



**Australian Government**

**Australian Securities and Investments Commission**

## **COST RECOVERY IMPLEMENTATION STATEMENT**

**ASIC Market Supervision**

**v1.8 14 May 2015 (Consultation draft)**

**1 July 2015 – 30 June 2016**

Cost recovery involves government entities charging individuals or non-government organisations some or all of the efficient costs of a specific government activity. This may include goods, services or regulation, or a combination of them. The Australian Government Cost Recovery Guidelines (the CRGs)<sup>1</sup> set out the overarching framework under which government entities design, implement and review cost recovered activities.

<sup>1</sup> the CRGs are available on the Department of Finance website ([www.finance.gov.au](http://www.finance.gov.au))

## CONTENTS

1. Introduction.....	1
1.1 Purpose of the CRIS.....	1
1.2 Market supervision activities to be cost recovered.....	1
1.2.1 Background .....	1
1.2.2 Activities being cost recovered .....	1
1.2.3 What ASIC market supervision sets out to achieve.....	2
1.2.4 Who will pay cost recovery charges? .....	2
1.2.4.1 Domestic licensed financial markets subject to market supervision cost recovery.....	2
1.2.4.2 Planned FIDA contribution to offset industry cost recovery.....	2
1.3 Appropriateness of cost recovery.....	4
1.4 Treatment of cost savings and excess costs.....	5
1.4.1 Cost savings .....	5
1.4.2 Excess costs .....	6
1.5 The Market Supervision Cost Recovery Stakeholder Panel.....	6
1.6 EMS expenditure and EMS cost recovery do not match until 2020-21.....	6
1.7 Operating environment: Changes in 2015-16.....	9
2. Policy and Statutory Authority to Cost Recover.....	12
2.1 Government policy approval to cost recover.....	12
2.2 Statutory authority to charge.....	13
3. Cost Recovery Model .....	14
3.1 Market supervision - Outputs and key business processes .....	14
3.2 Market supervision costs.....	16
3.3 Design of cost recovery charges.....	20
3.3.1 Cash Equity Markets (for ASX listed securities).....	20
3.3.1.1 Allocation of market supervision costs between market operators and market participants.....	20
3.3.1.2 Allocation of market supervision cost recovery budget to each cash equity market operator and participant .....	23
3.3.1.3 Fixed fee for cash equity market participants.....	26
3.3.1.4 Variable fees for cash equity market participants .....	27
3.3.1.5 Variable fees for cash equity market operators.....	28
3.3.1.6 Charges applying to market participants – net of FIDA contribution .....	29
3.3.1.7 Charges applying to market participants assuming no FIDA contribution .....	29
3.3.2 The ASX24 futures market.....	30
3.3.3 FEX Global Pty Ltd .....	30
3.3.4 Small financial markets .....	31
3.3.5 Recovery of unforeseen costs occurring during 2015-16.....	32
3.4 Summary of 2015-16 charging arrangements.....	33
4. Risk Assessment .....	34
5. Stakeholder Engagement .....	35
5.1 Consultation with the Market Supervision Cost Recovery Stakeholder Panel (MSCRSP).....	35
5.2 Current stakeholder consultation.....	35
6. Financial Estimates.....	35
7. Financial Performance .....	36
7.1 Summary of the prior two prior fee charging periods .....	36

7.2 1 January 2012 – 30 June 2013: Actual expenditure by key processes .....	36
7.3 1 January 2012 – 30 June 2013: Refunds issued in 2013-14.....	37
7.4 International benchmarking.....	38
8. Non-Financial Performance.....	39
9. Key Forward Dates and Events .....	40
10. CRIS Change Register.....	40
Appendix A: Recent History of ASIC Market Supervision.....	41
A.1 Transfer of market supervision to ASIC.....	41
A.2 Introduction of market competition.....	41
A.3 Enhanced Market Supervision (EMS).....	41
Appendix B: The Financial Industry Development Account (FIDA).....	43
B.1 About FIDA.....	43
B.2 Roles of the Minister and SEGC.....	43

## CRIS tables and charts

Table 1: Who will pay cost recovery fees and charges?.....	3
Table 2: Forecast expenditure profile of the EMS measure (\$m) .....	7
Chart 1: Expenditure 1 Jan 2012 – 30 Jun 2021 (\$m).....	8
Chart 2: Cost recovery 1 Jan 2012 – 30 Jun 2021 (\$m) .....	8
Table 3: Differences total cost recovery budget, fees and charges in 2015-16 c.f. 2013-14 & 2014-15.....	11
Table 4: Government decisions on ASIC market supervision cost recovery.....	12
Table 5: ASIC market supervision key outputs and business process .....	15
Table 6: 2015-16 Cost recovery budget and forecast expenditure per cost recovered Budget measure.....	16
Table 7: ASIC's market supervision cost recovery budget by key processes.....	17
Table 8: ASIC's market supervision cost recovery budget by key process and type of cost.....	19
Table 9: ASIC's market supervision cost recovery budget by market segment.....	19
Table 10: Allocation of shared ongoing costs between market operators and market participants based on their share of cash equity market revenue .....	21
Table 11: Cash equity market supervision costs – Overall allocation between operators and participants.....	22
Table 12: Cash equity market supervision costs by key process – allocation to each stakeholder group .....	22
Table 13: Key drivers of ASIC's cash equity market supervision costs .....	24
Table 14a: Cash equity market cost recovery budget (no % allocation adjustments) .....	24
Table 14b: Cash equity market cost recovery budget incl. non-IT and IT cost % allocation adjustments.....	25
Table 14c: Cash equity market cost recovery budget incl. (1) non-IT and IT cost % allocation adjustments and (2) FIDA offset.....	25
Table 14d: Cash equity market cost recovery budget incl. (1) non-IT and IT cost % allocation adjustments; (2) FIDA offset and (3) net of minimum participant supervision fees .....	27
Table 15: Total cost of ASX24 market supervision .....	30
Table 16: Total cost of FEX market supervision.....	31
Table 17: Summary of ASIC's cost recovery charges 2015-16.....	33
Table 18: Financial estimates .....	35
Table 19: Summary of the financial performance of the prior two prior fee charging periods .....	36
Table 20: Cost recovery expenses 1 Jan 2012 – 30 Jun 2013 (18m) by key process .....	36
Table 21: International benchmarking .....	38
Chart A: Cash equities: market share of execution venues 1 Oct – 31 Dec 2014.....	41

## CRIS Version

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## 1. INTRODUCTION

### 1.1 Purpose of the CRIS

This Market Supervision Cost Recovery Implementation Statement (CRIS) sets out the arrangements for the recovery of costs over the financial year 2015-16 for the Australian Securities and Investments Commission's (ASIC) market supervision functions. It contains financial forecasts for 2015-16 and three forward years and also reports financial and non-financial performance information for market supervision. ASIC will maintain and update this CRIS until the activity or cost recovery for the activity has been discontinued.

### 1.2 Market supervision activities to be cost recovered

#### 1.2.1 Background

ASIC is responsible for the supervision of trading on Australia's domestic licensed equity, derivatives and futures markets.

Prior to the transfer of market supervision to ASIC on 1 August 2010, each market operator was responsible for supervising real-time trading on their own markets and the conduct of their participants (for compliance with their market's operating rules, as well as some conduct of their business obligations). Market participants paid for the secondary market supervision function on each domestic licensed financial market they transacted on via fees and charges imposed on market participants by each individual market. The component of those fees and charges relating to markets' secondary market supervision function was typically not transparent to market participants.

Although ASIC still performs the same functions as it did prior to 1 August 2010, ***the pre-transfer functions are Budget funded and are not cost recovered.***

Historical background information about the transfer of the market supervision function to ASIC and the introduction of market competition is provided in Appendix A.

#### 1.2.2 Activities being cost recovered

Market Supervision cost recovery encompasses all the new market integrity-related activities post-transfer on 1 August 2010, namely for:

- performing market supervision functions following their transfer from market operators (funded by the Budget measure ***Transfer of Market Supervision / Market Supervision***);
- regulating the market after the introduction of market competition for trading in ASX listed securities and maintaining the supporting regulatory framework (funded by the Budget measure ***Market Competition***<sup>2</sup>); and

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<sup>2</sup> Funding for the measure referred to as ***Implementing Market Competition*** terminated on 30 June 2015 and has been replaced by the ***Competition for Market Services — continuation*** measure. See table 4 on page 11 for more information on all cost-recoverable market supervision Budget measures

- continued implementation of the Enhanced Market Supervision (EMS) programme of works (funded by the Budget measure **Enhanced Market Supervision**).

The key aims of the EMS programme are to:

- enhance ASIC's market supervision capabilities, particularly market supervision technology and tools, to a level comparable with international regulatory agency peers, so ASIC can improve its ability to detect and enforce market misconduct / abuse;
- better supervise the increased levels of messaging taking place in the Australian market now and for the foreseeable future; and
- improve interactions and workflow between ASIC and market participants, and within ASIC internally.

The EMS programme is designed to deliver productivity gains to both ASIC and industry. For example, it is anticipated that key elements of EMS will reduce the number of ASIC notices to produce information issued, and that industry will require less time to respond to ASIC notices than is currently the case.

More information about the Budget measures the Government decided should be cost recovered is provided in Table 4 '*Government decisions on ASIC market supervision*' on page 12.

### 1.2.3 What ASIC market supervision sets out to achieve

ASIC's core priority for market supervision is the promotion of investor confidence through fair and efficient markets. This requires market infrastructure that is robust, where the trading, clearing and settlement of transactions is orderly and efficient, and where market misconduct is minimised.

### 1.2.4 Who will pay cost recovery charges?

#### 1.2.4.1 Domestic licensed financial markets subject to market supervision cost recovery

The domestic licensed financial markets subject to market supervision cost recovery are:

- the domestic licensed financial markets that were part of the transfer of market supervision to ASIC on 1 August 2010;
- Chi-X Australia Pty Ltd; and
- FEX Global Pty Ltd, a new market that was granted a licence by the Government on 4 April 2013 and is expected to commence operations in 2015-16

(hereafter, these markets are collectively referred to as 'domestic licensed financial markets'). Table 1 below lists the in-scope domestic licensed financial markets and shows whether costs are recovered directly from the market operator only, or from both the market operator and their participants.

#### 1.2.4.2 Planned FIDA contribution to offset industry cost recovery

The proposed ASIC market supervision cost recovery arrangements include a planned Financial Industry Development Account (FIDA) contribution of \$1.465 million per annum in

**Table 1: Who will pay cost recovery fees and charges?**

Type of market	Market	Direct cost recovery from Market	
		Operator	Participants
<b>Cash equity</b> (ASX-listed securities)	ASX Limited (ASX) includes TradeMatch, PureMatch and Centre Point electronic order books	Yes	Yes
	Chi-X Australia Pty Ltd (Chi-X)	Yes	Yes
<b>Futures</b>	Australian Securities Exchange Limited <sup>3</sup> (ASX24)	Yes	No
	FEX Global Pty Ltd <sup>4</sup> (FEX)	Yes	No
<b>Small financial markets</b>	National Stock Exchange of Australia Limited (NSX)	Yes	No
	SIM Venture Securities Exchange Ltd (SIM)	Yes	No
	IMB Ltd (IMB)	Yes	No
	Asia Pacific Exchange Limited (APX)	Yes	No

...continued from previous page

2015-16. This contribution will be used to partially offset the cost recovery fees charged to cash equity market participants. Appendix B contains background information about FIDA.

In June 2013 ASIC's responsible Minister approved four annual FIDA contributions for ASIC market supervision to commence in 2013-14<sup>5</sup>. ASIC invoices SEGC at the beginning of each financial year for the annual amount approved. SEGC considers and decides whether there are sufficient excess funds in the NGF to pay the approved amount at its next board meeting. For the financial year 2015-16 the SEGC board is likely to consider the matter at its board meeting in August 2015.

Cost recovery fees charged to cash equity market participants may change depending on whether a FIDA contribution is received in 2015-16 or not. Given this uncertainty it is not possible for this CRIS to state a single specific amount these participants will be charged. This CRIS therefore presents two options with respect to the amounts that will be charged to cash equity market participants, depending on whether the FIDA contribution is received by ASIC in the first quarter of 2015-16 or not (see sections 3.3.1.6 and 3.3.1.7 respectively). Stakeholders are aware of this issue through prior ASIC market supervision cost recovery documents and consultations, public consultation of this draft CRIS and ongoing discussions.

After being informed of SEGC's decision, if the 2015-16 FIDA payment will not be made, cash equity market participants will be notified that the fee level to apply for 2015-16 will be as described in section 3.3.1.7 "Charges applying to market participants assuming no FIDA contribution" on page 29. This notification should occur on or before 15 October 2015 and the CRIS will be updated to reflect the applicable charges.

<sup>3</sup> formerly Sydney Futures Exchange

<sup>4</sup> FEX is currently preparing to commence operations

<sup>5</sup> FIDA contributions of \$1.465m to offset EMS costs were received in 2013-14 and 2014-15 as foreshadowed in past public consultation documents about the fees to apply from 1 July 2013 – 30 June 2015. In addition to the \$1.465m the Government expects to receive in 2015-16 (subject to SEGC Board approval) a final FIDA payment for ASIC Market Supervision is expected in 2016-17 (to be further discussed when this CRIS is updated for 2016-17; please note that the 2016-17 FIDA payment is also subject to SEGC Board approval)

### 1.3 Appropriateness of cost recovery

In accordance with the Australian Government Cost Recovery Guidelines (the CRGs), the Government decided that the costs involved in establishing and running the new market supervision functions at ASIC from 1 August 2010 (and all other market supervision-specific activities thereafter) be cost recovered. ASIC's incremental post-transfer market supervision activities<sup>6</sup> are considered appropriate for cost recovery, consistent with the CRGs.

In the Australian context, the market supervision function is most appropriately provided by Government. Previously, market operators supervised their own markets. With the advent of multiple exchanges trading the same and / or related products, a strong case arose for a single regulator in order to ensure effective and consistent whole-of-market supervision. Failure to do so would have introduced duplication and inconsistency, increasing industry's compliance costs and presenting a barrier to both competition and innovation.

Prior to the transfer of supervision, the supervision of Australia's main cash equity market was carried out and funded by ASX Group. Their clients indirectly bore market supervision costs (though not transparently through separate fees for market supervision). Many other jurisdictions maintain similar arrangements, or Self-Regulatory Organisations supervise markets and market participants (the operating expenses of which are borne by their members; such arrangements are akin to cost recovery).

The most direct beneficiaries of well-regulated financial markets are market operators and market participants (intermediaries) and their clients (investors). Imposing cost recovery on market intermediaries is an efficient way to pass costs onto investors who benefit from market supervision (noting that some firms may be both intermediaries and end users, to the extent that they are trading on their own account). Some stakeholders have raised concerns that the competitive environment has limited their ability to pass on supervision costs in part or in full to their clients.

Market supervision also provides significant benefits to the broader Australian community and economy – by assisting markets carry out their role in the efficient allocation of capital and risk management; thereby contributing to economic growth and employment. As such, in consultations, some stakeholders have asserted that market supervision should be paid for (in part or fully) through general taxation revenue.

It should be noted that only the measures set out in Table 4 on page 12 are cost recovered. ASIC market regulation activities conducted before 1 August 2010 are Budget funded.

Intermediaries generally give effect to the trading behaviour that creates demand for market supervision regulation and have a recognised 'gate keeper' role in the Australian regulatory regime. Cost recovery of market supervision can have a positive influence on the behaviour driving regulation.

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<sup>6</sup> Commonwealth Budget market supervision measures subject to cost recovery are listed in Table 4 on page 11



Cost recovery of market supervision commenced from 1 August 2010 (domestic licensed financial markets only) and expanded to include cash equity market participants from 1 January 2012. There have been very few implementation issues, and cost recovery has been implemented in a streamlined and efficient way. Market operators and cash equity market participants are collectively a relatively small and sophisticated class of stakeholders who are able to efficiently comply with, and bear the costs of, the additional costs of market supervision post 1 August 2010.

Billing takes place quarterly in arrears and, in the case of cash equity market operators and their participants, is based on actual trade and message data. The billing formula recovers quarterly budgeted costs exactly, so billed entities are not over-charged and the Government bears little to no risk of insufficient recovery occurring. Cost recovery of market supervision does not impact any of Australia's international commitments, nor any access to essential community services or access to government data.

Cost recovery has facilitated the funding of ASIC undertaking and investing in its market supervision functions and developing and implementing a framework to support market structure changes such as implementing market competition. The cost allocation methods used seek to minimise the extent to which intermediaries and operators may pay for the regulation of their competitors.

For most firms, expenditure on cost recovery fees is relatively small (compared to their overall operating costs), though for some firms this is not the case. The potential impacts on viability and competition have been taken into account in determining whether cost recovery is appropriate.

Implementation of cost recovery of market supervision has served to increase stakeholders' engagement on how ASIC utilises its regulatory resources and whether industry obtains 'value for money' for the fees it pays. Transparency and engagement with Government and ASIC about these matters has also improved.

## **1.4 Treatment of cost savings and excess costs**

### **1.4.1 Cost savings**

ASIC assesses whether refunds are required, and if so, how and when they will be remitted to entities in the financial year after any applicable Fees Regulations cease. If savings are made in relation to costs incurred during 2015-16, they will be reflected in either a future fee reduction and / or refunds issued to all impacted entities.

ASIC makes every effort to achieve cost savings when delivering market supervision activities. Early in the life of the EMS programme, ASIC achieved significant savings against the maximum allowance approved by the Government when procuring the Market Surveillance System (MSS) upgrade. ASIC determined that it would not require approximately \$5 million of the budgeted MSS upgrade cost (or just over 10% of the entire EMS measure). ASIC has therefore never needed to recover this amount from industry.

Refunds to industry for the period 1 January 2012 – 30 June 2013 totalling \$3.168 million were processed in 2013-14 (see section 7.3 '1 January 2012 – 30 June 2013: Refunds issued in 2013-14' on page 37 for further information regarding these refunds). ASIC will determine whether refunds are required for the two financial years 2013-14 and 2014-15 in 2015-16.

#### 1.4.2 Excess costs

If ASIC expends more than has been agreed by Government and stakeholders on market supervision activities, ASIC cannot cost recover any amounts in excess of such agreements from industry.

### 1.5 The Market Supervision Cost Recovery Stakeholder Panel

In late 2011 ASIC's responsible Minister established the Market Supervision Cost Recovery Stakeholder Panel (MSCRSP) to provide stakeholder perspectives to the Government on financial market supervision proposals and approaches for cost recovery. Treasury chair this Panel and ASIC also attends MSCRSP meetings.

Representatives from ASX Group, Chi-X, the FEX market, market participant and industry representative bodies (e.g. the Australian Financial Markets Association (AFMA), the Stockbrokers Association of Australia (SAA), the Financial Services Council (FSC) and the Australian Shareholders Association (ASA)), some market participants and a financial markets academic sit on the MSCRSP. The Panel first met in early 2012 to gather important early feedback for the Government on the overall cost of the EMS programme, and on the general operation of the post-competition cost recovery arrangements.

In response to feedback from the MSCRSP and industry's comments in general, the Government has taken several steps to ensure that market supervision cost recovery levels remain reasonable. These steps include:

- extending recovery of EMS costs over a longer period of time (seven years) rather than the forward estimates of the Commonwealth Budget (four years); and
- seeking FIDA contributions to partially offset the level of cost recovery revenue required, thus reducing market supervision charges on industry.

Sections 1.2.4.2 '*Planned FIDA contribution to offset industry cost recovery*' on page 2 (regarding FIDA) and 1.6 '*EMS expenditure and EMS cost recovery do not match until 2020-21*' commencing immediately below contain further discussion on each of these points.

### 1.6 EMS expenditure and EMS cost recovery do not match until 2020-21

At the outset of the initial transfer of market supervision, ASIC decided not to commit to a long-term contract for its initial market supervision system (MSS). ASIC's strategy was to initially implement proven, low-risk technology, then go back to the market for a more sophisticated, higher capacity solution that could better handle what ASIC expected would be a rapidly changing trading environment.

ASIC's initial MSS contract expired in mid-2013 and ASIC replaced its core market surveillance technology with a new, advanced system. The new MSS is now established and all other key elements of the EMS programme are due to be implemented by 30 June 2016. At that point, ongoing EMS funding is expected to reduce to a maximum of \$4.4 million p.a.

Other key EMS deliverables are shown in the table below, with the total amount ASIC was funded for each to 30 June 2016 (capital expenditure vs. operating expenditure and implementation vs. ongoing costs shown). The total reflects the maximum EMS funding approved by the Government (\$43.7 million from 2012-13 to 2015-16) less the 'locked in' savings relating to the MSS upgrade<sup>7</sup> and efficiency dividend-related net funding reductions.

**Table 2: Forecast expenditure profile of the EMS measure (\$m)**

EMS Work stream	Capex	Opex	Total
Market Surveillance System	1.91	6.30	8.21
Market Entity Compliance System (MECS <sup>8</sup> )	4.41	1.50	5.91
Market Integrity Workflow	1.49	0.60	2.09
Advanced analytics	6.72	1.28	8.00
Other (including programme management & governance)	0.83	5.78	6.61
Ongoing cost components of the work streams	0.00	7.62	7.62
IT overheads	0.00	0.27	0.27
<b>Total<sup>(a)</sup></b>	<b>15.37</b>	<b>23.35</b>	<b>38.72</b>

<sup>(a)</sup> total cost shown is not the exact sum of the component parts (due to rounding)

Approximately one-third of this cost (just over \$13 million) was recovered during 1 July 2013 to 30 June 2015. In 2015-16 around \$6.7 million of this will be recovered. The balance will be recovered after 30 June 2016. The charts further below show the expected expenditure and cost recovery profile of all market supervision activities covered by this CRIS (and expected future CRIS updates to 30 June 2021) as of May 2015 when this CRIS was prepared.

The EMS measure was approved in 2012-13 Budget with the following strategies also approved regarding cost recovery revenue collection to mitigate the impact of high upfront EMS expenditure on stakeholders:

- the permitted timeframe to recover EMS costs was extended to 30 June 2020 rather than within the forward estimates of the 2012-13 Budget (to 30 June 2016); and
- FIDA contributions were to be sought to partially offset the level of cost recovery revenue required from industry.

These strategies were necessary as no EMS expenditure in 2012-13 was able to be recovered contemporaneously as the Fees Regulations in effect at that time only allowed to recover costs approved as part of the **Market supervision** and **Implementing market competition** budget measures, and EMS implementation costs are high relative to projected

<sup>7</sup> discussed in section 1.4.1 'Cost savings' on page 5

<sup>8</sup> this work stream was previously known as 'Register and Portal'. No MECS costs are to be cost recovered during 2015-16 as the scope of MECS has changed to include stakeholders other than market participants. ASIC will consult on MECS cost recovery during 2015-16

ongoing expenditure, as shown in the first of the two charts below.

Chart 1 (left panel) below shows forecast ASIC market supervision expenditure. Chart 2 (right panel) below shows forecast cost recovery is almost uniform in contrast to the initially high and uneven EMS expenditure profile. The recovery of EMS project costs (that cease on 30 June 2016) is to be spread over a period of up to seven years (from 1 July 2013 to 30 June 2020). Annual cost recovery budgets to 30 June 2020 will be between \$20 - \$22 million p.a. Keeping charges uniform / close to current levels over that time reduces volatility in the overall amount recovered from industry. Market supervision fees decrease in relative terms if, as is expected, market turnover increases over time.

Chart 1: Expenditure 1 Jan 2012 – 30 Jun 2021 (\$m)

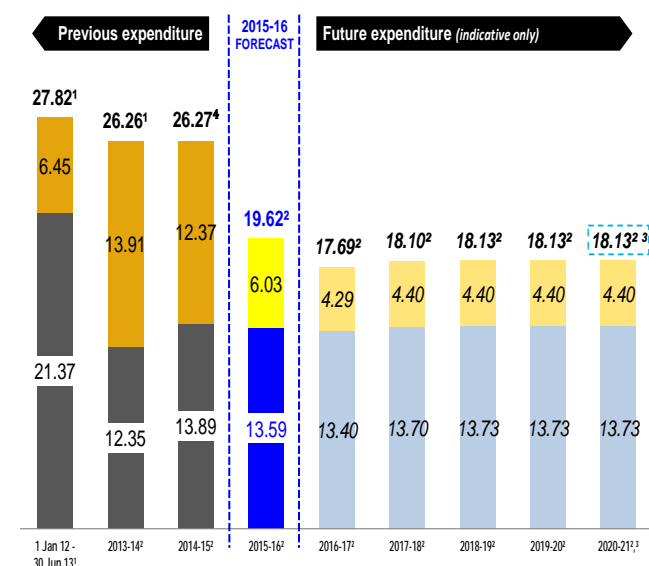
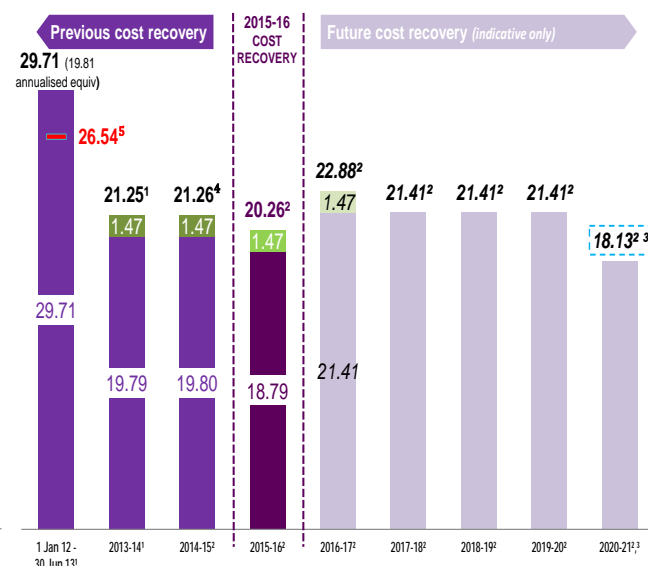


Chart 2: Cost recovery 1 Jan 2012 – 30 Jun 2021 (\$m)



- K** 2015-16: Initial transfer & market competition<sup>2</sup>
- E** Forecast 2016-17+ for the above<sup>2</sup>
- Y** Prior periods for the above<sup>1,4</sup>
- 2015-16: EMS (ongoing and implementation)<sup>2</sup>
- Forecast 2016-17+ for the above<sup>2</sup>
- Prior periods for the above<sup>1,4</sup>
- 2015-16: FIDA (for EMS cost recovery)<sup>2</sup>
- Forecast 2016-17+ for the above<sup>2</sup>
- Prior periods for the above<sup>1</sup>
- 2015-16 industry cost recovery<sup>5</sup>
- Forecast 2016-17+ for the above<sup>2</sup>
- Prior cost recovery (\$26.54m over 1 Jan 12 – 30 Jun 13 after \$3.17m refunds issued<sup>5</sup>)

**Notes to Charts 1 & 2 above:**

- <sup>1</sup> actual
- <sup>2</sup> forecast
- <sup>3</sup> in 2020-21 forecast expenditure and cost recovery for all three market supervision measures (projects) are expected to match
- <sup>4</sup> predominantly actuals, however 2014-15 expenditure forecast from March 2015 actuals. 2014-15 cost recovery is 75% actual plus projected cost recovery revenue for the quarter ending 30 Jun 2015. Cost recovery for the periods 1 Jan 2012 – 30 Jun 2013, 2013-14 and 2014-15 also include recovery of deferred market competition implementation costs (originally expended prior to 1 Jan 2012)
- <sup>5</sup> the \$29.71m initially recovered over 1 Jan 2012 – 30 Jun 2013 reduced to \$26.54m after refunds for the period totalling \$3.17m were processed in 2013-14. See section 7.3 '1 January 2012 – 30 June 2013: Refunds issued in 2013-14' on page 37 for further information about these refunds.

EMS expenditure was greater than amounts cost recovered for EMS in 2012-13, 2013-14 (actual), 2014-15 (forecast). Expenditure and cost recovery are roughly equivalent in 2015-

16 (forecast), with the cost recovery budget just \$640,000<sup>9</sup> higher than forecast expenditure (\$20.25 million c.f. \$19.62 million).

From 1 July 2016 to 30 June 2020, cost recovery from industry is forecast to be between \$3 - \$4 million p.a. greater than expenditure<sup>10</sup>, so that the high upfront costs of EMS are repaid by 30 June 2020. By 1 July 2020 ASIC expects that all EMS costs will have been recovered and market supervision cost recovery will generally match recurrent market supervision expenditure.

## 1.7 Operating environment: Changes in 2015-16

The Final Report of the Financial System Inquiry (FSI) was released on 7 December 2014 and included a recommendation that the Government "*introduce an industry funding model for the Australian Securities and Investments Commission (ASIC) and provide ASIC with stronger regulatory tools*"<sup>11</sup>. Consultation on the FSI's Final Report closed on 31 March 2015.

The Government is currently considering its response to this recommendation. In advance of the Government's response, the same method as that used to calculate the market supervision fees during 1 July 2013 to 30 June 2015 has been used to determine the fees to apply in 2015-16.

Although the method used to determine fees and charges to apply in 2015-16 has not changed, several numbers that are key inputs in the process have changed and therefore the fees and charges determined herein do differ from those that applied over 1 July 2013 to 30 June 2015. This is primarily due to (but not limited to):

- ASIC's 2015-16 cost recovery budget being different to that in the previous two financial years, and
- projected average staff costs being slightly higher in 2015-16 than in the previous two financial years.

Table 3 below summarises the differences in the total cost recovery budget and the resulting fees and charges to apply per quarter in 2015-16 relative to 2013-14 and 2014-15.

ASIC and Treasury have agreed on the cost recovery model outlined in this Market Supervision CRIS. This CRIS has been reviewed by the Department of Finance (DoF) for compliance with the CRGs. ASIC is responsible for preparing this CRIS as it is the entity undertaking the cost recovered activity. Treasury's role is to consult on the cost recovery arrangements (which it does jointly with ASIC) and recommend any changes to the Corporations (Fees) Regulations 2001 (Fees Regulations) to the Assistant Treasurer.

<sup>9</sup> in 2015-16 this figure would increase by \$1.465 million if the planned FIDA contribution is not forthcoming

<sup>10</sup> in 2016-17 this figure would increase by \$1.465 million if the planned FIDA contribution is not forthcoming

<sup>11</sup> see recommendation no 29 at <http://fsi.gov.au/publications/final-report/executive-summary/>

*Continued on next page...*

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**Table 3: Differences total cost recovery budget, fees and charges in 2015-16 c.f. 2013-14 & 2014-15**

Item	\$ 2013-14 & 2014-15 (prev)	\$ 2015-16 NEW	↑ or ↓	Refer to Section §	Page	
Total cost recovery budget \$ p.a.	\$21.44m p.a.	\$20.26m p.a.	↓ 5.5%	§3.2	16	
1. Fixed fee for Minimum Participant Supervision	\$1,835 p.qtr	\$1,905 p.qtr	↑ 3.8%	§3.3.1.3	26	
2. Fixed fee for ASX24 market supervision	\$344,670 p.qtr	\$323,405 p.qtr	↓ 6.2%	§3.3.2	30	
3. Fixed fee for FEX market supervision <sup>12</sup>	\$49,930 p.qtr	\$51,250 p.qtr	↑ 2.6%	§3.3.3	30	
4. Fixed fee for Small Financial Market supervision (per market)	\$8,735 p.qtr	\$9,065 p.qtr	↑ 3.8%	§3.3.4	31	
5. Variable fee for Cash Equity Market Operators allocated according to market share of transaction count	\$215,000 p.qtr	\$129,000 p.qtr	↓ 40.0%	Table 14d, Panel 1, Row 1 & \$0	27	
6. Variable fee for Cash Equity Market Operators allocated according to market share of message count	\$607,000 p.qtr	\$458,000 p.qtr	↓ 24.5%	Table 14d, Panel 2, Row 1 & \$0	27	
If \$1.465 offsetting FIDA contribution is received	7a. Variable fee for Cash Equity Market Participants allocated according to market share of transaction count	\$1.789m p.qtr	\$1.796m p.qtr	↑ 0.4%	Table 14d, Panel 1, Row 2 & §3.3.1.6	29
	8a. Variable fee for Cash Equity Market Participants allocated according to market share of message count	\$1.807m p.qtr	\$1.752m p.qtr	↓ 3.0%	Table 14d, Panel 2, Row 2 & §3.3.1.6	29
OR						
If NO \$1.465 offsetting FIDA contribution	7b. Variable fee for Cash Equity Market Participants allocated according to market share of transaction count	As per 7a. above (FIDA contribution was received)	\$1.988m p.qtr	↑ 11.1%	§3.3.1.7	29
	8b. Variable fee for Cash Equity Market Participants allocated according to market share of message count	As per 8a. above (FIDA contribution was received)	\$1.927m p.qtr	↑ 6.6%	§3.3.1.7	29

<sup>12</sup> charges for FEX Market Supervision will commence from the earliest date the FEX market is permitted to commence operations



## 2. POLICY AND STATUTORY AUTHORITY TO COST RECOVER

### 2.1 Government policy approval to cost recover

The sources of policy approval to cost recover ASIC's market supervision functions are listed in the table below:

**Table 4: Government decisions on ASIC market supervision cost recovery**

Budget Measure	When approved	Type of funding	Purpose
<b>1. Transfer of market supervision (aka Market Supervision)</b>	MYEFO 2009-10 <sup>13</sup>	Ongoing	For the additional expenditure incurred by ASIC to undertake its new regulatory functions following the transfer of market supervision (excluding the Markets Disciplinary Panel)
<b>2. Implementing market competition and developing a framework to support competition (aka Market Competition)</b>	2011-12 Budget Measures <sup>14</sup>	Terminates 30 June 2015	To recover ASIC's costs for undertaking its new regulatory functions following the introduction of market competition, and for the development of a framework to support competition in exchange market services. Also provided initial funding for the Markets Disciplinary Panel
<b>3. Enhanced Market Supervision (EMS)</b>	2012-13 Budget Measures <sup>15</sup>	Ongoing	<ul style="list-style-type: none"> <li>Enhancing ASIC's market supervision capabilities, particularly market supervision technology and tools, to a level comparable with international regulatory agency peers, so that ASIC can improve its ability to detect and enforce market misconduct / abuse;</li> <li>Supervising the increased levels of messaging taking place in the market now and for the foreseeable future; and</li> <li>Improving interactions and workflow between ASIC and market participants, and within ASIC internally</li> </ul>
<b>4. Competition for Market Services — continuation (aka Market Competition)</b>	2015-16 Budget Measures <sup>16</sup>	Ongoing from 1 July 2015	To recover the ongoing costs of regulating the market after the introduction of market competition for trading in ASX listed securities and maintaining the supporting regulatory framework. Also provides ongoing funding for the Markets Disciplinary Panel

Treasury's 'Reforms to the supervision of Australia's financial markets: Exposure draft and consultation paper', also stated that:

<sup>13</sup> *Mid-year Economic and Fiscal Outlook 2009-10*, Appendix A: Policy decisions taken since the 2009-10 Budget, Commonwealth of Australia, November 2009, p. 216

<sup>14</sup> *Budget Measures 2011-12*, Budget Paper No. 2 – Part 2: Expense Measures, Commonwealth of Australia, May 2011, p.319

<sup>15</sup> *Budget Measures 2012-13*, Budget Paper No. 2 – Part 2: Expense Measures, Commonwealth of Australia, May 2012, p.277

<sup>16</sup> *Budget Measures 2015-16*, Budget Paper No. 2 – Part 2: Expense Measures, Commonwealth of Australia, May 2015, p.50. This measure replaces measure #2 in this table that terminates on 30 June 2015



*"The Wallis Inquiry, which reported in 1997, made a recommendation that regulatory agencies should collect enough revenue from the financial entities which they regulate to fund themselves. The principle is that for reasons of equity and efficiency, the costs of financial regulation should be borne by those who benefit from it."*

## 2.2 Statutory authority to charge

The legal authority for the charges is set out in the following:

- Section 6A of the Corporations (Fees) Act 2001 (Fees Act)<sup>17</sup> states that the Fees Regulations may prescribe a fee or specify the method for calculating the amount of the fee for the performance by ASIC of its functions under Part 7.2A (Supervision of Financial Markets) of the Corporations Act.
- The Corporations (Fees) Amendment Bill 2011<sup>18</sup> amended the Fees Act to support the recovery of costs from both market operators and market participants. The Bill was passed by the House of Representatives on 2 November 2011 and the Senate on 24 November 2011.
- The Corporations (Fees) Amendment Regulations 2015<sup>19</sup> will prescribe the quarterly fee arrangements that will apply from 1 July 2015 to 30 June 2016.
  - Cash equity markets: the Fees Regulations prescribe the calculation of the quarterly fee to be paid by each cash equity market operator and direct participants of their markets. Direct cash equity market participants are also prescribed a fixed fee per quarter.
  - ASX24, FEX and small financial markets: the Fees Regulations prescribe the fixed quarterly fees to be paid by each market operator.

<sup>17</sup> <http://www.comlaw.gov.au/Details/C2012C00692>

<sup>18</sup> <http://www.comlaw.gov.au/Details/C2011A00144>

<sup>19</sup> A link to the Corporations (Fees) Amendment Regulations 2015 will be provided in the final CRIS.

### 3. COST RECOVERY MODEL

#### 3.1 Market supervision - Outputs and key business processes

ASIC is committed to preventing inappropriate conduct and improving poor compliance practices before they affect the integrity of markets. This is referred to as achieving 'positive behavioural change'. Engagement with stakeholders (both formal and informal), education, guidance and warning letters are some of the tools ASIC uses to achieve positive behavioural change.

Other Market Integrity-related regulatory tools used by ASIC include:

- surveillance of listed equities, futures and options markets;
- supervision of compliance in those markets with the Corporations Act 2001 (Corporations Act) and ASIC market integrity rules; and
- monitoring market participants and securities dealers' compliance with their Australian financial services (AFS) licence conditions.

When potential market misconduct is detected, ASIC conducts investigations and may take enforcement action—which can result in severe penalties in appropriate cases. The objectives of enforcement action are a combination of one or all of:

- Punishment;
- Improved compliance;
- Protection of the public
- Compensation for investors; and
- Deterrence.

ASIC releases comprehensive reports every six months on the supervision of markets and overall enforcement outcomes. The latest of these at the time of compiling this CRIS are:

- Report 421: ASIC enforcement outcomes: July to December 2014; and
- Report 425: ASIC supervision of markets and participants: July to December 2014.

These reports provide further information about the processes used and outcomes achieved by ASIC market supervision. Both reports and their predecessors are available at [www.asic.gov.au](http://www.asic.gov.au)

Table 5 below summarises the key processes ASIC employs in market supervision and their intended outcomes. If you are unfamiliar with some of the terms please refer to *ASIC Report 425: ASIC supervision of markets and participants: July to December 2014* for further background information.

Note that some of the outcomes and processes, particularly those relating to contraventions of the Corporations Act, are not subject to cost recovery if they relate to the regulatory

responsibilities of ASIC prior to 1 August 2010. However the majority of market supervision / market surveillance processes **are** cost recovered, as ASIC had few staff in this area prior to 1 August 2010 and primarily relied on ASX to refer possible breaches of the law to ASIC. Such matters are now sent to Enforcement teams in cost centres that are not subject to cost recovery. All Market Integrity Rule (MIR) related work is subject to cost recovery and referred to ASIC's cost-recovered MIR Enforcement team. Both MIRs and the MDP were created and implemented specifically for the transfer of market supervision to ASIC and thus all MIR-related and MDP expenditure is cost-recoverable.

**Table 5: ASIC market supervision key outputs and business process**

Key process	Sub processes	Outcomes <i>Punishment - Improved compliance - Protection of the public - Compensation for investors – Deterrence</i>
<b>Market Supervision / Surveillance</b> <i>(incl. real-time market surveillance)</i>	<ul style="list-style-type: none"> <li>• Monitor alerts; conduct post-trade analysis</li> <li>• Investigate alerts, issues from breach reports, suspicious activity reports, referrals from other ASIC teams and reports of misconduct from individuals or entities</li> <li>• Liaise with market participants, companies, advisers and investors regarding our enquiries (this may involve use of compulsory information gathering powers)</li> <li>• Engage with industry on trading issues (e.g. DTR<sup>20</sup> behaviour and trading algorithms)</li> <li>• Calibrate alerts and develop / maintain alerts and reports</li> </ul>	<p>Matters proceed to triage, then Investigations &amp; Enforcement</p> <p>Amended / improved:</p> <ul style="list-style-type: none"> <li>• execution strategies</li> <li>• algorithms for trading</li> <li>• trading filters</li> <li>• trading behaviours and trading system operations</li> <li>• policies and procedures</li> </ul> <p>Better alerts for market surveillance and surveillance process improvement</p>
<b>Participant Supervision</b>	<ul style="list-style-type: none"> <li>• General compliance reviews</li> <li>• Targeted / thematic compliance reviews (e.g. client money handling, managing confidential information)</li> <li>• Risk-based assessment visits</li> <li>• Warning letters, monitoring and remediation activities</li> <li>• Assess and process Applications, Waivers, relief applications, AOP<sup>22</sup> certifications and Notifications</li> <li>• Engagement / liaison with industry on compliance issues</li> </ul>	<p>Matters proceed to triage, then Investigations &amp; Enforcement</p> <p>Amended / improved:</p> <ul style="list-style-type: none"> <li>• trading behaviours, interactions with clients (e.g. handling client monies)</li> <li>• policies, procedures and compliance frameworks</li> </ul> <p>Participants' increased awareness of their compliance obligations</p> <p>Accurate information lodged about firms' ADA<sup>21</sup>s and firms' management structures</p> <p>Industry presentations and publications</p>

<sup>20</sup> DTR = Designated Trading Representative

<sup>21</sup> ADA = Accredited Derivatives Adviser

<sup>22</sup> AOP = Automated Order Processing

Key process	Sub processes	Outcomes <i>Punishment - Improved compliance - Protection of the public - Compensation for investors – Deterrence</i>
<b>Regulatory Framework (MIRs) and Market Structure &amp; Analysis</b>	<ul style="list-style-type: none"> <li>Developing and implementing ASIC's MIRs, including FRLI<sup>23</sup> registration</li> </ul>	<ul style="list-style-type: none"> <li>MIRs</li> <li>Quarterly reports published on ASIC's website re market structure and cash equity market statistics</li> <li>Analysis for related ASIC Reports and Consultation documents</li> <li>Related ASIC Reports and Consultation documents</li> </ul>

*Table continues on next page...*

**Table 5: ASIC market supervision key outputs and business process, Continued**

Key process	Sub processes	Outcomes <i>Punishment - Improved compliance - Protection of the public - Compensation for investors – Deterrence</i>
<b>Investigations and Enforcement &amp; Markets Disciplinary Panel (MDP)</b>	<ul style="list-style-type: none"> <li>Advanced surveillances</li> </ul>	<ul style="list-style-type: none"> <li>Bannings</li> <li>Insider trading pleas, verdicts and judgements</li> <li>Market manipulation pleas, verdicts and judgements</li> <li>Continuous disclosure infringement notices</li> <li>Enforceable undertakings</li> <li>Pecuniary penalties</li> <li>MDP-issued infringement notices</li> </ul>
	<ul style="list-style-type: none"> <li>Preparing briefs (delegates, DPP)</li> </ul>	
	<ul style="list-style-type: none"> <li>Preparing draft and final Statement of Reasons</li> </ul>	
	<ul style="list-style-type: none"> <li>Negotiating / settling matters with Market Participants prior to MDP hearings; Enforcement attend MDP hearings</li> </ul>	
	<ul style="list-style-type: none"> <li>MDP Secretariat (runs MDP hearings, publishes MDP notices)</li> </ul>	

### 3.2 Market supervision costs

Over 2015-16, ASIC's cost recovery budget (for undertaking its post-transfer market supervision functions, including costs associated with regulating of cash equity markets in an environment with competition for trading services and the new EMS systems and processes), is \$20.26m, with EMS recovery just slightly above that of EMS expenditure (the reasons for this are explained in section 1.6 'EMS expenditure and EMS cost recovery do not match until 2020-21' on page 6). The other two measures, *Market supervision* and *Market competition* are cost recovered according to their forecast expenditure.

**Table 6: 2015-16 Cost recovery budget and forecast expenditure per cost recovered Budget measure<sup>24</sup>**

\$m	2015-16	
	Cost recovery	Forecast expenditure
<b>Market supervision</b>	10.42	10.42
<b>Market competition</b>	3.17	3.17
<b>Enhanced Market Supervision (EMS)</b>	6.67	6.03
<b>Total</b>	<b>20.26</b>	<b>19.62</b>

<sup>23</sup> FRLI = Federal Register of Legislative Instruments

<sup>24</sup> all tables in this chapter of the CRIS (including Table 6 above) that reconcile to \$20.26m or less and relating in whole or in part to cash equity markets refer to cost recovery budgeted revenue rather than forecast expenditure; see section 1.6 'EMS expenditure and EMS cost recovery do not match until 2020-21' on page 6

The main cost drivers are staff costs (46.1%), followed by IT costs (42.6%). Cost drivers are discussed further in the section "*Design of the cost recovery charges*", specifically subsection 3.3.1.2 "*Allocation of market supervision cost recovery budget to each cash equity market operator and participant*" on page 23 and in Table 13 on page 24.

As stated on page 1 of this CRIS, "*the pre-transfer functions are Budget funded and are not cost recovered.*" This results in a low allocation of ASIC's overheads to market supervision cost recovery; only purely variable and / or post-transfer support staff / support costs are allocated to market supervision cost recovery (with the majority of overhead costs for market supervision being Budget funded; for example, none of the cost of Commission oversight of ASIC market supervision is cost recovered). Less than 5% of the cost recovery budget in 2015-16 relates to shared services costs. The method used to attribute these non-material costs to activities was to add a pro-rated amount to ASX24's direct cost recovery budget based on FTEs and assign the balance of shared costs to cash equity markets and their participants. The rationale of not assigning any shared services costs to FEX or small financial markets is discussed in detail further below in the sections 3.3.3 *FEX Global Pty Ltd* and 3.3.4 *Small financial markets* on pages 30 and 31 respectively.

An average staff cost of \$145,000<sup>25</sup> is consistently used throughout this section to estimate the people-related costs of supervising domestic licensed financial markets. Conducting effective market and participant supervision requires a highly specialised and skilled workforce and ASIC invests in training and developing market and participant supervision staff. Of late, the opportunity for staff in key market supervision teams to both use and develop new tools for ASIC's new real-time surveillance system has involved a great deal of new skill development.

Both direct and indirect<sup>26</sup> post-transfer market supervision staff are placed in different cost centres to pre-transfer (Budget funded) market supervision staff and services that identify both the team they work in and that the cost of performing their role is cost recovered. Purchase orders for post-transfer market supervision related goods and services are coded to different cost centres than those for services that were performed (and continue to be performed) for pre-transfer (Budget funded) market supervision functions. A breakdown of ASIC's market supervision costs by key market supervision processes is provided in Table 7.

Please note that some of the figures in the tables in this chapter may not reconcile to totals due to rounding.

**Table 7: ASIC's market supervision cost recovery budget by key processes**

Key process	Key sub processes, activities and outputs	2015-16
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<sup>25</sup> based on a sample size larger than twenty that includes market supervision and similar staff in ASIC's Markets cluster; includes estimated salary step increases and other direct employment costs e.g. superannuation, leave entitlements, etc

<sup>26</sup> indirect staff are in 'Shared Services'; all other staff are considered direct

		\$m	%
<b>Market Supervision</b> (incl. real-time surveillance) <sup>(a)</sup>	<ul style="list-style-type: none"> <li>Supervision of trading activities on domestic licensed financial markets</li> <li>Undertaking real-time market surveillance and post-trade analysis to detect market misconduct (including breaches of MIRs and the Corporations Act on domestic licensed financial markets)</li> <li>Undertaking whole-of-market monitoring</li> <li>Managing the increase in market activity and complexity arising from the entry of Chi-X and the move to a multi-market environment, including the ongoing costs of the upgraded ASIC MSS (for next generation whole-of-market surveillance and supervision)</li> </ul>	6.95	34.3%
<b>Participant Supervision</b>	<ul style="list-style-type: none"> <li>Building effective regulatory relationships with market participants, including understanding participant business models</li> <li>Undertaking surveillances and targeted themed compliance reviews on market participants, including referrals from ASIC Case Management</li> <li>Undertaking Risk Based Surveillance of market participants</li> </ul>	2.42	11.9%

Table continues on next page...

Table 7: ASIC's market supervision cost recovery budget by key processes, Continued

Key process	Key sub processes, activities and outputs	2015-16	
		\$m	%
<b>Participant Supervision</b> , <i>Continued</i>	<ul style="list-style-type: none"> <li>Implementing and monitoring required remediation for participants and their representatives</li> <li>Assessing, recording and managing applications, notifications, certifications and waivers for market participants under the MIRs</li> <li>Monitoring compliance with MIRs (e.g. best execution)</li> <li>Monitoring possible new forms of market misconduct arising from the introduction of competition</li> <li>Monitoring participant compliance with ongoing capital requirements</li> </ul>	2.42	11.9%
<b>Regulatory Framework (MIRs) and Market Structure and Analysis</b>	<ul style="list-style-type: none"> <li>Developing and implementing ASIC's MIRs, including FRLI registration</li> <li>Harmonizing MIRs across markets</li> <li>Undertaking ongoing review and analysis of the market micro and macro structure and the regulatory framework to respond to new issues and market developments</li> <li>Consulting with stakeholders and creating new MIRs to deal with the changing market environment</li> </ul>	1.18	5.8%
<b>Investigations and Enforcement</b>	<ul style="list-style-type: none"> <li>Conducting advanced surveillances, investigation and enforcement based on referrals relating to breaches of MIRs and the Corporations Act from the Market Supervision team, including: <ul style="list-style-type: none"> <li>preparing and serving draft and final Statement of Reasons to market participants</li> <li>negotiating appropriate outcomes with market participants for prompt settlement of matters, including infringement notices and/or enforceable undertakings</li> <li>appearing before the MDP as required</li> </ul> </li> <li>Investigating and taking enforcement actions against new forms of market misconduct arising from competition</li> <li>Preparing briefs for delegates, DPP</li> </ul>	2.18	10.7%
<b>Markets Disciplinary Panel (MDP)</b>	<ul style="list-style-type: none"> <li>The MDP functions as an independent peer review body. Its members largely comprise people who currently hold senior roles in the markets</li> <li>The MDP is responsible for: <ul style="list-style-type: none"> <li>hearing and determining alleged breaches of the ASIC MIRs</li> <li>exercising ASIC's powers to issue infringement notices and accept enforceable undertakings relating to breaches of the MIRs</li> <li>making its decisions, as far as practicable, independently of ASIC</li> </ul> </li> </ul>	0.92	4.5%

<b>IT</b> <sup>(b) (c)</sup>	<ul style="list-style-type: none"> <li>• Cost to implement remaining EMS deliverables such as improved register and portals and advanced analytics and ongoing costs of the EMS deliverables for 2015-16</li> <li>• Developing tools to keep pace with market developments</li> <li>• Flexible new market MSS connectivity</li> <li>• Project management and governance for EMS IT project delivery</li> <li>• IT overheads</li> </ul>	5.68	28.0%
<b>ASIC Shared Services</b>	<ul style="list-style-type: none"> <li>• Indirect costs, including Finance overheads and other shared services charges (but not IT overheads)</li> </ul>	0.94	4.7%
<b>Total</b> <sup>(d)</sup>		<b>20.26</b>	<b>100%</b>

<sup>(a)</sup> the IT costs relate to the operating lease expenses for the ASIC MSS. The lease payments include monthly fees for physical hosting, gateways, and ongoing maintenance.

<sup>(b)</sup> this includes some of ASIC's EMS implementation costs prior to 1 July 2013, some (but not all – see <sup>(c)</sup> below) expected EMS implementation costs over 2015-16 and all cash-equity market related ongoing IT management costs, with the exception of the ongoing costs for the ASIC MSS that are included under "Market Supervision (incl. real-time surveillance)".

<sup>(c)</sup> no MECS costs are to be cost recovered during 2015-16 as the scope of MECS has changed to include stakeholders other than market participants. ASIC will consult on MECS cost recovery during 2015-16.

<sup>(d)</sup> totals shown are not the exact sum of the component parts (due to rounding)

Table 8 provides a breakdown of ASIC's market supervision key process costs by type of cost. Table 9 then summarises of ASIC's market supervision costs to be recovered from each market segment.

**Table 8: ASIC's market supervision cost recovery budget by key process and type of cost**

Key process	Type of cost	2015-16	
		\$m	%
<b>Market Supervision</b> <i>(incl. real-time market surveillance)</i>	Employees	3.63	17.9%
	Goods and suppliers	0.38	1.9%
	Ongoing MSS related IT costs	2.95	14.6%
	<b>Total</b>	<b>6.95</b>	<b>34.3%</b>
<b>Participant Supervision</b>	Employees	2.24	11.1%
	Goods and suppliers	0.17	0.9%
	<b>Total</b>	<b>2.42</b>	<b>11.9%</b>
<b>Regulatory Framework (MIRs) and Market Structure and Analysis</b>	Employees	1.04	5.2%
	Goods and suppliers	0.13	0.7%
	<b>Total</b>	<b>1.18</b>	<b>5.8%</b>
<b>Investigations and Enforcement</b>	Employees	1.80	8.9%
	Goods and suppliers	0.38	1.9%
	<b>Total</b>	<b>2.18</b>	<b>10.7%</b>
<b>Markets Disciplinary Panel (MDP)</b>	Employees	0.62	3.1%
	Goods and suppliers	0.30	1.5%
	<b>Total</b>	<b>0.92</b>	<b>4.5%</b>
<b>IT</b>	Ongoing IT management costs	3.85	19.0%
	Deferred implementation costs (EMS)	1.83	9.0%
	<b>Total</b>	<b>5.68</b>	<b>28.0%</b>
<b>ASIC Shared Services</b>	Indirect costs	0.94	4.7%
	<b>Total</b>	<b>0.94</b>	<b>4.7%</b>
<b>Total</b> <sup>(a)</sup>		<b>20.26</b>	<b>100.0%</b>

<sup>(a)</sup> totals shown are not the exact sum of the component parts (due to rounding)

**Table 9: ASIC's market supervision cost recovery budget by market segment**



Market segment	2015-16 \$m
Cash equity markets (for ASX listed securities) i.e. ASX, Chi-X and their participants	18.61
The ASX24 futures market	1.29
The FEX Derivatives Market operated by FEX Global Pty Ltd	0.21
Small Financial Markets i.e. NSX; SIM; IMB; and APX	0.15
<b>Total</b>	<b>20.26</b>

### 3.3 Design of cost recovery charges

ASIC's market supervision costs will be recovered through charges on:

- the operators of domestic licensed financial markets that are in operation (or authorised to be in operation) during 1 July 2015 to 30 June 2016; and
- the market participants of domestic licensed financial markets within the cash equity market segment.

In addition, the Government seeks to secure approved contributions from the FIDA fund (discussed in the section immediately below) to offset some of the cost of ASIC market supervision that would otherwise need to be borne by cash equity market participants.

The cost recovery arrangements for each stakeholder segment are discussed in more detail in sections 3.3.1 to 3.3.4 below.

#### 3.3.1 Cash Equity Markets (for ASX listed securities)

ASX and Chi-X are the only two markets that are currently expected to be operating within this segment during the financial year 2015-16.

In 2015-16, the portion of ASIC's cost recovery budget that applies to the cash equity markets (for ASX listed securities), including part of the deferred costs associated with implementing the EMS programme, is \$18.61 million.

In line with the cost recovery rationale that costs should be recovered from those entities that have created the need for government activity such as regulation, \$18.61 million will be recovered from both market operators and market participants; this will also ensure that the burden of cost recovery is borne equitably across the industry. The method for recovering \$18.61 million is discussed in more detail below.

##### 3.3.1.1 Allocation of market supervision costs between market operators and market participants

In 2015-16 cash equity market supervision costs of \$18.61 million will be allocated between market operators and market participants by reference to key ASIC market supervision business processes as follows:

- Costs that are identified as relating to the regulation of market participant activities will be allocated to market participants only (i.e. Participant Supervision, Markets Disciplinary Panel, and Investigations and Enforcement functions).
- Costs that are identified as relating to the regulation of activities of both market operators and market participants will be allocated to both groups based on a proxy that



reflects each group's share of overall industry revenue (as per an update to Table 10 below). These include the ongoing costs for the Market Supervision, the Regulatory Framework, and Market Structure and Analysis functions.

The detail provided in columns two and three of Table 10 below was prepared when determining the market supervision fees that applied during 1 July 2013 to 30 June 2015 and it shows that the proxy split used at that time was 12.8% to market operators and 87.2% to market participants.

In determining the market supervision fees to apply in 2015-16, ASIC has followed the same method as used to determine the fees to apply during 1 July 2013 to 30 June 2015, however ASIC has used more recent data including twelve rather than three months (1 January – 31 December 2014<sup>27</sup>). The updated proxy figures using this data vary little to those used previously, being 12.7% to market operators and 87.3% to market participants. However, for the first time cash equity market revenue information from Chi-X is included in the proxy calculations. As this information is not generally available, ASIC is publishing the proxy outcome only using figures for 1 January – 31 December 2014 (see column 5 of Table 10).

**Table 10: Allocation of shared ongoing costs between market operators and market participants based on their share of cash equity market revenue**

	1 Jan – 31 Mar 2012 ( ) <i>(used to calculate fees applying from 1 July 2013 to 30 June 2015)</i>			CY2014 <i>(used to calculate fees applying in 2015-16)</i>	
Group	\$m	%	Comment	%	Comment
<b>Market operators</b>	57.4	12.8%	This includes cash market revenue, a proportion of information services (cash market) revenue, and market connectivity (cash market) revenue <sup>(a),(b)</sup> . Other cash market related revenue has been included in the calculation of market operators' total revenue to ensure that it is an appropriate comparable to the revenue figure being used for market participants (i.e. given that it includes other revenue streams in addition to trade execution fees).	12.7%	As per the fee period 1 July 2013 – 30 June 2015, with one small change to attribution of ASX technical services revenue. Attributable Chi-X revenue included for the first time.
<b>Market participants</b>	392.4	87.2%	This includes cash market product brokerage only – cash equities, debt and warrants	87.3%	
<b>Total</b>	<b>449.8</b>	<b>100%</b>		<b>100%</b>	

<sup>(a)</sup> ASX has not publicly provided figures regarding the attribution of information and technical services revenue for the cash market c.f. other ASX markets in recent times. ASIC has applied the adjustment used to calculate the fees that applied from 1 June 2013 to 30 June 2015 to determine 'comparable' ASX revenue to brokerage in respect of cash equities, warrants and debt securities in ASIC's analysis. The adjustment is based on information in ASX's 2011 Half Year Report (period ending 31 Dec 2010) on page 16 that states: 'In the first half of 2011, approximately 84% of

<sup>27</sup> 84% of ASX's technical services revenue was applied to the cash market (a simplification c.f. the approach for that ASX revenue line in the previous calculations to determine the fees applying 1 July 2013 – 30 June 2015)

information services revenue related to cash market and equity option data'. In the case of technical services, ASIC has attributed all the recent growth in technical services revenue to cash market revenue.

<sup>(b)</sup> 84% of ASX's market connectivity revenue was applied to the cash market — this is consistent with the proportional split applied to the information services revenue used to calculate the fees that applied from 1 July 2013 to 30 June 2015

- Costs associated with implementing the EMS programme will be allocated between market operators and market participants in equal proportion (i.e. 50%:50%). For example, costs associated with implementing the new MSS have been allocated between market operators and market participants in equal proportion (i.e. 50%:50%). The cost of implementing new and improved registers and portals (now known as MECS) was to be an exception to this and was to be allocated 100% to market participants. However, no MECS costs are to be cost recovered during 2015-16 as the scope of MECS has changed to include stakeholders other than market participants. ASIC will consult on MECS cost recovery during 2015-16.

Using calendar year 2014 results as per column 5 of Table 10, namely 12.7% to market operators for shared ongoing costs (87.3% to market participants), the overall result of the functional cost allocation approach outlined above is that market operators will pay just under 13% of the cash equity market supervision costs whilst market participants will pay just over 87% (see Table 11 and Table 12 below).

**Table 11: Cash equity market supervision costs – Overall allocation between operators and participants**

Group	2015-16	
	\$m	%
Market operators	2.35	12.6%
Market participants	16.27	87.4%
<b>Total<sup>(a) (b)</sup></b>	<b>18.61</b>	<b>100.0%</b>

<sup>(a)</sup> this is net of the costs attributed to the ASX24 market (\$1.29 million), FEX (\$0.21 million), small financial markets (\$0.15 million), and inclusive of minimum market participant supervision costs (\$0.61 million). These costs are described in turn in the remaining parts of this chapter of the CRIS

<sup>(b)</sup> total cost shown is not the exact sum of the component parts (due to rounding)

**Table 12: Cash equity market supervision costs by key process – allocation to each stakeholder group**

Key process	Cost allocation	% cost allocation	2015-16	
			\$m	%
Market Supervision (incl. real-time surveillance) <sup>(a)</sup>	Market operators	12.7%	0.53	2.9%
	Market participants	87.3%	3.66	19.6%
	<b>Total</b>	<b>100.0%</b>	<b>4.19</b>	<b>22.5%</b>
Participant Supervision	Market operators	0.0%	0.00	0.0%
	Market participants	100.0%	2.42	13.0%
	<b>Total</b>	<b>100.0%</b>	<b>2.42</b>	<b>13.0%</b>
Regulatory Framework (MIRs) and Market Structure and Analysis	Market operators	12.7%	0.15	0.8%
	Market participants	87.3%	1.03	5.5%
	<b>Total</b>	<b>100.0%</b>	<b>1.18</b>	<b>6.3%</b>
Investigations and Enforcement	Market operators	0.0%	0.00	0.0%
	Market participants	100.0%	2.18	11.7%
	<b>Total</b>	<b>100.0%</b>	<b>2.18</b>	<b>11.7%</b>
Markets Disciplinary Panel (MDP)	Market operators	0.0%	0.00	0.0%
	Market participants	100.0%	0.92	4.9%

Key process	Cost allocation	% cost allocation	2015-16	
			\$m	%
	<b>Total</b>	<b>100.0%</b>	<b>0.92</b>	<b>4.9%</b>
IT <sup>(b)(c)</sup>	Market operators	22.6% <sup>(d)</sup>	1.56	8.4%
	Market participants	77.4% <sup>(d)</sup>	5.34	28.7%
	<b>Total</b>	<b>100.0%</b>	<b>6.90</b>	<b>37.1%</b>
ASIC Shared Services	Market operators	12.7%	0.11	0.6%
	Market participants	87.3%	0.73	3.9%
	<b>Total</b>	<b>100.0%</b>	<b>0.84</b>	<b>4.5%</b>
<b>Total Market Operators</b>		<b>12.6%</b>	<b>2.35</b>	<b>12.6%</b>
<b>Total Market Participants</b>		<b>87.4%</b>	<b>16.27</b>	<b>87.4%</b>
<b>Total<sup>(e)</sup></b>		<b>100.0%</b>	<b>18.61</b>	<b>100.0%</b>

<sup>(a)</sup> this includes the ongoing IT costs for the ASIC MSS.

<sup>(b)</sup> this includes ASIC's deferred IT implementation costs for EMS, some (but not all – see <sup>(c)</sup> below) EMS implementation costs to be recovered over 2015-16 and all cash-equity market related ongoing IT management costs, with the exception of the ongoing costs for the ASIC MSS included under "Market Supervision (incl. real-time surveillance)"

<sup>(c)</sup> no MECS costs are to be cost recovered during 2015-16 as the scope of MECS has changed to include stakeholders other than market participants. ASIC will consult on MECS cost recovery during 2015-16.

<sup>(d)</sup> the percentages reflect the effect of allocating the ongoing IT costs (excluding ongoing MSS costs) using the revenue proxy i.e. 12.7%:87.3% split between operators and participants, and of allocating deferred EMS implementation costs in equal proportion between market operators and market participants

<sup>(e)</sup> totals shown are not the exact sum of the component parts (due to rounding)

### 3.3.1.2 Allocation of market supervision cost recovery budget to each cash equity market operator and participant

Analysis performed to determine the fees to apply in 2013-14 and 2014-15 found that approximately 10% of ASIC's people-based supervisory costs were attributable to managing surveillance alerts relating to messaging activity.

ASIC believes the growth in algorithmic trading is the main reason driving this change. In dealing with this change, ASIC re-allocated resources and created a team that specifically deals with the supervision of market participants' algorithms to better manage this aspect of market risk. Aspects of investigation and enforcement activity now take much longer than they once did due to order proliferation creating excessive 'noise' around the market activity ASIC is studying. ASIC now undertakes more policy work specifically relating to algorithmic trading and the impact of order proliferation on the Australian market and this trend is expected to continue.

To reflect these market supervision cost drivers, ASIC will recover 10% of ASIC's cash equity:

- market supervision staff costs<sup>28</sup>, and
- non-IT goods and supplier costs

by levying fees according to message counts, with the balance of the two amounts above (90%) recovered from fees on transactions<sup>29</sup>.

ASIC's non-IT and IT cash equity market supervision costs will be proportionally allocated to each market operator and each market participant as follows (also refer to Table 13 below):

<sup>28</sup> i.e. excluding staff allocated to supervising non-cash equity markets (ASX24, FEX and small financial markets)

<sup>29</sup> this is the same method used to determine the fees that applied in 2013-14 and 2014-15

o **90% of non-IT costs proportionally allocated using transaction count**<sup>30</sup>

As the number of transactions is the primary driver of ASIC's non-IT cash equity market supervision costs, these costs will be proportionally allocated to each market operator and market participant based on the operator's or participant's share of the total number of transactions in ASX listed securities (as recognised by ASIC's MSS) during each quarter.

90% of all non-IT costs to be recovered from market operators and market participants in 2015-16 are \$0.51 million and \$8.50 million respectively (refer to Table 14b; Table 14a shows the figures before the 90% adjustment).

o **100% of IT costs and 10% of non-IT costs proportionally allocated using message count**<sup>31</sup>

The number of messages, which is the primary driver of ASIC's IT cash equity market supervision costs, will be used as the basis for allocating ASIC's IT costs and 10% of ASIC's non-IT costs. Specifically, these costs will be proportionally allocated to each market operator and each market participant based on the operator's or participant's share of the overall number of messages for ASX listed securities (as recognised by the ASIC MSS) during each quarter.

**Table 13: Key drivers of ASIC's cash equity market supervision costs**

Core function	Cost drivers
<b>Market Supervision</b>	90% of non-IT costs: Number of transactions IT costs & 10% of non-IT costs: Number of messages (transactions and messages)
<b>Participant Supervision</b>	Of the cost of resources expended: <ul style="list-style-type: none"> <li>• 90% impacted by number of transactions; and</li> <li>• 10% impacted by number of messages</li> </ul>
<b>Investigations and Enforcement</b>	Number of cases reviewed (triggered by transactions and messages using the same proportion as above of 90%:10% transactions:messages)
<b>Markets Disciplinary Panel</b>	Number of cases reviewed (triggered by transactions and messages using the same proportion as above of 90%:10% transactions:messages)
<b>Other</b>	To be allocated by transactions and messages using the same proportion as above of 90%:10% transactions:messages

**Table 14a: Cash equity market cost recovery budget (no % allocation adjustments)**

	Cost allocation	2015-16	
		\$	%
<b>Non-IT costs in cost recovery budget</b>	Market operators	0.57	3.1%
	Market participants	9.44	50.7%

<sup>30</sup> transactions include all transactions that are executed on or reported under the operating rules of the cash equity markets that, after all processing or conversion necessary, are recognised by ASIC's MSS as executed transactions

<sup>31</sup> messages include trade, order entry, order amend (price and/or volume), and order deletion/cancellation messages that, after all processing or conversion necessary, are recognised by ASIC's MSS as orders or executed transactions. Some processing and conversion may be necessary in ASIC's MSS because some IT systems generate more than one message for a single order or executed transaction

	Cost allocation	2015-16	
		\$	%
	<b>Total</b>	<b>10.01</b>	<b>53.8%</b>
IT costs <sup>(a)</sup> in cost recovery budget	Market operators	1.77	9.5%
	Market participants	6.82	36.7%
	<b>Total</b>	<b>8.60</b>	<b>46.2%</b>
<b>Total Market Operators<sup>(b)</sup></b>		<b>2.35</b>	<b>12.6%</b>
<b>Total Market Participants<sup>(b)</sup></b>		<b>16.27</b>	<b>87.4%</b>
<b>Total<sup>(b)</sup></b>		<b>18.61</b>	<b>100.0%</b>

<sup>(a)</sup> this reflects all of ASIC's cash equity market IT costs (i.e. it includes deferred IT implementation costs of EMS, ongoing IT management costs, and the ongoing costs of ASIC'S MSS)

<sup>(b)</sup> total cost shown is not the exact sum of the component parts (due to rounding)

The costs to be recovered from market operators and market participants using a message count-based allocation in 2015-16 are \$1.83 million and \$7.77 million respectively (refer to Table 14b on the next page; Table 14a above shows the figures before the addition of 10% non-IT costs to the message based allocation pool and the corresponding reduction of the costs in the trade allocation pool).

Table 14c below shows the impact of the planned FIDA cost recovery offset of \$1.465 million in 2015-16 for cash equity market participants. The costs to be recovered from market participants using the transaction count-based fees reduce to \$7.73 million. For the message count-based fees this cost reduces to \$7.07 million.

The main advantage of the proportional cost allocation method based on the level of activity, rather than a fixed fee per transaction and message method, is that it will not result in an over- or under- recovery of ASIC's market supervision costs. The use of an activity-based approach is intended to provide a linkage between the quantum charged and the resources consumed in supervising operators and participants.

**Table 14b: Cash equity market cost recovery budget incl. non-IT and IT cost % allocation adjustments**

	Cost allocation	2015-16	
		\$	%
<b>Allocated based on market share of transaction counts</b> <i>(90% of non-IT costs in cost recovery budget)</i>	Market operators	0.51	2.8%
	Market participants	8.50	45.7%
	<b>Total</b>	<b>9.01</b>	<b>48.4%</b>
<b>Allocated based on market share of message counts</b> <i>(100% of IT costs and 10% of non-IT costs in cost recovery budget)</i>	Market operators	1.83	9.8%
	Market participants	7.77	41.7%
	<b>Total</b>	<b>9.60</b>	<b>51.6%</b>
<b>Total Market Operators<sup>(a)</sup></b>		<b>2.35</b>	<b>12.6%</b>
<b>Total Market Participants<sup>(a)</sup></b>		<b>16.27</b>	<b>87.4%</b>
<b>Total<sup>(a)</sup></b>		<b>18.61</b>	<b>100.0%</b>

<sup>(a)</sup> totals shown are not the exact sum of the component parts (due to rounding)

**Table 14c: Cash equity market cost recovery budget incl. (1) non-IT and IT cost % allocation adjustments and (2) FIDA offset**

	Cost allocation	2015-16	
		\$	%

	Cost allocation	2015-16	
		\$	%
<b>Allocated based on market share of transaction counts</b> <i>(90% of non-IT costs in cost recovery budget)</i>	Market operators	0.51	3.0%
	Market participants <sup>32,33</sup>	7.73	45.1%
	<b>Total</b>	<b>8.25</b>	<b>48.1%</b>
<b>Allocated based on market share of message counts</b> <i>(100% of IT costs and 10% of non-IT costs in cost recovery budget)</i>	Market operators	1.83	10.7%
	Market participants <sup>32,33</sup>	7.07	41.2%
	<b>Total</b>	<b>8.90</b>	<b>51.9%</b>
<b>Total Market Operators<sup>(a)</sup></b>		<b>2.35</b>	<b>13.7%</b>
<b>Total Market Participants<sup>(a)</sup></b>		<b>14.80</b>	<b>86.3%</b>
<b>Total<sup>(a)</sup></b>		<b>17.15</b>	<b>100.0%</b>

<sup>(a)</sup> total cost shown is not the exact sum of the component parts (due to rounding)

### 3.3.1.3 Fixed fee for cash equity market participants

ASIC's Market & Participant Supervision team allocates twenty of its staff to conducting compliance reviews of direct and indirect market participants. The aim is for these staff to spend half their time on non-issue specific, general reviews of participants and the other half on more in-depth follow-up reviews and remediation activities.

This general supervision aims to conduct on-site compliance reviews and risk-based surveillance with every participant at least once every three and a half years, process applications, notifications and waivers and perform regular reviews of participants' risk-based capital. The effort spent by ASIC on such supervision is relatively constant and does not depend on the level of transaction and messaging activity of trading market participants.

Allocation of relevant supervisory costs based on the level of trading and order messaging activity of participants results in highly variable individual charges for what is essentially the same level of supervision received by all participants as a group from year to year. In such circumstances, a fixed fee approach is considered to be a more equitable and administratively efficient method for recovering supervision costs from participants.

The fixed fee will be \$1,905 per quarter per each market participant (trading and non-trading market participants) based on the following calculations (all figures are rounded to the nearest hundred dollars):

- Average staff cost p.a. of \$145,000
- 60 per cent of the salaries and wages of this team are subject to cost recovery (with the remainder Budget funded because the rest of their time is spent on ASIC's market supervision activities that are not subject to cost recovery); and
- 70 per cent of the reviews are conducted on direct market participants, with a current regulated population of c. 80 — 90 trading and non-trading market participants.

<sup>32</sup> figure reflects that the planned FIDA contribution of \$1.465 million is received during 2015-16. The \$1.465 million has been apportioned over the trade and message count cost pools applying to market participants in the ratio 8.50: 7.77 (approximately 1:1.09407) in line with the figures for market participants in Table 14b

<sup>33</sup> net of FIDA contribution



The workings are as follows:

$$\begin{aligned} \frac{\$145,000 \times 20 \times 50\% \times 60\% \times 70\%}{80} &= \$7,612.50 \text{ p.a.} \\ &= \$1,903.13 \text{ per quarter} \\ &= \$1,905 \text{ per quarter (rounded to the nearest \$5)} \end{aligned}$$

This fee will be collected quarterly in arrears for every trading and non-trading cash equity market participant<sup>34</sup>. No goods and supplier or overhead costs are recovered in this fee; rather, recovery of these costs is incorporated into other participant supervision costs that get rolled into the variable, activity-based fees imposed on trading market participants. Assuming 80 trading and non-trading market participants are subject to the charge, the expected revenue from this fee in 2015-16 is \$0.61m.

The fixed fee will be payable regardless of the level of trading and messaging activity of the market participant, i.e. even if no activity has occurred during the quarter, the fixed fee will be charged.

#### 3.3.1.4 Variable fees for cash equity market participants

Table 14d below shows how the minimum participant supervision fee impacts the variable fees to be charged to cash equity market participants (total impact of \$0.61<sup>35</sup> million during 2015-16). The amount to be recovered from market participants using trade count-based fees reduces to \$7.19 million, and for message count-based fees the amount reduces to \$7.01 million. The overall cost recovered through variable fees with respect to the cash equity market reduces by \$0.61 million from \$17.15 million to \$16.54 million.

**Table 14d: Cash equity market cost recovery budget incl. (1) non-IT and IT cost % allocation adjustments; (2) FIDA offset and (3) net of minimum participant supervision fees**

	Cost allocation	2015-16	
		\$	%
<b>Allocated based on market share of transaction counts</b> <i>(90% of non-IT costs in cost recovery budget)</i>	Market operators	0.51	3.1%
	Market participants <sup>32,33</sup>	7.19	43.4%
	<b>Total</b>	<b>7.70</b>	<b>46.6%</b>
<b>Allocated based on market share of message counts</b> <i>(100% of IT costs and 10% of non-IT costs in cost recovery budget)</i>	Market operators	1.83	11.1%
	Market participants <sup>32,33</sup>	7.01	42.4%
	<b>Total</b>	<b>8.84</b>	<b>53.4%</b>
<b>Total Market Operators<sup>(a)</sup></b>		<b>2.35</b>	<b>14.2%</b>
<b>Total Market Participants<sup>(a)</sup></b>		<b>14.19</b>	<b>85.8%</b>
<b>Total<sup>(a)</sup></b>		<b>16.54</b>	<b>100.0%</b>

<sup>(a)</sup> total cost shown is not the exact sum of the component parts (due to rounding)

<sup>34</sup> in the case of trading market participants, this fee will be split across each such participants' active Trading PIDs in that quarter (trading PIDs are unique identifiers that tag a trading market participant's identity to every trade side and order on a market)

<sup>35</sup> the reductions to the amounts applying to market participants due to revenue from the minimum participant supervision fees have been applied in the ratio 90:10 to the amount allocated based on market share of transaction counts: amounts allocated based on market share of message counts

### 3.3.1.5 Variable fees for cash equity market operators

The quarterly charges that will apply to each cash equity market operator are outlined below. The charges are to be collected quarterly in arrears.

The formula for calculating the activity-based quarterly fee to be paid by each market operator in 2015-16 is as follows:

Operator A's overall quarterly fee	=	Fee based on Operator A's share of 90% of ASIC's total market operator related non-IT costs	=	\$0.51 m ÷ 4 quarters <sup>36</sup>	×	No. of transactions executed on or reported under the operating rules of the financial market operated by Operator A during the quarter (as recognised by the ASIC MSS) ÷ Total no. of transactions executed on or reported under the operating rules of all cash equity markets during the quarter (as recognised by the ASIC MSS)
	+	Fee based on Operator A's share of ASIC's total market operator related IT costs + share of 10% of ASIC's total market operator related non-IT costs	=	\$1.83 m ÷ 4 quarters	×	No. of messages from the financial market operated by Operator A during the quarter (that are recognised by the ASIC MSS as orders or executed transactions) ÷ Total no. of messages from all cash equity markets during the quarter (that are recognised by the ASIC MSS as orders or executed transactions)

*Continued on next page...*

<sup>36</sup> quarterly figure rounded to nearest \$1,000



### 3.3.1.6 Charges applying to market participants – net of FIDA contribution

Market participants will also pay quarterly charges based on their transaction and message activity during each quarter, plus a fixed fee for minimum participant supervision. The formula for calculating the charges to be paid by each market participant in 2015-16 is as follows:

Amount of Participant A's quarterly fee	=	Fee based on Participant A's share of 90% of ASIC's total market operator related non-IT costs	=	\$7.19 m ÷ 4 quarters	×	No. of transactions executed on or reported to the cash equity markets by Participant A during the quarter (as recognised by the ASIC MSS) ÷ Total no. of transactions executed on or reported to the cash equity markets by all participants during the quarter (as recognised by the ASIC MSS)
		+ Fee on Participant A's share of ASIC's total market operator related IT costs + share of 10% of ASIC's total market operator related non-IT costs	=	\$7.01 m ÷ 4 quarters <sup>36</sup>	×	No. of messages by Participant A in the cash equity markets during the quarter (as recognised by the ASIC MSS) ÷ Total no. of messages by all participants in the cash equity markets during the quarter (as recognised by the ASIC MSS)
		+ Fixed fee for minimum participant supervision	=	\$1,905		See section 'Fixed fee for cash equity market participants' on page 26

The figures above reflect that the planned FIDA contribution of \$1.465 million during 2015-16 is received and reduces charges on cash equity market participants. The charges are to be calculated on a quarterly basis and collected quarterly in arrears.

### 3.3.1.7 Charges applying to market participants assuming no FIDA contribution

The figures below are calculated on the same basis as those in section 3.3.1.6 above, however they do not include the planned FIDA contribution of \$1.465 million during 2015-16 to offset cash equity market participants' variable market supervision fees.

Amount of Participant A's quarterly fee	=	Fee based on Participant A's share of 90% of ASIC's total market operator related non-IT costs	=	\$7.95 m ÷ 4 quarters	×	No. of transactions executed on or reported to the cash equity markets by Participant A during the quarter (as recognised by the ASIC MSS) ÷ Total no. of transactions executed on or reported to the cash equity markets by all participants during the quarter (as recognised by the ASIC MSS)
		+ Fee on Participant A's share of ASIC's total market operator related IT costs + share of 10% of ASIC's total market operator related non-IT costs	=	\$7.71 m ÷ 4 quarters	×	No. of messages by Participant A in the cash equity markets during the quarter (as recognised by the ASIC MSS) ÷ Total no. of messages by all participants in the cash equity markets during the quarter (as recognised by the ASIC MSS)
		+ Fixed fee for minimum participant supervision	=	\$1,905		See section 'Fixed fee for cash equity market participants' on page 26

participant supervision

participants' on page 26

### 3.3.2 The ASX24 futures market

ASX24 is currently supervised by ASIC on a post-trade basis. ASIC receives ASX24-specific reports every day that are automatically uploaded into ASIC's MSS.

The current cost recovery arrangement for the ASX24 market involves the imposition of a fixed quarterly fee on the market operator only; participants of futures markets do not pay a direct fee to ASIC under this arrangement.

ASIC's supervisory effort for the ASX24 market is approximately equal to the cost of seven full-time employees. For 2015-16, ASIC's total supervisory cost for the ASX24 market is approximately \$1.29 million, based on seven full time employees and a share of budgeted 2015-16 goods and supplier and shared services costs. No allowance is made for ASX24-related MSS system changes in 2015-16 as none are scheduled to occur.

The fixed quarterly fee for the ASX24 market in 2015-16 is \$323,405<sup>37</sup> per quarter. This fee is to be collected quarterly in arrears.

**Table 15: Total cost of ASX24 market supervision**

Type of cost	Cost
Seven ASIC staff members specialising in ASX24 market supervision (including on-costs) <sup>38</sup> p.a.	\$1,015,000
Goods and Suppliers costs (pro-rated share based on seven staff) p.a.	\$146,694
ASIC shared services costs (pro-rated share based on seven staff) p.a.	\$131,920
<b>Total cost 2015-16</b>	<b>\$1,293,614</b>

### 3.3.3 FEX Global Pty Ltd

Consistent with the cost recovery arrangements currently in place for the ASX24 futures market, FEX Global Pty Ltd (FEX) will be supervised by ASIC on a post-trade basis for in 2015-16 (i.e. no real-time surveillance on ASIC's MSS). ASIC's annual supervisory effort for the FEX market is estimated at \$205,000 (see Table 16 below) and includes the cost of one new employee who will be directly engaged in the FEX market supervision and travel costs for two ASIC employees to undertake four compliance reviews on FEX overseas participants. This figure was determined assuming FEX commences operations on 1 July 2015, though the date FEX will commence operating is not yet known.

Although the travel costs for both ASIC employees will be included in the cost recovery charge, all other costs of the second ASIC employee will be Budget funded and not recovered from the FEX market. Other than the travel costs specified below, ASIC will not allocate a pro-rated share of goods and supplier and overhead costs to FEX during 2015-16, as this market is new and ASIC will need to assess the actual effort required in its

<sup>37</sup> quarterly figure rounded to the nearest \$5

<sup>38</sup> see average staff cost assumption on page 16

supervision. The appropriateness of this charging approach will be reviewed prior to preparing the next Fees Regulations.

Table 16 below shows that the fixed quarterly fee for the FEX market in 2015-16 is \$51,250<sup>39</sup> per quarter. This fee is to be collected quarterly in arrears.

**Table 16: Total cost of FEX market supervision**

Type of cost	Cost	Rationale for ASIC incurring this cost
One new ASIC staff member specialising in FEX market supervision (including on-costs) <sup>40</sup> p.a.	<b>\$145,000</b>	The FEX market will commence trading with unique and highly differentiated contracts based on underlying asset classes that require ASIC to acquire new skills, expertise and knowledge. A new, dedicated ASIC FEX resource is required during 2015-16 and beyond. If supervising the FEX market requires more than one additional ASIC supervisory resource due to market activity on FEX exceeding current projections, this additional cost will not be passed on to FEX and will be Budget funded until 30 June 2016.
Travel costs for two employees to conduct four compliance reviews per annum on FEX's overseas participants	<b>\$60,000</b>	FEX's target participants are different entities than those currently supervised by ASIC with respect to trading on ASX, ASX24 and small financial markets, and they are expected to be predominantly located offshore. The salary cost of the one staff member travelling with the allocated FEX staff member will be Budget funded and will not be cost recovered from the FEX market.
<b>Total cost 2015-16</b>	<b>\$205,000</b>	

FEX market participants will not pay a direct fee to ASIC during 2015-16. The imposition of a fixed quarterly fee on the futures market operator (FEX) only is a cost recovery arrangement that currently applies to futures markets. Prior to the next Fees Regulations being finalised, Treasury and ASIC will consult with industry on the principles for the recovery of futures markets' (including FEX) supervision costs to ensure that fair and transparent cost recovery arrangements that appropriately reflect the complex nature of futures markets are implemented.

### 3.3.4 Small financial markets

The current cost recovery arrangement for the small financial markets (i.e. NSX, SIM, IMB and APX) will continue to apply. As ASIC does not currently undertake real-time market surveillance on the small financial markets, it is more appropriate to continue to recover ASIC's costs for supervising these markets based on the supervisory effort expended by ASIC in terms of full-time employees.

ASIC's total cost for supervising the small financial markets (and their direct participants<sup>41</sup>), is based on a supervisory effort required for the small financial markets equivalent to one full time employee. This is based on the risk profile and trading activity on the four markets

<sup>39</sup> rounded to the nearest \$5

<sup>40</sup> see average staff cost assumption on page 16

<sup>41</sup> e.g. ASIC processes applications, notifications, waivers, etc

that comprise the small financial markets segment.

Apart from employee costs, ASIC does not incur any other significant costs to supervise the four markets within this segment, and will not allocate a pro-rated share of goods and supplier and overhead costs to the small financial markets to the cost recovery charges during 2015-16. The appropriateness of this charging approach will be reviewed prior to preparing the next Fees Regulations.

The fixed quarterly fee for each small financial market is \$9,065<sup>42</sup> per quarter. These fees are to be collected quarterly in arrears. Participants of the four small financial markets will not pay a direct fee to ASIC in 2015-16.

### 3.3.5 Recovery of unforeseen costs occurring during 2015-16

This section of the CRIS outlines the approach ASIC will take regarding cost recovery of any future additional costs unforeseen at the time of preparing this CRIS that ASIC may need to incur in 2015-16 to enhance its market supervision/regulatory capabilities to keep pace with industry innovation, market structure changes, and market developments. It assumes that policy authority for ASIC to cost recover falls within the Government's existing policy approvals for cost recovery of ASIC's market supervision activities (see Table 4 on page 12).

Promoters of market innovations are encouraged to discuss such proposals with ASIC at the earliest possible opportunity so that ASIC can:

- advise as to the proposed structure of recovering such costs in the next Fees Regulations; and
- request quotes from both internal and external suppliers as to the likely quantum of the cost.

Wherever possible, ASIC's approach will be to directly charge the promoter of the market innovation for ASIC's additional costs relating to such a change(s). Such charges would commence from the time the next Fees Regulations are implemented. If a proposal does not fall within existing policy authority for cost recovery, a new authority will need to be sought from Government.

Any changes to policy approvals for cost recovery of ASIC's market supervision activities and / or significant ASIC's market supervision activities themselves will be reflected in an updated CRIS.

*Continued on next page...*

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<sup>42</sup> quarterly figure rounded to the nearest \$5

### 3.4 Summary of 2015-16 charging arrangements

This table below provides a summary of the total fees for each financial market segment for the financial year 2015-16.

**Table 17: Summary of ASIC's cost recovery charges 2015-16**

Market segment	Group	Charging method	Quarterly charges with FIDA contribution (without FIDA contribution)	Total with FIDA <sup>43</sup>	Total without FIDA <sup>44</sup>
<b>Cash equity markets (for ASX listed securities) i.e. ASX and Chi-X</b>	Market operators	Activity-based fees	\$587,000 per quarter (to be proportionally recovered from all operators)	<b>2.35</b>	<b>2.35</b>
	Market participants	Activity-based fees	\$3,548,000 (\$3,914,250) per quarter (to be proportionally recovered from all trading participants)	<b>14.19</b>	<b>15.66</b>
	Market participants	Fixed fee (for minimum participant supervision)	\$1,905 per quarter per cash equity market participant (trading and non-trading participants)	<b>0.61</b>	<b>0.61</b>
<b>ASX24</b>	Market operator	Fixed fee	\$323,405 per quarter	<b>1.29</b>	<b>1.29</b>
<b>FEX Global Pty Ltd</b>	Market operator	Fixed fee	\$51,250 per quarter	<b>0.21</b>	<b>0.21</b>
<b>Small Financial Markets i.e. NSX; SIM; IMB; and APX</b>	Market operators	Fixed fee	\$9,065 per quarter per small financial market	<b>0.15</b>	<b>0.15</b>
<b>FIDA contribution</b>	NGF	Fixed contribution	\$1,465,000 per annum for four years from 2013-14 to 2016-17 inclusive; 2015-16 payment recognised in this period	<b>1.47</b>	---
<b>Total 2015-16 \$m<sup>(a)</sup></b>				<b>20.26</b>	<b>20.26</b>

<sup>(a)</sup> total cost shown is not the exact sum of the component parts (due to rounding)

<sup>43</sup> figures net of planned \$1.465 million FIDA contribution in 2015-16

<sup>44</sup> figures do not include any FIDA contributions in 2015-16

## 4. RISK ASSESSMENT

ASIC considers the proposed 2015-16 ASIC market supervision cost recovery arrangements as medium to low risk as:

- ASIC market supervision cost recovery is not new. Since 1 January 2012 cash equity market operators and their participants have been charged quarterly in arrears, predominantly according to their market share of trade and message counts. They now generally understand and are accustomed to paying these fees and working with a Government entity conducting market supervision
- There is no change in the complexity or materiality of ASIC market supervision cost recovery:
  - the activities and outputs presented in this CRIS are unchanged save for the progressive implementation of the EMS programme of works;
  - the methods used to calculate fees and charges in this CRIS do not differ from those that applied during 1 July 2013 – 30 June 2015 and 1 January 2012 to 30 June 2013<sup>45</sup>. Whilst it initially took some time for billed entities to understand the methods when they were introduced, they are now generally well understood; and
  - in 2015-16 the cost recovery budget is 5.5% per annum lower than the 2013-14 and 2014-15 annualised cost recovery budgets.
- The key sensitivities listed below have all been mitigated by ASIC to the best of its ability, save for the issues involved in the Government's response to the Financial System Inquiry (FSI) that are outside ASIC's control:
  - Cash equity market participants may be sensitive to a fee change as the result of a FIDA contribution not being received. The payment of a FIDA contribution is subject to decisions by the Minister and the SEGC board. To ensure that cash equity market participants are fully aware of the implications of a FIDA contribution not being received, Tables 3 and 17 (on pages 11 and 33 respectively) and sections 3.3.1.6 '*Charges applying to market participants – net of FIDA contribution*' and '*Charges applying to market participants assuming no FIDA contribution*' (both sections are on page 29) clearly outline the fees they are to be charged in either case;
  - Market participants that are heavy users of automated trading technology are typically sensitive to the amounts to be recovered with respect to messaging activity<sup>46</sup>. In 2015-16 this will decrease by 3% (assumes the planned FIDA contribution is forthcoming);
  - Some stakeholders are disappointed that a full market supervision cost recovery methodology review was not able to occur in 2014-15. A full review of methodology was not undertaken in advance of the Government's response to the recommendation of the FSI regarding ASIC's funding model.

<sup>45</sup> the introduction of the fixed fee for cash equity market participants (see section 3.3.1.3 on page 24) has been the only methodology change since 1 January 2012. This fee was introduced on 1 July 2013

<sup>46</sup> several firms who do not trade in a message-intensive fashion actually appreciate this aspect of ASIC's cost recovery model

## 5. STAKEHOLDER ENGAGEMENT

### 5.1 Consultation with the Market Supervision Cost Recovery Stakeholder Panel (MSCRSP)

The key role of the MSCRSP has been previously outlined in section 1.5 on page 6 of this CRIS. Treasury and ASIC regularly meet with the MSCRSP to discuss their views on financial market supervision proposals and approaches for cost recovery.

Formal consultation with the MSCRSP commenced in early 2012, and follow-up meetings were held in May 2012, November 2012, January 2013, May 2013 and September 2014. In March 2015 Treasury informed MSCRSP members of the Government's decision to use the same method as applied to calculate fees during 1 July 2013 to 30 June 2015 would be used to determine fees and charges to apply in 2015-16.

The MSCRSP has requested a full review of the method used to cost recover ASIC Market Supervision as part of the Government's FSI-related review of ASIC's future funding requirements and possible funding models.

### 5.2 Current stakeholder consultation

This version of the CRIS has been prepared for stakeholder consultation. Feedback from stakeholders will be incorporated in the final version of the CRIS and will be summarised in this section.

## 6. FINANCIAL ESTIMATES

Table 18: Financial estimates

(\$000)	2015-16	2016-17	2017-18	2018-19
<b>Expenses = X</b>	\$19,617	\$17,692	\$18,096	\$18,127
<b>Revenue = Y</b>	\$20,256	\$22,878	\$21,413	\$21,413
<b>Balance = Y – X</b>	\$639	\$5,186	\$3,317	\$3,286
<b>Cumulative balance</b>	\$639	\$5,825	\$9,141	\$12,427
<b>Explain material variance and discuss balance management strategy</b>	As discussed in section 1.6 'EMS expenditure and EMS cost recovery do not match until 2020-21' on page 6, EMS expenditure in previous years has not been fully cost recovered. ASIC therefore plans to recover more revenue than has been expended from 1 July 2015 to 30 June 2020 to recover the high upfront costs of the early implementation years of the EMS measure.			



## 7. FINANCIAL PERFORMANCE

ASIC closely monitors the costs of undertaking its market supervision functions. To ensure accountability and transparency, ASIC accounts for the expenses relating to its market supervision functions separately by recording them under distinct cost centres that link to ASIC's market supervision budget measures and the ASIC teams incurring the cost (see Table 4 on page 12 for details of ASIC's sources of funds for market supervision that are subject to cost recovery).

Cost recovery revenue is reported in ASIC's Financial Statements<sup>47</sup>.

### 7.1 Summary of the prior two prior fee charging periods

**Table 19: Summary of the financial performance of the prior two prior fee charging periods**

(\$000)	1 Jan 2012 – 30 Jun 2013 (actual 18m)	1 Jul 2013 – 30 Jun 2015 (projected 24m)
<b>Expenses = X</b>	\$26,544 <sup>48</sup>	\$42,882
<b>Revenue = Y</b>	\$29,713	\$42,485 <sup>49</sup>
<b>Balance = Y – X</b>	\$3,168	-\$397
<b>Refunds</b>	-\$3,168	unknown at publication date
<b>Cumulative balance</b>	\$0	---

Historically ASIC has evaluated the financial performance of market supervision cost recovery at the conclusion of each fee charging period.

In line with the new CRIS template introduced on 1 July 2014, ASIC will update the financial performance figures in this CRIS annually after the conclusion of each financial year from 1 July 2015.

### 7.2 1 January 2012 – 30 June 2013: Actual expenditure by key processes

**Table 20: Cost recovery expenses 1 Jan 2012 – 30 Jun 2013 (18m) by key process**

(\$000)	CRIS 1 Jan 2012 – 30 Jun 2013 (actual 18m)
<b>Key processes</b>	
Real-time Market Surveillance / Supervision	\$7,444
Participant Supervision	\$4,900
Regulatory Framework (MIRs) & Market Structure Analysis	\$1,733
Investigations & Enforcement	\$2,251
Markets Disciplinary Panel (MDP)	\$941
IT Costs	\$2,885
Deferred Competition Implementation Costs: IT	\$2,495
Deferred Competition Implementation Costs: Non-IT	\$2,064
ASIC Shared Services Costs	\$1,832
<b>Total</b>	<b>\$26,544</b>

<sup>47</sup> see <http://asic.gov.au/about-asic/corporate-publications/asic-annual-reports/#ar14>

<sup>48</sup> this includes an allowance for some deferred market competition implementation costs incurred prior to 1 January 2012 that were planned to be recovered in the 18 month period 1 January 2012 – 30 June 2013

<sup>49</sup> The FEX market was expected to commence operations by 30 June 2015 but did not do so



### 7.3 1 January 2012 – 30 June 2013: Refunds issued in 2013-14

ASIC's cost recovery budget for market supervision over the fee charging period spanning 18 months from 1 January 2012 to 30 June 2013 (2012-13 fee charging period) was \$29.77 million. \$29.71 million was actually collected (\$22.81 million from cash equity market participants). During the 2012-13 fee charging period, cash equity Market Participants were collectively billed \$3.8 million per quarter according to their transaction and messaging activity (approx. \$2.5 million was allocated to be recovered according to participants' market share of transaction count and approx. \$1.3 million was allocated to be recovered according to participants' market share of message count. See the CRIS reflecting the activity from 1 January 2012 – 30 June 2013 for further background information<sup>50,51</sup>).

ASIC estimated the cost of supervising the market over the 2012-13 fee charging period several months in advance of the period commencing. Over the 2012-13 fee charging period ASIC did not expend the full amount estimated and therefore refunds for this period were due to a majority of the entities who paid market supervision fees during this period.

ASIC incurred costs of \$26.54 million in relation to the 2012-13 fee charging period on activities subject to ASIC market supervision cost recovery (note: this includes \$4.56 million of deferred project implementation costs (DPICs) for implementing market competition). Thus ASIC saved \$3.17 million over the 2012-13 fee charging period relative to the cost recovery revenue collected. A majority of the amount saved (\$2.72 million) was attributable to cash equity market participants<sup>52</sup>.

ASIC determined that refunds to cash equity Market Participants totalling \$453,456 per quarter for each of the six quarters during 1 January 2012 – 30 June 2013 should be paid as part of the process of balancing the amount previously charged to the costs incurred. \$406,601 of the refund per quarter was allocated according to cash equity Market Participants' market share of transaction count, and \$46,855 per quarter was allocated according to participants' market share of message count. Refund amounts paid to ASX24, ASX and Chi-X in total were \$447,587 (i.e. \$74,598 per quarter).

In the case of the Small Financial Markets, no refunds applied as Real-time Market Surveillance / Supervision employee costs were 9.5% over budget<sup>53</sup> (however this does not relate to the resourcing for the SFM which was as planned).

ASIC operates within a robust financial management and budgeting framework. These cost savings were due to:

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<sup>50</sup> prior to 1 July 2014 CRISs were known as 'Cost Recovery Impact Statements' and had a finite duration; since 1 July 2014 a new CRIS template has been in effect for what is now known as 'Cost Recovery Implementation Statement'. This CRIS has been prepared using the new template

<sup>51</sup> available at <http://download.asic.gov.au/media/1329350/cost-recovery-impact-statement-2012-13.pdf>

<sup>52</sup> amounts of \$5 or less were not refunded as these were not economically significant amounts

<sup>53</sup> during this period this team was very stretched due to testing and implementing the new MSS system and decommissioning ASIC's old system, and required additional (temporary) resources

- Lower than anticipated costs for disciplinary action for alleged breaches of the market integrity rules in part due to a low rate of contested matters. ASIC acknowledges the generally positive and co-operative approach that industry has demonstrated in its dealings with us on disciplinary matters;
- Other supplier cost savings; and
- Lower than expected overheads incurred for market supervision cost recovery.

Refunds were issued by cheque. Detailed refund statements were sent to the ASIC billing contact and senior management of each entity receiving a refund. The refund process was also highlighted in ASIC's Market Supervision Update of June 2014.

#### 7.4 International benchmarking

ASIC benchmarks the cost of ASIC market supervision cost recovery relative to double-sided cash equity market turnover with comparable regulators FINRA (USA) and IIROC (Canada). ASIC market supervision cost recovery is comparable / in line with costs in Canada, a similar market in terms of size to Australia and even that of the US, a market of far greater size.

In the following analysis ASIC has made several assumptions and adjustment to compare like regulatory functions with like. Exact comparisons are not possible as no two jurisdictions are exactly alike. ASIC has used the following sources to prepare this analysis:

- IIROC and FINRA annual reports;
- SEC Fee rate advisory information;
- past published ASIC market supervision cost recovery documents; and
- IRESS.

**Table 21: International benchmarking**

		Basis points	
<b>1. AUS - ASIC Market Supervision Cost Recovery post-Competition (cash equity markets only)</b>			
<i>Using revenue collected (net of FIDA offset and refunds) <sup>(a)</sup></i>		<b>0.0739</b>	1 Jan 2012 - 31 Mar 2015 (average over 3.25 yrs)
<b>2. USA - Analysis using comparable FINRA revenue</b>			
	Max over CY2007 - CY2013	0.0940	in CY2012
	Min over CY2007 - CY2013	0.0518	in CY2008
	Average over CY2007 - CY2013	<b>0.0762</b>	
<b>3. Canada <sup>(b)</sup> - Analysis using comparable IIROC costs (includes capital costs) <sup>(c)</sup></b>			
	Max over FY2009 - FY2014	0.0873	in FY2012
	Min over FY2009 - FY2014	0.0616	in FY2009
	Average over FY2009 - FY2014	<b>0.0756</b>	
<b>4. Canada <sup>(b)</sup> - Analysis using comparable IIROC costs (excludes capital costs)</b>			
	Max over FY2009 - FY2014	0.0754	in FY2013
	Min over FY2009 - FY2014	0.0578	in FY2011
	Average over FY2009 - FY2014	<b>0.0670</b>	

<sup>(a)</sup> CRIS refunds for 18m period 1 Jan 2012 - 30 Jun 2013 of \$3.17m have been smoothed over the entire 3.25 year period

<sup>(b)</sup> Canadian fiscal years are to 31 March

<sup>(c)</sup> Money from fines and settlements is contributed to IIROC's restricted fund, which IIROC uses to fund capital expenditures necessary to address emerging regulatory issues, projects relating to investor and industry education, and other uses authorised under IIROC's Recognition Orders

## 8. NON-FINANCIAL PERFORMANCE

ASIC has built on a largely favourable review of its market supervision function by the IMF in November 2012<sup>54</sup> and is generally regarded as an effective markets regulator.

A number of problems other jurisdictions have experienced since introducing market competition are either not evident in Australia, or are far less prevalent, due to the design of the current regulatory framework. This has received praise from influential local and international industry practitioners<sup>55</sup>, including ASX CEO Elmer Funke Kupper who, at the 2014 Stockbroker's Association Conference said, *"in Australia, ASX believes ASIC has done a good job managing the challenges arising from our recently fragmented market structure"*. The same article quotes John Fildes, the Chief Executive of Chi-X Australia (ASX's direct competitor) as saying *"ASIC has taken a very measured, fact-based approach to the dark pool rules – creating a task force, analysing the data and coming to its own conclusions without listening to the media bias. The regulator has managed the dialogue with the market well."*

The final report of the Financial System Inquiry noted that *"Australia needs a better mechanism to allow Government to assess the performance of financial regulators... regulators should develop better performance indicators"*<sup>56</sup>.

Like all Commonwealth entities, ASIC is subject to performance reporting requirements under the PGPA Act that come into effect in 2015-16.

In the area of ASIC Market Supervision, ASIC believes the current half yearly reports it issues on *ASIC enforcement outcomes* and *ASIC supervision of markets and participants* form an excellent basis for future performance indicator development. The latest of these reports have been issued covering the half year period July – December 2014 and are available at [www.asic.gov.au](http://www.asic.gov.au) as Report 421 (*ASIC Enforcement Outcomes*) and Report 425 (*ASIC supervision of markets and participants*) respectively.

ASIC also uses its regular Market Supervision Updates to notify market stakeholders of any urgent issues we see emerging in the market as quickly as possible.

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<sup>54</sup> See International Monetary Fund, "Australia: Financial System Stability Assessment", November 2012 available at <http://www.imf.org/external/pubs/ft/scr/2012/cr12308.pdf>

<sup>55</sup> Another example provided below from [efinancialnews.com](http://www.efinancialnews.com) story "Australian dark-pool rules mark a test case for Asia" 4 June 2013 available at <http://www.efinancialnews.com/story/2013-06-04/australian-dark-pool-rules-asic?ea9c8a2de0ee111045601ab04d673622>:

*"Australia continues to set a sensible trend towards achieving strong and clean equity markets. The EU should consider what ASIC has implemented in the recent past, what it is doing and what it proposes to do and analyse if parts are appropriate for European markets."* – Stuart Baden Powell, head of European electronic trading at RBC Capital Markets

<sup>56</sup> see <http://fsi.gov.au/publications/final-report/>

## 9. KEY FORWARD DATES AND EVENTS

- May 2015: Stakeholder consultation
- June 2015: Updating of the CRIS after stakeholder consultation
- July 2015: Publication of the CRIS and new Fees Regulations
- October 2015: Updating the CRIS re FIDA  
(event contingent on 2015-16 FIDA contribution not being made)

## 10. CRIS CHANGE REGISTER

Date of change	CRIS change	Approver	Basis for change
12/05/2015	V1	n/a	Initial version released for public consultation

DRAFT

## APPENDIX A: RECENT HISTORY OF ASIC MARKET SUPERVISION

### A.1 Transfer of market supervision to ASIC

On 24 August 2009, the Government announced its decision to transfer the responsibility for supervision of domestic licensed financial markets from market operators to ASIC. The Corporations Amendment (Financial Market Supervision) Act 2010 gave effect to this decision and received Royal Assent on 25 March 2010.

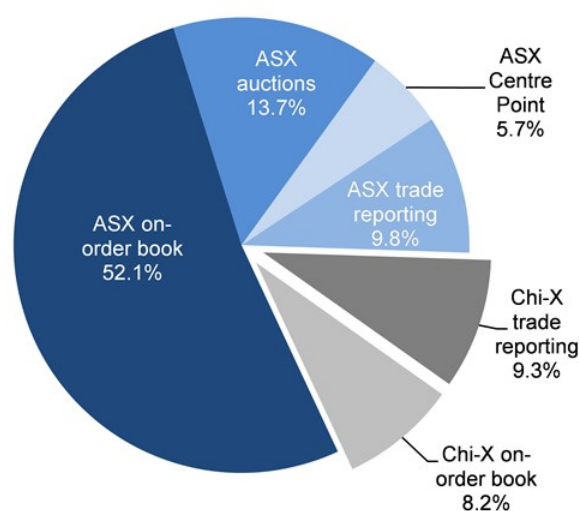
### A.2 Introduction of market competition

On 31 March 2010, the Government announced its support for market competition. On 4 May 2011, the Government granted Chi X an Australian market licence under section 795B(1) of the Corporations Act 2001 to enable it to operate an alternative exchange for trading in ASX listed securities. Chi-X commenced operations on 31 October 2011.

The figure at right shows the market share according to total dollar turnover of each cash equity market execution venue in the December 2014 quarter<sup>57</sup>. The figure shows that Chi-X has made significant inroads into the Australian market since commencing operations.

ASIC regularly publishes information on market structure and cash equity market statistics. For more information, please see <http://www.asic.gov.au/regulatory-resources/markets/market-structure/>

Chart A: Cash equities: market share of execution venues 1 Oct – 31 Dec 2014



### A.3 Enhanced Market Supervision (EMS)

Maintaining the integrity and efficiency of the Australian equity market is essential as Australia has some of the highest levels of share ownership among the general population in the world. This market is the foundation of a majority of Australians' superannuation holdings, and is at the core of Australia's capital markets. It is also important to Australia's competitiveness as a regional financial centre. ASX-listed equities are ranked eighth largest in the world in terms of free float market capitalisation<sup>58</sup>.

Appropriate investment in technological capabilities and systems is critical to facilitate effective surveillance in the future. The financial market landscape has rapidly evolved post-competition with changes in technology, trading techniques and regulation.

<sup>57</sup> see report 'Equity market data for quarter ending December 2014' available at <http://www.asic.gov.au/regulatory-resources/markets/market-structure/equity-market-data/equity-market-data-for-quarter-ending-december-2014/>

<sup>58</sup> source: <http://www.asx.com.au/listings/listing-IPO-on-ASX.htm>

Increased adoption of algorithmic trading techniques by both the buy side and the sell side, and the entry of specialist high frequency trading firms to Australia has resulted in average trade size declining and an increase in the number of orders in the Australian market. A recent study by ASIC's high-frequency trading taskforce found evidence of high order to trade ratios (indicative of order proliferation) in the Australian market that was widespread and not limited to high frequency traders. Order proliferation makes the detection of market misconduct more difficult using ASIC's current systems and processes.

Order proliferation increases the data capacity requirements of the entire industry. ASIC, market operators and market participants must all deal with the cost of investing in greater system capacity to store and manage order records for surveillance and compliance purposes.

In response to the Australian market changing and becoming more complex, the Government agreed to provide ASIC with additional funding on a cost recovery basis via the EMS measure in the 2012-13 Budget so that ASIC can enhance its market supervision capabilities, including:

- providing greater surveillance system capacity and capability (including dealing with greater levels of high frequency trading (HFT) and algorithmic trading);
  - developing superior capabilities to search data records and identify suspicious trading, by connecting patterns and relationships – essential for detecting insider trading relationships;
  - implementing new and improved post-trade surveillance tools to identify market trends, patterns of trading behaviour and repeated/systematic behaviour; and
  - improving ASIC portals and registers, including developing new portals and registers, that are (or will be) accessed by market participants.
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## APPENDIX B: THE FINANCIAL INDUSTRY DEVELOPMENT ACCOUNT (FIDA)

### B.1 About FIDA<sup>59</sup>

The Financial Industry Development Account (FIDA) is an account used to hold certain excess funds from the National Guarantee Fund (the NGF) which may under the Corporations Act 2001 (the Act) and the Corporations Regulations 2001 (the Regulations) be used for specified purposes if approved by the Minister.

The NGF is a fidelity fund established under the Act and allows investors in financial markets to claim for compensation in defined circumstances. The NGF mainly (but not exclusively) covers the Australian Securities Exchange (the ASX).

The NGF was established in 1987 from the amalgamation of state and territory fidelity funds, following a long history of exchanges operating their own fidelity funds. It was formed from contributions by brokers, interest on brokers' moneys which were held by various markets and interest and profits received from the investment of these funds.

The NGF is administered by the Securities Exchanges Guarantee Corporation (the SEGC, a company limited by guarantee whose sole member is the ASX) as trustee in accordance with the Act.

### B.2 Roles of the Minister and SEGC

The Regulations allow the Minister to approve the use of excess NGF funds for certain designated purposes. One of those purposes is to pay for costs and payments made to ASIC in relation to ASIC's responsibilities for market supervision.

While the Minister may approve certain payments to FIDA, it is within the discretion of the SEGC to decide whether there are sufficient excess funds available to pay the amounts approved by the Minister.

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<sup>59</sup> see <http://www.segc.com.au/pdf/segc-annual-report-2014-final.pdf> for more information about FIDA and the NGF