



ASTC Settlement Rules

Guidance Note No 11

KEY TOPICS

1. ASTC Rule requirements
2. Electronic Sponsorship Agreements
3. ASTC policy for electronic agreements

ASTC Settlement Rules

1. 7.1

Cross-reference

1. ASX Guidance Note No 5: New Clients – Electronic Client Agreements
2. ACH Guidance Note No 5: New Clients – Electronic Agreements

Guidance Note History

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SCH EM 1/00
Electronic
Sponsorship
Agreements

SCH EM 1/97 -
Sponsorship
Agreements - Section
9A and related rules

SPONSORSHIP AGREEMENTS

Purpose

The purpose of this Guidance Note is to provide assistance to ASTC Participants (“Participants”) in relation to their obligations when executing Sponsorship Agreements for Cash Market Transactions. It includes an overview of the requirements and sets out ASTC’s policy regarding electronic execution of Sponsorship Agreements.

ASTC Rule requirements

As a result of a review of current practices and queries received from Participants, ASTC policy in relation to specific issues is outlined below. Failure by a Participant to comply with stated policy may be taken into account in determining whether that Participant has breached the ASTC Settlement Rules.

“One Sponsorship Agreement - One Holder”

A Participant may only establish a Holder Record or Records in respect of one party (that is, a person; persons holding jointly; or a company) to a Sponsorship Agreement.

A Participant may not enter into a Sponsorship Agreement with multiple parties where those parties hold securities on the CHESS Subregister severally (under different names). Examples of prohibited practices include, but is not limited to, the following:

- a Sponsorship Agreement where multiple parties are listed in a Schedule but the parties are registered on the CHESS Subregister as separate parties. This has occurred where such a Sponsorship Agreement has been executed under a power of attorney; and
- inclusion of a second (separate) Sponsored Holder as a party to a tripartite Sponsorship Agreement that supports



a pledging arrangement. If the Participant wants another party to hold securities on the CHESS Subregister under a different HIN and Holder Record on behalf of the primary Sponsored Holder (generally, the mortgagor) in certain circumstances, a separate Sponsorship Agreement must be executed between that party and the Participant.

A Sponsored Holder may be allocated multiple HIN's under one Sponsorship Agreement, for example, where the Holder wishes to designate Holdings as "Account No 1", "Account No 2" etc. However, where joint Holders wish to also hold securities on the CHESS Subregister in their own names, separate Sponsorship Agreements must be executed with the relevant parties reflecting those arrangements. In this way, the first line of a Holder Record is directly referable to the party or parties executing the Agreement.

Execution of Sponsorship Agreements

A Sponsorship Agreement must be signed by both parties. Oral acceptance does not fulfil the requirements of the ASTC Settlement Rules (see below, "Setting Up of Holder Records" and "Electronic Sponsorship Agreements").

A copy of the signed Sponsorship Agreement must be given to the Sponsored Holder on request and the Sponsoring Participant must notify the Sponsored Holder that they are entitled to receive a copy of the executed Sponsorship Agreement.

Setting up of Holder Records

A Holder Record in respect of a Sponsored Holder may not be set up in CHESS unless the relevant Participant holds a current Sponsorship Agreement for that Holder (refer ASTC Settlement Rule 8.7.1). A Sponsorship Agreement is a written agreement between the Sponsoring Participant and another person, signed by both parties, as required under Section 7 of the ASTC Settlement Rules.

Until a Participant holds a Sponsorship Agreement signed by both the parties, it is not acceptable to Transmit a Message to establish a Holder Record in relation to a Sponsored Holder. Oral "acceptance" of the terms of a Sponsorship Agreement by a client does not fulfil the requirements of the Rules and the setting up of a Holder Record in those circumstances will constitute a prima facie breach of the ASTC Settlement Rules.

Electronic Sponsorship Agreements

Historically, the requirement to enter into a **written** agreement has been interpreted as a hard copy agreement signed by the client. However, to provide consistency with international and Australian trends towards electronic commerce, ASTC will permit electronic agreements subject to minimum standards to protect investors, promote investor confidence and commercial certainty.

The ASTC's policy in relation to electronic Sponsorship Agreement – Cash Market Transactions is based on three principles:



Functional equivalence

Paper Sponsorship Agreements and electronic Sponsorship Agreements are treated equally by the Rules and not given an advantage or disadvantage against each other;

Investor Protection

Ensure that investors entering into electronic Sponsorship Agreements are no worse off than those entering into paper based agreements (and vice versa); and

Technological neutrality

The Rules do not discriminate between different forms of technology.

ASTC policy for electronic agreement

The ASTC Settlement Rules prescribe the minimum terms Participants must incorporate into their Sponsorship Agreements, although the Rules do not prescribe what mediums Participants are permitted to use in executing these agreements.

ASTC does not intend to prescribe particular electronic technologies acceptable to the ASTC, as it is of the view that it is more appropriate for Participants to assess suitable technology for their particular purposes.

Subject to the Participant complying with the conditions set out below, ASTC is of the belief that Participants will discharge their obligations under the Rules. Failure to comply with the stated policy may be taken into account in determining whether a Participant has breached the Rules.

Conditions

1. The Participant's Sponsorship Agreements must contain the minimum terms prescribed by ASTC;
2. The client must view the terms and conditions of the Sponsorship Agreement before executing the Sponsorship Agreement.
3. The Participant must provide an explanation of the effect of the Sponsorship Agreement (that the client is entering into a contract) and the client must acknowledge that they understand the explanation. The explanation must be provided prior to the applicant entering into the Sponsorship Agreement. The explanation may be provided electronically and the acknowledgment may be made electronically.
4. Prior to the client executing the Sponsorship Agreement, the Participant must inform the applicant that they can discuss the terms and conditions of the Sponsorship Agreement with the Participant. The Participant must provide the client with contact details of a person at the Participant who can explain the effect of the Sponsorship Agreement and the terms and conditions. The contact details must be stated in the Sponsorship Agreement; and
5. A copy of the signed Sponsorship Agreement, including details of the time and date of execution and name and address of signatories, must be given to the client on request and the Participant must notify



the client that they are entitled to receive a copy of the executed Sponsorship Agreement. This may be provided electronically although the Participant must provide a paper copy if requested by the client.

Possible Electronic Methods

Detailed below are some possible methods which a Participant may wish to consider to fulfil its minimum requirements in relation to electronic Sponsorship Agreements. Participants are advised that these methods are merely a guide, and that ASTC recognises that other methods may fulfil the minimum standards.

Requirement for a “Written Agreement”

Interpretation

The Rules require a written Sponsorship Agreement between a client and its Market Participant. Neither the Rules nor statutory legislation defines a “written agreement” although the Corporations Act and the Commonwealth Acts Interpretation Act (Cth) contemplates writing and documents in electronic form.

ASTC considers that the Rule is fulfilled by a paper document or through using electronic methods that are reliable, appropriate and valid at law. The applicant must view a paper document, an electronic image capable of being printed out or viewed electronically, or an electronic image on-line, before executing the Sponsorship Agreement.

Possible Methods

Participants may:

- incorporate the Sponsorship Agreement into their web-site; or
- send applicants the Sponsorship Agreement by electronic mail, or hard copy.

Participants must provide a hard copy if requested by the client.

The requirement for a signature

Interpretation

There is no definition of the word “Signed” in either the Corporations Act or the Commonwealth Acts Interpretation Act. Whilst there is no express requirement for a signature contained in the Rules, under the law the requirement to enter into an *agreement* requires a “signature”. It is expected that entering into a Sponsorship Agreement will form part of Participants’ account opening procedures, and Participants should continue to have sufficient identification procedures in place to be able to identify their client.

The methods used to “sign” a Sponsorship Agreement must comply with the minimum requirements below:

The method must identify each party sufficiently for the purpose of the communication

Paper-based Sponsorship Agreements do not require a witness under the Rules. They require the applicant to provide their name and other identification required by the Participant. The electronic method is no more onerous. The electronic method need only identify the applicant, it does not require a witness.



Possible Method

Each applicant types their name onto the electronic Sponsorship Agreement and provides any additional identification required for Participants to sufficiently verify the identity of their client, such as age, drivers licence, passport number, ABN and/or ACN for a company.

Each electronic communication must incorporate a method to identify the person signing the Sponsorship Agreement and indicate the person's approval of the information contained in the message.

The method must indicate each applicant's approval of the terms and conditions communicated.

The applicant must review the Sponsorship Agreement terms and conditions before execution and have the opportunity to accept or reject the terms. An electronic Sponsorship Agreement should clearly state that the contract will be accepted if the client clicks on an acceptance button such as "I agree" or "Yes" on the website. If the applicant does not accept the terms and conditions of the Sponsorship Agreement, the applicant should not be able to proceed any further.

The terms and conditions must be located before the execution section and each applicant must be able to accept or reject the terms and conditions. For example, by having the option of clicking a button to indicate "I do not agree to be bound by the terms and conditions" or "I have read, understood and agree to be bound by the terms and conditions". The Sponsorship Agreement is valid only if each applicant executes the contract by providing a digital signature or clicking on an acceptance button.

The method must be as reliable as appropriate in the circumstances

ASTC recognises that there are several methods for electronic execution available at present and that other methods may be developed in the future. It is inappropriate for ASTC to prescribe a particular electronic execution technology. Participants are able to require execution of electronic Sponsorship Agreements using their preferred technology. However the method must be appropriate and reliable.

Possible method

Each applicant provides a digital signature, or each applicant types their name and clicks on a button indicating that they have read, understood and agree to be bound by the terms and conditions.

ASTC recommends that Participants include a procedure which is able to show that only the person intended to be bound could have clicked the "I agree" button (such as password access through a Trading Account).

Whatever the method and whether the Sponsorship Agreement is in hard copy or electronic form, it must be valid and enforceable at common law.

Execution by joint holders

Interpretation

Where a Participant enters into a Sponsorship Agreement with joint holders on paper, each applicant is identified by writing their own name or their name is pre-printed on the document. Each applicant indicates their approval by signing the Sponsorship Agreement. On an electronic Sponsorship Agreement there should



be provision for each applicant to separately provide their identity and indicate their approval of the terms and conditions.

Possible method

If execution is by clicking a button, there should be a separate place for each applicant to type their name and a separate button for each applicant to click to accept the Sponsorship Agreement. The Sponsorship Agreement must not proceed unless each applicant has provided a digital signature or there is a name and acceptance for each applicant and any further identity details required.

ASTC recommends that Participants include a procedure which is able to show that only the person intended to be bound could have clicked the “I agree” button (such as password access through a Trading Account).

Execution by Companies

Interpretation

Where a Sponsorship Agreement is entered into with a company, the Participant is entitled to make the assumptions in section 129 of the *Corporations Act* in relation to dealing with a company. The Participant is advised to ask how the company executes contracts. That process should be adopted for executing the Sponsorship Agreement. The Participant may include a separate acknowledgment, to the effect that the Company has complied with its constitution and any provisions of the *Corporations Act*. ASTC advises Participants to seek independent legal advice should they require clarification.

Possible method

The Participant should follow the process that the company requires for executing contracts. One possible method is to have two separate boxes for names to be typed (director and director/secretary), two acceptance buttons, and a declaration the Company has complied with its constitution and any provisions of the *Corporations Act*.

Execution by the Participant

Consideration should also be given to how the Participant will execute the agreement electronically to ensure that the electronic methods are reliable, appropriate and valid at law. Participants should seek independent legal advice should they require clarification.

Copy of Sponsorship Agreements

Interpretation

The Participant must be able to provide each applicant with a copy of the Sponsorship Agreement terms and conditions that the applicant executed.

Possible method

The Participant may provide a method for the applicant to print a copy, make arrangements to send a copy, or a copy may be posted on the Participant’s web-site in an area accessible only by the applicant. If the holder provides an e-mail address, a copy may be sent in electronic form to the e-mail address provided. The Participant must provide a hard copy of the Sponsorship Agreement to the holder if the holder does not



provide an e-mail address, or if the holder requests. The copy must include the time and date of execution, the name and address of all signatories and all account numbers that have been allocated to the holder.

Qualification

ASTC has published this note to promote commercial certainty, and assist market participants. Nothing in this note necessarily binds ASTC in the application of the Rules in a particular case. In issuing this note ASTC is not providing legal advice and market Participants should obtain their own advice from a qualified professional person in respect of their obligations. ASTC may replace this Guidance Note at any time. Readers may contact ASTC to ensure they have the latest version.