



Reducing red tape – proposed amendments to ASX’s admission and notification requirements

- ASX Operating Rules and Procedures
- ASX 24 Operating Rules and Procedures
- ASX Clear Operating Rules and Procedures
- ASX Clear (Futures) Operating Rules and Procedures
- ASX Settlement Operating Rules and Procedures
- ASX Enforcement and Appeals Rules and Procedures

EOS EPD EPM EPW EPX EPX EPY EQE EQH EQT EQU EQX ERA ERD ERI ERJ ERL ERM ERN ERO ESI
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Invitation to comment:

ASX is seeking submissions on the proposed amendments to the admission and notification requirements in the Operating Rules and Procedures for the ASX and ASX 24 markets and the ASX Clear, ASX Clear (Futures) and ASX Settlement facilities outlined in the Annexures to this Consultation Paper.

Due date for comments:

Submissions are due by 5 December 2014.

Where to send comments:

Submissions should be sent by email to:

bill.woods@asx.com.au

or by post to:

ASX Compliance Pty Limited
 20 Bridge Street
 Sydney NSW 2000
 Attention: Bill Woods

ASX prefers to receive submissions in electronic form.

Confidentiality:

If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in your submission.

Submissions not marked as 'confidential' will be made publicly available on ASX's website.

Meetings:

ASX is available to meet with interested parties for bilateral discussions on the proposed new Rule and Procedure amendments.

Contacts:

For general enquiries, please contact:

Bill Woods – Principal Adviser
 T 02 9227 0573
 E bill.woods@asx.com.au

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Introduction

1. ASX and its subsidiaries operate the ASX and ASX 24 markets and the ASX Clear, ASX Clear (Futures) and ASX Settlement clearing and settlement facilities that service those markets.*
2. The Operating Rules of the ASX and ASX 24 markets were aligned as part of the transfer of market supervision from ASX to ASIC in 2010 and the admission and notification requirements in those rules are now broadly the same. There are, however, substantial differences between the admission and notification requirements that apply to those markets and the corresponding requirements that apply to the clearing and settlement facilities that service those markets, and also as between the respective admission and notification requirements that apply to those clearing and settlement facilities.
3. ASX is proposing to standardise and streamline the admission and notification requirements for the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will make it easier, faster and cheaper for organisations to become participants in ASX's markets and facilities, encouraging more organisations to participate in Australia's financial markets and bringing added strength, liquidity and diversity to them. It will also reduce the ongoing compliance overhead for participants in those markets and facilities.
4. ASX sees the proposed changes to its admission and notification requirements as very much aligned with, and supportive of, the deregulation agenda currently being pursued by the Australian government and its agencies, including ASIC.

Standardising and streamlining ASX's admission processes

5. Having common admission requirements across its markets and facilities will enable ASX to adopt a common and much shorter and simpler application for admission, which will be faster and easier for applicants to complete and for ASX to process. Streamlining the admission requirements will also result in applicants having to produce fewer and shorter documents than is presently the case. The upshot will be that the time and effort involved in the admission process, both for applicants and for ASX, will be substantially reduced. These changes will especially benefit those applicants applying for admission to multiple ASX markets and facilities.
6. Participants in ASX's markets and facilities have an ongoing obligation to comply with the admission requirements for those markets and facilities. Simplifying and aligning the admission requirements across all of ASX's markets and facilities will therefore also enable participants to simplify, and (in the case of organisations that participate in more than one ASX market or facility) to standardise, their compliance frameworks.
7. ASX is proposing to simplify the business integrity admission requirements for the ASX and ASX 24 markets by giving due recognition (as the ASX Clear and ASX Settlement Operating Rules currently do) to the fact that applicants which are ADIs or hold an AFSL are already subject to business integrity regimes

* A subsidiary of ASX also operates the Austraclear settlement facility but that facility does not form part of this consultation.

administered by APRA and ASIC respectively. Applicants subject to those regimes will be able to meet ASX's business integrity requirements simply by confirming their compliance with those regimes.

8. ASX is also proposing to simplify and shorten the form of "organisational competence" certification that applicants for admission to the ASX and ASX 24 markets are required to provide under Procedure 1000(e) of the ASX and ASX 24 Operating Rules and to replace the admission requirements around management plans and structures that currently apply to the ASX Clear, ASX Clear (Futures) and ASX Settlement facilities with the same form of certification.

Under the proposed new provisions, applicants will be required to certify that they have the resources and processes to comply with their obligations under the relevant ASX Operating Rules and, if required by ASX, to demonstrate to the satisfaction of ASX the basis on which the certification is provided. In providing this certification, applicants will be required to have regard to a new Guidance Note 1 *Admission as a Participant*, which ASX will be introducing for all of its markets and facilities and which will have guidance on the resources and processes that participants should have in place. Applicants will also be required to have regard to Guidance Note 9 *Offshoring and Outsourcing*, a draft of which is included in Annexure N to this consultation paper, and, in the case of ASX's clearing and settlement facilities, to ASX's existing Guidance Notes for those facilities on business continuity and disaster recovery.

ASX will finalise a draft of Guidance Note 1 for each of its markets and facilities once it has finalised the proposed changes to its admission requirements and will release the draft for public consultation prior to formally adopting it.

9. ASX is further proposing to remove the provisions in Procedure 1000(e) of the ASX and ASX 24 Operating Rules that impose alternative "organisational competence" requirements on applicants applying for admission as a principal trader. This Procedure currently requires such applicants to certify to ASX that they are aware of and understand their obligations under the Rules; that they or at least one of their directors is a professional investor or sophisticated investor (as defined in the Corporations Act 2001); and that at least one of their directors is currently actively trading on a recognised exchange as a principal trader or has at least 5 years' experience in a senior trading role trading on ASX or a recognised exchange. ASX believes it is sufficient and appropriate that principal traders give the same form of certification as other market participants confirming that they have the resources and processes to comply with their obligations under the relevant ASX Operating Rules.

A uniform regime for foreign participants

10. As part of streamlining its admission requirements, ASX is proposing to remove the admission requirement in all of its rulebooks for a participant either to be incorporated in, or registered as a foreign company carrying on business in, Australia. Instead, ASX will simply require that a participant is a body corporate carrying on business in its own right and not as a trustee of a trust.
11. Whether or not a participant incorporated outside Australia needs to register as a foreign company carrying on business in Australia is a matter regulated by the Corporations Act and therefore falls within the regulatory remit of ASIC. ASX currently grants exemptions to foreign-incorporated applicants from the

requirement to register as a foreign company in Australia where they can produce legal advice that such registration is not required under the Corporations Act. ASX does not believe it is appropriate for it to impose a requirement that a foreign-incorporated participant register as a foreign company in Australia when that requirement is a Corporations Act requirement. Nor is it appropriate for ASX to have to form a view on the correctness of legal advice on the operation of the Corporations Act when considering whether or not it should grant a waiver from that requirement. ASX believes it is more appropriate that foreign-incorporated participants take their own legal advice on this issue and, if necessary, seek to involve ASIC, the body which administers the Corporations Act.

12. In conjunction with the change mentioned in paragraph 10, ASX is proposing to:

- introduce a standard admission requirement across all of its rulebooks that an applicant which is incorporated or carries on business in a place outside Australia, must hold any licence or authorisation required under the law of that place for it to carry on its business as a participant;
- add provisions into its procedures (based on Procedure 1002 of the ASX and ASX 24 Operating Rules) outlining examples of the standard conditions that ASX might (and where it currently admits such participants typically does) impose on the admission of participants that are incorporated or intend to carry on their business outside of Australia; and
- introduce a standard provision across all of its rulebooks (based on existing ASX Settlement Operating Rule 4.12.2) requiring any participant that is not incorporated or registered as a foreign company under the Corporations Act to have an agent approved by ASX which is resident in Australia for the service of process in Australia.

On this last issue, having an agent for service of process in Australia is something that a foreign-incorporated participant would be required to do under the Corporations Act if it was registered as a foreign company under that Act. This ensures that the change mentioned in paragraph 10 above will not affect ASX's ability to enforce compliance with its rules.

A uniform regime for offshoring and outsourcing

13. ASX is proposing to introduce a uniform regime across all of its markets and facilities for offshoring and outsourcing. This regime will recognise and facilitate the increasing trend for participants to offshore some of their activities to regional centres and to use specialist outsourcers for particular activities. It will also ensure that ASX has an appropriate rule framework to regulate offshored and outsourced activities across all of its markets and facilities.
14. The new regime for offshoring and outsourcing will be based on the existing provisions in ASX and ASX 24 Operating Rules 1002 and 6400-6403 and the related Procedures, ASX Clear Operating Rules 3.8.1 and 4.19.1 – 4.19.4 and ASX Settlement Operating Rule 4.12.2, and will be standardised across all of ASX's markets and facilities.

15. ASX is proposing to remove the requirement in Procedure 1000(e) of the ASX and ASX 24 Operating Rules that applicants provide copies of material outsourcing agreements to it as part of the admission process. After this consultation, ASX will be releasing a new standardised Guidance Note 9 *Offshoring and Outsourcing* for each of the ASX, ASX 24, ASX Clear, ASX Clear (Futures) and ASX Settlement rulebooks that will outline in some detail its expectations in relation to offshoring and outsourcing arrangements, rendering it unnecessary for ASX to continue this practice.
16. A draft of Guidance Note 9 appears in Annexure N to this consultation paper and ASX welcomes any feedback that participants, their advisers and other stakeholders may care to provide in relation to it. The draft assumes that the amendments proposed in this consultation in relation to offshoring and outsourcing are made to the various ASX rulebooks.

Removing “responsible executives” from the ASX Clear rules

17. ASX is proposing to remove the requirement for participants in the ASX Clear facility to have “responsible executives” – a senior executive nominated by the participant who has personal responsibility under the ASX Clear Operating Rules for ensuring that the participant complies with those rules and who can be personally disciplined by ASX if it fails to do so.
18. The role of a “responsible executive” is not one that is required or recognised under the Operating Rules of any other ASX market or facility apart from ASX Clear. It is, in ASX’s view, an anachronism that harks back to a time when many broking houses were smaller organisations with relatively limited compliance resources. It no longer reflects the contemporary realities of how participants run their businesses and the substantial resources they now devote to compliance.
19. Participants are obliged under the Operating Rules of all of ASX’s markets and facilities to have appropriate supervisory and compliance measures in place to ensure they comply with those rules. If a participant breaches the rules (whether because of inadequate supervision by the individuals currently occupying the position of responsible executive or otherwise), ASX has ample powers to require remedial action by, and to take disciplinary action against, the participant. Identifying the roles of particular individuals within a participant’s management structure and imposing personal responsibilities on those individuals for ensuring compliance with the rules is simply not necessary.
20. Removing the requirement for ASX Clear participants to have nominated responsible executives will also eliminate a number of not insignificant compliance burdens for those participants, including the requirements:
 - to obtain a written undertaking from responsible executives under ASX Clear Operating Rule 4.16.1 at time of their appointment;
 - to obtain a written representation from responsible executives each year under ASX Clear Operating Rule 4.22.1;

- to keep accurate records of their management structure and the allocation of responsibilities among their responsible executives and to give a copy of the management structure to ASX under ASX Clear Operating Rule 4.8.1;
 - for responsible executives to undertake continuing education and to provide an annual continuing education self-assessment form under ASX Clear Operating Rule 4.1.1(f) and the related Procedure; and
 - for reconciliations of clients' segregated accounts and trust accounts to be signed by a responsible executive or someone authorised by a responsible executive under ASX Clear Operating Rules 4.23.5 and 4.23.6.
21. Currently, all ASX Clear participants have an Australian Financial Services Licence (or an overseas equivalent) that requires them to have appropriate supervisory arrangements in place and to ensure that their representatives are appropriately trained and competent. The supervisory and continuing education requirements for responsible executives are therefore duplicative and unnecessary.

Simplifying and aligning ASX's notification requirements

22. ASX is proposing to simplify and align the notification requirements for participants across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will help participants in those markets and facilities to standardise their processes for notifying applicable information to ASX. In a number of cases, it will also mean allowing participants a longer period within which to provide the relevant notifications to ASX.
23. For most participants, these rule changes will lead to a reduction in the amount of notifications that they are required to provide to ASX. Participants in the ASX Clear (Futures) facility, however, will have some added notification requirements. ASX considers these to be appropriate and proportional and, because they will be standardised across ASX's various markets and facilities, should not involve any added compliance burden for those ASX Clear (Futures) participants who are also participants of another ASX market or facility.
24. In due course, ASX will update and reissue Guidance Note 8 *Notification Obligations* for each of the ASX, ASX 24, ASX Clear and ASX Settlement rulebooks, and will issue a new Guidance Note 8 *Notification Obligations* for the ASX Clear (Futures) rulebook, to reflect the changes made to its notification obligations as a result of this consultation.

Other reductions in compliance burden

25. ASX's proposed rule changes will bring with them a substantial reduction in the compliance burden borne by participants in ASX's markets and facilities. In addition to the reductions in compliance burden identified above, participants will benefit from:

- the removal of the requirement for ASX and ASX 24 participants to notify ASX of their professional indemnity (PI) insurance arrangements, any actual or potential claims on their PI insurance policies and other information about their PI insurance policies and compensation arrangements;
- the removal of the requirement for ASX Clear participants to notify ASX of their PI insurance cover and to provide to ASX copies of their PI certificates of insurance;
- the aligning of the PI insurance requirements applicable to participants in the ASX Clear (Futures) facility with those applicable to participants in the ASX Clear facility;
- the removal of the requirement for ASX Clear and ASX Clear (Futures) participants to lodge each year with ASX their ASIC Form FS 71 audit report and its replacement with an obligation simply to notify ASX where a significant issue has been identified by the auditor in that report;
- the simplification and harmonisation of the requirements for ASX Clear and ASX Clear (Futures) participants to notify ASX of changes in control (including the removal of the requirement in ASX Clear Futures Operating Rule 11.2 for ASX Clear (Futures) participants to formally seek the approval of ASX to a 'substantial change in control');
- the removal of the requirement for ASX Clear and ASX Settlement participants to keep accurate records of their management structure and to give a copy to ASX;
- the removal of the further requirement for ASX Clear participants to notify ASX of changes to their management structure;
- the removal of the requirement for ASX Clear participants to submit each year the ASX Clear Key Risks and Internal Systems Statement;
- the removal of the requirement for an applicant wishing to be admitted as a general participant to provide the form of written attestation currently required under ASX Clear Operating Rules Procedure 3.2.2 acknowledging the matters referred to in that Procedure;
- the removal of the requirement for an applicant wishing to clear market transactions effected through two or more approved market operators to provide the form of written attestation currently required under ASX Clear Operating Rules Procedure 3.2.3 acknowledging the matters referred to in that Procedure; and
- the removal of the annual director's declaration currently required under ASX Clear (Futures) Operating Rules Procedure 4.14(a) to accompany a Form 1 and Form 2.

Annexures

26. The above changes require numerous amendments to the Operating Rules and Procedures of the various ASX markets and facilities. A high level summary of the proposed Operating Rule and Procedure

amendments is set out in Annexure A to this consultation paper. The detailed Operating Rule and Procedure amendments are set out in mark-up format in Annexures B through M to this consultation paper. As mentioned previously, a draft of Guidance Note 9 *Offshoring and Outsourcing* appears in Annexure N to this consultation paper.

27. Annexures B through M to this consultation paper include shaded boxes that explain the purpose of each set of amendments proposed to the Operating Rules and Procedures.

Invitation to respond to this consultation

28. ASX is inviting comment from participants, their advisers and other stakeholders on the proposed Operating Rule and Procedure changes outlined in further detail in the annexures to this consultation paper. ASX is particularly interested in feedback on:
- a. whether the proposed changes to the Operating Rules and Procedures of the various ASX markets and facilities in the annexures to this consultation paper are appropriate;
 - b. whether there are any other admission or notification requirements in the Operating Rules or Procedures of the various ASX markets and facilities that participants consider would benefit from repeal or amendment; and
 - c. whether there might be any unforeseen consequences for participants if ASX were to adopt the proposed Operating Rule and Procedure changes or the proposed Guidance Note on offshoring and outsourcing.
29. If you wish to provide comments in response to this consultation paper, please do so by Friday 5 December 2014 by email to the following email address:

bill.woods@asx.com.au

or by post to:

ASX Compliance Pty Limited
20 Bridge Street
Sydney NSW 2000
Attention: Bill Woods

ASX prefers to receive submissions in electronic form.

30. ASX has prepared a Microsoft Word based template that respondents may care to use to respond to this consultation paper. It is available on the ASX website at: <http://www.asx.com.au/documents/public-consultations/asx-reducing-red-tape-consultation-feedback-form.doc>.
31. ASX is proposing to make the submissions it receives in response to this consultation paper publicly available on its website, unless a respondent clearly indicates that it wishes its submission to remain confidential.

Next steps

At the expiration of the consultation period, ASX will review the comments it has received in response to this consultation paper and consider the final form of changes that should be made to its admission and notification rules. As part of that process, ASX will also finalise the draft of Guidance Note 1 *Admission as a Participant* that ASX proposes to introduce for all of its markets and facilities and release that draft for public consultation.

32. Subject to receipt of the necessary regulatory approvals (including non-disallowance by the Minister under sections 793E and 822E of the Corporations Act), ASX will be aiming to introduce the rule changes with an effective date of no later than 30 June 2015 so that they are in effect by the end of the current financial year. ASX will publish the final form of the rule changes and Guidance Note 1 not less than two months ahead of their effective date so that participants have plenty of forewarning of the changes and sufficient time to make any necessary changes to their compliance processes.