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

By email: MIRconsolidation@asic.gov.au

Dear Mr Fox

Consultation Paper 277 – Proposals to consolidate the ASIC market integrity rules

Chi-X is grateful for the opportunity off providing a submission on the above consultation paper, which concerns ASIC's proposals to consolidate the ASIC market integrity rules.

Chi-X strongly supports the progress to a 'single rule book' and commends ASIC for following through on its commitment to deliver this outcome.

In this submission Chi-X outlines its views on the following proposals in the CP:

(i) A single rule book - Proposal B1;

(ii) Inadvertent changes - Proposal B1Q3;

(iii) Definitions - Proposal B3;

(iv) Facilitating competition - Proposal B3;

(v) Responsible executives and management structure - Proposals C1-C3;

(vi) Crossings- Proposals C8-C9;

(vii) Market operator records - Proposal C11.

1. A SINGLE RULE BOOK – PROPOSAL B1

Chi-X has consistently supported the consolidation of the multiple rules books into a single edition. This is supported by feedback from Chi-X participants and has been repeatedly submitted to ASIC and government consultation papers. Chi-X is of the view that a single rule book is an essential step in addressing the negative consequences of multiple rule books, including:

(i) an inherent lack of clarity on what a participant must do to satisfy an identical obligation that is contained in identical rules found in multiple rulebooks;

(ii) increasing the due diligence required of participants in respect of rule book compliance for little or no discernible benefit;

(iii) potentially disincentivising new applicants from participating in competing markets due to a prima facie increased cost of compliance;

(iv) inhibiting the move to platform neutral regulations.

Chi-X has publicly outlined its support for this position on multiple occasions including in submissions to ASIC on consultation papers 148, 181 and 184.

2. INADVERTENT CHANGES– PROPOSAL B1

Chi-X is conscious that the CP and proposed new rules raise many detailed issues and that there is a risk of inadvertent changes as alluded to in B1Q3. In these circumstances it may assist to have a committee of industry experts convened to examine and report to all stakeholders on a detailed review of the proposed changes, the many detailed issues they may raise and possible inadvertent changes.

3. DEFINITIONS – PROPOSAL B3

Chi-X agrees with the principle of moving to simpler drafting by deleting definitions that are already contained in the Corporations Act, that include proprietary terms and that do not aid interpretation or are derived from other terms that are to be omitted.

Chi-X would also support any steps to remove standalone requirements from defined terms (eg any definition of a particular financial product that purports to include the required features of a product). The requirements should be in a rule.

It is also worth noting that changes to the definition of "equity market product" in the market integrity rules will change the scope of the application of the Chi-X Operating Rules as the term "equity market product" is used to define the products that can trade on the Chi-X market. This is because the regulatory framework in Australia has developed an interaction between market operating rules and the market integrity rules. This has, in the case of Chi-X, been pursuant to ASIC direction. Chi-X does not support this framework model as "best practice" regulation as it inhibits "stand alone" regulation in a market operator's own rule framework. Chi-X would therefore

advocate the move to rule frameworks where the market integrity rules and market operating rules are separate standalone rule sets that are not reliant on each other.

4. WHAT DOES FACILITATING COMPETITION MEAN FOR THE RULE FRAMEWORK – PROPOSAL B3

The Government has said that:

> "[The Government] *will strengthen the focus on competition in the financial system by explicitly including consideration of competition in ASIC's mandate*"[1].

Paragraph 38 of the CP, in terminology that is also used elsewhere, states that:

> "[ASIC's] *aim is to make the Market Integrity Rules (Securities Markets) without any particular market operator, proprietary technology, business practice or product type in mind*."

Chi-X commends these two principles, however it is important to recognise that the rule, regulatory and service framework for market infrastructure providers in Australia is still dominated by legacy paradigms that favour the vertically integrated monopolies and dominant businesses operated by ASX. For example, the trading hours and session states in Australia are overwhelmingly dominated by ASX systems that are integrated and focus on serving the interests of ASX businesses. An example of this is the disclosure framework operated for listed companies, which is fundamentally integrated with the session states and operating hours of related ASX trading platforms. The rule framework is therefore only one part of the Australian market infrastructure framework that is impacted by proprietary technology, business practices or product types that favour one operator. Chi-X therefore commends ASIC for taking the approach to the single rule book embodied in paragraph 38 above and is of the view that this underlying policy can also be applied to other critical aspects of the Australian market infrastructure framework.

5. RESPONSIBLE EXECUTIVES AND MANAGEMENT STRUCTURE - PROPOSALS C1-C3

Chi-X is of the view that the proposed measures should be accompanied by an explicit framework that permits ASIC to share the material it receives on participant supervision, including that relating to management structure, with the market operators at which the firm is a participant. This would minimise the risk of supervisory duplication/triplication at participants, ASIC and market operators. It may also facilitate a more collegiate approach to regulation. This can only benefit the Australian market place.

6. CROSSINGS – PROPOSALS C8-C9

The view of Chi-X on the proposals/positions relating to crossing proposals is outlined in table C8-C9.

[1] See http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/Govt-response-to-the-FSI/html/07-Regulatory-system-measures

CP 277 reference	Proposal/Position	Chi-X view
C7	For block trades (i) you **cannot** aggregate orders from more than one client on both sides and (ii) you **may** have multiple clients on one side and principal on the other	Chi-X supports this position
C8	A large portfolio trade can only occur with **a single party on each side of the transaction**	Chi-X supports this position
C9 option 1	Allow client and principal orders to be aggregated on the same side of a transaction	Chi-X does not support this position
C9 option 2	Allows client and principal orders to be aggregated only once the block trade minimum requirements are met	Chi-X does not support this position
C9 option 3	Maintain prohibition on client and principal orders being aggregated on the same side of a transaction	Chi-X supports this position

Table C8-C9

7. PROPOSALS TO REQUIRE MARKET OPERATORS TO KEEP RECORDS – PROPOSAL C11

Chi-X is of the view that the CP does not make a sufficient case for the proposed new rule 9.5.1. This is because:

(i) the proposal does not seek to address a clearly identified regulatory failure or gap. Paragraph 148 states that "*explicit obligations will provide greater certainty and aid our supervision of market operator's activities*", but does not clearly state how this can only be achieved by the proposed rule 9.5.1. In particular, it is not clear to Chi-X how the outcome delivered by a new rule 9.5.1 cannot be achieved by the combination of the implicit requirements in existing rules, mentioned in paragraph 147, and the proposal to issue guidance on market operator obligations in paragraph 150;

(ii) the CP acknowledges that in at least some cases the proposals will double up on existing obligations (see, for example, paragraphs 145 and 147);

(iii) the proposals are based, at least in part if not primarily, on the principle that "they should be doing this anyway so making a new rule shouldn't be a problem". Chi-X is of the view that this is not a sufficient policy basis for proposing and implementing new regulations and risks creating unnecessary red tape;

(iv) as presently drafted the rule is open ended with a lack of precision over what obligations are imposed. For example, the statement in the proposed rule 9.5.1 that a market operator must keep "*records which are used by the Market operator's board of directors or senior managers to consider whether the Market operator has sufficient financial, technological and human resources to operate the market properly*" captures an

enormously wide and difficult to define set of records. Are trade publications and academic literature on which a director has relied, required to be identified and stored for seven years? If they are not is the market operator liable to a fine?

(v) There is no clear statement on how the provision applies to material that is currently protected by claims of confidentiality or privilege. If the proposal is that privileged records are also caught then it is not clear how that is aligned with ASIC's stated goals as that should not provide further assistance to ASIC supervision than that which currently exists.

The CP is correct in asserting that the additional costs of storage may be minimal but that may be the least of the costs imposed by the proposed new rules. The additional costs of a new rule 9.5.1 may include:

(a) the costs of deciding what records are covered;

(b) the cost of developing systems and controls that are aligned with decisions on what records are covered – note that this has the potential to be quite time consuming given the breadth of records that may come with a literal interpretation of the rule;

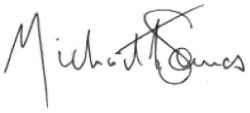
(c) systems and controls relating to periodic reviews of both decisions on what records are caught and how they are being stored.

These costs are unlikely to be insignificant and would favour larger incumbents that may be able to better exploit economies of scale, at the expense of alternate operators. As outlined above, it is not clear on the face of the CP that any such costs will provide discernible benefit to the current regulatory framework.

I hope this submission is of assistance in your deliberations.

Please do not hesitate to contact me if you have any queries.

Yours Sincerely



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