

KEY TOPICS

1. Importance of trading records
2. What can comprise a trading record?
3. Capturing trading records
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ASX Market Rules

1. 4.10

Cross-reference

1. Corporations Act s991D and Regulation 7.8.19

Guidance Note History

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TRADING RECORDS

Purpose

This Guidance Note provides assistance to Market Participants on ASX's interpretation of the ASX Market Rules relating to Trading Records.

Background

Market Participants are required to maintain Trading Records for all instructions to enter into a Market Transaction on ASX (whether or not those instructions are executed). One reason for this is that contemporaneous records are maintained so that instructions by clients or principal trading decisions (whether executed or not) can be established, particularly if a dispute as to the instructions received arises. The requirements also promote good business practice and provide an audit trail for compliance purposes.

The Trading Record requirements are identical for all Financial Products traded on ASX.

The Trading Record requirements in the Market Rules are reflective of, but more detailed than, the obligations under Corporations Act s991D and Regulation 7.8.19.

The importance of trading records

Trading Record rules have a significant part to play in the integrity of the markets conducted by ASX. They are a critical record of the causal link between the instructions of a client or a decision to trade on a Market Participant's own account ("Principal Trading") and the entry of an order into a Trading Platform (whether SEATS or the DTP). Trading Records are a primary evidentiary record of a transaction and ASX places strong reliance upon the evidentiary value of accurate Trading Records. Corroborating evidence (such as telephone recordings) may support the evidentiary value of a Trading Record. Inaccurate or incomplete Trading Records are a significant compliance failing.

Deficiencies in Trading Records may inhibit enquiries into possible market misconduct including, for example, manipulative trading. It is prudent for Market Participants to ensure that Trading Records accurately reflect their clients' and their own instructions to avoid possible disciplinary action for Trading Record breaches and other misconduct. In the absence of taped recordings of orders, written or computer Trading Records may be the only means by which a Market Participant can check a client's instructions and whether they were complied with.

ASX considers that Trading Record breaches are serious matters. Trading Records that do not accurately reflect a client's instructions and the other details required by the Rules may result in ASX seeking higher disciplinary penalties if they inhibit ASX's enquiries into possible market misconduct.

Trading Record Requirements

In the interests of having one standard of record keeping apply to the different types of transactions and orders that relate to ASX's markets, the Trading Record requirements apply to all Financial Products traded on ASX markets. The Trading Record requirements of the ASX Market Rules do not apply to orders received for Financial Products traded on other markets.¹ Market Participants should obtain their own advice from a qualified professional person in respect of the requirements (for example, Corporations Act s991D and Regulation 7.8.19) that apply to trading on other markets.

The Rules expressly require Market Participants to:

- (a) make Trading Records *immediately*;
- (b) maintain records of orders for dealing on their own account as well as client orders and orders made on a discretionary account; and
- (c) keep records of any changes made to orders, for example, changes to quantity and price instructions, cancellation of orders and other types of change. Other instructions from a client should also be recorded, for example, when restrictions are placed on an order.

In respect of the requirement to make records *immediately*, it should be noted that the ordinary English meaning of the word "immediately" is to apply. That is, "without delay" or "directly". By way of example:

- (a) if an order taker/advisor receives an instruction to deal in securities out of business hours when not in the office, the order taker should make the record of those instructions as soon as possible, for example, by immediately making a diary note of the details or, on returning to the office, entering the instructions on an order pad or computer system;

¹ Where a Market Participant is relying upon any Section 30.10 relief granted by the Commodity Futures Trading Commission, the Trading Record requirements of the ASX Market Rules may apply

- (b) if orders are recorded using an electronic order system and if there is a system malfunction such that an order taker/advisor cannot enter the instructions received into that system, a manual system of recording orders should be available and details of instructions should be made manually immediately after the instructions are received; or
- (c) if a Market Participant encounters exceptional circumstances such as a period of frenetic market activity, for example, if it is inundated with orders given orally due to a major market correction, it is vital that attention to trading record keeping not be relaxed. Such occasions will be limited and order takers must still record instructions received. However, ASX understands that complete Trading Records may not be made contemporaneously with the instructions received. Where a Trading Record is not made immediately, the onus in any disciplinary action will be on the Market Participant to be able to demonstrate that “exceptional circumstances” applied.

Trading Records must be a complete and accurate account of the client’s actual instructions or the Market Participant’s decisions or instructions. A record of the trade resulting from the instruction will not satisfy the requirement to record the instruction or decision except to the extent permitted under Market Rule 4.10.7.

The Rules require formality in the recording of decisions to trade by Market Participants, even when acting as principal. This assists in identifying which orders - whether from a client, by a Market Participant using its discretion for a client or for the Market Participant’s own account – have resulted in trades and which have not been executed.

The requirement to make a record of a decision to, or to give an instruction to, enter into a Market Transaction on a Market Participant’s own account applies whether or not the Market Participant executes the Market Transaction itself or gives the instruction to another Market Participant to execute. Where a Market Participant gives the instruction to another Market Participant to execute, both Market Participants will have records of the order. This is an important requirement to prevent, or identify, front running of client orders.

Trading Records may be kept electronically.

Capturing & Maintaining trading records

The Rules require that a Market Participant “maintain records” of all orders. The Rules do not state that all elements of a Trading Record specified in the Rules be maintained in the same place. However, ASX makes the following observations:

- if the elements of Trading Records are made in multiple locations or multiple media (eg, electronically and in diaries; or electronically and on hard copy Trading Record forms), the Market Participant must have ownership of all those media. This means that if a dealer’s diaries are relied upon, the Market Participant must have ownership of the diary in the event that the dealer departs the Market Participant;

- the obligation will be upon the Market Participant to demonstrate that the records in all the locations or media were made contemporaneously with the order being given or decision taken;
- the obligation will be on the Market Participant to provide to ASX all the relevant media should ASX request copies of a Trading Record. If Trading Records are maintained electronically and the system cannot readily identify who made a Trading Record amendment and when it was made, it will be necessary to provide a copy of the system logs showing this and other relevant information;
- the obligation will be on the Market Participant to nominate a primary Trading Record or, if multiple media are used, the primary elements of a Trading Record;
- where telephone conversations are recorded and those recordings are retained for the same period as Trading Records are required to be retained (that is, 7 years), those telephone recordings can constitute a primary record of a Trading Record in relation to, for example, the time and date a client order is received, the name of the person placing the order, the name of the person receiving that order and the instructions given.
- where there is conflicting information in the different locations or media, the obligation will be on the Market Participant to demonstrate which information is to be relied upon; and
- if the information is retained in multiple media or sources, unless the Market Participant can demonstrate and reconcile all the individual components of the Trading Records, ASX will be inclined towards a view that the Trading Records do not satisfy the obligations under the Rules.

ASX encourages the electronic capture of Trading Records, provided they are captured immediately and in accordance with the Rules. However, ASX has identified a number of issues of concern in relation to reliance on electronic Trading Records:

- on a number of occasions, ASX has encountered instances of required information not being captured “because the system doesn’t have the ability to capture it”. ASX does not accept system “limitations” as a reason for non-compliance. It is the obligation of a Market Participant to ensure any system it employs has the ability to satisfy the requirements of the Rules. Any deficiency in the system is taken to be a deficiency of the Market Participant, not of its system provider;
- in some instances, orders are accepted by advisers and then phoned through to another office where the order is entered into an electronic system. That electronic system captures the time the order is entered into the system and that time is relied upon by the Market Participant as the time of receipt of the order. ASX is of the view that this practice does not satisfy the requirements of the Rules. The time required to be recorded as the time of the receipt of the order is the time it is received by the adviser, not the time it is entered into the system;
- in some instances, initial orders are recorded in hard copy and electronically and subsequent amendments are also recorded in hard copy. However, the electronic systems only record the final execution price or volume. Where a Market Participant allows this practice, it should ensure there is a clear audit trail in its electronic systems to show when the original data was entered, when it was amended and by whom it was amended;
- in some instances, orders are captured and recorded in spreadsheets or other systems where certain fields default to specified data. (For example, the system may have a default value for the name of the person giving the order or joint accounts

may list potential order placers alphabetically and default to the first name.) ASX has identified instances where, if the person giving the order is different from the default name, rather than amend the name of the person giving the order at the time of receiving it, advisers have amended the name at the end of the day. ASX is of the view that this does not satisfy the requirements of the Rules; and

- in some instances, orders are captured and recorded in spreadsheets or other systems and advisers have received price or quantity amendments during the day but have not amended the order price or quantity field in the spreadsheets until the end of the day. This may not satisfy the requirements of the Rules to keep records of any changes made to orders unless there is a clear audit trail (such as system logs) to show when the original data was entered, when it was amended and by whom it was amended.

Specific interpretations

When considering the application of Rule 4.10, ASX advises that it will generally interpret the following rules in the manner set out in the table below. The intention of that interpretation is to provide certainty of interpretation to Trading Participants and to facilitate existing dealing and record keeping practices. It also provides a guide against which Trading Participants can assess their internal practices to determine which additional records they may need to maintain to take account of the ASX interpretation.

RULE	ASX Interpretation
4.10.1(1)(f)	Unless the Trading Participant maintains records to show otherwise, it will be interpreted that there was no other person between the person who received the instruction and the person who entered the instruction or that the role of any other person was purely incidental.
4.10.1(1)(h)	Unless the Trading Participant maintains records to show otherwise, the time the Trading Platform records the Trading Message was entered into the Trading Platform will be interpreted to be the time the instruction was passed from the person who received the instruction to the DTR.
4.10.2(a)(i)	Unless the Trading Participant maintains records to show otherwise, the DTR identifier contained in the relevant Trading Message will be interpreted to represent the person who generated the order or made the decision.
4.10.2(a)(ii)	Unless the Trading Participant maintains records to show otherwise, the Financial Products entered into the Trading Platform for a particular Trading Message will be interpreted to be the Financial Products decided or instructed to be bought or sold.
4.10.2(a)(iii)	Unless the Trading Participant maintains records to show otherwise, the number of Financial Products entered into the Trading Platform for a particular Trading Message will be interpreted to be the number of Financial Products decided or instructed to be bought or sold.
4.10.2(a)(iv)	Unless the Trading Participant maintains records to show otherwise, the price of Financial Products entered into the Trading Platform for a particular Trading Message price will be interpreted to be the decided or instructed price at which the Financial Products were to be bought or



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	sold.
4.10.2(b)	<p>Unless the Trading Participant maintains records to show otherwise, the DTR identifier contained in the relevant Trading Message will be interpreted to represent the person who generated the order or made the decision.</p> <p>Unless the Trading Participant maintains records to show otherwise, the date and time of any amendment or cancellation entered into the Trading Platform will be interpreted to be the time at which the decision to amend or cancel the Trading Message was taken.</p>
4.10.2(c)	Unless the Trading Participant maintains records to show otherwise, it will be interpreted that there was no other person between the person who generated the order or made the decision and the person who entered the instruction or that the role of any other person was purely incidental.

Recording of names

The Rules require a Market Participant to record various names including, but not limited to, the “name” of the client, the “name” of the person giving the instructions, the “name of the person who received the instructions”, and the “name” of the relevant DTR. Some systems record an account number or other identifier rather than a “name”. Some hard-copy Trading Records capture the initials of the person taking or placing the order. ASX is of the view that a Market Participant may comply with the Rules if it records a unique identification number or unique code assigned to the client or a person provided that the Market Participant has created and maintained, as part of its Trading Record systems and processes, a companion record that can be used to identify the “name” of the client or the “name” of the person. The companion record would be part of the Market Participant’s Trading Records and must be maintained, preserved, and made available to ASX in the same manner as all other Trading Records.

For example, if the Market Participant’s systems record “JT” (rather than “Jane Thomas”) in the name field of the person receiving the order, when providing Trading Records to ASX the Market Participant must provide both the Trading Record with the initials JT and a record demonstrating that this is the unique identifier of Jane Thomas.

ASX does not accept the words “client”, “ditto”, “as above” or similar as the “name” of the relevant person unless the client account is in the name of a single natural person and the words “client”, “ditto”, “as above” or similar are recording the name of that person actually placing the order (for example, if the client account is in the name of “John Thomas” and John Thomas placed the order, ASX would accept “as above” as the name of the person who placed the order. If the client account is in the name of “John and Janet Thomas” or John Thomas Pty Limited ASX would not accept “as above” as the name of the person who placed the order).

Recording the name, account number or other indicator of the person receiving commission on a trade in lieu of the name of the person actually receiving the order if they are different would not satisfy the requirements of the Rules.



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ASX, whilst not prescribing acceptable abbreviations, does accept standard industry abbreviations such as:

- “+” or “-“ signs to indicate buy or sell orders respectively;
- “m” to indicate “at market” orders;
- “vwap” to indicate volume weighted average price; or
- “cd” to indicate use of careful discretion;

or similar if the unique meaning of those symbols is documented in internal policies as standard practice.

Internal trading record reviews

ASX strongly recommends that Market Participants should carry out periodic internal Trading Record reviews. Reviews should trace both forward from source Trading Records to the resulting executed trade data and back from executed trade data to the source Trading Record to ensure that all sources of order instructions are captured. If performed comprehensively and accurately these reviews will assist to ensure that the Market Participant, its representatives and its systems, are complying with the Rules. It will also assist to highlight to the Market Participant what sources of information it relies upon for the maintenance of its Trading Records and where this information is maintained.

Reliance on records maintained by ASX

Market Rule 4.10.7 allows a Trading Participant to have complied with its obligations to maintain a record under Rule 4.10 if that record is maintained in the manner set out in Rule 4.10.8 and the Procedures. Market Rule 4.10.8 sets out conditions that must be met by a Trading Participants to rely upon ASX’s records. Procedure 4.10.8 sets out the details that will be retained by ASX for each of SEATS and the DTP. If any conditions specified in those Rules and Procedures are not satisfied, the Trading Participant will not have the benefit of Rule 4.10.7. Trading Participants should assess their internal practices to determine which additional records they may need to maintain to take account of the conditions in the Rule.

Reliance on ASX records for the purposes of the Corporations Act

Whilst Market Rule 4.10.7 allows a Market Participant to have complied with its obligations under the Rules, Market Participants should obtain their own advice from a qualified professional person in respect of whether reliance on records maintained by ASX also satisfies the requirements for recording of instructions to deal pursuant to Corporations Act s991D and Regulation 7.8.19.

ASX suggests Market Participants consider utilising the provisions of Corporations Act s1301 as a means of satisfying its obligations under s991D in relation to those records maintained by ASX under Market Rule 4.10.7.

Should a Market Participant relying upon Market Rule 4.10.8 or s1301 require a copy of the records maintained by ASX to be produced it should contact Market Control in writing.

Recovery and production of the records by ASX will incur a fee calculated on a cost-recovery basis.

Qualification

ASX has published this note to promote commercial certainty and to 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 without further express notice to any particular person. Readers may contact ASX to ensure they have the latest version.