



ASIC

Australian Securities & Investments Commission

ASIC Market Integrity Rules (NSXA Market) 2010

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Chapter 1: Introduction

Part 1.1 Preliminary

1.1.1 Enabling legislation

ASIC makes this instrument under subsection 798G(1) of the Corporations Act.

1.1.2 Title

This instrument is *ASIC Market Integrity Rules (NSXA Market) 2010*.

1.1.3 Commencement

This instrument commences on the later of:

- (a) the day the instrument is registered under the *Legislative Instruments Act 2003*; and
- (b) the commencement of Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (FRLI) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of register). The FRLI may be accessed at <http://www.frli.gov.au/>.

1.1.4 Scope of these Rules

These Rules apply to:

- (a) the activities or conduct of the Market;
- (b) the activities or conduct of persons in relation to the Market;
- (c) the activities or conduct of persons in relation to financial products traded on the Market.

Note: There is no penalty for this Rule.

1.1.5 Entities that must comply with these Rules

The following entities must comply with these Rules:

- (a) the Market Operator;
- (b) Market Participants; and
- (c) Other Regulated Entities;

as specified in each Rule.

Note: There is no penalty for this Rule.

1.1.6 Conduct by officers, employees or agents

In these Rules, conduct engaged in on behalf of a person:

- (a) by an officer, employee, or other agent of the person, and whether or not within the scope of the actual or apparent authority of the officer, employee, or other agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an officer, employee, or other agent of the person, and whether or not the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee, or other agent,

is deemed to have been engaged in by the person.

Note: There is no penalty for this Rule.

1.1.7 State of mind of a person

(1) If for the purposes of these Rules in respect of conduct engaged in by a person, it is necessary to establish the state of mind of the person, it is sufficient to show that an officer, employee, or other agent of the person, being an officer, employee, or other agent by whom the conduct was engaged in and whether or not the conduct was within the scope of the actual or apparent authority of that officer, employee, or other agent, had that state of mind.

(2) In subrule (1), a reference to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

Note: There is no penalty for this Rule.

Part 1.2 Waivers

1.2.1 Waiver of Rules

- (1) ASIC may provide a waiver from all or any of these Rules to an entity.
- (2) A waiver may be given subject to conditions.
- (3) A waiver, and an application for a waiver, must be in writing.
- (4) In this Part 1.2 "waiver" means a waiver under Rule 1.2.1.

Note: There is no penalty for this Rule.

1.2.2 Compliance with conditions

Failure to comply with a condition imposed under Rule 1.2.1 is a contravention of this Rule.

Maximum penalty: \$1,000,000

1.2.3 Period during which relief applies

ASIC may specify that a waiver applies for a specified period.

Note: There is no penalty for this Rule.

1.2.4 Register

(1) ASIC may establish and maintain a register for recording details of relief granted under Rule 1.2.1 and may enter the following details in the register:

- (a) the date that the relief takes effect;
- (b) the person or class of person relieved from the obligation;
- (c) the provision to which the relief applies;
- (d) brief reasons for the relief; and
- (e) any conditions that apply to the relief.

(2) ASIC may publish the register referred to in subrule (1).

Note: There is no penalty for this Rule.

Part 1.3 Notice, notification and service of documents

1.3.1 Market Participant to have email system

A Market Participant must acquire and maintain an operating email system for the purposes of receiving notices under these Rules.

Note: There is no penalty for this Rule.

1.3.2 Methods of giving notice in writing

Unless otherwise specified in a Rule, ASIC may give notice under these Rules by any of the following methods:

- (a) delivering it to the recipient personally;
- (b) leaving it at or by sending it by courier or post to the address of the recipient last notified to ASIC;
- (c) sending it by facsimile to the recipient's facsimile number last notified to ASIC;
- (d) a circular or bulletin addressed to a class of persons and delivered or communicated by any means permitted under this Rule;
- (e) specific email by any method which identifies a person or person's title as addressee and no notice of non-delivery has been received;
- (f) broadcast email by any method which identifies the addressee and which, having regard to all the relevant circumstances at the time, was as reliable as appropriate for the purposes for which the information was communicated.

Note: There is no penalty for this Rule.

Part 1.4 Interpretation

1.4.1 References to time

In these Rules a reference to time is to the time in Sydney, Australia.

Note: There is no penalty for this Rule.

1.4.2 Words and expressions defined in the Corporations Act

Words and expressions defined in the Corporations Act will unless otherwise defined or specified in these Rules or the contrary intention appears, have the same meaning in these Rules.

Note: There is no penalty for this Rule.

1.4.3 Definitions

“**Adviser**” means a person or entity that provides financial product advice as defined in Chapter 7 of the Corporations Act.

“**As Principal**” A reference to a Market Participant dealing or entering into a Transaction as principal, includes a reference to a Market Participant dealing in Securities on behalf of:

- (a) a partner of the Market Participant;
- (b) Director, company secretary or Substantial Shareholder of the Market Participant;
- (c) a consultant of the Market Participant;
- (d) the Immediate Family, Family Company or Family Trust of a partner, Director, consultant, company secretary or Substantial Shareholder of the Market Participant;
- (e) a body corporate in which the Market Participant has a Controlling Interest;
- (f) a body corporate in which the interests of one or more of the partners singly or together constitute a Controlling Interest;
- (g) the Holding Entity of the Market Participant and/or any Subsidiary of that Holding Entity.

“**ASIC**” means the Australian Securities and Investments Commission.

“**Associate**” includes:

- (a) a spouse of any Recognised Affiliate or relative of any Recognised Affiliate;
- (b) a partner of the Market Participant, a spouse of such a partner, or the relative of such a partner or spouse;
- (c) a Director of the licensed company,
- (d) a Director of a related body corporate of the Market Participant,
- (e) an employee of the Market Participant, a spouse of such an employee, or a relative of such an employee or spouse;

- (f) a trustee of a trust under which the Market Participant or a person referred to in paragraphs (a), (b), (c), (d) or (e), either individually or collectively, has a beneficial interest of not less than 30% of Net Assets of the trust;
- (g) a Corporation where one or more persons referred to in paragraph (a), (b), (c), (d) or (e) above, either individually or collectively, has a beneficial interest in shares in the body corporate which has a nominal value of not less than 30% of the nominal value of the issued capital of the body corporate;
- (h) a Corporation in which the Market Participant has a relevant interest in not less than 30% of the issued voting shares;
- (i) a Corporation which holds a relevant interest in not less than 30% of the issued voting shares of the Market Participant; and
- (j) any person who is an associate of the Market Participant for the purposes of Division 2 of Part 1.2 of the Corporations Act.

For the purpose of this definition, relative means spouse, defacto spouse, parent, son or daughter or a spouse or defacto spouse of that person.

“**Australian ADI**” has the meaning given by section 9 of the Corporations Act.

“**Australian Financial Services Licence**” means a licence granted under section 913B of the Corporations Act.

“**Authorised Representative**” has the meaning given by section 761A of the Corporations Act.

“**Bid**” means a bid of a price and quantity of Securities to be purchased made at an Official Meeting.

“**Business Day**” is a day other than:

- (a) a Saturday, Sunday, New Year’s Day, Good Friday, Easter Monday, Christmas Day, Boxing Day; and
- (b) any other day which the Market Operator shall declare and publish is not a Business Day.

“**Call**” includes an instalment of a call.

“**Chinese Wall**” A Market Participant is taken to have a “Chinese Wall” in place when:

- (a) that Market Participant has in place arrangements whereby information known to persons included in one part of the business of the Market Participant is not available, directly or indirectly, to those involved in another part of the business of the Market Participant;
- (b) it is accepted that in each of the parts of the business of the Market Participant so divided, decisions will be taken without reference to any interest which any other such part or any person in any other such part of the business of the Market Participant may have in the matter; and
- (c) the person advising the Client is not in possession of that information.

“**Client**” means a person to whom financial services or financial products are provided by a Market Participant in connection with the Market.

“**Closing Phase**” has the meaning given by the Market Operating Rules

“**Controlling Interest**” means an interest where a person has the capacity to control an entity, or an entity has the capacity to control another entity, by being able to determine the outcome of decisions about its financial and operating policies.

“**Corporation**” has the meaning given in section 9 of the Corporations Act and includes any company with dual Listings and any international Issuers.

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**Corporations Regulations**” means the *Corporations Regulations 2001* (Cth).

“**Cross**” or “**Crossing**” means, in relation to a Transaction in Securities, the circumstance where a Market Participant acts:

- (a) on behalf of both buying and selling clients to that transaction; or
- (b) on behalf of a buying or selling client on one side of that transaction and As Principal on the other side.

“**Dealing Rules**” means Chapter 7 of the Corporations Act, as appropriate, and the Market Operating Rules governing the processes of dealing in and of reporting dealings in Securities.

“**Designated Trading Representative**” means a person who submits Trading Messages into the Trading Platform using a Trader Workstation of a Market Participant.

“**Director**” includes any person who occupies the position of a director, by whatever name called.

“**Enquire Phase**” has the meaning given by the Market Operating Rules.

“**Equity Securities**” means:

- (a) shares in a body corporate or an unincorporated body including preference shares but other than redeemable preference shares which are Loan Securities in accordance with paragraph (c) of the definition of Loan Securities;
- (b) interests in a Managed Investment Scheme except those referred to in paragraph (d) of the definition of Loan Securities;
- (c) renounceable and non-renounceable rights to subscribe for Securities other than Loan Securities;
- (d) options over issued or unissued Securities other than Loan Securities;
- (e) convertible notes;
- (f) any Securities which are identified by the Market Operator as equity Securities,

but does not include derivatives or Securities determined to be Loan Securities by the Market Operator.

“Family Company” means a Corporation:

- (a) controlled by the person or the Immediate Family of the person; or
- (b) in respect of which the person is beneficially entitled to more than 50% of the issued capital.

“Family Trust” means a trust in which:

- (a) the person or the Immediate Family of the person is the sole or majority beneficiary; or
- (b) the person has the ability to remove the trustee of the trust and replace that trustee with his or her own nominee.

“Financial Services Licensee” means a person who holds an Australian Financial Services Licence.

“Gateway” means a hardware and software component which provides the communications interface between the Trading Platform and the Market Participant’s network.

“Gateway Session” means when a Market Participant accesses the Market for trading through the Gateway.

“Group” means the issuer and its subsidiaries, if any.

“Holding Entity” means an entity which has one or more subsidiaries.

“Immediate Family” in relation to a person means that person’s spouse and non-adult children, if any.

“Issuer” means the legal entity which issues the Securities.

“Listing” means the grant of a listing for quotation of, and permission to deal in, Securities on the Market and listed shall be construed accordingly.

“Loan Securities” means:

- (a) debentures, stocks or bonds issued or proposed to be issued by a government;
- (b) debentures of a body corporate or an unincorporated body;
- (c) redeemable preference shares which have a fixed and certain date for redemption, other than shares having a participating entitlement to rights or options referred to in paragraphs (c) and (d) of the definition of equity Securities;
- (d) interests in a Managed Investment Scheme (as the case may be) relating to a financial or business undertaking or scheme, common enterprise or investment contract, the trustee or Representative or Responsible Entity of which only invests in or Acquires one or more of Loan Securities, mortgages and cash;
- (e) any Securities which are identified by the Market Operator as Loan Securities,

but does not include futures contracts, or Securities identified by the Market Operator to be Equity Securities.

“**Market**” means the market operated by the Market Operator under *Australian Market Licence (Stock Exchange of Newcastle Limited) 2002*.

“**Market Operator**” means National Stock Exchange of Australia Limited (ACN 000 902 063).

“**Market Operating Rules**” means the operating rules, other than the listing rules, of the Market.

“**Market Participant**” means a participant in the Market admitted under the Market Operating Rules.

“**Managed Investment Scheme**” has the meaning given by section 9 of the Corporations Act.

“**Net Assets**” means the consolidated net assets of the Group as shown in the latest set of audited accounts of the Group.

“**Normal Trading**” has the meaning given by the Market Operating Rules.

“**Notify**” means giving written notice of the relevant matters or the transmission of an electronic message containing those matters.

“**Offer**” means a price and quantity of Securities to be sold.

“**Offeror**” means:

- (a) in relation to a takeover offer or Takeover Announcement (other than a Scheme), an offeror within the meaning of the Corporations Act and, in respect of an Issuer incorporated or established outside Australia, the equivalent entity; and
- (b) in relation to a Scheme, the entity or entities, is in a similar position to an offeror.

“**Official Quotation**” means official quotation by the Market Operator.

“**Official Meeting**” means a meeting of participants held pursuant to the Market Operating Rules.

“**Order**” means an instruction to purchase or sell Securities, or an instruction to amend or cancel a prior instruction to purchase or sell Securities.

“**Other Regulated Entities**” means entities prescribed by regulations made for the purposes of paragraph 798H(1)(c) of the Corporations Act, that must comply with these Rules.

“**Paid**” in relation to shares and capital, includes credited as paid.

“**Prescribed Person**” means:

- (a) a partner in the Market Participant;
- (b) a Director in the Market Participant;
- (c) an employee, consultant and associated member of the Market Participant;

- (d) Immediate Families of any such partners, Directors, employees, consultants and associated members;
- (e) Family Companies and Family Trusts of any of the abovementioned persons;
- (f) Substantial Shareholders in one or more of the member Corporations which constitute the Market Participant, unless the Substantial Shareholders places the Order:
 - (i) on behalf of its or its related companies' Clients; or
 - (ii) using funds managed by the Substantial Shareholder or its related companies.
 - (iii) For the purposes of this paragraph a reference to a Substantial Shareholder includes a reference to:
 - (A) a related Corporation, where the Substantial Shareholder is a Corporation; and
 - (B) the Immediate Family, Family Company and Family Trust, where the Substantial Shareholder is a natural person;
 - (C) a life insurance company registered under the *Life Insurance Act 1995* (Cth), or the equivalent Act of a State, is deemed to place its Order on behalf of its Clients or managed funds when that Order is on behalf of its statutory fund(s);
- (g) where a Market Participant or Prescribed Person is a Corporation, any Corporation controlled by that Corporation.

“Prohibited Conduct” includes:

- (a) conduct which amounts to impropriety affecting character and which is indicative of a failure either to understand or to practice the precepts of honesty or fair dealing in relation to a Client or the public;
- (b) unsatisfactory professional conduct, where the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence;
- (c) conduct which is or could reasonably be considered as likely to be prejudicial to the interests of the Market Operator or its Market Participants;

and includes, but need not involve a breach of any of the constitution or the Rules or a contravention of any law.

“Recognised Affiliate” has the meaning given by the Corporations Act and is a person who is a natural person whom is recognised as and remains recognised as a recognised affiliate by the Market Operator.

“Recognised Stock Exchange” has the meaning given by the Market Operating Rules.

“Related Party” means:

- (a) in relation to an individual:
 - (i) his or her spouse, defacto spouse, parent, son, or daughter or a spouse or defacto spouse of that person;
 - (ii) an entity over which one or more of the persons referred to above in paragraph (i) has control;

- (iii) an entity that he or she controls, or its parent entity or sibling entity;
 - (iv) a person who acts, or proposes to act, in concert with any one referred to above;
 - (v) a person who was a related party in the previous 6 months, or who would be a related party in the future, under the tests in section 243F of the Corporations Act (applying with any necessary adaptation);
- (b) in relation to a Corporation, those persons within the meaning of section 228 of the Corporations Act or a Substantial Shareholder of the body corporate;
- (c) in relation to a trust, the management company, trustee and their related parties within the meaning of section 228 of the Corporations Act.

“**Representative**” has the meaning given by section 910A of the Corporations Act.

“**Responsible Entity**” means a company that is a responsible entity within the meaning of section 9 of the Corporations Act.

“**Responsible Officer**” means a person who is nominated to the Market Operator as having executive responsibility for the supervision and control of all or part of the business of being a Market Participant and who has not ceased to be a Responsible Officer under the Operating Rules.

“**Rules**” means these market integrity rules.

“**Scheme**” means a compromise or arrangement within the meaning of section 411 of the Corporations Act (and, in respect of an Issuer incorporated or established outside Australia, any similar form of compromise or arrangement under the law of the jurisdiction of incorporation or establishment) which has, a similar result to a takeover offer or takeover Announcement.

“**Securities**” includes Equity Securities, Loan Securities, interests in a Managed Investment Scheme or units of such shares and public securities.

“**Subsidiary**” has the same meaning as in section 9 of the Corporations Act.

“**Substantial Shareholder**” means, a person who has a substantial holding as described in section 671B of the Corporations Act.

“**Takeover Announcement**” means an announcement in accordance with section 631 of the Corporations Act.

“**Takeover Bid**” has the meaning given by section 9 of the Corporations Act

“**Target**” has the meaning given by section 9 of the Corporations Act.

“**Trader Workstation**” means a personal computer which provides the functionality necessary to access the Gateway Session.

“**Trading Day**” means:

- (a) a day other than:
 - (i) a Saturday, Sunday, New Year’s Day, Good Friday, Easter Monday, Christmas Day, Boxing Day; and
 - (ii) any other day the Market Operator declares and publishes is not a trading day; and

- (b) notwithstanding (a), a day which for the purposes of settlement, the Market Operator declares is a trading day notwithstanding there is no Official Meeting on that day or that dealings between Market Participants are suspended on that day.

“**Trading Hours**” has the meaning given by the Market Operating Rules.

“**Trading Messages**” means those messages submitted into the Trading Platform by means of a Gateway of a Market Participant relating to trading functions, such as Bids or Offers, amendment or cancellation of prior Bids or Offers and the reporting or cancellation of trades on the Trading Platform.

“**Trading Platform**” means a facility made available by the Market Operator to Market Participants for the entry of Trading Messages, the matching of Orders, the advertisement of invitations to trade and the reporting of transactions.

“**Transaction**” means either a sale or purchase of Securities pursuant to these Rules or an obligation to transfer Securities pursuant to a Securities lending agreement.

“**Wholesale Client**” has the meaning given by section 761G of the Corporations Act.

Chapter 2: The Market Participant

Part 2.1 Market Participant restrictions

2.1.1 Director for more than one Market Participant

Where a Director of a Market Participant is a Director of another Market Participant, each Market Participant must ensure that:

- (a) the Director nominates one of the Market Participants as the primary Market Participant;
- (b) the primary Market Participant notifies ASIC of the nomination; and
- (c) the Director is not given access to the records of Orders received for the purchase or sale of Securities by Market Participants other than the primary Market Participant, without the prior written approval of the ASIC.

Maximum penalty: \$100,000

2.1.2 Market Participant requirements

A Market Participant which is a Corporation must:

- (a) nominate and continue to have at all times at least two Responsible Officers;
- (b) take reasonable steps to ensure that:
 - (i) each Director;
 - (ii) each Responsible Officer;
 - (iii) each employee;
 - (iv) each person who is or would be a Substantial Shareholder of the Corporations Act, of the Market Participant or its holding company (as if that Part applied); and
 - (v) each person who is entitled to not less than 10% of the non-voting shares of the Market Participant or the holding company, is of good character and high business integrity; and
- (c) hold an Australian Financial Services Licence.

Maximum penalty: \$1,000,000

Chapter 3: Market Participant business

Part 3.1 Responsible Officers

3.1.1 Responsible Officer requirements

A Market Participant must ensure that each of its Responsible Officers:

- (a) is resident in Australia;
- (b) is of good character;
- (c) is capable of carrying out the obligations of a Responsible Officer efficiently, honestly and fairly;
- (d) is a Representative of a Market Participant and has executive responsibility for the supervision and control of all or part of the business of the Market Participant in connection with the Market;
- (e) has training, qualifications and experience that are appropriate to the role of a Responsible Officer.
- (f) undertakes ongoing training, approved by ASIC in writing for the purposes of this Rule, that is relevant to the role of a Responsible Officer.

Maximum penalty: \$20,000

Part 3.2 Processes

3.2.1 Management structures

A Market Participant must have adequate management structures in place to ensure that each Responsible Officer has effective supervision and control over the business or the parts of the business that the Responsible Officer is responsible for.

Maximum penalty: \$1,000,000

Part 3.3 Good character

3.3.1 Good character determination

For the purposes of determining good character in these Rules:

- (a) if a person is prohibited under the Corporations Act from being a Director or promoter of, or being in any way concerned in or taking part in the management of a Corporation, that should be taken into account; and
- (b) any conviction of the person for any offence at any time (other than a traffic offence) and any adverse mention of the person at any time in a report made by or at the request of any government or governmental authority or agency should be taken into account.

Note: There is no penalty for this Rule.

Chapter 4: Regulation of Market Participant activities

Part 4.1 Australian Financial Services Licence

4.1.1 Australian Financial Services Licence requirement

A Market Participant must hold an Australian Financial Services Licence which entitles the holder to engage in the business of being a Market Participant.

Maximum penalty: \$1,000,000

Part 4.2 Common ownership of Market Participants

4.2.1 Market Participant association

(1) For the purposes of these Rules, a Market Participant is associated with another Market Participant if:

- (a) an officer, employee or consultant of the Market Participant is a Director, employee, officer or consultant of the other Market Participant, and that person's duties include trading or dealing in Securities;
- (b) the immediate holding company of the Market Participant is also a holding company of the other Market Participant, and the immediate holding company holds an Australian Financial Services Licence under the Corporations Act with the authorisations that entitle the immediate holding company to engage in the business of stockbroking as a Market Participant or as a participant of any other licensed market within the meaning of the Corporations Act;
- (c) one Market Participant is a related body corporate of the other Market Participant, or a person is entitled to shares in two or more Market Participants (unless one of the Market Participants is a listed Corporation and the shares constitute less than 10% of the shares of that Corporation) if:
 - (i) the Market Participant does not carry on business in different premises to the other Market Participant; or
 - (ii) the Market Participant has not obtained approval from the Market Operator for its business name; or
- (d) the Market Participant shares computer facilities with or allows its computer facilities to be linked with, that other Market Participant, unless the proposed sharing or linkage is approved by the Market Operator.

(2) For the purposes of paragraph (1)(b), "immediate holding company" means a company of which the Market Participant is a subsidiary by virtue of paragraph 46(a) of the Corporations Act.

Note: There is no penalty for this Rule.

4.2.2 Market Participant association notification

Each Market Participant must notify ASIC immediately if the Market Participant becomes associated with, as defined in Rule 4.2.1, another Market Participant.

Maximum penalty: \$100,000

Part 4.3 Insurance

4.3.1 Requirement to have insurance

A Market Participant must take out and maintain in full force and effect an insurance policy or policies covering and indemnifying the Market Participant against liability for negligence, errors, omissions, misstatements, statutory warranties and indemnities, and loss, destruction or deprivation of Securities or other documents of title.

Maximum penalty: \$100,000

4.3.2 Certificate of insurance

A Market Participant must provide ASIC with a copy of a certificate evidencing the insurance policy referred to in Rule 4.3.1, as soon as practicable after renewal.

Maximum penalty: \$100,000

4.3.3 Claims

In relation to the insurance policy under Rule 4.3.1 a Market Participant must notify the ASIC in writing of:

- (a) the existence of any claim; or
- (b) the receipt of a notice from any person of any intention to make a claim; and
- (c) any circumstance which is likely to give rise to a claim.

Maximum penalty: \$100,000

Part 4.4 Market Participant responsibility

4.4.1 Ensuring compliance

A Market Participant is responsible for the conduct of its Representatives under these Rules.

Note: There is no penalty for this Rule.

Part 4.5 Disclosure required when acting As Principal

4.5.1 Record of Substantial Shareholders and Prescribed Persons

A Market Participant must keep a written record of all Substantial Shareholders and Prescribed Persons so as to be fully aware when the Market Participant is acting As Principal.

Maximum penalty: \$100,000

4.5.2 Prohibition on brokerage charges

Except as otherwise authorised under the Corporations Act and subject to Rules 4.5.3 and 4.5.4 a Market Participant which enters into a Transaction of sale or purchase of Securities As Principal with a person who is not:

- (a) a Financial Services Licensee; or
- (b) an Authorised Representative of a Market Participant;

must not charge that person brokerage, commission or any other fee for the Transaction.

Maximum penalty: \$100,000

4.5.3 Transaction on behalf of a person associated with the Market Participant

If the Market Participant acts As Principal only because it is dealing or entering into a Transaction on behalf of a person associated with it, it may charge brokerage, commission or other fees to that person in respect of that Transaction.

Note: There is no penalty for this Rule.

4.5.4 Wholesale Client brokerage commission

A Market Participant may charge a Wholesale Client brokerage, commission or any other fee in respect of a Transaction which the Market Participant enters into As Principal, provided that the Wholesale Client has consented to the Market Participant charging brokerage commission or any other fee in respect of that Transaction.

Note: There is no penalty for this Rule.

Part 4.6 Allocation

4.6.1 Allocation policy

If a Client so requests, a Market Participant must advise the Client of the Market Participant's policy for allocating Securities to buys and sells to fulfil Orders placed with it.

Maximum penalty: \$20,000

Part 4.7 Prohibition of advice to Client

4.7.1 Client definition

For the purposes of this Part 4.7, “Client” includes a shareholder in a Market Participant.

Note: There is no penalty for this Rule.

4.7.2 Prohibition on advice to Client where in possession of certain information

If as a result of its relationship with a Client, a Market Participant is in possession of information in relation to a Security that is not generally available and which would be likely to materially affect the price of that Security if the information was generally available, the Market Participant must not give any advice to any other Client of a nature that would damage the interests of either Client.

Maximum penalty: \$1,000,000

4.7.3 Chinese Walls exception

A Market Participant is not regarded as having possession of information described in Rule 4.7.2 above if:

- (a) the Market Participant has Chinese Walls in place; and
- (b) the person advising the Client is not in possession of that information.

Note: There is no penalty for this Rule.

4.7.4 Advice exceptions

Advising a Client that the Market Participant is precluded from giving the Client advice is not, for the purposes of this Part, to be regarded as giving advice.

Note: There is no penalty for this Rule.

Part 4.8 Expenses

4.8.1 Out-of-pocket expenses

A Market Participant which charges a Client for out-of-pocket expenses incurred in the purchase or sale of Securities must expressly bill those charges.

Maximum penalty: \$100,000

Part 4.9 Beneficial ownership

4.9.1 Nominee shareholdings

A Market Participant must not register Securities which are beneficially owned by an unrelated third party, in its own name or in the name of its partners, Directors or employees unless those Securities are registered in the name of a nominee company that:

- (a) is incorporated in the Commonwealth of Australia under the Corporations Act with a name which contains the word “nominee” or “nominees”;
- (b) has a constitution that prohibits the nominee company from beneficially owning any Securities or other property except cash; and
- (c) is controlled and operated by the Market Participant.

Maximum penalty: \$100,000

Part 4.10 Disclosure of shortfall

4.10.1 A Market Participant with an Underwriting shortfall

A Market Participant or a Director or employee of a Market Participant who will be required to acquire Securities as an underwriter or sub-underwriter must not Offer such Securities to Clients unless:

- (a) they first inform the Clients of the closing date of the issue or offering of the Securities and the reasons for the acquisition; or
- (b) the offer to the Client is made more than 90 days from the closing date.

Maximum penalty: \$100,000

Chapter 5: Discretionary accounts and managed funds

Part 5.1 Authorisation

5.1.1 Authorisation required

A Market Participant must not manage or operate a discretionary account or managed fund for or on behalf of any Client unless the Client has given a written, signed authorisation setting out the terms and conditions of operation of the discretionary account or managed fund and including the rates of brokerage which may be incurred.

Maximum penalty: \$100,000

5.1.2 Dealing in Securities of the Market Participant

A Market Participant which manages or operates a discretionary account or managed fund on behalf of any Client, must not Bid or Offer on behalf of such Client for or in respect of any Securities of any Market Participant which is part of the Market Participant.

Maximum penalty: \$100,000

Part 5.2 Excessive Transactions

5.2.1 Excessive transactions on discretionary accounts

A Market Participant must not effect an excessive number of Transactions on behalf of Clients for whom the Market Participant manages or operates a discretionary account or managed fund.

Maximum penalty: \$1,000,000

Part 5.3 Discretionary account reports

5.3.1 Client discretionary account report

(1) If a Client so requests, a Market Participant must prepare and forward a report on the Client's discretionary account or managed fund made up to the end of each quarter in each year to the Client, on whose behalf it operates the discretionary account or managed fund setting out:

- (a) with respect to the Transactions in Securities executed on behalf of the Client during the quarter:
 - (i) the actual value;

- (ii) the value as a percentage of the market value of the total portfolio held; and
 - (iii) a calculation showing the above; and
- (b) separately, the brokerage or commission and the management or other fee charged by the Market Participant to the Client, if any, for operating or managing the discretionary account or managed fund during the quarter.

(2) A Market Participant must forward a report prepared in accordance with subrule (1) to the Client not later than 14 days after the date to which it is made up.

Maximum penalty: \$100,000

Part 5.4 Discretionary account register

5.4.1 Discretionary account register requirement

A Market Participant which operates a discretionary account or managed fund for a Client must keep a written register including the following information:

- (a) the date on which the account was opened;
- (b) the name and address of the Client;
- (c) the date the Client gave the written authorisation referred to in Rule 5.1.1;
- (d) the Client's account number or numbers; and
- (e) any qualifications, limitations or other Client directions as to the disposition of the discretionary account or managed fund.

Maximum penalty: \$100,000

Part 5.5 Confirmations

5.5.1 Confirmation requirement

Subject to Rule 5.5.3, a Market Participant must, immediately after a sale or purchase is executed for a Client, send a confirmation to that Client in a form prescribed by the Corporations Act, which can be printed or electronic.

Maximum penalty: \$100,000

5.5.2 Confirmation elements

Subject to Rule 5.5.3, a confirmation under Rule 5.5.1 must include the following information:

- (a) for a sale, the time (if applicable) and date on which:
 - (i) the Client must provide all documents and security holder information; and
 - (ii) the net consideration to the Client falls due;

- (b) for a purchase, the time (if applicable) and date by which the Client must provide the consideration;
- (c) if a Transaction in Securities is effected by a Market Participant through the use of a correspondent firm who is a Market Participant of a Recognised Stock Exchange the confirmation must include a statement that “This Transaction was effected by a correspondent firm of [Name of Market Participant] on the [Name of Recognised Stock Exchange]”;
- (d) where Securities are sold to Clients pursuant to Rule 4.10.1 the confirmation must be endorsed with a statement to that effect;
- (e) where a Transaction in Securities results from a Crossing, the confirmations issued to Clients must contain a statement to indicate that part or all of a transaction in securities was effected as a Crossing;
- (f) where Rule 6.3.5 applies, the Confirmation must contain a statement indicating the Market Participant was unable to give advice to the seller because the provisions of Rule 6.3.5 apply and the Market Participant is acting for the Offeror or the person on whose behalf the announcement to the Market was made.

Maximum penalty: \$100,000

5.5.3 Single confirmations

A Market Participant must not provide a single confirmation for a series of purchases or sales that make up one Order for a single class of Securities by a Wholesale Client unless:

- (a) the Client has given authorisation for a single confirmation to be provided in respect of the series of sale or purchases;
- (b) the Client’s settlement obligations have been agreed;
- (c) the confirmation is sent upon completion of the Order; and
- (d) the confirmation specifies:
 - (i) all purchases and sales of Securities;
 - (ii) the average price Paid for Securities; and
 - (iii) is dated the date that the confirmation was prepared.

Maximum penalty: \$100,000

5.5.4 Where a single sale or purchase

A Market Participant that executes a sale or purchase for a Client pursuant to an Order placed through a financial Adviser or agent must ensure that the Client receives the confirmation provided by the Market Participant under Rule 5.5.1 or 5.5.3.

Maximum penalty: \$100,000

Chapter 6: Trading principles

Part 6.1 Preference of Orders

6.1.1 Precedence for uncompleted Orders

A Market Participant must give precedence to the uncompleted Orders of Clients to buy or sell Securities over an Order of the Market Participant acting As Principal or on the account of a Prescribed Person.

Maximum penalty: \$1,000,000

6.1.2 Price differences

For the purposes of Rule 6.1.1, an Order which cannot be executed because of price differences is not an uncompleted Order.

Note: There is no penalty for this Rule.

6.1.3 Requirement for consent of a principal or Director

Unless the prior written consent of a principal or a Director (or the Director's appointee) of a Market Participant has been obtained, no business is to be transacted by a Market Participant on account of:

- (a) a consultant of the Market Participant;
- (b) an Associate;
- (c) an employee of the Market Participant; or
- (d) any account in which the abovementioned persons have a direct or indirect interest.

Maximum penalty: \$1,000,000

6.1.4 Definition of employee

For the purposes of Part 6.1, an employee includes:

- (a) any company which that employee controls; and
- (b) members of the employees Immediate Family; and
- (c) any trustee when acting as Trustee of any trust in which an employee has any material interest whether direct or indirect as a beneficiary.

Note: There is no penalty for this Rule.

Part 6.2 Corners

6.2.1 Identification of a corner

When in the opinion of ASIC a person or company or two or more persons and/or companies acting in concert have acquired such control of a Security that the Security cannot be obtained for delivery on existing contracts except at prices or on terms arbitrarily dictated by such persons and/or companies which are unfair, harsh, or unconscionable, ASIC may, for the purpose of enabling equitable settlement to be effected on these contracts:

- (a) postpone, and further postpone, the times for deliveries on contracts for any such Security;
- (b) declare that if such Security is not delivered on any contract requiring delivery on or before the time to which delivery has been postponed such contract shall be settled by payment to the party entitled to receive such Security or by the credit to such party of a fair settlement price determined under Rule 6.2.2.

Note: There is no penalty for this Rule.

6.2.2 Arbitration

If the parties to a contract referred to in Rule 6.2.1 do not agree on a fair settlement price and set a date for payment, they must submit the differences or matter in dispute to arbitration.

Maximum penalty: \$100,000

Part 6.3 Takeovers

6.3.1 Takeover Announcement

(1) A Market Participant must include the following information in an Takeover Announcement to the Market in addition to the information required to be given pursuant to Chapter 6 of the Corporations Act:

- (a) the number and class of shares in the Target the subject of the offer;
- (b) the number of Securities in the Target the subject of the offer that the person on whose behalf the Takeover Announcement is made is entitled to immediately prior to the Takeover Announcement;
- (c) a statement as to whether or not the Offeror will acquire shares in the Target the subject of the offer, at Official Meetings, during the day, and the fourteen (14) days after, the Takeover Announcement is made, at the price specified in the Takeover Announcement or at a higher price as provided by Chapter 6 of the Corporations Act;
- (d) if the Offeror will not acquire all the shares so offered during the period referred to in paragraph (c), a statement of the maximum number of such shares the Offeror will acquire during that period; and
- (e) the last date and time the Market Participant will accept shares in the Target the subject of the offer.

(2) A Market Participant must include, in an announcement of an extension of the period of the offer as permitted by law, identical information as is required by paragraph (1)(e).

Maximum penalty: \$100,000

6.3.2 Advice on the acceptance of shares

A Market Participant making an announcement under Rule 6.3.1 must include in the announcement to the Market or in a written advice to the Market Operator within fourteen (14) days of making the announcement, advice that the Market Participant will accept shares in the Target the subject of the offer for the period of the offer and any extension thereof at the price specified in the Announcement or at the highest price as provided by Chapter 6 of the Corporations Act.

Maximum penalty: \$100,000

6.3.3 Acquisition of shares

When a Market Participant is acting on behalf of an Offeror and the Offeror has:

- (a) served on the Target an offer document relating to offers under a Takeover Bid in respect of a class of shares in the Target; or
- (b) caused an announcement to be made to the Market in respect of a class of shares in a Target,

the Market Participant must not on behalf of the Offeror offer to buy or buy shares of that class in the Target during the takeover period at a price per share which is different from the amount of any consideration;

- (c) which is payable (or deemed under section 651A of the Corporations Act to be payable) under the offers or proposed offers to which the offer document relates; or
- (d) which has been specified (or deemed under section 649B of the Corporations Act to have been specified) in the Takeover Bid, as the case may be,

until an announcement of the varied price has been made to the Market.

Maximum penalty: \$100,000

6.3.4 Competing offers

Where shares of a Target are the subject of an offer pursuant to Chapter 6 of the Corporations Act, a Market Participant that makes an announcement of a second (or subsequent) and competing offer for shares of that Target (whether effectively given pursuant to Chapter 6 of the Corporations Act or not) must not acquire on behalf of the Offeror any shares in that company until the Market is informed of the contents of the second or subsequent offer.

Maximum penalty: \$100,000

6.3.5 Market Participant dealing with seller

Where a Market Participant:

- (a) has an order from the bidder acting by virtue of Section 620 of the Corporations Act; or
- (b) has made an announcement at an Official Meeting to acquire shares in a Target company or
- (c) acts for a company involved in an on-market buy-back by virtue of Division 2 of Part 2J.1 of the Corporations Act,

the Market Participant must not accept, or transact, an order to sell the shares subject of the offer referred to in paragraph (a) or subject to the announcement referred to in paragraph (b) or subject to the on-market buy-back referred to in paragraph (c) unless the Market Participant:

- (d) advises the seller that it is acting for the Offeror or the person or two or more persons on whose behalf the announcement was made or that it is acting for the company involved in the on-market buy-back and is thus unable to give the seller advice in respect of the proposed sale; and
- (e) does not give the seller any advice in respect of the proposed sale.

Maximum penalty: \$100,000

Part 6.4 Trading Obligations of Market Participants

6.4.1 Trading Message submitted by means of a Gateway Session

If a Trading Message is submitted into the Trading Platform by means of a Gateway Session of the Market Participant, the Trading Message is taken for all purposes under these Rules to have been submitted into the Trading Platform by and with the knowledge of the Market Participant.

Note: There is no penalty for this Rule.

6.4.2 Organisational and technical resources

A Market Participant must have and maintain the necessary organisational and technical resources to ensure that:

- (a) Trading Messages submitted into a Trading Platform by the Market Participant do not interfere with:
 - (i) the efficiency and integrity of the markets provided by the Market Operator; or
 - (ii) the proper functioning of a Trading Platform; and
- (b) the Market Participant at all times complies with these Rules.

Maximum penalty: \$1,000,000

6.4.3 Market Participants must be able to determine the origin of all Orders and Trading Messages

A Market Participant must have arrangements in place so that the Market Participant can at all times determine the origin of all Orders and Trading Messages, including:

- (a) the different stages of processing each Order (regardless of whether a Trading Message is generated) and the time at which each stage occurred;
- (b) the Order that corresponds to a Trading Message;
- (c) the identity and capacity of the person placing the Order that corresponds to the Trading Message;
- (d) the Trader Workstation through which the trading message was submitted into the Trading Platform;
- (e) the Designated Trading Representative with responsibility for that Trader Workstation; and
- (f) whether the Trading Message was submitted As Principal or for a Client.

Maximum penalty: \$1,000,000

6.4.4 Appropriate security procedures

A Market Participant must maintain and enforce at all times appropriate security procedures which are designed to prevent unauthorised persons from having access to a Gateway Session or a Trader Workstation of the Market Participant.

Maximum penalty: \$1,000,000

Part 6.5 Orderly market

6.5.1 Market Participant requirements for an orderly market

A Market Participant must ensure the conduct of an orderly market by, amongst other things:

- (a) ensuring that a Designated Trading Representative of the Market Participant is available to receive communications from other Market Participants or the Market Operator during Normal Trading and the Closing Phase; and
- (b) not intentionally taking advantage of a situation arising as a result of:
 - (i) a breakdown or malfunction in the Market Operator's procedures or systems; or
 - (ii) an error in entries made by the Market Operator within the Trading Platform.

Maximum penalty: \$1,000,000

Part 6.6 Prevention of manipulative trading

6.6.1 Creating a false or misleading appearance

A Market Participant must not make a Bid or Offer for, or deal in, Securities:

- (a) As Principal:
 - (i) with the intention; or
 - (ii) if that Bid, Offer or dealing has the effect, or is likely to have the effect, of creating a false or misleading appearance of active trading in any Securities or with respect to the Market for, or the price of, any Securities; or
- (b) on account of any other person where:
 - (i) the Market Participant intends to create;
 - (ii) the Market Participant is aware that the person intends to create; or
 - (iii) taking into account the circumstances of the Order, a Market Participant ought reasonably suspect that the person has placed the Order with the intention of creating, a false or misleading appearance of active trading in any Securities or with respect to the Market for, or the price of, any Securities.

Maximum penalty: \$1,000,000

6.6.2 Circumstances of the Order

For the purposes of Rule 6.6.1, in considering the circumstances of the Order, the Market Participant must have regard to the following matters:

- (a) whether the Order or execution of the Order would be inconsistent with the history of or recent trading in that Security;
- (b) whether the Order or execution of the Order would materially alter the market for, or the price of, the Securities;
- (c) the time the Order is entered or any instructions concerning the time of entry of the Order;
- (d) whether the person on whose behalf the Order is placed, or another person who the Market Participant knows to be a Related Party of that person, may have an interest in creating a false or misleading appearance of active trading in any Securities or with respect to the Market for, or the price of, any Securities;
- (e) whether the Order is accompanied by settlement, delivery or security arrangements which are unusual;
- (f) where the Order appears to be part of a series of Orders, when put together with the other Orders which appear to make up the series, the Order or the series is unusual having regard to the matters referred to in this Rule 6.6.2; and

- (g) whether there appears to be a legitimate commercial reason for that person placing the Order, unrelated to an intention to create a false or misleading appearance of active trading in or with respect to the Market for, or price of, any Securities.

Maximum penalty: \$1,000,000

6.6.3 Change of beneficial ownership

A Market Participant must not:

- (a) enter into a transaction on behalf of a Client or As Principal; or
- (b) make a Bid or Offer for Securities the execution of which would involve no change of beneficial ownership;

unless the Market Participant can show that:

- (c) the Market Participant had no reason to suspect that the transaction would involve no change in the beneficial ownership of the Securities; or
- (d) the purpose or purposes for which the transaction, or bid or offer was made was not, or did not include, creating a false or misleading appearance of active trading in any Securities or with respect to the market for, or the price of, any Securities.

Maximum penalty: \$1,000,000

Part 6.7 Records and identification of Order source

6.7.1 Record keeping

A Market Participant must maintain for a period of seven years, records of:

- (a) the matters referred to in Rule 6.4.3 above; and
- (b) the name and contact details of persons in relation to whom unique identifiers are allocated under the Market Operating Rules.

Maximum penalty: \$100,000

6.7.2 Transaction origin identifier

A Market Participant must fill the transaction origin identifier field for every Trading Message submitted into the Trading Platform with details of the unique identifier allocated pursuant to the Market Operating Rules, as the case may require, to enable the identification of the originator of a Trading Message submitted into Trader Workstation by means of a Gateway Session of the Market Participant.

Maximum penalty: \$100,000

Part 6.8 Designated Trading Representatives

6.8.1 Australian Financial Services Licence requirement

A Market Participant must ensure that each of its Designated Trading Representatives:

- (a) either
 - (i) holds an Australian Financial Services Licence which allows the person to deal in Securities; or
 - (ii) is a Representative or Representative of the Market Participant authorised to deal in Securities under the Australian Financial Services Licence of the Market Participant; and
- (b) has demonstrated knowledge of the dealing rules and relevant practices and procedures of the Market Operator.

Maximum penalty: \$1,000,000

6.8.2 Personal account trading prohibition

A Market Participant must ensure its Designated Trading Representatives do not execute any order on the Trading Platform for or on account of:

- (a) the Designated Trading Representative; or
 - (b) the Immediate Family/or Family Entity of the Designated Trading Representative,
- without the prior written approval of the Market Participant.

Maximum penalty: \$1,000,000

Part 6.9 Securities of listed entities for which Official Quotation sought

6.9.1 Dealing restriction

Except as permitted by Rule 6.9.2, a Market Participant is prohibited, either in its own office or elsewhere, from making quotations or dealing in a new issue or placement of Securities (except Loan Securities):

- (a) made for the purpose of qualifying a company for admission to the official list of the Market Operator; or
- (b) for which Official Quotation will be sought, until such Securities have been granted Official Quotation.

Maximum penalty: \$100,000

6.9.2 Exceptions

The exceptions to Rule 6.9.1 are:

- (a) a Market Participant may underwrite or sub-underwrite a new issue or placement of Securities;
- (b) a Market Participant may dispose of Securities if those Securities comprise an underwriting or sub-underwriting shortfall;
- (c) where the Securities have been issued on a pro rata basis to security holders;
- (d) where a listed company acquires assets and as part or full consideration, issues new Securities (except Loan Securities) to the vendor and the Market Participant:
 - (i) has made a prior firm arrangement with the vendor to place these Securities as soon as they are issued; and
 - (ii) ensures that the details of the issue to the vendor are advised to the Market by the listed company immediately the Securities are issued; and
- (e) where a Market Participant:
 - (i) makes a placement of new Securities (except Loan Securities) for which Official Quotation will be sought, and the Market Participant ensures that all investors accepting the Securities are informed in writing that Market Participants cannot deal in the Securities either As Principal or agent until Official Quotation is granted in respect of those Securities; or
 - (ii) accepts selling Orders in Securities (except Loan Securities) for which Official Quotation will be sought, and the Market Participant takes all reasonable steps to ensure that the Securities are not sold before the Securities have been granted Official Quotation.

Note: There is no penalty for this Rule.

Part 6.10 Dealings in Securities for which Official Quotation is not sought

6.10.1 Dealing restriction

A Market Participant must not deal in new Securities for which Official Quotation will not be sought until 24 hours after the entity has advised the Market Operator of the details of the issue.

Maximum penalty: \$100,000

Part 6.11 Dealings in Securities suspended from Official Quotation

6.11.1 Dealing restriction

A Market Participant must not deal in Securities which have been suspended from Official Quotation unless prior approval has been given by the Market Operator.

Maximum penalty: \$100,000

Chapter 7: Financial requirements and record keeping

Part 7.1 Trust account

7.1.1 Trust account requirement

A Market Participant must maintain at least one trust account, in accordance with the Corporations Act, with an Australian ADI.

Maximum penalty: \$1,000,000

7.1.2 Funds which must be deposited

All funds must be deposited and withdrawn from the trust account in accordance with the Corporations Act.

Maximum penalty: \$1,000,000

7.1.3 Overnight account requirement

All amounts which are required by Rule 7.1.2 to be paid to a Market Participant's trust account but which are received by the Market Participant after Australian ADI trading hours must be paid into the trust account on the first Australian ADI business day following the date of receipt.

Maximum penalty: \$1,000,000

Chapter 8: Miscellaneous rules

Part 8.1 Legal proceedings

8.1.1 Market Participant to give written particulars

Where a Responsible Officer or Market Participant sues or is sued by a Client in connection with any matter which arose in the course or out of their relationship of broker and Client, the Market Participant must give ASIC written particulars of the action.

Maximum penalty: \$100,000