



ASIC
Australian Securities &
Investments Commission

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Estimate of regulatory compliance burden of market integrity rules for technological and operational resilience

1. In June 2019, the Australian Securities and Investments Commission (ASIC) proposed market integrity rules for market operators and market participants to ensure their technological and operational resilience (proposed rules). We have estimated the regulatory compliance burden of the proposed rules. We prepared the estimates under the Regulatory Impact Analysis (RIA) framework, administered by the Office of Best Practice Regulation, a branch of the Department of Prime Minister and Cabinet.
2. Under the RIA framework, the Regulatory Burden Measurement (RBM) framework must be used by policy makers to estimate the regulatory compliance burden of policy proposals (a subset of the broader costs in an assessment). The RBM framework is a standardised method for calculating the compliance costs (administrative and substantive) and delay costs of regulation.

A. Summary of policy options assessed under the RIA framework

3. We summarise the policy option set out in [Consultation Paper 314 Market integrity rules for technological and operational resilience](#) (CP 314) at paragraphs 4–6. We also assessed two further policy options under the RIA framework, and these are summarised at paragraphs 7 (Option 2) and 8 (Option 3).

Option 1 (recommended): Implement the proposed rules

4. On 27 June 2019, we published CP 314, in which we sought feedback on eight proposals and corresponding rules. We received 22 submissions from market operators, market participants, industry bodies and associations, service providers and the public.
5. We have amended the proposed rules in response to the feedback we received on the proposals in CP 314. These are detailed in Report 000 *Response to submissions on CP 314 Market integrity rules for technological and operational resilience* (REP 000), which highlights the key issues arising from consultation and our response to those issues.

Table 1: Option 1 – Summary of the proposed rules

Critical business services arrangements	Market operators and market participants have adequate arrangements in place to ensure the resilience, reliability, integrity and security of their critical business services.
Change management of critical business services	Market operators and market participants ensure their arrangements for critical business services continue to remain adequate following the implementation of new critical business services or material changes to existing critical business services.
Outsourcing critical business services	Market operators and market participants ensure that outsourcing arrangements in relation to their critical business services include appropriate controls.
Risk management – Data and cyber risk	Market operators and market participants have adequate arrangements to ensure the confidentiality, integrity and availability of information obtained, held or used.
Incident management and business continuity arrangements	Market operators and market participants establish, maintain and implement plans for effectively responding to an event that would or would be likely to cause significant disruption to operations and services.
Governance arrangements and adequate resourcing	Market operators and market participants have appropriate governance arrangements and adequate financial, technological and human resources to support the arrangements contained in the above proposals.
Trading controls – Market operator rule only	Market operators have controls that enable immediate suspension, limitation or prohibition of the entry by a market participant of trading messages.

6. Option 1 is our recommended option. The feedback we received in response to CP 314 indicated that industry:
 - (a) is broadly supportive of the proposed rules and recognises the importance of ensuring technologically and operationally resilient market operators and market participants
 - (b) is already compliant with most of the proposed rules.

Option 2: Strengthen existing regulatory guidance

7. Under this option, the proposed rules would not be implemented. ASIC would amend our existing regulatory guides to include more detailed guidance on our expectations in relation to existing obligations for market operators and market participants under the ASIC market integrity rules and the *Corporations Act 2001* (Corporations Act). More information about market operators' and market participants' existing obligations, and current ASIC guidance that details specific expectations around those obligations, is contained in [CP 314](#).

Option 3: Do nothing, maintain the status quo

8. Under this option, we would make no policy change. We would rely on existing obligations under the ASIC market integrity rules and the Corporations Act, and existing ASIC guidance on managing technological and operational risks.

B. Assessment of regulatory compliance burden

9. As part of our public consultation, we requested information about how our proposals would affect respondents, including the likely compliance costs, the likely effect on competition and other impacts, costs and benefits. We also asked respondents to set out this information for any alternative approaches they proposed.
10. We undertook further bilateral consultation with industry associations, market operators and market participants that responded to [CP 314](#).
11. We have estimated the regulatory compliance burden of Options 1–3 under the RBM framework, using the compliance cost estimates respondents provided during our consultation. We used the estimated costs as a baseline, to determine the estimated costs to the entire industry (a total of 91 market participants and 6 market operators). In doing so, we considered various factors, such as the size of entities and the extent to which businesses have advised they are already compliant with the proposed rules.
12. Feedback received from industry indicated that many businesses were already mostly compliant with the obligations that would be imposed by the proposed rules. In particular, there are 21 market participants (or related bodies) that are also regulated by the Australian Prudential Regulation Authority (APRA). These market participants should already be compliant with similar requirements imposed under the APRA prudential standards.

Option 1: Implement the proposed rules

13. Table 2 sets out the regulatory burden estimate for implementing Option 1. It would represent an approximate change in annual regulatory costs of \$3.392 million per year, averaged over a 10-year period. This is the estimated cost to the entire industry.

Table 2: Annual regulatory costs for Option 1, averaged over 10 years

Sector	Change in costs
Business	\$3.392 m
Community organisations	\$0
Individuals	\$0
Total change in costs	\$3.392 m

14. We expect costs in the first year to be the highest, due to one-off implementation costs. For example, this could include onboarding of additional staff to:
 - (a) review existing arrangements to determine whether any additional arrangements are needed to ensure compliance with the proposed rules
 - (b) implement any required changes to ensure compliance with the proposed rules
 - (c) negotiate new contracts relating to outsourcing arrangements
 - (d) update relevant policies and procedures.
15. We expect these costs to taper off as entities embed the obligations under the proposed rules into their business. However, we recognise some businesses may incur some small ongoing compliance costs. For example, these may include:
 - (a) maintenance costs, such as ongoing monitoring of compliance with the proposed rules and detecting any breaches (as well as notifying ASIC where required)
 - (b) reviewing and testing business continuity plans, arrangements and other system capabilities, and ascertaining any required enhancements
 - (c) ongoing compliance costs, such as regular internal training provided to staff.
16. It is our view that the regulatory benefits of implementing Option 1 outweigh the estimated regulatory costs to industry.

Option 2: Strengthen existing regulatory guidance

17. Table 3 sets out the regulatory burden estimate if ASIC were to implement Option 2. It would represent an approximate change in annual regulatory costs of \$0.714 million per year, averaged over a 10-year period. This is the estimated cost to the entire industry.

Table 3: Annual regulatory costs for Option 2, averaged over 10 years

Sector	Change in costs
Business	\$0.714 m
Community organisations	\$0
Individuals	\$0
Total change in costs	\$0.714 m

18. Implementation of ASIC guidance would incur one-off implementation costs and ongoing compliance costs, similar to Option 1: see paragraphs 14–15. We again expect costs in the first year to be greatest and then taper off as entities embed the proposals into their business.
19. The regulatory costs would be lower under Option 2, compared to Option 1, as:

- (a) many of the obligations in the proposed rules already exist in regulatory guidance. However, this guidance is outdated. We therefore estimate some costs to implement the updated regulatory guidance. However, this cost would be lower than the cost of implementing Option 1
 - (b) market operators and market participants would choose the extent to which they want to incorporate ASIC guidance into their existing arrangements for technological and operational resilience. This may reduce the effort and costs associated with implementation.
20. We have estimated the costs of Option 2 using:
- (a) industry feedback on the extent to which they currently comply with both existing guidance and the obligations under the proposed rules
 - (b) other factors, such as the scale and complexity of business models.
21. Although Option 2 has a lower estimated regulatory cost than Option 1, we consider that there is a greater regulatory benefit in implementing the proposed rules.
22. Amended ASIC guidance would not properly address the increased technological risks and systemic vulnerability experienced by market operators and market participants. It has been ASIC's experience that guidance has not been adequate to deter significant failures of market operator and market participant systems, or to penalise market operators and market participants for failures. Guidance lacks certainty and has limited effectiveness in influencing and changing behaviour.
23. We consider that the proposed rules will be a greater incentive to improve technology and operational risk practices in the market.
24. In addition, Option 2 would mean that Australia's regulatory regime falls behind international standards and APRA. Falling behind international best practice threatens Australia's strong international regulatory reputation in the area of markets regulation.

Option 3: Do nothing, maintain status quo

25. Table 4 sets out the regulatory burden estimate for Option 3, which is maintaining the status quo. It would represent no change in annual regulatory costs, as no new obligations would be introduced.

Table 4: Annual regulatory costs for Option 3, averaged over 10 years

Sector	Change in costs
Business	\$0
Community organisations	\$0
Individuals	\$0
Total change in costs	\$0

26. However, we consider that doing nothing could result in greater costs to industry. For example:
 - (a) we consider that the current regulatory framework is insufficient to mitigate the risk of failures of critical business services, and is behind APRA and international standards such as the International Organization of Securities Commissions (IOSCO) principles
 - (b) our regulatory regime has not kept pace with recent developments. While we have set out our expectations in relation to operational and technological resilience in ASIC guidance, this has not deterred significant failures of market operator and market participant systems
 - (c) the COVID-19 pandemic has more broadly highlighted the need to ensure resilience in operational activities and to maintain business continuity in situations where external, and often unforeseen, shocks affect entities and their service providers.

C. Conclusion as to appropriate policy option

27. We have considered each of the above options, the associated costs and benefits, and the feedback from industry. As a result of this analysis, we consider Option 1 to be the best option.
28. While Option 2 and Option 3 have lower or no compliance costs, both of these options will not address the technological and operational risks experienced by market operators and market participants. They will also not align our regulatory framework with APRA and international standards.
29. We have set out further detailed reasons for recommending the proposed rules in [CP 314](#).

D. Implementation and review

30. As a result of industry feedback, we intend to extend the initially proposed 6-month transition period to 12 months from the date the proposed rules are made.
31. In large part, this change responds to submissions that more time is needed to update contractual agreements for outsourcing arrangements to meet the new requirements. This extended transition period will provide additional time for market operators and market participants to make changes to processes and controls to comply with the proposed rules. The extension also recognises that progress may be slower in the current COVID-19 environment.
32. Following the making of the proposed rules, we intend to publish:
 - (a) REP 000
 - (b) updated Regulatory Guide 265 Guidance on ASIC market integrity rules for participants of securities markets (RG 265), Regulatory Guide 266 Guidance on ASIC market integrity rules for participants of futures markets (RG 266) and Regulatory Guide 172 Financial markets: Domestic and overseas operators (RG 172).

33. ASIC's regulatory regime is regularly reviewed. These reviews consider whether the requirements continue to reflect good practice, remain consistent with international standards, and continue to achieve ASIC's objectives of facilitating fair, orderly and transparent financial markets.