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Dear Ashly

Chi-X Australia Submission on Report 391

Chi-X Australia is grateful for the opportunity of providing a submission to ASIC in respect of Report 391: ASIC's deregulatory initiatives.

The comments in this submission are divided into:

1. Feedback on some initiatives contained in Report 391; and
2. Additional measures which may make it easier to comply with ASIC requirements.

1. Feedback on Initiatives Contained in Report 391

(a) Developing De-Regulation into a Sustained and Continuous Process

Chi-X commends ASIC for prioritising deregulatory initiatives and the benefits that they may bring. Such initiatives warrant the sustained commitment and support of all stakeholders in Australia's financial markets. In these circumstances, the benefits of the identification of deregulatory initiatives on a case by case basis that is contained in Report 391, may feed into a sustained process where:

- (i) ASIC and other stakeholders may be able to identify those features common to all identified cases that could be used to further identify measures that should be considered for deregulatory initiatives;
- (ii) all stakeholders could review the processes by which regulatory initiatives are developed and implemented to see if they could be improved to minimise those initiatives that impose an unwarranted burden;
- (iii) ASIC processes are benchmarked against global practises to determine whether internal processes may be enhanced to deliver further deregulatory initiatives.

(b) Relief

Chi-X commends ASIC for the flexibility it has demonstrated in exercising its discretion to apply regulatory requirements on a modified basis where that is appropriate. Chi-X is of the view that the following may further enhance this process in the ways outlined:

- (i) providing a timetable and deadlines at the outset of the relief process may assist in providing certainty to all parties;
- (ii) more transparency around the solicitation of industry views pursuant to which decisions may be made could assist in ensuring all possible views are considered appropriately;
- (iii) greater clarity on the templates that may be used to apply for relief may assist in expediting the identification of the relevant issues;
- (iv) providing reasons for the decision by ASIC, including as to why the decision may be distinguishable from previous comparable decisions, may assist regulated entities in developing future relief applications.

2. Additional measures which may make it easier to comply with ASIC requirements

Chi-X commends ASIC for considering de-regulation initiatives that may lessen the cost and burden of compliance with regulatory measures that upon review are no longer justified on a cost benefit basis. The following are some matters that may warrant further consideration.

(a) Cessation of short sale transaction reporting

Chi-X is conscious of the benefits provided by the enhanced monitoring of short sale transactions but is conscious that the cost and problematic nature of the information produced by reporting of transactions (so called gross transaction reporting) may not be justified on a cost benefit analysis, given that position reporting is also involved. Chi-X is conscious that short sale position reporting is sufficient in many jurisdictions globally. Chi-X also queries whether the prohibition on naked short sales could be removed for those stocks where the cost and availability of the stock borrow is problematic.

(b) Duplication on real time market monitoring

Chi-X is conscious that in Australia there is duplicative real time market monitoring undertaken by ASX, Chi-X, ASIC and market participants. As competition in markets increases, this duplication may multiply. At present this has the potential to result in a “spaghetti” arrangement whereby each market provides real time data feeds to each other market, ASIC and the surveillance systems used by participants. ASIC would be aware that a “hub and spoke” arrangement of interacting market feeds is a more efficient model and Chi-X queries whether it is appropriate consider these arrangements at this point in the development of multiple markets. This issue is linked to those outlined in (d) and (e) below.

(c) RG 172

Chi-X is conscious that the formal ASIC guidance provided to market operators on what they must do to satisfy their licence obligations is out of date. In circumstances where the existing legislative regime is very much principles based (mostly around the principle of maintaining a fair, orderly and transparent market), the lack of any updated guidance has the potential to create excessive regulation as market operators must err on the side of caution in ensuring they satisfy existing obligations. One area where

this may indeed be the case is participant supervision, where there may be triplication in the work done by ASIC, ASX and Chi-X.

(d) Market-wide market monitoring

Within the financial services sector there is a significant community of compliance professionals undertaking monitoring and surveillance of market conduct. The potential savings and improvements in outcomes that may result from the synergies that could be obtained by that surveillance community working together could be substantial. For example, if a read only front end of some ASIC analysis was available to that community then the potential for harnessing the combined efforts of the total surveillance community may be significant.

(e) Alternate methods of market surveillance

Chi-X is currently required to provide ASIC with a real time feed of its market data for the purposes of ASIC market surveillance. As a result, the Chi-X product and innovation development cycle is subject to the ASIC Surveillance System development cycle. This has an impact on the innovation taking place on Australian markets. Chi-X therefore queries whether ASIC could explore alternatives to a real time market feed that would enable this product development cycle to be implemented by market operators independently of the ASIC Surveillance System development cycle.

(f) Ex Ante Cost Benefit analysis

Chi-X is grateful for the cost recovery statements and other work undertaken by ASIC on policy implementation. However, Chi-X queries whether a more significant focus on an ex ante cost benefit analysis could deliver more efficient outcomes of a deregulatory nature. The focus could take the form of more substantial pre-consultation on the cost of proposed measures.

(g) A single notification regime for Market Participants (eg on REs, responsible persons, changes in management plans, AOP/ACOP certification).

Under the Market Integrity Rules, ASX Operating Rules and Chi-X Operating Rules, a participant may be required to provide triple notifications of changes to its internal structures. Chi-X is of the view that single notification repository for participants would minimise this additional work. Chi-X is conscious that many participants have provided feedback that the duplication and triplication of regulatory notifications should be an area capable of streamlining, possibly by the creation of a single store front.

(h) Harmonisation of rule books.

Chi-X commends ASIC for its intention to harmonise rules books, but would commend to ASIC the possibility of harmonising rule books for all regulated firms, thereby creating a regulatory coherence throughout the perimeter of regulated activity.

(i) Creating a formal category of guidance

Chi-X is conscious that in some cases, an ASIC rule or legislative provision may contain a generally worded principle. In keeping with principles based regulation, a firm, often through its compliance department, will in good faith consider the application of the principles to its own predicament and deliver solutions to comply with the rule/legislative requirement. It is to be expected that there may be different views on what the rule requires in these circumstances. However, it is important in these cases that the principle based rule/provision is not subject to amendment or clarification by way of guidance without requiring that guidance to go through a process equivalent to what would be required for changing the

law/rule (see, for example, section 157 of the United Kingdom's Financial Services and Markets Act). This will deliver deregulatory outcomes as it will enable firms to deliver efficient compliance with principles based regulation: changes to what the regulation requires would have to be delivered on the same timeline and consultation basis as changes to the regulation itself.

(j) Harmonise the s792F and 794C requirements so a single streamlined process is undertaken

Chi-X is conscious that under the Corporations Act, market operators are subject to both:

- (i) a requirement to complete and submit an annual report to ASIC setting out how the operator has fulfilled its licence requirements; and
- (ii) an assessment conducted by ASIC of how the operator has fulfilled its licence requirements.

In these circumstances it appears there is scope for minimising the regulatory burden by having the two processes aligned so that either the market operator provides a report reviewed by ASIC or ASIC conducts its own assessment, collecting information on aspects of the operator's performance as part of that process. Chi-X notes in this regard that the IMF has remarked that Australian market operators are subject to "intensive oversight" (see pages 52 and 59 of the IMF report entitled *Australia: Report on the Observance of Standards and Codes (ROSC) – Summary Assessments, 2012*).

(k) Confidentiality

Chi-X is of the view that the current application of section 127 of the ASIC Act imposes an unwarranted regulatory burden to the extent that instead of efficient information sharing taking place between ASIC and other regulatory authorities such as the ASX and Chi-X, it creates a barrier to that process that requires each regulator to acquire the information separately. In these circumstances, Chi-X queries whether ASIC and government authorities can work together to come up with a more efficient information sharing regime.

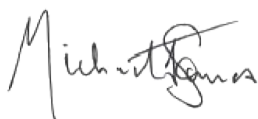
(l) Timetables and Deadlines

Chi-X is of the view that it would assist the regulated community if ASIC published a timetable for each regulatory decision it is required to make. If this occurred, then it would also enhance the governance around the decision making process if either ASIC made its decision according to the published timetable or, in the event no such decision was made, there was a deemed approval of the regulatory issue up for a decision (see for example s290(1B) of the United Kingdom's Financial Services and Markets Act).

We hope this assists in your work in this important area.

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

Yours sincerely



Chi-X Australia Pty Ltd