

## NOTIFICATION OBLIGATIONS

<b>The purpose of this Guidance Note</b>	<ul style="list-style-type: none"><li>To provide guidance to participants on their notification obligations under the ASX 24 Operating Rules</li></ul>
<b>The main points it covers</b>	<ul style="list-style-type: none"><li>General notification obligations under the ASX 24 Operating Rules</li><li>Notification of significant breaches</li><li>Lodging notifications via ASX Online</li></ul>
<b>Related materials you should read</b>	<ul style="list-style-type: none"><li>A list of the notifications that can be submitted to ASX via the participant forms facility on ASX Online and the relevant notification name: <a href="https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-notifications.pdf">https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-notifications.pdf</a></li><li>Instructions on how to use the participant forms facility on ASX Online: <a href="https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-forms-guide.pdf">https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-forms-guide.pdf</a></li></ul>

**History:** Guidance Note 8 amended 15/12/23. Previous versions of this Guidance Note were issued in 03/14, 06/15, 08/16, 01/18, 07/18 and 01/19.

**Important notice:** ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX 24 Operating Rules. It sets out ASX's interpretation of the ASX 24 Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX 24 Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and participants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

The purpose of this Guidance Note is to provide guidance to participants on their notification obligations under the ASX 24 Operating Rules.

## 2. Notification obligations for all participants

Under the ASX 24 Operating Rules, a trading participant is required to notify Australian Securities Exchange Limited (ASX) in writing of the following matters:

- **change of name** – any change to its name or the name under which it carries on business as a participant, before the change becomes effective;<sup>1</sup>
- **change of address** – any change to any address at which it carries on business as a participant, before the change becomes effective;<sup>2</sup>
- **change of director** – the appointment, resignation or removal of a director, within 10 business days of the change;<sup>3</sup>
- **change of licence** – any change to a licence or other authorisation which authorises the participant to carry on its business as a participant, immediately upon that happening;<sup>4</sup>
- **information about other changes in business** – any other material change in information concerning its business as a participant from that previously provided to ASX, immediately upon the participant determining the change will occur;<sup>5</sup>
- **ceasing a trading permission** – the participant intends to cease a trading permission, at least 20 business days before the intended date of cessation;<sup>6</sup>
- **trading on behalf of New Zealand customers** – a signed attestation regarding its activity for the previous calendar year stating whether it is or is not required to be licensed as a derivatives issuer under Part 6 of the NZ Financial Markets Conduct Act 2013 and, where it is required to be licensed, that it:
  - holds a current licence: and
  - has made the disclosures to new clients set out in ASX24 Procedure 1802(2);<sup>7</sup>

<sup>1</sup> ASX 24 Operating Rules Procedure 1400(e) item 1(a).

<sup>2</sup> ASX 24 Operating Rules Procedure 1400(e) item 1(b).

<sup>3</sup> ASX 24 Operating Rules Procedure 1400(e) item 2(a).

<sup>4</sup> ASX 24 Operating Rules Procedure 1400(e) item 2(b)(i).

<sup>5</sup> ASX 24 Operating Rules Procedure 1400(e) item 2(b)(ii).

<sup>6</sup> ASX 24 Operating Rule 1600A(a).

<sup>7</sup> ASX 24 Operating Rule 1801 and the related Procedure.

- **overseas activity** – the participant intending to locate or relocate any part of its business as a participant<sup>8</sup> or personnel engaged in its business as a participant outside Australia, prior to the commencement of the overseas activity;<sup>9</sup>
- **overseas taxes** – if the participant is incorporated outside Australia or conducts any part of its business as a participant outside Australia and that may have tax ramifications for ASX or any other person bound by the ASX 24 Operating Rules in relation to any transaction or agreement involving the participant, information about those tax ramifications, before the relevant transaction or agreement is entered into;<sup>10</sup>
- **appointment or cessation of agent for service of process** – where the participant is not incorporated or registered as a foreign company under the Corporations Act 2001 (Cth):<sup>11</sup>
  - the acceptance by an agent of its appointment as the participant's agent for service of process in Australia as soon as practicable after the acceptance;<sup>12</sup> and
  - the intended effective date of any agent ceasing for any reason to act as the participant's agent for service of process in Australia;<sup>13</sup>
- **legal proceedings** – the participant commences legal proceedings against, or becomes aware that legal proceedings have been commenced against it by, another trading participant, a clearing participant, ASIC or other regulatory authority or a client in connection with its role as a participant and those legal proceedings may affect the operations of ASX or the interpretation of the ASX 24 Operating Rules, immediately upon commencing or becoming aware of the proceedings;<sup>14</sup>
- **notification of regulatory action against the participant or an employee** – the participant is informed by ASIC or its delegate (or any other person authorised under the Corporations Act), an exchange, a market operator, a clearing and settlement facility or a regulatory body that action is being or may be taken against the participant or any of its employees that relates in any way to its activities as a participant, on or before the next business day of the participant being so informed. Note that the reference in this rule to action that “may be taken” against a participant or any of its employees means that the notification obligation arises even before the formal commencement or conclusion of enforcement proceedings. For example, a participant should notify ASX if it becomes aware that a matter relating in any way to its activities as a participant of ASX 24 has been referred to the enforcement division of ASIC, an exchange, a market operator, a clearing and settlement facility or any other regulatory body for consideration of enforcement or other action;<sup>15</sup>
- **significant rule breach** – the participant becomes aware of having committed a significant breach of the ASX 24 Operating Rules or Procedures, immediately upon becoming aware of the breach;<sup>16</sup>
- **clearing event of default** – the participant is also a clearing participant and any circumstances exist which constitute an event of default under the operating rules of an approved clearing facility, immediately upon that occurring;<sup>17</sup>

<sup>8</sup> Including, without limitation, any open interface device or other means of communicating trading messages to ASX or any employees.

<sup>9</sup> ASX 24 Operating Rule 6400 and ASX 24 Operating Rules Procedure 6400 paragraph (a).

<sup>10</sup> ASX 24 Operating Rule 6401.

<sup>11</sup> Referred to in this Guidance Note as the “Corporations Act”.

<sup>12</sup> ASX 24 Operating Rule 6404(b). The agent must be resident in Australia and approved by ASX (ASX 24 Operating Rules 6404(a) and (d)).

<sup>13</sup> ASX 24 Operating Rule 6404(c).

<sup>14</sup> ASX 24 Operating Rules Procedure 5000(d).

<sup>15</sup> ASX 24 Operating Rules Procedure 1400(e) item 3.

<sup>16</sup> ASX 24 Operating Rules Procedure 5000(a). See also ‘3. Significant breaches’ on page 4 of this Guidance Note.

<sup>17</sup> ASX 24 Operating Rules Procedure 5000(b).

- **insolvency** – the participant becomes aware or has reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects, or may adversely affect, its financial position or solvency, immediately upon that occurring;<sup>18</sup>
- **inability to comply with rules** – the participant becomes aware or has reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects, or may adversely affect, its ability to comply with the ASX 24 Operating Rules, or Procedures immediately upon that occurring;<sup>19</sup> and
- **incomplete, inaccurate or misleading information** – the participant becomes aware that information which it or its employees have previously given to ASX was incomplete, inaccurate or misleading, promptly upon becoming so aware.<sup>20</sup>

Where a trading participant is also a participant in another market or clearing and settlement facility operated by ASX or a related body corporate of ASX and the notice being provided relates to both participations, a notice given to ASX or a related body corporate of ASX in accordance with the operating rules of that other market or facility is taken to be given to ASX in accordance with the ASX 24 Operating Rules.<sup>21</sup>

### 3. Significant breaches

As mentioned above, a participant is required to notify ASX immediately if it becomes aware of having committed a significant breach of the ASX 24 Operating Rules or Procedures.<sup>22</sup> For the purposes of determining whether a breach is “significant”, a participant must have regard to:

- (a) the number or frequency of similar breaches;
- (b) the impact of the breach on the participant’s ability to comply with any other Rule or Procedure or to conduct its business operations;
- (c) the extent to which the breach indicates that a participant’s arrangements to ensure compliance with the Rules and Procedures is inadequate;
- (d) the actual or potential financial loss to clients of the participant, or the participant itself, arising from the breach; and
- (e) any other matters specified by ASX from time to time.<sup>23</sup>

For these purposes, it is irrelevant that the breach may have been caused by a third party (such as a payment provider).

A participant is required to make an objective assessment of the significance of each and every breach (or a series of related breaches) including frequency and number of minor breaches (as these could be determined to be systemic in nature) in terms of determining whether it requires notification to ASX under these requirements. In making this determination, participants may find the guidance provided by ASIC in Regulatory Guide 78 *Breach reporting by AFS licensees* on the corresponding obligation to notify ASIC of significant breaches of various financial services laws<sup>24</sup> helpful.

For the avoidance of doubt, a one-off or infrequent breach may still be significant if it meets some or all of the criteria in (b) – (e) above.

<sup>18</sup> ASX 24 Operating Rules Procedure 5000(e).

<sup>19</sup> ASX 24 Operating Rules Procedure 5000(e). By way of example, this would include notifying ASX if the participant became aware of the likelihood of an external administrator being appointed to the participant or its assets.

<sup>20</sup> ASX 24 Operating Rule 6704.

<sup>21</sup> ASX 24 Operating Rules Procedure 6901 concluding paragraph.

<sup>22</sup> See note 16 above and the accompanying text.

<sup>23</sup> ASX 24 Operating Rules Procedure 5000(g) - (k).

<sup>24</sup> Section 912D of the Corporations Act.

### 4. Lodging notifications via ASX Online

All of the above notifications can be made online via the participant forms facility on ASX Online. ASX Online is a secure extranet site provided by ASX to facilitate (among other things) the electronic lodgement of compliance related notifications by participants to ASX Participants Compliance.

The notification functionality in the participant forms facility on ASX Online covers the ASX and ASX 24 markets and the ASX Clear, ASX Settlement and ASX Clear (Futures) clearing and settlement facilities. It enables participants of more than one market or facility to file a single notification across multiple rulebooks.

A list of the notifications that can be submitted to ASX via the participant forms facility on ASX Online and the relevant notification name is available at:

<https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-notifications.pdf>

Instructions on how to use the participant forms facility on ASX Online are also available at:

<https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-forms-guide.pdf>