

## ACCESSING HOLDINGS IN ERROR

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To assist participants to understand their obligations if they access a holding in error or without the holder's consent or authorisation</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>The obligations of a participant if it accesses or transfers holdings in error or without the authority of the holder</li> <li>Evidencing consent or acquiescence of the holder</li> <li>Procedures to follow when correcting an errant transfer and advising the holder</li> </ul>
<p><b>Related materials you should read</b></p>	<ul style="list-style-type: none"> <li>Nil</li> </ul>

**History:** Guidance Note 11 issued 27/02/15. Previous versions of this Guidance Note were issued under the ASTC Settlement Rules as Guidance Note 5 in 03/04 and under the SCH Business Rules as Explanatory Memorandum 2/97 in 10/97.

**Important notice:** ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Settlement Operating Rules. It sets out ASX's interpretation of the ASX Settlement Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Settlement Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and applicants/participants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

This Guidance Note is published to assist participants to understand their obligations if they access the holdings of a holder erroneously or without the consent or agreement of the holder.

## 2. The consequences of errant or unauthorised transfers

A participant that transfers financial products from a source holding it controls to a target holding controlled by another participant in error or without the consent or acquiescence of the holder of the target holding is liable to indemnify each of:

- ASX;
- the issuer of the financial products specified in the originating message;
- the holder of the target holding; and
- the participant controlling that holding,

against all losses, damages, costs and expenses which they may suffer or incur by reason of that transfer.<sup>1</sup>

By way of example, in the case of an issuer, this indemnity would cover any fees or expenses that the issuer's share registry charges to the issuer to deal with the errant or unauthorised transfer. In the case of a holder, it would cover any loss of entitlement to receive a dividend or other distribution, participate in a corporate action, or receive benefits under a loyalty or reward scheme attached to the financial product, arising from the errant or unauthorised transfer.

Where a dispute arises, ASX considers that the onus is on the controlling participant to show that the holder consented or acquiesced to the participant's action.

The holder's consent or acquiescence need not be given in writing. For example, it may be given orally (for example, over the telephone) and be evidenced by a telephone recording, diary note or follow-up letter or email to the client confirming the client's instructions.

## 3. Procedures to correct an errant or unauthorised transfer

Given the indemnity above, it is important for a participant to have in place robust processes and procedures:

- to validate and evidence client instructions to transfer a source holding to another participant; and
- to detect and promptly remediate any errant or unauthorised transfer.

As soon as a participant becomes aware that it has transferred financial products in error or without the consent or acquiescence of the holder, it should immediately contact the participant that now controls the holding and advise it of the error.

<sup>1</sup> ASX Settlement Operating Rule 9.11.2. In addition, If a participant transmits a message to transfer the financial products in a deceased holding and an issuer transfers financial products in accordance with that message, the participant indemnifies the issuer from and against all losses, damages, costs and expenses which the issuer may suffer or incur because the participant was not authorised to transmit the message, or because the message was transmitted in error: ASX Settlement Operating Rule 9.11.3.

The controlling participant will be obliged to take such action as may be necessary to transfer the financial products back to the correct source holding within 2 business days of being advised of the errant or unauthorised transfer (or such further time as agreed between the participants).<sup>2</sup>

The participant that originated the errant or unauthorised transfer should also immediately liaise with the relevant share registry with a view to having the holder restored on the register with the same attributes as before the errant or unauthorised transfer. This may help to prevent the holder having to re-submit their personal details (such as dividend elections, banking instructions, annual report elections and TFNs). The registry may also be able to restore other records viewable by the holder, such as transaction histories, dividend payment histories etc. The participant should meet any fees or expenses charged by the share registry associated with this action.

Once these steps have been undertaken, the participant should also send a written advice to the holder of the financial products in question:

- setting out the circumstances of the errant or unauthorised transfer;
- confirming that the errant or unauthorised transfer has been rectified;
- if applicable, stating that the participant has liaised with the relevant registry to ensure that the holding and its attributes have been restored; and
- advising the holder that if they consider that they have suffered any loss, damage, cost or expense as a result of the errant or unauthorised transfer, they should contact the participant to discuss compensation.

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<sup>2</sup> ASX Settlement Operating Rule 9.11.1.