Stockbrokers Association of Australia
Incorporating SDIA

Submission to ASIC
Consultation Paper CP 168
Australian Equity Market Structure – Further Proposals

10 February 2012

Executive Summary

The current economic environment of low turnover, negative investor sentiment and rapidly increasing costs, is placing extreme financial pressure on stockbrokers and investment banks in Australia. It has become an issue of survival for many in this sector.

It should always be the case that new regulation should only be struck after the application of a robust cost benefit analysis. Now more than ever, this needs to be followed.

The Stockbrokers Association believes that there are a number of proposals in CP 168 where the case for introduction has not been satisfactorily made out. There are a number of others where the administrative and financial burden involved in implementing the proposal are too excessive to bear in the current difficult financial environment, and outweigh any potential benefits put forward by ASIC.

There should be greater emphasis on the policy objectives of fostering the competitive position of Australia's markets globally, and enhancing Australia as a regional financial centre. A number of the proposals in CP 168 are likely to adversely impact on these objectives , and deter offshore players from participating in our markets.

The existing regulatory framework relating to Automated Order Processing has worked well and has prevented some of the worst examples of market failure as have occurred elsewhere. At most, only minor enhancements to existing arrangements may be needed.

The proposals in CP 168 imposing additional obligations on Market Participants relating to Direct Electronic Access and algorithmic trading by clients are a case of "gold plated" regulation which is not needed, and which tends to unfairly shift some of the burden of market supervision from ASIC, where it belongs, onto the shoulders of Market Participants.

There are arguments supporting establishing a formal framework governing market makers in cash equities.

The case for volatility controls is not in the Association's view fully made out, however the limit-up limit-down model proposed is one which we would support for such a control if one is to be introduced.

The following proposals involve serious administrative difficulties and high cost, and should not be pursued. These are:

- Enhanced market surveillance data
- Standard format for providing information to ASIC
- Clock synchronization

The proposal to extend Best execution to products traded only on one market or over the counter would not achieve any useful purpose and would involve unnecessary cost, and should not be pursued.

The proposals for preventing excessive movement of liquidity from the lit to the dark markets should be introduced, as there are no demonstrably superior models that have been proposed. The trigger threshold however should be adjusted to take into account increased volumes overall in the event of a market recovery. The measures should be kept closely monitored for adjustment in case of unforeseen consequences.

There should be no change to threshold sizes for Block Special Crossings.

Introduction – Preliminary Comments

The Stockbrokers Association of Australia is the peak industry body representing institutional and retail stockbrokers and investment banks in Australia. Our membership includes stockbroking firms across the spectrum, from the largest firms through to medium-sized and smaller firms, and with client bases ranging from wholesale to retail, and both offshore and local.

The Stockbrokers Association is pleased to provide this submission to ASIC in response to its Consultation Paper CP 168 Australian Equity Market Structure – Further Proposals.

The Stockbrokers Association appreciates that the further proposals in CP 168 include a number of proposals or subject areas that were previously discussed in Consultation Paper CP 145 in November 2010. In view of the significant and complex nature of the implementation work needed to be ready for Day 1 of market competition, the Association strongly urged ASIC to defer those areas which were not critical to be resolved for Day 1 to be held back to a later date, in order to minimise the potential for delay to the scheduled target date for market competition or disruption to the successful implementation.

The Stockbrokers Association appreciates that ASIC listened to the market and deferred the non-Day 1 subject areas, which are among those now canvassed in CP 168. It is also apparent that ASIC has given a great deal of thought to a number of these subject areas in the intervening twelve months, and has developed and refined its thinking on some of the proposals in a positive way since they were initially canvassed in CP 145.

Notwithstanding this, the Stockbrokers Association submits in the strongest terms that the proposals in CP 145 must be considered in the context of the highly unfavourable financial market conditions which now prevail in Australia. The Australian listed equities market has suffered from market uncertainty and low trading volumes for a considerable time now, with no discernable end in sight. Demand from offshore investors has been severely affected by the high Australian dollar. Global economic turmoil, particularly the seemingly unending European problems, has further affected demand for securities by investors generally, local as well as offshore, and wholesale as well as retail. This has significantly impacted on revenue and profitability of the stockbroking industry across the board.

The stockbroking industry has had difficulties weathering this storm, and at the same time, has been required to shoulder the high costs of the transition to the multiple market environment, including IT, operational and compliance costs, as well as the costs of meeting what has now amounted to a constant program of regulatory change that stretches back to 2008.

On top of this, we are on the eve of commencement of the ASIC Cost recovery levy regime, pursuant to which brokers will now be required to pay ASIC's costs of market supervision. In the current, ultra competitive environment, brokers consider that

they have little option but to shoulder the levy themselves. Some firms are faced with absorbing levies in the order of $1 million or more. Regardless of the size of the levy, it will impact considerably on the financial situation of all firms

In circumstances which have been referred to as a "perfect storm" for stockbrokers, it is not surprising that the stockbroking sector is now experiencing significant job losses in the last few months, and faces the prospect of more. A number of firms face an uncertain future, and we have already seen the recent announcement of the closure of a top tier broking firm/investment bank, RBS Equities.

The financial sector has been a key sector in the Australian economy in terms of the creation of jobs and wealth, exceeding that of manufacturing, and the equities market has been a key component and driver of this. Considerable time and effort has been devoted to the goal of enhancing Australia as a regional financial centre, including but not limited to the work by the recent Johnson Committee. One of the key objectives of introducing exchange market competition, and the raft of regulatory reforms needed to enable competing markets to operate, has been to enhance the efficiency of the Australian market and to further enhance Australia's potential as a regional centre.

In the context of all of these factors, the Stockbrokers Association strongly submits that the proposals in CP 145 must be sorted into those which are essential for the integrity and functioning of the market, and those which could be regarded as "nice to have", or the case for which has not been sufficiently made out. We strongly urge ASIC to pay heed to the difficult economic circumstances facing stockbrokers and investment banks, and to not press forward with proposals that will further undue financial burden on brokers at a time when they can least bear them.

The Stockbrokers Association has always been vocal in supporting a well regulated market and the cause of investor protection, and has been committed to maintaining the reputation and high standing of Australia's markets, in particular its listed equities market. However, it should always be the case that regulation should only be struck if the case for the regulation is clearly made out, and the regulation satisfies a stringent cost benefit analysis. Now more than ever, in view of the prevailing economic and market conditions, the need for this is paramount.

The Stockbrokers Association also urges ASIC to play close regard to the international competitiveness of the Australian market, and not adopt proposals that would serve to make the Australian market less competitive than those in the region with which it is in direct competition, or which would tend to dissuade offshore investors and market participants from participating in our market. There does not seem any point, in our view, to introduce regulatory requirements which result in costs and administrative burdens that would undermine the efficiency gains that were sought to be achieved by the introduction of multiple markets in the first place. A lot has been said about the goal of making Australia a regional financial hub, however the Association is concerned that a significant number of the regulatory proposals in

recent times, including a number proposed in CP 168, are likely to hinder the achievement of this goal rather than promote it.

Set out below are the Stockbrokers Association's responses to the subject areas and particular questions contained in CP 168, in the order in which they appear in the CP. We comment on each of the subject areas on the basis of the fundamental approach outlined above. There are a number of proposals where we submit that the case for the proposed regulation has not in our view been sufficiently established, or where the cost of the implementing the proposal is disproportionate to the benefit or perceived benefit.

STOCKBROKERS ASSOCIATION RESPONSES TO QUESTIONS IN CP 168

TRADING BEHAVIOUR OF CONCERN

C2Q1 Do you agree with our approach to not propose changes to the market manipulation and orderly trading provisions at this stage? Please provide reasons.

The existing market manipulation provisions are very broad and capable of flexible application. They have been progressively applied over time to a changing trading environment including changes in trading technology. Changes to the law which have sought to remove intention as a key ingredient of the offence of manipulation have also had the potential to extend the offence to a broader range of conduct, including, we would argue, conduct that should not properly be considered to come within the concept of "manipulation", but should more appropriately be the subject of different regulatory provisions.

Therefore, we believe that it would be premature to change the market manipulation provisions at this stage. Rather, ASIC should utilize the provisions that already exist to better effect. Changes should only be considered after the multi-market environment has been in operation and more experience with changed trading patterns has been gained.

It may be, having regard to some of the trading patterns referred to in discussion papers published here and overseas, that some issues will need to be clarified at law, including what may constitute a genuine intention to trade, or the status of orders placed for the purpose of identifying liquidity. However, this will be best considered after multi-market trading has been in operation for a sufficient period.

We note at CP 168 parag. [59] that ASIC indicates that it has ".. identified numerous matters concerning order management, including problematic algorithms" since 1 August 2010. If that is the case, then we are surprised that nothing appears to have been said to the market about those matters, the nature of ASIC's concerns, and

preventative measures. Detail about these concerns may be highly relevant to consideration of this topic.

The position with regard to "orderly trading" on the other hand is not quite so straightforward. There is not a clear definition as to what constitutes a "disorderly market". Whilst there are some generally understood notions of what constitutes a "disorderly market", it is not in our view sufficiently clear, and further clarification is desirable. It may be sufficient to achieve this by more detailed guidance from ASIC, rather than necessarily by way of changes to Market Integrity Rules (MIR) or to the Act.

We note that this is an area where fines are increasingly being imposed on market participants, and for this reason, lack of clarity with respect to the concept creates additional exposure to regulatory liability for participants.

TESTING OF SYSTEMS BEFORE CONNECTION

C3Q1 Do you think our proposal is adequate to supplement the existing regime and meet the outcomes we are trying to achieve (see 'Rationale')?
C3Q2 Will compliance with the proposal require changes to systems and procedures? What are the likely costs of such changes (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
C3Q3 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.
C3Q4 We are considering extending this proposal to trading on markets other than ASX or Chi-X. Are there any practical issues with extending the proposal to other markets and products?

C3Q1
The reaction of our members is that the existing AOP obligations in the ASIC MIR already adequately deal with this issue. There is an existing obligation on a Participant to ensure that its AOP systems are appropriately tested in order for a Participant to be in a position to provide the necessary AOP certification to ASIC. In any event, the requirement for a Participant to have appropriate risk management systems would invariably require that adequate testing take place. Therefore, we are not sure what additional benefit will be achieved by introducing a MIR expressly providing for this to occur.

To the extent that the proposed Rule is intended to go beyond the Participant's own systems, then we would serious concerns about the level of obligation that is sought to be imposed on Market Participants in respect of client systems, including algorithms.

We note the clarification in CP 168 parag. [84] that it is not expected that market participants will test clients' algorithms. This clarification is welcomed, as this would not have been practicable. However, there is still a lack of clarity as to what the remaining requirement will still entail. The remaining obligation should be limited to imposing an obligation on clients in the relevant Terms and Conditions to undertake the relevant testing etc.

It will simply not be feasible to expect a Participant to take any more interventionist steps in the affairs of clients than this, for example, imposing test scripts, reviewing the technical aspects of an algorithm, and so on. The likelihood of any client agreeing to provide access to sensitive intellectual property involved in their trading systems to a broker would be remote. It is likely that clients would simply choose not to trade with that broker, or in the Australian market, if this would be required.

In relation to CP 168 parag [82], it is not feasible to expect an algorithm to be tested in terms of ' potential flow on effects, such as where the algorithm generates orders that trigger other algorithms.." It would be impossible in any testing environment to predict what types of other algorithms there may be in the market at any point in time, and how they would be triggered and what the result would be.

On a general note, it is essential that regulatory requirements on an issue such as this not be out of step with those applied in other jurisdictions, particularly those in the region in which Australia's markets are to compete, as the end result could be a disincentive for key offshore participants and investors to trade our markets. One of the objectives of opening our markets to competition is to attract the liquidity which these participants and investors offer. These obligations are likely in our view to have the effect of influencing those participants and investors to decide not to bother with the Australian market, and choose to participate in other markets that are perceived to be less complicated in which to conduct business.

C3Q2, C3Q3

In view of our answer to C3Q1 above, the systems and procedures established to meet existing requirements are already in place, and no changes would be necessary if the view were taken that the existing requirements are effective and do not need being added to. The length of the proposed transition period would also not in this event be an issue.

C3Q4

Algorithms are used to trade on many different markets for financial products, and across those markets. It is logical that, if concerns exist in relation to the use of algorithms, then they ought to exist in relation to any of those markets. There would be no reason therefore to apply this requirement only to the equities and equity derivatives markets on ASX and Chi-X. We note that the May 6 Flash Crash in the US

is understood to have commenced on the E-mini futures market, and spread later to equities markets.

There is also the potential that investment decisions can be distorted as a result of the application of different regulatory standards between different classes of product, and this should require that consistent obligations should apply across the different markets for financial products where relevant, unless there is good reason not to do so.

CONTROL OVER MESSAGES AND MONITORING

C3Q5 Will compliance with the proposal require changes to your systems and procedures? What are the likely costs of such changes (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?

The reaction of Stockbrokers Association members to this proposal is similar to that in relation to the proposal in C3Q1 above. We strongly submit that the existing AOP requirements in the ASIC MIR are sufficient and do not require any enhancement.

The existing MIR obligations have provided a very robust rule structure since they were first introduced in around 1998. Since that time, there have not been any significant market failures, in our view. To the extent that there were individual instances where AOP systems have failed, we note that the MIR structure has been applied, and there have been instances where fines or other sanctions have been able to be imposed that were commensurate with the incident that concerned.

There has certainly been no regulatory event such as the May 6 Flash Crash in Australia under the existing MIR. Having regard to some of the accounts of the Flash Crash, our view is that it can be questioned whether that event would have been able to occur in the way that it did if the same level of requirements as exist under the present MIR regime in Australia had been in place in the US.

Our members have strong concerns that this proposal is continuing a trend to create overly detailed "gold plated" regulation and generating a corresponding administrative/cost burden, when the existing regime has worked well.

In particular, the existing filter arrangements have proven to be effective. One area of suggested improvement would be to provide some more detailed guidance with respect to filter settings. Members are concerned that lack of clarity as to what are appropriate filter settings, particularly in relation to price filters, creates uncertainty and the potential for exposure to regulatory liability

There are particular issues with some of the wording of the proposals, such as:

- What does "direct and immediate control" over a client's orders mean? This term needs to be clearly defined, as it could mean a standard which may be impossible to attain. The wording of proposed MIR 5.6.3A sets up an "inclusive" definition, and leaves open the potential for a Market Participant to be under additional obligations beyond those which are spelled out in the Rule, and which might be unachievable or unreasonable.

- How is it possible to prevent a "series of messages that may interfere with the efficiency and integrity of the market"? By definition, a series is only likely to become apparent as such after it has occurred, or perhaps, after it has commenced and begun to take shape. The proposed rule should focus on the obligation to have appropriate processes and monitoring for the purposes of preventing misconduct, but should not be expressed in such a way as to create an absolute liability on the part of the Participant if those orders/series simply on the basis that they have occurred. It may be impossible in programming terms alone to design software that would prevent every such series occurring.

- "real time monitoring" – the existing MIR allows for flexibility as to how a Participant carries out its obligation to monitor its trading, having regard to the nature and scale of its business. We would submit that this remains the correct approach, and that there should not be any new requirement that would necessitate incurring the additional cost of employing full time monitoring staff, or purchasing expensive trading monitoring systems, if the nature of the participant's business did not justify this. Many of the larger broking firms will have considerable resources, including staff, dedicated to real time monitoring, however not all firms should be required to do this if the nature and scale of their business does not justify this cost.

- Post trade monitoring. Participants should be permitted to adopt criteria for some form of risk-based analysis to prioritise those orders and trades which are the subject of post trade monitoring. It should not be a requirement that every trade, or every alert generated by a monitoring system, should necessarily be analysed.

The Stockbrokers Association has some concerns about the enacting of a specific MIR to deal with Business Continuity obligations. Business Continuity is a significant issue for the market, for the individual Participant and for ASIC, however there are ample regulatory and licencing powers that would enable regulatory action to be taken in cases where it might be appropriate. Business Continuity would already fall within the risk management obligations under the MIR and AFSL obligations. We do not see why a specific MIR is needed.

At the end of the day, clients have the ability to switch their orders to other brokers in the case of a broker outage. Many clients will already have accounts with multiple brokers. A Participant has a very substantial business imperative to ensure that they

do not suffer the economic and reputational damage likely to flow from a business continuity failure. The additional MIR 5.6.3C in our view does not achieve any additional benefit.

C3Q6 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.

Having regard to our comments in C3Q5 above, we believe that this proposal is not required or should be significantly curtailed, which would impact on the time needed to undertake any transition.

C3Q7 We are considering extending this proposal to trading on markets other than ASX or Chi-X. Are there any practical issues with the extension of this proposal to other markets and products?

Again, having regard to our submissions on the merits of this proposal, it follows that we also would question extending it to other markets. Our fundamental position is that set out in C3Q4 , namely, that consistent obligations should apply to different markets for financial products where relevant, unless there is good reason not to do so.

In relation to the question of real time surveillance of markets other than the cash equities market, in particular the derivatives and fixed income markets, it is difficult to see how a requirement such as that which is proposed could be satisfied in view of the lack of trade surveillance systems that are commercially available from systems vendors. Bespoke surveillance systems will be very costly to develop.

ANNUAL REVIEW OF SYSTEMS AND CONNECTIVITY

C3Q8 Do you agree that an annual attestation by market participants, and the removal of the requirement for ASIC to acknowledge certifications and confirmations, will improve the efficiency of the certification process without affecting market integrity? If not, what alternative should be considered?

It is not entirely clear from the wording of Proposal (4) in C3 precisely what steps will no longer be required at the time of a material change to an AOP system. Proposal 4 C3(b) on page 39 states that ASIC proposes to remove the requirements "to provide confirmation or further certification to ASIC each time the market participant makes a material change to an AOP system..".

However, paragraph (a) on page 40 goes on to say that a participant will still be required to perform material change reviews, and "confirm that its AOP system will continue to comply with Part 5.6 (ASX) and (Chi-X) after the material change is made".

Hence, it is not clear to what extent the proposed confirmation differs from the existing confirmation/certification, and the extent to which there will be any, or any material, reduction in the work required of Market Participants. If it is simply any saving brought about from having to provide a certification as opposed to a confirmation, then this is not likely to generate any significant reduction in administrative effort.

As against this, Proposal (4) will require that participants provide an annual certification to ASIC in respect of all of their systems, including those which have not been the subject of any change at all.

It makes little sense to us for systems that are routinely used, operate effectively and have not been the subject of any issues or malfunctions, should require annual certification.

Therefore, the obvious conclusion is that Proposal (4) will add significantly to the administrative burden facing Market Participants, rather than offer any improvement in efficiency. In the absence of any improvements, our members would prefer the existing arrangements to those in Proposal (4).

The Proposal may offer some efficiencies for ASIC, in the event that the requirement for ASIC to acknowledge certifications and confirmations to Participants is discontinued. We would have no objections to this requirement being removed, although acknowledgement that a certification or confirmation has been received by ASIC should continue to be provided, as with any lodgment.

We do however add one important rider to these comments. Our members have expressed the strong view that ASIC performs a highly important function in relation to market integrity in administering the rules framework applying to AOP systems. Any streamlining of ASIC's handling of AOP certifications from Market Participants should not derogate from the important role that ASIC plays in monitoring AOP systems and trading to ensure that they do not impact on market integrity.

C3Q9 Will compliance with the proposals require changes to your systems and procedures? What are the likely costs of such changes (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?

We refer to our answer to C3Q8 above. The Proposal would not appear to lead to any significant reduction in work that needs to be carried out in connection with reviewing and testing an AOP system every time that a material change is carried out.

On the other hand, the Proposal will require an annual process of reviewing all AOP systems, whether or not any material change, or any change at all, has been carried out, and providing the annual attestation to ASIC. This will place an additional demand on the time of IT staff, Compliance and Management. It is difficult to quantify any estimate of the cost of this requirement, which will be on-going given the annual nature of this requirement.

There is the distinct probability that, in order to efficiently and accurately manage an annual attestation process, there will need to be a period of time in each calendar year when a moratorium on change on all systems will need to be imposed. In cases where firms already impose a change freeze (usually at the end of the calendar year), the period of the freeze is likely to need to be extended in order to carry out the attestation.

This is likely to impact on system development within individual firms, and also likely to impact on the calendar for system upgrades and enhancements of each of the Exchange Market Operators and Clearing and Settlement Facility operators.

C3Q10 What are your views on the proposed transition periods? Please provide details on why you consider these timeframes are, or are not, achievable.
C3Q11 We are considering extending these proposals to trading on markets other than ASX and Chi-X. Are there any practical issues with the extension of these proposals to other markets and products?

Given that we are not in favour of the Proposals, we do not advocate extending them to markets other than ASX and Chi-X.

Our general position is that the regulatory requirements should be product neutral, unless there is good reason for it to be otherwise. The rules relating to AOP systems should apply as far as appropriate to AOP systems on markets other than listed equities.

C4. DIRECT ELECTRONIC ACCESS – LEGALLY BINDING AGREEMENTS WITH AFS LICENSEES

C4Q1 Are there other controls that we should consider to achieve the outcomes proposed in paragraph 102? If so, what are they and why are they preferable?

The Stockbrokers Association reiterates its fundamental position that Australia already has in place a robust and effective regulatory regime governing AOP that has stood the market in good stead and has assisted in avoiding the more dramatic regulatory failures that have occurred in other jurisdictions.

The key element, in our view, is the role of filters and, where relevant, manual review by qualified and skilled DTRs prior to orders being released into the market. In our view, if these foundations of the AOP regime are implemented correctly, then the integrity of the market will be safeguarded, and there is less need for unwieldy or ineffective rules which attempt to regulate other matters.

The proposals in C4, which attempt to regulate the affairs of underlying clients by imposing requirements on Market Participants, are in our view an example of precisely this.

As a preliminary comment, ASIC has a responsibility for supervising the conduct of AFS Licensees. These proposals would have the effect of shifting the burden of some of these responsibilities to Market Participants who transact on behalf of those AFS licensees. It is not fair to require Market Participants to take on a function which should belong to ASIC.

Additionally. there are limits to how effective any Rules can be which require that a Market Participant know everything about a client's business and the proposed nature of its AOP trading.

Firstly, clients will in many cases prefer not to tell a Participant what their trading strategies are. One of the key benefits of AOP to clients is to achieve anonymity and prevent information leakage, particularly even to the client's own brokers.

Clients who are themselves an intermediary, including those located in another country, may have their own underlying clients who are given access to trade through the client's trading systems which feed into those of the Market Participant's AOP systems. The first client may be unprepared, or even unable, to assist the Market Participant to know and understand the nature of trading by the third party.

In relation to Proposal (1) C4(b), determining what are "the required financial resources" for the client to meet its obligations to the market participant in relation to its trading is a vague enough term to begin with. As it also depends on the nature of the client's trading, which as we have seen may not be disclosed, it would be unfair to impose regulatory liability on a Participant for not ensuring that the client has failed to demonstrate this to the Participant.

On a similar basis, apart from maintaining appropriate filters and supervising order entry, there are real limitations as to what can realistically be required of a Market Participant in relation to supervising the conduct of their clients. In our submission, the only requirement which can practically be asked of a Participant is to include requirements on the client's part to carry out the steps mentioned in the Proposal in the Terms and Conditions applicable to the client account.

It is not feasible to place an onus on a Participant to take any interventionist steps to ensure that clients have performed these steps. How in practical terms is it suggested that a Participant ensure that the client has adequately carried out system testing prior to use of an AOP system or an algorithm? How does a Participant assess the adequacy of client knowledge of the order management system? It is not practicable for a Participant to be required to undertake a review of each of their AOP Client's procedures for trade monitoring. On the assumption that clients will utilize more than one broker to execute trades, such a requirement would result in the duplication of multiple Participants each making these same assessments of the same client.

We would return to our fundamental proposition, namely, if the participant's filters and processes are sufficient to prevent unacceptable orders from entering the market, then this should be an adequate outcome to prevent market misconduct or a disorderly market. It should be left to the broker to manage any patterns which emerge from its filter breach reports through discussions with the client and/or in an appropriate case, removing AOP access for a client or authorized person.

In this regard, the Stockbrokers Association has been vocal in highlighting the importance of a strong regime for DTR training and accreditation. The Association has embarked on a program to maintain industry standards in this area, and has sought ASIC's endorsement and support. The Association believes that DTRs act as important gatekeepers in supervising the entry of orders, not the least the review of AOP orders, in order to maintain market integrity and prevent market misconduct.

In relation to the adequacy of client financial resourcing, this would be more relevant to the risk of settlement failure and counterparty risk for participants. There are already a number of measures in place to deal with these risks which are appropriate given the level of risk. In addition, we note that there are proposals for the commencement of cash margining of equity transactions in the near future. We do not believe that there is anything to be gained from adding any further obligations on the part of the Participant.

The above observations also apply to the proposal in parag (d) in relation to Client algorithms.

We note the discussion in paragraphs [108] – [110] of CP 168 of proposals and policy positions in similar jurisdictions, namely the US, Canada and Europe. However, we note also that these proposals seems to relate to or stem from the use of "sponsored" or "naked" access to clients, where orders do not pass through a Participant's systems. Again, this highlights the contrast of those jurisdictions with the Australian AOP regulatory framework, in which naked access is not allowed, and under which all orders must pass through a Participant's filters or be manually released by a DTR before entering the market.

C4Q2 Will compliance with the proposals require changes to your systems and procedures? What are the likely costs of such changes (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?

The proposals as they are drafted would result in the need for significant additional IT, Compliance and Managerial resources to be added by Participants. This would be would be required so as to carry out the reviews of client trading systems, including algorithms; client trade monitoring systems; and assessment of the financial resources of clients.

C4Q3 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.
C4Q4 We are considering extending these proposals to trading on markets other than ASX or Chi-X. Are there any practical issues with extending these proposals to other markets and products?

Given that we are not in favour of the Proposals, we do not advocate extending them to markets other than ASX and Chi-X.

Our general position is that regulatory requirements should be product neutral, unless there is good reason for it to be otherwise. The rules relating to AOP systems should apply as far as appropriate to AOP systems on markets other than listed equities.

C5. MARKET OPERATOR SYSTEMS AND CONTROLS

C5Q1 What information should market operators publish (and by when) about their testing arrangements and capacity?
C5Q2 Are there any reasons why this guidance should not be extended to all market operators (including in futures and other equity markets)?
C5Q3 Is it necessary that some or all of these expectations should be set out in market integrity rules? If so, why?

We do not have any concerns regarding the breadth of the obligations imposed on Market Operators under the Corporations Act and Market Integrity Rules to maintain a fair and orderly market and to have sufficient resources and controls. The existing regulations is broadly worded and capable of sufficient flexibility for ASIC to enforce these standards in a rapidly changing technological environment, we would have thought.

However, to the extent that it is considered that further clarification is needed, then we would welcome ASIC Guidance which provides this clarification.

The Stockbrokers Association is strongly supportive of the proposed industry protocol to promote the orderly implementation of market changes where there are IT or operational system implications for industry. Experience has already demonstrated how system upgrades and the introduction of new markets or order books can have a material impact on the capacity of participants to manage these changes when time frames are very limited. This could have the undesirable result of increasing the potential risk of disorderly markets or a system malfunction.

There is a perception in some overseas markets that some market operators have used their program of system releases and upgrades in a manner designed to foster their competitive position in relation to other competing markets. In order to ensure that local markets remain fair and orderly, appropriate measures should be in place to ensure that such a temptation would not arise here.

It is important that the Australian market, having invested in market competition, enjoys the fruits of competition. In that regard, it is important that competition in the form of technological innovation not be stifled. However, having said that, it is important that ASIC ensure that the roll out of system changes is appropriately planned, and that market operators cooperate to make available test arrangements that will allow participants to carry out necessary testing so as to avoid adverse market impact.

In our view, achieving such an outcome by means of enhanced ASIC Guidance, and through additional licence conditions if that is considered necessary, would be the appropriate approach.

As regards C5Q2, we reiterate our basic position that the same regulatory framework should extend across all markets unless inappropriate for some reason. There is no reason in our view why these particular requirement should not extend to other markets.

C6. MARKET MAKING IN THE CASH EQUITY MARKET

C6Q1 Do market makers add to market efficiency and on what basis? Please provide real life examples.
C6Q2 Should ASIC consider providing short selling relief to persons licensed, or exempt from holding a licence, under the Corporations Act to make markets, and on what basis should the relief be provided?
C6Q3 Should we only consider short selling relief for entities that are also formally registered as a market maker with a market operator? What should be the minimum characteristics of a registered market-making model?

Members have expressed a range of views on the question of the contribution of market makers to the cash equity market. One view is that an increase in market making activity is one of the significant benefits to flow from the introduction of multiple competing markets. Market makers posting two-way prices should generate additional liquidity, particularly in the event that market operators introduce incentives the types of incentives that have been a feature in overseas markets, for example, rebates for providing liquidity. If so, then this ought to have the effect of contributing to price formation and should tend to narrow bid-ask spreads.

Others however have expressed reservations about the extent to which market makers have contributed significantly to liquidity or to market efficiency in the past, and have doubts about the extent to which they will do so across competing markets here.

This will probably be an issue which will not be resolved until there has been a sufficient period of time to observe the multi-market environment in operation, particularly with the added impact of the improvements in latency following the implementation of new technology and greater use of co-location arrangements offered by market operators. It is also probable that an improvement in economic conditions and overall trading activity in our markets generally will be needed before a better picture of the impact of market making in Australia's multi market environment may be known.

Notwithstanding this, the Stockbrokers Association submits that it makes sense to look closely at the regulatory settings applying to market making so as to maximise the potential benefits to the market from market making activity.

In our view, there is merit in adopting a scheme for formal recognition of market makers. This would be the basis of determining what benefits should be allowed to market makers, and what obligations should be apply in order for those benefits to be enjoyed.

We do not argue that all parties who post two-way prices should be required to registered or considered as market makers. Many investors including proprietary desks within broking firms will trade in this way, and by definition, this will result in the provision of liquidity on both sides of the market. This needs to be distinguished from market-making, and should not trigger any mandatory obligation to be registered as a market maker or AFSL authorisation. In that event, any market maker obligations would not and should not be applicable, however neither would any benefits of being a market maker.

A more formal market maker regime would include specifying the obligations on the market maker as to the products in which markets are required to be made; minimum times in which prices must be quoted; and obligations with respect to the spread. In this regard, there should be no ability to satisfy two-way obligations

through the use of "stub quotes", a feature which was said to be a contributing factor in the May 6 Flash Crash.

The question of potential short selling relief should, in our submission, be resolved as part of this overall issue. Previously, the Stockbrokers Association was vocal in seeking the granting of naked short selling relief to legitimate market makers, subject to appropriately framed conditions. The Association was pleased that ASIC subsequently issued the relief in Class Order 09/774 to facilitate hedging by market makers.

In our view, the same logic supports the availability of similar short selling relief to be afforded to market makers in cash equities. It makes no sense, in our view, for market makers to be required to incur the expense of pre-borrowing stock at the start of each day in order to be able to be present on the sell side of the market, when the borrow may not end up being needed. This must impact on the economics of the activity, and must logically mean that market makers will be obliged to post wider spreads than would otherwise be required in order to cover the cost of unnecessary pre-borrowing. Wider spreads means less attractive prices to the market, less turnover, and less price efficiency.

It makes no sense, in the Association's view, to take the momentous step of going down the path of multiple markets, with all of the consequent cost to participants and market operators, but then leave obstacles which will impact one potentially significant aspect of multi market activity.

Conditions in the nature of those in Class Order 09/774 relief requiring short positions to be covered by the end of the day, either by being bought back or by a stock borrowing, should be imposed to protect the stability of the market.

C6Q4 Should ASIC continue to require all market participants that make a market within the broad meaning of s766D to hold an AFS licence?
C6Q5 Should ASIC consider providing relief from the requirement to hold an AFS licence for an ELP that:
(a) makes a market within the meaning of s766D; and
(b) is not formally recognised as a market maker by the market operator; and
(c) does not receive the benefit of ASIC short selling relief?
C6Q6 Would your view differ if these ELPs were subject to the ASIC market integrity rules?
C6Q7 If you answered yes to C6Q5, what should be the nature of the conditions of any such relief?
C6Q8 Are there any practical issues for a market participant if its client is also an AFS licensee?

See the answer to C6Q1 above. The concept of "making a market" can be very broadly defined at one level. In our view, participants should be free to follow a

strategy of present on both sides of the market at their desired price level(s), but should not be subject to any other obligations or receive other benefits unless they opt to be regulated as a market maker.

ASIC should ensure that it has sufficient jurisdiction to supervise the conduct of market makers. Until a better picture is formed as to how the multi-market environment takes shape in Australia, including the nature and extent of market making activity and high frequency trading, then it does not make sense to make any change to licencing requirements. In our submission, the AFS Licence regime is an important regulatory tool for the broader supervision of conduct in the market, and we do not advocate reducing its scope, particularly in relation to market making, unless it become clear that there is good reason to do so.

For these reasons, it makes good sense in our view that ASIC be in a position to make use of the AFS licence regime to supervise the conduct of ELPs. The Stockbrokers Association has also been vocal for some time in support of extending the scope of particular Market Integrity Rules to cover entities other than Market Participants, and this may include ELPs. If particular MIRs directly applied, then this might mean that some flexibility could arise in relation to the application of the AFS Licence regime to those entities.

VOLATILITY CONTROLS

D1Q1 Is a limit band and timeframe of 15% in five minutes an appropriate parameter for S&P/ASX 200 products and associated ETFs?
D1Q2 Should the limit band be measured in price steps for lower-priced securities (e.g. those under $2.00)?
D1Q3 Is a limit state of one minute an appropriate time for order book recovery?
D1Q4 Is a trading pause of five minutes an appropriate time before resumption of trading? Should the volatility control bands be wider during the open and close, or should the control apply for a shorter period of the day when all markets are open for continuous trading (e.g. 10.15 am–3.45 pm)?
D1Q5 In calculating a reference price and best bid or best offer across all order books, we expect market operators will have their own consolidated view of all activity across order books. Would it be preferable to use a single source?
D1Q6 What systems changes are necessary for these proposals? What are the costs of these (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
D1Q7 We recognise that timing for implementation depends to a large degree on market operators' system vendors and development cycles. What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.
D1Q8 Will this affect trading in related derivative products (see 'Derivative considerations' at paragraph 174), and how? How should this process be managed?

D1Q9 Should a volatility control be applied to a wider set of products than proposed?
D1Q11 Do you foresee unintended consequences of the proposed limit up–limit down approach? Please provide details.
D1Q12 Do you have any concerns about the notification process and the process of halting trading on other markets if the product is in a trading halt on one market? If so, what are your concerns and how can they be addressed?

In our previous submission relating to ASIC CP 145, we expressed the view that we did not believe that it was at all clear that Australia's markets had reached the point where volatility controls were required. Assuming that appropriate AOP/DEA filters are in place, and in view of the anomalous order filters which have been introduced, the Association remains of the view that the risk of a Flash Crash scenario in Australia's listed equities markets have been suitably mitigated.

In our CP 145 submission, we noted that the order which was thought to be the trigger for the May 6 Flash Crash, namely a large volume order entered without regard to time or price impact, is one which could have been expected to trigger the types of AOP filters that are required under Australia's AOP regime had the events occurred here.

We understand that regulators, including ASIC, remain concerned about the prospect of a repeat of the May 6 events. Putting aside our basic view that the case for volatility controls has not yet been fully made out, if such a control was to be implemented here, then we would be broadly supportive of the proposals in CP 168. We agree that, for the reasons set out in parag. [169], the limit-up limit-down model is to be preferred.

D1Q8

If the volatility control is implemented, then it will create an issue if derivatives over an affected security are permitted to trade during the period when the control is at work. There are good reasons for the existing arrangements whereby trading in derivatives is suspended when the underlying security is suspended. There is the potential for trading in the derivatives market to undermine the effect of the volatility control, or otherwise, for potential activity which could manipulate the underlying equities market upon its reopen.

It is difficult to predict how limited trading that may occur during the limit period may counteract these possibilities, and believe that the safest course would be to suspend trading in the relevant derivative from when a control is triggered and for the duration of the limit period and any subsequent trading pause.

EXTREME CANCELLATION RANGE

D1Q13 In your view, would the extreme cancellation ranges in Rule 2.2.1 (Competition) need to be amended if we implement the volatility control proposal? Please provide your reasons.
D1Q14 Should the reference price calculation be adapted to a dynamic calculation?
D1Q15 What systems changes are necessary for this proposal? What are the costs involved (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
D1Q16 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.
D1Q17 Should Part 2.2 (Competition) apply to products other than equity market products? Please state which other products it should apply to and the basis for your comments.

For a considerable number of products in the ASX 200, it is likely that the volatility control set at 15% of the reference price will be triggered before the Extreme Cancellation Range (ECR) would be reached, and therefore, the latter could in many cases become meaningless. As at 25 January 2012, there were 29 products in the ASX 200 priced between $0.10 and $1.00, and 27 priced between $1.00 and $2.00. Leaving aside the fact that the reference price for the volatility control is dynamic, unlike the reference price for the ECR, it is likely that in many instances the volatility control will be triggered for this class of products well before the current threshold level at which the ECR is triggered.

Much will depend on the rate of change of the price of a products during the day, and the extent to which this will lead to progressive recalculation of the reference price such that the volatility control does not get triggered. Without engaging in some complex financial modelling, it is difficult to predict to what extent the volatility control will in practice render the ECR meaningless for lower priced products.

Further consideration needs to be given to the ECR for lower priced products, as there is already anecdotal evidence from members there are increasing instances of trades being cancelled due to price moves in an orderly fashion but which nevertheless trigger the ECR. This is most likely to occur in the 0.1-9.9c range, where the ECR at 21 price ticks could be triggered by a move of 2.1c. Moving to a dynamic reference price for the calculation of the ECR could, depending on the mechanism, address the issue, however this is likely to elevate the level of complexity of the ECR significantly, and could generate significant implementation costs and difficulties. It should be borne in mind that one of the "cons" given in relation to the volatility control proposal is its level of complexity.

SPI FUTURE VOLATILITY CONTROLS

D2Q1 Is a limit band and timeframe of 250 points in five minutes an appropriate parameter for the SPI Future?
D2Q2 Is it appropriate to retain the current threshold of 250 points applied to the SPI Future administered by ASX in its trade cancellation policy for ASX 24, or would it be more appropriate to adopt a percentage movement which remains constant irrespective of the level of the underlying index?
D2Q3 Is a limit state of one minute an appropriate time for order book recovery?
D2Q4 Is a trading pause of five minutes an appropriate time before resumption of trading?
D2Q5 What systems changes are necessary for this proposal? What are the costs of these (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
D2Q6 We recognise that timing for implementation depends to a large degree on market operators' system vendors and development cycles. What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.
D2Q7 Do you foresee unintended consequences of the proposed limit up–limit down approach? Please provide details.
D2Q8 We do not intend to introduce a market-wide halt across the equities market, should the limit up–limit down control be triggered in the SPI Future. Do you consider that there should be such a market-wide halt parameter? If so, what would it be?
D2Q9 We consider that implementing a control in the S&P/ASX 200 products, associated domestic index ETFs and the SPI Future is sufficient, at this stage, to address cross-product and cross-market contagion. Should we also consider a market-wide control for the equities market, as exists in the United States?

We refer to our views in the Answer to D1Q1 above on whether the need for a volatility control has been fully made out.

Leaving this aside, if a volatility control is to be introduced, then it would make sense for the same limit-up/limit-down model to be applied to the SPI Future.

As regards the limit band of 250 points, we would favour the use of a percentage figure rather than a fixed value. The latter would eventually be eroded by a rising index, so would end up needing to be reviewed at a later point in time as markets recover. It would be better to simply opt for a percentage figure instead.

ANOMALOUS ORDER ENTRY – SPI FUTURES

D2Q10 What are your views on an order entry control for the SPI Future to supplement the limit up–limit down volatility control?

D2Q11 What systems changes are necessary for this proposal? What are the costs involved (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
D2Q12 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.

Following the same logic behind order entry controls for cash equities, it would make sense for there to be an anomalous order entry control for the SPI Future that operates in conjunction with the volatility control that may be implemented.

D3Q1 Should the order entry controls apply to all products traded on ASX and Chi-X, including debt, options and warrants?
D3Q2 Should the requirement for market operators to have order entry controls apply to products traded on other markets, such as the National Stock Exchange, SIM Venture Securities Exchange and the Australia Pacific Exchange?

The products referred to in each of D3Q1 and D3Q2 do not have sufficient liquidity for order entry controls such as these to be capable of application without considerable difficulty. We therefore do not support extending the controls to those products.

This would be an instance of a proposal where there is an insufficient benefit to justify the cost of implementation to Participants and to the Market Operators.

ENHANCED MARKET SURVEILLANCE DATA

E1Q1 Are there any practical issues with these proposals? Please provide details. Are there more desirable mechanisms of achieving the same outcome?
E1Q2 Considering the additional data to be carried via order and trade report messages, what will be the impact on the performance and capacity of your order management and trading systems?
E1Q3 What systems changes are necessary for these proposals? What are the costs of these (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
E1Q4 What are your views on the proposed transitional arrangements? Please provide details on why you consider these are, or are not, achievable.

The proposals create a number of logistical and practical difficulties for brokers, and the Association remains concerned about the cost impact and the impact on the speed of transmission of orders to market that will be occasioned by these requirements. Our members believe that the proposals will create a very heavy burden for Market Participants purely for the convenience of ASIC's surveillance program, and that the imbalance between the two is unfair.

Members do not believe that a case has been made out as to why this information is needed at the order stage. They do not see why the present arrangements, whereby ASIC notifies Participants of the trading about which it has concerns and asks for the relevant information to be provided, are not adequate or are not sufficiently expeditious as to warrant being replaced by arrangements that will present a logistic nightmare. Participants provide ASIC with information in a very short timeframe if ASIC needs it.

In relation to practical difficulties, the key concern is that the proposal will require an extremely difficult logistic exercise of marrying up all of the systems that contain the data that is sought, so that the information is extracted and incorporated into the order message. The information sought does not all reside in the one system, but can be in a number of separate systems, including back office systems and client management databases. The proposal that Participants undertake the task of making the various systems "talk" to each other has generated alarm from a logistical and cost perspective.

It should be noted that, for Participants who are part of an international group, many of these systems will be global systems, and hence the work involved will be even more complex and touch operations in many other jurisdictions locations globally.

In addition, we reiterate the problems with client account identification in order data that we highlighted in our CP 145 Submission. The allocation of an order is often not known at the time the order placed, particularly in relation to wholesale clients, and so client account information may not be available at the time. Further, there is the issue of amalgamated orders, which ASIC acknowledges in parag. [230].

We are concerned at the proposal that these gaps may be filled by further requirements for post trade or post-allocation reporting, as flagged in parag. [230]. We are concerned at the imposition of layer upon layer of reporting, all for the sake of monitoring the small sub-set of orders that might require further regulatory oversight. In our submission, the costs of these proposals would be disproportionate to the benefit.

The requirement for agency wholesale/retail information to be included in order data also presents practical difficulties, as the Client classification can change quite frequently depending on the criteria relied upon. We question why this information would be needed by ASIC at the trade monitoring stage, and why this would justify the cost of providing it.

The proposal for identification of algorithms will be dependant on arriving at a suitable definition of the term "algorithm". This is not a term that is easily able to be defined. The term is easily able to extend to include a simple VWAP tool if it is defined in the broadest sense.

SYNCHRONISED CLOCKS

E2Q1 What are the likely costs of changes (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
E2Q2 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.

We are not in a position to comment on the impact of these proposals on market operators.

E2Q3 What are the practical issues for market participants to synchronise their clocks?
E2Q4 Should market participants using co-location services provided by market operators be required to synchronise their clocks to the same standard as the market operator?
E2Q5 What are the likely costs of changes (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
E2Q6 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.

The Stockbrokers Association appreciates that monitoring of compliance with regulatory obligations may be difficult in the absence of an adequate level of time synchronization.

However, our Members do not support the requirement for clock synchronisation at this point. Our Members are very concerned at the size, and likely cost, of the task of synchronizing clocks, which would be considerable. This would require synchronization of not just one clock within a firm, but all clocks, including every PC, every server, and every trading platform.

Once clocks are synchronized, there is the question of how to deal variations that will subsequently arise for a whole host of reasons. Continuous maintenance and checking of all machines to ensure ongoing synchronisation would be a mammoth and very expensive obligation.

We are not convinced that the existing level of accuracy of time recording will be a barrier to effective surveillance and enforcement of the market by ASIC. We believe that there needs to be further evidence gathered to establish that ASIC's task cannot be adequately performed in the absence of synchronisation.

The Stockbrokers Association therefore strongly argues that this is a task and cost that Market Participants should not be asked to bear in the current economic environment.

STANDARD FORMAT FOR PROVIDING RECORDS TO ASIC

E3Q1 What changes would be necessary for you to implement this request? Please provide an indication of the implementation timeframe and costs that this would involve.
E3Q2 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.
E3Q3 Do you consider that adopting this proposal would impose an unreasonable burden?

We refer to the answer to E1Q1 above. As we mentioned there, the principal difficulty is the marrying up into one report in the desired format of all of the information that ASIC is seeking, when in reality the information that is being requested will invariably be held in a number of different systems within a Participant's business.

Participants do not object to complying with a lawful request to provide ASIC with this information, however they do object to the requirement to incur the burden and expense of re-engineering systems so that the information can be captured in the one report.

Some of the systems will be systems developed in-house, and some acquired from systems vendors. Any re-engineering of the latter, if it were required, would not be an option. However, as mentioned earlier, in-house systems in many cases will be global systems used in many jurisdictions, so , re-engineering these so as to satisfy a local report formatting requirement can be a costly and disruptive task.

BEST EXECUTION

F1Q1 What are the practical challenges for market participants to comply with the proposed increased product scope of the best execution obligations?
F1Q2 What are the implications of these obligations for off-order book trading in these products?
F1Q3 To reduce the potential impact on the wholesale market, should we consider limiting the application of the best execution obligations in relation to these products to the extent that they are traded by market participants:

> ***(a) under the rules of a licensed market; or***
> ***(b) under the rules of a licensed market that includes retail participation; or***
> ***(c) on behalf of retail investors?***

Which option do you prefer and why?
F1Q4 Should we consider applying only the best outcome obligation to obtain best outcome when dealing in these products? For example, the obligations in relation to policies and procedures, disclosure and evidencing would not apply.

F1Q5 Will compliance with this proposed obligation require any changes to your systems or procedures? What are the likely costs of such changes (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)? Are there likely to be significant impediments to making these changes?
F1Q6 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.

Stockbrokers Association members do not see any benefit to investors which would flow from extending the Best Execution obligation as it has been enacted in Chapter 3 to options, warrants, ASX-quoted interest rate securities and AQUA products.

Each of these classes of products are only traded on one market, so there is nothing to be gained, in our submission, from extending the Chapter 3 Best Execution obligation in this context. There are no multiple venues to consider. The significant administrative and reporting burden, and their compliance costs, which arise in connection with the statutory Best Execution obligation, would be imposed for no corresponding benefit.

Stockbrokers already have a common law duty to obtain the best possible price for a client, subject to the instructions of the client.

Implementation of the MIR Best Execution obligation recently has resulted in a significant and costly additional administrative burden to Market Participants. Extending this regime further to the products proposed would lead to a similar further increase in costs, but would not contribute anything for the benefit of investors.

Therefore, the Association strongly submits that the cost/benefit analysis does not support proceeding with the proposal at this stage.

ORDER ROUTING/EXECUTION QUALITY REPORTING

F2Q1 Do you agree with ASIC's approach not to require monthly reporting of order routing?
F2Q2 What additional data, if any, would assist investors in assessing execution quality?

We support the decision not to require monthly reporting of order routing. We do not believe that this will provide any benefit that clients are wanting. We believe that the reporting obligations that have been adopted will be sufficient for the demands of clients. It follows from this that we do not believe that there is any additional data that would assist investors in assessing execution quality

MEANINGFUL PRICE IMPROVEMENT

G2Q1 Are there any practical issues with requiring meaningful price improvement?
G2Q2 Should meaningful price improvement refer solely to the top-of-book bid or offer, or should we permit, as proposed, volume-weighted averaging based on the size of the trade? Are there any difficulties (e.g. technological issues) with these proposed methods of calculation?
G2Q3 Is it appropriate that all order types that could rely on this exception are based on the consolidated best bid and offer (i.e. NBBO)—for example, pegged orders?
G2Q4 Should fully hidden orders be permitted in an order book? Should they also be subject to meaningful price improvement?
G2Q5 What impact, if any, would the proposed record-keeping obligation (see Proposal G6) have on your systems or procedures in relation to this exception?
G2Q6 What are the likely compliance costs (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
G2Q7 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.
G2Q8 Is it necessary to make consequential amendments to the existing regulatory framework surrounding restrictions to activities during takeovers and buybacks, including to Chapter 6 (ASX) and (Chi-X), as a result of this proposal?

The Stockbrokers Association is broadly supportive of the "meaningful price improvement" requirement. Our members have not identified any difficulties with the proposal at this point, however this is an area which should be closely monitored following implementation to identify any issues.

MINIMUM SIZE FOR DARK ORDERS

G3Q1 Do you have any views on the proposed trigger?
G3Q2 What is the appropriate time period over which to calculate the base value of dark liquidity below block size to be used for the trigger?
G3Q3 Is 50% the appropriate level for the trigger?
G3Q4 Should the $50,000 threshold apply to all equity market products? For example, should we consider a tiered threshold based on liquidity?
G3Q5 Should this threshold apply equally to partly and fully hidden orders?
G3Q6 What are the likely compliance costs (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
G3Q7 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.

G3Q8 Is it necessary to make consequential amendments to the existing regulatory framework surrounding restrictions to activities during takeovers and buybacks, including to Chapter 6 (ASX) and (Chi-X), as a result of this proposal?

Stockbrokers Association members have supported the objective of ensuring that there is not an excessive loss of liquidity by the lit market to dark venues, with resulting detriment to price formation in the lit market. Having said this, there is no obvious mechanism for achieving this objective which would suggest itself as superior to that which is embodied in the MIRs.

As a preliminary comment, there is a body of argument that fears of excessive loss of liquidity to the dark markets from the lit markets may be unfounded or exaggerated. The point is made that parties are not likely to trade in the dark market if means they routinely achieve inferior prices to that obtainable in the lit market, and that the requirement of meaningful price improvement should mitigate against this danger. Notwithstanding this argument, our Members understand the reasons why ASIC as well as regulators overseas wish to retain a mechanism which with which to respond should there be an unacceptable transfer of liquidity from lit to dark.

It is difficult to foresee how the $50,000 threshold will impact on the market in practice, in the event that it is triggered, and whether the proposed settings of $50,000 value/50% increase in value of dark liquidity are the right ones, and what if any unintended consequences may arise from any of these. In our view, we support the approach of implementing the proposal, and for ASIC to keep the issue closely monitored and be ready to respond quickly should the settings prove to be incorrect or should unintended consequences arise.

The Stockbrokers Association does have some concerns about the base value of $10.94 billion, derived from the average of the period April- July 2011. Trading during 2011 has been impacted by the Global Financial Crisis, with market turnover significantly lower than previous years. With Daily turnover on the ASX commonly in the order of $6 billion prior to the GFC falling to figures in the order of $4 billion per day during 2011, it is not unreasonable to expect a rebound in turnover on the assumption that the current period of economic difficulty does eventually come to an end. In that context, one could easily imagine that the volume of dark pool trading could increase in the order of 50% simply by reflecting a corresponding increase in market turnover generally.

Therefore, it could be that the threshold is triggered even though the relative balance between dark and lit activity may not have, and without the increase representing a problem. Conversely, a further fall in market turnover could result in dark pool activity reaching a problematic level, even though the threshold might not have been triggered.

It would make sense, in our view, for there to be some form of relativity measure applied in determining the amount of any increase in value of dark liquidity that should trigger concerns.

RECOGNITION OF DISPLAYED ORDERS

G3Q9 Should we allow this display rule option?
G3Q10 If yes, what should be the minimum size and display period?
G3Q11 How can the practical concerns that we have raised be mitigated?
G3Q12 Are there other practical concerns that we should consider with this option, and how might they be mitigated?
G3Q13 What are the likely compliance costs (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?

We do not have any comments on these questions.

BLOCK TRADE THRESHOLDS

G4Q1 Do you have any views on the tiered block thresholds?
G4Q2 How frequently should we calculate average daily volume (ADV) and allocate equity market products to each tier (e.g. weekly, monthly, quarterly)? (The categories for post-trade transparency delayed publication are calculated weekly.)
G4Q3 How much notice is required for market operators and market participants to give effect to the calculation referred to in G4Q2?
G4Q4 What are the likely compliance costs (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
G4Q5 What are your views on the proposed transition period? Please provide details on why you consider this timeframe is, or is not, achievable.
G4Q6 Is it necessary to make consequential amendments to the existing regulatory framework surrounding restrictions to activities during takeovers and buybacks, including to Chapter 6 (ASX) and (Chi-X), as a result of this proposal?

In the Stockbrokers Association's previous CP 145 Submission, we made the general observation that reducing the threshold for Block Special Crossings at the lower end of the market might be seen as being at odds with the policy objective of limiting the migration of liquidity from the lit market to dark pools, in the very sector where liquidity is needed in the lit market in order to assist with price formation.

Our members have continued to express the view that, whilst reducing the threshold in the middle to lower tiers to less than $1 million would enable Block Special Crossings to be more easily executed, the overall impact of this would be to tend to

deprive the market of liquidity for stocks in this sector, and that this could create the potential for manipulation or mischief with respect to the market for those stocks.

For this reason, our members have indicated that they would on balance prefer to see no change to the Block Special Crossing threshold for the middle and lower tiers as indicated in Table 15 of CP 168.

REVIEW OF OTHER PRE-TRADE TRANSPARENCY EXCEPTIONS

G5Q1 Are there any reasons why we should consider retaining any of the exceptions that we propose to remove?
G5Q2 Are there any reasons primary market transactions, and stock lending or borrowing, should be subject to the pre-trade transparency obligations?
G5Q3 Are the other exceptions to pre-trade transparency that we have not raised in this paper (i.e. trades during the pre-trading and post-trading periods and out-of-hours trading) still appropriate?
G5Q4 What are your views on the proposed implementation periods? Please provide details on why you consider these timeframes are, or are not, achievable.
G5Q5 Is it necessary to make consequential amendments to the existing regulatory framework surrounding restrictions to activities during takeovers and buybacks, including to Chapter 6 (ASX) and (Chi-X), as a result of this proposal?

Our Members do not see any compelling reasons to remove these exceptions. There is no harm in leaving them in place.

RECORD KEEPING

G6Q1 Are there any practical implications associated with complying with this proposal?
G6Q2 What are the likely compliance costs (where possible, please identify the nature of these costs, quantify the estimated costs and indicate whether such costs will be one-off or ongoing)?
G6Q3 What are your views on the proposed implementation timeframe? Please provide details on why you consider this timeframe is, or is not, achievable.

Members believe that the existing requirements regarding record keeping are sufficiently broad, and as is noted in parag [367], Market Participants are already complying with these obligations. Therefore, our Members do not see why there is a need to introduce yet another rule specifically dealing with this class of records.

VALIDATION OF TRADES RELYING ON PRE-TRADE EXCEPTIONS

G7Q1 Do you have any comments on this proposal?

We have no comment on this proposal.

EXECUTION AS EXPEDITIOUSLY AS POSSIBLE

G8Q1 Does this clarification alter the way that client orders are currently handled?

Our Members consider that the relevant Rules speak for themselves, and that the clarification foreshadowed is not necessary.

We appreciate the opportunity to provide this written Submission in response to the 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 **pstepek@stockbrokers.org.au** .

David W Horsfield
Managing Director/CEO

STOCKBROKERS ASSOCIATION OF AUSTRALIA
10 February 2012