



ASIC

Australian Securities & Investments Commission

BACKGROUND PAPER: ASIC'S REGULATORY FRAMEWORK ON COMPETITION IN EXCHANGE MARKETS

29 April 2011

On 29 April 2011 ASIC released a package of material on competition in exchange markets. The package builds on the preliminary summary of rules and feedback that was issued on 3 March 2011.

The purpose of this paper is to provide background to the package released on 29 April. This paper is divided into three parts:

- **Part A:** questions and answers on the competition market integrity rules, Chi-X and what competition means for the Australian market;
- **Part B:** a summary of the Competition MIRs compared to the proposals we consulted on in CP 145; and
- **Part C:** a summary of some of the broader market issues we consulted on in CP 145 that we intend to undertake further consultation on.



PART A: QUESTIONS AND ANSWERS

The introduction of competition in exchange markets	3
What did ASIC publish on competition in exchange markets on 29 April?	3
Who should read the material published by ASIC?	3
What is competition in exchange markets and what are the expected benefits?	4
When is competition expected to be implemented?	4
What will the industry need to do to prepare for competition?	4
Will competing market operators have common trading hours?	5
How will competition in exchange markets impact retail investors?.....	5
How will competition in exchange markets impact issuers?	5
Chi-X	5
Who is Chi-X?	5
What type of market is Chi-X seeking approval to operate in Australia?	6
When will Chi-X commence operation?.....	6
Are the Chi-X MIRs the same as the ASX MIRs?	6
What will be the impact of Chi-X's proposed 'maker-taker' pricing model?.....	6
Competition MIRs	7
Who do the Competition MIRs apply to and in relation to what products?	7
I won't be connected to Chi-X initially. How do the Competition MIRs affect me?.....	7
Will there be transitional arrangements?	7
How will investors' interests be protected (best execution obligation)?	7
How do the Competition MIRs deal with high-frequency trading (HFT)?	8
How is ASIC addressing the growth in dark pools?	9
Do the Competition MIRs deal with the lessons of the 6 May 'flash crash'?	9
Will investors be able to see a consolidated view of prices across all markets?	10
What impact could the rules have on market operators and participants?	10
How will market operators work together?	11
Do the Competition MIRs anticipate other market operators or new competing platforms?	11
Does ASIC's timetable assume ASX's PureMatch will commence on 31 October?	11
Who can I contact if I have questions about the Competition MIRs?	11
Approach to broader market structure issues	11
Will ASIC introduce rules to address broader market developments raised in CP 145?.....	11
Why is ASIC not addressing the wider market structure issues now?	12
What is ASIC doing on suspicious activity reporting?	12
What is ASIC doing on short sale tagging?	12
Surveillance of multiple-markets	13
How will ASIC supervise multiple exchange markets?.....	13
How will ASIC's additional surveillance costs be recovered?	13



The introduction of competition in exchange markets

What did ASIC publish on competition in exchange markets on 29 April?

Regulatory framework for the introduction of competition in exchange markets

1. *ASIC Market Integrity Rules (Competition in Exchange Markets) 2011* (Competition MIRs). These are new rules that were made by ASIC on 29 April 2011 and will be registered in the first week of May. The Competition MIRs set the framework for the introduction of competition in equity exchange markets. The Competition MIRs address the matters raised in Consultation Paper 145 *Australian equity market structure: Proposals* (CP 145) that we consider necessary for the introduction of competition in Australia. The rules apply to trading on all competing markets (e.g. ASX and Chi-X);
2. *ASIC Regulatory Guide 223: Guidance on ASIC market integrity rules for competition in exchange markets* (RG 223). RG 223 provides background to the Competition MIRs, outlines our expectations about how market operators and market participants should comply with the Competition MIRs and provides good practice recommendations for data consolidators and in relation to the more complex rules, such as best execution.
3. *Report 237: Response to submissions on CP 145 Australian equity market structure: Proposals* (REP 237), which outlines the submissions we received to CP 145 and our response. We have also published the non-confidential submissions to CP 145.

Market integrity rules for the Chi-X market

The Minister is considering Chi-X's market licence application.

4. *ASIC Market Integrity Rules (Chi-X Australia Market) 2011* (Chi-X MIRs). These are new market integrity rules specifically for the Chi-X market, which are substantially similar to the relevant *ASIC Market Integrity Rules (ASX Market) 2010*, which were adapted from the long standing ASX Market Rules (now superseded).
5. *ASIC Regulatory Guide 224: Guidance on ASIC market integrity rules for the Chi-X market* (RG 224). RG 224 provides background to the Chi-X MIRs and outlines our expectations about how Chi-X and Chi-X's market participants should comply with the rules.
6. *Report 238: Response to submissions on CP 148 Proposed market integrity rules: Chi-X market* (REP 238), which outlines the submissions we received to CP 148 and our response.

Who should read the material published by ASIC?

7. We expect the Competition MIRs will impact:
 - a) ASX, Chi-X, participants of ASX and Chi-X and prospective operators of markets in equity market products—as the Competition MIRs apply to them directly;
 - b) clients of market participants—as the Competition MIRs apply new protections to clients; and
 - c) issuers of equity market products—the Competition MIRs relate to how markets will function, potentially impacting asset valuation and capital raising.



What is competition in exchange markets and what are the expected benefits?

8. Competition in exchange markets means that more than one market operator may offer secondary market trading services in equity market products admitted to quotation on ASX. It is not about competition in other products. Nor is it about competition for listings or competition in clearing or settlement services.
9. There are no changes to current arrangements for supervision and enforcement of listing rules or clearing and settlement rules as a result of the new regulatory framework. Chi-X intends to use the trade acceptance service of ASX Clear to ensure streamlined clearing and settlement.
10. Based on experience overseas, the introduction of competing exchange markets in Australia is expected to result in:
 - a) more innovation in products and services, more choice in markets, and maintained or improved market quality (including market depth, liquidity and price formation). This may attract new players, new trading strategies and new liquidity.
 - b) faster and more efficient trading experiences resulting from developments in technology; and
 - c) reduction in overall costs of execution, due to tighter spreads and a reduction in transaction costs. We note ASX revised its trading fees and activity rebates on 1 July 2010.

When is competition expected to be implemented?

11. The operative date for the Competition MIRs is Monday 31 October 2011, subject to rules on the provision of information to enable the industry to prepare for competition and the provision of information to ASIC about crossing systems to assist our market analysis, which take effect the day after the rules are registered under the *Legislative Instruments Act 2003* (expected to occur the first week of May 2011). The Chi-X MIRs also take effect the day after their registration.
12. This means 31 October 2011 is the earliest that any competitor market operator can commence operation. This is consistent with the timetable we published on 3 March 2011.

What will the industry need to do to prepare for competition?

13. Some of the steps industry will need to take prior to Chi-X's commencement include:
 - a) ASX and Chi-X will need to make system changes, put in place procedures for simultaneously halting trading, for use of common stock and broker identifiers and for the sharing of certain data, and link to the nominated clock for synchronisation;
 - b) Chi-X will need to connect to market participants, CHESS, data vendors and ASIC (for the provision of real-time order and trade data for surveillance purposes);
 - c) market participants will need to prepare to comply with the best execution obligation. Those intending to connect to Chi-X will need to amend their order routing and back office systems and prepare to comply with Chi-X operating rules, the new common market integrity rules, and the new Chi-X MIRs;
 - d) Chi-X will need access to clearing and settlement services; and



- e) data vendors will need to connect to Chi-X, consolidate ASX and Chi-X data feeds and make the consolidated feeds available to clients.

14. ASIC will continue to work closely with market operators and participants on industry testing and related issues to ensure a smooth transition to competition takes place. We are in discussion with industry about how best ASIC can facilitate this.

Will competing market operators have common trading hours?

15. Our expectation is that competing market operators will have the same core trading hours unless adequate arrangements are in place between market operators that, for example, enable ASX to monitor continuous disclosure under its listing rules and to identify and communicate to other market operators any market integrity related trading suspensions outside of ASX's core hours. We will continue to discuss this issue with market operators.

16. We recognise issues raised by market participants, the funds management community and issuers about the importance of common procedures for determining the opening and closing prices across markets for valuation purposes (even where trading hours are the same). We will work with the industry to better understand the issues and facilitate discussion to reach an appropriate market outcome.

How will competition in exchange markets impact retail investors?

17. Based on experience overseas, we expect it will be generally a positive story for retail investors, with limited change to their trading experience and better prices. They will look to their broker to provide services and to take account of the new multimarket environment. This includes participants providing clients with:

- a) access to a consolidated view of pre-trade and post-trade pricing;
- b) a single trade confirmation, even if an order is executed across multiple markets; and
- c) the best total consideration when executing client orders. This will ensure participants act in the best interests of their clients when dealing in equity market products.

How will competition in exchange markets impact issuers?

18. The rules will impact issuers/listed companies as they relate to how equity markets in Australia will function and how their issued securities will trade. However, issuers will continue to deal solely with ASX in relation to listing and disclosure issues.

19. We expect the trend for greater high-frequency trading (HFT) in our market to continue, which means there is likely to be greater intra-day turnover of holdings in companies. This may not flow through to shareholding disclosures as high-frequency traders often end the day with a flat position.

Chi-X

Who is Chi-X?

20. Chi-X Australia Pty Ltd (Chi-X) is a wholly owned Australian subsidiary of Chi-X Global Inc., a member of the Instinet group of companies ultimately owned by Nomura Holdings Inc. Chi-X Global is the parent company of several alternative equity trading venues in a number of



jurisdictions (e.g. Canada, Japan and Singapore). Chi-X Europe, owned by a consortium of financial institutions, operates a pan-European Multilateral Trading Facility.

What type of market is Chi-X seeking approval to operate in Australia?

21. Chi-X is seeking a licence to operate a market in Australia in ASX quoted equity market products. It is not seeking approval to compete for listings on ASX (so issuers will continue to deal solely with the ASX in relation to the listing rules and their continuous disclosure obligations). Chi-X intends to go live with a small subset of the most liquid securities quoted on ASX for on-market trading and gradually expand to offer trading in the remaining stocks in the S&P/ASX200 index and exchange traded funds.

When will Chi-X commence operation?

22. The Minister is considering the Chi-X licence application. If the Minister grants Chi-X a licence, as with other licensees of retail markets, Chi-X will need to satisfy a number of pre-requisites before it begins to operate a market. For example, relating to the readiness of its market (e.g. independent verification of its testing arrangements and attestations from users), its financial and human resources and having appropriate compensation arrangements in place. If the Minister grants Chi-X a licence, the earliest Chi-X could commence operation is on 31 October 2011 (i.e. the day the majority of the Competition MIRs commence).

Are the Chi-X MIRs the same as the ASX MIRs?

23. The Chi-X MIRs are new market integrity rules specifically for the Chi-X market, which are substantially similar to the relevant ASIC Market Integrity Rules (ASX Market) 2010, which were adapted from the long standing ASX Market Rules (now superseded). However, given Chi-X is not seeking approval to trade derivatives at this time, the Chi-X MIRs do not include similar rules that deal with derivatives products, such as those for retail client adviser accreditation, large order facilitation for futures contracts and corners.

24. We intend to review at a later time the market integrity rules for the ASX and Chi-X markets, with a view to conducting a harmonisation exercise so that only one set of ASIC market integrity rules applies to all like markets. This is consistent with previous statements in Consultation Paper 131 *Proposed ASIC Market Integrity Rules: ASX and SFE markets*.

What will be the impact of Chi-X's proposed 'maker-taker' pricing model?

25. Chi-X intends to introduce maker-taker pricing, which provides a rebate to persons who submit passive orders (e.g. with a limit price) and charges a fee to persons who submit aggressive orders (e.g. market orders). This model has been a feature of global markets for a number of years. While the majority of respondents to CP 145 did not oppose maker-taker pricing, there has been some concern that it may create pricing inefficiencies and distortions.

26. We expect our best execution rule to minimise situations where client orders are routed to markets based on rebates rather than the best interests of the client. We also expect market operators to take into account the potential implications for market integrity when setting fees or rebates. We will discuss with market operators the nature and potential impact of any intended rebates, and we will continue to monitor the impact of pricing models domestically and abroad. If it becomes apparent that a pricing model is having a material impact on market integrity, we may reconsider whether a rule is needed.



27. We have also created a rule (6.5.1) requiring material changes to a market operator's procedures to be notified to ASIC to enable us to consider the impact on market integrity. This will include notification of material changes to pricing models.

Competition MIRs

Who do the Competition MIRs apply to and in relation to what products?

28. The Competition MIRs apply to Australian market licensees that offer trading services in shares, rights in shares, managed investment schemes and rights in managed investment schemes and CHESS Depository Interests admitted to quotation on the ASX and participants of such markets. We refer to these as 'market operators', 'equity market products' and 'market participants' respectively.

I won't be connected to Chi-X initially. How do the Competition MIRs affect me?

29. The Competition MIRs do not require that all participants of ASX must become participants of Chi-X. There is a 12-month transitional arrangement allowing participants to comply with best execution rules by accessing only TradeMatch on ASX for the first 12 months of commencement of competition. By the end of the 12 months, participants will need to consider whether they could deliver a better outcome to their clients by accessing Chi-X.

Will there be transitional arrangements?

30. Yes. We have provided transitional arrangements for some Competition MIRs, including:
- allowing participants to comply with best execution rules by accessing only TradeMatch on ASX for the first 12 months of commencement of competition. A market participant will be able to meet its best execution obligation solely on ASX without being obliged to consider whether it should have access to other markets. Market participants that choose to rely on this 12-month transitional arrangement must disclose this fact to their clients; and
 - allowing ASX to retain existing order types that fall outside our exceptions from pre-trade transparency (orders on the VolumeMatch book; index replacing special crossings; ETF special trades; underwriting disposal special crossings; exchange-approved special crossings; and completion of order special crossings) on commencement of the Competition MIRs. Market participants may also continue to rely on these exceptions. This will minimise system and process changes for ASX and ASX's participants. This will apply on a transitional basis at least until ASIC has completed further consultation.

How will investors' interests be protected (best execution obligation)?

31. The Competition MIRs require market participants to take reasonable steps when handling and executing a client order to obtain the best outcome. This means 'best total consideration' for retail clients (unless otherwise instructed). This may be interpreted as 'best price' while there are not material differences in transaction costs between licensed markets.
32. For wholesale clients, market participants may take into account a range of outcomes in addition to 'total consideration'. Wholesale clients may also elect to provide clear standing instructions to 'opt out' of the best execution rules, subject to periodic review. For example, a



high-frequency client may elect to opt out where the market participant is not involved in the execution decision. This must be at the discretion of each client and not built into the standard client agreement offered to clients by a market participant.

33. Market participants must demonstrate compliance with their execution arrangements upon client request. We intend to introduce the order routing and execution quality periodic reporting that we consulted on in CP 145 after further consultation with industry.

How do the Competition MIRs deal with high-frequency trading (HFT)?

34. HFT is a specialised form of high-speed algorithmic trading generally characterised by:
- trading on price movements rather than fundamentals of the underlying asset (e.g. looking for arbitrage or market making opportunities);
 - generating a large numbers of orders, many of which are rapidly cancelled; and
 - holding positions for a very short time horizon (i.e. ending the day with a zero position).
35. ASIC has a neutral position on high-frequency trading (HFT). We acknowledge the increased role of technology in trading (including the associated efficiency benefits); however we recognise it raises regulatory issues (e.g. it may exacerbate price movements and encourage 'gaming').
36. There is already a robust set of rules in Australia that mitigate against some of these impacts:
- the prohibition of unfiltered access to the market;
 - requirements on automated order processing systems to meet minimum standards and to be certified;
 - the requirement to consider the circumstances of orders when submitting them;
 - the prohibition of manipulative trading that may create a false or misleading appearance. ASIC has no tolerance for any form of market misconduct irrespective of whether it originates from high-frequency traders or other participants; and
 - the prohibition of naked short selling.
37. The Competition MIRs add:
- controls on order entry to prevent anomalous orders from entering the market; and harmonised and transparent trade cancellation policies; and
 - harmonised tick sizes across markets. Many stocks already trade at the minimum size, which means HFT is less able to step ahead of other orders.
38. We consulted in CP 145 on enhancing the existing controls and introducing a specific testing requirement for algorithms. We intend to consult further with industry on these issues with the aim of settling rules in early 2012 (see paragraphs 56-57).
39. As part of our current supervisory work ASIC is actively engaging with market participants on their controls for direct electronic access and algorithms in compliance with existing market integrity rules.



How is ASIC addressing the growth in dark pools?

40. Dark pools are a type of matching system, characterised by their electronic nature and an absence of pre-trade transparency—meaning that bids or offers are not made publicly available as is the case in public markets such as ASX's central limit order book.
41. There is a recent trend for smaller trades to shift into dark pools and there is a risk that if too much liquidity shifts, the quality of the price formation process on-market will deteriorate (i.e. resulting in wider spreads and worse prices for trades done both on pre-trade transparent markets and in the dark). We consulted on introducing a minimum threshold, below which all orders should be pre-trade transparent. We received a wide range of responses to this proposal and as a matter of priority we intend to undertake further consultation taking account of the responses with the aim of settling revised rules in early 2012 (see paragraphs 56-57). In the interim, we have introduced a threshold set to zero. This will enable us to quickly respond if there is a shift of liquidity from the pre-trade transparent markets in the short term at a level that would adversely affect the price formation process.
42. We have taken on board industry feedback about having a consistent pre-trade transparency regime on day one. In the interim, we have also introduced Competition MIRs that harmonise some existing ASX pre-trade transparency exceptions to ensure consistent standards across competing markets from the commencement of competition; and a new reporting requirement for market participant operators of crossing systems to facilitate our market analysis and consideration of alternative options. These rules will take effect from the day after the Competition MIRs are registered.

Do the Competition MIRs deal with the lessons of the 6 May 'flash crash'?

43. The 'flash crash' in 2010 had limited direct impact in Australia. The market structure and regulatory environment in Australia is different from the US (e.g. nature and size of market, presence of HFT, number of markets, obligations on professional liquidity providers). We nevertheless have been carefully reviewing the lessons from this incident. We are requiring that market operators have in place execution risk controls that will, at a minimum:
 - a) effectively minimise the incidence of a single order executing at an anomalous price; and
 - b) provide a mechanism for detecting and addressing any such transactions which may occur, including the cancellation of certain transactions.
44. It was recognised in the feedback to CP 145 (see REP 237) that further consultation is required for volatility controls, in particular, appropriate thresholds and timeframes. We intend as a matter of priority to consult further on controls to automatically limit certain priced orders from executing during extreme market movements. Subject to the outcomes of this consultation, we aim to settle additional rules in relation to this in early 2012 (see paragraphs 56-57).
45. The objective is to enhance the level of confidence in the Australian market and encourage investor participation through mechanisms to preserve market quality and the price formation process.
46. Changes to the regulatory framework for direct electronic access (DEA) and algorithms may also address many of the lessons from 6 May. These changes would build on our existing



rule framework set out at paragraph 36 including a prohibition on unfiltered access to the market. The proposed changes will also be the focus of further consultation in 2011.

Will investors be able to see a consolidated view of prices across all markets?

47. We consider that a consolidated source of market information that is available for a reasonable price to all users is a fundamental element of a fair, orderly and transparent market. The Competition MIRs allow for more than one consolidator. To ensure market data is accurate, accessible and easily consolidated, the Competition MIRs require:

- a) market operators to have controls to prevent anomalous orders;
- b) market participants that transact off-order book in accordance with the permitted pre-trade transparency exceptions to report post-trade information to a market operator and to take reasonable steps to ensure it is complete, accurate and up-to-date;
- c) market operators to take reasonable steps to ensure the pre-trade and post-trade information is and remains complete, accurate and up-to-date; and
- d) market operators to make all pre-trade and post-trade information available on reasonable commercial terms and on a non-discriminatory basis.

48. We have also introduced best practice standards for data consolidators. We expect there will be more than one data consolidator in Australia.

What impact could the rules have on market operators and participants?

Area	Possible impacts—market operators	Possible impacts—market participants
Technology	Market operators will need systems to: <ul style="list-style-type: none"> • control order entry into matching engines; • coordinate trading halts and sharing of information; and • synchronise clocks in relevant systems to a universal clock. 	Market participants will need systems (either their own or those of third parties) that: <ul style="list-style-type: none"> • can process market data, determine to which execution market to route orders based on predefined parameters and then route the orders; and • capture and report additional data to ASIC (for participants that operate a crossing system).
Human resources	Market operators will need staff to: <ul style="list-style-type: none"> • consider the implications of the rules, including the impact on technology; • cooperate with ASIC and other market operators; • provide investor education about the consequential changes for their market; and • provide training to other staff. 	Market participants will need staff to: <ul style="list-style-type: none"> • consider the implications of the rules, including the impact on technology; • assess if existing client agreements require amendment; • monitor compliance with best execution arrangements and review the arrangements; • make best execution disclosures to clients; and • provide training to other staff.
Compliance policies and procedures	Market operators will need to: <ul style="list-style-type: none"> • review existing policies and procedures and amend where necessary; • have procedures to ensure that post-trade information is accurate and up-to-date; • put in place new policies and procedures for trading halts and trade cancellations; and • have procedures for ensuring clocks remain synchronised. 	Market participants will need to: <ul style="list-style-type: none"> • review existing policies and procedures and amend where necessary; and • put in place new best execution policies and procedures.



How will market operators work together?

49. Cooperation and coordination in a multimarket environment will be imperative to uphold the integrity of the market, particularly for minimising the impact of events like the 6 May 'flash crash' in the US, trading halts in response to the release of price sensitive information (which ASX will retain responsibility for as part of its listing authority function), responding to external events (such as September 11) and in response to system outages.
50. We are requiring under the Competition MIRs market operators:
- a) to cooperate with the coordination of trading suspensions to ensure business continuity and market integrity;
 - b) to coordinate arrangements for the cancellation of trades that occur as a result of an extreme price movement;
 - c) to share information necessary to maintain fair, orderly and transparent markets;
 - d) to assign unique identifiers for participants and unique symbols for products;
 - e) to synchronise their clocks to ensure data is chronologically recorded; and
 - f) to use common tick sizes.

Do the Competition MIRs anticipate other market operators or new competing platforms?

51. Yes the Competition MIRs do cater for additional market operators or platforms.

Does ASIC's timetable assume ASX's PureMatch will commence on 31 October?

52. We note that ASX has stated its intent to commence operations of its proposed PureMatch platform later in 2011. The proposal, which involves changes to ASX's operating rules, is subject to Ministerial disallowance. ASIC is in the early stages of considering ASX's proposed new platform. ASIC will consult with industry about the market impact. At this stage, ASIC cannot be certain about when PureMatch might commence operations.

Who can I contact if I have questions about the Competition MIRs?

53. Questions about the competition MIRs can be emailed to marketstructure@asic.gov.au.
54. Market participants are able to directly contact the relevant ASIC teams on the hotline number (1300 029 454) between 9 am and 5 pm Eastern Standard Time on market trading days. This hotline is for communicating with ASIC about live markets trading issues, non-live markets queries, general participant queries, notifications and exemptions. Participants and market operators can also call ASIC's Infoline on 1300 300 630.
55. For up-to-date information about competition MIRs and ASIC's ongoing work to address market developments, refer to www.asic.gov.au/markets.

Approach to broader market structure issues

Will ASIC introduce rules to address broader market developments raised in CP 145?

56. Yes. In CP 145 we consulted on a number of proposed rules relating to broader market structure developments. We intend to use the benefit of feedback from CP 145 to refine some of our proposals that respond to wider market developments, for example relating to:



- a) the growth in dark pools and the impact they are having on the public price formation process;
- b) automated electronic trading;
- c) volatility controls;
- d) best execution reporting; and
- e) enhanced data to ASIC for surveillance.

These issues are outlined in more detail in **Part C**.

57. We intend as a matter of priority to consult further on these important issues (expected in Q3 2011) and, subject to the outcomes of this consultation, aim to settle these additional rules in early 2012 (with sufficient lead time for transition and implementation).

Why is ASIC not addressing the wider market structure issues now?

58. The Competition MIRs reflect the necessary requirements for the commencement of competition that harmonise rules across all markets, minimise systems changes for industry and maintain market integrity.
59. We are addressing some of the wider market structure issues now (e.g. we have introduced rules requiring market operators to have in place execution risk controls like order entry controls and harmonised cancellation policies for extreme price movements). We intend to consult with stakeholders during 2011 on automated volatility interruptions (e.g. trading collars) to supplement these controls.
60. We will also use the benefit of the feedback from CP 145 to refine our proposals on other market structure issues (e.g. relating to the growth in dark pools and the impact they are having on the public price formation process, automated electronic trading and volatility controls). We intend as a matter of priority to consult further on these important issues and, subject to the outcomes of this consultation, aim to settle these additional rules in early 2012.

What is ASIC doing on suspicious activity reporting?

61. We consider that our suspicious activity market integrity rule proposal that we consulted on in CP 145 supplements the anti-money laundering legislation and is an important market integrity measure against a backdrop of recent market developments (including the introduction of competition). We will proceed with making market integrity rules on suspicious activity reporting as early as possible in 2011, with sufficient lead time for implementation. We will work with industry on settling the guidance and to develop relevant examples about the application of the rule.

What is ASIC doing on short sale tagging?

62. Short sale tagging is an important foreshadowed final step from ASIC's 2008–2009 work on short selling to enhance our market analysis and surveillance efficiencies. We have consulted on the reintroduction of the rule extensively since 2008. We will proceed with making a market integrity rule requiring mandatory real-time identification of short sales on orders and trades (as proposed in CP 145) as early as possible in 2011, with sufficient lead time for implementation.



Surveillance of multiple-markets

How will ASIC supervise multiple exchange markets?

63. Where there are multiple exchange markets, ASIC will conduct surveillance and monitor activity across all markets. ASIC's surveillance system is capable of supervising multiple markets, however, we propose enhancing our surveillance capabilities through:
- a) a review of what activity is considered misconduct in the prevailing environment;
 - b) timely access to intelligence, including through an enhanced suspicious activity reporting regime;
 - c) timely access to data, including real-time tagging of short sale transaction reporting and more granular information about clients; and
 - d) increased capacity of our supervisory tools and systems.

How will ASIC's additional surveillance costs be recovered?

64. The Competition MIRs do not deal with a regime to recover ASIC's additional market supervision costs. The Government will consult separately on the cost recovery regime for competition, including the nature of the costs to be recovered and the basis for their recovery. We expect the introduction of competition to bring material benefits (see paragraph 8-10).



PART B: SUMMARY OF COMPETITION MARKET INTGERITY RULES

Issue	Proposal in CP 145	Substance of Competition MIRs
Scope of products	Shares and rights in shares, managed investment schemes and rights in such schemes and CHESS Depository Interests (CDIs) admitted to quotation on ASX.	As proposed in CP 145. Clarifying that shares include rights in shares and managed investment schemes include rights in managed investment schemes.
Persons in scope	Market operators and market participants.	As proposed in CP 145.
Best execution	<p>Market participants to take reasonable steps to obtain the best total consideration for clients (best price for non-professional clients).</p> <ul style="list-style-type: none"> • Have policies and procedures in place; • Review arrangements at least annually; • Disclose arrangements to clients; • Evidence execution performance; and • Publish periodic reports on order routing and execution quality. <p>For 12 months, market participants may meet their best execution obligation solely on ASX.</p>	<p>Market participants to take reasonable steps to obtain the best outcome for clients.</p> <ul style="list-style-type: none"> • Retail clients – best total consideration (or price in the interim) unless the client instructs otherwise on a case-by-case basis; • Wholesale clients – range of outcomes (e.g. speed). They may elect to 'opt-out' of the best execution rules, subject to annual review; • Have policies and procedures in place; • Review arrangements when necessary; • Disclose arrangements to clients; and • Evidence execution performance. <p>For 12 months, market participants may meet their best execution obligation solely on ASX.</p>
Pre-trade transparency & Crossing systems ('dark pools')	<p>Market participants must display orders on a pre-trade transparent market subject to exceptions for large trades and orders above \$20,000 done with price improvement.</p> <p>Dark pool operators to periodically report to ASIC on the nature and activity of trading on the pool.</p> <p>Pre-trade transparency orders should take time priority over non-pre-trade transparent orders.</p>	<p>Further consultation intended on exceptions to pre-trade transparency.</p> <p>In the interim, harmonise some of the existing ASX exceptions across markets. Introduced a threshold set to zero to enable us to quickly respond if there is a significant shift of liquidity off-market.</p> <p>Dark pools to periodically report to ASIC on the nature and activity of trading on the pool. This rule takes immediate effect.</p> <p>Pre-trade-transparent orders on a licensed market to take time priority over fully undisclosed orders.</p>
Post-trade transparency	Post-trade information to be published immediately with delays permitted for large trades as per existing ASX requirements.	As proposed in CP 145.
Consolidation of pre-and post-trade information & Trading to be on licensed market	<p>Intend to bring about an outcome of consolidated information being available to market users. We raised a number of options (single provider to competing suppliers).</p> <p>Market participants to report all off-market trades to a market operator under market operator rules. To limit the possibility for duplication, only one party to a transaction should report.</p>	<p>Rely on multiple providers from industry with ASIC best practice standards for consolidators.</p> <p>Market operators to ensure information is accurate and up-to-date, taking reasonable steps to identify and correct any errors.</p> <p>Information to be made available on reasonable commercial terms and non-discriminatory basis.</p> <p>Market participants are required to report all off-market trades to a market operator.</p>



Issue	Proposal in CP 145	Substance of Competition MIRs
Extreme price movements	Market operators to have: <ul style="list-style-type: none"> • pre-trade controls to prevent the entry of anomalous orders; • the capability to immediately and automatically suspend trading (e.g. circuit breaker); and • transparent and predictable trade cancelling policies. 	Market operators to have: <ul style="list-style-type: none"> • pre-trade order controls to prevent the entry of anomalous orders. • transparent and predictable trade cancelling policies. ASIC has set the cancellation range for extreme movements—interim is proposed range from ASX's consultation on Trade Cancellation Policy, October 2010. ASIC to set volatility controls (circuit breakers) after further consultation with the industry.
Market operator cooperation	Market operators to comply with a multimarket protocol (governing trading halts and suspensions, information sharing). Must use common participant and stock symbols.	Specific rules on information sharing and dealing with trading halts and suspensions and notification to ASIC about material changes in procedures. Must use common participant and stock symbols.
Synchronised clocks	Market operators to synchronise clocks to a clock nominated by ASIC.	As proposed in CP 145.
Tick size	Market operators to implement common tick sizes (we proposed to retain the existing ASX tick sizes).	As proposed in CP 145.
Trading during a trading halt	Market participant must not trade on- or off-market during a market integrity-related trading halt or suspension.	As proposed in CP 145.
Trade confirmation	Single client orders executed across multiple markets may be aggregated into a single confirmation.	As proposed in CP 145.



PART C: SUMMARY OF BROADER MARKET DEVELOPMENTS THAT WILL BE THE SUBJECT OF FURTHER CONSULTATION

Issue	Proposal in CP 145	Industry feedback and next steps
Pre-trade transparency ('dark pools')	To minimise the shift of liquidity to dark pools and orders, we proposed a \$20,000 price improvement threshold for dark liquidity.	<p>A wide range of alternatives to the \$20,000 threshold were put forward.</p> <p>We remain of the view that the quality of price formation on public markets is an important issue. As noted above, we will continue to work with the industry on this issue (including taking into account the range of alternative options canvassed in the submissions to CP 145) and to monitor developments in our market and internationally.</p>
Automated electronic trading	<p>Market participants to ensure all systems used to generate orders by it and its clients are appropriately tested, monitored continuously during use, and able to be immediately disabled.</p> <p>We asked questions about the impact of HFT in Australia.</p>	<p>Industry indicated existing rules are adequate. General view that HFT has a net positive impact.</p> <p>Further consultation required on new rules. Continue working with industry to enhance their systems and processes and review guidance on existing rules/guidance.</p> <p>Considering application to futures market.</p>
Direct electronic access (DEA)	<p>DEA clients to meet certain standards and have a client contract in place (to reflect IOSCO Principles on DEA).</p> <p>Must have adequate controls (e.g. pre-trade filters) and ability to immediately disable clients.</p>	<p>There was some confusion in the industry with the concept of DEA, automated order processing and algorithms. Industry suggests existing rules are adequate.</p> <p>Further consultation required on new rules. Continue working with industry to enhance their systems and processes and review guidance on existing rules/guidance.</p>
Volatility controls for extreme price movements	Market operators to have capability to immediately and automatically suspend trading in a specific product and/or market-wide if extreme price movement.	<p>General support for a volatility control. Greater preference for limit up/ limit down than circuit breaker.</p> <p>Industry seeking further consultation. We will continue consulting with industry on trigger thresholds (taking account of market operators' capabilities). This may have consequential impacts for market order entry controls.</p> <p>Considering application to futures market.</p>
Best execution reporting	<p>Market participants to publish reports on order routing.</p> <p>Market operators to publish reports on execution quality.</p>	<p>There were questions about the relevance of the reports in an Australian context, the expected ultimate beneficiaries of the reports and the likely costs of implementation.</p> <p>Work with industry to assess what aspects or execution quality and order routing reports are most useful in the Australian market. We will have regard to what can be achieved with minimal system change.</p>
Enhanced data to ASIC for surveillance	We are considering orders and trade reports to include unique DEA client codes, unique codes for algorithms, ultimately unique client identifiers, and unique trading venue identifiers.	<p>In-principle support for enhancing ASIC's surveillance capability. Industry sought further consultation to better understand system implications.</p> <p>We will continue to work with the industry to see what can be achieved reasonably easily initially. We will continue to monitor developments internationally on client identifiers.</p>