



Stockbrokers

Association of Australia

Incorporating SDIA

8 May 2012

Ms Amanda Mark & Mr David Dworjanyn
Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

Dear Amanda and David

DESIGNATED TRADING REPRESENTATIVES (DTR's)

Thank-you both for attending the National DTR Working Group meeting held on 1 May 2012.

At that meeting we updated you on the progress of the National DTR Accreditation and the National DTR Register that the Stockbrokers Association administers on behalf of the industry. In addition, based on the results of the program to date, we would also like to propose a tightening of the accreditation requirements for DTR's, along the lines of the Responsible Executive model.

National DTR Accreditation – Progress Results

The National DTR Accreditation was launched in October 2011.

The Accreditation process comprises:

- 1 x written exam (50 multiple choice questions with a 80% pass mark), PLUS upon successful completion,
- 1 x Oral assessment carried out by 2 x DTR Governors with candidate and an RE/Senior DTR from the candidate's organisation.

The results of the Accreditation to date are:

- 59 candidates have enrolled in the National DTR Accreditation
- 16 candidates have passed the written exam (includes 2 resits)
- 11 Oral assessments have conducted of which 5 did not pass this component, and had to do more practical learning.
- 84 people are registered on the National DTR Register. These include those who were previously registered as DTRs with ASX and have applied to be grandfathered across and whose names now appear on the National DTR Register.

Given the National DTR Accreditation has been running for a reasonable time, some observations about the program and the candidates can be made. The DTR Governors, who conduct the oral assessment component of the National DTR Accreditation are concerned at the caliber of candidates being put forward for accreditation. While most are passing the written exam component, a significant number are not performing to the required standard in the oral DTR Governors Exam.

Importance of DTR's

In the lead-up to the hand-over to ASIC of Market Supervision from ASX in 2010, you will recall that the Stockbrokers Association was very vocal in its opinion that, despite proposals to the contrary, DTR's ought to be retained. As we noted at the time, Members were concerned that the removal of appropriately qualified and independently accredited specialist operators may impact negatively on the integrity of the market.

We were therefore pleased that the requirement for Trading Participants to have a DTR was retained in the Market Integrity Rules – albeit minus the compulsory registration requirement¹.

Traditionally, DTR's have played an important role. They are the first line of protection for the firm from improper trading. They play a 'gate keeper' quality-control role. Even with automated (DMA) orders, DTR's often play an important role in determining appropriate action when a trading message is blocked by filters or other safeguard mechanisms.

With new trading functions and platforms (including *Centrepoint Orders*, *Iceberg Orders*, *PureMatch*, *VolumeMatch* and *Chi-X*), together with the best execution requirement, it is even more important that specialist operators are on-hand to manage trading.

In a May 2010 decision of the ASX Disciplinary Tribunal involving erroneous orders, the Tribunal took the following matter into account:

*'The importance of the role of DTRs in reviewing and preventing the entry of orders into the trading platform that could result in a market that is not fair and orderly'*²

Our Members strongly support the above sentiments expressed by the Tribunal in that case.

Proposal

While there has been good take-up of our accreditation across the industry, it is by no means uniform and will not be uniform until such time as a minimum training and accreditation standard is imposed by ASIC. In order to address the perceived deficiency in the standard and caliber of candidates who present for Accreditation, and further protect market integrity, we would like to propose a minimum accreditation requirement along the lines of the Responsible Executive regime. As you are aware, RE's must pass an ASIC-approved examination and maintain minimum CPD under Market Integrity Rule 2.3.1³. (There are with equivalent requirements for Clearers under ASX Clear 4.22.1.)

¹ Market Integrity Rule 2.5

² ASX Circular 150/10 3 May 2010 *Disciplinary Matters*

³ 2.3.1 *Appointment or resignation of Responsible Executives*

(2)...

(c) if the person becomes a Responsible Executive for the first time on or after the Commencement Date, the person has:

(i) attained a mark of at least 65% in an examination approved by ASIC under subrule (3), in the 12 months preceding the date the Market Participant appoints the person as a Responsible Executive; and

(ii) satisfied the Compliance Education Requirements from the date the person passed the examination as referred to in subparagraph (i) to the date the Market Participant appoints the person as a Responsible Executive, pro-rata to the number of full months in that period.

We would therefore propose that Rule 2.5 be amended to include –

- (a) a requirement that DTR's pass an examination approved by ASIC in the duties and responsibilities of a DTR; and
- (b) ongoing CPD obligations be set-out. (As a guide, the National DTR Working Group have agreed to 6 hours of specific DTR CPD per annum for DTR's.
- (c) that DTRs be registered on the National DTR Register (currently administered by the Stockbrokers Association of Australia)

Thank-you for the opportunity to provide this information and proposal, and for you and your staff's time in being available to discuss these issues.

We look forward to discussing these matters further.

Yours sincerely



David W Horsfield
Managing Director/CEO

(3) For the purposes of subparagraph (2)(c)(i), ASIC may approve, in writing, one or more examinations that, in the opinion of ASIC, assess knowledge and competency in the application of the provisions of these Rules, the Market Operating Rules and the Corporations Act that govern the operation of the Market and are relevant to the role performed by Responsible Executives.

Maximum penalty: \$20,000

13 March 2013

April Mountfort and Catlin Chau
Financial Market Infrastructure
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2000

By email: marketstructure@asic.gov.au

Dear Ms Mountfort and Ms Chau,

PROPOSED MARKET INTEGRITY RULES: APX MARKET

The Stockbrokers Association of Australia is pleased to provide this submission to ASIC in relation to its proposed *Market Integrity Rules* for the APX Market

The Association's members have a strong commitment to maintaining the integrity and high standing of Australia's markets. The Association is also committed to enhancing the efficiency and competitiveness of Australia's financial markets and furthering Australia as a regional financial hub. We trust that the unique business model of APX will contribute to this goal, by providing new investment opportunities, particularly between the People's Republic of China and Australia.

We note that, apart from the listing rules, the proposed Rules are based on the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011*. With several years' experience, the Market Integrity Rule structure, with one set for each market and an overarching set of competition in market rules, is reasonably well bedded-down. Like Chi-X, derivatives will not be traded on APX initially. Even though APX will be different in that it is a listing exchange, on the trading side it is a good model for the APX market integrity rules.

Obviously, since there is to be only **one market** trading APX-listed securities, the competition market integrity rules will not apply. Accordingly, rules like the **best execution** rule¹ will not apply, nor will the rules on **extreme price movements**², and **pre- and post-trade transparency**³. However, we note that the *APX Draft Business Rules* contain provisions on **errors, cancellations and amendments**⁴, and the *Procedures* set out **extreme trade ranges**⁵ within which trades will be cancelled, in a similar way to the Competition MIRs.⁶

We generally support the approach of ASIC in endeavouring to achieve uniformity and consistency across all the Market *Integrity Rules*. There must not be any opportunity for 'regulatory arbitrage' between the markets. While the different rule books appear to be justified at this stage, we trust that eventually as many as possible of the *Market Integrity Rules* will appear in the *Common Rules*, avoiding the need to constantly consult multiple rule books.

Duplication

For many years the Association has objected to duplication and/or inconsistency of requirements which previously existed in both the *Corporations Act* and the then *ASX Market Rules*. This duplication and/or inconsistency has been perpetuated since 1 August 2010 in the *Corporations Act* and the *ASIC Market Integrity Rules* for the ASX, Chi-X and APX Markets, including those in the following areas:

- Confirmations
- Managed Discretionary Accounts
- Staff Trading
- Trading Records
- Trust Accounts
- Client order priority
- Principal trading
- Complaints
- Financial Records & Audit, and
- Breach Reporting.

We note that ASIC has flagged that it will review these areas of overlap 'in due course'⁷. We trust that this review will be given priority.

¹ *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (the '**Competition MIRs**' Chap 3

² Competition MIRs Chap 2

³ Competition MIRs Chap 4&5

⁴ *APX Draft Business Rule* 5.59 – 5.62

⁵ *APX Draft Business Rule Procedure* 5.61

⁶ Competition MIRs Rule 2.2 – while the APX Rules do not set out Anomalous Order Thresholds, we understand that the APX trading platform will reject orders within the Extreme Trade Range in any case.

⁷ ASIC Regulatory Guide 214 *Guidance on ASIC Market Integrity Rules for ASX and ASX 24 markets* at RG214.53

Policy in Drafting Market Integrity Rules

As we stated in our Submission on the draft Chi-X rules⁸, there should be consistency of policy across the ASX, Chi-X, APX and any other sets of *Market Integrity Rules*.

We continue to support the *Guiding Principles* which ASIC set out in CP148⁹ as influencing its drafting of market integrity rules. We continue to trust that ASIC will take a practical approach to matters such as investigations and enforcement proceedings, and take into account the fact that compliance with one rule will constitute compliance with all.

Designated Trading Representatives (DTRs)

We commend ASIC for incorporating Rule 2.5 which, like the corresponding rule for ASX and Chi-X, requires a market participant to have at least one DTR, and to ensure that trading messages are only submitted by a DTR, unless an Automated Order Processing system is used.

Since before the hand-over to ASIC of Market Supervision in 2010, the Stockbrokers Association has been vocal in its opinion that, despite proposals to the contrary, DTRs ought to be retained. They are the first line of protection for the firm from improper trading. They play a 'gate keeper' quality-control role and are guardians of market integrity.

⁸ Stockbrokers Association Submission on ASIC CP148 Proposed Market Integrity Rules: Chi-X Market 31 March 2011

⁹ ASIC CP148 Proposed Market Integrity Rules: Chi-X Market March 2011 Table 1 page 13

1. Single notification to ASIC and/or market operator for:
 - Management requirements
 - Insurance and information requirements
 - Responsible executives
 - Client money and property
 - Business connections between market participants
 - Automated order processing: filters, conduct and infrastructure.
2. Single disclosure to clients of market participant where:
 - Clients trading in products for the first time
 - Trading as principal
 - Reporting to clients
 - Client order priority
 - Dealing in equity market products.
3. Record keeping for:
 - Designated trading representatives
 - Trading as principal
 - Trading records
 - Records: general
 - Transactions by connected persons (including persons connected with other market participants)
 - Participant's trading infrastructure
 - Clients trading in products for the first time.

As you would be aware, after ASX discontinued its testing and registration of DTRs in 2011, the Association, through the work of its DTR Sub-Committee has offered the *National DTR Accreditation*. Last year, we wrote to the Commission expressing concern at the standard of DTRs being presented for Accreditation, and proposed tightening the regulation of DTRs, in terms of minimum qualifications and registration¹⁰. These concerns remain, and were reiterated to ASIC at a recent meeting of the DTR Sub-Committee¹¹, where members noted that the lack of appropriately qualified and independently accredited specialist operators may impact negatively on the integrity of the market, especially as market activity increases.

Therefore, we would repeat our proposals for the tightening of DTR regulation in the APX Rules along the lines presented in our letter of 8 May 2012 (attached), and reiterate the need for similar changes to the ASX and Chi-X Rules.

Substantive requirements in Procedures

We have noted in the past a tendency for ASX to move more and more significant obligations to the Procedures. This avoids the obligations being subject to the Ministerial non-disallowance provisions of the *Corporations Act* (which only apply to *Operating Rules*) under section 793E. The APX draft *Business Rules* contain many references to details which are in the Procedures. In the lead-up to the transfer of market supervision to ASIC in August 2010, ASX undertook that if any substantive obligations were to be contained in Procedures, ASX would endeavour to give sufficient notice of their introduction to allow for any concerns to be raised. We would expect a similar undertaking to be given by APX.

Thank-you for the opportunity to comment on these proposed market integrity rules. We would be happy to discuss any issues relating to this submission at your convenience. Should you require any further information, please contact Doug Clark, Policy Executive, on (02) 8080 3200 or email dclark@stockbrokers.org.au.

Yours sincerely,



David W Horsfield
Managing Director/CEO

¹⁰ See, Letter from Stockbrokers Association to ASIC dated 8 May 2012 **attached**

¹¹ Meeting of the DTR Sub-Committee, Sydney, 20 February 2013, attended by G.Yanco and A.Mark