

1 July 2016

## **Feedback on ICAP Securities and Derivatives Exchange (“ISDX” or “the Exchange”) Market Consultation on Proposed Amendments to the Rulebook for the ISDX Growth Market and confirmation of changes to ISDX Growth Market Rules for Issuers and the ISDX Corporate Adviser Handbook.**

### **Introduction**

On 13<sup>th</sup> June 2016 ISDX launched a market consultation in relation to proposed changes to the ISDX Growth Market Rules for Issuers and the ISDX Corporate Adviser Handbook (together the “Rules”).

The Exchange received well thought out and cogent responses to the consultation and we are grateful to the Corporate Advisers, Issuers and the QCA for their careful consideration of our proposals and their responses.

### **Rule 32 Price Sensitive Information**

The responses were broadly supportive of the approach we proposed in the consultation, although in regard to Rule 32 there was concern as to why ISDX retained a rule which many regard as being very similar to the requirements of MAR. We recognised in particular concern that Corporate Advisers expressed that the Exchange would expect them to take responsibility for MAR compliance under the Exchange’s Rules. Concern was also expressed that there would be a regulatory overlap between our role and that of the FCA as Competent Authority in the UK. We regard it as essential as market operator and to comply with our obligations as a RIE under the Recognition Requirements for Recognised Investment Exchanges and Clearing Houses SI 2001/95 (“REC”) that we have the ability under our Rules to act expeditiously. In certain situations, such as where price sensitive information is not disclosed and as a consequence a fair and orderly market cannot be maintained, we must retain the ability to act, for example by suspending trading. This is not a power or ability that FCA can exercise and we must retain Rule 32 as a consequence. It is not appropriate for the Exchange to exercise enforcement powers as market operator in respect of legislation which is under the exclusive remit of the FCA. It is the FCA who as Competent Authority in the UK will determine the application of MAR and take enforcement action and the Exchange does not have jurisdiction in this regard.

We are happy to confirm that the Corporate Adviser’s responsibilities to the Exchange extend only to those matters covered by the Rules and not wider. Therefore the Exchange cannot comment on the application and interpretation of MAR, as that is the remit of the FCA. As we stated we will continue to liaise with the FCA as Competent Authority in a practical and pragmatic manner recognising our differing roles and responsibilities.

### **Rule 71 Code of Dealing**

Responses were broadly welcoming of our approach, although again concern was expressed at the overlap with MAR. As stated above we are not in a position to interpret or give guidance upon MAR, only upon the requirements of our own Rules. Nor do we have the remit to enforce MAR as that is the role of FCA. It was also suggested that we introduce a requirement on the Exchange to advise Issuers and their ISDX Corporate Adviser if we have referred a potential breach of MAR to the FCA. This approach would not be appropriate or permitted under the Financial Services and Markets Act 2000 ("FSMA") or REC and we will accordingly not adopt that suggestion.

### **Duration of Closed Periods**

Our approach of only making changes to the Rules or issuing guidance once there is clarity from the European Securities and Markets Authority ("ESMA") or the European Commission was supported.

### **Rule 43 Disclosure of Dealings by PDMRs**

Similarly to Rule 32, this was another area in which most comments were received and those comments were focussed on the duplication of MAR Article 19. We proposed to retain Rule 43 and simplify matters for issuers by mirroring the definition of Persons Discharging Managerial Responsibility ("PDMR") (and through the definition those closely associated with them) in Article 19. We believed that it would be administratively simpler for issuers to maintain our current requirement that all transactions are reported. However, a majority of respondents were of the view that this may cause confusion and is unnecessary given Article 19. As such, Rule 43 will be deleted and issuers will have to comply with requirements of Article 19 only. Suggestion was also made that we replace the term director in the Rules with PDMR and we have done this where it relates to disclosure and transactions. However, where it is not appropriate (for example where the reference is to directors being responsible for the Issuer's compliance with the Rules where PDMR as defined would extend that responsibility to a director's child *inter alia*) then we have retained "director".

### **Rule 44 Financial Reporting**

Our approach was supported by those responding to the consultation.

### **Reverse Takeovers**

Our approach was supported by those responding to the consultation.

### **Appendix 1 para 36**

Our approach was supported by those responding to the consultation, we have taken on board the suggestion that we require financial information to be presented on a consistent and comparable basis.

### **Revised Rules implementation**

The Rules with amendments that we have made following the consultation are published today (and with a marked up copy to highlight changes from the consultation version) and will take effect from midnight on 1<sup>st</sup> July 2016.

### **Summary**

We are very grateful to all those who responded to the consultation and very much welcome their support and continued dialogue with all interested parties. The Exchange will monitor the implementation of the Rules and welcome feedback on them over time. We are always pleased to receive comments and thoughts from interested parties on our Rules whether as part of a formal consultation or not.