

## SECTION 3 APPEALS

<b>3.1</b>	<b>DECISIONS THAT MAY BE APPEALED .....</b>	<b>3</b>
3.1.1	ASX Operating Rule appeals.....	3
3.1.2	ASX Settlement Operating Rule appeals .....	3
3.1.3	ASX Clear Operating Rule appeals .....	4
3.1.4	ASX Listing Rule appeals – [Deleted].....	5
3.1.5	ASX 24 Operating Rule Appeals .....	5
3.1.6	ASX Clear (Futures) Operating Rule Appeals.....	5
3.1.7	Austraclear Regulation Appeals .....	5
3.1.8	No other ASX decisions are appealable .....	6
<b>3.2</b>	<b>NOTICES OF APPEAL.....</b>	<b>6</b>
3.2.1	Notices to be given to Appeal Tribunal .....	6
3.2.2	Convening of Appeal Tribunal .....	6
3.2.3	ASX to notify Appeal Tribunal .....	6
<b>3.3</b>	<b>ACTION WHICH MAY BE IMPLEMENTED PENDING APPEAL .....</b>	<b>6</b>
3.3.1	Appeal does not affect decision.....	6
3.3.2	Action which may be implemented pending appeal.....	7
<b>3.4</b>	<b>ACTION WHICH MAY NOT BE IMPLEMENTED PENDING APPEAL.....</b>	<b>7</b>
3.4.1	Action which may not be implemented pending appeal .....	7
<b>3.5</b>	<b>APPEAL TRIBUNAL .....</b>	<b>7</b>
3.5.1	Appeal Tribunal Panel .....	7
3.5.2	Role of Appeal Tribunal.....	7
3.5.3	Chairperson.....	8
3.5.4	Composition of Appeal Tribunal.....	8
3.5.5	Proceeding date.....	8
3.5.6	ASX may consolidate appeal proceedings.....	8
<b>3.6</b>	<b>CONDUCT OF APPEAL TRIBUNAL PROCEEDINGS.....</b>	<b>9</b>
3.6.1	Powers of Appeal Tribunal .....	9
3.6.2	Determination on the papers .....	9
3.6.3	Written submissions.....	9
3.6.4	Formalities, recording and transcripts.....	9
3.6.5	Procedural fairness.....	9
3.6.6	Voting.....	10
3.6.7	Appeal Tribunal may obtain advice .....	10
3.6.8	Participation in proceedings.....	10
3.6.9	Ability of the Appeal Tribunal to award costs or order refund of appeal fee .....	10
3.6.10	Order for costs .....	10
3.6.11	Reasons for decision .....	10
3.6.12	Decision final and binding .....	10
3.6.13	Trade cancellation appeals .....	11

<b>3.7</b>	<b>PROVISION OF INFORMATION BY ASX TO APPEAL TRIBUNAL.....</b>	<b>11</b>
3.7.1	ASX may provide information .....	11
3.7.2	Eligible Appellant to be informed .....	11
<b>3.8</b>	<b>INDEMNITY FOR APPEAL TRIBUNAL MEMBERS AND ASX OFFICERS .....</b>	<b>11</b>
3.8.1	Limitation of liability and indemnity .....	11
3.8.2	Indemnity for certain legal proceedings .....	11

## SECTION 3 APPEALS

### 3.1 DECISIONS THAT MAY BE APPEALED

The following parties ("**Eligible Appellants**") may appeal the following decisions to an Appeal Tribunal ("**Appealable Decisions**") 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:

Amended 25/05/15

#### 3.1.1 ASX Operating Rule appeals

- (a) A Participant if dissatisfied with a decision of ASX under Section 2 of this Rulebook to issue an Enforcement Notice or any sanction imposed in the Enforcement Notice;
- (b) A Participant if dissatisfied with a decision of ASX to suspend or terminate the admission of the Participant on default grounds under ASX Operating Rule [5160];
- (c) A Warrant Issuer if dissatisfied with a decision of ASX under ASX Operating Rule S10.14.3(g);
- (d) An AQUA Product Issuer if dissatisfied with a decision of ASX under ASX Operating Rule S10A.10.3(g);
- (e) A Participant if dissatisfied with a decision of ASX to cancel or not cancel a trade under ASX Operating Rule [3200], [3210] or [3220].

Amended 01/08/10, 25/05/15

#### 3.1.2 ASX Settlement Operating Rule appeals

- (a) A Participant, Issuer or Other Facility User if dissatisfied with a decision of ASX under Section 2 of this Rulebook to issue an Enforcement Notice or any sanction imposed in the Enforcement Notice;
- (b) An applicant against a decision of ASX to reject its application to become a Participant under ASX Settlement Operating Rule 4.14.3;
- (c) An Issuer if dissatisfied with a decision of ASX to revoke approval of a class of the Issuer's Financial Products under ASX Settlement Operating Rule 8.4.1(b);
- (d) A Settlement Participant or an affected person if dissatisfied with the decision of ASX under ASX Settlement Operating 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) A person who has applied for admission of the relevant Approved Financial Products or a Participant if dissatisfied with a decision of ASX under ASX Settlement Operating 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 of ASX to revoke approval of the Issuer's Financial Products under ASX Settlement Operating Rule 12.17.4;
- (g) A non-compliant Participant if dissatisfied with a decision of ASX under ASX Settlement Operating 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 ASX Settlement Operating 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 of ASX to suspend processing of Messages or classes of messages under ASX Settlement Operating Rule 16.3.1(e).

Amended 01/08/10, 25/05/15

### **3.1.3 ASX Clear Operating Rule appeals**

- (a) A Participant if dissatisfied with a decision of ASX under Section 2 of this Rulebook to issue an Enforcement Notice or any sanction imposed in the Enforcement Notice;
- (b) An applicant or Participant (as applicable) if dissatisfied with a decision of ASX to impose a condition under ASX Clear Operating Rule 3.1.4;
- (c) An applicant if dissatisfied with a decision of ASX to reject its application for Participant status under ASX Clear Operating Rule 3.9.1;
- (d) A Participant if dissatisfied with a decision of ASX to take steps to restrict access to the Clearing System under ASX Clear Operating Rule 6.3.1 or 6.4.1;

- (da) A Participant if dissatisfied with a decision of ASX under ASX Clear Operating Rule 15.2.1(l) to suspend or terminate the Participant's authority to clear all or any category of Market Transaction.

Amended 01/08/10, 25/05/15, 15/06/15

#### **3.1.4 ASX Listing Rule appeals – [Deleted]**

Amended 25/05/15 Deleted 24/12/15

#### **3.1.5 ASX 24 Operating Rule Appeals**

- (a) A Participant if dissatisfied with a decision of ASX under Section 2 of this Rulebook to issue an Enforcement Notice or any sanction imposed in the Enforcement Notice;
- (b) A Participant if dissatisfied with a decision of ASX to suspend or terminate the admission of the Participant on default grounds under ASX 24 Operating Rule [5160]; and
- (c) A Participant if dissatisfied with a decision of ASX to cancel or not cancel a trade under ASX 24 Operating Rule [3200], [3210] or [3220].

Amended 01/08/10, 25/05/15

#### **3.1.6 ASX Clear (Futures) Operating Rule Appeals**

- (a) A Participant if dissatisfied with a decision of ASX under Section 2 of this Rulebook to issue an Enforcement Notice or any sanction imposed in the Enforcement Notice;
- (b) An applicant or Participant (as applicable) if dissatisfied with a decision of ASX to impose a condition under Rule 4.5; and
- (c) An applicant if dissatisfied with the decision of ASX to refuse its application for Participant status.

Amended 01/08/10, 25/05/15, 15/06/15

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

- (a) A Participant if dissatisfied with a decision of ASX under Section 2 of this Rulebook to issue an Enforcement Notice or any sanction imposed in the Enforcement Notice;
- (b) An applicant if dissatisfied with the decision of ASX to refuse its application for Participant status; and
- (c) A Participant if dissatisfied with a decision of ASX under Austraclear Regulation 3.12 to suspend the Participant's Participant Status (as defined in the Austraclear Regulations) for more than 10 continuous Business Days (as defined in the

Austraclear Regulations) or to terminate its Participant Status (as defined in the Austraclear Regulations).

Amended 01/08/10, 25/05/15, 06/07/20

### **3.1.8 No other ASX decisions are appealable**

For the avoidance of doubt, save as set out in Rules 3.1.1 – 3.1.7, a decision of ASX under the Operating Rules is final and binding on all Participants, Issuers, Other Facility Users and other persons affected by the decision and is not subject to appeal.

Introduced 25/05/15

## **3.2 NOTICES OF APPEAL**

### **3.2.1 Notices to be given to Appeal Tribunal**

A notice of appeal must be given to the Appeal Tribunal in accordance with the Procedures.

Introduced 25/05/15

### **3.2.2 Convening of Appeal Tribunal**

If the chairperson of the Appeal Tribunal Panel receives a notice of appeal against an Appealable Decision from an Eligible Appellant which complies with the relevant appeal notice provisions under these Rules, the chairperson must convene an Appeal Tribunal in accordance with these Rules and the Procedures.

Introduced 25/05/15

### **3.2.3 ASX to notify Appeal Tribunal**

If ASX receives a notice of appeal against an Appealable Decision from an Eligible Appellant which complies with the relevant appeal notice provisions under these Rules, ASX must promptly give a copy of that notice to the chairperson of the Appeal Tribunal Panel.

Amended 01/08/10, 25/05/15

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

### **3.3.1 Appeal does not affect decision**

The fact that an Eligible Appellant has given notice of appeal against an Appealable Decision does not affect the validity of that decision, unless and until the Appeal Tribunal sets asides or otherwise varies that decision.

Introduced 25/05/15

### **3.3.2 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 market or CS facility.

Amended 25/05/15

## **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, ASX may not implement or announce a decision to:

- (a) take enforcement action against a Participant, Issuer or Other Facility User under Rule 2.5;
- (b) terminate a Participant's admission as a Participant under the relevant Operating Rules; or
- (c) terminate a Regulated Person's (other than a Participant's) recognition as a Regulated Person (other than as a Participant) under the relevant Operating Rules,

before the expiry of the time for giving a notice of appeal (in circumstances where this Rulebook provides for the appeal of the relevant decision) or, if a notice of appeal is given in accordance with this Rulebook, before the appeal is determined.

For the avoidance of doubt, nothing in this Rule 3.4.1 prevents ASX from exercising its enforcement powers in issuing an Alleged Minor Infringement Notice or Enforcement Notice pursuant to Section 2 of these Rules.

Amended 01/08/10, 25/05/15

## **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 appointed by ASX from time to time.

Amended 25/05/15

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

There will be an Appeal Tribunal for the purposes of conducting an appeal against 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.

Amended 01/08/10

### **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 2.6.1 and 2.7.1, if:

- (a) enforcement actions of two or more ASX Licensees are consolidated under Rule 2.6.1 or multiple enforcement actions are taken by an ASX Licensee against two or more Participants, Issuers or Other Facility Users in respect of the same or similar circumstances under Rule 2.7.1; and
- (b) the Participant, Issuer or Other Facility User appeals the decision of two or more ASX Licensees or two or more Participants, Issuers or Other Facility Users appeal a decision of an ASX Licensee 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 relating to enforcement action taken by one or more ASX Licensees or against one or more Participants, Issuers or Other Facility Users, may at the same time, hear appeal proceedings relating to another ASX Licensee or Participant, Issuer or Other



Facility User in their capacity as members of an Appeal Tribunal constituted under these Rules.

Amended 01/08/10, 25/05/15

## **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 sanction.

Amended 01/08/10

### **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 Participant, Issuer, Other Facility Users or Employee 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.

Amended 01/08/10, 25/05/15

### **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.

Amended 25/05/15

### **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 or order refund of appeal fee**

If an Appeal Tribunal considers that a party to the appeal, or to the enforcement action the subject of the appeal, has acted vexatiously, frivolously or unreasonably, it may order that party to pay to another party to the appeal, the whole or part of the costs and expenses incurred by the other party in the appeal. The Appeal Tribunal may also order that ASX refund the appeal fee paid to bring the appeal in the circumstances set out in the Procedures.

*Amended 01/08/10*

### **3.6.10 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 (or the refund of the appeal fee) must be paid.

*Amended 01/08/10*

### **3.6.11 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.

*Amended 01/08/10*

### **3.6.12 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.

### **3.6.13 Trade cancellation appeals**

For an appeal under Rule 3.1.1(e) or 3.1.5(c), the Appeal Tribunal:

- (a) must use its reasonable endeavours to determine the appeal and to notify the parties of its determination before 5.00pm on the Trading Day on which the trade the subject of the appeal occurs;
- (b) may vary or waive processes referred to in, or the time periods that would ordinarily apply under, Rules 3.5 and 3.6 in order to expedite the hearing and determination of the appeal within the timeframe referred to in paragraph (a) above.

Introduced 25/05/15

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

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

ASX may inform an Appeal Tribunal, as it sees fit, of any matter relating to any act, omission or conduct in respect of which an Eligible Appellant may be or has been penalised under these Rules or which is otherwise relevant to the appeal being considered by the Appeal Tribunal.

Amended 01/08/10, 25/05/15

### **3.7.2 Eligible Appellant to be informed**

Where information is communicated pursuant to Rule 3.7.1 the Eligible Appellant will be:

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

Amended 01/08/10, 25/05/15

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

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

ASX indemnifies each member 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.

Amended 01/08/10

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

Notwithstanding anything contained in Rule 3.8.1, ASX indemnifies each member of 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.

Amended 01/08/10

**End of Document**