



25 March 2011

Alex Orgaz-Barnier  
Senior Analyst  
Exchange Market Operators  
Australian Securities and Investments Commission  
GPO Box 9827  
Sydney NSW 2001

By email: [alex.orgaz-barnier@asic.gov.au](mailto:alex.orgaz-barnier@asic.gov.au)

Dear Mr Orgaz-Barnier

### **CP 148 Proposed market integrity rules: Chi-X market**

The Australian Financial Markets Association (AFMA) welcomes the opportunity to provide comments to the Commission on its Consultation Paper 148: Proposed market integrity rules: Chi-X market (CP 148).

#### **1. General Comments**

AFMA welcomes the consultative approach taken by ASIC in relation to the commencement of a new market operator and looks forward to continuing to work with the Commission in this regard.

Further, AFMA appreciates the efforts of ASIC to respond to industry concerns raised in response to Consultation Paper 145 around the need to prioritise those measures necessary to establish market operator competition and to consult further on lower priority issues.

AFMA notes that ASIC's proposal to implement a minimally altered version of the ASX Market Integrity Rules (MIR) to apply specifically to the Chi-X market is a less than optimal, pragmatic outcome that reflects limitations imposed by the time constraints of the current process. Ideally, rather than specify three separate sets of MIRs (the ASX, Chi-X and the common MIR), it would have been optimal to create one unified MIR to apply across all markets. A unified MIR would give greater certainty, a reduced compliance burden and reduce risks of regulatory arbitrage. As a second preference, a

**Australian Financial Markets Association**

ABN 69 793 968 987

Level 3, Plaza Building, 95 Pitt Street GPO Box 3655 Sydney NSW 2001

Tel: +612 9776 7955 Fax: +61 2 9776 4488

Email: [info@afma.com.au](mailto:info@afma.com.au) Web: [www.afma.com.au](http://www.afma.com.au)

review of the existing ASX MIR should have proceeded before their use in the creation of Chi-X and Common MIR.

As an interim approach, if it is necessary in order to expedite the commencement of market operator competition in a timeframe that is satisfactory to the industry, AFMA views the proposed approach by ASIC of creating three sets of MIRs as acceptable as long as it is subject to a clear and time-defined commitment to move to a unified MIR.

AFMA would like to ensure that the creation of multiple sets of MIRs for the ASX and Chi-X markets does not become an impediment for the resolution of longstanding issues that Market Participants have had with the ASX MIR (and former ASX Market Rules).

In this regard, AFMA would request that the process to create a unified MIR to apply across all markets includes detailed industry consultation on all outstanding issues with the ASX MIR.

While appreciating the demanding schedule of work ASIC has for 2011, AFMA would request a clearer commitment around the timing of the unified MIR project. Such a commitment may help allay concerns about the delays likely to the resolution of the outstanding MIR issues deriving from ASIC's proposed approach.

## **2. Minimum Presence Requirements**

A number of concerns were raised by members around the minimum presence requirements proposed by ASIC. In order to ensure a fair and level playing field for all participants more detail is required on how ASIC will ensure full compliance with Australian laws and regulations by foreign market participants with only a minimum local presence, while not inadvertently precluding potential foreign participants from entering the Australian market.

AFMA would encourage ASIC to continue to engage in a dialogue with industry in regards to minimum presence to explore options and risks in this area.

## **3. Guidance on Market Integrity Rules for the Chi-X market**

Subject to the concerns noted above in relation to the need to move in a timely fashion to a unified MIR for both markets, there is general support for the consistent application of guidance notes across both the Chi-X and ASX MIRs.

## **4. Guidance for Participants of both the Chi-X and ASX Markets**

Market Participants require certainty in regard to their obligations where they are duplicated in two or more markets. The guiding principles approach proposed by ASIC does not provide sufficient certainty in relation to these obligations as too much is left dependent upon an individual Market Participant's interpretation of how a guiding principle might apply to a given set of circumstances.

ASIC should move away from the guiding principles approach and provide detailed guidance that reduces interpretation risk in order to give Market Participants certainty in relation to their duplicated obligations.

In view of the amount of recertification of processes required to comply with the Chi-X MIR in the time available ASIC should give consideration to a short form registration process where appropriate.

## **5. Designated Trading Representatives**

In relation to ASIC's proposals in relation to Designated Trading Representatives (DTRs) in the proposed Chi-X MIR, AFMA sees inconsistencies in the application of the existing DTR framework to the Chi-X market.

Currently, the ASX provides training, examination and a standard trading application for accessing its market - ASX Trade. It is unclear how applicable this framework is to the Chi-X market which will not provide a standard trading application (such as ASX Trade) or any associated training.

Traders wishing to trade on Chi-X will typically be using already existing systems with which they should be familiar. This should address concerns about system usage for existing DTRs.

In order to address concerns about market specific knowledge, the Chi-X Rules require identification of a person to Chi-X that knows and understands the trading rules specific to its market.

As such, AFMA would seek to allow grandfathering of existing ASX Designated Trading Representatives across to Chi-X in the first instance.

As part of the creation of the unified rules there appears to be scope for the adoption of a more appropriate framework for a multi-operator environment where operators do not supply standard trading platforms or training.

## **6. Disciplinary Framework**

AFMA does not support the multiplication of penalties across multiple market operators. The addition of each market operator should not lead to an effective increase in penalties for single breaches of market rules.

In the Australian context at present, where market operator competition is yet to be established, the ASIC proposal could lead to a doubling of penalties for a single course of conduct by a Market Participant.

In a market with established competition between market operators, such as the US, with up to 30 significant execution venues, application of ASIC's proposed principle would lead to disproportionate penalties. AFMA supports limiting the penalty for a single course of conduct to the maximum of one listed penalty.

## **7. Coordination of Trading Halts, Suspensions and Market Data**

AFMA understands that ASIC proposes to include requirements in the common MIR for the listing market to distribute data feeds on trading halts, suspensions and other critical market data to other market operators, noting that such information is part of the standard information distributed to Market Participants.

To complement this forthcoming rule, non-listing market operators should be required to coordinate the response of their markets in a timely way to these signals and not to allow orders to be received and executed in stocks halted for reasons unrelated to systems failure.

ASIC should ensure that Market Participants are not exposed to any risk of inadvertent trading in halted securities due to non-listing markets accepting orders while these securities are halted in a listing market for reasons unrelated to systems failure.

## **8. Conclusion**

The Consultation Paper forms one component of the multi-part process to arrive at market operator competition.

AFMA appreciates ASIC's continued commitment to industry engagement and the assistance provided by ASIC in relation to CP 148. Please do not hesitate to contact me at [djeffree@afma.com.au](mailto:djeffree@afma.com.au) or (02) 9776 7993 if further clarification or elaboration is desired.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Jeffree', with a stylized flourish extending to the right.

**Damian Jeffree**  
**Director - Policy**