issue.

Example 2: Market manipulation

Participant A has a trading-related query about possible market manipulation by one of their clients.

- Participant A should contact ASIC.

Example 3: Trade cancellations

Participant A has a trading-related query about trade cancellations.

- Participant A should contact the relevant market operator.

Notifying ASIC of reportable situations

- RG 265.51 Breaches (or likely breaches) of market integrity rules may constitute reportable situations for AFS licensees under s912D. If certain breaches of the market integrity rules are required to be reported under s912DAA, market participants need to report them to ASIC. The process for notifying ASIC of reportable situations under s912DAA and reporting significant breaches of market integrity rules to ASIC is the same.
- RG 265.52 Guidance on how to notify ASIC of a reportable situation by AFS licensees under s912DAA is set out in [RG 78](#). You must report to ASIC using the prescribed form on the [ASIC Regulatory Portal](#).

Note: See RG 78 for further guidance on the process for notifying ASIC of reportable situations, and how we deal with these notifications.

E Operational requirements

Key points

This section provides guidance for market participants and representatives on complying with operational requirements contained in the market integrity rules. These requirements relate to:

- management structures;
- good fame and character requirements;
- professional indemnity (PI) insurance;
- designated trading representatives (DTRs).

RG 265.53 This section of the regulatory guide provides guidance on complying with a range of operational requirements contained in the Securities Markets Rules.

Management requirements

Management structure

RG 265.54 Market participants must have appropriate management structures and supervisory policies and procedures to comply with the Corporations Act, relevant market integrity rules and market operating rules. Part 2.1 sets out minimum management requirements for market participants.

RG 265.55 Rule 2.1.1 requires a market participant to have appropriate management structures in place covering all of its businesses and conduct relating to securities markets. Although ‘management structure’ is not defined, Rule 2.1.1 provides that a market participant’s management structure is to ensure that:

- (a) it has operations and processes in place that are reasonably designed, implemented and function to achieve compliance with the Securities Markets Rules and market operating rules;
- (b) those operations and processes are supervised by supervisory staff with appropriate supervisory skills, knowledge and experience; and
- (c) its supervisory staff have sufficient seniority and authority to exercise control, leadership, influence and supervision over the market participant’s operations and processes.

Documenting the management structure and allocation of responsibilities

- RG 265.56 A market participant must also keep accurate records of its management structure and allocation of responsibilities among these supervisory staff: Rule 2.1.1(2). Such records should include:
- (a) an overview of the market participant's business model and business objectives, including the types of services and products offered by the organisation and physical office addresses;
 - (b) if the market participant is part of a conglomerate group, a group structure chart which shows the relationship between the market participant, its parent company and other related bodies corporate;
 - (c) the internal structure of the market participant's business, including a chart showing the individuals responsible for managing the business, their titles, responsibilities, roles and reporting lines (including alternative arrangements for when these individuals are on leave or out of the office);
 - (d) a description of internal committees;
 - (e) trading arrangements, including order management and trade execution, such as identifying supervisory staff managing these key functions or interactions with other participants;
 - (f) clearing and settlement arrangements, such as identifying supervisory staff managing these key functions or interactions with other participants where alternative clearing and settlement operations are used;
 - (g) details of any outsourcing arrangements;
 - (h) frameworks for supervision, risk management, corporate governance and complying with regulatory obligations;
 - (i) monitoring, review and control processes and responsibilities; and
 - (j) escalation and reporting processes.
- RG 265.57 A market participant's management structure records may incorporate by reference other frameworks, policies or procedures it has adopted and implemented. We expect that any such cross-reference in the management structure records would be accompanied by a brief summary of the relevant aspects of the framework, policy or procedure to preserve the usefulness and effectiveness of the management structure records.
- New market participants must give management structure documents to ASIC**
- RG 265.58 Under Rule 2.1.2, an entity that becomes a market participant on or after commencement of the Securities Markets Rules must, within 10 business

days of becoming a market participant of the relevant market, give ASIC a document that sets out its management structure and the allocation of responsibilities among its supervisory staff.

- RG 265.59 Notification to ASIC should be submitted using the relevant form on the [ASIC Regulatory Portal](#).

Significant changes in management structure

- RG 265.60 A market participant must have accurate, up-to-date records of its management structure and the allocation of responsibilities among its supervisory staff: Rule 2.1.1(2).
- RG 265.61 As such we expect a market participant to review and update its documented management structure in the event of a significant change. A significant change in a market participant's management structure may include, but is not limited to:
- (a) a change in directors, senior managers, supervisory staff or other key staff including senior staff responsible for overseeing the compliance function;
 - (b) a new business or change in business model, including a decision to conduct activities overseas;
 - (c) providing services for new products;
 - (d) rapid growth and expansion of the business;
 - (e) a change to risk management systems, risk oversight or the risk profile of business; and
 - (f) takeovers and mergers.

- RG 265.62 A market participant should consider the significance of a change to its management structure, taking into account the nature, scale and complexity of its business.

- RG 265.63 We may review management structures from time to time as part of our regular risk assessments of market participants' businesses. We take a risk-based approach to prioritising our surveillance activities and may use our compulsory information-gathering powers to obtain information about management structures and other matters as necessary.

Compliance and supervisory procedures

- RG 265.64 We expect market participants to adopt and implement management structures and supervisory procedures that are specifically tailored to the nature, scale and complexity of their business.
- RG 265.65 Unless carefully adapted to the business, 'off-the-shelf' compliance and supervisory procedures are unlikely to reflect the actual practices of the

market participant or the responsibilities allocated to its representatives, and so may not be appropriate to ensure compliance with their obligations.

- RG 265.66 Compliance and supervisory procedures are ‘living’ documents. Market participants should periodically review their compliance and supervisory procedures to assess whether they are still appropriate to ensure compliance with their obligations.

Compliance procedures

- RG 265.67 A market participant must have appropriate compliance policies and procedures to ensure it and each person involved in its business comply with the Securities Markets Rules, the operating rules of each relevant market and the Corporations Act: Rule 2.1.3.
- RG 265.68 Appropriate compliance procedures should help a market participant’s representatives to understand how its obligations apply to its particular business and the behaviours expected (and not permitted) by the participant to ensure it complies with those obligations. This approach fosters a strong focus on the causes of poor conduct and promotes responsible behaviour and high standards of integrity.
- RG 265.69 In our view, compliance procedures which merely restate the law provide insufficient guidance to a market participant’s representatives about how it will comply with its obligations.

Supervisory procedures

- RG 265.70 Distinct from compliance procedures, written supervisory procedures document the supervisory system that has been established to ensure that the compliance procedures are being followed, and to prevent and detect prohibited practices. For example, supervisory procedures may specify the actions and reviews that must be undertaken by supervisory staff and the frequency of the supervisory reviews.
- RG 265.71 Written supervisory procedures should be maintained by market participants and made easily accessible to all staff irrespective of their location.
- RG 265.72 We expect that, at a minimum, a market participant’s written supervisory procedures should specify:
- (a) the supervisory staff responsible for supervision of the market participant’s business operations and processes, identified by name or title and position;
 - (b) the supervisory activities each supervisor is responsible for carrying out;

- (c) the frequency with which the market participant requires those supervisory activities to be carried out;
- (d) any supervisory activities which the supervisory staff may delegate to other persons, taking into account any need for specific qualifications; and
- (e) the documentation that the market participant requires a supervisor to retain to demonstrate that their supervisory activities were carried out and the results of those activities.

Allocation of supervisory staff

- RG 265.73 As noted above, a market participant must have in place a management structure which ensures that its operations and processes are supervised by one or more persons who have appropriate supervisory skills, knowledge and experience and sufficient seniority and authority to exert control, leadership, influence and supervision over those operations and processes:
Rule 2.1.1(1)(b)–(c).
- RG 265.74 A market participant’s written supervisory procedures should clearly identify each person who has supervisory responsibilities within the market participant’s business and the nature of those responsibilities. Where supervisory staff leave the organisation or take extended leave, a market participant should have a plan in place to ensure their supervisory responsibilities are carried out.
- RG 265.75 The supervisory staff who are responsible for the market participant’s operations and processes should be identified by name and position title. We expect a market participant to maintain records relating to its allocation of, and any changes to, supervisory responsibilities given to its supervisory staff.
- RG 265.76 If joint supervisory responsibility for a function or task is given to two or more supervisors, a market participant should consider how the joint supervisory responsibility should be shared so that risks are appropriately managed.
- RG 265.77 A market participant is responsible for appointing appropriately qualified supervisory staff to its management structure. We expect that supervisory staff, in carrying out their managerial responsibilities, will lead and shape the compliance culture of the market participant. Therefore it is important that all its supervisory staff have an appropriate level of financial services industry knowledge relevant to the market in which they operate. This includes, among other things, understanding the type of business the market participant operates, the types of products in which it deals and the relevant compliance and regulatory obligations.

- RG 265.78 We expect a market participant’s written supervisory procedures to set out:
- (a) any qualifications, skills and experience the market participant considers important in determining whether supervisory staff can fulfil their assigned responsibilities;
 - (b) its procedures for determining and reviewing on an ongoing basis whether supervisory staff possess such qualifications, skills and experience; and
 - (c) its methods for monitoring the performance of supervisory staff.
- RG 265.79 We acknowledge that one market participant’s requirements may differ from that of another—for example, because of its AFS licence authorisations and obligations, its business activities, its internal policy requirements and its membership of an industry association and adoption of standards set by that association.
- RG 265.80 We expect that a market participant will periodically review (at least on an annual basis) whether each individual involved in the supervision of its business has the appropriate skills, knowledge and experience for the supervisory role they are performing. While we expect that completion of examinations and continuing education or training requirements will be key considerations, market participants are best placed to make an overall assessment of the supervisory skills, knowledge, experience, seniority and authority of their supervisory staff.

Note: The Securities Markets Rules do not adopt requirements in the ASIC Market Integrity Rules (APX), (ASX) or (Chi-X) relating to use of the title ‘responsible executive’ by market participants, notifications to ASIC about responsible executives and approval by ASIC of examinations written by industry providers that assess the knowledge and competency of supervisory staff.

Activities should be independently assessed

- RG 265.81 Supervisory responsibilities should be performed independently and with high standards of integrity.
- RG 265.82 A market participant should not make a representative responsible for supervising their own activities. For instance, the head of trading should not be responsible for setting his or her own trading limits. Such an arrangement would demonstrate weakness in the participant’s risk management systems and arrangements for managing conflicts of interest arising in its financial services business.

Note: ‘Representative’ has the meaning given by s910A—see the ‘Key terms’.

Supervision of representatives

- RG 265.83 We expect a market participant to assign responsibility for supervising the conduct of each of its representatives to one or more of its supervisory staff who are competent to do so. In our view, it is not necessary for the

representative to be a direct report of the responsible supervisory staff. However, there should be a clear and documented connection between the activities of the representative and the responsibilities of the supervisor.

- RG 265.84 We expect these responsibilities to be documented in the market participant's management structure and allocation of supervisory responsibilities.

Documenting supervisory activities

- RG 265.85 A market participant's supervisory procedures should clearly describe the supervisory activities it will conduct, and who will conduct those activities.
- RG 265.86 We expect a market participant to maintain records of its supervisory activities, any incidents or breaches of its obligations encountered and how these incidents or breaches were addressed. When a market participant's supervisory actions in a particular matter are called into question, it is almost always to the market participant's advantage to have a written record of the supervisory actions that were taken. A written record will serve as helpful evidence that the supervisors considered an issue or problem and made good faith judgements about the proper course of action. It is in the interests of the market participant, its directors and supervisory staff to ensure these records are made and kept.
- RG 265.87 For this reason, a market participant's written supervisory procedures should specify that when incidents or breaches arise, supervisory staff should prepare a written record of the steps taken, possibly in consultation with the market participant's compliance executive or legal advisers.

Note: See [RG 78](#) for guidance on the breach reporting obligation under s912DAA for AFS licensees.

Examples of supervisory procedures

- RG 265.88 Where possible, a market participant's supervisory procedures should be designed to prevent breaches of market integrity rules and laws, as well as monitor for breaches after they occur.
- RG 265.89 The following are examples of preventative supervisory procedures that a market participant may implement in its business.

Supervising business or branch offices

- RG 265.90 Designing and implementing appropriate and effective procedures for supervising a market participant's business or branch offices (especially those outside Australia) is vital for ensuring compliance with its obligations under Rule 2.1.1. The market integrity rules anticipate that this will be achieved through assigning management responsibilities to supervisory staff.

- RG 265.91 We do not expect supervisory staff to be located in every part of the business or at all branch offices. We do, however, expect that market participants will hold supervisory staff accountable for the activities of those business or branch offices, including those business or branch offices located offshore. We expect these management responsibilities, and how they are assigned among the market participant's supervisory staff, to be documented in the market participant's management structure maintained under Rule 2.1.2.
- RG 265.92 In addition to desk reviews, we consider that onsite reviews are essential in order to exercise strict supervisory control over a market participant's business or branch offices and test compliance with its obligations. Onsite reviews may also help a market participant to identify emerging issues in its business. To achieve these goals, onsite reviews of business and branch offices should be carried out regularly and comprehensively, taking into account the nature, scale and complexity of the financial services provided.
- RG 265.93 If supervisory staff delegate certain supervisory responsibilities for a business or a branch office's operations to another person, we expect the supervisory staff to follow up on a regular basis to assess whether the assigned duties are being carried out effectively. For example, a delegate of the supervisor may visit each business or branch office on a quarterly basis to verify the performance of any delegated responsibilities.
- RG 265.94 A market participant should consider a centralised approach to compliance supervision as its geographical footprint and complexity grows. Centralised compliance supervision supplements the valuable oversight contributed by supervisory staff in business and branch offices and is a means by which the participant may control fragmentation of its supervisory procedures.
- RG 265.95 Regardless of how a market participant supervises its business and branch offices, it is important that all supervisory staff clearly understand their specific duties and that controls are in place to ensure that those duties are carried out effectively and in a timely manner.

Procedures for confirmations, statements and mail

- RG 265.96 We expect that confirmations and client account statements for dispatch to clients will not be produced by advisers or other front office staff.
- RG 265.97 If advisers or other front office staff do need to add information such as individual notes to confirmations or client account statements, the market participant should ensure that the additional material is reviewed and, if appropriate, incorporated by a member of its operations department.
- RG 265.98 Similarly, the booking of an executed transaction should not be actioned by the dealer that executed the transaction. Instead, bookings may be properly performed by the bookings team within the operations department or by

individuals within ‘middle office’, both of which are separate from the dealing staff in the market participant’s front office.

- RG 265.99 Where possible, client cheques, unopened incoming mail, confirmations and statements should not be received or personally delivered by advisers or other front office staff.

Monitoring and controls for AOP and ACOP

- RG 265.100 A market participant that uses its system for AOP must have and review policies and procedures for compliance with Part 5.6 and have appropriate design documentation.
- RG 265.101 Where a market participant provides automated client order processing (ACOP) access to clients, the market participant should have an adequate understanding of a client’s business. The filters and controls for client access should reflect the nature of the business.
- RG 265.102 See [RG 241](#) for detailed guidance on monitoring, supervising and using AOP systems.

Automated systems to assist in achieving compliance

- RG 265.103 Where a market participant uses an automated system to assist it in supervising compliance with its obligations, the participant’s supervisory procedures should set out how it plans to monitor and test the operation of the automated system and respond to any weaknesses, vulnerabilities, failures or errors which may arise.

Complex products procedures

- RG 265.104 A market participant should consider what, if any, additional supervisory procedures are necessary to appropriately monitor dealing in new or complex financial products. At a minimum, supervisory staff given responsibility for supervising representatives who deal in a new or complex financial product should understand the terms, pay-off profile and risks of the product and the nature of the services the market participant’s representatives provide in relation to the product.

Managed discretionary accounts

- RG 265.105 We consider it good practice for market participants to document the measures they have in place to manage conflicts of interest that may arise from managed discretionary account (MDA) arrangements. This may include management of a material conflict of interest through a combination of internal controls, disclosure and, in some cases, avoidance of the conflict of interest.

- RG 265.106 Further guidance on how we regulate MDA services provided to retail clients under the Corporations Act is available in [Regulatory Guide 179](#) *Managed discretionary account services* (RG 179).

Outsourcing

- RG 265.107 We expect a market participant to have written supervisory procedures to select and monitor the ongoing performance of outsourced service providers. If a market participant engages a service provider to provide, operate or support one or more of its critical business services, additional safeguards are required to ensure the operational resilience of those services: see RG 265.601–RG 265.627.

Regular review of supervisory procedures

- RG 265.108 We expect the board of a market participant to regularly assess its supervisory arrangements.
- RG 265.109 From time to time, market participants will need to revise their compliance and supervisory procedures if they have been affected by a change to:
- (a) the financial services legislation;
 - (b) the market integrity rules; or
 - (c) the operating rules or procedures of a market or CS facility.
- RG 265.110 Where such a change occurs, we consider it good practice for a market participant to:
- (a) communicate details of the change to its representatives;
 - (b) prepare a plan for updating the participant's compliance and supervisory procedures before the change takes effect, or otherwise in a timely manner;
 - (c) implement the updated procedures and provide training to relevant staff; and
 - (d) review the effectiveness of the updated procedures within a reasonable time.

Additional guidance

- RG 265.111 In assessing the appropriateness of a market participant's management structure and supervisory procedures, we will consider the nature, scale and complexity of the market participant's business. We will also take into account the following guidance and Australian standards:
- (a) [Regulatory Guide 79](#) *Research report providers: Improving the quality of investment research* (RG 79);
 - (b) [RG 104](#);
 - (c) [RG 105](#);

- (d) [RG 181](#);
- (e) [Report 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts* (REP 486);
- (f) Australian Standard [AS ISO 19600:2015](#) *Compliance management systems—Guidelines*;
- (g) Australian/New Zealand Standard [AS/NZS 10002:2014](#) *Guidelines for complaint management in organizations*; and
- (h) Australian/New Zealand Standard [AS/NZS ISO 31000:2009](#) *Risk management—Principles and guidelines*.

Note: See RG 104.18–RG 104.20 for more information on our existing approach to the extent that we place reliance on relevant standards.

Good fame and character requirement

- RG 265.112 A market participant must ensure that all persons involved in its business in connection with the relevant market are of good fame and character and high business integrity: Rule 2.1.4(1).
- RG 265.113 Under Rule 2.1.4(2)(b), when assessing whether a person is of good fame and character and high business integrity, a market participant should consider whether the person has been:
- (a) convicted of any offence;
 - (b) disciplined by or adversely mentioned in a report of a government or governmental authority or agency;
 - (c) adversely mentioned in a report of a market operator, a clearing facility, a settlement facility or any other exchange; or
 - (d) disciplined by a market operator, a clearing facility, a settlement facility or any other exchange.
- RG 265.114 Under Rule 2.1.4(2)(a), a person will not be of good fame and character if they are:
- (a) disqualified from managing a corporation under the Corporations Act (or under the law of another country); or
 - (b) an insolvent under administration (or its equivalent in another country).
- RG 265.115 Aside from the express circumstance in Rule 2.1.4(2)(a), none of the limbs in Rule 2.1.4(2)(b) will serve to determine that a person is not of good fame and character. Rule 2.1.4 does not prescribe the checks that a market participant must do in order to satisfy this requirement.

- RG 265.116 A market participant may exercise its own discretion to satisfy itself that a person is of good fame and character and high business integrity. The market participant may consider:
- (a) the facts and circumstances as a whole; and
 - (b) any procedural fairness and due process requirements relating to persons involved in its business in connection with the relevant market.

Professional indemnity insurance

- RG 265.117 A market participant must at all times maintain an adequate level of PI insurance cover, taking into account the nature and extent of its participation in the market and the risks and responsibilities assumed in relation to this: Rule 2.2.1. Market participants are required to immediately notify ASIC through the [ASIC Regulatory Portal](#) of any claims, potential or threatened claims, or circumstances that might give rise to a claim, under their PI insurance cover: Rule 2.2.4.

Note: See Section D for more details.

Designated trading representatives

- RG 265.118 Rules 2.5.2 and 2.5.3 require a trading participant to ensure all trading (other than AOP trading) is done by DTRs.
- RG 265.119 DTRs are representatives of trading participants who have been authorised by the trading participant to submit trading messages to the trading platform of a market on behalf of the participant. A trading participant must ensure that its DTRs have demonstrated to the trading participant their knowledge of the dealing rules of the markets that the trading participant operates on: Rule 2.5.5.
- RG 265.120 In permitting this delegation, Rule 2.5.5 requires the trading participant to continue to ensure that their DTRs:
- (a) have the authority to deal in the financial products for which the DTR submits orders on behalf of the trading participant;
 - (b) do not execute orders which will directly or indirectly benefit themselves, their associates, or relatives, without the prior written approval of the market participant; and
 - (c) do not intentionally take advantage of an error, breakdown or malfunction.
- RG 265.121 Trading participants must ensure their DTRs are suitably qualified and experienced to deal in the relevant financial products under their AFS

licence and have demonstrated to the trading participant knowledge of the dealing rules and relevant practices of the market operator as an AFS licensee and market participant: Rule 2.5.5.

- RG 265.122 ASX no longer administers system limits (e.g. special liability limits) or privileges (e.g. trader authorisation privileges) for DTRs trading on its market. We expect market participants to consider implementing these limits and privileges themselves if they consider it necessary to meet their obligations as an AFS licensee (e.g. the obligation to have adequate risk management systems under s912A(1)(h) of the Corporations Act).
- RG 265.123 The trading participant must determine how it will meet the DTR requirements in Rule 2.5.5, taking into consideration any limits on the DTR's access to the trading platform and the financial products in which the DTR is authorised to trade. Trading participants may wish to consider:
- (a) providing their DTRs with a copy of, or access to, the current documentation published by the market operator in relation to its trading platform (e.g. ASX Trade manuals); and
 - (b) providing or arranging training for, and testing of, the DTR on the:
 - (i) operation of the market participant's order entry system;
 - (ii) operation of the trading platform; and
 - (iii) relevant market integrity rules and market operating rules.
- RG 265.124 Each of a trading participant's DTRs must be given a unique identifier: Rule 2.5.6.

F Client relationships

Key points

Market participants should review (and amend as needed) their existing client agreements and templates as soon as possible following any amendments to the market integrity rules.

Client records must be kept as specified by the relevant market integrity rules and held for the specified period.

Client agreements

RG 265.125 As noted at RG 265.26, we will from time to time review, consult and amend the ASIC market integrity rules. We expect market participants to review their existing client agreements and templates as soon as possible following amendments to the ASIC market integrity rules to check that they remain compliant.

Client detail record keeping

RG 265.126 The Securities Markets Rules require market participants to keep details of clients, client consents and client trades. Records must be kept as specified by the relevant rules and held for the specified period. They must be maintained in English (whether audio or in writing), or in a manner that can be easily converted into English so that we are able to access them: Chapter 4. The Securities Markets Rules also articulate in what circumstances a participant may rely on records kept by the market operator: Rules 4.1.5–4.1.6.

G Best execution

Key points

Market participants must take reasonable steps to obtain the best outcome for their clients. Best outcome means different things for different clients:

- for retail clients, it means best total consideration, which market participants may interpret as best price while there are not material differences in transaction costs between licensed markets (see RG 265.135–RG 265.144); and
- for wholesale clients, a range of factors may be relevant (see RG 265.149–RG 265.152).

A market participant must:

- have adequate policies and procedures for complying with its best execution obligation (see RG 265.179–RG 265.184);
- disclose certain information about its execution arrangements to clients (see RG 265.185–RG 265.199);
- regularly review and monitor the effectiveness of its execution arrangements (see RG 265.200–RG 265.211); and
- be able to demonstrate compliance with its arrangements (see RG 265.212–RG 265.219).

Market participants have a range of options for accessing markets: see RG 265.220–RG 265.226.

Scope and application

RG 265.127 This section applies to market participants that trade in equity market products and CGS depository interests (collectively referred to as ‘relevant products’) and orders in relation to relevant products: Part 3.8.

Note: [ASIC Market Integrity Rules \(Securities Markets\) Class Waiver 2018/258](#) grants participants of the NSXA and SSX markets a waiver from the obligation to comply with the provisions of Part 3.8 of the Securities Markets Rules until 16 November 2022.

RG 265.128 Best execution promotes investor protection by ensuring market participants do not place their own interests ahead of those of their clients. It facilitates market efficiency by creating a regulatory incentive for market participants to direct client orders to the market that offers the best outcome.

RG 265.129 The best execution obligation, which builds on a market participant’s existing obligations to its clients, outlines our specific expectations of market participants when handling and executing client orders in relevant products.

Interaction between best execution and pre-trade transparency

Market participants currently transact on the pre-trade transparent order book of a licensed market or as permitted by the limited exceptions to pre-trade transparency under the rules of the licensed market.

In most circumstances, a market participant can discharge its best execution obligation by trading only on a pre-trade transparent order book of a licensed market. There may be circumstances where it is appropriate to consider non-pre-trade transparent liquidity (if permitted under a pre-trade transparency exception). For example, in some cases, the volume on the pre-trade transparent order books may not be adequate to fully execute a client order on favourable terms for the client. These circumstances should be set out clearly in the market participant's policies and procedures.

Best execution obligation

- RG 265.130 Under Rule 3.8.1, a market participant must take reasonable steps when handling and executing an order in relevant products to obtain the best outcome for its client. For a retail client, the best outcome means the best total consideration (which market participants may interpret as best price: see RG 265.140), taking into account client instructions. For wholesale clients, other outcomes may be relevant—including speed, likelihood of execution and any other relevant considerations (or any combination of these outcomes).
- RG 265.131 If a client provides a specific instruction about how an order should be handled and/or executed, we expect the market participant to take reasonable steps to satisfy the instruction.
- RG 265.132 The obligation to take reasonable steps to obtain the best outcome for clients applies equally to trading on a pre-trade transparent order book of a licensed market and to trading off an order book under an exception to pre-trade transparency: see Section J.

Complying with the best execution obligation

- RG 265.133 Best outcome will mean different things to different clients. Under Rule 3.8.1(2), market participants must at a minimum distinguish between wholesale and retail clients. For this purpose, these terms have the same meaning as in Ch 7 of the Corporations Act: see the summary in Table 4.

Table 4: Meaning of wholesale and retail client

Type of client	Meaning
Retail client	Clients other than wholesale clients
Wholesale client	<p>Where s761G(7) or 761GA applies, the client is a wholesale client where any of the following apply:</p> <ul style="list-style-type: none"> (a) the price or value of the transaction is \$500,000 or more (as specified in regs 7.1.18(2) and 7.1.19(2) of the Corporations Regulations); (b) the financial product or service is provided for use in connection with a business that is not a small business (as defined in s761G(12)); (c) when not provided for use in connection with a business, a qualified accountant certifies that the client has: <ul style="list-style-type: none"> (i) net assets of at least \$2.5 million (as specified in reg 7.1.28(1)); or (ii) a gross income for each of the last two financial years of at least \$250,000 a year (as specified in reg 7.1.28(1)); (d) the client is a professional investor (as defined in s9); or (e) the client is a sophisticated investor (as defined in s761GA) with demonstrated experience in using financial services and investing in financial products

RG 265.134 We consider that the best execution obligation applies to a market participant when dealing in relevant products on the following basis:

- (a) on behalf of a client on one side of a transaction;
- (b) on behalf of clients on both sides of a transaction—the requirements of both clients must be taken into account and they are both owed a duty of best execution; and
- (c) with a client on the market participant's own behalf—we consider this to be execution of the client's order, and therefore subject to the best execution obligation.

What is the best outcome for a retail client?

Total consideration

RG 265.135 For a retail client, the best outcome means the best total consideration: Rule 3.8.1(2)(a). Total consideration is defined as:

- (a) the purchase price paid by the client (for a buy order) (i.e. unit price multiplied by volume) plus transaction costs; or
- (b) the sale price received (for a sell order) (i.e. unit price multiplied by volume) minus transaction costs.

- RG 265.136 Transaction costs are defined to be all costs paid by a client that are directly related to a particular transaction and include:
- (a) any execution costs imposed by the licensed market and market participant (e.g. including any charges by a market participant for use of its crossing system);
 - (b) clearing and settlement costs; and
 - (c) commissions paid to the market participant by the client.

This would include any other costs paid by the client to third parties involved in the execution.

- RG 265.137 In assessing total consideration, a market participant may take into account implicit transaction costs—such as market impact or other costs resulting from differences in speed, likelihood of execution or liquidity (see Table 5 for descriptions of these factors, typically more applicable to institutional investors). The participant may give the implicit transaction costs precedence over the immediate price factors if they are instrumental in delivering the best total consideration. For example, this may be relevant for an order in a relatively illiquid product. However, we expect that implicit costs are unlikely to be a factor for most retail client transactions because they typically deal in order sizes that can be filled at the best displayed prices.

- RG 265.138 These cost factors must be reflected in a market participant's policies and procedures (where relevant to delivering the best total consideration) and disclosed to clients: see RG 265.179–RG 265.199.

- RG 265.139 Where material differences occur in transaction costs, we consider retail clients will expect, and should expect, a best total consideration result. Compared to taking into account more complex parameters that may be considered for wholesale clients, this will also be simpler to:
- (a) *implement*—details on costs are more readily available and comparable between markets, simplifying the selection of possible markets;
 - (b) *execute*—order transmitting capabilities need only take into account cost factors, rather than more complex parameters; and
 - (c) *evidence*—cost benchmarks are typically more available to assess execution performance against than other benchmarks.

Best price

- RG 265.140 Market participants may interpret total consideration solely as the best purchase or sale price of a relevant product while there are not material differences in transaction costs between licensed markets. We expect taking reasonable steps to obtain the best price will be simpler for market participants to fulfil and simpler for retail clients to monitor. Market participants choosing to interpret total consideration as best price should reflect this in their policies and procedures and disclose it to clients: see RG 265.179–RG 265.199.

- RG 265.141 For transactions done on an order book, we consider best price to be the best available price across all the order books of licensed markets. Where the best price (for the volume of the client order) is spread across multiple order books, the market participant should take reasonable steps to obtain the best overall price. This may include accessing each of the best prices on each order book (either directly or using an intermediary or service offered by a market operator), or it may be that the best price is achieved by transacting against one or a number of price points on a single order book.
- RG 265.142 We acknowledge that there may be occasions when the best price on an order book is in an insignificant volume (e.g. one share). In these circumstances, we do not expect a market participant to access the price. However, we expect the market participant to disclose to clients how it will manage these kinds of situations: see Table 7.
- RG 265.143 For transactions matched or executed off an order book under an exception to pre-trade transparency, market participants should consider the benefits to clients of trying to improve on the best displayed price across all order books to the extent this is possible for a particular relevant product. Where a market participant acts on behalf of both clients to a transaction and where a duty of best execution is owed to both clients, the market participant should consider whether it is possible to improve on the price for both clients. Since 26 May 2013, market participants relying on the exception under Rule 6.1.1(2)(c) have to provide meaningful price improvement when the ‘trade with price improvement’ rule applies. For example, if the best displayed bid and offer are \$5.04 and \$5.08, it would be possible to improve on the prices by trading at \$5.05, \$5.06 or \$5.07.
- RG 265.144 If or when material differences occur in transaction costs (e.g. if a competitor clearing house emerges with materially different prices), we would expect market participants to take those differences into account. We will be clear about whether we take a different interpretation of price and total consideration where market circumstances have changed, and will update this guidance accordingly. We will provide sufficient notice and lead time for market participants to prepare for any change.

Retail client instructions

- RG 265.145 Where a retail client provides an instruction about how an order should be handled and/or executed that is inconsistent with the obligation in Rule 3.8.1(1) to obtain the best outcome for the client, the market participant must take reasonable steps to satisfy the client’s instruction: Rule 3.8.1(3). Examples of instructions that a market participant may receive from a retail client include:
- (a) choice of market (e.g. Market X or Market Y);
 - (b) fast execution;

- (c) minimising market impact; and
- (d) obtaining greatest execution certainty.

RG 265.146 Under Rule 3.8.1(3), the instructions must be:

- (a) clear and unambiguous;
- (b) in writing or provided verbally (a record of the instruction must be kept for seven years). ‘In writing’ includes both printed and electronic form, including via email with hyperlinks or references to a website; and
- (c) specific to an order and not contained in the terms and conditions of a client agreement or any other standard form agreement provided by the market participant to the client.

RG 265.147 A market participant must not encourage or induce a client to provide specific instructions: Rule 3.8.2. That is, the instruction should be at the client’s own initiative. For example, a market participant must not include a standard clause within its client agreement to the effect that the market participant only deals on the basis of specific client instructions.

RG 265.148 Where the instruction is inconsistent with the best outcome for the client, we consider that a market participant has complied with its obligation to the extent that it has complied with the client’s instructions (provided the client’s instructions meet the requirements in RG 265.146). However, client instructions are likely to address only some aspects of order handling and/or execution. We consider the best execution obligation applies to those aspects of the handling and execution process not governed by the instruction. For example, if a retail client provides an instruction to execute an order on Market X, the market participant must still take reasonable steps to obtain the best outcome on Market X.

What is the best outcome for a wholesale client?

RG 265.149 In assessing the best outcome for a wholesale client under Rule 3.8.1(2)(b), market participants should take into account all outcomes that may be relevant for the client (which may include the outcomes outlined in Table 5). The relevance of these outcomes may vary based on matters such as the nature of the client, the client’s instructions (e.g. whether an order is a buy order, sell order, limit order, market order or an order generated by an algorithm), the order type, the product and liquidity at the time.

RG 265.150 A market participant must:

- (a) reflect the outcomes that are relevant to its clients in its policies and procedures (see Part 3.9 and RG 265.179–RG 265.184); and
- (b) disclose to clients the circumstances in which the market participant considers the outcomes are relevant to clients (see Part 3.10 and RG 265.185–RG 265.199).

Table 5: Outcomes that may be relevant for wholesale clients

Factors	Description
Price of the relevant product	Price is an important outcome and one that we expect most market participants will consider relevant. However, it may not represent the best outcome at a given point in time. For example, the order book of a licensed market that is displaying the best price may not have much volume, or the costs of executing on that market may be considerably more than for other markets
Costs	Costs can be both explicit (e.g. connection fees, transaction fees, or clearing and settlement fees) and implicit (e.g. market impact). A transaction may appear to have a higher cost when considering the explicit costs but may in fact be lower when implicit costs are considered. For example, a large order if executed in one lot may be subject to lower overall transaction fees than if the order was broken into many smaller parts. However, smaller transactions executed throughout the course of a day may achieve lower prices, resulting in lower overall costs
Speed	Speed is becoming an increasingly important outcome for some wholesale clients. It is important where a client needs to exit a position quickly or is concerned that the price may move in an adverse direction when they are trying to hedge a position. Speed may, however, be less relevant for clients that are taking a longer-term view of the relevant product
Execution certainty	Where a wholesale client seeks certainty that a large order will be executed, likelihood of execution may be an important outcome. The volumes available at each price point on each order book of a licensed market may be relevant. For example, it may be possible to execute smaller orders at the best price on a single order book, but larger orders may involve taking out orders across multiple price points. Executing part of a larger order on a single order book may mean subsequent executions become less favourable. Market participants should consider these issues when selecting destinations for order transmitting

RG 265.151 We consider that permitting wholesale clients to take into account a range of outcomes in general reflects the existing environment in Australia, where wholesale clients seek to achieve a range of outcomes other than best price.

RG 265.152 A market participant may nominate best price or best total consideration as the best outcome for its wholesale clients rather than other outcomes where it considers price or total consideration is the best outcome for its clients.

Wholesale client instructions

RG 265.153 As with retail clients, wholesale clients may provide instructions on an order-by-order basis about how an order should be handled and/or executed. Where the instruction is inconsistent with the obligation in Rule 3.8.1(1) to obtain the best outcome for the client, the market participant must take reasonable steps to satisfy the client's instructions: Rule 3.8.1(4).

RG 265.154 In addition, Rule 3.8.1(4) permits wholesale clients to provide standing instructions. For example, a wholesale client may have a standing instruction that market impact is the most important factor in assessing the best outcome if they typically deal in large sizes.

- RG 265.155 A wholesale client's instructions must be:
- (a) clear and unambiguous;
 - (b) in writing or provided verbally (a record of the instruction must be kept for seven years). 'In writing' includes both printed and electronic form, including via email with hyperlinks or references to a website; and
 - (c) not contained in the standard terms and conditions of a client agreement provided by the market participant to the client.
- RG 265.156 Rule 3.8.1(5) requires that a market participant should periodically review a standing instruction from a client to ensure it remains possible for the market participant to satisfactorily perform the instruction. The frequency of review may vary depending on the client and whether there have been material changes to the market participant's best execution arrangements (e.g. 6–12 months may be appropriate for certain instructions while a longer period may be appropriate for others).
- RG 265.157 As with retail clients, a market participant must not encourage or induce a wholesale client to provide specific instructions: Rule 3.8.2. That is, the instruction should be at the client's own initiative. For example, a market participant must not include a standard clause within its client agreement to the effect that the market participant only deals on the basis of specific client instructions.
- RG 265.158 Where a wholesale client instruction relates to only part of the market participant's handling and execution process, it does not absolve the market participant from its best execution obligation for the remainder of the order. For example, if a wholesale client provides an instruction to execute the order on Market X, the market participant must still take reasonable steps to obtain the best outcome on Market X.
- Wholesale client election for best execution protection not to apply*
- RG 265.159 Under Rules 3.8.1(4) and (5), a wholesale client can provide an instruction to opt out of the best execution protection by providing a standing instruction to this effect for up to 12 months.
- RG 265.160 As with other client instructions, Rule 3.8.2 requires that a market participant must not encourage or induce a client to opt out of its best execution protection. We would consider any such action by a market participant as a serious breach of the market participant's obligations.
- RG 265.161 The instruction to opt out of best execution protection applies for up to 12 months from the date the instruction was received by the market participant. The instruction must be renewed by the client. The market participant may notify the client that a renewal is required. We do not consider a notification of this type to be a breach of Rule 3.8.2.

- RG 265.162 Situations where a wholesale client may elect to opt out include:
- (a) a client that directly accesses a market with its own high-speed execution algorithm through the infrastructure of a market participant (i.e. direct electronic access); or
 - (b) a client that is another market participant.
- RG 265.163 The client may make this election so the market participant is not involved in the execution decision. We note that this opt-out does not alter a market participant's obligation to have appropriate controls and filters in place for direct electronic access clients (e.g. as required under Part 5.6).

Transactions resulting from quotes or negotiation

- RG 265.164 The act of negotiating or providing a quote is not necessarily subject to the best execution obligation. However, if a client chooses to proceed with the quote, we consider this to be an instruction under Rule 3.8.1 and subject to best execution. Market participants must also consider the best execution obligation for any aspect of order handling and execution that may not be governed by the instruction(s).

Taking reasonable steps to obtain the best outcome

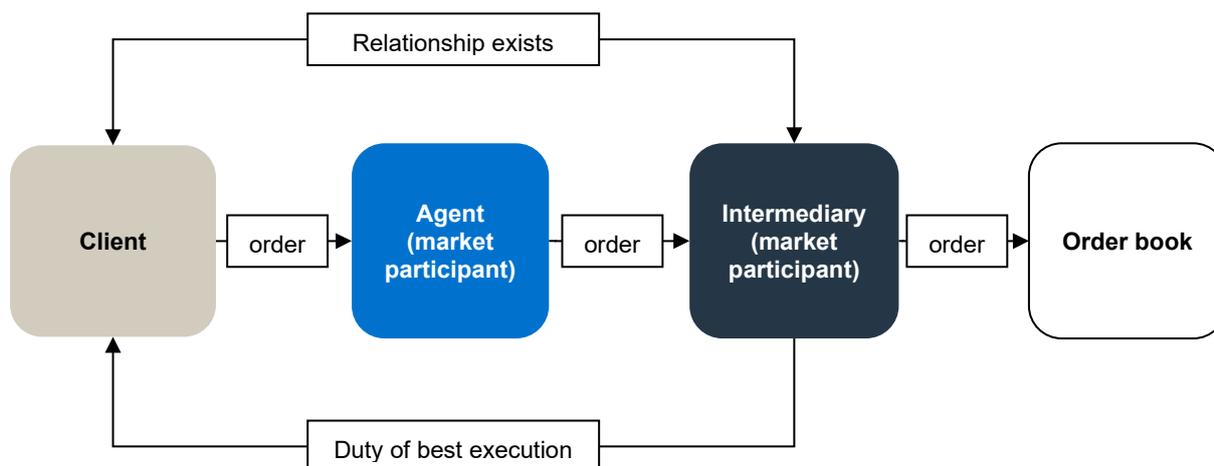
- RG 265.165 The best execution obligation applies from the moment an order is received from a client right through to settlement of the transaction. Throughout the process, market participants must take reasonable steps to obtain the best outcome for the client under Rule 3.8.1. We expect market participants to take reasonable steps to:
- (a) fully understand the client's instructions and the nature of the order (e.g. whether there are time, price or size constraints);
 - (b) consider all relevant information about prevailing market conditions (we recognise that there will be differences in latency in the delivery of information between licensed markets, data vendors and the systems of the market participant);
 - (c) ensure appropriate timing of order entry onto an order book or other matching mechanism (if permitted under a pre-trade transparency exception)—for example, it may be necessary to delay the entry of an order in a less liquid stock until there is sufficient liquidity to execute against; and
 - (d) choose an order book or other matching mechanism (if permitted under a pre-trade transparency exception) that will achieve the best outcome for the client. Choice of market should be considered in light of the relevant outcomes being sought (see Table 5 for outcomes that may be relevant), as well as the associated clearing and settlement arrangements and costs.

- RG 265.166 We consider that a market participant will have taken reasonable steps to obtain the best outcome for its clients if it has complied with its best execution arrangements (where those arrangements have demonstrated that they consistently deliver the best outcome), and it executes client orders based on the best information at the time.
- RG 265.167 In addition to taking the above reasonable steps that we consider essential to delivering the best outcome to clients, a market participant must:
- (a) have adequate policies and procedures reflecting their best execution arrangements (see Part 3.9 and RG 265.179–RG 265.184);
 - (b) disclose details of the arrangements to clients (see Part 3.10 and RG 265.185–RG 265.199);
 - (c) monitor and review their best execution arrangements (see Part 3.9 and RG 265.200–RG 265.211); and
 - (d) evidence compliance with the arrangements to clients on request (see Part 3.11 and RG 265.212–RG 265.219).

Chain of execution

- RG 265.168 Where a market participant seeks to execute a client order by placing it with an intermediary, the duty of best execution for the client under Rule 3.8.1 remains the obligation of the original market participant.
- RG 265.169 A market participant should only pass client orders to an intermediary whose arrangements will enable the market participant to comply with its own best execution obligation. We expect the market participant to take into account the results that the intermediary can achieve (e.g. by monitoring the quality of the intermediary's execution).
- RG 265.170 Where a client places an order with an AFS licensee that is not a market participant, the AFS licensee is subject to the obligations in the Corporations Act.
- RG 265.171 We consider that where a market participant is an intermediary, the market participant owes a duty of best execution to a client where the client deals with an agent, and that agent executes the client order by placing it with the market participant and the market participant:
- (a) also has a relationship with the client (and the terms of business have been agreed); and
 - (b) is aware that the first market participant is acting as an agent (e.g. in an advisory capacity only) for the client.

This is illustrated in Figure 1.

Figure 1: Duty of best execution

Note: See RG 265.171 for the processes set out in this flowchart (accessible version).

RG 265.172 When passing client orders, the market participant should provide sufficient instructions to ensure the client receives the best outcome. We understand that the level of instructions may vary. For example, there may be circumstances where the market participant chooses to retain considerable control over the order execution (e.g. by nominating the order book that the order should be executed on), or it may give substantial control to the intermediary to determine where to execute the order.

RG 265.173 An example of a situation where we would consider it inappropriate to pass a client order to an intermediary is where the intermediary would transmit the order to an order book that has no liquidity in the particular relevant product. It may also be inappropriate to pass the order to an entity that is not a market participant (given the entity will not be subject to the best execution obligation) unless the market participant is satisfied the use of the intermediary will enable the market participant to deliver the best outcome.

Market participant commissions should not discriminate between licensed markets

RG 265.174 A market participant may not structure or charge commissions in such a way as to discriminate between licensed markets unless the difference reflects differences in the market fees: Rule 3.8.3. Commissions or spreads charged to clients should ideally reflect the differences in the cost of executing on each market.

RG 265.175 For example, where Market X's fees are \$10 for a particular transaction and Market Y's fees are lower (e.g. \$5 or may even pay a rebate) for the same transaction, the commission paid by a client to a market participant should as far as possible reflect that Market Y is the cheaper market to transact on. We encourage market participants that have fixed rate commissions to consider whether clients could benefit from having the market fees and rebates passed on.

Order flow incentives and bundled services

RG 265.176 The best execution obligation means that market participants must ensure that the primary focus when executing client orders is to obtain best execution.

RG 265.177 Order flow incentives, such as volume rebates or rebates for certain types of orders, can influence how and where market participants direct client orders for execution. Directing orders in return for some benefit would represent a conflict of interest if the market participant was placing its own interests ahead of its client's interests and therefore not achieving best execution. Such activity may result in a breach of Rule 3.8.1.

Note: For guidance on Rule 5.4B.1 (Prohibition on order incentives) see RG 265.535–RG 265.554.

RG 265.178 Bundling is the practice of providing other services (such as advice, research, data and analytical tools) in conjunction with trade execution. We consider that transmitting a client order to a licensed market, market participant or other service provider which offers bundled services does not in itself meet the best execution obligation because it may not result in the best outcome being obtained for a client. Such activity may breach Rule 3.8.1. We consider that the best execution obligation requires client orders to be transmitted based on best execution for the client independently of any bundled services.

Policies and procedures

RG 265.179 A market participant that deals with client orders must establish, document and implement adequate policies and procedures to ensure it complies with the best execution obligation and complies with its policies and procedures: Rules 3.9.1 and 3.9.2. We consider that the policies and procedures should reflect a market participant's strategy for obtaining the best outcome for handling and executing client orders.

RG 265.180 Under Rule 3.9.1(2), the policies and procedures must at least set out:

- (a) the order books or other matching mechanism to which client orders may be transmitted;
- (b) how client orders will be handled and executed, including the circumstances in which orders will be transmitted to each listed order book or other matching mechanism. It must also include the circumstances in which the transmission will be automated or manual; and
- (c) arrangements to monitor the policies, procedures and implementation.

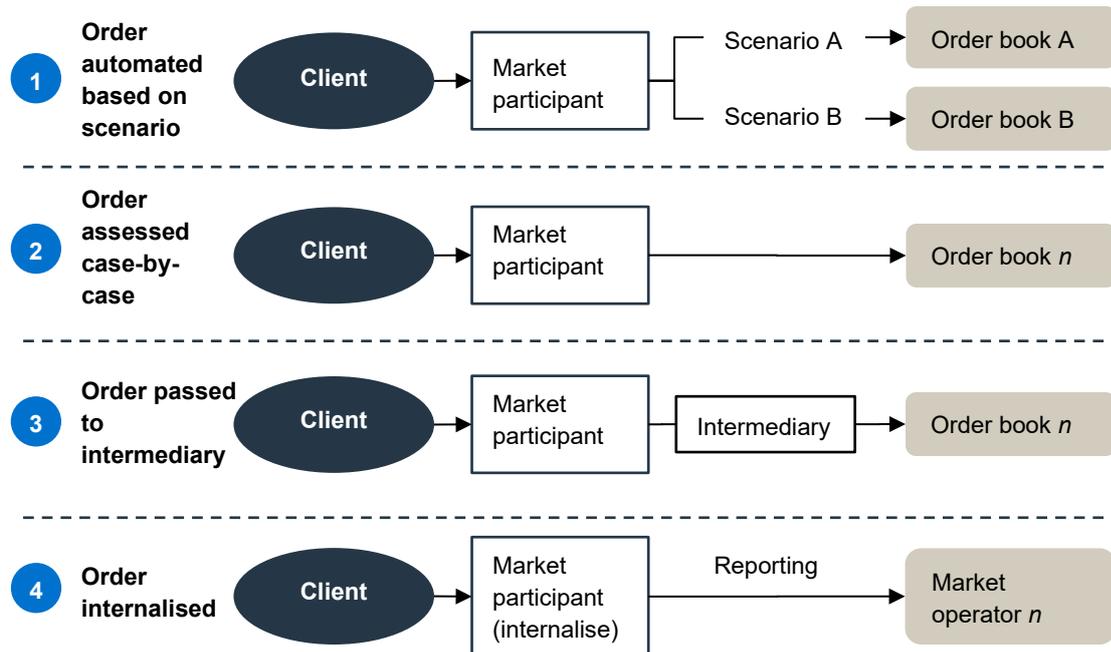
RG 265.181 To comply with this requirement, market participants should consider the matters outlined in Table 6 and address them where relevant.

Table 6: What should policies and procedures address?

Matters	Information that market participants should consider including
<p>Identification of order books or other mechanisms (if permitted under a pre-trade transparency exception) where orders may be matched or executed</p>	<p>A market participant should list the order books of licensed markets and other mechanisms (permitted under a pre-trade transparency exception) on which client orders may be matched or executed: Rule 3.9.1(2)(a)</p> <p>Examples of matching or execution arrangements other than an order book include third-party crossing systems, a market participant's own internalisation arrangements or crossing system, and OTC trading arrangements</p>
<p>Handling client orders and circumstances in which client orders will be transmitted</p>	<p>A market participant should outline its approach to handling orders from the time an order is received to the time it is settled. It should be clear from the description why the market participant's approach will deliver the best outcome for clients</p> <p>It should also outline the circumstances in which client orders may be transmitted to each order book or other matching mechanism (if permitted under a pre-trade transparency exception): Rule 3.9.1(2)(b)</p> <p>For a retail client, this should reflect how to obtain the best total consideration (or price). For wholesale clients, this should be based on the outcomes the market participant considers relevant to its clients. See Table 5 for some outcomes that may be relevant (more typically for institutional investors)</p> <p>The policies and procedures should allocate the relative importance, or the process for determining the relative importance, the market participant places on the possible outcomes for wholesale clients. It should also include information on how these outcomes affect the market participant's choice of order books or other matching mechanisms permitted under a pre-trade transparency exception</p> <p>In developing policies and procedures for assessing relative importance, a market participant should consider the characteristics of:</p> <ul style="list-style-type: none"> • the client (including whether retail or wholesale); • the client order (e.g. market, limit, fill or kill); • the particular relevant product; and • the order books of licensed markets to which the order can be directed and any matching mechanisms outside an order book that may be used subject to a pre-trade transparency exception <p><i>Differing trading hours:</i> Where trading hours vary across order books of licensed markets and a market participant is able to access more than one market, we expect a market participant's policies and procedures to address the handling of orders when not all licensed markets are open and available for trading. This includes before the opening and after the close of the traditional trading hours of the responsible market operator's market, or when certain licensed markets may be unavailable for trading for system or technical reasons</p>

Matters	Information that market participants should consider including
Handling client orders and circumstances in which client orders will be transmitted (cont.)	<p>Specifically, policies and procedures should address the handling of immediately executable orders (e.g. market orders) received before the opening of the listing market or when not all licensed markets are open. A market participant can adopt whatever policy it considers most appropriate to deliver the best outcome to its clients. For example, the policy may state that the market participant will hold orders received outside trading hours until all markets open or the responsible market operator's market opens (where considered to consistently deliver the best outcome)</p> <p><i>Differing opening and closing mechanisms:</i> A market participant should also consider the opening mechanism adopted by each licensed market and the effect of that mechanism on the probability of execution and the quality of that execution (e.g. an opening auction compared to opening straight into continuous trading). The auction is likely to receive considerably more buying and selling interest</p> <p>We consider that a market participant should regularly monitor the quality of the executions obtained for opening orders to be able to determine that the licensed market chosen as the location for entering opening orders generally offers best execution for that particular relevant product: Rule 3.9.1(2)(c). The same considerations will apply to handling orders at the market close where licensed markets have differing closing mechanisms</p> <p><i>Price movement after order transmitted:</i> Prices may vary after a market participant transmits an order. For example, a better price may become available on the order book of Market X after transmitting an order to Market Y. The policies and procedures should outline how a market participant intends to handle this situation. We consider that for immediately executable orders that have been transmitted to an order book taking into account the available information at the time, there is no requirement to retransmit the order</p> <p>However, if a market participant chooses to retransmit the order to another market, before doing so, the market participant should consider certainty of execution (i.e. risk that the price will no longer be available after the order is retransmitted and the risk of losing priority in the queue of the first market). Equally, if there is considerable volume at the new price and reasonable certainty that the order will execute at the better price, it may be appropriate to retransmit the order</p> <p><i>Market outages:</i> A market participant should consider how its order handling and execution arrangements will adapt to trading halts and suspensions on a single market (e.g. system failure on the responsible market operator's market), or all licensed markets or a crossing system it operates (or routes orders to). To the extent possible, a market participant should also consider its default arrangements in the event of unforeseen circumstances</p> <p><i>Limit orders:</i> A market participant should outline how it handles limit orders, particularly those that are away from the current market price. Among other relevant factors, we consider the policy and procedures should take into account liquidity and certainty of execution. These factors would apply equally to wholesale and retail clients because they would contribute to the ability of the retail client to ultimately get the best total consideration (or price as the case may be)</p>

Matters	Information that market participants should consider including
How client orders will be transmitted to the order books of licensed markets or other matching mechanisms (if permitted under a pre-trade transparency exception)	<p>A market participant should outline the mechanisms used for transmitting client orders to the order books of licensed markets and other matching mechanisms (if permitted under a pre-trade transparency exception), including documenting any manual and automated processes (Rule 3.9.1(2)(b)), and the circumstances in which the mechanisms will be used</p> <p>Where a market participant has fully, or in part, automated its order handling processes, it should ensure that the technologies employed are designed to comply with its best execution obligation. A market participant should document the logic of how the automated order handling process operates, including dependencies and parameters. Any changes to such systems should be documented, including the rationale for the change</p>
Monitoring policies and procedures	<p>A market participant should ensure there are appropriate arrangements in place to monitor the quality of execution received for clients and whether its policies and procedures are obtaining the best outcome for clients: Rule 3.9.1(2)(c). Our expectations about monitoring are outlined in RG 265.200–RG 265.211</p>
RG 265.182	<p>We encourage market participants to ensure that their policies and procedures are designed or tailored according to the nature, scale and complexity of their business and the client orders received. We expect that, in most cases, market participants will need to differentiate policies and procedures by client characteristics. A market participant may choose to also differentiate by liquidity of relevant product, order type or licensed market, or make an assessment on a case-by-case basis.</p>
RG 265.183	<p>Some of these choices are illustrated in Figure 2. For example, small orders in liquid products may be suited to an automated, high-volume process (e.g. line 1 in Figure 2). In contrast, closer attention may be necessary for large orders in the same product, including in some instances a case-by-case assessment (e.g. line 2 in Figure 2). Market participants may pass some orders through an intermediary (e.g. line 3 in Figure 2) or internalise orders and report it to the market operator (e.g. line 4 in Figure 2).</p>

Figure 2: Examples of order transmitting in best execution policies

Note: See RG 265.183 for the processes set out in this flowchart (accessible version).

RG 265.184 Comprehensive and robust internal policies and procedures for best execution, and ongoing monitoring and review of these policies and procedures, will help to ensure market participants are successful in delivering the best outcome to their clients.

Disclosure to clients of best execution arrangements

Information to be disclosed

RG 265.185 Under Rule 3.10.1(1), a market participant must disclose the following matters to clients about its best execution arrangements:

- that the market participant is required to handle and execute client orders in accordance with the best execution obligation in Rule 3.8.1 (i.e. to take reasonable steps to obtain the best outcome for clients);
- how the best execution obligation affects the handling and execution of the client's orders;
- the order books of licensed markets and any place other than an order book, for example other matching mechanisms (as permitted under a pre-trade transparency exception), to which the market participant may transmit client orders;
- the circumstances in which client orders will be transmitted to each of these destinations; and

- (e) that the market participant must take reasonable steps to handle and execute the client's orders in a way which satisfies any instructions that are inconsistent with the market participant obtaining the best outcome for the client and, as a result, may not achieve the best outcome for the client.

RG 265.186 This is a one-way communication to clients. It is not necessary for clients to acknowledge or consent to the disclosure. Our expectations about how market participants should comply with this disclosure obligation are described in Table 7.

Table 7: Matters to disclose to clients

Matters	Information to be disclosed
Best execution obligation	That the market participant has an obligation to obtain the best outcome for clients when handling and executing client orders
How the best execution obligation affects the handling and execution of client orders	<p>Disclosure to clients should include the appropriate level of detail of information about a market participant's handling and execution arrangements that a client would reasonably require to enable them to make an informed decision about whether to use the services of the market participant</p> <p>Disclosure should be clear about what the best execution obligation means for how a client order will be handled and executed. For retail clients, this should include what best total consideration or best price means in practice. For wholesale clients, this should include the outcomes the market participant considers relevant, as well as any trade-offs among these outcomes. For example, if likelihood of execution is considered the most important outcome, the trade-off may be price</p> <p>A market participant may also provide additional information to clients about its order handling practices to help them understand how their orders may be handled—for example, statistics about the relevant products and volume and size of orders transmitted to the various order books of licensed markets and other matching mechanisms (if permitted under a pre-trade transparency exception)</p> <p><i>Client instructions:</i> The circumstances in which client instructions can be accepted and acted upon (e.g. where instructions are inconsistent with the best outcome, only order-by-order instructions can be accepted for retail clients, whereas for wholesale clients, standing instructions can be made subject to the requirements in RG 265.146 and RG 265.155). A market participant should provide a warning upfront that the use of specific instructions may result in a client not obtaining the best outcome</p>
Identification of order books and other matching mechanisms (if permitted under a pre-trade transparency exception)	<p>The mechanisms by which client orders may be matched and executed</p> <p>This should identify the order books of licensed markets where transactions are executed or reported, as well as any other matching mechanism permitted under a pre-trade transparency exception (e.g. crossing system) that the market participant places significant reliance on</p>

Matters	Information to be disclosed
Circumstances in which orders are transmitted	<p>The circumstances in which orders may be transmitted to the order books of licensed markets and/or other matching mechanisms</p> <p>If a market participant's policies and procedures for retail clients mean that client orders will not be transmitted to a market that has a very small volume at the best price (e.g. one share), we expect the market participant to disclose to clients the minimum volume it will transmit. This should reflect the value of the relevant product. For example, a minimum volume of 100 may be appropriate for a \$2 share but may not be appropriate for a \$100 share</p> <p>If a market participant's best execution arrangements allow for a client order to be executed under a pre-trade transparency exception, the market participant should disclose on what basis this will occur (e.g. price improvement, volume improvement or managing market impact). Where it is on the basis of price improvement, the parameters should be disclosed (e.g. how this would apply where the market participant is acting on behalf of both clients to a transaction)</p> <p>If a market participant's approach is to route orders to a crossing system prior to order books of licensed markets, we expect the market participant to disclose to its clients the benefits of this approach as well as any potential detriment to clients (e.g. latency)</p> <p><i>Differing trading hours:</i> Where a market participant includes more than one licensed market in its policies and procedures and the trading hours of the licensed markets differ, we expect the market participant to disclose to the client how orders received outside traditional trading hours will be handled under its policies and procedures. For example, will a market order received outside these hours be transmitted to a licensed market that is open, or wait for the responsible market operator's market to open, and on what basis?</p>

- RG 265.187 Under Rules 3.8.1(3) and (4), a market participant must not attempt to limit the best execution obligation through disclosure (e.g. through the terms and conditions of a client agreement by a market participant to the client). This can undermine the intention of the best execution obligation.
- RG 265.188 Disclosure of certain execution arrangements to clients will enable those clients to better assess whether they are likely to receive best execution. It should include the most important and/or relevant aspects of the market participant's best execution arrangements.

When to make the disclosure

- RG 265.189 Under Rules 3.10.1 and 3.10.2, the best execution disclosure should be made:
- (a) before accepting a client order for the first time;
 - (b) on the request of a client; and
 - (c) when there is a material change to the market participant's best execution arrangements.

- RG 265.190 For the purposes of RG 265.189(c), a material change is where disclosure is necessary to enable a client to make a properly informed decision about whether to continue using the services of the market participant. For example, a market participant may no longer include in its policy a licensed market that had consistently achieved the best outcome for clients, or it may materially alter the circumstances in which client orders are transmitted to order books of licensed markets and other matching mechanisms (if permitted under a pre-trade transparency exception). We do not expect minor changes to be disclosed.
- RG 265.191 There is no requirement for clients to acknowledge or consent to the disclosure.
- RG 265.192 When considering their existing clients, if a market participant takes the view that an existing client is inactive, and is unlikely to place an order with the market participant in the foreseeable future, we will not take action in relation to compliance with Rule 3.10.1 if the disclosure required by Rule 3.10.1 is given before accepting the next order from the client.
- RG 265.193 A market participant should have appropriate arrangements in place to identify when disclosure is required under Rule 3.10.1 and to make that disclosure before acting on an order from the client.

Wholesale client election to not receive best execution disclosure

- RG 265.194 Under Rule 3.10.1(6), a market participant need not make a disclosure to a wholesale client if the market participant and wholesale client agree it is not required and the terms of the agreement are:
- (a) clear and unambiguous;
 - (b) in writing (a record of the instruction must be kept for seven years). ‘In writing’ includes both printed and electronic form, including via email with hyperlinks or references to a website; and
 - (c) not contained in the standard terms and conditions of a client agreement or other standard form agreement provided by the market participant to the client.

How to make the disclosure

- RG 265.195 A market participant must make its best execution disclosure to clients in writing and keep this disclosure for seven years: Rule 3.10.1(4). We consider that the disclosure may be made in printed or electronic form, including via email with hyperlinks or references to a website. This is the same approach as for Financial Services Guides (FSGs) in [RG 221](#).
- RG 265.196 Where a client asks for the disclosure to be made in print form (e.g. if they do not have access to electronic communications), we expect the market

participant to provide it in print form. Ultimately, a market participant needs to be able to demonstrate that the disclosure has been made to the client.

RG 265.197 While we do not intend to prescribe the mechanism for disclosure, a market participant may choose to:

- (a) include the disclosure in its FSG (where a market participant is already required to provide an FSG);
- (b) incorporate the disclosure into its terms and conditions; or
- (c) make the disclosure independently.

RG 265.198 A market participant cannot comply with Rule 3.10.1(2) solely by updating its website each time there is a material change. Where a market participant uses its website to provide the summary of material changes for the purposes of Rule 3.10.1(2), we expect that steps would be taken to ensure that clients are aware of the new information on the website. This may be done through an email with a hyperlink to the website, or through another form of written (paper or electronic) notice that the summary of changes is available on the website. This should occur each time there is a material change.

RG 265.199 A market participant must not encourage or induce a wholesale client to agree that it is not required to disclose the matters outlined in Table 7: Rule 3.8.2(2). That is, the request should be at the client's own initiative. For example, a market participant must not include a standard clause within its client agreement to the effect that it will not make the disclosures required under Rule 3.10.1, or that in any way limits its obligations under Rule 3.10.1.

Monitoring and reviewing best execution arrangements

Monitoring best execution arrangements

RG 265.200 We do not intend to approve market participants' best execution policies and procedures, nor do we intend to test that every individual transaction achieves the best outcome. However, we do expect a market participant to be able to demonstrate that its best execution policies and procedures enable it to consistently deliver the best outcome for clients and that client orders have been handled and executed in accordance with its policies and procedures or with client instructions (as required by Part 3.11).

RG 265.201 How a market participant demonstrates that its policies and procedures are reasonably designed to comply with its best execution obligation and that it has complied with its policies and procedures and client instructions is in large part dependent on the nature of its clients and the complexity of the client orders it handles and executes.

- RG 265.202 In any event, Rule 3.9.1(2)(c) requires a market participant to have arrangements to monitor its policies, procedures and implementation of the best execution obligation. To comply with this rule, we expect a market participant to monitor on a regular basis:
- (a) whether it has complied with its best execution arrangements; and
 - (b) the effectiveness of the arrangements in meeting its best execution obligation (i.e. whether it is obtaining the best outcome for clients).
- RG 265.203 A market participant could monitor transactions it has done on behalf of clients with similar transactions done by other market participants on the same markets.
- RG 265.204 We encourage market participants to consider setting measures to assess the effectiveness of the policies and procedures in obtaining the best outcome for clients. Examples of possible measures are outlined in Table 8. These measures may assist market participants in selecting venues to match and execute client orders, determining appropriate outcomes and assessing the trade-offs associated with the different outcomes.

Table 8: Possible measures of best execution performance

Factors	Possible measures
Price of the relevant product	A comparison of the prices achieved or achievable on each order book or other matching mechanism (if permitted under a pre-trade transparency exception) against the best available bid and offer at the time
Costs	<p><i>Explicit costs:</i> A comparison of the explicit costs involved in matching or executing orders on each order book or other matching mechanism (if permitted under a pre-trade transparency exception). This could take into account the fees and rebates for various order sizes and types, costs for software and connectivity, market participant membership costs, and clearing and settlement costs</p> <p><i>Implicit costs:</i> This is harder to measure. For market impact costs, a comparison of the market movement in response to similar size order entry for a particular relevant product on each market may be relevant</p>
Speed	Statistics that show the time taken for orders to match or execute on each order book or other matching mechanism (if permitted under a pre-trade transparency exception). This could be broken down by the relevant product and size of order
Execution certainty	<p>Statistics on fill rates on each order book or other matching mechanism (if permitted under a pre-trade transparency exception) for each relevant product, taking into account order size</p> <p>An assessment of volumes available at each price point on each order book or other matching mechanism (if permitted under a pre-trade transparency exception) may also be relevant</p>

Factors	Possible measures
Other measures	Statistics on the volume and speed of execution on each order book or other matching mechanism (if permitted under a pre-trade transparency exception) for specific order characteristics (e.g. buy order, sell order, limit order, market order, and orders generated by an algorithm)

- RG 265.205 A range of data on relevant products is available to market participants. Market-specific and consolidated pre-trade and post-trade transparency data is likely to be the primary source of data. Market operators may also choose to make data available to market participants to assist with this exercise. We will continue our consultation with industry on whether market operators and market participants should make available statistics on execution quality and order transmitting.
- RG 265.206 We expect a market participant to keep records of the monitoring it undertakes, including the results and any consequential modifications to policies and procedures.

Reviewing best execution arrangements

- RG 265.207 Under Rule 3.9.3, a market participant must review its best execution policies, procedures and implementation:
- (a) each time there is a material change in circumstances that affects where the market participant may transmit client orders; and
 - (b) when the results of monitoring its best execution arrangements suggest its policies and procedures are not obtaining the best outcome for clients.
- RG 265.208 For example, a market participant using only one order book of a licensed market might have to review its approach if a new market operator enters the market, or if an order book of an existing market operator obtains substantial liquidity in the relevant products in which the market participant transacts on behalf of clients. Market participants may have to reconsider their best execution arrangements if there is a significant change to trading functionality on an existing market.
- RG 265.209 In reviewing its policies and procedures, a market participant should consider whether it should make changes to improve overall performance. It should also consider whether the relative importance it has assigned to the order books of licensed markets and other matching mechanisms (if permitted under a pre-trade transparency exception) has led it to consistently deliver the best outcome for its clients.
- RG 265.210 We encourage market participants to consider whether they could consistently obtain better outcomes if they were to transmit orders to an

order book of another licensed market or if changes were made to any other aspect of the policy.

- RG 265.211 We expect a market participant to monitor the various licensed markets to determine which relevant products are available on each order book for the purposes of monitoring and reviewing its best execution arrangements.

Evidencing how client orders are executed

At client's request

- RG 265.212 On receipt of a reasonable request by a client, a market participant must demonstrate that the client's order or orders have been executed in accordance with the market participant's policies and procedures: Rule 3.11.1(1).
- RG 265.213 What is a 'reasonable request' may vary. We consider a request to provide evidence of the basis on which an order was executed is reasonable where it is made shortly after the client receives confirmation of the transaction. An example of a scenario where a market participant may determine that a request is not reasonable is where it relates to every order executed on behalf of the client over a long period of time (e.g. several years).
- RG 265.214 The nature of evidence required may also vary based on the client request and the market participant's record-keeping arrangements. We do not intend to prescribe the nature of the evidence. However, any evidence provided to a client should address the client's request and be clear to the client how their order was handled in the context of the market participant's best execution arrangements.

Timing of provision of information

- RG 265.215 Rule 3.11.1(2) requires that a market participant must demonstrate compliance to the client within a reasonable time after receiving the request. The time will vary based on the nature of the request. For a straightforward request (e.g. relating to a single recent client transaction), we expect it should take no more than a matter of days. For requests requiring considerable time and effort (e.g. relating to many transactions or to historical transactions), the market participant may require more time. We expect the market participant to notify the client when more time than usual is required to prepare the request and to give an indicative timeframe for fulfilling the request.
- RG 265.216 Provision of information to clients about how their orders are handled and executed will enable clients to assess what happens to their information and to assess the quality of execution they receive.

Records

- RG 265.217 A market participant must keep information so it has evidence that each client order has been executed in accordance with the policies and procedures that the market participant has in place: Rule 3.11.2. This information must be kept for seven years.
- RG 265.218 The type of information that a market participant should keep will vary based on the nature and size of the market participant and the mechanisms for handling client orders. Records relating to a manual process may include notes made by the relevant trader, whereas records relating to an automated process are likely to be retained as part of an electronic audit trail. We expect that in most cases there should be records relating to:
- (a) the client instruction;
 - (b) the steps taken in handling the order; and
 - (c) the basis for selection of an order book or other matching mechanism (if permitted under a pre-trade transparency exception), which will often include the details of the prevailing market conditions such as the current best bid and offer and associated volumes.
- RG 265.219 Maintaining accurate and complete records of order handling and execution decisions will enable market participants to more effectively monitor and review their execution arrangements and help ASIC in assessing compliance.

Access to markets

- RG 265.220 The best execution obligation requires market participants to transmit orders to the markets offering the best outcome. We are establishing a regulatory environment to promote a competitive market environment between licensed markets offering trading services in relevant products. Therefore, market participants should consider the respective merits of all order books of licensed markets.

How many licensed market order books should a market participant access?

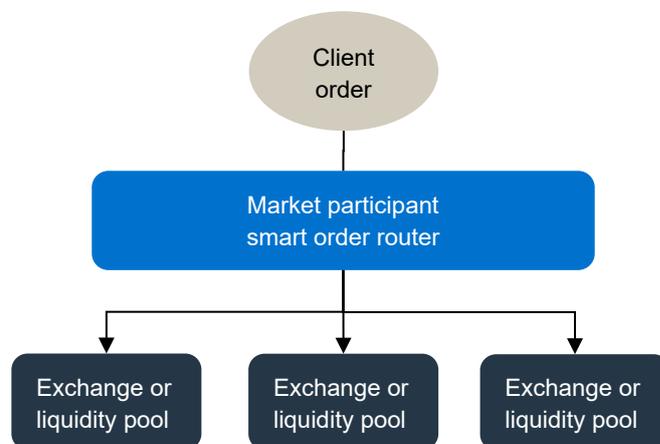
- RG 265.221 It is not our expectation that every market participant must connect to every order book offering relevant products. It may be reasonable in some circumstances to decide against connecting to all order books. For example, a market participant might minimise execution costs significantly by transmitting orders to one or a few order books of licensed markets (with these cost savings passed on to the client), or the relevant products that a market participant deals in might not be available on other order books.

- RG 265.222 We expect all market participants to consider their best execution obligation under the market integrity rules and to review their execution strategy to ensure it is possible to deliver the best outcome for their clients. The test for a market participant that is considering having access to only one or a limited number of order books is whether it can demonstrate that it has taken reasonable steps to deliver the best outcome and whether in practice it can consistently obtain the best outcome for its clients.
- RG 265.223 If a market participant chooses not to connect to a market directly, it should consider the advantages of indirect access (i.e. transmitting its client orders to another execution intermediary, rather than executing those orders itself).

Smart order routing

- RG 265.224 Market participants may use tools to connect to multiple order books of licensed markets to scan the various markets to determine which one delivers the best outcome on the basis of predetermined parameters and to transmit orders to the selected order books and other matching mechanisms (if relevant). Smart order routers (SORs) provide these linkages (to transmit client orders to multiple exchanges or crossing systems): see Figure 3. We expect that in Australia a number of vendors will offer SORs and some market participants will build their own.

Figure 3: Smart order routers



Note: See RG 265.224 for the process shown in this flowchart (accessible version).

- RG 265.225 We expect a market participant, in accordance with its obligation under Rule 3.9.3, to review policies, procedures and implementation of its SOR or other automated processes to verify that they remain compatible with the market participant's best execution policies and procedures. This applies irrespective of whether the SOR or automated processes have been developed by the market participant or provided by a third party. The results of all tests should be kept by the market participant for seven years and be available for ASIC to review on request.

Direct electronic access to markets

RG 265.226 Where a market participant provides clients with direct electronic access to an order book, we consider that the best execution obligation still applies to the extent that the market participant must take into account the client's instructions (e.g. to have fast access): Rule 3.8.1. A market participant must outline any parameters for the client's SOR or manual processes to select the order books to transmit an order or orders to. A market participant must also consider the best execution obligation for any aspect of order handling and execution that may not be governed by the instruction(s).

H Suspicious activity reporting

Key points

Under Rule 5.11.1, a market participant must notify ASIC if it has reasonable grounds to suspect that a person has placed an order or entered into a transaction:

- while in possession of inside information; or
- which has the effect of creating or maintaining an artificial price or a false or misleading appearance in the market or price for trading in financial products.

See RG 265.228–RG 265.235.

We do not expect a market participant to actively seek to detect reportable matters: see RG 265.236–RG 265.247.

A market participant should have a clear, well-understood and documented process for complying with its obligations under Rule 5.11.1: see RG 265.262–RG 265.266.

Notifying ASIC of a reportable matter under Rule 5.11.1 does not relieve market participants from compliance with other obligations, including notifying ASIC of reportable situations under s912DAA of the Corporations Act and other reporting requirements to AUSTRAC: see RG 265.267–RG 265.276.

Where a market participant has reported information to AUSTRAC under anti-money laundering (AML) reporting legislation, it is not required to notify ASIC of the same information under Rule 5.11.1: see RG 265.273.

- RG 265.227 This section provides guidance on a market participant’s obligations under Part 5.11 of the Securities Markets Rules. This includes guidance on the obligations for market participants operating a crossing system on a financial market in this jurisdiction.

What suspicious activity must be reported?

- RG 265.228 Under Rule 5.11.1, a market participant must notify ASIC in writing, as soon as practicable, if it has reasonable grounds to suspect that:
- (a) a person has placed an order or entered into a transaction on a market while in possession of inside information; or
 - (b) a transaction, or an order transmitted to a trading platform of a market, has or is likely to have the effect of:
 - (i) creating an artificial price for trading in financial products on a market;

- (ii) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a market;
- (iii) creating or causing the creation of a false or misleading appearance of active trading in financial products on a market; or
- (iv) creating or causing the creation of a false or misleading appearance with respect to the market, or price, for trading in financial products on a market.

These are collectively referred to as ‘reportable matters’ in this guide.

Note: Rule 5A.4.2 sets out the obligations of a crossing system operator in relation to reportable matters. As noted in RG 265.341, the guidance in this Section H applies to crossing system operators’ obligations to report suspicious activity on a crossing system.

- RG 265.229 Market participant notifications under Rule 5.11.1 provide ASIC with a valuable supplementary source of market intelligence which, when combined with other information available to ASIC, helps us to focus our investigations and resources.
- RG 265.230 Rule 5.11.1 requires a market participant to notify ASIC in writing with details of the relevant transaction or order, and the reasonable grounds it has to suspect there is a reportable matter: see RG 265.248–RG 265.255 for guidance on the meaning of ‘reasonable grounds to suspect’ and RG 265.279–RG 265.281 for guidance on the content of notifications under Rule 5.11.1.
- RG 265.231 The obligation to notify ASIC in writing under Rule 5.11.1 arises whether or not a market participant has knowledge of all the details surrounding the transaction or order, the identity of any insider (if the reportable matter relates to a person trading with inside information) or the intention of any party to a transaction or order (if the reportable matter relates to the effect on a market).
- RG 265.232 Market participants also have an obligation to submit suspicious matter reports (SMRs) to the Australian Transaction Reports and Analysis Centre (AUSTRAC) under s41 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and s16 of the *Financial Transaction Reports Act 1988* (FTR Act) (collectively referred to in this guide as ‘AML reporting legislation’). To avoid double reporting, Rule 5.11.1(2) provides that, where a market participant has reported information to AUSTRAC under AML reporting legislation, it is not required to notify ASIC of the same information under Rule 5.11.1(1): see RG 265.272–RG 265.276 for further information about the interaction between Rule 5.11.1 and the AML reporting legislation.
- RG 265.233 Under Rule 5.11.2, a market participant must not disclose to any person that it has notified ASIC of a reportable matter, nor disclose the information

contained in the notification: see RG 265.282 for further information about Rule 5.11.2, including exceptions to the rule.

- RG 265.234 Under Rule 5.11.1, a market participant is not required to form a view about whether a person has, or would have, a defence available if prosecuted for a contravention of any provision of the Corporations Act or any market integrity rule, or about whether all the elements of insider trading or market manipulation exist.
- RG 265.235 A market participant will need to decide on a case-by-case basis whether there are reasonable grounds to suspect there is a reportable matter. Table 9 and Table 10 provide guidance on when we would generally expect a market participant to consider notifying ASIC under Rule 5.11.1. These examples are not intended to provide an exhaustive list. There will be situations that do not fall squarely within any of the examples included in this guide where there would be reasonable grounds to suspect that a reportable matter has occurred.

Obligation to report, not actively investigate

- RG 265.236 We do not expect a market participant to actively seek to detect reportable matters for the purposes of Rule 5.11.1. Rather, the rule requires market participants to report activity they become aware of in the ordinary course of their client and proprietary trading activities.
- RG 265.237 The obligation under Rule 5.11.1 is to report information that is known. The obligation under Rule 5.11.1 does not require a market participant to put in place new surveillance arrangements to detect circumstances that may trigger a reporting obligation.
- RG 265.238 As part of its arrangements to comply with its current obligations under the law, a market participant will have in place existing trading safeguards and monitoring mechanisms. These may include system alerts, and procedures and processes which, at a minimum:
- (a) ensure that it does not do anything which results in a market for a financial product not being both fair and orderly (Rule 5.9.1);
 - (b) enable it to consider the circumstances of an order set out in Rule 5.7.2 to prevent the submission of orders that have the effect of, or are likely to have the effect of, creating a false or misleading appearance of active trading in a financial product or with respect to the market for, or the price of, a financial product (Rule 5.7.1);
 - (c) ensure that its AOP system does not interfere with the efficiency and integrity of a market or the proper functioning of a trading platform (Rule 5.6.1);
 - (d) for AFS licensees, ensure that it complies with, and takes reasonable steps to ensure that its representatives comply with, the financial services laws (s912A(1)(c) and (ca) of the Corporations Act).

- RG 265.239 Some market participants may also be subject to obligations under the AML/CTF Act to collect ‘know your customer’ information and conduct ‘ongoing customer due diligence’. We expect that these existing processes will, in some circumstances, be a source of information that a market participant should take into account in determining whether a reportable matter exists (e.g. details of a client’s investment profile or a client’s financial means—see Table 9 and Table 10).
- RG 265.240 If a market participant becomes aware of information, in the course of its business activities and in the course of complying with its existing obligations, that gives rise to reasonable grounds to suspect there is a reportable matter, the market participant must notify ASIC. Not all knowledge, by itself, gives rise to a reportable matter. Table 9 and Table 10 give some examples of information that, by itself, or in combination with certain other information, may give rise to a reportable matter. We do not expect market participants to make specific external inquiries to gather information for the purposes of Rule 5.11.1.

Information in different parts of the organisation

- RG 265.241 Where information in different parts of a market participant’s business would collectively give rise to a reportable matter, we will take into account whether:
- (a) the information has in fact come together; and
 - (b) it is reasonable to expect the information to have come together (e.g. in the compliance function of the market participant’s business).
- RG 265.242 Once information has come together, we would expect a market participant to notify ASIC in accordance with Rule 5.11.1. Market participants will need to consider which parts of the organisation are required to escalate potentially reportable matters to those responsible for compliance. At a minimum, we expect the trading function of the market participant to escalate potential reportable matters to those responsible for compliance with Rule 5.11.1: see RG 265.260.

Retrospective review

- RG 265.243 We expect a market participant to notify ASIC of orders or transactions that meet the Rule 5.11.1 criteria at the time they occur. We also expect that the Rule 5.11.1 criteria may be met as a result of information that the market participant becomes aware of after an order has been placed or a transaction entered into (e.g. price-sensitive announcements).
- RG 265.244 Where a market participant conducts retrospective spot checks in the ordinary course of ensuring compliance with its obligations, and discovers information that may give rise to reasonable grounds to suspect there is a reportable matter (e.g. Client A’s trading is inconsistent with its investment history and investment or risk profile, and Client A has made a large profit),

we expect the market participant, at a minimum, to identify this matter for internal escalation and active determination about whether to notify ASIC.

- RG 265.245 Where a market participant has received a notice to produce books or information to ASIC and, in the ordinary course of gathering information to comply with the notice, becomes aware of information about particular orders or transactions that may give rise to reasonable grounds to suspect there is a reportable matter, we expect the market participant, at a minimum, to identify this matter for internal escalation and active determination about whether to notify ASIC.
- RG 265.246 We do not expect a market participant to retrospectively review all orders or transactions in light of subsequent events, or information that it later becomes aware of, to detect potentially reportable matters under Rule 5.11.1.
- RG 265.247 The operation of Rule 5.11.1 is not intended to affect current processes that may be conducted by a market participant for other reasons (e.g. post-trade analysis). However, if post-trade analysis reveals any indicators of a reportable matter (see Table 9 and Table 10), a market participant should ensure that the indicators are considered further to determine whether it should notify ASIC under Rule 5.11.1.

What does ‘reasonable grounds to suspect’ mean?

- RG 265.248 A market participant must notify ASIC if it has reasonable grounds to suspect there is a reportable matter. Establishing ‘reasonable grounds to suspect’ requires both a suspicion and just cause for that suspicion.
- RG 265.249 The test is satisfied by circumstances that would create an actual apprehension or fear that a reportable matter exists. The suspicion has to be honest and reasonable, and must be based on facts that would create suspicion.
- RG 265.250 In *Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266, Kitto J described (at 303) a suspicion of something as being:
- ... more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust amounting to a ‘slight opinion, but without sufficient evidence’.

This case was applied by the High Court in *George v Rockett* (1990) 170 CLR 104 at 106.

- RG 265.251 A reasonable suspicion can exist without the market participant conducting exhaustive and conclusive investigations into the matter and, as stated above, we do not expect a market participant to conduct external inquiries for this purpose: see RG 265.240. Nor do we expect a market participant to undertake extensive legal analysis to determine whether a contravention of the Corporations Act or market integrity rules has occurred: see RG 265.253.
- RG 265.252 In some instances, there may be legitimate reasons or trading strategies behind conduct that, based on a system alert, suggests that a reportable

matter exists. For example, clients may legitimately request the cancellation of their orders if they believe the market is falling. However, this may be a less plausible explanation if orders are repeatedly entered into the market and cancelled. A market participant will need to exercise judgement in determining whether it should notify ASIC.

How much analysis is required?

- RG 265.253 A market participant is not required to form any view on whether a breach of the Corporations Act or market integrity rules has occurred. We do not expect a market participant to engage in detailed legal analysis to determine whether a particular law applies to the facts, whether an exception may apply in the circumstances, or whether it is aware of the knowledge or intention of the relevant person.
- RG 265.254 We expect all employees of a market participant to have some level of familiarity with, and knowledge of, the laws prohibiting insider trading and market manipulation, corresponding to the nature of their role in the organisation. We would expect that certain indicators of a reportable matter are referred to a compliance officer to ascertain whether a reporting obligation exists under Rule 5.11.1.
- RG 265.255 As a general rule, a market participant should exercise common sense and judgement when deciding whether to notify ASIC. We do not expect a market participant to notify ASIC every time a system alert is generated.

Some indicators of reportable matters

- RG 265.256 In RG 265.257, we provide some indicators that may give rise to a reportable matter. In most cases, one indicator alone will not give rise to reasonable grounds to suspect that a reportable matter has occurred. In most instances, a combination of two or more indicators may lead the market participant to decide there are reasonable grounds to suspect a reportable matter. Table 9 and Table 10 set out our guidance on combinations of indicators that may give rise to reasonable grounds to suspect a reportable matter. A market participant will need to decide, in the context of complying with its other obligations (see RG 265.240), whether further review is necessary after observing one or more indicators. Clear policies and procedures detailing when further review should be conducted will help market participants to comply with Rule 5.11.1.
- RG 265.257 Examples of indicators that a market participant may wish to take into account when considering whether a reportable matter exists include, but are not limited to:
- (a) unusual or unexpected activity—for example:
 - (i) transactions that do not appear to make economic sense;
 - (ii) large volumes of orders or trades;

- (iii) orders inconsistent with previous investment behaviour or investment profiles;
 - (iv) unusually high profits within a short time period; and
 - (v) financial commitments entered into by a client that appear beyond the client's means;
- (b) unusual concentration of trading or repetition of trading;
 - (c) knowledge of client relationships (e.g. that a client is related to a director of the company that releases a price-sensitive announcement);
 - (d) use of multiple accounts for no apparent reason, or accounts in the names of family members or corporate entities with no apparent business purpose or other purpose;
 - (e) rapid purchase and sale of shares;
 - (f) buying and selling shares with no discernible purpose;
 - (g) sell-down of stock to purchase particular securities, which are then sold shortly after;
 - (h) instructions to place an order immediately or urgently;
 - (i) trades modifying the valuation of a position without affecting the size of the position;
 - (j) trades modifying the valuation of an underlying financial instrument to affect a related derivative;
 - (k) orders or trades made outside volume limits, bid-offer spread parameters or any other applicable trading parameters; and
 - (l) trading that takes place before the release of a price-sensitive announcement or research report, or ahead of a large house or client order ('front running').

RG 265.258 Table 9 and Table 10 provide detailed examples of how a review of some indicators may lead to reasonable grounds to suspect there is a reportable matter. These examples are not intended to be an exhaustive list of circumstances in which a reportable matter may arise. While Table 9 and Table 10 refer to trading in shares, the indicators are equally relevant for trading in all financial products.

RG 265.259 The presence of one or more of the indicators described in Table 9 and Table 10 is not necessarily conclusive. Conversely, the absence of any of the indicators does not indicate that a reportable matter does not exist. A market participant needs to exercise its own judgement in evaluating whether the presence of certain facts gives rise to reasonable grounds to suspect there is a reportable matter.

- RG 265.260 At an individual trader level in a market participant's business, it may be that only one or two of these indicators are visible to the trader. This may, for example, result from the internal separation of a market participant's business as part of its compliance program. We would expect that, in these instances, where the trader has reason to question whether a reportable matter exists, the trader should escalate their observations to the person responsible for compliance. In the normal course of carrying out their responsibilities, the relevant compliance officer would:
- (a) assess these observations in light of all the information they possess; and
 - (b) determine, in accordance with the market participant's policies and procedures, whether there are reasonable grounds to suspect there is a reportable matter.
- RG 265.261 Once a notification is made, we will consider the information provided and may make further inquiries where appropriate. If a market participant notifies us of a reportable matter, it must not disclose to others that it has done so, except in limited circumstances: see RG 265.282.

Table 9: Indicators that may combine to give rise to reasonable grounds to suspect that a person is trading while in possession of inside information—Rule 5.11.1(1)(a)

Primary indicator	Other indicators
Orders or transactions are inconsistent with a client's or trader's recent prior trading history or risk profile	<p>On its own, trading that is inconsistent with a client's or trader's prior trading history or risk profile may not give rise to a reportable matter</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> • the type of financial product that is the subject of the order or transaction; • the profile of the company invested in; • the amount invested (including whether this is out of proportion with the client's monetary means or earning capacity); • the risk profile of the client; • the size of the order; • the length of time the security is held; • a significant increase in profit in the client's or trader's account; and • a significant increase in the particular adviser's commission <p>For example, an order or transaction may give rise to reasonable grounds to suspect a reportable matter if a client buys shares in a speculative company and the market participant knows from its relationship and dealings with the client that the client has a conservative risk profile and typically only invests in blue chip stocks</p> <p>We consider recent trading history to be the three-month period before the order or transaction occurs</p>

Primary indicator	Other indicators
<p>An order or transaction occurs immediately before a price-sensitive announcement</p>	<p>Without further knowledge or information, the order or transaction may not give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include the knowledge that the client is connected to (or the compliance officer is aware that the trader is connected to) the company or the subject matter of the announcement (front running)</p> <p>For example, the client may be an officer or employee of the company, or the trader may have been involved in providing professional advice to the company</p>
<p>An order is placed or a transaction entered into immediately after a client opens a new account</p>	<p>Without further knowledge or information, the order or transaction may not give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include instructions for the order to be carried out urgently, without reference to the price at which the order is to be executed</p>
<p>A client or trader opens simultaneous positions in related derivatives (e.g. contracts for difference (CFDs), options or warrants)</p>	<p>Without further knowledge or information, the orders or transactions may not give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> • the trading in the derivatives is inconsistent with the client's or trader's prior trading history or risk profile; and • the trading takes place just before a price-sensitive announcement
<p>A trading account receives a large transfer of money before an order is placed or a transaction entered into</p>	<p>Without further knowledge or information, the orders or transactions may not give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a third party is trading while in possession of inside information and attempting to disguise their own trading by trading through another account or person</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> • the authorisation on the account has recently changed; • the authorised person or account holder applies for the transfer of shares (or money) to a third party; and • the authorised person or account holder applies for the transfer of shares (or money) to the recently authorised person's own account after the trade is executed

Primary indicator	Other indicators
A trader is an employee of the market participant and an order is placed, or transaction entered into, ahead of house or client orders in the same security	<p>Without further knowledge or information, the orders or transactions may not give rise to reasonable grounds to suspect that a trader may be profiting from the effect of the house or client orders on the price of the security (front running)</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> the employee has not received internal consent for the trade; the security and size of the order are inconsistent with the employee's prior trading history (as far as the market participant is aware); and the trading is accompanied by the trader taking simultaneous positions in related derivatives
Trading takes place before the release of a research report that has been prepared by the market participant	<p>Without further knowledge or information, the orders or transactions may not give rise to reasonable grounds to suspect that a trader may be profiting from the effect of the house or client orders on the price of the security (front running)</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> the employee has not received internal consent for the trade; and no effective information barriers are in place between the market participant's business units <p>A market participant may have a sell-side division that prepares research reports that will be released to the public. A trader may intend to profit from the effect that the release of the report will have on the price of the securities that are discussed in the research report (front running)</p>

Note: If the market participant is an AFS licensee, it may also be required to make an assessment about whether it is required to notify ASIC of a reportable situation under s912DAA of the Corporations Act.

Table 10: Indicators that may combine to give rise to reasonable grounds to suspect that an order or transaction may affect market integrity—Rule 5.11.1(1)(b)

Primary indicator	Other indicators
<p>An order is placed:</p> <ul style="list-style-type: none"> near the close of the trading day; or on the last day of the month, quarter, half year or financial year 	<p>The order forms part of a trading pattern where the client or trader regularly chooses to buy high or sell low at the close. This may be a reportable matter where the order would, if executed, represent a significant increase or decrease from the previous trade price ('price support', 'marking the close' or 'window dressing')</p> <p>Other indicators include:</p> <ul style="list-style-type: none"> the client or trader chooses not to buy or sell at other times of the trading day when better prices are available; the client or trader is a substantial shareholder of the company invested in (Company A) or a related entity; Company A is the bidder or target in a takeover; or Company A is conducting a placement <p>In addition, the client or trader may already hold existing positions in Company A (e.g. as a fund manager), and:</p> <ul style="list-style-type: none"> have an interest in maintaining the price of the shares at a certain level; or the order would have the effect of modifying the valuation of their position without materially affecting the size of the position

Primary indicator	Other indicators
An order is placed near the expiry date of related derivatives (e.g. options)	<p>As a general rule, the market participant is not expected to investigate whether a client holds positions in related derivatives. A trader executing a client's order may not be able to 'see' if a client holds, or has opened, positions in related derivatives because of the way in which the market participant's business is structured</p> <p>However, if the client has entered into those derivative positions with the market participant, this may become apparent to the relevant compliance officer in the course of conducting retrospective spot checks</p> <p>This may raise an early warning signal if the market participant is aware that the client holds positions in derivatives over Company A, such as an option that is close to expiry. The order would, if executed, represent a significant increase or decrease from the previous trade price of the underlying security, and thereby increase or decrease the value of the related derivatives. As a result, the client or trader makes a profit or avoids a loss</p>
A client or trader places matched orders—prearranged trades	<p>The order is for a large volume of Company A shares, which are illiquid. Immediately after the client's order is placed, an order for a similar volume at the same price is placed on the opposite side of the market. The effect is that the order is executed unusually quickly, given the size of the order and the limited liquidity in the stock. This may indicate that the trade is a 'wash trade'</p> <p>We note that this may not always be indicative of suspicious conduct, as legitimate prearrangement of trades is often conducted for large volumes of illiquid stock</p>
A client or trader places multiple orders on the same side of the market at different price levels, which are just behind the best bid or ask	<p>These orders may be intended to create a false or misleading appearance of buying or selling demand ('layering the order book')</p> <p>This may be more suspicious if the client or trader subsequently submits an order on the other side of the market. Once this latter order is executed, the client or trader rapidly removes the initial multiple orders</p> <p>The market participant may be aware that the client or trader is a substantial shareholder of Company A, or may otherwise have an interest in supporting the share price of Company A</p> <p>The pre-auction period is a time to be particularly vigilant of this conduct</p>
An order is for a significant volume (possibly close to priority) and is then cancelled shortly after	<p>The order may have been intended to draw speculators to follow the order into the market, thereby precipitating a small run in the price of Company A's shares</p> <p>On its own, this factor may be insufficient grounds to establish market manipulation. However, it may raise a warning signal if the market participant is not aware of any plausible explanation for the client cancelling their order. It may also be particularly concerning if the client or trader appears to be repeatedly cancelling their orders</p>
An order is for a significant volume close to priority. This is followed by the execution of an order on the opposite side of the market. The initial order is then deleted	<p>The order may have been intended to attract interest or liquidity on one side of the market. This may lead to a small run in the price of Company A's shares. It may also assist the client or trader to discover the depth of the market, with the aim of executing the order on the opposite side of the market at a better price and with less impact on the market</p>

Note: Rule 5.11.1 does not require the market participant to be aware of the intention of any party to the transaction or order before it notifies ASIC.

Compliance with Part 5.11

- RG 265.262 To help ensure compliance with the obligation to notify ASIC of reportable matters, a market participant should have a clear, well-understood and documented process for:
- (a) identifying indicators of reportable matters;
 - (b) ensuring that employees escalate potentially reportable matters to compliance staff, who are made aware of the indicators identified;
 - (c) determining whether indicators of reportable matters give rise to an obligation to report; and
 - (d) notifying ASIC in writing of reportable matters.
- RG 265.263 A market participant will need to consider how best to keep these documents or records (e.g. they may be kept electronically). Keeping documents and records (particularly of the determinations made in RG 265.262(c)) will help market participants demonstrate to ASIC compliance with the obligation under Rule 5.11.1.
- RG 265.264 These records may be kept in a similar manner to a register for identifying, recording and reporting reportable situations: see [RG 78](#) at RG 78.136. However, this is not the only method that market participants can use to demonstrate compliance.
- RG 265.265 In enforcing Rule 5.11.1, we intend to focus on instances where market participants are obliged to notify us, but wilfully or recklessly disregard this obligation.
- RG 265.266 We will consider whether a market participant's policies and procedures have been followed, as well as whether the policies are adequate, when deciding whether a market participant has failed to report a reportable matter. Where internal policies and procedures are followed strictly but the market participant is not adequately reporting reportable matters to ASIC, the market participant may need to review its policies and procedures to ensure they are effective.

How does this relate to other breach reporting obligations?

- RG 265.267 Section 912DAA requires AFS licensees to notify ASIC if there are reasonable grounds to believe that a reportable situation has arisen: see [RG 78](#) for more detail.
- RG 265.268 The obligation to report suspicious conduct under Rule 5.11.1 is in addition to the breach reporting obligation imposed on AFS licensees under s912DAA.

- RG 265.269 In contrast to the breach reporting obligation, Rule 5.11.1 requires notification to ASIC of information relating to the trading activities of clients, other market participants or any other person.
- RG 265.270 In addition, the obligation under Rule 5.11.1 applies to all market participants, not all of whom are AFS licensees (e.g. some foreign market participants are exempt from holding an AFS licence).
- RG 265.271 The reporting obligations in s912DAA and Rule 5.11.1 are distinct. A notification under Rule 5.11.1 does not relieve a market participant that is an AFS licensee from its obligation to report under s912DAA. There may be instances where a reportable matter is notified to ASIC in the first instance and then, after further inquiry to determine whether it is also a reportable situation by the AFS licensee under s912D, the AFS licensee also notifies ASIC of the reportable situation. In these instances, when submitting the reportable situation form, it will assist ASIC if market participants advise, in their prescribed form, that a suspicious activity report has been made to ASIC and state the date of the suspicious activity report.

How does this relate to reporting obligations to AUSTRAC?

- RG 265.272 A market participant may have an obligation under AML reporting legislation to submit an SMR to AUSTRAC if it forms a suspicion on reasonable grounds relating to insider trading or market manipulation. Many of these cases may also give rise to reasonable grounds to suspect there is a reportable matter that must be reported to ASIC under Rule 5.11.1(1).
- RG 265.273 To avoid double reporting, Rule 5.11.1(2) provides that, where a market participant has reported information to AUSTRAC under AML reporting legislation, it is not required to notify ASIC of the same information under Rule 5.11.1(1). ASIC has access to SMRs lodged with AUSTRAC.
- RG 265.274 It is important to note that market participants cannot discharge their obligation to report under AML reporting legislation by reporting to ASIC.
- RG 265.275 Market participants should refer to [How to comply and report: guidance and resources](#) on the AUSTRAC website—in particular, [Who and what we regulate: designated services and reporting entities](#) and [Reporting](#)—for more information about their obligations under AML reporting legislation.
- RG 265.276 We expect that the processes and procedures that a market participant has in place to comply with Rule 5.11.1 may not be the same as those it has in place to comply with the AML reporting legislation.

When must market participants notify ASIC?

- RG 265.277 A market participant must notify ASIC under Rule 5.11.1 as soon as practicable and via the [ASIC Regulatory Portal](#). We would expect that this is within three business days of determining that there is a reportable matter.
- RG 265.278 We expect a market participant's internal systems to ensure that the relevant staff are aware of potentially suspicious activity in a timely and efficient manner.

What should the notification contain?

- RG 265.279 Notification to ASIC under Rule 5.11.1 must contain details of the transaction or order (to the extent known to the market participant) and the reasons the market participant suspects there is a reportable matter.
- RG 265.280 As a general guide, we would expect a notification to contain:
- (a) the name and contact details of the person suspected of trading while in possession of inside information, or who placed the order or entered into the transaction that has, or is likely to have, one of the effects set out in Rule 5.11.1(b);
 - (b) the details of the order or transaction that is the subject of the notification, including the security, market, time of placement, price and volume;
 - (c) the recent trading history of the client if the reportable matter arises partly because a market participant considers an order or transaction is inconsistent with a client's recent trading history (i.e. for the previous three months);
 - (d) the client's investment profile and risk profile if the reportable matter arises partly because a market participant considers an order or transaction is inconsistent with a client's investment or risk profile; and
 - (e) a snapshot of specific trading or order book activity that illustrates the context of the order or transaction that is the subject of the notification.
- RG 265.281 As stated in RG 265.273, where information that would otherwise be required to be contained in the notification to ASIC under Rule 5.11.1 has already been reported to AUSTRAC under the AML reporting legislation, a market participant does not need to notify ASIC of the same information: Rule 5.11.1(2).

Confidentiality

- RG 265.282 Under Rule 5.11.2, a market participant must not disclose that it has notified ASIC of a reportable matter under Rule 5.11.1, nor disclose the information contained in the notification. This rule does not preclude a market participant

from communicating that it has obligations under Rule 5.11.1 generally, or from communicating to a client or trader that it has concerns about the conduct of that person, which may constitute an offence under the law or which may expose the market participant to risk.

Qualified privilege

RG 265.283 A market participant notifying ASIC under Rule 5.11.1 has qualified privilege under s1100A for the notification. Section 89 states that, where a person has qualified privilege, that person is not, in the absence of malice, liable to an action for defamation. Qualified privilege under the Corporations Act does not affect any right, privilege or immunity that a person may otherwise have: s89(3).

Note: Section 1100A(1)(a) refers to information that a person is required to give under Ch 7 of the Corporations Act. Section 761H provides that, in Ch 7, a reference to a provision of Ch 7 includes (unless a contrary intention appears) a reference to other instruments made for the purposes of Ch 7.

RG 265.284 A market participant that has qualified privilege under s1100A for the notification is also not liable for any action based on breach of confidence in relation to the notification: s1100A(3).

RG 265.285 This protection extends to the officers, employees and representatives of a market participant: s1100D.

I Crossing systems

Key points

A market participant that operates a crossing system for financial products able to be traded on a market must:

- make certain notifications to ASIC and users of the crossing system, and make information about the operation of the crossing system publicly available on a website;
- provide fair treatment to all users of a crossing system;
- monitor activity on the crossing system, report significant breaches of its user obligations and operating procedures to ASIC, and report suspicious activity to ASIC;
- use standard tick sizes for trading in equity market products; and
- have controls to ensure the efficiency and integrity of the crossing system.

Scope and application

RG 265.286 Chapter 5A of the Securities Markets Rules and this section of the guide apply to market participants that operate crossing systems.

RG 265.287 In the Securities Markets Rules, a ‘crossing system’ is defined as any automated service provided by a market participant that matches or executes client orders with orders of:

- (a) the market participant;
- (b) other clients of the market participant; or
- (c) any other person whose orders access the automated service, otherwise than on an order book of a licensed market.

RG 265.288 Transactions on crossing systems rely on one or more of the pre-trade transparency exceptions in Section J.

RG 265.289 Crossing systems include:

- (a) internalisation systems where client orders are automatically matched with orders of the crossing system operator (i.e. against the market participant’s own account) or with orders of other clients; and
- (b) other systems, including those operated on an agency basis, which match user flow.

RG 265.290 Crossing systems may operate on technology built and operated exclusively by a crossing system operator or they may be developed by a third-party vendor. A full list of [crossing systems that are registered with ASIC](#) is available on our website.

- RG 265.291 Some market participants provide an ‘aggregator’ service. An aggregator provides connections between multiple crossing systems and facilitates the transmission and receipt of orders from a market participant to a crossing system (e.g. through an algorithm or smart order router).
- RG 265.292 It is also possible that two crossing system operators may establish direct connections between their crossing systems separately from an aggregator. This means that it is possible for a client’s order to be executed in a crossing system operated by a market participant that the client does not have a relationship with.

Note: In this guide, the term ‘user’ refers to any user of a crossing system, including a client of the crossing system operator and any other market participant that may have its client orders routed to the crossing system.

Notifying ASIC of intention to operate a crossing system

- RG 265.293 A market participant that operates, or proposes to operate, a crossing system must lodge a crossing system initial report with ASIC no later than 20 business days before beginning to operate the crossing system. Table 11 sets out the details required to be included in a crossing system initial report.

Table 11: Reporting requirements to be provided to ASIC about the nature of a crossing system

Matters	Rule 5A.1.1 reporting requirement	Guidance on details of information
Date of commencement	The date on which the crossing system began operating, or will begin to operate, in this jurisdiction	No further guidance
Clients	Access to the crossing system, including the criteria for determining persons who are eligible to use the crossing system and whether the crossing system transmits orders to other crossing systems, or receives orders from other crossing systems	For example, retail clients, wholesale clients and buy-side only
Matching process	How orders are prioritised and matched, and transactions are executed, on the crossing system	For example, if the crossing of orders is done on price–time priority, size priority or some other basis
Price determination	How the price for transactions on the crossing system is determined	For example, at the midpoint of the best available bid and offer on the order books of licensed markets
Fee structure	The fees, commissions, rebates or other charges paid by or to the market participant and users of the crossing system	This includes incentives paid by or to the market participant and/or users of the crossing system
Principal trades	Whether the market participant that operates the crossing system deals as principal with clients on the crossing system and, if so, the arrangements the market participant has in place for the management of conflicts of interest that may arise between the market participant and those clients	This includes all principal dealings, including facilitation and house desk

Matters	Rule 5A.1.1 reporting requirement	Guidance on details of information
Reporting to a licensed market	<p>The name of the market or markets to which:</p> <p>(a) transactions executed on the crossing system are reported; and</p> <p>(b) orders matched on the crossing system are transmitted for execution</p> <p>Where more than one market is named, the circumstances in which each market is used for the purposes set out in paragraphs (a) and (b) above</p>	<p>Under Rule 5.1AA.1, all trading by a market participant on its own account or on behalf of clients must be done under the rules of a licensed market. This means that all transactions matched or executed on a crossing system must be reported to a market operator</p> <p>Where more than one licensed market is used, the circumstances in which each is used (e.g. Market X for the top 200 stocks and Market Y for the remainder)</p>
Life of an order	<p>Whether orders on the crossing system are purged at the end of the day or remain on the crossing system until matching or execution on the crossing system next resumes. If the orders are not purged, the period of time they remain on the crossing system</p>	No further guidance

RG 265.294 Under Rules 5A.2.1(4) and 5A.2.2(4) crossing system operators are also required to give ASIC a copy of the disclosures they make about their crossing systems to the public and to their clients: see RG 265.298–RG 265.318 for further information about publicly available crossing system information and non-public crossing system information. The information in these disclosures to the public and to clients is more detailed than the information required to be lodged with ASIC in a crossing system initial report.

RG 265.295 A crossing system operator may fulfil its obligation to lodge a crossing system initial report under Rule 5A.1.1 by giving ASIC copies of the more detailed disclosures under Rules 5A.2.1 and 5A.2.2 no later than 20 business days before the crossing system commences operation.

Monthly reporting to ASIC on trading activity and system changes

RG 265.296 A crossing system operator that operates a crossing system must submit a monthly report to ASIC in certain circumstances: Rule 5A.1.2. A monthly report must be submitted if there have been any changes during that calendar month to the information last provided to ASIC in the operator's crossing system monthly report or crossing system initial report: Rule 5A.1.2(a).

RG 265.297 Under Rule 5A.1.2(b), the report must be prepared within 20 business days of the end of the calendar month and must be provided to ASIC as soon as practicable after it has been prepared.

Public disclosure about crossing system operations

RG 265.298 Under Rule 5A.2.1, a crossing system operator must make available on a publicly accessible website the information listed in columns 1 and 2 of Table 12. More detailed guidance about what we expect a crossing system operator to disclose is provided in column 3.

Table 12: Public disclosure requirements for crossing system operators

Type of information	Publicly available crossing system information	Guidance
Operator	The code identifying the crossing system	The full legal name of the crossing system operator should be identified in addition to a code that uniquely identifies the crossing system. We may publish on our website the codes assigned to and applicable to specific crossing systems
Start date	The date the crossing system began to operate in this jurisdiction	Where a crossing system has been decommissioned or replaced by another crossing system, the market participant should disclose the date the system originally commenced operating, the date it ceased operating and the date the new crossing system commenced operating
Products	The types of financial products traded on the crossing system	For example, equity market products, CGS depository interests and warrants
Access criteria	The criteria used to determine eligibility to use the crossing system	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> (a) the types of users that can gain access to the system, such as: <ul style="list-style-type: none"> (i) <i>liquidity providers</i>—liquidity providers, whether formally required to or not, during the course of a day, commonly enter regular buy and sell orders in a particular financial product, on their own behalf, into a crossing system or other facility. Orders entered do not include the principal leg of client facilitation. Examples of liquidity providers include market makers and high-frequency traders; (ii) <i>crossing system operators</i>—where they can trade as principal (including when trading on behalf of a related body corporate); (iii) <i>retail clients</i>; and (iv) <i>institutional clients</i> (e.g. fund managers); (b) the minimum requirements (e.g. technical capabilities) and the process for gaining access to the system; and (c) whether access arrangements for the crossing system are uniform across all users and, where they differ, provide details (e.g. whether some users are permitted to have direct access to the crossing system)

Type of information	Publicly available crossing system information	Guidance
Aggregation and other crossing systems	<p>If orders in the crossing system can be executed or matched in another crossing system because they are transmitted to one or more other crossing systems, or if they are executed or matched in the market participant's crossing system with orders received from one or more other crossing systems:</p> <p>(a) the code identifying the other crossing system(s); and</p> <p>(b) for each crossing system identified in (a), whether orders are transmitted to the other crossing system, or whether orders are received from the other crossing system, or both</p>	<p>The full legal name of the other crossing system operators should be identified in addition to a code that uniquely identifies the crossing system. We may publish on our website the codes assigned to and applicable to specific crossing systems</p>

Making the information publicly available

- RG 265.299 Rule 5A.2.1(1) requires a crossing system operator to make the information available on a website that is publicly available and free to access.
- RG 265.300 We expect the information to be made available on the crossing system operator's website using a constant, stable deep link where the web address does not change even when the information on the website changes.

Updating the information

- RG 265.301 When a crossing system operator implements a change to the operation of the crossing system described in Table 12, it must update the website within one business day: Rule 5A.2.1(3). We do not expect short-term 'pilot' changes to be updated. However, when the final version is launched, the website should be updated within one business day.
- RG 265.302 Crossing system operators should ensure that it is made clear on the website when the information was last updated and what information has been changed by an update.

Notifying ASIC of the information and the website address

- RG 265.303 Rule 5A.2.1(4) requires a crossing system operator to provide ASIC with a copy of the information that it has made publicly available and to provide to ASIC each update to the information within one business day of making the information available on its website. In fulfilling this requirement, we expect a crossing system operator to submit the relevant form on the [ASIC Regulatory Portal](#).
- RG 265.304 [Publicly available crossing system information](#) is also accessible via links on our website.

Disclosure to crossing system clients

- RG 265.305 It is important that clients of a market participant that operates a crossing system understand the operating procedures of the crossing system. Rule 5A.2.2 requires a crossing system operator to provide the following information to a client before accepting an order from them for the first time:
- (a) a copy of the publicly available crossing system information outlined in Table 12, or inform the client of the web address where the information is available (Rule 5A.2.2(1)(a)); and
 - (b) the non-public crossing system information outlined in columns 1 and 2 of Table 13 (Rule 5A.2.2(2)).
- Note: A more detailed description of the non-public crossing system information we expect a crossing system operator to disclose to its clients is provided in column 3 of Table 13.
- RG 265.306 Each time a crossing system operator makes a change to the publicly available crossing system information or the non-public crossing system information, it must inform each of its clients of the change before it accepts an order from the client: Rules 5A.2.2(1)(b) and (3).
- RG 265.307 We expect that the information provided by each crossing system operator should be standardised and consistent (i.e. not tailored for individual clients). However, it may differ for different groups of clients (e.g. wholesale and retail clients).
- RG 265.308 A crossing system operator only needs to provide the information outlined in Table 13 to a client in relation to its own crossing system. We do not expect it to provide this information in relation to other crossing systems that a client's order may access. However, we do expect the crossing system operator to make clients aware of the other crossing systems its orders may be routed to: see 'Aggregation and other crossing systems' in Table 12.

Table 13: Non-public client disclosure requirements for crossing system operators

Type of information	Non-public crossing system information	Guidance
User obligations	A description of the obligations imposed on users of the crossing system by the operator of the crossing system	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> (a) how users are expected to access the crossing system and enter orders into the crossing system; (b) technical specifications users must comply with; (c) controls for maintaining the efficiency and integrity of the crossing system; and <p>Note: A crossing system operator has obligations under Rule 5.6.1 or Rule 5A.5.2 in relation to the efficiency and integrity of its crossing system.</p> <ul style="list-style-type: none"> (d) circumstances where access may be suspended or constrained (e.g. during a system failure) and any trading protocols or behavioural expectations when users access and use the crossing system
Order types	A description of the order types available to those who have access to the crossing system, including a description of the characteristics of each order type	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> (a) how the order types work, how price is determined for each order type and whether certain order types affect the order queue priority in the crossing system; (b) for each order type, whether it is available to all users who have access to the crossing system and, if not, the types of users that can use the order type and on what terms; and (c) whether the order type interacts with an exchange market or another crossing system (e.g. a shadowing arrangement)
Operations	<p>A description of the operation of the crossing system— including, but not limited to:</p> <ul style="list-style-type: none"> (a) how orders are managed, including how prices are determined and cancellations are managed; (b) details of any different treatment or arrangements for certain users or order types; (c) the level of anonymity given to orders, including whether indications of interest (IOIs) are allowed; (d) the circumstances in which principal orders may interact with other orders in the crossing system, and the nature of the principal orders (e.g. proprietary desk, facilitation or market maker) 	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> (a) the hours of operation of the crossing system; (b) how orders are prioritised and matched on the crossing system (e.g. price–time priority or some other basis); (c) how prices are determined (e.g. at the midpoint of the best available bid and offer (i.e. NBBO) or at the midpoint of the order prices), how the pricing process works (e.g. whether price may differ for passive and aggressive orders), and which orders receive more favourable pricing (e.g. if the price of matched orders has to be rounded up or down by a tick size to comply with the pre-trade transparency exception in Rule 6.2.3 for a trade with price improvement); (d) how order and trade cancellations are managed; (e) how a system outage is managed, including the execution venues an order may be routed to, in the event of a system outage or system stress (see RG 265.354); (f) attributes of orders that may be controlled by users (e.g. minimum order quantity, opting out of certain types of order flow such as principal flow or liquidity providers); (g) details of any different treatment or arrangements for certain users or order types. Where one or a group of users have access to certain features of a crossing system and others do not, details should be included

Type of information	Non-public crossing system information	Guidance
Operations (cont.)	<p>(e) whether orders of related bodies corporate of the operator enter the system and, if so, how conflicts (arising because orders of related bodies corporate enter the crossing system) are managed;</p> <p>(f) how any other conflicts of interest that may arise are managed; and</p> <p>(g) if there are liquidity providers or market makers whose orders access the crossing system, the commitments (if any) they may have and any benefits they receive</p>	<p>(h) the circumstances in which principal orders (including orders of a related body corporate) may interact with other orders in the crossing system, and the nature of the principal orders (e.g. proprietary desk, facilitation, swap, liquidity provider). The description of circumstances should include whether principal orders and client orders are routed into the crossing system through the same smart order router or algorithm;</p> <p>(i) the arrangements for managing conflicts of interest that may arise in relation to the crossing system, including in relation to principal trading in the crossing system;</p> <p>(j) if there are liquidity providers whose orders access the crossing system, or aggregators transmitting orders into the crossing system, the:</p> <ul style="list-style-type: none"> (i) commitments (if any) they may have to supply liquidity (e.g. the minimum period of time within the day they are to provide quotes, minimum order sizes); and (ii) any benefits they receive (e.g. lower fees, order priority, favourable price outcomes, access to order types not available to all users); <p>(k) the licensed market or markets to which transactions are reported. Where more than one licensed market is used, the circumstances in which each is used (e.g. Market X for the top 200 stocks and Market Y for the remainder);</p> <p>(l) whether orders on the crossing system are purged at the end of the trading day or remain on the crossing system until matching or execution next resumes. If orders are not purged, the period of time they remain on the crossing system; and</p> <p>(m) how system failures are managed, including when users will be informed and how users' orders will be managed during system failures</p>
Fees	<p>The fees imposed for orders to gain access to the crossing system, or to be matched or executed in the crossing system, and an indication whether those fees differ from (e.g. by being in addition to) the market participant's standard fees</p>	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> (a) disclosure of fees charged by a crossing system operator to allow another crossing system to gain access to the crossing system; (b) disclosure where there are different fees for different types of users (e.g. liquidity providers) and a description of how the different fee arrangements apply in relation to the type of use of the crossing system. We do not expect the actual fee to be disclosed; and (c) where there are no additional fees beyond standard commission, this should be disclosed <p>Where fees are part of a commission sharing arrangement, and the commission does not depend on a particular execution venue, then the commission sharing arrangements do not need to be disclosed</p>

- RG 265.309 When describing the operation of the crossing system we expect there to be sufficient detail to enable a client to identify the key features of the system's operations.
- RG 265.310 We expect that, where retail clients use a crossing system, the disclosure to them about the matters in Table 13 is clear, concise and effective.

Providing the information to clients

- RG 265.311 A crossing system operator must provide a document containing non-public crossing system information to each client before accepting an order from the client for the first time: Rule 5A.2.2(2)(a).
- RG 265.312 It is not necessary for clients to acknowledge or consent to this disclosure. We consider that the disclosure may be made in printed or electronic form, including via email with hyperlinks or references to a website. This is the same approach as for FSGs in [RG 221](#).
- RG 265.313 Where a client asks for the non-public crossing system information in hard copy form (e.g. if they do not have access to electronic communications), we expect the crossing system operator to provide it to them in this form.

Updating the information

- RG 265.314 A crossing system operator must update its non-public crossing system information within one business day of implementing changes to the operation of the crossing system where those changes affect the accuracy of information disclosed under Rule 5A.2.2(3) and described in Table 12 and Table 13. A crossing system operator must provide the updated information to clients before accepting an order from the client after the update has been made. Clients only need to be notified about final system changes: see RG 265.301.
- RG 265.315 We expect that the notification will be made when there is a material change to the crossing system, particularly when it affects a client's use of the crossing system. For example, in relation to how orders are managed:
- (a) we expect clients to be notified when the change affects the order types available, how the price of an order is determined, or how the priority of orders is determined; and
 - (b) we would not expect clients to be notified when there are technical changes to the crossing system—for example, enhancement to the speed at which it operates—which do not affect the logic of how, for example, price or priority is determined.
- RG 265.316 A crossing system operator should consider providing advanced notice to its clients about planned changes to its crossing system where there are material changes to the way a user may access the crossing system or to the execution outcome (e.g. price) a user may expect to obtain from the crossing system.

- RG 265.317 Where the update is provided on a website, we expect that steps should be taken to ensure that clients are aware of the new information on the website. This may be done through an email with a hyperlink to the website, or through another form of written documentation (paper or electronic).

Notifying ASIC of the information

- RG 265.318 Rule 5A.2.2(4) requires a crossing system operator to provide ASIC with the non-public information that has been made available to its clients and each update to the information within one business day. In fulfilling this requirement, we expect a crossing system operator to submit the relevant form on the [ASIC Regulatory Portal](#).

Fair treatment of users

Fair treatment of all users of a crossing system

- RG 265.319 Rule 5A.3.1 requires a crossing system operator to ensure that:
- (a) the crossing system is operated by a common set of procedures that balances the interest of all users; and
 - (b) the procedures do not unfairly discriminate between crossing system users.
- RG 265.320 This is to ensure that users are treated in a fair and impartial manner and that retail clients are treated fairly compared to wholesale and principal users.
- RG 265.321 The requirement to treat users fairly does not prevent a crossing system operator from providing less favourable treatment for its own use of the crossing system or that of a related body corporate (Rule 5A.3.1(2))—for example, providing client orders with time priority over principal orders.
- RG 265.322 In complying with Rule 5A.3.1, we expect a crossing system operator to develop a common set of operating procedures that address the matters in Table 12 and Table 13.

Fairness and priority in dealing

- RG 265.323 Rules 5A.3.2 and 5A.3.3 relate to fairness and priority when dealing with client orders in a crossing system. They are similar to Rules 5.1.3 and 5.1.4 in relation to dealings on a market's trading platform.
- RG 265.324 Guidance relevant to these rules is currently found in ASX Guidance Note 11 *Client order priority* (GN 11).

RG 265.325 Rule 5A.3.3(1)(h) specifies that a crossing system operator’s principal orders are not to be knowingly interposed between orders of its clients that would otherwise have crossed in its crossing system. We consider that a crossing system that systematically matches client orders with principal orders, without considering client orders that are available to match, would be inconsistent with this requirement.

Opting out of a crossing system

RG 265.326 Under Rule 5A.3.4, a crossing system operator must permit a user of the crossing system to opt out of having their orders sent to the crossing system or another market participant’s crossing system. The crossing system operator must not impose any additional operational or administrative requirements as a consequence of a client electing to opt out.

RG 265.327 Additional operational or administrative requirements include requiring users who opt out to contact the crossing system operator on a trade-by-trade basis through a different mechanism to their usual broking arrangements.

RG 265.328 Enabling a user to elect to opt out of a crossing system, or any form of trading that occurs away from a pre-trade transparent order book, does not affect a market participant’s best execution obligation: see RG 265.145–RG 265.148 (retail client instructions) and RG 265.153–RG 265.158 (wholesale client instructions).

Monitoring and suspicious activity reporting

Monitoring the use of a crossing system

RG 265.329 Rule 5A.4.1 requires a crossing system operator to monitor the use of its crossing system for compliance with the:

- (a) obligations that the crossing system operator has imposed on the user in relation to the crossing system as discussed in ‘user obligations’ of Table 13; and
- (b) the operating procedures of the crossing system as described in RG 265.322.

RG 265.330 The monitoring that we expect a crossing system operator to undertake will vary depending on the nature, size and complexity of the crossing system and the crossing system operator’s business. The types of factors that may warrant higher levels of monitoring include, for example, whether:

- (a) a sophisticated matching mechanism is in place—for example, where there are different order types available, or matching can occur on a basis other than price–time priority;

- (b) there are connections between the crossing system and other crossing systems or trading venues—for example, whether orders from other crossing systems may enter and match in the crossing system or orders from the operator’s own crossing system may enter and match in other crossing systems;
- (c) it is possible for one or more users to directly access and enter orders into the crossing system;
- (d) there are liquidity providers active in the crossing system or otherwise large volumes of order messages;
- (e) the crossing system operator is aware that users are using order types or ‘gaming’ the matching algorithm for possible manipulative or abusive conduct; and
- (f) there is principal trading in the crossing system.

RG 265.331 Where the crossing system is large and complex and there are large volumes of orders, or orders entering the system from other crossing systems, the crossing system operator should consider monitoring activity in real time or at least having in place adequate filters and controls that it monitors in real time. This will enable a crossing system operator to effectively meet its responsibilities to ensure the efficiency and integrity of its crossing system and meet the requirement to have appropriate controls in place: see RG 265.347–RG 265.351.

RG 265.332 Post-trade monitoring may be adequate where a crossing system:

- (a) does not interact with other crossing systems;
- (b) has a simple order and matching process—for example, a midpoint of the NBBO;
- (c) has relatively low order and trade volumes; and
- (d) does not have clients directly accessing the system.

RG 265.333 Any monitoring (whether manual or automated, real-time or post-trade) could include, for example, monitoring:

- (a) whether users have complied with their user obligations and the operating procedures;
- (b) for spikes in order and trading volumes that may affect the efficiency and integrity of the crossing system;
- (c) for bait and switch activity, being the placement of a bona fide order on one side of the crossing system while simultaneously sending numerous small but aggressive orders on the other side of the crossing system. The purpose being to ‘bait’ other client interests to react and trade with the bona fide order;

- (d) for pinging-like activity, being the use of small-sized tradeable orders to detect the existence of a large bona fide buyer or seller to trade ahead of the large order flow;
- (e) the use of order types that may be inconsistent with their intended purpose as outlined in the crossing system's operating procedures and disclosures made to clients (see 'order types' in Table 13);
- (f) activity that has interfered with, or is likely to interfere with, the efficiency and integrity of the crossing system (see RG 265.347–RG 265.351);
- (g) where there is principal trading in the crossing system, that principal orders are not receiving more favourable outcomes than client orders; and
- (h) where a crossing system promotes itself as providing a specific benefit (e.g. being a 'safe harbour' from high-frequency traders or an execution venue of 'natural liquidity'), that activity in the crossing system is consistent with such disclosures.

RG 265.334 We expect that a crossing system operator's monitoring activity will help the crossing system operator to determine whether the filters and controls it has put in place ensure the efficiency and integrity of its crossing system: see RG 265.347–RG 265.351.

Managing breaches identified through monitoring activity

RG 265.335 A crossing system operator must also take action to ensure that any breaches identified as part of its monitoring activities do not recur: Rule 5A.4.1(1)(c). To comply with Rule 5A.4.1(1)(c), we expect crossing system operators to have policies and procedures for managing suspected breaches. The policies and procedures may include:

- (a) documenting inquiries made on suspected breaches, and the results of these inquiries;
- (b) actions that may be taken for certain types of breaches; and
- (c) internal escalation policies and procedures and external and internal notifications to be made in relation to types of breaches.

Notifying ASIC of breaches

RG 265.336 Rule 5A.4.1(2) requires a crossing system operator to notify ASIC, as soon as practicable, of all significant breaches it identifies during the course of its monitoring activities. In assessing what constitutes a 'significant' breach, a crossing system operator is not limited to considering a potential breach of the Corporations Act or market integrity rules. The crossing system operator should assess:

- (a) the types of users that access the crossing system and whether the activity or conduct of concern was targeted against particular types of users;

- (b) the nature of the activity or conduct of concern (e.g. whether it is repetitive);
- (c) the potential profitability of the activity or conduct of concern; and
- (d) any potential effects on the efficiency and integrity of the crossing system, and other execution venues. We do not expect a significant breach of the commercial terms between the crossing system operator and client to be reported to us.

RG 265.337 A crossing system operator must give ASIC written notification of the breach as soon as practicable: Rule 5A.4.1(2). We would expect to be notified within three business days of determining that there is a notifiable matter. This is consistent with our expectations for suspicious activity reporting.

Record keeping

RG 265.338 Rule 5A.4.1(3)(a) requires a crossing system operator to maintain records that document its monitoring activities for a period of seven years. We expect these records to include:

- (a) details of the monitoring activities the crossing system operator has undertaken; and
- (b) results of the monitoring activities, including details of inquiries made and any communications that have been sent to clients, internal management and ASIC about the monitoring activities.

RG 265.339 Crossing system operators must also maintain records of breaches that it has identified for a period of seven years: Rule 5A.4.1(3)(b).

Reporting suspicious activity in a crossing system

RG 265.340 A market participant that operates a crossing system is required by Rule 5A.4.2 to notify ASIC if it has reasonable grounds to suspect that a person has placed an order, or entered into a transaction, on a crossing system operated by a market participant:

- (a) while in possession of inside information; or
- (b) which has or is likely to have the effect of:
 - (i) creating an artificial price for trading in financial products on a financial market operated in this jurisdiction;
 - (ii) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a financial market operated in this jurisdiction;
 - (iii) creating or causing the creation of a false or misleading appearance of active trading in financial products on a financial market operated in this jurisdiction; or

- (iv) creating or causing the creation of a false or misleading appearance with respect to the market for, or price for trading in, financial products on a financial market operated in this jurisdiction.

RG 265.341 The guidance in Section H on suspicious activity reporting obligations relating to orders placed or transactions entered into on a market applies to operators of a crossing system for reportable matters on a crossing system.

Tick sizes

RG 265.342 For equity market products able to be traded on more than one market, we have harmonised tick sizes across trading venues to ensure consistency across those equity market products across all trading venues.

RG 265.343 A crossing system operator must not accept, display or queue orders in its order book in tick sizes less than those outlined in Table 14, based on the price of the equity market product that is able to be traded on more than one market.

Table 14: Tick sizes for equity market products able to be traded on more than one market

Price of equity market product	Tick size
Greater or equal to \$2	\$0.01
Priced between \$0.10 and \$2	\$0.005
Priced at less than \$0.10	\$0.001

RG 265.344 A minimum tick size of \$0.001 also applies in relation to equity market products priced at less than \$0.10 that are admitted to quotation on the ASX market or admitted to quotation on the Cboe market under the operating rules of the Cboe market.

RG 265.345 Rule 5A.5.1(2) provides an exception for orders that, if executed, would meet the pre-trade transparency exceptions for block trades and large portfolio trades. There is also an exception for orders matched at the best midpoint for trades that meet the price improvement pre-trade transparency exception: see Section J.

RG 265.346 We expect a crossing system operator to apply the tick sizes in Table 14 to all transactions that are reported to a market operator under Rule 6.3.1, unless relying on these exceptions: see RG 265.409–RG 265.427.

Systems and controls

Efficiency and integrity controls

RG 265.347 Rule 5A.5.2 requires a crossing system operator to have:

- (a) appropriate automated filters designed to ensure the efficiency and integrity of its crossing system (Rule 5A.5.2(1)); and
- (b) controls that enable the immediate suspension or cancellation of orders in a series of related orders (Rule 5A.5.2(2)).

Note: Rule 5A.5.2 only applies to crossing system operators who are not otherwise subject to Rules 5.6.1 and 5.6.3 in relation to their crossing system(s). Guidance on the responsible use of, and system and control requirements for, AOP in relation to crossing system operators who are subject to these rules may be found in [RG 241](#).

RG 265.348 In relation to the obligation in Rule 5A.5.2(1), filters are pre-trade controls that establish points at which orders are tested and, by exception, where the system may determine an action other than passing them directly into the crossing system. In practical terms, an automated filter can usually do one of four things in relation to any given order (depending on the settings of the filter parameters):

- (a) pass the order into the crossing system;
- (b) pass the order into the crossing system but identify it as an exception on exception reports generated by the system for subsequent analysis;
- (c) pass the order to an appropriate person for review—this could include personnel on an electronic trading desk or a DTR—and a decision as to whether the order may be submitted to the crossing system or routed to another execution venue; or
- (d) reject the order outright.

RG 265.349 We recognise that, given the differences in types of business conducted by crossing system operators, there must be some degree of flexibility in determining what constitutes ‘appropriate’ filters for each crossing system operator. The types of filters will depend on the crossing system operator’s capabilities; the nature, scale and complexity of its business; and the particular risks that the crossing system operator has assessed as relevant to that business including financial, reputational and regulatory risks.

RG 265.350 The requirement in Rule 5A.5.2(2) relates to controls that enable a crossing system operator to effectively implement automated controls to limit a series of related orders from interfering with the efficiency and integrity of the crossing system. For example, this may be required if a user has flooded a crossing system with orders which have substantially slowed the system down so that it no longer operates efficiently. Such controls enable a crossing system operator to target its response to orders which may substantially disrupt its service offering to other users.

RG 265.351 In addition to having appropriate automated filters and controls, we expect a crossing system operator to consider the resources it may need to cope with the effects of stressed market conditions on its crossing system, including the adequacy of any disaster recovery and capacity management with respect to its crossing system operations. In managing client orders in the event of stressed market conditions, this may include switching to a backup site or bypassing the crossing system and routing to another execution venue (e.g. a licensed exchange market). Whatever the case, these arrangements should not result in a worse outcome for the crossing system operator's clients.

Notifications of crossing system outages

RG 265.352 Rule 5A.2.3 requires crossing system operators to notify ASIC—and all users with orders in the crossing system at the time—where a system outage may materially affect the efficiency or proper functioning of the crossing system. Examples of matters that may be considered material include:

- (a) when orders can no longer be entered, amended or cancelled in the crossing system; or
- (b) when the matching facility in the crossing system ceases to function efficiently.

RG 265.353 We do not expect a crossing system operator to notify clients where, under the non-public disclosure requirements in Rule 5A.2.2, it has disclosed to clients:

- (a) how it will route an order that may be in the crossing system at the time of the outage; and
- (b) when it has discretion to on-route an order that may be in the crossing system at the time of the outage.

Note: See Table 13.

RG 265.354 To meet the requirements of Rule 5A.2.3, a crossing system operator should consider putting in place policies and procedures that clearly outline the steps to be followed if the crossing system experiences an outage. They should outline the period of time before the procedures are enacted and the process of notifying ASIC and users with orders in the crossing system.

RG 265.355 These notifications may be made by any means that the crossing system operator determines is most efficient, including through the use of a standardised email to all users. The crossing system operator should notify ASIC using the relevant form on the [ASIC Regulatory Portal](#).

RG 265.356 If a crossing system experiences an outage, and there are orders from another market participant that are affected by the outage, the notification should be made to the other market participant. This is because the crossing system operator may not know the contact details of the underlying client, and the market participant responsible for these clients is in the best position to take action that is in its client's best interests.

J Pre-trade transparency

Key points

Subject to certain exceptions, market participants must not enter into a transaction unless the order is first pre-trade transparent. Market operators must make information about pre-trade transparent orders available immediately.

Exceptions apply for block trades, large portfolio trades, trades with price improvement and certain trades outside market hours.

Pre-trade transparent orders must take priority over fully hidden orders in an order book.

Scope and application

RG 265.357 Parts 6.1 and 6.2 and this section of the guide apply to market operators that offer trading services in equity market products and CGS depository interests (collectively referred to as ‘relevant products’) and to market participants that trade in these products.

Note: [ASIC Market Integrity Rules \(Securities Markets\) Class Waiver 2018/258](#) grants participants of the NSXA and SSX markets a waiver from the obligation to comply with the pre-trade transparency provisions in Chapter 6 until 16 November 2022.

RG 265.358 Parts 6.1 and 6.2 and this section of the guide do not apply to transactions arising from:

- (a) the terms embedded in the relevant product, such as a redemption;
- (b) primary market actions (including issuance or allotment of, or an application or subscription for, a relevant product);
- (c) acceptance of an offer under an off-market takeover bid; and
- (d) stock lending or stock borrowing (Rule 6.1.8).

RG 265.359 Pre-trade transparency refers to information on bids and offers being made available before transactions occur. Together with post-trade information, it is generally regarded as central to both the fairness and efficiency of a market, and in particular to its liquidity and quality of price formation. This is also the view of IOSCO.

Note: See IOSCO, [Transparency and market fragmentation](#) (PDF 578 KB), report, November 2001 as updated by IOSCO, [Regulatory issues raised by changes in market structure](#) (PDF 675 KB), final report, December 2013, and IOSCO, [Principles for dark liquidity final report](#) (PDF 471 KB), final report, May 2011.

RG 265.360 Pre-trade transparency enables investors to identify trading opportunities, contributing to investor confidence that they will be able to execute a transaction. Investor confidence in a market can give other investors an

incentive to participate, contributing to liquidity and stimulating more competitive pricing. It also plays an important role for listed companies in valuing their assets and their ability to raise further funds, and it contributes to market participants' ability to achieve and evidence best execution. The market integrity rules require a high level of trading interest to be immediately pre-trade transparent.

RG 265.361 There have always been rules in the Australian market requiring market participants to transact on-market (or on the central limit order book since the move to electronic trading). This is based on the notion that price formation is most efficient when full supply and demand is allowed to interact. Pre-trade transparent orders on an order book are important because they:

- (a) establish a reference price, which in addition to their role in trading is important for capital allocation decisions and capital raising; and
- (b) create a deeper pool of 'accessible' liquidity than would otherwise be available, which keeps spreads tight and costs down for investors.

RG 265.362 However, there are limited circumstances where pre-trade transparency can adversely affect a market and investors in terms of price volatility and higher execution costs. Pre-trade transparency exceptions for large orders reduce the possibility of information leakage of these orders.

Orders and quotes to be pre-trade transparent

Market participant's obligation to be pre-trade transparent

RG 265.363 Subject to the exceptions in Rule 6.1.1(2) (see RG 265.364), a market participant must not enter into a transaction in a relevant product unless the order is first pre-trade transparent on an order book of a licensed market: Rule 6.1.1.

Exceptions

RG 265.364 There are a number of exceptions to the obligation on a market participant to submit orders to a pre-trade transparent order book: Rule 6.1.1(2) and Part 6.2. They are for:

- (a) block trades;
- (b) large portfolio trades;
- (c) trades with price improvement;
- (d) permitted trades during the post-trading hours period;
- (e) permitted trades during the pre-trading hours period; and
- (f) out of hours trades.

- RG 265.365 There are also exceptions to market operators making pre-trade information available about orders on their order book immediately: Rule 6.1.2(2). They are orders that result in:
- (a) block trades;
 - (b) large portfolio trades; and
 - (c) trades with price improvement.

RG 265.366 These exceptions are described below. Under Rule 6.1.6, where an order is executed in part, the exception ceases to apply unless the remainder of the order would have been entitled to the exception if it were a separate order.

Block trades (Rule 6.2.1)

RG 265.367 A market participant may enter into a transaction that is not entered into by matching a pre-trade transparent order on an order book if the transaction is a block trade.

RG 265.368 A block trade occurs in certain circumstances where the transaction is entered into:

- (a) by matching orders on an order book of a licensed market; or
- (b) by a market participant matching orders off an order book of a licensed market:
 - (i) on behalf of a client on one side of a transaction and on behalf of one or more clients on the other side;
 - (ii) on behalf of one or more clients on one side of a transaction and as principal on the other side; or
 - (iii) on behalf of a client (first client) on one side of a transaction and on the other side on behalf of one or more clients and as principal where the consideration for the transaction that is payable by or to the first client and all of the clients on the other side of the transaction in aggregate meets the thresholds referred to in RG 265.370.

RG 265.369 A block trade cannot include orders from more than one client on both sides of the transaction.

RG 265.370 The block trade exception only applies where the resulting transaction would result in a purchase or sale for a total consideration of:

- (a) \$1 million or more for Tier 1 equity market products;
- (b) \$500,000 or more for Tier 2 equity market products;
- (c) \$200,000 or more for Tier 3 equity market products (i.e. equity market products that are not Tier 1 equity market products or Tier 2 equity market products); or
- (d) \$200,000 or more for CGS depository interests.

RG 265.371 The equity market products that fall within each tier are published in legislative instruments and on our website. We will review the tiers at least quarterly and they will take effect 20 business days after registration or on a later date as specified in the legislative instrument.

RG 265.372 The relevant product that is the subject of the transaction must be issued by the same issuer, in the same class, with the same paid-up value.

Large portfolio trades (Rule 6.2.2)

RG 265.373 A market participant may enter into a transaction that is not entered into by matching a pre-trade transparent order on an order book if the transaction is a large portfolio trade.

RG 265.374 This exception only applies where there is a purchase or sale of at least 10 different classes of relevant products under a single agreement between a buyer and a seller where:

- (a) the aggregated consideration is not less than \$5 million; and
- (b) the consideration for each different class of relevant products forming part of the transaction is not less than \$200,000, although additional purchases and/or sales of less than this amount may be included.

Trades with price improvement (Rule 6.2.3)

RG 265.375 A market participant may enter into a transaction that is not entered into by matching a pre-trade transparent order on an order book if the transaction is a trade with price improvement.

RG 265.376 This exception only applies where the transaction is entered into at a price (at the time of execution) that is:

- (a) at a valid price step (i.e. tick size) that is both above the best available bid and below the best available offer; or
- (b) at the midpoint of the best available bid and best available offer, where:

$$\text{Midpoint} = \frac{\text{Best available bid} + \text{Best available offer}}{2}$$

Examples

RG 265.377 In Table 15, the best available bid is \$5.03 and the best available offer is \$5.06. A transaction relying on the trade with price improvement exception could be done at \$5.04, \$5.045 and \$5.05.

Table 15: Example of best available bid and offer

Market	Best bid	Best offer
Market A	\$5.03	\$5.07
Market B	\$5.02	\$5.06
Market C	\$5.02	\$5.07

RG 265.378 Where the spread (i.e. the difference between the best available bid and best available offer) is a single price step (e.g. \$5.04 and \$5.05), the trade with price improvement exception means that the trade must only be done at the midpoint price (i.e. \$5.045). The midpoint is not limited to the standard tick sizes for the relevant product in Rule 9.4.1. In this example, the tick size is 1 cent and the midpoint is half a cent.

Minimum order threshold

RG 265.379 The value of a transaction relying on the trade with price improvement exceptions must be greater than the threshold prescribed in Rule 6.2.3. The threshold is currently set at zero. The purpose of the threshold is to enable ASIC to quickly respond if there is, or we expect there to be, a shift of liquidity away from order books of licensed markets in the short term. Market participants should anticipate that a threshold greater than zero may apply in the future—and they should factor this into their business plans and system development.

Consolidated tape of best available bids and offers

RG 265.380 In compiling best available bid and best available offer data (i.e. NBBO), we expect market participants and market operators, or their service provider for this purpose, to:

- (a) consider all pre-trade transparent bids and offers from pre-trade transparent order books irrespective of the size and nature of the order (this includes small volume orders and orders that may result in a locked or crossed market);
- (b) compile the data in real time; and
- (c) have appropriate systems and controls in place to ensure data is collected and processed in a timely, accurate and reliable way.

RG 265.381 There will be circumstances when the bids and offers on a pre-trade transparent order book are not available for execution (e.g. during an auction period or during a technical failure). Where a pre-trade transparent order book is open, and any other pre-trade transparent order book does not have bids and offers available for execution, the NBBO should be determined by compilation of the bids and offers on those pre-trade transparent order books that are available for execution.

How this exception applies during a takeover or buy-back

- RG 265.382 A transaction relying on the trade with price improvement exception that is effected other than on an order book is:
- (a) not an ‘on-market’ transaction within the meaning of s9 of the Corporations Act—therefore, this transaction does not fall within the takeover exceptions permitted by Ch 6 of the Corporations Act for an on-market transaction; and
 - (b) not ‘in the ordinary course of trading’—therefore, this transaction does not fall within s257B(6) for a listed corporation conducting an on-market buy-back. Neither does it fall under the terms of ASIC relief for buy-backs by responsible entities of registered managed investment schemes under [*ASIC Corporations \(ASX-listed Schemes On-market Buy-backs\) Instrument 2016/1159*](#).

How this exception applies in a locked market

- RG 265.383 We consider that where there is no spread because the best bid and offer are the same (e.g. if the best bid is \$5.05 and the best offer is \$5.05), a transaction relying on this exception can only be done at the locked price (i.e. \$5.05—also the midpoint).

How this exception applies in a crossed market

- RG 265.384 A crossed market occurs when the best bid (e.g. \$5.05) exceeds the best offer (e.g. \$5.04). We do not expect this to occur often. It is likely to occur more often with volatile products, when orders are being entered before the market opens and as a result of increasing messaging traffic or latency. We expect that where it does occur, the arbitrage opportunity it creates means it will be very short-lived.
- RG 265.385 The trade with price improvement exception is intended to apply when there is a positive spread (i.e. the bid is lower than the offer). It is not intended to apply when there is a negative spread. We consider that if it is imperative to trade during a crossed market, trades can only be priced at the midpoint (i.e. in this example, \$5.045 where the bid is \$5.05 and the offer is \$5.04).

How this exception applies when there is no spread

- RG 265.386 We consider that where there is no spread because there is only one of a best bid or offer (e.g. the bid is \$5.05 and there is no offer), the trade with price improvement exception cannot be used.

Ensuring compliance with this exception

- RG 265.387 Under Rule 6.3.1(4A), market participants must have in place systems and controls to ensure that their trade reporting systems and associated filters only enable trades that are actually done with meaningful price improvement (trade with price improvement exception) to be reported to a relevant market

operator under the appropriate exception code. This will help market participants comply with Rule 6.3.1(4), requiring them to take reasonable steps to ensure that the post-trade information they report is and remains complete, accurate and up to date. We consider that there should be regular review of the arrangements and verification by a sufficiently senior executive.

- RG 265.388 In considering a market participant's compliance with these exceptions and Rule 6.3.1(4) on the reporting of off-order book trades, we have zero tolerance for error. We will not tolerate any variation away from a valid improved price on the best available bid and offer (for the trade with price improvement exception) of a trade as evidence that a trade complies with the exception.
- RG 265.389 Market operators are required to validate transactions reported to them for accuracy: see [RG 172](#) at RG 172.323–RG 172.328.
- RG 265.390 Market participants need to be prepared to manage transactions that are not accepted by market operators. Where a trade report is not accepted (i.e. it is rejected) by a market operator (and therefore not published), we will not consider market participants to have met their obligation under Rules 6.1.1 and 6.3.1 until the trade is cancelled, or amended so that it complies with the criteria for the exception and then is resubmitted and published: Rule 6.3.1(4B).
- RG 265.391 Market participants must understand and adapt to any contingency arrangements the relevant market operator may have in place if they cannot report as required by Rule 6.3.4 because of an outage in the market operator's systems. This may include a manual process.

Permitted trades during post-trading hours period (Rule 6.2.4)

- RG 265.392 This exception applies where the transaction occurs in the period from the earliest time that trading hours end on any market until 30 minutes after the latest time that trading hours end on any market and it:
- (a) completes an order received before the end of continuous trading (or if there is an auction at the end of trading hours, before that auction) on the market;
 - (b) comprises a bona fide hedge;
 - (c) completes an order that narrowly missed execution during an auction at the end of trading hours for a market;
 - (d) rectifies an error; or
 - (e) results in the transaction being sold by a nominee that holds the relevant products on behalf of a fund manager to another nominee that holds the products on behalf of the same funds manager and the market participant acts for both clients.

RG 265.393 This exception limits trading to what is essential to settle a market participant's books for the day. We consider it important to limit the type of trading that can occur during this period to minimise opportunities for regulatory arbitrage between transactions done on a licensed market and outside trading hours without constraint on price and size.

Permitted trades during pre-trading hours period (Rule 6.2.5)

RG 265.394 This exception applies where the transaction is a crossing that occurs in the period three hours before the start of trading hours on the responsible market operator's market until 15 minutes before the start of trading hours on that market:

- (a) which involves overseas resident clients on each side of the transaction, or an overseas resident client on one side with the market participant as principal on the other; and
- (b) where a market maintained by a recognised stock exchange in the overseas client's (or one of the overseas clients') country of residence is open for trading at the time. Each market may maintain a list of recognised stock exchanges in its operating rules.

RG 265.395 This exception is intended to prevent all trading for domestic clients and between market participants before the opening of markets to ensure maximum demand and supply in the opening auction and to minimise opportunities for regulatory arbitrage between transactions done on a licensed market and outside trading hours.

Out of hours trading (Rule 6.2.6)

RG 265.396 This exception applies where a transaction is executed after the end of the post-trading hours period and before the start of the pre-trading hours period on the next trading day. If the transaction is on behalf of a client, the transaction must be a crossing and the order must be received from the client during this period.

RG 265.397 During this period, transactions can occur between any parties without constraint on price and size.

Record keeping

RG 265.398 A market participant that relies on an exception in Rule 6.1.1 (see RG 265.364) must keep, for a period of seven years from the date of the transaction, records that enable the market participant to demonstrate that the transaction met the criteria for the exception: Rule 6.1.1(3).

RG 265.399 For transactions other than on an order book relying on the trade with price improvement exception, a market participant must record the best available bid and best available offer at the time the transaction was executed: Rule 6.1.1(2)(c).

- RG 265.400 We do not necessarily expect market participants to store this information in their own systems. For example, a market participant may rely on its supplier of consolidated bid and offer information to store the information. However, the market participant must have a process for accurately and efficiently accessing the information. We expect market participants to make the information available to ASIC for inspection on request.

Content of pre-trade disclosures

- RG 265.401 Table 13 in Appendix 2 in [RG 172](#) outlines the minimum information market participants must make available to market operators and the minimum information market operators must make available as required by Rules 6.1.4 and 6.1.4A. This table also outlines the format we expect to be used for information to facilitate the data consolidation process.
- RG 265.402 We will keep this information under review. We intend to monitor industry developments to determine whether additional information should be made available and will consult if any changes are considered necessary.

Partly disclosed orders

- RG 265.403 A partly disclosed order is an order on an order book that is pre-trade transparent under Rule 6.1.5 with the exception of 'volume' if 'price' is transparent, or with the exception of 'price' if 'volume' is transparent on the order.
- RG 265.404 The value of the resulting transaction must be greater than the threshold prescribed in Rule 6.1.5. The threshold is currently set at zero. The purpose of the threshold is to enable us to quickly respond if there is, or we expect there to be, a shift of liquidity away from pre-trade transparent orders on an order book to non-pre-trade transparent orders on an order book of licensed markets in the short term. Market participants should anticipate that a threshold greater than zero may apply in the future and should factor this into their business plans and system development.

Iceberg order

- RG 265.405 Rule 6.1.5(2) clarifies that certain types of orders are partly disclosed orders for the purposes of the market integrity rules. An iceberg order is where the order is of a size specified by the market operator. The order is divided into separate parts and only a single part is pre-trade transparent with the remainder fully hidden until such time as the pre-trade transparent part has been executed and another part is made pre-trade transparent. This continues until the entire order is executed.
- RG 265.406 Under Rule 6.1.7, the hidden portion of the transaction does not have time priority. Therefore, as new portions of the hidden order become pre-trade transparent, they must go to the back of the queue on the order book.

K Post-trade transparency

Key points

Details of executed transactions must be made public by market operators immediately, with the exception of certain transactions.

Market participants that transact off-order book should continue to report details of the executed transaction to a market operator, and that information should be included in the market operator's feed of information. These transactions can be reported to any market operator that provides facilities for trading equity market products and CGS depository interests. Table 14 in Appendix 2 in [RG 172](#) outlines the minimum information that a market participant must report to a market operator.

Market participants must only make use of the publication delay while they are at risk as principal in connection with the transaction, and must otherwise report to a market operator immediately.

Market operators must make available post-trade information on reasonable commercial terms and on a non-discriminatory basis. Certain trading information must be publicly available at no cost after 20 minutes.

Scope and application

RG 265.407 Parts 6.3 and 6.4 and this section of the guide apply to market participants that trade in equity market products and CGS depository interests (collectively referred to as 'relevant products'). Rule 6.3.6A (course-of-sales information) applies to market participants that trade in financial products.

Note: [ASIC Market Integrity Rules \(Securities Markets\) Class Waiver 2018/258](#) grants participants of the NSXA and SSX markets a waiver from Part 6.3 of the Securities Markets Rules until 16 November 2022.

RG 265.408 Like pre-trade transparency, disclosure of volumes and prices about completed transactions (post-trade transparency) contributes to price formation. It also allows investors to assess execution quality and is an important component for transaction cost analysis.

Market participants' obligations to report data

RG 265.409 All transactions by market participants must be entered into under the rules of a licensed market: Rule 5.1AA.1. Under Rule 6.3.1(1), market participants are required to report post-trade information for a transaction in an equity market product or a CGS depository interest entered into off-order book to a market operator. The information that market participants must

report to market operators is outlined in Rule 6.3.7: see Table 14 in Appendix 2 in [RG 172](#). This table also outlines the format that we expect to be used for each field to facilitate the data consolidation process.

Note: Rule 7.4.2 requires a market participant to provide certain regulatory data to a market operator. This differs from a market participant's obligation to report post-trade information. For guidance on the provision of regulatory data, see Section L 'Regulatory data'.

RG 265.410 A market participant is required under Rule 6.3.1(4) to take reasonable steps to ensure that all post-trade information it reports is and remains complete, accurate and up to date.

RG 265.411 Market participants have a choice about which market operator to report to when transacting off-order book. These transactions can be reported to any market operator that provides facilities for trading relevant products.

Reporting off-order book transactions

RG 265.412 Under Rule 6.3.1, a market participant that transacts off-order book in accordance with the permitted pre-trade transparency exceptions (see Section J) must:

- (a) *during normal trading hours*—report post-trade information immediately to a market operator; and
- (b) *outside normal trading hours*—irrespective of where it is matched or executed, report post-trade information to a relevant market operator at least 15 minutes before the commencement of normal trading hours of the next trading day.

Note: The Securities Markets Rules allow for deferred publication of information in certain circumstances: see RG 265.416–RG 265.421.

RG 265.413 If a transaction is executed outside normal trading hours and outside the period in which there is an auction on the market, post-trade information must be reported to a market operator at least 15 minutes before the commencement of normal trading hours of the next trading day, or at an earlier time as required by the operating rules of the market operator under which the market participant determines the transaction has taken place.

RG 265.414 Where operating hours vary between markets, we deem 'normal trading hours' to be the earliest opening time and latest closing time (including auction periods) of all licensed markets dealing in relevant products that the market participant can access. For this purpose, a market is considered open for trading when there is continuous trading and during any auction period.

RG 265.415 Under Rules 6.3.1 and 5.1AA.1, transactions by market participants in relevant products that take place off-order book must be reported to a market operator—irrespective of where the counterparty is located (i.e. including if the counterparty is overseas).

Delayed reporting

- RG 265.416 There are some circumstances where immediate disclosure of executed trades can have negative market impacts.
- RG 265.417 Under Rules 6.3.1(2) and 6.4.1, reporting of large principal transactions in which the market participant acts as either buyer or seller may be delayed, if the transaction is at least:
- (a) \$15 million for equity market products in Category A;
 - (b) \$10 million for equity market products in Category B;
 - (c) \$5 million for equity market products in Category C; or
 - (d) \$2 million for equity market products in Category D, or CGS depository interests.

Note: The list of equity market products that fall within each category is published by the relevant market operator (taking effect the day after it is published).

- RG 265.418 Where a market participant buys or sells more than one class of relevant product under a single agreement, each constituent transaction should be assessed separately for the purpose of determining whether it is entitled to deferred publication.
- RG 265.419 Under Rule 6.3.1(2), reporting of large portfolio trades in which the market participant acts as principal as either buyer or seller may also be delayed. Large portfolio trades are included in the list of exceptions to pre-trade transparency in Section J.
- RG 265.420 The maximum period for delayed reporting is set out in Rule 6.3.1: see Table 16.

Table 16: Maximum period for delayed reporting

Time transaction is effected	Maximum period for delayed reporting
Before 1 pm on trading day	15 minutes before the commencement of normal trading hours on the next trading day
After 1 pm on trading day	No later than 1 pm on the next trading day

- RG 265.421 Under Rule 6.3.1(2), market participants must only make use of the delay while they are at risk as principal in connection with the transaction. When they are no longer at risk, they should report the information.

Who should report off-order book transactions?

- RG 265.422 It is important that transactions are only reported once to ensure data quality and to assist the data consolidation process. Only one party to a transaction should report the information to a market operator: Rule 6.3.2. This party should be:
- (a) where only one party is subject to the market integrity rules—the party subject to the rules (e.g. if the counterparty is an overseas party, the party that is a market participant and subject to the market integrity rules must report); or
 - (b) where more than one party is subject to the market integrity rules—the executing party, which is:
 - (i) the market participant that receives the order and executes the transaction without transmitting the order to another market participant (e.g. a market participant that executes an order through its own crossing system); or
 - (ii) if both parties receive the order and execute the transaction, either:
 - (A) the seller or the party acting on behalf of the seller (e.g. for manually negotiated trades); or
 - (B) as determined by agreement between the parties. In this case, the party representing the seller must document the agreement reached with the buyer that the buyer will report. This can be done on a case-by-case basis or by standing agreement between the parties (Rule 6.3.2(3)).
- RG 265.423 Where an order is routed to another market participant’s crossing system and the order is matched or executed in that other crossing system, we consider that the market participant that operates that other crossing system is the executing party and should report the trade.
- RG 265.424 All parties to a transaction must take reasonable steps to determine, before the transaction is executed, who will report the transaction: Rule 6.3.2(4). However, we acknowledge that the non-reporting party is not responsible for publication irrespective of whether the reporting party complies with its reporting obligation.
- RG 265.425 The following examples indicate which party should report the transaction in various circumstances.

Examples of reporting obligations

Market: A market participant receives a buy order from Client B for 5,000 products. The market participant, on the basis of its best execution policy, transmits the order to Market X for execution. Market X must publish a transaction of 5,000 products.

Agency: A market participant receives a buy order from Client B and a sell order from Client C—both for 5,000 products. The market participant, as agent, matches the orders of Client B and Client C. As the executing party, it must report a transaction of 5,000 products.

Principal: A market participant receives a buy order from Client B for 5,000 products. The market participant executes the transaction against its own account. As the executing party, it must report a transaction of 5,000 products.

Riskless principal: A market participant receives a buy order from Client B and a sell order from Client C for 5,000 products. To the extent permitted under Rule 5A.3.3(1)(h), and Rule 5.1.4(1)(h), the market participant simultaneously acts as the seller to Client B and buyer to Client C. As the executing party, it must report a single transaction of 5,000 products.

We expect that where a market participant accesses another market participant's crossing system and immediately undertakes a transaction with its client, only one transaction will be reported—by the market participant operating the crossing system in which the transaction occurred—and the crossing system venue will be identified in accordance with RG 265.448–RG 265.453.

Multi-fill (agency): A market participant receives a buy order from Client B for 5,000 products and a sell order from Client C for 8,000 products. The market participant, as agent, matches the order of Client B with 5,000 of Client C's order. The remaining 3,000 products from Client C are sold on Market X. The market participant, as the executing party for the agency component, must report a transaction of 5,000 products. Market X must publish a transaction of 3,000 products.

Principal hedge: A market participant receives a buy order from Client B for 5,000 products. The market participant executes the transaction against its own account, and then hedges its position on Market X. The market participant, as the executing party for the client transaction, must report a transaction of 5,000 products. Market X must publish a transaction of 5,000 products.

RG 265.426 Rule 6.3.1(4) requires a market participant to take reasonable steps to ensure that all post-trade information it reports to a market operator is and remains complete, accurate and up to date.

RG 265.427 Under Rule 6.3.1(4B), where a market participant reports an off-order book transaction to a market operator and the market operator notifies the participant that the transaction does not meet the criteria for an off-order book trade or the criteria for delayed reporting, the market participant must immediately amend or cancel the transaction or take other appropriate measures in relation to the transaction (having regard to the reporting market participant's obligations under Rules 6.1.1 and 6.3.1).

Content and format of post-trade disclosure

- RG 265.428 Market participants must report post-trade information to market operators as specified under Rule 6.3.7 (in the case of equity market products) or Rule 6.3.7A (in the case of CGS depository interests): see Table 14 in Appendix 2 in [RG 172](#). Market operators must make that information available.
- RG 265.429 We will keep under review the post-trade information that must be reported to market operators by market participants.

Which activities do not need to be reported?

- RG 265.430 Only those activities that constitute a transaction should be reported and each transaction should not be reported more than once. This is necessary to avoid duplication and misleading the wider market about the volume of trading.

Single transaction

- RG 265.431 Two matching trades entered at the same time and price with a single party interposed (i.e. riskless principal) is a single transaction for the purpose of the post-trade transparency obligations and should be reported as a single transaction to avoid duplication. Parties to the transaction must ensure that the transaction is made public as a single transaction and only reported once: Rule 6.3.1(5).

Activities that should not be reported

- RG 265.432 Under Rule 6.4.2, the following activities should not be reported:
- (a) passing of an order—an order only becomes a transaction at the point there is an execution. For example, when an order passes from one investor to another via a chain of firms, and when the movement is economically unchanged, only the final execution constitutes a transaction;
 - (b) primary market transactions (such as issuance allotment, subscription or takeover bid);
 - (c) stock lending or stock borrowing; and
 - (d) ETF special trades.

L Regulatory data

Key points

Market participants must provide specified regulatory data on orders and trade reports to market operators.

Market operators must record and provide to ASIC all regulatory data they receive.

We recommend that participants retain or record the data they send to a market operator.

Scope and application

- RG 265.433 Chapter 7 of the Securities Markets Rules on regulatory data for market supervision and this section of the guide apply to market participants that trade in equity market products (excluding futures and options) and CGS depository interests, and to market operators that offer trading services in these products: Rule 7.4.1.
- RG 265.434 Under Chapter 7, specified regulatory data on orders and trades must be provided by market participants to the relevant market operators: Rules 7.4.2(1) and (2).
- RG 265.435 Market operators offering trading services in these products must record the regulatory data they receive: Rule 7.4.3(1). Market operators must also provide this regulatory data to ASIC: Chapter 7.
- RG 265.436 The data provided by market participants to market operators and ASIC will help us to carry out our function of supervising and ensuring the integrity of Australia's licensed financial markets, including:
- (a) detecting market abuse;
 - (b) monitoring market orderliness and integrity; and
 - (c) analysing market structure, trends and quality.
- RG 265.437 Market participants must provide the information specified in Chapter 7:
- (a) in an order transmitted to an order book (Rule 7.4.2(1)); and
 - (b) in a trade report (i.e. an off-order book transaction) for each side of the transaction (buy and/or sell) for which the market participant acted as agent or as principal (Rule 7.4.2(2)).

- RG 265.438 Where an off-order book transaction involving two market participants is reported to a market operator, a market participant is not required to provide regulatory data for the other market participant's side of the transaction.
- RG 265.439 The information to be provided in trade reports under Chapter 7 is different from the post-trade information that must be provided by a market participant reporting under Chapter 6 of the Securities Markets Rules for off-order book transactions in relevant products.

Note: [ASIC Market Integrity Rules \(Securities Markets\) Class Waiver 2018/258](#) grants participants of the NSXA and SSX markets a waiver from the obligation to comply with the provisions of Part 7.4 of the Securities Markets Rules until 16 November 2022.

Confidentiality

- RG 265.440 Unlike the post-trade information that must be given to market operators under Part 6.3, the regulatory data under Part 7.4 (with the exception of information about the execution venue) is for ASIC's use rather than for public consumption, and must be treated confidentially.
- RG 265.441 Subject to exceptions required by law, the seeking of legal advice, or the provision of the data to a person acting as agent on behalf of the market participant (to the extent there is a legitimate business reason for that person to have access to the regulatory data), the data relating to orders and trade reports given to a market operator by a market participant under Part 7.4 must not be made available by the market participant in its raw or summarised form to any other person in connection with the order or trade report: Rule 7.4.1(3). The market participant must also take reasonable steps to ensure that its agent does not disclose the regulatory data to any other person, subject to the same exceptions.
- RG 265.442 We expect that market participants may wish to restrict access to this data internally, and specify to their system providers certain restrictions in that regard. In particular, we recognise that indiscriminate display of the origin of order information may concern some clients and we expect market participants will elect to limit the visibility of this information within their systems.

Data to be provided and recorded

- RG 265.443 Table 17 summarises the information market participants must provide to a market operator: Rule 7.4.4. A detailed description for each component of information is provided after the table. For the purposes of Rule 7.4.4(3), market participants and market operators must provide the data in accordance with the format and content requirements set out in Table 17.

- RG 265.444 There is no specific obligation in Chapter 7 of the Securities Markets Rules to record regulatory data sent by a market participant to a market operator. However, we recommend that market participants retain or record the data they send to a market operator.
- RG 265.445 This will:
- (a) enable a market participant to demonstrate compliance with Rule 7.4.4; and
 - (b) aid a market participant's compliance with Rule 7.4.4(5). This rule requires a market participant to take all reasonable steps to consistently provide the same code, notation or number for the same information in subsequent orders or trade reports.
- RG 265.446 We also remind market participants of existing order and trade record-keeping requirements under other market integrity rules, including the requirements under Rules 5.5.3 and 5.6.3(b).
- RG 265.447 Currently, there is no requirement for market participants to comply with the regulatory data requirements in Rule 7.4.4 in relation to 'booking purposes' transactions. A booking purposes transaction is used for internal accounting and book-keeping purposes. For example, to correct a client's identification on a trade.

Table 17: Summary of data to be provided by market operators and market participants

Data	Description	Content/format	Required for order	Required for trade report
Execution venue	The venue (licensed market, crossing system or other facility), if any, on which the transaction occurred	The code for identifying: (a) ASX TradeMatch is 'ASXT'; (b) ASX Centre Point is 'ASXC'; (c) the Cboe market is 'CHIA'; (d) a crossing system is the crossing system ID published by ASIC in a legislative instrument and on our website See RG 265.448–RG 265.453	No	Yes
Capacity of market participant	Describes the capacity in which a market participant has submitted an order or entered into a transaction	Principal ('P'), agent ('A') or both ('M') See RG 265.455–RG 265.461	Yes	Yes

Data	Description	Content/format	Required for order	Required for trade report
Origin of order information for agency orders and transactions	Information that assists identification of the person who provided instructions to place an order or enter into a transaction	<p>One of the following (generally, in order of preference) used consistently:</p> <ul style="list-style-type: none"> (a) a client's ACN, ARBN or ARSN (or an equivalent form of identification in an overseas jurisdiction), or global LEI; (b) an internal client identifier; (c) user login identifier; (d) CHES HIN; (e) internal account identifier; or (f) adviser reference <p>If there is no single source, 'VWAP', 'TWAP' or another identifier, used consistently</p> <p>See RG 265.462–RG 265.474</p> <p>Note 1: ACN = Australian Company Number; ARBN = Australian Registered Business Number; ARSN = Australian Registered Scheme Number; LEI = Legal Entity Identifier; and CHES HIN = CHES Holder Identification Number.</p> <p>Note 2: VWAP = volume weighted average price; and TWAP = time weighted average price.</p>	Yes	Yes
Intermediary identifier for agency orders and transactions	Information that enables identification of an AFS licensee intermediary (i.e. an AFS licensee with which the market participant has a specific type of market access arrangement) that is permitted to provide instructions to place an order or enter into a transaction	<p>AFS licence number</p> <p>See RG 265.475–RG 265.482</p>	Yes	Yes

Data	Description	Content/format	Required for order	Required for trade report
Directed wholesale indicator for agency orders and transactions	Information that indicates whether the order or transaction was submitted by a wholesale AOP client (i.e. an AOP client with which the market participant has a specific type of market access arrangement) with non-discretionary routing and execution instructions	'Y' for yes or 'N' for no. Default is 'N' See RG 265.484–RG 265.489	Yes	Yes

Execution venue

- RG 265.448 To stay abreast of developments in market structure, including off-order book liquidity (or liquidity in 'dark pools'), we require unique identification of the execution venue for transactions executed other than on an order book of a licensed market (off-order book). The execution venue is the market, crossing system or other facility on which the transaction the subject of the trade report was executed. This information enhances the efficiency of our surveillance function across execution venues and provides accurate data for analysing market developments.
- RG 265.449 Market participants are not required to provide execution venue information for orders transmitted to an order book of a licensed market (i.e. entities licensed under s795B(1) of the Corporations Act, including the markets operated by ASX and Cboe).
- RG 265.450 Execution venue codes are determined by ASIC in a legislative instrument and are made available on our website. Market participants must identify the venue (i.e. licensed market, crossing system or other facility) on which off-order book transactions reported to a market operator are matched or executed: see item 1 of the table in Rule 7.4.4. The following execution venue codes must be used:
- 'ASXT' for ASX TradeMatch;
 - 'ASXC' for ASX Centre Point;
 - 'CHIA' for the Cboe market;
 - for a crossing system, the [crossing system ID](#) published by ASIC in legislative instruments and on our website.

Note: Execution venue codes are determined by ASIC in [ASIC Market Integrity Rules \(Securities Markets\) Determination 2018/314](#).

- RG 265.451 Where the venue does not have a market identifier code (MIC) that complies with International Standard [ISO 10383:2012 Securities and related financial instruments—Codes for exchanges and market identification](#), a crossing system ID is used.
- RG 265.452 On request, ASIC may determine a code for an execution venue where one has not been assigned.
- RG 265.453 For manually negotiated transactions, there is no requirement to provide a code for the execution venue.

Examples

- RG 265.454 Table 18 sets out examples and guidance on the execution venue information that we would expect market participants to provide.

Table 18: Examples of execution venue information

Example	Content/format
<p><i>Example 4: Internal crossing system</i></p> <p>A participant sends a trade report to a market operator for a transaction executed on its internal crossing system</p>	<p>In this example, Rule 7.4.4 requires a participant to provide in the trade report the crossing system ID allocated by ASIC to the internal crossing system. We publish a list of the crossing system IDs on our website</p>
<p><i>Example 5: Trading platform on a licensed market</i></p> <p>A participant sends an order to a licensed market operator for execution on one or more of the market operator's trading platforms</p>	<p>In this example, the participant is not required to provide an execution venue identification code in the order sent to the market operator. A code for execution venue is only required on a trade report and is not required for transactions executed on a trading platform on a licensed market</p>

Capacity of market participant

- RG 265.455 For orders submitted to an order book of a licensed market, market participants must indicate whether they are acting as principal or as agent for a client, or as both principal and agent, in relation to the order: see item 2 of the table in Rule 7.4.4.
- RG 265.456 For transactions done other than on an order book of a licensed market and reported to a market operator, the market participant reporting the transaction must indicate, for each side (buy and/or sell) of the transaction on which they are required to provide regulatory data, whether they were acting as principal or as agent for a client, or as both principal and agent.

Note: 'Principal' has the meaning given by Rule 1.4.3 and includes a participant acting on behalf of a related body corporate in relation to the order or transaction.

- RG 265.457 The market participant should use the option ‘both principal and agent’ where an order is attributable partly as principal and partly as agent for a client.
- RG 265.458 A participant that uses its principal account to hedge its position in relation to a swap transaction is trading as principal for the purposes of item 2 of the table in Rule 7.4.4. Participants should therefore identify a hedging transaction or order as a ‘principal’ order or transaction.
- RG 265.459 This is the case whether a market participant is hedging a swap transaction entered into between:
- (a) the participant and a client of the participant; or
 - (b) a related body corporate of the participant and a client of the participant.
- RG 265.460 The market participant must use the following notations for identifying that the participant is acting:
- (a) as principal—use ‘P’;
 - (b) as agent for a client—use ‘A’; and
 - (c) as both principal and agent for a client—use ‘M’.
- Note: The notations for identifying the capacity of a participant are determined by ASIC in [ASIC Market Integrity Rules \(Securities Markets\) Determination 2018/314](#).
- RG 265.461 This information will enhance our ability to detect certain forms of market abuse and our understanding of the basis upon which transactions occur in the Australian market.

Origin of order

- RG 265.462 Where a market participant is acting as agent for a client, it must provide a reference to identify the source of the original client instructions that resulted in an order or a transaction, to the extent the market participant is able to determine the source of those instructions, taking all reasonable steps: see item 3 of the table in Rule 7.4.4.
- Note: For an explanation of what are ‘reasonable steps’ for the purposes of this rule, see RG 265.490–RG 265.492.
- RG 265.463 Origin of order information allows us to identify transactions that may have originated from the same person or client. It allows us to detect and investigate market manipulation and insider trading with greater efficiency and may assist market participants’ risk management. On that basis, this information will enhance our ability to perform market surveillance.

- RG 265.464 We recognise that for certain forms of order flow, providing this information may not be practicable. Accordingly, the information must be provided to the extent that it is able to be determined by the market participant, taking all reasonable steps. Where it is not practicable or reasonable to determine the ultimate ‘originator’ of an order or transaction, a participant should provide an identifier for the party as close to the originator as possible.
- RG 265.465 We expect this information will be provided where it is:
- (a) provided on the original client order;
 - (b) entered by the market participant; or
 - (c) available by reference to information held in the order management system used by the market participant.
- RG 265.466 This information must be provided on all orders or transactions that can be attributed to a single source.
- RG 265.467 As noted in Table 17, a market participant may identify the origin of an order by using one of the following identifiers for the client:
- (a) Australian Company Number (ACN);
 - (b) Australian Registered Business Number (ARBN);
 - (c) Australian Registered Scheme Number (ARSN);
 - (d) global Legal Entity Identifier (LEI);
 - (e) an equivalent form of identification to ACN, ARBN, ARSN, in a foreign jurisdiction;
 - (f) an internal client identifier;
 - (g) user login identifier;
 - (h) CHES HIN;
 - (i) internal account identifier; or
 - (j) adviser reference.
- RG 265.468 Our preference generally is to receive origin of order information that is not unique to the market participant providing it (i.e. the references referred to in RG 265.467(a)–RG 265.467(e)).
- RG 265.469 Where the market participant uses a notation, code or number to identify the origin of an order, the market participant must take all reasonable steps to use the same notation, code or number on an order or trade report to identify the same person or account in different orders or trade reports (i.e. where multiple orders or transactions originate from the same source, that source should be identified consistently): Rule 7.4.4(5). Where a market

participant's internal client, account or user login identifier is used, that identifier may be encrypted so long as the encrypted identifier does not change with the date and/or time.

RG 265.470 Rule 7.4.4 recognises that where an order or transaction relates to a number of unrelated instructions, it may not be possible to provide information that identifies the origin of the order or transaction. For example, where multiple investment managers provide instructions to achieve VWAP, a market participant may place 'basket' orders representing similar instructions received from multiple sources. In this case, market participants must provide an identifier that indicates the origin of the order is not a single source. Acceptable identifiers include:

- (a) VWAP;
- (b) TWAP; or
- (c) any other identifier used consistently.

RG 265.471 A market participant may offer 'one-off' trade services (e.g. selling for a shareholder who is not an existing client without requiring the shareholder to open a share trading account). Where possible, the participant should provide a unique identifier for that shareholder.

RG 265.472 However, if it is not reasonably possible to identify the person who initiates a one-off order or transaction, a participant may use a single unique account identifier for multiple 'one-off' client orders. In this case, it is preferable that the unique identifier for the account indicates that the origin of the orders is not from a single source. For example, the unique identifier 'multiple clients account' is preferable to the use of the actual account number.

RG 265.473 Origin of order information must be provided on orders submitted to an order book of a licensed market and, where relevant, for each of the buy side and sell side of transactions done other than on an order book of a market when reporting that transaction in accordance with Rule 6.3.1 (for relevant products) or the market operating rules (for other products).

Examples

RG 265.474 Table 19 sets out examples and guidance on the origin of order information associated with common types of order flow that we would expect market participants to provide. The examples are not exhaustive and each example should be considered in isolation, unless otherwise specified.

Table 19: Examples of origin of order information

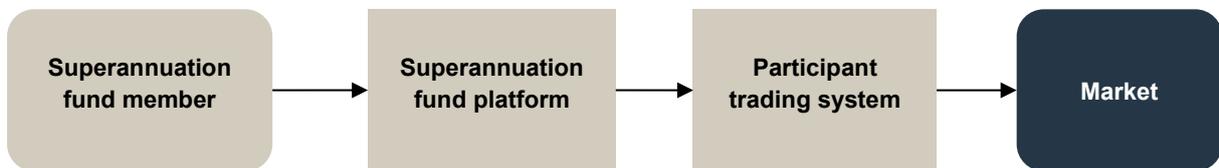
Example	Guidance
<p><i>Example 6: Online retail broking</i></p> <p>A person logs on to a market participant's online retail broking website and places orders for three accounts</p>	<p>In this example, the person is authorised to place orders for the three accounts, and is the origin of the three orders. On all three orders, the market participant should provide the same unique reference for the person that placed the order. This may be the person's customer number or system login username</p> <p>If the market participant is not able to provide a unique customer number or system login username for the person that placed the order, the market participant should provide the relevant account identifier for each order</p> <p>Market participants already using a unique account reference to propagate a market operator's 'Xref' or 'bookings reference' field may, as long as the information does not change with time, use the same reference for ASIC's origin of order reference</p>
<p><i>Example 7: 'White label' online retail broking</i></p> <p>A person logs on to the online trading website of an intermediary AFS licensee that is not a market participant</p> <p>The website, order management systems and access to markets is provided and managed by a market participant to the intermediary AFS licensee</p> <p>The person places orders for three retail accounts using the systems provided to the intermediary AFS licensee by the market participant</p>	<p>In this example, the person is authorised to place orders for the three accounts, and is the origin of the three orders</p> <p>As the market participant provides and manages the systems used by the intermediary and the person, information relating to the origin of the three orders is known to the market participant. On all three orders, the market participant should provide a unique reference for the person that placed the order. This may be the person's customer number or system login username</p> <p>If the market participant is not able to provide a unique reference for the person that placed the order, the market participant should provide the relevant account identifier on each order</p> <p>Market participants already using a unique account reference to propagate a market operator's 'Xref' or 'bookings reference' field may, as long as the information does not change with time, use the same reference for ASIC's origin of order reference</p> <p>Note: In addition to providing a reference for the origin of order, market participants must also provide the AFS licence number of the intermediary: see RG 265.475–RG 265.482</p>
<p><i>Example 8: Full service retail broking</i></p> <p>A person contacts their adviser and provides instructions to place an order</p> <p>The adviser places the order</p>	<p>In this example, a market participant should provide, on the order, a reference that identifies the person that provided instructions to place the order</p> <p>If the market participant is not able to identify the person that provided the instruction to place the order, and the accounts to which the trades will be allocated are known, the market participant should provide, on the order, a reference for one of those accounts</p> <p>If the market participant is not able to identify the person that provided the instruction to place the order and the accounts to which the trades will be allocated are unknown, the market participant should provide a reference for the adviser who placed the order</p>

Example	Guidance
<p><i>Example 9: Full service retail broking—Managed discretionary account</i></p> <p>An adviser places an order on behalf of a client (or several clients) without receiving explicit instructions from the client(s)</p>	<p>In this example, the market participant should provide an identifier for the adviser that placed the order</p> <p>If the market participant is not able to identify the adviser that placed the order, the market participant should provide, on the order, a reference for one of the accounts for which the order was placed</p>
<p><i>Example 10: Institutional broking—Wholesale client</i></p> <p>An investment manager places an order on behalf of a client (or several clients)</p> <p>The trader places the order</p>	<p>In this example, a market participant should provide a reference that identifies the investment manager that placed the order</p> <p>If the market participant is not able to identify the investment manager that placed the order, the market participant should provide, on the order, a reference for one of the accounts to which the trades will be allocated</p> <p>If the market participant is not able to identify the person that provided the instruction to place the order or identify the accounts to which the trades will be allocated, the market participant should provide a reference for the trader who placed the order</p>
<p><i>Example 11: Institutional broking—Overseas client</i></p> <p>An overseas investor instructs their overseas broker to submit an order to an Australian market operator</p> <p>Through one or more intermediaries the overseas investor's instruction is received by the London office of a global investment bank and transferred electronically to the Australian office of the investment bank</p> <p>The Australian office of the global investment bank is a market participant</p>	<p>The market participant must provide a reference that best identifies the origin of the order. If the market participant, taking all reasonable steps, can determine the ultimate originator of the order (the overseas investor), then an identifier for that ultimate originator should be provided</p> <p>We recognise that, in this example, even if the market participant takes all reasonable steps, it may not be able to ascertain the ultimate originator of the order. In that case, it must provide an identifier for the party as close to the originator as possible</p> <p>In this example, the London office should provide the Australian market participant with a reference to identify where the order originated. If the London office does not provide the Australian market participant with a reference to identify where the order originated, the market participant should provide a reference to identify the London office</p>
<p><i>Example 12: Institutional broking—Overseas client</i></p> <p>An overseas investor instructs their overseas broker to submit an order to an Australian market operator</p> <p>Through one or more unrelated intermediaries, the instruction is received by a market participant</p>	<p>The market participant must provide a reference that best identifies the origin of the order. If a reference for the ultimate originator of the order is known, it must be provided</p> <p>We recognise that order information received from the intermediary may not include a reference for the ultimate originator of the order. The market participant should provide a reference for the party as close to the originator as possible</p> <p>If details of the originator are not provided by the intermediary, the market participant must provide a reference for the intermediary from which it received instructions for the order</p>

Example	Guidance
<p><i>Example 13: Institutional broking—VWAP</i></p> <p>A number of unrelated clients contact a market participant asking them to buy a quantity of shares and achieve VWAP over the trading day</p> <p>The market participant aggregates all similar orders and executes an algorithm, which submits a number of orders to the market to achieve VWAP for the total quantity of shares over the trading day</p>	<p>The market participant must provide a reference that best describes the origin of the order, but in this case there is no single client or person associated with the origin of each order submitted to the market by the algorithm. The market participant should modify the algorithm to provide a consistently used identifier for the origin of the order. In this case, 'VWAP' would be an appropriate identifier to use</p>
<p><i>Example 14: Superannuation fund—Member</i></p> <p>A market participant provides a superannuation fund with an order entry platform that sends orders to the participant's trading system. The order entry platform is also accessible to superannuation fund members. The superannuation fund is the client of the participant, not the superannuation fund members. Superannuation fund members submit orders to the platform, and they are sent through the platform into the market participant's trading system</p>	<p>In this example, a unique identifier for the superannuation fund member that entered the orders into the platform is required. However, if a market participant cannot determine the identity of the member, after taking all reasonable steps to do so, they may provide the unique identifier for the superannuation fund</p> <p>See Figure 4 which sets out the order flow in this example</p>
<p><i>Example 15: Superannuation fund—Adviser</i></p> <p>Building on Example 14, an adviser to a superannuation fund member is authorised to trade in securities on behalf of the member and has direct access to the superannuation fund platform. This adviser (instead of the superannuation fund member) is making the trading decisions on behalf of the member, and directly enters orders into the superannuation fund platform</p>	<p>In this example, a unique identifier for the adviser who traded on behalf of the member is required because the order originated from the adviser. However, if a market participant cannot determine the identity of the adviser, after taking all reasonable steps to do so, they may provide the unique identifier for the superannuation fund</p> <p>See Figure 5 which sets out the order flow in this example</p>

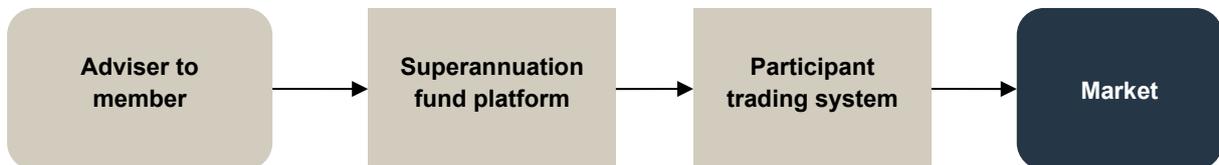
Example	Guidance
<p><i>Example 16: Superannuation fund</i></p> <p>Building on Example 14, an adviser to the superannuation fund member trades in securities on behalf of the member, following instructions from the member to enter into the relevant trades. The superannuation fund member (instead of the adviser) is making the trading decisions. The adviser directly enters orders into the superannuation fund platform</p>	<p>In this example, a unique identifier for the superannuation fund member is required because the order originated from the member and not the adviser. However, if a market participant cannot determine the identity of the member, after taking all reasonable steps to do so, they may provide the unique identifier for the adviser. If the market participant is also not reasonably able to determine the identity of the adviser, the participant may provide the unique identifier for the superannuation fund</p> <p>See Figure 6 which sets out the order flow in this example</p>

Figure 4: Origin of order information—superannuation fund member



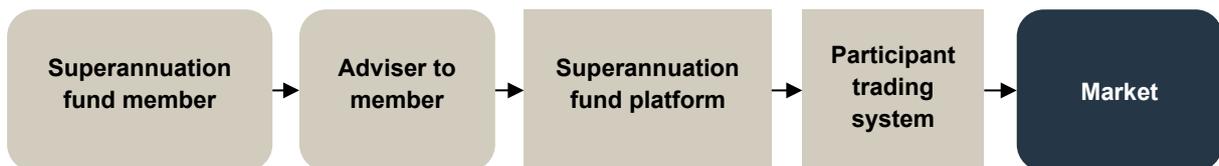
Note: See Example 14 in Table 19 for the process in this flowchart (accessible version).

Figure 5: Origin of order information—superannuation fund adviser



Note: See Example 15 in Table 19 for the process in this flowchart (accessible version).

Figure 6: Origin of order information—superannuation fund



Note: See Example 16 in Table 19 for the process in this flowchart (accessible version).

Intermediary identifier

RG 265.475 Where an order originates from the client of an AFS licensee that acts as an intermediary for its own clients and that has a specific arrangement with the market participant for access to the market (typically known as an online ‘white label’ broking arrangement), the market participant must take all reasonable steps to identify the AFS licence number of the intermediary on orders and the relevant buy and/or sell side of trade reports: see item 4 of the table in Rule 7.4.4.

- RG 265.476 The ‘specific arrangement with the market participant for access to the market’ includes, for example, an arrangement where a participant provides an AFS licensee (indirect market participant) with a platform under which the licensee may enter orders on behalf of its clients into the participant’s trading system. The participant may provide a website containing the licensee’s branding—however, the licensee’s clients will have a share trading agreement with the participant, who provides execution services for those clients. In this scenario, a participant must provide the licence number of the AFS licensee in the intermediary ID field.
- RG 265.477 Over recent years, the number of indirect market participants has grown significantly and order and trade information for orders originating from this segment of the market is difficult to identify. Providing AFS licence numbers on orders and trade reports originating from indirect market participants will allow ASIC to map this important market segment and provide efficiencies for our trading inquiries. Under this rule, active indirect market participants will be identified, and the information obtained under it will be used to assist us to assess compliance with AFS obligations by indirect market participants.
- RG 265.478 The obligation under Rule 7.4.4 requires a participant to identify all intermediaries that have AFS licences and are permitted to submit orders into the participant’s trading system. Therefore, participants must provide an intermediary identifier for ‘indirect market participants’ with whom a participant has an arrangement, and for other participants with whom there is such an arrangement.
- RG 265.479 The requirement does not extend to providing the licence numbers of AFS licensees that make investment decisions over pooled funds, such as those acting in the capacity of fund managers.
- RG 265.480 Where an indirect market participant is permitted to directly place orders using systems provided by the market participant, we expect market participants will be able to provide the AFS licence number of the intermediary. This means that we expect a market participant, taking all reasonable steps, will be able to determine and provide this information.
- RG 265.481 An intermediary ID is not required when an order is received by a participant from an intermediary using non-AOP methods, such as telephone or email. This also applies when an AOP order is rerouted to the participant’s designated trading representative, who manually enters the order into the participant’s trading system.
- RG 265.482 Where a number of intermediaries exist between the market participant and the client, the participant is only required to provide the AFS licence number of the intermediary with direct access to the trading system of the market participant.

Examples

RG 265.483 Table 20 sets out an example and guidance on the intermediary ID information that we would expect market participants to provide.

Table 20: Example of intermediary ID information

Example	Guidance
<p><i>Example 17: Adviser enters orders</i></p> <p>A market participant provides a platform to an intermediary to enter orders into the market participant's trading system. An adviser to the intermediary (who is an AFS licensee) enters orders, on behalf of its clients, directly into the platform provided by the market participant. The orders are then sent electronically to the market participant's trading system</p>	<p>In this example, the intermediary is facilitating trading for its clients and is an intermediary for the purposes of item 4 of the table in Rule 7.4.4. In this example, item 4 requires the market participant to provide the licence number of the AFS licensee in the intermediary ID field</p> <p>See Figure 7 which sets out the order flow in this example</p>

Figure 7: Intermediary ID information – adviser enters orders



Note: See Example 17 in Table 20 for the process in this flowchart (accessible version).

Directed wholesale indicator

RG 265.484 A market participant must take all reasonable steps to identify orders and transactions:

- (a) with non-discretionary routing and execution instructions; and
- (b) received electronically from a wholesale client: see item 5 of the table in Rule 7.4.4.

RG 265.485 A wholesale client submits 'non-discretionary execution and routing instructions' when a participant does not have any discretion over a wholesale client's choice of venue, attributes of an order, or when the order is transmitted to an execution venue (other than ensuring compliance with AOP obligations). In those cases, the directed wholesale indicator should be 'Y'. When a participant has any discretion, even partial, over an order the order or transaction should be flagged 'N'.

RG 265.486 Where both criteria are satisfied, the market participant must use the notation 'Y' when providing the data to a market operator. If one or both of the criteria are not satisfied, the market participant must use the notation 'N'.

Note: The notations for identifying the directed wholesale indicator are determined by ASIC in [ASIC Market Integrity Rules \(Securities Markets\) Determination 2018/314](#).

RG 265.487 For the purposes of this rule, ‘wholesale’ has the same meaning as outlined in Table 4.

Examples

RG 265.488 Table 21 sets out examples and guidance on the directed wholesale indicator information that we would expect market participants to provide.

Table 21: Examples of directed wholesale indicator information

Example	Guidance
<p><i>Example 18: Direct access client—Own algorithm</i></p> <p>A wholesale client has direct access to a participant’s trading system via AOP. The wholesale client places an instruction into its own algorithm to achieve VWAP over the trading day. As a result of the VWAP instruction, the wholesale client submits a number of ‘child’ orders via AOP to the market participant’s trading system throughout the trading day. Each ‘child order’ is submitted exactly as specified to the nominated trading venue</p>	<p>In this example, the market participant does not have any influence over the orders or instructions entered by the wholesale client. These orders or instructions should be flagged ‘Y’</p>
<p><i>Example 19: Direct access client—Participant’s ‘smart order router’</i></p> <p>The same wholesale client in Example 18 places an order into a market participant’s trading system that is processed by the market participant’s ‘smart order router’, but is subject to the wholesale client’s standing instruction not to trade on a particular venue</p>	<p>In this example, the wholesale client is not entirely in control of the entry and execution of the order. The market participant’s ‘smart order router’ exercises discretion to determine the best trading venue from the remaining allowable venues. As the market participant has some control in managing the order or instruction, the order or instruction should be flagged ‘N’</p>
<p><i>Example 20: Direct access client—Instructions</i></p> <p>The same wholesale client in Example 18 places an order into a market participant’s trading system with the instruction that VWAP is to be achieved</p>	<p>In this example, the wholesale client is not in control of the entry and execution of the order. The market participant’s VWAP algorithm and smart order router both exercise discretion to determine price, time, size and the venue for each of the ‘child’ orders submitted to the trading platform. As the market participant is making the decisions regarding the order or instruction, the order or instruction should be flagged ‘N’</p>

RG 265.489 Technology—in particular, direct electronic access to markets by wholesale clients—plays an ever-increasing role in our markets. The information that must be reported will enable ASIC to assess the impact on the market of clients with direct access to markets. These clients have sophisticated technology platforms and, with the exception of market access, often do not rely on the execution services provided by the market participant.

What are 'reasonable steps' to determine data?

- RG 265.490 Origin of order information, intermediary identifiers and directed wholesale indicators must be provided to the extent it is able to be determined by a market participant, taking all reasonable steps: Rule 7.4.4.
- RG 265.491 In the particular circumstances of an order or transaction or client, a market participant may be unable to determine the data required to be reported. This may be because the systems and processes developed do not cater for unique circumstances. In those cases, which we expect to be limited, a market participant need not provide the required data.
- RG 265.492 When a specific, unique set of circumstances for an order or transaction starts to recur, market participants should consider whether to enhance their systems and processes to enable the capture of the data required for those circumstances.

M Trades under rules of a market operator, trade confirmations, client agreements, confidential order information and order incentives

Key points

Transactions in equity market products and CGS depository interests must be entered into under the operating rules of a market operator.

Market participants must not transact during a market integrity related trading suspension.

Market participants may provide a single trade confirmation for an order executed across multiple markets with written authorisation from a client.

Client agreements should reflect the relevant requirements of the market integrity rules.

Market participants are not required to give confirmations to non-retail clients if the client has agreed not to receive such notifications or if it is in relation to a derivatives market contract transaction.

Market participants must take reasonable steps to ensure confidential client order and transaction information is not used or disclosed.

Market participants must not buy or sell order flow if the payment for order flow arrangement results in a 'negative commission'. Market participants must also take reasonable steps to ensure their market intermediaries do not engage in such arrangements.

Scope and application

RG 265.493 This section of the guide applies to market participants that trade in equity market products and CGS depository interests (collectively referred to as 'relevant products').

Note: [ASIC Market Integrity Rules \(Securities Markets\) Class Waiver 2018/258](#) grants participants of the NSXA and SSX markets a waiver from the obligation to comply with the provisions of Part 5.1AA and Part 5.9A of the Securities Markets Rules until 16 November 2022.

Trading under the operating rules of a market operator

RG 265.494 Under Rule 5.1AA.1, a market participant must not enter into a transaction other than under the rules of a market operator (either on an order book or off-order book), unless the transaction is entered into under:

- (a) the terms of a relevant product, including a redemption; or
- (b) a primary market auction, including an off-market bid for relevant products or an issue, allotment or subscription of new relevant products.

- RG 265.495 This means that a market participant must execute a transaction in a relevant product either on an order book of a market or report it to a market operator in accordance with the market integrity rules and the operating rules (including written procedures made under the operating rules) of the relevant market.
- RG 265.496 Market participants have a choice about which market operator's operating rules to enter into a transaction under. They can enter into transactions under the rules of any market operator that provides facilities for trading relevant products.
- RG 265.497 Market participants should ensure that, on an ongoing basis, they meet all obligations under the operating rules and written procedures made under the operating rules of the market operator they are transacting under. For example, market participants should ensure any orders and transactions comply with the market operator's pre-trade transparency exceptions and post-trade transparency reporting requirements.
- RG 265.498 This rule is intended to ensure that clients have certainty about the rules and protections they are transacting under and can access the relevant compensation entitlements on a market. The rule is also intended to limit the sources of pre-trade and post-trade data, which will facilitate data consolidation in the market.

Trading suspensions and off-order book trading

- RG 265.499 Under Rule 5.9A.1, a market participant must not match or execute a transaction where there is a trading suspension in the relevant product on all licensed markets.
- RG 265.500 We acknowledge that market participants should be able to continue trading where there is a technical failure on one market and this rule does not prohibit that. However, we expect that when trading is suspended for a market integrity related purpose all trading should cease. We consider that when trading is suspended on all licensed markets, it will typically be a result of a market integrity related issue.
- RG 265.501 The purpose of constraining trading during market integrity related events is to limit the effect of information asymmetries between market participants, provide time for all market participants to consider the implications of the event and to minimise opportunities for regulatory arbitrage between trading on order books of licensed markets and off-order book.

Non-retail client confirmations

- RG 265.502 Market participants must provide confirmations to their clients for each market transaction entered into on the client's instructions or on the client's managed discretionary account: Rule 3.4.1.

- RG 265.503 Rule 3.4.3(1) provides an exception to the requirement to provide confirmations for a client if that client is not a retail client. To rely on this exception, the market participant must notify the client:
- (a) before entering a trading message on the client's behalf that market transactions effected by the client are subject to the:
 - (i) directions, decisions and requirements of the market operator, the market integrity rules, the operating rules, the clearing rules and where relevant, the settlement rules;
 - (ii) customs and usages of the market; and
 - (iii) correction of errors and omissions; and
 - (b) as soon as possible:
 - (i) when the market participant enters into the client's transaction as principal; and
 - (ii) if the client's transaction was executed as a crossing, the execution code for the execution venue for the crossing.

Timing and form of a notification referred to in Rule 3.4.3(1)(b)

- RG 265.504 Rule 3.4.3(1)(b) states that a notification must be given to a non-retail client by sending it 'as soon as practicable'. We expect the market participant to provide that notification to the client on the day on which the transaction is executed.
- RG 265.505 Rule 3.4.3 is not prescriptive about the form of notification, and market participants may choose any method that provides effective notification to non-retail clients. Forms of notification that may be suitable include:
- (a) real-time fill notifications, such as a Financial Information eXchange (FIX) message. FIX tag 29 (i.e. broker capacity) could be used to identify when the market participant acts as principal. FIX tag 30 (i.e. trading venue) could be used to identify the venue where the non-retail client's order was matched or executed; or
 - (b) an end-of-day report of relevant transactions.
- RG 265.506 Rule 3.4.3 specifies that the obligation to notify non-retail clients applies for each market transaction. Accordingly, the information provided in the notification to non-retail clients under Rule 3.4.3(1)(b) must be provided on a market transaction basis and cannot be accumulated or price averaged.

Where a non-retail client's order is matched with an order where the participant acts as both principal and agent

- RG 265.507 When providing a notification to a non-retail client under Rule 3.4.3(1)(b), a market participant must notify the client if the participant entered into the client's market transaction as principal.
- RG 265.508 In some circumstances, a non-retail client's order is matched with 'basket' orders. These orders represent similar instructions received from multiple sources, including where the market participant is acting as both principal and agent for a client.
- RG 265.509 When a market participant creates a 'basket' order, we expect that participant to be able to identify if that 'basket' is comprised of orders which represent the market participant acting as:
- (a) agent for a client (or clients);
 - (b) principal; or
 - (c) both principal and as agent for a client (or clients).
- RG 265.510 In circumstances where a non-retail client's order is matched with 'basket' orders, and those 'baskets' are comprised of orders where the market participant is acting as:
- (a) principal only—the participant must provide the client with a notification under Rule 3.4.3(1)(b) that discloses that the participant entered into the client's market transaction as principal; or
 - (b) principal and as agent—we expect the participant to provide the client with a notification under Rule 3.4.3(1)(b) that discloses that the participant entered into the client's market transaction as both principal and as agent.

When a notification under Rule 3.4.3(1)(b) is not required

- RG 265.511 Under Rule 3.4.3(2), a market participant is not required to give the notification of the information in Rule 3.4.3(1)(b) to a non-retail client if:
- (a) the client has agreed not to receive such notifications. Accordingly, a non-retail client can decide it does not want to receive the information in Rule 3.4.3(1)(b), and opt out of receiving it; or
 - (b) the market transaction is regarding a financial product which is a derivatives market contract.
- RG 265.512 A non-retail client cannot opt out of receiving the information in Rule 3.4.3(1)(a).

- RG 265.513 We encourage market participants to:
- (a) ensure that non-retail clients that agree not to receive the notifications under Rule 3.4.3(1)(b) are aware of the consequences of not receiving the notifications; and
 - (b) require those clients to take active steps to agree not to receive the notifications under Rule 3.4.3(1)(b). The inclusion of a standard opt-out clause in a client agreement, without more, would not necessarily mean that clients were aware of the consequences of opting out, or taking active steps to do so.

Accumulation of trade confirmations

- RG 265.514 In a multimarket environment, it is possible that a single client order may be executed through a series of transactions across more than one market (e.g. divided between Market X and Market Y). In these circumstances, there need to be clear and consistent arrangements in place for disclosing individual transaction details to clients who are required to be given a confirmation under s1017F(1)(a) of the Corporations Act (see also regs 7.9.63A–7.9.63C of the Corporations Regulations) and Rule 3.11.2.
- RG 265.515 Market participants are permitted to accumulate confirmations for orders executed through multiple transactions on one market into a single trade confirmation, and to specify the VWAP for the transactions: Rule 3.4.2.
- RG 265.516 Rule 3.4A.1 sets out the circumstances in which a market participant may accumulate multiple transactions into a single confirmation for a single client order executed across multiple markets. As with the market-specific market integrity rules, it enables a market participant to specify the VWAP rather than the price per unit, subject to the client providing written authorisation to accumulate trade confirmations before the time the order is placed.
- RG 265.517 Rule 3.4A.1(b) requires a market participant, on request from a client, to provide a statement of the individual prices for each transaction. We expect market participants to also disclose the markets where each price was achieved if requested. Depending on the specific request from the client, we consider that the statement may be provided in writing or verbally. Where it is provided in writing, this may be in print or electronic form.
- RG 265.518 Regulation 7.9.63B(7) of the Corporations Regulations requires a trade confirmation to include the name of the market where the transaction was executed. A market participant can fulfil this obligation by listing the markets that the market participant is a member of on trade confirmations and note that the trade may have been executed on one or more of those markets.

Client authorisation by existing clients

- RG 265.519 Where a market participant has already obtained written authorisation from a client to accumulate transactions on a market into a single trade confirmation (under Rule 3.4.2), we consider that this authorisation is sufficient to satisfy the requirement under Rule 3.4A.1—that is, there is no need to obtain another written authorisation.
- RG 265.520 Where a wholesale client has elected not to receive trade confirmations in accordance with Rule 3.4.2, we consider this election will also apply in the context of Rule 3.4A.1.
- RG 265.521 Where a client has not already provided written authorisation to accumulate trade confirmations on a market, the market participant will need to obtain the client’s written authorisation before accumulating transactions under Rule 3.4A.1.
- RG 265.522 In all cases, we expect market participants to notify their clients of how they intend to accumulate transactions in a multimarket environment. They may choose to make this notification in the client agreement.

Client authorisation by new clients

- RG 265.523 Under Rule 3.4A.1, market participants that are required under s1017F(1)(a) of the Corporations Act and Rule 3.4.1 to provide trade confirmations to a client should obtain the written authorisation of all new clients to accumulate a series of transactions into a single trade confirmation before the time an order is placed.

Managing confidential order information

- RG 265.524 Rule 5.4A.1 requires a market participant to take reasonable steps to ensure that its officers and employees do not use or disclose information about orders received, or transactions resulting from those orders, unless permitted under the market integrity rules or the law. Rule 5.4A.1 provides the following permitted disclosures and uses of information:
- (a) information about orders or transactions that is generally available (i.e. publicly available);
 - (b) pre-trade information (as defined in Rule 6.1.2 and Section J of this guide) if:
 - (i) the information has been made available by a market operator. This means that a market participant cannot use or disclose pre-trade information it may hold about an order unless a market operator has made it available under Rule 6.1.2; or

- (ii) it is necessary to use or disclose that information to execute an order (including disclosure of the information in an order routing instruction). For example, a market participant may route an order to another market participant for execution;
- (c) post-trade information (as defined in Rule 6.3.4 and Section K of this guide) if:
 - (i) the information has been made available by a market operator. This means that a market participant cannot use or disclose post-trade information it may hold about a transaction it has executed unless a market operator has made it available under Rule 6.3.4; or
 - (ii) such disclosure is required for trade confirmations or billing purposes. This enables a market participant to disclose post-trade information to back office personnel to enable trade confirmations to be issued to clients; and
- (d) information about orders or transactions is disclosed to a person that maintains or services the market participant's internal order management system or crossing system, or provides administrative or analytical services to or for the market participant. When information is disclosed for these purposes the person receiving the order or transaction information must agree in writing to limit its use of such information for either of these purposes. Examples of administrative and analytical services include research and transaction cost analysis.

RG 265.525 The reference to 'a person' in RG 265.524(d) includes employees of the market participant and all other parties, including contractors. We expect a written agreement to be maintained for each person, whether an employee or contractor. For example:

- (a) if the information is disclosed to an employee, it could form part of internal procedures that the employee has agreed in writing to comply with in an employment contract or an employee code of conduct; and
- (b) if the information is disclosed to a contractor, then it could form part of the terms of conditions of the contract for service, or form part of a separate confidentiality agreement.

RG 265.526 We expect a market participant to restrict the disclosure and use of confidential order information to an 'as needs basis'. For example, a market participant that operates a crossing system may restrict disclosure of orders and transactions in its crossing system to an internal electronic trading desk that oversees the crossing system for the purposes of ensuring the crossing system is operating efficiently.

Client disclosure

- RG 265.527 We consider it good practice for a market participant to disclose to its clients how, and to whom, it discloses confidential order information.

Information barriers

- RG 265.528 We expect that market participants will have in place internal policies and procedures that will limit the disclosure and use of confidential order information in line with the permitted uses and disclosures in Rule 5.4A.1(2). A market participant should maintain strong information barriers to comply with Rule 5.4A.1, including system and physical segregation to ensure that information about orders and transactions is not made available other than in accordance with Rule 5.4A.1. Further guidance on our expectations about information barriers can be found in [RG 181](#).

Note: Rule 3.6.3 imposes obligations on the participants in relation to the implementation of information barriers.

Indications of interest

- RG 265.529 An indication of interest (IOI) is a non-binding electronic expression (or advertisement) of trading interest. It is a mechanism used to identify potential counterparties and is most often used where there is a large volume of securities to trade.
- RG 265.530 An IOI usually contains some information about trading intentions, such as the identity of the security, the capacity in which the market participant is operating (i.e. agency or principal), the volume of securities, or the price the party is willing to trade at. IOIs are usually distributed by a fund manager or market participant to selected clients, or through a third-party service provider.
- RG 265.531 IOIs can be used for wholesale client orders, and may be a permitted use or disclosure of pre-trade order information in accordance with the exception in Rule 5.4A.1(2)(c). IOIs should not be used for a retail client order as this would be inconsistent with a market participant's obligation to execute non-discretionary orders as expeditiously as practicable: Rule 5.1.4.
- RG 265.532 The following lists some of our concerns about the use of IOIs:
- (a) They may be misused to generate a misleading appearance of an intention to trade—for example, IOIs that are not backed by a genuine client or proprietary intent to trade, and that are aimed at gathering information on genuine intentions to trade and exploiting the responses received. In such instances, we may view an IOI as false or misleading if they misrepresent the true origin and intention of the IOI.

- (b) They may increase the risk of information leakage for clients with genuine trading intentions, which may result in a worse outcome for the client. For example, recipients of an IOI may trade ahead of the person issuing the IOI, leading to an adverse price movement. Market participants need to manage this risk.
- (c) Selective disclosure and access to IOIs, which is especially important for less liquid securities where indications of some trading interests may be price sensitive.
- (d) They present challenges to the management of conflicts of interest. For example, market participants that conduct principal and client trading should not misrepresent the nature of the liquidity to attract liquidity (e.g. genuine natural client order flows versus proprietary interests), which may artificially boost market share of trading volumes.

RG 265.533 The examples in RG 265.532(a)–RG 265.532(d) may affect a market participant’s ability to meet its AFS licence obligations to act honestly and fairly, and effectively manage conflicts of interest that may arise between clients, or between proprietary and client interests: s912A(1)(a) and 912A(1)(aa).

RG 265.534 When using an IOI, we expect market participants to:

- (a) circulate an IOI for a security only when they have reasonable cause to believe that the IOI represents a bona fide order in the security and is not being used for any fraudulent, deceptive or manipulative purposes;
- (b) make adequate disclosure to their clients about the intended use of, and accessibility to, client order information that may be used in IOIs;
- (c) manage the potential information leakage from any type of communication that may be price sensitive or conflict with the client’s best interests;
- (d) offer clients the ability to consent to the dissemination of their trading interest (i.e. their confidential order information) through IOIs, or otherwise opt out of participating in IOIs;
- (e) appropriately manage conflicts of interest and maintain records to substantiate the origin and basis of all IOIs; and
- (f) discontinue the display of an IOI if the underlying order has been cancelled or executed, or appropriately amend an IOI to accurately reflect the currency of the order if it has otherwise been amended.

Order incentives

What is payment for order flow?

RG 265.535 ‘Payment for order flow’ is an arrangement where a person receives an incentive from another person in exchange for sending their clients’ orders to that other person. These incentives can be in the form of direct cash

payments or soft dollar incentives (e.g. the provision of free services, such as technology).

- RG 265.536 Payment for order flow arrangements can exist between market participants, other market intermediaries such as securities dealers or liquidity providers, or a combination of both.

Restricting payment for order flow

- RG 265.537 Part 5.4B prohibits, or otherwise seeks to restrict, order incentives in the form of cash payments for order flow. It applies when:
- (a) a market participant buys or sells client order flow (see RG 265.539–RG 265.541); and
 - (b) payment for order flow occurs among other market intermediaries (see RG 265.542–RG 265.546).

The concept of ‘negative commission’

- RG 265.538 Part 5.4B does not prohibit all cash payment for order flow arrangements, only those where the cash payment to the recipient (for the order flow) is greater than the cost to the recipient (or to their clients) of submitting that order flow. Put simply, it prohibits ‘negative commission’. For example, if the amount that the market participant pays a person for their client order flow is greater than the brokerage that the market participant charges that person, this is a ‘negative commission’ and it is prohibited under the rules.

Prohibition on buying or selling order flow

- RG 265.539 Rule 5.4B.1(1) applies when a market participant handles or executes orders as a result of an arrangement with another person to direct orders to the market participant. The market participant must not, directly or indirectly, make a cash payment to the other person (or the other person’s associate) for the order flow if the cash payment is greater than the market participant’s commission: Rule 5.4B.1(1)(a).
- RG 265.540 Rule 5.4B.1(3) applies when a market participant directs orders to another person, as a result of an arrangement between the two parties. The market participant must not, directly or indirectly, accept a cash payment from the other person for directing orders to the other person if the cash payment results in a ‘negative commission’. The participant must also ensure that its associates do not breach Rule 5.4B.1(3).
- RG 265.541 This prohibition on buying and selling order flow applies to both orders to buy and orders to sell financial products. It means that a market participant cannot:
- (a) pay another person more for order flow than the commission received by the market participant for those orders (see Example 21);

- (b) accept a payment for the order flow that is greater than the cost to the market participant for sending that order flow to another person (see Example 22).

Example 21: A market participant buys client order flow

ABC Broking (a market participant) has an arrangement with SD Pty Ltd (a securities dealer). Under this arrangement, SD Pty Ltd directs client orders through to ABC Broking.

ABC Broking:

- charges SD Pty Ltd \$10 to execute client order flow through ABC Broking;
- pays SD Pty Ltd \$11 for its client order flow (i.e. payment for order flow); and
- crosses SD Pty Ltd's client orders and reports the transaction, or otherwise sends SD Pty Ltd's orders to the market.

The payment made by ABC Broking to SD Pty Ltd (of \$11) for the order flow exceeds the cost (of \$10) charged by ABC Broking to SD Pty Ltd (i.e. a negative commission).

The purchase of client order flow by ABC Broking is therefore prohibited by Rule 5.4B.1(1).

Example 22: A market participant sells client order flow

ABC Broking (a market participant) has an arrangement with XYZ Trader (a liquidity provider). Under this arrangement, XYZ Trader directs orders through ABC Broking.

XYZ Trader has a separate arrangement with MP Broking (a market participant). Under this arrangement, XYZ Trader:

- charges MP Broking \$10 to direct client order flow through XYZ Trader;
- pays MP Broking \$11 for its client order flow (i.e. payment for order flow); and
- crosses MP Broking's client orders and reports the transaction, or otherwise sends MP Broking's client orders to the market, through ABC Broking.

The payment made by XYZ Trader to MP Broking (of \$11) for the client order flow exceeds the cost (of \$10) charged by XYZ Trader to MP Broking (i.e. a negative commission).

The sale of client order flow by MP Broking is therefore prohibited by Rule 5.4B.1(3).

Payment for order flow among other market intermediaries

- RG 265.542 Rule 5.4B.1 also seeks to restrict payment for order flow among other market intermediaries (such as liquidity providers or securities dealers) that direct their orders through a market participant.
- RG 265.543 Under Rule 5.4B.1(1)(b), market participants must take reasonable steps, when the participant handles or executes orders as a result of an arrangement with another person, to ensure that the other person has not directly or indirectly made a cash payment to a third party (or the third party's associate) for that third party's orders (or their client's orders) if the cash payment is greater than the cost to the third party for directing those orders to the other person: see Example 23.

What are 'reasonable steps?'

- RG 265.544 What constitutes 'reasonable steps' will depend on the nature, scale and complexity of a market participant's business. It might include one or more of the following:
- (a) incorporating terms or clauses in the market participant's agreement with that person that deal with the requirements under Part 5.4B;
 - (b) obtaining an undertaking from that person (e.g. during the on-boarding process) that the person will not engage in a payment for order flow arrangement that contravenes Part 5.4B; or
 - (c) obtaining an annual declaration from the person that the person has not engaged in a payment for order flow arrangement that contravenes Part 5.4B.
- RG 265.545 This is not intended to be an exhaustive list of requirements. Ultimately each market participant can determine what they consider to be 'reasonable' based on their own circumstances.
- RG 265.546 We do not expect market participants to actively monitor their intermediaries for compliance with the payment for order flow expectations.

Example 23: Payments between non-market participants

ABC Broking (a market participant) has an arrangement with XYZ Trader (a liquidity provider). Under this arrangement, XYZ Trader directs orders through to ABC Broking.

XYZ Trader has a separate arrangement with SD Pty Ltd (a securities dealer). Under this arrangement, XYZ Trader:

- charges SD Pty Ltd \$10 to direct client order flow through XYZ Trader;
- pays SD Pty Ltd \$11 for its client order flow (i.e. a payment for order flow arrangement); and

- crosses SD Pty Ltd's client orders and reports the transaction, or otherwise sends SD Pty Ltd's client orders to the market, through ABC Broking.

The payment made by XYZ Trader to SD Pty Ltd (of \$11) for the client order flow exceeds the cost (of \$10) charged by XYZ Trader to SD Pty Ltd (i.e. a negative commission).

Under Rule 5.4B.1(1)(b), ABC Broking must take reasonable steps to ensure that XYZ Trader is not engaging in this payment for order flow arrangement with SD Pty Ltd.

Meaning of 'associate'

- RG 265.547 Under Rule 5.4B.1(2) and 5.4B.1(4), 'associate' means 'any director, officer, employee or associated or related company'. This is intended to capture certain payment for order flow arrangements where the payment (for the client order flow) is made to another person or entity which is associated with the payment recipient.

Excluded fee or payment arrangements

- RG 265.548 Rule 5.4B.1 applies to payments between market participants or other market intermediaries (or a combination of both). It does not apply to payments made by licensed market operators to market participants or other market intermediaries.

Note: Although market operator trading fees or other incentive-based models are not specifically prohibited in Rule 5.4B.1, we have concerns where such models might influence behaviour in a way that is not in the best interests of clients, and the integrity and quality of the Australian market. We provide further guidance for market operators in [RG 172](#).

- RG 265.549 Generally, Rule 5.4B.1 does not prohibit fee or payment arrangements between market participants or other market intermediaries, provided the payment arrangement does not result in a 'negative commission'.
- RG 265.550 More specifically, Rule 5.4B.1 does not affect the following market practices:
- where a market participant facilitates trading (e.g. by agreeing with another person to trade at the market close price or the VWAP) and the price reported to the market is the same as the price agreed with the other person, including any discounts or rebates;
 - where a market participant offers differential brokerage rates to certain clients (e.g. based on trading volume), provided that such arrangements do not result in a negative commission;
 - where a market participant or other market intermediary pays a fee to another person for any kind of genuine product distribution fee or facility establishment fee related to a structured product transaction that

- may involve an on-market execution (i.e. the fee is part of a structured product fee arrangement rather than a payment for order flow);
- (d) commission sharing arrangements or internal transfer pricing arrangements that do not result in a negative commission;
 - (e) trade reports arising from account adjustments, including for execution errors. For example, a trade report with a reported price that is higher than the net cost to the client would breach Rule 5.4B.1. However, if the original trade report was submitted in error, a subsequent adjustment trade report should bring the net reported trades into compliance with Rule 5.4B.1. We will monitor trade reports to ensure that these adjustments are not used inappropriately; and
 - (f) where a market participant makes cash payments to other persons, which are not directly ‘tied’ to particular transactions—for example, monthly rebate structures. For these arrangements, market participants will need to ensure there is no breach of Rule 5.4B.1 by determining the value of cash payments over the relevant period and apportioning this value to transactions conducted over the relevant period.

Non-monetary order incentives

- RG 265.551 Rule 5.4B.1 relates specifically to cash payments or ‘monetary benefits’.
- RG 265.552 Although not specifically prohibited in Rule 5.4B.1, non-monetary benefits may raise significant conflict of interest issues for a market participant when handling and executing orders.
- Note: Comprehensive guidance on how an AFS licensee should manage conflicts of interests can be found in [RG 181](#).
- RG 265.553 Non-monetary benefits take a number of forms. Examples include, but are not limited to:
- (a) free or subsidised business equipment or services (e.g. computers and other hardware, software, information technology support and stationery);
 - (b) hospitality-related benefits (e.g. tickets to sporting events or concerts and subsidised travel);
 - (c) marketing assistance; and
 - (d) employee promotions, or other ways of recognising an employee, based on product recommendations or sales.
- RG 265.554 A market participant should consider the following circumstances when giving or receiving non-monetary benefits for handling and executing orders:
- (a) ensure there is no effect on the market participant’s best execution obligations under Chapter 3 of the Securities Markets Rules and as discussed in Section G of this guide;

- (b) disclose to clients details of any incentives offered to and received by the market participant in a comprehensive, accurate and understandable way before the service is provided; and
- (c) ensure the incentive enhances the quality of the financial service provided to the client.

N Capital requirements

Key points

The market integrity rules for capital and reporting do not apply if the market participant is a principal trader only, a clearing participant of an approved clearing facility, or an authorised deposit-taking institution (ADI).

A market participant should lodge capital returns using the [ASIC Regulatory Portal](#).

Scope, application and waivers

RG 265.555 This section of the regulatory guide provides guidance on the Capital Rules.

Note: In this guide, 'Capital Rules' refers to *ASIC Market Integrity Rules (Capital) 2021*.

RG 265.556 The Capital Rules set out the capital and reporting requirements for market participants of securities markets and futures markets. The market integrity rules for capital and reporting do not apply if the market participant is a principal trader only, a clearing participant of an approved clearing facility, or an ADI. A clearing participant must comply with the CS facility's capital and reporting requirements.

Note: In June 2021, ASIC made the Capital Rules. The Capital Rules replaced *ASIC Market Integrity Rules (Securities Markets—Capital) 2017* and *ASIC Market Integrity Rules (Futures Markets—Capital) 2017*.

RG 265.557 Where a market participant has been granted a waiver from the capital or reporting rules for one market (e.g. the ASX market), we may consider granting a similar waiver for the rules for another market (e.g. the Cboe, NSXA or SSX markets). For details of how to apply for a waiver, see RG 265.34–RG 265.37.

Lodging forms and returns

RG 265.558 A market participant should lodge capital returns using the [ASIC Regulatory Portal](#): Rule 9.4.2 of the Capital Rules.

RG 265.559 Market participants that belong to multiple exchange markets only need to lodge one return.

ASX guidance materials on capital

- RG 265.560 Prior to 1 August 2011, the ASX Operating Rules set out capital requirements for market participants. These capital requirements were administered with the benefit of guidance materials issued by ASX Group—in particular, the *Capital Liquidity Handbook* and the *Capital Requirements Guidance*.
- RG 265.561 As such, we will take into account the *Capital Liquidity Handbook* and the *Capital Requirements Guidance* when interpreting the Capital Rules to the extent they are relevant.
- RG 265.562 In future, we may consider reviewing our policy position on these guidance materials in light of changes in the market or other factors. If so, we will consult with industry at that stage.

O Technological and operational resilience

Key points

Market participants must have adequate arrangements to ensure the resilience, reliability, integrity and security of their critical business services.

If a market participant engages a service provider to provide, operate or support one or more of its critical business services, they must have additional safeguards to ensure the operational resilience of those services.

Market participants must have adequate arrangements to ensure the confidentiality, integrity and availability of information obtained, held or used by the participant. They must also have adequate arrangements to ensure the availability of access to data obtained, held or used by the market participant, including arrangements designed to provide for the backup of data and the timely recovery of data in the event of any theft, corruption or loss of the data.

Market participants must have robust business continuity plans to effectively respond to events that could cause significant disruption to their operations or materially impact their services. These plans must be regularly reviewed, updated and tested.

It is essential for market participants to have appropriate governance arrangements and adequate financial, technological and human resources to comply with these obligations. This includes, but is not limited to, oversight by the board or senior management of the establishment, implementation, maintenance, review, testing and documentation of business continuity plans.

Scope and application

- RG 265.563 Chapter 8B of the Securities Markets Rules and this section of the guide apply to all market participants that trade in equity market products and CGS depository interests. Similar rules also apply to participants of the futures markets. Guidance for futures market participants can be found in [RG 266](#).
- RG 265.564 While the rules apply to market participants, the obligations set out sound practices that have more general applications. Other AFS licensees should consider applying the principles in the rules to their business.
- RG 265.565 AFS licensees should also consider [RG 104](#), which provides further information about ensuring adequacy of resources to provide financial services: see RG 104.89–RG 104.100.

Critical business services

RG 265.566 Part 8B.2 of the Securities Markets Rules requires market participants to implement an appropriate framework for ensuring the resilience, reliability, integrity and security of their critical business services.

Definition of critical business services

RG 265.567 ‘Critical business services’ means functions, infrastructure, processes or systems (and the resources on which these functions, infrastructure, processes or systems depend) that, in the event of failure to operate effectively, would or would be likely to:

- (a) cause significant disruption to the market participant’s operations, activities and conduct in connection with each market of which they are a participant (participant operations); or
- (b) materially impact the market participant’s services provided in connection with each market of which they are a participant (participant services).

RG 265.568 Market participants must identify the critical business services relevant to their business: Rule 8B.2.1(2)(a). We expect market participants to determine which services are critical in the context of their own businesses and consider the nature, scale and complexity of their operations. The factors that may be considered in identifying critical business services include the criticality of a service to users or the market participant, the impact on users or the market participant in the event of prolonged disruption, and any dependencies that third-party businesses may have on a service. Market participants may determine the criticality of their business services based on their operational risk appetite, with defined indicators and limits.

RG 265.569 In defining critical business services, we have provided examples of what we consider likely to be critical business services for market participants: see the definition of critical business services and related note in Rule 8B.1.2. Critical business services generally include functions, infrastructure, processes and systems that deliver or support:

- (a) order acceptance;
- (b) routing and entry;
- (c) clearing and settlement of transactions;
- (d) payments and deliveries of securities and funds;
- (e) accounting for and reconciling client money;
- (f) trust accounts;
- (g) securities and funds;
- (h) provision of trade confirmations; and
- (i) regulatory data reporting to market operators.

- RG 265.570 Relevant infrastructure that delivers or supports critical business services may include telephony, power and e-communication services.
- RG 265.571 The rules do not apply to CS participants (but do apply to market participants that are also CS participants). However, market participant functions, infrastructure, process and systems that provide information to, or that interface with, CS participants for the purposes of clearing and settling transactions would likely be critical business services.

Note: For further information on determining the criticality of services, market participants may wish to refer to IOSCO, [Market intermediary business continuity and recovery planning](#) (PDF 321 KB), final report, December 2015 and the International Standard [ISO 22301:2019 Security and resilience—Business continuity management systems—Requirements](#).

Adequate arrangements for critical business services

- RG 265.572 Market participants must have adequate arrangements for their critical business services. Adequate arrangements should ensure the resilience, reliability, integrity and security of critical business services: Rule 8B.2.1(1). These arrangements would generally include, but are not limited to, policies, procedures and organisational resources (including financial, human and technological resources). The arrangements should be commensurate with the nature, scale and complexity of the services offered: see [RG 104](#) at RG 104.21–RG 104.22.
- RG 265.573 At a minimum, a market participant must have arrangements for:
- (a) identifying critical business services;
 - (b) identifying, assessing, managing and monitoring for any risks to the resilience, reliability, integrity and security of critical business services (RG 265.574–RG 265.577);
 - (c) ensuring critical business services have sufficient and scalable capacity for the market participant’s ongoing and planned operations and services (RG 265.578–RG 265.584);
 - (d) preventing unauthorised access to or use of critical business services (RG 265.631);
 - (e) managing the implementation of new critical business services and of changes to existing critical business services (RG 265.590–RG 265.600);
 - (f) dealing with a major event (RG 265.650–RG 265.674); and
 - (g) managing outsourcing arrangements for critical business services (RG 265.601–RG 265.627).

Identifying, assessing, managing and monitoring risks to critical business services

- RG 265.574 Market participants must have critical business services arrangements for identifying, assessing, managing and monitoring for any risks to the resilience, reliability, integrity and security of their critical business services: Rule 8B.2.1(2)(b). To identify and assess risks, market participants should have adequate risk management systems: see RG 104.59–RG 104.66. Market participants should also have effective compliance measures to manage or mitigate those risks: see RG 104.23–RG 104.32 and Chapter C of RG 104. A market participant’s risk management systems and compliance measures will depend on the nature, scale and complexity of its business and its risk profile.
- RG 265.575 A director or senior manager of a market participant should have appropriate oversight of the risk management framework and compliance measures. This includes reporting to the governing body: see RG 104.50–RG 104.53.
- RG 265.576 A market participant regulated by APRA may instead develop and maintain a risk management framework as required by Prudential Standard [CPS 220](#) *Risk management* to ensure compliance with Rule 8B.2.1(2)(b).
- RG 265.577 A market participant’s critical business services arrangements should also identify key interdependencies that may exist between critical business services. Market participants should also consider the risks associated with aged systems and assets.

Sufficient and scalable capacity

- RG 265.578 Market participants should have arrangements for ensuring their critical business services have sufficient and scalable capacity for the participant’s ongoing and planned operations and services: Rule 8B.2.1(2)(c).

Human capacity

- RG 265.579 Market participants should have sufficient human resources to conduct their business and provide their services properly. What is ‘sufficient’ will depend on the nature, size and complexity of the market participant. As a market participant’s businesses may change over time, a market participant should keep under review whether it still has sufficient human resources, including the right balance of skill sets.
- RG 265.580 We consider having sufficient human resources means:
- (a) having enough staff for the size of the business;
 - (b) having staff (including directors, secretaries and senior management) with the right skills, knowledge, competence, expertise and integrity to ensure the market participant can operate their business properly and comply with its obligations;

- (c) when outsourcing any senior management or executive function, exercising due diligence and taking care to ensure that the outsourcing provides the market participant with the requisite skills, knowledge and competence;
- (d) being able to monitor and supervise the business appropriately; and
- (e) being able to meet current and anticipated future operational needs.

RG 265.581 To ensure market participants have sufficient and scalable capacity for their ongoing and planned operations and services, market participants should also undertake robust continuity planning, capacity planning and stress testing. Where market participants have outsourced their critical business services, we expect them to consider these principles as part of their management of the outsourced services: for more information about outsourcing of critical business services, see RG 265.601–RG 265.627.

System capacity management and stress testing

RG 265.582 Market participants should have sufficient system capacity to accommodate reasonably foreseeable volumes of trading activity.

RG 265.583 Systems should be adaptable to manage trading behaviours and scalable to allow for changes in response to elevated message levels and/or stressed market conditions that might breach their capacity. Stress testing of capacity, infrastructure, computers and applications should be conducted regularly and in line with a market participant's change management arrangements.

Monitoring and review

RG 265.584 To ensure that critical business services have sufficient and scalable capacity for the participant's ongoing and planned operations and services, market participants should periodically monitor and review their arrangements for systems testing, business continuity, capacity management and security. Market participants should remedy deficiencies and deal with identified problems in an appropriate and systematic way, as soon as reasonably possible.

Review and change of critical business services arrangements

RG 265.585 Review of a market participant's critical business services arrangements is fundamental to ensuring the continued resilience, reliability, integrity and security of a market participant's critical business services.

RG 265.586 At a minimum, market participants must review their critical business services arrangements following each material change to their critical business services and at least once every 12 months: Rule 8B.2.1(3). However, it may be appropriate for larger and more complex businesses to review their arrangements more frequently.

- RG 265.587 A market participant's critical business services arrangements should be periodically reviewed to ensure they remain adequate and are within the risk appetite and risk tolerance levels of the market participant. Market participants must apply recommended changes to the critical business services arrangements arising from the review to ensure they continue to comply with the requirement to have adequate critical business services arrangements: Rule 8B.2.1(3). The monitoring and review of arrangements should be proportional to the nature, scale and complexity of the business: see [RG 104](#) at RG 104.21–RG.104.22.
- RG 265.588 We expect that the board or senior management of the market participant should have oversight of the review.

Documentation of arrangements

- RG 265.589 Market participants must implement an appropriate framework for documenting their compliance with Rule 8B.2.1(4), including their critical business services arrangements, the scope and results of each review, and changes made to the arrangements. For guidance on how you can document your compliance measures, see [RG 104](#) at RG 104.23–RG 104.32.

Change management of critical business services

- RG 265.590 Poor implementation of a new critical business service or a poorly managed material change to an existing critical business service may adversely affect clients, other market participants, market operators and the operators of licensed CS facilities. It can also affect the fair, orderly and transparent operation of the market.
- RG 265.591 Market participants must have adequate arrangements to ensure they continue to comply with Rule 8B.2.1(1) following the implementation of a new, or change to an existing, critical business service: Rule 8B.2.2. Adequate arrangements include, but are not limited to, testing of a new critical business service or material changes to an existing critical business service: Rule 8B.2.2(2)(a). The testing of new or material changes to existing critical business services should include testing of related changes to processes, technology, data and infrastructure, and consider the effect on stakeholders relying on the critical business service. Testing should occur before the live implementation of a new critical business service or material changes to an existing critical business service.
- RG 265.592 Adequate arrangements may also include implementation of a recovery point mechanism, where possible. Such a mechanism enables market participants to 'roll back' to a functional pre-change point, following the implementation of a new critical business service or material changes to an existing critical business service.

RG 265.593 Market participants must have arrangements for communicating with persons who may be materially impacted by the implementation of a new critical business service, or a material change to an existing critical business service, to ensure they are adequately informed about the nature, timing and impact of the implementation a reasonable time before it occurs: Rule 8B.2.2(2)(b). What a reasonable time is will depend on the size, complexity and impact of the change, including the impact on clients and other third parties.

RG 265.594 Market participants' arrangements must also include arrangements for ensuring, to the extent reasonably practicable, that persons that may be materially impacted by the implementation or change are adequately prepared before it occurs: Rule 8B.2.2(2)(c). We expect that market participants will factor in the impact of the change on clients and other third parties, and allow sufficient time for any system or process changes that these persons need to make.

Material change

RG 265.595 When determining what constitutes a 'material change', market participants should consider the change in the context of the nature, scale and complexity of their business.

RG 265.596 Material changes to critical business services could include, but are not limited to:

- (a) implementing a new critical business service or ceasing an existing critical business service;
- (b) outsourcing a new or existing critical business service;
- (c) bringing in-house a previously outsourced critical business service;
- (d) making changes to an existing critical business service that may materially affect the users of the market participant's services;
- (e) implementing hardware upgrades and software updates that, in the event of an unsuccessful go-live:
 - (i) would or would be likely to cause significant disruption to the market participant's operations or materially impact the participant's services; or
 - (ii) may materially impact persons such as other market participants, market operators and the operators of licenced CS facilities; and
- (f) making changes that, in the event of an unsuccessful go-live, may require the activation of the market participant's business continuity plan.

RG 265.597 Adequate change management arrangements mitigate the risk of market disruptions and adverse impacts caused by failures of critical business services.

Testing

- RG 265.598 Market participants should have appropriate testing arrangements to ensure that their critical business services are functional and reliable. The testing methodologies should be designed to ensure that:
- (a) the operation of the critical business service complies with relevant regulatory obligations;
 - (b) the controls embedded in the critical business service work as intended; and
 - (c) the critical business service can continue to work effectively in stressed market conditions.
- RG 265.599 Material stress scenarios may include significantly increased trading message volumes, constrained access to a market operator or other important service provider and/or market conditions that might strain a market participant's functions, infrastructure, processes and systems. Stress testing of capacity, infrastructure, computers and applications should be conducted to ensure market participants have sufficient capacity to accommodate reasonably foreseeable volumes of trading activity. Market participants that facilitate algorithmic, low-latency and high-message volumes should have a testing environment to enable them to adequately stress test this activity.
- RG 265.600 When introducing or modifying a critical business service, relevant testing should be performed before going live. Examples of relevant testing may include, but are not limited to, the following:
- (a) *Functional testing*—This testing ensures that a system works as intended by verifying its features against its functional requirements.
 - (b) *Connectivity testing*—This testing validates the continuity of network communications by verifying that the network is properly connected, with message traffic taking the desired route. For example, if a market participant plans to introduce a new order routing system, it could use a 'simulated trading environment' to make sure that the system is properly connected to relevant market operators and data providers.
 - (c) *Conformance testing*—This testing is designed to determine whether a system meets predefined standards, and that quality assurance standards are being met. For example, standards can be the FIX protocols and specifications. Conformance testing should include interoperability testing and confirmation of associated internal procedures. It should also include testing for compliance with the market participant's obligations under the Corporations Act and ASIC market integrity rules.
 - (d) *Regression testing*—This testing detects potential problems in existing functional and non-functional areas of a system after changes and/or enhancements have been made. For example, when undertaking system enhancements, the market participant should review relevant legacy code and infrastructure to evaluate the compatibility of the system changes with existing software and hardware.

Outsourcing of critical business services

- RG 265.601 Outsourcing occurs where a market participant uses a third party to perform tasks that it would ordinarily undertake itself. Outsourcing may also include tasks that the market participant does not have the capacity or resources to perform.
- RG 265.602 We recognise that market participants may enter into an arrangement with a third party (service provider) under which the service provider will provide, operate or support their critical business services (outsourcing arrangement).
- RG 265.603 The service provider may be a related party within the corporate group or an unrelated third party. Outsourced critical business services may be provided domestically, from an offshore location or a combination of both.
- RG 265.604 Critical business services that are commonly subject to an outsourcing arrangement include, but are not limited to:
- (a) order acceptance, routing and entry using trading platforms supplied by third-party vendors;
 - (b) clearing and settlement of transactions;
 - (c) accounting for or reconciling client money and trust accounts conducted by a third-party custodian; and
 - (d) regulatory data reporting.
- RG 265.605 Market participants that outsource tasks (including their critical business services) related to their AFS licence will remain responsible for complying with their licence obligations under s769B of the Corporations Act. [RG 104](#) provides further information for licensees on their obligations when outsourcing tasks: see RG 104.33–RG 104.36.

Due diligence inquiries

- RG 265.606 Before entering into an outsourcing arrangement, market participants must conduct due diligence inquiries to ensure the service provider has the ability and capacity to provide the services effectively: Rule 8B.2.3(1)(a). When renewing or materially modifying an existing outsourcing arrangement, market participants should make inquiries to ensure the service provider continues to have the ability and capacity to provide the services effectively.
- RG 265.607 Market participants should exercise due care, skill and diligence in the selection of service providers. This should include consideration of the service provider's technical, financial and human resources and capability. The participant should also consider the service provider's capability on information security, business resilience, continuity and disaster recovery, as well as any dependencies, conflicts and risks. Participants should be satisfied that the service provider has the ability and capacity to provide the services effectively, reliably, continuously and to a high standard.

- RG 265.608 The due diligence inquiries to be made under Rule 8B.2.3(1)(a) may be different depending on whether the outsourced arrangement is with a wholly-owned group entity or another third party. There may also be differences in the due diligence inquiries required depending on whether the wholly-owned group entity is based in Australia or on a cross-border basis. For example, in identifying the potential business, operational and other risks in an outsourcing arrangement with a wholly-owned group entity based in Australia, there may be more focus on the internal processes and procedures of the participant and the service provider.
- RG 265.609 Where the outsourced arrangement is with a wholly-owned group entity outside Australia, there may be more focus on the added risk that the overseas-based wholly-owned group entity may not be able to exercise the same level of oversight as if they were based in Australia—for example, due to time zone differences, language barriers and the fact that the overseas-based wholly-owned group entity may not be as familiar with Australian legislative requirements.
- RG 265.610 In outsourcing arrangements with other service providers (including with a related body corporate that is not a wholly-owned group entity) there may be more focus on the contractual arrangements between the participant and the service provider and validating, through appropriate reference checks, the competence and reliability of the service provider.
- RG 265.611 When outsourcing is undertaken on a cross-border basis (including with a wholly-owned group entity), market participants should consider any additional due diligence to address additional risks—for example, to maintain confidentiality of client information and whether any laws in the service provider’s jurisdiction would obstruct or frustrate the ability of the market participant or ASIC to obtain prompt access to books and records.

Legally binding agreement

- RG 265.612 Market participants must ensure that the outsourcing arrangement is contained in a legally binding agreement between the market participant and the service provider: Rule 8B.2.3(1)(b). The agreement must provide, among other things, for the orderly transfer of services to the market participant or another service provider in the event of termination of the arrangement: Rule 8B.2.3(1)(b)(iv). The agreement should clearly define the ownership of intellectual property and provide specifications relating to the transfer of information to the market participant or the new service provider, as instructed by the market participant following the termination of the outsourcing arrangement. The agreement should also include an obligation for the service provider to assist and provide full support for the successful and complete transition following the termination of the outsourcing arrangement.

- RG 265.613 Additional safeguards can be implemented in the contractual arrangements between market participants and service providers. For example, market participants may also like to consider including provisions that:
- (a) terminate the contract if the service provider subcontracts services material to the outsourcing arrangement;
 - (b) allow the market participant to grant approval before the service provider subcontracts services material to the outsourcing arrangement;
 - (c) require the service provider to provide periodic assurance about the adequacy of their security controls and resilience capability;
 - (d) require the service provider to give a copy of its business continuity program to the market participant; and
 - (e) permit the market participant to make periodic onsite visits to the service provider's premises to assess whether it is meeting its obligations.

Monitor the performance of the service provider

- RG 265.614 Market participants must monitor the performance of the service provider to ensure it is providing, and continues to provide, the services effectively and has the ability and capacity to continue to provide those services effectively: Rule 8B.2.3(1)(c). They are expected to have written supervisory procedures that set out how they will monitor and oversee the outsourced tasks provided by service providers.
- RG 265.615 The written supervisory procedures may be part of an overall framework for managing outsourcing arrangements. However, the framework should document, for each service provider, the required service level and have clearly defined metrics to measure the service level provided, including on emergency procedures, disaster recovery and contingency plans. This will also support the market participant's assessment of, and reporting to management on, the quality of tasks performed by the service provider.
- RG 265.616 Market participants should have measures for the service provider to identify, record and remediate instances of failure to meet contractual obligations or unsatisfactory performance and to report such instances to the market participant in a timely manner.
- RG 265.617 Market participants should have sufficient human resources to monitor the outsourced service provider. Market participants may also consider the use of internal and/or external auditors to monitor, assess and report on performance and controls over confidential information or client data.

Conflicts of interest

RG 265.618 Market participants must also have in place adequate arrangements to identify and manage any conflicts of interest which have been identified or could arise between the market participant and the service provider. This includes any conflicts involving subcontractors and related entities of the market participant, service provider and any subcontractor: Rule 8B.2.3(1)(d). The legally binding agreement between the service provider and the market participant must require a service provider to notify a market participant before it subcontracts services to another provider: Rule 8B.2.3(1)(b)(ii). Therefore, market participants should be able to identify and manage any potential conflicts of interests relating to subcontractors as they would ordinarily identify and manage potential conflicts relating to the service provider.

Access to books, records and other information

- RG 265.619 Market participants must ensure that they and their auditors are able to promptly, on request, access books, records and other information of the service provider relating to the critical business services: Rule 8B.2.3(1)(f). They must also ensure that ASIC has the same access that it would have if not for the outsourcing arrangement: Rule 8B.2.3(1)(g). This may be achieved through specific terms in the legally binding outsourcing agreement with the service provider. The terms could prevent the service provider from deleting the records or otherwise making them unavailable, including in the event of non-payment of fees and charges by the market participant.
- RG 265.620 Market participants should test that their books, records and other information are readily accessible as expected. For example, market participants may do so by requesting, from time to time, access to certain books, records and other information of the service provider.
- RG 265.621 We expect that market participants will deal appropriately with any actions by service providers that breach outsourcing arrangements or compromise the participant's ability to comply with the market integrity rules and the law.
- RG 265.622 Where the outsourced tasks do not relate to critical business services, we encourage market participants to consider the appropriateness of applying the principles in Rule 8B.2.3 as a matter of good practice.

Note: APRA-regulated entities should also refer to Prudential Standard [CPS 231 Outsourcing](#), which includes information on outsourcing arrangements involving material business activities and IOSCO, [Principles on outsourcing](#) (PDF 639 KB), final report, October 2021.

Attestation requirement

- RG 265.623 Market participants must ensure, for each outsourcing arrangement, that the board or a director or senior manager have confirmed that they complied with the market participant's obligations in Rule 8B.2.3(1) and have made a written attestation to that effect: Rule 8B.2.3(1)(h). This attestation requirement applies to any outsourcing arrangement entered into after 10 March 2023 (including when an existing outsourcing arrangement is renewed or materially changed after 10 March 2023).
- RG 265.624 A market participant may use an internal governing body able to make decisions, approve or oversee a market participant's outsourcing arrangements to confirm whether a market participant has complied with the participant's obligations under Rule 8B.2.3(1). Examples of such a body are a steering or oversight committee for outsourcing, a risk management committee or an audit committee (at board or management level). In these examples, the written attestation may be made by a member of one of the above committees, or by a director of the market participant's board or a senior manager with relevant expertise and oversight.
- RG 265.625 The written attestation should be made each time a market participant enters into a new outsourcing arrangement with a service provider. This includes when a market participant renews or materially modifies an existing outsourcing arrangement with a service provider. Where a market participant has an existing outsourcing arrangement with a service provider that has no end date (e.g. an outsourcing arrangement within a wholly-owned group entity), we expect that the market participant will periodically comply with the written attestation requirement in Rule 8B.2.3(1)(h). The frequency of attestation may be informed by the risks involved with the outsourcing arrangement.
- RG 265.626 Market participants should regularly review and report to the board, director, senior manager or relevant governing body whether the outsourcing arrangement continues to comply with the participant's obligations in Rule 8B.2.3(1).

Outsourcing involving cloud computing services

- RG 265.627 We consider that using a cloud service provider is a form of outsourcing that involves specific risks and issues. Market participants should consider these risks and issues and apply appropriate safeguards to manage them. These risks and issues include, but are not limited to:
- (a) the shared responsibility model, which may require the allocation of roles and accountabilities between the market participant and the cloud service provider;

- (b) different types of cloud services, including exposure to environments that are available to a range of entities (e.g. the ‘public cloud’ versus the ‘private cloud’);
- (c) the information security arrangements that are applied to information stored in the cloud;
- (d) the jurisdictions in which the cloud service provider’s data centres are located;
- (e) the jurisdictions from which the cloud service provider’s services are supported (e.g. there may be a ‘follow-the-sun’ service model) by technical staff;
- (f) the legal jurisdiction that applies to the contractual arrangements with the cloud service provider;
- (g) market participants’, auditors’ and regulators’ access to data stored in the cloud, including any privacy limitations on accessing and using information about individual persons;
- (h) circumstances where the service provider is unable to provide an orderly transfer of services following unexpected termination of the outsourcing arrangement; and
- (i) the lack of visibility of the controls implemented by the cloud service provider.

Note: For further information on the use of cloud service providers, participants may wish to refer to the APRA information paper [Outsourcing involving cloud computing services](#) (PDF 836 KB), 24 September 2018.

Information security

- RG 265.628 Market participants may hold or receive a range of information, including information received from their clients and external parties. This may include sensitive, confidential and personal information. Market participants must protect their information assets from unauthorised access, theft, loss or corruption. This helps to address concerns relating to cyber-attacks and privacy requirements.
- RG 265.629 Rules 8B.3.1(1) and (2) require market participants to have adequate arrangements to ensure the confidentiality, integrity and availability of information obtained, held or used by the market participant in relation to its operations and services. This includes:
- (a) arrangements to identify and document information assets that are integral to the provision of the participant’s operations and services;
 - (b) controls (including automated controls) designed to prevent unauthorised access to information assets;

- (c) controls for identifying, assessing, managing and monitoring for unauthorised access to information assets; and
 - (d) arrangements designed to protect information assets from theft, loss or corruption.
- RG 265.630 Information assets include information and information technology, including software, hardware and data (both soft and hard copy).
- RG 265.631 Market participants must also have arrangements for preventing unauthorised access to or use of their critical business services: Rule 8B.2.1(2)(d). These arrangements may include appropriate security policy frameworks that safeguard critical business services against unauthorised use, modification, damage or loss.
- RG 265.632 A market participant must maintain, for a period of at least seven years after the relevant event, records of any:
- (a) unauthorised access to or use of its critical business services that impacts the effective operation or delivery of those services; or
 - (b) unauthorised access to or use of market-sensitive, confidential or personal information: Rule 8B.3.1(5).
- RG 265.633 We do not expect a market participant to retain all of its IT logs (such as user activity logs) for at least seven years. However, when a market participant becomes aware of unauthorised access to or use of the above services or information, it should retain whatever written records it makes about the relevant event and, where possible, retain the relevant IT logs associated with the unauthorised access.

Roles and responsibilities

- RG 265.634 A market participant should maintain an information security policy framework commensurate with its exposures to vulnerabilities and threats. A market participant should classify its information assets, including those managed by related parties and third parties, by criticality and sensitivity.
- RG 265.635 A market participant's information security arrangements should set out the responsibilities of all parties who have an obligation to maintain information security.
- RG 265.636 A market participant should clearly define the information security roles and responsibilities of:
- (a) the board;
 - (b) senior management;
 - (c) governing bodies; and
 - (d) individuals with responsibility for decision making, approval, oversight, operations and other information security functions.

- RG 265.637 A market participant should maintain an information security capability commensurate with the size and extent of threats to its information assets, and that enables the continued sound operation of the entity. To determine the size and extent of threats, a market participant should consider the degree to which an information security incident affecting an information asset has the potential to impact market participant services and operations.
- RG 265.638 Those responsible for information security should ensure that the market participant maintains the information security capability in this manner.
- RG 265.639 A market participant should actively maintain its information security capability in response to changes in vulnerabilities and threats, including those resulting from changes to information assets or its business environment.

Controls in relation to information assets

- RG 265.640 A market participant should have information security controls to protect its information assets, including those managed by related parties and third parties. The controls should be designed to prevent unauthorised access to information assets and to protect information assets from theft, loss or corruption. These controls should be commensurate with:
- (a) vulnerabilities and threats to the information assets;
 - (b) the criticality and sensitivity of the information assets;
 - (c) the stage at which the information assets are within their life cycle; and
 - (d) the potential consequences of an information security incident.
- RG 265.641 Market participants should consider implementing access controls to their information assets. Controls include, but are not limited to:
- (a) authorisation for remote access being determined on a user-by-user basis and business requirements;
 - (b) validation and review of access rights on a regular basis;
 - (c) traceable audit trails and logs for access to critical systems;
 - (d) multi-factor authentication for remote access; and
 - (e) ringfenced security, isolated networks or ‘air gaps’ for those critical systems that should not be accessed remotely.
- RG 265.642 Market participants that have adopted or expanded remote working arrangements should ensure supervision and controls remain effective for staff who are working remotely. They should also enhance supervision and controls where necessary to mitigate additional risks.
- RG 265.643 A market participant should test the effectiveness of its information security controls through a systematic testing program.

Availability of access to data

- RG 265.644 Market participants must have adequate arrangements to ensure the availability of access to data obtained, held or used by the participant in its operations and services: Rule 8B.3.1(3).
- RG 265.645 We expect a market participant to have adequate arrangements and controls to ensure availability of access to data in the event of either physical or electronic information security incidents. Adequate arrangements include, but are not limited to:
- (a) access controls through encryption, firewalls, password and/or electronic keys, and network segregation;
 - (b) monitoring access to data through authentication mechanisms and generation of audit trails to detect unauthorised access;
 - (c) intrusion prevention and detection systems that allow the market participant to detect, analyse and alter possible cyber-security threats; and
 - (d) appropriate training programs educating staff on cyber-security threats.
- RG 265.646 We expect market participants' arrangements to include testing of information security controls in a manner that is appropriate to the nature, scale and complexity of the business.
- RG 265.647 Market participants who are AFS licensees must comply with their obligation to have adequate risk management systems: see s912A(1)(h). These participants should refer to [RG 104](#) for guidance on how to comply with this obligation: see RG 104.59–RG 104.66.
- RG 265.648 AFS licensees must also comply with the obligation to have adequate resources, including financial, technological and human resources, to provide the financial services covered by their licence: see s912A(1)(d). This includes having adequate technological resources to enable the licensee to maintain client records, maintain data integrity, and to protect confidential and other information. Licensees should refer to [RG 104](#) for guidance on how to comply with this obligation: see RG 104.97–RG 104.100.

Note: APRA-regulated entities should also refer to Prudential Standard [CPS 234 Information security](#), which includes requirements and guidance on information security.

Backup and recovery of data

- RG 265.649 Market participants must have adequate arrangements to provide for the backup and timely recovery of data obtained, held or used by the market participant in the event of any theft, loss or corruption of the data: Rule 8B.3.1(4). Adequate arrangements may include, but are not limited to:
- (a) data backups that mirror data stored in the primary data centre;
 - (b) geographically separate secondary data centres and/or offsite storage;

- (c) assessment of the geographical area risks of the secondary data centre;
- (d) penetration testing of the backup site to prevent backups from compromise; and
- (e) technical recovery tests to ensure data backups can be recovered.

Note: For insight into what constitutes timely recovery of data, market participants may wish to refer to Section 2(d) of IOSCO, [Market intermediary business continuity and recovery planning](#) (PDF 321 KB), [CPS 234](#) and additional resources such as the [Information security manual](#) published by the Australian Cyber Security Centre (ACSC).

Business continuity plans

- RG 265.650 A market participant must establish, implement and maintain business continuity plans for effectively responding to a major event. A major event is an event that would or would be likely to cause significant disruption to the market participant's operations or materially impact their services: Rule 8B.4.1(1). The plans must enable the continuity of the market participant's usual operations and services, including of critical business services, during a major event. Where continuity is not possible, the plans must enable the timely and orderly restoration of those usual operations following the event.
- RG 265.651 The plan implemented by the market participant should include clearly defined roles and responsibilities to ensure that the appropriate resources and correct processes are deployed in response to a major event.

Identifying possible major events

- RG 265.652 Under Rule 8B.4.1(4), business continuity plans must identify and address, among other things:
- (a) the types of major events that may impact a market participant's operations and services; and
 - (b) their potential impact on the market participant's critical business services, operations and services, including classifying the potential severity of the impacts and the escalation procedures that are appropriate to the classification.
- RG 265.653 It must also be clear what actions, arrangements and resources are required, and specific objectives for the time taken, to provide continuity of operations or to quickly restore services. For example, this may involve teams triaging events according to pre-defined metrics and escalating the event to the appropriate crisis management team.
- RG 265.654 Major events might include a significant internal system failure, a pandemic, a natural disaster, an outage of a critical infrastructure provider (such as a

market operator or operator of a CS facility), the failure or corruption of a critical third-party service (such as a market data provider), or a significant cyber-security threat.

- RG 265.655 A pandemic can have global impact for significant periods of time. While a pandemic may not cause physical damage to property and assets like a natural disaster, it can threaten the health of key personnel and demand a special level of consideration.

Note: For further guidance on the operational resilience of trading venues and market intermediaries during the COVID-19 pandemic, market participants may wish to refer to IOSCO, [Operational resilience of trading venues and market intermediaries during the COVID-19 pandemic & lessons for future disruptions](#) (PDF 654 KB), final report, July 2022.

- RG 265.656 We expect market participants to undertake a business impact analysis to identify the potential likelihood of a major event occurring and the impact a major event may have on the market participant.
- RG 265.657 We also expect market participants to map assets and dependencies (including third parties and financial market infrastructures) to identify potential impacts when a dependency is unavailable, so as to develop appropriate workaround actions.

Appropriate to the nature, scale and complexity of their business

- RG 265.658 We expect market participants to implement business continuity plans that are appropriate to the nature, scale and complexity of their business. Market participants operating on a regional or global scale are expected to have business continuity plans that address major events at the appropriate level:
- (a) *Local response to a major event*—when the event has a local impact only (e.g. a localised event that affects only part of a building or a single building), such as a fire at the primary site;
 - (b) *Wide area response to a major event*—when the event affects both the primary site and alternative site within a region, such as an earthquake or wide area flooding;
 - (c) *Regional response to a major event*—when the event affects two or more countries within a region, such as a pandemic, nuclear accident or the onset of war.
- RG 265.659 Market participants should establish alternative sites for critical business services that have the same basic capabilities of primary sites including for required infrastructure, hardware and software (e.g. data centres). Any alternative site should be a safe distance from any primary site to mitigate any reasonably foreseeable event likely to impact the availability of all sites simultaneously.

RG 265.660 In some cases, employees working remotely may be a resilient and workable alternative option. However, if this is not a solution for all employees and functions, business continuity plans should provide for an alternative location. Market participants should also consider the risks associated with remote working arrangements and implement appropriate controls to address these risks.

Communication during a major event

RG 265.661 A disruption or outage to a market participant's critical business services can impact:

- (a) their clients;
- (b) other market participants;
- (c) counterparties; or
- (d) those dependent on the market participant for their critical business services, who require access to these services to carry out their activities.

RG 265.662 Market participants' business continuity plans must include procedures for communicating during a major event with persons that may be impacted to ensure they are adequately informed: Rule 8B.4.1(4)(h). The communication must include the nature of the event, the steps that are or will be taken (and their likely timing) to manage the event, and the likely timing of the resumption of usual operations. The form of communication should be consistent with how the recipients would reasonably expect the market participant to communicate with them during such events.

RG 265.663 A market participant's communication procedures should address required communications with financial authorities in other jurisdictions in the event of major operational disruptions with cross-border implications.

Notification of a major event

RG 265.664 Market participants must notify ASIC immediately on becoming aware of a major event: Rule 8B.4.1(6). We also request that ASIC is notified when operations return to normal.

RG 265.665 The market participant must also give ASIC a written report within seven days. The report must set out the circumstances and the steps taken by the market participant to respond to the major event: Rule 8B.4.1(7). The following elements should be set out in the report:

- (a) the circumstances of the major event—including, for example:
 - (i) how it was identified;

- (ii) the cause;
 - (iii) the impact of the event on the usual operation of the critical business services; and
 - (iv) the affected parties (e.g. clients, other market participants, market operators or operators of licensed CS facilities); and
- (b) the steps taken to manage the major event—including, for example:
- (i) the escalation procedures for responding to the event, and the board members and senior management involved;
 - (ii) any changes to management structure or supervisory policies and procedures during or after the event;
 - (iii) the actions, arrangements and resources to respond to the event (including any documentation arising from the formation or invocation of a crisis management team or plan);
 - (iv) the timeframe for the expected return to normal operations; and
 - (v) any actions to remediate affected parties.

RG 265.666 Following submission of the written report to ASIC, we encourage market participants to notify ASIC if there are any significant changes to the matters outlined in the written report.

Review, update and testing of plans

RG 265.667 Market participants must review, test and update their business continuity plans from time to time. At a minimum, to ensure the plans remain effective, market participants must review, test and update them:

- (a) each time there is a material change to the operations, services or critical business services, or to the participant’s structure and location;
- (b) as soon as practicable after a major event; and
- (c) once every 12 months (Rule 8B.4.1(8)).

RG 265.668 Testing scenarios should be designed to cover a variety of major events and recovery scenarios. This should go beyond partial scenarios, where only specific components of business continuity plans are tested (like offsite tests that only involve switching off the main system to operate the backup system). Better practice is that tests should incorporate full-scale simulated ‘real life, end-to-end’ scenarios that test all aspects of the business continuity plan, including the initial response and invocation, recovery and continuity, and return to normal operation phases.

RG 265.669 Business continuity testing should include market participants considering all the resources and facilities required to conduct the testing and confirming their availability—for example, physical infrastructure, equipment and personnel. Market participants should also consider the efficacy of a

business continuity plan before testing—a full-scale test of a plan with limited development may itself lead to a disruption.

- RG 265.670 Whenever practical and useful, market participants should participate in industry-wide or cross-border testing with other intermediaries and stakeholders. Participants should conduct mock drills (simulation exercises) to test the effectiveness of their business continuity plan. Senior management should review results of business continuity plan assessments and, where appropriate, make the necessary changes to the business continuity plan.
- RG 265.671 Business continuity plans are generally temporary in nature. Prolonged use of these plans may require more frequent updates and testing. Further, the occurrence of a major event may warrant revisiting these plans and making more permanent changes to governance and oversight frameworks.
- RG 265.672 When reviewing their business continuity plans, market participants should conduct small-scale exercises to improve and increase understanding and effectiveness within the business.
- RG 265.673 Market participants should document the training exercises and note any observed problems or weaknesses in staff execution of the business continuity plan. Market participants should incorporate lessons learned from their reviews and testing of their business continuity plans in the updates.

Documentation of plans and testing

- RG 265.674 Market participants must maintain documentation of their business continuity plans and the scope and results of all reviews and testing required under the rules: Rule 8B.4.1(9). The documentation must be maintained for a period of seven years from the date created or last amended, whichever is later. From time to time, we may request this documentation. Examples of documentation that should be maintained include, but are not limited to:
- (a) playbooks detailing responses to major events;
 - (b) terms of reference for crisis management committees;
 - (c) business continuity communication plans; and
 - (d) results of business continuity testing and failover resilience testing.

Note 1: Market participants may wish to refer to IOSCO, [Market intermediary business continuity and recovery planning](#) (PDF 321 KB), final report, December 2015 and IOSCO, [Thematic review on business continuity plans with respect to trading venues and intermediaries](#) (PDF 556 KB), final report, May 2021.

Note 2: Market participants should also consider certifying their business continuity plans against [ISO 22301:2019](#). APRA-regulated entities should also refer to Prudential Standard [CPS 232 Business continuity management](#).

Governance

- RG 265.675 Market participants must have appropriate governance arrangements and adequate financial, technological and human resources to comply with their obligation under Chapter 8B of the Securities Markets Rules: Rule 8B.5.1(1).
- RG 265.676 We expect that oversight and accountability for critical business services and business continuity will come from the highest levels within market participants. Market participants must have arrangements for their board or senior management to oversee the establishment, implementation, maintenance, review, testing and documentation of the business continuity plans: Rule 8B.5.1(2).
- RG 265.677 We expect the persons with responsibility for oversight to be able to exert significant influence over the management of the business operations. Examples of appropriate levels of seniority include, but are not limited to:
- (a) a director of the organisation;
 - (b) a member of the board of the organisation; and
 - (c) individuals who make, or participate in making, decisions that affect the whole or a substantial part of the organisation.
- Note: See the definition of 'director' and 'senior manager' in s9 of the Corporations Act.
- RG 265.678 Whether a person might be considered as having the appropriate level of seniority will depend on the size and nature of the business. This may include a senior manager with responsibility for oversight of the relevant critical business service and/or business continuity plans.
- RG 265.679 We expect that the board or senior management will provide effective oversight and regularly assess whether the market participant has adequate financial, technological and human resources to comply with its obligations under Chapter 8B of the Securities Markets Rules.

Appendix 1: Guidance notes

RG 265.680 Table 22 lists the old ASX guidance notes (GN) that remain relevant to the ASIC market integrity rules.

Table 22: Old ASX guidance notes that are relevant to the Securities Markets Rules

Number	Title
GN 1	Prevention of manipulative trading
GN 3	Reporting to clients—Confirmations
GN 4	New clients
GN 5	New clients—Electronic client agreements for derivatives market transactions
GN 8	Insurance requirements
GN 11	Client order priority
GN 12	Client money and property—Client funds deposited with third parties
GN 13	Prohibition of advice to clients
GN 23	New clients or clients trading in new products for the first time—Dispatch of ASX explanatory booklets
GN 29	Managed discretionary accounts
GN 31	Client agreements—Requirements: The requirement for participants to enter into client agreements with clients
GN 32	Bulk authorisation of index arbitrage orders in ITS
GN 33	Trading records
GN 37	Maintenance of an orderly market when closing out settlement failures

Note 1: Relevant guidance in GN 6 *Management requirements*, GN 7 *Management requirements—Good fame and character* and GN 27 *Ongoing compliance and supervision—Responsibilities of responsible executives*, has been incorporated into this regulatory guide. These guidance notes have been removed from Table 22.

Note 2: [RG 241](#) replaces guidance contained in GN 19 *Automated order processing: Certification*, GN 21 *Automated order processing: Authorised persons* and GN 22 *Automated order processing: Operational requirements*. These guidance notes have been removed from Table 22.

Appendix 2: Superseded guidance

RG 265.681 This guide consolidates relevant guidance previously found in:

- (a) superseded Regulatory Guide 214 *Guidance on ASIC market integrity rules for ASX and ASX 24 markets*, issued July 2010, reissued August 2010, February 2014, May 2015 and November 2015;
- (b) superseded Regulatory Guide 215 *Guidance on ASIC market integrity rules for IMB, NSXA and SIM VSE markets*, issued 20 November 2015;
- (c) superseded Regulatory Guide 223 *Guidance on ASIC market integrity rules for competition in exchange markets*, issued 4 May 2015 (see Sections G, I, J, K, L and M);

Note: See also [Regulatory Guide 172](#) *Financial markets: Domestic and overseas operators* for guidance previously found in superseded Regulatory Guide 223.

- (d) superseded Regulatory Guide 224, *Guidance on ASIC market integrity rules for Chi-X and APX markets*, issued 20 November 2015;
- (e) superseded Regulatory Guide 226 *Guidance on ASIC market integrity rules for capital and related requirements: ASX, ASX 24, Chi-X and APX markets*; and
- (f) superseded Regulatory Guide 238 *Suspicious activity reporting*.

Key terms

Term	Meaning in this document
ACI	Australian Compliance Institute
ACN	Australian Company Number
ACSC	Australian Cyber Security Centre
ADI	An authorised deposit-taking institution—a corporation that is authorised under the <i>Banking Act 1959</i> . ADIs include: <ul style="list-style-type: none"> • banks; • building societies; and • credit unions
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
agency	Where a market participant acts on behalf of a client
algorithm/algorithmic trading	Electronic trading activity where specific execution outcomes are delivered by predetermined parameters, rules and conditions
algorithmic program	Automated strategies using programmable logic/system-generated orders (rather than human-generated orders) based on a set of predetermined parameters, logic rules and conditions. These include algorithmic trading, automated order generation, high-frequency trading and automated market making
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
AML reporting legislation	Section 41 of the AML/CTF Act and s16 of the FTR Act
AOP	Automated order processing—the process by which orders are registered in a market participant’s system, which connects it to a market. Client or principal orders are submitted to an order book without being manually keyed in by an individual (referred to in the rules as a DTR). It is through AOP systems that algorithmic programs access our markets

Term	Meaning in this document
AOP Annual Review Date	1 November each calendar year
API	Application programming interface
arbitrage	The process of seeking to capture pricing inefficiencies between related products or markets
ARBN	Australian Registered Business Number
ARSN	Australian Registered Scheme Number
associate	Any director, officer, employee or associated or related company of a person
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited (ACN 008 624 691) or the exchange market operated by ASX Limited
ASX guidance notes	Guidance notes providing assistance to ASX market participants on ASX's interpretation of the former ASX Market Rules
ASX Market Rules	Previous operating rules made by ASX dealing with activities or conduct of its market and of persons in relation to the market
ASX Operating Rules	ASX's operating rules, which replace the pre-existing ASX Market Rules
AUSTRAC	Australian Transaction Reports and Analysis Centre—Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit
Australian domestic licensed financial market	A financial market licensed under s795B(1) of the Corporations Act
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
best available bid and offer	See 'NBBO'
best bid or offer	The best available buying price or selling price
best execution	Where a market participant achieves the best outcome for its client
bid–ask spread	The difference between the best bid and the best offer

Term	Meaning in this document
block trade	Has the meaning given by Rule 6.2.1 of the Securities Markets Rules
buy-side	Advising institutions typically concerned with buying, rather than selling, assets or products. Private equity funds, mutual funds, unit trusts, hedge funds, pension funds and proprietary trading desks are the most common types of buy-side entities
Capital Rules	<i>ASIC Market Integrity Rules (Capital) 2021</i> —rules made by ASIC under s798G of the Corporations Act
Cboe	Cboe Australia Pty Ltd (formerly known as Chi-X Australia Pty Limited) or the exchange operated by Cboe
CFD	A contract for difference
CGS depository interest	A depository interest in a security issued by the Australian Government (e.g. Treasury Bonds and Treasury Notes) that can be transferred through a licensed CS facility
Chapter 5A (for example)	A chapter in the Securities Markets Rules (in this example numbered 5A), unless otherwise specified
CHESS	Clearing House Electronic Subregister System
CHESS HIN	CHESS Holder Identification Number
conflict of interest	A direct or indirect pecuniary interest, or a direct or indirect interest of any other kind, that could conflict with the proper performance of the functions of a person in relation to determining a matter Note: See s124(1)(b) of the <i>Australian Securities and Investments Commission Act 2001</i> .
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
court enforceable undertaking	A court enforceable undertaking that may be accepted by ASIC under reg 7.2A.01 of the Corporations Regulations
CP 145 (for example)	An ASIC consultation paper (in this example numbered 145)
CPS 234 (for example)	An APRA Prudential Standard (in this example numbered 234)

Term	Meaning in this document
crossing	A type of transaction where the market participant is the same for both the buyer and seller. The market participant may be acting on behalf of the buying client and the selling client, or acting on behalf of a client on one side of the transaction and as principal on the other side of the transaction
crossing system	<p>An automated service provided by a market participant to its clients which matches or executes client orders with orders of:</p> <ul style="list-style-type: none"> • the market participant (i.e. against the market participant's own account); • other clients of the market participant; or • any other person whose orders access the automated service
	These orders are not matched on an order book of a licensed market
crossing system operator	A market participant that operates a crossing system in financial products able to be traded on a market
dark pool/venue	Non-pre-trade transparent, electronically accessible pools of liquidity
depository interest	A financial product quoted on a market that confers on the holder a beneficial interest in another financial product (underlying product) to which it relates, where legal title to the underlying product is held by a nominee company on behalf of the holder
direct electronic access	Also known as automated client order processing (ACOP) in Australia. Direct electronic access is the process by which an order is submitted by a client, agent or participant representative into a market participant's AOP system directly without human intervention. Direct electronic access enables a client to access a market without being a direct market participant and without being directly bound by the operating rules of the market they are accessing
DTR	Designated trading representative—representative of a market participant that has been authorised by the participant to submit trading messages to a trading platform on behalf of the participant
equity market products	Shares, interests in managed investment schemes (including ETFs), rights to acquire shares or interests in managed investment schemes under a rights issue, CDIs admitted to quotation on ASX, and transferable custody receipts that are admitted to quotation under a market's operating rules. CGS depository interests are not equity market products

Term	Meaning in this document
equity securities	Has the meaning given by Rule 1.4.3 of the Securities Markets Rules
ETF	<p>Exchange-traded fund—A managed fund:</p> <ul style="list-style-type: none"> • the equity securities of which are: <ul style="list-style-type: none"> – listed on a market; – able to be traded on a market; or – admitted to trading status as an AQUA Product or to the AQUA Quote Display Board; • with power and approval to continuously issue and have quoted on the relevant market, equity securities in the managed fund; • which provides for the issue of new equity securities in return for the subscriber transferring to the managed fund a portfolio of securities, cash or a combination of securities and cash; and • for which the price of the underlying instrument is continuously disclosed or can be immediately ascertained
ETF special trade (exchange-traded fund special trade)	Has the meaning given to the term ‘ETF Special Trade’ by the operating rules of a market
exchange market	<p>A market that enables trading in listed products</p> <p>Note: Not all exchange markets offer primary listings services.</p>
execution venue	<p>An execution venue is a facility, service or location on or through which transactions in equity market products and CGS depository interests are executed and includes:</p> <ul style="list-style-type: none"> • each individual order book maintained by a market operator; • a crossing system; and • a participant executing a client order against its own inventory otherwise than on or through an order book or crossing system. This includes an order book and other matching mechanisms
financial market	Has the meaning given in s767A of the Corporations Act, and includes facilities through which offers to acquire or dispose of financial products are regularly made or accepted
financial product	<p>Generally, a facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> • makes a financial investment (s763B); • manages financial risk (s763C); and • makes non-cash payments (s763D) <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>

Term	Meaning in this document
FSG	A Financial Services Guide—a document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act Note: This is a definition contained in s761A.
FTR Act	<i>Financial Transaction Reports Act 1988</i>
fully hidden order	An order on an order book that is not pre-trade transparent
GN 1 (for example)	An ASX guidance note (in this example, numbered 1)
high-frequency traders	Traders that adopt a specialised form of algorithmic trading characterised by the use of high-speed computer programs
high-frequency trading	While there is not a commonly agreed definition of high-frequency trading, we characterise it as: <ul style="list-style-type: none"> • the use of high-speed computer programs to generate, transmit and execute orders; • the generation of large numbers of orders, many of which are cancelled rapidly; and • typically holding positions for very short time horizons and ending the day with a zero position
indirect market participant	A broker that is not itself a market participant, but that accesses the market through a market participant
infringement notice	An infringement notice issued under reg 7.2A.04 of the Corporations Regulations
institutional investor	Advising institutions typically concerned with buying, rather than selling, assets or products. The most common types of institutional investors include private equity funds, mutual funds, unit trusts, hedge funds, pension funds and proprietary trading desks
internalisation	Where a client order is transacted against a market participant's own account
IOI	Indication of interest—A non-binding, electronic expression of trading interest that may contain information such as the security name, capacity (agency or principal), volume and price instructions to identify potential counterparties
IOSCO	International Organization of Securities Commissions
issuer	In relation to a financial product able to be traded on a market, the legal entity which issues the product
ISO 22301:2019 (for example)	A standard of the International Standards Organisation (in this example numbered 22301:2019)

Term	Meaning in this document
large portfolio trade	A transaction that includes at least 10 purchases or sales, the market participant acts as agent for both the buyer and seller of the portfolio or as principal buys from or sells to the client, and the consideration of each is not less than \$200,000 and the aggregate consideration is not less than \$5 million
latency	An expression of how much time it takes for data to get from one point to another
LEI	Legal Entity Identifier
limit order	An order for a specified quantity of a product as a specified price or better
liquidity	The ability to enter and exit positions with a limited impact on price
locked market/price	Occurs when there is no spread because the best available bid price and best available offer price are the same (also the midpoint)
managed investment scheme	Has the meaning given in s9 of the Corporations Act
market	Any of: <ul style="list-style-type: none"> • the ASX market; • the Cboe market; • the NSXA market; or • the SSX market
market impact	The effect on the formation of price, volume and market depth created by order flow or trading activity. This includes the associated cost incurred when the execution price differs from the target price, or when the liquidity required by the execution is different from the liquidity available
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
market licence	An Australian market licence
market licensee	The holder of an Australian market licence Note: This is a definition contained in s761A of the Corporations Act.
market manipulation	Has the definition given in Pt 7.10 of the Corporations Act
market order	An order at the best price currently available

Term	Meaning in this document
market participant	A participant of a market Note: Participant has the meaning given by s761A of the Corporations Act.
MDA	A managed discretionary account
MDP	Markets Disciplinary Panel—ASIC’s Markets Disciplinary Panel, through which we exercise our powers to issue infringement notices and to accept court enforceable undertakings in relation to breaches of the market integrity rules
negative commission	Where the cash payment to a recipient (for their client order flow) is greater than the cost to the recipient (or to their clients) of submitting that order flow
NBBO	National best bid and offer—the highest bid (best buying price) and the lowest offer (best selling price) for a product that is available across all pre-trade transparent order books at the time of the transaction. The best bid and best offer may not necessarily be on the same order book. It may be that the best bid is on the order book of another market
NSXA	National Stock Exchange of Australia Limited (ACN 000 902 063) or the exchange market operated by NSXA
off-order book trading and transactions	Transactions that take place away from a central limit order book and that are not pre-trade transparent. It is often referred to as ‘dark liquidity’ or ‘upstairs trading’. It includes bilateral OTC transactions and transactions resulting from a market participant matching client orders or matching a client order against the participant’s own account as principal. When this type of trading is done in an automated way and is part of a pool of liquidity, it is referred to as a ‘dark pool’
operating rules	Has the meaning given in s761A of the Corporations Act
order book	An electronic list of buy orders and sell orders, maintained by or on behalf of a market operator, on which those orders are matched with other orders in the same list
origin of order	A type of order category that identifies trading capacity and, if relevant, the type of client
OTC	Over the counter
Part 4.3 (for example)	A part of the Securities Markets Rules (in this example numbered 4.3), unless otherwise specified
partly disclosed order	An order on an order book that is pre-trade transparent with the exception of either price or volume

Term	Meaning in this document
payment for order flow	An arrangement where a person receives a payment from another person in exchange for sending its clients' order flow to them. This can include payments between market participants or other market intermediaries (such as securities dealers or liquidity providers), or a combination of both
PI insurance	Professional indemnity insurance
post-trade transparency	Information on executed transactions made publicly available after transactions occur
pre-trade transparency	Information on bids and offers being made publicly available before transactions occur (i.e. displayed liquidity)
price formation	The process determining price for a listed product through the bid and offer trading process of a market
price step	The difference in price of one tick size
professional investor	A professional investor as defined in s9 of the Corporations Act
Pt 7.2A (for example)	A part of the Corporations Act (in this example, numbered 7.2A), unless otherwise specified
reg 10.15.04 (for example)	A regulation under the Corporations Regulations (in this example, numbered 10.15.04), unless otherwise specified
reportable matter	Where a market participant has reasonable grounds to suspect that: <ul style="list-style-type: none"> • a person has placed an order or entered into a transaction on a market while in possession of inside information; or • a transaction, or an order transmitted to a trading platform of a market, has or is likely to have the effect of: <ul style="list-style-type: none"> – creating an artificial price for trading in financial products on a market; – maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a market; – creating or causing the creation of a false or misleading appearance of active trading in financial products on a market; or – creating or causing the creation of a false or misleading appearance with respect to the market, or price, for trading in financial products on a market
reportable situation	Has the meaning given by s912D of the Corporations Act or s50A of the <i>National Consumer Credit Protection Act 2009</i>

Term	Meaning in this document
representative	<p>Means:</p> <ul style="list-style-type: none"> • an authorised representative of the licensee; • an employee or director of the licensee; • an employee or director of a related body corporate of the licensee; or • any other person acting on behalf of the licensee <p>Note: This is a definition contained in s910A of the Corporations Act.</p>
responsible market operator	<p>Where an equity market product is able to be traded on more than one market, the responsible market operator is the market operator determined in writing by ASIC</p> <p>Where a CGS depository interest is able to be traded on more than one market, the responsible market operator is the CGS market operator determined in writing by ASIC</p>
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
RG 216 (for example)	An ASIC regulatory guide (in this example, numbered 216)
risk management systems	Systems to identify, measure, control and monitor risks
Rule 1.2.2 (for example)	A rule of the Securities Markets Rules (in this example numbered 1.2.2), unless otherwise specified
s795B (for example)	A section of the Corporations Act (in this example, numbered 795B), unless otherwise specified
Securities Markets Rules	<i>ASIC Market Integrity Rules (Securities Markets) 2017</i> —rules made by ASIC under s798G of the Corporations Act
sell-side	Firms that sell investment services to the buy-side, or corporate entities, including broking–dealing, investment banking, advisory functions and investment research
settlement	The exchange of payment and delivery for purchased securities
SOR	Smart order router—An automated process of scanning various execution venues to determine which venue will deliver the best outcome on the basis of predetermined parameters
spread	The difference between the best bid and offer prices
SSX	Sydney Stock Exchange Limited (formerly Asia Pacific Stock Exchange Limited) or the exchange market operated by SSX

Term	Meaning in this document
tick size	The minimum increment by which the price for an equity market product or CGS depository interest may increase or decrease
total consideration	For a buy order, the purchase price paid by a client in respect of performance of a client order, plus transaction costs; or for a sell order, the sale price received by a client in respect of performance of a client order less transaction costs
trade confirmation	A legal document provided to clients which sets out the terms of an executed transaction
trade report	<p>For equity market products or CGS depository interests, a report of post-trade information required to be made to a market operator under the Securities Markets Rules</p> <p>For any product other than an equity market product, a CGS depository interest and an option market contract, a report of information in relation to a transaction entered into otherwise than by matching of orders on an order book, required to be made to a market operator under the operating rules of the relevant market</p>
trading halt or suspension	A temporary pause in the trading of a product for a reason related to market integrity, such as when an announcement of price sensitive information is pending (does not include a halt or suspension caused by a technical problem, including a power outage, affecting a market operator's trading system)
trading participant	A market participant that has trading permission in respect of one or more financial products
trading pause	A period during which the responsible market operator must prevent orders from being matched or executed on its market, but during which bids and offers may be displayed, entered, amended and cancelled
undisclosed order	A non-pre-trade transparent order
volatility	Fluctuation in a product's price

Related information

Headnotes

ASX, CGS, CGS depository interest, Cboe, crossing system, equity market products, financial markets, front running, insider trading, licensed financial markets, management structures, market integrity rules, market manipulation, market operators, NSXA, participants, qualified privilege, reportable situations, significant breach reporting, SSX, supervision, suspicious activity

Regulatory guides

[RG 51](#) *Applications for relief*

[RG 78](#) *Breach reporting by AFS licensees and credit licensees*

[RG 79](#) *Research report providers: Improving the quality of investment research*

[RG 104](#) *AFS licensing: Meeting the general obligations*

[RG 105](#) *AFS licensing: Organisational competency*

[RG 146](#) *Licensing: Training of financial product advisers*

[RG 166](#) *Licensing: Financial requirements*

[RG 172](#) *Financial markets: Domestic and overseas operators*

[RG 179](#) *Managed discretionary account services*

[RG 181](#) *Licensing: Managing conflicts of interest*

[RG 216](#) *Markets Disciplinary Panel*

[RG 221](#) *Facilitating digital financial services disclosures*

[RG 241](#) *Electronic trading*

[RG 266](#) *Guidance on ASIC market integrity rules for participants of futures markets*

Consultation papers

[CP 131](#) *Proposed ASIC market integrity rules: ASX and SFE markets*

[CP 136](#) *Markets Disciplinary Panel*

[CP 140](#) *Responsible entities: Financial requirements*

[CP 145](#) *Australian equity market structure: Proposals*

[CP 148](#) *Proposed market integrity rules: Chi-X market*

[CP 152](#) *ASIC's conversion of ASX and SFE guidance: General operational obligations*

[CP 156](#) *Retail OTC derivative issuers: Financial requirements*

[CP 161](#) *Proposed ASIC market integrity rules for capital and related requirements: ASX, ASX 24 and Chi-X markets*

[CP 168](#) *Australian equity market structure: Further proposals*

[CP 179](#) *Australian market structure: Draft market integrity rules and guidance*

[CP 181](#) *Retail trading in Commonwealth Government Securities*

[CP 202](#) *Dark liquidity and high-frequency trading: Proposals*

[CP 222](#) *Reducing red tape: Proposed amendments to the market integrity rules*

[CP 277](#) *Proposals to consolidate the ASIC market integrity rules*

[CP 302](#) *Proposed changes to ASIC's capital requirements for market participants*

[CP 314](#) *Market integrity rules for technological and operational resilience*

[CP 342](#) *Proposed amendments to the ASIC market integrity rules and other ASIC-made rules*

[CP 347](#) *Proposed amendments to the prohibition on order incentives in the ASIC market integrity rules*

Reports

[REP 204](#) *Response to submissions on CP 131 Proposed ASIC market integrity rules: ASX and SFE markets*

[REP 215](#) *Australian equity market structure*

[REP 237](#) *Response to submissions on CP 145 Australian equity market structure: Proposals*

[REP 238](#) *Response to submissions on CP 148 Proposed market integrity rules: Chi-X market*

[REP 244](#) *Response to submissions on CP 161 Proposed ASIC market integrity rules for capital and related requirements: ASX, ASX and Chi-X markets*

[REP 290](#) *Response to submissions on CP 168 Australian equity market structure: Further proposals*

[REP 311](#) *Response to submissions on CP 179 and CP 184 Australian market structure: Draft market integrity rules and guidance*

[REP 331](#) *Dark liquidity and high-frequency trading*

[REP 332](#) *Response to submissions on CP 181 Retail trading in Commonwealth Government Securities*

[REP 364](#) *Response to submissions on CP 202 Dark liquidity and high-frequency trading: Proposals*

[REP 432](#) *Response to submissions on CP 222 Reducing red tape: Proposed amendments to the market integrity rules*

[REP 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts*

[REP 692](#) *Response to submissions on CP 302 Proposed changes to ASIC's capital requirements for market participants*

[REP 719](#) *Response to submissions on CP 314 Market integrity rules for technological and operational resilience*

[REP 720](#) *Response to submissions on CP 342 Proposed amendments to the ASIC market integrity rules and other ASIC-made rules*

[REP 721](#) *Response to submissions on CP 347 Proposed amendments to the prohibition on order incentives in the ASIC market integrity rules*

Legislative instruments

[ASIC Corporations \(ASX-listed Schemes On-market Buy-backs\) Instrument 2016/1159](#)

[ASIC Market Integrity Rules \(Securities Markets\) Class Waiver 2018/258](#)

[ASIC Market Integrity Rules \(Securities Markets\) Determination 2018/314](#)

Legislation

AML/CTF Act, s41

Australian Securities and Investments Commission Act 2001, s124

Corporations Act, Chs 6 and 7; Pt 7.2A; s9, 89, 257B, 761G, 761GA, 761H, 769B, 795B910A, 912A, 912D, 912DAA, 1100A, 1100D and 1017F

Corporations Regulations, regs 7.1.18, 7.1.19, 7.1.28, 7.9.63A–7.9.63C, and 10.15.04

FTR Act, s16

Market integrity rules

Capital Rules, Rule 9.4.2

Securities Markets Rules, Chapters 3, 4, 5A, 6, 7 and 8B; Parts 2.1, 3.8–3.11, 5.1AA, 5.4B, 5.6, 5.9A, 5.11, 6.1–6.4, 7.4 and 8B.2; Rules 1.2.2, 1.4.3, 1.6.1, 2.1.1–2.1.4, 2.2.1, 2.2.2, 2.2.4, 2.2.5, 2.5.2, 2.5.3, 2.5.5, 2.5.6, 3.4A.1, 3.4.1–3.4.3, 3.5.10, 3.6.3, 3.8.1–3.8.3, 3.9.1–3.9.3, 3.10.1, 3.10.2, 3.11.1, 3.11.2, 4.1.5–4.1.6, 5.1AA.1, 5.1.3, 5.1.4, 5.4A.1, 5.4B.1, 5.5.3, 5.6.1, 5.6.3, 5.7.1, 5.7.2, 5.9.1, 5.9A.1, 5.11.1, 5.11.2, 5A.1.1, 5A.1.2, 5A.2.1–5A.2.3, 5A.3.1–5A.3.4, 5A.4.1, 5A.4.2, 5A.5.1, 5A.5.2, 6.1.1, 6.1.2, 6.1.4–6.1.7, 6.1.8, 6.2.1–6.2.6, 6.3.1, 6.3.2, 6.3.4, 6.3.6A, 6.3.7, 6.3.7A, 6.4.1, 6.4.2, 7.4.1–7.4.4, 8B.2.1–8B.2.3, 8B.3.1, 8B.4.1, 8B.5.1, and 9.4.1

Cases

George v Rockett (1990) 170 CLR 104

Queensland Bacon Pty Ltd v Rees (1966) 115 CLR 266

Standards

[AS ISO 19600:2015](#) *Compliance management systems—Guidelines*

[AS/NZS 10002:2014](#) *Guidelines for complaint management in organizations*

[AS/NZS ISO 31000:2009](#) *Risk management—Principles and guidelines*

[CPS 220](#) *Risk management*

[CPS 231](#) *Outsourcing*

[CPS 232](#) *Business continuity management*

[CPS 234](#) *Information security*

[ISO 10383:2012](#) *Securities and related financial instruments—Codes for exchanges and market identification*

[ISO 22301:2019](#) *Security and resilience—Business continuity management systems—Requirements*

Other publications

ACSC, [Information security manual](#)

APRA, [Outsourcing involving cloud computing services](#) (PDF 836 KB).

IOSCO, [Market intermediary business continuity and recovery planning](#) (PDF 321 KB)

IOSCO, [Objectives and principles of securities regulation](#) (PDF 187 KB)

IOSCO, [Operational resilience of trading venues and market intermediaries during the COVID-19 pandemic & lessons for future disruptions](#) (PDF 654 KB)

IOSCO, [Principles for dark liquidity final report](#) (PDF 471 KB)

IOSCO, [Principles on outsourcing](#) (PDF 639 KB)

IOSCO, [Regulatory issues raised by changes in market structure](#) (PDF 675 KB)

IOSCO, [Thematic review on business continuity plans with respect to trading venues and intermediaries](#) (PDF 556 KB)

IOSCO, [Transparency and market fragmentation](#) (PDF 578 KB)