

TRUST AND CLIENT SEGREGATED ACCOUNTS

<p>The purpose of this Guidance Note</p>	<ul style="list-style-type: none"> To assist participants to understand their obligations under the ASX Clear Operating Rules in relation to trust and client segregated accounts
<p>The main points it covers</p>	<ul style="list-style-type: none"> Corporations Act requirements for trust and client segregated accounts Naming conventions for trust and client segregated accounts Permitted payments into trust and client segregated accounts Permitted payments out of trust and client segregated accounts The use of buffers in trust and client segregated accounts Reconciliation requirements for trust and client segregated accounts The obligation to notify ASX of certain matters relating to reconciliations Trust and client segregated account supervisory procedures
<p>Related materials you should read</p>	<ul style="list-style-type: none"> ASX Clear Operating Rules 4.23.2 – 4.23.8 and 4.24

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

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1. Introduction

This Guidance Note is published to assist participants to understand their obligations under the ASX Clear Operating Rules in relation to trust and client segregated accounts.

2. Corporations Act requirements

Under Division 2 of Part 7.8 of the Corporations Act 2001 (Cth),¹ a financial services licensee must ensure that client money is paid, on the day it is received by the licensee or on the next business day, into an account:²

- with an Australian ADI or of a kind prescribed by the regulations;³
- that is designated as an account for the purposes of section 981B;
- into which only certain money is paid;⁴ and
- that satisfies any additional requirements imposed by the regulations and/or the licensee's licence conditions.⁵

For these purposes, "client money" means money paid to a financial services licensee:

- in connection with a financial service that has been provided, or that will or may be provided, to the client or a financial product held by a client; and
- the money is paid by the client, by a person acting on behalf of the client or to the licensee in the licensee's capacity as a person acting on behalf of the client,⁶

but (relevantly) does not include money to the extent that it is:

¹ Referred to in this Guidance Note as the "Corporations Act". References in this Guidance Note to sections are to sections of the Corporations Act, unless otherwise indicated. References in this Guidance Note to regulations are to the Corporations Regulations, unless otherwise indicated.

² The licensee may maintain a single account or two or more accounts for the purposes of section 981B (section 981B(2)).

³ Under regulation 7.8.01(2), accounts with approved foreign banks (as defined in regulation 1.1.02(1)) and cash management trusts are prescribed.

⁴ See '4. Permitted payments into trust and client segregated accounts' on page 4.

⁵ Section 981B(1).

⁶ Section 981A(1).

- paid by way of remuneration payable to the licensee or is money that the licensee is entitled to deduct remuneration from;⁷
- paid:
 - to reimburse the licensee for payments made to acquire, or acquire an increased interest in, a financial product; or
 - to discharge a liability incurred by the licensee in respect of the acquisition of a financial product or an increased interest in a financial product, or to indemnify the licensee in respect of such a liability;⁸
- paid to acquire, or acquire an increased interest in, a financial product from the licensee, whether by way of issue or sale by the licensee;⁹
- loan money to which Subdivision B of Division 2 of Part 7.8 of the Corporations Act applies;¹⁰
- paid to the licensee in order for it to be deposited to the credit of a deposit product held by the person or another person with the licensee;¹¹ or
- otherwise prescribed not to be client money under the regulations.¹²

These Corporation Act requirements are reinforced by the ASX Clear Operating Rules.

ASX Clear Operating Rule 4.23.2 requires a participant to comply with Division 2 of Part 7.8 of the Corporations Act in relation to client money received in connection with market transactions¹³ to which that Division applies.¹⁴

ASX Clear Operating Rule 4.23.3 requires a participant to establish one or more clients' trust accounts for money received by the participant in connection with dealings in cash market transactions, options market transactions or OTC options market transactions.

ASX Clear Operating Rule 4.23.4 requires a participant to establish either one or more clients' trust accounts or clients' segregated accounts for money received by the participant in connection with dealings in futures market transactions and options market transactions over an underlying product which is a futures market contract.

3. Naming conventions for trust and client segregated accounts

An account under section 981B must be designated and operated as a trust account and the funds in it (other than moneys paid to the financial services licensee in relation to its obligation to call margins from clients under the Market Integrity Rules or the rules of a licensed market or licensed clearing and settlement facility) must be held on trust for the persons entitled to them.¹⁵

A licensee who is required to call margins under the Market Integrity Rules or the operating rules of a licensed market or licensed clearing and settlement facility, however, is permitted to operate an account under section 981B

⁷ Section 981A(2)(a).

⁸ Section 981A(2)(b).

⁹ Section 981A(2)(c).

¹⁰ Section 981A(2)(d).

¹¹ Section 981A(3).

¹² Section 981A(4).

¹³ As defined in ASX Clear Operating Rule 2.10.1.

¹⁴ ASX Clear Operating Rule 19.11.1 provides that where a rule requires compliance with a Corporations Act provision, ASX may enforce that provision as if it were a rule and make a determination or take action against a participant for a contravention of such a provision as if it was a contravention of the rules.

¹⁵ Regulation 7.8.01(5).

as a client segregated account instead of a trust account, provided it does so in accordance with the provisions of the Market Integrity Rules or the operating rules of that licensed market or licensed clearing and settlement facility.¹⁶

To comply with the above requirements, the name of a trust account must contain the word 'trust'. It is not sufficient to name it, for example, a 'client account' or 'clearing account'. The name of a client segregated account should contain the words 'client segregated account' or, if the number of permitted characters for the account name will not accommodate that, an abbreviated version that clearly denotes that the account is a client segregated account for the purposes of section 981B (for example, 'client seg a/c').

4. Permitted payments into trust and client segregated accounts

The Corporations Act prescribes that only the following types of money may be paid into an account under section 981B:

- client money;¹⁷
- interest on the amount from time to time standing to the credit of the account;
- interest, or other similar payments, on an investment made in accordance with the regulations referred to in section 981C, or the proceeds of the realisation of such an investment; or
- other money permitted to be paid into the account by the regulations.¹⁸

The regulations (relevantly) permit the following amounts to be paid into a section 981B account:

- "make good" amounts under regulation 7.8.02(3)(a)(iv);¹⁹
- moneys required by the Market Integrity Rules or the operating rules of a licensed financial market to be paid into a section 981B account;²⁰
- moneys received for the issuance of financial products under section 1017E;²¹
- "mixed money" (that is, money that may include client money and non-client money);²² and
- "unidentified money" (that is, money which hasn't yet been identified as client money or non-client money).²³

Where mixed money or unidentified money is paid into a section 981B account, the licensee is required to identify any amount that is not client money and remove it from the account "as soon as practicable".²⁴ In the case of mixed money, the non-client component must be removed within a maximum period of one month after the mixed money is paid into the account.²⁵

Participants who identify non-client money pursuant to a trust account or client segregated account reconciliation should therefore be withdrawing that money from the account as soon as practicable, which in ASX's view would usually mean within one business day of the money having been identified as non-client money.

¹⁶ Regulation 7.8.01(8).

¹⁷ This may be money paid by, on behalf of, or for the benefit of, several different clients (section 981B(1)(b)(i)). For example, the receipt by a participant of the net amount payable from ASX under ASX Clear Operating Rule 12.17.2 in relation to derivatives CCP contracts should be paid into a trust account unless the participant can clearly identify that the net amount does not include any client monies.

¹⁸ Section 981B(1)(b).

¹⁹ Regulation 7.8.01(3).

²⁰ Regulation 7.8.01(4A).

²¹ Regulation 7.8.01(7).

²² Regulation 7.8.01(11)(a).

²³ Regulation 7.8.01(11)(b).

²⁴ Regulation 7.8.01(12) and (13).

²⁵ Regulation 7.8.01(12).

Under ASX Clear Operating Rule 4.25.1(b) if the participant has appointed a settlement participant as its agent to settle its cash CCP transactions through the approved settlement facility, all obligations under ASX Settlement Operating Rules 6.3B and 10.10A for the settlement participant to pay an amount to the clients' trust account maintained by the participant pursuant to ASX Clear Operating Rule 4.23 (or to ensure that such payment occurs), are to be treated also as obligations of the participant under the ASX Clear Operating Rules and the participant must do all things in its capacity as a participant to enable compliance by the settlement participant with its obligations under the ASX Settlement Operating Rules.

5. Permitted payments out of trust and client segregated accounts

The regulations (relevantly) specify the following types of payments that may be made out of an account under section 981B:

- a payment to, or in accordance with the written direction of, a person entitled to the money;²⁶
- a payment to defray brokerage and other proper charges;²⁷
- a payment to the financial services licensee of money to which the financial services licensee is entitled;²⁸
- a payment that is otherwise authorised by law;²⁹
- a payment to the financial services licensee of money to which the financial services licensee is entitled pursuant to the Market Integrity Rules or the operating rules of a licensed financial market;³⁰ and
- a payment made with the client's prior written agreement or written consent into certain permitted types of investments.³¹

If client money relates to a dealing in derivatives, the money concerned may also be used for the purpose of meeting obligations incurred by the licensee in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by the licensee (including dealings on behalf of people other than the client).³²

Under ASX Clear Operating Rule 4.24.1, a participant must not withdraw from a client's trust account maintained under rule 4.23 money received by the participant in connection with the purchase of financial products under a cash market transaction until the participant has taken all the steps specified³³ in order for the financial products to be registered or held in the name of the client (or such other person as instructed by the client).³⁴

The restriction in rule 4.24.1 does not apply to the extent that:

²⁶ Corporations Regulations 7.8.02(1)(a).

²⁷ Corporations Regulations 7.8.02(1)(b).

²⁸ Corporations Regulations 7.8.02(1)(c).

²⁹ Corporations Regulations 7.8.02(1)(e).

³⁰ Corporations Regulations 7.8.02(1)(f).

³¹ Corporations Regulations 7.8.02(3).

³² Section 981D.

³³ ASX Clear Operating Rules Procedure 4.24.1 specifies that the participant must take all steps (including transmitting to ASX Settlement a valid originating message that initiates a CHESSE to issuer sponsored demand transfer or conversion in accordance with ASX Settlement Operating Rule 9.7.1 or a demand transfer or conversion to a CHESSE holding in accordance with ASX Settlement Operating Rule 8.8.1 (as applicable)) in order for the relevant number of financial products acquired under the cash market transaction to be recorded in either the issuer sponsored subregister against an issuer sponsored holding or the CHESSE subregister against a CHESSE holding, in the name of the client (or if the client has instructed the financial products be registered in the name of another person, then in the name of that other person).

If the cash market transaction is settled through the transfer of CDIs or FDIs, the participant is required to take all steps in order for the relevant number of CDIs or FDIs acquired under the cash market transaction to be recorded in a holding on the principal register or the CDI register in the name of the client (or if the client has instructed the CDIs or FDIs be in the name of another person, then in the name of that other person).

³⁴ ASX Clear Operating Rule 4.24.1.

- the money was paid by way of remuneration payable to the participant in connection with the relevant cash market transaction or the participant is entitled to deduct from the money remuneration payable to the participant in connection with that cash market transaction;
- the money is paid out of the clients' trust account to defray brokerage and other proper charges in connection with the relevant cash market transaction;
- the money is paid out of the clients' trust account:
 - in accordance with the written direction of the client; or
 - to the participant where the participant is entitled to the money,
- the money is paid in connection with a transfer authorised by the client of financial products acquired under that cash market transaction which is a transfer other than a transfer to a holding contemplated in rule 4.24.1; or
- the money is paid out of the clients' trust account to the client.³⁵

Under ASX Clear Operating Rule 14.8.1 a participant must not, among other things, use cash that belongs to a client for the purposes of meeting the participant's margin obligations to ASX in connection with cash CCP transactions, whether those transactions were entered into on behalf of the client or otherwise.³⁶

In addition, where in accordance with ASX Settlement Operating Rule 6.3B.4 a participant transfers financial products from its settlement account to a CHES holding (other than its accumulation account) in connection with the purchase of financial products under a cash market transaction and includes a 'client trust deductible amount'³⁷ in the message, it must ensure that funds equal to that amount are held at the time of the transfer in a trust account that conforms to the Corporations Act and the ASX Clear Operating Rules, and that those funds will remain in trust until batch settlement has occurred.³⁸

6. The use of buffers in trust and client segregated accounts

The Corporations Act prescriptions on what money can be paid and retained in a section 981B account identified above have the effect of precluding a participant from including a 'buffer' in such an account – that is, a participant depositing its own funds into the account, or failing to withdraw funds from the account to which it is entitled, for example, to cover or make allowance for any potential shortfall or reconciliation error in the account.

Such buffers are unacceptable from a regulatory perspective since they can disguise major shortcomings in a participant's processes, as well as potential client losses. They may also compromise the protection of client money if the participant goes into administration or receivership, especially if the buffer is hiding reconciliation issues which are not in favour of the client or is concealing inherent or systemic problems with the handling of client money.

The retention of a buffer does not remove the need for a participant to self-report a shortfall in client money in a trust account or client segregated account that would arise or be apparent but for the buffer, since the buffer is not client money.

Participants' attention is drawn to ASIC Market Supervision Update Issue 25, September 2012, where ASIC reminded participants of their obligations relating to client money and the inappropriate use of buffers.

³⁵ ASX Clear Operating Rule 4.24.2.

³⁶ ASX Clear Operating Rule 14.8.1(b).

³⁷ As defined in ASX Settlement Operating Rule 6.3B.8.

³⁸ For example, where moneys are withdrawn from a client's cash management trust (CMT) account to pay for a purchase, they can only be included in the 'client trust deductible amount' if the money has been received by the participant from the CMT provider and deposited into a trust account that complies with the Corporations Act and the ASX Clear Operating Rules.

7. Trust account reconciliation requirements

ASX Clear Operating Rule 4.23.6 requires a participant to perform a reconciliation that is accurate in all respects of the balance held by it at the close of business (“COB”) on each business day for each client in a trust account maintained pursuant to rule 4.23.3 or 4.23.4 and the corresponding balance as recorded in the participant’s accounting records. The participant must be able to produce the reconciliation and all relevant supporting documentation to ASX upon request.

The reconciliation must be prepared by 7.00 pm on the business day after the business day to which the reconciliation relates and be in the form set out in ASX Clear Operating Rules Procedures Annexure 4.23.6.³⁹

ASX notes that participants typically conduct a daily funding calculation and run a daily trust/general account movement report to ensure the trust account is appropriately funded for anticipated payment obligations at COB on each business day. While the funding calculation and movement report are acknowledged to be an integral part of participants’ operational procedures, participants should not confuse this with the need to conduct a separate trust account reconciliation which meets the requirements of rule 4.23.6.

To meet the reconciliation requirement, a participant will need to identify:

- the actual balances held in the trust bank account(s) at COB (ie, after all processing is completed) on each business day;
- the actual balance(s) held in trust for each client according to the participant’s accounting records at COB on each business day; and
- the difference between the two balances, which should be listed and categorised accordingly, for example:
 - unpresented cheques;
 - items on bank statement not in trust; and
 - items in trust not on bank statement.

The items making up the difference should be listed individually, if small in number, or otherwise given as a total supported by a detailed report attached.

A participant should make appropriate arrangements with its bank to ensure that bank charges and dishonours are not debited to its trust account.⁴⁰

To meet the accuracy requirement in rule 4.23.6(c), ASX would generally expect a participant to:

- cross check that the balances and entries used in the trust account reconciliation correctly reflect the relevant balances and entries that appear in the applicable system reports and bank statements; and
- retain copies of reports and statements to support the figures appearing on the trust account reconciliation and thus support the accuracy of the reconciliations. Soft copies which can be retrieved when required would be sufficient.

ASX also expects a participant to retain sufficient supporting evidence of all balances used in the trust account reconciliation. This could include:

- COB balances: a report generated from the participant’s system providing a breakdown of the amount held by the participant on trust for each client (for example, an ‘Items in Trust Report’, ‘Detailed Trust Position Report’ or equivalent system report), with the balances on the report being cross-checked against the balances used in the trust account reconciliation;

³⁹ ASX Clear Operating Rules Procedure 4.23.6.

⁴⁰ These debits may represent an unauthorised withdrawal from trust and generally result in a deficiency in trust which should be notified to ASX, as set out in ‘10 Error! Reference source not found.’ on page 9.

- COB bank balances: bank statements, bank produced transaction reports or equivalent reports for the date being reconciled, showing the opening balance, all transactions conducted and the closing balance, and with the closing balance on the statements being cross-checked against the balance used in the trust account reconciliation;
- unrepresented cheques drawn on the trust account: a report that breaks-down each amount and to which client it relates; and
- appropriate records to track all unknown items or unreconciled balances, including:
 - the date they first appeared on the trust account reconciliation, so as to facilitate tracking of aged items or balances;
 - the names of those who are investigating the matter; and
 - confirmation of escalation to management, if applicable.

While the ASX Clear Operating Rules apply only in relation to client money received in respect of market transactions, to mitigate the risk of money being moved inappropriately, it is recommended that a participant conduct all client money reconciliations for all of its businesses at the same time.⁴¹

8. Client segregated account reconciliation requirements

ASX Clear Operating Rule 4.23.5 requires a participant to perform a reconciliation that is accurate in all respects of the aggregate balance held by it at the time specified in the Procedures on each business day in clients' segregated accounts maintained pursuant to rule 4.23.4 and the corresponding balance as recorded in the participant's accounting records. The participant must be able to produce the reconciliation and all relevant supporting documentation to ASX upon request.

The reconciliation must be prepared by 7.00 pm on the business day after the business day to which the reconciliation relates and be in the form set out in ASX Clear Operating Rules Procedure Annexure 4.23.5.⁴² Under that form, where the movement in "Total Futures Client Monies" from the prior business day is greater than 20%, an explanation is required to be set out in the form, along with the reconciliation.

Again, to meet the accuracy requirement in ASX Clear Operating Rule 4.23.5, ASX would generally expect a participant to:

- cross check that the balances and entries used in the client segregated account reconciliation correctly reflect the relevant balances and entries that appear in the applicable system reports and bank statements; and
- retain copies of reports and statements to support the figures appearing on the client segregated account reconciliation and thus support the accuracy of the reconciliations. Soft copies which can be retrieved when required would be sufficient.

9. The requirement for reconciliations to be signed off

The prescribed forms set out in ASX Clear Operating Rules Procedures for trust and client segregated account reconciliations⁴³ require the name and signature of the employee conducting the reconciliation and the time and date at which it was completed to be inserted in the form.

⁴¹ For that reason (and given the inter-relationship of movements of client securities and funds and the need to hold these in trust), a participant which is required by ASX Settlement Operating Rule 6.3A.3 to complete a reconciliation of its accumulation account should complete both its trust account and accumulation reconciliations as at the same time.

⁴² ASX Clear Operating Rules Procedure 4.23.5.

⁴³ ASX Clear Operating Rules Procedures Annexures 4.23.5 and 4.23.6.

ASX expects the relevant employee at the participant who conducts a trust or client segregated account reconciliation to be of appropriate seniority and to have the requisite skills and experience to undertake that task competently.

Trust and client segregated account reconciliations are required to be performed by 7.00 pm on the business day after the business day to which they relate. To evidence compliance with this requirement, the employee conducting the reconciliation should note on the paperwork for the reconciliation the date and time at which it was completed.

ASX also expects there to be an appropriate level of managerial oversight of the reconciliation process to ensure that:

- differences which have been identified are actively investigated;
- 'old' or recurring differences have been appropriately escalated; and
- the causes of recurring differences (for example, system rounding issues, mis-postings, duplicate entries etc) are actively investigated and resolved.

10. The obligation to notify ASX of certain matters relating to client money

ASX Clear Operating Rule 4.23.7 requires a participant to notify ASX within 2 business days if:

- a trust account or client segregated account reconciliation has not been performed in accordance with rule 4.23.6 or 4.23.5 and the Procedures under those rules;⁴⁴
- according to a trust account reconciliation performed pursuant to rule 4.23.6, there is a deficiency of funds held in its trust accounts in respect of any particular client (regardless of the amount of the deficiency);⁴⁵ or
- according to a client segregated account reconciliation performed pursuant to rule 4.23.5, 'Total Deposits' are less than 'Total Third Party Client Monies' (as set out in the form in ASX Clear Operating Rules Procedure Annexure 4.23.5).

The notification must be in writing and:

- state the paragraph of rule 4.23.7 to which the notification relates;
- contain details of the failure or deficiency, as applicable;
- explain any remedial action taken or proposed to be taken by the participant in relation to the matters in the notification;
- if paragraph (c) or (d) of Rule 4.23.7 applies, include a copy of the reconciliation to which the notification relates (with all relevant supporting documentation);
- contain any other information the participant considers necessary to explain the matters detailed in the notification; and
- be lodged via ASX Online.⁴⁶

⁴⁴ In some instances a participant may need to invoke its business continuity plan ("BCP" – refer ASX Clear Operating Rules Guidance Note 10 *Business Continuity and Disaster Recovery*) if it is unable to perform a trust reconciliation. Consideration should be given to including this in the participant's BCP processes and testing.

⁴⁵ Irrespective of whether the deficiency is rectified prior to the reconciliation being completed, or the deficiency is caused by a third party. In instances where a deficiency is corrected such that the subsequent reconciliation is not in deficit, there may nevertheless be a breach of the general obligation under ASX Clear Operating Rule 4.23.2 and the matter be reported to ASX (and ASIC) in accordance with rule 4.23.7 and the related Procedure.

⁴⁶ ASX Clear Operating Rules Procedure 4.23.7. For further information about lodging notifications via ASX Online, see ASX Clear Operating Rules Guidance Note 8 *Notification Obligations*.

A participant may notify ASX of the matters referred to above by copying ASX in on any corresponding notification given to ASIC under Rule 3.5.10 of the ASIC Market Integrity Rules (Securities Markets) 2017, provided the notification includes all of the details above.

A participant should note that it may have an obligation to report a significant rule breach regarding client moneys under ASX Clear Operating Rule 19.1.1A, as well as under ASX Clear Operating Rule 4.23.7, depending on the nature or severity of the breach.⁴⁷

In ASX's opinion, there is a reportable deficiency of funds in a participant's trust account or client segregated account if the amount of client money in that account is less than the amount of client money that should be held in that account. A buffer of non-client money in a trust account or client segregated account cannot be used to offset a deficiency in client money.

ASX has observed a number of instances where bank fees and charges deducted from a trust account or client segregated account have caused a deficiency in client money and that deficiency has not been reported to ASX in accordance with the rule 4.23.7. ASX has also observed a number of instances where participants have been retaining a buffer in their trust account or client segregated account to cover unexpected bank fees and charges in the (mistaken) belief that this would avoid a reportable deficiency.

Participants should have arrangements with their banks so that reversals for dishonoured client payments and bank fees and charges on a trust account or client segregated account are charged to or deducted from a general account rather than to the trust account/client segregated account to avoid this issue. If a bank does not provide these arrangements, participants need to have processes in place to ensure that any dishonoured client payments, bank fees and charges deducted from a trust account or client segregated account are actioned on the same day so as to avoid an overnight deficiency in client money.

Where there is an overnight deficiency in client money due to unexpected or unactioned dishonoured client payments or bank fees or charges, that matter needs to be escalated for remediation and a notice of deficiency given to ASX under rule 4.23.7.

Participants should not retain buffers in their trust accounts or client segregated accounts to cover unexpected bank fees and charges since, as noted above, that breaches the Corporations Regulation requirement to identify and remove non-client money from section 981B accounts as soon as practicable.

11. Policies and procedures

Under ASX Clear Operating Rule 4.23.8 participants are required to establish and maintain policies and procedures designed to ensure compliance with ASX Clear Operating Rule 4.23 and that have regard to the matters set out in the Procedures. ASX Clear Operating Rules Procedure 4.23.8 requires a participant to have regard to this Guidance Note for these purposes.

Under ASX Clear Operating Rule 3.5.1(a), participants also have a general obligation to have and maintain appropriate supervisory policies and procedures over all parts of their business relating to ASX Clear.

A participant's systems and processes for dealing with client money are critical to its reputation and integrity and the proper and efficient conduct of its business. Those systems and processes must be properly documented and have clear allocations of responsibilities to the key employees involved. They must also be carefully designed to ensure that:

- the participant's trust and client segregated accounts use the correct naming conventions;
- the configuration of the participant's systems, account structures and account mappings support, at all times, the correct attribution of client moneys;

⁴⁷ See the section on significant breaches in ASX Clear Operating Rules Guidance Note 8 *Notification Obligations*.

- the flow of funds to and from clients and to and from the participant's trust and client segregated accounts (including in relation to rejected funds and bank fees and charges) meet, at all times, the client money requirements in the Corporations Act;
- the processes for identifying non-client money in the participant's trust and client segregated accounts and the timeliness with which that money is removed comply with the Corporations Act ;
- the participant's system and processes for reconciling trust and client segregated accounts and notifying ASX of any deficiencies comply with the ASX Clear Operating Rules and this Guidance Note;
- the participant's processes for dealing with old unrepresented cheques and other unclaimed monies meet the participant's legal obligations under applicable laws; and
- any manual steps involved in the participant's payment processes are robust and have appropriate protections to prevent fraud or misappropriation.

It is recommended that a participant keep an up-to-date process map (or similar document) that it can produce to new staff or a regulator or auditor that identifies simply and clearly:

- the different trust and client segregated accounts maintained by the participant;
- the key systems and processes involved in the movement of client money or property and the timeframes within which those movements occur; and
- the flow of funds between those systems and the participant's trust and client segregated accounts.

12. Periodic reviews and change management

Given the importance of a participant's client money processes, a participant should be conducting periodic reviews of those processes to test their integrity. Those periodic reviews preferably should be conducted by someone independent of the business unit involved in the day-to-day operation of those processes, such as the participant's compliance, risk or internal audit functions. ASX would recommend that such periodic reviews are conducted at least once every two years.

In examining the participant's compliance with the ASX Clear Operating Rules client money requirements ASX would expect a periodic review to consider:

- ascertaining the participant's systems and processes for reconciling trust and client segregated accounts to assess whether they comply with the ASX Clear Operating Rules and this Guidance Note;
- obtaining a random and representative sample of the reconciliations completed during the period and conducting appropriate tests to validate that the figures are supported by accurate source records and the reconciliations have been performed correctly;⁴⁸ and
- examining the participant's compliance with its obligation to notify ASX of any failure to conduct a reconciliation in accordance with the ASX Clear Operating Rules or of any deficiency identified as a result of a reconciliation.

A participant should also undertake a thorough and timely assessment of the impact on its client money processes of any proposed change to:

- the participant's systems, account structures, account mappings or payment flows that could affect its client money processes; or
- the client money requirements in the Corporations Act or ASX Clear Operating Rules, Procedures or Guidance Notes.

⁴⁸ As indicated, an independent review should not be a rote confirmation of the figures used in a reconciliation but should challenge the assumptions underpinning the inclusion of individual items in the reconciliation.

13. Audit requirements for trust and client segregated accounts

A participant that holds an Australian financial services licence is required under the Corporations Act⁴⁹ to engage an auditor to prepare a report in respect of its financial statements for each financial year. The report must be in the prescribed form (ASIC Form FS 71) and, among other things, express an opinion on the effectiveness of the internal controls used by the participant during the financial year to comply with the client money provisions in Division 2 of Part 7.8 of the Corporations Act and also whether each client money account required to be maintained by the participant under section 981B of the Corporations Act during the financial year was operated and controlled in accordance with that section.⁵⁰

A participant must immediately notify ASX in writing if an auditor identifies a significant issue in an ASIC Form FS 71 or equivalent report lodged with ASIC.⁵¹

The Auditing and Assurance Standards Board has published Guidance Statement GS 003 *Assurance Relating to Australian Financial Services Licences issued under the Corporations Act 2001* with guidance for auditors on the steps they should take to determine whether a licensee has suitable controls to comply with the relevant requirements of the Corporations Act and to test whether those controls have been operating effectively.

ASX would note that the client money reconciliation requirements in the ASX Clear Operating Rules⁵² are important controls that are directed to ensuring that a participant complies with its client money obligations under Division 2 of Part 7.8 of the Corporations Act.⁵³

ASX would further note that an auditor who, in the course of performing his or her duties as auditor of a participant, becomes aware of a breach by the participant of the client money provisions in Subdivision A or B of Division 2 of the Corporations Act must, within 7 days of becoming aware of the breach, lodge a written report about the breach with ASIC and provide a copy of that report to ASX.⁵⁴ This applies regardless of the significance of the breach.

⁴⁹ Section 989B(3)(b)(ii) or 989B(3)(c) of the Corporations Act (as modified by Corporations Regulation 7.8.12A).

⁵⁰ Corporations Regulation 7.8.13.

⁵¹ ASX Clear Operating Rule 4.5.4.

⁵² ASX Clear Operating Rules 4.23.5, 4.23.6 and 4.23.7.

⁵³ See also ASX Clear Operating Rule 4.23.2.

⁵⁴ Section 990K(2)(b)(i).