

11 December, 2014

Mr Bill Woods
ASX Compliance Ltd
20 Bridge Street
SYDNEY NSW 2000

By email: bill.woods@asx.com.au

Dear Mr Woods,

**Consultation Paper: Reducing Red Tape – Proposed Amendments to Admission and Notification Requirements
Comments by the Stockbrokers Association of Australia**

We refer to the above Consultation Paper (“the Consultation Paper”).

The Stockbrokers Association of Australia acknowledges the ASX’s efforts in putting forward the proposed amendments. The Association has publicly called for more attention to be devoted to harmonization of regulatory requirements applicable to the listed markets and the removal of unnecessary rules, and in particular, removing unnecessary duplication between the ASX and ASIC rule books. We are pleased to see that ASIC and now ASX have taken steps in that direction.

Our comments in relation to particular Proposals set out in the Paper are set out below. We have not addressed all of the itemized proposals as set out in the Table annexed to the Consultation Paper, but rather, have focused on certain key Proposals.

Standardising and Streamlining ASX’s Admission Process

We note that ASX is proposing to simplify the form of certification for admission by removing some of the specific matters to be certified, as specified in Procedure 1000(e).

The simplified form of certification will be required to have regard to matters contained in a new Guidance Note 1, the content of which is not yet known.

The Association supports simplification of process, however it is equally important that Participants have sufficient certainty as to what is meant by terms in the Rules that are general in nature, such as adequate “resources’ and “processes”. Hence, it is essential that the proposed Guidance Note 1 be sufficiently clear so that those who sign a certification know what it is that they are certifying to be in existence. Simplifying process is a desirable objective, but it should not give rise to greater regulatory risk due to uncertainty or lack of clarity.

These comments are particularly relevant to Guidance in relation to the Principal Trader category. If ASX has expectations of what constitutes sufficient qualifications and experience for a principal trading participant, then it should ensure that these are set this out in the Guidance.

Removing Responsible Executives from ASX Clear participants

The Association can understand and is supportive of removing unnecessary process such as the initial and annual Certification by Responsible Executives, as mentioned in paragraph 20 of the Consultation Paper. The fundamental obligations reflected in the content of those certifications can apply without the administrative requirements of having to provide those certifications on an ongoing basis.

However, the Association considers that removing the requirement for there to be Responsible Executives is a step too far at this point in time, in the absence of a coordinated approach to the question between ASX and ASIC.

The Association in the past has identified the existence of parallel Responsible Executive and Responsible Manager requirements as a duplication that should be addressed in harmonizing the Rule framework, especially since ASIC assumed responsibility for market supervision in 2010. The Association has called for this framework to be simplified and remains of this view.

If this were to happen, then it would hopefully follow that there would be a good basis for removing the Responsible Executive requirement under the ASX Rules. However, the Association has concerns that removing the RE requirements from the ASX Clear rules prior to ASIC dealing with the issue on a holistic level could lead to the risk of there being a management “gap” being created within the clearing operations of a Participant.

Notwithstanding the general obligations imposed on a Participant to have suitable management and supervision arrangements in place, there has always been value in our view in the requirement to designate a particular executive(s) to be publicly “on the hook” for the relevant part of the Participant’s business. We believe that this is a framework that should be retained, albeit ultimately under ASIC’s Rule framework. Such a requirement in our view accords the appropriate level of importance that needs to be attached to the clearing operations within a Participant’s business. In our view, whether or not there are more compliance resources now being devoted to such businesses as compared to previous times is not really relevant to the question.

Because of the significance which the Association attaches to the recognition of a Responsible Executive, the Association does not support removing the requirement to undertake annual continuing education and the requirement for signing reconciliations of client segregated accounts and trust account, as proposed in the Consultation paper. In relation to the former, there are many professional sectors where an express annual professional development obligation is prescribed, and this should remain the case for Responsible Executives (or their successors in any subsequent framework).

Whilst we understand that the general requirement for an AFS Licence holder to ensure that staff are properly trained will apply, this is a general obligation. There are cases where we believe that some additional specificity is warranted, and this in our view is such a case.

Removing PI Insurance notifications

The Association supports the proposals to remove various PI Insurance notification requirements, including:

- The requirement for ASX and ASX 24 participants to notify ASX of their professional indemnity (PI) insurance arrangements; any actual or potential claims on their PI Insurance policies; and other information about their PI insurance policies and compensation arrangements;
- The removal of the requirement for ASX clear participants to notify ASX of their PI insurance cover and to provide to ASX copies of their PI certificates of insurance.

These requirements (other than the notification of claims) have always been regarded as being bureaucratic and not achieving any outcome of real substance. So long as the fundamental requirement to maintain cover exists, there is no detriment caused by removing the notification requirements. We note that under the ASX’s proposals, notification of claims will be required to be made to ASIC, but no longer to ASX.

In the Stockbrokers Association’s Submission to ASIC on CP 222, the Association noted that continued existence of these obligations in relation to ASX Clear, after the removal of the obligations by ASIC in relation to markets generally, would be an anomaly, and we are pleased to see that ASX is now proposing to act to address this.

Notification of Management Structures

The specific requirement for participants to keep accurate records of management structure has been regarded by many as unnecessary. Having clearly defined management arrangements would already be an inherent part of the general obligation on a Participant to ensure adequate supervision, so removing the specific obligation will not lead to any detriment.

The specific requirement to give a copy of the management structure to ASX every time there was any change has similarly been viewed as unnecessary and its removal is welcomed.

Additional Matter for Consideration

ASX Settlement Rule 5.8. We note that there remains the ASX Settlement Rule 5.8 for the bulk transfer of Holder Identification Numbers which requires ASX permission before the relevant consent letter is sent to clients. The Association considers that this is a requirement that warrants being removed.

ASX Clearing Rule 4.23.7. We note that there is a duplication between the requirement to notify ASX within 2 business days of a discrepancy in a trust reconciliation (where total deposits is less than total third party client monies, or where a trust reconciliation is not performed) and the parallel requirement to notify ASIC under MIR 3.5.10. The Association considers that a single notification to ASIC should suffice, and that the ASX notification could be dispensed with. It is not uncommon for multiple reports to be triggered by a technical breach, such as where a bank fails to honour a trust transfer due to a malfunction in their systems.

We appreciate the opportunity to provide comments in respect of this Consultation Paper. Should you require any additional information or wish to discuss further any of the matters raised in this Submission, please contact me or Peter Stepek, Policy Executive on psteppek@stockbrokers.org.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Horsfield', written in a cursive style.

David W Horsfield
Managing Director/CEO