

10 March 2017

Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000

Attn: Merrick Fox  
Lawyer, Market Integrity Group  
Legal & Policy

By email: [MIRconsolidation@asic.gov.au](mailto:MIRconsolidation@asic.gov.au)

Dear Merrick,

**ASIC Consultation Paper 277: NSX Response to consolidate the ASIC market integrity rules –  
PUBLIC SUBMISSION**

The National Stock Exchange of Australia (NSX) welcomes the opportunity to provide input to the consultation on the consolidation of the ASIC market integrity rules and thanks ASIC for its recent engagement to discuss the proposed changes.

NSX is the second largest cash equity market in Australia and its business strategy is formed on the belief that a truly competitive, innovative and dynamic marketplace provides the only platform for the Australian equity market to compete globally.

NSX anticipates that the changes contemplated will provide a path to vibrant and unencumbered competition in all areas of financial markets.

In the preparation of our responses, we have incorporated aspects that we believe are vital to the continued importance of Australia as a world class marketplace.

NSX's response to the Consultation Paper is attached.

NSX looks forward to continuing discussions with ASIC regarding the proposed market integrity rule changes and contributing further to their review.

Yours sincerely,

*(sent electronically without signature)*

**John Williams**  
**Head of Admissions**



## Responses to Proposals and Questions:

Item	Proposal	Feedback
B1	<p>(a) consolidate the ASIC Market Integrity Rules (APX), ASIC Market Integrity Rules (ASX), ASIC Market Integrity Rules (Chi-X), ASIC Market Integrity Rules (SIM VSE) and ASIC Market Integrity Rules (Competition) into a single rule book: see the draft ASIC Market Integrity Rules (Securities Markets) in Attachment 1;</p> <p>(b) in the ASIC Market Integrity Rules (Securities Markets), apply the rules that derive from ASIC Market Integrity Rules (Competition) to SSX, IR Plus and their participants; and</p> <p>(c) waive the requirement for SSX, IR Plus and their participants to comply with obligations in the ASIC Market Integrity Rules (Securities Markets) that derive from the ASIC Market Integrity Rules (Competition), until a specified date in the future.</p>	<p>NSX agrees with ASIC's proposals for the reasons given regarding the similarity in products and conduct and the need for consistency in the application of relevant rules.</p> <p>Benefits would arise from being able to adopt for a common approach to the supervision of rules and also for Participants and Market Operators in meeting those obligations.</p> <p>NSX would like to understand how ASIC, with the harmonised MIRs, plans to allow market operators to innovate in a way that isn't detrimental to the product and service offering of a market operator.</p>
B2	<p>(a) apply the ASIC Market Integrity Rules (Securities Markets) to NSXA and participants of NSXA;</p> <p>(b) waive the requirement for NSXA and participants of NSXA to comply with the ASIC Market Integrity Rules (Securities Markets) until a specified date in the future, with the exception of the rules in proposal B2(c);</p> <p>(c) apply, from commencement, the following rules to participants that may undertake automated order processing (AOP) on NSXA or provide their clients with such capability:</p> <p>(i) AOP rules and associated rules (i.e. Parts 5.5, 5.6 and 5.7 of the draft ASIC Market Integrity Rules (Securities Markets)); and</p> <p>(ii) the ASIC Market Integrity Rules (Securities Markets – Capital) (in the same way as they would apply to Chi-X and SSX, see also proposal B6(a)).</p>	<p>NSX agrees with ASIC's proposals for the reasons given regarding the similarity in products and conduct and the need for consistency application of relevant rules.</p> <p>Benefits would arise from being able to adopt for a common approach to the supervision of rules and also for participants and Market Operators in meeting those obligations.</p> <p>NSX considers that the AOP and associated rules should not apply to any NSX Participants who do not provide AOP based functions to their clients.</p> <p>Those NSX Participants that already offer AOP services would benefit from a waiver for twelve months following commencement of the rules to appropriately prepare for compliance with the ASIC Market Integrity Rules (Securities Markets) and the ASIC Market Integrity Rules (Securities Markets – Capital) (with the exception of proposal B2(c)).</p>
B3	<p>(a) omit the defined terms in Table 1 from the ASIC Market Integrity Rules (Securities Markets):</p> <p>(i) that are defined in the Corporations Act and will have the same meaning;</p> <p>(ii) where it is possible and appropriate to use generic or descriptive terms instead of proprietary terms; or</p> <p>(iii) that do not aid interpretation or are derived from or based on other defined terms we propose to omit;</p> <p>and</p> <p>(b) adopt or materially modify the defined</p>	<p>NSX agrees with ASIC's proposal as it assists users to have consistent definitions and referral to the Corporations Act and the draft ASIC Market Integrity Rules (Securities Markets) centralises the location of those definitions.</p>



Item	Proposal	Feedback
	terms in Table 2 for use in the ASIC Market Integrity Rules (Securities Markets).	
B4	(a) consolidate the ASIC Market Integrity Rules (ASX 24) and ASIC Market Integrity Rules (FEX) into a single set of ASIC market integrity rules (see the ASIC Market Integrity Rules (Futures Markets) in Attachment 2); and (b) where requirements in the ASIC Market Integrity Rules (ASX) or (Competition) currently apply to ASX 24 and/or FEX, replicate them in the ASIC Market Integrity Rules (Futures Markets) (e.g. the extreme price movement rules in the ASIC Market Integrity Rules (Competition)).	NA. Left blank intentionally.
B5	(a) omit the defined terms in Table 3 from the ASIC Market Integrity Rules (Futures Markets): (i) that are defined in the Corporations Act and will have the same meaning; (ii) where it is possible and appropriate to use generic or descriptive terms instead of proprietary terms; or (iii) that do not aid interpretation or are derived from or based on other defined terms we propose to omit; (b) adopt or materially modify the defined terms in Table 4 for use in the ASIC Market Integrity Rules (Futures Markets).	NA. Left blank intentionally.
B6	(a) consolidate the ASIC Market Integrity Rules (ASX Market-Capital) 2014, ASIC Market Integrity Rules (Chi-X Australia Market-Capital) 2014 and ASIC Market Integrity Rules (APX Market-Capital) 2014 to create a single capital rule book that applies to participants of ASX, Chi-X, IR Plus, NSXA (for NSXA's AOP participants only) and SSX (see the draft ASIC Market Integrity Rules (Securities Markets – Capital) in Attachment 3); and (b) waive the requirement for participants of NSXA who do not offer AOP services to comply with the ASIC Market Integrity Rules (Securities Markets – Capital) until a specified date in the future (see also related proposal B2); (c) consolidate the ASIC Market Integrity Rules (ASX 24 Market-Capital) 2014 and ASIC Market Integrity Rules (FEX Market-Capital) 2014 to create a single capital rule book that applies to participants of ASX 24 and FEX (see the draft ASIC Market Integrity Rules (Futures Markets – Capital) in Attachment 4).	<p>NSX agrees with ASIC's proposals for the reasons given in the similarity in products and conduct and the need for consistent application of relevant rules.</p> <p>Regarding participants of NSX who do not offer AOP services, NSX considers that the requirement to comply with the ASIC Market Integrity Rules (Securities Markets – Capital) should be waived until such time as those participants commence to offer AOP services.</p> <p>This is suggested on the basis that the additional requirements under these rules would be onerous to the operations and financial requirements of those participants.</p> <p>NSX appreciates the points ASIC raises in paragraph 53, and feels that an extended period of waiver is suitable if a participant does not choose to offer AOP services.</p> <p>The current capital requirements for NSX Participants who do not offer AOP include are captured in the NSX Business Rules (part E) that requires that all times that the surplus liquid funds in the business is not less than \$50,000 or 5% of the adjusted liabilities whichever is the greater.</p>



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		<p>NSX considers that the proposed transition to capital requirements that double the surplus liquid funds and only slightly increase the adjusted liabilities, may result in the resignation of affected NSX Participants, thereby reducing market access and activity and consequentially a reduction in liquidity and the ability for investors to acquire or dispose of holdings.</p>
C1	<p>We propose to: (a) remove the following requirements of the market integrity rules that require market participants to:</p> <ul style="list-style-type: none"> <li>(i) notify ASIC of the appointment or cessation of a responsible executive (Rule 2.3.1(1) (APX), (ASX) and (ChiX));</li> <li>(ii) not appoint a responsible executive unless specific competence and continuing education standards are met (Rules 2.3.1(2) and (3) (APX), (ASX) and (Chi-X));</li> <li>(iii) ensure that its responsible executives complete an annual review of their allocated supervision and control procedures (Rule 2.3.3 (APX), (ASX) and (Chi-X));</li> <li>(iv) ensure its responsible executives meet annual continuing education requirements (Rule 2.3.4 (APX), (ASX) and (Chi-X)); and</li> <li>(v) notify ASIC annually of its responsible executives and self assess responsible executives' satisfaction of requirements on competence, character and continuing education (Rule 2.3.5 (APX), (ASX) and (Chi-X)); and</li> </ul> <p>(b) not require staff allocated supervisory responsibilities by a market participant to carry the title 'responsible executive'.</p>	<p>NSX agrees with ASIC's proposals for the reasons given in the similarity in products and conduct and the need for consistent application of relevant rules.</p> <p>NSX appreciates ASIC's objective of providing market participants greater flexibility to carry out their supervisory arrangements.</p> <p>NSX will revise its application processes for Participants and references to responsible individuals to be consistent with the changes proposed by ASIC.</p>
C2	<p>We propose to omit Rule 2.1.2(3) (APX), (ASX) and (Chi-X) from the ASIC Market Integrity Rules (Securities Markets).</p>	<p>NSX agrees with ASIC's proposals for the reasons given in the similarity in products and conduct and the need for consistent application of relevant rules.</p> <p>NSX appreciates ASIC's objective of giving market participants greater flexibility to carry out their supervisory arrangements.</p>
C3	<p>We propose to update RG 214 and RG 224 to provide guidance on our expectations of the content of a market participant's management structure.</p>	<p>NSX agrees with ASIC's proposal. The information provided in ASIC's Regulatory Guides is useful for all market users and outlines expectations to encourage best practice.</p>
C4	<p>We propose to adopt in the ASIC Market Integrity Rules (Securities Markets) a narrower meaning of dealing 'as principal' by carving out market participants and related body corporates acting or trading as a trustee of a trust, if: (a) the trustee has no beneficial interest in the trust or a beneficial interest in the trust of less than 5%; and (b) all of that interest was acquired by the trustee in lieu of fees for administering the trust.</p>	<p>NSX agrees with ASIC's proposal as it provides greater clarity of the application of principal dealing.</p>
C5	<p>We propose to not apply the trustee carve-out in proposal C4 to Rule 5.1.7 of</p>	<p>NSX agrees with ASIC's proposal as it provides greater clarity of the</p>



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	the ASIC Market Integrity Rules (Securities Markets).	application and practices of principal dealing.
C6	We propose to apply the clarified prohibition in Rule 3.2.4 (ASX) and (Chi-X) to all securities markets in the ASIC Market Integrity Rules (Securities Markets).	NA. Left blank intentionally.
C7	We propose to adopt the definition of block trade in Rule 4.2.1 (Competition) in the ASIC Market Integrity Rules (Securities Markets) with amendments to clarify that a block trade: (a) cannot include orders from more than one client on both sides of the transaction; and (b) may have 'multiple clients' on one side of the transaction and a 'principal' on the other side of the transaction.	<p>NSX agrees with ASIC's proposal to provide consistency across market practices regarding block trading and recommends that Tier 3 should be set at \$100,000 rather than \$200,000.</p> <p>NSX considers that setting Tier 3 at \$100,000 would assist with establishing consistent market practices for block trading in small to mid-cap companies across all market operators.</p>
C8	We propose to adopt the definition of large portfolio trade in Rule 4.2.2 (Competition) in the ASIC Market Integrity Rules (Securities Markets) with amendments to clarify that a large portfolio trade may only be executed off-order book as a crossing with a single party on each side of the transaction.	NSX agrees with ASIC's proposal for the reasons cited by ASIC: providing greater certainty to participants and reduce the risk of misinterpretation.
C9	We propose to take one of the following options for Rule 4.2.1 (Competition): (a) Option 1—amend Rule 4.2.1 (Competition) to allow aggregation of client and principal orders on the same side of a block trade transaction. (b) Option 2—amend Rule 4.2.1 (Competition) to allow aggregation of client and principal orders on the same side of a block trade transaction once the block trade consideration threshold has been met by the client orders on each side of the transaction. (c) Option 3—maintain the status quo (i.e. a participant cannot use the pre-trade transparency exception for block trades in Rule 4.1.1(2)(a) (Competition) if principal and client orders are aggregated on the same side of an off-order book crossing).	<p>NSX's preferred option would be one that minimises the occurrence of adverse market impacts while ensuring appropriate transparency for the market.</p> <p>NSX's view is that participants and market users who utilise block trading functionality are best placed to contribute their thoughts to developments in this space.</p>
C10	We propose to remove class waiver relief provided in [CW 14-1091] and apply Rule 3.4.3(1)(b) of the ASIC Market Integrity Rules (Securities Markets) to all securities markets.	This question relates to derivatives market contracts which are not part of NSX's product offering, however NSX is supportive of enhancements to disclosure requirements that, as ASIC has noted, assist retail and wholesale clients to understand the capacity in which a market participant has filled their order, particularly where



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		the transaction is with the participant as principal.
C11	(a) to demonstrate it has complied with its obligations under the ASIC market integrity rules and Pt 7.2 of the Corporations Act (see Part 9.5 of the draft ASIC Market Integrity Rules (Securities Markets) in Attachment 1 and Part 4.3 of the draft ASIC Market Integrity Rules (Futures Markets) in Attachment 2); and (b) for a period of at least seven years from the date the record is made or amended (see Rules 6.1.2(1A), 6.3.4(1A), 6.3.6A(1A), 7.1AA.3(1A), 7.1.1(1A) and 9.5.2 in the draft ASIC Market Integrity Rules (Securities Markets) in Attachment 1 and Rules 4.1.1(1A) and 4.3.2 in the draft ASIC Market Integrity Rules (Futures Markets) in Attachment 2).	NSX considers that the proposed period of seven years is a suitable period for reports to be retained by market operators.  This period is consistent with best practice guidance for document retention and storage.

**General Comments:**

Section	Feedback
Chapter 6 – Pre- and Post-Trade Transparency	Regarding the thresholds for block trades that are described in section 6.2.1, currently NSX has a single threshold that consideration for the transaction is not less than \$100,000.  This differs from the structure described with the three tiers of thresholds. NSX will request relief from ASIC from adopting the described thresholds until the activity of its market requires such functionality.
Chapter 7 - Regulatory Data and data feeds.	NSX currently delivers a live feed of the electronic data of its Trading Platform to ASIC using a vendor provided format and feed. This current arrangement performs well given the order and trading activity that occurs on NSX’s Trading Platform.  Until the current order and trading activity changes NSX doesn’t propose to change the method used to deliver a live feed of the electronic data of its Trading Platform to ASIC.
Chapter 8 - Extreme price movements.	The existing version of the NSX Trading Platform (NETS) does not cater for a kill switch or contain functionality to monitor extreme price movements. Further, NETS does not attempt to limit the entry of orders in relation to Anomalous Order Thresholds as described in the Market Integrity Rules.  The historical activity of the NSX market has been investor based trading and has not experienced events that other have affected markets where High Frequency and Algorithmic Trading occurs. E.g. Flash Crash.  To date NSX has not been required to cancel a trade because of either extreme price movements or a flash crash type event.



<b>Section</b>	<b>Feedback</b>
	<p>For the reasons described above, NSX considers that the requirement to include the functionality described in chapter 8 in NETS is not applicable currently based on:</p> <ul style="list-style-type: none"><li>• the current and historical order and trade activity levels;</li><li>• the costs associated with adding the necessary functionality; and</li><li>• given the current nature of the NSX market, the likely frequency of events that may lead to such functionality being applied.</li></ul> <p>NSX will request relief from ASIC from these requirements until the activity of its market requires the functionality.</p>
Chapter 9 - Market operators— other obligations	<p>As securities listed on NSX are not currently traded on any other domestic market the requirements described in this chapter are not relevant.</p> <p>These requirements should be waived until such time as another domestic market applies to trade NSX securities.</p>