

Compliance in Focus

For Compliance Executives



ASX

AUSTRALIAN SECURITIES EXCHANGE

Autumn 2009

Forthcoming changes to be aware of

In coming months there are a number of changes to trading, clearing and settlement which compliance executives and operational management need to be aware of. ASX has, to the extent that it has been able, communicated with industry in a number of forums. The summary below is to raise awareness of the range of issues.

Short sale tagging

There have been numerous changes to short selling obligations over recent months. Government and ASIC have introduced new legislation, regulations and Class Orders. Further change is anticipated and has yet to be finalised.

Details of the technology changes have previously been communicated [via ITS Open Interface Bulletin 18/08](#) – “Requirements for technical capability of electronic short selling reporting – tagging of orders within ITS” dated 15 December 2008 and via [ASX Circular 041/09](#) “Equity Market enhancements new Go-Live date” dated 12 February 2009. It is anticipated that these will take effect from May 2009. ASX anticipates that changes to the ASX Market Rules and/or Procedures will also be required. ASX is awaiting clarification of certain issues by ASIC prior to finalisation of details. When details of the additional regulations (or other instrument) to support the new legislation are available, ASX will determine what changes are required and advise Participants as soon as practicable to assist Participants to put in place appropriate business processes and compliance controls.

Stock lending and borrowing

ASX and industry have been in dialogue with the Reserve

Bank as part of the review of stock lending.

It is anticipated that “tagging” of stock lending and borrowing transactions conducted via CHESSE will be required from December 2009. When further details of the new requirements are available, ASX will determine what technology and ASTC Settlement Rule and/or Procedure changes are required and advise Participants as soon as practicable to enable Participants to put in place appropriate business processes and compliance controls.

ASX appreciates that these changes will require communication with clients, changes to internal processes and may require amendments to the contractual arrangements with clients. ASX is aiming to provide Participants with details of the rule changes to enable Participants to put in place appropriate business processes and compliance controls.

For further information refer to the Reserve Bank of Australia [Media Release 2009-03](#) dated 24 February 2009.

Settlement close-out

ASTC Settlement Rules to support the introduction of settlement close-out obligations have been released to the market (ASTC Bulletin P2009/058). The close-out requirement will be effective Monday 30 March 2009.

The new ASTC rules are supported by an ASX Guidance Note (ASX Circular 049/09) to outline ASX policy in relation to the maintenance of an orderly market when instructed to purchase Financial Products for the purpose of satisfying the ASTC obligation to take action to close out unsettled transactions was

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issued to support the amended ASTC Rules.

The close-out requirement imposes a close out obligation, to be completed two Business Days later (generally T+5), on those Settlement Participants that enter the Batch Settlement process with a net short position where a resulting settlement shortfall remains after Batch Settlement.

It does not impose a close out obligation on those Settlement Participants whose obligation to deliver Financial Prod-

ucts failed as a result of other Settlement Participants failing to deliver Financial Products to them during the Batch Settlement process.

ASX will enforce the close-out requirement by referring any outstanding settlement position on T+10 that has not been resolved by T+9 to ASX Markets Supervision for investigation and possible referral to the Disciplinary Tribunal.

ASX Compliance Hot Topics

Supervisory, Risk and Compliance Framework

As previously foreshadowed one of ASX's key focuses is Participants Supervisory, Risk and Compliance Framework ("The Management Plan"). ASX is of the view that establishing, maintaining and enforcing supervisory and compliance procedures are the cornerstone of self-regulation within the financial services industry.

At a minimum, the Participant needs to articulate evidence and demonstrate that it:

- Knows and understands its obligations under the applicable ASX Operating Rules;
- Has, as a minimum, taken into account the prescribed supervisory standards within the relevant ASX Operating Rules when building its supervisory and risk framework;
- Has appropriately considered the risks inherent in its business and processes and provided adequate controls to mitigate those risks;
- Has management, operational and supervision controls that are reasonably capable of ensuring it is able to meet its obligations on an ongoing basis;
- Has an appropriate framework to ensure it has properly qualified and experienced staff who are reasonably capable of completing assigned supervisory and monitoring tasks and other obligations at all times;
- Has monitoring and review processes, independent of day to day staff and management, to ensure that it regularly assesses its capacity to meet its obligations and readily identify issues / risks;
- Has processes to ensure it continually reviews and improves its supervisory and monitoring program to ensure it is effective and reasonably expected to prevent and detect any misconduct, regulatory or policy breach insofar as is practicable;
- Has processes to assist it in anticipating and assessing the compliance risks inherent in a new business;

- Can demonstrate a transparent and effective escalation process at all levels within the business; and
- Can evidence and produce supporting documentation relevant to all supervisory tasks performed upon request.

When drafting the Management Plan and assessing the risks in the Participant's business, ASX expects that, as a minimum, the Participant should have regard to the following standards:

- Australian Standard AS3806:2006 Compliance Programs;
- Australian Standard AS/NZS 4360:2004 Risk Management
- Australian Standard on Customer Satisfaction (AS ISO 10002-2006)
- ASIC Regulatory Guide 104 and ASIC Regulatory Guide 105; and
- Securities & Derivatives Industry Association and Securities Institute Best Practice Guidelines for Research Integrity.

These standards are incorporated into ASX Market Rule 3.6.3 and ACH Clearing Rule 3.5.1.

Key Risks and Internal Systems and the Role of Directors

Annual Attestation by Directors

There is a considerable body of law as to the duties and obligations of the Directors of a Corporation. Ultimately the Directors (subject to corporations law) are responsible for ensuring that the management and supervisory systems of a Participant that is a company are sufficiently robust to enable the Participant to comply with its ASX Market Rules and/or ACH Clearing Rules obligations.

Appendix 4.9.5-2 of the Appendices to the ASX Market Rules Procedures and Annexure 4.4.3-2 of the ACH Clearing Rules Procedures contain a form of Directors Attestation which is required to be provided in relation to the Participant's Key

ASX Compliance Hot Topics...cont.

Risks and Internal Systems. This is not just a certification as to the accurate calculation of the capital requirement or as to accounting or financial issues. The Directors (inter alia) are required to have conducted an appropriate review of the Participant's obligations under the Rules, to have identified the key risks facing the Participant and established systems procedures and controls to monitor and manage those risks.

The Directors are required to certify that the systems procedures and controls are operating effectively and are adequate having regard to the nature of the Participant's business to ensure compliance with the ASX Market Rules and/or ACH Clearing Rules. The Directors are also required to certify that they have retained copies of the relevant documentation on which this representation is based **and these copies are available for inspection by ASX and/or ACH.**

Typically the requisite risk identification might be reviewed by the Board Audit and/or Risk Committee and then formally considered by the Board of Directors. Where the Company does not have an Audit and/or Risk Committee the Directors might themselves wish to oversee or take conduct of the requisite review and conduct the subsequent assessment of the effectiveness of the operation of the Participant's systems, controls and procedures.

Since the Directors are required to make proper enquiry and themselves review the issues certified it is necessary for the Directors to carefully consider the enquiries which would need to be made by them and the systems and processes underlying that certification.

It is important to note that this is not just a form ticking exercise and that Directors will need to have carefully considered the body of statutory and case law on directors' duties and obligations in connection with the provision of this certification to ASX and/or ACH.

Responsible Executives – Delegation of Supervisory Tasks

Responsible Executives ("REs") must supervise the design, implementation, functioning and review of the operations and processes so as to achieve compliance by the Participant with ASX's operating rules in respect of that part of the business for which they are the RE.

One of the functions of a Participant's Supervisory, Risk and Compliance Framework ("The Management Plan") should be to identify which parts of the business are under the supervision of which REs. The Management Plan should, as a minimum:

- Identify the REs assigned to supervise each of the service offerings;
- Provide a comprehensive description and assignment of specific supervisory tasks to the RE;
- Provide an explanation as to how the RE fulfils these tasks. This should also include explaining the specific monitoring and supervisory tasks that are undertaken including, by whom, how, frequency (including allowances for unscheduled reviews), scope / methodology and objective of the specific task;
- Provide an overview of the framework that allows the Directors to satisfy themselves and verify that the REs are conducting adequate and effective monitoring and surveillance activities for all key processes / risks and performing their duties effectively and in a timely manner;
- Should clearly document any delegated RE supervisory tasks to others including the supervision of these duties by the RE (see RE Delegation below);
- Show which REs are responsible for any third party service providers and the procedures to be undertaken, for ensuring the Participant can satisfy itself that the performance of, and compliance by, these parties is appropriate;

RE Delegation

ASX does not assume REs will undertake all of the supervisory tasks themselves. REs may delegate responsibility for carrying out their supervisory tasks, however they cannot delegate accountability. The Management Plan should specify which tasks REs may delegate to administrative personnel or other persons, taking into account any need for specific skills and/or qualifications. It should notify the delegate of the specific tasks that have been assigned to them and the standard in which the RE expects those tasks to be carried out. Since the RE remains accountable, they should conduct periodic reviews of their delegates, to ensure that the tasks they are carrying out are to a standard the RE deems satisfactory.

Supervisory Reviews

ASX expects independent supervisory reviews to be conducted (REs reviewing their delegates and compliance reviewing REs and the effectiveness of the REs' reviews of their delegates) by REs and compliance / risk in assessing the overall effectiveness / robustness of the processes and trou-

ASX Compliance hot topics...cont.

bleshoot for any other issues that may arise.

Such reviews should be documented and retained in a manner sufficient to demonstrate to management and ASX how the review was undertaken, the steps taken to remediate and escalate any issues identified and the follow up to evaluate the effectiveness of the remediation actions.

Staff Trades – Taking Account

ASX Market Participants & ASX Market Rule 7.8.2

Under ASX Market Rule 7.8.2 a Market Participant must ensure each transaction entered into by or for its connected persons, must first be approved in writing by a Responsible Executive, director or partner of the Market Participant or a person with written delegation for that responsibility from a Responsible Executive, director or partner (other than the Employee concerned). That approval must be obtained separately for each relevant Market Transaction. This approval must be signed/initialled, dated and timed by the authorised person.

The person who approves the Market Transaction has an obligation to take into account the circumstances of the proposed transaction and anything which might materially affect the price of the relevant Cash Market Product (or, in the case of a Derivatives Market Transaction, the price or value of the relevant Series) the subject of the Market Transaction. This obligation falls on all Market Participants irrespective of the Market Participant's role in executing the order.

By way of example, Participants should give consideration to some of, but not limited to, the following review requirements:

- What is the relationship between the Employee and their clients in the market in the same security?
- Is the employee in possession of price sensitive information that is not generally available to others?

- Does the Employee have sufficient funds available to settle the proposed buy trades?
- Does the Employee have sufficient securities to settle the proposed sell trades?
- Does the Employee have a Margin Account? If so, are they in Margin Call or do they have a large stock concentration which might lead to misconduct such as price support?
- Are the proposed securities listed/registered on the Participant's Embargo List, Restricted List, Black List, Grey List etc?
- Does the Participant have a minimum holding time that an employee must hold securities before being able to sell? Has the sufficient time passed?
- What is the trade suitability, comparing the requested order to any other Participant bids and offers in the market, in the same security?
- If the employee is in an advisory capacity, is the trade contrary to the patterns of their client trades i.e. Buying large volume when providing advice to clients to Sell down?
- Is this trade proposed to be crossed on market with a client trade?
- Has the Designated Trading Representative had issues with this Employee's previous trades?

It is important for Participants to state the minimum standards it expects approvers to consider prior to authorising a staff order. These minimum standards should be documented in the Participant's Staff trading policies and procedures, which also will establish how the Participant will comply with the express obligation set out in ASX Market Rule 7.8.2(a). For additional controls ASX suggests Participants give consideration to centralising the execution of staff trading to set representatives who are independent of the advisory team.

ASX also suggests that the Participant conduct regular training for authorised persons approving staff orders on its internal staff trading policy.

Investigations

Trading Halt – Participant Obligation not to Trade Cash Market Products

Due to an increase in matters referred to ASX Investigations regarding trading in Cash Market Products subject to a trading halt, it is essential that Participants remain cognisant of the following obligation:

ASX Market Rule 16.4.2 Trading halts

“(c) Cash Market Products subject to a trading halt must not be traded (including by way of Crossings and Special Crossings) during the period of the trading halt, regardless of whether the Cash Market Products have been placed into Pre-Open Session State”. (emphasis added)

Granting a trading halt ensures that trading does not take place in respect of a Cash Market Product where the market is not fully informed. The Issuer of the relevant Cash Market Product may not be in a position to make its announcement on a particular day so a trading halt is sought so the announcement can be made within approximately three days from the date a trading halt is granted. Therefore, any trading in an Issuer's Cash Market Products during the period of a trading halt is a contravention of ASX Market Rule 16.4.2 (c).

ASX Market Rule 16.4.2(c) requires that Cash Market Products of an Issuer subject to a trading halt not be traded. This Rule aims to prevent unfair trading in the Cash Market Prod-

ucts of an Issuer that has an announcement to make that may affect the price of the Cash Market Product in a negative or positive way. Appendix 31 to the ASX Market Rules Procedures provides that where a Trading Halt Session State is in force Bids and Offers may be entered, amended or cancelled but will not be matched and no auctions takes place. Note also that **no trades may be reported** (emphasis added).

The prohibition against trading applies even if the Cash Market Product has been placed in Pre-Open Session State. Bids and Offers may be entered, amended or cancelled but will not be matched during Pre-Open. Allowable trades may be reported during Pre-Open but Participants must guard against effecting Crossings and Special Crossings (which could otherwise be reported during Pre-Open) during a Trading Halt.

Participants should be aware that it is their responsibility to ensure that they have internal systems or processes in place to ensure that any Cash Market Products of an Issuer that are subject to a trading halt do not comprise any part of a trade. This includes Index Replicating trades and Exchanges for Physical where there is a risk that a Cash Market Product which is subject to a trading halt may be included.

Participants should familiarise themselves with the above obligation to prevent any occurrence of matters regarding trading in Cash Market Products subject to a trading halt.

Capital Monitoring

Development of a New System for Capital Returns

Participants file their monthly, annual, ad hoc and summary financial returns with Capital Monitoring according to the requirements of the ASX or ACH Rules. Participants subject to the Risk Based Capital Requirements must prepare their returns using the ASX Returns system and submit these returns via email. Participants subject to the NTA Requirements submit paper based returns.

We are pleased to advise that Capital Monitoring is in the preliminary stages of developing a new system that will replace the ASX Returns system. The new system will be called the Returns Lodgement & Monitoring (RLM) system. It is proposed that RLM be an online system to be accessed via the ASX Online website. It is ASX's intention that RLM will overcome some of the compatibility issues with ASX Returns that have previously been advised to Participants and will provide improved efficiency in the return lodgement process.

Whereas ASX Returns is currently only used by ASX/ACH Participants that are subject to the Risk Based Capital Requirements, RLM will be used by all Participants that are subject to the capital requirements of ASX, ACH, SFE or SFECC.

An implementation date for RLM is not yet available. Participants will be provided with further details in due course.

Resignation of Participants

Recently, we have seen an increase in the number of Participants seeking resignation. Capital Monitoring would like to advise Participants seeking resignation that ASX/ACH will require participants to discharge all existing Approved Subordinated Debt facilities that may be in place. Capital Monitoring provides affected Participants with a draft Deed of Discharge for consideration. Such a deed needs to be executed prior to the resignation taking effect.

Capital Monitoring...cont.

Participants are also reminded that capital requirements, including all reporting requirements, will continue to apply until the resignation is formally accepted by ASX and/or ACH.

Cash Management Trusts

ASX considers that an investment by participants in a cash management trust, even if offered by an Approved Deposit Taking Institution, should be treated as an investment in either a hybrid exchange traded fund (ETF) or other managed fund (assuming the cash management trust satisfies the definition of either of these instruments set out in the Capital Liquidity Handbook) and that a position risk amount is required to be calculated in respect of that investment. If the cash management trust in which investments are made does not meet the applicable definition contained in the Capital Liquidity Handbook or if the investment does not meet the definition of "Liquid", ASX considers that the investment must be treated as an Excluded Asset and hence deducted from Liquid Capital. For further guidance on the classification and capital treatment of ETFs please refer to the guidance commencing on page 953 of the Capital Liquidity Handbook.

Securities Lending and Borrowing

Capital Monitoring would like to remind all Participants of some requirements in relation to securities lending and borrowing (SL&B) arrangements.

ASX/ACH consider that participants entering into SL&B transactions are required to calculate a counterparty risk amount under the 'securities lending and borrowing method' set out in ASX Market Rule S1A/ACH Clearing Rule S1, Annexure 1, Clause 4.

The 'securities borrowings' item in the balance sheet section of the capital liquidity return (section 11.1) should only be used to report cash paid for securities borrowings. The 'securities lending' item in the balance sheet (section 11.2) should only be used to report cash received for securities lending.

If a Participant holds stock as principal and lends the stock out under a SL&B arrangement, the stock remains a principal position of the Participant and as such the market value of the position should be reported as a 'financial asset' in the balance sheet section of the capital liquidity return. A position

risk amount will need to be calculated on the position if it is Liquid (otherwise it must be treated as an Excluded Asset). This is in addition to the counterparty risk amount that must be calculated under the SL&B method to reflect the Participant's exposure to the borrower of the stock.

Acceptance of ADIs as ACH Clearing Participants

In July 2008, a Market Information Document titled 'Overview of Risk Management Changes to ASX's Central Counterparty Services' was issued. This document outlined a number of future changes in relation to ACH and SFECC, including the acceptance of bank authorised deposit taking institutions (ADIs) as Clearing Participants of ACH and Market Participants of ASX (pending finalisation of arrangements). The paper stated that in order to prevent duplication with APRA's existing regulatory oversight, it is proposed that Participants that are bank ADIs will be exempt from ASX's or ACH's capital requirements.

Capital Monitoring has received a number of queries about the application of capital requirements to ADIs or subsidiaries of ADIs. In response to these queries, Capital Monitoring would like to remind Participants that the arrangements to enable bank ADIs to be admitted as Participants have not been completed and are not yet implemented. Until such time that these arrangements are implemented, no exemptions or waivers of the ASX/ACH capital requirements will be granted to any existing or potential Participant on the basis of their status as an ADI¹ or as a subsidiary of an ADI. In particular, any Participant that is a subsidiary of a bank ADI must continue to comply with the ASX or ACH capital requirements and no differentiation is made because of the bank ownership.

Participant Queries

To assist Capital Monitoring in providing timely and accurate capital advice, it would be appreciated if all significant queries are set out in writing with full details provided. The email should be sent to asx.returns@asx.com.au or ach.returns@asx.com.au (as applicable).

¹Except for exemptions granted under ASX Market Rule 6.3.1 or ACH Clearing Rule 5.2.1 for Participants that only trade and/or clear ASX futures.

SFE Compliance Hot Topics

SFE Annual Returns

With the Easter Season arriving soon, we would like to remind SFE Participants with a 31 March 2009 financial year end that the SFE Annual Return is due to be lodged with SFE by no later than 30 June 2009.

SFE Participants are reminded that as part of the SFE Annual Return submission, a copy of the Annual Audited Accounts and the Annual Audit Certificate along with the accompanying Directors' Declaration are required to be submitted to SFE. These proforma documents can be obtained by contacting Ben Christiansen on (02) 9227 0222 or by email at ben.christiansen@asx.com.au.

Open Interest

ASX issued SFE Notice no. 186/08 on 4 December 2008 advising that it had come to the attention of Futures Supervision that some Participants had not been following the Best Practice as outlined in the Explanatory Note to Clearing Rule 46.5, regarding Daily Close-Outs of Matched Positions (including Back-to-Back Open Positions).

It appears that some Participants are continuing to maintain back-to-back holdings within their clearing accounts in con-

travention of best practice, and although the majority of these positions were closed out in the days before the December expiry, it is the Exchange's preference that Participants remain vigilant to this matter and that positions are closed out early in order to avoid mass close-outs (causing large changes in Open Interest numbers) close to contract expiries which do not reflect a true change in market depth.

Should you have any queries relating to this matter, please contact Nick Gaut, Senior Market Analyst, Futures Supervision on (02) 9227 0226 or by e-mail at nick.gaut@asx.com.au.

Initial Margins and Other Deposits

Clearing Rule 43.1 states:

"A Clearing Participant shall deposit with respect to each Open Position with SFE Clearing an amount determined by SFE Clearing in its absolute discretion from time to time (whether before or after the opening of such Open Position) upon demand or by such time as is Prescribed in the Schedules or is required by the Board or the Managing Director or his delegate."

The Schedule to Clearing Rule 43.1 states:

Rule	Description	Time
43.1 and 44.4	Time for payment of Initial margins and Daily Settlement Amounts	<p>SFE AUD denominated contracts – 10:30 am (Sydney time), to be pending RTGS.</p> <p>SFE AUD denominated contracts – 11:00 am (Sydney Time), funds to be cleared.</p> <p>SFE NZD denominated Contracts – 10:30 am (Sydney Time), to be pending RTGS.</p> <p>SFE NZD denominated Contracts – 11:00 am (Sydney Time), funds to be cleared.</p> <p>SFE US denominated contracts – 12:00 pm (Sydney time), payment to be confirmed via authenticated SWIFT message to SFE USD Bank.</p> <p>SFE US denominated contracts – 5:00 pm (New York time), funds to be received by SFE US Correspondent Bank.</p> <p>EUR denominated contracts – 12pm (Sydney time), Payment to be confirmed via authenticated SWIFT message to SFE EUR Bank.</p> <p>EUR denominated contracts – Funds to be received by SFE EUR Correspondent Bank by local cut-off for same day value.</p> <p>GBP denominated contracts – 12pm (Sydney time), Payment to be confirmed via authenticated SWIFT message to SFE GBP Bank.</p> <p>GBP denominated contracts – Funds to be received by SFE GBP Correspondent Bank by local cut-off for same day value.</p> <p>JPY denominated contracts – 10am (Sydney time), Payment to be confirmed via authenticated SWIFT message to SFE JPY Bank.</p> <p>JPY denominated contracts – Funds to be received by SFE JPY Correspondent Bank by local cut-off for same day value.</p>
43A.1	Time for payment of Initial Margins	<p>SFE – 10:30 am (Sydney Time), to be pending RTGS</p> <p>SFE – 11:00 am (Sydney Time), Funds to be cleared</p>

SFE Compliance Hot Topics...cont

As set out in the Schedule, a Clearing Participant must **deposit an amount determined by SFE Clearing by the time Prescribed in the Schedules, which is 10:30am** in respect of AUD and NZD denominated contracts. The Exchange advises that having the payment pending in RTGS is an integral part of the deposit process and hence the 10:30am deadline applies.

Accordingly, the failure to match a payment in RTGS prior to 10:30am is a breach of Clearing Rule 43.1 and failure to deposit payment of margins prior to the 11:00am deadline will cause a Participant to be in default.

Compliance Recommendations

Participant Compliance Manuals

During the review of assessment of new Participant applications, and also whilst performing Participant inspections, Futures Supervision staff will request a copy of a Participant's (or applicant's) Compliance Manual (or Policy and Procedures manual) for review.

In doing so, Futures Supervision staff are in general attempting to determine, based on the detail reflected in the manual, whether the Participant, or applicant, appears to be in a position to comply with the Exchange's Operating Rules.

SFE Full Participants are bound by SFE Operating Rules and SFE Clearing Participants by SFE Clearing Rules, therefore it is important that Participants (and applicants) can not only demonstrate that they understand the Rules, but that they have policies and procedures in place to ensure that they are in compliance, and also to monitor for non-compliance.

Many Participant (or applicant) documents reviewed by Futures Supervision reflect that the obligations are understood and will be complied with, however, often lack policies and procedures detailing how each rule is, or will be, complied with, and whose responsibility it is to perform the roles reflected in the policies and procedures.

An area regularly found to be lacking is back-up procedures, i.e. where systems fail, or staff are on leave. Procedures should address these potential scenarios as the Exchange will not always accept Participant breaches on the basis of extenuating circumstances where systems fail and there are no back-up processes, or where staff have gone on leave and have not delegated responsibilities to another person.

Participants should ensure that their compliance manual is maintained as a living document which is continually reviewed and updated.

Articles of interest

SEC charges against stock operator offer firms business and compliance tips

This article is owned and authored by Complinet Inc. It was originally published by Complinet on Feb. 13, 2009, at www.complinet.com.

Feb 13 2009 Stuart Gittleman Complinet exclusive

A Securities and Exchange Commission lawsuit over manipulating the market in microcap stocks should remind firms that good compliance is good business and can protect them from being defrauded as well as from regulatory risk.

The suit, filed Thursday in Philadelphia federal court, names George Georgiou, a former registered representative with a Canadian broker-dealer. He was also indicted Thursday on related fraud and conspiracy charges for which he was arrested in September 2008.

Georgiou, a Toronto resident, was previously suspended by the Investment Dealers Association, Canada's securities industry self-regulator, for unauthorized trading in client accounts and providing a client with false and misleading information.

The SEC alleged that Georgiou from 2004 until his arrest controlled all or much of the publicly traded stock of four companies and manipulated the market to artificially inflate the stocks' price or create the false appearance of an active and liquid market. He traded in nominee accounts he directly or indirectly controlled at offshore brokerages and banks, using manipulative techniques including matched orders and wash sales, and allegedly made at least \$20.9m in ill-gotten gains from his manipulation schemes.

The SEC alleged that each manipulation scheme followed a similar pattern. Georgiou used his influence with management and access to confidential shareholder lists to coordinate the release of company news with his trading. He admitted in conversations and emails his intent to manipulate the stocks and gave directions to his nominees.

Georgiou allegedly used nominee accounts at offshore brokers in Canada, the Bahamas, Turks and Caicos, and other locations. He asserted direct control by issuing trading and

wiring instructions to the firms, and indirect control by communicating instructions to nominees who then executed his trading instructions. He also used various manipulative techniques, including controlling the trading volume through promises of profits to nominees; executing or directing matched orders, wash sales or other prearranged trades; marking the close; and paying illegal kickbacks in exchange for purchases.

"Cross-border market manipulation will not be tolerated in the US trading markets," said Daniel Hawke, director of the SEC office that filed the suit. He said the case shows that the SEC "will act aggressively to police the conduct of those who seek to manipulate our markets, even when they act from outside the US using offshore brokers and banks."

Georgiou's alleged manipulation of one stock was in the nature of a pump-and-dump scheme in which he arranged and paid for the publication of a promotional mailer sent to seven million US addresses. Also, part of his alleged manipulation of another stock involved paying an illegal kickback to someone he believed was a corrupt broker but was in reality an undercover agent of the Federal Bureau of Investigation.

Georgiou also allegedly defrauded two offshore brokers by obtaining margin loans using the manipulated stock as collateral to fund his schemes and provide cash that he wired to offshore bank accounts. He made at least \$17.1m from his stock purchases and cash withdrawals from the fraudulently obtained margin accounts, but the brokers collapsed along with the stock prices in the "dump" phase of the scheme.

Laurie Magid, whose office brought the criminal charges, said the firms were forced to liquidate when the shares they were holding turned out to be nearly worthless.

The case is another example of how failing to conduct basic due diligence on the customer, his account and the nature of his trading can enable fraudulent conduct. The offshore brokers should have asked more questions about Georgiou, his source of the shares, his trading practices and why he was using their services rather than a US or Canadian firm. Brokers take significant risks when they think a fraudster will hurt other victims but not prey on them.

Articles of interest...cont.

ASIC

ASIC has extended the ban on covered short selling of financial securities until 31 May 2009 and has confirmed that certain limited naked short selling exemptions (relating to exemptions previously in the Corporations Regulations) will continue after the Government's law reform to ban naked short selling came into effect. See Advisory [AD09-02](#) and [AD09-05](#) and Media Release MR09-36.

AUSTRAC

The 2008 AML/CTF compliance reports lodgement period has now commenced

AUSTRAC is advising the financial sectors that the lodgement period for submitting their 2008 anti-money laundering and counter-terrorism financing (AML/CTF) compliance reports has now commenced. AML/CTF compliance reports must be lodged by the 31 March 2009 deadline.

AUSTRAC recently issued a [media release](#) reminding reporting entities of the deadline. A [fact sheet](#) about the 2008 compliance reporting obligation is also available.

ASX

ITS enhancements

ASX has introduced a split go-live timetable for the range of ITS enhancements previously announced to the market in November. Phase 1, which includes the ITS capacity and

short selling changes, is scheduled to occur on the weekend of 16 – 17 May 2009. Phase 2, which includes the remaining ITS functionality changes, is still scheduled to occur in mid 2009. See [ASX Market Circular 608/08](#) and ASX Market Circular 041/09.

ASX - market rules - new LIC index

ASX has amended section 2.10 of the ASX Market Rule Procedures to reflect the inclusion of the ASX LIC Index as an 'Approved Index'. The index covers listed investment companies investing in domestic and international equities. See [ASX Market Circular 615/08](#).

ASX - market rules - compliance frameworks and responsible executives

Rules 3.6.3 and 3.6.6 have been re-instated in the published version of the ASX Market Rules, having been earlier inadvertently dropped from the published version. Amendments have also been made to Market Rules Procedure 3.6.3 to update the prescribed standards for compliance frameworks and to Market Rules Procedure 3.6.5 to update the qualification requirements for responsible executives. See [ASX Circular 020/09](#) and [Attachment A](#) and [Attachment B](#).

SFE – self-reporting obligations

SFE has reminded all Participants of their self-reporting obligations under Operating Rule 2.2.10(b). See [SFE Notice 011/09](#).

Education & upcoming events

ASX

ASX – JORC Code update (links to be provided shortly)
Perth – 12 May 2009 (to be followed by Kalgoorlie and other cities)

Australasian Compliance Institute (ACI)

[RISK 202 - A workshop on risk management, standards, processes and controls](#)
Melbourne – 21 April 2009

[ACI Associate Intensive](#)
Melbourne – 22 May 2009

SDIA

[Responsible Executive Exam Preparation Short Course](#)
Melbourne – 1 April 2009

[Responsible Executive Refresher Workshop](#)
Melbourne – 2 April 2009

[6th Annual SDIA Charity Golf Day](#)
NSW – 27 May 2009

For other education and training opportunities, see the [SDIA website](#).

AFMA

[Financial Services Core Workshop](#)
Melbourne – 7 April 2009

[Market Misconduct & Other Prohibited Conduct](#)
Sydney – 7 April 2009

[Insider Trading & Conflicts Management](#)
Sydney – 21 April 2009

[Risk Management – the Fundamentals](#)
Sydney – 22 April 2009

For other education and training opportunities, see the [AFMA website](#).

Tonkin

[Corporate Governance Symposium](#)
Sydney – 20 – 22 April 2009

[Risk Management Symposium 2009](#)
Sydney – 1 April 2009

Ongoing ASX education initiatives

For details, including dates, go to www.asx.com.au/classes.
For Accredited Derivatives Adviser exams go to www.asx.com.au/adaprogram.

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