



**ASIC**

Australian Securities & Investments Commission

REGULATORY GUIDE 265

# Guidance on ASIC market integrity rules for participants of securities markets

May 2018

## About this guide

This guide is for market participants subject to the ASIC Market Integrity Rules (Securities Markets) 2017 and ASIC Market Integrity Rules (Securities Markets – Capital) 2017.

It gives guidance on how market participants can comply with their obligations under these rules.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in May 2018 and is based on legislation, regulations and market integrity rules as at the date of issue. It expands guidance on a market participant's management structure and consolidates relevant guidance previously found in:

- Superseded Regulatory Guide 214 *Guidance on ASIC market integrity rules for ASX and ASX 24 markets*, issued July 2010, reissued August 2010, February 2014, May 2015 and November 2015
- Superseded Regulatory Guide 215 *Guidance on ASIC market integrity rules for IMB, NSXA and SIM VSE markets*, issued 20 November 2015
- Superseded Regulatory Guide 223 *Guidance on ASIC market integrity rules for competition in exchange markets*, issued 4 May 2015 (see Sections G, I, J, K, L and M)

Note: See also [Regulatory Guide 172](#) *Financial markets: Domestic and overseas operators* for guidance previously found in superseded Regulatory Guide 223.

- Superseded Regulatory Guide 224, *Guidance on ASIC market integrity rules for Chi-X and APX markets*, issued 20 November 2015
- Superseded Regulatory Guide 226 *Guidance on ASIC market integrity rules for capital and related requirements: ASX, ASX 24, Chi-X and APX markets*
- Superseded Regulatory Guide 238 *Suspicious activity reporting*

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

# Contents

<b>A</b>	<b>Overview</b> .....	<b>5</b>
	Supervision of trading on domestic licensed financial markets .....	5
	ASIC market integrity rules .....	5
	Communicating with ASIC .....	5
	Scope of this regulatory guide .....	6
	Related guidance .....	7
<b>B</b>	<b>Supervision of trading on domestic licensed financial markets</b> .....	<b>8</b>
	ASIC’s supervisory responsibilities .....	8
	How ASIC works together with market licensees .....	9
	Status of notifications, consents, waivers, etc., given before 1 August 2010 .....	10
<b>C</b>	<b>ASIC market integrity rules</b> .....	<b>11</b>
	ASIC market integrity rules .....	11
	Waivers .....	12
<b>D</b>	<b>Communicating with ASIC</b> .....	<b>14</b>
	Forms .....	14
	Contacting ASIC .....	15
	When to contact ASIC .....	16
	Significant breach reporting to ASIC .....	17
<b>E</b>	<b>Operational requirements</b> .....	<b>18</b>
	Management requirements .....	18
	Professional indemnity insurance .....	29
	Accreditation for retail client advisers for options, warrants and futures .....	29
	Designated trading representatives .....	31
<b>F</b>	<b>Client relationships</b> .....	<b>33</b>
	Client agreements .....	33
	Client detail record keeping .....	33
<b>G</b>	<b>Best execution</b> .....	<b>34</b>
	Scope and application .....	34
	Best execution obligation .....	35
	Policies and procedures .....	45
	Disclosure to clients of best execution arrangements .....	48
	Monitoring and reviewing best execution arrangements .....	52
	Evidencing how client orders are executed .....	55
	Access to markets .....	56
<b>H</b>	<b>Suspicious activity reporting</b> .....	<b>59</b>
	What suspicious activity must be reported? .....	59
	Compliance with Part 5.11 .....	70
<b>I</b>	<b>Crossing systems</b> .....	<b>74</b>
	Scope and application .....	74
	Notifying ASIC of intention to operate a crossing system .....	75
	Monthly reporting to ASIC on trading activity and system changes .....	77
	Public disclosure about crossing system operations .....	77
	Disclosure to crossing system clients .....	79
	Fair treatment of users .....	83
	Monitoring and suspicious activity reporting .....	85
	Tick sizes .....	89
	Systems and controls .....	89

<b>J</b>	<b>Pre-trade transparency</b> .....	<b>92</b>
	Scope and application .....	92
	Orders and quotes to be pre-trade transparent.....	93
	Exceptions .....	93
	Content of pre-trade disclosures .....	100
<b>K</b>	<b>Post-trade transparency</b> .....	<b>102</b>
	Scope and application .....	102
	Market participants' obligations to report data.....	102
	Which activities do not need to be reported? .....	107
<b>L</b>	<b>Regulatory data</b> .....	<b>108</b>
	Scope and application .....	108
	Confidentiality .....	109
	Data to be provided and recorded .....	109
	What are 'reasonable steps' to determine data? .....	118
<b>M</b>	<b>Trades under rules of a market operator, trade confirmations, client agreements, confidential order information and order incentives</b> .....	<b>119</b>
	Scope and application .....	119
	Trading under the operating rules of a market operator.....	119
	Trading suspensions and off-order book trading.....	120
	Accumulation of trade confirmations .....	120
	Managing confidential order information .....	122
	Order incentives.....	125
<b>N</b>	<b>Capital requirements</b> .....	<b>129</b>
	Scope, application and waivers .....	129
	Lodging forms and returns .....	129
	ASX guidance materials on capital.....	130
	<b>Appendix: Guidance notes</b> .....	<b>131</b>
	<b>Key terms</b> .....	<b>132</b>
	<b>Related information</b> .....	<b>143</b>

## A Overview

### Key points

We are responsible for supervising domestic licensed financial markets in Australia.

As part of our supervisory responsibilities, we make market integrity rules and monitor compliance by market participants with those rules.

### Supervision of trading on domestic licensed financial markets

- RG 265.1 We are responsible for supervising the activities and the conduct of market participants in relation to domestic licensed markets (i.e. financial markets operated by persons licensed under s795B(1) of the *Corporations Act 2001* (Corporations Act)).
- RG 265.2 We are also responsible for supervising compliance with the Corporations Act and for making and supervising compliance with market integrity rules.
- RG 265.3 Australian market licensees are responsible for the operation of their markets and for monitoring and enforcing compliance with their markets' operating rules, which include their listing rules.

### ASIC market integrity rules

- RG 265.4 Under Pt 7.2A of the Corporations Act, we are able to make market integrity rules dealing with activities and conduct in relation to domestic licensed financial markets, including the activities and conduct of market participants. We are also responsible for granting waivers from the obligation to comply with a provision of the market integrity rules.

### Communicating with ASIC

- RG 265.5 Market participants can contact ASIC directly to ensure that market integrity matters are known and addressed in an efficient and timely manner.
- RG 265.6 You may contact ASIC using the [market entity compliance system](#) (MECS), by direct email or by telephone to the relevant ASIC teams to communicate issues and queries about markets, trading and participant conduct. For contact details see RG 265.41–RG 265.45. See Table 3 for a list of email addresses you can use to contact ASIC about different market- and participant-related matters.

- RG 265.7 In Table 2 we have listed some of the information which must be provided to ASIC under the market integrity rules.

## Scope of this regulatory guide

- RG 265.8 This regulatory guide provides guidance for market participants on the ASIC Market Integrity Rules (Securities Markets) 2017 and ASIC Market Integrity Rules (Securities Markets – Capital) 2017.

Note 1: In this guide, ‘Securities Markets Rules’ refers to the ASIC Market Integrity Rules (Securities Markets) 2017. The Securities Markets Rules replaced the ASIC Market Integrity Rules (APX Market) 2013, ASIC Market Integrity Rules (ASX Market) 2010, ASIC Market Integrity Rules (Chi-X Australia Market) 2011, ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 and the ASIC Market Integrity Rules (SIM VSE Market) 2010. The Securities Markets Rules can be downloaded from the [Federal Register of Legislation](#).

Note 2: In this guide, ‘Securities Capital Rules’ refers to the ASIC Market Integrity Rules (Securities Markets – Capital) 2017. The Securities Capital Rules replaced the ASIC Market Integrity Rules (APX Market-Capital) 2014, ASIC Market Integrity Rules (ASX Market-Capital) 2014 and the ASIC Market Integrity Rules (Chi-X Australia Market-Capital) 2014. The Securities Capital Rules can be downloaded from the [Federal Register of Legislation](#).

Note 3: Guidance on the ASIC Market Integrity Rules (Futures Markets) 2017 for market participants can be found in [Regulatory Guide 266](#) *Guidance on ASIC market integrity rules for participants of futures markets* (RG 266).

- RG 265.9 This guide also explains how we expect market participants to comply with requirements about:
- (a) the operation of market participants and representatives, specifically:
    - (i) management structures;
    - (ii) professional indemnity (PI) insurance;
    - (iii) accreditation of retail client advisers for options, warrants and futures; and
    - (iv) designated trading representatives (DTRs);
  - (b) client relationships, specifically:
    - (i) client agreements;
    - (ii) client detail record keeping; and
    - (iii) best execution;
  - (c) trading, specifically:
    - (i) suspicious activity reporting;
    - (ii) crossing systems;
    - (iii) pre- and post-trade transparency;

- (iv) regulatory data; and
- (v) trades under rules of a market operator; and
- (d) capital requirements.

RG 265.10 This guide does not cover the operating rules of market operators or clearing and settlement (CS) facility operators.

## Related guidance

RG 265.11 Table 1 identifies other regulatory guides that may be relevant to market participants. This is not an exhaustive list.

Note: Guidance on various obligations under the Securities Markets Rules that apply to market operators can be found in [Regulatory Guide 172](#) *Financial markets: Domestic and overseas operators* (RG 172).

**Table 1: Related guidance**

Topic	ASIC regulatory guide
The disciplinary process for breaches of all market integrity rules	<a href="#">Regulatory Guide 216</a> <i>Markets Disciplinary Panel</i> (RG 216)
Notifying ASIC of significant breaches (or likely breaches) by Australian financial services (AFS) licensees under s912D	<a href="#">Regulatory Guide 78</a> <i>Breach reporting by AFS licensees</i> (RG 78)
Our approach to supervising compliance with the AFS licensing obligations	<a href="#">Regulatory Guide 104</a> <i>Licensing: Meeting the general obligations</i> (RG 104) and <a href="#">Regulatory Guide 105</a> <i>Licensing: Organisational competence</i> (RG 105)
Information on electronic forms of disclosure	<a href="#">Regulatory Guide 221</a> <i>Facilitating digital financial services disclosures</i> (RG 221)
Guidance on electronic trading and automated order processing (AOP)	<a href="#">Regulatory Guide 241</a> <i>Electronic trading</i> (RG 241)
Guidance on an AFS licensee's statutory obligation to manage conflicts of interest (s912A(1)(aa))	<a href="#">Regulatory Guide 181</a> <i>Licensing: Managing conflicts of interest</i> (RG 181)

## B Supervision of trading on domestic licensed financial markets

### Key points

We are responsible for supervising trading on Australian domestic licensed financial markets.

We take a risk-based approach to surveillance of compliance with the market integrity rules and market participants' obligations under the Corporations Act.

### ASIC's supervisory responsibilities

RG 265.12 We are responsible for supervising market participants, market operators and other prescribed entities for compliance with the market integrity rules. This is in addition to our role in supervising compliance by market participants with the market misconduct provisions of the Corporations Act (e.g. the prohibitions against insider trading, market manipulation and making false and misleading statements) and with the general obligations of AFS licensees.

Note 1: For our approach to supervising compliance with the general obligations of AFS licensees under s912A of the Corporations Act, see RG 104 and RG 105.

Note 2: Guidance on market operators' obligations under the Securities Markets Rules can be found in RG 172.

Note 3: Our supervisory responsibilities do not extend to foreign-based markets that are licensed to operate in Australia under s795B(2) or to financial markets that are exempt from being licensed.

### Supervision of compliance with market integrity rules

RG 265.13 We take a risk-based approach to surveillance of compliance with the market integrity rules and market participants' obligations under the Corporations Act. In doing so, we consider the *Objectives and principles of securities regulation* set out by the International Organization of Securities Commissions (IOSCO).

Note: IOSCO, [Objectives and principles of securities regulation](#) (PDF 187 KB), report, 10 June 2010.

RG 265.14 We perform risk assessments of participants and, where necessary, conduct targeted surveillance of suspected misconduct.

RG 265.15 We are responsible for any investigation and action in relation to an alleged breach of the market integrity rules.



### Guidance notes

- RG 265.16 In assessing a market participant's compliance with the market integrity rules, we will seek to follow existing relevant published interpretation contained in old ASX guidance notes. The old ASX guidance notes that remain relevant are listed in the appendix.

### Market surveillance

- RG 265.17 To promote market integrity, we monitor on-market trading activity, including activity in relation to cash market products, options market contracts and futures market contracts, through a variety of computerised systems.
- RG 265.18 Our Market Surveillance team makes inquiries of market operators, participants, listed entities, clients and others, using compulsory powers where necessary.

### Disciplinary process

- RG 265.19 The disciplinary process for breaches of the market integrity rules is contained in RG 216. The Markets Disciplinary Panel (MDP) exercises ASIC's power to issue infringement notices and accept enforceable undertakings relating to breaches of the market integrity rules. RG 216 provides guidance on the processes by which matters will be referred to, and dealt with by, the MDP.

## How ASIC works together with market licensees

- RG 265.20 Australian market licensees are responsible for the operation of their markets and are required to set operating rules for their markets. These operating rules govern how trading can take place on the market and may, where relevant, deal with entities trading on the market's official list. Market licensees are responsible for monitoring and enforcing compliance with their operating rules.

Note: Guidance on market licensee obligations under the Corporations Act and, for domestic licensees, under the Securities Markets Rules and Futures Markets Rules, can be found in RG 172.

- RG 265.21 ASIC and market licensees conduct site visits of market participants and, where appropriate, share information on supervisory practices.

## Status of notifications, consents, waivers, etc., given before 1 August 2010

RG 265.22 Unless ASIC determines that it should be amended or revoked, any written:

- (a) waiver, exemption, consent, recognition, accreditation, approval, determination or notification given by a market operator to a participant under the operating rules of a market, where those rules are incorporated into the market integrity rules; and
- (b) notification or certification given by market participants to market operators under the operating rules of a market, where those rules are incorporated into the market integrity rules,

is grandfathered and taken to be given by ASIC so as to continue in its existing form, and continue to have the same effect as given under the operating rules: reg 10.15.04 of the Corporations Regulations.

Note: Rule 1.6.1 of the Securities Markets Rules provides additional transitional arrangements to ensure the continuity of the status of notifications and certifications given by a market participant to ASIC in accordance with the market integrity rules in force immediately prior to 7 May 2018.

## C ASIC market integrity rules

### Key points

The market integrity rules are made by ASIC and apply to market operators, market participants, other prescribed entities and financial products traded on a licensed market.

We will consult on future amendments to the market integrity rules as required.

We are responsible for supervising compliance with the market integrity rules. We are also responsible for granting waivers from the obligation to comply with a provision of the market integrity rules.

### ASIC market integrity rules

- RG 265.23 We are able to make market integrity rules under Pt 7.2A of the Corporations Act dealing with the activities or conduct of:
- (a) licensed markets;
  - (b) persons in relation to licensed markets; and
  - (c) persons in relation to financial products traded on licensed markets.

- RG 265.24 The market integrity rules are legislative instruments and are subject to parliamentary scrutiny and possible disallowance by Parliament.

#### Ministerial consent to market integrity rules

- RG 265.25 We may not make a market integrity rule unless we have the written consent of the Minister. An exception applies for making emergency rules that are necessary, or are in the public interest, to protect people dealing in a financial product.

#### Future review and amendment to the market integrity rules

- RG 265.26 We will review the market integrity rules from time to time to make any adjustments required as a result of our experience in administering the rules; developments in the market and the international regulatory environment; and feedback from market operators, participants and clients.
- RG 265.27 We expect to consult on any future amendment of these rules.

## Waivers

### Power to grant a waiver of a market integrity rule

RG 265.28 We are able to grant waivers from the obligation to comply with a provision of the market integrity rules.

RG 265.29 Any such waiver may be general, or limited to a particular case or category, and may be limited by such conditions as we think fit. If conditions are imposed on a waiver, all of the conditions must be complied with for the waiver to be effective. Failure to comply with a condition imposed on a waiver is a contravention of Rule 1.2.2. Further, failure to comply with a condition on a waiver may amount to a possible breach of the relevant market integrity rule waived.

Note: In this guide, 'Chapter 4', 'Part 4.2' and 'Rule 4.2.1' (for example) refer to a chapter, part or rule (respectively) of the Securities Markets Rules, unless otherwise specified.

RG 265.30 We may withdraw a waiver at any time. The waiver will cease to be effective from the time it is expressed to be withdrawn in writing. We will not grant a waiver retrospectively.

### Approach to considering a market integrity rule waiver

RG 265.31 We will consider and determine all requests for a waiver of a market integrity rule on the basis of the facts, circumstances and merits of each request. In determining whether such a request should be granted, we will take into account commercial considerations against the need to maintain the integrity of the market.

RG 265.32 Where appropriate, we may grant a waiver to a class of persons.

### The process of requesting a waiver

RG 265.33 Any request for a waiver must be in writing. It should also include details of the market integrity rule to be waived, the person or class of persons seeking the waiver, the requested start date and duration of the waiver, the rationale for the waiver, all relevant facts and circumstances in support of the request, and any other relevant information.

RG 265.34 Market participants may be refused a request if they fail to address all of the relevant issues. Similarly, failure to supply relevant information may cause a delay in finalising the request.

RG 265.35 Should a commercially time-sensitive situation arise, we can consider such requests on an urgent basis, providing the participant has clearly demonstrated that the urgency results from factors beyond their reasonable

control and that those factors could not reasonably have been foreseen. Self-imposed deadlines will not be a sufficient basis for urgent consideration.

RG 265.36 Applications for waivers should be made in writing and emailed to:

Senior Executive Leader, Market Supervision, ASIC  
[market.participants@asic.gov.au](mailto:market.participants@asic.gov.au).

### **Publication of waivers**

RG 265.37 We may publish notice of a waiver on our website. We maintain a public [register of waivers](#) on our website that contains details of:

- (a) the date a waiver takes effect;
- (b) the person or class of persons relieved from the obligation in the market integrity rule;
- (c) the provision of the market integrity rule to which the waiver applies;
- (d) brief reasons for the waiver; and
- (e) any conditions that apply to the waiver.

## D Communicating with ASIC

### Key points

Market participants can contact ASIC directly to ensure that market integrity matters are known and addressed in an efficient and timely manner.

Contact points include MECS, direct email and telephone access to the relevant ASIC teams to communicate issues and queries about markets, trading and participant conduct.

Breaches of the market integrity rules and/or provisions of the Corporations Act should be reported in accordance with the breach reporting procedures set out in RG 78.

### Forms

- RG 265.38 Details about the type of information that is required to be submitted to ASIC in writing are contained in the market integrity rules. These rules do not prescribe forms or a format in which to submit such information.
- RG 265.39 Market participants may use the forms available on [MECS](#) to submit certain information to us as required under the market integrity rules. We will also accept information by any reasonable means, including by email to [market.participants@asic.gov.au](mailto:market.participants@asic.gov.au)
- RG 265.40 Table 2 lists some of the matters market participants will need to notify ASIC about. Note that this list is not exhaustive.

**Table 2: What market participants must notify ASIC about**

<b>All market participants</b>	Significant breaches (s912D)
<b>Securities markets participants</b>	Trust account reconciliation breaches (Rule 3.5.10) Management structure (Rule 2.1.2) PI insurance: With related body corporate (Rule 2.2.2) PI insurance: Claims (Rule 2.2.4) Legal proceedings (Rule 2.2.5) Suspicious activity reports (Rule 5.11.1) Crossing systems (Chapter 5A) Capital requirements (Securities Capital Rules)

## Contacting ASIC

- RG 265.41 The market integrity rules require market participants to provide ASIC with information and other notifications in certain circumstances. Information should be provided in the manner detailed in the relevant market integrity rule.

### Written applications and requests

- RG 265.42 Requests and applications can be made to ASIC using the relevant form on [MECS](#). Alternatively, these can be submitted by email to [market.participants@asic.gov.au](mailto:market.participants@asic.gov.au) with the subject line ‘Attention: Senior Executive Leader, Market Supervision, ASIC’.

### MECS

- RG 265.43 Market participants can submit a range of applications and notifications using the forms available on [MECS](#). Where a form is available on MECS, participants should use MECS to make the application or notification.

### Telephone hotline

- RG 265.44 Market participants can directly contact the relevant ASIC teams by calling our telephone hotline on 1300 029 454 between 9 am and 5 pm Eastern Standard Time on market trading days. The hotline is for communicating with ASIC about live markets trading issues, non-live markets queries, general participant queries, notifications and exemptions. Participants can also call ASIC’s Infoline on 1300 300 630.

### Email

- RG 265.45 There are four email addresses set up for use by market participants for market- and participant-related matters: see Table 3 for details.

**Table 3: ASIC email addresses for use by market participants**

Email address	To be used for:	Examples of information, applications and notifications
<a href="mailto:fsr.breach.reporting@asic.gov.au">fsr.breach.reporting@asic.gov.au</a>	Significant breaches under s912D of the Corporations Act	Significant breaches (or likely breaches) of market integrity rules must be reported to ASIC. Further guidance is given in RG 78
<a href="mailto:markets@asic.gov.au">markets@asic.gov.au</a>	Matters relating to markets and trading	Concerns or queries about trading anomalies Queries about unexplained market events Reports of suspicious market trades or behaviour Concerns about misconduct in the market

Email address	To be used for:	Examples of information, applications and notifications
<a href="mailto:market.participants@asic.gov.au">market.participants@asic.gov.au</a>	Participant-related matters	<p>Applications, including:</p> <ul style="list-style-type: none"> <li>• waiver applications; and</li> <li>• AOP certification</li> </ul> <p>Notifications, including:</p> <ul style="list-style-type: none"> <li>• notification of a claim, potential claim, or circumstances that might give rise to a claim, under the participant's PI insurance;</li> <li>• commencement of legal proceedings that may impact on market integrity rules;</li> <li>• notification of a failure to perform a trust account reconciliation in accordance with Rule 3.5.8 or 3.5.9 (if not reportable as a significant breach under s912D of the Corporations Act); and</li> <li>• any other notifications to ASIC required under the market integrity rules relating to the participant's business and capital requirements</li> </ul> <p>Other information, including:</p> <ul style="list-style-type: none"> <li>• retail adviser accreditation; and</li> <li>• any other information relating to the participant</li> </ul>
<a href="mailto:crossing.systems@asic.gov.au">crossing.systems@asic.gov.au</a>	Reports in relation to crossing systems	<p>Notifications, including:</p> <ul style="list-style-type: none"> <li>• intention to operate a crossing system;</li> <li>• monthly reporting on trading activity and system changes; and</li> <li>• public disclosure about crossing system operations</li> </ul>

## When to contact ASIC

- RG 265.46 As stated above, we are responsible for supervising trading activities by market participants to ensure market integrity. As such, we can be contacted about conduct and activities that occur on domestic licensed financial markets.
- RG 265.47 Australian market licensees retain responsibility for the operation of their markets. Queries about the operations and processes of markets should be directed to the relevant market operator.
- RG 265.48 In general terms, if your issue relates to an obligation or conduct covered by the market integrity rules or provisions of the Corporations Act, you should contact ASIC. The following examples indicate the sorts of matters that might arise and who to contact.



**Example 1: Crossings**

Participant A has a trading-related query about conducting crossings.

- Participant A should contact the relevant market operator as this is an operational issue.

**Example 2: Market manipulation**

Participant A has a trading-related query about possible market manipulation by one of their clients.

- Participant A should contact ASIC.

**Example 3: Trade cancellations**

Participant A has a trading-related query about trade cancellations.

- Participant A should contact the relevant market operator.

## Significant breach reporting to ASIC

RG 265.49 Breaches (or likely breaches) of market integrity rules may constitute reportable breaches for AFS licensees under s912D. If certain breaches of the market integrity rules are required to be reported under s912D, they need to be reported to ASIC. The process for reporting breaches to ASIC under s912D and reporting significant breaches of market integrity rules to ASIC is the same.

RG 265.50 Guidance on how to notify ASIC of significant breaches (or likely breaches) by AFS licensees under s912D is set out in RG 78. Written breach reports should be emailed to [fsr.breach.reporting@asic.gov.au](mailto:fsr.breach.reporting@asic.gov.au).

Note: See RG 78 for further guidance on the process for reporting significant breaches to ASIC, and how we deal with breach notifications.

## E Operational requirements

### Key points

This section provides guidance for market participants and representatives on complying with operational requirements contained in the market integrity rules. These requirements relate to:

- management structures;
- professional indemnity (PI) insurance;
- accreditation for retail client advisers for options, warrants and futures; and
- designated trading representatives (DTRs).

RG 265.51 This section of the regulatory guide provides guidance on complying with a range of operational requirements contained in the Securities Markets Rules.

## Management requirements

### Management structure

RG 265.52 Market participants must have appropriate management structures and supervisory policies and procedures to comply with the Corporations Act, relevant market integrity rules and market operating rules. Part 2.1 sets out minimum management requirements for market participants.

RG 265.53 Rule 2.1.1 requires a market participant to have appropriate management structures in place covering all of its businesses and conduct relating to securities markets. Although ‘management structure’ is not defined, Rule 2.1.1 provides that a market participant’s management structure is to ensure that:

- (a) it has operations and processes in place that are reasonably designed, implemented and function to achieve compliance with the Securities Markets Rules and market operating rules;
- (b) those operations and processes are supervised by supervisory staff with appropriate supervisory skills, knowledge and experience; and
- (c) its supervisory staff have sufficient seniority and authority to exercise control, leadership, influence and supervision over the market participant’s operations and processes.

## Documenting the management structure and allocation of responsibilities

- RG 265.54 A market participant must also keep accurate records of its management structure and allocation of responsibilities among these supervisory staff: Rule 2.1.1(2). Such records should include:
- (a) an overview of the market participant's business model and business objectives, including the types of services and products offered by the organisation and physical office addresses;
  - (b) if the market participant is part of a conglomerate group, a group structure chart which shows the relationship between the market participant, its parent company and other related bodies corporate;
  - (c) the internal structure of the market participant's business, including a chart showing the individuals responsible for managing the business, their titles, responsibilities, roles and reporting lines (including alternative arrangements for when these individuals are on leave or out of the office);
  - (d) a description of internal committees;
  - (e) trading arrangements, including order management and trade execution, such as identifying supervisory staff managing these key functions or interactions with other participants;
  - (f) clearing and settlement arrangements such as identifying supervisory staff managing these key functions or interactions with other participants where alternative clearing and settlement operations are used;
  - (g) details of any outsourcing arrangements;
  - (h) frameworks for supervision, risk management, corporate governance and complying with regulatory obligations;
  - (i) monitoring, review and control processes and responsibilities; and
  - (j) escalation and reporting processes.
- RG 265.55 A market participant's management structure records may incorporate by reference other frameworks, policies or procedures it has adopted and implemented. We expect that any such cross-reference in the management structure records would be accompanied by a brief summary of the relevant aspects of the framework, policy or procedure to preserve the usefulness and effectiveness of the management structure records.
- New market participants must give management structure documents to ASIC**
- RG 265.56 Under Rule 2.1.2, an entity that becomes a market participant on or after commencement of the Securities Markets Rules must, within 10 business

days of becoming a market participant of the relevant market, give ASIC a document that sets out its management structure and the allocation of responsibilities among its supervisory staff.

- RG 265.57 Notification to ASIC can be submitted using the relevant form on [MECS](#). Alternatively, a market participant may send the notification by email to [market.participants@asic.gov.au](mailto:market.participants@asic.gov.au).

### **Significant changes in management structure**

- RG 265.58 A market participant must have accurate, up-to-date records of its management structure and the allocation of responsibilities among its supervisory staff: Rule 2.1.1(2).
- RG 265.59 As such we expect a market participant to review and update its documented management structure in the event of a significant change. A significant change in a market participant's management structure may include, but is not limited to:
- (a) a change in directors, senior managers, supervisory staff or other key staff including senior staff responsible for overseeing the compliance function;
  - (b) a new business or change in business model, including a decision to conduct activities overseas;
  - (c) providing services for new products;
  - (d) rapid growth and expansion of the business;
  - (e) a change to risk management systems, risk oversight or the risk profile of business; and
  - (f) takeovers and mergers.
- RG 265.60 A market participant should consider the significance of a change to its management structure, taking into account the nature, scale and complexity of its business.
- RG 265.61 We may review management structures from time to time as part of our regular risk assessments of market participants' businesses. We take a risk-based approach to prioritising our surveillance activities and may use our compulsory information-gathering powers to obtain information about management structures and other matters as necessary.

### **Compliance and supervisory procedures**

- RG 265.62 We expect market participants to adopt and implement management structures and supervisory procedures that are specifically tailored to the nature, scale and complexity of their business.

RG 265.63 Unless carefully adapted to the business, ‘off-the-shelf’ compliance and supervisory procedures are unlikely to reflect the actual practices of the market participant or the responsibilities allocated to its representatives, and so may not be appropriate to ensure compliance with their obligations.

RG 265.64 Compliance and supervisory procedures are ‘living’ documents. Market participants should periodically review their compliance and supervisory procedures to assess whether they are still appropriate to ensure compliance with their obligations.

### **Compliance procedures**

RG 265.65 A market participant must have appropriate compliance policies and procedures to ensure it and each person involved in its business comply with the Securities Markets Rules, the operating rules of each relevant market and the Corporations Act: Rule 2.1.3.

RG 265.66 Appropriate compliance procedures should help a market participant’s representatives to understand how its obligations apply to its particular business and the behaviours expected (and not permitted) by the participant to ensure it complies with those obligations. This approach fosters a strong focus on the causes of poor conduct and promotes responsible behaviour and high standards of integrity.

RG 265.67 In our view, compliance procedures which merely restate the law provide insufficient guidance to a market participant’s representatives about how it will comply with its obligations.

### **Supervisory procedures**

RG 265.68 Distinct from compliance procedures, written supervisory procedures document the supervisory system that has been established to ensure that the compliance procedures are being followed, and to prevent and detect prohibited practices. For example, supervisory procedures may specify the actions and reviews that must be undertaken by supervisory staff and the frequency of the supervisory reviews.

RG 265.69 Written supervisory procedures should be maintained by market participants and made easily accessible to all staff irrespective of their location.

RG 265.70 We expect that, at a minimum, a market participant’s written supervisory procedures should specify:

- (a) the supervisory staff responsible for supervision of the market participant’s business operations and processes, identified by name or title and position;
- (b) the supervisory activities each supervisor is responsible for carrying out;

- (c) the frequency with which the market participant requires those supervisory activities to be carried out;
- (d) any supervisory activities which the supervisory staff may delegate to other persons, taking into account any need for specific qualifications; and
- (e) the documentation that the market participant requires a supervisor to retain to demonstrate that their supervisory activities were carried out and the results of those activities.

*Allocation of supervisory staff*

- RG 265.71 As noted above, a market participant must have in place a management structure which ensures that its operations and processes are supervised by one or more persons who have appropriate supervisory skills, knowledge and experience and sufficient seniority and authority to exert control, leadership, influence and supervision over those operations and processes:  
Rule 2.1.1(1)(b)–(c).
- RG 265.72 A market participant's written supervisory procedures should clearly identify each person who has supervisory responsibilities within the market participant's business and the nature of those responsibilities. Where supervisory staff leave the organisation or take extended leave, a market participant should have a plan in place to ensure their supervisory responsibilities are carried out.
- RG 265.73 The supervisory staff who are responsible for the market participant's operations and processes should be identified by name and position title. We expect a market participant to maintain records relating to its allocation of, and any changes to, supervisory responsibilities given to its supervisory staff.
- RG 265.74 If joint supervisory responsibility for a function or task is given to two or more supervisors, a market participant should consider how the joint supervisory responsibility should be shared so that risks are appropriately managed.
- RG 265.75 A market participant is responsible for appointing appropriately qualified supervisory staff to its management structure. We expect that supervisory staff, in carrying out their managerial responsibilities, will lead and shape the compliance culture of the market participant. Therefore it is important that all its supervisory staff have an appropriate level of financial services industry knowledge relevant to the market in which they operate. This includes, among other things, understanding the type of business the market participant operates, the types of products in which it deals and the relevant compliance and regulatory obligations.

- RG 265.76 We expect a market participant's written supervisory procedures to set out:
- (a) any qualifications, skills and experience the market participant considers important in determining whether supervisory staff can fulfil their assigned responsibilities;
  - (b) its procedures for determining and reviewing on an ongoing basis whether supervisory staff possess such qualifications, skills and experience; and
  - (c) its methods for monitoring the performance of supervisory staff.

RG 265.77 We acknowledge that one market participant's requirements may differ from that of another—for example, because of its AFS licence authorisations and obligations, its business activities, its internal policy requirements and its membership of an industry association and adoption of standards set by that association.

RG 265.78 We expect that a market participant will periodically review (at least on an annual basis) whether each individual involved in the supervision of its business has the appropriate skills, knowledge and experience for the supervisory role they are performing. While we expect that completion of examinations and continuing education or training requirements will be key considerations, market participants are best placed to make an overall assessment of the supervisory skills, knowledge, experience, seniority and authority of their supervisory staff.

Note: The Securities Markets Rules do not adopt requirements in the ASIC Market Integrity Rules (APX), (ASX) or (Chi-X) relating to use of the title 'responsible executive' by market participants, notifications to ASIC about responsible executives and approval by ASIC of examinations written by industry providers that assess the knowledge and competency of supervisory staff.

*Activities should be independently assessed*

RG 265.79 Supervisory responsibilities should be performed independently and with high standards of integrity.

RG 265.80 A market participant should not make a representative responsible for supervising their own activities. For instance, the head of trading should not be responsible for setting his or her own trading limits. Such an arrangement would demonstrate weakness in the participant's risk management systems and arrangements for managing conflicts of interest arising in its financial services business.

Note: 'Representative' has the meaning given by s910A of the Corporations Act.

*Supervision of representatives*

RG 265.81 We expect a market participant to assign responsibility for supervising the conduct of each of its representatives to one or more of its supervisory staff who are competent to do so. In our view, it is not necessary for the

representative to be a direct report of the responsible supervisory staff. However, there should be a clear and documented connection between the activities of the representative and the responsibilities of the supervisor.

- RG 265.82 We expect these responsibilities to be documented in the market participant's management structure and allocation of supervisory responsibilities.

*Documenting supervisory activities*

- RG 265.83 A market participant's supervisory procedures should clearly describe the supervisory activities it will conduct, and who will conduct those activities.

- RG 265.84 We expect a market participant to maintain records of its supervisory activities, any incidents or breaches of its obligations encountered and how these incidents or breaches were addressed. When a market participant's supervisory actions in a particular matter are called into question, it is almost always to the market participant's advantage to have a written record of the supervisory actions that were taken. A written record will serve as helpful evidence that the supervisors considered an issue or problem and made good faith judgements about the proper course of action. It is in the interests of the market participant, its directors and supervisory staff to ensure these records are made and kept.

- RG 265.85 For this reason, a market participant's written supervisory procedures should specify that when incidents or breaches arise, supervisory staff should prepare a written record of the steps taken, possibly in consultation with the market participant's compliance executive or legal advisers.

Note: See RG 78 for guidance on breach reporting obligations under s912D for AFS licensees.

**Examples of supervisory procedures**

- RG 265.86 Where possible, a market participant's supervisory procedures should be designed to prevent breaches of market integrity rules and laws, as well as monitor for breaches after they occur.
- RG 265.87 The following are examples of preventative supervisory procedures that a market participant may implement in its business.

*Supervising business or branch offices*

- RG 265.88 Designing and implementing appropriate and effective procedures for supervising a market participant's business or branch offices (especially those outside Australia) is vital for ensuring compliance with its obligations under Rule 2.1.1. The market integrity rules anticipate that this will be achieved through assigning management responsibilities to supervisory staff.



- RG 265.89 We do not expect supervisory staff to be located in every part of the business or at all branch offices. We do, however, expect that market participants will hold supervisory staff accountable for the activities of those business or branch offices, including those business or branch offices located offshore. We expect these management responsibilities, and how they are assigned among the market participant's supervisory staff, to be documented in the market participant's management structure maintained under Rule 2.1.2.
- RG 265.90 In addition to desk reviews, we consider that onsite reviews are essential in order to exercise strict supervisory control over a market participant's business or branch offices and test compliance with its obligations. Onsite reviews may also help a market participant to identify emerging issues in its business. To achieve these goals, onsite reviews of business and branch offices should be carried out regularly and comprehensively, taking into account the nature, scale and complexity of the financial services provided.
- RG 265.91 If supervisory staff delegate certain supervisory responsibilities for a business or a branch office's operations to another person, we expect the supervisory staff to follow up on a regular basis to assess whether the assigned duties are being carried out effectively. For example, a delegate of the supervisor may visit each business or branch office on a quarterly basis to verify the performance of any delegated responsibilities.
- RG 265.92 A market participant should consider a centralised approach to compliance supervision as its geographical footprint and complexity grows. Centralised compliance supervision supplements the valuable oversight contributed by supervisory staff in business and branch offices and is a means by which the participant may control fragmentation of its supervisory procedures.
- RG 265.93 Regardless of how a market participant supervises its business and branch offices, it is important that all supervisory staff clearly understand their specific duties and that controls are in place to ensure that those duties are carried out effectively and in a timely manner.

*Procedures for confirmations, statements and mail*

- RG 265.94 We expect that confirmations and client account statements for dispatch to clients will not be produced by advisers or other front office staff.
- RG 265.95 If advisers or other front office staff do need to add information such as individual notes to confirmations or client account statements, the market participant should ensure that the additional material is reviewed and, if appropriate, incorporated by a member of its operations department.
- RG 265.96 Similarly, the booking of an executed transaction should not be actioned by the dealer that executed the transaction. Instead, bookings may be properly performed by the bookings team within the operations department or by

individuals within ‘middle office’, both of which are separate from the dealing staff in the market participant’s front office.

- RG 265.97 Where possible, client cheques, unopened incoming mail, confirmations and statements should not be received or personally delivered by advisers or other front office staff.

*Monitoring and controls for AOP and ACOP*

- RG 265.98 A market participant that uses its system for AOP must have and review policies and procedures for compliance with Part 5.6 and have appropriate design documentation.
- RG 265.99 Where a market participant provides automated client order processing (ACOP) access to clients, the market participant should have an adequate understanding of a client’s business. The filters and controls for client access should reflect the nature of the business.
- RG 265.100 See RG 241 for detailed guidance on monitoring, supervising and using AOP systems.

*Automated systems to assist in achieving compliance*

- RG 265.101 Where a market participant uses an automated system to assist it in supervising compliance with its obligations, the participant’s supervisory procedures should set out how it plans to monitor and test the operation of the automated system and respond to any weaknesses, vulnerabilities, failures or errors which may arise.

*Complex products procedures*

- RG 265.102 A market participant should consider what, if any, additional supervisory procedures are necessary to appropriately monitor dealing in new or complex financial products. At a minimum, supervisory staff given responsibility for supervising representatives who deal in a new or complex financial product should understand the terms, pay-off profile and risks of the product and the nature of the services the market participant’s representatives provide in relation to the product.

*Managed discretionary accounts*

- RG 265.103 We consider it good practice for market participants to document the measures they have in place to manage conflicts of interest that may arise from managed discretionary account (MDA) arrangements. This may include management of a material conflict of interest through a combination of internal controls, disclosure and, in some cases, avoidance of the conflict of interest.

RG 265.104 Further guidance on how we regulate MDA services provided to retail clients under the Corporations Act is available in [Regulatory Guide 179](#) *Managed discretionary account services* (RG 179).

#### *Outsourcing*

- RG 265.105 If a market participant outsources any of its functions that relate to its activities as a market participant, we expect that the market participant:
- (a) will have measures in place to ensure that due skill and care is taken in choosing suitable service providers;
  - (b) can and will monitor the ongoing performance of service providers;
  - (c) will deal appropriately with any actions by service providers that breach service level agreements or compromise the market participant's ability to comply with the market integrity rules and the law; and
  - (d) will at all times be able to access books, records and information of the service provider relating to the outsourced services; and ensure we have the same access to such books, records and information that we would have if not for the outsourcing arrangement.
- RG 265.106 A market participant might outsource a function or task to an external third party or to another entity or entities within its corporate group. Written supervisory procedures should include procedures for ensuring that the market participant can satisfy itself that the performance of obligations, and compliance, by outsourced service providers is appropriate. For example, a market participant may include, as part of its service level agreement with a third-party provider, a requirement that the third-party provider:
- (a) gives a copy of its business continuity program to the market participant; and
  - (b) permits the market participant to make an annual onsite visit to the third-party provider's premises to help assess whether it is meeting its obligations.
- RG 265.107 Outsourcing arrangements should clearly document:
- (a) the activities that are outsourced under the arrangement;
  - (b) the details of the service provider;
  - (c) how the market participant will monitor the provision of the outsourced activities; and
  - (d) who within the market participant will monitor the outsourced service provider and how often.
- RG 265.108 We expect that an AFS licensee will have documented legal agreements in place with all external providers of outsourced functions connected with its provision of financial services. This is especially relevant where a licensee engages the services of related entities based overseas. Under s769B of the

Corporations Act, a market participant that outsources functions that relate to its AFS licence remains responsible for complying with all its obligations as a licensee.

- RG 265.109 If a third party provides financial services to clients on behalf of a market participant, the third party will generally need to be an authorised representative of the market participant or hold their own AFS licence. If the third party is an AFS licensee, it will generally be taken to be the provider of the financial services and will be responsible for complying with the financial services laws in relation to the provision of those services.
- RG 265.110 RG 104 provides further information on outsourcing arrangements. APRA-regulated institutions should also refer to [Prudential Standard CPS 231 Outsourcing](#) (PDF 560 KB) which includes information on both outsourcing and offshoring arrangements.

### **Regular review of supervisory procedures**

- RG 265.111 We expect the board of a market participant to regularly assess its supervisory arrangements.
- RG 265.112 From time to time, market participants will need to revise their compliance and supervisory procedures if they have been affected by a change to:
- (a) the financial services legislation;
  - (b) the market integrity rules; or
  - (c) the operating rules or procedures of a market or CS facility.
- RG 265.113 Where such a change occurs, we consider it good practice for a market participant to:
- (a) communicate details of the change to its representatives;
  - (b) prepare a plan for updating the participant's compliance and supervisory procedures before the change takes effect, or otherwise in a timely manner;
  - (c) implement the updated procedures and provide training to relevant staff; and
  - (d) review the effectiveness of the updated procedures within a reasonable time.

### **Additional guidance**

- RG 265.114 In assessing the appropriateness of a market participant's management structure and supervisory procedures, we will consider the nature, scale and complexity of the market participant's business. We will also take into account the following guidance and Australian standards:
- (a) [Regulatory Guide 79](#) *Research report providers: Improving the quality of investment research* (RG 79);
  - (b) [Regulatory Guide 104](#) *Licensing: Meeting the general obligations* (RG 104);

- (c) [Regulatory Guide 105](#) *Licensing: Organisational competence* (RG 105);
- (d) [Regulatory Guide 181](#) *Licensing: Managing conflicts of interest* (RG 181);
- (e) [Report 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts* (REP 486);
- (f) Australian Standard, *Compliance management systems – Guidelines* (AS ISO 19600:2015);
- (g) Australian/New Zealand Standard, *Guidelines for complaint management in organizations* (AS/NZS 10002:2014); and
- (h) Australian/New Zealand Standard, *Risk management – Principles and guidelines* (AS/NZS ISO 31000:2009).

Note: See RG 104.14–RG 104.16 for more information on our existing approach to the extent that we place reliance on relevant standards.

## Professional indemnity insurance

RG 265.115 A market participant must at all times maintain an adequate level of PI insurance cover having regard to the nature and extent of its participation in the market and the risks and responsibilities assumed in relation to this: Rule 2.2.1. Market participants are required to immediately notify ASIC of any claims, potential or threatened claims, or circumstances that might give rise to a claim, under their PI insurance cover: Rule 2.2.4.

RG 265.116 These notifications can be submitted using the relevant form on [MECS](#). Alternatively, a market participant may send the notification by email to [market.participants@asic.gov.au](mailto:market.participants@asic.gov.au) with the subject line ‘Attention: Senior Executive Leader, Market Supervision, ASIC’.

Note: See Section D for more details.

## Accreditation for retail client advisers for options, warrants and futures

RG 265.117 If a market participant’s representative provides financial product advice to a retail client in relation to options market contracts, warrants or futures, the market participant must ensure its representative holds the accreditation required under Part 2.4. The accreditations include:

- (a) level one accredited derivatives adviser;
- (b) level two accredited derivatives adviser; and
- (c) accredited futures adviser.

RG 265.118 A market participant may nominate an adviser representative to be recognised as an accredited derivatives or futures adviser by written application.

RG 265.119 An application can be submitted using the relevant form on [MECS](#). Alternatively, a market participant may submit the application by email to [market.participants@asic.gov.au](mailto:market.participants@asic.gov.au) with the subject line 'Attention: Senior Executive Leader, Market Supervision, ASIC'.

Note: See Section D for more details.

RG 265.120 Market participants should ensure that the required supporting material, as specified in Rules 2.4.6(2), 2.4.7(2) and 2.4.8(2), is included.

### **Level one accredited derivatives adviser**

RG 265.121 A market participant must ensure that a representative who provides financial product advice in relation to options market contracts or covered call option writing strategies is accredited as a level one accredited derivatives adviser or higher (i.e. level two accredited derivatives adviser): Rules 2.4.2 and 2.4.3. Financial product advice relating to futures options is excluded from the remit of a level one accredited derivatives adviser.

RG 265.122 An adviser will only be accredited as a level one accredited derivatives adviser if they meet certain standards. This includes successful completion of an ASIC-approved level one accredited derivatives adviser examination (i.e. 80% or higher) and training course. The adviser must also have the requisite skill set and level of integrity necessary to provide this financial advice: Rule 2.4.7(1).

### **Level two accredited derivatives adviser**

RG 265.123 A market participant must ensure that a representative who provides financial product advice in relation to derivatives market contracts or warrants is accredited as a level two accredited derivatives adviser: Rule 2.4.4. A level two accredited derivatives adviser cannot advise on futures market contracts or futures options without further accreditation.

RG 265.124 An adviser will only be accredited as a level two accredited derivatives adviser if they meet certain standards. The adviser must have achieved a score of at least 80% for both the ASIC-approved level one and level two accredited derivatives adviser examinations. The adviser must also have the requisite skill set and level of integrity necessary to provide this financial advice: see Rule 2.4.8(1).

## Accredited futures adviser

- RG 265.125 A market participant must ensure that a representative who provides financial product advice in relation to futures market contracts or futures options is accredited as an accredited futures adviser: Rule 2.4.5.
- RG 265.126 An adviser may be accredited as an accredited futures adviser if they are a level two accredited derivatives adviser and have successfully completed ASIC-approved educational modules or subjects. The adviser must also understand any relevant rules and any reading materials approved by ASIC, and have the requisite skill set necessary to give financial product advice in relation to futures market contracts and futures options: Rule 2.4.6(1).

## Designated trading representatives

- RG 265.127 Rules 2.5.2 and 2.5.3 require a trading participant to ensure all trading (other than AOP trading) is done by DTRs.
- RG 265.128 DTRs are representatives of trading participants who have been authorised by the trading participant to submit trading messages to the trading platform of a market on behalf of the participant. A trading participant must ensure that its DTRs have demonstrated to the trading participant their knowledge of the dealing rules of the markets that the trading participant operates on: Rule 2.5.5.
- RG 265.129 In permitting this delegation, Rule 2.5.5 requires the trading participant to continue to ensure that their DTRs:
- (a) have the authority to deal in the financial products for which the DTR submits orders on behalf of the trading participant;
  - (b) do not execute orders which will directly or indirectly benefit themselves, their associates, or relatives, without the prior written approval of the market participant; and
  - (c) do not intentionally take advantage of an error, breakdown or malfunction.
- RG 265.130 Trading participants must ensure their DTRs are suitably qualified and experienced to deal in the relevant financial products under their AFS licence and have demonstrated to the trading participant knowledge of the dealing rules and relevant practices of the market operator as an AFS licensee and market participant: Rule 2.5.5.
- RG 265.131 ASX no longer administers system limits (e.g. special liability limits) or privileges (e.g. trader authorisation privileges) for DTRs trading on its market. We expect market participants to consider implementing these limits and privileges themselves if they consider it necessary to meet their

obligations as an AFS licensee (e.g. the obligation to have adequate risk management systems under s912A(1)(h) of the Corporations Act).

- RG 265.132 The trading participant must determine how it will meet the DTR requirements in Rule 2.5.5, taking into consideration any limits on the DTR's access to the trading platform and the financial products in which the DTR is authorised to trade. Trading participants may wish to consider:
- (a) providing their DTRs with a copy of, or access to, the current documentation published by the market operator in relation to its trading platform (e.g. ASX Trade manuals); and
  - (b) providing or arranging training for, and testing of, the DTR on the:
    - (i) operation of the market participant's order entry system;
    - (ii) operation of the trading platform; and
    - (iii) relevant market integrity rules and market operating rules.
- RG 265.133 Each of a trading participant's DTRs must be given a unique identifier: Rule 2.5.6.



## F Client relationships

### Key points

Market participants should review (and amend as needed) their existing client agreements and templates as soon as possible following any amendments to the market integrity rules.

Client records must be kept as specified by the relevant market integrity rules and held for the specified period.

### Client agreements

RG 265.134 As noted at RG 265.26, we will from time to time review, consult and amend the ASIC market integrity rules. We expect market participants to review their existing client agreements and templates as soon as possible following amendments to the ASIC market integrity rules to check that they remain compliant.

### Client detail record keeping

RG 265.135 The Securities Markets Rules require market participants to keep details of clients, client consents and client trades. Records must be kept as specified by the relevant rules and held for the specified period. They must be maintained in English (whether audio or in writing), or in a manner that can be easily converted into English so that we are able to access them: Chapter 4. The Securities Markets Rules also articulate in what circumstances a participant may rely on records kept by the market operator: Rules 4.1.5–4.1.6.

## G Best execution

### Key points

Market participants must take reasonable steps to obtain the best outcome for their clients. Best outcome means different things for different clients:

- for retail clients, it means best total consideration, which market participants may interpret as best price while there are not material differences in transaction costs between licensed markets (see RG 265.144–RG 265.153); and
- for wholesale clients, a range of factors may be relevant (see RG 265.158–RG 265.161).

A market participant must:

- have adequate policies and procedures for complying with its best execution obligation (see RG 265.188–RG 265.193);
- disclose certain information about its execution arrangements to clients (see RG 265.194–RG 265.208);
- regularly review and monitor the effectiveness of its execution arrangements (see RG 265.209–RG 265.220); and
- be able to demonstrate compliance with its arrangements (see RG 265.221–RG 265.228).

Market participants have a range of options for accessing markets: see RG 265.229–RG 265.235.

## Scope and application

RG 265.136 This section applies to market participants that trade in equity market products and CGS depository interests (collectively referred to as ‘relevant products’) and orders in relation to relevant products: Part 3.8.

Note: ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 grants participants of the NSXA and SSX markets a waiver from the obligation to comply with the provisions of Part 3.8 of the Securities Markets Rules until 16 November 2020.

RG 265.137 Best execution promotes investor protection by ensuring market participants do not place their own interests ahead of those of their clients. It facilitates market efficiency by creating a regulatory incentive for market participants to direct client orders to the market that offers the best outcome.

RG 265.138 The best execution obligation, which builds on a market participant’s existing obligations to its clients, outlines our specific expectations of market participants when handling and executing client orders in relevant products.



**Table 4: Meaning of wholesale and retail client**

Type of client	Meaning
Retail client	Clients other than wholesale clients
Wholesale client	<p>Where s761G(7) or 761GA applies, the client is a wholesale client where any of the following apply:</p> <ul style="list-style-type: none"> <li>(a) the price or value of the transaction is \$500,000 or more (as specified in regs 7.1.18(2) and 7.1.19(2) of the Corporations Regulations);</li> <li>(b) the financial product or service is provided for use in connection with a business that is not a small business (as defined in s761G(12));</li> <li>(c) when not provided for use in connection with a business, a qualified accountant certifies that the client has: <ul style="list-style-type: none"> <li>(i) net assets of at least \$2.5 million (as specified in reg 7.1.28(1)); or</li> <li>(ii) a gross income for each of the last two financial years of at least \$250,000 a year (as specified in reg 7.1.28(1));</li> </ul> </li> <li>(d) the client is a professional investor (as defined in s9); or</li> <li>(e) the client is a sophisticated investor (as defined in s761GA) with demonstrated experience in using financial services and investing in financial products</li> </ul>

RG 265.143 We consider that the best execution obligation applies to a market participant when dealing in relevant products on the following basis:

- (a) on behalf of a client on one side of a transaction;
- (b) on behalf of clients on both sides of a transaction—the requirements of both clients must be taken into account and they are both owed a duty of best execution; and
- (c) with a client on the market participant's own behalf—we consider this to be execution of the client's order, and therefore subject to the best execution obligation.

#### **What is the best outcome for a retail client?**

##### *Total consideration*

RG 265.144 For a retail client, the best outcome means the best total consideration: Rule 3.8.1(2)(a). Total consideration is defined as:

- (a) the purchase price paid by the client (for a buy order) (i.e. unit price multiplied by volume) plus transaction costs; or
- (b) the sale price received (for a sell order) (i.e. unit price multiplied by volume) minus transaction costs.

- RG 265.145 Transaction costs are defined to be all costs paid by a client that are directly related to a particular transaction and include:
- (a) any execution costs imposed by the licensed market and market participant (e.g. including any charges by a market participant for use of its crossing system);
  - (b) clearing and settlement costs; and
  - (c) commissions paid to the market participant by the client.

This would include any other costs paid by the client to third parties involved in the execution.

- RG 265.146 In assessing total consideration, a market participant may take into account implicit transaction costs such as market impact or other costs resulting from differences in speed, likelihood of execution or liquidity (see Table 5 for descriptions of these factors, typically more applicable to institutional investors), and give them precedence over the immediate price factors if they are instrumental in delivering the best total consideration. For example, this may be relevant for an order in a relatively illiquid product. However, we expect that implicit costs are unlikely to be a factor for most retail client transactions because they typically deal in order sizes that can be filled at the best displayed prices.

- RG 265.147 These cost factors must be reflected in a market participant's policies and procedures (where relevant to delivering the best total consideration) and disclosed to clients: see RG 265.188–RG 265.208.

- RG 265.148 Where material differences occur in transaction costs, we consider retail clients will expect, and should expect, a best total consideration result. Compared to taking into account more complex parameters that may be considered for wholesale clients, this will also be simpler to:
- (a) *implement*—details on costs are more readily available and comparable between markets, simplifying the selection of possible markets;
  - (b) *execute*—order transmitting capabilities need only take into account cost factors, rather than more complex parameters; and
  - (c) *evidence*—cost benchmarks are typically more available to assess execution performance against than other benchmarks.

#### *Best price*

- RG 265.149 Market participants may interpret total consideration solely as the best purchase or sale price of a relevant product while there are not material differences in transaction costs between licensed markets. We expect taking reasonable steps to obtain the best price will be simpler for market participants to fulfil and simpler for retail clients to monitor. Market participants choosing to interpret total consideration as best price should reflect this in their policies and procedures and disclose it to clients: see RG 265.188–RG 265.208.

- RG 265.150 For transactions done on an order book, we consider best price to be the best available price across all the order books of licensed markets. Where the best price (for the volume of the client order) is spread across multiple order books, the market participant should take reasonable steps to obtain the best overall price. This may include accessing each of the best prices on each order book (either directly or using an intermediary or service offered by a market operator), or it may be that the best price is achieved by transacting against one or a number of price points on a single order book.
- RG 265.151 We acknowledge that there may be occasions when the best price on an order book is in an insignificant volume (e.g. one share). In these circumstances, we do not expect a market participant to access the price. However, we expect the market participant to disclose to clients how it will manage these kinds of situations: see Table 7.
- RG 265.152 For transactions matched or executed off an order book under an exception to pre-trade transparency, market participants should consider the benefits to clients of trying to improve on the best displayed price across all order books to the extent this is possible for a particular relevant product. Where a market participant acts on behalf of both clients to a transaction and where a duty of best execution is owed to both clients, the market participant should consider whether it is possible to improve on the price for both clients. Since 26 May 2013, market participants relying on the exception under Rule 6.1.1(2)(c) have to provide meaningful price improvement when the ‘trade with price improvement’ rule applies. For example, if the best displayed bid and offer are \$5.04 and \$5.08, it would be possible to improve on the prices by trading at \$5.05, \$5.06 or \$5.07.
- RG 265.153 If or when material differences occur in transaction costs (e.g. if a competitor clearing house emerges with materially different prices), we would expect market participants to take those differences into account. We will be clear about whether we take a different interpretation of price and total consideration where market circumstances have changed, and will update this guidance accordingly. We will provide sufficient notice and lead time for market participants to prepare for any change.

*Retail client instructions*

- RG 265.154 Where a retail client provides an instruction about how an order should be handled and/or executed that is inconsistent with the obligation in Rule 3.8.1(1) to obtain the best outcome for the client, the market participant must take reasonable steps to satisfy the client’s instruction: Rule 3.8.1(3). Examples of instructions that a market participant may receive from a retail client include:
- (a) choice of market (e.g. Market X or Market Y);
  - (b) fast execution;

- (c) minimising market impact; and
- (d) obtaining greatest execution certainty.

RG 265.155 Under Rule 3.8.1(3), the instructions must be:

- (a) clear and unambiguous;
- (b) in writing or provided verbally (a record of the instruction must be kept for seven years). ‘In writing’ includes both printed and electronic form, including via email with hyperlinks or references to a website; and
- (c) specific to an order and not contained in the terms and conditions of a client agreement or any other standard form agreement provided by the market participant to the client.

RG 265.156 A market participant must not encourage or induce a client to provide specific instructions: Rule 3.8.2. That is, the instruction should be at the client’s own initiative. For example, a market participant must not include a standard clause within its client agreement to the effect that the market participant only deals on the basis of specific client instructions.

RG 265.157 Where the instruction is inconsistent with the best outcome for the client, we consider that a market participant has complied with its obligation to the extent that it has complied with the client’s instructions (provided the client’s instructions meet the requirements in RG 265.155). However, client instructions are likely to address only some aspects of order handling and/or execution. We consider the best execution obligation applies to those aspects of the handling and execution process not governed by the instruction. For example, if a retail client provides an instruction to execute an order on Market X, the market participant must still take reasonable steps to obtain the best outcome on Market X.

#### **What is the best outcome for a wholesale client?**

RG 265.158 In assessing the best outcome for a wholesale client under Rule 3.8.1(2)(b), market participants should take into account all outcomes that may be relevant for the client (which may include the outcomes outlined in Table 5). The relevance of these outcomes may vary based on matters such as the nature of the client, the client’s instructions (e.g. whether an order is a buy order, sell order, limit order, market order or an order generated by an algorithm), the order type, the product and liquidity at the time.

RG 265.159 A market participant must:

- (a) reflect the outcomes that are relevant to its clients in its policies and procedures (see Part 3.9 and RG 265.188–RG 265.193); and
- (b) disclose to clients the circumstances in which the market participant considers the outcomes are relevant to clients (see Part 3.10 and RG 265.194–RG 265.208).

**Table 5: Outcomes that may be relevant for wholesale clients**

Factors	Description
Price of the relevant product	Price is an important outcome and one that we expect most market participants will consider relevant. However, it may not represent the best outcome at a given point in time. For example, the order book of a licensed market that is displaying the best price may not have much volume, or the costs of executing on that market may be considerably more than for other markets
Costs	Costs can be both explicit (e.g. connection fees, transaction fees, or clearing and settlement fees) and implicit (e.g. market impact). A transaction may appear to have a higher cost when considering the explicit costs but may in fact be lower when implicit costs are considered. For example, a large order if executed in one lot may be subject to lower overall transaction fees than if the order was broken into many smaller parts. However, smaller transactions executed throughout the course of a day may achieve lower prices, resulting in lower overall costs
Speed	Speed is becoming an increasingly important outcome for some wholesale clients. It is important where a client needs to exit a position quickly or is concerned that the price may move in an adverse direction when they are trying to hedge a position. Speed may, however, be less relevant for clients that are taking a longer-term view of the relevant product
Execution certainty	Where a wholesale client seeks certainty that a large order will be executed, likelihood of execution may be an important outcome. The volumes available at each price point on each order book of a licensed market may be relevant. For example, it may be possible to execute smaller orders at the best price on a single order book, but larger orders may involve taking out orders across multiple price points. Executing part of a larger order on a single order book may mean subsequent executions become less favourable. Market participants should consider these issues when selecting destinations for order transmitting

RG 265.160 We consider that permitting wholesale clients to take into account a range of outcomes in general reflects the existing environment in Australia, where wholesale clients seek to achieve a range of outcomes other than best price.

RG 265.161 A market participant may nominate best price or best total consideration as the best outcome for its wholesale clients rather than other outcomes where it considers price or total consideration is the best outcome for its clients.

*Wholesale client instructions*

RG 265.162 As with retail clients, wholesale clients may provide instructions on an order-by-order basis about how an order should be handled and/or executed. Where the instruction is inconsistent with the obligation in Rule 3.8.1(1) to obtain the best outcome for the client, the market participant must take reasonable steps to satisfy the client's instructions: Rule 3.8.1(4).

RG 265.163 In addition, Rule 3.8.1(4) permits wholesale clients to provide standing instructions. For example, a wholesale client may have a standing instruction that market impact is the most important factor in assessing the best outcome if they typically deal in large sizes.



- RG 265.164 A wholesale client's instructions must be:
- (a) clear and unambiguous;
  - (b) in writing or provided verbally (a record of the instruction must be kept for seven years). 'In writing' includes both printed and electronic form, including via email with hyperlinks or references to a website; and
  - (c) not contained in the standard terms and conditions of a client agreement provided by the market participant to the client.
- RG 265.165 Rule 3.8.1(5) requires that a market participant should periodically review a standing instruction from a client to ensure it remains possible for the market participant to satisfactorily perform the instruction. The frequency of review may vary depending on the client and whether there have been material changes to the market participant's best execution arrangements (e.g. 6–12 months may be appropriate for certain instructions while a longer period may be appropriate for others).
- RG 265.166 As with retail clients, a market participant must not encourage or induce a wholesale client to provide specific instructions: Rule 3.8.2. That is, the instruction should be at the client's own initiative. For example, a market participant must not include a standard clause within its client agreement to the effect that the market participant only deals on the basis of specific client instructions.
- RG 265.167 Where a wholesale client instruction relates to only part of the market participant's handling and execution process, it does not absolve the market participant from its best execution obligation for the remainder of the order. For example, if a wholesale client provides an instruction to execute the order on Market X, the market participant must still take reasonable steps to obtain the best outcome on Market X.
- Wholesale client election for best execution protection not to apply*
- RG 265.168 Under Rules 3.8.1(4) and (5), a wholesale client can provide an instruction to opt out of the best execution protection by providing a standing instruction to this effect for up to 12 months.
- RG 265.169 As with other client instructions, Rule 3.8.2 requires that a market participant must not encourage or induce a client to opt out of its best execution protection. We would consider any such action by a market participant as a serious breach of the market participant's obligations.
- RG 265.170 The instruction to opt out of best execution protection applies for up to 12 months from the date the instruction was received by the market participant. The instruction must be renewed by the client. The market participant may notify the client that a renewal is required. We do not consider a notification of this type to be a breach of Rule 3.8.2.

- RG 265.171 Situations where a wholesale client may elect to opt out include:
- (a) a client that directly accesses a market with its own high-speed execution algorithm through the infrastructure of a market participant (i.e. direct electronic access); or
  - (b) a client that is another market participant.
- RG 265.172 The client may make this election so the market participant is not involved in the execution decision. We note that this opt-out does not alter a market participant's obligation to have appropriate controls and filters in place for direct electronic access clients (e.g. as required under Part 5.6).

### **Transactions resulting from quotes or negotiation**

- RG 265.173 The act of negotiating or providing a quote is not necessarily subject to the best execution obligation. However, if a client chooses to proceed with the quote, we consider this to be an instruction under Rule 3.8.1 and subject to best execution. Market participants must also consider the best execution obligation for any aspect of order handling and execution that may not be governed by the instruction(s).

### **Taking reasonable steps to obtain the best outcome**

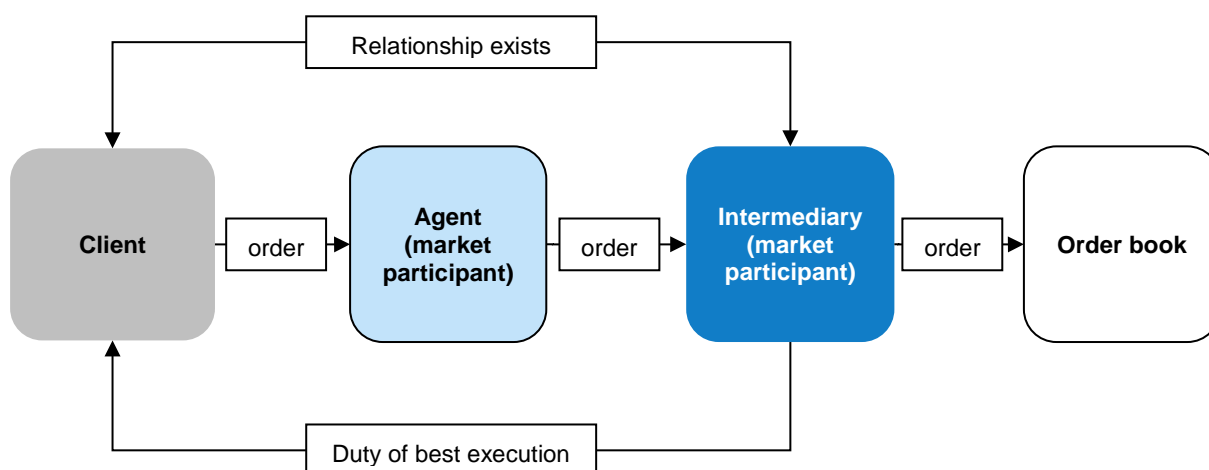
- RG 265.174 The best execution obligation applies from the moment an order is received from a client right through to settlement of the transaction. Throughout the process, market participants must take reasonable steps to obtain the best outcome for the client under Rule 3.8.1. We expect market participants to take reasonable steps to:
- (a) fully understand the client's instructions and the nature of the order (e.g. whether there are time, price or size constraints);
  - (b) consider all relevant information about prevailing market conditions (we recognise that there will be differences in latency in the delivery of information between licensed markets, data vendors and the systems of the market participant);
  - (c) ensure appropriate timing of order entry onto an order book or other matching mechanism (if permitted under a pre-trade transparency exception)—for example, it may be necessary to delay the entry of an order in a less liquid stock until there is sufficient liquidity to execute against; and
  - (d) choose an order book or other matching mechanism (if permitted under a pre-trade transparency exception) that will achieve the best outcome for the client. Choice of market should be considered in light of the relevant outcomes being sought (see Table 5 for outcomes that may be relevant), as well as the associated clearing and settlement arrangements and costs.

- RG 265.175 We consider that a market participant will have taken reasonable steps to obtain the best outcome for its clients if it has complied with its best execution arrangements (where those arrangements have demonstrated that they consistently deliver the best outcome), and it executes client orders based on the best information at the time.
- RG 265.176 In addition to taking the above reasonable steps that we consider essential to delivering the best outcome to clients, a market participant must:
- (a) have adequate policies and procedures reflecting their best execution arrangements (see Part 3.9 and RG 265.188–RG 265.193);
  - (b) disclose details of the arrangements to clients (see Part 3.10 and RG 265.194–RG 265.208);
  - (c) monitor and review their best execution arrangements (see Part 3.9 and RG 265.209–RG 265.220); and
  - (d) evidence compliance with the arrangements to clients on request (see Part 3.11 and RG 265.221–RG 265.228).

#### **Chain of execution**

- RG 265.177 Where a market participant seeks to execute a client order by placing it with an intermediary, the duty of best execution for the client under Rule 3.8.1 remains the obligation of the original market participant.
- RG 265.178 A market participant should only pass client orders to an intermediary whose arrangements will enable the market participant to comply with its own best execution obligation. We expect the market participant to take into account the results that the intermediary can achieve (e.g. by monitoring the quality of the intermediary's execution).
- RG 265.179 Where a client places an order with an AFS licensee that is not a market participant, the AFS licensee is subject to the obligations in the Corporations Act.
- RG 265.180 We consider that where a market participant is an intermediary, the market participant owes a duty of best execution to a client where the client deals with an agent, and that agent executes the client order by placing it with the market participant and the market participant:
- (a) also has a relationship with the client (and the terms of business have been agreed); and
  - (b) is aware that the first market participant is acting as an agent (e.g. in an advisory capacity only) for the client.

This is illustrated in Figure 1.

**Figure 1: Duty of best execution**

Note: See RG 265.180 for the processes set out in this flowchart (accessible version).

RG 265.181 When passing client orders, the market participant should provide sufficient instructions to ensure the client receives the best outcome. We understand that the level of instructions may vary. For example, there may be circumstances where the market participant chooses to retain considerable control over the order execution (e.g. by nominating the order book that the order should be executed on), or it may give substantial control to the intermediary to determine where to execute the order.

RG 265.182 An example of a situation where we would consider it inappropriate to pass a client order to an intermediary is where the intermediary would transmit the order to an order book that has no liquidity in the particular relevant product. It may also be inappropriate to pass the order to an entity that is not a market participant (given the entity will not be subject to the best execution obligation) unless the market participant is satisfied the use of the intermediary will enable the market participant to deliver the best outcome.

### **Market participant commissions should not discriminate between licensed markets**

RG 265.183 A market participant may not structure or charge commissions in such a way as to discriminate between licensed markets unless the difference reflects differences in the market fees: Rule 3.8.3. Commissions or spreads charged to clients should ideally reflect the differences in the cost of executing on each market.

RG 265.184 For example, where Market X's fees are \$10 for a particular transaction and Market Y's fees are lower (e.g. \$5 or may even pay a rebate) for the same transaction, the commission paid by a client to a market participant should as far as possible reflect that Market Y is the cheaper market to transact on. We encourage market participants that have fixed rate commissions to consider whether clients could benefit from having the market fees and rebates passed on.

### Order flow incentives and bundled services

- RG 265.185 The best execution obligation means that market participants must ensure that the primary focus when executing client orders is to obtain best execution.
- RG 265.186 Order flow incentives, such as volume rebates or rebates for certain types of orders, can influence how and where market participants direct client orders for execution. Directing orders in return for some benefit would represent a conflict of interest if the market participant was placing its own interests ahead of its client's interests and therefore not achieving best execution. Such activity may result in a breach of Rule 3.8.1.

Note: For guidance on Rule 5.4B.1 (Prohibition on order incentives) see RG 265.514–RG 265.524.

- RG 265.187 Bundling is the practice of providing other services (such as advice, research, data and analytical tools) in conjunction with trade execution. We consider that transmitting a client order to a licensed market, market participant or other service provider which offers bundled services does not in itself meet the best execution obligation because it may not result in the best outcome being obtained for a client. Such activity may breach Rule 3.8.1. We consider that the best execution obligation requires client orders to be transmitted based on best execution for the client independently of any bundled services.

## Policies and procedures

- RG 265.188 A market participant that deals with client orders must establish, document and implement adequate policies and procedures to ensure it complies with the best execution obligation and complies with its policies and procedures: Rules 3.9.1 and 3.9.2. We consider that the policies and procedures should reflect a market participant's strategy for obtaining the best outcome for handling and executing client orders.
- RG 265.189 Under Rule 3.9.1(2), the policies and procedures must at least set out:
- (a) the order books or other matching mechanism to which client orders may be transmitted;
  - (b) how client orders will be handled and executed, including the circumstances in which orders will be transmitted to each listed order book or other matching mechanism. It must also include the circumstances in which the transmission will be automated or manual; and
  - (c) arrangements to monitor the policies, procedures and implementation.
- RG 265.190 To comply with this requirement, market participants should consider the matters outlined in Table 6 and address them where relevant.

**Table 6: What should policies and procedures address?**

Matters	Information that market participants should consider including
<p>Identification of order books or other mechanisms (if permitted under a pre-trade transparency exception) where orders may be matched or executed</p>	<p>A market participant should list the order books of licensed markets and other mechanisms (permitted under a pre-trade transparency exception) on which client orders may be matched or executed: Rule 3.9.1(2)(a)</p> <p>Examples of matching or execution arrangements other than an order book include third-party crossing systems, a market participant's own internalisation arrangements or crossing system, and OTC trading arrangements</p>
<p>Handling client orders and circumstances in which client orders will be transmitted</p>	<p>A market participant should outline its approach to handling orders from the time an order is received to the time it is settled. It should be clear from the description why the market participant's approach will deliver the best outcome for clients</p> <p>It should also outline the circumstances in which client orders may be transmitted to each order book or other matching mechanism (if permitted under a pre-trade transparency exception): Rule 3.9.1(2)(b)</p> <p>For a retail client, this should reflect how to obtain the best total consideration (or price). For wholesale clients, this should be based on the outcomes the market participant considers relevant to its clients. See Table 5 for some outcomes that may be relevant (more typically for institutional investors)</p> <p>The policies and procedures should allocate the relative importance, or the process for determining the relative importance, the market participant places on the possible outcomes for wholesale clients. It should also include information on how these outcomes affect the market participant's choice of order books or other matching mechanisms permitted under a pre-trade transparency exception</p> <p>In developing policies and procedures for assessing relative importance, a market participant should consider the characteristics of:</p> <ul style="list-style-type: none"> <li>• the client (including whether retail or wholesale);</li> <li>• the client order (e.g. market, limit, fill or kill);</li> <li>• the particular relevant product; and</li> <li>• the order books of licensed markets to which the order can be directed and any matching mechanisms outside an order book that may be used subject to a pre-trade transparency exception</li> </ul> <p><i>Differing trading hours:</i> Where trading hours vary across order books of licensed markets and a market participant is able to access more than one market, we expect a market participant's policies and procedures to address the handling of orders when not all licensed markets are open and available for trading. This includes before the opening and after the close of the traditional trading hours of the responsible market operator's market, or when certain licensed markets may be unavailable for trading for system or technical reasons</p> <p>Specifically, policies and procedures should address the handling of immediately executable orders (e.g. market orders) received before the opening of the listing market or when not all licensed markets are open. A market participant can adopt whatever policy it considers most appropriate to deliver the best outcome to its clients. For example, the policy may state that the market participant will hold orders received outside trading hours until all markets open or the responsible market operator's market opens (where considered to consistently deliver the best outcome)</p>

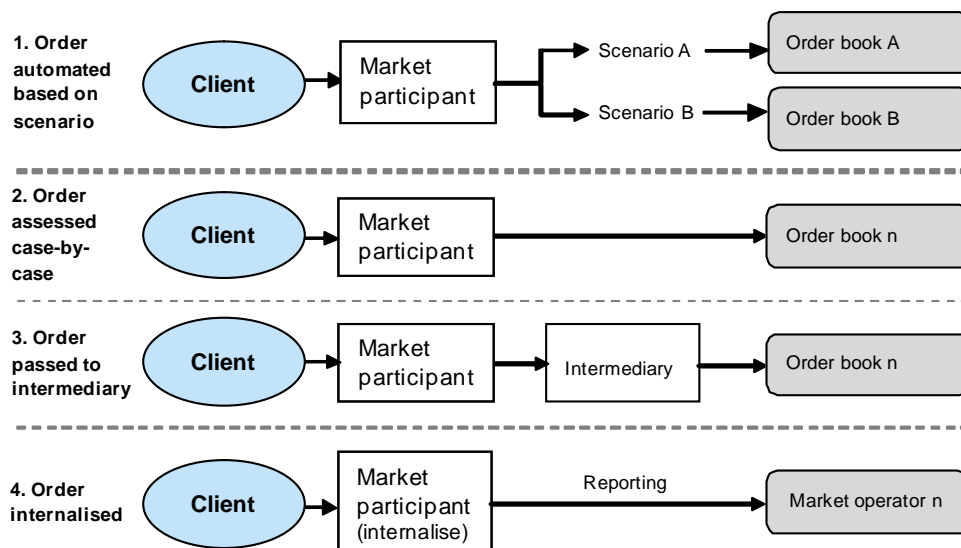
Matters	Information that market participants should consider including
Handling client orders and circumstances in which client orders will be transmitted (cont.)	<p><i>Differing opening and closing mechanisms:</i> A market participant should also consider the opening mechanism adopted by each licensed market and the impact of that mechanism on the probability of execution and the quality of that execution (e.g. an opening auction compared to opening straight into continuous trading). The auction is likely to receive considerably more buying and selling interest</p> <p>We consider that a market participant should regularly monitor the quality of the executions obtained for opening orders to be able to determine that the licensed market chosen as the location for entering opening orders generally offers best execution for that particular relevant product: Rule 3.9.1(2)(c). The same considerations will apply to handling orders at the market close where licensed markets have differing closing mechanisms</p> <p><i>Price movement after order transmitted:</i> Prices may vary after a market participant transmits an order. For example, a better price may become available on the order book of Market X after transmitting an order to Market Y. The policies and procedures should outline how a market participant intends to handle this situation. We consider that for immediately executable orders that have been transmitted to an order book taking into account the available information at the time, there is no requirement to retransmit the order</p> <p>However, if a market participant chooses to retransmit the order to another market, before doing so, the market participant should consider certainty of execution (i.e. risk that the price will no longer be available after the order is retransmitted and the risk of losing priority in the queue of the first market). Equally, if there is considerable volume at the new price and reasonable certainty that the order will execute at the better price, it may be appropriate to retransmit the order</p> <p><i>Market outages:</i> A market participant should consider how its order handling and execution arrangements will adapt to trading halts and suspensions on a single market (e.g. system failure on the responsible market operator's market), or all licensed markets or a crossing system it operates (or routes orders to). To the extent possible, a market participant should also consider its default arrangements in the event of unforeseen circumstances</p> <p><i>Limit orders:</i> A market participant should outline how it handles limit orders, particularly those that are away from the current market price. Among other relevant factors, we consider the policy and procedures should take into account liquidity and certainty of execution. These factors would apply equally to wholesale and retail clients because they would contribute to the ability of the retail client to ultimately get the best total consideration (or price as the case may be)</p>
How client orders will be transmitted to the order books of licensed markets or other matching mechanisms (if permitted under a pre-trade transparency exception)	<p>A market participant should outline the mechanisms used for transmitting client orders to the order books of licensed markets and other matching mechanisms (if permitted under a pre-trade transparency exception), including documenting any manual and automated processes (Rule 3.9.1(2)(b)), and the circumstances in which the mechanisms will be used</p> <p>Where a market participant has fully, or in part, automated its order handling processes, it should ensure that the technologies employed are designed to comply with its best execution obligation. A market participant should document the logic of how the automated order handling process operates, including dependencies and parameters. Any changes to such systems should be documented, including the rationale for the change</p>
Monitoring policies and procedures	<p>A market participant should ensure there are appropriate arrangements in place to monitor the quality of execution received for clients and whether its policies and procedures are obtaining the best outcome for clients: Rule 3.9.1(2)(c). Our expectations about monitoring are outlined in RG 265.209–RG 265.220</p>



RG 265.191 We encourage market participants to ensure that their policies and procedures are designed or tailored according to the nature, scale and complexity of their business and the client orders received. We expect that, in most cases, market participants will need to differentiate policies and procedures by client characteristics. A market participant may choose to also differentiate by liquidity of relevant product, order type or licensed market, or make an assessment on a case-by-case basis.

RG 265.192 Some of these choices are illustrated in Figure 2. For example, small orders in liquid products may be suited to an automated, high-volume process (e.g. line 1 in Figure 2). In contrast, closer attention may be necessary for large orders in the same product, including in some instances a case-by-case assessment (e.g. line 2 in Figure 2). Market participants may pass some orders through an intermediary (e.g. line 3 in Figure 2) or internalise orders and report it to the market operator (e.g. line 4 in Figure 2).

**Figure 2: Examples of order transmitting in best execution policies**



Note: See RG 265.192 for the processes set out in this flowchart (accessible version).

RG 265.193 Comprehensive and robust internal policies and procedures for best execution, and ongoing monitoring and review of these policies and procedures, will help to ensure market participants are successful in delivering the best outcome to their clients.

## Disclosure to clients of best execution arrangements

### Information to be disclosed

RG 265.194 Under Rule 3.10.1(1), a market participant must disclose the following matters to clients about its best execution arrangements:



- (a) that the market participant is required to handle and execute client orders in accordance with the best execution obligation in Rule 3.8.1 (i.e. to take reasonable steps to obtain the best outcome for clients);
- (b) how the best execution obligation affects the handling and execution of the client's orders;
- (c) the order books of licensed markets and any place other than an order book, for example other matching mechanisms (as permitted under a pre-trade transparency exception), to which the market participant may transmit client orders;
- (d) the circumstances in which client orders will be transmitted to each of these destinations; and
- (e) that the market participant must take reasonable steps to handle and execute the client's orders in a way which satisfies any instructions that are inconsistent with the market participant obtaining the best outcome for the client and, as a result, may not achieve the best outcome for the client.

RG 265.195 This is a one-way communication to clients. It is not necessary for clients to acknowledge or consent to the disclosure. Our expectations about how market participants should comply with this disclosure obligation are described in Table 7.

**Table 7: Matters to disclose to clients**

Matters	Information to be disclosed
Best execution obligation	That the market participant has an obligation to obtain the best outcome for clients when handling and executing client orders
How the best execution obligation affects the handling and execution of client orders	<p>Disclosure to clients should include the appropriate level of detail of information about a market participant's handling and execution arrangements that a client would reasonably require to enable them to make an informed decision about whether to use the services of the market participant</p> <p>Disclosure should be clear about what the best execution obligation means for how a client order will be handled and executed. For retail clients, this should include what best total consideration or best price means in practice. For wholesale clients, this should include the outcomes the market participant considers relevant, as well as any trade-offs among these outcomes. For example, if likelihood of execution is considered the most important outcome, the trade-off may be price</p> <p>A market participant may also provide additional information to clients about its order handling practices to help them understand how their orders may be handled—for example, statistics about the relevant products and volume and size of orders transmitted to the various order books of licensed markets and other matching mechanisms (if permitted under a pre-trade transparency exception)</p> <p><i>Client instructions:</i> The circumstances in which client instructions can be accepted and acted upon (e.g. where instructions are inconsistent with the best outcome, only order-by-order instructions can be accepted for retail clients, whereas for wholesale clients, standing instructions can be made subject to the requirements in RG 265.155 and RG 265.164). A market participant should provide a warning upfront that the use of specific instructions may result in a client not obtaining the best outcome</p>

Matters	Information to be disclosed
Identification of order books and other matching mechanisms (if permitted under a pre-trade transparency exception)	<p>The mechanisms by which client orders may be matched and executed</p> <p>This should identify the order books of licensed markets where transactions are executed or reported, as well as any other matching mechanism permitted under a pre-trade transparency exception (e.g. crossing system) that the market participant places significant reliance on</p>
Circumstances in which orders are transmitted	<p>The circumstances in which orders may be transmitted to the order books of licensed markets and/or other matching mechanisms</p> <p>If a market participant's policies and procedures for retail clients mean that client orders will not be transmitted to a market that has a very small volume at the best price (e.g. one share), we expect the market participant to disclose to clients the minimum volume it will transmit. This should reflect the value of the relevant product. For example, a minimum volume of 100 may be appropriate for a \$2 share but may not be appropriate for a \$100 share</p> <p>If a market participant's best execution arrangements allow for a client order to be executed under a pre-trade transparency exception, the market participant should disclose on what basis this will occur (e.g. price improvement, volume improvement or managing market impact). Where it is on the basis of price improvement, the parameters should be disclosed (e.g. how this would apply where the market participant is acting on behalf of both clients to a transaction)</p> <p>If a market participant's approach is to route orders to a crossing system prior to order books of licensed markets, we expect the market participant to disclose to its clients the benefits of this approach as well as any potential detriment to clients (e.g. latency)</p> <p><i>Differing trading hours:</i> Where a market participant includes more than one licensed market in its policies and procedures and the trading hours of the licensed markets differ, we expect the market participant to disclose to the client how orders received outside traditional trading hours will be handled under its policies and procedures. For example, will a market order received outside these hours be transmitted to a licensed market that is open, or wait for the responsible market operator's market to open, and on what basis?</p>

RG 265.196 Under Rules 3.8.1(3) and (4), a market participant must not attempt to limit the best execution obligation through disclosure (e.g. through the terms and conditions of a client agreement by a market participant to the client). This can undermine the intention of the best execution obligation.

RG 265.197 Disclosure of certain execution arrangements to clients will enable those clients to better assess whether they are likely to receive best execution. It should include the most important and/or relevant aspects of the market participant's best execution arrangements.

### When to make the disclosure

RG 265.198 Under Rules 3.10.1 and 3.10.2, the best execution disclosure should be made:

- (a) before accepting a client order for the first time;
- (b) on the request of a client; and
- (c) when there is a material change to the market participant's best execution arrangements.

- RG 265.199 For the purposes of RG 265.198(c), a material change is where disclosure is necessary to enable a client to make a properly informed decision about whether to continue using the services of the market participant. For example, a market participant may no longer include in its policy a licensed market that had consistently achieved the best outcome for clients, or it may materially alter the circumstances in which client orders are transmitted to order books of licensed markets and other matching mechanisms (if permitted under a pre-trade transparency exception). We do not expect minor changes to be disclosed.
- RG 265.200 There is no requirement for clients to acknowledge or consent to the disclosure.
- RG 265.201 When considering their existing clients, if a market participant takes the view that an existing client is inactive, and is unlikely to place an order with the market participant in the foreseeable future, we will not take action in relation to compliance with Rule 3.10.1 if the disclosure required by Rule 3.10.1 is given before accepting the next order from the client.
- RG 265.202 A market participant should have appropriate arrangements in place to identify when disclosure is required under Rule 3.10.1 and to make that disclosure before acting on an order from the client.

#### **Wholesale client election to not receive best execution disclosure**

- RG 265.203 Under Rule 3.10.1(6), a market participant need not make a disclosure to a wholesale client if the market participant and wholesale client agree it is not required and the terms of the agreement are:
- (a) clear and unambiguous;
  - (b) in writing (a record of the instruction must be kept for seven years). ‘In writing’ includes both printed and electronic form, including via email with hyperlinks or references to a website; and
  - (c) not contained in the standard terms and conditions of a client agreement or other standard form agreement provided by the market participant to the client.

#### **How to make the disclosure**

- RG 265.204 A market participant must make its best execution disclosure to clients in writing and keep this disclosure for seven years: Rule 3.10.1(4). We consider that the disclosure may be made in printed or electronic form, including via email with hyperlinks or references to a website. This is the same approach as for Financial Services Guides (FSGs) in RG 221.
- RG 265.205 Where a client asks for the disclosure to be made in print form (e.g. if they do not have access to electronic communications), we expect the market

participant to provide it in print form. Ultimately, a market participant needs to be able to demonstrate that the disclosure has been made to the client.

RG 265.206 While we do not intend to prescribe the mechanism for disclosure, a market participant may choose to:

- (a) include the disclosure in its FSG (where a market participant is already required to provide an FSG);
- (b) incorporate the disclosure into its terms and conditions; or
- (c) make the disclosure independently.

RG 265.207 A market participant cannot comply with Rule 3.10.1(2) solely by updating its website each time there is a material change. Where a market participant uses its website to provide the summary of material changes for the purposes of Rule 3.10.1(2), we expect that steps would be taken to ensure that clients are aware of the new information on the website. This may be done through an email with a hyperlink to the website, or through another form of written (paper or electronic) notice that the summary of changes is available on the website. This should occur each time there is a material change.

RG 265.208 A market participant must not encourage or induce a wholesale client to agree that it is not required to disclose the matters outlined in Table 7: Rule 3.8.2(2). That is, the request should be at the client's own initiative. For example, a market participant must not include a standard clause within its client agreement to the effect that it will not make the disclosures required under Rule 3.10.1, or that in any way limits its obligations under Rule 3.10.1.

## Monitoring and reviewing best execution arrangements

### Monitoring best execution arrangements

RG 265.209 We do not intend to approve market participants' best execution policies and procedures, nor do we intend to test that every individual transaction achieves the best outcome. However, we do expect a market participant to be able to demonstrate that its best execution policies and procedures enable it to consistently deliver the best outcome for clients and that client orders have been handled and executed in accordance with its policies and procedures or with client instructions (as required by Part 3.11).

RG 265.210 How a market participant demonstrates that its policies and procedures are reasonably designed to comply with its best execution obligation and that it has complied with its policies and procedures and client instructions is in large part dependent on the nature of its clients and the complexity of the client orders it handles and executes.

- RG 265.211 In any event, Rule 3.9.1(2)(c) requires a market participant to have arrangements to monitor its policies, procedures and implementation of the best execution obligation. To comply with this rule, we expect a market participant to monitor on a regular basis:
- (a) whether it has complied with its best execution arrangements; and
  - (b) the effectiveness of the arrangements in meeting its best execution obligation (i.e. whether it is obtaining the best outcome for clients).
- RG 265.212 A market participant could monitor transactions it has done on behalf of clients with similar transactions done by other market participants on the same markets.
- RG 265.213 We encourage market participants to consider setting measures to assess the effectiveness of the policies and procedures in obtaining the best outcome for clients. Examples of possible measures are outlined in Table 8. These measures may assist market participants in selecting venues to match and execute client orders, determining appropriate outcomes and assessing the trade-offs associated with the different outcomes.

**Table 8: Possible measures of best execution performance**

Factors	Possible measures
Price of the relevant product	A comparison of the prices achieved or achievable on each order book or other matching mechanism (if permitted under a pre-trade transparency exception) against the best available bid and offer at the time
Costs	<p><i>Explicit costs:</i> A comparison of the explicit costs involved in matching or executing orders on each order book or other matching mechanism (if permitted under a pre-trade transparency exception). This could take into account the fees and rebates for various order sizes and types, costs for software and connectivity, market participant membership costs, and clearing and settlement costs</p> <p><i>Implicit costs:</i> This is harder to measure. For market impact costs, a comparison of the market movement in response to similar size order entry for a particular relevant product on each market may be relevant</p>
Speed	Statistics that show the time taken for orders to match or execute on each order book or other matching mechanism (if permitted under a pre-trade transparency exception). This could be broken down by the relevant product and size of order
Execution certainty	<p>Statistics on fill rates on each order book or other matching mechanism (if permitted under a pre-trade transparency exception) for each relevant product, taking into account order size</p> <p>An assessment of volumes available at each price point on each order book or other matching mechanism (if permitted under a pre-trade transparency exception) may also be relevant</p>

Factors	Possible measures
Other measures	Statistics on the volume and speed of execution on each order book or other matching mechanism (if permitted under a pre-trade transparency exception) for specific order characteristics (e.g. buy order, sell order, limit order, market order, and orders generated by an algorithm)

RG 265.214 A range of data on relevant products is available to market participants. Market-specific and consolidated pre-trade and post-trade transparency data is likely to be the primary source of data. Market operators may also choose to make data available to market participants to assist with this exercise. We will continue our consultation with industry on whether market operators and market participants should make available statistics on execution quality and order transmitting.

RG 265.215 We expect a market participant to keep records of the monitoring it undertakes, including the results and any consequential modifications to policies and procedures.

### Reviewing best execution arrangements

RG 265.216 Under Rule 3.9.3, a market participant must review its best execution policies, procedures and implementation:

- (a) each time there is a material change in circumstances that affects where the market participant may transmit client orders; and
- (b) when the results of monitoring its best execution arrangements suggest its policies and procedures are not obtaining the best outcome for clients.

RG 265.217 For example, a market participant using only one order book of a licensed market might have to review its approach if a new market operator enters the market, or if an order book of an existing market operator obtains substantial liquidity in the relevant products in which the market participant transacts on behalf of clients. Market participants may have to reconsider their best execution arrangements if there is a significant change to trading functionality on an existing market.

RG 265.218 In reviewing its policies and procedures, a market participant should consider whether it should make changes to improve overall performance. It should also consider whether the relative importance it has assigned to the order books of licensed markets and other matching mechanisms (if permitted under a pre-trade transparency exception) has led it to consistently deliver the best outcome for its clients.

RG 265.219 We encourage market participants to consider whether they could consistently obtain better outcomes if they were to transmit orders to an

order book of another licensed market or if changes were made to any other aspect of the policy.

- RG 265.220 We expect a market participant to monitor the various licensed markets to determine which relevant products are available on each order book for the purposes of monitoring and reviewing its best execution arrangements.

## Evidencing how client orders are executed

### At client's request

- RG 265.221 On receipt of a reasonable request by a client, a market participant must demonstrate that the client's order or orders have been executed in accordance with the market participant's policies and procedures: Rule 3.11.1(1).
- RG 265.222 What is a 'reasonable request' may vary. We consider a request to provide evidence of the basis on which an order was executed is reasonable where it is made shortly after the client receives confirmation of the transaction. An example of a scenario where a market participant may determine that a request is not reasonable is where it relates to every order executed on behalf of the client over a long period of time (e.g. several years).
- RG 265.223 The nature of evidence required may also vary based on the client request and the market participant's record-keeping arrangements. We do not intend to prescribe the nature of the evidence. However, any evidence provided to a client should address the client's request and be clear to the client how their order was handled in the context of the market participant's best execution arrangements.

### Timing of provision of information

- RG 265.224 Rule 3.11.1(2) requires that a market participant must demonstrate compliance to the client within a reasonable time after receiving the request. The time will vary based on the nature of the request. For a straightforward request (e.g. relating to a single recent client transaction), we expect it should take no more than a matter of days. For requests requiring considerable time and effort (e.g. relating to many transactions or to historical transactions), the market participant may require more time. We expect the market participant to notify the client when more time than usual is required to prepare the request and to give an indicative timeframe for fulfilling the request.
- RG 265.225 Provision of information to clients about how their orders are handled and executed will enable clients to assess what happens to their information and to assess the quality of execution they receive.



## Records

- RG 265.226 A market participant must keep information so it has evidence that each client order has been executed in accordance with the policies and procedures that the market participant has in place: Rule 3.11.2. This information must be kept for seven years.
- RG 265.227 The type of information that a market participant should keep will vary based on the nature and size of the market participant and the mechanisms for handling client orders. Records relating to a manual process may include notes made by the relevant trader, whereas records relating to an automated process are likely to be retained as part of an electronic audit trail. We expect that in most cases there should be records relating to:
- (a) the client instruction;
  - (b) the steps taken in handling the order; and
  - (c) the basis for selection of an order book or other matching mechanism (if permitted under a pre-trade transparency exception), which will often include the details of the prevailing market conditions such as the current best bid and offer and associated volumes.
- RG 265.228 Maintaining accurate and complete records of order handling and execution decisions will enable market participants to more effectively monitor and review their execution arrangements and help ASIC in assessing compliance.

## Access to markets

- RG 265.229 The best execution obligation requires market participants to transmit orders to the markets offering the best outcome. We are establishing a regulatory environment to promote a competitive market environment between licensed markets offering trading services in relevant products. Therefore, market participants should consider the respective merits of all order books of licensed markets.

### **How many licensed market order books should a market participant access?**

- RG 265.230 It is not our expectation that every market participant must connect to every order book offering relevant products. It may be reasonable in some circumstances to decide against connecting to all order books. For example, a market participant might minimise execution costs significantly by transmitting orders to one or a few order books of licensed markets (with these cost savings passed on to the client), or the relevant products that a market participant deals in might not be available on other order books.
- RG 265.231 We expect all market participants to consider their best execution obligation under the market integrity rules and to review their execution strategy to



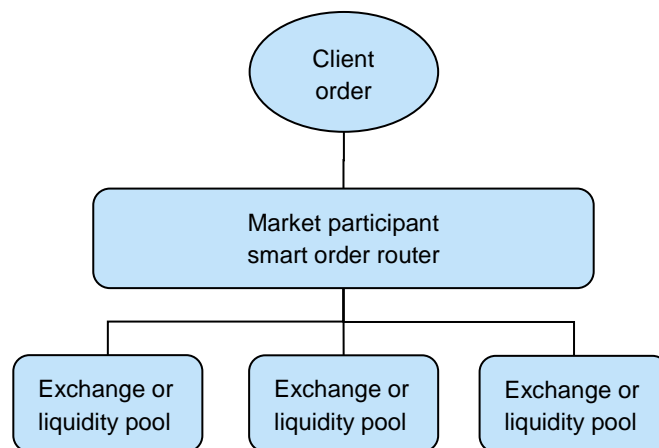
ensure it is possible to deliver the best outcome for their clients. The test for a market participant that is considering having access to only one or a limited number of order books is whether it can demonstrate that it has taken reasonable steps to deliver the best outcome and whether in practice it can consistently obtain the best outcome for its clients.

- RG 265.232 If a market participant chooses not to connect to a market directly, it should consider the advantages of indirect access (i.e. transmitting its client orders to another execution intermediary, rather than executing those orders itself).

### Smart order routing

- RG 265.233 Market participants may use tools to connect to multiple order books of licensed markets to scan the various markets to determine which one delivers the best outcome on the basis of predetermined parameters and to transmit orders to the selected order books and other matching mechanisms (if relevant). Smart order routers (SORs) provide these linkages (to transmit client orders to multiple exchanges or crossing systems): see Figure 3. We expect that in Australia a number of vendors will offer SORs and some market participants will build their own.

**Figure 3: Smart order routers**



Note: See RG 265.233 for the process shown in this flowchart (accessible version).

- RG 265.234 We expect a market participant, in accordance with its obligation under Rule 3.9.3, to review policies, procedures and implementation of its SOR or other automated processes to verify that they remain compatible with the market participant's best execution policies and procedures. This applies irrespective of whether the SOR or automated processes have been developed by the market participant or provided by a third party. The results of all tests should be kept by the market participant for seven years and be available for ASIC to review on request.

## **Direct electronic access to markets**

RG 265.235 Where a market participant provides clients with direct electronic access to an order book, we consider that the best execution obligation still applies to the extent that the market participant must take into account the client's instructions (e.g. to have fast access): Rule 3.8.1. A market participant must outline any parameters for the client's SOR or manual processes to select the order books to transmit an order or orders to. A market participant must also consider the best execution obligation for any aspect of order handling and execution that may not be governed by the instruction(s).

## H Suspicious activity reporting

### Key points

Under Rule 5.11.1, a market participant must notify ASIC if it has reasonable grounds to suspect that a person has placed an order or entered into a transaction:

- while in possession of inside information; or
- which has the effect of creating or maintaining an artificial price or a false or misleading appearance in the market or price for trading in financial products.

See RG 265.237–RG 265.244.

We do not expect a market participant to actively seek to detect reportable matters: see RG 265.245–RG 265.256.

A market participant should have a clear, well-understood and documented process for complying with its obligations under Rule 5.11.1: see RG 265.271–RG 265.275.

Notifying ASIC of a reportable matter under Rule 5.11.1 does not relieve market participants from compliance with other obligations, including significant breach reporting to ASIC under s912D of the Corporations Act and other reporting requirements to AUSTRAC: see RG 265.276–RG 265.285.

Where a market participant has reported information to AUSTRAC under anti-money laundering (AML) reporting legislation, it is not required to notify ASIC of the same information under Rule 5.11.1: see RG 265.282.

- RG 265.236 This section provides guidance on a market participant’s obligations under Part 5.11 of the Securities Markets Rules. This includes guidance on the obligations for market participants operating a crossing system on a financial market in this jurisdiction.

### What suspicious activity must be reported?

- RG 265.237 Under Rule 5.11.1, a market participant must notify ASIC in writing, as soon as practicable, if it has reasonable grounds to suspect that:
- (a) a person has placed an order or entered into a transaction on a market while in possession of inside information; or
  - (b) a transaction, or an order transmitted to a trading platform of a market, has or is likely to have the effect of:
    - (i) creating an artificial price for trading in financial products on a market;

- (ii) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a market;
- (iii) creating or causing the creation of a false or misleading appearance of active trading in financial products on a market; or
- (iv) creating or causing the creation of a false or misleading appearance with respect to the market, or price, for trading in financial products on a market.

These are collectively referred to as ‘reportable matters’ in this guide.

Note: Rule 5A.4.2 sets out the obligations of a crossing system operator in relation to reportable matters. As noted in RG 265.349, the guidance in this Section H applies to crossing system operators’ obligations to report suspicious activity on a crossing system.

- RG 265.238 Market participant notifications under Rule 5.11.1 provide ASIC with a valuable supplementary source of market intelligence which, when combined with other information available to ASIC, helps us to focus our investigations and resources.
- RG 265.239 Rule 5.11.1 requires a market participant to notify ASIC in writing with details of the relevant transaction or order, and the reasonable grounds it has to suspect there is a reportable matter: see RG 265.257–RG 265.264 for guidance on the meaning of ‘reasonable grounds to suspect’ and RG 265.289–RG 265.291 for guidance on the content of notifications under Rule 5.11.1.
- RG 265.240 The obligation to notify ASIC in writing under Rule 5.11.1 arises whether or not a market participant has knowledge of all the details surrounding the transaction or order, the identity of any insider (if the reportable matter relates to a person trading with inside information) or the intention of any party to a transaction or order (if the reportable matter relates to the effect on a market).
- RG 265.241 Market participants also have an obligation to submit suspicious matter reports (SMRs) to the Australian Transaction Reports and Analysis Centre (AUSTRAC) under s41 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and s16 of the *Financial Transaction Reports Act 1988* (FTR Act) (collectively referred to in this guide as ‘AML reporting legislation’). To avoid double-reporting, Rule 5.11.1(2) provides that, where a market participant has reported information to AUSTRAC under AML reporting legislation, it is not required to notify ASIC of the same information under Rule 5.11.1(1): see RG 265.281–RG 265.285 for further information about the interaction between Rule 5.11.1 and the AML reporting legislation.
- RG 265.242 Under Rule 5.11.2, a market participant must not disclose to any person that it has notified ASIC of a reportable matter, nor disclose the information

contained in the notification: see RG 265.292 for further information about Rule 5.11.2, including exceptions to the rule.

- RG 265.243 Under Rule 5.11.1, a market participant is not required to form a view about whether a person has, or would have, a defence available if prosecuted for a contravention of any provision of the Corporations Act or any market integrity rule, or about whether all the elements of insider trading or market manipulation exist.
- RG 265.244 A market participant will need to decide on a case-by-case basis whether there are reasonable grounds to suspect there is a reportable matter. Table 9 and Table 10 provide guidance on when we would generally expect a market participant to consider notifying ASIC under Rule 5.11.1. These examples are not intended to provide an exhaustive list. There will be situations that do not fall squarely within any of the examples included in this guide where there would be reasonable grounds to suspect that a reportable matter has occurred.

### **Obligation to report, not actively investigate**

- RG 265.245 We do not expect a market participant to actively seek to detect reportable matters for the purposes of Rule 5.11.1. Rather, the rule requires market participants to report activity they become aware of in the ordinary course of their client and proprietary trading activities.
- RG 265.246 The obligation under Rule 5.11.1 is to report information that is known. The obligation under Rule 5.11.1 does not require a market participant to put in place new surveillance arrangements to detect circumstances that may trigger a reporting obligation.
- RG 265.247 As part of its arrangements to comply with its current obligations under the law, a market participant will have in place existing trading safeguards and monitoring mechanisms. These may include system alerts, and procedures and processes which, at a minimum:
- (a) ensure that it does not do anything which results in a market for a financial product not being both fair and orderly (Rule 5.9.1);
  - (b) enable it to consider the circumstances of an order set out in Rule 5.7.2 to prevent the submission of orders that have the effect of, or are likely to have the effect of, creating a false or misleading appearance of active trading in a financial product or with respect to the market for, or the price of, a financial product (Rule 5.7.1);
  - (c) ensure that its AOP system does not interfere with the efficiency and integrity of a market or the proper functioning of a trading platform (Rule 5.6.1);
  - (d) for AFS licensees, ensure that it complies with, and takes reasonable steps to ensure that its representatives comply with, the financial services laws (s912A(1)(c) and (ca) of the Corporations Act).

- RG 265.248 Some market participants may also be subject to obligations under the AML/CTF Act to collect ‘know your customer’ information and conduct ‘ongoing customer due diligence’. We expect that these existing processes will, in some circumstances, be a source of information that a market participant should take into account in determining whether a reportable matter exists (e.g. details of a client’s investment profile or a client’s financial means—see Table 9 and Table 10).
- RG 265.249 If a market participant becomes aware of information, in the course of its business activities and in the course of complying with its existing obligations, that gives rise to reasonable grounds to suspect there is a reportable matter, the market participant must notify ASIC. Not all knowledge, by itself, gives rise to a reportable matter. Table 9 and Table 10 give some examples of information that, by itself, or in combination with certain other information, may give rise to a reportable matter. We do not expect market participants to make specific external inquiries to gather information for the purposes of Rule 5.11.1.

#### **Information in different parts of the organisation**

- RG 265.250 Where information in different parts of a market participant’s business would collectively give rise to a reportable matter, we will take into account whether:
- (a) the information has in fact come together; and
  - (b) it is reasonable to expect the information to have come together (e.g. in the compliance function of the market participant’s business).
- RG 265.251 Once information has come together, we would expect a market participant to notify ASIC in accordance with Rule 5.11.1. Market participants will need to consider which parts of the organisation are required to escalate potentially reportable matters to those responsible for compliance. At a minimum, we expect the trading function of the market participant to escalate potential reportable matters to those responsible for compliance with Rule 5.11.1: see RG 265.269.

#### **Retrospective review**

- RG 265.252 We expect a market participant to notify ASIC of orders or transactions that meet the Rule 5.11.1 criteria at the time they occur. We also expect that the Rule 5.11.1 criteria may be met as a result of information that the market participant becomes aware of after an order has been placed or a transaction entered into (e.g. price-sensitive announcements).
- RG 265.253 Where a market participant conducts retrospective spot checks in the ordinary course of ensuring compliance with its obligations, and discovers information that may give rise to reasonable grounds to suspect there is a reportable matter (e.g. Client A’s trading is inconsistent with its investment history and investment or risk profile, and Client A has made a large profit),

we expect the market participant, at a minimum, to identify this matter for internal escalation and active determination about whether to notify ASIC.

- RG 265.254 Where a market participant has received a notice to produce books or information to ASIC and, in the ordinary course of gathering information to comply with the notice, becomes aware of information about particular orders or transactions that may give rise to reasonable grounds to suspect there is a reportable matter, we expect the market participant, at a minimum, to identify this matter for internal escalation and active determination about whether to notify ASIC.
- RG 265.255 We do not expect a market participant to retrospectively review all orders or transactions in light of subsequent events, or information that it later becomes aware of, to detect potentially reportable matters under Rule 5.11.1.
- RG 265.256 The operation of Rule 5.11.1 is not intended to affect current processes that may be conducted by a market participant for other reasons (e.g. post-trade analysis). However, if post-trade analysis reveals any indicators of a reportable matter (see Table 9 and Table 10), a market participant should ensure that the indicators are considered further to determine whether it should notify ASIC under Rule 5.11.1.

### What does ‘reasonable grounds to suspect’ mean?

- RG 265.257 A market participant must notify ASIC if it has reasonable grounds to suspect there is a reportable matter. Establishing ‘reasonable grounds to suspect’ requires both a suspicion and just cause for that suspicion.
- RG 265.258 The test is satisfied by circumstances that would create an actual apprehension or fear that a reportable matter exists. The suspicion has to be honest and reasonable, and must be based on facts that would create suspicion.
- RG 265.259 In *Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266, Kitto J described (at 303) a suspicion of something as being:
- ... more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust amounting to a ‘slight opinion, but without sufficient evidence’.
- This case was applied by the High Court in *George v Rockett* (1990) 170 CLR 104 at 106.
- RG 265.260 A reasonable suspicion can exist without the market participant conducting exhaustive and conclusive investigations into the matter and, as stated above, we do not expect a market participant to conduct external inquiries for this purpose: see RG 265.249. Nor do we expect a market participant to undertake extensive legal analysis to determine whether a contravention of the Corporations Act or market integrity rules has occurred: see RG 265.262.
- RG 265.261 In some instances, there may be legitimate reasons or trading strategies behind conduct that, based on a system alert, suggests that a reportable

matter exists. For example, clients may legitimately request the cancellation of their orders if they believe the market is falling. However, this may be a less plausible explanation if orders are repeatedly entered into the market and cancelled. A market participant will need to exercise judgement in determining whether it should notify ASIC.

### **How much analysis is required?**

- RG 265.262 A market participant is not required to form any view on whether a breach of the Corporations Act or market integrity rules has occurred. We do not expect a market participant to engage in detailed legal analysis to determine whether a particular law applies to the facts, whether an exception may apply in the circumstances, or whether it is aware of the knowledge or intention of the relevant person.
- RG 265.263 We expect all employees of a market participant to have some level of familiarity with, and knowledge of, the laws prohibiting insider trading and market manipulation, corresponding to the nature of their role in the organisation. We would expect that certain indicators of a reportable matter are referred to a compliance officer to ascertain whether a reporting obligation exists under Rule 5.11.1.
- RG 265.264 As a general rule, a market participant should exercise common sense and judgement when deciding whether to notify ASIC. We do not expect a market participant to notify ASIC every time a system alert is generated.

### **Some indicators of reportable matters**

- RG 265.265 In RG 265.266, we provide some indicators that may give rise to a reportable matter. In most cases, one indicator alone will not give rise to reasonable grounds to suspect that a reportable matter has occurred. In most instances, a combination of two or more indicators may lead the market participant to decide there are reasonable grounds to suspect a reportable matter. Table 9 and Table 10 set out our guidance on combinations of indicators that may give rise to reasonable grounds to suspect a reportable matter. A market participant will need to decide, in the context of complying with its other obligations (see RG 265.249), whether further review is necessary after observing one or more indicators. Clear policies and procedures detailing when further review should be conducted will help market participants to comply with Rule 5.11.1.
- RG 265.266 Examples of indicators that a market participant may wish to take into account when considering whether a reportable matter exists include (but are not limited to):
- (a) unusual or unexpected activity—for example:
    - (i) transactions that do not appear to make economic sense;
    - (ii) large volumes of orders or trades;



- (iii) orders inconsistent with previous investment behaviour or investment profiles;
  - (iv) unusually high profits within a short time period; and
  - (v) financial commitments entered into by a client that appear beyond the client's means;
- (b) unusual concentration of trading or repetition of trading;
  - (c) knowledge of client relationships (e.g. that a client is related to a director of the company that releases a price-sensitive announcement);
  - (d) use of multiple accounts for no apparent reason, or accounts in the names of family members or corporate entities with no apparent business purpose or other purpose;
  - (e) rapid purchase and sale of shares;
  - (f) buying and selling shares with no discernible purpose;
  - (g) sell-down of stock to purchase particular securities, which are then sold shortly after;
  - (h) instructions to place an order immediately or urgently;
  - (i) trades modifying the valuation of a position without affecting the size of the position;
  - (j) trades modifying the valuation of an underlying financial instrument to create an impact on a related derivative;
  - (k) orders or trades made outside volume limits, bid-offer spread parameters or any other applicable trading parameters; and
  - (l) trading that takes place before the release of a price-sensitive announcement or research report, or ahead of a large house or client order ('front running').

RG 265.267 Table 9 and Table 10 provide detailed examples of how a review of some indicators may lead to reasonable grounds to suspect there is a reportable matter. These examples are not intended to be an exhaustive list of circumstances in which a reportable matter may arise. While Table 9 and Table 10 refer to trading in shares, the indicators are equally relevant for trading in all financial products.

RG 265.268 The presence of one or more of the indicators described in Table 9 and Table 10 is not necessarily conclusive. Conversely, the absence of any of the indicators does not indicate that a reportable matter does not exist. A market participant needs to exercise its own judgement in evaluating whether the presence of certain facts gives rise to reasonable grounds to suspect there is a reportable matter.

RG 265.269 At an individual trader level in a market participant's business, it may be that only one or two of these indicators are visible to the trader. This may,

for example, result from the internal separation of a market participant's business as part of its compliance program. We would expect that, in these instances, where the trader has reason to question whether a reportable matter exists, the trader should escalate their observations to the person responsible for compliance. In the normal course of carrying out their responsibilities, the relevant compliance officer would:

- (a) assess these observations in light of all the information they possess; and
- (b) determine, in accordance with the market participant's policies and procedures, whether there are reasonable grounds to suspect there is a reportable matter.

RG 265.270 Once a notification is made, we will consider the information provided and may make further inquiries where appropriate. If a market participant notifies us of a reportable matter, it must not disclose to others that it has done so, except in limited circumstances: see RG 265.292.

**Table 9: Indicators that may combine to give rise to reasonable grounds to suspect that a person is trading while in possession of inside information—Rule 5.11.1(1)(a)**

Primary indicator	Other indicators
Orders or transactions are inconsistent with a client's or trader's recent prior trading history or risk profile	<p>On its own, trading that is inconsistent with a client's or trader's prior trading history or risk profile may not give rise to a reportable matter</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> <li>• the type of financial product that is the subject of the order or transaction;</li> <li>• the profile of the company invested in;</li> <li>• the amount invested (including whether this is out of proportion with the client's monetary means or earning capacity);</li> <li>• the risk profile of the client;</li> <li>• the size of the order;</li> <li>• the length of time the security is held;</li> <li>• a significant increase in profit in the client's or trader's account; and</li> <li>• a significant increase in the particular adviser's commission</li> </ul> <p>For example, an order or transaction may give rise to reasonable grounds to suspect a reportable matter if a client buys shares in a speculative company and the market participant knows from its relationship and dealings with the client that the client has a conservative risk profile and typically only invests in blue chip stocks</p> <p>We consider recent trading history to be the three-month period before the order or transaction occurs</p>

Primary indicator	Other indicators
An order or transaction occurs immediately before a price-sensitive announcement	<p>Without further knowledge or information, the order or transaction may not give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include the knowledge that the client is connected to (or the compliance officer is aware that the trader is connected to) the company or the subject matter of the announcement (front running)</p> <p>For example, the client may be an officer or employee of the company, or the trader may have been involved in providing professional advice to the company</p>
An order is placed or a transaction entered into immediately after a client opens a new account	<p>Without further knowledge or information, the order or transaction may not give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include instructions for the order to be carried out urgently, without reference to the price at which the order is to be executed</p>
A client or trader opens simultaneous positions in related derivatives (e.g. contracts for difference (CFDs), options or warrants)	<p>Without further knowledge or information, the orders or transactions may not give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> <li>• the trading in the derivatives is inconsistent with the client's or trader's prior trading history or risk profile; and</li> <li>• the trading takes place just before a price-sensitive announcement</li> </ul>
A trading account receives a large transfer of money before an order is placed or a transaction entered into	<p>Without further knowledge or information, the orders or transactions may not give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a third party is trading while in possession of inside information and attempting to disguise their own trading by trading through another account or person</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> <li>• the authorisation on the account has recently changed;</li> <li>• the authorised person or account holder applies for the transfer of shares (or money) to a third party; and</li> <li>• the authorised person or account holder applies for the transfer of shares (or money) to the recently authorised person's own account after the trade is executed</li> </ul>

Primary indicator	Other indicators
A trader is an employee of the market participant and an order is placed, or transaction entered into, ahead of house or client orders in the same security	<p>Without further knowledge or information, the orders or transactions may not give rise to reasonable grounds to suspect that a trader may be profiting from the effect of the house or client orders on the price of the security (front running)</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> <li>• the employee has not received internal consent for the trade;</li> <li>• the security and size of the order are inconsistent with the employee's prior trading history (as far as the market participant is aware); and</li> <li>• the trading is accompanied by the trader taking simultaneous positions in related derivatives</li> </ul>
Trading takes place before the release of a research report that has been prepared by the market participant	<p>Without further knowledge or information, the orders or transactions may not give rise to reasonable grounds to suspect that a trader may be profiting from the effect of the house or client orders on the price of the security (front running)</p> <p>However, if there are other indicators present, this may give rise to reasonable grounds to suspect that a person is trading while in possession of inside information</p> <p>Other indicators may include:</p> <ul style="list-style-type: none"> <li>• the employee has not received internal consent for the trade; and</li> <li>• no effective information barriers are in place between the market participant's business units</li> </ul> <p>A market participant may have a sell-side division that prepares research reports that will be released to the public. A trader may intend to profit from the effect that the release of the report will have on the price of the securities that are discussed in the research report (front running)</p>

Note: If the market participant is an AFS licensee, it may also be required to make an assessment about whether a significant breach report is to be made to ASIC under s912D of the Corporations Act.

**Table 10: Indicators that may combine to give rise to reasonable grounds to suspect that an order or transaction may affect market integrity—Rule 5.11.1(1)(b)**

Primary indicator	Other indicators
<p>An order is placed:</p> <ul style="list-style-type: none"> <li>• near the close of the trading day; or</li> <li>• on the last day of the month, quarter, half year or financial year</li> </ul>	<p>The order forms part of a trading pattern where the client or trader regularly chooses to buy high or sell low at the close. This may be a reportable matter where the order would, if executed, represent a significant increase or decrease from the previous trade price ('price support', 'marking the close' or 'window dressing')</p> <p>Other indicators include:</p> <ul style="list-style-type: none"> <li>• the client or trader chooses not to buy or sell at other times of the trading day when better prices are available;</li> <li>• the client or trader is a substantial shareholder of the company invested in (Company A) or a related entity;</li> <li>• Company A is the bidder or target in a takeover; or</li> <li>• Company A is conducting a placement</li> </ul> <p>In addition, the client or trader may already hold existing positions in Company A (e.g. as a fund manager), and:</p> <ul style="list-style-type: none"> <li>• have an interest in maintaining the price of the shares at a certain level; or</li> <li>• the order would have the effect of modifying the valuation of their position without materially affecting the size of the position</li> </ul>

Primary indicator	Other indicators
An order is placed near the expiry date of related derivatives (e.g. options)	<p>As a general rule, the market participant is not expected to investigate whether a client holds positions in related derivatives. A trader executing a client's order may not be able to 'see' if a client holds, or has opened, positions in related derivatives because of the way in which the market participant's business is structured</p> <p>However, if the client has entered into those derivative positions with the market participant, this may become apparent to the relevant compliance officer in the course of conducting retrospective spot checks</p> <p>This may raise an early warning signal if the market participant is aware that the client holds positions in derivatives over Company A, such as an option that is close to expiry. The order would, if executed, represent a significant increase or decrease from the previous trade price of the underlying security, and thereby increase or decrease the value of the related derivatives. As a result, the client or trader makes a profit or avoids a loss</p>
A client or trader places matched orders—prearranged trades	<p>The order is for a large volume of Company A shares, which are illiquid. Immediately after the client's order is placed, an order for a similar volume at the same price is placed on the opposite side of the market. The effect is that the order is executed unusually quickly, given the size of the order and the limited liquidity in the stock. This may indicate that the trade is a 'wash trade'</p> <p>We note that this may not always be indicative of suspicious conduct, as legitimate prearrangement of trades is often conducted for large volumes of illiquid stock</p>
A client or trader places multiple orders on the same side of the market at different price levels, which are just behind the best bid or ask	<p>These orders may be intended to create a false or misleading appearance of buying or selling demand ('layering the order book')</p> <p>This may be more suspicious if the client or trader subsequently submits an order on the other side of the market. Once this latter order is executed, the client or trader rapidly removes the initial multiple orders</p> <p>The market participant may be aware that the client or trader is a substantial shareholder of Company A, or may otherwise have an interest in supporting the share price of Company A</p> <p>The pre-auction period is a time to be particularly vigilant of this conduct</p>
An order is for a significant volume (possibly close to priority) and is then cancelled shortly after	<p>The order may have been intended to draw speculators to follow the order into the market, thereby precipitating a small run in the price of Company A's shares</p> <p>On its own, this factor may be insufficient grounds to establish market manipulation. However, it may raise a warning signal if the market participant is not aware of any plausible explanation for the client cancelling their order. It may also be particularly concerning if the client or trader appears to be repeatedly cancelling their orders</p>
An order is for a significant volume close to priority. This is followed by the execution of an order on the opposite side of the market. The initial order is then deleted	<p>The order may have been intended to attract interest or liquidity on one side of the market. This may lead to a small run in the price of Company A's shares. It may also assist the client or trader to discover the depth of the market, with the aim of executing the order on the opposite side of the market at a better price and with less impact on the market</p>

Note: Rule 5.11.1 does not require the market participant to be aware of the intention of any party to the transaction or order before it notifies ASIC.

## Compliance with Part 5.11

- RG 265.271 To help ensure compliance with the obligation to notify ASIC of reportable matters, a market participant should have a clear, well-understood and documented process for:
- (a) identifying indicators of reportable matters;
  - (b) ensuring that employees escalate potentially reportable matters to compliance staff, who are made aware of the indicators identified;
  - (c) determining whether indicators of reportable matters give rise to an obligation to report; and
  - (d) notifying ASIC in writing of reportable matters.
- RG 265.272 A market participant will need to consider how best to keep these documents or records (e.g. they may be kept electronically). Keeping documents and records (particularly of the determinations made in RG 265.271(c)) will help market participants to demonstrate to ASIC compliance with the obligation under Rule 5.11.1.
- RG 265.273 These records may be kept in a similar manner to a breach register for significant breach reporting purposes (see RG 78.20–RG 78.22), although this is not the only method that market participants can use to demonstrate compliance.
- RG 265.274 In enforcing Rule 5.11.1, we intend to focus on instances where market participants are obliged to notify us, but wilfully or recklessly disregard this obligation.
- RG 265.275 We will consider whether a market participant's policies and procedures have been followed, as well as whether the policies are adequate, when deciding whether a market participant has failed to report a reportable matter. Where internal policies and procedures are followed strictly but the market participant is not adequately reporting reportable matters to ASIC, the market participant may need to review its policies and procedures to ensure they are effective.

### How does this relate to other breach reporting obligations?

- RG 265.276 Section 912D requires AFS licensees to report to ASIC certain breaches (or likely breaches) of obligations imposed by the Corporations Act, where the breach (or likely breach) is significant: see RG 78 for more detail.
- RG 265.277 The obligation to report suspicious conduct under Rule 5.11.1 is in addition to the breach reporting obligations imposed on AFS licensees under s912D.

- RG 265.278 In contrast to the s912D obligation, Rule 5.11.1 requires notification to ASIC of information relating to the trading activities of clients, other market participants or any other person.
- RG 265.279 In addition, the obligation under Rule 5.11.1 applies to all market participants, not all of whom are AFS licensees (e.g. some foreign market participants are exempt from holding an AFS licence).
- RG 265.280 The reporting obligations in s912D and Rule 5.11.1 are distinct. A notification under Rule 5.11.1 does not relieve a market participant that is an AFS licensee from its obligation to report under s912D. There may be instances where a reportable matter is notified to ASIC in the first instance, and then, after further inquiry to determine whether it is also a significant breach by the AFS licensee under s912D, a subsequent significant breach report is made to ASIC. In these instances, when making the significant breach report, it will assist ASIC if market participants advise, in their s912D report, that a suspicious activity report has been made to ASIC and state the date of the suspicious activity report.

### **How does this relate to reporting obligations to AUSTRAC?**

- RG 265.281 A market participant may have an obligation under AML reporting legislation to submit an SMR to AUSTRAC if it forms a suspicion on reasonable grounds relating to insider trading or market manipulation. Many of these cases may also give rise to reasonable grounds to suspect there is a reportable matter that must be reported to ASIC under Rule 5.11.1(1).
- RG 265.282 To avoid double-reporting, Rule 5.11.1(2) provides that, where a market participant has reported information to AUSTRAC under AML reporting legislation, it is not required to notify ASIC of the same information under Rule 5.11.1(1). ASIC has access to SMRs lodged with AUSTRAC.
- RG 265.283 It is important to note that market participants cannot discharge their obligation to report under AML reporting legislation by reporting to ASIC.
- RG 265.284 Market participants should refer to the [AUSTRAC compliance guide](#)—in particular, Chapter 2: Designated services and Chapter 7: AML/CTF reporting obligations—for more information about their obligations under AML reporting legislation.
- RG 265.285 We expect that the processes and procedures that a market participant has in place to comply with Rule 5.11.1 may not be the same as those it has in place to comply with the AML reporting legislation.



## When must market participants notify ASIC?

- RG 265.286 A market participant must give ASIC the written notification required under Rule 5.11.1 as soon as practicable. We would expect that this is within three business days of determining that there is a reportable matter.
- RG 265.287 We expect a market participant's internal systems to ensure that the relevant staff are aware of potentially suspicious activity in a timely and efficient manner.

## How can market participants notify ASIC?

- RG 265.288 Notification to ASIC under Rule 5.11.1 can be submitted using the relevant form on [MECS](#). Alternatively, a market participant may send the notification by email to [markets@asic.gov.au](mailto:markets@asic.gov.au).

## What should the notification contain?

- RG 265.289 Notification to ASIC under Rule 5.11.1 must contain details of the transaction or order (to the extent known to the market participant) and the reasons the market participant suspects there is a reportable matter.
- RG 265.290 As a general guide, we would expect a notification to contain:
- (a) the name and contact details of the person suspected of trading while in possession of inside information, or who placed the order or entered into the transaction that has, or is likely to have, one of the effects set out in Rule 5.11.1(b);
  - (b) the details of the order or transaction that is the subject of the notification, including the security, market, time of placement, price and volume;
  - (c) the recent trading history of the client if the reportable matter arises partly because a market participant considers an order or transaction is inconsistent with a client's recent trading history (i.e. for the previous three months);
  - (d) the client's investment profile and risk profile if the reportable matter arises partly because a market participant considers an order or transaction is inconsistent with a client's investment or risk profile; and
  - (e) a snapshot of specific trading or order book activity that illustrates the context of the order or transaction that is the subject of the notification.
- RG 265.291 As stated in RG 265.282, where information that would otherwise be required to be contained in the notification to ASIC under Rule 5.11.1 has already been reported to AUSTRAC under the AML reporting legislation, a market participant does not need to notify ASIC of the same information: Rule 5.11.1(2).



## Confidentiality

- RG 265.292 Under Rule 5.11.2, a market participant must not disclose that it has notified ASIC of a reportable matter under Rule 5.11.1, nor disclose the information contained in the notification. This rule does not preclude a market participant from communicating that it has obligations under Rule 5.11.1 generally, or from communicating to a client or trader that it has concerns about the conduct of that person, which may constitute an offence under the law or which may expose the market participant to risk.

## Qualified privilege

- RG 265.293 A market participant notifying ASIC under Rule 5.11.1 has qualified privilege under s1100A for the notification. Section 89 states that, where a person has qualified privilege, that person is not, in the absence of malice, liable to an action for defamation. Qualified privilege under the Corporations Act does not affect any right, privilege or immunity that a person may otherwise have: s89(3).

Note: Section 1100A(1)(a) refers to information that a person is required to give under Ch 7 of the Corporations Act. Section 761H provides that, in Ch 7, a reference to a provision of Ch 7 includes (unless a contrary intention appears) a reference to other instruments made for the purposes of Ch 7.

- RG 265.294 A market participant that has qualified privilege under s1100A for the notification is also not liable for any action based on breach of confidence in relation to the notification: s1100A(3).
- RG 265.295 This protection extends to the officers, employees and representatives of a market participant: s1100D.

# I Crossing systems

## Key points

A market participant that operates a crossing system for financial products able to be traded on a market must:

- make certain notifications to ASIC and users of the crossing system, and make information about the operation of the crossing system publicly available on a website;
- provide fair treatment to all users of a crossing system;
- monitor activity on the crossing system, report significant breaches of its user obligations and operating procedures to ASIC, and report suspicious activity to ASIC;
- use standard tick sizes for trading in equity market products; and
- have controls to ensure the efficiency and integrity of the crossing system.

## Scope and application

RG 265.296 Chapter 5A of the Securities Markets Rules and this section of the guide apply to market participants that operate crossing systems.

RG 265.297 In the Securities Markets Rules, a ‘crossing system’ is defined as any automated service provided by a market participant that matches or executes client orders with orders of:

- (a) the market participant;
- (b) other clients of the market participant; or
- (c) any other person whose orders access the automated service, otherwise than on an order book of a licensed market.

RG 265.298 Transactions on crossing systems rely on one or more of the pre-trade transparency exceptions in Section J.

RG 265.299 Crossing systems include:

- (a) internalisation systems where client orders are automatically matched with orders of the crossing system operator (i.e. against the market participant’s own account) or with orders of other clients; and
- (b) other systems, including those operated on an agency basis, which match user flow.

RG 265.300 Crossing systems may operate on technology built and operated exclusively by a crossing system operator or they may be developed by a third-party vendor. A full list of [crossing systems that are registered with ASIC](#) is available on our website.

- RG 265.301 Some market participants provide an ‘aggregator’ service. An aggregator provides connections between multiple crossing systems and facilitates the transmission and receipt of orders from a market participant to a crossing system (e.g. through an algorithm or smart order router).
- RG 265.302 It is also possible that two crossing system operators may establish direct connections between their crossing systems separately from an aggregator. This means that it is possible for a client’s order to be executed in a crossing system operated by a market participant that the client does not have a relationship with.

Note: In this guide, the term ‘user’ refers to any user of a crossing system, including a client of the crossing system operator and any other market participant that may have its client orders routed to the crossing system.

## Notifying ASIC of intention to operate a crossing system

- RG 265.303 A market participant that operates, or proposes to operate, a crossing system must lodge a crossing system initial report with ASIC no later than 20 business days before beginning to operate the crossing system. Table 11 sets out the details required to be included in a crossing system initial report.

**Table 11: Reporting requirements to be provided to ASIC about the nature of a crossing system**

Matters	Rule 5A.1.1 reporting requirement	Guidance on details of information
Date of commencement	The date on which the crossing system began operating, or will begin to operate, in this jurisdiction	No further guidance
Clients	Access to the crossing system, including the criteria for determining persons who are eligible to use the crossing system and whether the crossing system transmits orders to other crossing systems, or receives orders from other crossing systems	For example, retail clients, wholesale clients and buy-side only
Matching process	How orders are prioritised and matched, and transactions are executed, on the crossing system	For example, if the crossing of orders is done on price–time priority, size priority or some other basis
Price determination	How the price for transactions on the crossing system is determined	For example, at the midpoint of the best available bid and offer on the order books of licensed markets
Fee structure	The fees, commissions, rebates or other charges paid by or to the market participant and users of the crossing system	This includes incentives paid by or to the market participant and/or users of the crossing system

Matters	Rule 5A.1.1 reporting requirement	Guidance on details of information
Principal trades	Whether the market participant that operates the crossing system deals as principal with clients on the crossing system and, if so, the arrangements the market participant has in place for the management of conflicts of interest that may arise between the market participant and those clients	This includes all principal dealings, including facilitation and house desk
Reporting to a licensed market	<p>The name of the market or markets to which:</p> <p>(a) transactions executed on the crossing system are reported; and</p> <p>(b) orders matched on the crossing system are transmitted for execution</p> <p>Where more than one market is named, the circumstances in which each market is used for the purposes set out in paragraphs (a) and (b) above</p>	<p>Under Rule 5.1AA.1, all trading by a market participant on its own account or on behalf of clients must be done under the rules of a licensed market. This means that all transactions matched or executed on a crossing system must be reported to a market operator</p> <p>Where more than one licensed market is used, the circumstances in which each is used (e.g. Market X for the top 200 stocks and Market Y for the remainder)</p>
Life of an order	Whether orders on the crossing system are purged at the end of the day or remain on the crossing system until matching or execution on the crossing system next resumes. If the orders are not purged, the period of time they remain on the crossing system	No further guidance

RG 265.304 Under Rules 5A.2.1(4) and 5A.2.2(4) crossing system operators are also required to give ASIC a copy of the disclosures they make about their crossing systems to the public and to their clients: see RG 265.308–RG 265.328 for further information about publicly available crossing system information and non-public crossing system information. The information in these disclosures to the public and to clients is more detailed than the information required to be lodged with ASIC in a crossing system initial report.

RG 265.305 A crossing system operator may fulfil its obligation to lodge a crossing system initial report under Rule 5A.1.1 by giving ASIC copies of the more detailed disclosures under Rules 5A.2.1 and 5A.2.2 no later than 20 business days before the crossing system commences operation.

## Where to notify

### Notification to ASIC

The notification to ASIC should be emailed to [crossing.systems@asic.gov.au](mailto:crossing.systems@asic.gov.au).

## Monthly reporting to ASIC on trading activity and system changes

- RG 265.306 A crossing system operator that operates a crossing system must submit a monthly report to ASIC in certain circumstances: Rule 5A.1.2. A monthly report must be submitted if there have been any changes during that calendar month to the information last provided to ASIC in the operator's crossing system monthly report or crossing system initial report: Rule 5A.1.2(a).
- RG 265.307 Under Rule 5A.1.2(b), the report must be prepared within 20 business days of the end of the calendar month and must be provided to ASIC as soon as practicable after it has been prepared.

### Where to notify

#### Notification to ASIC

The notification to ASIC should be emailed to [crossing.systems@asic.gov.au](mailto:crossing.systems@asic.gov.au).

## Public disclosure about crossing system operations

- RG 265.308 Under Rule 5A.2.1, a crossing system operator must make available on a publicly accessible website the information listed in columns 1 and 2 of Table 12. More detailed guidance about what we expect a crossing system operator to disclose is provided in column 3.

**Table 12: Public disclosure requirements for crossing system operators**

Type of information	Publicly available crossing system information	Guidance
Operator	The code identifying the crossing system	The full legal name of the crossing system operator should be identified in addition to a code that uniquely identifies the crossing system. We may publish on our website the codes assigned to and applicable to specific crossing systems
Start date	The date the crossing system began to operate in this jurisdiction	Where a crossing system has been decommissioned or replaced by another crossing system, the market participant should disclose the date the system originally commenced operating, the date it ceased operating and the date the new crossing system commenced operating
Products	The types of financial products traded on the crossing system	For example, equity market products, CGS depository interests and warrants

Type of information	Publicly available crossing system information	Guidance
Access criteria	The criteria used to determine eligibility to use the crossing system	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> <li>(a) the types of users that can gain access to the system, such as: <ul style="list-style-type: none"> <li>(i) <i>liquidity providers</i>—liquidity providers, whether formally required to or not, during the course of a day, commonly enter regular buy and sell orders in a particular financial product, on their own behalf, into a crossing system or other facility. Orders entered do not include the principal leg of client facilitation. Examples of liquidity providers include market makers and high-frequency traders;</li> <li>(ii) <i>crossing system operators</i>—where they can trade as principal (including when trading on behalf of a related body corporate);</li> <li>(iii) <i>retail clients</i>; and</li> <li>(iv) <i>institutional clients</i> (e.g. fund managers);</li> </ul> </li> <li>(b) the minimum requirements (e.g. technical capabilities) and the process for gaining access to the system; and</li> <li>(c) whether access arrangements for the crossing system are uniform across all users and, where they differ, provide details (e.g. whether some users are permitted to have direct access to the crossing system)</li> </ul>
Aggregation and other crossing systems	<p>If orders in the crossing system can be executed or matched in another crossing system because they are transmitted to one or more other crossing systems, or if they are executed or matched in the market participant's crossing system with orders received from one or more other crossing systems:</p> <ul style="list-style-type: none"> <li>(a) the code identifying the other crossing system(s); and</li> <li>(b) for each crossing system identified in (a), whether orders are transmitted to the other crossing system, or whether orders are received from the other crossing system, or both</li> </ul>	The full legal name of the other crossing system operators should be identified in addition to a code that uniquely identifies the crossing system. We may publish on our website the codes assigned to and applicable to specific crossing systems

## Making the information publicly available

- RG 265.309 Rule 5A.2.1(1) requires a crossing system operator to make the information available on a website that is publicly available and free to access.
- RG 265.310 We expect the information to be made available on the crossing system operator's website using a constant, stable deep link where the web address does not change even when the information on the website changes.

## Updating the information

- RG 265.311 When a crossing system operator implements a change to the operation of the crossing system described in Table 12, it must update the website within one business day: Rule 5A.2.1(3). We do not expect short-term 'pilot' changes to be updated. However, when the final version is launched, the website should be updated within one business day.
- RG 265.312 Crossing system operators should ensure that it is made clear on the website when the information was last updated and what information has been changed by an update.

## Notifying ASIC of the information and the website address

- RG 265.313 Rule 5A.2.1(4) requires a crossing system operator to provide ASIC with a copy of the information that it has made publicly available and to provide to ASIC each update to the information within one business day of making the information available on its website. In fulfilling this requirement, we expect a crossing system operator to email ASIC with a description of the information that has been made available, together with a link to the web address where the information is published.
- RG 265.314 [Publicly available crossing system information](#) is also accessible via links on our website.

### Notification to ASIC

The notification to ASIC should be emailed to [crossing.systems@asic.gov.au](mailto:crossing.systems@asic.gov.au).

## Disclosure to crossing system clients

- RG 265.315 It is important that clients of a market participant that operates a crossing system understand the operating procedures of the crossing system. Rule 5A.2.2 requires a crossing system operator to provide the following information to a client before accepting an order from them for the first time:
- (a) a copy of the publicly available crossing system information outlined in Table 12, or inform the client of the web address where the information is available (Rule 5A.2.2(1)(a)); and

- (b) the non-public crossing system information outlined in columns 1 and 2 of Table 13 (Rule 5A.2.2(2)).

Note: A more detailed description of the non-public crossing system information we expect a crossing system operator to disclose to its clients is provided in column 3 of Table 13.

- RG 265.316 Each time a crossing system operator makes a change to the publicly available crossing system information or the non-public crossing system information, it must inform each of its clients of the change before it accepts an order from the client: Rules 5A.2.2(1)(b) and (3).
- RG 265.317 We expect that the information provided by each crossing system operator should be standardised and consistent (i.e. not tailored for individual clients). However, it may differ for different groups of clients (e.g. wholesale and retail clients).
- RG 265.318 A crossing system operator only needs to provide the information outlined in Table 13 to a client in relation to its own crossing system. We do not expect it to provide this information in relation to other crossing systems that a client's order may access. However, we do expect the crossing system operator to make clients aware of the other crossing systems its orders may be routed to: see 'Aggregation and other crossing systems' in Table 12.

**Table 13: Non-public client disclosure requirements for crossing system operators**

Type of information	Non-public crossing system information	Guidance
User obligations	A description of the obligations imposed on users of the crossing system by the operator of the crossing system	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> <li>(a) how users are expected to access the crossing system and enter orders into the crossing system;</li> <li>(b) technical specifications users must comply with;</li> <li>(c) controls for maintaining the efficiency and integrity of the crossing system; and</li> </ul> <p>Note: A crossing system operator has obligations under Rule 5.6.1 or Rule 5A.5.2 in relation to the efficiency and integrity of its crossing system.</p> <ul style="list-style-type: none"> <li>(d) circumstances where access may be suspended or constrained (e.g. during a system failure) and any trading protocols or behavioural expectations when users access and use the crossing system</li> </ul>
Order types	A description of the order types available to those who have access to the crossing system, including a description of the characteristics of each order type	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> <li>(a) how the order types work, how price is determined for each order type and whether certain order types affect the order queue priority in the crossing system;</li> <li>(b) for each order type, whether it is available to all users who have access to the crossing system and, if not, the types of users that can use the order type and on what terms; and</li> <li>(c) whether the order type interacts with an exchange market or another crossing system (e.g. a shadowing arrangement)</li> </ul>



Type of information	Non-public crossing system information	Guidance
Operations	<p>A description of the operation of the crossing system, including, but not limited to:</p> <ul style="list-style-type: none"> <li>(a) how orders are managed, including how prices are determined and cancellations are managed;</li> <li>(b) details of any different treatment or arrangements for certain users or order types;</li> <li>(c) the level of anonymity given to orders, including whether indications of interest (IOIs) are allowed;</li> <li>(d) the circumstances in which principal orders may interact with other orders in the crossing system, and the nature of the principal orders (e.g. proprietary desk, facilitation or market maker);</li> <li>(e) whether orders of related bodies corporate of the operator enter the system and, if so, how conflicts (arising because orders of related bodies corporate enter the crossing system) are managed;</li> <li>(f) how any other conflicts of interest that may arise are managed; and</li> <li>(g) if there are liquidity providers or market makers whose orders access the crossing system, the commitments (if any) they may have and any benefits they receive</li> </ul>	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> <li>(a) the hours of operation of the crossing system;</li> <li>(b) how orders are prioritised and matched on the crossing system (e.g. price–time priority or some other basis);</li> <li>(c) how prices are determined (e.g. at the midpoint of the best available bid and offer (i.e. NBBO) or at the midpoint of the order prices), how the pricing process works (e.g. whether price may differ for passive and aggressive orders), and which orders receive more favourable pricing (e.g. if the price of matched orders has to be rounded up or down by a tick size to comply with the pre-trade transparency exception in Rule 6.2.3 for a trade with price improvement);</li> <li>(d) how order and trade cancellations are managed;</li> <li>(e) how a system outage is managed, including the execution venues an order may be routed to, in the event of a system outage or system stress (see RG 265.364);</li> <li>(f) attributes of orders that may be controlled by users (e.g. minimum order quantity, opting out of certain types of order flow such as principal flow or liquidity providers);</li> <li>(g) details of any different treatment or arrangements for certain users or order types. Where one or a group of users have access to certain features of a crossing system and others do not, the details should be included;</li> <li>(h) the circumstances in which principal orders (including orders of a related body corporate) may interact with other orders in the crossing system, and the nature of the principal orders (e.g. proprietary desk, facilitation, swap, liquidity provider). The description of circumstances should include whether principal orders and client orders are routed into the crossing system through the same smart order router or algorithm;</li> <li>(i) the arrangements for managing conflicts of interest that may arise in relation to the crossing system, including in relation to principal trading in the crossing system;</li> <li>(j) if there are liquidity providers whose orders access the crossing system, or aggregators transmitting orders into the crossing system, the: <ul style="list-style-type: none"> <li>(i) commitments (if any) they may have to supply liquidity (e.g. the minimum period of time within the day they are to provide quotes, minimum order sizes); and</li> <li>(ii) any benefits they receive (e.g. lower fees, order priority, favourable price outcomes, access to order types not available to all users);</li> </ul> </li> <li>(k) the licensed market or markets to which transactions are reported. Where more than one licensed market is used, the circumstances in which each is used (e.g. Market X for the top 200 stocks and Market Y for the remainder);</li> <li>(l) whether orders on the crossing system are purged at the end of the trading day or remain on the crossing system until matching or execution next resumes. If orders are not purged, the period of time they remain on the crossing system; and</li> <li>(m) how system failures are managed, including when users will be informed and how users' orders will be managed during system failures</li> </ul>

Type of information	Non-public crossing system information	Guidance
Fees	The fees imposed for orders to gain access to the crossing system, or to be matched or executed in the crossing system, and an indication whether those fees differ from (e.g. by being in addition to) the market participant's standard fees	<p>Crossing system operators should consider including:</p> <ul style="list-style-type: none"> <li>(a) disclosure of fees charged by a crossing system operator to allow another crossing system to gain access to the crossing system;</li> <li>(b) disclosure where there are different fees for different types of users (e.g. liquidity providers) and a description of how the different fee arrangements apply in relation to the type of use of the crossing system. We do not expect the actual fee to be disclosed; and</li> <li>(c) where there are no additional fees beyond standard commission, this should be disclosed</li> </ul> <p>Where fees are part of a commission sharing arrangement, and the commission does not depend on a particular execution venue, then the commission sharing arrangements do not need to be disclosed</p>

RG 265.319 When describing the operation of the crossing system we expect there to be sufficient detail to enable a client to identify the key features of the system's operations.

RG 265.320 We expect that, where retail clients use a crossing system, the disclosure to them about the matters in Table 13 is clear, concise and effective.

### Providing the information to clients

RG 265.321 A crossing system operator must provide a document containing non-public crossing system information to each client before accepting an order from the client for the first time: Rule 5A.2.2(2)(a).

RG 265.322 It is not necessary for clients to acknowledge or consent to this disclosure. We consider that the disclosure may be made in printed or electronic form, including via email with hyperlinks or references to a website. This is the same approach as for FSGs in RG 221.

RG 265.323 Where a client asks for the non-public crossing system information in hard copy form (e.g. if they do not have access to electronic communications), we expect the crossing system operator to provide it to them in this form.

### Updating the information

RG 265.324 A crossing system operator must update its non-public crossing system information within one business day of implementing changes to the operation of the crossing system where those changes affect the accuracy of information disclosed under Rule 5A.2.2(3) and described in Table 12 and Table 13. A crossing system operator must provide the updated information to clients before accepting an order from the client after the update has been made. Clients only need to be notified about final system changes: see RG 265.311.

- RG 265.325 We expect that the notification will be made when there is a material change to the crossing system, particularly when it affects a client's use of the crossing system. For example, in relation to how orders are managed:
- (a) we expect clients to be notified when the change affects the order types available, how the price of an order is determined, or how the priority of orders is determined; and
  - (b) we would not expect clients to be notified when there are technical changes to the crossing system—for example, enhancement to the speed at which it operates—which do not affect the logic of how, for example, price or priority is determined.
- RG 265.326 A crossing system operator should consider providing advanced notice to its clients about planned changes to its crossing system where there are material changes to the way a user may access the crossing system or to the execution outcome (e.g. price) a user may expect to obtain from the crossing system.
- RG 265.327 Where the update is provided on a website, we expect that steps should be taken to ensure that clients are aware of the new information on the website. This may be done through an email with a hyperlink to the website, or through another form of written documentation (paper or electronic).

### **Notifying ASIC of the information**

- RG 265.328 Rule 5A.2.2(4) requires a crossing system operator to provide ASIC with the non-public information that has been made available to its clients and each update to the information within one business day. In fulfilling this requirement, we expect a crossing system operator to email ASIC with the information that has been provided to its clients. If the information is provided to its clients through a website hyperlink, the same hyperlink can be provided to ASIC.

#### **Notification to ASIC**

The notification to ASIC should be emailed to [crossing.systems@asic.gov.au](mailto:crossing.systems@asic.gov.au).

## **Fair treatment of users**

### **Fair treatment of all users of a crossing system**

- RG 265.329 Rule 5A.3.1 requires a crossing system operator to ensure that:
- (a) the crossing system is operated by a common set of procedures that balances the interest of all users; and

- (b) the procedures do not unfairly discriminate between crossing system users.

- RG 265.330 This is to ensure that users are treated in a fair and impartial manner and that retail clients are treated fairly compared to wholesale and principal users.
- RG 265.331 The requirement to treat users fairly does not prevent a crossing system operator from providing less favourable treatment for its own use of the crossing system or that of a related body corporate (Rule 5A.3.1(2))—for example, providing client orders with time priority over principal orders.
- RG 265.332 In complying with Rule 5A.3.1, we expect a crossing system operator to develop a common set of operating procedures that address the matters in Table 12 and Table 13.

### **Fairness and priority in dealing**

- RG 265.333 Rules 5A.3.2 and 5A.3.3 relate to fairness and priority when dealing with client orders in a crossing system. They are similar to Rules 5.1.3 and 5.1.4 in relation to dealings on a market's trading platform.
- RG 265.334 Guidance relevant to these rules is currently found in ASX Guidance Note 11 *Client order priority* (GN 11).
- RG 265.335 Rule 5A.3.3(1)(h) specifies that a crossing system operator's principal orders are not to be knowingly interposed between orders of its clients that would otherwise have crossed in its crossing system. We consider that a crossing system that systematically matches client orders with principal orders, without considering client orders that are available to match, would be inconsistent with this requirement.

### **Opting out of a crossing system**

- RG 265.336 Under Rule 5A.3.4, a crossing system operator must permit a user of the crossing system to opt out of having their orders sent to the crossing system or another market participant's crossing system. The crossing system operator must not impose any additional operational or administrative requirements as a consequence of a client electing to opt out.
- RG 265.337 Additional operational or administrative requirements include requiring users who opt out to contact the crossing system operator on a trade-by-trade basis through a different mechanism to their usual broking arrangements.
- RG 265.338 Enabling a user to elect to opt out of a crossing system, or any form of trading that occurs away from a pre-trade transparent order book, does not affect a market participant's best execution obligation: see RG 265.154–RG 265.157 (retail client instructions) and RG 265.162–RG 265.167 (wholesale client instructions).

## Monitoring and suspicious activity reporting

### Monitoring the use of a crossing system

- RG 265.339 Rule 5A.4.1 requires a crossing system operator to monitor the use of its crossing system for compliance with the:
- (a) obligations that the crossing system operator has imposed on the user in relation to the crossing system as discussed in ‘user obligations’ of Table 13; and
  - (b) the operating procedures of the crossing system as described in RG 265.332.
- RG 265.340 The monitoring that we expect a crossing system operator to undertake will vary depending on the nature, size and complexity of the crossing system and the crossing system operator’s business. The types of factors that may warrant higher levels of monitoring include, for example, whether:
- (a) a sophisticated matching mechanism is in place—for example, where there are different order types available, or matching can occur on a basis other than price–time priority;
  - (b) there are connections between the crossing system and other crossing systems or trading venues—for example, whether orders from other crossing systems may enter and match in the crossing system or orders from the operator’s own crossing system may enter and match in other crossing systems;
  - (c) it is possible for one or more users to directly access and enter orders into the crossing system;
  - (d) there are liquidity providers active in the crossing system or otherwise large volumes of order messages;
  - (e) the crossing system operator is aware that users are using order types or ‘gaming’ the matching algorithm for possible manipulative or abusive conduct; and
  - (f) there is principal trading in the crossing system.
- RG 265.341 Where the crossing system is large and complex and there are large volumes of orders, or orders entering the system from other crossing systems, the crossing system operator should consider monitoring activity in real time or at least having in place adequate filters and controls that it monitors in real time. This will enable a crossing system operator to effectively meet its responsibilities to ensure the efficiency and integrity of its crossing system and meet the requirement to have appropriate controls in place: see RG 265.357–RG 265.361.

- RG 265.342 Post-trade monitoring may be adequate where a crossing system:
- (a) does not interact with other crossing systems;
  - (b) has a simple order and matching process—for example, a midpoint of the NBBO;
  - (c) has relatively low order and trade volumes; and
  - (d) does not have clients directly accessing the system.
- RG 265.343 Any monitoring (whether manual or automated, real-time or post-trade) could include, for example, monitoring:
- (a) whether users have complied with their user obligations and the operating procedures;
  - (b) for spikes in order and trading volumes that may affect the efficiency and integrity of the crossing system;
  - (c) for bait and switch activity, being the placement of a bona fide order on one side of the crossing system while simultaneously sending numerous small but aggressive orders on the other side of the crossing system. The purpose being to ‘bait’ other client interests to react and trade with the bona fide order;
  - (d) for pinging-like activity, being the use of small-sized tradeable orders to detect the existence of a large bona fide buyer or seller to trade ahead of the large order flow;
  - (e) the use of order types that may be inconsistent with their intended purpose as outlined in the crossing system’s operating procedures and disclosures made to clients (see ‘order types’ in Table 13);
  - (f) activity that has interfered with, or is likely to interfere with, the efficiency and integrity of the crossing system (see RG 265.357–RG 265.361);
  - (g) where there is principal trading in the crossing system, that principal orders are not receiving more favourable outcomes than client orders; and
  - (h) where a crossing system promotes itself as providing a specific benefit (e.g. being a ‘safe harbour’ from high-frequency traders or an execution venue of ‘natural liquidity’), that activity in the crossing system is consistent with such disclosures.
- RG 265.344 We expect that a crossing system operator’s monitoring activity will help the crossing system operator to determine whether the filters and controls it has put in place ensure the efficiency and integrity of its crossing system: see RG 265.357–RG 265.361.

### Managing breaches identified through monitoring activity

RG 265.345 A crossing system operator must also take action to ensure that any breaches identified as part of its monitoring activities do not recur: Rule 5A.4.1(1)(c). To comply with Rule 5A.4.1(1)(c), we expect crossing system operators to have policies and procedures for managing suspected breaches. The policies and procedures may include:

- (a) documenting inquiries made on suspected breaches, and the results of these inquiries;
- (b) actions that may be taken for certain types of breaches; and
- (c) internal escalation policies and procedures and external and internal notifications to be made in relation to types of breaches.

### Notifying ASIC of breaches

RG 265.346 Rule 5A.4.1(2) requires a crossing system operator to notify ASIC, as soon as practicable, of all significant breaches it identifies during the course of its monitoring activities. In assessing what constitutes a ‘significant’ breach, a crossing system operator is not limited to considering a potential breach of the Corporations Act or market integrity rules. The crossing system operator should assess:

- (a) the types of users that access the crossing system and whether the activity or conduct of concern was targeted against particular types of users;
- (b) the nature of the activity or conduct of concern (e.g. whether it is repetitive);
- (c) the potential profitability of the activity or conduct of concern; and
- (d) any potential impacts on the efficiency and integrity of the crossing system, and other execution venues. We do not expect a significant breach of the commercial terms between the crossing system operator and client to be reported to us.

RG 265.347 A crossing system operator must give ASIC written notification of the breach as soon as practicable: Rule 5A.4.1(2). We would expect to be notified within three business days of determining that there is a notifiable matter. This is consistent with our expectations for suspicious activity reporting.

#### Notification to ASIC

The notification to ASIC should be emailed to [crossing.systems@asic.gov.au](mailto:crossing.systems@asic.gov.au).



### Record keeping

RG 265.348 Rule 5A.4.1(3)(a) requires a crossing system operator to maintain records that document its monitoring activities for a period of seven years. We expect these records to include:

- (a) details of the monitoring activities the crossing system operator has undertaken; and
- (b) results of the monitoring activities, including details of inquiries made and any communications that have been sent to clients, internal management and ASIC about the monitoring activities.

RG 265.349 Crossing system operators must also maintain records of breaches that it has identified for a period of seven years: Rule 5A.4.1(3)(b).

### Reporting suspicious activity in a crossing system

RG 265.350 A market participant that operates a crossing system is required by Rule 5A.4.2 to notify ASIC if it has reasonable grounds to suspect that a person has placed an order, or entered into a transaction, on a crossing system operated by a market participant:

- (a) while in possession of inside information; or
- (b) which has or is likely to have the effect of:
  - (i) creating an artificial price for trading in financial products on a financial market operated in this jurisdiction;
  - (ii) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a financial market operated in this jurisdiction;
  - (iii) creating or causing the creation of a false or misleading appearance of active trading in financial products on a financial market operated in this jurisdiction; or
  - (iv) creating or causing the creation of a false or misleading appearance with respect to the market for, or price for trading in, financial products on a financial market operated in this jurisdiction.

RG 265.351 The guidance in Section H on suspicious activity reporting obligations relating to orders placed or transactions entered into on a market applies to operators of a crossing system for reportable matters on a crossing system.



## Tick sizes

- RG 265.352 For equity market products able to be traded on more than one market, we have harmonised tick sizes across trading venues to ensure consistency across those equity market products across all trading venues.
- RG 265.353 A crossing system operator must not accept, display or queue orders in its order book in tick sizes less than those outlined in Table 14, based on the price of the equity market product that is able to be traded on more than one market.

**Table 14: Tick sizes for equity market products able to be traded on more than one market**

Price of equity market product	Tick size
Greater or equal to \$2	\$0.01
Priced between \$0.10 and \$2	\$0.005
Priced at less than \$0.10	\$0.001

- RG 265.354 A minimum tick size of \$0.001 also applies in relation to equity market products priced at less than \$0.10 that are admitted to quotation on the ASX market or admitted to quotation on the Chi-X market under the operating rules of the Chi-X market.
- RG 265.355 Rule 5A.5.1(2) provides an exception for orders that, if executed, would meet the pre-trade transparency exceptions for block trades and large portfolio trades. There is also an exception for orders matched at the best midpoint for trades that meet the price improvement pre-trade transparency exception: see Section J.
- RG 265.356 We expect a crossing system operator to apply the tick sizes in Table 14 to all transactions that are reported to a market operator under Rule 6.3.1, unless relying on these exceptions: see RG 265.419–RG 265.437.

## Systems and controls

### Efficiency and integrity controls

- RG 265.357 Rule 5A.5.2 requires a crossing system operator to have:
- appropriate automated filters designed to ensure the efficiency and integrity of its crossing system (Rule 5A.5.2(1)); and
  - controls that enable the immediate suspension or cancellation of orders in a series of related orders (Rule 5A.5.2(2)).

Note: Rule 5A.5.2 only applies to crossing system operators who are not otherwise subject to Rules 5.6.1 and 5.6.3 in relation to their crossing system(s). Guidance on the responsible use of, and system and control requirements for, AOP in relation to crossing system operators who are subject to these rules may be found in RG 241.

- RG 265.358 In relation to the obligation in Rule 5A.5.2(1), filters are pre-trade controls that establish points at which orders are tested and, by exception, where the system may determine an action other than passing them directly into the crossing system. In practical terms, an automated filter can usually do one of four things in relation to any given order (depending on the settings of the filter parameters):
- (a) pass the order into the crossing system;
  - (b) pass the order into the crossing system but identify it as an exception on exception reports generated by the system for subsequent analysis;
  - (c) pass the order to an appropriate person for review—this could include personnel on an electronic trading desk or a DTR—and a decision as to whether the order may be submitted to the crossing system or routed to another execution venue; or
  - (d) reject the order outright.
- RG 265.359 We recognise that, given the differences in types of business conducted by crossing system operators, there must be some degree of flexibility in determining what constitutes ‘appropriate’ filters for each crossing system operator. The types of filters will depend on the crossing system operator’s capabilities; the nature, scale and complexity of its business; and the particular risks that the crossing system operator has assessed as relevant to that business including financial, reputational and regulatory risks.
- RG 265.360 The requirement in Rule 5A.5.2(2) relates to controls that enable a crossing system operator to effectively implement automated controls to limit a series of related orders from interfering with the efficiency and integrity of the crossing system. For example, this may be required if a user has flooded a crossing system with orders which have substantially slowed the system down so that it no longer operates efficiently. Such controls enable a crossing system operator to target its response to orders which may substantially disrupt its service offering to other users.
- RG 265.361 In addition to having appropriate automated filters and controls, we expect a crossing system operator to consider the resources it may need to cope with the impacts of stressed market conditions on its crossing system, including the adequacy of any disaster recovery and capacity management with respect to its crossing system operations. In managing client orders in the event of stressed market conditions, this may include switching to a back-up facility or bypassing the crossing system and routing to another execution venue (e.g. a licensed exchange market). Whatever the case, these arrangements should not result in a worse outcome for the crossing system operator’s clients.

## Notifications of crossing system outages

- RG 265.362 Rule 5A.2.3 requires crossing system operators to notify ASIC—and all users with orders in the crossing system at the time—where a system outage may materially affect the efficiency or proper functioning of the crossing system. Examples of matters that may be considered material include:
- (a) when orders can no longer be entered, amended or cancelled in the crossing system; or
  - (b) when the matching facility in the crossing system ceases to function efficiently.

- RG 265.363 We do not expect a crossing system operator to notify clients where, under the non-public disclosure requirements in Rule 5A.2.2, it has disclosed to clients:
- (a) how it will route an order that may be in the crossing system at the time of the outage; and
  - (b) when it has discretion to on-route an order that may be in the crossing system at the time of the outage.

Note: See Table 13.

- RG 265.364 To meet the requirements of Rule 5A.2.3, a crossing system operator should consider putting in place policies and procedures that clearly outline the steps to be followed if the crossing system experiences an outage. They should outline the period of time before the procedures are enacted and the process of notifying ASIC and users with orders in the crossing system.
- RG 265.365 These notifications may be made by any means that the crossing system operator determines is most efficient, including through the use of a standardised email to all users and ASIC.

### Notification to ASIC

The notification to ASIC should be emailed to [crossing.systems@asic.gov.au](mailto:crossing.systems@asic.gov.au).

- RG 265.366 If a crossing system experiences an outage, and there are orders from another market participant that are affected by the outage, the notification should be made to the other market participant. This is because the crossing system operator may not know the contact details of the underlying client, and the market participant responsible for these clients is in the best position to take action that is in its client's best interests.

## J Pre-trade transparency

### Key points

Subject to certain exceptions, market participants must not enter into a transaction unless the order is first pre-trade transparent. Market operators must make information about pre-trade transparent orders available immediately.

Exceptions apply for block trades, large portfolio trades, trades with price improvement and certain trades outside market hours.

Pre-trade transparent orders must take priority over fully hidden orders in an order book.

### Scope and application

RG 265.367 Parts 6.1 and 6.2 and this section of the guide apply to market operators that offer trading services in equity market products and CGS depository interests (collectively referred to as ‘relevant products’) and to market participants that trade in these products.

Note: ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 grants participants of the NSXA and SSX markets a waiver from the obligation to comply with the pre-trade transparency provisions in Chapter 6 until 16 November 2020.

RG 265.368 Parts 6.1 and 6.2 and this section of the guide do not apply to transactions arising from:

- (a) the terms embedded in the relevant product, such as a redemption;
- (b) primary market actions (including issuance or allotment of, or an application or subscription for, a relevant product);
- (c) acceptance of an offer under an off-market takeover bid; and
- (d) stock lending or stock borrowing (Rule 6.1.8).

RG 265.369 Pre-trade transparency refers to information on bids and offers being made available before transactions occur. Together with post-trade information, it is generally regarded as central to both the fairness and efficiency of a market, and in particular to its liquidity and quality of price formation. This is also the view of IOSCO.

Note: See IOSCO report, [Transparency and market fragmentation](#) (PDF 578 KB) (IOSCOPD124), Technical Committee of IOSCO, November 2001 as updated by IOSCO report, [Regulatory issues raised by changes in market structure](#) (PDF 675 KB) (FR 13/13), Board of IOSCO, December 2013, and IOSCO [Principles for dark liquidity final report](#) (PDF 471 KB) (FR06/11), Technical Committee of IOSCO, May 2011.

RG 265.370 Pre-trade transparency enables investors to identify trading opportunities, contributing to investor confidence that they will be able to execute a

transaction. Investor confidence in a market can give other investors an incentive to participate, contributing to liquidity and stimulating more competitive pricing. It also plays an important role for listed companies in valuing their assets and their ability to raise further funds, and it contributes to market participants' ability to achieve and evidence best execution. The market integrity rules require a high level of trading interest to be immediately pre-trade transparent.

RG 265.371 There have always been rules in the Australian market requiring market participants to transact on-market (or on the central limit order book since the move to electronic trading). This is based on the notion that price formation is most efficient when full supply and demand is allowed to interact. Pre-trade transparent orders on an order book are important because they:

- (a) establish a reference price, which in addition to their role in trading is important for capital allocation decisions and capital raising; and
- (b) create a deeper pool of 'accessible' liquidity than would otherwise be available, which keeps spreads tight and costs down for investors.

RG 265.372 However, there are limited circumstances where pre-trade transparency can adversely impact on a market and investors in terms of price volatility and higher execution costs. Pre-trade transparency exceptions for large orders reduce the possibility of information leakage of these orders.

## Orders and quotes to be pre-trade transparent

### Market participant's obligation to be pre-trade transparent

RG 265.373 Subject to the exceptions in Rule 6.1.1(2) (see RG 265.374), a market participant must not enter into a transaction in a relevant product unless the order is first pre-trade transparent on an order book of a licensed market: Rule 6.1.1.

## Exceptions

RG 265.374 There are a number of exceptions to the obligation on a market participant to submit orders to a pre-trade transparent order book: Rule 6.1.1(2) and Part 6.2. They are for:

- (a) block trades;
- (b) large portfolio trades;
- (c) trades with price improvement;
- (d) permitted trades during the post-trading hours period;
- (e) permitted trades during the pre-trading hours period; and
- (f) out of hours trades.

- RG 265.375 There are also exceptions to market operators making pre-trade information available about orders on their order book immediately: Rule 6.1.2(2). They are orders that result in:
- (a) block trades;
  - (b) large portfolio trades; and
  - (c) trades with price improvement.

RG 265.376 These exceptions are described below. Under Rule 6.1.6, where an order is executed in part, the exception ceases to apply unless the remainder of the order would have been entitled to the exception if it were a separate order.

### **Block trades (Rule 6.2.1)**

RG 265.377 A market participant may enter into a transaction that is not entered into by matching a pre-trade transparent order on an order book if the transaction is a block trade.

RG 265.378 A block trade occurs in certain circumstances where the transaction is entered into:

- (a) by matching orders on an order book of a licensed market; or
- (b) by a market participant matching orders off an order book of a licensed market:
  - (i) on behalf of a client on one side of a transaction and on behalf of one or more clients on the other side;
  - (ii) on behalf of one or more clients on one side of a transaction and as principal on the other side; or
  - (iii) on behalf of a client (first client) on one side of a transaction and on the other side on behalf of one or more clients and as principal where the consideration for the transaction that is payable by or to the first client and all of the clients on the other side of the transaction in aggregate meets the thresholds referred to in RG 265.380.

RG 265.379 A block trade cannot include orders from more than one client on both sides of the transaction.

RG 265.380 The block trade exception only applies where the resulting transaction would result in a purchase or sale for a total consideration of:

- (a) \$1 million or more for Tier 1 equity market products;
- (b) \$500,000 or more for Tier 2 equity market products;
- (c) \$200,000 or more for Tier 3 equity market products (i.e. equity market products that are not Tier 1 equity market products or Tier 2 equity market products); or
- (d) \$200,000 or more for CGS depository interests.

- RG 265.381 The equity market products that fall within each tier are published in legislative instruments and on our website. We will review the tiers at least quarterly and they will take effect 20 business days after registration or on a later date as specified in the legislative instrument.
- RG 265.382 The relevant product that is the subject of the transaction must be issued by the same issuer, in the same class, with the same paid-up value.

### Large portfolio trades (Rule 6.2.2)

- RG 265.383 A market participant may enter into a transaction that is not entered into by matching a pre-trade transparent order on an order book if the transaction is a large portfolio trade.
- RG 265.384 This exception only applies where there is a purchase or sale of at least 10 different classes of relevant products under a single agreement between a buyer and a seller where:
- (a) the aggregated consideration is not less than \$5 million; and
  - (b) the consideration for each different class of relevant products forming part of the transaction is not less than \$200,000, although additional purchases and/or sales of less than this amount may be included.

### Trades with price improvement (Rule 6.2.3)

- RG 265.385 A market participant may enter into a transaction that is not entered into by matching a pre-trade transparent order on an order book if the transaction is a trade with price improvement.
- RG 265.386 This exception only applies where the transaction is entered into at a price (at the time of execution) that is:
- (a) at a valid price step (i.e. tick size) that is both above the best available bid and below the best available offer; or
  - (b) at the midpoint of the best available bid and best available offer, where:

$$\text{Midpoint} = \frac{\text{Best available bid} + \text{Best available offer}}{2}$$

### Examples

- RG 265.387 In Table 15, the best available bid is \$5.03 and the best available offer is \$5.06. A transaction relying on the trade with price improvement exception could be done at \$5.04, \$5.045 and \$5.05.

**Table 15: Example of best available bid and offer**

Market	Best bid	Best offer
Market A	\$5.03	\$5.07
Market B	\$5.02	\$5.06
Market C	\$5.02	\$5.07

RG 265.388 Where the spread (i.e. the difference between the best available bid and best available offer) is a single price step (e.g. \$5.04 and \$5.05), the trade with price improvement exception means that the trade must only be done at the midpoint price (i.e. \$5.045). The midpoint is not limited to the standard tick sizes for the relevant product in Rule 9.4.1. In this example, the tick size is 1 cent and the midpoint is half a cent.

#### **Minimum order threshold**

RG 265.389 The value of a transaction relying on the trade with price improvement exceptions must be greater than the threshold prescribed in Rule 6.2.3. The threshold is currently set at zero. The purpose of the threshold is to enable ASIC to quickly respond if there is, or we expect there to be, a shift of liquidity away from order books of licensed markets in the short term. Market participants should anticipate that a threshold greater than zero may apply in the future—and they should factor this into their business plans and system development.

#### **Consolidated tape of best available bids and offers**

RG 265.390 In compiling best available bid and best available offer data (i.e. NBBO), we expect market participants and market operators, or their service provider for this purpose, to:

- (a) consider all pre-trade transparent bids and offers from pre-trade transparent order books irrespective of the size and nature of the order (this includes small volume orders and orders that may result in a locked or crossed market);
- (b) compile the data in real time; and
- (c) have appropriate systems and controls in place to ensure data is collected and processed in a timely, accurate and reliable way.

RG 265.391 There will be circumstances when the bids and offers on a pre-trade transparent order book are not available for execution (e.g. during an auction period or during a technical failure). Where a pre-trade transparent order book is open, and any other pre-trade transparent order book does not have bids and offers available for execution, the NBBO should be determined by compilation of the bids and offers on those pre-trade transparent order books that are available for execution.



**How this exception applies during a takeover or buy-back**

- RG 265.392 A transaction relying on the trade with price improvement exception that is effected other than on an order book is:
- (a) not an ‘on-market’ transaction within the meaning of s9 of the Corporations Act—therefore, this transaction does not fall within the takeover exceptions permitted by Ch 6 of the Corporations Act for an on-market transaction; and
  - (b) not ‘in the ordinary course of trading’—therefore, this transaction does not fall within s257B(6) of the Corporations Act for a listed corporation conducting an on-market buy-back. Neither does it fall under the terms of ASIC relief for buy-backs by responsible entities of registered managed investment schemes under [ASIC Corporations \(ASX-listed Schemes On-market Buy-backs\) Instrument 2016/1159](#).

**How this exception applies in a locked market**

- RG 265.393 We consider that where there is no spread because the best bid and offer are the same (e.g. if the best bid is \$5.05 and the best offer is \$5.05), a transaction relying on this exception can only be done at the locked price (i.e. \$5.05—also the midpoint).

**How this exception applies in a crossed market**

- RG 265.394 A crossed market occurs when the best bid (e.g. \$5.05) exceeds the best offer (e.g. \$5.04). We do not expect this to occur often. It is likely to occur more often with volatile products, when orders are being entered before the market opens and as a result of increasing messaging traffic or latency. We expect that where it does occur, the arbitrage opportunity it creates means it will be very short-lived.
- RG 265.395 The trade with price improvement exception is intended to apply when there is a positive spread (i.e. the bid is lower than the offer). It is not intended to apply when there is a negative spread. We consider that if it is imperative to trade during a crossed market, trades can only be priced at the midpoint (i.e. in this example, \$5.045 where the bid is \$5.05 and the offer is \$5.04).

**How this exception applies when there is no spread**

- RG 265.396 We consider that where there is no spread because there is only one of a best bid or offer (e.g. the bid is \$5.05 and there is no offer), the trade with price improvement exception cannot be used.

**Ensuring compliance with this exception**

- RG 265.397 Under Rule 6.3.1(4A), market participants must have in place systems and controls to ensure that their trade reporting systems and associated filters only enable trades that are actually done with meaningful price improvement

(trade with price improvement exception) to be reported to a relevant market operator under the appropriate exception code. This will help market participants comply with Rule 6.3.1(4), requiring them to take reasonable steps to ensure that the post-trade information they report is and remains complete, accurate and up to date. We consider that there should be regular review of the arrangements and verification by a sufficiently senior executive.

- RG 265.398 In considering a market participant's compliance with these exceptions and Rule 6.3.1(4) on the reporting of off-order book trades, we have zero tolerance for error. We will not tolerate any variation away from a valid improved price on the best available bid and offer (for the trade with price improvement exception) of a trade as evidence that a trade complies with the exception.
- RG 265.399 Market operators are required to validate transactions reported to them for accuracy: see RG 172.320–RG 172.325.
- RG 265.400 Market participants need to be prepared to manage transactions that are not accepted by market operators. Where a trade report is not accepted (i.e. it is rejected) by a market operator (and therefore not published), we will not consider market participants to have met their obligation under Rules 6.1.1 and 6.3.1 until the trade is cancelled, or amended so that it complies with the criteria for the exception and then is resubmitted and published: Rule 6.3.1(4B).
- RG 265.401 Market participants must understand and adapt to any contingency arrangements the relevant market operator may have in place if they cannot report as required by Rule 6.3.4 because of an outage in the market operator's systems. This may include a manual process.

### **Permitted trades during post-trading hours period (Rule 6.2.4)**

- RG 265.402 This exception applies where the transaction occurs in the period from the earliest time that trading hours end on any market until 30 minutes after the latest time that trading hours end on any market and it:
- (a) completes an order received before the end of continuous trading (or if there is an auction at the end of trading hours, before that auction) on the market;
  - (b) comprises a bona fide hedge;
  - (c) completes an order that narrowly missed execution during an auction at the end of trading hours for a market;
  - (d) rectifies an error; or
  - (e) results in the transaction being sold by a nominee that holds the relevant products on behalf of a fund manager to another nominee that holds the

products on behalf of the same funds manager and the market participant acts for both clients.

- RG 265.403 This exception limits trading to what is essential to settle a market participant's books for the day. We consider it important to limit the type of trading that can occur during this period to minimise opportunities for regulatory arbitrage between transactions done on a licensed market and outside trading hours without constraint on price and size.

### **Permitted trades during pre-trading hours period (Rule 6.2.5)**

- RG 265.404 This exception applies where the transaction is a crossing that occurs in the period three hours before the start of trading hours on the responsible market operator's market until 15 minutes before the start of trading hours on that market:
- (a) which involves overseas resident clients on each side of the transaction, or an overseas resident client on one side with the market participant as principal on the other; and
  - (b) where a market maintained by a recognised stock exchange in the overseas client's (or one of the overseas clients') country of residence is open for trading at the time. Each market may maintain a list of recognised stock exchanges in its operating rules.

- RG 265.405 This exception is intended to prevent all trading for domestic clients and between market participants before the opening of markets to ensure maximum demand and supply in the opening auction and to minimise opportunities for regulatory arbitrage between transactions done on a licensed market and outside trading hours.

### **Out of hours trading (Rule 6.2.6)**

- RG 265.406 This exception applies where a transaction is executed after the end of the post-trading hours period and before the start of the pre-trading hours period on the next trading day. If the transaction is on behalf of a client, the transaction must be a crossing and the order must be received from the client during this period.
- RG 265.407 During this period, transactions can occur between any parties without constraint on price and size.

### **Record keeping**

- RG 265.408 A market participant that relies on an exception in Rule 6.1.1 (see RG 265.374) must keep, for a period of seven years from the date of the transaction, records that enable the market participant to demonstrate that the transaction met the criteria for the exception: Rule 6.1.1(3).

- RG 265.409 For transactions other than on an order book relying on the trade with price improvement exception, a market participant must record the best available bid and best available offer at the time the transaction was executed: Rule 6.1.1(2)(c).
- RG 265.410 We do not necessarily expect market participants to store this information in their own systems. For example, a market participant may rely on its supplier of consolidated bid and offer information to store the information. However, the market participant must have a process for accurately and efficiently accessing the information. We expect market participants to make the information available to ASIC for inspection on request.

## Content of pre-trade disclosures

- RG 265.411 Table 13 in Appendix 2 in RG 172 outlines the minimum information market participants must make available to market operators and the minimum information market operators must make available as required by Rules 6.1.4 and 6.1.4A. This table also outlines the format we expect to be used for information to facilitate the data consolidation process.
- RG 265.412 We will keep this information under review. We intend to monitor industry developments to determine whether additional information should be made available and will consult if any changes are considered necessary.

### Partly disclosed orders

- RG 265.413 A partly disclosed order is an order on an order book that is pre-trade transparent under Rule 6.1.5 with the exception of 'volume' if 'price' is transparent, or with the exception of 'price' if 'volume' is transparent on the order.
- RG 265.414 The value of the resulting transaction must be greater than the threshold prescribed in Rule 6.1.5. The threshold is currently set at zero. The purpose of the threshold is to enable us to quickly respond if there is, or we expect there to be, a shift of liquidity away from pre-trade transparent orders on an order book to non-pre-trade transparent orders on an order book of licensed markets in the short term. Market participants should anticipate that a threshold greater than zero may apply in the future and should factor this into their business plans and system development.

### Iceberg order

- RG 265.415 Rule 6.1.5(2) clarifies that certain types of orders are partly disclosed orders for the purposes of the market integrity rules. An iceberg order is where the order is of a size specified by the market operator. The order is divided into separate parts and only a single part is pre-trade transparent with the remainder fully hidden until such time as the pre-trade transparent part has

been executed and another part is made pre-trade transparent. This continues until the entire order is executed.

RG 265.416 Under Rule 6.1.7, the hidden portion of the transaction does not have time priority. Therefore, as new portions of the hidden order become pre-trade transparent, they must go to the back of the queue on the order book.

## K Post-trade transparency

### Key points

Details of executed transactions must be made public by market operators immediately, with the exception of certain transactions.

Market participants that transact off-order book should continue to report details of the executed transaction to a market operator, and that information should be included in the market operator's feed of information. These transactions can be reported to any market operator that provides facilities for trading equity market products and CGS depository interests. Table 14 in Appendix 2 in RG 172 outlines the minimum information that a market participant must report to a market operator.

Market participants must only make use of the publication delay while they are at risk as principal in connection with the transaction, and must otherwise report to a market operator immediately.

Market operators must make available post-trade information on reasonable commercial terms and on a non-discriminatory basis. Certain trading information must be publicly available at no cost after 20 minutes.

### Scope and application

RG 265.417 Parts 6.3 and 6.4 and this section of the guide apply to market participants that trade in equity market products and CGS depository interests (collectively referred to as 'relevant products'). Rule 6.3.6A (course-of-sales information) applies to market participants that trade in financial products.

Note: ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 grants participants of the NSXA and SSX markets a waiver from Part 6.3 of the Securities Markets Rules until 16 November 2020.

RG 265.418 Like pre-trade transparency, disclosure of volumes and prices about completed transactions (post-trade transparency) contributes to price formation. It also allows investors to assess execution quality and is an important component for transaction cost analysis.

### Market participants' obligations to report data

RG 265.419 All transactions by market participants must be entered into under the rules of a licensed market: Rule 5.1AA.1. Under Rule 6.3.1(1), market participants are required to report post-trade information for a transaction in an equity market product or a CGS depository interest entered into off-order book to a market operator. The information that market participants must report to market operators is outlined in Rule 6.3.7: see Table 14 in

Appendix 2 in RG 172. This table also outlines the format that we expect to be used for each field to facilitate the data consolidation process.

Note: Rule 7.4.2 requires a market participant to provide certain regulatory data to a market operator. This differs from a market participant's obligation to report post-trade information. For guidance on the provision of regulatory data, see Section L 'Regulatory data'.

RG 265.420 A market participant is required under Rule 6.3.1(4) to take reasonable steps to ensure that all post-trade information it reports is and remains complete, accurate and up to date.

RG 265.421 Market participants have a choice about which market operator to report to when transacting off-order book. These transactions can be reported to any market operator that provides facilities for trading relevant products.

### Reporting off-order book transactions

RG 265.422 Under Rule 6.3.1, a market participant that transacts off-order book in accordance with the permitted pre-trade transparency exceptions (see Section J) must:

- (a) *during normal trading hours*—report post-trade information immediately to a market operator; and
- (b) *outside normal trading hours*—irrespective of where it is matched or executed, report post-trade information to a relevant market operator at least 15 minutes before the commencement of normal trading hours of the next trading day.

Note: The Securities Markets Rules allow for deferred publication of information in certain circumstances: see RG 265.426–RG 265.431.

RG 265.423 If a transaction is executed outside normal trading hours and outside the period in which there is an auction on the market, post-trade information must be reported to a market operator at least 15 minutes before the commencement of normal trading hours of the next trading day, or at an earlier time as required by the operating rules of the market operator under which the market participant determines the transaction has taken place.

RG 265.424 Where operating hours vary between markets, we deem 'normal trading hours' to be the earliest opening time and latest closing time (including auction periods) of all licensed markets dealing in relevant products that the market participant can access. For this purpose, a market is considered open for trading when there is continuous trading and during any auction period.

RG 265.425 Under Rules 6.3.1 and 5.1AA.1, transactions by market participants in relevant products that take place off-order book must be reported to a market operator—irrespective of where the counterparty is located (i.e. including if the counterparty is overseas).

## Delayed reporting

- RG 265.426 There are some circumstances where immediate disclosure of executed trades can have negative market impacts.
- RG 265.427 Under Rules 6.3.1(2) and 6.4.1, reporting of large principal transactions in which the market participant acts as either buyer or seller may be delayed, if the transaction is at least:
- \$15 million for equity market products in Category A;
  - \$10 million for equity market products in Category B;
  - \$5 million for equity market products in Category C; or
  - \$2 million for equity market products in Category D, or CGS depository interests.
- Note: The list of equity market products that fall within each category is published by the relevant market operator (taking effect the day after it is published).
- RG 265.428 Where a market participant buys or sells more than one class of relevant product under a single agreement, each constituent transaction should be assessed separately for the purpose of determining whether it is entitled to deferred publication.
- RG 265.429 Under Rule 6.3.1(2), reporting of large portfolio trades in which the market participant acts as principal as either buyer or seller may also be delayed. Large portfolio trades are included in the list of exceptions to pre-trade transparency in Section J.
- RG 265.430 The maximum period for delayed reporting is set out in Rule 6.3.1: see Table 16.

**Table 16: Maximum period for delayed reporting**

Time transaction is effected	Maximum period for delayed reporting
Before 1 pm on trading day	15 minutes before the commencement of normal trading hours on the next trading day
After 1 pm on trading day	No later than 1 pm on the next trading day

- RG 265.431 Under Rule 6.3.1(2), market participants must only make use of the delay while they are at risk as principal in connection with the transaction. When they are no longer at risk, they should report the information.

## Who should report off-order book transactions?

- RG 265.432 It is important that transactions are only reported once to ensure data quality and to assist the data consolidation process. Only one party to a transaction



should report the information to a market operator: Rule 6.3.2. This party should be:

- (a) where only one party is subject to the market integrity rules—the party subject to the rules (e.g. if the counterparty is an overseas party, the party that is a market participant and subject to the market integrity rules must report); or
- (b) where more than one party is subject to the market integrity rules—the executing party, which is:
  - (i) the market participant that receives the order and executes the transaction without transmitting the order to another market participant (e.g. a market participant that executes an order through its own crossing system); or
  - (ii) if both parties receive the order and execute the transaction, either:
    - (A) the seller or the party acting on behalf of the seller (e.g. for manually negotiated trades); or
    - (B) as determined by agreement between the parties. In this case, the party representing the seller must document the agreement reached with the buyer that the buyer will report. This can be done on a case-by-case basis or by standing agreement between the parties (Rule 6.3.2(3)).

RG 265.433 Where an order is routed to another market participant's crossing system and the order is matched or executed in that other crossing system, we consider that the market participant that operates that other crossing system is the executing party and should report the trade.

RG 265.434 All parties to a transaction must take reasonable steps to determine, before the transaction is executed, who will report the transaction: Rule 6.3.2(4). However, we acknowledge that the non-reporting party is not responsible for publication irrespective of whether the reporting party complies with its reporting obligation.

RG 265.435 The following examples indicate which party should report the transaction in various circumstances.

#### Examples of reporting obligations

**Market:** A market participant receives a buy order from Client B for 5,000 products. The market participant, on the basis of its best execution policy, transmits the order to Market X for execution. Market X must publish a transaction of 5,000 products.

**Agency:** A market participant receives a buy order from Client B and a sell order from Client C—both for 5,000 products. The market participant, as agent, matches the orders of Client B and Client C. As the executing party, it must report a transaction of 5,000 products.

**Principal:** A market participant receives a buy order from Client B for 5,000 products. The market participant executes the transaction against its own account. As the executing party, it must report a transaction of 5,000 products.

**Riskless principal:** A market participant receives a buy order from Client B and a sell order from Client C for 5,000 products. To the extent permitted under Rule 5A.3.3(1)(h), and Rule 5.1.4(1)(h), the market participant simultaneously acts as the seller to Client B and buyer to Client C. As the executing party, it must report a single transaction of 5,000 products.

We expect that where a market participant accesses another market participant's crossing system and immediately undertakes a transaction with its client, only one transaction will be reported—by the market participant operating the crossing system in which the transaction occurred—and the crossing system venue will be identified in accordance with RG 265.454–RG 265.457.

**Multi-fill (agency):** A market participant receives a buy order from Client B for 5,000 products and a sell order from Client C for 8,000 products. The market participant, as agent, matches the order of Client B with 5,000 of Client C's order. The remaining 3,000 products from Client C are sold on Market X. The market participant, as the executing party for the agency component, must report a transaction of 5,000 products. Market X must publish a transaction of 3,000 products.

**Principal hedge:** A market participant receives a buy order from Client B for 5,000 products. The market participant executes the transaction against its own account, and then hedges its position on Market X. The market participant, as the executing party for the client transaction, must report a transaction of 5,000 products. Market X must publish a transaction of 5,000 products.

RG 265.436 Rule 6.3.1(4) requires a market participant to take reasonable steps to ensure that all post-trade information it reports to a market operator is and remains complete, accurate and up to date.

RG 265.437 Under Rule 6.3.1(4B), where a market participant reports an off-order book transaction to a market operator and the market operator notifies the participant that the transaction does not meet the criteria for an off-order book trade or the criteria for delayed reporting, the market participant must immediately amend or cancel the transaction or take other appropriate measures in relation to the transaction (having regard to the reporting market participant's obligations under Rules 6.1.1 and 6.3.1).

### Content and format of post-trade disclosure

RG 265.438 Market participants must report post-trade information to market operators as specified under Rule 6.3.7 (in the case of equity market products) or Rule 6.3.7A (in the case of CGS depository interests): see Table 14 in

Appendix 2 in RG 172. Market operators must make that information available.

RG 265.439 We will keep under review the post-trade information that must be reported to market operators by market participants.

## Which activities do not need to be reported?

RG 265.440 Only those activities that constitute a transaction should be reported and each transaction should not be reported more than once. This is necessary to avoid duplication and misleading the wider market about the volume of trading.

### Single transaction

RG 265.441 Two matching trades entered at the same time and price with a single party interposed (i.e. riskless principal) is a single transaction for the purpose of the post-trade transparency obligations and should be reported as a single transaction to avoid duplication. Parties to the transaction must ensure that the transaction is made public as a single transaction and only reported once: Rule 6.3.1(5).

### Activities that should not be reported

RG 265.442 Under Rule 6.4.2, the following activities should not be reported:

- (a) passing of an order—an order only becomes a transaction at the point there is an execution. For example, when an order passes from one investor to another via a chain of firms, and when the movement is economically unchanged, only the final execution constitutes a transaction;
- (b) primary market transactions (such as issuance allotment, subscription or takeover bid);
- (c) stock lending or stock borrowing; and
- (d) ETF special trades.

## L Regulatory data

### Key points

Market participants must provide specified regulatory data on orders and trade reports to market operators.

Market operators must record and provide to ASIC all regulatory data they receive.

### Scope and application

- RG 265.443 Chapter 7 of the Securities Markets Rules on regulatory data for market supervision and this section of the guide apply to market participants that trade in equity market products (excluding futures and options) and CGS depository interests, and to market operators that offer trading services in these products: Rule 7.4.1.
- RG 265.444 Under Chapter 7, specified regulatory data on orders and trades must be provided by market participants to the relevant market operators: Rules 7.4.2(1) and (2).
- RG 265.445 Market operators offering trading services in these products must record the regulatory data they receive: Rule 7.4.3(1). Market operators must also provide this regulatory data to ASIC: Chapter 7.
- RG 265.446 The data provided by market participants to market operators and ASIC will help us to carry out our function of supervising and ensuring the integrity of Australia's licensed financial markets, including:
- (a) detecting market abuse;
  - (b) monitoring market orderliness and integrity; and
  - (c) analysing market structure, trends and quality.
- RG 265.447 Market participants must provide the information specified in Chapter 7:
- (a) in an order transmitted to an order book (Rule 7.4.2(1)); and
  - (b) in a trade report (i.e. an off-order book transaction) for each side of the transaction (buy and/or sell) for which the market participant acted as agent or as principal (Rule 7.4.2(2)).
- RG 265.448 Where an off-order book transaction involving two market participants is reported to a market operator, a market participant is not required to provide regulatory data for the other market participant's side of the transaction.
- RG 265.449 The information to be provided in trade reports under Chapter 7 is different from the post-trade information that must be provided by a market

participant reporting under Chapter 6 of the Securities Markets Rules for off-order book transactions in relevant products.

Note: ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 grants participants of the NSXA and SSX markets a waiver from the obligation to comply with the provisions of Part 7.4 of the Securities Markets Rules until 16 November 2020.

## Confidentiality

- RG 265.450 Unlike the post-trade information that must be given to market operators under Part 6.3, the regulatory data under Part 7.4 (with the exception of information about the execution venue) is for ASIC's use rather than for public consumption, and must be treated confidentially.
- RG 265.451 Subject to exceptions required by law, the seeking of legal advice, or the provision of the data to a person acting as agent on behalf of the market participant (to the extent there is a legitimate business reason for that person to have access to the regulatory data), the data relating to orders and trade reports given to a market operator by a market participant under Part 7.4 must not be made available by the market participant in its raw or summarised form to any other person in connection with the order or trade report: Rule 7.4.1(3). The market participant must also take reasonable steps to ensure that its agent does not disclose the regulatory data to any other person, subject to the same exceptions.
- RG 265.452 We expect that market participants may wish to restrict access to this data internally, and specify to their system providers certain restrictions in that regard. In particular, we recognise that indiscriminate display of the origin of order information may concern some clients and we expect market participants will elect to limit the visibility of this information within their systems.

## Data to be provided and recorded

- RG 265.453 Table 17 summarises the information market participants must provide to a market operator: Rule 7.4.4. A detailed description for each component of information is provided after the table. For the purposes of Rule 7.4.4(3), market participants and market operators must provide the data in accordance with the format and content requirements set out in Table 17.

**Table 17: Summary of data to be provided by market operators and market participants**

Data	Description	Content/format	Required for order	Required for trade report
Execution venue	The venue (licensed market, crossing system or other facility), if any, on which the transaction occurred	The code for identifying: (a) ASX TradeMatch is 'ASXT'; (b) ASX Centre Point is 'ASXC'; (c) the Chi-X market is 'CHIA'; (d) a crossing system is the <a href="#">crossing system ID</a> published by ASIC in a legislative instrument and on our website See RG 265.454–RG 265.457	No	Yes
Capacity of market participant	Describes the capacity in which a market participant has submitted an order or entered into a transaction	Principal ('P'), agent ('A') or both ('M') See RG 265.458–RG 265.461	Yes	Yes
Origin of order information for agency orders and transactions	Information that assists identification of the person who provided instructions to place an order or enter into a transaction	One of the following (generally, in order of preference) used consistently: (a) a client's ACN, ARBN or ARSN (or an equivalent form of identification in an overseas jurisdiction), or global LEI; (b) an internal client identifier; (c) user login identifier; (d) CHES HIN; (e) internal account identifier; or (f) adviser reference  If there is no single source, 'VWAP', 'TWAP' or another identifier, used consistently See RG 265.462–RG 265.472  Note 1: ACN = Australian Company Number; ARBN = Australian Registered Business Number; ARSN = Australian Registered Scheme Number; LEI = Legal Entity Identifier; and CHES HIN = CHES Holder Identification Number.  Note 2: VWAP = volume weighted average price; and TWAP = time weighted average price.	Yes	Yes

Data	Description	Content/format	Required for order	Required for trade report
Intermediary identifier for agency orders and transactions	Information that enables identification of an AFS licensee intermediary (i.e. an AFS licensee with which the market participant has a specific type of market access arrangement) that provided instructions to place an order or enter into a transaction	AFS licence number See RG 265.473–RG 265.476	Yes	Yes
Directed wholesale indicator for agency orders and transactions	Information that indicates whether the order or transaction was submitted by a wholesale AOP client (i.e. an AOP client with which the market participant has a specific type of market access arrangement) with non-discretionary routing and execution instructions	'Y' for yes or 'N' for no. Default is 'N' See RG 265.477–RG 265.480	Yes	Yes

## Execution venue

RG 265.454 To stay abreast of developments in market structure, including off-order book liquidity (or liquidity in 'dark pools') we require unique identification of the execution venue for transactions executed other than on an order book of a licensed market (off-order book). This information enhances the efficiency of our surveillance function across execution venues and provides accurate data for analysing market developments.

RG 265.455 Execution venue codes are determined by ASIC in a legislative instrument and are made available on our website. Market participants must identify the venue (i.e. licensed market, crossing system or other facility) on which off-order book transactions reported to a market operator are matched or executed: see item 1 of the table in Rule 7.4.4. The following execution venue codes must be used:

- (a) 'ASXT' for ASX TradeMatch;
- (b) 'ASXC' for ASX Centre Point;
- (c) 'CHIA' for the Chi-X market;
- (d) for a crossing system, the [crossing system ID](#) published by ASIC in legislative instruments and on our website.

Note: Execution venue codes are determined by ASIC in *ASIC Market Integrity Rules (Securities Markets) Determination 2018/314*.

RG 265.456 On request, ASIC may determine a code for an execution venue where one has not been assigned.

RG 265.457 For manually negotiated transactions, there is no requirement to provide a code for the execution venue.

### Capacity of market participant

RG 265.458 For orders submitted to an order book of a licensed market, market participants must indicate whether they are acting as principal or as agent for a client, or as both principal and agent, in relation to the order: see item 2 of the table in Rule 7.4.4.

RG 265.459 For transactions done other than on an order book of a licensed market and reported to a market operator, the market participant reporting the transaction must indicate, for each side (buy and/or sell) of the transaction on which they are required to provide regulatory data, whether they were acting as principal or as agent for a client, or as both principal and agent.

Note: 'Principal' has the meaning given by Rule 1.4.3.

RG 265.460 The following notations must be used for identifying that the market participant is acting:

- (a) as principal—is 'P';
- (b) as agent for a client—is 'A'; and
- (c) as both principal and agent for a client—is 'M'.

Note: The notations for identifying the capacity of a participant are determined by ASIC in *ASIC Market Integrity Rules (Securities Markets) Determination 2018/314*.

RG 265.461 This information will enhance our ability to detect certain forms of market abuse and our understanding of the basis upon which transactions occur in the Australian market.

### Origin of order

RG 265.462 Where a market participant is acting as agent for a client, it must provide a reference to identify the source of the original client instructions that resulted in an order or a transaction, to the extent the market participant is able to determine the source of those instructions, taking all reasonable steps: see item 3 of the table in Rule 7.4.4.

Note: For an explanation of what are 'reasonable steps' for the purposes of this rule, see RG 265.481–RG 265.483.

RG 265.463 Origin of order information allows us to identify transactions that may have originated from the same person or client. It allows us to detect and investigate market manipulation and insider trading with greater efficiency



and may assist market participants' risk management. On that basis, this information will enhance our ability to perform market surveillance.

RG 265.464 We recognise that for certain forms of order flow, providing this information may not be practicable. Accordingly, the information must be provided to the extent that it is able to be determined by the market participant, taking all reasonable steps.

RG 265.465 We expect this information will be provided where it is:

- (a) provided on the original client order;
- (b) entered by the market participant; or
- (c) available by reference to information held in the order management system used by the market participant.

RG 265.466 This information must be provided on all orders or transactions that can be attributed to a single source.

RG 265.467 As noted in Table 17, a market participant may identify the origin of an order by using one of the following identifiers for the client:

- (a) Australian Company Number (ACN);
- (b) Australian Registered Business Number (ARBN);
- (c) Australian Registered Scheme Number (ARSN);
- (d) global Legal Entity Identifier (LEI);
- (e) an equivalent form of identification to ACN, ARBN, ARSN, in a foreign jurisdiction;
- (f) an internal client identifier;
- (g) user login identifier;
- (h) CHESS HIN;
- (i) internal account identifier; or
- (j) adviser reference.

RG 265.468 Our preference generally is to receive origin of order information that is not unique to the market participant providing it (i.e. the references referred to in RG 265.467(a)–RG 265.467(e)).

RG 265.469 Where the market participant uses a notation, code or number to identify the origin of an order, the market participant must take all reasonable steps to use the same notation, code or number on an order or trade report to identify the same person or account in different orders or trade reports (i.e. where multiple orders or transactions originate from the same source, that source should be identified consistently): Rule 7.4.4(5). Where a market participant's internal client, account or user login identifier is used, that

identifier may be encrypted so long as the encrypted identifier does not change with the date and/or time.

RG 265.470 Rule 7.4.4 recognises that where an order or transaction relates to a number of unrelated instructions, it may not be possible to provide information that identifies the origin of the order or transaction. For example, where multiple investment managers provide instructions to achieve VWAP, a market participant may place ‘basket’ orders representing similar instructions received from multiple sources. In this case, market participants must provide an identifier that indicates the origin of the order is not a single source. Acceptable identifiers include:

- (a) VWAP;
- (b) TWAP; or
- (c) any other identifier used consistently.

RG 265.471 Origin of order information must be provided on orders submitted to an order book of a licensed market and, where relevant, for each of the buy side and sell side of transactions done other than on an order book of a market when reporting that transaction in accordance with Rule 6.3.1 (for relevant products) or the market operating rules (for other products).

### Examples

RG 265.472 Table 18 sets out examples and guidance on the origin of order information associated with common types of order flow that we would expect market participants to provide. The examples are not exhaustive and each example should be considered in isolation—that is, the circumstances in one example should not be applied to circumstances in the others.

**Table 18: Examples of origin of order information**

Example	Guidance
<p><i>Example 1: Online retail broking</i></p> <p>A person logs on to a market participant’s online retail broking website and places orders for three accounts</p>	<p>In this example, the person is authorised to place orders for the three accounts, and is the origin of the three orders. On all three orders, the market participant should provide the same unique reference for the person that placed the order. This may be the person’s customer number or system login username</p> <p>If the market participant is not able to provide a unique customer number or system login username for the person that placed the order, the market participant should provide the relevant account identifier for each order</p> <p>Market participants already using a unique account reference to propagate a market operator’s ‘Xref’ or ‘bookings reference’ field may, as long as the information does not change with time, use the same reference for ASIC’s origin of order reference</p>

Example	Guidance
<p><i>Example 2: 'White label' online retail broking</i></p> <p>A person logs on to the online trading website of an intermediary AFS licensee that is not a market participant</p> <p>The website, order management systems and access to markets is provided and managed by a market participant to the intermediary AFS licensee</p> <p>The person places orders for three retail accounts using the systems provided to the intermediary AFS licensee by the market participant</p>	<p>In this example, the person is authorised to place orders for the three accounts, and is the origin of the three orders</p> <p>As the market participant provides and manages the systems used by the intermediary and the person, information relating to the origin of the three orders is known to the market participant. On all three orders, the market participant should provide a unique reference for the person that placed the order. This may be the person's customer number or system login username</p> <p>If the market participant is not able to provide a unique reference for the person that placed the order, the market participant should provide the relevant account identifier on each order</p> <p>Market participants already using a unique account reference to propagate a market operator's 'Xref' or 'bookings reference' field may, as long as the information does not change with time, use the same reference for ASIC's origin of order reference</p> <p>Note: In addition to providing a reference for the origin of order, market participants must also provide the AFS licence number of the intermediary: see RG 265.473–RG 265.476.</p>
<p><i>Example 3: Full service retail broking</i></p> <p>A person contacts their adviser and provides instructions to place an order</p> <p>The adviser places the order</p>	<p>In this example, a market participant should provide, on the order, a reference that identifies the person that provided instructions to place the order</p> <p>If the market participant is not able to identify the person that provided the instruction to place the order, and the accounts to which the trades will be allocated are known, the market participant should provide, on the order, a reference for one of those accounts</p> <p>If the market participant is not able to identify the person that provided the instruction to place the order and the accounts to which the trades will be allocated are unknown, the market participant should provide a reference for the adviser who placed the order</p>
<p><i>Example 4: Full service retail broking—Managed discretionary account</i></p> <p>An adviser places an order on behalf of a client (or several clients) without receiving explicit instructions from the client(s)</p>	<p>In this example, the market participant should provide an identifier for the adviser that placed the order</p> <p>If the market participant is not able to identify the adviser that placed the order, the market participant should provide, on the order, a reference for one of the accounts for which the order was placed</p>
<p><i>Example 5: Institutional broking—Wholesale client</i></p> <p>An investment manager places an order on behalf of a client (or several clients)</p> <p>The trader places the order</p>	<p>In this example, a market participant should provide a reference that identifies the investment manager that placed the order</p> <p>If the market participant is not able to identify the investment manager that placed the order, the market participant should provide, on the order, a reference for one of the accounts to which the trades will be allocated</p> <p>If the market participant is not able to identify the person that provided the instruction to place the order or identify the accounts to which the trades will be allocated, the market participant should provide a reference for the trader who placed the order</p>

Example	Guidance
<p><i>Example 6: Institutional broking—Overseas client</i></p> <p>An overseas investor instructs their overseas broker to submit an order to an Australian market operator</p> <p>Through one or more intermediaries the overseas investor's instruction is received by the London office of a global investment bank and transferred electronically to the Australian office of the investment bank</p> <p>The Australian office of the global investment bank is a market participant</p>	<p>The market participant must provide a reference that best identifies the origin of the order. If the market participant, taking all reasonable steps, can determine the ultimate originator of the order (the overseas investor), then an identifier for that ultimate originator should be provided</p> <p>We recognise that, in this example, even if the market participant takes all reasonable steps, it may not be able to ascertain the ultimate originator of the order. In that case, it must provide an identifier for the party closest to the originator as possible</p> <p>In this example, the London office should provide the Australian market participant with a reference to identify where the order originated. If the London office does not provide the Australian market participant with a reference to identify where the order originated, the market participant should provide a reference to identify the London office</p>
<p><i>Example 7: Institutional broking—Overseas client</i></p> <p>An overseas investor instructs their overseas broker to submit an order to an Australian market operator</p> <p>Through one or more unrelated intermediaries, the instruction is received by a market participant</p>	<p>The market participant must provide a reference that best identifies the origin of the order. If a reference for the ultimate originator of the order is known, it must be provided</p> <p>We recognise that order information received from the intermediary may not include a reference for the ultimate originator of the order. The market participant should provide a reference for the party closest to the originator as possible</p> <p>If details of the originator are not provided by the intermediary, the market participant must provide a reference for the intermediary from which it received instructions for the order</p>
<p><i>Example 8: Institutional broking—VWAP</i></p> <p>A number of unrelated clients contact a market participant asking them to buy a quantity of shares and achieve VWAP over the trading day</p> <p>The market participant aggregates all similar orders and executes an algorithm, which submits a number of orders to the market to achieve VWAP for the total quantity of shares over the trading day</p>	<p>The market participant must provide a reference that best describes the origin of the order, but in this case there is no single client or person associated with the origin of each order submitted to the market by the algorithm. The market participant should modify the algorithm to provide a consistently used identifier for the origin of the order. In this case, 'VWAP' would be an appropriate identifier to use</p>

## Intermediary identifier

- RG 265.473 Where an order originates from the client of an AFS licensee that acts as an intermediary for its own clients and that has a specific arrangement with the market participant for access to the market (typically known as an online 'white label' broking arrangement), the market participant must take all reasonable steps to identify the AFS licence number of the intermediary on orders and the relevant buy and/or sell side of trade reports: see item 4 of the table in Rule 7.4.4.

- RG 265.474 Over recent years, the number of indirect market participants has grown significantly and order and trade information for orders originating from this segment of the market is difficult to identify. Providing AFS licence numbers on orders and trade reports originating from indirect market participants will allow ASIC to map this important market segment and provide efficiencies for our trading inquiries. Under this rule, active indirect market participants will be identified, and the information obtained under it will be used to assist us to assess compliance with AFS obligations by indirect market participants.
- RG 265.475 Where an order is placed directly by an indirect market participant using systems provided by the market participant, we expect market participants will be able to provide the AFS licence number of the intermediary. This means that we expect a market participant, taking all reasonable steps, will be able to determine and provide this information.
- RG 265.476 Where a number of intermediaries exist between the market participant and the client, the AFS licence number of the intermediary with access to the trading system of a market participant must be provided.

### **Directed wholesale indicator**

- RG 265.477 A market participant must take all reasonable steps to identify orders and transactions:
- (a) with non-discretionary routing and execution instructions; and
  - (b) received electronically from a wholesale client: see item 5 of the table in Rule 7.4.4.
- RG 265.478 Where both criteria are satisfied, the market participant must use the notation ‘Y’ when providing the data to a market operator. If one or both of the criteria are not satisfied, the market participant must use the notation ‘N’.
- Note: The notations for identifying the directed wholesale indicator are determined by ASIC in *ASIC Market Integrity Rules (Securities Markets) Determination 2018/314*.
- RG 265.479 For the purposes of this rule, ‘wholesale’ has the same meaning as outlined in Table 4.
- RG 265.480 Technology—in particular, direct electronic access to markets by wholesale clients—plays an ever-increasing role in our markets. The information that must be reported will enable ASIC to assess the impact on the market of clients with direct access to markets. These clients have sophisticated technology platforms and, with the exception of market access, often do not rely on the execution services provided by the market participant.

## What are 'reasonable steps' to determine data?

- RG 265.481 Origin of order information, intermediary identifiers and directed wholesale indicators must be provided to the extent it is able to be determined by a market participant, taking all reasonable steps: Rule 7.4.4.
- RG 265.482 In the particular circumstances of an order or transaction or client, a market participant may be unable to determine the data required to be reported. This may be because the systems and processes developed do not cater for unique circumstances. In those cases, which we expect to be limited, a market participant need not provide the required data.
- RG 265.483 When a specific, unique set of circumstances for an order or transaction starts to recur, market participants should consider whether to enhance their systems and processes to enable the capture of the data required for those circumstances.

## M Trades under rules of a market operator, trade confirmations, client agreements, confidential order information and order incentives

### Key points

Transactions in equity market products and CGS depository interests must be entered into under the operating rules of a market operator.

Market participants must not transact during a market integrity related trading suspension.

Market participants may provide a single trade confirmation for an order executed across multiple markets with written authorisation from a client.

Client agreements should reflect the relevant requirements of the market integrity rules.

Market participants must take reasonable steps to ensure confidential client order and transaction information is not used or disclosed.

Market participants must not pay for order flow where the result is that the net price paid by a client is less than the price reported to a market.

### Scope and application

RG 265.484 This section of the guide applies to market participants that trade in equity market products and CGS depository interests (collectively referred to as ‘relevant products’).

Note: ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258 grants participants of the NSXA and SSX markets a waiver from the obligation to comply with the provisions of Chapter 5 (other than Part 5.4A and Part 5.4B) of the Securities Markets Rules until 16 November 2020.

### Trading under the operating rules of a market operator

RG 265.485 Under Rule 5.1AA.1, a market participant must not enter into a transaction other than under the rules of a market operator (either on an order book or off-order book), unless the transaction is entered into under:

- (a) the terms of a relevant product, including a redemption; or
- (b) a primary market auction, including an off-market bid for relevant products or an issue, allotment or subscription of new relevant products.

RG 265.486 This means that a market participant must execute a transaction in a relevant product either on an order book of a market or report it to a market operator

in accordance with the market integrity rules and the operating rules (including written procedures made under the operating rules) of the relevant market.

- RG 265.487 Market participants have a choice about which market operator's operating rules to enter into a transaction under. They can enter into transactions under the rules of any market operator that provides facilities for trading relevant products.
- RG 265.488 Market participants should ensure that, on an ongoing basis, they meet all obligations under the operating rules and written procedures made under the operating rules of the market operator they are transacting under. For example, market participants should ensure any orders and transactions comply with the market operator's pre-trade transparency exceptions and post-trade transparency reporting requirements.
- RG 265.489 This rule is intended to ensure that clients have certainty about the rules and protections they are transacting under and can access the relevant compensation entitlements on a market. The rule is also intended to limit the sources of pre-trade and post-trade data, which will facilitate data consolidation in the market.

## Trading suspensions and off-order book trading

- RG 265.490 Under Rule 5.9A.1, a market participant must not match or execute a transaction where there is a trading suspension in the relevant product on all licensed markets.
- RG 265.491 We acknowledge that market participants should be able to continue trading where there is a technical failure on one market and this rule does not prohibit that. However, we expect that when trading is suspended for a market integrity related purpose all trading should cease. We consider that when trading is suspended on all licensed markets, it will typically be a result of a market integrity related issue.
- RG 265.492 The purpose of constraining trading during market integrity related events is to limit the impact of information asymmetries between market participants, provide time for all market participants to consider the implications of the event and to minimise opportunities for regulatory arbitrage between trading on order books of licensed markets and off-order book.

## Accumulation of trade confirmations

- RG 265.493 In a multimarket environment, it is possible that a single client order may be executed through a series of transactions across more than one market (e.g. divided between Market X and Market Y). In these circumstances, there



need to be clear and consistent arrangements in place for disclosing individual transaction details to clients who are required to be given a confirmation under s1017F(1)(a) of the Corporations Act (see also regs 7.9.63A–7.9.63C of the Corporations Regulations) and Rule 3.11.2.

- RG 265.494 Market participants are permitted to accumulate confirmations for orders executed through multiple transactions on one market into a single trade confirmation, and to specify the VWAP for the transactions: Rule 3.4.2.
- RG 265.495 Rule 3.4A.1 sets out the circumstances in which a market participant may accumulate multiple transactions into a single confirmation for a single client order executed across multiple markets. As with the market-specific market integrity rules, it enables a market participant to specify the VWAP rather than the price per unit, subject to the client providing written authorisation to accumulate trade confirmations before the time the order is placed.
- RG 265.496 Rule 3.4A.1(b) requires a market participant, on request from a client, to provide a statement of the individual prices for each transaction. We expect market participants to also disclose the markets where each price was achieved if requested. Depending on the specific request from the client, we consider that the statement may be provided in writing or verbally. Where it is provided in writing, this may be in print or electronic form.
- RG 265.497 Regulation 7.9.63B(7) of the Corporations Regulations requires a trade confirmation to include the name of the market where the transaction was executed. A market participant can fulfil this obligation by listing the markets that the market participant is a member of on trade confirmations and note that the trade may have been executed on one or more of those markets.

### **Client authorisation by existing clients**

- RG 265.498 Where a market participant has already obtained written authorisation from a client to accumulate transactions on a market into a single trade confirmation (under Rule 3.4.2), we consider that this authorisation is sufficient to satisfy the requirement under Rule 3.4A.1—that is, there is no need to obtain another written authorisation.
- RG 265.499 Where a wholesale client has elected not to receive trade confirmations in accordance with Rule 3.4.2, we consider this election will also apply in the context of Rule 3.4A.1.
- RG 265.500 Where a client has not already provided written authorisation to accumulate trade confirmations on a market, the market participant will need to obtain the client's written authorisation before accumulating transactions under Rule 3.4A.1.

RG 265.501 In all cases, we expect market participants to notify their clients of how they intend to accumulate transactions in a multimarket environment. They may choose to make this notification in the client agreement.

### **Client authorisation by new clients**

RG 265.502 Under Rule 3.4A.1, market participants that are required under s1017F(1)(a) of the Corporations Act and Rule 3.4.1 to provide trade confirmations to a client should obtain the written authorisation of all new clients to accumulate a series of transactions into a single trade confirmation before the time an order is placed.

## **Managing confidential order information**

RG 265.503 Rule 5.4A.1 requires a market participant to take reasonable steps to ensure that its officers and employees do not use or disclose information about orders received, or transactions resulting from those orders, unless permitted under the market integrity rules or the law. Rule 5.4A.1 provides the following permitted disclosures and uses of information:

- (a) information about orders or transactions that is generally available (i.e. publicly available);
- (b) pre-trade information (as defined in Rule 6.1.2 and Section J of this guide) if:
  - (i) the information has been made available by a market operator. This means that a market participant cannot use or disclose pre-trade information it may hold about an order unless a market operator has made it available under Rule 6.1.2; or
  - (ii) it is necessary to use or disclose that information to execute an order (including disclosure of the information in an order routing instruction). For example, a market participant may route an order to another market participant for execution;
- (c) post-trade information (as defined in Rule 6.3.4 and Section K of this guide) if:
  - (i) the information has been made available by a market operator. This means that a market participant cannot use or disclose post-trade information it may hold about a transaction it has executed unless a market operator has made it available under Rule 6.3.4; or
  - (ii) such disclosure is required for trade confirmations or billing purposes. This enables a market participant to disclose post-trade information to back office personnel to enable trade confirmations to be issued to clients; and

- (d) information about orders or transactions is disclosed to a person that maintains or services the market participant's internal order management system or crossing system, or provides administrative or analytical services to or for the market participant. When information is disclosed for these purposes the person receiving the order or transaction information must agree in writing to limit its use of such information for either of these purposes. Examples of administrative and analytical services include research and transaction cost analysis.

RG 265.504 The reference to 'a person' in RG 265.503(d) includes employees of the market participant and all other parties, including contractors. We expect a written agreement to be maintained for each person, whether an employee or contractor. For example:

- (a) if the information is disclosed to an employee, it could form part of internal procedures that the employee has agreed in writing to comply with in an employment contract or an employee code of conduct; and
- (b) if the information is disclosed to a contractor, then it could form part of the terms of conditions of the contract for service, or form part of a separate confidentiality agreement.

RG 265.505 We expect a market participant to restrict the disclosure and use of confidential order information to an 'as needs basis'. For example, a market participant that operates a crossing system may restrict disclosure of orders and transactions in its crossing system to an internal electronic trading desk that oversees the crossing system for the purposes of ensuring the crossing system is operating efficiently.

### **Client disclosure**

RG 265.506 We consider it good practice for a market participant to disclose to its clients how, and to whom, it discloses confidential order information.

### **Information barriers**

RG 265.507 We expect that market participants will have in place internal policies and procedures that will limit the disclosure and use of confidential order information in line with the permitted uses and disclosures in Rule 5.4A.1(2). A market participant should maintain strong information barriers to comply with Rule 5.4A.1, including system and physical segregation to ensure that information about orders and transactions is not made available other than in accordance with Rule 5.4A.1. Further guidance on our expectations about information barriers can be found in RG 181.

Note: Rule 3.6.3 of the Securities Markets Rules imposes obligations on the participants in relation to the implementation of information barriers.

## Indications of interest

- RG 265.508 An indication of interest (IOI) is a non-binding electronic expression (or advertisement) of trading interest. It is a mechanism used to identify potential counterparties and is most often used where there is a large volume of securities to trade.
- RG 265.509 An IOI usually contains some information about trading intentions, such as the identity of the security, the capacity in which the market participant is operating (i.e. agency or principal), the volume of securities, or the price the party is willing to trade at. IOIs are usually distributed by a fund manager or market participant to selected clients, or through a third-party service provider.
- RG 265.510 IOIs can be used for wholesale client orders, and may be a permitted use or disclosure of pre-trade order information in accordance with the exception in Rule 5.4A.1(2)(c). IOIs should not be used for a retail client order as this would be inconsistent with a market participant's obligation to execute non-discretionary orders as expeditiously as practicable: Rule 5.1.4.
- RG 265.511 The following lists some of our concerns about the use of IOIs:
- (a) They may be misused to generate a misleading appearance of an intention to trade—for example, IOIs that are not backed by a genuine client or proprietary intent to trade, and that are aimed at gathering information on genuine intentions to trade and exploiting the responses received. In such instances, we may view an IOI as false or misleading if they misrepresent the true origin and intention of the IOI.
  - (b) They may increase the risk of information leakage for clients with genuine trading intentions, which may result in a worse outcome for the client. For example, recipients of an IOI may trade ahead of the person issuing the IOI, leading to an adverse price movement. Market participants need to manage this risk.
  - (c) Selective disclosure and access to IOIs, which is especially important for less liquid securities where indications of some trading interests may be price sensitive.
  - (d) They present challenges to the management of conflicts of interest. For example, market participants that conduct principal and client trading should not misrepresent the nature of the liquidity to attract liquidity (e.g. genuine natural client order flows versus proprietary interests), which may artificially boost market share of trading volumes.
- RG 265.512 The examples in RG 265.511(a)–RG 265.511(d) may affect a market participant's ability to meet its AFS licence obligations to act honestly and fairly, and effectively manage conflicts of interest that may arise between clients, or between proprietary and client interests: s912A(1)(a) and 912A(1)(aa).

- RG 265.513 When using an IOI, we expect market participants to:
- (a) circulate an IOI for a security only when they have reasonable cause to believe that the IOI represents a bona fide order in the security and is not being used for any fraudulent, deceptive or manipulative purposes;
  - (b) make adequate disclosure to their clients about the intended use of, and accessibility to, client order information that may be used in IOIs;
  - (c) manage the potential information leakage from any type of communication that may be price sensitive or conflict with the client's best interests;
  - (d) offer clients the ability to consent to the dissemination of their trading interest (i.e. their confidential order information) through IOIs, or otherwise opt out of participating in IOIs;
  - (e) appropriately manage conflicts of interest and maintain records to substantiate the origin and basis of all IOIs; and
  - (f) discontinue the display of an IOI if the underlying order has been cancelled or executed, or appropriately amend an IOI to accurately reflect the currency of the order if it has otherwise been amended.

## Order incentives

- RG 265.514 Where a market participant handles or executes an order as the result of an arrangement with another person to direct orders to the market participant, the market participant must not, directly or indirectly, make a cash payment to the other person for the opportunity to handle or execute those orders if the cash payment leads to the net cost—calculated as set out in Rule 5.4B.1(2)—being less than the value of the reported price for the transaction(s) the subject of the orders: Rule 5.4B.1(1).

- RG 265.515 Under Rule 5.4B.1(2), the net cost is calculated as follows:

$$\text{Net cost} = (\text{Commission less the dollar value of any cash payment to the other person}) + \text{Reported price}$$

*Commission* means the dollar value of any payment received by the market participant (including commission received from a client of the other person) for the opportunity to handle or execute the other person's orders.

*Reported price* means the total dollar value of the transaction(s) that are the subject of the other person's order(s):

- (a) as executed on a market;
- (b) as reported to a market operator under Rule 6.3.1; or
- (c) as set out in a trade confirmation provided to the other person under Rule 3.4.2.

Note: Rule 3.4.2 permits a market participant to accumulate multiple transactions in a single trade confirmation and specify a VWAP for those transactions in specified circumstances.

RG 265.516 Rule 5.4B.1 applies to both orders to buy and orders to sell financial products, and means that a market participant cannot pay more for order flow than the commission received by the market participant for those orders. In Rule 5.4B.1 reference to the 'dollar value of any cash payment' is intended to capture payment made by a market participant for another entity's order flow, and in the case of an order to sell, does not include the proceeds from the sale: see Table 19 for examples of the application of Rule 5.4B.1.

**Table 19: Example of net cost calculation under Rule 5.4B.1**

Example	Commission	Cash payment for order flow	Reported price for a sell or buy order	Net cost calculation under Rule 5.4B.1(2)	Allowed under Rule 5.4B.1
1	\$200	\$400	\$10,000	\$9,800 = (\$200 – \$400) + \$10,000	No
2	\$200	\$200	\$10,000	\$10,000 = (\$200 – \$200) + \$10,000	Yes
3	\$200	\$0	\$10,000	\$10,200 = (\$200 – \$0) + \$10,000	Yes

RG 265.517 Example 1 is not permitted under Rule 5.4B.1 as the net cost of \$9,800 for the buyer or seller is less than the reported price of \$10,000. In this example, the cash payment for order flow from the market participant is higher than the commission paid for the transaction.

RG 265.518 Example 2 is permitted because the net cost of \$10,000 for the buyer or seller is equal to (and not less than) the reported price of \$10,000. In this example, the cash payment for order flow from the market participant is equal to the commission paid for the transaction.

RG 265.519 Example 3 is permitted because the net cost of \$10,200 for the buyer or seller is more than the reported price of \$10,000. In this example, the cash payment for order flow from the market participant is less than the commission paid for the transaction.

RG 265.520 Rule 5.4B.1 does not affect the following market practices:

- (a) where a market participant facilitates trading (e.g. by agreeing with another person to trade at the market close price or the VWAP) and the

- price reported to the market is the same as the price agreed with the other person, including any discounts or rebates;
- (b) commission sharing arrangements that do not result in a negative commission;
  - (c) trade reports arising from account adjustments, including for execution errors. For example, a trade report with a reported price that is higher than the net cost to the client would breach Rule 5.4B.1. However, if the original trade report was submitted in error, a subsequent adjustment trade report should bring the net reported trades into compliance with Rule 5.4B.1. We will monitor trade reports to ensure that these adjustments are not used inappropriately; and
  - (d) where a market participant makes cash payments to other persons, which are not directly ‘tied’ to particular transactions—for example, monthly rebate structures. For these arrangements, market participants will need to ensure that there is no breach of Rule 5.4B.1 by determining the value of cash payments over the relevant period and apportioning this value to transactions conducted over the relevant period.

### **Non-monetary order incentives**

RG 265.521 Rule 5.4B.1 relates specifically to cash payments or ‘monetary benefits’.

RG 265.522 Although not specifically prohibited in Rule 5.4B.1, non-monetary benefits may raise significant conflict of interest issues for a market participant when handling and executing orders.

Note: Comprehensive guidance on how an AFS licensee should manage conflicts of interests can be found in RG 181.

RG 265.523 Non-monetary benefits take a number of forms, including, but not limited to:

- (a) free or subsidised business equipment or services (e.g. computers and other hardware, software, information technology support and stationery);
- (b) hospitality-related benefits (e.g. tickets to sporting events or concerts and subsidised travel);
- (c) marketing assistance; and
- (d) employee promotions, or other ways of recognising an employee, based on product recommendations or sales.

RG 265.524 A market participant should consider the following circumstances when giving or receiving non-monetary benefits for handling and executing orders:

- (a) ensure there is no impact on the market participant’s best execution obligations under Chapter 3 of the Securities Markets Rules and as discussed in Section G of this guide;

- (b) disclose to clients details of any incentives offered to and received by the market participant in a comprehensive, accurate and understandable way before the service is provided; and
- (c) ensure the incentive enhances the quality of the financial service provided to the client.



## N Capital requirements

### Key points

The market integrity rules for capital and reporting do not apply to market participants who are clearing participants or principal traders.

A participant of the ASX market may continue to lodge capital returns using ASX Group's electronic returns lodgement portal, as allowed in the Securities Capital Rules.

### Scope, application and waivers

RG 265.525 This section of the regulatory guide provides guidance on the Securities Capital Rules.

Note: In this guide, 'Securities Capital Rules' refers to ASIC Market Integrity Rules (Securities Markets – Capital) 2017. 'Futures Capital Rules' refers to ASIC Market Integrity Rules (Futures Markets – Capital) 2017. Guidance on the Futures Capital Rules can be found in [Regulatory Guide 266](#) *Guidance on ASIC market integrity rules for participants of futures markets* (RG 266).

RG 265.526 The Securities Capital Rules set out the capital and reporting requirements for market participants of securities markets. The market integrity rules for capital and reporting do not apply to market participants who are clearing participants or principal traders. A clearing participant must comply with the CS facility's capital and reporting requirements.

Note: In November 2017, ASIC made the Securities Capital Rules. The Securities Capital Rules replaced ASIC Market Integrity Rules (APX Market-Capital) 2014, ASIC Market Integrity Rules (ASX Market-Capital) 2014 and ASIC Market Integrity Rules (Chi-X Australia Market-Capital) 2014.

RG 265.527 Where a market participant has been granted a waiver from the capital or reporting rules for one market (e.g. the ASX market), we may consider granting a similar waiver for the rules for another market (e.g. the Chi-X, NSXA or SSX markets). For details of how to apply for a waiver, see RG 265.28–RG 265.36.

### Lodging forms and returns

RG 265.528 A market participant may lodge capital returns using ASX Group's electronic returns lodgement portal: Rule 9.4.2 of the Securities Capital Rules. We have an arrangement with ASX Group that it will forward the returns to us. We intend to reassess this process at a future date and will consult with market participants at that stage.

- RG 265.529 Where the market integrity rules allow a market participant to lodge capital forms or returns directly with us, rather than through ASX Group's electronic returns lodgement portal, and the market participant decides to do so, they should submit them via [MECS](#) or email them to [market.participants@asic.gov.au](mailto:market.participants@asic.gov.au).
- RG 265.530 Market participants that belong to multiple exchange markets only need to lodge one return with one of the exchange markets. We would generally expect a market participant of multiple exchange markets that is an ASX market participant to lodge the return electronically with ASX.

## ASX guidance materials on capital

- RG 265.531 Prior to 1 August 2011, the ASX Operating Rules set out capital requirements for market participants. These capital requirements were administered with the benefit of guidance materials issued by ASX Group—in particular, the *Capital Liquidity Handbook* and the *Capital Requirements Guidance*.
- RG 265.532 As such, we will take into account the *Capital Liquidity Handbook* and the *Capital Requirements Guidance* when interpreting the Securities Capital Rules to the extent they are relevant.
- RG 265.533 We have retained copies of these guidance materials, as at 31 July 2011, on our website for reference purposes.
- RG 265.534 In future, we may consider reviewing our policy position on these guidance materials in light of changes in the market or other factors. If so, we will consult with industry at that stage.

## Appendix: Guidance notes

RG 265.535 Table 20 lists the old ASX guidance notes (GN) that remain relevant to the ASIC market integrity rules.

**Table 20: Old ASX guidance notes that are relevant to the Securities Markets Rules**

Number	Title
GN 1	Prevention of manipulative trading
GN 3	Reporting to clients—Confirmations
GN 4	New clients
GN 5	New clients—Electronic client agreements for derivatives market transactions
GN 8	Insurance requirements
GN 11	Client order priority
GN 12	Client money and property—Client funds deposited with third parties
GN 13	Prohibition of advice to clients
GN 23	New clients or clients trading in new products for the first time—Dispatch of ASX explanatory booklets
GN 29	Managed discretionary accounts
GN 31	Client agreements—Requirements: The requirement for participants to enter into client agreements with clients
GN 32	Bulk authorisation of index arbitrage orders in ITS
GN 33	Trading records
GN 37	Maintenance of an orderly market when closing out settlement failures

Note 1: Relevant guidance in GN 6 *Management requirements*, GN 7 *Management requirements—Good fame and character* and GN 27 *Ongoing compliance and supervision—Responsibilities of responsible executives*, has been incorporated into this regulatory guide. These guidance notes have been removed from Table 20.

Note 2: RG 241 replaces guidance contained in GN 19 *Automated order processing: Certification*, GN 21 *Automated order processing: Authorised persons* and GN 22 *Automated order processing: Operational requirements*. These guidance notes have been removed from Table 20.

## Key terms

Term	Meaning in this document
accredited adviser	<p>A person who is a:</p> <ul style="list-style-type: none"> <li>• level one accredited derivatives adviser (see RG 265.121–RG 265.122);</li> <li>• level two accredited derivatives adviser (see RG 265.123–RG 265.124); or</li> <li>• accredited futures adviser who is a person who has been accredited under Rule 2.4.6 and whose accreditation is current (see RG 265.125–RG 265.126)</li> </ul>
ACI	Australian Compliance Institute
ACN	Australian Company Number
AFS licence	<p>An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries out a financial services business to provide financial services</p> <p>Note: This is a definition contained in s761A of the Corporations Act.</p>
AFS licensee	<p>A person who holds an AFS licence under s913B of the Corporations Act</p> <p>Note: This is a definition contained in s761A of the Corporations Act.</p>
agency	Where a market participant acts on behalf of a client
algorithm/algorithmic trading	Electronic trading activity where specific execution outcomes are delivered by predetermined parameters, rules and conditions
algorithmic program	Automated strategies using programmable logic/system-generated orders (rather than human-generated orders) based on a set of predetermined parameters, logic rules and conditions. These include algorithmic trading, automated order generation, high-frequency trading and automated market making
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
AML reporting legislation	Section 41 of the AML/CTF Act and s16 of the FTR Act
AOP (automated order processing)	The process by which orders are registered in a market participant's system, which connects it to a market. Client or principal orders are submitted to an order book without being manually keyed in by an individual (referred to in the rules as a DTR). It is through AOP systems that algorithmic programs access our markets

Term	Meaning in this document
AOP Annual Review Date	Means 1 November each calendar year
API	Application Programming Interface
arbitrage	The process of seeking to capture pricing inefficiencies between related products or markets
ARBN	Australian Registered Business Number
ARSN	Australian Registered Scheme Number
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited (ACN 008 624 691) or the exchange market operated by ASX Limited
ASX guidance notes	Guidance notes providing assistance to ASX market participants on ASX's interpretation of the former ASX Market Rules
ASX Market Rules	Previous operating rules made by ASX dealing with activities or conduct of its market and of persons in relation to the market
ASX Operating Rules	ASX's operating rules, which replace the pre-existing ASX Market Rules
AUSTRAC	Australian Transaction Reports and Analysis Centre—Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit
Australian domestic licensed financial market	A financial market licensed under s795B(1) of the Corporations Act
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
best available bid and offer	See 'NBBO'
best bid or offer	The best available buying price or selling price
best execution	Where a market participant achieves the best outcome for its client
bid–ask spread	The difference between the best bid and the best offer
block trade	Has the meaning given by Rule 6.2.1 of the Securities Markets Rules

Term	Meaning in this document
buy-side	Advising institutions typically concerned with buying, rather than selling, assets or products. Private equity funds, mutual funds, unit trusts, hedge funds, pension funds and proprietary trading desks are the most common types of buy-side entities
CFD	A contract for difference
CGS depository interest	A depository interest in a security issued by the Australian Government (e.g. Treasury Bonds and Treasury Notes) that can be transferred through a licensed clearing and settlement facility
Chapter 5A (for example)	A chapter in the ASIC Market Integrity Rules (Securities Markets) 2017 (in this example numbered 5A), unless otherwise specified
CHES	Clearing House Electronic Subregister System
CHES HIN	CHES Holder Identification Number
Chi-X	Chi-X Australia Pty Limited (ACN 129 584 667) or the exchange market operated by Chi-X
conflict of interest	<p>A direct or indirect pecuniary interest, or a direct or indirect interest of any other kind, that could conflict with the proper performance of the functions of a person in relation to determining a matter</p> <p>Note: See s124(1)(b) of the Australian Securities and Investments Commission Act 2001.</p>
Corporations Act	<i>Corporations Act 2001</i> (Cth), including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
CP 145 (for example)	An ASIC consultation paper (in this example numbered 145)
crossing	A type of transaction where the market participant is the same for both the buyer and seller. The market participant may be acting on behalf of the buying client and the selling client, or acting on behalf of a client on one side of the transaction and as principal on the other side of the transaction

Term	Meaning in this document
crossing system	<p>An automated service provided by a market participant to its clients which matches or executes client orders with orders of:</p> <ul style="list-style-type: none"> <li>• the market participant (i.e. against the market participant's own account);</li> <li>• other clients of the market participant; or</li> <li>• any other person whose orders access the automated service</li> </ul> <p>These orders are not matched on an order book of a licensed market</p>
crossing system operator	A market participant that operates a crossing system in financial products able to be traded on a market
dark pool/venue	Non-pre-trade transparent, electronically accessible pools of liquidity
depository interest	A financial product quoted on a market that confers on the holder a beneficial interest in another financial product (underlying product) to which it relates, where legal title to the underlying product is held by a nominee company on behalf of the holder
direct electronic access	Also known as automated client order processing (ACOP) in Australia. Direct electronic access is the process by which an order is submitted by a client, agent or participant representative into a market participant's AOP system directly without human intervention. Direct electronic access enables a client to access a market without being a direct market participant and without being directly bound by the operating rules of the market they are accessing
DTR (designated trading representative)	Representative of a market participant that has been authorised by the participant to submit trading messages to a trading platform on behalf of the participant
enforceable undertaking	An enforceable undertaking that may be accepted by ASIC under reg 7.2A.01 of the Corporations Regulations
equity market products	Shares, interests in managed investment schemes (including ETFs), rights to acquire shares or interests in managed investment schemes under a rights issue, CDIs admitted to quotation on ASX, and transferable custody receipts that are admitted to quotation under a market's operating rules. CGS depository interests are not equity market products
equity securities	Has the meaning given by Rule 1.4.3 of the Securities Markets Rules

Term	Meaning in this document
ETFs (exchange-traded funds)	<p>A managed fund:</p> <ul style="list-style-type: none"> <li>• the equity securities of which are: <ul style="list-style-type: none"> <li>– listed on a market;</li> <li>– able to be traded on a market; or</li> <li>– admitted to trading status as an AQUA Product or to the AQUA Quote Display Board;</li> </ul> </li> <li>• with power and approval to continuously issue and have quoted on the relevant market, equity securities in the managed fund;</li> <li>• which provides for the issue of new equity securities in return for the subscriber transferring to the managed fund a portfolio of securities, cash or a combination of securities and cash; and</li> <li>• for which the price of the underlying instrument is continuously disclosed or can be immediately ascertained</li> </ul>
ETF special trade (exchange-traded fund special trade)	Has the meaning given to the term 'ETF Special Trade' by the operating rules of a market
exchange market	<p>A market that enables trading in listed products</p> <p>Note: Not all exchange markets offer primary listings services.</p>
execution venue	<p>An execution venue is a facility, service or location on or through which transactions in equity market products and CGS depository interests are executed and includes:</p> <ul style="list-style-type: none"> <li>• each individual order book maintained by a market operator;</li> <li>• a crossing system; and</li> <li>• a participant executing a client order against its own inventory otherwise than on or through an order book or crossing system. This includes an order book and other matching mechanisms</li> </ul>
financial market	As defined in s767A of the Corporations Act. It encompasses facilities through which offers to acquire or dispose of financial products are regularly made or accepted
financial product	<p>Generally, a facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> <li>• makes a financial investment (s763B);</li> <li>• manages financial risk (s763C); and</li> <li>• makes non-cash payments (s763D)</li> </ul> <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>



Term	Meaning in this document
FSG	A Financial Services Guide—a document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act  Note: This is a definition contained in s761A.
FTR Act	<i>Financial Transaction Reports Act 1988</i>
fully hidden order	An order on an order book that is not pre-trade transparent
GN 1 (for example)	An ASX guidance note (in this example, numbered 1)
high-frequency traders	Traders that adopt a specialised form of algorithmic trading characterised by the use of high-speed computer programs
high-frequency trading	While there is not a commonly agreed definition of high-frequency trading, we characterise it as: <ul style="list-style-type: none"> <li>• the use of high-speed computer programs to generate, transmit and execute orders;</li> <li>• the generation of large numbers of orders, many of which are cancelled rapidly; and</li> <li>• typically holding positions for very short time horizons and ending the day with a zero position</li> </ul>
indication of interest (IOI)	A non-binding, electronic expression of trading interest that may contain information such as the security name, capacity (agency or principal), volume and price instructions to identify potential counterparties
indirect market participant	A broker that is not itself a market participant, but that accesses the market through a market participant
infringement notice	An infringement notice issued under reg 7.2A.04 of the Corporations Regulations
institutional investor	Advising institutions typically concerned with buying, rather than selling, assets or products. The most common types of institutional investors include private equity funds, mutual funds, unit trusts, hedge funds, pension funds and proprietary trading desks
internalisation	Where a client order is transacted against a market participant's own account
IOSCO	International Organization of Securities Commissions
IR Plus	IR Plus Securities Exchange Limited (ACN 087 708 898) or the exchange market operated by IR Plus
issuer	In relation to a financial product able to be traded on a market, the legal entity which issues the product

Term	Meaning in this document
large portfolio trade	A transaction that includes at least 10 purchases or sales, the market participant acts as agent for both the buyer and seller of the portfolio or as principal buys from or sells to the client, and the consideration of each is not less than \$200,000 and the aggregate consideration is not less than \$5 million
latency	An expression of how much time it takes for data to get from one point to another
LEI	Legal Entity Identifier
limit order	An order for a specified quantity of a product as a specified price or better
liquidity	The ability to enter and exit positions with a limited impact on price
locked market/price	Occurs when there is no spread because the best available bid price and best available offer price are the same (also the midpoint)
managed investment scheme	As defined in s9 of the Corporations Act
market	Any of: <ul style="list-style-type: none"> <li>• the ASX market;</li> <li>• the Chi-X market;</li> <li>• the IR Plus market;</li> <li>• the NSXA market; or</li> <li>• the SSX market</li> </ul>
market impact	The effect on the formation of price, volume and market depth created by order flow or trading activity. This includes the associated cost incurred when the execution price differs from the target price, or when the liquidity required by the execution is different from the liquidity available
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
market licence	An Australian market licence
market licensee	Holder of an Australian market licence
market manipulation	As defined in Pt 7.10 of the Corporations Act
market order	An order at the best price currently available
market participant	A participant of a market <p>Note: Participant has the meaning given by s761A of the Corporations Act.</p>

Term	Meaning in this document
MDA	A managed discretionary account
MDP (Markets Disciplinary Panel)	ASIC's Markets Disciplinary Panel, through which ASIC will exercise its power to issue infringement notices and to accept enforceable undertakings in relation to breaches of the market integrity rules
MECS (market entity compliance system)	Our online regulatory compliance portal that provides market participants with tools and information to assist them in complying with their regulatory obligations  Note: <a href="#">MECS</a> can be accessed through our website.
NBBO (national best bid and offer)	The highest bid (best buying price) and the lowest offer (best selling price) for a product that is available across all pre-trade transparent order books at the time of the transaction. The best bid and best offer may not necessarily be on the same order book. It may be that the best bid is on the order book of another market
NSXA	National Stock Exchange of Australia Limited (ACN 000 902 063) or the exchange market operated by NSXA
off-order book trading and transactions	Transactions that take place away from a central limit order book and that are not pre-trade transparent. It is often referred to as 'dark liquidity' or 'upstairs trading'. It includes bilateral OTC transactions and transactions resulting from a market participant matching client orders or matching a client order against the participant's own account as principal. When this type of trading is done in an automated way and is part of a pool of liquidity, it is referred to as a 'dark pool'
operating rules	As defined in s761A of the Corporations Act
order book	An electronic list of buy orders and sell orders, maintained by or on behalf of a market operator, on which those orders are matched with other orders in the same list
origin of order	A type of order category that identifies trading capacity and, if relevant, the type of client
OTC	Over the counter
Part 4.3 (for example)	A part of the Securities Markets Rules (in this example numbered 4.3), unless otherwise specified
partly disclosed order	An order on an order book that is pre-trade transparent with the exception of either price or volume
PI insurance	Professional indemnity insurance
post-trade transparency	Information on executed transactions made publicly available after transactions occur

Term	Meaning in this document
pre-trade transparency	Information on bids and offers being made publicly available before transactions occur (i.e. displayed liquidity)
price formation	The process determining price for a listed product through the bid and offer trading process of a market
price step	The difference in price of one tick size
professional investor	A professional investor as defined in s9 of the Corporations Act
Pt 7.2A (for example)	A part of the Corporations Act (in this example, numbered 7.2A), unless otherwise specified
reg 10.14.02 (for example)	A regulation under the Corporations Regulations (in this example, numbered 10.14.02), unless otherwise specified
reportable matter	Where a market participant has reasonable grounds to suspect that: <ul style="list-style-type: none"> <li>• a person has placed an order or entered into a transaction on a market while in possession of inside information; or</li> <li>• a transaction, or an order transmitted to a trading platform of a market, has or is likely to have the effect of: <ul style="list-style-type: none"> <li>– creating an artificial price for trading in financial products on a market;</li> <li>– maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a market;</li> <li>– creating or causing the creation of a false or misleading appearance of active trading in financial products on a market; or</li> <li>– creating or causing the creation of a false or misleading appearance with respect to the market, or price, for trading in financial products on a market</li> </ul> </li> </ul>
responsible market operator	Where an equity market product is able to be traded on more than one market, the responsible market operator is the market operator determined in writing by ASIC  Where a CGS depository interest is able to be traded on more than one market, the responsible market operator is the CGS market operator determined in writing by ASIC
retail client	A retail client as defined in s761G of the Corporations Act
RG 216 (for example)	An ASIC regulatory guide (in this example, numbered 216)
risk management systems	Systems to identify, measure, control and monitor risks

Term	Meaning in this document
s795B (for example)	A section of the Corporations Act (in this example, numbered 795B), unless otherwise specified
Securities Markets Rules	ASIC Market Integrity Rules (Securities Markets) 2017 – rules made by ASIC under s798G of the Corporations Act
sell-side	Firms that sell investment services to the buy-side, or corporate entities, including broking–dealing, investment banking, advisory functions and investment research
settlement	The exchange of payment and delivery for purchased securities
SOR (smart order router)	An automated process of scanning various execution venues to determine which venue will deliver the best outcome on the basis of predetermined parameters
spread	The difference between the best bid and offer prices
SSX	Sydney Stock Exchange Limited (ACN 080 399 220) or the exchange market operated by SSX
tick size	The minimum increment by which the price for an equity market product or CGS depository interest may increase or decrease
total consideration	For a buy order, the purchase price paid by a client in respect of performance of a client order, plus transaction costs; or for a sell order, the sale price received by a client in respect of performance of a client order less transaction costs
trade confirmation	A legal document provided to clients which sets out the terms of an executed transaction
trade report	<p>For equity market products or CGS depository interests, a report of post-trade information required to be made to a market operator under the Securities Markets Rules</p> <p>For any product other than an equity market product, a CGS depository interest and an option market contract, a report of information in relation to a transaction entered into otherwise than by matching of orders on an order book, required to be made to a market operator under the operating rules of the relevant market</p>
trading halt or suspension	A temporary pause in the trading of a product for a reason related to market integrity, such as when an announcement of price sensitive information is pending (does not include a halt or suspension caused by a technical problem, including a power outage, affecting a market operator's trading system)
trading participant	A market participant that has trading permission in respect of one or more financial products

<b>Term</b>	<b>Meaning in this document</b>
trading pause	A period during which the responsible market operator must prevent orders from being matched or executed on its market, but during which bids and offers may be displayed, entered, amended and cancelled
undisclosed order	A non-pre-trade transparent order
volatility	Fluctuation in a product's price

## Related information

### Headnotes

APX, ASX, CGS, CGS depository interest, Chi-X, crossing system, equity market products, financial markets, front running, insider trading, IR Plus, licensed financial markets, management structures, market integrity rules, market manipulation, market operators, NSXA, participants, qualified privilege, significant breach reporting, SSX, supervision, suspicious activity

### Regulatory guides

[RG 51](#) *Applications for relief*

[RG 78](#) *Breach reporting by AFS licensees*

[RG 79](#) *Research report providers: Improving the quality of investment research*

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 105](#) *Licensing: Organisational competency*

[RG 166](#) *Licensing: Financial requirements*

[RG 172](#) *Financial markets: Domestic and overseas operators*

[RG 179](#) *Managed discretionary account services*

[RG 181](#) *Licensing: Managing conflicts of interest*

[RG 214](#) *Guidance on ASIC market integrity rules for ASX and ASX 24 markets*

[RG 215](#) *Guidance on ASIC market integrity rules for IMB, NSXA and SIM VSE markets*

[RG 216](#) *Markets Disciplinary Panel*

[RG 221](#) *Facilitating digital financial services disclosures*

[RG 225](#) *Markets Disciplinary Panel practices and procedures*

[RG 241](#) *Electronic trading*

[RG 266](#) *Guidance on ASIC market integrity rules for participants of futures markets*

## Legislation

AML/CTF Act, s41

*Australian Securities and Investments Commission Act 2001*, s124

Corporations Act, Chs 6 and 7; Pts 7.1, 7.2A, 7.7, 7.10 and 9.4B; s89, 257B, 761A, 761G, 761GA, 763B, 763C, 763D, 767A, 769B, 791A, 793B, 795B(1), 795B(2), 798G, 912A, 912D, 913B, 1100A, 1100D and 1017F

Corporations Regulations, regs 7.1.18(2), 7.1.19(2), 7.1.28(1), 7.2.07, 7.2A.01, 7.2A.04, 7.9.63A–7.9.63C, 10.14.02 and 10.15.04

FTR Act, s16

## Market integrity rules

Securities Capital Rules

Securities Markets Rules, Chapters 3, 4, 5, 5A, 6 and 7; Parts 2.1, 2.4, 3.9–3.11, 5.6, 5.11, 5A.1, 6.1–6.4 and 7.4; Rules 1.2.2, 1.4.5, 1.6.1, 2.1.1–2.1.3, 2.2.1–2.2.2, 2.2.4–2.2.5, 2.4.2–2.4.8, 2.5.2–2.5.3, 2.5.5–2.5.6, 3.4A.1, 3.4.1–3.4.2, 3.5.8–3.5.10, 3.6.3, 3.8.1–3.8.3, 3.9.1–3.9.3, 3.10.1–3.10.2, 3.11.1–3.11.2, 4.1.5–4.1.6, 5.1AA.1, 5.1.3–5.1.4, 5.4A.1, 5.4B.1, 5.6.1, 5.6.3, 5.7.1–5.7.2, 5.9.1, 5.9A.1, 5.11.1–5.11.2, 5A.1.1–5A.1.2, 5A.2.1–5A.2.3, 5A.3.1–5A.3.4, 5A.4.1–5A.4.2, 5A.5.1–5A.5.2, 6.1.1–6.1.2, 6.1.4–6.1.7, 6.1.8, 6.2.1–6.2.6, 6.3.1–6.3.2, 6.3.4, 6.3.6A, 6.3.7, 6.3.7A, 6.4.1–6.4.2, 7.4.1–7.4.4 and 9.4.1–9.4.2

## Other legislative instruments

[ASIC Corporations \(ASX-listed Schemes On-market Buy-backs\) Instrument 2016/1159](#)

*ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/258*

*ASIC Market Integrity Rules (Securities Markets) Determination 2018/314*

## Consultation papers and reports

[CP 131](#) *Proposed ASIC market integrity rules: ASX and SFE markets*

[CP 136](#) *Markets Disciplinary Panel*

[CP 140](#) *Responsible entities: Financial requirements*

[CP 145](#) *Australian equity market structure: Proposals*

[CP 148](#) *Proposed market integrity rules: Chi-X market*



[CP 152](#) *ASIC's conversion of ASX and SFE guidance: General operational obligations*

[CP 156](#) *Retail OTC derivative issuers: Financial requirements*

[CP 161](#) *Proposed ASIC market integrity rules for capital and related requirements: ASX, ASX 24 and Chi-X markets*

[CP 168](#) *Australian equity market structure: Further proposals*

[CP 179](#) *Australian market structure: Draft market integrity rules and guidance*

[CP 181](#) *Retail trading in Commonwealth Government Securities*

[CP 202](#) *Dark liquidity and high-frequency trading: Proposals*

[CP 222](#) *Reducing red tape: Proposed amendments to the market integrity rules*

[CP 277](#) *Proposals to consolidate the ASIC market integrity rules*

[REP 204](#) *Response to submissions on CP 131 Proposed ASIC market integrity rules: ASX and SFE markets*

[REP 215](#) *Australian equity market structure*

[REP 237](#) *Response to submissions on CP 145 Australian equity market structure: Proposals*

[REP 238](#) *Response to submissions on CP 148 Proposed market integrity rules: Chi-X market*

[REP 244](#) *Response to submissions on CP 161 Proposed ASIC market integrity rules for capital and related requirements: ASX, ASX and Chi-X markets*

[REP 290](#) *Response to submissions on CP 168 Australian equity market structure: Further proposals*

[REP 311](#) *Response to submissions on CP 179 and CP 184 Australian market structure: Draft market integrity rules and guidance*

[REP 331](#) *Dark liquidity and high-frequency trading*

[REP 332](#) *Response to submissions on CP 181 Retail trading in Commonwealth Government Securities*

[REP 364](#) *Response to submissions on CP 202 Dark liquidity and high-frequency trading: Proposals*

[REP 432](#) *Response to submissions on CP 222 Reducing red tape: Proposed amendments to the market integrity rules*

[REP 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts*

## **Cases**

*George v Rockett* (1990) 170 CLR 104

*Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266

## **Other publications**

APRA [Prudential Standard CPS 231](#) *Outsourcing* (PDF 560 KB)

ASX Group, *Capital Liquidity Handbook*

ASX Group, *Capital Requirements Guidance*

[AUSTRAC compliance guide](#), Chapters 2 and 7

IOSCO, [Objectives and principles of securities regulation](#) (PDF 187 KB)

IOSCO, [Principles for dark liquidity final report](#) (PDF 471 KB)

IOSCO, [Regulatory issues raised by changes in market structure](#) (PDF 675 KB)

IOSCO, [Transparency and market fragmentation](#) (PDF 578 KB)