

### KEY TOPICS

1. Responsible Executives
2. Supervisory Systems
3. Business Offices

### ASX Market Rules

1. 3.6
2. 4.1

### Cross-reference

1. ACH Guidance Note: "Ongoing compliance and supervision-responsibilities of Responsible Executives"

### Guidance Note History

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## ONGOING COMPLIANCE AND SUPERVISION – RESPONSIBILITIES OF RESPONSIBLE EXECUTIVES

### Purpose

The purpose of this Guidance Note is to set out ASX expectations of Responsible Executives ("REs") and of Market Participants in relation to REs.

### Background

ASX expects all Market Participants to have executives responsible for supervision of, and control over, the operations and processes in place to achieve satisfaction of the Market Participant's obligations related to the business that the Market Participant conducts in a market operated by ASX. Such people must be suitably experienced and qualified to oversee satisfaction of those obligations.

ASX recognises that most Market Participants will be obliged to have appointed Responsible Officers ("ROs") under the terms of their Australian Financial Services Licence ("AFSL"). In order to minimise regulatory overlap with AFSL requirements, ASX will rely upon the Responsible Officer standards as set out by ASIC to the extent it considers appropriate.

The regulatory objectives of the Responsible Executive requirements in the ASX Market Rules and Procedures ("Rules") are:

- (a) to complement the obligation in the Rules that a Market Participant is responsible for all actions and omissions of its employees (including Responsible Executives);
- (b) to ensure there are identifiable people responsible for the supervision and control of the ASX markets related business of a Market Participant so that they can supervise the activities of the Market Participant in a meaningful way;
- (c) to ensure that those people responsible for supervision and control of the ASX markets related business of the Market Participant are competent by requiring that they have the appropriate level of knowledge and experience relevant to the Australian market;



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- (d) to ensure that those people responsible for supervision and control of the ASX markets related services business of the Market Participant are of good fame and character and high business integrity; and
- (e) to reinforce the personal responsibility of those people by requiring that they be accountable for the design, implementation, functioning and review of the Market Participant's operations and processes for compliance with the Rules of ASX and be bound by the Market Rules.

## **Participant to determine and manage its risk**

Market Participants are responsible for ongoing compliance with the Market Rules. Market Participants are also responsible for all actions and omissions of their employees (including Responsible Executives). It is the obligation of each Market Participant to identify and implement internal controls to manage their regulatory risk and comply with the Market Rules. As such, each Market Participant must have in place effective mechanisms to establish, document, maintain, review, test, remedy and modify compliance and supervisory policies and procedures reasonably designed to achieve compliance by the Market Participant with the Rules and, where contraventions (or potential contraventions) are discovered, to then have available the means to take appropriate action. The management structure a Market Participant adopts is a matter for the Market Participant to determine based upon the size, complexity and distribution of its business and its regulatory risk profile and appetite.

## **Management structure**

The Market Rules require that a Market Participant have appropriate management structures in place to ensure that its Responsible Executives have adequate supervision and effective control over the compliance operations and processes in relation to the business the Market Participant conducts on ASX, (wherever the business is located or intended to be operated). The Market Rules also require that a Market Participant have appropriate supervisory policies and meet any standards or requirements set out in the Procedures. ASX expects that it will be the Responsible Executives who are accountable for adequate supervision, effective control and adherence to the supervisory policies.

Comprehensive compliance and supervisory systems constitute the foundation of effective regulation. ASX believes that a Market Participant's senior management should focus similar attention to its compliance and supervisory policies and procedures as they devote to its revenue-producing businesses. It is for this reason that the Rules require that the Responsible Executives must supervise the design, implementation, functioning and review of the Market Participant's operations and processes for compliance with the Rules of ASX and be bound by the Market Rules.

## Responsible Executives

A Market Participant will need to satisfy itself that its Responsible Executives have executive responsibility, seniority and authority for the supervision and control of the operations and processes for compliance in relation to the business that the Market Participant conducts in a market operated by ASX. ASX expects that it will be the Responsible Executives who will lead and shape the compliance culture of the Market Participant. To achieve this, Responsible Executives will require the seniority and authority within the organisation to exert control, leadership, influence and supervision over the operations, policies and culture of the organisation.

A Market Participant will also need to satisfy itself that those Responsible Executives who have executive responsibility for the supervision and control of its compliance operations and processes:

- have an appropriate level of financial services industry knowledge which is relevant to the Australian market, the type of business the Market Participant operates and the types of products in which it deals;
- have appropriate financial service industry experience relevant to the Australian market, the type of business the Market Participant operates and the types of products in which it deals; and
- are of good fame and character and high business integrity.

The Market Participant's written supervisory procedures should include the methods for monitoring the performance of the Responsible Executive. All Responsible Executives should participate in compliance training. Training should provide a clear description of the Market Participant's expectations.

## Responsible Executive Exams

In order to satisfy itself that Responsible Executives have a competent knowledge of the local market obligations, ASX requires that Responsible Executives sit and pass an examination set by ASX.

The ASX Markets Responsible Executive Examination covers the ASX Market Rules as well as relevant sections of the Corporations Act. It is designed to demonstrate knowledge of the rules governing the markets operated by ASX and competency in their application. The examination is of value to anyone who conducts business in or related to ASX's markets. It is the minimum mandatory requirement for persons intending to be Responsible Executives for an ASX Participant's market operations for the purpose of the ASX Market Rules where that Market Participant conducts only principal and/or agency business.

The ASX Markets Responsible Executive (Principal Trader only) Examination covers the ASX Market Rules as well as relevant sections of the Corporations Act as far as they affect ASX Principal Trader only Participants. It is designed to demonstrate knowledge of the rules governing the markets operated by the ASX and competency in their application. It is the minimum mandatory requirement for persons intending to be Responsible Executives for an ASX Participant's market operations for the purpose of the ASX Market Rules where that Market Participant conducts only principal (ie no agency) business.

The ACH Clearing and Settlement Responsible Executive Examination covers the ACH Clearing Rules and ASTC Settlement Rules as well as relevant areas of the Corporations Act. It is designed to demonstrate knowledge of the rules governing the clearing & settlement facilities operated by ACH and ASTC and competency in their application. The examination is of value to anyone who conducts business in or related to clearing and settlement. It is mandatory for persons intending to be Responsible Executives for an ACH Participant's clearing and settlement operations for the purpose of the ACH Clearing Rules.

The ASX and ACH Responsible Executive Examination covers the ASX Market Rules, ACH Clearing Rules, ASTC Settlement Rules as well as relevant sections of the Corporations Act. The content of this examination is drawn from the material of the other two examinations. The examination is of value to anyone who conducts business in or related to trading, clearing and settlement in ASX markets and requires knowledge of all aspects of those operations. It would also be of interest to a person considering taking on a broader Responsible Executive Role. It is mandatory for persons intending to be Responsible Executives for both a Participant's market and clearing & settlement operations.

All Responsible Executive Exams are one hour on-line multiple choice examinations with a pass mark of 65%.

Tribeca Education administers all ASX and ACH RE Exams on behalf of ASX. Prospective candidates for the ASX RE Exam should refer to the Tribeca web site ([www.tribeca.com.au](http://www.tribeca.com.au)) and download the required forms to arrange a time to sit the formal examination.

## **Number of Responsible Executives**

ASX requires each Market Participant to have at least one Responsible Executive accountable for the design, implementation, functioning and review of the Market Participant's operations and processes for compliance with the Rules of ASX. A Market Participant may choose to appoint more than one Responsible Executive, each accountable for different parts of the Market Participant's market operations. Those accountabilities will be reflective of the management structure.

The responsibility for supervision of large or complex organisations will be a critical consideration when determining the number of Responsible Executives to be appointed.

Similarly, the responsibility for supervision of Business Offices will be a critical consideration when determining the number of Responsible Executives to be appointed for those organisations that are geographically diverse.

If the Market Participant is also an ACH Clearing Participant it will also require at least one Responsible Executive accountable for clearing and settlement operations. Whilst ASX discourages the appointment of one person as Responsible Executive for the purposes of both the ASX and ACH Rules, it is the responsibility of the Market Participant to consider the desirability of segregating controls relating to trading and clearing/settlement functions and to determine the appropriateness of a dual appointment.

ASX discourages Market Participants from appointing compliance personnel as Responsible Executives. However, in circumstances where a person has both compliance and operational responsibilities, it is reasonable to accept the person as a Responsible Executive for the purposes of operational supervision.

## **Accountability for supervisory systems**

ASX expects Responsible Executives to be accountable for the supervisory controls, processes, systems and culture within a Market Participant. Responsible Executives will be accountable for processes to establish, document, maintain, review, test, remedy and modify supervision policies and procedures reasonably designed to achieve compliance by the Market Participant with the Rules. That is, management accountability. Hence, ASX will not generally expect a Responsible Executive to be held accountable for each and every breach or deficiency (unless they were personally involved). For example, ASX may take the view that a Responsible Executive or Market Participant may be considered not to have failed to supervise if:

- It can be evidenced that there have been established procedures and a system for applying those procedures which would reasonably be expected to prevent and detect, insofar as practicable, the breach; and
- the Responsible Executive has discharged the duties and obligations incumbent upon them competently; and
- there was no reasonable cause to believe that there was non-compliance with the procedures and systems.

However, a Responsible Executive may be held accountable for significant or systemic breaches or deficiencies.

ASX expects that Responsible Executives will periodically reassess supervisory responsibilities and accountabilities in light of changes in the nature and size of their Market Participant's business. This is particularly applicable to Market Participants experiencing rapid growth in business office numbers, staff numbers, complexity or new products. The supervision of the operations and processes and the compliance framework must keep pace with the growth of the Market Participant's branch network and product range. The requirement for the provision to the Market Participant of an annual attestation reinforces this obligation.

## Responsibility for business offices

Business offices pose a special compliance challenge. Distance, time and a lack of a compliance culture of business office staff can defeat supervisory procedures that have been adopted with the best of intentions. Compliance issues originating in business offices represent a significant proportion of the disciplinary matters considered by ASX.

It is not necessary (under the Market Rules) for a Responsible Executive to be present in each business office. Whether or not there is a Responsible Executive in each business office is a matter for the Market Participant to determine. How control is best effected is up to the Market Participant and Responsible Executives to determine. However, as the Rules require that a Market Participant must ensure that its Responsible Executives have adequate supervision and effective control over all parts of the business “wherever the business is located”, Responsible Executives are responsible and accountable for compliance in business offices. Again, the requirement for the provision to the Market Participant of an annual attestation reinforces this obligation.

## Absence and departure

Market Participants will need to consider what actions are required in the event of an extended absence or the departure of a Responsible Executive. A Market Participant should have contingency plans for these situations.

In the absence of any documentary trail to the contrary, ASX will assume that the Responsible Executive last notified to ASX as being accountable for a part of the business operations continues to be accountable for those operations.

A Market Participant must notify ASX immediately of any subsequent change to the Responsible Executives or management plan. At the time of notifying ASX the Market Participant must lodge with ASX a “Notification of Appointment of Responsible Executive” form for each new Responsible Executive. The “Notification of Appointment of Responsible Executive” form is available from the ASX Online website (<https://www.asxonline.com/>) and should be forwarded to your ASX Compliance Advisor.

If a Responsible Executive suddenly departs a Market Participant, the Market Participant will be required to advise ASX of its revised allocation of responsibilities within 6 weeks.

## Appointment of a new Responsible Executive

Responsible Executive status is not portable between Market Participants. Thus when a Responsible Executive leaves a Market Participant, the status cannot be transferred to another Participant. If the new Market Participant nominates the person to be a Responsible Executive, that Market Participant will be required to notify ASX in the required form of a “Notification of Appointment of Responsible Executive”.

It should be noted that the requirement to have passed the Responsible Executive Exam prior to being appointed a Responsible Executive applies equally to people becoming Responsible Executives for the first time and people who have previously been Responsible Executives. The “Notification of Appointment of Responsible Executive” form is available from the ASX Online website (<https://www.asxonline.com/>) and should be forwarded to your ASX Compliance Advisor.

## **Continuing Education**

The continuing education requirements set out in the Procedures require 8 hours of compliance related continuing education. In many instances the ASX requirements are not the only obligations of Responsible Executives. They are necessarily complementary obligations to be factored into satisfaction of the licence obligations of Market Participants, their internal policy requirements and any professional association obligations.

In recognition of the role that professional bodies play in the education field ASX will rely upon the standards of measurement and quality established by recognised Australian professional bodies. It is important to note that ASX is placing reliance upon the standards of measurement and quality set by the recognised Australian professional bodies, not requiring membership of an Australian professional body. The Procedures are not to be interpreted as requiring that Responsible Executives must satisfy the full continuing education requirements of an Australian professional body (although in satisfying the ASX requirements they may in fact be doing so). The Procedures are to be interpreted as requiring 8 hours compliance education as measured by reference to the standards of quality and measurement of a recognised Australian professional body as set out in those Procedures.

## **Disciplinary action**

As stated, ASX would expect a Responsible Executive to be held accountable for significant or systemic breaches or deficiencies. It is for that reason that Market Participants and their Responsible Executives are subject to potential disciplinary action for failure to supervise.

ASX may also refer the professional behaviour of a Responsible Executive to his or her professional body.

## **Relationship with Responsible Officer requirements under the Corporations Act**

The Responsible Executive regime is similar in many respects to the Responsible Officer requirements under the Corporations Act. ASX has endeavoured to remove competing obligations wherever possible.

A Responsible Executive must satisfy the ASIC Responsible Officer skills and knowledge requirements (whether or not they are a Responsible Officer) and a Responsible Executive exam. In relation to the satisfaction of the Responsible Officer requirements, ASX will rely upon a suitable warranty from the Market Participant that it is satisfied the person meets those requirements.

There are potential regulatory implications for a person who is both a Responsible Executive and Responsible Officer. If a person is a Responsible Executive and is the subject of disciplinary action by ASX in accordance with Rules, ASIC may take an interest in that fact and its implications for the licence of the Market Participant. Similarly, if a person is Responsible Officer and ASIC takes action against that person, ASX may take an interest in that fact and its implications for the ability of that person to continue as a Responsible Executive. In this regard it should be noted that the requirement for a Responsible Executive to be of good fame and character is an ongoing requirement. Should ASX form a conclusion about the conduct of a Responsible Executive, this does not prevent ASIC from forming a different conclusion about their conduct as a Responsible Officer and vice versa.

## **Relationship between Responsible Executives and compliance executives**

A Responsible Executive will generally be a line manager accountable for the supervisory controls, processes, systems and culture within a Market Participant and will have the power to hire, fire, punish or reward a subordinate employee. Compliance executives generally are not line managers for business unit employees, although they may be line managers with respect to employees in the compliance department. Compliance executives may advise Responsible Executives about the hiring, firing and discipline of employees, but they generally do not make actual decisions in these areas.

In performing their duties and making their annual attestation a Responsible Executive may rely upon the advice and services of a compliance executive to, for example, provide advice, inform them of compliance related issues and to monitor the satisfaction of compliance related obligations.

ASX is of the view that compliance executives should not be Responsible Executives. Such a mixing of functions undermines the compliance executive's independent support and monitoring functions. However, ASX acknowledges that for various reasons a Market Participant may wish to appoint a compliance executive as a Responsible Executive for some purposes. A compliance executive will generally not be held accountable by ASX for failure to supervise another unless they have the responsibility, ability and authority to affect the other person's conduct in a line management capacity.

## Qualification

ASX has published this note to promote commercial certainty, and assist Market Participants. 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 Market Participants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may replace this Guidance Note at any time. Readers should contact ASX to ensure they have the latest version.