



## **Register of ACH Clearing Rule Waivers**

**1 to 15 March 2010**

**The purpose of this register is to record when ASX has exercised its discretion and granted a waiver from the ACH Clearing rules. Waivers are published bi-monthly and include information such as:**

- Organisation**
- Rule Number**
- Decision Details**
- Basis for Decision**

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<b>Rule Number</b>	5.1.1
<b>Date</b>	17/03/2010
<b>Participant</b>	Fortis Clearing Sydney Pty Ltd
<b>Waiver Number</b>	WPA100018-001
<b>Decision</b>	<p>Fortis Clearing Sydney Pty Ltd ('Fortis') be granted a waiver of ACH Rule 5.1.1 to the extent that, for the purpose of the Risk Based Capital Requirements contained in Schedule 1, Fortis does not have to treat guarantees given to a Fortis group entity, in order to guarantee obligations to that Fortis group entity from a related entity of Fortis' client ('secured guarantees'), as Excluded Liabilities (as per ACH Clearing Rule S1.1.1) subject to the conditions set out below.</p> <p>Conditions:</p> <ol style="list-style-type: none"> <li>1. A guarantee must only be considered a 'secured guarantee', if: <ol style="list-style-type: none"> <li>a. Fortis has entered into a Deed of Guarantee and Indemnity with the relevant parties whereby the Fortis client indemnifies Fortis and agrees to a collateral amount equivalent to the guaranteed amount being retained by and for the benefit of Fortis as security for the fulfilment of the Fortis client's related party's obligations under the guarantee; and</li> <li>b. it is secured by collateral which is liquid, evidenced in writing and valued at the mark to market value.</li> </ol> </li> <li>2. Fortis is required to include in the Additional Comments section of each Capital Liquidity Return a description of the gross amount of the third party guarantee (1), the amount of the collateral held against the third party guarantee (2) and the net of these two amounts (i.e. (1) minus (2)). If the net amount is positive, this positive amount must be treated as an Excluded Liability. This must be disclosed separately to amounts under the waiver originally granted on 18 June 2007.</li> <li>3. The waiver ceases on the earlier of: <ol style="list-style-type: none"> <li>a. 12 months from the date the waiver commences; or</li> <li>b. the effective date of an amendment to ACH Clearing Rule S1 to reflect the treatment of secured guarantees.</li> </ol> </li> </ol>
<b>Basis For Decision</b>	<p>Underlying Policy</p> <p>Guarantees outside the ordinary course of a Participant's securities or derivatives can only be given if a maximum liability is specified at the time it is given. The full amount must be classified as an Excluded Liability and hence will be a 100% deduction from Liquid Capital.</p>

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### Present Application

This waiver overcomes a "gap" in the rules with regard to the treatment of secured third party guarantees. The newly requested waiver is a mere variation of the original scenario for which Fortis was granted a waiver. The basis for decision for the original waiver (copied below) also applies in this instance.

ACH Clearing Rule S1 does not currently recognise security held for guarantees. The reason for this is that it was never envisaged when the Rule was drafted that third party guarantees would be secured by liquid collateral.

If a guarantee is secured with collateral that meets the conditions outlined above, then a Participant has no risk exposure arising from giving the guarantee and hence the Participant should not have to exclude the amount of the guarantee from its liquid capital calculation.