

KEY TOPICS

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4. Policies and Procedures

ASX Market Rules

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Guidance Note History

Re-Issued:
11 March 2004
New Rule Introduction

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8 December 1997
ASX GN 13/97

NEW CLIENTS

Purpose

The purpose of this Guidance Note is to provide assistance to market participants on the interpretation of procedures that should be adopted to govern the establishment of an account by a new client which is a natural person or proprietary limited company.

Background

Whilst client verification is not a requirement of the Rules, ASX expects each Market Participant to undertake client verification before accepting a new client.

There are specific provisions of the ASX Market Rules (the “Rules”) which apply before a Market Participant can conduct a transaction in the ASX’s Derivatives Markets.

Verification of the identity of a new client is an important control to prevent fraud, or other types of illegal conduct, against a Market Participant. It is also important to prevent inappropriate trading practices being conducted in the market by persons using multiple identities or by authorised representatives.

This Guidance Note sets out a summary of the Market Rules and other requirements which are relevant to opening a new account and trading for the first time for a new client as well as a set of operational controls that should be adopted by Market Participants. Whilst the focus of the Guidance Note is predominantly upon new retail clients, Market Participants should give consideration to having commensurate policies and procedures in place for new wholesale clients.

The extent to which a Market Participant adopts and implements client identification and verification procedures is a relevant factor with respect to the outcome of investigations conducted by ASX into trading on fictitious accounts, client fraud or related issues.

Market Rule References and Other Requirements

Listed below are references to the Rules and other requirements which are relevant to opening a new account and transacting business for the first time for a new client. The list provided is not exhaustive and Market Participants should ensure that it meets all Rule requirements and other relevant legislative provisions.

Discretionary accounts and Managed Funds:	Written authorisation must be obtained prior to managing or operating a discretionary account or managed fund – Rule 7.10.1
CHESS	A Sponsorship Agreement must be obtained prior to operating a CHESS Holding
New Clients	<p>If the Market Participant does not have Trading Permission to execute that Market Transaction, a document which clearly discloses the execution arrangements in place for that Market Transaction including, without limitation, any information set out in the Procedures- Rule 7.1.1 (b)</p> <p>If the Market Participant is not a Clearing Participant to clear that Market Transaction, a document which clearly discloses the clearing arrangements in place for that Market Transaction, including, without limitation, any information required by the Procedures – Rule 7.1.1(c)</p>
Market Participant Restrictions	Market Participants must not enter into Market Transaction for a client, except in accordance with the instructions of the client, or of a person authorised in writing by a client to give such instructions – Rule 7.4(b)
ASIC requirements	<ul style="list-style-type: none"> • Corporations Act Part 7.7 Div 2 – Financial Services Guide requirements; • Corporations Act Part 7.7 Div 3 – requirements relating to personal advice and Statements of Advice (sections 947B and 947C – Statements of Advice – main requirements); • Section 946B(1) of the Corporations Act – Execution-related telephone advice • Corporations Act Part 7.9 Division 2 and Policy Statement 168 - Disclosure: Product Disclosure Statements (and other disclosure obligations)
The Financial Transaction Reports Act 1988	The Act places various obligations on Market Participants to report certain transactions and retain certain records.
Charter of the United Nations (Terrorism and Dealing with Assets) Regulations 2002	The Regulation requires Market Participants to determine whether their clients are listed on the “Proscribed Persons and Entities List” and to freeze assets of those persons and entities involved in terrorism. Refer to Circular to Participating Organisations 090/03 dated 10 March 2003.

Client Agreement Forms

ASX strongly encourages each Market Participants to execute client agreements with clients who trade in equities. This not only allows the client to understand their rights and obligations but also provides some protection to the Market Participants.

Control Techniques

Each Market Participants should:

Adopt and follow effective policies and procedures for accepting new clients and opening new accounts;

Document these policies and procedures and have copies available for reference by client advisers, and other relevant staff;

- Ensure staff are adequately trained on these policies and procedures;
- Regularly review these policies and procedures to ensure they remain up-to-date and effective; and
- Regularly conduct compliance reviews to ensure these policies and procedures are being adequately implemented.

Suggested Policies and Procedures

ASX suggests the following policies and procedures for adoption by Market Participants:

Policies

- The functions of account opening and verification should be kept separate, so as to ensure that the same person does not collect and verify client information (for example, advisers should not be responsible for obtaining identification from clients and verifying the veracity of the identification). This is both a fraud control and a means to prevent staff establishing fictitious accounts. In small firms where it is not practical that the functions be separated, account opening and verifications should be reviewed by a senior person;
- Ensure a written record is kept which shows for each new client and account that is opened, the verifications of the client's information that was conducted;
- Where documents are required to be given to clients under the ASX Market Rules and/or Corporations Act, the Market Participants should ensure that a written record is kept for each new client and account that details what documents have been given;

- Do not accept the first order from a new client unless all client information is obtained and verified. If this has not occurred, obtain payment or control of securities (as the case may be) before acting on the person's instructions. If those instructions (if followed) would have a significant effect on the market for that security, do not accept the order until the client information is obtained and verified;
- Retain for seven years, the written record that is made;
- Ensure that Employees of the Market Participants are not given third party authority on a client account unless a discretionary account agreement has been obtained;
- Have in place procedures for assessing a client's financial means and credit worthiness;
- Additional enquiries be made where:
 - a. The new client is reluctant to provide information about themselves or some or all of the verifications requested;
 - b. The new client wishes to conduct business in cash or only by way of facsimile;
 - c. The new client is based overseas and wishes to pay for their first transaction with a foreign denominated cheque rather than electronic funds transfer;
 - d. The new client's only address is a post office box;
 - e. The new client may be a minor, a bankrupt or other person or entity which does not have the capacity to transact business on its own account; or
 - f. The new client matches a name on the "Prescribed Persons or Entity List".
- Include such enquiries in the written record of the verifications of the client's information.

Market Participants should give consideration to adopting additional measures for new overseas based clients.

Procedures - Client Information

Obtain as a minimum the following client/account information:

1. For a natural person:
 - Name and Title
 - Home Address
 - Mailing Address (if different)
 - Contact numbers
 - Age
 - Occupation
 - Employer details
 - Position
 - Does client currently have securities that are:
 - certificated,
 - sponsored on CHESS, or
 - issuer sponsored

- How is client going to pay/be paid
 - Any additional information considered necessary to know your client.
2. For a proprietary company:
- Name of company
 - ACN or ARBN
 - Registered address
 - Mailing address (if different)
 - Contact numbers
 - Name of company officers or person authorised to place orders
 - Does company currently have securities that are:
 - certificated,
 - sponsored on CHESS, or
 - issuer sponsored
 - How is company going to pay/be paid

Procedures - Verification of Information

It is recommended that client identity be verified using information obtained from at least *two different sources*.

Verification can be provided by various means, for example, by sighting original documents of identity (eg passport, licence, identification card), by obtaining confirmation by a referee who has known the person for a sufficient length of time and who is prepared to vouch for the identity of the person or by way of confirmation from other independent sources of the client's identity. Evidence should be sought to verify any change of name.

It is recommended that at least one of the sources include photo identification for a natural person or in the case a proprietary company, certified constitution, a government issued business licence or partnership agreement. It is further recommended that in the case of a proprietary company that a search of Company Directors be carried out.

Market Participants should ensure that the verification procedures selected are sufficiently robust to confirm the true identity of the client. For this purpose, reference can be made to the point value of documents applicable to account opening by financial institutions subject to the Financial Transactions Reports Act 1988. (A list of documents and the points value under the Act are conveniently set out in Austrac's Standard 100 Point Weighting Form).

Australia has endorsed the 40 recommendations of the international Financial Action Task Force on Money Laundering (FATF) for a framework for global anti-money laundering efforts. Amongst other things, these may result in new obligations for financial institutions (including stockbrokers) to identify all clients, including any beneficial owners of property, and to keep appropriate records. The 40 recommendations are available from the FATF website (<http://www.fatf-gafi.org/>).

Qualification

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