



## **BUSINESS RULE GUIDANCE NOTE**

### **WAIVERS OF ASX BUSINESS RULE 5.10: TRANSACTIONS FOR EMPLOYEES OF ANOTHER TRADING PARTICIPANT**

No: 02/02

Date: 15 February 2002

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#### **Purpose**

The purpose of this Guidance Note is to provide guidance to Participating Organisations as to the information to be provided when requesting a waiver of ASX Business Rule 5.10 and the circumstances in which the Exchange may grant a waiver of Rule 5.10.

#### **Background**

ASX Business Rule 5.10(1) requires a Trading Participant to ensure that all its employees, directors and related persons only trade through the Trading Participant itself.

While ASX Business Rule 5.10(2) provides the Exchange with the ability to grant a waiver from ASX Business Rule 5.10, it does not provide any assistance to Trading Participants in determining the types of circumstances in which the Exchange may or may not grant such a waiver.

This guidance note details some of the factors that ASX will take into consideration when assessing an application for such a waiver and sets out the principles that govern the granting of such waivers.

#### **Relevant Business Rules and Law**

ASX Business Rule 5.10 states:

- “(1) A Trading Participant shall ensure that an employee, consultant, director, partner or Associated Affiliate of the Trading Participant or their Immediate Families, Family Companies and Family Trusts shall not, as principal, buy or sell Securities or rights or interests in Securities unless the Trading Participant acts as agent for the employee, consultant, director, partner or Associated Affiliate of the Trading Participant or their Immediate Families, Family Companies, and Family Trusts.*”

- (2) *Except where a Trading Participant receives a prior waiver from the Exchange, a Trading Participant shall not buy or sell Securities for any person who is an employee, consultant, director, partner or Associated Affiliate of another Trading Participant or their Immediate Families, Family Companies and Family Trusts.*
- (3) *It shall be a defence to any charge brought against the Trading Participant under this Rule that none of the partners or directors of the Trading Participant aware of the transaction knew and could not be reasonably expected to have known that the person for whom Securities were bought or sold was an employee, consultant, director, partner or Associated Affiliate of another Trading Participant or their Immediate Families, Family Companies and Family Trusts."*

\*Section 845(4) of the Corporations Act states:

*"A person who is an employee of a sole trader or member firm in connection with a business of dealing in securities carried on by the sole trader or member firm shall not, as principal, buy or agree to buy securities or rights or interests in securities unless the sole trader or member firm acts as the agent of the person in respect of the transaction."*

**Trading Participants should note that ASX cannot grant a waiver from the Corporations Act and therefore any waiver granted under ASX Business Rule 5.10(2) does not extend to Section 845(4) of the Corporations Act. It is the responsibility of the Trading Participant to ensure that their employees are aware of their obligations pursuant to section 845(4).**

\*At the end of the transition period for a Participating Organisation under the Financial Services Reform Act 2001 Section 991F will replace this section.

## Policy

An executing Trading Participant must apply for a waiver of Rule 5.10 if it wishes to execute orders on behalf of an employee of another Trading Participant (the "employing Trading Participant").

ASX will not automatically grant a waiver merely because it has received an application for one. Each request for a waiver is considered on its own merits.

Whilst this Guidance Note does not seek to detail **all** the circumstances in which ASX will grant a waiver from ASX Business Rule 5.10 it does, however, provide some examples of situations where a waiver may be granted.

When assessing an application for a waiver, factors which will be taken into account include:

- whether the employing Trading Participant is able to offer the specific transaction type;
- whether the waiver is necessary, rather than convenient;
- whether the waiver will cover, for example:
  - equities, warrants and options; or
  - equities and warrants only; or
  - options only;
- the number of accounts involved and the details of each account (e.g. joint accounts, super fund accounts, etc.).

Situations where a waiver may be granted include:

- where the waiver will be restricted to a specific type of transaction or security (e.g. margin lending or futures);
- whether the employing Trading Participant is able to offer the specific transaction type (e.g. options trading). If the employing Trading Participant is not a derivatives Trading Participant, ASX may grant a waiver to allow an employee to trade options through another derivatives Trading Participant, but not allow equities to be traded through that other derivatives Trading Participant, except for equities transactions that arise as a direct result of an exercise or assignment of an option contract;
- spouses (or immediate family members as defined in ASX Business Rules) working for different Trading Participants and trading in their own accounts. In situations where there is a relationship between employees subject to Business Rule 5.10 and each person wishes to trade with their respective employer, a waiver is required to ensure that Business Rule 5.10 is not breached. In these cases the respective Trading Participants should each apply for a waiver in relation to the trading by the spouse (or immediate family member) of their employee;
- spouses working for different Trading Participants and trading in a joint account;
- spouses (or immediate family members as defined in ASX Business Rules) who independently manage trading in their own accounts. In situations where the spouse (or immediate family member) is not an employee of a Trading Participant, an assurance must be given by both the employing and executing Trading Participants that they are satisfied that the employee has no control/influence over the investment decisions of their spouse (or immediate family member).

Examples of circumstances in which a waiver may not be granted include:

- where the executing Trading Participant charges cheaper commission than the employing Trading Participant;
- the desire to trade through a previous employer;
- having a long family association with another Trading Participant;
- a relative (other than a spouse/partner) is employed by the other Trading Participant;
- an employee of one Trading Participant wanting to deal through their spouse's Trading Participant because it is convenient;
- too many accounts are involved;
- present employer's policy does not allow for a waiver; and/or
- being a short-term contractor.

In relation to subscriptions for Initial Public Offerings individuals should seek independent advice regarding their obligations under the Corporations Act.

As a condition of any waiver, ASX requires that the executing Trading Participant forward copies of all contract notes, liquidation advices, statements and other records to the compliance officer (or other nominated individual) at the employing Trading Participant. Both participants must maintain sufficient records in order to demonstrate that this process has taken place. The executing Trading Participant must also complete new client information as it would with any new client. ASX also recommends that Participating Organisations maintain a Register of waivers.

**Duration of Waivers:** all waivers will cease to apply 12 months after the date of the grant of the waiver.

Trading Participants should note that if the circumstances on which the waiver was granted change within that 12 month period (e.g. the employee changes employer), the waiver will cease to operate. A new application should then be made setting out the revised circumstances. In any case the obligation is on the Trading Participant who has been granted the waiver to notify ASX of any change in the circumstances on which the waiver was granted. The waiver will also cease to operate within the 12 months if the executing Trading Participant fails to forward copies of all contract notes, liquidation advices, statements and other records to the compliance officer (or other nominated independent individual) at the employing Trading Participant.

If at the end of 12 months from the grant of the waiver, the waiver is still required, then the Trading Participant should notify ASX that the circumstances have not changed and request that the period the waiver is required for be extended.

## **Procedure**

The executing Trading Participant must send a waiver request to ASX (a sample letter is included as Attachment 1). The reason(s) for the request must be stated. The request must have attached to it a letter from the employing Trading Participant stating that it has no objection to the arrangement and that it has advised the employee of their obligations under the Corporations Act (currently Section 845(4)). The letter from the executing Trading Participant must also advise that it will make arrangements for copies of all contract notes, liquidation advices, statement and other records to be forwarded to the compliance officer of the employing Trading Participant. The executing Trading Participant must include a statement that they agree to immediately report to ASX any change in the circumstances on which the waiver is based.

## **Qualification**

ASX has published this note to promote commercial certainty and to assist Participants. Nothing in this note necessarily binds ASX in the application of the Rules in a particular case. 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 should contact ASX to ensure they have the latest version.

## **Enquiries**

As this note is only a guide to ASX practice, participants are advised to contact their Compliance Advisor to discuss their particular circumstances. General enquiries can be made to:

### **Compliance Services**

Telephone: (02) 9227 0000  
(03) 9617 8611  
e-mail: [compliance@asx.com.au](mailto:compliance@asx.com.au)

## Attachment 1 – Sample Waiver Application

*[date]*

*[Your Compliance Advisor]*  
Compliance Advisor  
Compliance & Information  
Australian Stock Exchange Limited

Dear *[Your Compliance Advisor]*

### **Application for waiver of ASX Business Rule 5.10**

We hereby request a waiver of ASX Business Rule 5.10 to allow *[name of employee]*, an employee of *[name of employing Trading Participant]*, to trade through *[name of executing Trading Participant]*. *[name of employee]* wishes to conduct *[specify types of transactions]* through *[name of executing Trading Participant]* because *[reason/s for waiver]*.

It is intended that accounts will be established in the following names:  
*[list account names to be used]*

*[name of employing Trading Participant]* has advised that it has no objection to this application for a waiver, that it has advised *[name of employee]* of their obligations under the Corporations Act and that any change in the circumstances on which this waiver is based will be reported immediately to ASX. We attach a letter to that effect.

We confirm that *[name of executing Trading Participant]* will forward copies of all contract notes, liquidation advices, statements and other records to the Compliance Manager of *[name of employing Trading Participant]* for review and distribution. We acknowledge that failure to do so will extinguish the waiver.

We confirm that any change in the circumstances on which this waiver is based will be reported immediately to ASX.

We understand that this letter only relates to the operation of Business Rule 5.10 (2) and does not extend to similar obligations in the Corporations Act.