



3 April 2024

Katrina Purvis
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Australian Securities & Investments Commission

By email: Katrina Purvis Katrina.Purvis@asic.gov.au

Dear Ms Purvis

Business Communications Surveillance

Thank you for the opportunity to provide comment on the draft information sheet on business communications.

We have summarised the feedback received from members in the attachment.

We trust this information is of assistance.

Yours sincerely

Damian Jeffree

Head of Financial Markets, Exchanges and Digital

Feedback on Draft INFO 000 Business Communications

Definition of Market Intermediaries

- The Information Sheet includes terminology that is not locally defined such as **“market intermediaries”** thus making it unclear who the intended audience is and the overall purpose.
- There is reference to a wide variety of different rules and legislation spanning high level AFS licensee obligations combined with granular ASIC Market Integrity Rules that only apply to a subset of AFS Licensees with Market Participant status.

Refinement scope of recording requirements

- We suggest that the following paragraph include the qualification that **except for rule 2.2.7 of the ASIC Market Integrity Rules (Futures Markets) 2017, there is currently no Australian requirement for AFS Licensees to record the telephone lines of its representatives:**

Market intermediaries must have adequate arrangements to supervise and record their representatives’ business communications, considering the nature, scale and complexity of the business: see section 912A(1) of the Corporations Act and relevant provisions of the Securities Markets Rules and Futures Markets Rules set out below. Business communications include any communication related to the financial services business of the firm for the purpose of monitoring compliance with financial services laws.

- Without such a qualification, this statement may incorrectly infer extension to areas that currently are not required to be recorded eg. corporate banking, research given “representatives’ business communications” is a very high-level reference.
- As per the National Futures Association (NFA) guidance, ASIC could give consideration of the definition to ‘in scope employees’ or ‘authorized persons’ that require business communication to be done via approved channels.

Definition of business communications

- AFMA holds that **the definition of ‘business communications’** may be currently too broad – “any communication related to the financial services business of the firm for the purpose of monitoring compliance with financial services laws”. Firms are concerned this might capture all business communications as their business is the provision of financial services and increase the risk that monitoring processes and escalations are not tuned to higher risk activities, such as client & interbank dealing.
- A natural language reading might also suggest a requirement for at least some firms to record and monitor all communications, including face to face

communications (both internal and external), and to monitor these communications. The business communication description would cover all customer communication regardless of whether advice was provided and potentially internal communications.

- We do not believe these are the intended meanings and note they would not be consistent with the requirements placed on asset managers and super funds, and insurance companies.
- We note that the NFA are more targeted in their record keeping requirement regarding the recording of 'pre-trade' and deal formation/execution communications. The rules may benefit from drafting that is more harmonized with those of other regulators.

Use of personal devices

- AFMA notes that the use of personal devices for personal communications is a complex area that must respect privacy laws.
- Monitoring of personal devices and channels, use of unauthorized channels and applications on personal devices and in a hybrid environment require a careful consideration of employment law, privacy law and the protection of personal data.
- Market Participants note that a challenge can be that clients may initiate contact with participant staff via means other than approved and recorded communications channels.

Encrypted channels

- We seek confirmation that 'encrypted channels' is referring to messaging applications that use end-to-end encryption.
- Firms note that the privacy, employment and other matters raised above around personal devices may also apply to encrypted channels and particularly encrypted channels on personal devices.
- We note that the encrypted end-to-end channels themselves (as distinct from the endpoints) may not be possible to monitor due to their encrypted nature.

Preferred reform process

- Members note concerns that the INFO may risk introducing substantive regulatory requirements. Substantive extension of RG 104 might best be done via a standard consultation.
- While information sheets can be helpful in explicating existing guidance, we note their status might be less clear given they have not been through a typical guidance process.

Governance – escalations

In the governance section, there is reference to clear lines of accountability but not paths of escalation. ASIC may wish to consider aligning with the ASIC Conduct Risk Management guidance and include guidance around escalating and reporting conduct breaches to senior management and/or risk forums.