



ACH Clearing Rules

Guidance Note No. 3

KEY TOPICS

1. Notification to ASX Compliance Services
2. Monthly Reporting to ASX Risk Management
3. Self- Insurance by a related body corporate
4. Notification and Monthly Reporting of Claims
5. Amendment or Cancellation of Insurance
6. Failure to Obtain or Retain Professional Indemnity Insurance

ACH Clearing Rules

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Guidance Note History

Introduced:

11 March 2004
Introduction of New Rule Book

INSURANCE REQUIREMENTS

Purpose

The purpose of this Guidance Note is to provide assistance to ACH Clearing Participants (“Participants”) on the interpretation of the ACH Clearing Rules (“Rules”) in relation to matters dealing with professional indemnity insurance.

Background

The Rules require Participants that act for any person other than itself or a related body corporate to take out and maintain professional indemnity (or equivalent) insurance. The professional indemnity insurance policy taken out by Participants must include cover against a breach of duty the Participant owes in a professional capacity. The policy may be specific to the Participant or may be a policy of a parent company or related body corporate which names the Participants as one of the parties covered.

Notification & Monthly Reporting of Claims

Notification to ASX Compliance Services

Participants are required to immediately notify ACH of details relating to any liability or potential liability referred to in the Rules. This must be at the time they notify their underwriter of “a circumstance” that may give rise to a claim and must be in writing.

It is common for insurance policies to require the notification of claims, potential claims or circumstances. The *Insurance Contracts Act (1984) Cth* provides that if an insured notifies the insurer (under the terms of the policy during the period of the policy) of a circumstance that may give rise to a claim, then any subsequent claim relating to the circumstance notified is covered by that policy, subject to the policy conditions. It is important matters be notified promptly in order to avoid any suggestion by an insurer that a claim, potential claim or circumstance has not been notified within a particular policy period.

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In consideration of these provisions under professional indemnity insurance policies, ACH's policy is that Participants must, at the time they notify their underwriter of "a circumstance" that may give rise to a claim (whether under

a notification clause in their professional indemnity insurance policy, to obtain the benefit under the *Insurance Contracts Act (1984) Cth* or otherwise), immediately notify ACH in writing, of the details referred to in the Rules and preferably all of the details listed below.

At a minimum, the following should be notified **immediately** to ASX Compliance Services.

1. Date that the Participant was first aware of a claim, potential claim or a "circumstance".
2. A full description of the claim, potential claim or "circumstance" including sufficient information to allow ACH to understand the basis of the client's allegation.
3. Gross contingent liability arising from the claim, potential claim or circumstance. This is the maximum potential exposure or claim made on the Participant.
4. Net contingent liability arising from the claim, potential claim or circumstance. This is the gross contingent liability net of the available cover and excess (if any). (i.e. net contingent liability = gross contingent liability – (cover – excess)).
5. Nature of insurance cover, if any.
6. Full name of cover provider.
7. Date claim, potential claim or circumstance was notified to cover provider.

Monthly Reporting to ASX Risk Management

This information should also be reported on a monthly basis in the capital liquidity returns, specifically, Section 12.41 – Legal Proceedings and Insurance Claims (this can be located via the following steps in v3.2 of ASX Returns: Financial Position Details (Section 12), Legal/Insurance/Encumbrances (Section 12.4), Legal Proceedings and Insurance Claims (Section 12.41)).

This ensures that ACH is kept up to date on an on going basis with any liability or potential liability and the accounts and financial position are accurately reported as required under the Rules.

Self- Insurance by a related body corporate of a Participant

Certificate Evidencing the Self-insurance

Where the professional indemnity insurance is provided by a related body corporate, the Rules require Participants to provide a certified copy of evidence to demonstrate that the insurer is a related body corporate of the Participant and a certified copy of the certificate evidencing the insurance or self-insurance.

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At a minimum the certificate evidencing the self-insurance, should include:

- the name of the related body corporate and confirmation that it is a related body corporate within the meaning of the Corporations Act and the Rules;
- the level of cover;
- the level of excess; and
- the period of cover.

The certificate should also contain statements to the effect that:

- the related body corporate¹ does and will continue to guarantee payment of all liabilities of the Participants and its officers in respect of a breach of duty it owes in a professional capacity and has the financial capacity to do so;
- the guarantee is in lieu of taking out professional indemnity insurance and with the intention of "self insuring" for those risks;
- valid claims made against the Participants will be satisfied by the Participant or by the related body corporate if Participant fails to pay; and
- the related body corporate will advise the Participant immediately of any material change in its financial circumstances that may impact on the ability to provide the insurance and that the Participant is required to notify ACH.

The Directors of the Participant are required to provide to ACH, in writing, an outline of how they formed the opinion that the level of insurance cover and excess is reasonable and how they have satisfied themselves, and will continue to satisfy themselves, that the related body corporate has adequately provisioned for the level of cover it is providing and hence the capacity to pay, in the event that it needs to. This should be provided to ACH within 14 days following the issue of the self-insurance policy and annually thereafter.

Notification and Monthly Reporting of Claims

Participants that are self-insured through a related body corporate, are still required to notify and report claims to ACH in accordance with the requirements set out earlier in this guidance note.

¹ If the related body corporate is a Participant of ACH any guarantee provided would be subject to the Rule in relation to Guarantees and Indemnities. This Rule prevents a Participant from giving a guarantee outside the ordinary course of its (*emphasis*) business unless the amount of the maximum liability is specified in the guarantee. ACH is of the opinion that a guarantee given by a Participant for the purpose of another Participant's self insurance, is outside the ordinary course of its business. Hence if a Participant gives a guarantee for the purposes of insuring another Participant, the amount of the maximum liability specified in the guarantee would have to be treated as an Excluded Liability (refer to the Rules in relation to Capital Liquidity) and then deducted 100% from Liquid Capital (refer to the Rules in relation to Capital Liquidity).

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Amendment or Cancellation of Insurance

Should the Participants' professional indemnity insurance policy be dishonoured, amended, cancelled or partially cancelled, the Participant should notify ASX Compliance Services immediately, in writing.

Failure to Obtain or Retain Professional Indemnity Insurance

The failure by a Participant to obtain or retain professional indemnity insurance, through either method, will cause ACH to consider taking immediate action to protect the interests of ACH, the market and the National Guarantee Fund.

Qualification

ACH has published this note to promote commercial certainty and to assist Participants. Nothing in this note necessarily binds ACH in the application of the Rules in a particular case. In issuing this note ACH is not providing legal advice and market participants should obtain their own advice from a qualified professional person in respect of their obligations. ACH may replace this Guidance Note at any time without further express notice to any particular person. Readers may contact ACH to ensure

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