Law Council
OF AUSTRALIA

Business Law Section

20 October 2025

Senior Manager, Markets Regulation
Markets Group
Australian Securities and Investments Commission
GPO Box 9827
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By email: markets.consultation@asic.gov.au

Dear Sir/Madam,

Consultation Paper 386—Proposed amendments to the ASIC market integrity rules: Trading systems and automated trading

1.1. This submission is made by the Corporations Committee of the Law Council of Australia (**Committee**) in response to ASIC Consultation Paper 386 (**CP 386**), released on 27 August 2025. The Committee welcomes ASIC's objective of modernising the market integrity rules to reflect technological developments, including algorithmic and AI-driven trading. However, the Committee has concerns about particular proposals that, if implemented as drafted, would increase compliance burdens and could have unintended consequences for market functioning, competition and market resilience.

1.2. The Committee's primary concerns are:

(a) the proposal for real-time monitoring of trades by market participants and trading venues;

(b) the proposals to harmonise obligations across the cash and futures markets without sufficient recognition of the different operational, liquidity and risk profiles of those markets;

(c) to seek clarification on testing requirements and whether testing should cover both algorithms and associated filters/controls;

(d) to recommend a minimum 18-month transition period with assurance of no liability during transition;

(e) to support internal responsibility for review and certification, rather than requiring external experts;

(f) to recommend narrowing the definition of 'Trading Algorithm' to execution-related functions only; and

(g) to request clear definition of 'materiality', aligned with Automated Order Processing standards.

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1.3. Our submission explains these concerns and suggests implementation approaches that preserve ASIC's policy objectives while avoiding disproportionate implementation costs and operational disruption.

2. Executive summary

2.1. The Committee supports ASIC's stated policy goals of ensuring resilience and robust governance of trading systems, clarifying obligations for automated trading and aligning the domestic rules with international best practice. The Committee also supports targeted measures that improve transparency, incident response, and testing of algorithmic strategies.

2.2. At the same time, the Committee considers that the proposal to require real-time monitoring across the board would impose substantial systems, staffing and cost burdens that are not proportionate to the risks in many cases. We believe that this would be the case for smaller participants, as well as larger participants who adopt global systems. There is also limited published quantitative analysis of the expected costs to participants or to the marketplace as a whole.

2.3. The Committee therefore recommends that ASIC: (a) allow for a risk-based, proportionate monitoring approach; and (b) allow firms to meet outcomes through existing pre-trade and post-trade controls.

2.4. On harmonisation between cash and futures MIRs, the Committee accepts that alignment is desirable where risks and operating models are similar, but recommends ASIC adopt a more calibrated approach that recognises the distinct liquidity profiles, clearing arrangements, and product architectures of futures markets. Certain prescriptive provisions applicable in the ASX-listed cash securities context may be inappropriate for futures markets or for market participants that operate across asset classes under differing settlement, collateral and margining regimes, particularly having regard to the likely impact on smaller futures market participants.

2.5. The Committee further recommends that ASIC:

(a) extend the proposed transition period to at least eighteen months, coupled with appropriate liability protection during the transition phase. ASIC should also formulate and settle, with appropriate consultation, its regulatory guidance so that participants have a clear understanding of how to implement the rules;

(b) confirm that review and certification of algorithmic systems may be conducted internally by appropriately senior and independent personnel, rather than requiring external experts;

(c) tighten the definition of "Trading System" to better scope the system to which the proposed obligations apply;

(d) refine the definition of "Trading Algorithm" to focus on execution-related functionality, excluding broader operational or administrative processes; and

(e) provide clearer guidance on the concept of "materiality" in system changes, aligned with established Automated Order Processing standards.

3. Detailed comments and recommendations

3.1. Real-time monitoring—policy rationale and proportionality

3.1.1 CP 386 proposes more explicit and prescriptive obligations around monitoring of trading systems and algorithmic trading, including requirements described in the consultation materials as real-time monitoring which is also reflected in the drafting of the rule to "identify in real time" relevant trading messages. The Committee understands the policy impulse—to ensure timely detection and mitigation of disorderly trading and to shorten time to intervention. ASIC will need to balance the desirable speed of detection against: (a) the practical limits of monitoring and false positive rates; (b) the cost of implementing low-latency surveillance systems; and (c) the operational risk of overly aggressive automated interventions or de-listings triggered by imperfect monitoring signals.

3.1.2 The Committee is concerned that real-time monitoring will impose substantial systems, staffing and cost burdens that are not proportionate to the risks. The Committee questions whether a more proportionate approach may be to focus on pre-trade and post-trade controls.

3.2. Practical compliance burdens and systems impacts

3.2.1 Building and operating true real-time monitoring systems (including the telemetry, data storage, streaming analytics and alerting infrastructure) is a major engineering and resourcing exercise. For many market participants—particularly smaller trading firms, brokers and some proprietary trading operations—the capital and operating expenditure may be material relative to their business. This includes the need for dedicated engineering resources, subject matter experts, and compliance monitoring staff to tune detection logic and manage alerts. For larger firms that rely on cross-jurisdictional systems and frameworks, it would also likely impose significant build requirements, made more complex given the use of systems that operate across multiple jurisdictions. As far as we are aware, there is no perfect "off the shelf" solution, particularly for the futures market, which would enable fast and cost-effective implementation.

3.2.2 Further, the operationalisation of monitoring often requires integration with exchanges/venues and with third-party data providers. Participants may need to revise order routing, risk limits and kill-switch logic to align with monitoring outputs, with knock-on effects for market liquidity and behaviour.

3.2.3 Presently participants necessarily rely on pre-trade controls, alerts and post-trade surveillance and analysis to detect market integrity issues and manipulative trading. Real-time monitoring would be a significant deviation from current practices and it does not appear that ASIC has had sufficient regard in its proposal to the practical compliance burdens, costs and systems impact.

3.3. Recommendations on monitoring design and implementation

If ASIC proposes to proceed with real-time monitoring, then the Committee makes the following recommendations:

3.3.1 **Avoid prescriptive 'one-size-fits-all' technical mandates**. The Committee cautions against overly prescriptive technical mandates (for example, requiring a particular latency figure or specific technology stack). Technological

architectures evolve rapidly—outcome-based rules combined with published guidance better preserve flexibility and innovation.

3.3.2 **Risk-based flexible approach and thresholds**. The Committee recommends ASIC adopt a flexible risk-based approach to monitoring, including one that explicitly recognises participant type, trading activity and potential market impact. Smaller participants or low-impact strategies should be able to rely on close-to-real-time monitoring where the residual risk is low.

3.3.3 **Phased implementation and transitional relief**. Any new real-time monitoring obligations should be phased in. ASIC could stipulate staged compliance dates tied to firm size or system throughput, for example: Tier 1 (systemically important venues and participants) within 18 months; Tier 2 (medium activity participants) within 24 months; and Tier 3 (low activity) with alternative periodic monitoring obligations. This approach recognises differing implementation lead times and reduces systemic risk associated with rushed deployments.

3.3.4 **Clarify interfaces and data responsibilities**. The Committee recommends ASIC clarify the allocation of responsibilities between trading venues, platform operators and participants for data feeds, timestamps and monitoring telemetry. Where ASIC's proposals imply obligations that rely on venue data, ASIC should confirm whether venues will be expected to provide standardised feeds and, if so, under what terms and timelines.

4. Harmonisation of cash and futures rules

4.1. The Committee recognises the desirability of reducing inconsistency and complexity between the Securities MIRs and Futures MIRs where appropriate. However, the Committee considers ASIC should be cautious about wholesale harmonisation that does not account for key structural differences.

4.2. **Operational and market differences**. Futures markets typically have central clearing, standardised contracts and significant intermediation by clearing participants, whereas cash markets have a fixed settlement cycle, corporate event risks and dispersed liquidity profiles. These differences mean that identical monitoring and governance prescriptions may not be equally effective or proportionate in both markets.

4.3. **Recommendations on harmonisation**. ASIC should harmonise on foundational principles (e.g. requirement for governance, testing, incident reporting and kill switches) but allow tailored operational requirements to reflect market-specific risks.

5. Additional issues raised by CP 386

5.1. **Scope of algorithm testing**. The Committee recommends that ASIC clarifies that any algorithms that are developed by a client should be that client's responsibility. Where a trading participant is providing a trading algorithm to a client, ensuring controls and testing of those algorithms should reasonably be the responsibility of the trading participant.

5.2. **Transition period and liability protection**. The Committee recommends a minimum of eighteen months, with clear assurances that firms acting in good faith

to implement changes will not be subject to enforcement action during the transition period.

5.3. **Internal review and certification**. The Committee recommends internal responsibility for review and certification, provided it is undertaken by suitably senior and independent personnel. Requiring external experts would likely add cost without commensurate benefit.

5.4. **Definition of "Trading System**". The current proposed definition may be too broad. A participant may have many systems and processes which are part of its order system. If ASIC's intention is to apply the proposed obligations to the system that is the last point of contact before a trading message is submitted onto the trading platform, then the definition should be tightened to reflect "*the* system which submits Trading Messages into a Trading Platform".

5.5. **Definition of "Trading Algorithm"**. The current proposed definition may be too broad, potentially capturing ordinary system functions. ASIC should refine the definition to focus on execution-related processes, consistent with international norms. ASIC should also clarify the distinction between "parameters of an Order" (in the preamble wording of the definition) and "trading parameters" (in paragraph (b) of the definition)—as presently drafted, these two elements potentially could cancel each other out.

5.6. **Materiality of system changes.** The Committee recommends ASIC provide clearer guidance on materiality, aligned with existing Automated Order Processing standards, to reduce uncertainty about notification and testing triggers. The Committee believes that it is important that ASIC settles its regulatory guidance, with appropriate consultation, prior to the commencement of the transition period.

6. Conclusion and further contact

6.1. The Committee commends ASIC for addressing the important and evolving risks associated with algorithmic trading and for seeking stakeholder feedback. The Committee remains supportive of regulatory modernisation consistent with international best practice.

6.2. The Committee supports ASIC's objective of enhancing market integrity but submits that CP 386 should be revised to ensure practicality and proportionality. In particular, ASIC should ensure that new obligations for monitoring and harmonisation across cash and futures are proportionate, evidence-based and implementable in practice.

6.3. The Committee would be pleased to discuss any aspect of this submission.

6.4. Please contact the chair of the Committee Philippa Stone [redacted] if you would like to do so.

Yours faithfully



Adrian Varrasso
Deputy Chair
Business Law Section