



ASX Market Rules Guidance Note No. 2

KEY TOPICS

1. What is a Management Letter?
2. Why are Management Letters issued?
3. Expectations regarding Management Letter?
4. Publication of Management Letters

ASX Market Rules

1. 28.3.1
2. 28.14

Cross-reference

1. S792A
2. ASX Market Rule Guidance Note No. 25 – Monitoring Compliance - Investigations;
3. ASX Market Rule Guidance Note No. 10 – Disciplinary Proceedings

Guidance Note History

Amended:
01 November 2006

Re-Issued:
11 March 2004 –
Introduction of New
Rules

Previously:
17 September 2001
ASX GN 13/01

RECORD OF ACTION AND ANNOUNCEMENT Management Letters – Issue and Publication by the Exchange

Purpose

The purpose of this Guidance Note is to promote awareness among Regulated Persons of the practices and procedures followed by ASX in issuing and publishing management letters.

Background

ASX considers that one of its core functions is to promote and maintain a high level of market integrity in the interests of Regulated Persons and the broader economic community.

ASX is obliged by s792A of the Corporations Act to, among other things;

- do all things necessary to ensure that its market is a fair, orderly and transparent market;
- have adequate arrangements for supervising the market; and
- have adequate arrangements for monitoring and enforcing compliance with its operating rules.

The Market Rules provide ASX with broad powers to monitor, investigate and obtain information from Regulated Persons in the course of complying with its Corporations Act obligations and for the purpose of promoting and maintaining market integrity.

ASX's practices and procedures in relation to investigations and the conduct of disciplinary proceedings under the ASX Market Rules are set out in separate guidance notes.

Management letters are issued by ASX Investigations as a means of obtaining appropriate regulatory effect where disciplinary action before a Tribunal is not warranted in the circumstances. The Market Rules permit ASX to publish management letters. The Market Rules do not otherwise deal with this subject.



Introduction

What is a Management Letter?

As its name implies, a management letter is a formal letter by ASX's management to the management of an ASX Market Participant or to a Responsible Executive. Subject to the comments below, it is a private and confidential¹ communication, signed by a senior member of ASX's management (usually the General Manager, Participants) addressed to a relevant senior manager, director or chairman of a Market Participant or to a Responsible Executive.

A management letter will set out a summary of relevant issues raised by a Regulated Person's conduct and refer to and discuss that conduct in the context of compliance with the ASX Market Rules, acceptable standards of behaviour and/or ethics or against the background of best practice standards in the industry. The letter will often (but need not necessarily) also discuss relevant provisions of the Corporations Act or other relevant law and will indicate the action, if any, ASX expects or suggests that the Regulated Person take, or the conduct it is requested not to repeat, in the future.

If circumstances have changed since the conduct occurred, for example, policies and procedures of the Market Participant have changed or been strengthened, or changes have been made to the business it undertakes, a comment will be made to recognise and/or discuss such changes. If material relevant to the conduct includes transcripts of discussions or relevant documents, these may be attached to the letter.

Customarily, management letters also state that-

- a) ASX reserves the right to refer to the letter in any future disciplinary proceedings that may be taken with respect to the Regulated Person, where the contents of the letter are in its view relevant, and
- b) it is likely that ASX would view such a course as relevant if the circumstances referred to in the letter recur in the future.

Management letters normally conclude with a request that the recipient sign a copy of the letter and return the copy to ASX as acknowledgement of receipt.

ASX's Compliance Services unit will be involved in the development of recommended actions by Regulated Persons and monitors the implementation of them.

Why are Management Letters issued?

ASX is of the view that management letters provide an appropriate means to obtain regulatory effect where action before a tribunal, pursuant to the provisions of ASX Market Rule 28.3.1 (for breach of Rules), is, in its view, not warranted in the circumstances. ASX takes into account all relevant factors.



These include the nature and seriousness of misconduct and whether it is a “one off” occurrence, whether the circumstances giving rise to the conduct have materially changed, and the action taken by management of the Market Participant response to the conduct.

Management letters may also be used in situations where on the evidence available there are competing interpretations to explain the Regulated Person’s conduct. In those situations, ASX may advise the Regulated Person that the conduct is not acceptable to ASX. In this context, management letters serve as a warning that the Regulated Person should not repeat conduct that causes concern to ASX.

If a Regulated Person fails to change its behaviour after receiving a management letter, it can expect that a Disciplinary Tribunal (constituted under Market Rule 28.14) will consider the letter in determining any penalty that should be imposed, for subsequent misconduct of the type outlined in a previous management letter to the Regulated Person.

In many cases, ASX’s aim in issuing management letters is to change behaviour. A management letter may assist a Regulated Person to identify issues relating to compliance and risk management practices.

What does ASX expect of Participants that receive a Management Letter?

ASX expects that Regulated Personsⁱⁱ will review their policies and procedures so as to ensure that conduct discussed in the management letter does not recur. This may involve the Market Participant not only raising the matter with its compliance staff but also with any compliance committee or other relevant sub-committee of its Board as well as the relevant senior management of the Market Participant. It may trigger pro-active compliance monitoring by the Regulated Person in respect of future conduct. It may also involve the introduction or amendment of compliance or other internal procedures that document the Market Participant’s policies and procedures relating to the conduct.

ASX also expects that Regulated Persons will acknowledge receipt of the letter either by signing the copy of the letter provided and returning it to ASX, or by separate letter. In a separate letter of acknowledgement, the Regulated Person may do more than merely acknowledge receipt of the letter; for example, it may advise ASX of changed practices and procedures or other relevant action taken. (See also below). This action is welcomed.

Publication of Management Letters

When will Management Letters be published?

Many management letters do not justify publication. However, there are circumstances from time to time where the conduct of the Regulated Person and ASX’s views about that conduct and the compliance issues raised by the conduct, are of very great import and interest to the general public or the investment or stockbroking community.



In these cases and because of that interest, there is a need for transparency of outcome. Such circumstances would include (but are not limited to) circumstances involving trading techniques or devices that circumvent the spirit but not necessarily the letter of the Market Rules, that produce aberrations or anomalies in recorded market volumes and/or prices.

How and when will Management Letters be Published?

ASX will not publish a management letter without first advising the Regulated Person of its intention to do so and providing it with a reasonable opportunity to make comments on a draft of the letter. What is a reasonable time for this purpose will depend on the circumstances. The names of clients and/or staff of the Market Participant will not be referred to in the letter. Where ASX agrees that comments received warrant changes to its letter, appropriate changes to it will be made prior to release.

If the Regulated Person disagrees with ASX's view of the conduct (as provided to the Regulated Person in a draft of the letter), ASX may agree to publicly release a response by the Regulated Person to its letter. ASX would not publish a Regulated Person's response unless the Regulated Person consents to it doing so and the response would not expose ASX to legal liability from third parties.

The form of publication will depend on the circumstances of the conduct. In most instances, publication would be by way of attachment to an ASX Participant Circular. In cases where market integrity is an issue and where ASX needs to be pro-active in explaining its view of the conduct and/or its acceptability, ASX may make a release to the media that attaches the management letter, in addition to the release of it by way of ASX Participant Circular. Management letters may also be published on an ASX website.

Qualification

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

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- ⁱ Disclosure of confidential information relating to ASX investigations is discussed in ASX Guidance Note No. 25 – Monitoring Compliance – Investigations.
 - ⁱⁱ In addition, Market Participants listed on ASX and subject to the Listing Rules may need to consider their obligations under these Rules in respect of continuous disclosure.