



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 250

Guidance on ASIC market integrity rules for risk management and other requirements: ASX 24 market

August 2013

About this guide

This guide is for market participants of the ASX 24 market.

It gives guidance on ASIC market integrity rules regarding risk management for house accounts, supervisory policies and procedures, and minimum presence requirements for foreign market participants.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in August 2013 and is based on legislation and regulations as at the date of issue.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

| | | |
|----------|------------------------------------------------------------|-----------|
| A | Overview | 4 |
| | ASIC's market supervisory function..... | 4 |
| | Scope of this regulatory guide | 6 |
| | Related guidance..... | 7 |
| B | Risk management | 8 |
| | Risk management requirements for market participants | 8 |
| | Setting and documenting limits..... | 10 |
| | Terminal connections..... | 13 |
| | Accessing terminal connections | 14 |
| C | Supervisory policies and procedures | 16 |
| D | Minimum presence requirements | 18 |
| | Key terms | 20 |
| | Related information..... | 22 |

A Overview

Key points

ASIC is responsible for supervising Australian domestic licensed financial markets.

As part of our supervisory responsibilities, ASIC makes market integrity rules and monitors compliance by market participants with those rules.

This regulatory guide gives guidance on the obligations of market participants of the ASX 24 market regarding risk management for house accounts, supervisory policies and procedures, and minimum presence requirements for foreign market participants.

Market participants that are market participants on the ASX 24 market on 4 May 2013 must comply with these obligations by 4 August 2013. New market participants after 4 May 2013 must comply immediately.

ASIC's market supervisory function

- RG 250.1 Since 1 August 2010, ASIC has had the responsibility for supervising trading activities and conduct of business by market participants in relation to domestic licensed financial markets—that is, those operated by persons licensed under s795B(1) of the *Corporations Act 2001* (Corporations Act).
- RG 250.2 Under Pt 7.2A of the Corporations Act, which was inserted by the *Corporations Amendment (Financial Market Supervision) Act 2010* from 1 August 2010, ASIC has the power to make market integrity rules that deal with activities and conduct in relation to Australian domestic licensed financial markets, including of participants of the relevant market. We are responsible for supervising compliance with those rules.
- RG 250.3 ASIC market integrity rules are legislative instruments that are subject to Ministerial consent and Parliamentary scrutiny.

ASIC market integrity rules for the ASX 24 market

- RG 250.4 On 1 August 2010, ASIC made market integrity rules for the ASX 24 market (formerly Sydney Futures Exchange (SFE)): see ASIC Market Integrity Rules (ASX 24 Market) 2010. Our approach to making the market integrity rules at the time of transfer of supervision on 1 August 2010 was to retain the substance of the obligations that applied to market participants of the ASX 24 market immediately before that date.

Note: In this document 'ASIC Market Integrity Rules (ASX 24)' refers to the ASIC Market Integrity Rules (ASX 24 Market) 2010.

RG 250.5 In May 2011, we consulted on proposed ASIC market integrity rules for a new derivatives market to be operated by Financial and Energy Exchange Limited (FEX): see Consultation Paper 157 *Proposed ASIC market integrity rules: FEX market* (CP 157).

Note: Since that time, the applicant for the market licence has changed to FEX Global Pty Ltd.

RG 250.6 The proposed rules for the FEX market were modelled on the ASIC Market Integrity Rules (ASX 24), with minor amendments. In CP 157 we also proposed the same amendments (other than amendments relating to the differences between the FEX and ASX 24 markets) to the ASIC Market Integrity Rules (ASX 24). We did not receive any substantive comments on the proposals in CP 157.

RG 250.7 On 1 August 2011, ASIC amended the ASIC Market Integrity Rules (ASX 24) to include rules on capital and related requirements: see ASIC Market Integrity Rules (ASX 24 Market) Amendment 2011 (No. 1) and Regulatory Guide 226 *Guidance on ASIC market integrity rules for capital and related requirements: ASX, ASX 24 and Chi-X markets* (RG 226).

RG 250.8 In November 2012, we proposed to build on the existing ASIC Market Integrity Rules (ASX 24) with new requirements to deal with changes in market structure (e.g. see RG 250.21) and growth in automation and innovation in electronic trading (in particular by proprietary trading firms) in the domestic futures market: see Consultation Paper 195 *Proposed amendments to ASIC market integrity rules: ASX 24 and FEX markets* (CP 195).

RG 250.9 On 4 May 2013 amendments to the ASIC Market Integrity Rules (ASX 24) took effect, to:

- (a) require market participants that execute trades on behalf of a house account on the ASX 24 market to meet certain risk management requirements;
- (b) include supervisory policy and procedure requirements to assist market participants of the ASX 24 market to comply with market integrity rules, operating rules and the Corporations Act; and
- (c) include minimum presence requirements for foreign market participants that trade on the ASX 24 market and that do not hold an Australian financial services (AFS) licence.

RG 250.10 Market participants that are market participants of the ASX 24 market on 4 May 2013 must comply with these requirements by 4 August 2013. New market participants after 4 May 2013 must comply immediately.

Scope of this regulatory guide

Risk management

RG 250.11 In Section B we give guidance on a market participant's risk management requirements for house accounts under Rule 2.2.1 of the ASIC Market Integrity Rules (ASX 24).

Note: In this document 'Rule 2.2.1' (for example) refers to a particular rule of the ASIC Market Integrity Rules (ASX 24).

RG 250.12 These requirements include setting and documenting appropriate limits and requirements relating to terminal connections.

RG 250.13 Rule 2.2.1 in the form it was made on 1 August 2010 was modelled on Rule 2.2.13 of the SFE Operating Rules, as they existed before 1 August 2010. Since Rule 2.2.13 of the SFE Operating Rules was made, there have been changes in market structure and growth in automation and innovation in electronic trading (in particular by proprietary trading firms) in domestic futures markets.

RG 250.14 To deal with the changes occurring in market structure and the electronic market environment, we have amended Rule 2.2.1 to require market participants that execute trades on behalf of a house account on the ASX 24 market to meet certain risk management requirements: see Table 2.

Supervisory policies and procedures

RG 250.15 In Section C we give guidance on a market participant's obligation under Rule 2.2.8 to have in place supervisory policies and procedures, to ensure compliance with the market integrity rules, market operating rules and Corporations Act.

RG 250.16 Supervisory policies and procedures should be in writing and tailored to the nature, size and complexity of the market participant's business.

Minimum presence requirements

RG 250.17 In Section D we give guidance on minimum presence requirements for foreign market participants under Rule 2.4.1.

RG 250.18 These requirements were imposed to facilitate enforcement action in Australia for breaches by foreign market participants of the relevant market integrity rules and legislation.

Related guidance

RG 250.19 This guide should be read in conjunction with other regulatory guides on market integrity rules and other obligations for market participants. Table 1 identifies other regulatory guides that may be relevant.

Table 1: Related guidance

| Topic | ASIC regulatory guide |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Our rule-making regime and approach to supervising compliance with ASIC market integrity rules for ASX and ASX 24 (including our approach to waivers) | Regulatory Guide 214 <i>Guidance on ASIC market integrity rules for ASX and ASX 24 markets</i> (RG 214) |
| Capital and related requirements for ASX, ASX 24 and Chi-X Markets | RG 226 |
| The disciplinary process for breaches of all ASIC market integrity rules (including market integrity rules for the ASX 24 market) | Regulatory Guide 216 <i>Markets Disciplinary Panel</i> (RG 216) |
| The operational framework for the Markets Disciplinary Panel when considering alleged breaches of ASIC market integrity rules | Regulatory Guide 225 <i>Markets Disciplinary Panel practices and procedures</i> (RG 225) |
| Notifying ASIC of significant breaches (or likely breaches) by AFS licensees under s912D | Regulatory Guide 78 <i>Breach reporting by AFS licensees</i> (RG 78) |
| Our approach to supervising compliance with AFS licensing obligations | Regulatory Guide 104 <i>Licensing: Meeting the general obligations</i> (RG 104) and Regulatory Guide 105 <i>Licensing: Organisational competence</i> (RG 105) |

B Risk management

Key points

Market participants must meet certain risk management requirements for their house accounts, including setting and documenting appropriate limits, and requirements relating to terminal connections.

Market participants that are market participants of the ASX 24 market on 4 May 2013 must comply with the risk management requirements for house accounts by 4 August 2013. New market participants after 4 May 2013 must comply immediately.

Risk management requirements for market participants

RG 250.20 Market participants on the ASX 24 market that are principal traders have not traditionally accessed the market directly and, in those cases, their order and position limits have been set by the market participant that provides them with access to the market. This is because the market participant that provides the principal trader with access to the market must meet certain risk management obligations, including the setting of order and position limits, for the principal trader as its client: see Rule 2.2.1.

RG 250.21 There are now an increasing number of principal traders accessing the ASX 24 market directly, rather than as clients of another market participant. There has also been an increase in automation and innovation in electronic trading more generally, including proprietary trading.

Note: A principal trader is a market participant on the ASX 24 market that trades only on its own behalf.

RG 250.22 To deal with these changes occurring in market structure and the electronic market environment, Rule 2.2.1 requires all market participants that execute trades on behalf of a house account on the ASX 24 market to meet certain risk management requirements: see Table 2.

Note: The term 'house account' is defined in Rule 1.4.3.

RG 250.23 Market participants that are market participants of the ASX 24 market on 4 May 2013 must comply with the requirements under Rule 2.2.1 (for house accounts) by 4 August 2013. New market participants after 4 May 2013 must comply immediately.

Table 2: Risk management—House account requirements

| Requirement | Description |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Order and/or position limits | <p>A market participant must demonstrate prudent risk management procedures by setting and documenting appropriate pre-determined order and/or position limits on each of its house accounts, including a volume per order limit, an aggregate loss limit and an aggregate net session limit.</p> <p>These limits must be:</p> <ul style="list-style-type: none"> • based on the market participant's analysis of its financial resources or other relevant factors; and • input into trading platform account maintenance by the market participant's risk manager. |
| Maximum price change limits | <p>A market participant must set and document maximum price change limits in relation to house accounts.</p> <p>These limits must be input into trading platform account maintenance by the market participant's risk manager.</p> |
| System requirements | <p>A market participant's order system for execution of trades on the house account must have the capability for:</p> <ul style="list-style-type: none"> • setting limits; and • rejecting orders that are in excess of the limits set. |
| Amendment of limits | <p>A market participant may amend the pre-determined order and/or position limits based on its analysis of financial resources or other relevant factors for house accounts.</p> |
| Terminal connections | <p>Where a market participant has connected to a terminal for the purposes of allowing trading for a house account, it:</p> <ul style="list-style-type: none"> • is responsible under the rules for any orders entered through the terminal on behalf of the house account; and • must promptly take all steps necessary to terminate such a connection when notified to do so by ASIC. |
| Accessing terminal connections | <p>Before connecting to a terminal for the purposes of allowing trading for a house account, and at all times while so connected, a market participant must:</p> <ul style="list-style-type: none"> • have the necessary skills, facilities and procedures to operate such a facility; • understand the risks and obligations attached to the use of such a facility; • ensure that each order so placed, and any order system, complies with the rules; • provide appropriate controls on access to passwords of the market participant and its employees to such systems; and • ensure appropriate controls are implemented for the security of its premises and physical access of the market participant and its employees to such systems. |

Setting and documenting limits

- RG 250.24 A market participant of the ASX 24 market must demonstrate prudent risk management procedures. This includes, but is not limited to, setting and documenting:
- (a) appropriate pre-determined order and/or position limits on each of its house accounts, including a volume per order limit, an aggregate loss limit and an aggregate net session limit, based on the market participant's analysis of its financial resources or other relevant factors; and
 - (b) maximum price change limits (Rule 2.2.1(1)(ab) and (b)).
- RG 250.25 The limits determined in RG 250.24 must be input by a market participant's risk manager into trading platform account maintenance and will be established as preset accounts: Rule 2.2.1(1)(c). The 'risk manager' is the person responsible for managing risks within the market participant's business, and their role and responsibilities will depend on the nature, scale and complexity of the market participant's business.
- RG 250.26 A market participant may amend the pre-determined order and/or position limits referred to in RG 250.24(a) based on its analysis of financial resources or other relevant factors: Rule 2.2.1(e).
- RG 250.27 In addition to the limits referred to in RG 250.24, a market participant's order system for execution of trades on the house account must also have the capability for:
- (a) setting limits that reflect prudent account risk management; and
 - (b) rejecting orders that are in excess of limits set by the market participant (Rule 2.2.1(1)(d)).

Principal traders

- RG 250.28 A principal trader is a market participant that trades only on its own behalf. The principal trader is either:
- (a) a client of another market participant on the ASX 24 market, and that market participant permits the principal trader to connect to a terminal. The principal trader's orders are routed directly through the terminal onto the trading platform and are subject to the terminal's risk management system, but will usually bypass the market participant's order system (see RG 250.32–RG 250.34 and Figure 1);
 - (b) a client of another market participant on the ASX 24 market, and the principal trader's orders are subject to the market participant's order system and the terminal's risk management system (see RG 250.35–RG 250.37 and Figure 2); or

- (c) granted trading permission by ASX and given its own terminal (see RG 250.38–RG 250.41 and Figure 3).

Note: A ‘terminal’ (sometimes referred to as a ‘gateway’) is defined under Rule 1.4.3 as an automated order entry interface through which an order system routes orders to the trading platform. An ‘order system’ is the software application for entering orders into the trading platform through a terminal.

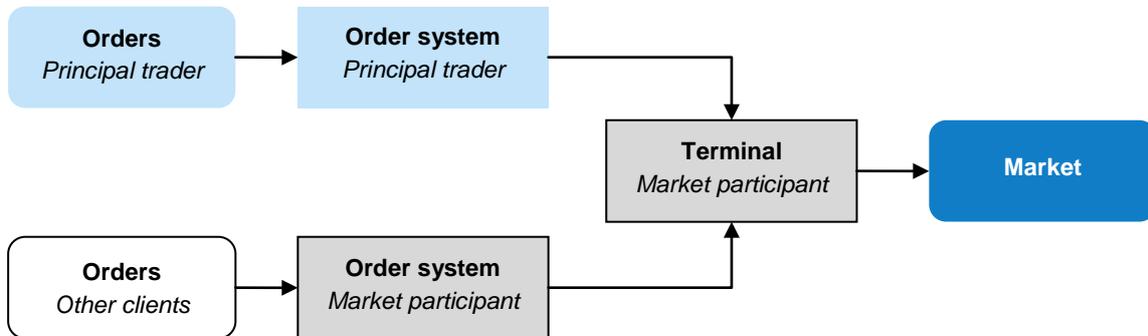
- RG 250.29 In each of these scenarios, the principal trader has an obligation under Rule 2.2.1(1) to demonstrate prudent risk management procedures. This includes, but is not limited to, ensuring that the principal trader’s order system has the capability for setting limits that reflect prudent account risk management, and for rejecting orders that are in excess of those limits.
- RG 250.30 However, when a principal trader engages in trading as set out in RG 250.28(a)–RG 250.28(b), the principal trader does not access the market directly and may not have the capability to set, document and input into trading platform account maintenance pre-determined order and/or position limits on its house account. We have therefore granted Class Rule Waiver [CW 13/972], under Rule 1.2.1, for principal traders that engage in trading as set out in RG 250.28(a)–RG 250.28(b). [CW 13/972] relieves these principal traders from the obligation to comply with Rules 2.2.1(1)(ab), 2.2.1(1)(b), 2.2.1(1)(c) and 2.2.1(1)(e).
- RG 250.31 In these circumstances, the market participant that provides the principal trader with access to the market has obligations under Rule 2.2.1 to:
- (a) set and document appropriate pre-determined order and/or position limits on each of its client accounts (including its client account for the principal trader) (Rule 2.2.1(1)(a));
 - (b) set and document maximum price change limits (Rule 2.2.1(1)(b)); and
 - (c) input the limits referred to in RG 250.31(a)–RG 250.31(b) into trading platform account maintenance for each of its client accounts (including its client account for the principal trader) (Rule 2.2.1(1)(c)).

Client of a market participant—Orders bypass market participant’s order system

- RG 250.32 When a principal trader engages in trading as set out in RG 250.28(a) and Figure 1, the market participant responsible for access to the terminal has an obligation under Rule 2.2.1(1)(a) to set and document pre-determined limits for the principal trader as its client, and an obligation under Rule 2.2.1(1)(b) to set and document maximum price change limits. The principal trader may rely on the relief in [CW 13/972].
- RG 250.33 The principal trader may set tighter and/or differing limits within its own order system at an individual trader or group level.

RG 250.34 The principal trader must document the limits that the principal trader has set in its own order system. The principal trader must ensure its order system complies with Rules 2.2.1(1)(d) and 2.2.1(1)(f).

Figure 1: Principal trader’s orders bypass market participant’s order system



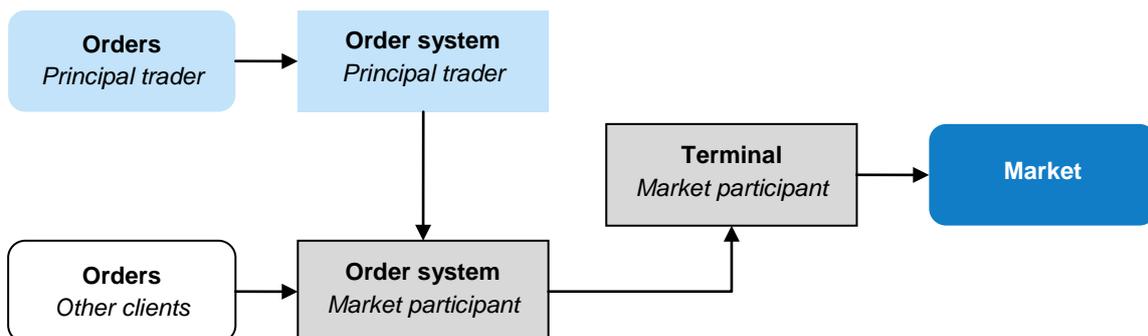
Client of a market participant—Orders subject to market participant’s order system

RG 250.35 When a principal trader engages in trading as set out in RG 250.28(b) and Figure 2, the market participant responsible for access to the terminal has an obligation under Rule 2.2.1(1)(a) to set and document pre-determined limits for the principal trader as its client, and an obligation under Rule 2.2.1(1)(b) to set and document maximum price change limits. The principal trader may rely on the relief in [CW 13/972].

RG 250.36 The principal trader’s orders will also be subject to the limits set by the market participant in the market participant’s order system. The principal trader may set tighter and/or differing limits within its own order system at an individual trader or group level.

RG 250.37 The principal trader must document the limits that the principal trader has set in its own order system. The principal trader must ensure that its order system complies with Rules 2.2.1(1)(d) and 2.2.1(1)(f).

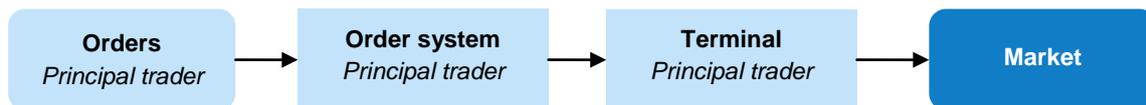
Figure 2: Principal trader’s orders are subject to market participant’s order system



Granted trading permission by ASX

- RG 250.38 When a principal trader engages in trading as set out in RG 250.28(c) and Figure 3, the principal trader has direct access to the risk management tools that are provided as part of the software associated with the terminal.
- RG 250.39 The principal trader has an obligation under Rule 2.2.1(1)(ab) to set and document pre-determined limits for each of its house accounts, and an obligation under Rule 2.2.1(1)(b) to set and document maximum price change limits.
- RG 250.40 The principal trader may also set tighter and/or differing limits within its own order system at an individual trader or group level.
- RG 250.41 The principal trader must document the limits it has set in its order system. The principal trader must ensure its order system complies with Rules 2.2.1(1)(d) and 2.2.1(f).

Figure 3: Principal trader granted trading permission by ASX



Terminal connections

- RG 250.42 Any market participant, including a principal trader, who has connected to a terminal for the purposes of trading for a house account will be responsible under the ASIC Market Integrity Rules (ASX 24) for any orders entered through the terminal: Rule 2.2.1(2)(ab).
- RG 250.43 We may give notice to a market participant requiring that market participant to terminate a connection referred to in RG 250.42. As soon as a market participant receives notification, it must promptly take all steps necessary to terminate such connection: Rule 2.2.1(2)(b).

Filters and filter parameters

- RG 250.44 As a market participant that has connected to a terminal for the purposes of trading on a house account is responsible for all orders entered through the terminal and must ensure those orders and the order system complies with the ASIC Market Integrity Rules (ASX 24) (Rule 2.2.1(2)(ab) and Rule 2.2.1(4)(c)), we expect the market participant to apply appropriate filters and filter parameters to its order system.

- RG 250.45 What constitutes ‘appropriate’ will depend on the market participant’s order system capabilities, the nature, scale and complexity of its business, and the particular risks that the market participant has assessed as relevant to that business (including financial, reputational and regulatory risks).
- RG 250.46 Filters and filter parameters are pre-trade controls and the principal means by which trading messages are checked to ensure that they comply with the rules. Filters are a set of rules that apply to an order system and that determine automatically which trading messages (or series of related trading messages) meet a pre-defined set of criteria and can pass into the trading platform.
- RG 250.47 Filter parameters are the variables within each filter that can be changed to modify the operation of the filter without changing the rule to which the filter applies. The filter parameters result in trading messages being handled differently according to factors such as the type, source, size or price of an order, or its relationship with other orders. A filter parameter may apply at a number of different levels—for example, to particular financial products, representatives, authorised persons or clients, and to a dollar or margin value level.

Accessing terminal connections

- RG 250.48 A market participant that connects to a terminal for the purposes of trading for a house account must, before connecting to the terminal and at all times while connected:
- (a) have the necessary skills, facilities and procedures to operate such a facility (Rule 2.2.1(4)(a));
 - (b) understand the risk and obligations attached to the use of such a facility (Rule 2.2.1(4)(b));
 - (c) ensure that each order placed through the terminal, and any order system, complies with the ASIC Market Integrity Rules (ASX 24) (Rule 2.2.1(4)(c));
 - (d) provide appropriate controls, such as passwords, on the access by the market participant and its employees to such systems (Rule 2.2.1(4)(d)); and
 - (e) ensure appropriate controls are implemented for the security of its premises and physical access by the market participant and its employees to such systems (Rule 2.2.1(4)(e)).
- RG 250.49 We recognise that, given the differences in types of business conducted by market participants, there must be some degree of flexibility in determining what constitutes ‘appropriate’ controls for each market participant for the purposes of Rule 2.2.1(4)(d) and (e). The types of controls that a market

participant must implement will depend on the nature, scale and complexity of its business, and the particular risks that the market participant has assessed as relevant to that business (including financial, reputational and regulatory risks).

Example: Risk management for internet-based order systems

XYZ Pty Ltd is a principal trader that uses an internet-based order system to enter orders through a terminal into the trading platform. Each trader is granted remote access to the order system, allowing them to enter orders through the terminal 24 hours a day, from their home computer or any other computer.

XYZ Pty Ltd must ensure that its order system and remote access to the system is subject to appropriate security measures, such as passwords, firewalls and other security-related software.

XYZ Pty Ltd must also ensure that appropriate controls are implemented for the security of its premises and physical access of the market participants and its traders to the order system. We would expect XYZ Pty Ltd to have appropriate policies and procedures in place outlining its security expectations for those individuals working from locations other than the principal trader's business premises.

C Supervisory policies and procedures

Key points

Market participants of the ASX 24 market must have appropriate supervisory policies and procedures in place to ensure compliance with the market integrity rules, market operating rules and Corporations Act.

Supervisory policies and procedures should be in writing and tailored to the nature, size and complexity of the market participant's business.

Market participants that are market participants of the ASX 24 market on 4 May 2013 must comply with the requirements under Rule 2.2.8 by 4 August 2013. New market participants after 4 May 2013 must comply immediately.

- RG 250.50 Rule 2.2.8 requires a market participant of the ASX 24 market to have appropriate supervisory policies and procedures to ensure compliance by the market participant, and each person involved in its business as a market participant, with the market integrity rules, the market operating rules and the Corporations Act.
- RG 250.51 Rule 2.2.8 is modelled on market integrity rules relating to supervisory policies and procedures for market participants of the ASX and Chi-X markets: see Rule 2.1.3 of the ASIC Market Integrity Rules (ASX Market) 2010 and Rule 2.1.3 of the ASIC Market Integrity Rules (Chi-X Australia Market) 2011.
- RG 250.52 A distinction can be drawn between compliance procedures and supervisory procedures. Compliance procedures generally cover the applicable rules and policies and describe prohibited practices. Supervisory procedures document the supervisory system that has been established to ensure that the compliance procedures are being followed, and to prevent and detect prohibited practices.
- RG 250.53 We expect a market participant to be able to demonstrate that it has established, maintained and continues to enforce supervisory policies and procedures that are tailored to the nature, size and complexity of their business. A market participant should also undertake periodic reassessment of its supervisory policies and procedures in light of changes to its business.
- RG 250.54 We expect a market participant's supervisory policies and procedures to be in writing and to be designed to reasonably supervise the business and each person involved in the business.
- RG 250.55 We also expect a market participant to maintain evidence that supervisory policies and procedures have been implemented and carried out, and make

this available to ASIC on request. A market participant should be able to demonstrate that it has allocated sufficient personnel and system resources to implement the supervisory policies and procedures.

RG 250.56 Market participants that are market participants of the ASX 24 market by 4 May 2013 must comply with the requirements under Rule 2.2.8 by 4 August 2013. New market participants after 4 May 2013 must comply immediately.

D Minimum presence requirements

Key points

To facilitate enforcement action against foreign market participants on the ASX 24 market that do not hold an AFS licence, Part 2.4 of the ASIC Market Integrity Rules (ASX 24) imposes minimum presence requirements on those foreign market participants.

Foreign market participants that are market participants of the ASX 24 market on 4 May 2013 must comply with obligations under Rule 2.4.1 by 4 August 2013. New market participants after 4 May 2013 must comply immediately.

- RG 250.57 Under the Corporations Act, market participants must comply with the market integrity rules that apply to the market(s) on which they trade. This includes foreign market participants—that is, those participants that are foreign entities and are not required to hold an AFS licence.
- RG 250.58 Part 2.4 of the ASIC Market Integrity Rules (ASX 24) imposes minimum presence requirements on foreign market participants of the ASX 24 market if those foreign market participants do not hold an AFS licence. This is to facilitate enforcement action in Australia for breaches by foreign market participants of the relevant market integrity rules, the *Australian Securities and Investments Commission Act 2001* (ASIC Act), the Corporations Act more broadly and the *Corporations (Fees) Act 2001*.
- RG 250.59 Our ability to take effective enforcement action is fundamental to the supervision of financial markets and ensuring that markets are fair and efficient. The Corporations Act already facilitates enforcement actions against those market participants that are foreign entities that hold an AFS licence.
- RG 250.60 Rule 2.4.1 is modelled on market integrity rules relating to minimum presence requirements for foreign market participants of the ASX and Chi-X markets that do not hold an AFS licence: see Rule 2.6.1 of the ASIC Market Integrity Rules (ASX Market) 2010, Rule 2.6.1 of the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 and Consultation Paper 166 *Market integrity rules for non-AFS licensee foreign participants and consequential amendments* (CP 166).
- RG 250.61 To facilitate enforcement action in Australia, a foreign market participant of the ASX 24 market must execute and lodge with ASIC a deed that contains certain provisions. This deed is for the benefit of, and is enforceable by, ASIC (and other persons referred to in s659B(1) of the Corporations Act)

and continues to apply even if the foreign market participant may have ceased to be a market participant of the ASX 24 market.

RG 250.62 The deed must be irrevocable except with the prior written consent of ASIC and provide that the foreign market participant will:

- (a) submit to the non-exclusive jurisdiction of the Australian courts in legal proceedings (whether brought in the name of ASIC or the Crown or otherwise) that are conducted:
 - (i) by ASIC (including under s50 of the ASIC Act); and
 - (ii) for proceedings relating to a financial services law, by any entity referred to in s659B(1);

Note: The entities referred to in s659B(1) (which permits certain entities to commence court proceedings relating to a takeover bid or a proposed takeover bid) are certain Commonwealth, state and territory entities. We have referred to 's659B(1) entities' here and in the ASIC Market Integrity Rules (ASX 24), rather than replicating the s659B(1) list of entities.

- (b) comply with any order of an Australian court for any matter relating to the activities or conduct of the foreign market participant in relation to the ASX 24 market, or in relation to financial products traded on the ASX 24 market;
- (c) if the foreign market participant is not registered under Div 2 of Pt 5B.2 of the Corporations Act, appoint a local agent (a natural person or a company) that is authorised to accept service of process and notices on behalf of the foreign market participant;
- (d) notify ASIC of any change to the agent or the name and address of the agent; and
- (e) comply with any additional terms notified by ASIC to the foreign market participant.

RG 250.63 The original deed must be dated and it must be signed by a person authorised by the foreign market participant to do so on its behalf. If the foreign market participant is an unincorporated entity, the foreign market participant must provide an authority for the person to sign the deed.

RG 250.64 Foreign market participants that are market participants of the ASX 24 market on 4 May 2013 must comply with the obligations under Part 2.4 of the ASIC Market Integrity Rules (ASX 24) by 4 August 2013. New market participants after 4 May 2013 must comply immediately.

Key terms

| Term | Meaning in this document |
|-----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AFS licence | An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A of the Corporations Act. |
| ASIC Act | <i>Australian Securities and Investments Commission Act 2001</i> |
| ASIC Market Integrity Rules (ASX 24) | ASIC Market Integrity Rules (ASX 24 Market) 2010—rules made by ASIC under s798G of the Corporations Act for trading on ASX 24 |
| ASX 24 | The exchange market formerly known as the Sydney Futures Exchange (SFE), operated by Australian Securities Exchange Limited |
| ASX 24 Operating Rules | ASX Limited's new operating rules, which replace the pre-existing SFE Operating Rules |
| Australian domestic licensed financial market | A financial market licensed under s795B(1) of the Corporations Act |
| Australian market licence | Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market |
| Corporations Act | <i>Corporations Act 2001</i> , including regulations made for the purposes of the Act |
| client | Has the meaning given by Rule 1.4.3 |
| client account | Has the meaning given by Rule 1.4.3 |
| CP 157 (for example) | An ASIC consultation paper (in this example numbered 157) |
| deed | An instrument under seal containing a written contractual arrangement between ASIC and the foreign market participant that is enforceable by a court |
| FEX | FEX Global Pty Ltd |
| FEX market | The market operated by FEX |
| foreign market participant | A market participant that is a foreign entity and does not hold an AFS licence |
| house account | Has the meaning given by Rule 1.4.3 |

| Term | Meaning in this document |
|--------------------------|---------------------------------------------------------------------------------------------------|
| market integrity rules | Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets |
| market participant | An entity that is a participant of a financial market on which financial products are traded |
| order system | Has the meaning given by Rule 1.4.3 |
| principal trader | A market participant on the ASX 24 market that trades only on its own behalf |
| RG 214 (for example) | An ASIC regulatory guide (in this example numbered 214) |
| Rule 2.2.1 (for example) | A rule of the ASIC Market Integrity Rules (ASX 24) (in this example numbered 2.2.1) |
| s912D (for example) | A section of the Corporations Act (in this example numbered s912D) |
| SFE Operating Rules | The operating rules of the Sydney Futures Exchange, now replaced by the ASX 24 Operating Rules |
| terminal | Has the meaning given by Rule 1.4.3 |
| trading platform | Has the meaning given by Rule 1.4.3 |

Related information

Headnotes

ASX 24 market, foreign market participants, market integrity rules, market participants, minimum presence requirements, principal traders, risk management, supervisory policies and procedures, terminals

Regulatory guides

RG 78 *Breach reporting by AFS licensees*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 214 *Guidance on ASIC market integrity rules for ASX and ASX 24 markets*

RG 216 *Markets Disciplinary Panel*

RG 225 *Markets Disciplinary Panel practices and procedures*

RG 226 *Guidance on ASIC market integrity rules for capital and related requirements: ASX, ASX 24, Chi-X and APX markets*

Legislation

ASIC Act, s50

Corporations Act, Div 2 of Pt 5B.2, Pt 7.2A, s659B(1), 795B(1), 912D

Corporations Amendment (Financial Market Supervision) Act 2010

Market integrity rules

ASIC Market Integrity Rules (ASX Market) 2010

ASIC Market Integrity Rules (ASX 24)

ASIC Market Integrity Rules (Chi-X Australia Market) 2011

Consultation papers and reports

CP 157 *Proposed ASIC market integrity rules: FEX market*

CP 166 *Market integrity rules for non-AFS licensee foreign participants and consequential amendments*

CP 195 Proposed amendments to ASIC market integrity rules: ASX 24 and FEX markets

Waivers

[CW 13/972]