



BUSINESS RULE GUIDANCE NOTE

Title: NEW PRIVACY PROVISIONS

No: 1/02

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Purpose

The purpose of this Guidance Note is to provide assistance to Participating Organisations in understanding ASX's approach to the obligations under the new Privacy legislation concerning the handling of personal information.

Whilst Participating Organisations need to obtain their own advice concerning compliance with these new Privacy laws, this Guidance Note may assist Participating Organisations to identify a number of ASX Business Rules, the operation of which impact upon ASX's approach to dealing with personal information and how those matters will, as a consequence, impact upon Participating Organisations.

Background

New privacy provisions in the *Privacy Act* 1988 (Cth) affecting the way private sector organisations collect, use, keep, secure and disclose personal information came into effect on 21 December 2001. These laws will concern all Participating Organisations, unless they come within one of the exemptions – the most likely being that they are a “small business”. Such businesses will have an additional 12 months to comply.

Participating Organisations covered by the legislation will have been considering how they are going to implement procedures to comply with the provisions. That process will involve the consideration of the ten National Privacy Principles (NPPs) set out in Schedule 3 of the legislation.

Introduction

ASX, OCH and other related entities of ASX collect personal information through Participating Organisations and use or disclose this information, as provided for under the *Corporations Act 2001* (Cth) and the ASX Business Rules (the 'Rules'). Generally, that collection may arise in a number of ways under the Rules, including:

- processing applications seeking recognition as a Participating Organisation (Rule 5A.2.2(1)) or Affiliate (Rule 5A.1.2(1));
- processing applications seeking registration of an Approved Representative (Rule 5A.3);
- Participating Organisations notifying ASX of the appointment of a Responsible Executive (Rule 5A.2.1(1)(B)) or a Director of a Participating Organisation or a new substantial holder in a Participating Organisation (Rules 5A.2.1(2)(a));
- maintaining a Register of Affiliates pursuant to Rule 5A.1.7 and a Register of Approved Representatives pursuant to Rule 5A.3;
- undertaking tasks in relation to exchange traded options pursuant to Sections 7, 10 and 11 of the Rules;
- processing and facilitating trades in international securities via the ASX World Link service;
- maintaining client account information in the OCH Derivatives Clearing System to enable OCH to perform its risk management activities; and
- processing applications seeking accreditation as an Approved Derivatives Advisor, in accordance with Rule 7.3.1B.

Participating Organisations are obliged under the Rules to provide information to ASX and OCH and the new Privacy Laws do not alter those obligations. Once personal information is provided to ASX, OCH or a related entity pursuant to the Rules, ASX or OCH is responsible for ensuring the security of this information, its appropriate use and disclosure and providing access where appropriate in accordance with its Rules and legislation including the *Privacy Act*.

ASX and OCH play a fundamental role in ensuring the integrity of Australia's financial markets. The Rules require ASX to collect personal information, to promote and maintain market integrity. ASX has determined that after receiving personal information it may be used by ASX to fulfil its regulatory responsibilities under the *Corporations Act* and the Rules.

The Rules also require OCH to collect personal information to register market contracts and to promote and maintain market integrity. OCH has determined that to fulfil its regulatory responsibilities, it involves disclosure of such information to ASX regulatory areas.

On occasions, OCH may also use personal information for market research purposes. The information is used by OCH to establish general statistical information about investors who include derivative products as part of their investment portfolio. The information contained in market research reports and statistics is aggregated and de-identified to protect the identity of individuals.

Collection Statements

Under the Privacy Laws, organisations are required to make individuals aware that they are collecting personal information about them, the purposes for which it is collecting the information and who they might pass the information on to (NPP 1 - Collection).

Given that ASX, OCH and related entities collect personal information concerning the clients of Participating Organisations through Participating Organisations themselves, Participating Organisations will need to provide collection statements to their clients, or otherwise inform them, that their personal information will be disclosed to ASX and may be used by ASX Group members, SEGC, any court or tribunal, authority or regulatory body such as ASIC (Rule 3.15)(this could include overseas equivalents of ASIC and overseas exchanges), and operators of disputes or complaints resolution schemes (Rule 3.17) to enable compliance with the Rules.

Participating Organisations are encouraged to develop their own collection statements, given that the statement sets out the use that will be made of the personal information and this may vary between Participating Organisations.

NPP 1.3 sets out that a collection statement should include:

- (a) the identity of the organisation and how to contact it; and
- (b) the fact that he or she is able to gain access to the information; and
- (c) the purposes for which the information is collected; and
- (d) the organisations (or the types of organisations) to which the organisation usually discloses information of this kind; and
- (e) any law that requires the particular information to be collected; and
- (f) the main consequences (if any) for the individual if all or part of the information is not provided.

An example of where a collection statement could be employed by a Participating Organisation is in broker-client agreements. ASX has also decided to include a collection statement on emails to external clients.

Participating Organisations will also need to inform their employees that their personal information may be collected by ASX in circumstances such as applications for admission, disciplinary proceedings or in the course of ASX's compliance process.

Consents

Participating Organisations may also like to consider obtaining consents from clients at the time an agreement is signed or including opt-out provisions, to avoid breach of NPP 2 (Use and Disclosure), for example the consent to receive direct marketing material from the Participating Organisation.

Accuracy of Information

The privacy laws also require that an organisation ensures personal information held by it is accurate, complete and up to date (NPP 3 – Data Quality). Participating Organisations will also need to ensure that any such information provided to ASX satisfies this requirement.

ASX considers this is implicit in the Rules dealing with client record keeping including Rules 1.2 and 7.3.

Accessing Information

NPP 6 (Access and Correction) provides an individual with a right of access to information held about them by an organisation and to correct that information. Participating Organisations

should be aware, that for security reasons and to ensure that ASX does not breach NPP 4 (Data Security), regarding unauthorized access to personal information, clients should be informed that access to their personal information is obtainable through the individual's Participating Organisation or in respect of derivatives, cleared through OCH, their clearing participant.

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

For more information about ASX's information handling practices you can view ASX's Privacy Statement on www.asx.com.au.

More information on the National Privacy Principles and privacy in general can be found on the Federal Privacy Commissioner's website at <http://www.privacy.gov.au>.