

23 August 2022

By email: consultations@asx.com.au

Rob Nash
ASX Limited
PO Box H224
Australia Square NSW 1215

Attention: ASX Consultations

Dear Mr Nash

MARKET MANAGEMENT CONSULTATION

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA welcomes the opportunity to provide feedback on the Market Management Consultation. We note that the expectations contained in *ASIC Report 708 ASIC's expectations for industry in responding to a market outage* require ASX to consult with stakeholders before implementing changes and we appreciate the opportunities for engagement that ASX has provided to our members during the consultation.

ASIC report 708: ASIC's expectations for industry in responding to a market outage

SIAA continues to dispute some of the findings of *ASIC Report 708*, particularly that Market Participants were unable or unwilling to facilitate client access to the alternative market during the market outage due to limited arrangements to continue submitting orders. SIAA's members were already capable of trading on the alternative venue of Cboe during the ASX outage, but at the time of the November 2020 ASX outage they could not facilitate the resolution of price uncertainty in the absence of the primary market. The diminished trading on the day of the ASX outage was not due to incapacity to reroute.

We consider that ASIC's expectations for Market Participants set out in *Report 708* will introduce substantial cost and significant, unwieldy complexity to our members, as well as additional risk. The cause of future market outages, which tend to be infrequent, will be unique and as such endeavouring to impose a pre-determined response to an unquantified issue which introduces such cost and complexity will likely not guarantee an optimal result. The changes ASIC is 'expecting' Market Participants to implement are intended to solve the problem of a market outage where the

fact pattern experienced in November 2020 is repeated. Experience suggests that the circumstances of a future market outage are unlikely to be repeated. Indeed, ASIC has acknowledged that other markets have had outages and each had a unique cause. Tokyo was a hardware failure. NZX was the subject of DDoS attacks. HKE was subject to internet outages that affected more than the exchange. ASX was a software failure.

Also of concern to SIAA members is that ASX and Cboe operate differently as exchanges, so the assumption that trading can continue in exactly the same fashion when moving from one exchange to the other is not borne out in practice. There are different order types; different pricing structures; and no opening or closing auctions, to point to a few differences between the two exchanges.

The concerns our members raised with ASIC following the November 2020 ASX outage were as follows:

- The thousands of ‘sitting trades’ on the market which could not be cancelled due to the ASX putting the market into ENQUIRE session state.
- The inability to determine the state of orders already sent to ASX, that is, inability to determine what had been traded or what was ‘at risk’, and no means to cancel them — ASX left the market in ENQUIRE mode while it sought to determine the cause of the outage.
- The risk of switching thousands of different orders across to a different market with no real transparency of what was going on.
- Resting orders, mostly for retail clients, with set price limits have priority in their markets over new orders. Therefore, losing time priority would not be in the client’s best interests if such orders are not executed on Cboe during the outage period and need to be re-entered into the ASX market.
- The shortage of tradeable liquidity on Cboe, which meant that the prevailing market price was not clear and large spreads would have resulted in sub-optimal execution outcomes for retail clients. Given the lack of price discovery, Market Participants would have had difficulty ensuring that they would discharge their best execution obligations for clients.
- Inadequate communication from ASX.

Some of the reasons why new orders were not redirected to Cboe included:

- communications from ASX which ‘suggested’ the system may be repaired soon
- the potential pricing penalty given the lower liquidity on Cboe
- clients requesting no action due to the ongoing uncertainty as to when the market would re-open — retail brokers have a statutory obligation to act in the client’s best interests.

The ASX market outage, while disappointing, is not unique in a global context. The disruption to trading that ensued is also not unique.

Research from other jurisdictions shows that outages on other exchanges:

- resulted in substantial reductions in trading activity and new order submissions on alternative venues, as occurred during the ASX outage in November 2020, and
- had common characteristics in terms of their impact on trading.

We are pleased that ASX has clearly set out in the Consultation Paper what it can and cannot do during a market outage. The Consultation Paper makes it clear that Market Participants are completely reliant on the actions ASX undertakes during a market outage and that, in many

instances, they have no other option but to wait for ASX communications before they can make a determination on how to deal with existing and new orders.

SIAA's responses to the Consultation Paper questions are below. We have provided general feedback rather than respond specifically to each question.

2. Certainty about trade and order status

We note that ASX makes it very clear that where an incident may result in ASX not being able to provide reliable market data until the underlying issue has been resolved, consideration of ASX's obligations to provide a fair, orderly and transparent market will prevent it from unfreezing the ASX market. This is exactly what took place during the 2020 market outage which is why ASX placed the market into ENQUIRE. It makes intuitive sense that ASX 'cannot operate on a moving patient' and must freeze the market in order to avoid uncertainty and expedite recovery.

SIAA strongly supports ASX's position of freezing the market to avoid the publication by ASX of erroneous data. In saying this, we are aware that while the market is in ENQUIRE our members' orders are frozen and cannot be cancelled or amended and that there may be confusion as to the status of the orders. This is something that is outside our members' control and they are captive to this decision. This was one of the reasons there was not the flow of liquidity to Cboe on the day of the outage. Our members' orders were stuck in the system, they couldn't be cancelled or moved and there was uncertainty as to the status of executed trades.

We note that the preservation of long orders and the establishment of an accurate view of market data are currently typically achieved through the end of day and start of day processes and that as a result, ASX may be unable to provide complete and accurate order data through normal channels until the resumption of service on the business day following an incident. We understand that ASX is examining alternative recovery models that could potentially bring forward the processes that may preserve long orders and establish an accurate view of market data. SIAA looks forward to engaging with ASX on this. It is important to preserve long orders, particularly for retail clients.

3. Session states, intraday cut-offs and checkpoint times

Consistent with our response to questions on trade and order status, SIAA supports ASX's position of freezing the market to prohibit any uncertainty of trading on erroneous data.

We support ASX's position to use ENQUIRE as the initial session state during an incident to enable ASX to investigate the incident in a locked data environment and we accept the inability for Market Participants to cancel and redirect orders to an alternative market as a result.

SIAA agrees with ASX's approach to hold systems in a 'no change' ENQUIRE session state in the first instance while it determines whether moving to an ADJUST state will not be detrimental to the resolution of the technical problem and result in erroneous orders.

We note that ASX intends to discuss the feasibility of an alternative model with a potential new session state that would support ASX Market Participants deleting their orders during certain incident scenarios in the second market management consultation and we look forward to engaging with ASX on this.

We note the Consultation Paper sets out a number of matters that ASX will take into account when making its assessment on unfreezing the market. We consider the tests set out in the Consultation Paper to be appropriate for deciding whether to take the market out of freeze. We encourage ASX to afford Market Participants the opportunity to raise concerns — if any — prior to proceeding with their implementation.

We reiterate that the Consultation Paper highlights that Market Participants are very much at the mercy of ASX decision making when it comes to the question of whether the market will be unfrozen or left in ENQUIRE.

We consider that 45 minutes period between each assessment is an appropriate period as it appears to strike the right balance between investigating the incident and providing meaningful updates to the market. We strongly recommend that ASX makes every attempt to restart the market to avoid taking an excessive amount of potential trading time away from the market. Should ASX determine that the market is to remain closed for that business day, ASX should communicate its decision as soon as practicable.

Our members consider that the current minimum timings of 40 minutes for the resumption sequence are sufficient as they allow DTRs and customers to prepare for the resumption of trading.

Backstop time

The reason for a backstop time or ‘down for the day’ announcement is to remove uncertainty and allow Market Participants and their clients the ability to make adjustments. We consider that any determination of the backstop time must take into account ASIC’s expectation that new orders from that time will be directed to the alternative market. SIAA considers 1.00pm, being halfway through a normal trading day, as an appropriate backstop time for the final determination of the resumption of the ASX market. An earlier announcement of this at say 12.30pm would allow Market Participants 30 minutes to get ready for a move to the alternative market at 1.00pm. Our members have pointed out that a backstop time of 1.30pm would be appropriate if trading was being extended. One of the challenges, identified by our members, would be the potential log jam of Market Participants trying to obtain details of orders and trades after the backstop time if the ASX advises no recovery for the day.

Any decision on a backstop time would also have to take into account the dependency issues we have highlighted in paragraph 5 of this submission.

Notwithstanding the adoption of a backstop time, our members expect ASX to form a decision on the resumption of trading within a reasonable period to allow sufficient trading time for Market Participants on the alternative market.

4. Incident communications

SIAA considers that on the day of the ASX Market Outage, ASX communications did not provide sufficient information and created uncertainty as to when the market would re-open. We agree with the ASIC report findings that:

- there was substantial confusion and uncertainty about the nature and scale of the issues
- the updates were very general and did not provide any substantive information

- it was effectively in a holding pattern, with no indication as to how long the market outage would likely take to be resolved.

We agree with ASX's proposed increase in the standard content for inclusion in the System Status Page updates. It is important that detailed information is provided in a transparent manner in the event of a market outage that assists Market Participants to make appropriate decisions and allows them to provide best execution for clients.

SIAA considers that half-hourly updates are appropriate. However, the timing of the updates is not as important an issue as the details provided in the update. If Market Participants and clients receive the impression that the market will be up and running soon and are placed in a holding pattern, they are less likely to make a decision to direct new orders to the alternative market.

Dependencies

We note that ASX recognises the very significant ecosystem surrounding ASX that services and supports the investment activities of both wholesale and retail investors. That being said, our members are completely reliant on ASX decision making when it comes to orders that our members have submitted to the ASX that are caught up in a market outage.

Our members would like to highlight the following key issues:

- Changing smart order routers/destinations takes time to implement.
- New orders or amendments must be compatible with the market they are placed into which creates challenges in order management.
- Market Participants will need to receive reconciliation data in a timely manner – new or amended orders can't be properly managed if the executed status of existing orders is not known. The communication exercise for Market Participants with large numbers of retail orders at any one time either sitting or being placed into the market is extremely challenging, as it must take into account multiple layers of orders and customer types.
- Market Participants use multiple interfaces for order management which also add complexity to communications and interfaces into the trading system.

Conclusion

If you require additional information or wish to discuss this matter in greater detail, please do not hesitate to contact SIAA's policy manager, Michelle Huckel, at michelle.huckel@stockbrokers.org.au.

Yours faithfully



Judith Fox
Chief Executive Officer