



# Australian Securities Exchange

## DISCIPLINARY PROCESSES AND APPEALS RULEBOOK

**Replaced by ASX Enforcement and Appeals Rulebook  
1 August 2010**

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## **SECTION 1           SCOPE OF RULEBOOK**

This Rulebook deals with disciplinary, tribunal and appeal matters including:

- the taking of disciplinary action and the conduct of proceedings before a Disciplinary Tribunal following commencement of disciplinary action by an ASX Licensee or appeal by an ASX Licensee or a Regulated Person under any of the Operating Rules;
- the exercise of powers of a Disciplinary Tribunal where a Regulated Person has breached the Operating Rules or Procedures;
- the process of appeal to an Appeal Tribunal;
- enforcement action including the power of ASX to suspend or terminate a Regulated Person;
- the consolidation of proceedings and appeals; and
- the recording and announcement of determinations made by the Tribunals.

This Rulebook also deals with the establishment and composition of the Tribunal Panels, a Disciplinary Tribunal and an Appeal Tribunal and sets out:

- the powers of those Tribunals; and
- how proceedings before a Disciplinary Tribunal and an Appeal Tribunal are to be conducted.

### **1.1           SCOPE OF RULE BOOK**

This Rule Book deals with the processes and procedures for dealing with contraventions of the Operating Rules and appeals in relation to the operation of the licensed markets and facilities within ASX.

#### **1.1.1       Operating Rules of ASX Licensees**

These Rules form part of the Operating Rules of each ASX Licensee for the purposes of the Corporations Act. These Rules should be read in conjunction with:

- (a) the Procedures;
- (b) the Operating Rules of the ASX Licensees; and
- (c) the Corporations Act.

To the extent of any inconsistency between these Rules and the Procedures, these Rules will prevail.

### 1.1.2 Binding effect of Rules

These Rules are binding on ASX, Regulated Persons and suitably qualified affiliates in the manner set out in:

- (a) section 793B of the Corporations Act; and
- (b) Rule 1.1.3.

### 1.1.3 Covenants to observe Rules

These Rules have the effect of a contract under seal between ASX, Regulated Persons and suitably qualified affiliates under which:

- (a) each Regulated Person and each suitably qualified affiliate covenants with ASX and each other Regulated Person and suitably qualified affiliate to observe the Rules and to perform the obligations which the Rules purport to impose on the Regulated Person and the suitably qualified affiliate, in the manner provided by the Rules; or
- (b) ASX covenants with each Regulated Person and each suitably qualified affiliate to observe the Rules and to perform the obligations which the Rules purport to impose on ASX, in the manner provided by the Rules.

## 1.2 CORPORATIONS ACT COMPLIANCE AND CONTRAVENTIONS

### 1.2.1 Enforcement of contractual provisions

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

- (a) ASX or a Tribunal may enforce that provision as if it were repeated as a Rule;
- (b) any action taken or determination by ASX or a Tribunal 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 and any Tribunal may take action or make a determination under this Section 1.2 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 or any Tribunal 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.

## **1.3 DEFINITIONS AND INTERPRETATION**

### **1.3.1 General Principles of Interpretation**

In these Rules unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or any legislative provision substituted for, and any regulation or statutory instrument issued under, that legislation or legislative provision;
- (b) a reference to the Operating Rules of an ASX Licensee is a reference to those Operating Rules, the Rules or the Procedures as modified or amended from time to time. However a reference to a breach of the Operating Rules shall be a reference to those Operating Rules in force at the time of occurrence of the alleged breach;
- (c) the singular includes the plural and vice-versa;
- (d) a reference to a person, body, corporation, trust, partnership, unincorporated body, firm, association, authority or government includes any of them;
- (e) a word denoting any gender includes all genders;
- (f) if a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (g) a reference to power includes a reference to authority and discretion;
- (h) a reference to a Rule (eg Rule 2.4) includes a reference to all sub-Rules included under that Rule (eg Rule 2.4.3);
- (i) a reference to a Section (eg Section 2) includes a reference to all Rules and sub-Rules within that Section;
- (j) a reference to any Rule or Procedure is a reference to that Rule or Procedure as amended from time to time;
- (k) a reference to time is to the time in Sydney, Australia;
- (l) a reference to currency is a reference to Australian currency;
- (m) a reference to writing includes typing, printing, lithography, photography, telex, facsimile or any other mode of representing or reproducing words in a visible form;
- (n) where there is a reference to the power of ASX to make, demand or impose a requirement there is a corresponding obligation of the relevant Regulated Person to comply with that demand or requirement in all respects; and
- (o) a reference to ASX notifying or giving notice to a Regulated Person or vice-versa is a reference to notifying or giving notice in accordance with the relevant Operating Rules.

## **1.4 WORDS AND EXPRESSIONS DEFINED IN THE CORPORATIONS ACT**

### **1.4.1 Words and expressions defined have the same meaning in these Rules**

Words and expressions defined in the Corporations Act or the Operating Rules will unless otherwise defined or specified in these Rules or the contrary intention appears, have the same meaning in these Rules.

## **1.5 HEADINGS AND INTRODUCTORY REVIEW**

### **1.5.1 Headings and introductory overview for convenience of reference only**

Headings and the introductory overview at the beginning of each Section are for convenience of reference only and do not affect the interpretation of the Rules or the Procedures. When a term is defined in both the Operating Rules and the Corporations Act, the meaning in the Operating Rules prevails.

## **1.6 CONDUCT, ACTS AND OMISSIONS**

### **1.6.1 References to conduct or doing any act or thing**

In these Rules:

- (a) a reference to conduct or engaging in conduct includes a reference to doing, refusing to do or omitting to do, any act, including the making of, or the giving effect to a provision of, an agreement; and
- (b) unless the contrary intention appears, a reference to doing, refusing or omitting to do any act or thing includes a reference to causing, permitting or authorising:
  - (i) the act or thing to be done; or
  - (ii) the refusal or omission to occur.

### **1.6.2 Conduct by officers, employees or agents**

In these Rules, conduct engaged in on behalf of a person:

- (a) by an officer, Employee, or other agent of the person, and whether or not within the scope of the actual or apparent authority of the officer, Employee, or other agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an officer, Employee, or other agent of the person, and whether or not the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, Employee, or other agent,

is deemed to have been engaged in also by the person.

### **1.6.3 State of mind of a person**

If for the purposes of these Rules in respect of conduct engaged in by a person, it is necessary to establish the state of mind of the person, it is sufficient to show that an officer, Employee, or other agent of the person, being an officer, Employee, or other agent by whom the conduct was engaged in and whether or not within the scope of the actual or apparent authority of that officer, Employee, or other agent, had that state of mind.

In this Rule 1.6.3 a reference to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

### **1.6.4 Construction to promote purpose of Rules**

In the interpretation of a Rule, a construction that would promote the purpose or object underlying the Rules (whether that purpose or object is expressly stated in the Rules or not) is to be preferred to a construction which would not promote that purpose or object.

## **1.7 EXAMPLES AND NOTES**

### **1.7.1 Use of examples and notes**

If these Rules include an example of, or a note about, the operation of a Rule:

- (a) the example or note is not to be taken to be exhaustive; and
- (b) if the example or note is inconsistent with the Rule, the Rule prevails.

## **1.8 CHANGE OF NAME**

### **1.8.1 Reference to a body or office under a former name**

If:

- (a) the name of a body is changed in accordance with the law (whether or not the body is incorporated); or
- (b) the name of an office is changed by law,

then a reference in these Rules to the body or office under any former name, except in relation to matters that occurred before the change took effect, is taken as a reference to the body or office under the new name.

## **1.9 EFFECT OF AMENDMENT TO RULES AND PROCEDURES**

### **1.9.1 Where amendments to Rules and Procedures are made**

Unless expressly stated otherwise, where a Rule or Procedure is:

- (a) amended;



- (b) deleted; or
- (c) lapses or otherwise ceases to have effect,  
that circumstance does not:
- (d) revive anything not in force or existing at the time at which that circumstance takes effect;
- (e) affect the previous operations of that Rule or Procedure or anything done under that Rule or Procedure;
- (f) affect any right, privilege, obligation or liability acquired, accrued or incurred under that Rule or Procedure;
- (g) affect any penalty, forfeiture, suspension, expulsion or disciplinary action taken or incurred in respect of any breach of that Rule or Procedure; or
- (h) affect any investigation, disciplinary proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, suspension, expulsion or disciplinary action,

and any such investigation, disciplinary proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, suspension, expulsion or disciplinary action may be imposed as if the circumstance had not taken effect.

## **1.10 RULES IN FORCE AT TIME OF CONTRAVENTION**

### **1.10.1 Determining a contravention of the Rules**

Unless expressly stated otherwise, in determining whether the act or omission of a party constitutes a contravention of the Operating Rules or constitutes Unprofessional Conduct, the matter will be determined with regard to the Operating Rules in force at the time of the relevant act or omission.

### **1.10.2 Matters ASX will have regard to**

Where a Rule provides that ASX may act in a manner which it considers "appropriate", when deciding whether or not to act, and how to act, the relevant ASX Licensee will have regard to the obligations, duties, powers and discretions which the relevant ASX Licensee may have as the holder of, or in connection with, the holding of an Australian market licence under Part 7.2 of the Corporations Act or an Australian CS facility licence under Part 7.3 of the Corporations Act.

## **1.11 DEFINITIONS**

### **1.11.1 Definitions**

“Appeal Tribunal” means a tribunal convened in accordance with Rule 3.2;

“Appeal Tribunal Panel” means the panel established in accordance with Rule 3.5.1;

“ASX” means any, some or all of the ASX Licensees (as the context requires);

“**ASX Licensee**” means any of ASX Limited, Australian Clearing House Pty Limited (‘ACH’), ASX Settlement and Transfer Corporation Pty Ltd (‘ASTC’), Sydney Futures Exchange Limited (‘SFE’), SFE Clearing Corporation Pty Limited (‘SFEC’) and Austraclear Limited (‘Austraclear’) (as the context requires);

“**Board**” has the same meaning it has in the relevant Operating Rules;

“**Business Day**” means Monday to Friday inclusive, except New Year’s Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX declares is not a business day;

“**Commence**” means:

- (a) in relation to disciplinary proceedings under the ASX Market Rules prior to the Effective Time, the provision of a contravention notice by ASX to the Regulated Person pursuant to Rule 28.3.5 of the ASX Market Rules in force immediately before the Effective Time;
- (b) in relation to appeal proceedings under the ASX Market Rules prior to the Effective Time, the provision of notice of appeal by the Regulated Person or ASX pursuant to Rules 3.1.3, 3.8.3, 8.2.10, 8.12, 10.14, 12.1.6, 15.5, 23.1.8, 23.7.3, 23.8.4, 28.7 or 30.5.2 of the ASX Market Rules in force immediately before the Effective Time;
- (c) in relation to disciplinary proceedings under the ASTC Settlement Rules prior to the Effective Time, the provision of a Contravention Notice by ASTC to the Facility User pursuant to Rule 12.4.6 of the ASTC Settlement Rules in force immediately before the Effective Time;
- (d) in relation to appeal proceedings under the ASTC Settlement Rules prior to the Effective Time, the provision of an Appeal Notice by a Facility User or ASTC pursuant to Rules 8.4.4, 10.4.9, 11.2, 12.5, 12.17.5, 12.21.1 or 16.5.1 of the ASTC Settlement Rules in force immediately before the Effective Time;
- (e) in relation to disciplinary proceedings under the ACH Clearing Rules prior to the Effective Time, the provision of a contravention notice by ACH to the Regulated Person pursuant to Rule 19.3.5 of the ACH Clearing Rules in force immediately before the Effective Time;
- (f) in relation to appeal proceedings under the ACH Clearing Rules prior to the Effective Time, the provision of a notice of appeal by a Regulated Person or ACH pursuant to Rules 3.1.5, 3.9.3, 6.6, 19.7.1 or 22.6.2 of the ACH Clearing Rules in force immediately before the Effective Time;
- (g) in relation to disciplinary proceedings under the Operating Rules of Sydney Futures Exchange prior to the Effective Time, the referral of any breach of the Operating Rules to the BCC, MPC or Board pursuant to Rule 5.5.3(f) of the Operating Rules of Sydney Futures Exchange in force immediately before the Effective Time;
- (h) in relation to appeal proceedings under the Operating Rules of Sydney Futures Exchange prior to the Effective Time, the provision of a notice by a Regulated Person to Sydney Futures Exchange indicating that it wishes to appeal pursuant

to Rules 5.8.1 or 5.9.1 of the Operating Rules of Sydney Futures Exchange in force immediately before the Effective Time;

- (i) in relation to disciplinary proceedings under the Operating Rules of SFE Clearing prior to the Effective Time, the referral of any breach of the Clearing Rules to the BCC or Board pursuant to Rule 9A.2(f) of the Operating Rules of SFE Clearing in force immediately before the Effective Time;
- (j) in relation to appeal proceedings under the Operating Rules of SFE Clearing prior to the Effective Time, the provision of a notice by a Regulated Person to SFE Clearing indicating that it wishes to appeal pursuant to Rules 10.19.1 or 12.1 of the Operating Rules of SFE Clearing in force immediately before the Effective Time;
- (k) in relation to disciplinary proceedings under the Austraclear Regulations prior to the Effective Time, the giving of notice under Regulation 3.11(b) by Austraclear to the Participant in force immediately before the Effective Time;
- (l) in relation to appeal proceedings under the Austraclear Regulations prior to the Effective Time, the lodgment of a notice of appeal by a Regulated Person under Regulations 2.9(e) or 3.13(a)(iii) in force immediately before the Effective Time;
- (m) in relation to disciplinary proceedings under the relevant Operating Rules following the Effective Time, the provision of a notice by the relevant ASX Licensee to a Regulated Person pursuant to Rule 2.1 of these Rules; and
- (n) in relation to appeal proceedings under the relevant Operating Rules following the Effective Time, the provision of a notice of appeal by the relevant person pursuant to Rule 3.1 of these Rules.

“**Contravention Notice**” means the notice as described in Procedure 2.2;

“**Corporations Act**” means the Corporations Act 2001 (Cth), as amended from time to time;

“**determination**” includes any decision of an interim nature;

“**Disciplinary Tribunal**” means a tribunal convened in accordance with Rule 2.3.1;

“**Disciplinary Tribunal Panel**” means the panel established in accordance with Rule 2.6.1;

“**Effective Time**” means the date set out in the Procedures;

“**Employee**” in relation to a person includes a director, employee, officer, agent, representative, consultant or adviser of that person, or an independent contractor who acts for or by arrangement with that person;

“**Error**” has the same meaning it has in the relevant Operating Rules;

“**Issuer**” has the same meaning it has in the ASTC Settlement Rules;

“**Old ASX Rules**” means any, some or all (as the context requires) of the following rules of the relevant ASX Licensee which were in force immediately before the Effective Time:

- (a) ASX Market Rules;
- (b) ACH Clearing Rules;
- (c) ASTC Settlement Rules;
- (d) Operating Rules of Sydney Futures Exchange;
- (e) Operating Rules of SFE Clearing; and/or
- (f) Austraclear Regulations;

“**Old Tribunal**” means any tribunal or committee (as the context requires) in existence immediately before the Effective Time which conducts proceedings for or on behalf of any one or more of the ASX Licensees, as the context requires;

“**Open Contract**” means any contract under the relevant Operating Rules;

“**Operating Rules**” mean any, some or all (as the context requires) of the following:

- (a) ASX Market Rules;
- (b) ASX Listing Rules;
- (c) ACH Clearing Rules;
- (d) ASTC Settlement Rules;
- (e) Operating Rules of Sydney Futures Exchange;
- (f) Operating Rules of SFE Clearing; and/or
- (g) Austraclear Regulations;

“**Participant**” means any (as the context requires) of the following:

- (a) a Market Participant as defined in the ASX Market Rules;
- (b) a Participant as defined in the ACH Clearing Rules;
- (c) a Participant as defined in the ASTC Settlement Rules;
- (d) a Participant as defined in the Operating Rules of Sydney Futures Exchange;
- (e) a Clearing Participant as defined in the Operating Rules of SFE Clearing; and/or
- (f) a Participant as defined in the Austraclear Regulations,

unless otherwise provided or required under the relevant Operating Rules or these Rules;

“**Procedures**” mean the Procedures of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook;

**“Product”** means any product offered by the relevant ASX Licensee to be traded, cleared, settled or deposited, as the context requires and, in relation to ACH, includes an “Approved Market Operator” as defined in the ACH Clearing Rules;

**“Regulated Person”** means any (as the context requires) of the following:

- (a) a Regulated Person, Warrant-Issuer or an Existing Participating Organisation as defined in the ASX Market Rules or a person applying to ASX Limited for admission as a Market Participant pursuant to Rule 3.1 of the ASX Market Rules;
- (b) a Regulated Person or an Affiliate Based CP as defined in the ACH Clearing Rules or a person applying to ACH for admission as a Participant pursuant to Rule 3.1 of the ACH Clearing Rules;
- (c) a Facility User as defined in the ASTC Settlement Rules or a person applying to ASTC for admission as a Participant pursuant to Rule 4.2 of the ASTC Settlement Rules or an affected person described in Rule 10.4.9 of the ASTC Settlement Rules or a person that applied for admission of the relevant Approved Financial Products pursuant to Rule 11.1.3 of the ASTC Settlement Rules;
- (d) an entity as defined in the ASX Listing Rules;
- (e) a Participant as defined in the Operating Rules of Sydney Futures Exchange or a person applying to Sydney Futures Exchange for admission as a Participant pursuant to Rules 2.2 or 2.3 of the Operating Rules of Sydney Futures Exchange;
- (f) a Clearing Participant or a Representative as defined in the Operating Rules of SFE Clearing or a person applying to SFE Clearing for admission as a Clearing Participant pursuant to Rule 4 of the Operating Rules of SFE Clearing; and/or
- (g) a Participant as defined in Rule 1.1 of the Austraclear Regulations or an Applicant as defined in Rule 2.1 of the Austraclear Regulations,

unless otherwise provided or required under the relevant Operating Rules or these Rules;

**“Rules”** or **“Rulebook”** means the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook;

**“taking action”** includes commencing or continuing any inquiry or investigation, holding any hearing or engaging in any procedure;

**“Transaction”** means any transaction under the relevant Operating Rules;

**“Tribunal”** means either a Disciplinary Tribunal or an Appeal Tribunal, as the context requires;

**“Tribunal Panel”** means either the Disciplinary Tribunal Panel or the Appeal Tribunal Panel, as the context requires.

## **1.12 TRANSITIONAL PROVISIONS**

### **1.12.1 Transitional Provisions**

Following the Effective Time:

- (a) a Disciplinary Tribunal and an Appeal Tribunal will have jurisdiction pursuant to these Rules and may Commence disciplinary proceedings or appeal proceedings under these Rules (including the holding of any hearings or engaging in any procedures) after the Effective Time in respect of a Regulated Person concerning any conduct under, any failure to comply with, or any engagement in Unprofessional Conduct under, the Operating Rules, irrespective of whether that conduct or failure occurred before or after the Effective Time or when ASX became aware of, or should have become aware of, that conduct or failure;
- (b) where disciplinary proceedings or appeal proceedings (including the holding of any hearings or engaging in any procedures) have Commenced prior to the Effective Time in respect of a Regulated Person concerning any conduct under, any failure to comply with, or any engagement in Unprofessional Conduct under, the Operating Rules, the relevant Old Tribunal shall continue to conduct the relevant 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 ASX Rules;
- (c) the maximum penalty that may be imposed on a Regulated Person shall be the maximum penalty that would have been imposed for the relevant conduct under the Operating Rules in existence at the time that the relevant conduct occurred, irrespective of whether the disciplinary proceedings or appeal proceedings (as the case may be) were Commenced before or after the Effective Time or whether the disciplinary proceedings or appeal proceedings (as the case may be) were conducted by an Old Tribunal pursuant to the Old ASX Rules or a Disciplinary Tribunal or an Appeal Tribunal (as the case may be) pursuant to these Rules;
- (d) the Old Tribunal pursuant to the Old ASX Rules and a Disciplinary Tribunal and an Appeal Tribunal pursuant to these Rules shall conduct the disciplinary proceedings or appeal proceedings (as the case may be) with due regard to the relevant Operating Rules that were in force at the time that they were alleged to be contravened; and
- (e) Old ASX Rules continue to apply in respect of the Participant and Regulated Person to the extent required to give effect to the paragraphs above.

## **1.13 NOTICE & CORRESPONDENCE**

### **1.13.1 Methods of giving notice in writing**

Any notice or correspondence that is to be given by a Regulated Person to a Disciplinary Tribunal or an Appeal Tribunal pursuant to these Rules must be forwarded to the address, and in the manner, set out in the Procedures.

**1.13.2 Delivery of notice**

For the purposes of Rule 1.13.1, any such notice or correspondence will be taken to have been received at the time and in the manner set out in the Procedures.

**End of Document**

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## **SECTION 2            DISCIPLINARY ACTION**

### **2.1            GROUNDS FOR DISCIPLINARY ACTION**

#### **2.1.1        Grounds for Disciplinary Action**

ASX may take disciplinary action under this Rule if ASX considers that a Regulated Person, other than an entity as defined in the ASX Listing Rules, has contravened an Operating Rule.

**Note:** Where an entity under the ASX Listing Rules is considered to have breached an ASX Listing Rule, ASX refers the matter to ASIC.

### **2.2            COMMENCEMENT OF DISCIPLINARY PROCEEDINGS**

#### **2.2.1        Commencement of Disciplinary Proceedings**

In order to initiate disciplinary proceedings before a Disciplinary Tribunal against a Regulated Person ASX will give a notice to the Regulated person and a Disciplinary Tribunal in the form set out in the Procedures setting out the details on which the disciplinary action is based.

### **2.3            REFERRAL TO AND ROLE OF DISCIPLINARY TRIBUNAL**

#### **2.3.1        Referral**

After ASX has given a notice under Rule 2.2.1, a Disciplinary Tribunal will be convened and the proceedings of a Disciplinary Tribunal will be conducted in accordance with the relevant provisions of this Section 2.

#### **2.3.2        Role of Disciplinary Tribunal**

There will be a Disciplinary Tribunal for the purposes of:

- (a)        conducting disciplinary proceedings under this Section 2; and
- (b)        performing any other function given to a Disciplinary Tribunal under the Rules.

Each Disciplinary Tribunal is bound by, and shall enforce the provisions of, the Operating Rules.

### **2.4            EXERCISE OF POWERS OF DISCIPLINARY TRIBUNAL IN DISCIPLINARY PROCEEDINGS**

#### **2.4.1        General Powers**

If a Disciplinary Tribunal determines that a Regulated Person, other than an Issuer, has contravened the Operating Rules, the Disciplinary Tribunal may exercise any one or more of the following powers:

- (a) censure the Regulated Person;
- (b) subject to Rule 2.4.3, impose a fine not exceeding the amount determined by ASX and set out in the Procedures, on the Participant for each contravention by it or any of its Regulated Persons;
- (c) suspend the Participant from all or any of the privileges of being a Participant for one or more Products under these Rules;
- (d) prohibit the Regulated Person from transacting any business with ASX or with or through any Participant in respect of one or more Products for a period not exceeding 3 months, upon terms which the Disciplinary Tribunal considers appropriate;
- (e) specify, and/or direct ASX to specify, the form, objectives and timeframe for a new, or an enhanced version of an existing, education and compliance programme designed to prevent future contravention of the Rules by the Regulated Person and its Employees, and direct the Regulated Person to implement such a programme to the satisfaction of ASX;
- (f) where the contravention arose from conduct of a particular individual involved in the business of the Participant, direct that the Participant cease to permit that individual to remain involved or that the Participant change that individual's role in the business in some way;
- (g) require the Participant to pay to ASX all or part of the total commission or gross profit arising from any Transaction or Open Contract the subject of the proceedings, and ASX may deal with that amount in any manner the ASX considers appropriate;
- (h) terminate the admission of the Participant;
- (i) where the Regulated Person against which disciplinary action is taken is not a Participant, direct the relevant Participant to:
  - (i) suspend that person's role as a Regulated Person of that Participant for a period not exceeding 3 months upon such terms and conditions as the Disciplinary Tribunal thinks fit; or
  - (ii) where the Disciplinary Tribunal makes a finding of Unprofessional Conduct, terminate that person's role as a Regulated Person of that Participant;
- (j) where the Regulated Person determined to have contravened the Rules is not a Participant, make an order that the Regulated Person not be employed, or otherwise appointed, as a Responsible Executive for a period the Disciplinary Tribunal thinks fit; and
- (k) impose conditions or restrictions in relation to:
  - (i) any actions taken under this Rule 2.4.1;
  - (ii) a Regulated Participant's participation rights in the relevant ASX Licensee's facilities;

- (iii) the future conduct of a Regulated Person;
- (iv) any other matter the Disciplinary Tribunal sees fit.

**Note:** Rule 2.4.1 does not apply to Issuers under the ASTC Rules. Refer to Rule 2.4.2 for penalties that can be imposed on Issuers pursuant to the ASTC Rules.

#### **2.4.2 Disciplinary Powers in relation to Issuers under the ASTC Rules**

If a Disciplinary Tribunal determines that an Issuer has contravened the Operating Rules of ASTC:

- (a) the Disciplinary Tribunal may exercise any one or more of the following powers against that Issuer:
  - (i) the Disciplinary Tribunal may impose a censure;
  - (ii) if, because of the conduct constituting the contravention, ASTC has suffered loss or damage, direct the Issuer to pay to ASTC an amount not exceeding the amount of that loss or damage;
  - (iii) if, because of the conduct constituting the contravention, a Participant of ASTC has suffered loss or damage which was reasonably foreseeable at the time when the conduct occurred (but not including loss or damage as a consequence of any fine, penalty, fee or charge imposed on the Participant by ASTC or the Approved Market Operator), direct the Issuer to pay to the Participant an amount not exceeding the amount of that loss or damage.
- (b) In relation to the exercise of any power under Rule 2.4.2(a):
  - (i) the total amounts which the Disciplinary Tribunal directs an Issuer to pay must not exceed the sum set out in the Procedures for a single contravention;
  - (ii) the Disciplinary Tribunal may give an Issuer more than one direction in respect of a single contravention.

#### **2.4.3 Penalty where conduct arises from the same Circumstances**

Where in respect of proceedings initiated by a single Contravention Notice a Disciplinary Tribunal finds that a Regulated Person has committed two or more contraventions involving the same provision of the relevant Operating Rules, being contraventions that appear to the Disciplinary Tribunal to have been of the same nature or a substantially similar nature and to have occurred at or about the same time or as part of a single course of conduct, the Disciplinary Tribunal shall not impose on the Regulated Person fines that, in total, exceed the maximum fine that would be applicable in respect of one contravention by the Regulated Person of that Operating Rule.

#### **2.4.4 Consultation with an Approved Clearing or Approved Settlement Facility or the relevant Approved Market Operator**

In relation to contraventions under the ACH Clearing Rules or ASTC Settlement Rules, if a Disciplinary Tribunal proposes to impose a penalty on, or give directions to, a Clearing

Participant (as defined in the ASTC Settlement Rules) or a Settlement Participant (as defined in the ACH Clearing Rules) or a participant of an Approved Market Operator other than ASX (as defined in the ASTC Settlement Rules) involving termination of, suspension from or conditions or restrictions on, participation in the Settlement Facility (in relation to contraventions under the ACH Clearing Rules) or ACH (in relation to contraventions under the ASTC Settlement Rules), the following provisions apply:

- (a) the Disciplinary Tribunal must not impose the penalty or give directions without first giving the Approved Settlement Facility (in relation to contraventions under the ACH Clearing Rules) or Approved Clearing Facility (in relation to contraventions under the ASTC Settlement Rules) or the relevant Approved Market Operator (in relation to contraventions under either the ACH Clearing Rules or the ASTC Settlement Rules) a reasonable opportunity to appear before the Tribunal and make submissions as to the penalty that should be imposed, or the directions that should be given;
- (b) if such a penalty is imposed or direction given ACH or ASTC must, before taking any action to give effect to that penalty:
  - (i) give notice of the penalty or directions to the Approved Settlement Facility (in relation to contraventions under the ACH Clearing Rules) or Approved Clearing Facility (in relation to contraventions under the ASTC Settlement Rules) or the relevant Approved Market Operator; and
  - (ii) afford the Approved Settlement Facility (in relation to contraventions under the ACH Clearing Rules) or Approved Clearing Facility (in relation to contraventions under the ASTC Settlement Rules) or the Approved Market Operator (in relation to contraventions under either the ACH Clearing Rules or the ASTC Settlement Rules) a reasonable time in which to take action to reduce or avoid any risk of impairment to the efficient operation of the Approved Settlement Facility or Approved Clearing Facility or the Approved Market Operator (as the case may be) that may result from the enforcement of the penalty or compliance with the directions.

## **2.5 CONDUCT OF DISCIPLINARY TRIBUNAL PROCEEDINGS**

### **2.5.1 Determination on the Papers**

All matters to be considered by a Disciplinary Tribunal will be assessed on the written submissions of the parties unless a Disciplinary Tribunal determines to conduct an oral hearing or either party requests an oral hearing. If either party requests an oral hearing it must do so by no later than the lodgement of its final written submissions.

### **2.5.2 Written submissions**

The parties will be given and must comply with such directions as determined by a Disciplinary Tribunal in relation to written submissions. A Disciplinary Tribunal may at its discretion, but is not bound to, consider any written submissions which do not comply with the directions of the Disciplinary Tribunal, including without limitation any written submission that is submitted outside the timeframes determined by the Disciplinary Tribunal.

### **2.5.3 Formalities, recording and transcripts**

Proceedings will be conducted with as little formality and technicality, and with as much expedition as a proper consideration of the matters before a Disciplinary Tribunal permits. A Disciplinary Tribunal may conduct its proceedings as it thinks fit and may record or make a transcript of proceedings (or both) at a proceeding. A copy of any transcript or recording must be made available to ASX and to the other party involved in the proceeding if requested.

### **2.5.4 Procedural fairness**

A Disciplinary Tribunal will determine each matter on its own merits and must conduct the proceedings without bias and must observe the rules of procedural fairness.

### **2.5.5 Voting**

The decision of a Disciplinary Tribunal will be determined according to a simple majority of votes of the Disciplinary Tribunal members. Each member has, and must exercise, a deliberative vote. The chairperson has a deliberative but not a casting vote.

### **2.5.6 Disciplinary Tribunal may obtain advice**

A Disciplinary Tribunal may obtain such legal and other advice as it considers appropriate and may have its advisers present at a proceeding.

### **2.5.7 Participation in proceedings**

A Disciplinary Tribunal may conduct proceedings without all members of the Disciplinary Tribunal being in the physical presence of each other, provided that all members involved in the proceedings are able to participate in the proceedings.

### **2.5.8 Attendance at Proceeding**

Where a Disciplinary Tribunal requests that a Regulated Person appears before it the process for such appearance shall be as set out in the Procedures. Each party shall bear its own costs of attendance.

### **2.5.9 Agreed Settlements**

ASX may agree a set of facts, liability and/or penalty with a Regulated Person in accordance with the Procedures for determination by a Disciplinary Tribunal.

## **2.6 DISCIPLINARY TRIBUNAL**

### **2.6.1 Disciplinary Tribunal Panel**

ASX will establish a Disciplinary Tribunal Panel comprising of such number of persons as set out in the Procedures and as nominated by ASX from time to time.

### **2.6.2 Chairperson**

ASX will appoint one or more chairpersons for the period determined by ASX with such qualifications as are set out in the Procedures.

### 2.6.3 Composition of Disciplinary Tribunal

A Disciplinary Tribunal will, when it is meeting, comprise the chairperson or, in that person's absence, a person nominated by the chairperson who will act as chairperson of the proceedings, and such number of persons set out in the Procedures, as selected by the chairperson of the proceedings from the Disciplinary Tribunal Panel. There can be more than one Disciplinary Tribunal meeting at any one time.

### 2.6.4 Proceeding date

The chairperson of the proceedings will appoint a date, time and place for the conduct of proceedings and cause notice to be given to each of ASX and the relevant Regulated Person of that date and any other information as set out in the Procedures. A Disciplinary Tribunal may vacate a proceeding date for which notice has previously been given and appoint a substitute proceeding date in accordance with the Procedures and may adjourn and re-convene its proceedings as it thinks fit.

### 2.6.5 Reasons for decision

A Disciplinary Tribunal will notify ASX and the relevant Regulated Person of the decision and the reasons for its decision in writing in such format as it determines in accordance with the timeframe set out in the Procedures.

## 2.7 CONSOLIDATION OF PROCEEDINGS – ASX LICENSEES

### 2.7.1 ASX may consolidate disciplinary proceedings

Subject to Rule 2.7.2 if:

- (a) an ASX Licensee is entitled to take disciplinary action against a Regulated Person under Section 2 in respect of particular circumstances; and
- (b) another one or more ASX Licensees have similar powers under their Operating Rules and are entitled to exercise those powers against the same Regulated Person in respect of the same or similar circumstances,

each ASX Licensee and a Disciplinary Tribunal and each member need not exercise their powers separately but may, exercise those powers together. Without limiting this Rule 2.7, persons constituting a Disciplinary Tribunal appointed to hear the proceedings Commenced by an ASX Licensee may at the same time, conduct disciplinary proceedings Commenced by another ASX Licensee, in their capacity as members of a Tribunal constituted under these Rules.

### 2.7.2 Consolidation does not affect powers

Even though the exercise of powers or proceedings is consolidated under this Rule 2.7, ASX and the Disciplinary Tribunal must comply with the Rules which govern those powers and proceedings. The consolidation of the exercise of powers or hearings under this Rule 2.7 does not confer on ASX or a Disciplinary Tribunal any powers in addition to those conferred on them by these Rules or the Operating Rules of the relevant ASX Licensee.

## **2.8 CONSOLIDATION OF PROCEEDINGS – REGULATED PERSONS**

### **2.8.1 ASX may combine proceedings**

Where ASX is entitled to take disciplinary action against more than one Regulated Person in respect of the same or similar circumstances, ASX may indicate in the notice given under Rule 2.2 that it proposes that a Disciplinary Tribunal deal with the proceedings at a combined proceeding.

### **2.8.2 Right to object**

Any of the Regulated Persons referred to in Rule 2.8.1 may, within 10 Business Days or such other time set out in the Procedures following the receipt of the notice under Rule 2.8.1, give a notice addressed to the chairperson of a Disciplinary Tribunal to the effect that the Regulated Person objects to a combined proceeding. Any Regulated Person who gives a notice of objection under this Rule 2.8.2 will have their objection considered by the Disciplinary Tribunal and may be entitled to a separate proceeding. Nothing in this Rule 2.8 precludes any member of one Disciplinary Tribunal from participating as a member of another Disciplinary Tribunal in relation to proceedings involving the same or similar circumstances but different Regulated Persons.

### **2.8.3 Appeal against Consolidation of Proceedings**

Where a Disciplinary Tribunal has dealt with proceedings against more than one Regulated Person at a combined proceeding, an Appeal Tribunal is also entitled to hear any appeal from a determination of a Disciplinary Tribunal at a combined proceeding.

## **2.9 CERTAIN OBLIGATIONS OF CERTAIN REGULATED PERSONS CONTINUE**

### **2.9.1 Jurisdiction continues**

After a Regulated Person ceases to be a Regulated Person under these Rules:

- (a) the Rules continue to apply and ASX will continue to have jurisdiction in respect of the Regulated Person concerning any conduct or any failure to comply with the Rules which occurred before the Regulated Person ceased to be a Regulated Person, whether that conduct or failure was by the Regulated Person or by any other person for whose conduct the Regulated Person was responsible;
- (b) the Regulated Person continues to be bound by any indemnity given by the Regulated Person under these Rules; and
- (c) other Rules continue to apply in respect of the Regulated Person to the extent required to give effect to paragraphs (a) and (b).

**End of Document**



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## **SECTION 3            APPEALS**

### **3.1            DECISIONS THAT MAY BE APPEALED**

The following parties may appeal the following decisions to an Appeal Tribunal on the giving of the relevant notice of appeal, within the relevant time and on the payment of any fee, as set out in the Procedures:

#### **3.1.1            ASX Market Rule Appeals**

- (a)        A Regulated Person or ASX if dissatisfied with a determination of a Disciplinary Tribunal under Rule 2 of this Rulebook or any sanction imposed under that Rule;
- (b)        A Participant if dissatisfied with a decision of ASX to suspend or terminate the admission of the Participant on default grounds under ASX Market Rule 28.4;
- (c)        A Regulated Person if dissatisfied with a decision of ASX to suspend or terminate the recognition of a Regulated Person under ASX Market Rule 28.6.2;
- (d)        An applicant if dissatisfied with the decision to reject its application for Participant status under ASX Market Rule 3.8;
- (e)        A Trading Participant or the relevant Designated Trading Representative if dissatisfied with the decision of ASX under ASX Market Rule 8.2.7 to suspend or withdraw the registration of a Designated Trading Representative;
- (f)        A Market Participant if dissatisfied with a decision of ASX in connection with:
  - (i)        an application made by that Market Participant for an Employee to be accredited;
  - (ii)       an application made by that Market Participant for permission for an Employee to sit an additional examination;
  - (iii)      an application made by that Market Participant for an Employee to be exempt from the requirement to sit an accreditation examination;
  - (iv)      the imposing of conditions on the accreditation of an Employee of that Market Participant;
  - (v)       the re-accreditation of an Employee of that Market Participant; or
  - (vi)      the suspension or withdrawal of the accreditation of an Employee of that Market Participant under ASX Market Rule 8.9.5.
- (g)        A Warrant Issuer if dissatisfied with a decision of ASX under Market Rule 10.14.3(g);
- (h)        An applicant if dissatisfied with a decision to reject its application for Trading Permission under ASX Market Rule 12.1;

- (i) A Market Participant if dissatisfied with:
  - (i) the failure of ASX to refer a dispute to a Dispute Governors Committee under ASX Market Rule 15.2.7; or
  - (ii) the actions taken (or the failure to take actions) by ASX under either ASX Market Rules 15.4.7, 15.4.8 or 15.6;
- (j) An applicant if dissatisfied with:
  - (i) a decision to reject its application to be registered as a Market Maker;
  - (ii) the assignment of a Class to a Market Maker under ASX Market Rule 23.1.5; or
  - (iii) a decision to re-assign a Class to a Market Maker under ASX Market Rule 23.1.6,
- (k) A Market Maker if dissatisfied with a decision to suspend the assignment of a Class under ASX Market Rule 23.7.1;
- (l) A Market Maker if dissatisfied with a decision to suspend or withdraw its registration as a Market Maker under ASX Market Rule 23.8.1;
- (m) An Existing Participating Organisation if dissatisfied with a decision referred to in ASX Market Rule 30.5.1.

### 3.1.2 ASTC Rule Appeals

- (a) A Regulated Person or ASTC if dissatisfied with a determination of a Disciplinary Tribunal under Rule 2 of this Rulebook or any sanction imposed under that Rule;
- (b) An applicant against a decision to reject an application to become a Participant under ASTC Rule 4.14.3;
- (c) An Issuer if dissatisfied with the decision to suspend or revoke approval of a class of an Issuer's Financial Products under ASTC Rule 8.4.1(e) or 8.5.4, or a suspension of an Issuer's Financial Products has under ASTC Rule 8.4.1(d) continued for a period of at least 15 Business Days against the revocation under ASTC Rule 8.4.1(e) or 8.5.4 or impending revocation under ASTC Rule 8.5.4 respectively;
- (d) A Settlement Participant or an affected person if dissatisfied with the decision under ASTC Rule 10.4 to:
  - (i) not admit a class of Batch Instruction into DvP Batch Settlement; or
  - (ii) remove a class of Batch Instruction from Batch Settlement or DvP Batch Settlement,
- (e) The relevant person or any Participant (as applicable) if dissatisfied with the decision under ASTC Rule 11.1 to:

- (i) not admit a class of Instructions into Real Time Gross Settlement; or
- (ii) remove a class of Instructions from Real Time Gross Settlement,
- (f) An Issuer if dissatisfied with the decision to revoke ASTC approval of the Issuer's Financial Products under ASTC Rule 12.17.4;
- (g) A non-compliant Participant if dissatisfied with a decision of ASTC under ASTC Rule 12.19.1 unless:
  - (i) the non-compliance is in respect of a prohibition or restriction imposed by a State Revenue Authority against the Participant paying stamp duty by lodgement of a periodic return;
  - (ii) in the case of a General Settlement Participant, the Settlement Participant no longer complies with the capacity requirements specified in ASTC Rule 4.10;
  - (iii) in the case of a Settlement Participant which is a Foreign Clearing House:
    - (a) the Settlement Participant no longer complies with the requirement to be appropriately authorised to provide clearing services in the foreign country in which its principal place of business is located; or
    - (b) any necessary regulatory approval granted to the Settlement Participant to allow the Settlement Participant to provide services as a Participant have been withdrawn,
- (h) A Facility User if dissatisfied with a decision to suspend processing of Messages or classes of messages under ASTC Rule 16.3.1(e).

### 3.1.3 ACH Rule Appeals

- (a) A Regulated Person or ACH if dissatisfied with a determination of a Disciplinary Tribunal under Rule 2 of this Rulebook or any sanction imposed under that Rule;
- (b) An applicant or Participant (as applicable) if dissatisfied with a decision of ACH to impose a condition under Rule 3.1.4;
- (c) An applicant if dissatisfied with a decision to reject its application for Participant status under ACH Rule 3.9.1;
- (d) A Participant if dissatisfied with a decision of ACH to take steps to restrict access to the Clearing System under ACH Rule 6.3.1 or 6.4.1;
- (e) An Affiliate Based CP if dissatisfied with decisions where:
  - (i) an Affiliate Based CP applies for a person to be registered as a New Approved Representative under ACH Rule 22.4.1(e) and ACH decides to refuse to register that person as a New Approved Representative;

- (ii) an Affiliate Based CP applies for a person to be recognised as a New Affiliate under ACH Rule 22.4.1(e) and ACH decides to refuse to register that person as a New Affiliate;
- (iii) ACH decides to cancel the registration of an Approved Representative of an Affiliate Based CP.

#### **3.1.4 ASX Listing Rule Appeals**

- (a) An entity if dissatisfied with a decision of ASX to refuse to admit that entity to the official list, or the conditions of admission;
- (b) An entity if dissatisfied with a decision of ASX to refuse to quote the securities of that entity, or the conditions of quotation;
- (c) An entity if dissatisfied with a decision of ASX to refuse to grant a waiver to that entity, or the conditions of a waiver;
- (d) An entity if dissatisfied with a decision of ASX to apply the Listing Rules to that entity (except in relation to a suspension); and
- (e) An entity if dissatisfied with a decision of ASX to remove that entity from the official list.

#### **3.1.5 SFE Rule Appeals**

- (a) A Regulated Person or SFE if dissatisfied with a determination of a Disciplinary Tribunal under Rule 2 of this Rulebook or any sanction imposed under that Rule;
- (b) An applicant if dissatisfied with the decision to not grant Participant status; and
- (c) A Participant if dissatisfied with a Trading Manager decision regarding an Error or Objection.

#### **3.1.6 SFEC Rule Appeals**

- (a) A Regulated Person or SFEC if dissatisfied with a determination of a Disciplinary Tribunal under Rule 2 of this Rulebook or any sanction imposed under that Rule; and
- (b) An applicant if dissatisfied with the decision to not grant Participant status.

#### **3.1.7 Austraclear Regulation Appeals**

- (a) A Regulated Person or Austraclear if dissatisfied with a determination of a Disciplinary Tribunal under Rule 2 of this Rulebook or any sanction imposed under that Rule; and
- (b) An applicant if dissatisfied with the decision to not grant Participant status.

## **3.2 ASX TO NOTIFY APPEAL TRIBUNAL**

### **3.2.1 ASX to notify Appeal Tribunal**

If either:

- (a) ASX receives a notice of appeal which complies with the relevant appeal notice provisions under these Rules; or
- (b) ASX gives a notice of appeal which complies with these Rules,

ASX must promptly give a copy of that notice to the chairperson of an Appeal Tribunal and an Appeal Tribunal will be convened in accordance with the Procedures.

## **3.3 ACTION WHICH MAY BE IMPLEMENTED PENDING APPEAL**

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

ASX may implement any action (including the making of any announcement) which it is expressly permitted to do under the relevant Operating Rules before the expiry of the time for giving a notice of appeal or before the appeal is determined, including, without limitation, any action ASX considers appropriate having regard to its obligations as an operator of a licensed facility.

## **3.4 ACTION WHICH MAY NOT BE IMPLEMENTED PENDING APPEAL**

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

Subject to any action taken in accordance with Rule 3.3, neither ASX, nor a Disciplinary Tribunal, may implement or announce a decision to:

- (a) discipline a Regulated Person;
- (b) terminate a Participant's admission as a Participant under the relevant Operating Rules; or
- (c) terminate a Regulated Person's recognition as a Regulated Person under the relevant Operating Rules,

before the expiry of the time for giving a notice of appeal or, if a notice of appeal is given, before the appeal is determined.

## **3.5 APPEAL TRIBUNAL**

### **3.5.1 Appeal Tribunal Panel**

ASX will establish an Appeal Tribunal Panel comprising of such number of persons as set out in the Procedures and as nominated by ASX from time to time.

### **3.5.2 Role of Appeal Tribunal**

There will be an Appeal Tribunal for the purposes of conducting an appeal against a decision of a Disciplinary Tribunal, or a decision of ASX in respect of which the Operating Rules or these Rules expressly provide for an appeal direct to an Appeal Tribunal.

An Appeal Tribunal is bound by, and shall enforce the provisions of, the Operating Rules.

### **3.5.3 Chairperson**

ASX will appoint one or more chairpersons for the period determined by ASX with such qualifications as are set out in the Procedures.

### **3.5.4 Composition of Appeal Tribunal**

An Appeal Tribunal will, when it is meeting, comprise the chairperson or, in that person's absence, a person nominated by the chairperson who will act as chairperson of the proceedings, and such number of persons set out in the Procedures, as selected by the chairperson of the proceedings from the Appeal Tribunal Panel. There can be more than one Appeal Tribunal meeting at any one time.

A person who participated in the making of the decision under appeal must not be a member of an Appeal Tribunal constituted to hear the appeal unless otherwise set out in the Procedures.

### **3.5.5 Proceeding date**

The chairperson of the proceedings will appoint a date, time and place for the appeal proceeding and cause notice of the date and any other information to be given to the parties as set out in the Procedures.

An Appeal Tribunal may vacate the proceeding date and appoint a substitute proceeding date in accordance with the Procedures and may adjourn and re-convene its proceedings as it thinks fit.

### **3.5.6 ASX may consolidate appeal proceedings**

Subject to Rules 2.7.1 and 2.8.1, if:

- (a) proceedings of a Disciplinary Tribunal of two or more ASX Licensees are consolidated under Rule 2.7.1 or proceedings of a Disciplinary Tribunal of two or more Regulated Persons are consolidated under Rule 2.8.1; and
- (b) two or more ASX Licensees or two Regulated Persons appeal a decision of a Disciplinary Tribunal under these Rules to an Appeal Tribunal,

each ASX Licensee and the Appeal Tribunal need not exercise their powers separately but may exercise those powers together.

Without limiting this Rule, persons constituting an Appeal Tribunal appointed to hear the proceedings Commenced by one or more ASX Licensees may at the same time, hear appeal proceedings relating to another ASX Licensee in their capacity as members of a Tribunal constituted under these Rules.



## **3.6 CONDUCT OF APPEAL TRIBUNAL PROCEEDINGS**

### **3.6.1 Powers of Appeal Tribunal**

Unless set out in the Procedures, an appeal will not be conducted as a re-hearing. An Appeal Tribunal may affirm, vary or set aside the appealed decision and any penalty.

### **3.6.2 Determination on the Papers**

All matters to be considered by an Appeal Tribunal will be assessed on the written submissions of the parties unless an Appeal Tribunal determines to conduct an oral hearing or either party requests an oral hearing. If either party requests an oral hearing it must do so by no later than the lodgement of its final written submissions.

Where an Appeal Tribunal requests that a Regulated Person appears before it, the process for such appearance shall be as set out in the Procedures. Each party shall bear its own costs of attendance.

### **3.6.3 Written submissions**

The parties will be given and must comply with such directions as determined by an Appeal Tribunal in relation to written submissions. An Appeal Tribunal may at its discretion, but is not bound to, consider any written submissions which do not comply with the directions of the Appeal Tribunal, including without limitation any written submission that is submitted outside the timeframes determined by the Appeal Tribunal.

### **3.6.4 Formalities, recording and transcripts**

Proceedings will be conducted with as little formality and technicality, and with as much expedition as a proper consideration of the matters before an Appeal Tribunal permits. An Appeal Tribunal may conduct its proceedings as it thinks fit and may record or make a transcript of proceedings (or both) at a proceeding. A copy of any transcript or recording must be made available to ASX and to the other party involved in the proceeding if requested.

### **3.6.5 Procedural fairness**

An Appeal Tribunal will determine each matter on its own merits and must conduct the proceedings without bias and must observe the rules of procedural fairness.

### **3.6.6 Voting**

The decision of an Appeal Tribunal will be determined according to a simple majority of votes of the Appeal Tribunal members. Each member has, and must exercise, a deliberative vote. The chairperson has a deliberative but not a casting vote.

### **3.6.7 Appeal Tribunal may obtain advice**

An Appeal Tribunal may obtain such legal and other advice as it considers appropriate and may have its advisers present at a determination.

### **3.6.8 Participation in proceedings**

An Appeal Tribunal may conduct proceedings without all members of the Appeal Tribunal being in the physical presence of each other, provided that all members involved in the proceedings are able to participate in the proceedings.

### **3.6.9 Ability of the Appeal Tribunal to award costs**

If an Appeal Tribunal considers that a party to the appeal, or to the proceedings the subject of the appeal, has acted vexatiously, frivolously or unreasonably, it may order that party to pay to another party to the proceedings, the whole or part of the costs and expenses incurred by the other party.

### **3.6.10 Ability of an Appeal Tribunal to award costs incurred at a Disciplinary Tribunal**

If an Appeal Tribunal considers that a decision of a Disciplinary Tribunal is unreasonable, it may order ASX to pay to another party to the proceedings, the whole or part of the costs and expense incurred by the other party.

### **3.6.11 Order for costs**

An order for costs:

- (a) may be for a specified amount or an unspecified amount;
- (b) if for an unspecified amount, must specify the basis on which the amount is to be determined;
- (c) may specify the terms on which the costs must be paid.

### **3.6.12 Reasons for decision**

An Appeal Tribunal must notify ASX and the other party of the decision and the reasons for its decision in writing in such format as it determines in accordance with the timeframe set out in the Procedures. In the case of an appeal from a Disciplinary Tribunal, an Appeal Tribunal must also give a copy of those reasons to the chairperson of the Disciplinary Tribunal.

### **3.6.13 Decision final and binding**

A decision of an Appeal Tribunal in relation to the matter the subject of the appeal, and any decision as to costs, is final and binding on ASX and the other party.

## **3.7 PROVISION OF INFORMATION BY ASX TO TRIBUNAL**

### **3.7.1 ASX may provide information**

ASX will be entitled to inform a Tribunal and such persons acting for or on behalf of ASX, as it sees fit, of any matter relating to any act, omission or conduct in respect of which a Regulated Person may be or has been penalised under these Rules.

Without limiting the generality of this Rule, information which may be communicated includes any information which may be relevant to any investigation, or proposed investigation.

### **3.7.2 Regulated Person to be informed**

Where information is communicated pursuant to Rule 3.7.1 the Regulated Person to whom the act, omission or conduct the subject of that information is attributable will be:

- (a) informed of:
  - (i) the provision of that information;
  - (ii) the information; and
- (b) given a reasonable opportunity to make submissions to a Tribunal in respect of that information.

## **3.8 INDEMNITY FOR TRIBUNAL MEMBERS AND ASX OFFICERS**

### **3.8.1 Limitation of liability and indemnity**

ASX indemnifies each member of a Disciplinary Tribunal and of an Appeal Tribunal and each officer of ASX and each person acting for or on behalf of ASX against any liability arising in or in connection with the determination of a proceeding, other than any liability that by law would attach to the member, officer or person in respect of any negligence, default, breach of duty or breach of trust of which the member, officer or person may be guilty in relation to ASX.

### **3.8.2 Indemnity for certain legal proceedings**

Notwithstanding anything contained in Rule 3.7.1, ASX indemnifies each member of a Disciplinary Tribunal and an Appeal Tribunal and each officer of ASX and each person acting for or on behalf of ASX against any liability incurred by the member, officer or person in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the member, officer or person or in which the member, officer or person is acquitted or in connection with any application in relation to any such proceedings in which relief is granted under the Corporations Act to the member, officer or person by any court of competent jurisdiction.

**End of Document**

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## **SECTION 4 ASX ANNOUNCEMENT AND IMPOSITION OF PENALTY**

### **4.1 ASX ANNOUNCEMENT**

#### **4.1.1 Announcement**

Subject to Rules 3.3 and 3.4:

- (a) a Disciplinary Tribunal or an Appeal Tribunal (as the case may be) will, unless it determines otherwise, direct ASX to make public, in the form and manner ASX considers appropriate having regard to Rule 1.10.2, any of the following matters:
  - (i) the disciplining of a Regulated Person, including the exercise by a Disciplinary Tribunal of any of its powers under Rules 2.4.1 or 2.4.2 and the affirmation by an Appeal Tribunal of such exercise of powers;
  - (ii) the suspension or termination of a Regulated Person's admission as a Participant in a default situation;
  - (iii) such other matters that are set out in the Procedures.
- (b) Unless a Disciplinary Tribunal or an Appeal Tribunal (as the case may be) determines otherwise, an announcement or publication made under Rule 4.1.1(a) will include the name of the Regulated Person and any other information which the Disciplinary Tribunal or the Appeal Tribunal (as the case may be) considers relevant to those matters.

#### **4.1.2 Disclosure**

A Regulated Person must not take (and must procure that its Employees do not take) any action or proceeding (including without limitation an action for damages) against any person for publishing or circulating any announcement, or which would stop any person from publishing or circulating any announcement under Rule 4.1.1 or making any record in the register under Rule 4.1.3. Any person against whom an action or proceeding is taken in breach of this Rule 4.1.2 may rely on this Rule 4.1.2 as a defence to that action or proceeding.

#### **4.1.3 Register of Banned Regulated Persons**

ASX will enter the name of a person in respect of whom an order is made under Rule 2.4.1(j) on a register made available to all Participants.

### **4.2 IMPOSITION OF PENALTY**

#### **4.2.1 Payment of Fines and Costs**

Any fine or cost is a debt to ASX due and payable by the Regulated Person on whom it is imposed or by whom it is payable, and shall be payable within twenty eight (28) Business Days of a decision being notified to a Regulated Person unless expressly provided

otherwise in the Procedures. ASX will add GST to the fine notified to the Regulated Person.

#### **4.2.2 ASX may Terminate Participant Status**

If the fine or cost referred to is not paid by the Regulated Person by the due date ASX may suspend or terminate the status and rights of that Regulated Person.

#### **4.2.3 ASX may Pursue Legal Action**

Notwithstanding any termination of Regulated Person status, ASX may by legal action pursue payment of the fine or cost or may accept security therefore or may agree to payment over a period of time.

**End of Document**



# **Australian Securities Exchange**

## **DISCIPLINARY PROCESSES AND APPEALS RULEBOOK**

### **PROCEDURES**

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## **SECTION 1      SCOPE OF RULEBOOK**

### **PROCEDURE 1.11.1    EFFECTIVE TIME**

Effective Time for the commencement of the Rules shall be 31 March 2008.

### **PROCEDURE 1.13.1    METHODS OF GIVING NOTICE IN WRITING**

Unless otherwise specified in correspondence with a Market Participant, documents addressed to a Disciplinary Tribunal or an Appeal Tribunal should be addressed to:

The Chairperson  
c/o Legal Counsel to the Tribunal  
Exchange Centre  
20 Bridge Street,  
SYDNEY NSW 2000  
e-mail: [Tribunals@asx.com.au](mailto:Tribunals@asx.com.au)  
Fax: 02 9227 0917

Unless otherwise specified by a Disciplinary Tribunal or an Appeal Tribunal, any notice or correspondence to a Disciplinary Tribunal or to an Appeal Tribunal may be given by:

- (a) leaving it at or by sending it by courier or post to the address specified above;
- (b) facsimile to the facsimile number specified above; or
- (c) e-mail to the e-mail address specified above.

### **PROCEDURE 1.13.2    DELIVERY OF NOTICE**

Notice or correspondence by:

- (a) Post is taken to be given on the second Business Day after the document is put in the post, in a stamped envelope or other covering addressed to the address referred to in Procedure 1.13.1;
- (b) Delivery in person or by courier is taken to be given at the time of delivery to the address referred to in Procedure 1.13.1;
- (c) Facsimile is taken to be given when the sender's facsimile machine indicates a successful transmission to the facsimile number referred to in Procedure 1.13.1;
- (d) An e-mail to the address nominated in Procedure 1.13.1 is taken to be given 2 hours after the time the e-mail enters the recipient's information system.

## **SECTION 2      DISCIPLINARY ACTION**

### **PROCEDURE 2.2.1      COMMENCEMENT OF DISCIPLINARY PROCEEDINGS**

#### **Commencing disciplinary proceedings**

In order to commence disciplinary proceedings before a Disciplinary Tribunal against a Regulated Person, ASX shall cause to be issued to both the Regulated Person and the Disciplinary Tribunal, either:

- (a) a contravention notice; or
- (b) a breach notice.

#### **Issuing a Notice**

In issuing a notice pursuant to Procedure 2.2.1, ASX may also provide to the Regulated Person and to the Disciplinary Tribunal the following:

- (a) final disciplinary report; or
- (b) statement of agreed facts and penalty; and/or
- (c) such other documentation, material or submissions that ASX considers relevant to the disciplinary proceedings which are the subject of that notice.

#### **Contravention Notices**

A contravention notice issued pursuant to Procedure 2.2.1 shall set out the details upon which the disciplinary action is based.

#### **Breach Notices**

A breach notice may be issued to a Regulated Person in lieu of a contravention notice in circumstances where in respect of a contravention of the Operating Rules:

- the matter is self-reported; and
- the conduct is isolated and is not continuing; and
- no client or third party sustained loss or damage; and
- the conduct was inadvertent, accidental and unintentional; and
- the conduct concerns a minor administrative contravention; and
- the conduct is not indicative of systemic failings in the Regulated Person's compliance processes.

The breach notice shall contain the facts in support of the alleged contravention and a proposed penalty of the amount set out in Rule 2.4.1.

ASX will lodge the proposed breach notice with a Disciplinary Tribunal requesting that the breach notice be issued after the elapse of 28 days. ASX will give a copy of the proposed breach notice and the request to the Regulated Person at the same time they are lodged with a Disciplinary Tribunal.

The Regulated Person may, within 28 days of receipt of the breach notice:

- Advise the Disciplinary Tribunal that it accepts the alleged contravention – in which case the Disciplinary Tribunal will independently assess whether or not it finds the alleged contravention to be proved and may or may not issue the breach notice; or
- Advise the Disciplinary Tribunal that it will contest the alleged contravention – in which case the breach notice will be withdrawn and ASX may conduct any necessary further investigations prior to lodgement of a contravention notice with the Disciplinary Tribunal; or
- Decline to respond to the alleged contravention – in which case the Disciplinary Tribunal will independently assess whether or not it finds the alleged contravention to be proved and may or may not issue the breach notice.

If the Disciplinary Tribunal finds the alleged contravention to not be proved then the Disciplinary Tribunal will advise all parties accordingly.

If the Disciplinary Tribunal finds the alleged contravention to be proved, then the Disciplinary Tribunal will advise all parties accordingly and issue the breach notice.

#### **PROCEDURE 2.4.1 GENERAL POWERS**

In the case of a contravention notice, the maximum fine that can be imposed by a Disciplinary Tribunal under Rule 2.4.1(b) is \$1,000,000 (exclusive of GST).

In determining sanction, a Disciplinary Tribunal shall take into account the guidelines set out at Annexure 'A' of these Procedures.

In the case of a breach notice issued to a Participant, and where a Disciplinary Tribunal finds the matter proven, the sanction that is to be imposed by the Disciplinary Tribunal upon a Participant under Rule 2.4.1(b) will be \$2,000 (exclusive of GST).

#### **PROCEDURE 2.4.2 DISCIPLINARY POWERS IN RELATION TO ISSUERS UNDER ASTC RULES**

In the case of a contravention notice or breach notice issued to an Issuer, and where a Disciplinary Tribunal finds the matter proven, the sanction that is to be imposed by the Disciplinary Tribunal under Rule 2.4.2(a) will be a censure.

The total amount for which a Disciplinary Tribunal can direct an Issuer to pay under Rule 2.4.2 (a)(ii) or (iii) must not exceed \$250,000.

## **PROCEDURE 2.5.8 ATTENDANCE AT PROCEEDINGS**

Any oral hearing of a Disciplinary Tribunal shall take place in private.

The parties may have up to two representatives present to make submissions and, with the permission of a Disciplinary Tribunal, the parties may have more than two representatives present to make submissions.

A representative may be an Employee of the party represented, or any other person approved by a Disciplinary Tribunal, or a barrister or solicitor of the Supreme Court of a State or Territory of Australia or of the High Court of Australia.

ASX may specify one or more other persons who may attend Disciplinary Tribunal proceedings as observers.

## **PROCEDURE 2.5.9 AGREED SETTLEMENTS**

A Disciplinary Tribunal shall review any proposed agreed settlement, including any statement of agreed facts and penalty, submitted by the parties, and may approve that proposed agreed settlement as the determination of that matter.

A Disciplinary Tribunal shall consider any proposed agreed settlement on the basis of the material before it and form a view as to whether:

- (a) the contravention or contraventions pressed by ASX are made out on the basis of the information contained in the relevant documentation and material before the Disciplinary Tribunal; and
- (b) the sanction proposed by the parties is considered appropriate.

In circumstances, where a Disciplinary Tribunal forms a preliminary view that the financial sanction proposed might be varied from the sanction proposed by the parties, the Disciplinary Tribunal may adjourn the proceedings and provide the parties with the opportunity to make further written submissions prior to determining those proceedings.

A right of appeal is retained by the parties in circumstances where a Disciplinary Tribunal has, in its determination of those proceedings, varied the agreed settlement proposed by the parties.

## **PROCEDURE 2.6.1 DISCIPLINARY TRIBUNAL PANEL**

ASX will establish a Disciplinary Tribunal Panel comprising not less than 10 persons nominated by ASX from time to time.

In selecting persons for appointment as members of the Disciplinary Tribunal Panel, ASX shall have regard to financial markets and industry experience, knowledge and expertise, or such other qualifications considered by ASX as relevant to that appointment.

## **PROCEDURE 2.6.2 CHAIRPERSON**

ASX shall appoint, from the members appointed under Rule 2.6.1, one or more Chairpersons of a Disciplinary Tribunal to perform the functions of the Chairperson prescribed by the Rules and Procedures.

A Chairperson may at any time appoint another member of the Disciplinary Tribunal Panel to act as the Chairperson's delegate for performing all or any of the functions of the Chairperson prescribed by the Rules and Procedures. The Chairperson may revoke any such delegation at any time.

In appointing a Chairperson, ASX shall have regard to the possession of relevant financial markets and industry experience, knowledge and expertise, or such other qualifications considered by ASX as relevant to that appointment.

### **PROCEDURE 2.6.3 COMPOSITION OF DISCIPLINARY TRIBUNAL**

A Disciplinary Tribunal will comprise of three or more members drawn from the Disciplinary Tribunal Panel, unless the matter concerns the determination of a breach notice in which case a Disciplinary Tribunal will be comprised of one member only being the Chairperson or a person appointed by the Chairperson pursuant to Procedure 2.6.2.

### **PROCEDURE 2.6.4 PROCEEDING DATE**

Where a Disciplinary Tribunal will consider a matter on written submissions only, the Chairperson shall cause notice to be given to the parties of the date appointed for that hearing.

A Disciplinary Tribunal may vacate a date on which it will consider a matter on written submissions only and cause notice to be given to the parties of the revised date appointed for that hearing.

Where a Disciplinary Tribunal has requested the appearance of a Regulated Person, the Chairperson shall cause reasonable notice to be given to the parties of the date, time and place appointed for that hearing.

A Disciplinary Tribunal may vacate a date on which it will consider a matter for which it has requested the appearance of a Regulated Person and cause reasonable notice to be given to the parties of the revised date, time and place appointed for that hearing.

### **PROCEDURE 2.6.5 REASONS FOR DECISION**

A Disciplinary Tribunal shall within 90 days of making its decision, or such longer period as advised to the parties by the Chairperson if required, notify ASX and the other party of the decision and the reasons for its decision in writing.

## SECTION 3 APPEALS

### PROCEDURE 3.1 DECISIONS THAT MAY BE APPEALED

Each appeal notice must identify the decision against which the appeal is made and set out the grounds of appeal. For the purposes of Rule 3.1, any Appeal Notice to be lodged shall be in the following format:

Type of Appeal	Form of Appeal Notice	Time to lodge Appeal Notice	Appeal Fees
<b>3.1.1 ASX Market Rules Appeals</b>			
The appeals referred to in Rules 3.1.1 (a) – (f); (h); (j) – (m)	Written notice	No later than 10 Business Days from receipt of the written reasons for determination.	Nil
(g) Warrant Issuer appeal	Written notice	No later than 1 Trading Day from receipt of the reasons for determination.	Nil
(i) Error Appeal	Written notice	No later than 1 Business Day from receipt of the reasons for determination.	\$3000 GST exclusive
<b>3.1.2 ASTC Rule Appeals</b>			
The appeals referred to in Rule 3.1.2(a), (b), (d) – (h)	Written notice	No later than 10 Business Days from receipt of the written reasons for determination.	
(c)	Written notice	No later than 10 Business Days from receipt of the reasons for determination except where a class of an Issuer's Financial Products has been suspended under Rule 8.4.1(e) and the suspension has continued for a period of at least 15 Business Days, notice must be given no later than 5:00 p.m. Sydney time on the Business Day before the date that the revocation under ASTC Rule 8.5.4 is due to take effect.	Nil

Type of Appeal	Form of Appeal Notice	Time to lodge Appeal Notice	Appeal Fees
<b>3.1.3 ACH Rule Appeals</b>			
All appeals	Written notice	No later than 10 Business Days from receipt of the reasons for determination.	Nil
<b>3.1.4 ASX Listing Rule Appeals</b>			
All appeals	Written notice	No later than 10 Business Days after the decision is sent to the entity.	Nil
<b>3.1.5 SFE Appeals</b>			
Appeals under Rules 3.1.5 (a) and (b)	Written notice	No later than 10 Business Days from receipt of the reasons for determination.	Nil
(c) Trading Manager decision regarding an Error or Objection	Written notice	Within 5 minutes of the Trading Manager's decision, or such other time as determined by the SFE Trading Manager.	\$3000 excl GST
<b>3.1.6 SFE Clearing Appeals</b>			
All appeals	Written notice	No later than 10 Business Days from receipt of the reasons for determination.	Nil
<b>3.1.7 Austraclear Appeals</b>			
All appeals	Written notice	No later than 10 Business Days from receipt of the reasons for determination.	Nil

### **PROCEDURE 3.5.1 APPEAL TRIBUNAL PANEL**

ASX will establish an Appeal Tribunal Panel comprising not less than 10 persons nominated by ASX from time to time.

In selecting persons for appointment as members of the Appeal Tribunal Panel, ASX shall have regard to relevant financial markets and industry experience, knowledge and expertise, or such other qualifications ASX considers relevant to that appointment.

Persons appointed to the Appeal Tribunal Panel may include directors or employees of ASX.

### **PROCEDURE 3.5.3 CHAIRPERSON**

ASX shall select and appoint, from the members appointed under Rule 3.5.1, one or more Chairpersons of the Appeal Tribunal Panel to perform the functions of the Chairperson prescribed by the Rules and Procedures.

A Chairperson may at any time appoint another member of the Appeal Tribunal Panel to act as the Chairperson's delegate for performing all or any of the functions of the Chairperson prescribed by the Rules and Procedures. The Chairperson may revoke any such delegation at any time.

In selecting persons for appointment as Chairperson, ASX shall have regard to relevant financial markets and industry experience, knowledge and expertise, or such other qualifications ASX considers relevant to that appointment.

A Chairperson who is determining an appeal from a Disciplinary Tribunal matter shall be a retired judge, or a barrister, or a solicitor of a State or Territory of Australia or of the High Court of Australia.

### **PROCEDURE 3.5.4 COMPOSITION OF APPEAL TRIBUNAL**

An Appeal Tribunal will comprise of 3 or more members, appointed by the Chairperson, drawn from the Appeal Tribunal Panel.

The composition of an Appeal Tribunal hearing an appeal from a decision of the Warrants Committee pursuant to ASX Market Rule 10 may be constituted as follows:

- (a) At least one member of the Appeal Tribunal must be an agent or employee of ASX.
- (b) No person who has an interest in the matter being considered by a committee, or in the case of a Warrants Appeal Tribunal has been a member of a Warrants Committee under ASX Market Rule 10 which has considered the same matter, may be appointed to, or take part in the deliberations of a committee. The fact a member or proposed member of a committee is an employee or agent of ASX, or a Related Body Corporate of ASX, will not be regarded as an interest provided that in the case of a Warrants Appeal Tribunal such person has not taken part or been concerned in a decision or determination of ASX in relation to the matter being considered by the Warrants Appeal Tribunal.

In respect of ASX Error and Dispute Appeals, one member of an Appeal Tribunal may be an agent or an employee of ASX.

In respect of SFE Error and Objection Appeals, one member of an Appeal Tribunal may be an agent or an employee of ASX.

### **PROCEDURE 3.5.5 PROCEEDING DATE**

Where an Appeal Tribunal will consider a matter on written submissions only, the Chairperson shall cause notice to be given to the parties of the date appointed for that hearing other than in relation to the following:

#### **ASX Market Rule Appeals**

- Warrant Issuer appeals under ASX Market Rule 10.14; and



- Error and Dispute Appeals under ASX Market Rule 15.

### **SFE Appeals**

- Error and Objection Appeals under SFE Rule 1.14.

An Appeal Tribunal may vacate a date on which it will consider a matter on written submissions only and cause notice to be given to the parties of the revised date appointed for that hearing.

Where an Appeal Tribunal has requested the appearance of a Regulated Person, the Chairperson shall cause reasonable notice to be given to the parties of the date, time and place appointed for that hearing.

An Appeal Tribunal may vacate a date on which it will consider a matter for which it has requested the appearance of a Regulated Person and cause reasonable notice to be given to the parties of the revised date, time and place appointed for that hearing.

### **PROCEDURE 3.6.2 DETERMINATION ON THE PAPERS**

Any oral hearing of an Appeal Tribunal shall take place in private.

The parties may have up to two representatives present to make submissions and, with the permission of an Appeal Tribunal, the parties may have more than two representatives present.

A representative may be an Employee of the party represented, or any other person approved by an Appeal Tribunal, or a barrister or solicitor of the Supreme Court of a State or Territory of Australia or of the High Court of Australia.

ASX may specify one or more other persons who may attend the Appeal proceedings as observers.

### **PROCEDURE 3.6.3 WRITTEN SUBMISSIONS**

Where an entity has lodged its written submissions in relation to a matter other than an appeal from a Disciplinary Tribunal, ASX may review such submissions and may determine to overturn its earlier decision so as to avoid the need for the continuation of the appeal process.

### **PROCEDURE 3.6.5 PROCEDURAL FAIRNESS**

Where its obligations as an operator of a licensed facility would deem it necessary to deal with appeals in an expedited manner, ASX may determine that a Regulated Person be given a shorter period of time to lodge a notice of appeal as set out in Procedure 3.1 and that no written hearing date will be provided by the relevant Appeal Tribunal.

### **PROCEDURE 3.6.12 REASONS FOR DECISION**

An Appeal Tribunal shall within 90 days, or such longer period as advised to the parties by the Chairperson if required, of making its decision, notify ASX and the other party of the decision and the reasons for its decision in writing.

**End of Document**

## **ANNEXURE A      DISCIPLINARY TRIBUNAL SANCTION GUIDELINES**

These Guidelines provide information on the general principles and factors that a Disciplinary Tribunal may take into account when considering and determining sanctions for contraventions of the Operating Rules.

The Guidelines also serve to assist a Disciplinary Tribunal to achieve consistency in its decision-making in determining and imposing a sanction, and to provide Regulated Persons with a general indication of the range of possible outcomes in disciplinary proceedings.

These Guidelines do not derogate from a Disciplinary Tribunal's obligation to have regard to all relevant circumstances in any individual case. Nor do the Guidelines purport to state an exhaustive list of the principles or factors which may be taken into account by a Disciplinary Tribunal.

### **General principles in determining sanction**

The following general principles are a guide to a Disciplinary Tribunal's determination of disciplinary sanction:

- (a) Disciplinary sanctions should be remedial and imposed to protect the public, the interests of the ASX and the integrity of the market and facilities it operates.
- (b) Disciplinary sanctions should also serve as a deterrent to any future misconduct by the Regulated Person, and as a deterrent to all other Regulated Persons from engaging in the same or any similar misconduct.
- (c) A Disciplinary Tribunal will take into account the circumstances of the contravention, the seriousness of the misconduct, and any relevant mitigating or aggravating factors.
- (d) Disciplinary sanctions should be more severe for repeat misconduct, or where the relevant misconduct evidences a disregard for the Rules.
- (e) Disciplinary sanctions should be tailored to address the relevant misconduct.
- (f) A Disciplinary Tribunal will determine disciplinary sanction on the basis of the evidence and submissions before it, and exercise its powers fairly and impartially and with due regard for the principles of natural justice.

### **Principal factors in determining sanction**

Where relevant, the following principal factors (in mitigation or aggravation) are to be considered by a Disciplinary Tribunal in determining an appropriate sanction:

- 1) The disciplinary history of the Regulated Person.
- 2) Disciplinary sanctions previously applied by a Disciplinary Tribunal in relation to the same or similar types of contravention/s, or in comparable circumstances.

- 3) Whether the Regulated Person fully assisted and cooperated with the ASX in its investigation, and whether the level of the assistance and cooperation provided by the Regulated Person minimised the time and costs of the investigation (or conversely, that there was a failure to assist or cooperate with the ASX in its investigation).
- 4) Whether the Regulated Person made an early decision not to contest the contravention/s brought against it, thereby saving time and costs, and assisting a Disciplinary Tribunal in the efficient administration of the disciplinary process.
- 5) The culpability of the Regulated Person including whether the misconduct was unintentional, negligent, deceptive, manipulative, fraudulent or intentional.
- 6) Whether the misconduct was an isolated instance or had occurred over an extended period of time.
- 7) Whether the misconduct was self-reported in a timely and comprehensive manner, or there was a failure to report (or an attempt to conceal) the relevant misconduct.
- 8) Whether the relevant misconduct was systemic or indicative of a pattern of non-compliance with the Rules.
- 9) The size of any commercial advantage or financial benefit obtained as a result of the misconduct.
- 10) Whether a corporate culture conducive to compliance with the Rules is evident e.g. effective educational and compliance programs.
- 11) Whether the misconduct resulted in, or has the potential to result in, loss or injury to other parties (e.g. retail investors, members of the public, other market participants etc.), and if so, the nature and extent of that loss or injury, any steps taken to redress the loss or injury, or whether any exploitation or unfair advantage was evident due to the lack of the financial sophistication of the party/parties affected.
- 12) Whether the Regulated Person had placed reasonable reliance upon its receipt of independent professional and considered accounting or legal advice.
- 13) Whether, at the time of the contravention, the Regulated Person had appropriate supervisory, operational or technical procedures/controls in place.
- 14) Whether the Regulated Person had taken steps or measures to prevent any recurrence of the contravening conduct.
- 15) Whether the relevant conduct damaged, or had the potential to damage, the reputation and integrity of the ASX and the market and facilities it operates.
- 16) The totality principle (refer to “Consideration of multiple contraventions” below).

### **Seriousness of conduct**

A Disciplinary Tribunal will consider the level of seriousness by reference to the circumstances of the matter and the conduct involved together with any relevant mitigating or aggravating factors.

The Tables in this guideline provide a general guide for the purpose of promoting consistency and fairness in the determination of an appropriate sanction, and to provide the Participants with guidance as to the seriousness of the relevant conduct. The three levels and categories of seriousness are:

- Level 1 (Contravention of Concern)
- Level 2 (Serious Contravention)
- Level 3 (Very Serious Contravention)

The above terms categorising the levels of seriousness of conduct are referred to for the purposes of guidance only. In the event of any conflict, the context or any definition of such terms within the Operating Rules will prevail over these Procedures.

A Disciplinary Tribunal retains the discretion to impose what it considers to be appropriate sanction even if it falls outside of the possible ranges specified in the below Tables.

### **Suspension and termination sanctions**

Where under the Rules, a Disciplinary Tribunal has jurisdiction to apply a suspension to deny access to the trading, clearing and settlement systems, the Disciplinary Tribunal shall have regard to at least the following matters before making an order to impose suspension or termination:

- the seriousness of the misconduct of the Regulated Person and/or individual/s involved;
- the history of that type of behaviour by the Regulated Person;
- the financial impact that such an order is likely to have on the Regulated Person or to any individual/s involved; and
- the effect that suspension is likely to have on the ability of the Regulated Person to meet various clearing and settlement obligations.

### **Consideration of multiple contraventions**

Under the totality principle, where a Disciplinary Tribunal has imposed a number of sanctions it may consider the aggregate of those penalties to determine whether that sanction is appropriate, taking into account all the circumstances.

A Disciplinary Tribunal may impose sanction in respect of each contravention but choose to apply an overall financial sanction instead, which may be lower than the total sum of the individual financial sanctions. Pursuant to Rule 2.4.3 where a Regulated Person has been found to have engaged in two or more contraventions involving the same provision of the relevant Operating Rules, being contraventions that appear to a Disciplinary Tribunal to have been of the same nature or a substantially similar nature and to have occurred at or about the same time or as part of a single course of conduct, the Disciplinary Tribunal cannot impose fines that, in total, exceed the maximum fine available under the Rules.

Under the Rules, a Disciplinary Tribunal has jurisdiction to simultaneously hear matters that relate to contraventions of Rules from different Rule books. Again, a Disciplinary Tribunal may impose a financial sanction in respect of each contravention or apply an overall financial sanction, which is lower than the total of the individual sanctions imposed.

## **CATEGORIES OF SERIOUSNESS TABLES (Indicative Guidelines)**

### **Level 1 (Contravention of Concern)**

Examples of Conduct (not exhaustive)	Characteristics of Contravention (Examples)	Range of financial sanction	Other possible sanctions
<ul style="list-style-type: none"> <li>• Minor Annual/Audit Account record contravention</li> <li>• Failure to notify changes of business address, Directors or shareholders</li> <li>• Failure to provide Exchange with current AFSL</li> <li>• Late lodgement of Monthly or Quarterly returns or Annual Audit Certificate</li> <li>• Minor Daily Beneficial Ownership contraventions</li> <li>• Minor record-keeping contravention</li> <li>• Minor error report contravention</li> <li>• Failure to input client identifier</li> <li>• Minor contravention of wash trade, block trade, EFF, strategy/pre-negotiated order or expression of interest provisions</li> <li>• Contravention of mandatory recording requirements associated with equipment failure</li> <li>• Isolated Order Record contravention</li> <li>• Account/Audit record contraventions</li> <li>• Minor Trust Account or Client Segregated Account contraventions</li> <li>• Unauthorised disclosure of HINs/SRNs</li> <li>• Fail to settle within T+3/Fail to settle net clearing obligation</li> </ul>	<ul style="list-style-type: none"> <li>• Disciplinary history of the Regulated Person e.g. first contravention</li> <li>• Minor nature of contravention</li> <li>• Self-reported</li> <li>• Isolated occurrence</li> <li>• Unintentional/Inadvertent/Accidental</li> <li>• No damage or loss occasioned to any third party</li> <li>• Action taken to remedy contravention</li> <li>• Reasonable reliance placed on professional legal or accounting advice</li> <li>• Contravention of rules not involving a breach of confidentiality</li> </ul>	<ul style="list-style-type: none"> <li>• Nil to \$20,000</li> </ul>	<p>Issue of breach notice</p> <p>Consider remedial sanctions including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Censure</li> <li>• Implementing/upgrading of education and compliance programme</li> </ul>

## Level 2 (Serious Contravention)

Examples of Conduct (not exhaustive)	Characteristics of Contravention (Examples)	Range of financial sanction	Other possible sanctions
<ul style="list-style-type: none"> <li>• Trading and Operating Rule contraventions</li> <li>• Order Record contraventions</li> <li>• Margin Call Contraventions</li> <li>• AOP contraventions (uncertified/inappropriate filters)</li> <li>• Discretionary Account contraventions (manage/operate account without client's authority)</li> <li>• Capital Liquidity and NTA contraventions</li> <li>• Account/Audit record contraventions</li> <li>• Trust and Client Segregated Account contraventions</li> <li>• Failure to supervise an Advisor/Unaccredited Advisor</li> <li>• Failure to execute/maintain client agreement documentation</li> <li>• Unprofessional Conduct of a serious nature</li> <li>• Unauthorised Disclosure of HINs/SRNs</li> <li>• Mandatory recording of information contravention</li> <li>• Post allocation</li> <li>• Contravention of wash trade, block trade, EFF, strategy/pre-negotiated order or expression of interest provisions</li> <li>• Failure to deal in accordance with client instructions or best interests</li> <li>• Fail to Settle within T+3/Fail to settle significant net clearing obligation</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct constitutes a serious contravention</li> <li>• Disciplinary history of the Regulated Person</li> <li>• Repeat contravention or displays disregard for Rules</li> <li>• Systemic problem or indicative of a pattern of non-compliance</li> <li>• Intentional/Deliberate/Reckless</li> <li>• Failure to rectify or address</li> <li>• Conduct impeded ASX inquiries and investigations</li> <li>• Conduct threatened the integrity and efficiency of the market</li> <li>• Damage or loss (or potential) to another party</li> <li>• Contravention involving a breach or loss of confidentiality</li> </ul>	<ul style="list-style-type: none"> <li>• \$20,000 to \$100,000 per contravention</li> </ul>	<p>In all cases consider remedial sanctions if appropriate including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Implementing/upgrading of education and compliance programme</li> <li>• Suspension of Regulated Person</li> <li>• Order Regulated Person to terminate involvement/change role of offending individual</li> <li>• Payment of commission or gross profit to ASX</li> </ul>

### Level 3 (Very Serious Contravention)

Characteristics of Conduct (not exhaustive)	Characteristics of Contravention (Examples)	Indication of range of financial sanction	Other possible sanctions
<ul style="list-style-type: none"> <li>• Market Manipulation</li> <li>• Misleading Acts</li> <li>• Insider Trading (being Unprofessional Conduct)</li> <li>• Dual trading and error/personal account trading</li> <li>• Failure to maintain sufficient levels of NTA</li> <li>• Failure to meet obligations with SFE Clearing by prescribed times</li> <li>• Delivery breach</li> <li>• Trust/Discretionary Account contraventions involving damage/loss to third party</li> <li>• Submission of false or misleading information to the Exchange</li> <li>• Failure to demonstrate Prudent Risk Management</li> <li>• Failure to co-operate with or provide records to the Exchange</li> <li>• Failure to allocate trades in sequence</li> <li>• Self reporting contraventions</li> <li>• Automated Order Processing contraventions (e.g. failure to certify system; failure to ensure appropriate filters in place) involving damage/loss to third party</li> <li>• Failure to supervise an Advisor in circumstances where damage/loss to third party has occurred</li> <li>• Unprofessional Conduct of a very serious nature</li> </ul>	<ul style="list-style-type: none"> <li>• Systemic or indicative of pattern of non-compliance</li> <li>• Attempt to conceal contravention</li> <li>• Intentional/Deliberate conduct</li> <li>• Knowingly Fraudulent/Deceptive conduct</li> <li>• Conduct which resulted in loss or damage to a client or third party</li> <li>• Contravention which damaged or detrimentally affected the fair and orderly operation of the market</li> <li>• Contravention that threatened (or had the potential to threaten) the integrity and efficiency of the market</li> <li>• Repeat contraventions</li> <li>• Complete disregard for the Rules</li> </ul>	<ul style="list-style-type: none"> <li>• \$100,000 to a maximum of \$1,000,000 in total</li> </ul>	<p>In all cases consider remedial sanctions if appropriate including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Payment of commission or gross profit to ASX</li> <li>• Suspension of Regulated Person</li> <li>• Order Regulated Person to terminate involvement/ change role of offending individual</li> <li>• Prohibit Regulated Person from transacting business with ASX</li> </ul>

**End of Document**





# Australian Securities Exchange Disciplinary Processes & Appeals Rules

## Guidance Note No. 1

### KEY TOPICS

1. Purpose
2. Disciplinary Obligations & Powers
3. Overview - DP&A Rulebook
4. Disciplinary & Appeals Tribunal
5. Disciplinary Procedures
6. Tribunal Communications & Directions
7. Electing to Not to Contest a Matter
8. Contested Hearings
9. Appeal Proceedings
10. Publication of Determinations
11. Reporting to ASIC
12. Transitional Provisions

### Cross-reference

1. S 792A Corps Act
2. s 793B Corps Act
3. s.821A Corps Act
4. s.822B Corps Act

### Guidance Note

#### History

First Issued  
31 March 2008

### DISCIPLINARY PROCEEDINGS

#### Purpose

This Guidance Note outlines for the benefit of Regulated Persons and their advisers the practices and procedures in respect of disciplinary action commenced against a Regulated Person in accordance with the Disciplinary Processes and Appeals Rulebook of the Australian Securities Exchange.

This Guidance Note does not address the practices and procedures in relation to the investigation of Regulated Persons.

This Guidance Note has been published to promote commercial certainty and to assist Regulated Persons. Nothing in this note necessarily binds the Licensees of the Australian Securities Exchange (“ASX Licensees”) in the application of the Operating Rules in a particular case. Nor does anything in this Note bind the Disciplinary Tribunal or the Appeal Tribunal or restrict either Tribunal from adopting such practices and procedures as each considers appropriate in its discretion from time to time. In issuing this Note, legal advice is not being provided and Regulated Persons should independently obtain their own advice from a qualified professional person in respect of their obligations.

#### Disciplinary Obligations & Powers

ASX Licensees holding a market license are obliged by Section 792A of the Corporations Act to, amongst other things:-

- do all things necessary to ensure that its market is a fair, orderly and transparent market;
- have adequate arrangements for supervising the market; and
- have adequate arrangements for monitoring and enforcing compliance with its Operating Rules.

By Section 793B of the Corporations Act the respective Operating Rules, applicable to each of the markets operated by an ASX licensee, have effect as a contract between the ASX Licensee and its Regulated Persons, under which all parties agree to observe and perform the provisions of the Operating Rules which apply to them.

ASX Licensees holding a C&S Facility Licenses are obliged by Section 821A of the Corporations Act to, amongst other things:-

- do all things necessary to ensure that its services are provided in a fair and effective way;
- have adequate supervisory arrangements ; and
- have adequate arrangements for enforcing compliance with its Operating Rules.

By Section 822B of the Corporations Act the respective Operating Rules, applicable to each ASX Licensee holding a C&S Facility License, have effect as a contract between that ASX Licensee and its Regulated Persons, under which all parties agree to observe and perform the provisions of the Operating Rules which apply to them.

The processes and procedures for dealing with the contraventions of the Operating Rules and appeals in relation to the operation of licensed markets and facilities are contained in the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

### **Overview – Australian Securities Exchange Disciplinary Processes & Appeals Rulebook**

The Australian Securities Exchange Disciplinary Processes & Appeals Rulebook (“The Rules”) sets out the formal arrangements which the Australian Securities Exchange has put in place in relation to the processes and procedures for dealing with contraventions of the Rules and appeals in relation to the operation of the licensed markets and facilities within ASX.

## Disciplinary and Appeal Tribunals

### Contravention Notices and the Disciplinary Tribunal

By Rule 2.2 where an ASX Licensee considers that a Regulated Person may have contravened any of its operating rules, it may instigate and initiate disciplinary proceedings by issuing to the Regulated Person and to the Disciplinary Tribunal, a Contravention Notice, in the form set out in the Procedures, setting out the details on which the disciplinary action is based.

Disciplinary proceedings instigated against a Regulated Person under Rule 2.2 shall be determined on the documents submitted to the Tribunal unless either of the parties elects to have an oral hearing, or where the Tribunal determines that it wishes to conduct an oral hearing. The Regulated Person is entitled to be heard in answer to the Contravention Notice.

By Rule 2.6, and in accordance with the Procedures, the Disciplinary Tribunal is a “peer” Tribunal comprised of three or more members drawn from a Tribunal Panel of not less than 10 persons by the Chairperson of the Disciplinary Tribunal (or by a person delegated by the Chairperson in the Chairperson’s absence).

Where the Disciplinary Tribunal finds that a contravention is established against a Regulated Person (other than an Issuer), it may impose a variety of sanctions. By Rule 2.4.1 the Disciplinary Tribunal may

- (a) Censure the Regulated Person; and/or
- (b) impose a fine not exceeding the amount set out in the procedures (which prescribe a fine of up to \$1,000,000); and/or
- (c) suspend the Participant from all or any of the privileges of being a Participant for one or more Products under these Rules;
- (d) prohibit the Regulated Person from transacting any business with ASX or with or through any Participant in respect of one or more Products for a period not exceeding 3 months, upon terms which the Disciplinary Tribunal considers appropriate;
- (e) specify, and/or direct ASX to specify, the form, objectives and timeframe for a new, or an enhanced version of an existing, education and compliance programme designed to prevent future contravention of the Rules by the Regulated Person and its Employees, and direct the Regulated Person to implement such a programme to the satisfaction of ASX;

- (f) where the contravention arose from conduct of a particular individual involved in the business of the Participant, direct that the Participant cease to permit that individual to remain involved or that the Participant change that individual's role in the business in some way;
- (g) require the Participant to pay to ASX all or part of the total commission or gross profit arising from any Transaction or Open Contract the subject of the proceedings, and ASX may deal with that amount in any manner the ASX considers appropriate;
- (h) terminate the admission of the Participant;
- (i) where the Regulated Person against which disciplinary action is taken is not a Participant, direct the relevant Participant to:
  - (i) suspend that person's role as a Regulated Person of that Participant for a period not exceeding 3 months upon such terms and conditions as the Disciplinary Tribunal thinks fit; or
  - (ii) where the Disciplinary Tribunal makes a finding of Unprofessional Conduct, terminate that person's role as a Regulated Person of that Participant;
- (j) where the Regulated Person determined to have contravened the Rules is not a Participant, make an order that the Regulated Person not be employed, or otherwise appointed, as a Responsible Executive for a period the Disciplinary Tribunal thinks fit; and
- (k) impose conditions or restrictions in relation to:
  - (i) any actions taken under this Rule 2.4.1;
  - (ii) a Regulated Participant's participation rights in the relevant ASX Licensee's facilities;
  - (iii) the future conduct of a Regulated Person;
  - (iv) any other matter the Disciplinary Tribunal sees fit.

## Disciplinary Procedures

Set out below is a description of practices and procedures which ASX commonly follows when it commences and pursues disciplinary action under the Rules. Many of these procedures are not formal rules. Participants should note that the procedures which ASX adopts in a particular case may vary from these procedures where appropriate, depending on all the relevant circumstances.

## **Contraventions**

The decision as to whether to issue a Contravention Notice under Rule 2.2 is made by the General Manager, Enforcement, or by the delegate of the General Manager, Enforcement in that person's absence.

If a decision is made to commence disciplinary proceedings, a written Contravention Notice will be issued to the Regulated Person and to the Disciplinary Tribunal. The Contravention Notice will specify the alleged rule breach or Unprofessional Conduct which is alleged to have occurred, together with particulars setting out the facts on which the alleged breach or Unprofessional Conduct is based.

In addition to the Contravention Notice, a copy of any report and any other supporting documentation will also be provided to the Regulated Person and to the Disciplinary Tribunal.

## **Tribunal Communications & Directions**

Following the provision of a Contravention Notice to a Regulated Person, the Chairperson of the Disciplinary Tribunal or Counsel to the Disciplinary Tribunal (being a person appointed to assist the Disciplinary Tribunal in carrying out its functions) will advise the Regulated Person and ASX in writing of the date fixed for the hearing. The Chairperson of the Disciplinary Tribunal or Counsel to the Disciplinary Tribunal will also advise the parties of the identity of the panel members who have been nominated to hear the matter.

Communications to the Disciplinary Tribunal prior to a hearing should be addressed to Counsel to the Disciplinary Tribunal, and should always be copied to the other party.

If any party has any objection to any member of the Disciplinary Tribunal hearing a particular matter or has any other objection to a particular matter being heard by the Disciplinary Tribunal, that party should raise that objection at the earliest possible opportunity with Counsel to the Disciplinary Tribunal and should not wait until the hearing date before raising the objection.

Prior to a hearing, the Disciplinary Tribunal may give written directions to the parties, with a view to simplifying the matter and shortening the hearing time. Pre-hearing directions given by the Disciplinary Tribunal may address such

matters as imposing deadlines for the supply to the other party of copies of documents which it is intended will be relied on at the hearing, imposing deadlines for identifying any persons who it is proposed will give oral evidence at the hearing, directing that written outlines of arguments be prepared and directions in relation to preparing a statement of agreed facts.

The above procedures apply equally before the Appeal Tribunal, except that the references to Counsel to the Disciplinary Tribunal should be read as references to Counsel to the Appeal Tribunal (being a person appointed to assist the Appeal Tribunal).

### **Electing to Refrain from Contesting a Contravention Notice**

After receiving a written Contravention Notice, a Regulated Person should give consideration to whether it intends to contest the matter at a hearing.

Some of the factors which could have a bearing on that decision may include whether the Regulated Person accepts that it has contravened the Operating Rules of the ASX Licensee, the weight of the evidence, the wording of the relevant Operating Rules and the expense and time involved in preparing for and attending a contested hearing. The Regulated Person may choose to consult with its professional advisers when giving consideration to these matters.

If a Regulated Person is interested in possibly refraining from contesting a Contravention Notice, it should contact ASX Enforcement as soon as possible to discuss the matter. Discussions with ASX Enforcement may be held on a “without prejudice” basis, such that the matters discussed will remain confidential and will not be used in evidence against the Regulated Person before the Disciplinary Tribunal without the Regulated Person’s consent.

In accordance with Rule 2.5.9, where a Regulated Person agrees with ASX that it will not contest a Contravention Notice in whole or in part, it may also seek to agree with ASX a submission to the Disciplinary Tribunal in relation to the sanction or sanctions it would be appropriate for the Disciplinary Tribunal to impose and, where the sanction involves a fine or a payment of commission or profit, the amount of that sanction. That submission may be made to the Disciplinary Tribunal in writing, in the form of a letter from the Regulated Person. The Regulated Person will usually consult with ASX Enforcement regarding the form and content of such a submission.

Where a Regulated Person elects not to contest part or all of a Contravention Notice, the Disciplinary Tribunal must nevertheless be satisfied, having regard to the available evidence, that the breaches alleged in the Contravention Notice are made out, before it will make a finding that a breach of the Rules has occurred. In considering the evidence when an uncontested hearing takes place, the Disciplinary Tribunal will have regard to any documents and submissions placed before it by the parties. The Disciplinary Tribunal may also in its discretion require the parties to appear before it to provide further information or clarify any issue raised by the documents.

The Disciplinary Tribunal is not obliged to adopt a common submission from the parties as to the appropriate sanction to impose, where an uncontested Contravention Notice is found to have been made out on the evidence. The Disciplinary Tribunal has the discretion to impose a greater or lesser sanction than that submitted by the parties. However, where a Contravention Notice is uncontested, the parties' entitlement to appeal from the Disciplinary Tribunal's determination as to the sanction to be imposed, is preserved.

### **Contested Hearings**

Where a Contravention Notice is contested, the matter will be considered by the Tribunal on the submitted material before it unless either party, or the Tribunal, makes an election for the matter to be heard by way an oral hearing (Rule 2.5.1).

In the event an election being made by either of the parties, or by the Tribunal an oral hearing will take place before the Disciplinary Tribunal and, in the event of an appeal, before the Appeal Tribunal, on a date nominated by the Disciplinary Tribunal (Rule 2.6.4), and where relevant, by the Appeal Tribunal (Rule 3.5.5), by notice in writing to the parties.

Rule 2.5.3 provides that proceedings of the Disciplinary Tribunal and the Appeal Tribunal shall be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the relevant Tribunal permit. While both the Disciplinary Tribunal and the Appeal Tribunal do not operate as a court, some court practices or procedures may be adopted by the Tribunals in hearings, for example, setting time-tables for the submission of material to the Tribunal and other parties.



The venue for a hearing is chosen by the relevant Tribunal. Alternatively, the Disciplinary Tribunal or the Appeal Tribunal may choose to hold a hearing by video or telephone conference.

If the Regulated Person does not want to appear in person or wishes to be represented before the Disciplinary Tribunal or Appeal Tribunal, it may lodge a written request for consideration by the relevant Tribunal.

Oral hearings before the Disciplinary Tribunal and the Appeal Tribunal take place in private. However, 2 representatives of each of the Participating Organisation and ASX are entitled to be present and to make submissions (Rule 2.5.8). The relevant Tribunal may also permit more than 2 representatives to be present. A representative may be a member or employee of the party appearing before the Tribunal, or a barrister or solicitor or any other person approved by the Tribunal.

At the commencement of a hearing, it is customary for the Chairperson to:

- identify the members of the Tribunal;
- request the parties and their representatives to identify themselves and in the course of doing so, draw to the parties attention that (if relevant) the proceedings are being recorded;
- ascertain whether there are any procedural objections, not previously raised, to the convening of the hearing or the composition of the Tribunal; and
- ascertain whether the Regulated Person continues to contest the Contravention Notice brought against them.

Once it has ascertained that the Contravention Notice continues to be contested, the Tribunal will invite ASX to put before it the evidence upon which ASX relies in support of the Contravention Notice and to address the Tribunal in relation thereto. After ASX has presented its evidence and made its address, the Tribunal will invite the Regulated Person to present its evidence and to address the Tribunal in relation to the Contravention Notice. After the Regulated Person has completed its address, the Tribunal will afford ASX an opportunity to address the Tribunal in reply.

The Tribunal will also invite the parties to address it on the question of any sanction which it would be appropriate to impose, in the event that it finds that the Rules have been contravened. It may call for addresses to be made on the



question of sanction as part of the submissions in support of or in opposition to the Contravention Notice, or it may ask that those submissions be made if and when it makes a finding that a contravention of the Rules has occurred. If the latter, the same order of addresses will apply as for addresses in support of or in opposition to the Contravention Notice.

A Tribunal must determine a matter without bias and give both ASX and the Regulated Person a fair hearing and observe the rules of procedural fairness (Rule 2.5.4).

Apart from the obligation to observe the respective requirements of Rules 2.5.4, and 3.6.5 the Disciplinary Tribunal and the Appeal Tribunal may conduct proceedings as they see fit (Rules 2.5.3 and 3.6.4 respectively). Neither Tribunal is obliged to observe formal rules of evidence and may give such weight to items of evidence placed before it as it considers appropriate and fair in all the circumstances.

The strength of evidence required to be presented by the ASX for a level 3 breach will be higher than the strength of evidence required to be presented by the ASX for a level 1 breach i.e. not inconsistent with the sanction procedures and not likely to bring the Rules and their administration into disrepute.

Evidence placed before the Disciplinary Tribunal and the Appeal Tribunal by ASX and by Regulated Person is commonly in written form, and supported by oral submissions made by the parties if an election to have an oral hearing is made. The written evidence commonly includes a report and trading or other business records of the Regulated Person. The Disciplinary Tribunal, and the Appeal Tribunal where relevant, may permit oral evidence to be led before them. It is a matter for the relevant Tribunal's discretion whether to permit a person who provides oral evidence to be cross-examined. The relevant Tribunal may itself choose to question a person who provides oral evidence.

The Disciplinary Tribunal and the Appeal Tribunal are not obliged to make a transcript of a hearing but may elect to do so. The usual practice is that the hearing is recorded and the relevant Tribunal subsequently makes a decision on whether to prepare a transcript from the recording. A copy of any transcript or recording will be made available to the parties involved in the proceeding if requested.

A determination of the Disciplinary Tribunal or the Appeal Tribunal is made by a simple majority of votes of the members of the relevant Tribunal. Each member, including the Chairperson, has one vote. The Chairperson does not have a casting vote.

The relevant Tribunal may make its determination at the conclusion of submissions made to it by the parties, or it may reserve its decision to a later date. In either case, the Disciplinary Tribunal and the Appeal Tribunal are each obliged to provide written reasons for their determinations. The Disciplinary Tribunal is required to notify the parties of its decision in writing with reasons within 90 days of making its decision. The Appeal Tribunal is guided by the same timeframe or such longer period as may be advised to the parties (Rules 2.6.5 and 3.6.12).

The Rules contain provisions whereby the Appeal Tribunal can award costs, as follows:-

- if it considers that a party to the appeal, or to the proceedings the subject of the appeal, has acted vexatiously, frivolously or unreasonably, the Appeal Tribunal may order that party to pay to another party to the proceedings, the whole or part of the costs and expenses incurred by the other party (Rule 3.6.9); or
- if it considers that a decision of the Disciplinary Tribunal is unreasonable, the Appeal Tribunal may order ASX to pay to another party to the proceedings, the whole or part of the costs and expense incurred by the other party (Rule 3.6.10).

Where an order for costs is made, it may be for a specified or unspecified amount (Rule 3.6.11(a)). Where the amount is unspecified, the Appeal Tribunal must specify the basis on which the amount is to be determined (Rule 3.6.11(b)). The Appeal Tribunal may also specify the terms on which costs must be paid (Rule 3.6.11(c)).

## APPEAL PROCEEDINGS

### Appeal Tribunal

Parties, if dissatisfied with a decision, may appeal to the Appeal Tribunal in accordance with Rules 3.1.1 to 3.1.7.

The Appeal Tribunal will comprise of at least 3 panel members, appointed by the Chairperson, drawn from the Appeal Tribunal Panel. Notice of an appeal must be received by the Appeal Tribunal within the time frames prescribed in the Procedures. Each appeal notice must identify the decision or ruling against which the appeal is made and set out the grounds of appeal.

### **Publication of Disciplinary Tribunal and Appeal Tribunal Determinations**

Rule 4.1.1 provides that a Disciplinary Tribunal or an Appeal Tribunal unless it determines otherwise will direct ASX to publish, in the manner and form ASX considers appropriate, the disciplining of a Regulated Person. The publication shall include the exercise of any of the tribunal powers exercised under Rule 2.4, such as fines and sanctions imposed, the name of the Regulated Person and any other information the Tribunal considers relevant.

It should be noted that no announcement of a determination, shall be made until after expiry of the 10 Business Day appeal period following the receipt of written reasons for the determination. Where an appeal is lodged with the Appeal Tribunal, within the prescribed time, no announcement will be made until the appeal is determined.

### **Report to Australian Securities and Investments Commission**

If the Disciplinary Tribunal, and where relevant the Appeal Tribunal, takes disciplinary action against a Regulated Person, ASX is obliged by Section 792B(2) of the Corporations Act to lodge with ASIC written particulars of the name of the Regulated Person, the reason for and nature of the action taken.

### **Transitional Provisions**

The Operating Rules and processes and procedures set out in this Guidance Note apply to disciplinary matters that are commenced by a Contravention Notice issued to the Participant or Regulated Person after 31 March 2008, regardless of when the conduct giving rise to the Contravention Notice arose. Any matter, which has had a Contravention Notice issued to the participant or Regulated person, or similar initiating application or referral to a Committee such as the SFE Business Conduct Committee, prior to 31 March 2008 will be dealt with in accordance with the Operating Rules in effect at that time. For example, matters commenced before 31 March 2008 by Sydney Futures Exchange Ltd will continue to be dealt with by the Business Conduct Committee or Market Practices Committee as the case may be.

Any appeal from a disciplinary decision or non-disciplinary decision will also be dealt with in accordance with the Operating Rules and Procedures in place before 31 March 2008 if the appeal notice was lodged before 31 March 2008.

### **Qualification**

ASX has published this note to promote commercial certainty and to assist Participants. Nothing in this note necessarily binds ASX Licensees in the application of the respective Operating Rules in a particular Market. In issuing this note, ASX is not providing legal advice and market participants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may replace this Guidance Note at any time without further express notice to any particular person. Readers may contact ASX to ensure they have the latest version.