Stockbrokers and Investment Advisers Association
Building prosperity for Australian investors

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Senior Manager
Markets Regulation
Markets Group
Australian Securities and Investments Commission
GPO Box 9827
MELBOURNE VIC 3001

Dear Sir/Madam

Simple Consultation 63: Proposed updates to RG 265

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and wealth management 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 members represent the full range of advice providers from full-service and online brokers to execution-only participants and provide wealth advice and portfolio management services.

The history of the stockbroking profession in Australia can be found here.

Thank you for the opportunity to provide feedback to the proposed updates to Regulatory Guide 265.

Draft RG 265: Guidance on ASIC market integrity rules for participants of securities markets

Sections A to C: Overview, Supervision, communication with ASIC and ASIC Market Integrity Rules

We have no feedback on these changes.

Section D: Governance and risk management requirements

Supervisory policies and procedures

We have no feedback on these changes.

Organisational and technical resources

We have no feedback on these changes.

Trading representatives

We are pleased to see the reference to expectations for representatives, also known as designated trading representatives (DTRs) in the securities markets who submit trading messages.

Otherwise, we have no feedback on these changes.

Risks associated with operating trading systems and algorithms

We have no feedback on these changes.

Section E: Arrangements for trading systems and algorithms

Trading system design, documentation and controls

We have no feedback on these changes.

Trading algorithm obligations

Members who use trading algorithms mostly use those developed by third parties rather than developing their own. Their focus is therefore on appropriate testing and controls over the algorithms provided by those third parties. Changes are subject to appropriate testing before implementation, and orders generated by the algorithms are subject to pre-and post-trade controls and monitoring. If monitoring indicates an algorithm that is malfunctioning, appropriate action can therefore be taken to suspend its use. A question has arisen as to whether ASIC expects market participants using a third party service to be involved in the ***development*** phase of the trading algorithm. As we pointed out in our submission on Consultation Paper 386, it would be difficult for our members to have controls and arrangements in place for the ***development*** of algorithms developed by a third party as this would require a level of understanding and due diligence beyond their current obligations.

Our members have also asked for ASIC to provide guidance on the level of due diligence of third party providers' governance processes it would expect participants to undertake before deployment of third party trading algorithms.

Monitoring and surveillance

As highlighted in our submission to Consultation Paper 386 our members had concerns over the original proposal for Participants to have in place monitoring systems that enabled them to monitor trading messages in *real-time.* We are pleased to see the inclusion of the words *or near real time* in RG 265:119. For similar reasons, we recommend adding '*unreasonable*' to the paragraph so that the relevant sentence now reads:

In this context, monitoring systems should be able to identify relevant trading messages that require action or review promptly and without ***unreasonable*** *delay (i.e. in real time or near real time).*

This reflects the fact that immediate identification can be difficult in real time.

False or misleading appearances

We have no feedback on these changes.

ASIC direction to limit trading

We have no feedback on these changes.

Section F: Initial certification, material change and annual reviews

What is a material change under Rule 5.6.8?

We have received feedback that the examples of material changes provided in the guidance are quite broad and we would welcome more specific examples tailored to different types of market participants. We also consider that some of the examples could be non-material changes and that they need to have an assessed material effect or made more specific.

We recommend the following specific additions to Table 6 (RG 265:167) as follows:

Table 6: Examples of material changes under Rule 5.6.8

The addition of the word 'materially' to example nine so that it reads:

*Implementation of a new algorithmic trading strategy, or a substantive change to the decision logic, execution logic, order routing, throttling, pricing, or risk controls of an existing algorithm, where the change may **materially** alter the nature, speed, volume, or pattern of orders sent to the market.*

We have also received the following specific examples from members of non-material changes that we recommend are included in the **Not material (generally)** section of table six:

- *Technology Upgrades - operating system, database, middleware, infrastructure, network, security and platform upgrades where market facing behaviour remains substantially unchanged.*
- *Legacy technology replacement/refactoring - software refactoring, technical debt remediation and legacy component replacement/rewrite where market facing functionality remains substantially unchanged.*
- *Reliability/resilience changes - Add reliability, resilience, availability, capacity, monitoring and observability improvements that do not materially change trading behaviour, controls or market integrity*
- *Latency/performance optimisation - latency, performance and tech improvements that do not materially change trading strategy, routing outcomes or market integrity*
- *Execution venue driven technical changes - mandatory or technical changes required by ASX, TMX Exchange Australia or another execution venue where implementation does not materially change trading behaviour or market integrity.*
- *Defect remediation - defect fixes that restore intended/approved system behaviour where they do not introduce a material change to market-facing behaviour or market integrity.*

Existing Section F content

We have no feedback on these changes.

Sections after Section F

We have no feedback on these changes.

Section L: Regulatory data

We note that removal of former RG 265.481 means an intermediary identifier will be required for all relevant trades, regardless of whether an order is received or entered manually or through automated processing. Our members would like clarification on why this is a requirement.

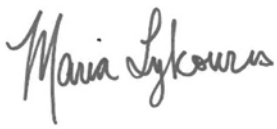
General comments

We note that ASIC has provided a marked-up version of the amended market integrity rules as well as a summary of the draft updated regulatory guide. However, no marked-up version of the regulatory guide was provided. Our members' feedback is that a marked-up version that clearly shows the differences between the old and new guidance would have greatly assisted them in providing feedback to this consultation. Our member firms with large compliance and legal departments reported that their staff compared the two versions of the guidance side by side to gain an understanding of exactly what changes were proposed. We note that ASIC was reluctant to provide a marked-up version because it would have been messy due to the large amount of changes. However, a mark-up, however messy, would have been of considerable assistance in enabling our members identify where the changes have been made and how comprehensive they are. While our member firms with large numbers of legal and compliance staff have the time and resources to undertake this comparison exercise, our smaller firms do not. We therefore encourage ASIC to provide mark-ups that highlight the changes between old and proposed guidance in future consultations.

Conclusion

If you require additional information or wish to discuss this submission in greater detail, please do not hesitate to contact SIAA's policy manager, Michelle Huckel, using the contact details in the covering email.

Yours faithfully



Maria Lykouras
Chief Executive Officer