



Proposed ASIC Market Integrity Rules: ASX and SFE markets

ASX Submission to ASIC Consultation Paper 131

26 March 2010

Executive Summary

ASX acknowledges the constructive dialogue between ASIC and ASX which has brought ASIC's proposed Market Integrity Rules for ASX and SFE markets, which substantially replicate existing provisions of the ASX Market Rules and SFE Operating Rules, to their current stage of development. ASX welcomes the opportunity to make further comments on the proposed market integrity rules and to respond to certain other important matters raised by Consultation Paper 131.

Role clarity

ASX is concerned that a number of statements contained in Consultation Paper 131 could lead to public confusion about the respective roles of ASIC and market licensees once the transfer of supervisory functions to ASIC takes effect and, consequently, are likely to reinforce perceptions of conflicts of interest on the part of market licensees. In particular, statements which contemplate a continuing or residual market supervisory role for market licensees (including ASX and SFE) do not accord with the Government's August 2009 announcement in relation to the transfer of supervisory arrangements for Australia's domestic licensed markets, the express terms of the Corporations Amendment (Financial Market Supervision) Bill 2010 (the Bill) and the underlying intent of the Bill as articulated in the Explanatory Memorandum.

ASX submits that role clarity is a pre-condition to achievement of the stated objectives of the Government's announced reforms to the regulation of Australia's domestic licensed financial markets, and that the respective future roles of ASIC and market licensees must be consistent with the following description of the delineation as contemplated by the Bill:

- ASIC will be responsible for supervising Australia's domestic licensed financial markets including the conduct of participants on or in relation to those markets; and
- market licensees will be responsible for operating the markets and for monitoring and enforcing compliance with the markets' operating rules.

Scope of ASIC's Market Integrity Rules

These ASIC Market Integrity Rules are designed for a "single market ASIC supervisory system". ASX has supplied ASIC with details of the issues that it considers would need to be addressed in a multi-market environment and presumes that ASIC is separately providing advice to the Government in relation to those issues. ASX has also raised serious matters in its review of *Algorithmic Trading and Market Access Arrangements* released on 8 February 2010 (the ASX Review) in relation to the potential impact of algorithmic trading and certain market access arrangements on market integrity and quality in a multi-market environment. Matters raised by ASX in the ASX Review, and the ASX Review itself, have recently been referred to on the floor of the US Senate.¹ If, and when, Australia moves to a multi-market environment these concerns and other issues will need to be addressed by revisiting these Market Integrity Rules and the associated regulatory framework under which they are enabled.

ASX intends to make changes to the ASX Market Rules and SFE Operating Rules

Although it is not referenced in ASIC's Consultation Paper, as previously positioned with ASIC and subsequently advised to market participants, it has been necessary for ASX to restructure the operating rules to provide a clear and workable rules framework once the "market integrity rules" are deleted. In developing its new operating rules ASX is seeking to maintain the status quo where possible, while presenting rules in a simpler and more concise format.

¹ Refer speech by U.S. Senator Kaufman on 2 March 2010 in relation to "High Frequency Trading", available at: http://kaufman.senate.gov/press/floor_statements/statement/?id=4cfe28ec-662b-4d7e-8e57-a9844ca67220

Comments on the draft Market Integrity Rules

It is submitted that ASIC/SFE Market Integrity Rule 2.2 – Trade Cancellation should be revised. This rule imposes a Tier 1 Penalty on the Market Operator for not giving notice to ASIC as soon as practical, and to a Market Participant as soon as possible, after an order or trade cancellation. ASIC has not disclosed the purpose of such a rule nor how it would enforce it. ASIC has provided no guidance on how it would determine what “as soon as practical” and “as soon as possible” mean in these circumstances.

In some areas there is overlap between ASIC’s proposed Market Integrity Rules and the ASX Market Rules or SFE Operating Rules. It is important to consider whether this overlap is appropriate where the subject matter of the overlap relates to either the maintenance of a fair, orderly and transparent market or the operation of the market, noting that the market operator has the corresponding license obligations in relation to these matters and that ASIC’s Market Integrity Rules are also designed to facilitate the achievement of fair, orderly and transparent markets. If ASIC considers it is appropriate to make these Market Integrity Rules, ASIC and ASX will need to put in place protocols to deal with the enforcement of the overlapping rules.

ASX has made a number of other detailed drafting suggestions in relation to ASIC’s draft Market Integrity Rules.

Introduction

ASX's submission on ASIC's proposed Market Integrity Rules for ASX and SFE markets:

1. addresses the need for clarity in relation to the respective future roles of ASIC and ASX following the "transfer of market supervision" to ASIC;
2. seeks to reinforce that ASX intends to make changes to the ASX Market Rules and SFE Operating Rules – as previously positioned with ASIC and foreshadowed to ASX and SFE Market Participants on 26 February 2010;
3. identifies a number of issues in relation to the proposed content of ASIC's Market Integrity Rules;
4. identifies certain rules which ASX intends to delete from the ASX Market Rules and SFE Operating Rules and which ASIC should consider including in its Market Integrity Rules; and
5. foreshadows some proposed definitional changes in the ASX Market Rules and SFE Operating Rules which may assist ASIC in refining its draft Market Integrity Rules.

1. Role clarity and the concept of “supervision”

Background

The effect of the Corporations Amendment (Financial Market Supervision) Bill 2010 (the Bill) is that:

- ASIC will have the function of supervising financial markets the operators of which are licensed under s. 795B(1); refer proposed new s. 798F; and
- a market licensee will have an obligation to have adequate arrangements to operate its market, including arrangements for monitoring and enforcing compliance with the market's operating rules: refer proposed amendments to s. 792A.

The Bill specifically relieves market licensees of any general obligation to supervise the market or to monitor the conduct of participants on or in relation to the market. The Hon. Chris Bowen MP, Minister for Human Services and Minister for Financial Services, Superannuation & Corporate Law noted in a media release issued on 11 March 2010 that the Bill:

- removes the obligation on Australian market licensees to supervise their markets;
- provides ASIC with the function of supervising domestic Australian market licensees;² and
- provides ASIC with additional powers, including the power to make rules with respect to trading on such markets and additional powers to enforce such rules.

As noted in the Explanatory Memorandum to the Bill (paragraph 1.9):

This change reflects the decision of the Government to have ASIC take over responsibility for the supervision of domestic licensed financial markets. However, market operators will retain the responsibility for making sure participants admitted to their market comply with the operating rules. The Bill requires market operators to monitor and enforce compliance with the market's operating rules. ...

Market licensees will continue to monitor the conduct of participants on the market only to the extent necessary to fulfil their continuing license obligations, including:

- to the extent that it is reasonably practicable to do so, to do all things necessary to ensure that the market is a fair, orderly and transparent market; and
- to have adequate arrangements for operating the market, including arrangements for monitoring and enforcing compliance with the market's operating rules.

However, the Bill confers on ASIC, and on ASIC alone, the function of supervising Australia's domestic licensed financial markets. For this reason the Bill is loosely described as effecting the “transfer of market supervision” from market licensees to ASIC.

² ASX notes that ASIC already had this role under the existing law and the Bill does not make any significant changes in this regard. Accordingly, the significant change is in relation to supervision of users of the facilities provided by market licensees.

Consultation Paper 131

Consultation Paper 131 contains numerous statements to the effect that ASX and SFE will retain “supervisory” functions or responsibilities after the effective date of the proposed transfer of market supervision to ASIC. For instance:

- Paragraph 30 states that:

*To create the new ASIC Market Integrity Rules, we have reviewed the existing ASX Market Rules and SFE Operating Rules and identified subject areas which will fall within ASIC’s new supervisory remit. **We propose that the remaining subject areas will continue to be the supervisory responsibility of ASX and SFE. As a result, we have proposed a division of supervisory responsibility for existing ASX Market Rules and SFE Operating Rules.*** (emphasis added)

- Appendices 1 and 2 to the Consultation Paper set out, section by section, the proposed “division of supervisory responsibility” between ASIC and ASX or SFE referred to in paragraph 30 of the Consultation Paper, and ASIC notes in relation to certain rules that “we propose that both ASX and ASIC will have supervisory responsibilities”;
- Paragraph 32 states that:

*Our aim has been to maintain status quo as much as possible on Day 1, while **transferring the supervisory responsibility for certain subject areas from the market operator to ASIC.*** (emphasis added)

ASX’s concerns about role clarity

Our concern is that certain statements contained in Consultation Paper 131, including those extracted above, do not accurately reflect the effect of the Bill in relation to the future role of ASX and SFE, and ASIC’s functions under proposed Part 7.2A of the Corporations Act (Supervision of financial markets). We are concerned that the Consultation Paper did not take the opportunity to clearly and consistently articulate the respective future roles of ASIC on the one hand, and ASX and SFE on the other, following the transfer of market supervision and that this may give rise to ongoing public confusion as to “who is responsible for what”.

Contrary to the statements extracted above from Consultation Paper 131, the Bill does not contemplate any continuing or residual market supervisory role for market licensees. This was made abundantly clear by the Hon. Chris Bowen MP, Minister for Human Services and Minister for Financial Services, Superannuation & Corporate Law in a media release issued on 11 March 2010, in which the Minister noted that the Bill “removes the obligation on Australian market licensees to supervise their markets”. One of the key objectives of the Bill is to negate perceptions of conflicts of interest in relation to market licensees conducting supervisory activities in relation to the markets which they operate: refer paragraphs 3.6 – 3.9 and 3.13 – 3.14 of the Explanatory Memorandum to the Bill. It is inconsistent with this objective for market licensees to retain supervisory responsibilities of any kind, and as noted above the Bill achieves this objective by conferring on ASIC alone the function of supervising Australia’s domestic licensed financial markets: proposed new s. 798F. By referring to ASX and SFE as continuing to have “supervisory” functions, or responsibility for “supervising” certain operating rules, ASIC does risk reinforcing the very perceptions of conflict which it is the express intent of the Bill to overcome. This is not merely a matter of semantics: the Government considers that “[t]he continued perception of the presence of conflicts of interests could result in decreased confidence in the integrity of the market by market participants, which in turn could lead to individuals being unwilling to invest in the market for fear of market misconduct, potentially affecting the liquidity and stability of the market” (paragraph 3.7 of the Explanatory Memorandum to the Bill).

Role clarity is imperative for the achievement of the aspirations identified by the Government in relation to its announced reforms to the regulation of Australia’s domestic licensed financial markets. Paragraph 13 of the paper correctly states ASX’s understanding of the role delineation between ASIC and market operators post transfer:

... ASIC is responsible for supervising trading activities by market participants that take place on a licensed financial market, and for supervising the conduct of persons in relation to domestic licensed financial markets. Market operators, such as ASX, will retain responsibility for monitoring and enforcing compliance with the remaining operating rules including listing rules for entities listed on their exchange

This description of the respective future roles of ASIC and market licensees actually reflects the changes to markets supervision arrangements contemplated by the Bill. That is:

- ASIC will be responsible for supervising Australia's domestic licensed financial markets including the conduct of participants on or in relation to those markets; and
- market licensees will be responsible for operating the markets and for monitoring and enforcing compliance with the markets' operating rules.

The timely and effective revision of MOU arrangements between ASIC and the ASX group (foreshadowed in paragraph 28 of the Consultation Paper) needs the role delineation to be well understood.

The meaning of "supervision"

The Consultation Paper contains numerous references to ASX or SFE "supervising" certain operating rules. For instance, in paragraph 4 ASIC states:

ASX and SFE will continue to make and supervise operational rules for their markets and ASX will continue to make and supervise its listing rules (including continuous disclosure).

It is simply a misuse of the term to speak of "supervising" a rule. The term "supervision" means the act of overseeing actions or the execution of a task. ASX and SFE will, consistently with their license obligations under the Act (as amended), monitor and enforce compliance with their respective operating rules, but they will not, in any commonly accepted sense of the word, "supervise" those rules. ASIC's use of the term "supervision" in this context may be a convenient shorthand expression, but again ASX submits that it is inconsistent with the underlying intent of the Bill and does not promote role clarity.

The practical difference, in our view, between a market licensee's responsibility to "monitor" compliance with the Operating Rules and ASIC's responsibility to "supervise" participant conduct that may impact on market integrity and other relevant regulatory objectives is that the former involves monitoring participant compliance with a standard (i.e. is participant conduct consistent with the Operating Rules as in force from time to time), while by contrast participant "supervision" is more wide-ranging and undertaken with a view to achieving certain regulatory objectives (i.e. determining what are the regulatory objectives and whether participant conduct is consistent with those regulatory objectives) and continuously reviewing whether there are better ways of achieving those regulatory objectives.

Clearing and settlement participant "supervision"

In paragraph 25 of the Consultation Paper, ASIC notes that under the new arrangements, the ASX group of market and clearing and settlement licensees [sic] will retain, among other things, "the supervision of clearing and settlement participants". This statement is inaccurate, because the Act does not provide for CS facility licensees to "supervise" participants in such facilities. The Act provides that a CS facility licensee must have adequate arrangements for "supervising the facility" (not participants in the facility), including arrangements for enforcing compliance with the facility's operating rules. Based on the Act, the ASX group's CS facility licensees do have an obligation to supervise the facilities which they operate, and this connotes an obligation to oversee the operation of those facilities to ensure that they are operated in a way that is consistent with the licensees' other obligations as CS facility licensees (for example, the obligation to ensure that the facility's services are provided in a fair and effective way). The CS facility licensees are also obliged to monitor (that is, maintain regular surveillance of) and enforce compliance with their operating rules by participants in the facilities. However, the license obligation to "supervise the facility" does not confer on CS facility licensees a general supervisory remit with respect to the activities of facility participants.

2. As previously positioned with ASIC, ASX intends to make changes to the ASX Market Rules and SFE Operating Rules – a fact not referenced by ASIC in the Consultation Paper

By setting out, section by section, the proposed “division of supervisory responsibility” between ASIC and ASX or SFE in Appendices 1 and 2 to the Consultation Paper, ASIC may be taken by market participants to be implying that there will be no change to the status quo other than as set forth in that document. However, as previously positioned with ASIC and subsequently advised to market participants (refer ASX Circular No. 071/10: New ASX Operating Rules to be introduced as a consequence of new ASIC Market Integrity Rules³), it has been necessary for ASX to restructure the operating rules to provide a clear and workable rules framework once the “market integrity rules” are deleted. In developing its new operating rules ASX is seeking to maintain the status quo where possible, while presenting rules in a simpler and more concise format. At the same time, ASX is taking the opportunity to:

- ensure that the rules appropriately reflect the role and responsibilities of ASX going forward as a financial market operator;
- present the operating rules in a more logical format;
- remove duplication and delete rules which are no longer necessary;
- move some material to the procedures to make the rules more concise and remove unnecessary references to specific functionality in the rules;
- achieve consistency between the ASX and SFE Operating Rules, where useful and possible; and
- include the mechanics for managing the transfer of responsibilities to ASIC in transitional rules.

The ASX Market Rules will be reduced from 32 sections to 8 sections, with rules being consolidated under the topics of access, products, trading rules, execution, quote display and reporting services, monitoring conduct and enforcing compliance, general rules, definitions and interpretation and transitional matters, as communicated to ASX and SFE Market Participants on 26 February 2010. This will result in a rulebook which is shorter and more ‘user friendly’. A similar structure will be adopted for the SFE Operating Rules which, as far as possible, will be made consistent with the ASX rules to provide greater clarity for participants of both markets.

³ https://www.asxonline.com/intradoc-cgi/groups/participant_services/documents/communications/asx_026463.pdf

3. Issues in relation to the proposed content of ASIC's Market Integrity Rules

The key issues are set out below. Additional comments are set out in Schedule A.

ASIC/SFE Market Integrity Rule 2.2 – Trade Cancellation

This rule imposes a Tier 1 Penalty on the Market Operator for not giving notice to ASIC as soon as practical and to a Market Participant as soon as possible after an order or trade cancellation. This position has changed from a previous draft and discussion with ASIC regarding the ASIC/SFE Market Integrity Rules. The initial draft of this rule concerned the provision of notice to ASIC about SFE trade cancellations. There was no discussion at any stage about this rule imposing a penalty on SFE for failing to notify ASIC or Market Participants as soon as practical/possible about order or trade cancellations. ASIC has not disclosed the purpose of such a rule nor how it would enforce it. The enforcement of such a rule would require ASIC to investigate every order and trade cancellation on SFE and make a determination as to whether ASIC has been given notice as soon as practical and a Market Participant had been notified as soon as possible. ASIC has provided no guidance on how it would determine what "as soon as practical" and "as soon as possible" mean in these circumstances.

Currently, ASX Trading Operations & Markets notifies ASXMS via the INFRA system when there is a cancellation of an order or trade.

It is submitted that this proposed rule should be revised having regard to the foregoing comments.

Overlap between ASIC's Market Integrity Rules and ASX Market Rules or SFE Operating Rules

In some areas there is overlap between ASIC's proposed Market Integrity Rules and the ASX Market Rules or SFE Operating Rules. It is important to consider whether this overlap is appropriate. If it is, ASIC and ASX should have protocols in place to deal with the enforcement of these rules. We envisage that the protocols would explicitly confirm that the fact that particular ASX rules impose obligations on a market participant which may contribute positively to market integrity or to other objectives of the regulatory framework (as well as being necessary for the proper functioning of the trading platform) does not import an obligation on ASX to proactively supervise market participants in relation to the relevant activity.

For example, ASX supports ASIC's intention to duplicate the existing ASX Market Rule 14.1.4 in ASIC/ASX Market Integrity Rule 5.9.3 (Market Participant must not take advantage or breakdown or malfunction), the content of which will be retained in the new ASX Operating Rules, provided that there is a protocol in place between ASIC and ASX directed at ensuring that ASX's retention of its existing rule does not import a responsibility to proactively supervise market participants so as to reduce the risk of breaches of the rule but simply imports a responsibility to impose appropriate sanctions when a breach of the rule is detected.

We note that ASIC intends to make ASIC/ASX Market Integrity Rule 5.9.1 in the same terms as ASX Market Rule 14.1.1 (Market must remain fair and orderly). Whether or not ASX needs to also retain this rule turns on how ASIC interprets the obligation on a market licensee to, to the extent that is reasonably practicable to do so, do all things necessary to ensure that the market is a fair, orderly and transparent market (Corporations Act s. 792A(a)). ASX envisages separate discussions with ASIC on this issue. If ASIC forms the view that this statutory licence condition does not have the effect of imposing a positive obligation on market licensees to create rules imposing obligations on market participants designed to achieve a fair, orderly and transparent market (but is consistent with market licensees simply having a monitoring role in relation to whatever rules it decides to create in order to operate the market), then ASX would be likely to not need to retain ASX Market Rule 14.1.1.

We set out in Schedule B some observations on the ambit of the obligation of a market licensee to maintain a fair, orderly and transparent market following the passage of the Corporations Amendment (Financial Market Supervision) Bill 2010.

We note that ASIC states in the Consultation Paper that automated order processing will be an area where both ASIC and ASX will have responsibility and that ASX or SFE will be responsible for rules in relation to operations, including logistics and connectivity (paras. 40-41). We would like to clarify that while ASX will have rules which cover operational matters, it is not proposed that there be specific rules relating to certification for automated order processing. These rules have been adopted in ASIC's Market Integrity Rules and repeating them in the ASX Rules would result in unnecessary duplication.

Participant Trading Message Representative

As discussed with ASIC previously, ASX does not intend to retain the concept of a Designated Trading Representative (DTR) as this concept is no longer relevant or useful in a market environment where the majority of orders are not entered by DTRs. In view of this, ASIC has adopted the new term "Participant Trading Message Representative" and used that term in rules which previously referred to DTRs.

We understand that the purpose of having a Participant Trading Message Representative is to ensure there is a person who can be contacted when there are queries or issues in relation to trading by a Market Participant. Replacing "DTR" with "Participant Trading Message Representative" does not achieve this purpose, but rather replicates the outmoded concept of a DTR. We suggest that a better approach is for ASIC to introduce a new rule setting out the requirements for and responsibilities of a Participant Trading Message Representative, and delete references to DTRs in the existing rules.

4. Rules relating to market participant-client relationship which ASX intends to delete from its operating rules and which ASIC should consider including in its Market Integrity Rules

ASIC has chosen not to adopt ASX Market Rules 7.12 to 7.14 which relate to the payment of margins by clients and the powers of market participants, on the death or default of clients, in relation to futures contracts. Similarly, ASIC has not adopted SFE Operating Rule 2.2.27 regarding calling margins from clients.

ASX does not intend to retain these rules in its operating rules, as they clearly address the relationship between the market participant and the client, which will not be supervised by ASX going forward. One of ASIC's guiding principles is that "rules relating to general participant conduct, including participant conduct with clients, should be the responsibility of ASIC": Consultation Paper, para. 33(e).

These rules deal with matters which are or should be the subject of client agreements, which will be within ASIC's new remit. For instance, the minimum terms for ASX futures client agreements, which ASIC is adopting in the ASIC/ASX Market Integrity Rules, make express provision in relation to:

- the right of a market participant to call for funds or security from clients – the obligation of a market participant to make such calls on clients is the subject of Rule 7.12; and
- the powers of a market participant on the default of a client – this is the subject of Rule 7.14.

It is ASX's view that the subject matter of Rule 7.14 (the powers of a market participant on the death of a client) should also be dealt with in the minimum terms for ASX futures client agreements.

Given the substantial overlap between the subject matter of Rules 7.12 – 7.14 and the minimum terms for ASX futures client agreements (for which ASIC will have supervisory responsibility), it does seem logical for ASIC to adopt Rules 7.12 – 7.14 in some form. If ASIC chooses not to do so, it will nonetheless accrue supervisory responsibility in relation to the subject matter of those rules because that subject matter is substantially addressed by the minimum terms for ASX futures client agreements, which ASIC is adopting. In any case, for the reasons indicated above, ASX does not intend to retain these rules in its revised operating rules.

SFE proposes to delete SFE Operating Rule 2.2.27 on the same basis, that is, this rule addresses market participant conduct vis-à-vis clients. It is proposed that a modified form of Rule 2.2.27 (similar in effect to ACH Clearing Rule 14.7) will be introduced in the SFE Clearing Rules.

5. Proposed definitional changes in the ASX Market Rules and SFE Operating Rules which may assist ASIC in refining the draft Market Integrity Rules.

Please refer to Schedule C.

Schedule A

(Section 3 of ASX Submission)

Issues in relation to the proposed content of ASIC’s Market Integrity Rules

ASIC/ASX Market Integrity Rule	ASX comment
1.2	Register of Relief – It appears that there will be no publication of waivers mentioned in the rules. It is not clear whether this will be made public in another way. It would be helpful if ASIC were to inform ASX of any relief granted as soon as possible as it may impact upon compliance with the ASX Rules. If not in the rules, this should be in a protocol.
1.7 - “Automated Order Processing Requirements” definition	Cross reference should presumably be to Rule 5.6
1.7 - “Trading Platform” definition	<p>ASIC has amended the definition to refer to “facility” not “platform”. ASX also proposes an amendment to its existing definition to clarify its application across part or whole of the Trading Platform.</p> <p>Proposed new ASX definition: “Trading Platform” means a platform made available by ASX to Trading Participants for the entry of Trading Messages, the matching of Orders, the advertisement of invitations to trade and the reporting of transactions. Parts of the Trading Platform may be referred to as “a Trading Platform” or “the relevant Trading Platform”.</p>
2.1.3 (b)	It is not clear why good fame and character and high business integrity is assessed with regard to the admission requirements of the Market Operator. This suggests that there might be differing standards of good fame and character and high business integrity in different markets. The concept of good fame and character and high business integrity should exist independently of the market. ASX suggests deleting the words “having regard to the relevant admission requirements of the Market Operator”. Same comment for 2.1.4(a).
2.1.4(a)	See above.
3.3.1(d)	<p>Rule 3.3.1(d) prohibits market transactions not entered into on the trading platform unless ASIC permits this in writing. However, unlike the current ASX Rule it does not carve out transactions permitted by the ASX Rules. Unless ASIC gives consent in writing which reflects the situations where the ASX Rules currently allow transactions which do not occur on the trading platform, participants will be prohibited from undertaking such transactions. Relevant transactions under the ASX Rules include:</p> <ul style="list-style-type: none"> • Overnight trades (MR 16.3.10 & 17.7) • Overseas client trades (MR 17.6) • Special crossings for cash products (Section 18) • Special crossings for derivatives (MR 22.3) • AQUA quoted display board transactions (MR 10B.5) • Wholesale loan securities transactions (MR 26.2.8)

ASIC/ASX Market Integrity Rule	ASX comment
3.5.1(b)(i) 3.5.3(a)	The ASIC Rules have deleted reference to confirmations being issued subject to the ASX Market Rules and the directions, decisions and requirements of ASX. Such reference could be relevant (e.g. for identifying trade is subject to ASX trade cancellation powers and T+3 settlement requirements). Accordingly such references should be reinstated.
4.1.1(g) and (h) 4.1.2(d) and (e) 5.5.3(f)	<p>These ASIC Rules relate to the obligation of a participant to record the name of the Participant Trading Message Representative who submitted a message and the time it was submitted (unless the message is submitted by AOP). This replaces the obligation to record the name of the DTR and the time the DTR submits the message.</p> <p>The concept of a DTR is to be deleted in the ASX Rules as it is no longer relevant. Given this, it is not clear what this rule is trying to achieve. A better approach would be to include a specific rule setting out the requirements for and obligations of a Participant Trading Message Representative.</p>
4.1.5 & 4.1.6	<p>These ASIC Rules contemplate that trading record requirements of Participants can be complied with through records maintained by ASX.</p> <p>Rule 4.1.6 relates to the situation where records connect the Participant Trading Message Representative ("PTMR") identifier with a particular PTMR or where a PTMR is capable of being connected with a particular Trading Record or sequence of events. The equivalent ASX Rule referred to a DTR. As discussed above, the concept of a DTR is to be deleted in the ASX Rules as it is no longer relevant. Given this, it is not clear what a 'PTMR identifier' is or how this rule is intended to operate.</p> <p>Also, some of the specific records contemplated to be captured by this rule appear to fall outside of ASX's records or remit, including:</p> <ul style="list-style-type: none"> • 4.1.1(g) and (h) dealing with the Participant Trading Message Representative • 4.1.1(g) dealing with particulars of AOP messages where participant dealing for client • 4.1.2(a)(i)- (v) dealing with particulars of decisions or instructions where participant dealing on own account • 4.1.2(b) dealing with particulars of amendment of such instructions where participant dealing on own account • 4.1.2(d) and (e) dealing with Participant Trading Message Representative where a participant is dealing on its own account • 4.1.2(d) dealing with particulars of AOP messages where participant dealing on own account
4.3 (& 4.1.6)	<p>The proposed ASIC Rules state that a Trading Participant must maintain records of:</p> <p>"the name and contact details of Participant Trading Message Representatives and Authorised Persons in relation to whom the Trading Participant has allocated unique identifiers under the operating rules of the Market." (ASIC Rule 4.3).</p>

ASIC/ASX Market Integrity Rule	ASX comment
	<p>This is based on the existing ASX Rule 13.1.10 which states that a Trading Participant must maintain records of:</p> <p style="padding-left: 40px;">"..the name and contact details of persons in relation to whom unique identifiers are allocated under Rule 12.5.2(b)."</p> <p>The proposed ASX rules will no longer refer to DTRs (as this concept has been deleted) or Authorised Persons (as this concept is now under the ASIC Rules) and hence will not include an obligation to allocate unique identifiers to those persons.</p>
5.5.2(a)(i)	It appears that this rule should refer to "Market Operator" rather than ASX.
5.7.1	The formatting in the ASX rule 13.4.1 has been copied incorrectly.
5.10.4	The restriction on dealing in products during "suspension from Official Quotation" will only apply to the suspension of listed products and not non-listed products admitted to trading status e.g. warrants and AQUA products. It is proposed to amend the equivalent ASX Rule to extend such restriction to products suspended from "quotation or trading" rather than more limited "Official Quotation" reference.

Schedule B

(Section 3 of ASX Submission)

Observations on the ambit of the obligation of a market licensee to maintain a fair, orderly and transparent (FOT) market following the passage of the Corporations Amendment (Financial Market Supervision) Bill 2010 (the Bill)

- Market licensees' FOT obligation will be narrower in scope after their other licence obligations have been amended than their current (identically worded) FOT obligation; it will be narrower to the extent that it will no longer involve an obligation to achieve FOT by creating rules of the type for which ASIC has been granted rule-making responsibility and by monitoring compliance with such rules.
- The provisions of ASX rules which were created in furtherance of ASX's existing FOT obligations are, for the most part, the provisions which will appear in ASIC rules.
- It would be inconsistent with the conferral of rule-making powers and participant supervision responsibilities on ASIC for market operators' ongoing FOT obligation to be construed as involving a positive obligation to create rules imposing obligations on participants for the purpose of achieving FOT.
- If market licensees are not expected to achieve their FOT obligation through rule creation and monitoring, then the main scope for this obligation to have any application is in relation to how they operate the market and exercise their powers under those (relatively few market operator) rules that have potential to impact on FOT, e.g. trade cancellation.

The continuing absence in the Corporations Act of a definition of the key construct of FOT is a significant omission which now needs to be addressed by ASIC under its new powers if the role clarity that is a pre-condition to achievement of the Government's aspirations is to be fully achieved.

ASX invites ASIC to find the appropriate mechanism through which to confirm that the FOT obligation will be monitored (in annual assessments and otherwise) on the basis that it does not have application to a large number of a market licensees' activities but does have application to any activities which are relevant to whether:

- the prices at which financial products are transacted generally reflect genuine supply and demand;
- the market licensee's rules and actions avoid unfairly favouring some market users over others;
- the information that is being reflected in the prices at which transactions occur is reliable; and
- there is an appropriate level of transparency as to the prices and volumes of transactions, recognising that this may differ depending upon the means of execution.

Schedule C

(Section 5 of ASX Submission)

Proposed definitional changes in the ASX Market Rules and SFE Operating Rules which may assist ASIC in refining the draft Market Integrity Rules

ASX Operating Rules

The table below indicates which definitions appear in the ASIC/ASX Market Integrity Rules which, at this stage, ASX proposes to replace or alter in the ASX Operating Rules.

ASIC/ASX Market Integrity Rule Definition/Old ASX Definition	Changed to ...	New ASX definition
Unprofessional Conduct	To be deleted and replaced with "Conduct not in the Best Interests of the Market"	<p>"Conduct not in the Best Interests of the Market" includes, but is not limited to, conduct by a Market Participant on, or affecting, a Market which:</p> <ul style="list-style-type: none"> (a) is indicative of a failure to understand and/or practise the precepts of honesty or fair dealing in relation to ASX or other Market Participants; (b) involves a substantial or consistent failure to reach reasonable standards of competence and diligence; (c) is, or could reasonably be considered as likely to be, prejudicial to the interests of ASX; and (d) causes, or is likely to cause, a breach of these Rules by another Market Participant, <p>and need not involve a contravention of these Rules, the Procedures or any law.</p>
Central Orderbook	To be renamed 'TradeMatch'	<p>"TradeMatch" means a part of a Trading Platform known as the "central orderbook" which is a facility for submitting Trading Messages in respect of, and entering into transactions in respect of Derivatives Market Contracts, Cash Market Products, Tailor-Made Combinations and Standard Combinations.</p>
Trading Platform	ASIC has amended the definition to refer to "facility" not "platform". ASX also proposes an amendment to its existing definition to clarify its application across part or whole of the Trading Platform.	<p>"Trading Platform" means a platform made available by ASX to Trading Participants for the entry of Trading Messages, the matching of Orders, the advertisement of invitations to trade and the reporting of transactions. Parts of the Trading Platform may be referred to as 'a Trading Platform' or 'the relevant Trading Platform'.</p>

SFE Operating Rules

Most definitional changes have been made for the purpose of harmonising with the ASX Operating Rules. Therefore, the new definitions section will be a combination of ASX and SFE definitions. This table indicates which definitions appear in the ASIC/SFE Market Integrity Rules which will no longer appear in the SFE Rules.

ASIC/SFE Market Integrity Rule Definition/Old SFE Definition	Changed to ...	Is this an ASX definition?
Full Participant	Trading Participant	Yes it is a subset of Market Participant. Note ASIC refer to Market Participant in the Market Integrity Rules
Proprietary Full Participant	Principal Trading Participant	Yes
Class of Contract	Contract Series	Yes. May retain both definitions in the interim.
SFE Clearing	Approved Clearing Facility	Yes.
Chief Executive	Not used	No
Initial Margin	Not used	Refer Section 4 of ASX Submission.
Margin	Not used	Refer Section 4 of ASX Submission.
SFE Allocation and Clearing System	Approved Clearing System	No
SFE Clearing Rules	Clearing Rules	Yes
Variation Margin	Not used	Refer Section 4 of ASX Submission.