

Compliance in Focus

For Compliance Executives



ASX

AUSTRALIAN SECURITIES EXCHANGE

Summer 2009

Compliance and Risk Fundamentals for ASX, ACH and ASTC Participants

In conjunction with Australasian Compliance Institute ("ACI"), ASX Markets Supervision has developed a one day risk and compliance workshop entitled "*ASX/ACI Compliance & Risk Fundamentals for ASX, ACH and ASTC Participants*".

Pilot programs have been run successfully in Melbourne and Sydney. It is anticipated that the workshop will be available more broadly for all Compliance / Risk practitioners in the first quarter of 2010.

The objectives of this workshop are to explore the fundamental elements of a supervisory, risk and compliance framework. Using practical application with case studies, attendees will be engaged in increasing their awareness of strategic compliance initiatives to identify and mitigate the emerging risks inherent in their business processes.

The workshop has been developed to provide a foundation and insight into supervisory, risk and compliance frameworks for persons in the following types of roles:

- Team Leaders;
- Staff to whom Responsible Executive supervisory tasks have been allocated;
- Compliance / Risk personnel in monitoring and administrative roles; and
- Any other officer of the firm who would benefit from understanding the obligations design, implementation and supervisory elements of a Participant supervisory framework.

At the completion of this workshop attendees should be able to:

- Explain the obligations framework of the ASX, ACH and ASTC Operating Rules;
- Explain the role and obligations of the Responsible Executive;
- Understand the processes in identification, evaluation and treatment of risks;
- Identify key risk areas applicable to ASX, ACH and ASTC participations;
- Describe how to structure a compliance program;
- Understand the importance of a compliance culture;
- Understand the principles of compliance and risk standards;
- Understand, design, implement and apply effective monitoring and control processes capable of preventing, detecting and remedying issues / potential misconduct; and
- Understand the use of strategic initiatives for preventative compliance.

ASX Markets Supervision and ACI will publish the workshop timetable early in the new year.

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ASXOnline - Participants Security Enhancements

To maintain a high standard of security for the ASXOnline Participants web site, ASX has made a number of changes to ASX Online Participants ([refer ASX Circular 434/09](#)).

Changes will include:

- Forgotten password functionality
- Password expiry (after 90 days)
- Administrator PIN expiry (after 90 days)
- Account lockout after 3 incorrect attempts
- PIN lockout after 3 incorrect attempts
- Password history (cannot use previous password)
- Display of previous login time
- Increased password complexity, Passwords must contain characters from at least three (3) of the following four (4) classes:
 - English letters upper case letters, i.e. A-Z,

- English letters lower case letters, i.e. a-z,
- Numeric values i.e. 0-9,
- Non-alphanumeric (special characters) that is either \$ (dollar sign) or _ (under score).

- Passwords may not contain user name or any part of the full name
- Passwords must contain between 8 and 12 characters

These changes align login and password security controls with other ASXOnline sites.

Please note: Next time you log into ASX Online Participants, you may be asked to change your password.

A help file will be available on the implementation of these changes to assist you should you have any issues.

ASX Compliance Hot Topics

Shareholder Reference Numbers

ASX Market Participants should be aware of the importance of reminding their clients to exercise extreme caution regarding the security of their Shareholder Reference number ("SRN") when selling Issuer Sponsored securities.

There have been recent instances of clients' SRN details ending up in the wrong hands through individuals attempting to obtain SRN details from Share Registries under false pretence or by the interception of the shareholder's mail.

In light of the fact that a client's SRN may be compromised, Participants can reduce the risk of potential fraud by ensuring that they:

Validate Holder Details

- Validate the holder details of the SRN with the respective share registry before placing the sell order; and
- Validate the client's details that are returned from the Registry.

When requesting an Issuer Sponsored to CHES transfer for the settling of a client's sell confirmation, the registry, via CHES message 174, will confirm the client details associated with the SRN supplied.

A control may be to have a report that allows the Participant to compare the client registration details from the client's account with the details confirmed back from the registry.

In the event that the Participant identifies that it has removed securities from the incorrect SRN, you must take immediate steps to return the holdings to the correct source ([refer to ASTC Settlement Rule Guidance Note No. 5](#)).

Validate Payee Details

- Validate that the payee details are as per the SRN details and not the details on the Participant's account.

When paying out the proceeds of an SRN sale, Participants should consider only making payment to the holder as stated in the SRN registration details.

Participants should give consideration to attaching a copy of relevant documentation to the payment advice and ensuring that they have a "four eyes" process in place supporting their payment processing.

ASX Compliance Hot Topics...cont.

Third Party Payments

- If a Participant allows third party payments, ensure that there are robust controls supporting the identification and verification of the third party payee.

These should include, but not be limited to:

- "Four eyes" checking over the payment processing;
- Signature verification; and
- Client "call backs" for payments over certain values.

If something seems unusual, or the payment request is different to the normal requests received from a client, take the extra step and validate the information with the client.

Confidentiality

Participants will note a recent amendment to ASTC Settlement Rule 8.11.1 which now precludes ASTC Participants and Issuers (or their agents) from *mailing (either in writing or electronically), releasing, publishing or otherwise disseminating or disclosing:*

- (a) the HIN of a CHESS Holding;
- (b) the PID of the Controlling Participant of a CHESS Holding; or
- (c) the SRN for the Holder of an Issuer Sponsored Holding,

other than to:

- (d) the Holder of that Holding;
- (e) the Holder's duly appointed attorney, agent or legal personal representative;
- (f) if the Holding is a CHESS Holding, the Controlling Participant for that Holding; or
- (g) ASTC.

The previous version of this rule only prohibited the

"disclosure" of a), b) and c) other than to d), e), f) and g). Accordingly, the amendments seek to reinforce the obligation for Participants to treat their clients HINS and SRNs as confidential. It is ASTC's expectation that Participants have controls in place to ensure their ongoing compliance with this requirement.

Confirmations and Monthly Statements

As a consequence of recent compliance failings by some Participants, ASX is taking the opportunity to remind Participants of their obligations having regard to the *sending of confirmations* for Market Transactions and the *despatch to clients of monthly statements* for Derivatives Market Transactions.

Identification of obligations

Whilst the obligation to give a confirmation of a Market Transaction resides with the Market Participant that entered into the transaction on behalf of the client, the obligation to send a monthly statement for Derivatives Market Transactions is borne by the relevant ACH Clearing Participant.

ASX is aware that some Participants that have entered into third party clearing arrangements rely on their ACH Clearing Participant to issue confirmations of Market Transactions to clients. Whilst ASX recognises the rationale for why these arrangements exist, Market Participants should bear in mind that they remain accountable for compliance with ASX Market Rule 7.9 at all times. Similarly, the same obligation applies in the event the Market Participant is outsourcing the despatch of their confirmations to external distribution providers.

To assist Participants with identifying their obligations under the ASX Operating Rules, having regard to the sending of confirmations and monthly statements, ASX has summarised the requirements within the matrix on the following page.

ASX Compliance Hot Topics...cont.

Confirmations and Monthly Statements...cont.

Obligation	Obligation resides with	ASX traded products the obligation applies to	Client Type	Relevant Rule references and Guidance Notes
Sending of confirmations of Market Transactions	The Market Participant that entered into the Market Transaction on behalf of the client	All ASX traded products	<ul style="list-style-type: none"> • Retail Mandatory • Wholesale carve out 	ASX MR 7.3.3 and 7.9.1 - 3 ASX MR Guidance Note 3
Sending of monthly statements	The relevant ACH Clearing Participant	Derivatives Market Contracts	<ul style="list-style-type: none"> • Retail Mandatory • Wholesale carve out 	ACH CR 4.15.1 – 2 ACH CR Guidance Note 14

Confirmations

The underlying policy objectives of the Rules governing the sending of confirmations is to ensure clients are aware, and have a written record, of all Market Transactions entered into on their behalf. With this in mind, Participants should ensure confirmations are sent:

- Directly to the client, a guardian or a person that is a trustee in respect of a client, or an agent appointed, or a person otherwise engaged, by a client that is a responsible entity of a managed investment scheme or an Investor Directed Portfolio Service (in such circumstances the agent must be appointed, or a person engaged, either pursuant to s.601FB(2) of the Corporations Act 2001 (Cth).

ASX does not consider that a Market Participant relevantly will have complied with ASX Market Rule 7.9.1 if it sends a confirmation to an intermediary such as, without limitation, a "wholesale intermediary" (for example, a financial planner), a person with a power of attorney, an accountant, a person authorised to place orders on behalf of a client or a client's employee.

A Market Participant is not obliged to give a confirmation to a client that is not a retail client, provided it has notified the client that Market Transactions entered into on its behalf are subject to the conditions set out in ASX MR 7.9.3. A Clearing Participant is not obliged to give a monthly statement to a client that is not a retail client, provided it does so if the client requests (refer to ACH Clearing Rule 4.15.3).

Risk Identification

A Participant should conduct an end-to-end risk assessment of the process for governing how it complies with its obligation to send confirmations and monthly statements for Derivatives Market Transactions (as applicable), inclusive of ensuring each document contains the requisite information and disclosures under the Operating Rules and the Corporations Act.

In performing a risk assessment having regard to the standards set out in ASX Market Rule Procedure 3.6.3 and ACH Clearing Rule Procedure 3.5.1 ASX and/or ACH would expect the Participant to evidence the following steps:

- That it has understood its supervisory obligations as a Participant;
- Process mapped the lifecycles of the confirmation and monthly statement processes (including the identification of the key risks that exist within the process map);
- Risk rate / measure the key risks (both in likelihood and potential impact);
- Treat the identified risks with appropriate mitigation controls; and
- Embed the mitigation controls into daily business practices by ensuring accountability and assignment of independent oversight by Responsible Executive's and/or their delegate.

ASX Compliance hot topics...cont.

Discharge of Net Clearing Obligations

Participants are advised to ensure they have effective back up procedures to ensure payments to ACH are made by the due time (generally 10.30am Sydney time) on bank holidays and regional holidays (e.g. Labour Day). Apparent breaches of this requirement (ACHCR and Procedure 12.17.1) can occur on such days because payment providers frequently transfer the authorisation processing interstate and Participants fail to follow up the delay in authorisation until after the due time.

ASX Partly Paid Security Client Agreement under ASX Market Rule 7.1.2

ASX has become aware that some Participants may be of the opinion that the Partly Paid Security Client Agreement ('PPS Client Agreement') required under ASX Market Rule 7.1.2 is not required for clients who have bought partly paid securities prior to 1 May 2009. This view is not in line with the interpretation of ASX Market Rule 7.1.2 ('the Rule').

To make clear the obligations from 1 May 2009 under this Rule, Trading Participants are required to have in place a PPS Client Agreement which complies with ASX Market Rule 7.1.2 and incorporates, and is consistent with, the relevant terms of ASX Market Rule Procedure 7.1.2 and has been signed by each Retail Client who purchases a Partly Paid Security (other than where issued by a no liability company) after 1 May 2009 irrespective of whether the Retail Client had or had not bought Partly Paid Securities prior to 1 May 2009.

Overseas and Overnight Crossings during a Take-over Bid or Scheme

ASX Market Rule 20.6.1 requires that during the Offer Period under a Market Bid or Scheme, overseas Crossings (refer ASX Market Rule 17.6) and overnight Crossings (refer ASX Market Rule 17.7) must not be effected where the price is at or below the offer price.

Difficulty arises when the terms of the offer price include an exchange of the bidder's shares for the target's shares, particularly where the bidder's shares are traded on an overseas exchange.

Neither the Rules nor the Procedures give guidance on how the equivalent offer price should be calculated in such circum-

stances. Notwithstanding, and in consideration of ASX Market Rule 2.5, both trading prices in the domestic currency and exchange rates must be taken into account in such circumstances to determine the Australian Dollar equivalent offer price.

In monitoring compliance with rule 20.6.1, ASX will have regard to the equivalent offer price (calculated as referred to above) at the time the Crossing is effected. Where the price at which the Crossing is effected is at or below such equivalent offer price then this will not be considered to be in compliance with ASX Market Rule 20.6.1.

Should ASX suspect that a Participant may have used an incorrect equivalent price for an overseas or overnight Crossing, we will seek:

- the methodology used to calculate the equivalent price;
- evidence of the time at which the Crossing was effected;
- evidence of trading prices and exchange rates at the time of the Crossing was been effected; and
- any further information the Participant deems would assist in demonstrating the validity of their methodology.

ASX will use this information to determine whether or not the equivalent offer price used by the Participant for the purposes of determining its compliance with ASX Market Rule 20.6.1 is consistent with ASX Market Rule 20.6.1.

Futures Supervision Hot Topics

SFE Annual Returns

With the Christmas Season arriving soon, we would like to remind SFE Participants that pursuant to SFE Operating Rule 2.2.18(c) the 30 November 2009 SFE Monthly Return is still due on 31 December 2009, as such SFE Participants should ensure that their Finance Department is made aware of this requirement.

SFE Participants with 30 November 2009 and 31 December 2009 financial year ends are also reminded that pursuant to SFE Operating Rule 2.2.18(g) the SFE Annual Return is due to be lodged with SFE by no later than 26 February 2010 and 31 March 2010 respectively.

SFE Participants are reminded that pursuant to SFE Operating Procedure 2.2.18 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 pro-forma documents can be obtained by contacting Ben Christiansen on (02) 9227-0222 email ben.christiansen@asx.com.au or Leena Xu on 9227-0231 email leena.xu@asx.com.au.

Change to Operating Rule 2.2.25 – Client Documentation and Clearing Rule 4.14

The following changes to Operating Rule 2.2.25 and Clearing Rule 4.14 became effective 2 November 2009.

Purpose of Amendment

The purpose of the change is to allow Full Participants who perform execution only business for their clients to be able to use the International Uniform Brokerage ("Give Up") Agreements without the need to include the Exchange's minimum terms, on the basis that the minimum terms will be included in a separate agreement between the client and the Clearing Participant.

If the client's Clearing Participant is also a Full Participant, the minimum terms will already be included in the Client Agreement Form.

If the client's Clearing Participant is not a Full Participant, Clearing Rule 4.14 has now been amended to include the minimum terms.

Clearing Participants must have an agreement in place with their clients that incorporate the minimum terms that have been prescribed under the Exchange rules.

However, removing the need for the minimum terms to be incorporated into an agreement with the execution only broker restores the ability of globally operating brokerages to sign their clients to a single agreement covering trading on multiple exchanges (in the knowledge that the local clearing participant will have incorporated any unique local requirements into a separate agreement with the client).

Should you have any queries please contact Robert Coaldrake, General Manager Futures and Capital Monitoring on (02) 9227 0223 or Robert.Coaldrake@asx.com.au or Janice Coles, Senior Futures Supervision Officer on (02) 9227 0224 or Janice.Coles@asx.com.au.

Addition to Operating Rule 3.3 – Pre-Negotiated Business Orders and Operating Rule 3.4 – Trading Principles for Block Trades

The following Rule additions also became effective 2 November 2009:

Operating Rule 3.3.9 shall include the following addition:

- (b) For the purposes of trading out of a trade allocated to a Participant that is an Error Trade, the Participant's futures division is classified as a Client.

Operating Rule 3.4.10 shall include the following addition:

- (b) For the purposes of trading out of a trade allocated to a Participant that is an Error Trade, the Participant's futures division is classified as a Client.

The purpose of these Rule additions is to allow Participants who have a genuine error in executing a Pre-negotiated order or a Block Trade, which have been allocated to the Participant's Futures Division error account, to be allowed to trade out of the error by way of a Pre-Negotiated Business Order or a Block Trade.

Where a Participant's Futures Division trades out of errors in accordance with Operating Rule 3.3.9(b) and 3.4.10(b), it must ensure that it follows Operating Rules 3.1.8 – Orders to be

Futures Supervision Hot Topics...cont.

Transmitted and Executed in the Sequence Received, 3.1.19 – Trades to be Allocated in Sequence of Order Receipt and 3.1.16 – Acting in Accordance with Client Instructions and Client's Best Interests, in that its client's orders must take precedence over the orders of the Participant and that its client's best interests must be considered at all times.

Should you have any queries please contact Robert Coaldrake, General Manager Futures and Capital Monitoring on (02) 9227 0223 or Robert.Coaldrake@asx.com.au or Janice Coles, Senior Futures Supervision Officer on (02) 9227 0224 or Janice.Coles@asx.com.au.

Articles of Interest

ASIC

[AD09-188](#) – ASIC released proposed guidance on the regulation of clearing and settlement (C&S) facilities. See [Consultation Paper 120 – Operators of clearing and settlement facilities](#)

[AD09-235](#) – Former director of Lion Selection pleads guilty to insider trading.

ASIC has released an updated version of Regulatory Guide 31: [Acquisitions by a broker acting as principal for client facilitation purposes](#)

ASX

Disclosure of equity securities lending - The first phase in the improved disclosure of securities lending activity in the Australian equities market has come into effect. See [ASX Circular 369/09](#).

Financial Ombudsman Service (FOS)

FOS has released its [Annual Review](#), documenting a 33% increase in overall disputes for the year, with a 68% increase in disputes about investments.

Education and Upcoming Events

Australasian Compliance Institute (ACI)

[Associate Intensive](#)

4 February 2010 (not in Australia, location TBA)

25 February 2010 – Sydney

[ACI Accreditation Awareness breakfast](#)

16 February 2010 – Sydney

17 February 2010 – Melbourne

[ACI Accreditation Awareness and Networking lunch](#)

19 February 2010 – Brisbane

AFMA

[Markets in Focus – Foreign Exchange](#)

30 January 2010 – Sydney

[Accreditation: Financial Markets Core](#)

1 February 2010 – Sydney

9 February 2010 – Melbourne

[Derivatives Products – the Fundamentals](#)

16 February 2010 – Sydney

[Insider Trading and Conflicts Management](#)

18 February 2010 – Sydney

Education and Upcoming Events...cont

Stockbrokers Association of Australia (SAA -formerly SDIA)

Responsible Executive Refresher Workshop

3 February 2010 – Sydney
2 March 2010 - Melbourne

Responsible Executive Exam Preparation Course

9 & 10 February 2010 – Melbourne
24 & 25 March 2010 – Sydney

Market Manipulation & Prohibited Conduct Workshops

17 February 2010 – Sydney

Introduction to CFDs

23 February 2010 – Melbourne
10 March 2010 – Sydney



Seasons Greetings from ASX Markets Supervision

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