ASX
AUSTRALIAN SECURITIES EXCHANGE

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Obligations Under Give Up Agreements

The Exchange is aware of the extensive amount of 'give up' execution that takes place in its markets and would like to remind Participants of some of the obligations associated with this type of arrangement. Most Give Up Agreements are formulated using the Uniform International Give Up Agreement as the base document. These agreements allow for a great deal of flexibility and the opportunity for specific conditions to be added and removed which are subsequently agreed and signed off on by the parties involved. These agreements are commercially negotiated between parties and largely fall outside the SFE Operating Rules. The only requirement the Exchange has on give up agreements is that if the give up agreement is being used in place of a Client Agreement Form it must contain the Exchange's minimum terms as set out in the Rules for a Standard Client Agreement Form.

The Exchange has identified that there are some common misunderstandings in relation to the obligations associated with give up execution. These misunderstandings have the potential to leave parties involved in the give up arrangement with trades they do not want or in a position where they are in breach of the Operating Rules. The areas most commonly misunderstood within give up agreements are:

"Clearing broker may, upon prior notice to Executing Broker and Customer, place limits or conditions on the positions it will accept for give-up for the Customer account."

"Subject to (above clause) the Clearing Broker shall be responsible for clearing all executed orders."

If a Clearing Broker, or its agent, agrees upon and notifies its customer and the executing broker/s of limits it has imposed on its customer then the executing broker is obliged to adhere to these limits. The consequence of the executing broker not adhering to these limits is that the clearing broker, or its agent, has no obligation to accept trades executed in excess of the limits as agreed and notified.

Trades not accepted by the clearing broker, or its agent, will therefore be owned by the executing broker and unless the executing broker has a valid client agreement in place, account set up, prudent risk limits set and funds on deposit from the client that placed the order then the trades would become error trades and would need to be dealt with under the executing broker's error policy. Having an account set up for the client is not an option if the client is a Local Participant of the Exchange because, as set out in Operating Rule 2.2.3 (Actions on Approval), the Local Participant must be nominated by a Full Participant and that "*Nominating Participant shall be treated as the party entering into, acquiring, or disposing of each Contract traded on the Exchange by the Local Participant*". The Nominating Participant would either be a Clearing Participant in its own right or a Full Participant acting as agent for a Clearing Participant.

A breach of these obligations may also potentially place the executing broker in breach of Operating Rule 2.2.13 (Prudential Risk Management), by way of the executing broker not being able to comply with part (a) of the rule as set out below:

"A Full Participant must demonstrate prudent risk management procedures, as determined by the Exchange, including but not limited to:

(i) *set and document appropriate pre-determined order and/or position limits on each of its Client accounts, including a volume per order limit, aggregate loss limit and an aggregate net session limit, based on the Full Participant's analysis of Clients' financial resources or other relevant factors.*

(ii) *set and document maximum price change limits;*

(iii) *the limits determined in Rule 2.2.13(a)(i) and (ii) must be input by a Full Participant's risk manager into the Trading Platform account maintenance and will be established as preset accounts;*

(iv) *limit setting capability must exist in the Participant's Order System which reflects prudent account risk management and the Order System must have order rejection capability where orders are in excess of limit parameters set by the Full Participant;*

(v) *the Full Participant may in its absolute discretion amend the pre-determined order and/or position limits;*

(vi) *orders in excess of the agreed pre-determined limits must be rejected by the Participant's Order System and may be rejected by the trading Platform.*

The Exchange is of the view that adherence to these obligations by the executing broker is a vital part of the Participant demonstrating Prudent Risk Management and to the integrity of the market. Further a clearing broker, or its agent, would be completely within its rights not to accept trades executed in excess of agreed limits. It is important for Participants and their clients to be completely aware of these obligations when entering into a give up agreement. Each Participant should also carefully consider the limits in place for each of its clients executing on a give up basis with other brokers to ensure that the limits agreed upon closely align with the internal risk limits it has set for each of those clients.

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