



28 January 2011

Ms Calissa Aldridge
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Australian Securities and Investments Commission
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Dear Ms Aldridge

Consultation Paper 145 Australian equity market structure: Proposals

The Australian Financial Markets Association (AFMA) welcomes the opportunity to comment on ASIC Consultation Paper 145 'Australian equity market structure: Proposals'. AFMA's initial comments on CP 145 are to be found in the attached commentary paper.

Given the scale and scope of CP 145 and the comments we make on the prioritisation and further handling of the proposals and issues raised in it there is much more work and consultation to be done in settling appropriate Market Integrity Rules and then implementing them. AFMA and its members are keen to work with ASIC in this process. Getting the Market Integrity Rules right is of vital importance to our membership and we stand ready to organise further consultation forums and have discussions with you as required.

Tracey Lyons and I are the principal AFMA officers working on this project. Please contact Tracey at tlyons@afma.com.au or on (02) 9776 7997 or me at dlove@afma.com.au or on (02) 9776 7995 as needed.

Yours sincerely

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ASIC CONSULTATION PAPER 145

AUSTRALIAN EQUITY MARKET STRUCTURE:

PROPOSALS

January 2011

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1. Executive Summary

There is an overall industry appreciation that ASIC is seeking to take a strategic approach to the evolution of the equity markets in Australia and how the regulatory framework needs to be developed to accommodate the changing environment. The approach of thinking holistically about the overall environment and seeking to provide a predictable path for regulatory policy development is applauded. However, AFMA considers that the accelerated timetable for the implementation of a number of the proposed market integrity rules is not an appropriate approach and a reprioritisation, with further consultation, needs to take place with regard to proposals which are not directly related to the commencement of additional equity market operators.

The essential priority is to meet the Government's policy objective of enabling a competitive environment in which other market operators can have consideration of license applications settled and begin to offer services. The settlement of the new market integrity rules (MIR) should be prioritised to provide a sufficient regulatory framework so that rule creation does not present a barrier to the introduction of competition while allowing ample opportunity to further consider new MIR that have a broader role in promoting the ongoing integrity and efficiency of the market as a whole.

- *Categorisation and Prioritisation of Issues*

Amongst the range of proposed MIR there are a number of measures which are seen as desirable to be put in place as soon as possible as they are deemed necessary by market participants to conduct trading in a multi market operator environment and their settlement provides regulatory certainty for the implementation of system changes. We include best execution into this category subject to our doubts about the regulatory value it serves for wholesale clients.

Accordingly, we have put the proposals into three categories, which is different in a number of cases to the way issues are broadly categorised in Table 7 of Consultation Paper 145 (CP 145). The categories are as follows:

1. *Relevant to multi-operator environment* - These proposals are necessary to enable a multi-operator equity market environment to come into operation and are of immediate priority.
2. *Relevant to market integrity* - These proposals could enhance market integrity and efficiency and are next in priority.
3. *Relevant to market licensing, structure and competition* - Proposals which go to the structure and future competitive development of the market that are properly within the scope of public policy debate and thorough regulatory

impact assessment. These proposals should be considered as part of the Government's policy review of the market licensing provisions of the Corporations Act as they lie across the bounds of regulatory policy.

AFMA considers that the proposals listed in Category 1 are matters that can be dealt with in the near term as they are immediately relevant to anticipated commencement of trading services by financial market licence applicants.

AFMA considers that it is premature to make early decisions on issues that are in Category 3. CP 145 provides an important starting point on these issues but the consultation process will need to go beyond what it envisages. There needs to be a measured, transparent public policy debate on proposals which will affect the evolution of the market. There are a range of viewpoints and commercial interests that need to have an ample and fair hearing and be taken into account in the Government's decision-making process.

- *Stable Testing Environment*

There needs to be a stable IT environment for the end-to-end testing of system connectivity and compliance with the new MIR related changes at least for the initial phase of implementation.

AFMA considers it necessary, in the interests of market integrity, for ASIC to control the environment and require market operators to provide a stable environment for system testing and certification on an end-to-end basis. It is clear that if market operators continually impose trading system upgrades during the period when the MIR changes are being implemented the IT resources of our members will be overwhelmed by multiple demands.

- *Transition Flexibility*

The desire to put in place MIR to provide a sufficient regulatory framework so that rule creation does not present a barrier to the introduction of competition means that some of the proposed MIR will come into affect ahead of the capacity of market participants to acquire and upgrade systems to comply with the new rules. In this environment, where market participants may take some time to connect to new financial markets, ASIC should provide a transition period during which market participants can become fully compliant with measures that require significant system upgrades. It is recommended that ASIC adopt a flexible approach to enforcement during this transition phase focusing on guidance and education and comfort through no-action positions.

- *Inappropriate MIR Proposals*

There are two proposals which are not relevant to the MIR and which we consider sit outside current policy authority given to ASIC by the Parliament. These are:

- Suspicious activity reporting - there is existing regulation already in place through the Anti-Money Laundering/Counter-Terrorism Financing (AML/CTF) legislation.
- Real-time tagging of short sales - short sale disclosure rules were implemented through the reforms put in place by the Government in 2008/09.

These proposals are not being appropriately dealt with as part of consultations on the proposed MIR. The manner of their proposed implementation is not consistent with sound policy and regulatory best practice as they lack comprehensive regulatory impact assessments justifying such regulatory interventions and a clear policy mandate from the Government.

2. Scope of Reforms

2.1. Categorisation of Issues

The ASIC proposals are divided into three categories for the purposes of comment:

1. *Relevant to multi-operator environment* - These proposals are related to enabling a multi-operator equity market environment to come into operation and are of immediate priority.
2. *Relevant to market integrity* - These proposals could enhance market integrity and efficiency and are in the next order of priority.
3. *Relevant to market licensing, structure and competition* - Proposals which go to the structure and future competitive development of the market that are properly within the scope of public policy debate and thorough regulatory impact assessment. These proposals should be considered as part of the Government's policy review of the market licensing provisions of the Corporations Act as they lie across the bounds of regulatory policy.

Under these categorisations the proposals in CP145 would fall under the following groupings:

Category 1 - Relevant to multi-operator environment

- D1 Products to which the proposals apply
- D2 Persons to whom the proposals apply
- G1 Best execution obligation
- G2 Policies and procedures
- G5 Execution quality reporting by execution venues
- G6 Format for the reports
- J1 Timing of publication
- J4 Reporting of off-order book transactions
- J5 Activities that do not need to be reported
- K1 Consolidation of pre-trade and post-trade information
- K2 Consolidated information cost
- L1 Market operator cooperation
- L2 Assignment of common identifiers
- L3 Synchronised clocks

- M1 Trades to be under the operating rules of a market operator
- M2 Participant not to trade during trading halt
- M3 Participant may produce single trade confirmations

Category 2 - Relevant to market integrity

- D3 Proposed approach to breaches of the market integrity rules
- E1 Order entry controls for anomalous orders
- E2 Volatility controls for extreme market movements
- E3 Transparent cancellation policies for clearly erroneous trades
- F1 Minimum standards for direct electronic access
- F2 Legally binding contract for direct electronic access
- F3 Requirement to have adequate systems and controls
- F4 Algorithmic trading minimum requirements - Testing
- F5 Algorithmic trading minimum requirements - Adequate systems and controls and documentation
- G3 Disclosure to clients of best execution obligation
- G4 Demonstrating execution performance and order routing by market participants
- J2 Reporting - Deferred publication for large principal transactions
- J3 Content of post-trade disclosures

Category 3 - Relevant to market licensing, structure and competition

- H1 Orders that should be pre-trade transparent
- H2 Content of pre-trade disclosures
- H3 Priority for pre-trade transparent orders
- H4 Reporting requirements for operators of dark pools of liquidity
- F6 High-frequency trading: Your feedback
- I2 Identification of client and origin of orders
- I3 Identification of off-order book execution venues: Dark pools
- L4 Tick sizes
- L5 Fair access to markets
- L6 Market operator systems and controls

Irrelevant proposals

- I1 Suspicious activity reporting
- I4 Real time tagging

3. Transition Issues

3.1. Stable Testing Environment

Overall, with the exception of some of the reporting proposals, it appears that IT systems can be adapted or acquired in a timely fashion that can conform to the requirements of the MIR proposals dealing with trading on multiple markets. Members are very clear that they cannot begin implementation of IT system changes until the MIR are made.

Market operators have a legitimate desire to upgrade trading systems. During 2010 a considerable amount of market participant attention and resources were directed to the preparation for and testing of compliance with the existing equity market operator's upgrades to its trading system. Market participants face significant challenges each time a market operator system is upgraded. Market participants have no control over decisions made by market operators on the scheduling of such system upgrades. This creates circumstances where upgrade cycles cause commercial and compliance risk associated with their implementation and testing. If a market operator provides a sub-optimal testing environment such risks are greatly heightened. Overlaps of market operator system upgrade schedules with the implementation of new MIR will exacerbate the risk environment to the detriment of market integrity and in practice seriously exceed the resource capacity of market participants to meet the demands placed on them. An unstable environment in which to test will undermine market integrity to the detriment of investors and market participants. In these circumstances it is the responsibility of ASIC to provide an effectively controlled environment where system stability is prioritised over trading platform upgrades of market operators to promote the smooth implementation of the market structure reforms.

Accordingly, there needs to be a stable IT environment for the end-to-end testing of system connectivity and compliance with the new MIR related changes at least for the initial phase of implementation. This includes providing full end-to-end testing right through to a market participant receiving settlement confirmation messages when trading tests are conducted. An indicative transition period could be six months but this should be subject to further discussion with market participants.

AFMA considers it necessary, in the interests of market integrity, for ASIC to control the environment and compel the cooperation of market operators to provide a stable environment for system testing and certification on an end-to-end basis. It is clear that if market operators continually impose trading system upgrades during the period when

the MIR changes are being implemented the IT resources of our members will be overwhelmed by multiple demands.

3.2. Transition Flexibility

There is overall support for settlement of Category 1 issues so that MIR can be made to allow for pending market license applications to be considered by the Minister. This means that we are looking at the implementation of MIR set out in the proposals which would place significant demands on market participants to implement systems and compliance measures to ensure full conformity with the law.

To ensure the earliest implementation of proposed MIR necessary to allow for the operation of Chi-X in the market ASIC should provide a transition period during which market participants can transition to the new MIR, particularly in relation to best execution and reporting requirements where significant IT system upgrades need to be generally implemented. It is recommended that ASIC adopt a flexible approach to enforcement during this transition phase, focusing on guidance and comfort through no-action positions.

4. Best Execution

There is an overall acceptance by AFMA's member firms of the principle of best execution and the more significant application of this principle when there are competing market operators.

For retail clients, it would be helpful to expressly articulate what best execution means for them, as a measure that promotes confident participation by them in the market. It should be based on a simple formulation easily understood by retail investors, namely price. It is, therefore, an investor protection measure in character, and is generally the case in the Corporations Act that investor protection is directed at retail clients and serves their needs.

4.1. Simple Best Execution Rule for Retail Clients Only

For non-retail clients AFMA questions the justification for overly elaborate prescriptive rules, particularly with regard to determining 'total consideration'. The general principles around best execution expressed as general principles have been a long standing feature of ASX supervision of the market. CP 145 and Report 215 provide no indication of a regulatory failure or problem with regard to the execution services being currently provided.

While we have this overall reservation we have noted the general determination on the part of ASIC in this consultation process to introduce MIR dealing with best execution along the general lines proposed in part G of CP 145 as a part of the Category 1 measures. Further consultation is needed as part of the implementation process around

client reporting obligations and the interaction of ‘best execution’ obligations with existing MIR in relation to fairness and priority of dealing. In this context we have provided comments which stress the need for transitional flexibility as it will place major demands on IT and compliance resources of market participants.

4.2. Access to Clearing and Settlement Services

Market participants require an environment where clearing and settlement services (CS) are provided on a fair and effective basis regardless of the trading platform on which the trades are executed.

Part of the ‘total consideration’ that needs to be taken into account in determining best execution are costs associated with CS services. If CS facilities are not provided in a fair and effective way cost differentials may arise that are associated with the decision to transact on one market over another. Uneven CS costs could cause detriment to some investors and this outcome would be contrary to the objectives of the best execution proposal.

Provision of clearing and settlements services on a non-discriminatory basis is an existing obligation placed on CS facility licensees under paragraph 821A(a) – “A CS facility licensee must to the extent that is reasonably practicable to do so, do all things necessary to ensure that the facility’s services are provided in a fair and effective way”.

AFMA considers that ASIC should give consideration to ensuring equitable cooperation between the market operators includes arrangements for accessing and processing clearing and settlement and forms part of the supervisory role that is expected of ASIC in the transition to the new equity market regime.

Consideration of the broader public policy issues that surround this concern would also be an appropriate matter for the Government to consider as part of its policy review of the market licensing and CS facility licensing provisions of the Corporations Act.

5. Suspicious Activity Reporting

The proposal for suspicious activity report clearly overlaps with the existing AML/CTF requirements. The requirement to report to ASIC with a “reasonable suspicion” is not defined. There should be consistency across Commonwealth law. The threshold is lower than the AML/CTF legislation "actual suspicion" test.

It is also questionable whether the MIR provisions in the Corporations Act provide sufficient legislative authority to impose such an onerous regulatory burden. It is noted that the AML/CTF legislation requirement is set out in the legislation and was subject to significant policy scrutiny and regulatory impact assessment followed by extensive consultation on implementation and supporting regulatory guidance.

The implementation of changes to meet AUSTRAC suspicious transaction reporting requirements is now costed in many hundreds of millions of dollars. Regulators should not introduce overlapping and inconsistent regulation of such major consequence without a legislative mandate and public policy consideration.

Overall this proposal is viewed as superfluous. In keeping with the principles of better regulation, ASIC should look to its cooperation arrangements with AUSTRAC in relation to suspicious activity reporting.

6. Real-time Tagging

6.1. Proposal Outside Policy Authority

Proposal I4 relating to identification of short sales was deliberately omitted when the short-selling provisions of the Corporations Act were amended to introduce the transaction reporting requirement. The proposal also lacks a regulatory impact assessment and does not relate to the market structure reforms. AFMA is of the view that ASIC is going beyond its policy authority in proposing draft market integrity rules I4-1 and I4-2 and that a separate policy review and regulatory impact assessment would need to be conducted to justify their introduction. Review by the Committee of European Securities Regulators (CESR) of the European Union directive dealing with short selling did not support the introduction of real-time tagging.

6.2. Transaction Reporting Statutory Obligations

In respect of transaction reporting of short sales, the relevant statutory provisions impose short sale transaction reporting obligations in the following way. Sub-regulation 7.9.100(2) of the Corporations Regulations specifies the timing for disclosure of the particulars in accordance with paragraph 1020AB(3)(b) of the Corporations Act 2001 (Corporations Act). It requires a seller selling through a financial services licensee to disclose the particulars to the financial services licensee at the time of entering into the agreement to sell. Importantly for present purposes, sub-regulation 7.9.101(1) specifies the particulars that a financial services licensee must disclose in relation to their clients' covered short sales. Sub-regulation 7.9.101(2) then specifies that the timing for disclosure of these particulars is by 9am on the next trading day after entering into the agreement to sell if the information is provided to the licensee by 7pm. If the information is provided after 7pm, it must be disclosed to the market operator by 9am on the second trading day after the information was provided. In addition, sub-regulation 7.9.100(2) specifies that a financial services licensee selling on their own behalf must disclose the particulars relating to their own covered short sale to the market operator by 9am on the next trading day after entering into the agreement to sell if the sale occurs before 7pm. If the sale occurs after 7pm, it must be disclosed to the market operator on the second trading day after entering into the agreement.

The Regulation Impact Statement on the Short Selling Disclosure Regime that supported the making of the Corporations Amendment Regulations 2009 (No. 8) which put in place the regulations relating to short sale transaction reporting noted above, described and considered the costs associated with the interim transaction short sale reporting requirements put in place as a temporary measure before the present regulations were made. The conclusion drawn gave rise to the proposal to retain the existing interim transactional disclosure regime with public disclosure on the following day, based on the analysis of the costs and benefits outlined in the Statement. The Statement and the Explanatory Memorandum accompanying the making of the regulations do not consider the possibility or the regulatory impact of real-time tagging of short sales.

Accordingly, a real-time tagging obligation could only be created by amendment of regulations 7.9.100 and 7.9.101.

6.3. Settled Law

The law in relation to short sale reporting has been recently considered by Parliament and amended. No parliamentary intent can be discerned to create such a real-time tagging obligation in the recent law reform process and current Australian law is fully consistent with the IOSCO Principles on Short Selling Regulation which were published in June 2009.

As this is an area of recent law reform that has been extensively considered and supported by a regulatory impact assessment, no further modification of the law is warranted for the foreseeable future.

6.4. Existing Multi-layered Disclosure

The short selling disclosure regime now includes:

- Reporting of gross short sales data on a daily basis
- Reporting by investors of their short sale positions
- Securities lending transaction and position reporting under the Financial Stability Standard administered by the Reserve Bank, which serves as an indicator of short sale activity and complements the above disclosures of short sale activity

Each of the reporting requirements is backed by legislation, or the Financial Stability Standard in the case of securities lending, and has been subject to the normal accountability checks on new regulation. ASIC does not have the statutory authority to create revised short sale real-time tagging obligations as these would not be consistent with the Corporations Regulations and would create an additional layer of reporting on top of the existing triple-layered short sale report requirements that arise through transaction, position and securities lending data reporting.

Any further change to the law in this area would also be another major regulatory burden at a time when complex market supervision reforms are being implemented that not only involve dealing with compliance issues relating to MIR and revised market operating rules but also the need to make IT systems ready for a multi-operator environment within very tight timeframes from a system implementation perspective. Moreover, this additional regulatory burden would come on top of substantial regulatory costs incurred by stockbrokers and other financial institutions implementing major government reforms including consumer credit and unfair contracts legislation, short selling disclosure and the future cost of reforms flowing from the Future of Financial Advice reform project.

7. ASIC Consultation Paper 145 – Specific Proposal Comments

Question	Proposal	AFMA Comment
D1	<p>Products to which the proposals apply</p> <p>We propose a market integrity rule that would apply the proposals in this paper to shares, managed investment schemes and CDIs admitted to quotation on ASX. These are referred to in the remainder of this paper as ‘equity market products’.</p> <p>The proposals do not apply to trading in companies that are dual-listed where the trading occurs in the instrument listed in the overseas jurisdiction and is subject to regulation in that jurisdiction.</p> <p>The short sale tagging proposal (Section I) applies to a broader range of products.</p>	<p>Category 1 Issue</p>
D1Q1	<p>Do you agree that the proposals should apply to equity market products as defined?</p>	<p>The scope needs to cover related equity derivatives to allow for consistent supervision and market practices.</p>
D1Q2	<p>Which of the proposals in this paper should naturally apply to other products, such as futures, other equity-related products and debt products?</p>	<p>The MIR having to do with trading halts and circuit breakers etc, should apply to the single stock futures markets as well, in that the futures market ought to halt trading where the underlying is placed in a market integrity trading halt.</p> <p>Debt products should not be covered in the initial stage.</p>

Question	Proposal	AFMA Comment
D2	<p>Persons to whom the proposals apply</p> <p>We propose a market integrity rule that would apply the proposals in this paper to one or more of:</p> <ul style="list-style-type: none"> a) market operators that offer trading services in equity market products; b) market participants that deal in equity market products on their own behalf or for clients, whether or not the participant transacts on a CLOB or off-order book in equity market products; and c) market participants who provide a service to clients that enables the electronic matching of orders in equity market products with orders of the participant or of other clients of the participant. <p>We are considering whether to extend the scope to other financial services providers (e.g. indirect market participants, fund managers).</p> <p>Depending on what option is taken to ensure sufficient consolidation of market data (see Section K), rules may apply to market operators about the provision of market data to ASIC-approved data consolidators.</p>	<p>Category 1 Issue</p>
D2Q1	<p>Will there be material gaps in the regulatory approach if the proposed rules apply only to market operators and market participants? Should the proposals apply to other persons (e.g. indirect market participants and fund managers)?</p>	<p>If clients of market participants are to be required to comply with market trading rules, ASIC has the jurisdiction to impose obligations on such investors directly. The MIR should not be used as an indirect route to require market participants and market operators to impose regulatory type obligations on their clients through contractual arrangements. There should be direct accountability for meeting such obligations directly to ASIC.</p> <p>It is common regulatory practice world wide to apply best execution obligations to both market participants and fund managers as both are serving client instructions in transacting trades.</p> <p>Contemplation of extension of the MIR to indirect market participants may raise broader public policy issues that need to be considered in the context of the Government’s review of the market licensing provisions of the Corporations Act. Using the tool of the MIR may not necessarily be the best approach or consistent with policy intentions of the legislature. Given these broader public policy issues a cautious approach should be adopted which focuses on the task in hand and the intended role of MIR as the means to</p>

Question	Proposal	AFMA Comment
		create market integrity specific rules within a licensed financial market context.
D2Q2	Should the scope be extended so minimum standards for data consolidation apply to data consolidators under market integrity rules rather than indirectly?	A standardised approach to data consolidation is desirable which standards set by the regulator can promote. Large market participants are likely put in place their own data consolidation requirements. Data consolidators/providers are unlikely to be able to service the requirements of the whole market.
D3	<p>Proposed approach to breaches of the market integrity rules</p> <p>We propose to set a maximum penalty for contravention of each market integrity rule, depending on the nature of the rule.</p>	Category 2 issue
D3Q1	<p>What are your views on an appropriate maximum penalty for each of the proposed market integrity rules in this paper?</p> <p>Tier 1: 20,000</p> <p>Tier 2: 100,000</p> <p>Tier 3: 1,000,000</p>	The level of penalties is not controversial. The real concerns with penalties relate to the operation of the infringement notice regime and the decision-making process surrounding them. We refer to our comments on CP 136 from June 2010 in this regard.

Question	Proposal	AFMA Comment
E1	<p>Order entry controls for anomalous orders</p> <p>We propose market integrity rules that will require a market operator to:</p> <ul style="list-style-type: none"> a) have in place minimum order entry price controls and maximum order entry price and volume controls to prevent anomalous orders from entering the market; b) make the thresholds of these controls available to the public; c) in setting the relevant thresholds, have regard to (at least) current price, historical price movements and tick sizes; and d) have in place documented procedures for setting, regularly reviewing and monitoring the effectiveness of these controls. 	<p>Category 2 issue</p>
E1Q1	<p>What implications will this measure have on market integrity? Will it reduce the number of trade cancellations?</p>	<p>AFMA agrees with ASIC that it is desirable for market operators to have in place market level access and volatility controls beyond the current participant controls and trade cancellation rules. This view does not mean that the role market participant controls should be diminished. The separate levels of controls need to complement and reinforce each other.</p> <p>IOSCO has found that nearly all markets overseas they surveyed several years ago had measures that are intended to reduce the possibility of error trades, through measures like price limits or functions programmed into the trading system algorithm that automatically limit the range of permissible buying or selling prices. The prophylactic measures are intended to minimise the possibility of error trades.</p>

Question	Proposal	AFMA Comment
E1Q2	What implications will this measure have on liquidity?	<p>Erroneous trades can affect the integrity of the market as a whole and market users can quickly lose confidence in the market as a forum for the execution of transactions at fair prices. In particular, large orders executed at prices substantially away from the prevailing market price could cause other participants, both in the underlying cash markets and in related futures contracts and derivatives, to take actions that are not economically justified and, ultimately, will result in substantial losses. In addition, contingent orders entered into an electronic trading system could be executed automatically. More generally, participants could lose confidence in the market as a forum for the execution of transactions at fair prices. Against this backdrop, an effective trade cancellation policy can promote market integrity by counteracting the effect of the error trade and enabling the proper management of the potential market disruption.</p> <p>For these thresholds to function as they are intended and to prevent them from having an undesirable effect on the efficiency of the market, especially liquidity (for example, by preventing reasonable orders from entering into the market) however, it is vital for them to be properly established. To this purpose, AFMA proposes that we establish a Working Group to work with ASIC to design thresholds based not only on current price, historical price movements and tick sizes, as has been proposed, but also based on volatility and liquidity. Careful calibration is necessary to safeguard against outcomes which decrease market efficiency and liquidity.</p>
E1Q3	What implications will this measure have on confidence in the market?	<p>Information in relation to volumes and prices of completed trades enables market users not only to take into account the most recent information, but also to monitor the quality of executions they have obtained compared with other market users. In general, where trading information is comprehensive and widely available, the price discovery process is more efficient and the public's confidence in the market is greater.</p>
E1Q4	Who should decide the thresholds? What factors should be taken into account when deciding the thresholds?	<p>As suggested above, AFMA proposes that we establish a Working Group to work with ASIC to design thresholds. Circuit breakers or other market halting mechanisms should be taken into account. Thresholds should be mandated by ASIC and not be set by the market operators. The thresholds should be harmonised across operators to ensure market integrity.</p>

Question	Proposal	AFMA Comment
E1Q5	Should the thresholds be made available to the public?	Yes, as this will increase certainty. Regulatory concern about how thresholds could be taken into account by market participants in determining their tailored order entry controls is dealt with through supervision of such controls. Participant-level order entry controls should be commensurate and appropriate to the relevant business (and client) of any market participant. Market operator enforced order entry controls should be tailored to relevant products traded on those markets.
E1Q6	What implications will this measure have on market-participant-level order entry controls?	<p>It is difficult to evaluate in the abstract how different order entry filters may interact without being able to test them in an operational environment. It is important that testing occur to ensure that filters do not feedback on one another. The nature of derivative markets and the way that price and volume activity occurs is different to that of equity markets. In practice it may be difficult to apply the same thresholds across equity and derivatives markets.</p> <p>The secondary market will be affected by current proposals - ETOs should not be included due to the nature of that market. Price movements are extreme given the leverage and their relationship to the underlying equities market. The proposed rules for the underlying equities will take out the extreme movements and therefore reduce the volatility in the underlying. In the interests of fair and orderly markets, a threshold in the underlying market would bring this to the derivative market indirectly.</p>
E1Q7	What practical alternatives are there to ensure anomalous orders are not entered into the market?	Greater emphasis could be placed on the use of market-to-limit orders and other order types designed to achieve relative certainty of price execution, rather than market orders. However, AFMA considers more consultation is required with stakeholders before judgments are made about such measures.
E1Q8	Should this obligation apply to all financial products traded on exchange markets and to operators of non-equity market product markets (e.g. derivative markets)?	There should be scope for the application of this obligation to derivatives markets, subject to them being tailored to the fundamentals and behaviour of relevant markets and financial products traded on them. In relation to more complex financial instruments such as ETOs some degree of flexibility is needed to both protect properly informed price formation and to protect the interests of retail investors and in turn the long term trading volumes of the ASX market for ETOs.

Question	Proposal	AFMA Comment
E1Q9	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	<p>As most market participants already have procedures and filters in place there will be costs associated reviewing existing procedures and filters to make sure they are in line with the new MIR.</p> <p>Market participants would potentially have greater review costs if the MIR were to impose new review obligations. Additionally, there may be additional costs depending on the model ASIC chooses in relation to circuit breakers.</p>
E1Q10	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	This will impose a burden on market operators. Market operator costs are likely to ultimately flow through to transactional costs.

Question	Proposal	AFMA Comment
E2	<p>Volatility controls for extreme market movements</p> <p>We propose market integrity rules that will require a market operator to:</p> <ul style="list-style-type: none"> a) suspend trading in an individual equity market product and/or market-wide trading if the price of the relevant equity market product and/or market-wide index reaches a threshold prescribed by ASIC. During a suspension, orders should be permitted to be added and withdrawn from the order book; and b) implement appropriate automatic suspension and reopening procedures. <p>In setting the prescribed threshold, ASIC would at a minimum have regard to the following features of the equity market product and/or market:</p> <ul style="list-style-type: none"> a) standard deviation of the product price; b) volatility; c) daily price range; d) historical price range; and e) the operation of the volatility control mechanism in a wider market context (including impacts on interconnected markets). <p>It is our intention that this obligation should ultimately apply to all financial products traded on exchange markets. We will assess scope and timing in the context of the comments we receive. We intend to undertake follow-up consultation with industry before setting the prescribed threshold.</p>	<p>Category 2 issue</p>
E2Q1	<p>Do you consider that volatility controls (in single equity market products and market-wide) are necessary or desirable in the Australian market environment? Why?</p>	<p>The introduction of volatility controls is generally viewed from a conceptual stand point as a positive development. Concerns surround the details of such controls. Market participants have a strong desire to be involved in the development of volatility controls.</p>
E2Q2	<p>Do volatility controls help stabilise markets or do they destabilise markets?</p>	<p>There is significant academic debate on this issue. Volatility controls if properly applied can serve to stabilise the market when extreme events occur. The caveat lies in the words “if properly applied”. This is why detailed</p>

Question	Proposal	AFMA Comment
		development of such controls should be done in consultation with stakeholders, particularly market participants.
E2Q3	Should there be a market-wide volatility control (with or without volatility controls for individual equity market products)?	Equity products should be considered in classes with respect to percentage and price moves.
E2Q4	What are your views on this proposal? Please comment on what you consider to be appropriate for the duration of the volatility control, the mechanism for implementing it, the reopening procedure, and whether there should be different requirements for different products.	Price based trading suspension events should be handled automatically. It is preferable to have a threshold based on time/velocity but also take into account historical price movements, liquidity, stock price and spread. The calculation should apply equally to all instruments and not vary at different times during a trading day.
E2Q5	How should a volatility control take into account explained volatility (e.g. caused by a material earnings downgrade)? Should it be possible to manually override an automated volatility control?	Volatility controls need to be built in a way that allows for the market to respond to market sensitive announcements without ASIC or the market operators needing to “manually override” the control.
E2Q6	Should volatility controls between equities and derivatives products be consistent? If so, how should this operate?	Volatility controls need to be tailored to take account of whether they are quote or order driven as this produces different dynamics which need to be accounted for.
E2Q7	Should there be specific controls on particular types of orders (e.g. market orders)? What would be the advantages and disadvantages of these?	Front line controls of market participants play a fundamental role in protecting against erroneous order entry. Market wide controls should be used as a final line of protection to deal with extreme events and not used to micro manage front line surveillance.
E2Q8	How regularly should volatility controls be reviewed to ensure they are relevant to the prevailing market environment?	Regular periodic review is recommended.
E2Q9	What other practical alternatives are there for stabilising the market?	Participant level pre-order controls and market managed anomalous order entry controls would provide for a sufficient degree of stabilisation. Developing and implementing stabilisation controls requires stakeholder involvement.
E2Q10	What are your views on the SSCB pilot rule and thresholds in the US currently in operation (see paragraph 142)?	This is being trialled in the context of US conditions. Absolute limits can be problematic and conclusions about their impacts on the US market cannot be automatically imputed to the Australian market

Question	Proposal	AFMA Comment
E2Q11	Should this obligation apply to operators of non-equity market product markets (e.g. derivative markets)?	They should apply and controls need to interact properly but because of the differing nature of the markets. While they must be linked they need to be appropriately tailored to the nature of the market.
E2Q12	What are your views on how the prescribed threshold should be calculated?	With stakeholder involvement.
E2Q13	What are your views on this methodology for calculating the prescribed threshold? What other metrics should be taken into account?	Price and liquidity.
E2Q14	Should there be different thresholds at different stages of the trading day?	There should be no limits during auction periods. If stock goes into halt then that is the auction. There have to be checks to ensure that the tolerance bands are appropriate to consider price moves that would occur as a result of out of market news.
E2Q15	Should volatility controls take account of data relating to trades done off-order book or should they take into account CLOB orders and trades alone? Is there a risk that erroneous reporting of over-the-counter trades would trigger a halt?	CLOB only.
E2Q16	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.
E2Q17	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Requires further consultation.

Question	Proposal	AFMA Comment
E3	<p>Transparent cancellation policies for clearly erroneous trades</p> <p>We propose a market integrity rule that will require a market operator to have in place policies and arrangements to cancel clearly erroneous trades. Policies about trade cancellations should:</p> <ul style="list-style-type: none"> a) promote predictability and consistency of actions taken under the policy; b) promote fairness; c) provide a timely process; and d) have a process for disclosing cancellation decisions to the market. 	Category 2 Issue
E3Q1	Are there any risks in mandating transparent cancellation policies? If so, what are they?	The ASX TCP order entry controls should be aligned with ASIC parameters. The ASX TCP thresholds should be inside the ASIC parameters.
E3Q2	What benefits will the market derive from transparent cancellation policies? Consider interconnected, multi-leg trades.	This affects markets in arbitrage trades, ETOs and the underlying. There should be a percentage rule for individual stocks. Market makers should be taken into account- they are providers of liquidity- and specific rules for market making activity need to be considered. A fair and orderly market would not be observed if part of a portfolio or contingent trade that occurred as a result of market making activity was not allowed to stand. Pricing of individual stocks would not be reflected accurately in relation to each other. This has the potential to create disorderly price action and possibly create a situation where volatility controls are further triggered.
E3Q3	Should trade cancellation policies be consistent across all markets (equity and derivative)? Should ASIC set this policy?	<p>While there is merit in bringing consistency and some harmony to error policy across markets, consistency should be at the level of the ASIC MIR. At the operational level there needs to be recognition of the different dynamics of the cash equities, futures and equity derivatives markets and the fundamental differences between ASX and ASX 24 equity products. The markets have fundamentally different dynamics. For instance, the options market is a quote driven one and the equities an order driven one. The former is largely driven by theoretical value and reference prices and the latter by fundamental stock valuation, sentiment and much more significant demand and supply parameters.</p> <p>While greater certainty in relation to the handling of error trades is desirable,</p>

Question	Proposal	AFMA Comment
		with more complex financial instruments such as ETOs, the drive for greater commercial certainty should be tempered by some degree of flexibility. The current MIRs already provide sufficient controls around the use of order cancellations for purposes other than genuine mistakes or change in trading strategy. We have previously commented that ETO trades should be subject to cancellation with counterparty consent. The retention of the ability of market participants to cancel erroneous trades by mutual consent, irrespective of the price at which the trade occurred is needed.
E3Q4	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.
E3Q5	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.

Question	Proposal	AFMA Comment
F1	<p>Minimum standards for direct electronic access</p> <p>We propose a market integrity rule that will require, as a precondition for DEA, a market participant to ensure its DEA clients meet minimum standards, including that each DEA client:</p> <ul style="list-style-type: none"> a) has adequate financial resources; b) has adequate procedures in place to ensure that all relevant persons: <ul style="list-style-type: none"> i) are both familiar with, and comply with, all relevant regulatory requirements; and ii) have knowledge of and proficiency in the use of the order entry system used by the DEA client; c) has their order entry system tested before being connected to an execution venue to ensure the use of the system does not interfere with market integrity and is monitored on an ongoing basis; d) has adequate trading controls, systems and processes to monitor all trading through their DEA; and e) is of high integrity. <p>To comply with this rule, it is expected that a market participant will:</p> <ul style="list-style-type: none"> a) undertake appropriate due diligence on all DEA clients who may submit orders through the participant’s market access—before granting access; and b) have an understanding of the nature of orders a DEA client may use. 	<p>Category 2 issue</p>

Question	Proposal	AFMA Comment
F1Q1	Are these standards adequate, or should others be included? Please elaborate.	<p>Overall, AFMA considers the current MIR, which refer to Authorised Persons and Automated Order Processing, are sufficient to ensure that direct market access and resultant order flow is properly controlled. The F1 proposal supplements the current adequate principles based requirements which ensure that market participants prudently control their clients' access to the market. There are expectations in the proposals of more intrusive due diligence on a client control framework before enabling a client access to the market. The case justifying this level of regulatory intervention is not made out.</p> <p>The proposal introduces significant additional requirements for direct access clients that do not apply to clients not using direct electronic access . This creates an unbalanced regulatory environment which discriminates against one class of investors.</p> <p>In effect the MIR is imposing on the market participant a due diligence exercise which is equivalent to ASIC's decision making process around granting financial services licenses. If this is ASIC's regulatory objective the more straightforward approach would be to restrict DEA clients to those holding relevant AFSs.</p> <p>This proposal places unrealistic expectations on market participants regarding assessment of clients, because of the vague and subjective nature of the criteria. To make this proposal workable ASIC would to provide detailed guidance to market participants on how they are to conduct assessments against the criteria.</p>
F1Q2	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Changes will need to be made to systems and processes for monitoring Direct Electronic Access (DEA) trading. There would be financial, resource and practical implementation costs for market participants. However, compared to some of the other IT system change contemplated by CP 145 these are not major changes to current systems.

Question	Proposal	AFMA Comment
F1Q3	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Market participants expect resistance from parts of their client base, who would be concerned with the undermining of their commercial privacy from the effects of more intrusive due diligence employed by market participants.
F2	<p>Legally binding contract for direct electronic access</p> <p>We propose a market integrity rule that will require a market participant to have a legally binding written contract with the DEA client, the nature and detail of which should be appropriate to the nature of the service provided at all times. The contract should at least require that the DEA client:</p> <ul style="list-style-type: none"> a) meets the minimum standards for a DEA client (as set out in proposal F1); and b) ensures that any person to whom the DEA client grants market access meets the same minimum standards required of DEA clients. 	Category 2 issue
F2Q1	To what extent do market participants already have contracts in place with their DEA clients?	ASIC should not assume that the majority of market participants with DEA clients have contracts with the type of terms envisaged in place with clients. Market participants would need to work many of these standards into their terms and contracts. In a number of cases these will be contracts which are set at the global level. Australianisation would be a costly and time consuming exercise.
F2Q2	Should the market operator or ASIC set minimum terms for these contracts or should this be left to the market participant?	<p>If detailed rules are applied to DEA clients then there is merit for considering what terms should be in agreements. However, this should not detract from the freedom of market participants to make judgments about the appropriate content and principle of freedom to contract with clients as they see fit.</p> <p>This is an issue where industry standards might play a role rather than regulation under the MIR.</p>
F2Q3	To what extent do DEA clients sub-delegate their access to their own clients?	While this issue can be addressed through contractual terms, market participants have no practical way of monitoring whether clients sub-delegate their access. Sub-delegation is the responsibility of the client and it is up to them to address the issues that this may raise with regard to their own

Question	Proposal	AFMA Comment
		contractual obligations to the market participant.
F2Q4	Are transitional arrangements necessary? Should implementation timeframes differ for disclosure to existing and new clients? What are your views on what the transitional time period and arrangements should be?	Yes – In our general comments we note the need for transitional flexibility. This proposal would require market participants to find and devote significant resources to implement and cannot be put into effect quickly. An 18 month time period would be needed as individual negotiations need to be conducted with clients after preparing documents and systems.
F2Q5	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.
F2Q6	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.

Question	Proposal	AFMA Comment
F3	<p>Requirement to have adequate systems and controls</p> <p>Building on ASIC Market Integrity Rules (ASX Market) Rule 5.6, we propose market integrity rules that will require a market participant to:</p> <ul style="list-style-type: none"> a) have in place both operational and financial controls: <ul style="list-style-type: none"> i) to monitor, limit and prevent a client from placing an order that exceeds existing position or credit limits on such a client; ii) to ensure all orders submitted through the market participant's access to a market comply with all relevant regulatory requirements and market operating rules; iii) to detect and prevent bad algorithms, or erroneous or otherwise disorderly trades; iv) that handle orders rejected by the filters; and v) that provide for detailed procedures regarding the generation and handling of exception reports; b) maintain comprehensive order records and audit trails; c) have in place arrangements to allow for trading by a client or the market participant to be suspended or cancelled; d) document its order entry systems, controls and procedures for proposal F3(a)–(c), including its AOP systems and the process flow of orders going through these systems, and maintain a system for regularly reviewing the effectiveness of these; and e) have adequate operational and technical capabilities to manage its DEA system, including an adequate: <ul style="list-style-type: none"> i) business continuity plan; and ii) system of controls around IT infrastructure and persons with access to a gateway or other device connected to an open interface device. 	<p>Category 2 issue</p>

Question	Proposal	AFMA Comment
F3Q1	Are current market participant controls sufficient in detecting bad algorithms or erroneous or otherwise disorderly trades?	<p>Current MIR relating to electronic access already provide sufficient and reasonable regulation.</p> <p>No evidence is provided in Report 215 to suggest the existing rules dealing with automated order processing are flawed and require the overhaul proposed by ASIC. The best service that could be done for the market would be for ASIC to provide improved guidance built upon principles based on the existing rules in this area. For example, ASIC could provide guidance on the types of controls it would expect to see for different types of trading logic used to make orders.</p>
F3Q2	Do market participants currently employ filters on DEA systems that are not systematically overridden? How effective are they?	The answer to this question relates back to the nature of market operator level controls that may be introduced rather than the current market environment. Market participant DEA controls might have to cater for being systemically overridden if such controls are introduced. This is not the case at present.
F3Q3	Should we consider other controls on DEA, such as a 'go slow' or 'reduce volume' controls?	The purpose of such controls or throttling is not effectively articulated. Controls that are too restrictive can potentially impede genuine market activity.
F3Q4	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	<p>In practical terms it is technically impossible in real-time to detect problematic algorithms, given the nature of the analysis that is required for patterns. Many algorithms enter orders in relation to performance in other stock and algorithms work very quickly. The principle deterrence lies in the fact the algorithms provide an audit trail which allows for detection of conduct.</p> <p>Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.</p>
F3Q5	Are there any other practical implications associated with complying with this proposal?	There must be an objective means of determining what type of activity by an algorithm is problematic. This responsibility for putting in place such filters should be at the market level because of the importance of consistency.
F3Q6	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.

Question	Proposal	AFMA Comment
F3Q7	Are transitional arrangements necessary? What are your views on what the transitional time period and arrangements should be?	Transitional arrangements will be necessary. An eighteen month period is a reasonable time, but this will need to be considered in the context of the overall changes to be introduced by ASIC.
F3Q8	Should the DEA proposals apply to trading in non-equity market products (e.g. derivative markets)?	Overall consistency should apply to DEA trading controls.
F4	<p>Algorithmic trading minimum requirements – Testing</p> <p>We propose a market integrity rule that will require a market participant to:</p> <ul style="list-style-type: none"> a) ensure that all order algorithms that it or its clients use, either through its systems or its market participation, are appropriately tested before use; and b) document the logic of its order algorithms, have test plans for the order algorithms, and have appropriate measures and outputs. 	Category 2 issue
F4Q1	To what extent are order algorithms currently tested before use?	<p>Testing is generally conducted but how this is done when contrasting market participants who have thorough testing in place to clients is unclear. The extent to which clients test their own algorithms is difficult to judge.</p> <p>AFMA is advised that members extensively test their own algorithms before they are used. On the other hand, given the sensitive commercial nature of algorithms used by clients it is unrealistic to expect they would provide detailed information on their workings and logic to a market participant. Control of client algorithms lies with system filters not detailed, intrusive vetting by brokers.</p>
F4Q2	What instances have been observed of faulty order algorithms? Please provide examples.	From an overall industry perspective it is not possible to provide an answer to this question.

Question	Proposal	AFMA Comment
F4Q3	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.
F4Q4	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.
F4Q5	Are there any other practical implications associated with complying with this proposal?	The regulatory burden falls on the market participant.
F4Q6	Are transitional arrangements necessary? What are your views on what the transitional time period and arrangements should be?	Transitional arrangements will be necessary. An eighteen month period is a reasonable time, but this will need to be considered in the context of the overall changes to be introduced by ASIC.

Question	Proposal	AFMA Comment
F5	<p>Algorithmic trading minimum requirements - Adequate systems and controls and documentation</p> <p>We propose market integrity rules that will require a market participant that uses a trading algorithm to generate orders, or permits DEA clients to use such an algorithm, to:</p> <ul style="list-style-type: none"> a) ensure that once deployed, an order algorithm is continually monitored while in use; b) ensure the system is regularly reviewed to ensure it is operating according to its design and specifications, and to ensure it complies with the market integrity rules; c) have in place adequate systems and controls to: <ul style="list-style-type: none"> i) limit or prevent bad algorithms, or erroneous or otherwise disorderly trades generated by algorithms; ii) maintain comprehensive order records and audit trails of orders and trades generated by algorithms; iii) handle orders rejected by filters; iv) provide for detailed procedures regarding the generation and handling of exception reports; and v) allow for the operation of algorithms to be immediately disabled; and vi) document its arrangements to comply with proposal F5(a)–(c). 	Category 2 issue
F5Q1	<p>Do you consider that there is an adequate level of understanding in the market of algorithms used? What do you consider is necessary to ensure that market participants adequately understand their execution algorithms? Should there be additional obligations on market participants (e.g. additional reporting to ASIC)? Please provide details.</p>	<p>It is important to avoid characterising algorithms with subjective terms eg 'bad'. Algorithms are merely the tool which conveys their creator's instructions. As with all tools the quality of their construction may affect their performance. This depends on the skill of those creating the strategies and their knowledge of the market. As always it is the human element, not the fact that a machine executes the instructions it is given that is the area for rule enforcement. Malevolence should be ascribed to the human behind the tool. But as algorithms are a recorded form of instructions they do helpfully provide regulators with a clear audit trail and evidence of how trading was conducted.</p>

Question	Proposal	AFMA Comment
		<p>A competitive market environment provides the most powerful incentive to ensure that there is an adequate level of understanding of algorithms being used. People and organisations that lack the requisite skill to use trading technology effectively will quickly be out of a job or business.</p> <p>Clients who use algorithms understand them as a result of the sophistication of the entities relying on them, but also because market participants that offer algorithmic execution look to educate their clients about these algorithms. In terms of proprietary systems engineered by clients themselves, it follows that their level of knowledge is very high.</p> <p>Part of the competent management of algorithms by firms includes risk management controls and supervisory procedures that can effectively limit the financial exposure of the broker or dealer that could arise as a result of market access, and ensure compliance with all regulatory requirements that are applicable in connection with market access.</p> <p>Past history suggests that disorderly markets have resulted because market participants have not had the appropriate filter settings configured in their DEA system allowing market orders through to the market causing larger than normal price movements where liquidity for a security is sparse. If exchange operators were mandated to incorporate filters into their trading platforms these additional controls would further militate against disorderly markets from occurring. There is no supporting case for additional obligations on market participants.</p>
F5Q2	How often do market participants review their order algorithms? What degree of post-trade analysis is conducted on algorithmic trading and order book conduct?	<p>General practice is for regular reviews of in-house algorithms which are adjusted to market conditions. In practice this means that algorithms are continually reviewed in real-time to identify deviations against a benchmark in order to determine the accuracy of the algorithm. The review process gives ongoing feedback (in line with trading and post-trade) to ensure that if anything deviates from activity normally expected, it is reviewed and rectified. This may be supplemented by real-time trade surveillance, which is also designed to assist us in identifying possible errant market activity.</p>

Question	Proposal	AFMA Comment
F5Q3	Should order algorithms be required to have an inbuilt circuit breaker requiring them to automatically stop if they move too far from specified parameters? If so, what parameters should ASIC consider?	This should not be necessary if there are controls at the market operator level. Algorithms already have inbuilt filters to ensure that orders do not move markets too far from specified parameters so there should not be the need to introduce circuit breakers to algorithms.
F5Q4	<p>We are seeking comment on any incidences where automated or algorithmic trading has resulted in inappropriate and/or undesirable effects on a market. In particular, what trading strategies do you believe have resulted in these effects? Examples of what may be considered inappropriate or undesirable include:</p> <ul style="list-style-type: none"> a) layering of the order book, which creates a false impression of liquidity; b) pinging or sniffing algorithms that have intent other than execution; c) cascading or looping algorithms that cause volatility or price support; d) algorithms that flood the market with orders that are intended to be cancelled, in order to distract or confuse rival traders (i.e. 'quote-stuffing'); and e) algorithms that purposely use up bandwidth, making it progressively more difficult for slower market participants to get time-price priority. 	<p>Advice to AFMA suggests that order book crowding is conduct which market participants pay particular attention to. Sniffing is also an activity which market participants are careful to scan for and avoid.</p> <p>Beyond such general observations a response would depend on analysis of ASIC market surveillance data which is properly the function of ASIC. It would be of value in determining the regulatory impact assessment for a summary of such analysis to be provided publicly so that an objective appraisal can be made of the benefit of these proposals with regard to the scale of the harm they are addressing.</p>
F5Q5	Are there concerns about the shortcomings of IT infrastructure or IT security leading to the intentional misuse of order algorithms or other sensitive information? If so, would an obligation on the market participant to have in place adequate IT security measures be appropriate?	While IT security measures are clearly seen as necessary by market participants to protect their own commercial interests, trading systems which by their nature are a conduit for people to access the market can be subject misuse no matter what measures are taken. Therefore, our response goes back to focusing on the human element rather than the algorithms themselves. Resourceful and determined people have shown time and time again that technology can be circumvented and subverted and used for criminal purposes. This applies equally to industry and government. Onerous, prescriptive rules around security cannot guarantee against misuse. Effective surveillance of the market where the risk of detection is high provides the most reliable deterrent.

Question	Proposal	AFMA Comment
F5Q6	How effective are pre-trade and post-trade filters (at the market-participant level) in preventing order book and trading misconduct by algorithms?	The electronic trading framework a robust filtering environment that provides more safeguards and better means to trace misconduct than the framework that is in place to prevent more traditional manual order book and trading misconduct.
F5Q7	Should ASIC Market Integrity Rules (ASX Market) Rule 5.7.2 on circumstances of orders be clarified or amended to extend beyond the immediate impact of an order to take account of recent trades beyond the immediately preceding trade?	No. ASX Market Rule 5.7.2 (f) already contains this type of requirement. The rule requires a market participant to take into account circumstances of an order if that order appears to be part of a series of orders, which when put together with other orders which appear to make up the series, the order or the series of orders is unusual having regard to the other matters referred to in the rule. This ASX Market Rule does not need clarification or extension.
F5Q8	Should the algorithmic trading proposals apply to trading in non-equity market products (e.g. derivative markets)?	No. Derivative markets are not traded using algorithms for execution. Market Participants already use pre trade filters in their systems for derivative orders on ASX. As noted earlier exchange operators should incorporate filters into their trading platforms to further mitigate disorderly markets from occurring.
F5Q9	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	We restate our view that a summary of ASIC surveillance analysis should be provided publicly so that an objective appraisal can be made of the benefit of these proposals with regard to the scale of the harm they are addressing.
F5Q10	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	It will also impose a burden on HFT traders if they have to conduct additional testing of algorithms.
F5Q11	Are there any other practical implications associated with complying with this proposal?	Clarification of what is meant by “an order algorithm is continually monitored while in use” is needed. Does this refer to the surveillance done by SMARTS?
F5Q12	Are transitional arrangements necessary? What are your views on what the transitional time period and arrangements should be?	Transitional arrangements will be necessary. An eighteen month period is a reasonable time, but this will need to be considered in the context of the overall changes to be introduced by ASIC.

Question	Proposal	AFMA Comment
F6	<p>High-frequency trading: Your feedback</p> <p>We are interested in your feedback on the impact of HFT and other high-speed trading activity on equity market functioning and market integrity. We are particularly interested in your views on the effectiveness of the market manipulation provisions in the ASIC Market Integrity Rules (ASX Market) and the Corporations Act in light of new automated trading strategies.</p>	<p>Category 3 issue</p>
F6Q1	<p>What HFT strategies are prevalent in Australia? In your view, do they affect the operation of the market or pose risks to market integrity?</p>	<ul style="list-style-type: none"> • Volume and price arbitrage • Algorithm searching • Testing depth • Statistical arbitrage
F6Q2	<p>Do you consider that the above conduct is inappropriate or undesirable? What other examples of conduct should we be focusing on?</p>	<p>High frequency trading is a technique that should be dealt with in a neutral way and should not be characterised as “conduct” that is desirable or undesirable. The starting point should be that HFT orders that are genuine and entered with the intent of trading should be permitted, so long as they also comply with other provisions of the MIR meant to prevent disorderly markets. The effects of HFT need to be taken into account when designing the parameters of MIR controls.</p> <p>If ASIC is not already aware of the report dated November 2010 of Netherlands Authority for the Financial Markets ‘<i>High frequency trading: The application of advanced trading technology in the European marketplace</i>’ is commended to you.</p> <p>We note the AFM’s concluding remarks:</p> <p><i>Since the legislation and structure of the European market is different from its American counterpart, one must be careful that US measures are not directly copied in the European market. The European Commission has indicated that an approach designed for the European situation will be chosen. This is welcomed by the AFM.</i></p> <p><i>Where HFT makes a positive contribution, it is moreover not desirable that the free market is limited and (technological) innovation is unnecessarily hindered. Intervention that is not sufficiently thought through could lead to unforeseen and counterproductive effects that do not contribute to strengthening the</i></p>

Question	Proposal	AFMA Comment
		<p><i>market and may have a negative impact on the liquidity-providing and fragmentation-reducing functions of HFT. We should also avoid a situation in which participants are discouraged from investing in IT and better trading techniques due to fears of potential intervention by the regulator.</i></p> <p><i>To conclude: Given the international nature of the financial markets, any measures to be taken should be at not lower than European level. Unilateral national measures are useless and therefore undesirable. In an international context as well, the AFM strongly supports the setting of additional requirements (for instance, the establishment of binding technical standards) for the operational and risk management systems throughout the trading chain. CESR, of which the AFM is a member, takes the view that there are no grounds for the limitation of HFT and related activities by the regulators for the time being. Further research into the effects and risks of HFT is needed. The AFM supports this approach and is actively contributing to its further elaboration. In the context of other CESR activities, for example in relation to the supervision of market abuse and the availability of market information, and also in the IOSCO context, the AFM is contributing to the practical development of the recommendations and potential solutions outlined in this report.</i></p>
F6Q3	Should there be a minimum order size to discourage traders from placing orders that are of an economically insignificant amount? What should the order size be?	No. No regulatory justification is provided for a minimum order size. This would be an unnecessary and additional layer of regulation. The regulatory / surveillance issue is whether an order is genuine and volume should not be a factor, even if the order is for one share.
F6Q4	The SEC has identified that 90% or more of the orders that HFTs submit to markets are cancelled, citing this as an area of concern. The SEC and other regulators are assessing whether this practice is fraudulent or improper. What reasons may certain market participants have for high cancellation rates? Do you consider that these reasons are legitimate? Do you consider high rates of order cancellation are a concern? What controls, if any, are necessary to address this? For example, should there be a minimum order to trade ratio?	<p>There are legitimate reasons for entering and deleting of orders in short periods of time. For example, investors engage in price/volume arbitrage so that orders in one stock are based on movement in another stock. Thus the orders that are entered are genuine and are intended for execution. However, they may have to be amended when price/volume moves in another stock in order to get the price that they want.</p> <p>Current market misconduct provisions, surveillance and investigative powers are sufficient to enable ASIC to regulate misconduct whether it emanates from direct electronic access or more traditional investment methodology.</p>

Question	Proposal	AFMA Comment
F6Q5	Should ASIC consider setting controls to manage the volume of messaging traffic (e.g. fee for order cancellations, limits on the speed of messaging or a minimum period of time that orders must stand before they can be cancelled)?	As previously noted, regulation should not be directed at HFT as a trading tool. There is no apparent justification for such controls and could distort the market.
F6Q6	What impact does HFT have on price formation and the depth and quality of trading interest in the order book?	This question is broad and there are a range of views. It illustrates the need for a more extensive and extended discussion around the impact of HFT technology before the impact of regulatory intervention can be assessed. The impact that HFTs will have on price formation and the depth and quality of trading interest in the order book will depend on the strategies used by HFTs. Academic analysis indicates HFT can play a positive for markets by providing increased liquidity and reducing spreads thereby assisting price formation.
F6Q7	Should there be formal obligations on electronic liquidity providers to help maintain orderly trading conditions (e.g. to provide two-sided quotes and to limit their ability to be aggressive liquidity takers during extreme trading conditions)?	Obligations should not force market makers to take on unacceptable risks as they judge it. Regulation which increases risk will force such risk to be priced into market maker quotes which may markets less liquid and increase spreads. This question requires more extensive and extended discussion with stakeholders.
F6Q8	Should electronic liquidity providers be exempt from the naked short selling ban? If so, why? What criteria should be used for determining whether or not a particular provider or class of providers should be awarded an exemption (see REP 215, paragraph 170)?	This question requires more extensive and extended discussion with stakeholders.
F6Q9	What impact does maker–taker pricing have on the integrity of markets? Should maker–taker rebates be capped (see REP 215, paragraphs 163–167)?	Having a rebate system can affect trading behaviour and incentives for categories of market makers. This question requires more extensive and extended discussion with stakeholders to understand potential behaviour responses and their consequences for the market.

Question	Proposal	AFMA Comment
G1	<p>Best execution obligation</p> <p>We propose market integrity rules that will require a market participant when dealing with client orders in equity market products to:</p> <ul style="list-style-type: none"> a) take reasonable steps when handling and executing the client order to obtain the best total consideration for the client. The obligation applies to any dealings for clients, including executions as a result of quotes. We will interpret this obligation for non-professional clients as ‘best price’ while there are not material differences in execution costs. For these purposes total consideration means the price paid or received and the execution costs incurred by the client, including market fees and clearing and settlement fees; and b) not structure or charge its commissions in such a way as to discriminate between execution venues. <p>If a professional client or a client with an order of \$500,000 or greater provides a specific instruction about the execution of their order, the market participant should take reasonable steps to obtain that outcome.</p> <p>For the purposes of this obligation:</p> <ul style="list-style-type: none"> c) the term ‘professional client’ should be interpreted as ‘professional investor’ in s9 of the Corporations Act; and d) clients other than professionals should be interpreted as all other clients. 	<p>Category 1 issue</p>

Question	Proposal	AFMA Comment
G1Q1	What are the practical challenges for market participants to comply with the proposed best execution obligation?	<p>The practical challenge include cost and resource constraints involved with implementing systems that capture accurate data, calculate post trade performance, possible peer group comparison, etc.</p> <p>While institutional clients constantly monitor and assess the execution performance of brokers used by them against criteria that are relevant to their needs it is difficult to objectively measure best execution and produce a satisfactory one size fits all formulation.</p>
G1Q2	Do you have any views on whether we should overlay the best execution obligation with a trade-through protection rule similar to that in the US and Canada?	<p>There are a range of views on this issue. A 'trade-through' rule was created for the North American market where there are a large number of market operators much greater scale, and requirement for connectivity. Given the foreseeable Australian market environment the utility and practicality of a 'trade-through' rule is doubtful at the present time.</p>
G1Q3	Is it appropriate to allow market participants to meet the best execution obligation based on 'price' rather than 'total consideration' for a transitional period?	<p>A preference is for a simple test of 'price' to be applied to retail client trades and the avoidance of complex prescriptive rules for wholesale market clients.</p>
G1Q4	Do you have any views on the distinction we have made between professional and non-professional investors? Is professional and non-professional investor an appropriate divide?	<p>The appropriate distinction is between wholesale and retail clients. A distinction should be made between retail and wholesale clients based on existing rules. It is noted that the Government is currently conducting consultation on the distinction between retail and wholesale investors.</p> <p>'Best execution' should not be judged by reference to just the total proceeds of net cost of a trade. It is necessary to consider things like; brokerage costs, transaction price, market impact costs, timing costs (such as speed to market and likelihood of execution), opportunity costs, order size, and other factors relevant to clients who use us to execute their orders. Because institutional clients have different needs and criteria a clear and objective assessment of best execution is not always possible.</p> <p>Commission currently can include payment for "other" services such as research so net total consideration is not necessarily a reflection of best execution for the asset owner. Non-retail clients are fully capable of making a market participant accountable for the trading service it provides.</p> <p>Fund managers continually assess the execution performance of brokers. If a broker is not performing, wholesale clients will go elsewhere. Wholesale investors are able to determine by their own needs and criteria whether they</p>

Question	Proposal	AFMA Comment
		are getting best execution.
G1Q5	Is it appropriate to have a threshold above which transactions for all clients could take account of a range of factors, and is \$500,000 an appropriate threshold?	Again, it is noted that the Government is conducting consultation on the distinction between retail and wholesale investors. This question is relevant to that consultation.
G1Q6	<p>With regard to Option A (i.e. market operator routing):</p> <p>a) Would market level routing be of benefit to market participants? What benefits would it provide?</p> <p>b) What are the challenges and costs in implementing such a solution? Where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing.</p> <p>c) Should market operator routers be able to take account of undisclosed orders posted on that market when making routing decisions or only pre-trade transparent orders?</p>	<p>Market level could be of benefit but should not be made mandatory under the MIR. It is a commercial market service that market operators may make available as a result of market competition. Costs of such a service incurred by the market operators would very likely be passed on in some form to market participants.</p> <p>If such a service was offered then disclosed and undisclosed orders could be taken into account by a market operator.</p>
G1Q7	With regard to Option B (i.e. best execution on ASX), should we consider explicitly limiting the best execution obligation so that entities that choose to be a participant of a single market can do so for a transitional period without immediate pressure to connect to new markets?	<p>Option B should not be described as 'best execution' . There is general support for the proposal that market participants should not be forced to connect to multiple markets. A trading venue needs to be of reasonable size before market participants can be obliged to connect to it. This would alleviate the situations where market operators can make more money from market data than volumes which is an issue of concern in the US. Decisions about connection to a market should be left to commercial judgment.</p> <p>We refer to our introductory comments about the need for a transition period with regard to the introduction of the proposed MIR.</p>

Question	Proposal	AFMA Comment
G1Q8	To what extent do incentives currently determine choice of market participant in which to direct orders? How is this expected to change in the future?	At present they do not. This is an area of speculation where more discussion is required to make an assessment.
G1Q9	Should the best execution proposals apply to trading in non-equity market products (e.g. derivative markets)?	Given the range of issues raised with the current proposal more work needs to be done before rules could be extended to non-equity markets because of the wider range of factors that go into the decision about how to execute a derivative trading strategy.
G1Q10	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	<p>Costs are predicted to be substantial for the proposed best execution requirements.</p> <p>AFMA questions the justification for overly elaborate prescriptive rules for non-retail clients, particularly with regard to determining 'total consideration'. The general principles around best execution expressed as general principles have been a long standing feature of ASX supervision of the market. The ASIC consultation paper and Report 215 provide no indication of a regulatory failure or problem with regard to the execution services being currently provided.</p> <p>ASIC's current proposal would at a minimum require market participants to re-document with their clients and carry out widespread client analysis (i.e. to split their wholesale clients in to "professional investors" and non-professional investors. The requisite transitional period to achieve this would be a minimum of 6 months.</p>
G1Q11	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	<p>Clearing costs are not taken into consideration in CP 145- this will also change costs of total consideration.</p> <p>Paragraph 231- There is contradiction with Section M (M3) in the ability to produce a single contract note - a single contract note will not be able to reflect the different prices in each venue.</p> <p>The flexible transition arrangements are an important factor.</p>

Question	Proposal	AFMA Comment
G2	<p>Policies and procedures</p> <p>We propose market integrity rules that will require a market participant that is subject to the best execution obligation to:</p> <p>a) have adequate internal policies and procedures in place for complying with the obligation; and</p> <p>b) review its policies and procedures when there is a material change in circumstances, and do so in any event at least once a year.</p>	<p>Category 1 issue</p>
G2Q1	<p>What are some of the practical steps that market participants will need to take to implement internal policies and procedures?</p>	<ul style="list-style-type: none"> • Market participants would need to: • Identify requirements after a review and assessment of existing/contemplated arrangements and the obligations in relation to services provided; • Consultation with internal stakeholders; • Assessing relevant information collected; • Preparation or drafting; • Review of draft materials; • Finalisation of policies and procedures; • Develop new controls that can track and assess the parameters set for judging best execution • Implementation of new controls • Communication and training - as necessary; and • Ongoing monitoring of changes
G2Q2	<p>What are the likely costs of such steps (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to implementing internal policies and procedures?</p>	<p>There will be costs associated with reviewing existing policies and implementing new policies where required. New methods of monitoring and implementing controls may also need to be developed which will incur costs.</p>

Question	Proposal	AFMA Comment
G2Q3	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	These changes represent a large financial and operational burden. The costs are difficult to determine with out knowing the details.
G3	<p>Disclosure to clients of best execution obligation</p> <p>We propose a market integrity rule that will require a market participant to disclose to clients that it has a best execution obligation and what this means, as well as the venues on which client orders may be executed and the circumstances in which orders may be transmitted to execution venues. This disclosure should be made prior to accepting a client order for the first time.</p>	Category 2 issue
G3Q1	What are some of the practical steps that market participants will need to take to make the necessary disclosures to clients?	Participants will need to provide a copy of their best execution policy to clients. Disclosure documentation would have to be developed and means of distribution considered. If client disclosure rules were to require physical mailing or positive consent then major resource issues would arise. In practice, positive consent requirements are impossible to put into effect.
G3Q2	How should disclosure to existing clients be managed?	The best execution policy could be provided at the time the client opens an account with the market participant, or by email or website reference.
G3Q3	What are the likely costs involved with this proposed obligation (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to complying with this proposed obligation?	There is a large technology costs associated with this proposal- as an example: when clients want discounts for having traded increased volume on one exchange as opposed to another- they may request rebates- implementation of requests such as this would be costly and difficult.
G3Q4	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	<p>Clients will face having to deal with broker documentation and possibly enquiries on the same questions from multiple market participants in many circumstances.</p> <p>The compliance burden would be both transitional and ongoing.</p>

Question	Proposal	AFMA Comment
G3Q5	What controls could ASIC put in place to ensure the order execution policies disclosed to clients are of high quality and contribute to investors' order routing decisions?	Highly prescriptive micro-managing rules are undesirable. ASIC's role is to provide guidance as to what it requires best execution policies and procedures to address.
G3Q6	Is it appropriate that this disclosure obligation applies to all clients, including professional clients?	Yes
G3Q7	For retail clients, should there be a requirement for an acknowledgement of the disclosure?	No
G3Q8	What are some of the practical steps that market participants will need to take to make these disclosures?	Participants will need to provide a copy of their best Execution policy to clients. Staff would have to be trained in the best execution policy and how to respond to client enquiries?

Question	Proposal	AFMA Comment
G4	<p>Demonstrating execution performance and order routing by market participants</p> <p>We propose market integrity rules that will require a market participant to:</p> <ul style="list-style-type: none"> a) be able to demonstrate to a client, on request, that it has executed the client order in accordance with its best execution arrangements; b) be able to evidence that its arrangements enable it to consistently deliver the best outcome for its clients; c) produce, for each calendar month, a report on its routing of client orders in equity market products during that month, which is made publicly available within one month after the end of the month addressed in the report, and which discloses: <ul style="list-style-type: none"> i) the identity of the venues to which client orders were routed for execution; ii) whether the execution venue was directed by the client or not; and iii) the nature of the market participant’s relationship with those execution venues, including the existence of any incentives received for order flow. d) A market participant with order flow in equity market products must comply with this reporting requirement. Client orders include buy or sell orders in equity market products, which are not for the account of the market participant. See Appendix 3 for a more detailed outline of the requirement. 	Category 2 issue
G4Q1	Do you have any comments on how ASIC should assess market participant compliance with best execution?	This is technically very difficult to do. On any one day some trades will be executed at the lowest and highest prices for the day. It does not mean the broker was not complying with its best execution obligations. Best execution cannot be assessed in a generic way for wholesale clients where there are a range of varying factors which may be taken into account by those clients. Clients do and will make their own assessment about the service and its cost they have received.

Question	Proposal	AFMA Comment
		If a simple 'price' formulation was used for best execution in relation to retail clients then assessment by them and by ASIC is more straightforward.
G4Q2	Are there other factors that the order routing report should address?	Best execution has to be assessed over a period of time and would take into account volume, price, average and depth.
G4Q3	What should be the frequency of reporting (e.g. monthly or quarterly)? We note that the similar reporting obligation in the US is quarterly.	AFMA questions the justification for a reporting requirement and does not support it. However, if reporting was required, quarterly as it allows a proper perspective to be given on which to make assessments.
G4Q4	Should the order routing report be limited to those transactions below a threshold? The SEC Rule 606 requirement has a US\$200,000 threshold, which is the block trade size in the US.	AFMA questions the justification for a reporting requirement and does not support it. The best execution rule serves can assist retail clients to understand the market better and confidently participate in it. Wholesale clients are able to make market participants accountable in the form they see fit.
G4Q5	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	The costs of implementation of wholly new systems will be high, especially for smaller market participants, although quantification of these costs with more precision has not yet been carried out.
G4Q6	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	This proposal requires a large effort with no identifiable benefit. Reporting can impose enormous development and ongoing costs on market participants, which are passed on to clients. Before such an obligation is imposed there needs to be serious consideration given as to the value of the information to the market generally and how it will be ultimately presented to the market. The costs of implementation of wholly new systems will be high, especially for smaller market participants, although quantification of these costs with more precision has not yet been carried out.
G4Q7	Are transitional arrangements necessary? What are your views on what the transitional time period and arrangements should be?	Yes. Because wholly new systems are require a transition period.

Question	Proposal	AFMA Comment
G5	<p>Execution quality reporting by execution venues</p> <p>We propose a market integrity rule that will require an operator of an execution venue to produce, for each calendar month, a report on all orders that it received for execution from all sources, which is made publicly available within one month after the end of the month addressed in the report and which:</p> <p>a) categorises each equity market product into:</p> <p>i) five types of orders—market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders; and</p> <p>ii) five order size groups—≤\$199, \$200–\$499, \$500–\$999, \$1000–\$4999, and ≥\$5000; and</p> <p>b) includes the following statistics:</p> <p>i) liquidity measures, including the number and value of orders received, cancelled and executed by the execution venue, and the number and value of orders that were routed to another execution venue; and</p> <p>ii) trade execution statistics, including the value of trades executed on the execution venue in five time-bands (0–2.999 milliseconds, 3–9.999 milliseconds, 10–19.999 milliseconds, 20–29.999 milliseconds and ≥30 milliseconds), the value of trades from the execution of orders that were not pre-trade transparent, the average realised spread, the average access fees, the average effective spread, the average price improvement, the frequency of trade-throughs, and the average trade-through amount per unit.</p>	<p>Category 1 issue</p>
G5Q1	<p>Are there other factors that the execution quality reports should address?</p>	<p>Market participants do their own analysis so the utility of the proposed report is questionable. While this proposal is directed at promoting competition between market operators the value of the report is at best of marginal interest to a market participant.</p>
G5Q2	<p>Are the proposed five categories of order size appropriate for the Australian market?</p>	<p>The overall impression is that they are on the small side but there are not strong views on the question.</p>

Question	Proposal	AFMA Comment
G5Q3	Are the time-bands used to assess speed and certainty of execution appropriate? If not, what time-bands should be used?	There is a need to define where this is measured from. Is it the start time when the order arrives on a domestic piece of hardware, or from when it leaves the market participant's DMA filters? Currently the ASX latency approaches 20ms so these bands are too small. Drawing on US experience with latency can lead to misleading conclusions because of the different technology in the Australian market.
G5Q4	Is monthly reporting adequate? If you consider it should be more or less frequent, please explain why.	Consistent with our overall view quarterly reporting would be appropriate. This would be consistent with our view of participant related data requirements and allow for a more consolidated view of the data provided by the market operators.
G5Q5	Should reporting be limited to only those products that are available for trading on more than one market?	Reporting should encompass all products - if limited only to ASX 200 then the price and volume action occurring in the less liquid stocks would not be observable.
G5Q6	Would it be useful to have information about partially or fully hidden liquidity? If so, what measures of that liquidity would be most informative?	<p>Diverse views on the utility of this information. Public disclosure of this will require disclosure of commercially sensitive information, which is anti-competitive to brokers and execution venue operators. There needs to be a full regulatory impact assessment on how the information will be used and how disclosure will benefit investors.</p> <p>Dark pools and crossing engines allow better price, less market impact and minimise signalling to the market, thereby resulting in better price for clients. Pushing trading onto the lit market will not improve price for investors, eg. for orders which are executed in parcels over the day to minimise price impact and signalling, lit trading will increase price impact. Given the nature of opaque liquidity- if more disclosure were to be required assumed, the detail should not be too granular- but aggregation of hidden volume may have benefits. These are questions which need much fuller discussion with a sufficient consultation period.</p>
G5Q7	Are milliseconds a sufficiently precise time stamp, or should it be microseconds—given the speed of trading?	Microseconds. Note that the ASX claims its new systems will have speeds of up to 250 microseconds. HFTs work to these speeds. If the time stamps were set at milliseconds- several orders could go through the market between time stamps. This would not be beneficial to fair and orderly price action.

Question	Proposal	AFMA Comment
G5Q8	The reporting criteria will need to keep pace with market developments. What should be the process for modifying the criteria?	Ongoing review against material market improvements or regular periodic review.
G5Q9	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	These changes are proposed for market operators. While the cost will be borne by them, they will be passed onto market participants.
G5Q10	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	These changes are proposed for market operators. While the cost will be borne by them, they will be passed onto market participants.
G5Q11	Are transitional arrangements necessary? What are your views on what the transitional time period and arrangements should be?	These changes are matters where feedback from market operators is relevant.
G6	Format for the reports The format of the order routing and execution quality report will be set by ASIC.	Category 1 issue
G6Q1	Is there a preferred electronic format?	This issue requires technical consultation as part of implementation process.
G6Q2	Do you currently create reports containing information on order routing and execution quality in a particular format? If so, will any changes to the format impose additional costs on you (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making any changes?	Not currently relevant.

Question	Proposal	AFMA Comment
H1	<p>Orders that should be pre-trade transparent</p> <p>We propose market integrity rules that will require:</p> <ul style="list-style-type: none"> a) a market operator to immediately make public certain information about current bid and offer prices that are available through its systems, subject to the exceptions below. The information displayed should be complete, accurate and up-to-date. We intend to specify the detail about how to comply once we have taken into account the feedback from this consultation paper; b) a market participant to display orders relating to equity market products on a licensed market, subject to the following exceptions: <ul style="list-style-type: none"> i) block trades—where the consideration for the trade is not less than \$1 million for highly liquid equity market products (category B) (outlined in paragraphs 282–284) and \$500,000 for all other equity market products. ASIC will assess at least annually equity market products that fall into each category on the basis of 2.5% average daily turnover and will make the list publicly available; ii) large portfolio trades—where under a single agreement there are 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 purchase or sale is not less than \$200,000 and the aggregate consideration is not less than \$5 million; iii) price improvement trades—where the price is determined to be within the spread of the best bid and offer on all markets and the trade would result in a size equal to or greater than \$20,000; iv) undisclosed orders—where the order is a non-pre-trade transparent order on a pre-trade transparent order book and the size of order is greater than \$20,000; and v) out-of-hours trading—where trades are conducted outside normal trading hours. <p>If an order meets one of the exceptions, the exception will no longer apply if the order is partially filled and the residual ('stub') of the order falls</p>	<p>Category 3 issue</p>

Question	Proposal	AFMA Comment
	below the relevant threshold.	
H1Q1	Do you have any views on a tiered block trade regime?	This is not an urgent issue for regulatory policy to address. Review of the tiers is of value overtime.
H1Q2	Is there value in also having a \$2.5 million threshold for the largest 12 equity market products and/or a \$200,000 threshold for the less liquid equity market products, as described in paragraphs 283–284? What impact are these additional thresholds likely to have on transparency? What would be the practical impact on market operators and market participants to adapt systems to reflect the new thresholds?	Tiering levels for block crossings are a function of market capitalisation and market liquidity in respective products. Stakeholders have a range of views and there should be adequate time given for fuller discussion on the issue.
H1Q3	Should the price improvement exception reflect 'meaningful' price improvement and how should 'meaningful' be interpreted?	Price improvement is simple as concept as it is a reflection of price improvement between prevailing bid and ask in the market. It should not be made complex by applying subjective criteria such as implied by the term meaningful. Market participants are be able to supply price improvement for their clients where it exists. It does not require mandatory rules.
H1Q4	What will be the impact on systems and business volumes of imposing a \$20,000 threshold and price improvement on dark trades? Should a size limit apply to all equity market products or just the more liquid equity market products (e.g. ASX 200)? Or should the threshold be tiered based on liquidity?	<p>This proposal could have a negative effect impact on price and market liquidity to the detriment of investors. This is because most crossings in Australia are less than \$20,000. Clients utilise different brokers for varying reasons including good broking service, efficient settlement, competitive brokerage rates, system access or other service related advantages and cannot be assumed to want a bundling of their order through a single broker in order to meet an artificial threshold.. The proposal will mean that market participants with active two way order flow are penalised for operating a competitive broking business and having both sides of a market transaction. This will reduce client service levels.</p> <p>More generally, the proposal runs counter to the best execution proposal.</p> <p>In addition, the tiering of crossing thresholds based on liquidity would require</p>

Question	Proposal	AFMA Comment
		<p>far greater system complexity.</p> <p>Australia has not had the concerns with off market trading that have arisen in Europe and the US. Any requirements should be appropriately tailored to our market. There is no evidence of problems with dark pools in Australia that warrant this level of intervention and is unlikely to be on current evidence and market conditions.</p> <p>Allowing orders to be broken up into smaller parcels and crossed off market allows clients better price and reduces need to cross the spread, which disadvantages investors.</p> <p>AFMA considers that the premature implementation of the ASIC proposals based on curtailed consultation would be poor regulatory practice. The legitimacy and the value work done by ASIC in preparing ideas on this issue is not in question. This is an important issue to fully explore and consider in a public policy context. AFMA's concern is directed at the consultation process and the policy level at which it should be conducted.</p> <p>The proposals in section H are a clear intervention in the natural development of the market, and will have long term consequences for the way markets develop in Australia. A thorough regulatory impact assessment needs to be conducted before such intervention can be properly justified. They are distinct from issues relating to commencement of additional market operators in Australia and are not subject to the need for urgent resolution. The issues raised by the ASIC proposals form part of a broader public policy discussion on the evolving regulation of markets as a whole in Australia. This is a matter AFMA will be taking up further in discussions with the government on the review of the market licensing provisions of the Corporations Act.</p>
H1Q5	Should a 'stub' be transparent, as proposed, if its residual size is below the relevant pre-trade exception threshold? Should there be an exception for iceberg and other partly transparent orders given they in part contribute to price formation?	<p>The value of a transparent stub display is questioned as it appear not to offer any benefit as the order is already advised as undisclosed</p> <p>Iceberg orders should be exempt, orders above a certain volume should not be disclosed because they could have a distorting influence on price formation.</p>
H1Q6	'Pegged orders' are discussed in REP 215, paragraphs 253–256. What impact do pegged orders have on market integrity? Should pegged orders reference another market or should they reference market-wide prices? Why?	Pegged orders do not have any negative impact on market integrity.

Question	Proposal	AFMA Comment
H1Q7	The various pre-trade transparency thresholds will need to keep pace with market developments. What should be the frequency and process for modifying the thresholds?	No greater than annually, for cost reasons.
H1Q8	Are there other steps that ASIC could take to minimise the shift of trading into dark pools? For example, should we consider reintroducing a minimum exposure time for crossed trades (i.e. like the 10-second priority crossing rule)?	The abolition of the 10 second rule was widely supported and is generally considered to have had a positive market impact. Further consideration of this question would need to be the subject of a proper public policy discussion where the range of views can be considered in a fair and transparent manner by policy makers.
H1Q9	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	For later comment.
H1Q10	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	For later comment.

Question	Proposal	AFMA Comment
H2	<p>Content of pre-trade disclosures</p> <p>We propose market integrity rules that will require a market operator to make pre-trade information available on a continuous real-time basis during normal trading hours, as follows:</p> <ul style="list-style-type: none"> a) for order-driven markets—the minimum information to be disclosed is the aggregate number of orders and aggregate volume at each price level per equity market product available on the facility; and b) for quote-driven markets—information should be disclosed on the current best bid and offer price per equity market product of each market maker and the volume at those prices. The quotes that are published should only be those that represent binding commitments. 	<p>Category 3 issue</p>
H2Q1	<p>Do you have any views on the data elements that should be publicly disclosed and collected for provision to ASIC?</p>	<p>For later comment.</p>
H2Q2	<p>Do you have views on whether this proposal is likely to impose any additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.</p>	<p>The collection and preparation of any data to be provided to imposes an initial and on-going cost, which can be significant. Costs incurred by a market operator will be passed on to market participants and potentially to investors. No additional information should be required unless it will be of quantifiable positive assistance to investors.</p>
H3	<p>Priority for pre-trade transparent orders</p> <p>We propose a market integrity rule that will require pre-trade transparent orders to take time priority over undisclosed orders within a CLOB.</p>	<p>Category 3 issue</p>
H3Q1	<p>Should the requirement for pre-trade transparent orders to always take time priority over undisclosed orders apply in all sizes? For example, should orders that meet the block threshold be entitled to have time priority, as ASX's current undisclosed orders do?</p>	<p>Currently there are two types of undisclosed order types that could theoretically be used in the ASX Cash Market, Undisclosed Orders and Iceberg Orders according to the ASX Operating Rules). These order types operate according to different disclosure thresholds.</p>

Question	Proposal	AFMA Comment
		<p>The proposed H3 MIR would effectively make Undisclosed Orders (or similarly order types) redundant as the order type would have very limited application (for e.g. they could be used pursuant to ASIC market stabilisation no-action relief), whereas the operation of Iceberg Order types appears consistent with ASIC's approach.</p> <p>Time priority being given to disclosed orders is a reasonable proposition. The current price/time priority requirement applicable for Undisclosed Orders, which requires volume of less than the threshold of \$500,000 to be disclosed in the market (with retained time priority) is satisfactory.</p> <p>The concern raised by this question investor is why an investor looking for order confidentiality should lose their advantage of time in the market? If there are restrictions applied to dark pools, then similar rules should be applied to order types on transparent markets.</p>
H4	<p>Reporting requirements for operators of dark pools of liquidity</p> <p>We propose a market integrity rule that will require a market operator and a market participant operating dark pools to report to ASIC monthly on:</p> <ul style="list-style-type: none"> a) the nature of the dark pool, including the access criteria, how orders are prioritised, matched and executed, how the price is determined and whether the dark pool operator's proprietary flow is able to interact with client flow, and how conflicts are managed; b) the number of Australian clients whose orders were executed through the service during the preceding month; c) the number and value of all trades executed through the service in the preceding month and the proportion of these trades that were on behalf of professional and non-professional clients; and d) the average and median trade size for professional and non-professional clients. 	<p>Category 3 issue</p>

Question	Proposal	AFMA Comment
H4Q1	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Additional data collection and reporting mechanisms need to be developed. The collection and preparation of any data to be provided to will impose an initial and on-going cost, which can be significant. As costs incurred will likely be passed on investors no additional information should be required unless it will be of quantifiable positive assistance to investors and the marketplace.
H4Q2	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	For later comment
H4Q3	Will this proposal have any other impacts on operators of dark pools?	Information regarding the nature of dark pools of market participants and client participation in them is valuable intellectual property and confidential information. It is inappropriate to require detailed disclosure unless there is a quantifiable benefit in doing so.
H4Q4	Is there any reason that an operator of a dark pool will not know the domicile of all clients?	Yes. Clients do not disclose their end client to market participants. There is no reason to assume the end client is with either an Australian or foreign a resident.
I1	<p>Suspicious activity reporting</p> <p>We propose market integrity rules that will require a market participant to notify ASIC (unless the same information has already been reported to the Australian Transaction Reports and Analysis Centre (AUSTRAC)) in a form prescribed by ASIC as soon as practicable if it has reasonable grounds to suspect that a person is:</p> <ul style="list-style-type: none"> a) trading with inside information; or b) engaging in manipulative trading. <p>A market participant must not disclose to other parties that it has notified ASIC of suspicious activity.</p>	Not relevant

Question	Proposal	AFMA Comment
I1Q1	What are your views on our proposed approach to requiring suspicious activity reporting? Are there other avenues for obtaining this information?	<p>The requirement clearly overlaps with the existing AML/CTF requirements. The requirement to report to ASIC with a "reasonable suspicion" needs to be clarified/defined. There should be consistency across Commonwealth law. The threshold is lower than the AML/CTF legislation "actual suspicion" test.</p> <p>It is also questionable whether the MIR provisions in the Corporations Act provide sufficient legislative authority to impose such an onerous regulatory burden. It is noted that the AML/CTF legislation requirement is set out in the legislation and was subject to significant policy scrutiny and regulatory impact assessment followed by extensive consultation on implementation and supporting regulatory guidance.</p> <p>Overall this proposal is viewed as superfluous. ASIC should look to its cooperation arrangements with AUSTRAC in relation to suspicious activity reporting.</p>
I1Q2	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	<p>The proposal raises the following concerns:</p> <ol style="list-style-type: none"> 1. Very broad/high burden of proof (ought reasonably to suspect). Significant impact on the number of SUSTR's that will need to be lodged by compliance areas. 2. This will likely be very onerous, as a vast majority of SMARTS alerts may trigger this requirement. 3. 3. High impact for front office teams as well who will also be required to fulfil this obligation. 4. 4. New monitoring checks to ensure compliance. Failure to meet requirements would constitute a breach.
I1Q3	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing. What other information should be encapsulated in suspicious activity reporting?	<p>The implementation of changes to meet AUSTRAC suspicious transaction reporting requirements as part of an AML/CTF program that complies with the AML/CTF Act is now in costed in many hundred of millions of dollars. Regulators should not introduce overlapping and inconsistent regulation of such major consequence without a legislative mandate and public policy consideration.</p>
I1Q4	Are transitional arrangements necessary? What are your views on what the transitional time period and arrangements should be?	<p>Implementation of AUSTRAC reporting rules took several years.</p>

Question	Proposal	AFMA Comment
I1Q5	Should this obligation apply to trading in non-equity market products (e.g. derivative markets)?	It should not apply to any market.
I2	<p>Identification of client and origin of orders</p> <p>We propose to establish a phased-in set of requirements about certain data to be included on order and/or trade messages that would be visible only to ASIC and market operators. The first set of requirements will be designed after consultation with industry about what is achievable in a reasonably short period of time.</p>	Category 3 issue
I2Q1	Will market participants be able to categorise the originator of orders as proposed?	Categorisation is technically feasible. The real question surrounds what sort of benefit will be derived from this proposal, balanced against implementation costs for market participants. Who would be responsible for creating and maintaining a register.
I2Q2	Will market participants be able to identify the IP address associated with the origin of an order?	This could not be done for all orders. If they are hubbed through offshore centres like New York or Tokyo the IP would not be available, or because it is a single vendor IP rather than the vendor user's IP.
I2Q3	Will market participants be able to provide an identifier for DEA channels and algorithms?	Not in all cases. Where orders go through multiple channels and algorithms an identifier may not persist.
I2Q4	Will market participants be able to provide a market participant-wide identifier? Is there benefit in providing this as an interim step or would it be preferable to move to a market-wide identifier?	A centralised system for maintaining a registry would have to be developed. It is technically feasible which ever course was taken so an interim step would appear to offer no benefits.
I2Q5	Is it appropriate to use the client's HIN or SRN for this purpose?	In relation institutional clients settlement instructions are commonly directed through a custodian or settlement agent rather than settling through a participant sponsored account or SRN.
I2Q6	What are your views on having a large trader identifier? What should the thresholds be?	For later comment.

Question	Proposal	AFMA Comment
I2Q7	Should the information be provided in specific 'ASIC only' fields on orders and trade reports or are there existing fields that could be used?	<p>It is unclear to us what is the relevance of the order information. This would have a serious impact on the relationships between market participants and their clients.</p> <p>Automation of information gathering is not needed. Because of the frequency of requests for such information currently it would be best to leave the information in it's current place and have market participants provide it to ASIC through their normal surveillance requests.</p>
I2Q8	What other additional types of data do you consider should be made available to ASIC to perform our function as a market supervisor?	For later comment.
I2Q9	Considering the additional data to be captured in order and trade reports, what will be the impact on the performance and capacity of your order management and trading systems?	Having a unique identifier for every type or order, DEA channel and algorithm will impose a big additional burden on market participant IT resources. It would incur high costs and require substantial lead time to develop. A more thorough cost / benefit analysis would need to be provided by ASIC to justify this proposal.
I2Q10	What lead time would be required for each item in Table 14?	That would be dependent on the body creating the register.
I2Q11	Should we consider the options in relation to trading in non-equity market products (e.g. derivative markets)?	The regulatory benefit still needs to be established before this question could be answered.
I3	<p>Identification of off-order book execution venues: Dark pools</p> <p>We propose a market integrity rule that will require a market participant, when transacting off-order book, to identify on post-trade transparency disclosures (trade reports) the execution venue. This information would be visible only to ASIC and market operators.</p>	Category 3 issue
I3Q1	What are your views on this proposal?	This should be a general requirement for dark pool operator not a market participant specific requirement

Question	Proposal	AFMA Comment
I3Q2	Is it possible to make this information available to ASIC on a trade-by-trade basis?	ASIC can obtain this information through its normal surveillance processes.
I3Q3	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.
I3Q4	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	For later comment.
I4	<p>Identification of short sales</p> <p>We propose market integrity rules that will require a market participant to distinguish short sale orders and trade reports where the sell-side is a short sale. A market participant must specify the quantity of the sale that is short, to ASIC and the market operator, at the time the sale order is placed or the time the trade is reported.</p> <p>This proposal applies to s1020B products in the Corporations Act.</p> <p>It is proposed that the current exemptions to transactional reporting will continue to apply so that the short sales made under these exemptions will not be required to be tagged under this proposal. Refer to Regulatory Guide 196 Short selling (RG 196) at RG 196.42–RG 196.79 for more information on the short sale transactions that require disclosure.</p> <p>No manual adjustments or splitting of orders are expected to be required.</p>	Not relevant
I4Q1	What are your views on this proposal?	AFMA considers this proposal is outside the policy scope of the MIR and it is outside the legislative authority given to ASIC under the short-selling provisions. See our detailed comments on this proposal in the general part of

Question	Proposal	AFMA Comment
		this submission.
I4Q2	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	The Regulation Impact Statement on the Short Selling Disclosure Regime that supported the making of the Corporations Amendment Regulations 2009 (No. 8) which put in place the regulations relating to short sale transaction reporting noted above, described and considered the costs associated with the interim transaction short sale reporting requirements put in place as a temporary measure before the present regulations were made. The implementation costs of real-time tagging of short sales are high which is why in part this proposal has been previously rejected. The conclusion drawn gave rise to the proposal to retain the existing interim transactional disclosure regime with public disclosure on the following day, based on the analysis of the costs and benefits outlined in the Statement.
I4Q3	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	This proposal was not implemented as part of the short selling reforms on which there was extensive consultation and does not satisfy a regulatory impact assessment. This proposal cannot be implemented.
I4Q4	Are there any other practical implications?	This proposal cannot be implemented.
I4Q5	What are the likely risks of this proposal on your business?	This proposal cannot be implemented. Non-compliance with the MIR if implemented.
I4Q6	We do not expect that any manual adjustments or splitting of orders will be required. Do you agree?	This proposal cannot be implemented.
I4Q7	Are transitional arrangements necessary? What are your views on what the transitional time period and arrangements should be?	This proposal cannot be implemented.

Question	Proposal	AFMA Comment
J1	<p>Post Trade Transparency</p> <p>Timing of publication</p> <p>We propose a market integrity rule requiring a market operator offering trading in equity market products to make public:</p> <p>a) certain information about transactions executed under its rules and during normal trading hours immediately, subject to the deferral exceptions described below. The information displayed should be complete, accurate and up-to-date. We intend to specify the detail about who to publish the information to once we have taken into account the feedback from this consultation paper and after further consultation with market operators; and</p> <p>b) all information reported to it outside normal trading hours before the market opens.</p>	Category 1 issue
J1Q1	<p>Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?</p>	Market operators will bear the burden of implementing this proposal.
J1Q2	<p>Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.</p>	None identified.

Question	Proposal	AFMA Comment
J2	<p>Reporting</p> <p>We propose a market integrity rule requiring a market participant that transacts off-order book:</p> <ul style="list-style-type: none"> a) during normal trading hours—to report post-trade information immediately to a market operator; and b) outside normal trading hours—irrespective of where they are executed, to report post-trade information to a relevant market operator at least by 15 minutes prior to the commencement of normal trading hours of the next trading day based on the earliest opening hour of any exchange market. <p>Reporting of facilitated principal transactions that are large in size may be deferred, as follows:</p> <ul style="list-style-type: none"> 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; and d) \$2 million for all other equity market products (Category D). <p>Where a market participant buys or sells more than one class of equity market product under a single agreement, each constituent trade should be assessed separately for the purpose of determining whether it is entitled to deferred publication.</p> <p>The maximum period for deferral is:</p> <ul style="list-style-type: none"> a) 15 minutes prior to the commencement of normal trading hours on the next trading day based on the earliest opening hour of any exchange market if the trade is effected before 1 pm on the previous trading day; or b) no later than 1 pm on the next trading day if the trade is effected after 1 pm on the previous trading day. <p>However, entities should publish as soon as they are no longer at risk.</p>	<p>Category 1 issue</p>

Question	Proposal	AFMA Comment
J2Q1	What will be the impact of requiring transactions done outside normal trading hours to be reported before any market opens?	Market participant systems already exist to satisfy this obligation.
J2Q2	Is it appropriate that off-order book trade reporting is limited to market participants or should it apply to all AFS licensees?	Non market participants are unlikely to have the technical ability to report transactions.
J2Q3	Are the existing categories for block exceptions still appropriate? If not, why not? What is the impact of the delays on transparency?	The current categories are appropriate. The delays on transparency assist in maintaining an orderly market.
J2Q4	The thresholds for block trades will need to keep pace with market developments. What should be the process for modifying the thresholds?	Periodic reviews.
J2Q5	Should post-trade data be provided free of charge after a short period? What should that period be?	After 20 minutes.
J2Q6	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Not significant.
J2Q7	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Non identified.
J3	<p>Deferred publication for large principal transactions</p> <p>Content of post-trade disclosures</p> <p>We propose a market integrity rule that will prescribe the minimum information that a market participant must report to a market operator and that the market operator must make public in accordance with proposals J1 and J2. The proposed information requirements are outlined in Appendix 4, Table 22.</p>	Category 2 issue

Question	Proposal	AFMA Comment
J3Q1	Should crossing systems be uniquely identified on post-trade publications, to assist market participants and investors to locate liquidity?	This would reverse market participant anonymity introduced by ASX around 2005. This would be a significant change to the nature of the market in Australia.
J3Q2	Is there value in publicly disclosing whether a trade was done on an agency or principal basis?	None. The market does not need this information to operate fairly and efficiently as demonstrated by current circumstances. In relation to large principal transactions for which the ITN functionality is used, it is unnecessary as the market will know anyway upon publication whether it was agency or principal.
J3Q3	Is there value in publicly disclosing whether a trade was generated by a dark order?	None. The market does not need this information to operate fairly and efficiently as demonstrated by current circumstances. In relation to large principal transactions for which the ITN functionality is used, this information would be irrelevant as this type of trade is a verbal order between the client and the market participant and will not be entered into the dark pool.
J3Q4	Is there value in publicly disclosing whether at least one side of a trade was generated by an algorithm?	None. The market does not need this information to operate fairly and efficiently as demonstrated by current circumstances.
J3Q5	Should data fields and standards be harmonised to simplify the data consolidation process? Are the proposed field formats appropriate?	While standardisation is desirable, it depends on the cost involved and whether it justifies the benefit.
J3Q6	Do you already prepare and report post-trade information? If so, will any changes to the minimum content of post-trade disclosures require changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Generally not. Some information may be provided to clients, but the range of information contemplated in this proposal would require new systems.

Question	Proposal	AFMA Comment
J3Q7	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	A prescriptive regime will involve implementation costs but there has not been the opportunity to quantify these.
J4	<p>Reporting of off-order book transactions</p> <p>We propose a market integrity rule on market participants that will require only one party to a transaction to report the information. This party should be the executing party. When there is no clear executing party, it should be the seller or by agreement between the parties. When only one party is subject to the market integrity rules, that party must report.</p> <p>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. Parties to a transaction must ensure that the transaction is made public as a single transaction.</p>	Category 2 issue
J4Q1	Is it appropriate that the executing party be responsible for reporting of off-order book post-trade information, with the sellers as the default?	This form of reporting fits within current practice. The need for prescriptive rules in this area is questionable
J4Q2	Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	A prescriptive regime will involve implementation system changes.
J4Q3	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	A prescriptive regime will involve implementation costs but there has not been the opportunity to quantify these.

Question	Proposal	AFMA Comment
J5	<p>Activities that do not need to be reported</p> <p>We propose a market integrity rule clarifying that the following activities should not be post-trade reported:</p> <ul style="list-style-type: none"> a) passing of an order; b) primary market transactions; and c) stock lending or stock borrowing. 	Category 2 issue
J5Q1	Are there any other activities that should not be reported?	No other activities are suggested.
K1	<p>Consolidation of pre-trade and post-trade information</p> <p>We are intending to bring about an outcome of a whole-of-market complete and accurate consolidated view of pre-trade and post-trade information for equity market products.</p> <p>We have discussed three possible options which may achieve this outcome. However, we are of the view that, on balance, only two of these options are preferable in the context of the likely structure of the Australian market and the outcomes we are trying to achieve:</p> <ul style="list-style-type: none"> (a) multiple ASIC-approved consolidators to establish consolidated views of pre-trade and post-trade information; or (b) a single provider of a consolidated view of pre-trade and post-trade information established by an ASIC tender process. <p>The mechanism for implementing the eventual approach would be setting obligations on market operators to provide data to an ASIC-approved consolidator.</p>	Category 1 issue
K1Q1	Do you have views on the best way to implement a consolidated view of pre-trade and post-trade information in Australia?	There is general support for this proposal with preference for multiple providers. The industry expectation is that existing data service providers will provide a consolidated view of pre and post trade data. AFMA does not see a need for regulatory intervention in this environment and a competitive market environment for the provision of such services is desirable. There would be concern if only one service provider was able to exercise monopoly control of the market. Accordingly, the single vendor and government/industry utility

Question	Proposal	AFMA Comment
		provider do not have general support.
K1Q2	After what time period should data be made available free of charge?	<p>As market participants are likely to make arrangements for their own consolidated data the main use of a consolidated tape would be reconciliation purposes when responding to compliance requests from ASIC.</p> <p>Free data would be of greatest interest to retail investors and that 20 minute delay that applies for ASX data at the present time would be a fair balance for the commercial interests involved.</p>
K1Q3	Will compliance with either option require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Data connections will have to be put in place. This will involve some additional costs that have not yet been quantified.
K1Q4	Do you have views on whether either option is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing. Are there any other practical or implementation issues associated with either preferred option that we should be aware of?	There will be implementation costs involved in putting in place connections but there has not been the opportunity to quantify these
K1Q5	What, if any, competition issues do you consider could be raised by each of the options proposed? If so, how could these issues be addressed?	AFMA's general position on this question is that regulation should not distort market forces and competition provides the best tool for ensuring the proper pricing of services.

Question	Proposal	AFMA Comment
K2	<p>Consolidated information cost</p> <p>In order to be able to charge a reasonable price for the consolidated information, consolidators should be able to obtain trade information from market operators at a reasonable cost or at no cost, and on reasonable terms.</p>	<p>Category 1 issue</p>
K2Q1	<p>Should market operators be able to profit from providing information to consolidators or should market operators be obligated to provide their most socially valuable information, such as top five best bids and offers, for no fee or at cost?</p>	<p>AFMA's general position on this question is that regulation should not distort market forces and competition provides the best tool for ensuring the proper pricing of services. We are discussing services the rationale for which is to enable the making of profitable decisions. It therefore follows that services providers should be appropriately remunerated for the services they provide to investors. The question of pricing of services is problematic when monopoly providers are able to exploit their position and extract monopoly rents from the market. In this circumstance regulatory interventions may be justified.</p>
K2Q2	<p>Should market operators be obligated to provide information to consolidators on an equivalent basis to that they provide to other information users, such as, for example, co-location proprietary traders?</p>	<p>Data should be provided on a non-discriminatory basis.</p>
K2Q3	<p>Do you consider it would be appropriate for a market operator, either directly or by way of commercial association, to be an ASIC-approved consolidator, or the single provider of consolidated information? If so, what additional protections should be put in place to ensure that competition issues are addressed?</p>	<p>Signs of regulatory approval by statutory bodies for private sector services is a matter that always needs to be handled with great caution. The consolidator relied upon by ASIC for its own market surveillance needs will obviously have an advantage in the market because of this association. MIR relating to the consolidated data should not result in market participants having to acquire this consolidator's services.</p>

Question	Proposal	AFMA Comment
L1	<p>Market operator cooperation</p> <p>We propose a market integrity rule requiring a market operator to comply with a protocol with ASIC and other market operators. The types of issues the protocol would address are:</p> <ul style="list-style-type: none"> a) the coordination of market operator controls as discussed in Section E (e.g. volatility controls and trade cancellations); b) arrangements for synchronising trading halts and suspensions relating to price sensitive information and external events; c) arrangements for managing system outages on one or multiple markets; d) arrangements for responding to market events and emergencies, such as a natural disaster; e) procedures for the assignment of common symbols and identifiers (as discussed below); f) arrangements for managing differences in operating hours between markets, including supervision of the continuous disclosure obligations; g) arrangements for cooperating with operators of derivative markets (e.g. ASX 24) or markets that offer financial products related to equity market products; h) expectations about information sharing; and i) general arrangements for cooperation. <p>A market operator must make available to other market operators information relating at least to real-time orders, executed trades and company announcements.</p>	<p>Category 1 issue</p>
L1Q1	<p>Are there other components that we should consider, including in a cooperation protocol between market operators?</p>	<p>This is the most significant area of member concern. There is a strong view that ASIC will need to closely supervise this area. Market operators must be required to provide and cooperate to provide a stable pre-production testing environment for market participants, testing environments that reflect current production proposals and are robust enough to ensure imminent market like conditions are reproduced. These testing environments should reflect the data</p>

Question	Proposal	AFMA Comment
		delivery expected in the imminent market production environment.
L1Q2	Should a market operator be required to provide information to other market operators for this purpose free of charge?	Market operators are obliged to cooperate where issues of market integrity are concerned. This is an area where commercial rivalry cannot be allowed to affect the smooth operation of the market as a whole.
L1Q3	Will compliance with the proposed protocol require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	If market operators are cooperating appropriately then system development should not disadvantage clients. System development which is implemented by market operators without appropriate consultation and in a premature manner to the disadvantage of clients will undermine a market and encourage market participants to seek alternative service providers. Trading platforms are in the service business, and service levels and the meeting of client needs is enhanced when there is competition between providers.
L1Q4	Do you have views on whether the proposed protocol is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Cooperation should benefit market participants. This is especially important during the implementation phase of new MIR when a stable environment for end to end testing is essential for market participants so that they can comply with regulatory requirements. A failure by market operators to provide such an environment undermines market integrity and may put them in breach of their market license obligations.
L1Q5	What is the impact, if any, of there being longer trading hours on a market other than the listing market (i.e. ASX)? This issue is discussed in REP 215, paragraphs 272–273.	Longer trading hours make determining stock's closing price and VWAP a more difficult exercise. Consideration will also have to be given to timing publication of material announcements, trading halts and suspensions.
L1Q6	What is the impact, if any, of new market operators having or not having an opening or closing auction? If new market operators have auctions, should they occur at the same time as those on ASX? This issue is discussed in REP 215, paragraphs 272–273.	This is a question which needs discussion as an implementation issue. There are alternative means of doing this and more discussion is required on this issue.

Question	Proposal	AFMA Comment
L2	<p>Assignment of common identifiers</p> <p>We propose market integrity rules that will require a market operator to:</p> <ul style="list-style-type: none"> a) assign each market participant a unique identifier for trading purposes. A single identifier should be used for participants that are participants of more than one market; and b) use a unique identifier for equity market products, to be assigned by the listing market. <p>The identifiers should be provided to other market operators free of charge.</p>	<p>Category 1 issue</p>
L2Q1	<p>Are there any practical problems with allowing the relevant market to assign the identifiers for new market participants? If so, would it be preferable to have a single entity responsible for this function? Is this something ASIC should undertake?</p>	<p>AFMA supports the proposal that market operators should use common market participant identifiers and stock symbols. If market operators can undertake to cooperate on achieving this there should be no need for ASIC to undertake this function.</p>
L2Q2	<p>Are there any other identifiers that should be standardised?</p>	<p>Client identifiers are not practical. No current systems exist for registering and tracking clients and given the nature of a global client base such a system would really need to be implemented on a global scale to be useful and effective from a regulatory viewpoint.</p>
L2Q3	<p>Will compliance with the proposed obligations require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?</p>	<p>There would be transitional issues associated with changes of identifiers provided by the ASX if a different system for issuing centralised IDs was introduced. If the same ones are adopted problems are not envisaged.</p>
L2Q4	<p>Do you have views on whether the proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.</p>	<p>We refer to our previous answer. There would be implementation costs if a whole new system and identifiers were introduced.</p>

Question	Proposal	AFMA Comment
L3	<p>Synchronised clocks</p> <p>We propose market integrity rules that will require a market operator to synchronise the clocks of its trading, supervision and reporting systems to the Universal Time Clock (UTC) designated by ASIC (i.e. the clock of the National Measurement Institute (NMI)) to within a specified allowable tolerance, and must be able to demonstrate the level of its clocks' compliance with these rules.</p> <p>A market operator must have procedures in place governing its connection to the clock, for managing drift and for restarting the synchronisation process.</p> <p>To the extent that a market operator relies on third-party providers for trading, compliance or reporting purposes, the market operator must ensure the third-party providers synchronise their clock to the Universal Time Clock designated by ASIC.</p> <p>We intend to set a clock for market participant systems to synchronise to (as is the requirement in Canada (UMIR 10.14)) after we have considered the responses to the proposal for market operators.</p>	Category 1 issue
L3Q1	Are there other sources besides the NMI that represent an accurate source from which to synchronise clocks?	Brokers rely on their own firm wide standardised time reference clocks for timestamps.
L3Q2	What is an appropriate level of precision for the measurement of time? What is an appropriate level of 'allowable tolerance'? Should this be static or dynamic?	This question requires detailed technical consultation with stakeholders.
L3Q3	Should market participants using co-location services provided by market operators be required to synchronise their clocks sooner than other participants to facilitate surveillance and investigations?	Given the latency issues, synchronisation at the microsecond level is not feasible. There will have to be reconciliation of timestamps across the board.
L3Q4	What are the practical issues for market participants to synchronise their clocks?	For large international firms which are referenced to global single time sources. Eg US firms referenced to The United States Naval Observatory (USNO) USNO Master Clock. Markets operators can coordinate off same clock but firms should not be required to standardise to the Australian reference

Question	Proposal	AFMA Comment
		master clock as this causes global coordination problems.
L3Q5	Will compliance with the proposal require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	For audit purposes timestamp differences will have to be reconciled.
L3Q6	Do you have views on whether the proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Additional synchronisation of systems and reconciliation will necessarily incur additional costs in implementing and running systems.
L4	<p>Tick sizes</p> <p>We propose a market integrity rule requiring a market operator to prevent orders in equity market products from being displayed, ranked or accepted in price increments less than those outlined below based on the price of the equity market product. These are the existing ASX tick sizes.</p> <p>Price of the equity market product</p> <p>Tick size</p> <ul style="list-style-type: none"> • Greater or equal to \$2 - \$0.01 • Priced between \$0.10 and \$2 - \$0.005 • Priced at less than \$0.10 - \$0.001 <p>An exception would apply for orders entitled to a pre-trade transparency exception (e.g. block trade).</p>	Category 2 issue
L4Q1	Do you have any views on our proposed approach to harmonising tick sizes?	Standardisation of tick sizes could be anti-competitive because it does not promote price improvement. It would make it impossible to achieve price improvement on a crossing.

Question	Proposal	AFMA Comment
L4Q2	Should we consider increasing the middle tier from ASX's current \$2 to \$20, as proposed by ASX?	More extended consultation is required on this issue.
L4Q3	Would it be preferable for tick sizes to be a function of price and trading volume? What are some of the practical challenges in implementing such an arrangement?	Tick sizes should be calculated based on price alone.
L4Q4	What approach should we take to reviewing tick sizes?	More extended consultation is required on this issue.
L4Q5	Will compliance with the proposal require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	A single tick size could undermine the goal of price improvement. The impact of this proposal needs to be assessed further.
L4Q6	Do you have views on whether the proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	For later comment.
L5	<p>Fair access to markets</p> <p>We are interested in your feedback on whether we should supplement the rules applying to market operators in the Corporations Act and in RG 172 relating to access to their market.</p>	Category 3 issue
L5Q1	Should market operators have a specific obligation to not unreasonably prohibit, condition or limit access to a person for which the market was established?	<p>This proposals needs to take into consideration:</p> <ul style="list-style-type: none"> • Cross subsidisation; • Lack of price competition; • Loss of innovation; and • Excessive fees.

Question	Proposal	AFMA Comment
L5Q2	Should market operators be required to offer all of their services on a transparent, fair and non-discriminatory basis by making the services available to all market participants willing to pay for the services? Should the services also be available to non-participants (e.g. data/system vendors)? If so, on what basis?	<p>Highly significant issue.</p> <p>Market participants require an environment where clearing and settlement services are provided on a fair and effective basis regardless of the trading platform on which the trades are executed. If CS facilities are not provided in a fair and effective way market participants will be unable to meet best execution obligations to the detriment of investors. Provision of clearing and settlements services on a non-discriminatory basis is an existing obligation placed on CS facility licensees under paragraph 821A(a) – “A CS facility licensee must to the extent that is reasonably practicable to do so, do all things necessary to ensure that the facility’s services are provided in a fair and effective way”. Ensuring equitable cooperation between the market operators includes arrangements for accessing and processing clearing and settlement and forms part of the supervisory role that is expected of ASIC in the transition to the new equity market regime. This includes providing full end to end testing right through to a market participant receiving back settlement confirmation messages when trading tests are conducted.</p>
L5Q3	Are there circumstances where services create an unfair barrier (e.g. where a market operator provides lower service standards to participants who do not co-locate and the difference in service is not justifiable by reference to the fact that the participant has not co-located)?	This question raises a number of considerations which merit more thorough examination.
L5Q4	Do any issues arise from market operators having vertical pricing structures (e.g. combining or linking trading and clearing and settlement services or where a single party is responsible for settling trading and clearing and settlement fees)?	Yes – there needs to be greater independence between commercial trading platform services and CS facilities and close regulatory oversight by ASIC to ensure that services are provided in a fair and effective way. While there is contestability among trading platforms CS facilities will continue to be a monopoly for the foreseeable future and need to be treated as an essential utility that underpins delivery of market participant obligations particularly with regard to best execution.
L6	<p>Market operator systems and controls</p> <p>We are interested in your feedback on whether we should supplement the rules applying to market operators in the Corporations Act and in RG 172 relating to their systems and controls.</p>	Category 1 issue

Question	Proposal	AFMA Comment
L6Q1	Given the nature of the way markets are evolving to become more electronic, should there be a specific market integrity rule on market operators to have reasonable business continuity and disaster recovery plans, to conduct capacity stress tests, and to review the vulnerability of systems to internal and external threats?	This issue should form part of a broader public policy review of the market licensing provisions of the Corporations Act.
L6Q2	Should there be a specific market integrity rule on market operators relating to their responsibilities when relying on a third party for the performance of operational functions that are critical for the provision of continuous services?	There needs to be a stable IT environment for the end to end testing of system connectivity and compliance with the new MIR related changes at least for the initial phase of implementation. AFMA is of the strong opinion that in the interests of market integrity that ASIC should control the environment and compel the cooperation of the market operators to provide a stable environment for system testing and certification on an end to end basis.
M1	<p>Trades to be under the operating rules of a market operator</p> <p>We propose a market integrity rule preventing a market participant from trading in equity market products by means other than under the operating rules of a market operator, unless the trade is pursuant to a primary market action (e.g. takeover bid).</p>	Category 1 issue
M1Q1	Do you have views on whether this proposal is likely to impose any additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	No significant additional costs.
M2	<p>Participant not to trade during trading halt</p> <p>We propose a market integrity rule to prevent a market participant from transacting in equity market products during a market-integrity-related trading halt and/or suspension (e.g. responding to price movements, emergencies and price sensitive information).</p>	Category 1 issue
M2Q1	Do you agree that all trading in equity market products should stop during a trading market integrity halt or suspension, irrespective of where the trade is intended to take place?	Yes. Support does not extend to halts arising from a market operator's own system failures.

Question	Proposal	AFMA Comment
M2Q2	Is it appropriate that this obligation would be limited to market participants or should it apply to all AFS licensees?	It should apply generally when a halt is called.
M2Q3	Will compliance with this proposal require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of likely costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be any significant impediments to making these changes?	Subject to the rules being clear, the parameters can be factored into existing systems.
M2Q4	Do you have views on whether this proposal is likely to impose any other additional costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	Quantification of the costs to industry has not been possible to establish in the tight timeframe given for comment.
M3	<p>Participant may produce single trade confirmations</p> <p>We propose to extend ASIC Market Integrity Rules (ASX Market) Rule 3.4 to allow all market participants that enter into multiple transactions for the purpose of completing a single client order to aggregate transactions into one confirmation and specify the volume-weighted average price (VWAP), provided:</p> <ul style="list-style-type: none"> a) the client provides written authorisation to this arrangement; and b) the market participant provides individual prices to the client on request. 	Category 1 issue
M3Q1	Do you agree that the existing requirements in the Corporations Act and Corporations Regulations, as well as the proposed market integrity rules, are sufficient to ensure trade confirmations disclose sufficient information to clients in a multimarket environment?	Yes – this proposal is strongly supported and welcomed.
M3Q2	Do you have views on whether this proposal is likely to impose any other costs or burdens on any class of stakeholder? Where possible, please identify the nature of the likely costs/burdens, quantify the estimated costs (including any assumptions and relevant data) and indicate whether such costs/burdens will be one-off or ongoing.	<p>The requirement to collect client authorisation needs to only apply to retail clients.</p> <p>With regard to single confirmations provided to professional investors, markets should be allowed to provide an aggregate trade quantity and VWAP and not have to identify and itemise the execution venue or price. Market</p>

Question	Proposal	AFMA Comment
		<p>participants should be given the option as to whether they prefer to issue a single confirmation or multiple confirmations. Where a market participant chooses to provide single confirmations, they will very likely require systems modifications to be able to generate the confirmations. Generally it will be more efficient and less costly for market participants to provide separate confirmations.</p> <p>From a regulatory burden viewpoint there is a cost associated with having to collect authorisations from clients. This would be a manual process and would also create record retention responsibilities that could prove costly and onerous.</p>