

## SECTION 19 COMPLIANCE, ENFORCEMENT ACTIONS AND APPEALS

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## SECTION 19 COMPLIANCE, ENFORCEMENT ACTIONS AND APPEALS

This Section deals with supervision and enforcement matters including:

- (a) investigating the activities of a Participant and the powers of ASX Clear to obtain information, inspect records and obtain an Accountant's report at the cost of a Participant;
- (b) the circumstances when a Participant must inform ASX Clear of certain matters;
- (c) the taking of enforcement action by ASX Clear for a contravention of the Rules;
- (d) enforcement action to suspend or terminate a Participant; and
- (e) the consolidation of investigations.

The establishment and composition of the Tribunal Panel, the Appeal Tribunal, the powers of the Tribunal and how appeal proceedings (including from sanctions imposed by ASX Clear as part of an enforcement action) before the Appeal Tribunal are to be conducted are set out in the ASX Enforcement and Appeals Processes Rulebook.

### 19.1 MONITORING COMPLIANCE

#### 19.1.1 Obtaining information

ASX Clear may at any time investigate the activities of a Participant. As part of any investigation, ASX Clear may require a Participant to do one or both of the following:

- (a) to provide any information known to the Participant; and
- (b) by notice in writing, to provide or permit inspection at the offices of the Participant or any other place notified by ASX Clear of any records in the custody, control or possession of the Participant,

in connection with the performance by the Participant of its obligations under the Rules or the Procedures. ASX Clear may also require, by notice in writing, that a Participant provide specified information relating to the terms and circumstances of, and the parties to, any dealings in relevant Financial Products by Clients and former Clients of the Participant.

Introduced 11/03/04 Origin OCH 16.1.1 Amended 15/06/15

#### 19.1.2 Participant to comply

If a Participant is required to provide information or receives a notice under Rule 19.1.1, the Participant must:

- (a) provide the information, or provide or permit inspection of the records in accordance with the notice;
- (b) provide assistance to ASX Clear as ASX Clear may reasonably require in relation to the information required or the notice; and
- (c) bear any costs incurred by the Participant in connection with providing the information or complying with the notice or providing assistance to ASX Clear.

Introduced 11/03/04 Origin OCH 16.1.2 Amended 15/06/15

### **19.1.3 Attendance of individuals before ASX Clear**

Without limiting the powers under Rule 19.1.1, ASX Clear may, in connection with an investigation, require a Participant and its Employees to appear for interview before ASX Clear to give any information required by ASX Clear in relation to the business of the Participant or to enable ASX Clear to consider whether or not the Participant continues to comply with the Admission Requirements and whether the Participant has complied with the Participant's obligations under these Rules. A Participant must comply, and must ensure that its Employees comply, with any requirement of ASX Clear under this Rule 19.1.3.

Introduced 11/03/04 Origin OCH 16.1.4 Amended 31/03/08, 15/06/15

### **19.1.4 Other requirements of investigation**

ASX Clear may, in connection with any investigation, do one or more of the following:

- (a) give directions about who may be present at an interview of another person;
- (b) impose conditions on the attendance of a person, including in relation to appropriate undertakings as to confidentiality; and
- (c) impose any other requirement which ASX Clear considers to be reasonably necessary to preserve the integrity of the investigation.

A Participant must comply, and ensure that its Employees comply, with any requirement imposed under this Rule 19.1.4.

Introduced 11/03/04 Origin OCH 16.1.5 Amended 15/06/15

### **19.1.5 Provision of independent expert report or certification**

ASX Clear may by notice to a Participant require the Participant to provide a report, in a form acceptable to ASX Clear, from a suitably qualified independent expert approved by ASX Clear expressing an opinion as to:

- (a) the performance by the Participant of its obligations (including its ability to perform its obligations in future) under the Rules;
- (b) the Participant's capacity to continue to meet the requirements for admission as a Participant; and

- (c) any other matter which in the opinion of ASX Clear is necessary to assist ASX Clear in the discharge of its functions under these Rules or as ASX Clear otherwise considers appropriate having regard to Rule 1.15.

Introduced 11/03/04 Origin OCH 16.1.6 Amended 02/08/13

#### **19.1.6 ASX Clear may appoint Accountant**

If a Participant fails to comply with a direction by ASX Clear under Rule 19.1.5, ASX Clear may appoint an Accountant to investigate the Participant and prepare a report in a form and within a time determined by ASX Clear. The Participant must give all necessary assistance required by the Accountant to prepare the report and must at the request of the Accountant direct third parties to make available all information the Accountant requires.

Introduced 11/03/04 Origin OCH 16.1.7 Amended 15/06/15

#### **19.1.7 Authority of Accountant appointed by ASX Clear**

An Accountant appointed by ASX Clear under Rule 19.1.6 is taken to be the Participant's attorney for the purpose of obtaining any information or documents from third parties which in the opinion of the Accountant or ASX Clear are necessary for the Accountant to prepare the report or further report.

Introduced 11/03/04 Origin OCH 16.1.8 Amended 15/06/15

#### **19.1.8 Cost of Accountant**

Unless ASX Clear otherwise determines, the Participant must pay the cost of the report of the Accountant prepared under this Rule 19.1.

Introduced 11/03/04 Origin OCH 16.1.9 Amended 15/06/15

### **19.1A SELF-REPORTING BY PARTICIPANTS**

#### **19.1A.1 Self-reporting by Participants**

A Participant must notify ASX Clear in writing immediately if:

- (a) it becomes aware that it has breached any of the Rules or the Procedures and that breach is significant;
- (b) any circumstance exists which constitutes an event of default under Rule 15.1 or an event referred to in paragraphs (a) or (d) of Rule 15.3.1;
- (c) the Participant suspects or becomes aware that any Employee has engaged in fraudulent conduct or other conduct which might constitute Unprofessional Conduct; or
- (d) the Participant becomes aware or has reasonable grounds for suspecting the existence of any event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules or the Procedures.

For the purposes of determining whether a breach is significant for the purposes of paragraph (a), a Participant must have regard to the following:

- (e) the number or frequency of similar breaches;
- (f) the impact of the breach on the Participant's ability to comply with any other Rule or Procedure or to conduct its business operations;
- (g) the extent to which the breach indicates that a Participant's arrangements to ensure compliance with the Rules and Procedures is inadequate;
- (h) the actual or potential financial loss to clients of the Participant, or the Participant itself, arising from the breach; and
- (i) any other matters specified by ASX Clear from time to time.

Introduced 15/06/15

## **19.2 PROVISION OF AUDIT REPORT TO ASX CLEAR**

### **19.2.1 Audit of Participants**

ASX Clear may by notice to a Participant require the Participant to provide a report from an independent auditor or other expert approved by ASX Clear expressing an opinion as to:

- (a) the performance by the Participant and any third party provider of the Participant of the Participant's obligations under the Rules;
- (b) the Participant's capacity to continue to meet the requirements for admission as a Participant under Section 3; or
- (c) any other matter which in the opinion of ASX Clear is necessary to assist ASX Clear in the discharge of its functions under these Rules.

Introduced 11/03/04 Origin SCH 17.9.1 Amended 15/06/15

### **19.2.2 Notice, reporting and costs of audit of obligations**

If ASX Clear gives notice to a Participant requiring that Participant to provide a report under Rule 19.2.1;

- (a) ASX Clear must specify in that notice the date and time by which the Participant is to provide the report and that date must be a date not less than 1 month from that date that ASX Clear gives the notice; and
- (b) the Participant must:
  - (i) provide that report to ASX Clear within the time specified in the notice; and
  - (ii) bear any costs incurred by the Participant in obtaining the report.

Introduced 11/03/04 Origin SCH 17.9.2 Amended 15/06/15

### **19.2.3 Notice by Regulated Person – [Deleted]**

Introduced 11/03/04 Origin OCH 16.1.10 Amended 01/08/10, 02/08/13 Deleted 15/06/15

### **19.2.4 Notice by other Regulated Person – [Deleted]**

Introduced 11/03/04 Origin OCH 16.1.11 Amended 01/08/10 Deleted 15/06/15

## **19.3 ENFORCEMENT ACTION**

### **19.3.1 Enforcement action for breach of rules**

If ASX Clear considers that a Participant has contravened the Rules or the Procedures, ASX Clear may take any action in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

Introduced 11/03/04 Origin OCH 16.2.1 Amended 31/03/08, 01/08/10, 15/06/15

### **19.3.2 Expedited disciplinary procedure – [Deleted]**

Introduced 11/03/04 Origin OCH 16.2.2 Amended 12/04/05 19/10/05 Deleted 31/03/08

### **19.3.3 Regulated Person may elect for Disciplinary Tribunal hearing – [Deleted]**

Introduced 11/03/04 Origin OCH 16.2.3 Deleted 31/03/08

### **19.3.4 Action to enforce expedited determination – [Deleted]**

Introduced 11/03/04 Origin OCH 16.2.4 Deleted 31/03/08

### **19.3.5 Commencement of disciplinary proceedings – [Deleted]**

Introduced 11/03/04 Origin OCH 16.2.5 Deleted 31/03/08

### **19.3.6 Proceedings of Disciplinary Tribunal – [Deleted]**

Introduced 11/03/04 Origin OCH 16.2.6 Deleted 31/03/08

### **19.3.7 Exercise of powers of Disciplinary Tribunal in disciplinary proceedings – [Deleted]**

Introduced 11/03/04 Origin OCH 16.2.7, 16.2.8 Amended 19/10/05 Deleted 31/03/08

### **19.3.8 Register of banned Responsible Executives – [Deleted]**

Introduced 19/10/05 Deleted 31/03/08

## **19.4 IMMEDIATE ACTION WHERE EVENT OF DEFAULT**

### **19.4.1 Action pursuant to Section 15**

ASX Clear may exercise its powers under Section 15 to suspend or terminate a Participant's authority to clear all or any category of Market Transaction without following the procedures set out in Section 19.3. Action by ASX Clear under Rule 15 does not prevent ASX Clear from taking enforcement action under Rule 19.3 in



connection with the circumstances giving rise to that action or from taking any other action under Section 15.

Introduced 11/03/04 Origin OCH 16.3.1 Amended 01/08/10

#### **19.4.2 Notice of suspension or termination**

ASX Clear will, as soon as practicable, notify the Participant of action taken by ASX Clear under Section 15 to suspend or terminate the Participant, and its reasons for taking that action.

Introduced 11/03/04 Origin OCH 16.3.2

### **19.5 SUSPENSION AND TERMINATION OF PARTICIPANTS**

#### **19.5.1 Suspension**

If ASX Clear suspends a Participant's authority to clear all or any category of Market Transaction under Rule 15.2.1(1):

- (a) the period of suspension will be the period that ASX Clear considers necessary or desirable. ASX Clear may extend the period of suspension if it considers an extension is necessary or desirable;
- (b) the Participant must not hold itself out as a Participant during a period of suspension; and
- (c) during a period of suspension, ASX Clear may, pursuant to its powers under Rule 15.2.1, terminate the admission of the Participant.

Introduced 11/03/04 Origin OCH 16.4.1 Amended 06/07/20

#### **19.5.2 No termination without hearing – [Deleted]**

Introduced 11/03/04 Origin OCH 16.4.2 Deleted 06/07/20

### **19.6 SUSPENSION AND TERMINATION OF OTHER REGULATED PERSONS – [DELETED]**

#### **19.6.1 Regulated Person declared a defaulter – [Deleted]**

Introduced 11/03/04 Origin OCH 16.4A.1 Deleted 15/06/15

#### **19.6.2 Suspension or termination in interests of ASX Clear – [Deleted]**

Introduced 11/03/04 Origin OCH 16.4A.2 Deleted 15/06/15

#### **19.6.3 Suspension – [Deleted]**

Introduced 11/03/04 Origin OCH 16.4A.3 Deleted 15/06/15

#### **19.6.4 No termination without hearing – [Deleted]**

Introduced 11/03/04 Origin OCH 16.4A.4 Deleted 15/06/15

## **19.7 APPEALS**

### **19.7.1 Appeal from decision of ASX Clear**

If a Participant is dissatisfied with a determination of ASX Clear to issue an Enforcement Notice under Section 2 of the ASX Enforcement and Appeals Rulebook or any sanction imposed in the Enforcement Notice, the Participant may appeal to the Appeal Tribunal in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

Introduced 11/03/04 Origin OCH 16.5.1 Amended 31/03/08, 01/08/10, 15/06/15

### **19.7.2 Appeal from decision of ASX Clear under Section 15**

If a Participant is dissatisfied with a decision of ASX Clear to suspend or terminate the admission of a Participant under Section 15, the Participant may appeal to the Appeal Tribunal in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

Introduced 11/03/04 Origin OCH 16.5.2 Amended 31/03/08, 01/08/10

### **19.7.3 Appeal from decision of ASX Clear under Rule 19.6.2 – [Deleted]**

Introduced 11/03/04 Origin OCH 16.5.2A Amended 31/03/08, 01/08/10 Deleted 15/06/15

### **19.7.4 Action which may be implemented pending appeal**

ASX Clear may implement and announce a decision to suspend a Participant pursuant to Rule 15 before the expiry of the time for giving a notice of appeal or before the appeal is determined, if ASX Clear considers it appropriate having regard to Section 1.15 to do so.

Introduced 11/03/04 Origin OCH 16.5.3 Amended 15/06/15

### **19.7.5 Action which may not be implemented pending appeal**

ASX Clear may not implement or announce a decision to:

- (a) take enforcement action against a Participant under Rule 2.5 of the ASX Enforcement and Appeals Rulebook; or
- (b) terminate a Participant's admission as a Participant under Section 15 of this Rulebook,

before the expiry of the time for giving a notice of appeal or, if a notice of appeal is given in accordance with the ASX Enforcement and Appeals Rulebook, before the appeal is determined.

Introduced 11/03/04 Origin OCH 16.5.4 Amended 31/03/08, 01/08/10, 15/06/15

## **19.8 RECORD OF ACTION AND ANNOUNCEMENT – [DELETED]**

### **19.8.1 Record to be made – [Deleted]**

Introduced 11/03/04 Origin OCH 16.6.1 Deleted 31/03/08

**19.8.2 Action pending appeal – [Deleted]**

Introduced 11/03/04 Origin OCH 16.6.2 Deleted 31/03/08

**19.8.3 Copies of Discipline Register – [Deleted]**

Introduced 11/03/04 Origin SCH 18.6.3, 18.6.4 Deleted 31/03/08

**19.8.4 Announcement – [Deleted]**

Introduced 11/03/04 Origin OCH 16.6.3 Deleted 31/03/08

**19.8.5 Disclosure – [Deleted]**

Introduced 11/03/04 Origin OCH 16.6.4 Deleted 31/03/08

**19.8.6 Disciplining of Participants – Consultation with an Approved Settlement Facility or the relevant Approved Market Operator – [Deleted]**

Introduced 11/03/04 Origin SCH 18.9.1, 18.9.2 Deleted 31/03/08

**19.9 CONSOLIDATION OF INVESTIGATIONS – RELATED BODIES CORPORATE**

**19.9.1 ASX Clear may consolidate investigation**

Subject to Rule 19.9.4, if:

- (a) ASX Clear is entitled to exercise its powers against a Participant under Rule 19.3 in respect of particular circumstances; and
- (b) a Related Body Corporate of ASX Clear has similar powers under its operating rules and is entitled to exercise those powers against the same Participant in respect of the same or similar circumstances,

ASX Clear need not exercise those powers separately but may exercise those powers together with the exercise by the Related Body Corporate of its powers.

Introduced 11/03/04 Origin OCH 16.7.1 Amended 15/06/15

**19.9.2 ACH may consolidate disciplinary proceedings – [Deleted]**

Introduced 11/03/04 Origin OCH 16.7.2 Deleted 31/03/08

**19.9.3 ACH may consolidate appeal proceedings – [Deleted]**

Introduced 11/03/04 Origin OCH 16.7.3 Deleted 31/03/08

**19.9.4 Consolidation does not affect powers**

Even though the exercise of powers are consolidated under this Rule 19.9, ASX Clear must comply with the Rules which govern those powers. The consolidation of the exercise of powers under this Rule 19.9 does not confer on ASX Clear or on the Related Body Corporate any powers in addition to those conferred on them by these Rules or the rules of the Related Body Corporate.

Introduced 11/03/04 Origin OCH 16.7.4 Amended 31/03/08

## 19.10 CONSOLIDATION OF INVESTIGATIONS AND PROCEEDINGS – REGULATED PERSONS – [DELETED]

### 19.10.1 ACH may combine proceedings – [Deleted]

Introduced 11/03/04 Origin OCH 16.8.1 Deleted 31/03/08

### 19.10.2 Right to object – [Deleted]

Introduced 11/03/04 Origin OCH 16.8.2 Deleted 31/03/08

### 19.10.3 Appeals – [Deleted]

Introduced 11/03/04 Origin OCH 16.8.3 Deleted 31/03/08

## 19.11 CORPORATIONS ACT COMPLIANCE AND CONTRAVENTIONS

### 19.11.1 Enforcement of contractual provisions

Where these Rules require a Participant to comply with a provision of the Corporations Act (and therefore, contemplate that ASX Clear may take action against a Participant for a contravention of that provision):

- (a) ASX Clear may enforce that provision as if it were a Rule;
- (b) any action taken or determination by ASX Clear is not to be regarded as taking action or making a determination under the Corporations Act but rather as taking action or making a determination under the contract constituted by these Rules in relation to a contravention of the contractual term referred to in paragraph (a);
- (c) ASX Clear may take action or make a determination under this Section 19 regardless of whether a court, the Commission or any other authority has commenced or completed any investigation, prosecution or other action in relation to the alleged contravention of that provision; and
- (d) any action or determination by ASX Clear is not affected by any previous or subsequent action or determination by any court, the Commission or any other authority in relation to an alleged contravention of that provision.

Introduced 11/03/04 Origin OCH 16.9.1 Amended 31/03/08, 15/06/15

### 19.11.2 Interpretation

In Rule 19.11:

- (a) “**taking action**” includes commencing or continuing any inquiry or investigation, holding any hearing or engaging in any procedure; and
- (b) “**determination**” includes any decision of an interim nature.

Introduced 11/03/04 Origin OCH 16.9.2

- 19.12 TRIBUNAL PANEL – [DELETED]**
- 19.12.1 ACH to establish panel – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.2 Deleted 31/03/08
- 19.13 DISCIPLINARY TRIBUNAL – [DELETED]**
- 19.13.1 How hearings to be conducted – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.1.1 Deleted 31/03/08
- 19.13.2 Role of Tribunal – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.3.1 Deleted 31/03/08
- 19.13.3 Chairperson and deputy chairperson – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.3.2 Deleted 31/03/08
- 19.13.4 Composition of Tribunal – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.3.3 Deleted 31/03/08
- 19.13.5 Hearing date – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.3.4 Deleted 31/03/08
- 19.13.6 Powers of Disciplinary Tribunal – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.3.5 Deleted 31/03/08
- 19.13.7 Reasons for decision – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.3.6 Deleted 31/03/08
- 19.13.8 Conduct of proceedings – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.3.8 Deleted 31/03/08
- 19.14 APPEAL PROCESS – [DELETED]**
- 19.14.1 Notice of appeal by person other than ACH – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.4.1 Deleted 31/03/08
- 19.14.2 Notice of appeal by ACH – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.4.2 Deleted 31/03/08
- 19.14.3 ACH to notify relevant Tribunal – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.4.3 Deleted 31/03/08

- 19.15 APPEAL TRIBUNAL – [DELETED]**
- 19.15.1 How appeal to be conducted – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.1.2 Deleted 31/03/08
- 19.15.2 Role of Appeal Tribunal – [Deleted]**  
Introduced 11/03.04 Origin OCH 17.5.1 Deleted 31/03/08
- 19.15.3 Chairperson and deputy chairperson – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.5.2 Deleted 31/03/08
- 19.15.4 Composition of Appeal Tribunal – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.5.3 Deleted 31/03/08
- 19.15.5 Hearing Date – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.5.4 Deleted 31/03/08
- 19.15.6 Powers of Appeal Tribunal – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.5.5 Deleted 31/03/08
- 19.15.7 Ability of the Appeal Tribunal to award costs – [Deleted]**  
Introduced 11/03/04 Deleted 31/03/08
- 19.15.8 Ability of the Appeal Tribunal to award costs incurred at the Disciplinary Tribunal – [Deleted]**  
Introduced 11/03/04 Deleted 31/03/08
- 19.15.9 Order for costs – [Deleted]**  
Introduced 11/03/04 Deleted 31/03/08
- 19.15.10 Reasons for decision – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.5.7 Deleted 31/03/08
- 19.15.11 Decision final and binding – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.5.8 Deleted 31/03/08
- 19.15.12 Conduct of proceedings – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.5.10 Deleted 31/03/08
- 19.16 CONDUCT OF TRIBUNAL PROCEEDINGS – [DELETED]**
- 19.16.1 Attendance – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.6.1 Deleted 31/03/08

- 19.16.2 Written submissions – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.6.2 Deleted 31/03/08
- 19.16.3 Formalities, recording and transcripts – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.6.3 Deleted 31/03/08
- 19.16.4 Procedural fairness – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.6.4 Deleted 31/03/08
- 19.16.5 Voting – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.6.5 Deleted 31/03/08
- 19.16.6 Tribunal may obtain legal advice – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.6.6 Deleted 31/03/08
- 19.16.7 Participation in proceedings – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.6.7 Deleted 31/03/08
- 19.17 INDEMNITY FOR TRIBUNAL MEMBERS AND ACH OFFICERS – [DELETED]**
- 19.17.1 Limitation of liability and indemnity – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.7.1 Deleted 31/03/08
- 19.17.2 Indemnity for certain legal proceedings – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.7.2 Deleted 31/03/08
- 19.18 PROVISION OF INFORMATION BY ACH TO TRIBUNAL – [DELETED]**
- 19.18.1 ACH may provide information – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.8.1 Deleted 31/03/08
- 19.18.2 Regulated Person to be informed – [Deleted]**  
Introduced 11/03/04 Origin OCH 17.8.2 Deleted 31/03/08
- 19.19 TRANSITIONAL PROVISIONS – [DELETED]**
- 19.19.1 Transitional Provisions – [Deleted]**  
Introduced 31/03/08 Deleted 01/08/10
- 19.19.2 Definitions – [Deleted]**  
Introduced 31/03/08 Deleted 01/08/10

## 19.20 TRANSITIONAL PROVISIONS

### 19.20.1 Transitional Provision Definitions

For the purposes of this Rule 19.20:

**"Commence"** means:

- (a) in relation to disciplinary proceedings relating to conduct or a failure prior to the Effective Time, the provision of a contravention notice by ASX Clear to the Participant pursuant to Rule 2.1 of the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook; and
- (b) in relation to appeal proceedings relating to conduct or a failure prior to the Effective Time, the provision of notice of appeal by the relevant person pursuant to Rule 3.1 of the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

**"Effective Time"** means the date of commencement of Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010*.

**"Old ACH Rules"** means the ACH Clearing Rules in force before the Effective Time.

**"Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook"** means the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook in force before the Effective Time;

**"Old Tribunal"** means the Disciplinary Tribunal or Appeal Tribunal (as the context requires) convened in accordance with the Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook, irrespective of whether it is convened before or after the Effective Time.

**"Relevant Person" or "Participant"** means a Participant or an Affiliate Based CP or a person applying to ASX Clear for admission as a Participant pursuant to Rule 3.1 of the Rules.

Introduced 01/08/10 Amended 15/06/15

### 19.20.2 Sanctions

Following the Effective Time:

- (a) ASX Clear will have jurisdiction pursuant to Rule 19.3.1 and the ASX Enforcement and Appeals Rulebook and may take any action under that rule or rulebook in respect of a Relevant Person concerning any conduct or failure under:
  - (i) these Rules, where that conduct or failure occurred on or after the Effective Time; or
  - (ii) these Rules and the Old ACH Rules, where the relevant conduct or failure the subject of the action spans both prior to and following the Effective Time,



irrespective of when ASX Clear became aware of, or should have become aware of, that conduct or failure;

- (b) the Appeal Tribunal will have jurisdiction pursuant to the ASX Enforcement and Appeals Rulebook and may conduct appeal proceedings (including the holding of any hearings or engaging in any procedures) under those Rules in respect of a Relevant Person concerning any conduct or failure under:
  - (i) these Rules, where that conduct or failure occurred on or after the Effective Time; or
  - (i) these Rules and the Old ACH Rules, where the relevant conduct or failure the subject of the proceedings spans both prior to and following the Effective Time,

irrespective of when ASX Clear became aware of, or should have become aware of, that conduct or failure;

- (c) ASX Clear will continue to have jurisdiction pursuant to Rule 19.3.1 of the Old ACH Rules and the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook and may take disciplinary action under that rule or rulebook after the Effective Time in respect of a Participant concerning any conduct under or any failure to comply with, or any engagement in Unprofessional Conduct under, the Old ACH Rules, where that conduct or failure occurred prior to the Effective Time, irrespective of when ASX Clear became aware of, or should have become aware of, that conduct or failure;
- (d) the Old Tribunal shall continue to have jurisdiction to conduct disciplinary proceedings (including any appeal proceedings from those disciplinary proceedings) or appeal proceedings (as the case may be) in accordance with, and pursuant to its jurisdiction under, the provisions of the Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook in respect of a Participant concerning any conduct under, any failure to comply with, or any engagement in Unprofessional Conduct under, the Old ACH Rules, where that conduct or failure occurred prior to the Effective Time, irrespective of whether disciplinary or appeal proceedings have Commenced prior to the Effective Time or when ASX Clear became aware of, or should have become aware of, that conduct or failure;
- (e) for the purposes of paragraphs (c) and (d) above:
  - (i) the maximum penalty that may be imposed on a Participant shall be the maximum penalty that would have been imposed for the relevant conduct or failure under the rules in existence at the time that the relevant conduct or failure occurred, irrespective of whether the disciplinary proceedings or appeal proceedings (as the case may be) were Commenced before or after the Effective Time;
  - (ii) ASX Clear and the Old Tribunal shall take disciplinary action and conduct the disciplinary proceedings or appeal proceedings (as the case may be) with due regard to the relevant rules that were in force at the time that they were alleged to be contravened;

- (f) the Old ACH Rules and the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook continue to apply in respect of the Participant to the extent required to give effect to the paragraphs above;
- (g) Nothing in this Rule 19.20.2 limits the continued operation of rule 19.19 of the Old ACH Rules where disciplinary proceedings or appeal proceedings have Commenced (as defined in the Old ACH Rules) prior to the Effective Time (as defined in the Old ACH Rules).

Introduced 01/08/10 Amended 15/06/15

### **19.20.3 Conduct spanning pre and post Effective Time**

For the avoidance of doubt, where the relevant conduct or failure the subject of the action or proceeding spans both prior to and following the Effective Time:

- (a) ASX Clear and the Appeal Tribunal will have the jurisdiction and may take action or conduct appeal proceedings as referred to in Rules 19.20.2(a) & (b) above;
- (b) Rules 19.20.2(c), (d) and (e) do not apply to such conduct or failure.

Introduced 01/08/10

**End of Document**