Asia Pacific Exchange Limited
Bridging Australian and Asian Capital Markets

Level 16, Central Square
323 Castlereagh Street
Sydney NSW 2000
Phone: +61 2 9217 2723
Fax: +61 2 9215 2833
Email: info@apx.com.au
Web: www.apx.com.au

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The Manager
Financial Markets Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email financialmarkets@treasury.gov.au

Dear Sirs

Australia's Financial Market Licensing Regime: Addressing Market Evolution

We thank you for the opportunity to comment upon the issues raised in the Discussion Paper "*Australia's Financial Market Licensing Regime: Addressing Market Evolution*". We commend you on the comprehensive scope of the issues addressed and the quality of the paper generally.

Asia Pacific Exchange Limited ("APX") is the holder of Australian Market Licence (Asia Pacific Exchange Limited) 2004. Pursuant to the licence APX may operate a financial market in securities and managed investment products. Currently APX is not operational. It is in the process of updating its Operating Rules and implementing a new trading system. We are awaiting updated Market Integrity Rules by ASIC. We anticipate the re-launch of the market in the first half of 2013. A key principle of reform and the administration of the AML regime must be the equal treatment of markets with similar characteristics.

We take the opportunity to address each of the questions asked in the consultation paper. In summary, on the key issues we submit that:

- we agree with the views expressed in the discussion paper that the licensing regime has had little ability to address changing regulatory needs and has led to an uneven and patchwork regulatory regime. This is not just a result of the legislative framework itself, but also that the administration of that framework has been stretched to accommodate market developments. The principals of the existing financial market licensing regime do not require significant change;
- dark pools and CFD providers should be licensed under an Australian Market Licence regime;
- flexibility in the regulatory regime for Australian markets is essential to enable growth and innovation in markets. However, flexibility should not be introduced with the primary objective of allowing more participants. Flexibility should be introduced with the primary objective of enhancing the quality and efficiency of the Australian market;
- neither Option 1 nor Option 2 as they are outlined in the consultation paper are appropriate as the preferred option for reform is one which exists within a new paradigm recognising the emergence of new forms of competition. We submit that a preferred categorisation would be:
    - "Listing Markets"
    - "Trading Markets"
        - small scale offerings markets;
        - lit public markets;
        - lit professional markets; and
        - dark professional markets;

- HFT rules applicable to non-market participants do not need to be introduced and that the question which has been asked is the wrong question. We submit that the better way of addressing HFT issues is to focus upon the mischief which is sought to be addressed, rather than upon the cause of that mischief as the regulatory framework should be technology neutral;
- the process of operating rule amendments should be more efficient; and
- a review of compensation arrangements is overdue following the introduction of competition in market services.

Should you wish to discuss any matter contained in this submission, please do not hesitate to contact me on +61 (2) 92152840 or at david.lawrence@apx.com.au.

Regards

David Lawrence
Chief Operating Officer

PROBLEM IDENTIFICATION

Q1. DO YOU HAVE ANY COMMENTS ON THE GENERAL FORM OF THE CURRENT LEGISLATIVE FRAMEWORK FOR LICENSING OF FINANCIAL MARKETS IN AUSTRALIA?

We agree with the views expressed in the discussion paper that the licensing regime has had little ability to address changing regulatory needs and has led to an uneven and patchwork regulatory regime. We believe, however, that this is not just a result of the legislative framework itself, but also that the administration of that framework has been stretched to accommodate market developments.

As a general observation, we submit that the principals of the existing financial market licensing regime do not require significant change. We agree that regulation of markets by way of:

- the Australian Market License ("AML") regime for some markets;
- a combination of the Australian Financial Services License ("AFSL") and Market Integrity Rules ("MIR") regimes for other markets; and
- exemption from the AML regime for other markets,

is inappropriate, inequitable and inefficient.

As a starting principal, all financial market operators should be licensed under the AML regime. It is appropriate that there be different classes of AML in recognition of the different market structures. However, the AML regulatory regime must satisfy four key objectives in respect of all classes of markets, being:

- certainty;
- clarity;
- transparency; and
- accountability.

Further, the framework in respect of all AMLs within an individual market class should be:

- competition neutral;
- technology neutral; and
- administratively neutral.

Regulatory reform should provide the catalyst for the modernization of all aspects of the regulatory framework.

We submit that the definition of financial market in Section 5 of Chapter 7 of the Act sufficiently captures those financial markets that are currently AML holders and sufficiently captures those financial markets operating as dark pools, notwithstanding that those dark pools are not currently AML holders. We therefore further submit, as a key principle of market regulation, that dark pools should be licensed under an AML regime rather than a combination of the AFSL and MIR regimes. This is supported by the findings of the International Monetary Fund that "some trading systems which, in terms of the policy rationale for defining a financial market, should be regulated" are not currently regulated as financial markets.[1]

[1] International Monetary Fund, "Australia: Report on the observance of Standards and Goals (ROSC) – Summary Assessments" p57 at http://www.imf.org/external/pubs/ft/scr/2012/cr12307.pdf.

In relation to other forms of financial market, we submit that contracts for difference (CFD) providers should be licensed as derivative markets under an AML regime rather than operating under an exemption in s767A(2) (to the effect that they make or accept offers or invitations to acquire or dispose of financial products on their own behalf).

Business matching services operate under ASIC Class Order 02/273 (Business Introduction or Matching Services) and section 708 of the Corporations Act (Cth) 2001. We submit that the nature of the current regulation of business matching services is appropriate in the primary capital raising market. However, where a business matching service is providing a secondary market, consideration should be given to whether it should be regulated as a financial market.

Q2. Do you consider that there are efficiency issues that could be addressed by revising the licensing regime? If so, please provide details.

As outlined above, the regulatory regime for AMLs must satisfy four key requirements – certainty, clarity, transparency and accountability. As already outlined above, the regulation of markets by way of the AML regime for some markets; a combination of the AFSL and MIR regimes for other markets; and exemption for other markets, is inappropriate, inequitable and inefficient.

A regulatory environment in which similar activities are unnecessarily differently regulated results in inefficiency, due to it resulting in an environment which is not competition neutral or in which there is uncertainty.

One area in which efficiency and international competitiveness could be enhanced is in the process of amendment approvals for operating rules. In the interests of international competitiveness between market operators, we submit that the operation of s793D should be reviewed and modernised to better facilitate market evolution.

Q3. Do you consider that there are market integrity or investor protection concerns that could be addressed by revising the licensing regime? If so, please provide details.

We submit that there are two key investor protection issues which currently exist in relation to the operation of dark pools:

- absence of transparency about the management of the "market" and, in particular, management and execution of orders in dark pools; and
- retail investor participation in dark pools.

Whereas AML holders are required to include in their operating rules the manner in which orders are entered and executed (including client order priority) in lit markets, the current regime does not provide transparency in relation to dark pools. This results in uncertainty and a perception of inequality in the market.

In relation to retail investor protection, we submit that retail orders should not be executed in dark pools.

One specific area in which investor protection could be enhanced and efficiencies obtained is in relation to investor compensation regimes. We submit that a review of compensation arrangements is overdue following the introduction of competition in market services.

Q4. Do you agree that regulatory change would be desirable in order to better align Australia's market regulatory regime with overseas regimes?

We agree that Australia's market licensing and regulation regime should be enhanced to better align with overseas regimes. This will provide greater opportunities for Australian AML operators in foreign markets and greater opportunities for expansion of Australian capital markets into overseas capital markets. However, alignment should be focused solely upon AML holders operating lit markets as the highest standard of regulated market in Australia.

Q5. Do you believe that such regulatory alignment could increase the prospects of Australian trading venues and market participants being able to seek regulatory recognition in other jurisdictions?

We agree that regulatory alignment would provide greater opportunities for Australian AML operators in foreign markets and greater opportunities for expansion of Australian capital markets into overseas capital markets.

We caution against assumptions that overseas regimes are better models than those which exist in Australia or which could exist in Australia. Overseas models must be placed in national economic, commercial and political context and take into account the circumstances in which they were conceived and evolved.

Overview of reform options

Q6. Do you consider that more flexibility in the AML regime is warranted, so that a greater number of facilities may be covered?

Flexibility in the regulatory regime for Australian markets is essential to enable growth and innovation in markets. However, flexibility should not be introduced with the primary objective of allowing more participants. Flexibility should be introduced with the primary objective of enhancing the quality and efficiency of the Australian market. If flexibility is contrary to the principals of certainty, clarity, transparency and accountability, and offends the objectives of being competition neutral, technology neutral and administratively neutral then the introduction of such flexibility could be to the detriment of the Australian market. In this regard, we agree that the regime should be more flexible such that all existing markets, whether operated as dark pools, business matching services offering secondary markets or otherwise, should be covered by the licensing regime but be subject to an appropriate standard of rigor to not offend the principals outlined earlier.

However, in an environment whereby one operator may operate one or more markets of differing types (eg a lit market and a dark pool, or a lit market and a business matching service secondary market) consideration needs to be given to how the operator will be licensed. The obligations of the market operator and the conditions on which the market operates should be clearly and concisely set out in the Act and/or Regulations rather than set out in license conditions. It should be possible for a single licensee to hold more than one license to operate one or more markets.

Q7. Do you have a preference between Option 1 and Option 2? If so, please provide details.

We submit that neither Option 1 nor Option 2 as they are outlined in the consultation paper are appropriate,

although Option 2 provides a better starting point than Option 1.

We submit that Option 1 primarily operates within the existing paradigm of the current regulatory framework and the historical market monopoly. Option 2 is a step towards a new paradigm, but omits some key competition elements.

Q8. Is there an alternative option that you think would provide a better outcome than either of those presented? If so, please explain this option.

We submit that the preferred option is one which exists within a new paradigm recognising the emergence of new forms of competition. It provides certainty in legislation and regulation, thereby reducing uncertainty in administration and supports the principals outlined above that regulatory regime for AMLs must satisfy four key objectives, being:

- certainty;
- clarity;
- transparency; and
- accountability.

Further the framework should be

- competition neutral;
- technology neutral; and
- administratively neutral.

In examining and facilitating new forms of competition, a market licensing regime needs to draw a clear distinction between "listing markets" and "trading markets". Within "trading markets" there are, as proposed, various classes of market. The emergence of competition in markets is not just in relation to "trading markets" but is, and will increasingly be, in the area of "listing markets".

The preferred solution is neither option 1 nor option 2. The preferred solution is one in which Part 7.2 and Part 7.2A of the Act are amended to facilitate the setting of one or more market categories in the Regulations. Licensing and confidence in Australian markets is a matter of national importance and Parliament should have a key role. By setting the market categories in regulation rather than legislation, parliament maintains a key role in the governance of the Australian market framework yet the process of change will be more timely than if enshrined in legislation. Base obligations of all markets or market operators should be set out in the legislation, with variances between the types of markets set in regulations. The regime should retain the Ministerial power to grant an applicant a licence.

Option 2 in the consultation paper postulates that a market operator, rather than ASIC, would be responsible for monitoring trading in real-time on its market. ASIC would monitor post-trade information reported through other AMLs. We believe this would be a significantly retrograde step. Given the inter-relationships between markets in the current and future environments and the likelihood that dark pools and new derivative markets will continue to provide facilities for trading in products which are traded on lit markets, the test for whether or not a licensee is responsible for monitoring its own trading (or whether ASIC should be conducting real-time monitoring) should not be the licence category of the market operator, but should instead be the nature of the financial products being traded. If a financial product or a derivative of a financial product which is being traded on a lit market is also traded on a dark pool, or on a lit market and a professional market, then ASIC should have whole of market surveillance and dark pools and professional markets should be providing real time data to ASIC in the same way as lit markets already do. If a financial product or a derivative of a financial product is traded in a dark pool or a professional market but not on a lit market, then the market operator should be responsible for its own market monitoring and reporting to ASIC. The scope for manipulation and loss of market confidence would be exacerbated by fragmented real-time monitoring of identical or fungible financial products.

Options 1 and 2 identify 3 possible categories of market license:

- lit retail public exchanges
- professional markets
- dark pools.

We agree dark pool operators should be licensed under the AML regime rather than using the AFSL regime and MIRs. Given the high retail participation in Australian markets and the high degree of transparency required to maintain retail investor confidence, we submit that retail orders should not be entered or executed in a dark pool. All retail orders (ie non-professional orders) should be directed to a public lit market.

We further submit that differentiation should be made between listing markets and non-listing markets. There should be further differentiation within "trading markets".

We submit that a preferred categorisation would be:

- "Listing Markets"
- "Trading Markets"
    - Small scale offerings markets;
    - lit public markets;
    - lit professional markets; and
    - dark professional markets.

In this model,

- all retail orders (ie non-professional orders) would be directed to a public lit market. Public lit markets would have minimum standards of pre and post trade transparency.
- there is recognition of the different characteristics and requirements of listing as opposed to trading. It also recognises competition in listing markets, which provides scope for the increased vibrancy in markets essential for delivery of the political desire to develop Australia's role in the Asian region.
- There can be greater recognition of differing forms of competition within classes of market as well as between classes of market. For example, competition in lit public markets should not mean competition between markets having the same characteristics as existing markets. Lit markets can have very different characteristics (whether as listing markets or trading markets) and differing characteristics should be facilitated as an evolutionary process rather than adhering to an incumbent model.

In all instances, as these market operators would be AML holders, they should have publicly available operating rules and, in the case of trading markets in which there is retail participation, appropriate compensation arrangements (including there being a single compensation regime). We believe it could be appropriate for dark pool operators to obtain an AML without the need to have approved compensation arrangements in place under Division 3 of Part 7.5 provided there is no non-professional participation and there is complete disclosure of the absence of compensation arrangements. If there is retail participation in a trading market there must be adequate compensation arrangements.

We agree that, in relation to dark pools there should be transparency of operations, disclosure to users about their operations and trade outcomes, and more explicit obligations about monitoring of trading activity on the dark pool. However, these obligations should be set out in regulations, MIRs and transparent operating rules, rather than in ASIC guidance.

Q9. Is it appropriate for ASIC to have the power to make rules in respect of licensing obligations as indicated in Option 1? What checks and balances should there be on ASIC's rule-making power? Should it be limited to matters in which default requirements in the legislation are 'switched off' or should they have the ability to make rules relating to all provisions in Part 7.2?

We submit that, in general, ASIC should not have power to make rules in relation to licensing obligations.

We submit that there also needs to be greater clarity around what can be included as a licence condition and what should be in MIRs. It would be inappropriate to utilise licence conditions as a de facto MIR power without the appropriate checks and balances.

Q10. If Option 1 were adopted, do you think the discretion should be operated through regulations (Option 1A) or through ASIC guidance (Option 1B)? Please provide details.

Discretion should be exercised through regulations. Licensing and confidence in Australian markets is a matter of national importance and Parliament should have a key role.

Q11. If Option 2 were addressed, how could the limitations to flexibility found in international markets be allowed for in system design?

There is a trade-off between flexibility and timeliness which must be accommodated by any framework. Legislation provides greatest certainty but is less timely, Regulations provide less certainty but are more timely, MIRs provide even less certainty but are more timely, and ASIC guidance provides the least certainty but can be most timely.

Our preferred approach is that, as per Option 2, there would be a single set of high level obligations set out in legislation that would apply to all markets (listing markets, small scale offerings markets, lit public markets, lit professional markets and dark professional markets). These may or may not be the same as those currently set out in Parts 7.2 and 7.2A of the Act. Beyond these basic provisions, additional obligations would be applied in a tiered fashion to different types of markets (listing markets, small scale offerings markets, lit public markets, lit professional markets and dark professional markets) by way of Regulation. In this way, limitations to flexibility are overcome with an acceptable trade-off with timeliness. If circumstances require amendment of the obligations relating to an existing type of market as set out in the Regulations, relatively timely amendments may be made. If a new type of market emerges, new Regulations can be adopted with appropriate levels of public scrutiny.

Q12. Do you have any general comments in relation to the types of obligations which should or should not apply for particular entities under either option (noting that this will be consulted on in more depth at a later stage)? Please provide details.

As stated above, as a general observation, we submit that the principals of the existing financial market licensing regime do not require significant change.

The regulatory regime for AMLs must satisfy four key objectives, being:

- certainty;
- clarity;

- transparency; and
- accountability.

Further the framework should be

- competition neutral;
- technology neutral; and
- administratively neutral.

We submit that the definition of financial market in Section 5 of Chapter 7 of the Act sufficiently captures those markets that are currently AML holders and sufficiently captures those "trading markets" operating as dark pools, notwithstanding that those dark pools are not currently AML holders. We therefore further submit, as a key principle of market regulation, that dark pools should be licensed under an AML regime rather than a combination of the AFSL and MIR regimes. However, the interpretation of "facility" must be technology neutral. That is, it may be a physical meeting of people, it may be a telephone facility, or it may be an electronic computer trading facility.

ADVANTAGES OF REFORM

Q13. DO YOU HAVE ANY COMMENTS IN RELATION TO THE PERCEIVED ADVANTAGES OF A MORE FLEXIBLE MARKET LICENSING REGIME? IF SO, PLEASE PROVIDE DETAILS.

Our comments in this regard are set out throughout this submission.

POTENTIAL DRAWBACKS

Q14. DO YOU HAVE ANY COMMENTS IN RELATION TO THE POTENTIAL DRAWBACKS OF THE PROPOSED LICENSING REFORM? PLEASE PROVIDE DETAILS OF ANY CONCERNS YOU HAVE.

Our comments in this regard are set out throughout this submission.

REFORM ISSUES

Q15. DO YOU THINK THAT MAKING HFTS (INCLUDING NON-MARKET PARTICIPANT HFTS) DIRECTLY SUBJECT TO MARKET INTEGRITY RULES WOULD ASSIST IN SAFEGUARDING MARKET INTEGRITY? SHOULD THESE RULES BE LIMITED TO THOSE WHICH RELATE SPECIFICALLY TO NON-MARKET PARTICIPANT HFTS?

In response to the question which has been asked, as a policy principal we do not believe that HFT rules applicable to non-market participants need to be introduced. The role of a market participant is to act as a gate-keeper for the market. That is the privileged position they hold. Whether or not a market participant wishes to provide its clients

with HFT access to a market via its systems is a risk based commercial decision taken by the market participant. A key element of risk management for those market participants which do provide their clients with HFT access to a market is to have in place appropriate controls to manage those risks.

From a principles perspective, the introduction of MIRs or other controls specifically for HFT offends the principal of technology neutrality.

From a practical perspective we believe implementation and enforcement of MIRs upon non-market participants, especially those which reside off-shore, would be practically difficult.

In the context of the broader HFT issues, we submit that the question which has been asked is the wrong question. We submit that HFT is not inherently detrimental to the market, but there is a perception in some segments of the market that it is detrimental. We submit that the better way of addressing HFT issues is to focus upon the mischief (and the perception of mischief) which is sought to be addressed, rather than upon the cause of that mischief as the regulatory framework should be technology neutral.

It appears that there are 2 primary mischiefs which the market in general perceives to be at issue:

- The risk of creation of a disorderly market; and
- Market manipulation.

We agree that these 2 key market integrity risks need to be adequately addressed.

Disorderly markets

In relation to the risk of disorderly markets, participants in licensed markets have obligations to not do anything which results in a market for a financial product not being both fair and orderly, or fail to do anything where that failure has that effect.[2] A similar rule will exist in the APX Business Rules.

This places the obligation upon the market participant to prevent a disorderly market. However, in a HFT environment, it is possible that the actions of a HFT client could, despite the best endeavours of the market participant, transmit messages which create a disorderly market. In such scenarios, it is reasonable that the actions or inactions of both the market participant (as gatekeeper) and client be the subject of scrutiny and potential liability. Further, given the prevalence of clients to deal through more than one market participant, there is potential for a client to create a disorderly market through, for example, 2 market participants, notwithstanding that each market participant has, in its own right, been in compliance with its obligations. However, as set out above, extending the MIRs to apply to both the market participant and the client is not an ideal solution.

We submit that the equivalent of, for example, ASIC (ASX) MIR 5.9.1 should be adopted in the legislative framework so that it extends to all participants in the market, including the market participant and the client. This provides the broader scope for enforcement action which is being sought, without forcing clients of market participants into a framework which has not been designed for that purpose. We submit that it also has the benefit of enabling a broader scope of action by ASIC in that it enables action to be taken against a client which creates a disorderly market via 2 or more market participants in circumstances where there may not be sufficient basis to initiate action against the market participants individually.

This course of action is also technology neutral.

Adopting the equivalent of, for example, ASIC (ASX) MIR 5.9.1 in the legislative framework sends a clear signal to

[2] See, for example, ASIC (ASX) MIR 5.9.1

investors, especially retail investors which often perceive HFT to be disorderly or manipulative, that HFT is adequately controlled.

An additional benefit of adopting an appropriate law similar to ASIC (ASX) MIR 5.9.1 and making it technology neutral is that it may also allow action against persons who create alleged disorderly markets via other mechanisms than HFT or other than via direct order entry in the market (for example, the trading in Whitehaven Resources Limited on 7 January 2012).

Market manipulation

In relation to the risk of market manipulation, we submit that the market manipulation laws should be reviewed to ensure they adequately address issues arising from evolving technology whilst retaining the technology neutral drafting of the law.

We are of the view that it is essential that the Act adequately addresses manipulation by algorithmic trading engines. Hence a review of the section in the context of the HFT discussions would be timely.

One form of efficiency which could also be achieved by consideration of the orderly market and market manipulation issue could be to reduce duplication of those provisions which are in both the MIRs and the law. This is supported by the findings of the International Monetary Fund which stated "there appear to be a number of areas where not all those involved in the market understand yet whether the responsibility for monitoring and enforcing particular rules falls to ASIC or the relevant exchange. This can lead to uncertainty among licensees on the rulebook they should look to for compliance"[3] and that steps should be taken towards "eliminating any remaining overlaps and ambiguities emerging from the transfer of responsibility to ASIC for market surveillance and the supervision of nonclearing ASX members"[4]. M Regulatory duplication and inconsistency increases the cost of compliance and doing business and should be minimized to the maximum practicable extent.

Q16. Do you have any concerns in relation to making HFTs subject to market integrity rules? If so, please provide comments.

As set out above, we believe making HFTs subject to MIRs would be challenging and would be a response to the wrong question.

Q17. Do you have any comments on how HFT should be defined and how it should be measured?

Defining HFT should not be necessary. The Act and the MIRs should be technology neutral and the mischief which HFT is (or is perceived to be) causing is best addressed by addressing the mischief itself, not the mechanism for causing the mischief.

[3] International Monetary Fund, "Australia: Report on the observance of Standards and Goals (ROSC) – Summary Assessments" p57 at http://www.imf.org/external/pubs/ft/scr/2012/cr12307.pdf.

[4] International Monetary Fund, "Australia: Report on the observance of Standards and Goals (ROSC) – Summary Assessments" p60 at http://www.imf.org/external/pubs/ft/scr/2012/cr12307.pdf.

EXEMPT MARKETS

Q18. DO YOU HAVE ANY CONCERNS WITH THIS PROPOSED OPTION? IF SO, PLEASE PROVIDE COMMENTS.

We submit that, consistent with proposals elsewhere in the consultation paper, exempt markets should move to some form of licence under the AML regime.

ANNUAL REGULATORY REPORTS

Q19. DO YOU HAVE ANY CONCERNS WITH THIS PROPOSED OPTION? IF SO, PLEASE PROVIDE COMMENTS.

We note that ASIC has requested that arrangements for the annual regulatory report provided by a licensee under s792F(5) be changed so that, while they will continue to review these submitted reports, they would only send a copy of the report to the Minister where there are reservations within the report. These instances would be determined on a risk-based assessment. The Minister and Treasury would continue to be notified that the annual regulatory report has been completed in all cases.

We have no objections to the proposal on the condition that, at the time of giving the report and its reservations to the Minister, ASIC is required to provide a copy of those reservations and any recommendations to the market licensee. This is not dissimilar to the obligation of a market licensee pursuant to s792B(3). We submit that, in the interests of transparency, if ASIC has reservations about a market licensee, especially if those reservations potentially impact upon the licence or the potential for the Minister to give directions under s794 or require a report under s795, the market licensee is entitled to know the nature of those reservations.

We also submit that, in the event that all operators of markets (including dark pools (of which 17 are registered with ASIC) and exempt markets (of which 20 are listed by ASIC)) are brought within the AML regime, the obligation upon ASIC to conduct annual reviews of licensees under s794C(2) will have a significant impact upon ASIC resourcing and costs. We submit that the requirement for an annual assessment is excessive, inefficient for both ASIC and the market licensee, and that the assessment frequency should be determined on a risk basis established in accordance with the risk-based determination for provision of reports to the Minister as proposed in the consultation paper in relation to the amendments to s 792F(5). If annual reviews of licensees by ASIC are to continue, we submit that it may be more efficient for ASIC to undertake its reviews on a 'thematic' basis, such that ASIC and the AML holders could focus their resources more appropriately and deal with new and novel issues on a more expedited basis.

LICENCE FEES

Q20. DO YOU CONSIDER THE FEE FOR A MARKET LICENCE IN AUSTRALIA NEEDS REVISION? IF SO, PLEASE PROVIDE COMMENTS.

We question the outcome which is sought to be achieved by increasing the fees applicable to markets licensees. Given the small number of licensees, the quantum of fees recovered will be insignificant in the overall Government financial equation. We strongly disagree with a cost recovery approach.

As Australia needs a strong and vibrant markets sector, any increase in the ongoing fees (for example, license amendments or operating rule amendments) would only serve as an additional barrier to innovation.

Q21. DO YOU SEE COST RECOVERY AS AN APPROPRIATE APPROACH TO LEVYING LICENCE FEES? PLEASE PROVIDE DETAILS.

We strongly disagree with a cost recovery approach. Cost recovery is not an appropriate mechanism as the time and costs incurred by ASIC in performing its functions would represent an unlimited exposure to the applicant and a cost not within the applicant's or licensee's control. The lack of certainty and potentially unlimited costs would act as a significant barrier to innovation. Any costs would be passed to users of the market facility and, ultimately, on to investors.

We note that ASIC market surveillance costs are currently funded on a cost recovery basis and are subject of a separate consultation process.

Q22. WOULD A CHANGE IN THE FEE LEVEL HAVE ANY IMPACT ON THE DECISION WHETHER TO OPERATE A MARKET IN AUSTRALIA? DOES THE CURRENT RATE INFLUENCE THIS DECISION?

As stated above, any costs would be passed to users of the market facility and, ultimately, on to investors.

To the extent that it is desired that Australia assume a more prominent role in Asian financial markets, any additional costs would jeopardise those ambitions in an increasingly competitive environment.