29 June 2026

Ms Yasmin Hamad
Lawyer, Markets Regulation
Markets Group
Australian Securities & Investments Commission

By email

Dear Ms Hamad

Proposed changes to false and misleading appearances rules 5.7.1 and 3.1.2

Thank you for the opportunity to comment on the proposed additional drafting in relation to MIR subrule s5.7.1(2) Securities and 3.1.2 (2) Futures.

AFMA agrees that the revised drafting is a substantial improvement over the previous and addresses many of the concerns.

Residual concerns remain around the potential to read the subrules as requiring consideration of effect rule as being a pre-trade requirement. Outside of simple cases this is likely to not be practical in modern markets. As such, we suggest the tense of the effect clauses into the same past tense as the intent clauses, to ensure these are understood as post trade considerations.

As we have noted these are such important rules they warrant a very careful process around any changes. The industry very much appreciates the opportunity to review the additional proposed changes but is concerned that the time for their consideration is limited and a longer consultation period may allow deeper consideration and as such would be our strong preference.

Members consider, for example, that in the context of the MIRs the concern around the issues with intent ASIC has noted in other legal contexts may not be as relevant as it is not necessary for ASIC to prove the intent of the order placer, merely that the Market Participant, considering the prescribed factors, ought to have suspected such an intention. If after further exploration ASIC's concerns in this regard are indeed warranted, then there may be more targeted ways to address them that could be unearthed in the fullness of time.

AFMA would support, for example, an exploration of closer alignment with global frameworks as part of a more comprehensive consultation. While more time would be required to form a consensus, there has been a suggestion that elements of global frameworks (e.g. MIFID II) might better align with ASIC's interest in ensuring enforcement of the 'gatekeeping' elements of market participant's responsibilities to implement a range of reasonable measures including:

- pre-trade risk controls (e.g. limits, filters, kill switches),
- real-time monitoring,

- post-trade surveillance,
- client due diligence and onboarding controls,
- ongoing training,
- material change processes,
- expectations and controls around client use of algorithms and automated trading systems.

The view is these international regimes might avoid creating similar exposure for participants undertaking these duties as those that might intentionally place manipulative orders.

The type of drafting that has been suggested as an example, include changing 3.1.2 (2)(c)(ii) to read: '(ii) consider that the offer to purchase or to sell, or dealing, will have the effect, or is likely to have the effect of creating'. Again, we note that more time is needed to refine and optimise the drafting.

Thank you for considering our comments on these matters.

Yours sincerely

Damian Jeffree

Head of Financial Markets, Exchanges and Digital