asifma
Growing Asia's Markets

25 July 2026

To:
Wholesale Markets, Market Conduct
Australian Securities and Investment Commission (ASIC)
By email: markets.consultation@asic.gov.au

ASIFMA Submission for ASIC Proposed Regulatory Guide on Pre-Hedging

Dear Sir/Madam

The Asia Securities Industry & Financial Markets Association (ASIFMA) appreciates the opportunity to respond to ASIC's consultation on its Proposed Regulatory Guide on pre-hedging. ASIFMA operates as an independent regional organisation with global integration through membership in the Global Financial Markets Association (GFMA), alongside AFME and SIFMA. ASIFMA harnesses the shared interests of the financial industry to promote the development of liquid, deep, and broad capital markets in Asia.[1] This consultation response represents only the views of ASIFMA's sell side members and does not represent ASIFMA's Asset Management Group(AAMG).

ASIFMA supports prudent, principles-based guidance that is operationally workable and closely aligned with IOSCO's final global recommendations on pre-hedging. As acknowledged by IOSCO, pre-hedging is a well-established risk-management tool that enables dealers to manage anticipated risk and seek to achieve beneficial outcomes when facilitating potential client transactions. As recognised by IOSCO and the Global FX Committee's FX Global Code, the London Bullion Markets Association's Global Precious Metals Code and the Financial Markets Standards Board's Standard for the execution of Large Trades in FICC Markets ("FMSB Standard"), pre-hedging supports liquidity provision, efficient risk transfer, orderly market functioning and improved execution outcomes by allowing risk to be managed holistically rather than at a single point in time.

Given the diversity of markets, products and transaction types, too prescriptive an approach to pre-hedging would not be appropriate. Dealers must retain flexibility to determine how best to manage risk and achieve better outcomes for clients based on factors such as market conditions, liquidity, volatility, transaction size, product characteristics and execution timing. Regulatory guidance should therefore remain principles-based and sufficiently flexible to accommodate differing market structures, product and transaction types, market conventions and business models. Overly restrictive requirements could reduce dealers' willingness or ability to source liquidity and/or facilitate risk transfer transactions, ultimately resulting in wider pricing, and reduced liquidity which will overall impact the attractiveness of the Australian market.

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[1] ASIFMA is an independent, regional trade association with approximately 150 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, and competitive Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region. More information about ASIFMA can be found at: www.asifma.org.

We strongly support close alignment with IOSCO's global recommendations. Consistent implementation across jurisdictions is critical to promoting regulatory certainty, supporting efficient cross-border activity and avoiding market fragmentation. Given ASIC's leadership role in the IOSCO Committee that developed the final recommendations, ASIC has a unique opportunity to demonstrate how IOSCO's recommendations can be implemented consistently and effectively in practice. Significant departures from IOSCO's recommendations by ASIC may give the impression that IOSCO's recommendations are insufficient for regional application. Creating jurisdiction specific requirements that significantly differ from IOSCO's recommendation creates conflicting regulatory expectations, increases compliance costs and operational complexity, and reduces market efficiency which will ultimately negatively impact client outcomes and isolate the Australian market.

We support IOSCO's ***"intention of promoting a consistent interpretation of the practice of pre-hedging across interested jurisdictions and markets."***[2] Against this backdrop, we are concerned that the draft Regulatory guide and three proposed "Better Practices" go beyond IOSCO's recommendations. In particular, Better Practice 3 would be extremely challenging to implement in practice for firms to serve clients in Australia. Requiring firms currently providing pre-hedging activities in Australia to separately identify, tag, monitor and distinguish pre-hedging from inventory management and other trading activities does not reflect how risk is managed in principal wholesale markets, where dealers typically manage exposures on a portfolio basis and pre-hedging activity is often inextricably linked with broader market-making and risk-management functions. Requirements for "controls to identify pre-hedging and distinguish it from other trading activities" in Australia would necessitate fundamental changes in market practices related to management of principal risk, significant technology builds, operational redesign and the creation of parallel supervisory and record-keeping frameworks with limited evidence of any corresponding benefit to market integrity. Global sell side and buy side firms would have to weigh the overall cost and operational benefit of implementing such changes to their wider global practices to meet the jurisdiction specific requirements for Australia.

More importantly, imposing Australia-specific requirements that diverge from IOSCO's recommendations risks undermining the competitiveness of Australian markets. Faced with materially higher compliance costs, operational complexity and legal uncertainty, some market participants may reduce their activity in Australia, limit liquidity provision, or choose to execute and manage risk from other jurisdictions operating under more internationally aligned frameworks. Collectively, these additional requirements risk reducing investor appetite, as market participants may choose to allocate capital to jurisdictions that offer more efficient, predictable and internationally aligned regulatory frameworks.

Consistent with ASIC's broader regulatory simplification agenda and the objectives set out in *Regulatory Simplification Progress Report* (REP 830), ASIFMA would encourage that the final Regulatory Guide should promote competitiveness, reduce unnecessary compliance burdens and preserve an international level-playing field. Regulatory requirements that materially contradict internationally agreed standards should only be introduced where there is a clearly identified market failure and a compelling evidence-based case that the benefits outweigh the significant costs and market impact.

Furthermore, we note limited evidence of widespread buy-side demand for the additional measures set out in the draft Regulatory Guide and proposed Better Practices. On the contrary, feedback from both buy-side and sell-side participants has consistently supported a principles-based and operationally workable approach. Introducing additional identification, monitoring and procedural requirements risks adversely impacting liquidity in the Australian wholesale market due to the inability of dealers to source liquidity and/or engage in risk transfer transactions, without a clearly demonstrated improvement in client outcomes, market integrity or risk management. It is worth noting that not only dealers but also their counterparties would have to implement oversight frameworks in line with these proposals. A more proportionate framework would preserve efficient execution, liquidity provision and effective risk transfer while remaining aligned with international standards.

Further below, we provide detailed comments on the draft Regulatory Guide and proposed Better Practices and responses to the specific questions raised in the consultation paper, as requested by ASIC.

[2] IOSCO Final Report page 6

PART 1 - BETTER PRACTICES

General comments

We do not support the inclusion of the proposed Better Practices in the draft Regulatory Guide. Better practice statements provided by regulators are given the weight of de facto regulation by market participants. Where these significantly depart from global regulatory guidance and relevant market standards, such as the case for ASIC's proposed Better Practice statements, these create significant uncertainty of the standards expected by regulators for firms to implement effectively

The draft Regulatory Guide and proposed Better Practices go beyond the IOSCO recommendations and risk creating regulatory divergence from internationally accepted standards. Divergent requirements applicable for a specific jurisdiction encourage fragmentation in market practice and undermine efforts to achieve greater international consistency.

To maintain alignment with the IOSCO framework, ASIC should align with IOSCO's recommendations and that firms may adopt, in whole or in part, based on the nature, scale and risk profile of their business, as well as the circumstances of individual transactions. This approach would preserve the flexibility necessary for firms to exercise appropriate judgement on a risk-based basis.

The examples and proposed Better Practices appear to be derived from a limited examples of large, bespoke, or event-driven transactions. These situations are fundamentally different from routine flow business and principal market-making activities where pre-hedging also may occur, and that operate under different commercial, liquidity, and risk management considerations. The Regulatory Guide should clearly avoid creating expectations that enhanced disclosure, governance, or control requirements should apply uniformly to all forms of pre-hedging and, as IOSCO's recommendations reflect, allow for dealer discretion to determine where such additional measures are appropriate.

As stated above, industry is concerned about the risk of creating an uneven regional and global competitive landscape which would ultimately adversely impact Australian clients or counterparties. This may increase barriers for global firms seeking to operate in Australia or transact with Australian clients or counterparties, while requiring Australian firms to comply with additional obligations. Over time, such divergence risks reducing market participation, discouraging innovation and impairing the competitiveness of Australian financial markets relative to other jurisdictions that continue to adopt more proportionate and internationally consistent approaches. This will ultimately impact liquidity in the Australian market and adversely impact Australian counterparties and ultimately Australian consumers.

The draft Regulatory Guide and proposed Better Practices would also impose significant operational complexity and compliance costs, requiring counterparties to both develop and maintain market-specific policies, controls, systems and monitoring frameworks, with limited corresponding benefits to investor protection or market integrity. This outcome would appear inconsistent with ASIC's broader regulatory simplification agenda, including the objectives set out in *Regulatory Simplification Progress Report* (REP 830), which seeks to reduce unnecessary compliance burdens, enhance competitiveness and support efficient, well-functioning markets.

We believe ASIC can achieve its supervisory and policy objectives through more proportionate measures that remain closely aligned with the IOSCO recommendations, without introducing the market disruption and unintended consequences that the draft Regulatory Guide and proposed Better Practices are likely to create. Accordingly, we set out below our comments, recommendations and key considerations in relation to each of the proposed Better Practices. We are also providing as an Annex our **Guiding Principles for Pre-Hedging**

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(GFMA Feb 2026), which we thought would give a broader context about the way pre-hedging is understood and executed in practice**.**

Better Practice 1

We do not consider that there is a need for an explicit requirement for post-trade reviews in all cases – and disagree with the inclusion of Better Practice 1 in ASIC's final Regulatory Guide. Consistent with IOSCO's principles-based approach, we recommend the adoption of risk-based and proportionate reviews, where necessary that allow dealers to design their review frameworks as appropriate, including how they cover pre-hedging.

The post-trade reviews with a view to demonstrate "minimise impact of pre-hedging" are not appropriate and unlikely to yield definitive results because:

- The causal factors of market outcomes cannot be isolated to specific trades. Observable markets depend on a wide range of factors, including other market participants' activity, prevailing market conditions, liquidity conditions and broader market events, many of which cannot be reliably isolated or accurately identified. Attempting to link specific market outcomes such as individual price movements to specific dealer activity would therefore be inherently incorrect.
- Dealers act as principal counterparties, assuming and managing risk to facilitate client transactions, provide liquidity, and support general market-making activities. Consequently, pre-hedging and risk management are not necessarily conducted on a one-to-one transaction basis but are undertaken within the context of the firm's broader market-making function.
- Given the dynamic nature of principal market trading activity and the use of portfolio-based risk management strategies, a requirement to identify, isolate and review specific pre-hedging activity may not be feasible in practice and could require significant systems enhancements for both dealers and their clients. Dealers in principal markets have existing requirements to operate comprehensive firm-wide risk management, governance, compliance and surveillance frameworks across business areas and geographic regions for all trade execution and client outcomes. These firm-wide controls include market abuse trade surveillance designed to detect instances of attempted or actual front-running across products as well as reviews of fair pricing and trade execution metrics.

Both the Westpac case and ANZ (Treasury Bonds Case) demonstrate dangers of segregating pre-hedging activities from an institution's overall market abuse supervision. Pre-hedging should be assessed within the broader context of an institution's overall market abuse, supervision and risk management framework, rather than requiring separate pre-hedging-specific reviews.

IOSCO explicitly recognised that: ***"Compliance and supervisory arrangements for pre-hedging do not need to be stand alone and could be incorporated into firms' existing compliance arrangements, such as those for managing conflicts of interest or preventing market abuse."***[3]

While we do not support the incorporation of any of the proposed Better Practices into the Regulatory Guide, if ASIC nevertheless elects to include general, non-exhaustive examples of principles that may be considered by market participants, in addition to the IOSCO recommendations, we suggest that Better Practice 1 be amended to read as follows to mitigate the regulatory risks listed above:

Dealers should have a framework to determine whether internal post-trade reviews of pre-hedging are appropriate for particular transactions, based on a range of factors which may include prevailing market

[3] IOSCO Final Report Rec. B4--Explanatory Notes at page 31

conditions, liquidity conditions and their existing risk management, surveillance and governance frameworks, and to carry out the subsequent reviews as appropriate.

We believe the language above would address the ASIC's policy objective while avoiding creating legal uncertainty for firms' global compliance frameworks.

Better Practice 2

We disagree with the inclusion of this Better Practice in ASIC's final Regulatory Guide.

The statement that "explicit and informed trade-by-trade client consent" should be sought "where practical" is unlikely to be interpreted consistently by market participants and not sufficiently clear as to ASIC's expectations. Dealers are likely to interpret this requirement differently, leading to clients having different experiences between different dealers for substantially similar trades. While Better Practice 2's wording states "where practical", without sufficient clarity provided by ASIC, it is likely that this requirement for trade-by-trade consent is overapplied to a wider range of trades than ASIC likely contemplated to reduce potential regulatory scrutiny.

In addition, the statement that pre-hedging "poses greater risks to execution quality or pricing, such as in relatively low-liquidity markets" does not reflect IOSCO's conclusion in its final publication that pre-hedging, when conducted appropriately, is a risk management tool that can facilitate liquidity provision, support efficient risk transfer and mitigate the market impact associated with larger transactions.

We firmly support IOSCO's view that disclosure should be relationship based and not transaction specific. IOSCO recommends that dealers ***"(i) seek to receive prior consent to pre-hedge from the client at the outset of the relationship, and (ii) give the client a clear process to modify or revoke that consent at any time with reasonable notice."***. IOSCO ***"acknowledges that it may not always be possible for dealers to seek to receive prior consent from the client at the outset of the relationship"*** and recommends that dealers ***"consider informing clients of their use of pre-hedging and the process for revoking or modifying consent when practicable and then in their periodic disclosure updates to clients.***"[4]

As written, Better Practice 2 conflicts with IOSCO's principles-based approach that ***"…dealers could consider…when trade-by-trade disclosure is appropriate."***[5]. Such a requirement would introduce unnecessary friction into time-sensitive wholesale markets, thus adversely impacting liquidity in the Australian market due to the inability of dealers to source liquidity and/or engage in risk transfer transactions and increasing operational complexity for both dealers and clients. In practice, requiring clients to assess and respond to individual consent requests may impede efficient risk transfer, which would have a more acute impact on larger or time-sensitive transactions.

A more consistent and proportionate approach than Better Practice 2's trade-by-trade consent "where practical" is to provide relationship-level disclosure regarding a dealer's pre-hedging practices, and supplement, where appropriate, with transaction-specific disclosure for large transactions. Consistent with IOSCO recommendations and the FMSB Standard, dealers should retain discretion to determine whether additional disclosure is appropriate having regard to the nature of the transaction, prevailing market conditions, the expertise of the client, the nature of the client relationship and the frequency with which the client enters into comparable transactions.

Trade-by-trade consent or mandatory transaction-level disclosure is not supported by the buy-side and not widely operationally feasible. While Better Practice 2 wording contains a "where practical" qualifier, the lack of clarity in ASIC's intended application will likely result in this requirement for trade-by-trade consent being overapplied to a wider range of trades than ASIC likely contemplated. This would be particularly challenging given principal dealers undertake risk management activities on a holistic basis to support their portfolio risk, which may involve pre-hedging multiple anticipated client transactions, hedging and inventory management.

[4] IOSCO Final Report Rec. B3-Explanatory Notes at page 30

[5] IOSCO Final Report Rec. B2-Explanatory Notes at page 29

This would have particular impact on the operations of electronic and other high-volume trading environments, introducing latency, reducing execution efficiency and imposing significant operational burdens without a corresponding improvement in client outcomes, market integrity or supervisory oversight.

While we do not support the incorporation of any of the proposed Better Practices into the Regulatory Guide, if ASIC nevertheless elects to include general, non-exhaustive examples of principles that may be considered by market participants, in addition to the IOSCO recommendations, we suggest that Better Practice 2 be amended to read as follows:

Dealers should seek to receive consent to pre-hedging from the client. This may be established by a client entering into transaction(s) following relationship-level disclosure from the dealer (together with a clear process to modify or revoke consent to pre-hedge at any time with reasonable notice). For large trades, as determined by a dealer, in addition to relationship-level disclosure regarding pre-hedging practices, dealers should consider providing additional transaction-specific disclosure as appropriate if such large trades are negotiated over time, including event-driven transactions such as M&A or loan/bond financing and deal-contingent transactions, having regard to prevailing market conditions.

The language above recognises the principal activity between two counterparties that have an established relationship. Preserving dealer discretion based on the facts and circumstances enhances dealers' ability to maximise the risk management benefits to clients of pre-hedging.

Better Practice 3

Industry strongly opposes Better Practice 3 and recommends that it be deleted in its entirety. The proposal is premised on a distinction between pre-hedging, inventory management and principal market making that does not reflect how dealers manage risk in practice. Moreover, there is no clear supervisory, market integrity or operational benefit in requiring pre-hedging to be identified, segregated or monitored separately where such activity is already subject to firms' existing risk management, surveillance, governance and control frameworks. Consistent with IOSCO's recommendations, pre-hedging should remain subject to firms' existing risk management, compliance, surveillance and control frameworks, rather than being treated as a standalone activity requiring separate systems or trade-level tagging.

- **Better Practice 3** is based on a distinction that does not reflect how pre-hedging is conducted in real-world principal markets. As concluded through the IOSCO consultation process, pre-hedging is recognised as a risk management tool undertaken by dealers acting in a principal capacity in connection with anticipated client transactions. In practice, dealers manage anticipated client risk, existing inventory, market-making exposures and broader portfolio risks holistically. Pre-hedging is therefore not a standalone activity but forms part of the broader process of liquidity provision, market making, risk transfer and inventory management. Requiring firms to separate pre-hedging from these activities would be inconsistent with how risk is managed and transferred in principal markets.

- **Better Practice 3 was an issue explicitly considered and rejected by IOSCO**. IOSCO's response stated: *"IOSCO believes these existing codes and standards align with an expectation that a dealer would have a clear understanding of what constitutes inventory management and hedging versus when pre-hedging would be permitted—which would include, to be effective, having appropriate internal controls to monitor trading practices. No substantive change has been made to the recommendation."*[6]

- **The proposal assumes that pre-hedging can be identified, segregated and monitored independently when this is not feasible in practice.** A single transaction may simultaneously contribute to inventory management, ongoing market making activity, anticipated client risk management and the management of aggregate principal risk. As recognised during the IOSCO consultation process, firms frequently manage risk on a portfolio basis and do not distinguish or map individual transactions to a specific anticipated client trade. Requiring transaction-level identification, tagging or matching of pre-hedging activity would

[6] IOSCO Final Report page 45

therefore be operationally impracticable and would not accurately reflect the purpose of many principal transactions.

- **Industry strongly opposes the requirement for standalone pre-hedging control frameworks.** Firms already maintain comprehensive risk management, governance, surveillance, compliance, reporting and record-keeping frameworks covering principal trading activities, including those associated with anticipated client transactions. Consistent with IOSCO's principles-based approach, pre-hedging should remain subject to these existing control frameworks rather than a separate regime. Firms should be permitted to rely on existing equivalent controls applied on a risk-based and proportionate basis, rather than being required to implement system-enforced segregation or standalone monitoring arrangements.

- **The proposal would impose significant operational costs while delivering limited additional supervisory benefit.** Dealers are already subject to extensive record-keeping, surveillance and market conduct obligations, and supervisors are able to review these records to assess whether trading activity was conducted appropriately. Requiring separate pre-hedging records, trade-level tagging, physical or system segregation, and additional monitoring processes would duplicate existing controls, create substantial implementation costs and generate large volumes of additional documentation and output without materially enhancing market integrity or oversight. Such requirements could also impair firms' ability to efficiently provide liquidity and manage risk associated with larger transactions.

As such, Better Practice 3 cannot be implemented in a practical, reliable, or proportionate manner and should therefore be removed. Firms should be permitted to rely on existing equivalent controls applied on a risk-based and proportionate basis, with the focus remaining on the governance and conduct requirements associated with pre-hedging, rather than on system-enforced segregation or transaction-level tagging.

If these additional obligations are implemented, they could give rise to a number of unintended and adverse market consequences, potentially impairing market efficiency, reducing the competitiveness of the Australian market and discouraging international market participants from operating in Australia. A lack of global consistency may also reduce market activity and innovation in the Australian market, while other jurisdictions continue their regulatory and market development in line with internationally recognised standards.

Responses to ASIC questions (Better Practices)

ASIFMA recognises that the Better Practices are separate and specific articulations of content elsewhere in the draft Regulatory Guide. The responses we provide to the questions in this section relate to both the expression of these requirements in the draft Regulatory Guide text and also to their proposed separate articulation as "Better Practices".

ASIFMA does not support the inclusion of Better Practices in the Regulatory Guide. Better Practice statements provided by regulators are viewed by market participants as defacto regulatory requirements rather than being merely observations or ideals to strive for. Market participants will be expected by their compliance and assurance functions to change their processes and systems to meet each and every aspect in them. Our response demonstrates that this is not currently possible for any of ASIC's proposed Better Practice statements, and as such these should be removed or, at the least, significantly changed.

B2Q1^ What are the costs, benefits, and utility of including these better practices in the proposed regulatory guide?

As indicated above, ASIFMA does not support the inclusion of Better Practices (or the draft Regulatory Guide text related to these statements) in the draft Regulatory Guide. ASIC's proposed Better Practice statements do not align with IOSCO's global regulatory recommendations and relevant market standards, and do not align with market convention.

The additional procedural requirements included in the proposed Better Practices (and relevant draft Regulatory guide text) would place the following additional burdens on operations in the Australian market:

- Additional procedural requirements and codification of new market conventions

- Adverse impacts on liquidity due to inability of dealers to source liquidity and/or engage in risk transfer transactions
- Increased operational burdens for both clients and dealers to create processes, systems and market conventions to support these additional procedural steps – both in terms of human and technical resources and costs.

ASIC's consultation paper does not provide evidence of buy-side demand or sell-side support for the proposed Better Practices, or specific rationale for a unique regime in the Australian market, as proposed in the draft Regulatory Guide. On the contrary, feedback provided to IOSCO from both buy-side and sell-side participants has consistently supported principles-based, global and operationally workable approaches. In ASIFMA's view, there would be a negative impact to Australian markets of including the proposed Better Practices or relevant Regulatory Guide text.

Given that IOSCO acknowledges that "*Pre-hedging as a market practice can enable dealers to offer benefits to clients and the broader market, including enabling and offering better terms for transactions and reducing market impact*"[7], ASIC's creation of an additional regime of requirements specific to Australia without a robust cost-benefit analysis that creates additional burdens runs counter to promoting the orderly operation of markets on a cross border basis.

B2Q2 Are the situations in which their inclusion might lead to confusion or unforeseen circumstances?

As indicated above, ASIFMA does not support the articulation of Better Practices (or the related Regulatory Guide text). These are deeply problematic for industry primarily use they exceed and conflict with IOSCO's recommendations as well as long standing industry standards such as the FX Global Code, Global Precious Metals Code and FMSB Standard.

This approach as proposed by ASIC would in practice create an additional regime of requirements specific to a single jurisdiction's market causing confusion and uncertainty as to the expectations of both dealers and clients when undertaking or considering undertaking pre-hedging within ASIC's jurisdiction. This is particularly acute given the global nature of wholesale markets and the need to support cross border trading activity. Additionally, each of the proposed Better Practice statements (and related draft Regulatory Guide content) is deeply problematic for the reasons stated in the "Part 1 - Better Practice" section above, summarised in the following section.

Better Practice 1: Post trade reviews of pre-hedging with the intention to review specific transactions to determine "market impact of pre-hedging" are not possible. Such results of such reviews are likely to be materially unsubstantiated and misleading, as:

- Real-world considerations include the fact that market conditions cannot be held constant and price movements in the market cannot typically be solely attributed to the activity of one dealer. Attempting to link specific market outcomes to specific dealer activity would therefore be inherently unreliable or misleading.
- Dealers are continuously market making to support the aggregate risk across their entire portfolio of client interest – which can include pre-hedging for anticipated client transactions or for its portfolio. The risk management activities across portfolios cannot be systematically segregated to identify only pre-hedging activity, or for a specific transaction in order to support proposed Better Practice 1's requirement to review pre-hedging only.
- Dealers' systems are generally not designed to link individual risk management activity to specific anticipated transactions. Given the dynamic nature of trading activity and the use of portfolio-based risk management strategies, a requirement to identify, isolate and review specific pre-hedging activity may not be feasible in practice and could require significant systems enhancements.

[7] IOSCO Final Report page 9

- The systematic production of post-trade reviews on a transaction-by-transaction basis would be costly and inefficient, and it would also not be meaningful given that the counterfactual (i.e., what would have occurred in the absence of pre-hedging) is not observable.

Better Practice 2: The requirements for "explicit and informed trade-by-trade client consent where practical and where pre-hedging poses greater risks to execution quality or pricing, such as in relatively low-liquidity markets" are not sufficiently clear as to the intended target population. This will lead to confusion between market participants as to the applicable regulatory requirement, given this does not align with IOSCO's recommendation. Dealers are likely to interpret this requirement differently, leading to clients having different experiences between different dealers for substantially similar trades. The lack of clarity in the requirement wording will likely have the unintended consequence that a requirement for trade-by-trade consent will be overapplied to a wider range of trades than ASIC likely contemplated. This will introduce unnecessary friction into time-sensitive wholesale markets, potentially delaying execution and increasing operational complexity for both dealers and clients. In practice, requiring clients to assess and respond to individual consent requests may impede efficient risk transfer, particularly for time-sensitive transactions. Such requirements could adversely impact liquidity, reduce execution efficiency and impose significant operational burdens without a corresponding improvement in client outcomes, market integrity or supervisory oversight.

Better Practice 3: requires creation of "internal controls to identify pre-hedging and distinguish it from other trading activities, including inventory management". The current wording of Better Practice 3 (unlike 1 and 2) does not specify a particular population of trades – so applies to all pre-hedging activity, including immaterial, client flow transactions and also the large, complex trades that may have more inherent market risk. Given this inconsistency with the drafting of Better Practices 1 and 2, it is not clear if proposed Better Practice 3 is intended to apply to all pre-hedging activity or a specific subset, and this specification was a drafting oversight. To meet this requirement, as written, currently would require the development of separate controls, surveillance and booking model specifically for pre-hedging transactions in Australia. This is not systematically achievable given that dealers manage their portfolio of risk on an aggregate basis (rather than for a single trade at a time) and continue to market make for other clients while pre-hedging. As a result, this draft Better Practice statement creates fundamental uncertainty for dealers as to how they can meet this regulatory expectation and should be removed.

In addition, CP 389 describes Better Practices as "examples of observed better practices". However, the draft Regulatory Guide also states that it is intended to provide guidance on conduct that clients should expect from market participants and highlights potential regulatory contraventions where expectations are not met. Presenting the Better Practices as non-binding observations while simultaneously framing them as conduct that clients should expect may create uncertainty as to whether they are optional examples or de facto regulatory requirements.

B2Q3 Will their inclusion support a level playing field?

As indicated above, ASIFMA does not support the inclusion of Better Practices (or the related draft Regulatory Guide text).The proposed Better Practices statements are made with reference to a handful of very specific examples of trading activity, which are not representative of the vast spectrum of wholesale trading activity and the totality of situations in which principal dealers need to manage the risk arising from their attempts to facilitate anticipated client need. These very specific scenarios should not be used to define rules applicable to all trading activity.

The proposed Better Practices exceed and conflict with IOSCO's recommendations as well as long standing industry standards such as the FX Global Code, Global Precious Metals Code and FMSB Large Trades Standard – and do not align with global wholesale market conventions. The proposed statements are also not sufficiently clear and have multiple possible interpretations, risking creating confusion and uncertainty on the expectations on dealers and clients experience across dealers within ASIC's jurisdiction.

The implementation of the proposed Better Practice statements will require significant changes to market practice, trading procedure and system support for both Dealers and clients. More importantly, imposing Australia-specific requirements risks undermining the competitiveness of Australian markets. Firms operating in this jurisdiction will face materially higher compliance costs, operational complexity and legal uncertainty –

putting them at a competitive disadvantage. The regulatory burden to comply with these requirements would be disproportionate given the size and nature of the Australian wholesale OTC market. As a result, some market participants may reduce their activity in Australia, limit liquidity provision, or choose to execute and manage risk from other jurisdictions operating under more internationally aligned frameworks. This could fragment liquidity, reduce market depth, widen pricing, and ultimately diminish the capacity of Australian markets to facilitate efficient risk transfer and capital formation.

As highlighted earlier, the inclusion of the Better Practice statements in the final Regulatory Guide would appear inconsistent with ASIC's broader regulatory simplification agenda, including the objectives set out in *Regulatory Simplification Progress Report* (REP 830), which seeks to reduce unnecessary compliance burdens, enhance competitiveness and support efficient, well-functioning markets.

B2Q4 What (if any) amendments to the better practices would you suggest if they are included in our proposed regulatory guide?

Our response demonstrates the operational challenges with implementing each of ASIC's proposed Better Practice statements in their current form. It is ASIFMA's view that the proposed Better Practice statements should be removed or, at the least, significantly changed. It is ASIFMA's strong view that ASIC should target consistency with IOSCO's recommendations. To be consistent with IOSCO's recommendations, the following edits should be made:

Better Practice 1 **– Dealers should have a framework to determine whether internal post-trade reviews of pre-hedging are appropriate for particular transactions, based on a range of factors which may include prevailing market conditions, liquidity conditions and their existing risk management, surveillance and governance frameworks – and to carry out the subsequent reviews as appropriate.**

Better Practice 2 - **Dealers should seek to receive consent to pre-hedging from the client. This may be established by a client entering into transaction(s) following relationship-level disclosure from the dealer (together with a clear process to modify or revoke consent to pre-hedge at any time with reasonable notice). For large trades, as determined by a dealer, in addition to relationship-level disclosure regarding pre-hedging practices, dealers should consider providing additional transaction-specific disclosure as appropriate if such large trades are negotiated over time, including event-driven transactions such as M&A or loan/bond financing and deal-contingent transactions, having regard to prevailing market conditions.**

Better Practice 3 is not practical or proportionate and should therefore be removed. Firms have existing regulatory obligations to maintain policies and procedures that include monitoring, surveillance and supervisory oversight to address potential market abuse and conflicts of interest. These existing requirements already cover activities undertaken by dealers to manage principal risk including their pre-hedging activities. Dealers have detailed control frameworks in place including monitoring and surveillance to detect potentially inappropriate information sharing or use and potential market abuse, including front running.

We believe ASIC can achieve its supervisory and policy objectives through more proportionate measures that remain closely aligned with the IOSCO recommendations than the current proposed Better Practices.

B2Q5 What other better practices (if any) should be included in our proposed regulatory guide?

ASIFMA does not support the inclusion of any Better Practices in the draft Regulatory Guide.

We believe ASIC can achieve its supervisory and policy objectives through more proportionate measures that remain closely aligned with the IOSCO recommendations, and existing market standards without introducing the market disruption and unintended consequences that the draft Regulatory Guide and any proposed Better Practices are likely to create.

PART 2 – REGULATORY GUIDE

ASIFMA supports ASIC to provide further regulatory clarification following the publication of IOSCO's pre-hedging consultation report in November 2025 and ASIC's February 2024 "Dear CEO" letter.

ASIC could consider endorsing IOSCO recommendations and client considerations to clarify that the global regulatory report findings are supported by ASIC and in line with Australia's broader regulatory simplification agenda. Such global alignment would foster regulatory certainty as market participants engage with Australian clients. This would also reinforce that in Australian markets ASIC agrees with the IOSCO Final Report that concluded that pre-hedging as a legitimate risk-management activity that can benefit clients through improved execution, liquidity provision and risk transfer.

As proposed, we note that several aspects of ASIC's draft guidance are not consistent with IOSCO's recommendations. In particular, the draft in a number of places conflates legitimate pre-hedging with misconduct, creates uncertainty around the scope of covered activities and participants, and introduces expectations additional to IOSCO's recommendations that ASIFMA feels are not operationally feasible in wholesale market contexts. These include transaction-specific disclosure and consent, market-impact assessments, bespoke monitoring and record-keeping, and dedicated information-barrier arrangements.

The final Regulatory Guide should focus on whether firms undertake pre-hedging for a legitimate risk-management purpose, with the intention of benefiting the client, while taking reasonable steps to manage conflicts, potential market impact and conduct risks. ASIC should not create outcomes-based requirements that are not possible to evidence in practice, given that client outcomes, pricing and market impact are influenced by numerous factors beyond a dealer's control.

We encourage ASIC to:

- Clarify the scope of the guidance, including the market participants intended to be covered, and confirm that routine inventory management, portfolio risk management and flow trading activities are not captured unless linked to a specific identifiable anticipated client transaction.
- Confirm that disclosure, consent, supervisory arrangements, information controls and record-keeping expectations should be applied in a principle, risk-based and proportionate manner, and that firms may rely on existing governance, compliance and control frameworks rather than implementing standalone pre-hedging processes.
- Clarify the availability of the statutory "own intentions" defence and distinguish legitimate pre-hedging from insider trading and other forms of market misconduct.
- References to physical segregation measures, such as "dark rooms", should be reframed to make clear that these are examples of controls that may be appropriate in specific circumstances. The selection of such measures should be risk-based and proportionate, reflecting a firm's assessment of the relevant risks and the characteristics of the transaction, rather than being treated as a standard expectation across all pre-hedging activity.

Finally, we caution against overly referring to the Westpac and the ANZ Treasury Bond cases as establishing broader legal principles applicable to pre-hedging. Both cases were settled outside court and therefore without judicial determination and should not be treated as equivalent to case law. Additionally, these represent a very narrow sample of trading activity on which to extrapolate dealing behaviour and obtain rationale for regulatory requirements applicable to all dealing activity in the relevant market.

The regulatory guide should instead focus on IOSCO's internationally agreed recomendations and clearly articulated regulatory expectations that can be applied consistently across products, markets and jurisdictions to ensure that firms implementation of the recommendations and client considerations remain practical, proportionate and globally consistent, while avoiding unintended consequences such as reduced liquidity, increased compliance costs and fragmentation from international market practice

Further Comments on Draft Guide

Scope (RG 000.1 and RG 000.7(b)

The scope of the draft Regulatory Guide is currently unclear as to the market participants to whom the guidance is expected to apply and the types of transactions intended to be covered.

As currently drafted, RG 000.1 applies to persons carrying on a financial services business who undertake pre-hedging associated with "anticipated client transactions", while RG 000.7(b) defines "market participants" to include both AFS licensees and participants operating under ASIC licensing relief. Taken together, these provisions create uncertainty regarding both the jurisdictional reach of the guidance and the trading activities that fall within its scope.

The draft Regulatory Guide is currently unclear as to the inclusion of entities that rely on ASIC licensing relief. These entities are not necessarily subject to the same statutory obligations as AFS licensees, and the current drafting creates ambiguity as to which obligations and expectations are intended to apply to them. The draft guidance lacks a clear definition of "market participants" as entities directly subject to the relevant Australian regulatory obligations or explaination of how the guidance applies to entities operating under licensing relief arrangements.

What is Pre-hedging and when is it undertaken (RG 000.8, RG 000. 10, RG 000. 15, RG 000.17)

We support both IOSCO and ASIC's recognition of pre-hedging as a risk management activity. However, several provisions do not currently align with the IOSCO Final Report and existing international standards.

As a threshold matter, ASIC should clarify in Key Points the strong market consensus recognized by IOSCO that ***"pre-hedging should only take place when the dealer acts as principal (i.e., not when acting as agent)."*** [8]

In particular, the intention to benefit the client is a fundamental element of the IOSCO definition of pre-hedging and a key feature distinguishing legitimate pre-hedging from conduct that may raise concerns regarding front-running or misuse of confidential information. However, this is inconsistently reflected throughout the draft Regulatory Guide currently.

We also request clarification that the concept of "benefiting the client" should not be interpreted as requiring a dealer to pass through or share specific financial gains arising from pre-hedging. As recognised by IOSCO, ***"IOSCO agrees…that client benefit goes beyond the dealing price to include factors such as enabling speed of execution, reducing market impact, accommodating trade size, providing liquidity, and treating the client fairly. IOSCO agrees…that these recommendations do not create an express obligation to confer financial benefits derived from pre-hedging with the client***."[9]. In practice, it is neither possible nor appropriate to attribute individual price movements or financial outcomes solely to pre-hedging activity, nor would there be any expectation that clients share losses where pre-hedging results in adverse outcomes for the dealer.
In addition, RG 000.15 should recognise that the definition of "market participants" includes entities operating under ASIC licensing relief arrangements, including certain FFSPs. These entities are not subject to the same obligations as AFS licensees, including the obligation to provide financial services efficiently, honestly and fairly. We therefore suggest ASIC clarify the intended application of these requirements, including by cross-referencing Information Sheet 157 or other relevant guidance applicable to FFSPs.

Finally, in RG 000.17(c), we suggest refining the reference to enabling clients to make informed decisions about their "execution options" to better align with the objective of the proposed guidance. Consistent with IOSCO's recommendations and Principle 11 of the FX Global Code, the key purpose of disclosure is to ensure that clients are sufficiently informed about a dealer's pre-hedging practices, have provided consent where appropriate, and understand the potential implications for execution. In the context of pre-hedging, the emphasis should therefore be on transparency, informed decision-making and the ability for clients to modify or revoke their consent, rather than on execution options themselves. Clarifying this point would help ensure the guidance remains focused on the disclosure outcomes that are most relevant to pre-hedging arrangements.

Risks Associated with Pre-Hedging (RG 000.25)

[8] IOSCO Final Report at page 20

[9] IOSCO Final Report at pages 38-39

While we agree that pre-hedging can give rise to market and conduct risks if undertaken improperly, several of the examples in RG 000.25 appear to imply that market impact arising from pre-hedging is, in itself, indicative of misconduct. We agree with IOSCO's identification of certain potential risks associated with pre-hedging[10], however, we believe that the proposed control mechanisms are disproportionate to those risks.

In particular, adverse price movements or liquidity effects may arise as a natural consequence of legitimate risk management activity, especially in less liquid markets or for larger transactions. Market impact alone should not be interpreted as evidence of misconduct, conflicts mismanagement, unconscionable conduct or an intent to disadvantage clients. We therefore suggest revising RG 000.25(b) to focus on circumstances where pre-hedging is undertaken in a manner that is not designed to minimise market impact or is inconsistent with its stated risk-management purpose, rather than implying that any resulting market impact is problematic. Consistent with our previous comments, the relevant test should remain whether the activity was undertaken with the intention of benefiting the client, while appropriately managing market impact and maintaining market integrity.

For RG 000.25(c), ASIC should acknowledge the availability of the 'own intentions' defence under Australian law. Without this clarification, the discussion of insider trading risks may overstate the circumstances in which legitimate pre-hedging could give rise to liability.

For RG 000.25(d), we suggest focusing on the risk of market misconduct arising from the misuse of confidential information rather than on broader commercial confidentiality obligations, which will vary depending on the terms of the engagement. The key consideration should be whether information handling controls are sufficient to prevent client information from being used to facilitate market abuse.[11]

Finally, with respect to RG 000.25(e), ASIC should clarify that disclosure and consent expectations apply in a risk-based and proportionate manner. Not all instances of pre-hedging present the same level of conduct risk, and it should not be assumed that a failure to provide transaction-specific disclosure or obtain consent for every instance of non-material pre-hedging would necessarily constitute unconscionable conduct.

Intention to benefit the client (RG 000.42, RG 000.43, RG 000.46 and RG 000.48)

We support the inclusion of the principle that pre-hedging should be undertaken with the intention of benefiting the client, as this is a core element of the IOSCO definition and recommendations. However, the guidance would benefit from clarifying how such intent should be assessed and demonstrated in practice. IOSCO expressly recognised that client benefit extends beyond price and includes factors such as execution quality, liquidity provision, trade size, speed of execution, risk management and market impact. IOSCO further acknowledged that market conditions and the actions of other market participants may prevent the intended benefit from materialising, and that the relevant consideration is the dealer's intention rather than the ultimate outcome achieved.

Against that background, we suggest that RG 000.42 and RG 000.43 focus on whether a dealer has a reasonable expectation of benefiting the client overall, taking into account execution quality, risk management and prevailing market conditions, rather than implying that a demonstrable or measurable client benefit must result from each instance of pre-hedging. As IOSCO noted, it is not practicable to evaluate client benefit solely on the basis of ex post outcomes because multiple factors beyond the dealer's control influence execution results. Accordingly, evidence of intent should be assessed primarily through a dealer's policies, procedures, governance arrangements and trading rationale rather than by reference to realised market outcomes.

With respect to RG 000.46, ASIC should clarify that "transparency into pre-hedging activities" does not require disclosure of a dealer's principal risk positions, inventory levels, trading strategies or other proprietary information. IOSCO's recommendations focus on providing clients with clear disclosure of pre-hedging practices and their potential implications, rather than transparency into the dealer's confidential trading

10 IOSCO Final Report at page 10

11 IOSCO Final Report Rec. B5-Explanatory Notes at page 32

positions. We therefore suggest removing or clarifying this wording to avoid uncertainty regarding disclosure expectations.

Finally, RG 000.48 appropriately recognises that dealers must balance client interests with broader responsibilities, including inventory management and providing liquidity to other counterparties. IOSCO expressly acknowledges that dealers may need to consider such competing responsibilities when pre-hedging. However, ASIC should clarify that any reference to physical and electronic information controls is not intended to require separate or bespoke information barriers specifically for pre-hedging activities. In practice, client confidentiality, information handling and conflicts management controls operate across the firm as part of broader governance and compliance frameworks and are not ordinarily segregated by product type or trading activity. IOSCO similarly contemplates that pre-hedging may be incorporated within existing compliance, supervisory and conflicts-management arrangements rather than requiring standalone controls.

Client Communications, Disclosure and Consent (RG 000.51, RG 000.55, RG 000.78, RG 000.80, RG 000.82, RG 000.83, RG 000.86 and RG 000.88)

We support the objective of ensuring that clients receive clear information regarding dealers' pre-hedging practices. However, the current drafting would benefit from greater consistency and closer alignment with IOSCO's principles-based approach to disclosure and consent.

IOSCO recognised that while clients should be informed of a dealer's pre-hedging practices, the form and timing of disclosure should depend on the nature of the transaction, the trading environment and the client relationship. IOSCO also acknowledged that trade-by-trade disclosure and consent may not be feasible in many circumstances, particularly in electronic trading environments, automated execution channels, competitive RFQs and flow trading. IOSCO further noted broad support for a tiered approach under which relationship-level disclosure and consent are appropriate in most circumstances, supplemented by additional client engagement where warranted by the nature of the transaction.

Against this background, RG 000.51 and RG 000.78 should not be interpreted as creating an expectation that dealers proactively communicate with clients before every instance of pre-hedging. Consistent with IOSCO, communications should be relevant to the trading environment, clear and not misleading, while recognising that the appropriate form of disclosure will vary depending on the particular transaction and market structure. We therefore request consistent language throughout the Regulatory Guide confirming that disclosure and consent obligations should be applied in a principles-based, risk-based and proportionate manner.

Similarly, the interaction between RG 000.55(e), RG 000.82 and RG 000.83 remains unclear. Some provisions suggest consent should be obtained at the outset of the client relationship, while others refer to obtaining consent only "where appropriate" or "where practical" per draft Better Practice Statement 2. ASIC should clarify that relationship-level consent obtained through standard client documentation, disclosure letters and ongoing trading relationships may generally be relied upon, with additional disclosure or engagement considered where appropriate for large, complex or event-driven transactions. The guidance should avoid creating an expectation that both relationship-level consent and transaction-specific consent are required as a default outcome. Such an approach would be inconsistent with IOSCO's findings and could create unnecessary execution delays, operational complexity and inconsistent treatment across products, jurisdictions and trading models.

We also request clarification that trade-by-trade disclosure and post-trade disclosure should not be expected as routine requirements. In many markets, particularly flow trading and electronic execution environments, such disclosures are not operationally feasible. Consistent with IOSCO's observations, more detailed disclosure should be considered only in specific circumstances, such as large, bespoke or event-driven transactions where additional dialogue between dealers and clients may be appropriate.

Further, RG 000.83 appears to imply that informed consent is a critical safeguard in all instances where a dealer may benefit from price movements associated with pre-hedging. We believe this statement should be removed. Where there is little or no foreseeable market impact or client detriment, it is unclear why additional transaction-specific consent would be required. Market participants already provide conflicts disclosures and descriptions of trading practices through existing client agreements and disclosure frameworks. The appropriate level of disclosure and consent should therefore depend on the nature and materiality of the relevant risks.

For similar reasons, RG 000.86 should adopt a more balanced formulation. Failure to obtain consent should not automatically imply a contravention of statutory obligations. The relevant assessment should depend on the facts and circumstances, including the adequacy of existing disclosures, the nature of the client relationship, any prior consent arrangements and the degree of potential market or client impact.

Finally, RG 000.88 should clarify that references to an "agreement" concerning pre-hedging are intended to capture specific mandates, undertakings or contractual arrangements under which parties have expressly agreed that pre-hedging should not occur. Without such clarification, the term could be interpreted broadly and create uncertainty regarding the circumstances in which a dealer may be considered to have acted unfairly or unconscionably.

Consistent with IOSCO’s recommendations, the overall framework should focus on ensuring clients understand a dealer’s pre-hedging practices and have the ability to provide, modify or revoke consent through proportionate and operationally workable mechanisms, rather than imposing prescriptive transaction-level disclosure and consent requirements that may not be feasible across all products and execution environments.

Minimise market impact and market integrity (RG 000.57- RG 000.60)

We support the objective of minimising market impact and maintaining market integrity when undertaking pre-hedging. However, consistent with IOSCO Recommendation A4, the relevant standard should focus on whether a dealer has taken reasonable steps to manage market impact, rather than implying that market impact can always be avoided or that firms must be able to demonstrate a specific outcome. IOSCO itself amended its recommendation to require dealers to "seek to minimise" market impact, recognising stakeholder feedback that outcomes are influenced by numerous external factors and may be difficult to evidence or measure objectively.

Accordingly, we support the revised formulation proposed in RG 000.57, namely that dealers should take reasonable steps to manage market impact, consistent with the nature, size and urgency of the anticipated client transaction. This reflects the practical reality that some market impact is an inevitable consequence of legitimate risk-management activity, particularly for larger or less liquid transactions, and should not in itself be viewed as evidence of misconduct. IOSCO similarly recognised that pre-hedging may contribute to market impact while remaining a legitimate and beneficial risk-management practice when undertaken appropriately.

For RG 000.58, we suggest replacing the reference to "not planning and managing pre-hedging appropriately" with "poor execution". The decision to pre-hedge is often made in close to real time and may depend on rapidly changing market conditions. In many circumstances, there is limited opportunity for extensive pre-planning. The more relevant consideration is whether the execution itself was conducted appropriately and in a manner consistent with the firm's risk management framework and client objectives.

Finally, RG 000.60 appears heavily influenced by the specific facts of the ANZ Treasury Bonds matter and may not be applicable across the full range of pre-hedging scenarios contemplated by the guidance. Several of the considerations listed—particularly agreeing a pre-hedging strategy with a client, discussing pricing-call timing, or withholding hedging activity until after a pricing event—are more relevant to large, structured or event-driven transactions and may not be operationally feasible in RFQ markets, flow trading environments or time-sensitive transactions. We therefore recommend clarifying that these considerations should be applied where appropriate and having regard to the facts and circumstances of the transaction, particularly for large or event-driven transactions. Alternatively, ASIC could clarify that these factors are examples drawn from specific deal-management situations and are not intended to represent general expectations applicable to all forms of pre-hedging. In particular, the suggestion that dealers should withhold hedging activity until after a pricing call may not always be consistent with the underlying purpose of pre-hedging. In some circumstances, limiting a dealer's ability to manage anticipated risk before pricing may impair the dealer's ability to provide a competitive quote or facilitate execution altogether. Consistent with IOSCO's principles-based approach, firms should retain discretion to determine the appropriate timing and extent of pre-hedging based on the characteristics of the transaction, prevailing market conditions and the objective of benefiting the client while seeking to minimise market impact.

Policies, Procedures, Controls and Information Barriers (RG 000.65, RG 000.70, RG 000.72 and RG 000.93)

We support the objective of ensuring that firms maintain appropriate governance, controls and supervisory arrangements for pre-hedging. However, the guidance would benefit from clarifying that these arrangements, as confirmed by IOSCO, may be implemented through existing firmwide compliance, risk management and conduct frameworks and should not be interpreted as requiring standalone controls, dedicated information barriers or physical segregation arrangements specifically for pre-hedging activities.

In relation to RG 000.65(c), RG 000.70(b) and RG 000.93, we request clarification that references to physical and electronic segregation are illustrative examples only and are not intended to establish an expectation that firms implement dedicated information barriers, segregated trading environments or enhanced access controls every time pre-hedging occurs. In particular, we do not believe the "dark room" example in RG 000.93 reflects operational reality across most wholesale market activities. Client confidentiality, conflicts management and information handling controls are typically designed and operated on a firmwide basis and are not segregated by product type or trading activity. Consistent with IOSCO Recommendation B5, controls should be proportionate to the risks identified and capable of being incorporated within existing governance arrangements.

We also note that information barriers are generally designed to control access to material non-public information (MNPI). In many pre-hedging scenarios, confidential client information may not constitute MNPI. Accordingly, references to information barriers should not imply that physical or electronic segregation is required to manage conflicts of interest arising from pre-hedging where there is no MNPI nexus. Firms should retain flexibility to adopt controls appropriate to the nature of the information and risks involved rather than being expected to implement specific forms of segregation.

For RG 000.65(h), we suggest aligning the reference to training with existing AFSL obligations and terminology. Training representatives and ensuring compliance with applicable financial services laws already form part of firms' regulatory obligations. The guidance should therefore recognise existing training frameworks rather than implying a separate pre-hedging-specific training requirement.

With respect to RG 000.72, ASIC should avoid introducing elements of the proposed Better Practices, for which we commented above, through supervisory expectations that effectively require firms to separately identify, monitor and review pre-hedging activity. References to arrangements for "reviewing pre-hedging activity" and "detecting" whether pre-hedging was undertaken for a risk-management purpose appear closely aligned with Better Practice 1 (post-trade reviews) and Better Practice 3 (identification and differentiation of pre-hedging from other trading activities). This creates uncertainty as to whether the Better Practices are being incorporated indirectly despite not being included as formal requirements.

This is particularly relevant given IOSCO's explicit recognition that compliance, supervisory and monitoring arrangements for pre-hedging do not need to be standalone and may be incorporated into existing frameworks used for market abuse surveillance, conflicts management and conduct-risk oversight. IOSCO also amended Recommendation B4 specifically to clarify that existing compliance and supervisory arrangements may cover pre-hedging activity.

Overall, we recommend confirming that firms may satisfy these expectations through existing firmwide governance, surveillance, record-keeping and control frameworks, without needing to implement dedicated systems, transaction-level tagging, physical segregation, separate books and records or bespoke controls solely for pre-hedging. Such an approach would remain fully consistent with IOSCO's principles-based framework while avoiding unnecessary operational complexity and cost.

Record keeping (RG 000.98 – RG 000.100)

We support maintaining adequate records to facilitate supervisory oversight, monitoring and surveillance. However, consistent with IOSCO Recommendation B6, the Regulatory Guide should recognise that firms may rely on existing record-keeping frameworks and should not be interpreted as requiring bespoke documentation, transaction-level records or standalone record-keeping processes specifically for pre-hedging activities. IOSCO expressly clarified that dealers may not need to create standalone record-keeping practices where existing arrangements adequately facilitate supervisory oversight, monitoring and surveillance of pre-hedging activity.

Accordingly, we support the approach reflected in RG 000.98 and request confirmation that firms may satisfy record-keeping expectations through existing systems, controls, communications records, trade records and supervisory processes where appropriate. Pre-hedging should remain subject to the same broader governance and surveillance frameworks that apply to other principal trading activities, rather than being subject to a separate record-keeping regime.

We are concerned that RG 000.100 may be interpreted as requiring firms to maintain a comprehensive set of transaction-specific records, including pre-hedging plans, strategies, deviations, approvals and escalation decisions for each instance of pre-hedging. Such an approach would go beyond IOSCO's principles-based recommendations and could create significant operational burdens without a corresponding supervisory benefit. We therefore recommend either deleting RG 000.100 and relying on RG 000.101, which more closely reflects IOSCO Recommendation B6, or clarifying that the records listed are illustrative examples only and should be applied in a risk-based and proportionate manner.

In fast-moving markets, pre-hedging decisions are frequently made in real time in response to changing market conditions and anticipated client activity. It would not be operationally practical to require dealers to prepare and maintain a documented strategy or plan for each individual instance of pre-hedging before acting. IOSCO recognised these concerns in its consultation process and ultimately amended Recommendation B6 to make clear that existing record-keeping obligations may be sufficient. The relevant supervisory objective should be that firms can demonstrate, through their existing records and controls, that trading activity constituted legitimate pre-hedging undertaken for a risk-management purpose and not inappropriate conduct such as front-running.

More broadly, record-keeping expectations should remain aligned with the principles-based approach adopted throughout the IOSCO framework. Firms should be able to leverage existing governance, surveillance, communications monitoring, trade reconstruction and compliance records to demonstrate adherence to applicable policies and regulatory requirements, without being required to introduce transaction-level pre-hedging documentation, bespoke audit trails or separate record repositories. Such an approach would provide regulators with effective oversight while avoiding unnecessary duplication, cost and operational complexity.

Responses to ASIC questions (Regulatory Guide)

B1Q1 Is our guidance sufficiently clear to promote a common understanding of pre-hedging?

No – in ASIFMA's view ASIC's guidance does not promote a common understanding of pre-hedging.

There are inconsistent descriptions of pre-hedging in a number of sections of the draft Regulatory Guide, creating internal inconsistencies and the potential for market participants to come to different understandings – creating confusion as to the appropriate interpretation.

ASIC's draft Regulatory Guide expresses a view of pre-hedging and additional requirements for pre-hedging practices that are inconsistent with the new global regulatory standards expressed in IOSCO's Final Report, long standing industry standards such as the FX Global Code, Global Precious Metals Code and FMSB Standard. The drivers for unique interpretations of pre-hedging and requirements related to pre-hedging practices specific to the Australian market have not been sufficiently articulated.

In particular, the intention to benefit the client is a fundamental element of the IOSCO definition of pre-hedging and a key feature distinguishing legitimate pre-hedging from conduct that may raise concerns regarding front-running or misuse of confidential information. However, this is inconsistently reflected throughout the draft Regulatory Guide currently. As a threshold matter, ASIC should clarify in Key Points the strong market consensus recognized by IOSCO that ***"pre-hedging should only take place when the dealer acts as principal (i.e., not when acting as agent)."*** [12]

Additionally, several of the examples in the draft Regulatory Guide imply that market impact arising from pre-hedging is, in itself, indicative of misconduct. Adverse price movements or liquidity effects may arise as a natural consequence of legitimate risk management activity, especially in less liquid markets or for larger transactions. Market impact alone should not be interpreted as evidence of misconduct, conflicts mismanagement, unconscionable conduct or an intent to disadvantage clients. Consistent with our previous comments, and IOSCO Recommendation A4, the relevant standard should focus on whether a dealer has taken reasonable steps to manage market impact, rather than implying that market impact can always be avoided or that firms must be able to demonstrate a specific outcome. IOSCO itself amended its recommendation to require dealers to "seek to minimise" market impact, recognising stakeholder feedback that outcomes are influenced by numerous external factors and may be difficult to evidence or measure objectively.

The draft Regulatory Guide includes expectations for Dealers such as "implementing a 'dark room' to physically and electronically segregate the trader who undertakes pre-hedging" (RG 000.93) which are not operationally feasible or likely to yield a better outcome for clients or attempts to mitigate potential market impact in wholesale OTC markets. Traders manage risk in aggregate for all transactions – for example a single trader could be managing the position for a particular currency pair, responding to all demands for that pair in aggregate. Their trading activity could involve hedgeing their position based on transactions that clients have given a firm instruction, anticipated near term client demand given their deep knowledge of the market for that particular pair demand, and pre-hedging based on client instructions they are expecting to receive. They manage risk across the entirity of this demand and also respond to market events and liquidity conditions – often in sub second decisions. ASIC's suggestion that Traders could move to a segregating trading environment whenever pre-hedging is required is unrealistic. The suggestion that it would be desirable by a regulator for traders to be managing their principal risk without access to the market information and separate to management of their wider risk requirements is not operationally feasible or likely to yield a better outcome for clients or attempts to mitigate potential market impact.

As such, these views expressed in ASIC's draft Regulatory guide risk creating an inconsistent view of pre-hedging in the Australian jurisdiction compared with wider global market. This is of particular concern to ASIFMA given the global nature of OTC wholesale markets that any final ASIC Guidance would apply to. Consistent implementation within and across jurisdictions is critical to promoting regulatory certainty, supporting efficient cross-border activity and avoiding market fragmentation.

It is critical that ASIC aligns to the IOSCO Final Report published in November 2025, rather than introduce additional guidance or Better Practices that go beyond the IOSCO recommendations. Given ASIC's leadership role in IOSCO Committee 3 developing the IOSCO framework, the introduction of Australia-specific requirements in ASIC's draft Regulatory Guide creates the impression that IOSCO's recommendations are insufficient and their international standard is not sufficient for Australia. This is likely to create uncertainty among market participants and potential misinterpretation by other regulators. If ASIC intends the Final Regulatory guide to establish a higher regulatory threshold for Australia, greater clarity on this policy rationale and necessity for departure from the global standards is required.

B1Q2 How can our guidance better support a level playing field?

Given the cross-border nature of wholesale OTC financial markets, it is important that Australia's approach remains aligned with internationally recognised standards and comparable regulatory frameworks. Where regulatory requirements diverge significantly across jurisdictions, such as in ASIC's draft Guide, cross-border transactions would be subject to overlapping and inconsistent regulatory obligations.

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[12] IOSCO Final Report at page 20

We also encourage ASIC to align the final guidance more closely with the IOSCO Final Report published in November 2025, rather than introducing additional Guidance or Better Practices that go beyond the IOSCO recommendations. Given ASIC's leadership role in IOSCO Committee 3 and its involvement in developing the IOSCO framework, the introduction of Australia-specific requirements may create the impression that the IOSCO recommendations are insufficient or do not represent the appropriate international standard. This could lead to uncertainty among market participants and potential misinterpretation by other regulators. If ASIC intends the proposed Guidance and Better Practices to establish a higher regulatory threshold for Australia, greater clarity on this policy rationale would be beneficial.

Alignment with IOSCO's recommendations and other internationally recognised standards, including the FX Global Code, would help promote a practical, competitive and level playing field while minimising unnecessary fragmentation across global markets.

Given ASIC's leadership role in IOSCO's Committee 3 which led the IOSCO consultation, the introduction of Australia-specific requirements in ASIC's draft Regulatory Guide creates the impression that IOSCO's recommendations are insufficient and their international standard is not sufficient for Australia. This is likely to create uncertainty among market participants and potential misinterpretation by other regulators. If ASIC intends the draft guide to establish a higher regulatory threshold for Australia, greater clarity on this policy rationale and necessity for departure from the global standards is required.

B1Q3 Are there circumstances where the guidance may create uncertainty or unintended consequences?

In ASIFMA's view, ASIC's draft Regulatory guidance creates uncertainty as to the regulatory expectations related to pre-hedging when compared with the new global regulatory standards expressed in IOSCO's Final Report, long standing industry standards such as the FX Global Code, Global Precious Metals Code and FMSB Standard. The requirements ASIC articulate in the draft Regulatory guide diverge from IOSCO's recommendations and risk undermining the competitiveness of Australian markets. Faced with materially higher compliance costs, operational complexity and legal uncertainty, some market participants may reduce their activity in Australia, limit liquidity provision, or choose to execute and manage risk from other jurisdictions operating under more internationally aligned frameworks. This could fragment liquidity, reduce market depth, widen pricing, and ultimately diminish the capacity of Australian markets to facilitate efficient risk transfer and capital formation. Such Australia-specific requirements that diverge from IOSCO's recommendations risk undermining the competitiveness of Australian markets.

The draft Regulatory guidance references specific cases involving particular transactions with unique characteristics and implies that all situations in which pre-hedging is contemplated align with those facts and circumstances – which is an over-simplification of OTC markets, the role of principal market-makers and their management of principal business. Given the diversity of markets, products and transaction types, a single pre-hedging framework would not appropriate in all circumstances.

Dealers must retain flexibility to determine how best to manage their risk based on factors such as market conditions, liquidity, volatility, transaction size, product characteristics and execution timing. Regulatory guidance should therefore remain principles-based and sufficiently flexible to accommodate differing market structures and business models. Overly restrictive and prescriptive requirements, such as those set out in ASIC's draft Regulatory guidance could reduce dealers' willingness or ability to effectively manage the risk arising from Australian business, ultimately resulting in wider pricing, potential market impact from transactions that are not pre-hedged, lower liquidity and reduced capacity for risk transfer.

We believe certain aspects of the proposed Regulatory guidance is likely to create uncertainty. For example, ASIC's expectations with regards to requirements for Dealers to seek their clients consent to pre-hedge are unclear as to trade-by-trade explicit client consent is required for all trades, or a specific population of trades, whether relationship level disclosure of pre-hedging practices is sufficient, etc. Given the ambiguity in this wording and the resultant confusion that may arise, we suggest removing this from the proposed guidance. In addition, transaction-specific consent may introduce practical challenges and execution delays to time-sensitive pricing and execution workflows, particularly in fast-moving markets resulting in a negative consequence for the Australian markets.

As such, ASIFMA advocates principle level guidance, rather than stating specific operational outcomes, whether formulated as requirements, examples or illustrations of better practices.

B1Q4 Are there any changes we should make to our proposed guidance? If so, please provide details with reasons.

ASIFMA are not supportive of the creation of jurisdiction specific requirements for pre-hedging or the divergence of regulatory expectations across jurisdictions.

The draft Regulatory Guide refers to a handful of very specific examples of trading activity, which are not representative of the vast spectrum of wholesale trading activity and the totality of situations in which principal dealers need to manage the risk arising from their attempts to facilitate anticipated client need. These very specific scenarios should not be used to define rules applicable to all trading activity. The requirements in the draft Regulatory Guide exceed and conflict with IOSCO's recommendations as well as long standing industry standards such as the FX Global Code, Global Precious Metals Code and FMSB Standard – and do not align with global wholesale market conventions. It is ASIFMA's strong view that ASIC should target consistency with IOSCO's recommendations and existing market standards.

We believe ASIC can achieve its supervisory and policy objectives through more proportionate measures that remain closely aligned with the IOSCO recommendations, without introducing the market disruption and unintended consequences that the draft Regulatory Guide is likely to create.

We look forward to continuing our engagement with ASIC on the matters addressed in this consultation response. Should you have any questions or wish to discuss any aspect of our submission further, please do not hesitate to contact us. We would also welcome the opportunity to meet with ASIC to discuss our response in more detail, should that be helpful.

Sincerely,

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ANNEX:

Spotlight Review: Guiding Principles for Pre-Hedging

The FICC Markets Standards Board (FMSB) guiding principles for pre-hedging is complementary to existing Codes, Standards, and Recommendations to avoid any uncertainty around the efficacy of existing governance processes across asset classes and markets globally. The guiding principles aim to provide both members of FMSB and other market participants common understanding of good practices for pre-hedging.

Pre-hedging should only be conducted when acting as a principal. Pre-hedging is arm's length trading in which neither party to a potential or actual transactions has a fiduciary duty to the other. When acting as principal the dealer is separately taking on market risk in order to determine the price it will offer to the client[13] when that client seeks to execute a transaction. Such trading would be improper if undertaken by an agent who is acting for a fee pursuant to a client mandate without taking on market risk.

Liquidity providers in principal markets maintain inventories of financial products to satisfy reasonably expected near-term demand. Consequently, they actively manage the risks associated with this inventory.

Anticipated trade requests differ from orders in that the dealer has market risk. When pre-hedging the dealer is managing this risk with its own capital and no assurance that the counterparty will trade. Further, liquidity providers pre-hedge because they need to know what to charge for the potential risk transfer.

This ability to manage risk is executed with the intent to benefit the client, including:

- Achieving a tighter bid-ask spread via price discovery
- Mitigating potential adverse market impact
- Facilitating liquidity provision (e.g., by enabling dealer to manage against risk limit)
- Enabling larger trade size
- Enhancing speed of execution

Markets are inter-connected and pre-hedging may occur in correlated asset classes. Pre-hedging can occur in securities and derivatives transactions on trading venues and over the counter (OTC) markets, and across a range of asset classes (e.g., equity, fixed income, currencies, and commodities).

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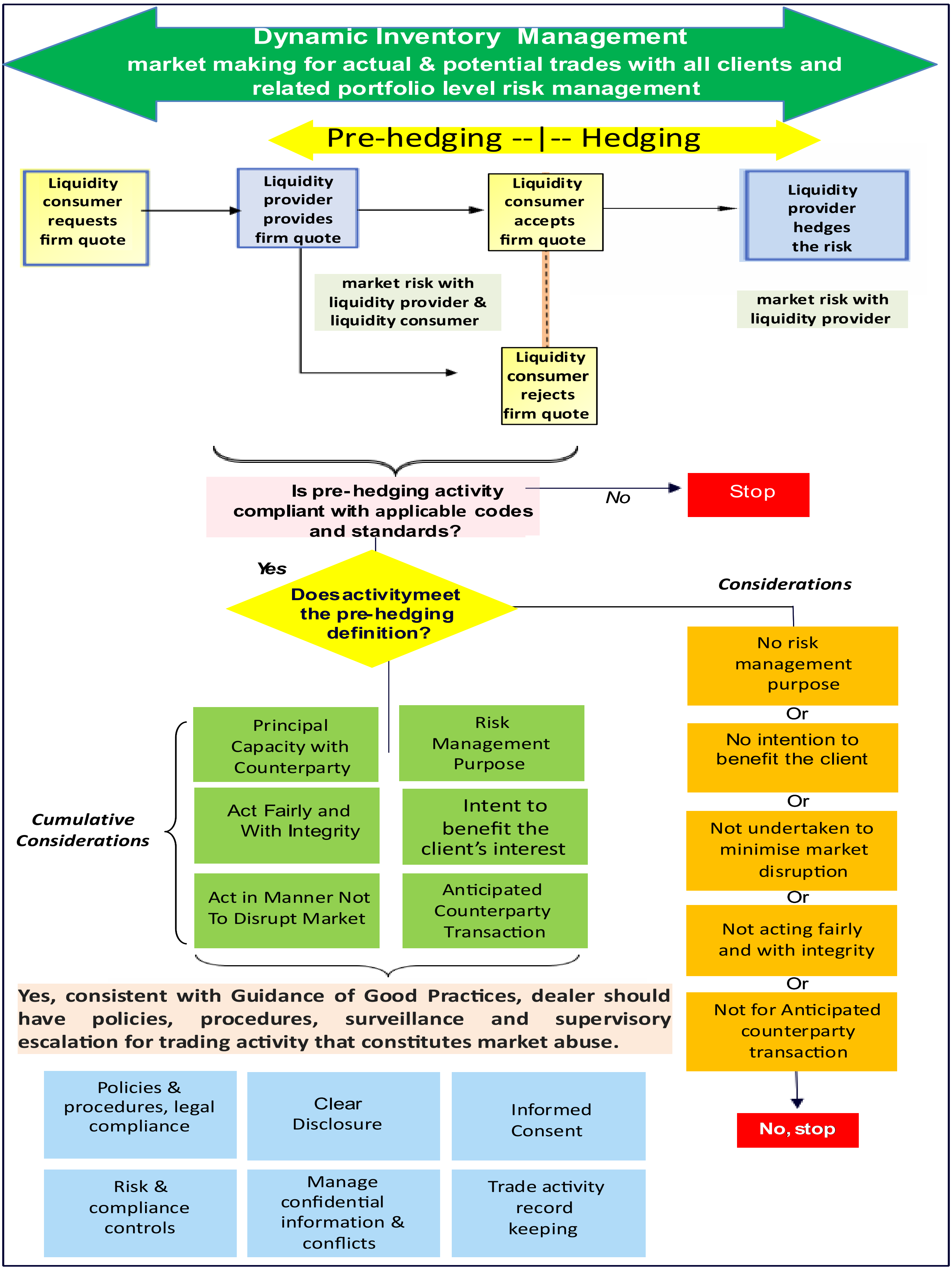
[13] See IOSCO Pre-Hedging (November 2025) FN2 "*Client in this context includes counterparty and does not give rise to any agency relationship or fiduciary duty.*"

Pre-hedging Guiding Principles:

1. **Relationship Level Disclosure** means liquidity providers should communicate their pre-hedging practices to their clients in a manner meant to enable clients to understand their choices as to execution. Disclosure in advance makes clients aware of the liquidity provider's role as a principal market maker. Make clear whether relationship-level disclosure applies to all types of RFQs and/or trading, including whether electronic or voice. Such relationship level disclosure is not required on a trade-by-trade basis.
2. **Risk Management Purpose**: Consistent with principal market making, the dealer manages risks when fulfilling or facilitating the execution of counterparty demand, including by pre-hedging. Disclosure coverage includes discussion of the risk management factors that are taken into account when pre-hedging, including such activity is reasonable relative to the size and nature of the anticipated transaction (or portfolio of transactions) and may include pre-hedging in the same or correlated instruments to the potential transaction.
3. **Communication Channels**: Liquidity providers should seek to receive prior consent to pre-hedge from the client at the outset of the relationship. Clients may also request additional information about the risk management activities for specific transactions in order for them to determine whether to trade. A liquidity provider may determine to provide trade-level disclosure for large trades, such as those negotiated over time (e.g., structured transactions of large size negotiated over time related to event driven activities such as M&A or loan/bond financing activities, including deal contingent trades). In circumstances where transactions are negotiated over time, a liquidity consumer may notify liquidity provider of any pre-hedging to opt out at trade level or relationship level.
4. **Proportionality:** liquidity providers should have policies and procedures reasonably designed to appropriately manage access to and prohibit misuse of confidential counterparty information and adequately manage any conflicts of interest. Such policies and procedures may include requirements for information barriers, staff training and supervision and monitoring and surveillance to detect potentially inappropriate information sharing or use.
5. **Mediums of Disclosure:** Liquidity providers determine most appropriate mechanism to communicate pre-hedging practices to clients. For example, include in public trading practices disclosure to clients (may include in overall hedging disclosures or break out separately); post on dealer website; transmit by email to clients in tandem with onboarding; and consider GFXC expansion of GFXC liquidity provider cover sheets to identify location of pre-hedging disclosure across asset classes (rather than, as currently, just FX).


Dynamic Inventory Management
market making for actual & potential trades with all clients and related portfolio level risk management
Pre-hedging --|-- Hedging
Liquidity consumer requests firm quote
Liquidity provider provides firm quote
Liquidity consumer accepts firm quote
Liquidity provider hedges the risk
market risk with liquidity provider & liquidity consumer
market risk with liquidity provider
Liquidity consumer rejects firm quote
Is pre-hedging activity compliant with applicable codes and standards?
No
Stop
Yes
Does activity meet the pre-hedging definition?
Considerations
No risk management purpose
Or
No intention to benefit the client
Or
Not undertaken to minimise market disruption
Or
Not acting fairly and with integrity
Or
Not for Anticipated counterparty transaction
No, stop
Cumulative Considerations
Principal Capacity with Counterparty
Risk Management Purpose
Act Fairly and With Integrity
Intent to benefit the client's interest
Act in Manner Not To Disrupt Market
Anticipated Counterparty Transaction
Yes, consistent with Guidance of Good Practices, dealer should have policies, procedures, surveillance and supervisory escalation for trading activity that constitutes market abuse.
Policies & procedures, legal compliance
Clear Disclosure
Informed Consent
Risk & compliance controls
Manage confidential information & conflicts
Trade activity record keeping

RESTRICTED