

SCHEDULE 9 RULES OF DIVISION 3 COMPENSATION ARRANGEMENT

1. INTRODUCTORY

These are the Compensation Rules of the ASX Compensation Arrangement established pursuant to Division 3 of Part 7.5 of the Corporations Act. These Compensation Rules have effect as a contract under seal between ASX and each Market Participant.

2. ESTABLISHMENT, INVESTMENT AND HOLDING OF THE FUND

- (a) The initial amount of the Fund is \$2,000,000.
- (b) The Authority must, until the Fund is applied for the Purposes of the Fund or disbursed in accordance with these Compensation Rules, invest the Fund in accordance with section 892C of the Corporations Act or kept in accordance with section 892B of the Corporations Act.

3. PURPOSES OF THE FUND

The Purposes of the Fund are:

- (a) to meet Permitted Claims on the Fund in accordance with these Compensation Rules;
- (b) to meet Disbursements of the Fund;
- (c) to make Permitted Returns of the Fund;
- (d) to invest the Fund as provided for under section 892C of the Corporations Act;
- (e) such other purposes as the Authority considers necessary with regard to the other Purposes of the Fund.

Amended 30/12/09

4. DISBURSEMENTS OUT OF THE FUND

The Authority may pay out of the Fund in such order as it deems proper:

- (a) all legal and other expenses incurred in investigating or defending claims made under the Compensation Rules or incurred in relation to the Fund or in the exercise by the Authority or its delegates or officers of any rights, powers, authorities or duties vested in or imposed on it under these Compensation Rules or otherwise in relation to the Fund or the Purposes of the Fund;
- (b) all premiums payable in respect of contract of insurance or indemnity entered into by or on behalf of the Authority;
- (c) the expenses incurred in the administration of the Fund, including the salaries and wages of persons employed by or seconded to the Authority, its board or the Claims Review Panel in relation to the fund;

- (d) all other money payable out of the Fund in accordance with these Compensation Rules or law.

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5. CLAIMS ON THE FUND

- (a) The Claims Review Panel must consider claims on the Fund by claimants for the compensation of Relevant Entrusted Property Losses, if the claimants:
 - (i) claim to have suffered a Relevant Entrusted Property Loss;
 - (ii) have notified the Claims Review Panel in the Required Form (by delivery to the Authority addressed to “the Secretary, Claims Review Panel”) setting out sufficient details of the claim within 6 months of the claimant becoming aware of the Relevant Entrusted Property Loss or, if a notice has been published under clause 10, by no later than the date specified in that notice; and
 - (iii) if the claim is in respect of a Relevant ASXF Entrusted Property Loss, the claimant has provided the Authority with a deed of release in a form acceptable to the Authority and ASXF, releasing ASXF from any liability in respect of the claim.
- (b) The Claims Review Panel must consider claims notified in accordance with paragraph (a) in a reasonable time having regard to the information provided in support of the claim and the circumstances of the claim.

Amended 19/08/09

6. THE CLAIMS REVIEW PANEL

- (a) The Board must, by resolution, appoint a Claims Review Panel comprising not fewer than 3 and not more than 5 persons, at least one of whom is also a member of the Board.
- (b) The Claims Review Panel may be paid such remuneration as the Authority considers appropriate.
- (c) Decisions of the Claims Review Panel must be determined by a majority vote of the Claims Review Panel.
- (d) The Claims Review Panel must notify the relevant claimant and the Market Participant in relation to a claim of the outcome of the Claims Review Panel’s deliberations in respect of that claim in writing.
- (e) The Board must only appoint such persons to the Claims Review Panel who it believes have appropriate experience in the fields of financial markets, law, accounting or such other field of activity as the Board considers relevant.

7. PAYMENT OF CLAIMS

- (a) If the Claims Review Panel decides, in accordance with clause 6 that a Claim is established, it must determine, subject to this clause 7 and clause 8, what compensation will be paid out of the Fund to meet the claim.
- (b) Subject to these Compensation Rules and the limitations set out in Part 7.5 of the Corporations Act, the amount of compensation to be paid in respect of a Relevant Entrusted Property Loss must be not less than the sum of:
 - (i) The actual pecuniary loss suffered by the claimant, calculated by reference to the market value of any relevant assets or liabilities as at the date on which the loss is suffered; and
 - (ii) The claimant's reasonable costs of, and disbursements incidental to, the making of the claim.
- (c) The amount of compensation payable in respect of a claim may be reduced by reference to:
 - (i) a right of set-off available to the claimant;
 - (ii) the extent to which the claimant was responsible for causing the loss.
- (d) In addition to any compensation that is payable under these Compensation Rules, interest is payable out of the Fund on the amount of the compensation, less any amount attributable to costs and disbursements, at the prescribed rate calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.
- (e) In other provisions of this Division a reference to "Relevant Entrusted Property Loss" includes (unless the contrary intention appears) a reference to interest payable in accordance with section 885E(5).
- (f) The Authority must, subject to the limitations set out in these Compensation Rules, satisfy claims established in accordance with these Compensation Rules, by making a lump sum payment to the successful claimants.

8. MONETARY LIMITATIONS ON CLAIMS

- (a) The Compensation Payment to any Claimant in respect of any Claim or series of Claims arising out of the same circumstances will not exceed \$100,000. In this regard a Claim will be considered to arise out of the same circumstances if it arises out of property having been given or entrusted to a single Market Participant.
- (b) If:
 - (i) a person makes or has made another claim against the Fund or against any Division 3 or Division 4 arrangements or under any law or contract, in respect of a loss suffered by the person and that claim has been allowed by the relevant court or body; and

- (ii) the person or another person makes a Claim against the Fund for compensation in respect of the same loss,

the Claim against the Fund must not be allowed unless the Claimant satisfies the Tribunal that the Claimant has not been paid and will not be paid such compensation as has been ordered to the Claimant by the court or body referred to in paragraph (f).

- (c) The amount or the sum of amounts paid from the Fund in respect of Claims referable to Relevant Circumstances in respect of a particular Market Participant must not exceed \$1,000,000.
- (d) The amount or the sum of amounts paid from the Fund in respect of Claims in respect of a single set of circumstances must not exceed \$1,000,000.
- (e) For the purposes of calculating the sum of amounts paid from the Fund for the purposes of this clause 8, an amount paid from the Fund is to be disregarded to the extent to which that amount is repaid to the Fund.
- (f) If the Authority or the Claims Review Panel considers, having regard to the ascertained or contingent liabilities **in respect** of the Fund, that the assets of the fund so permit, it may apply out of the Fund such sums in excess of the amount limited by this clause 9 as it, in its discretion, thinks fit in or towards the compensation of Claimants in respect of a Permitted Claim.
- (g) If the Fund is, at any time, insufficient to meet current Permitted Claims, or if the amount of claims which have been made out but not paid in respect of a particular Market Participant or a single set of circumstances exceeds the limitations set out paragraphs (c) or (d) respectively, the Authority may apportion the available funds amongst claimants on such basis as it considers, on reasonable grounds, to be equitable.
- (h) Notwithstanding paragraphs (a) to (g) above, claims in respect of Relevant ASXF Entrusted Property Losses will not be subject to the limitations set out in those paragraphs.
- (i) Claims in respect of Relevant ASXF Entrusted Property Losses will be subject to the limitations that would have applied had they been brought under Part 8.6 of the Corporations Act as in effect on 15 July 2001 (construed as if references therein to “the fidelity fund” were references to the Fund).

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9. TIME LIMITS ON CLAIMS

- (a) The Authority may cause to be published in a daily newspaper circulating generally in each State and Territory, a notice specifying a date, not being earlier than 3 months after the publication of the notice, on or before which claims for compensation from the Fund, in relation to a person, firm, circumstance or set of circumstances described in the notice, may be made.
- (b) A Claim for compensation from the Fund must be made within 6 months after the claimant became aware of the relevant loss (or, if a notice has been published

in accordance with paragraph (f), before the date specified in that notice. Claims not made within those time limits are barred unless the Authority or the Claims Review Panel otherwise determines.

10. CERTAIN CLAIMS PERMITTED

A claim relating to an alleged loss caused by defalcation or fraudulent misuse is not disallowed solely because:

- (a) the person against whom the defalcation or misuse is alleged has not been convicted or prosecuted; and
- (b) the evidence on which the claim is allowed would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse.

11. PERMITTED RETURNS OF THE FUND

If, at any time, the amount in the Fund is greater than the Prescribed Amount, the Authority may return so much of the Fund as is in excess of the Prescribed Amount to Contributors on such basis as the Authority considers appropriate.

12. CONTRIBUTIONS TO THE FUND

- (a) If the amount in the Fund is less than the Prescribed Amount, the Authority may determine in writing that a levy is payable by Relevant Market Participants in an amount which, when added to the amount of the Fund at the time of such determination is not less than the Prescribed Amount.
- (b) The provisions of Section 883D of the Corporations Act apply to a levy raised under this Rule 12.
- (c) If the Authority determines that a levy is payable in accordance with paragraph (a) above, the amount of levy payable by each Relevant Market Participant will be the total amount of the levy divided by the number of Relevant Market Participants at the time the Authority determines that the levy is payable.
 - (i) all Relevant Market Participants must pay on an equal basis; or
 - (ii) all Relevant Market Participants must pay on a basis related to the amount of claims that have been made in relation to such Market Participant; or
 - (iii) all Relevant Market Participant must pay on a basis related to the size or turnover of the Relevant Market Participants' Relevant Business.; or
 - (iv) on another basis determined by the Authority.
- (d) Relevant Market Participants must pay levies raised under this clause 12 within the period, and in the manner and amounts, specified in writing by the Authority either generally or in relation to particular Relevant Market Participants or particular classes of Relevant Market Participants.

13. INDEMNITY

Each Relevant Market Participant indemnifies and must keep indemnified the Authority against any costs, losses, expenses or payments it pays or incurs pursuant to these Compensation Rules arising out of Relevant Entrusted Property Losses in connection with that Relevant Market Participant.

14. RUN-OFF

- (a) Subject to paragraph (b), if ASX ceases to be required by the Corporations Act to maintain the compensation arrangements provided for in these Compensation Rules, the Authority must:
- (i) publish an advertisement in a newspaper or newspapers circulating in Canberra and the capital city of each state of Australia notifying that it has so ceased and calling for any claims under these Rules which have arisen on or before the date on which the Authority ceases to be bound by the Corporations Act to be notified to the Authority in accordance with Rule 5 within 3 months of that date;
 - (ii) continue to comply with these Rules to the extent necessary to ensure that any Claims which have arisen on or before the date on which the Authority ceases to be bound by the Corporations Act to maintain the compensation arrangements provided for in these Compensation Rules been notified in accordance with Rule 5 on or before the date which is 3 months after the date on which the Authority ceases to be bound by the Corporations Act Relevant Date are considered and, if successful, compensated in accordance with these Rules.
- (b) The Authority will not be required to comply with clause 14(a) if another compensation arrangement is put in place that, in the opinion of the Australian Securities and Investments Commission, provides adequately for the consideration and compensation of claims of the type described in paragraph (a).

15. DEFINITIONS

In these Compensation Rules, the following terms have the meanings set out below.

“ASX” and “Authority” mean ASX Futures Exchange Pty Limited.

“Board” means the Board of directors of ASX.

“Claims” means a claim on the fund made in accordance with clause 4.

“Claims Review Panel” means a panel appointed in accordance with clause 6.

“Compensation Rules” means the rules set out in this Annexure to the Market Rules.

“Contributors” means ASX or any related body corporate of ASX and Contributing Market Participants.

“Contributing Market Participants” means Market Participants who have paid levies to the Fund pursuant to clause 12.

“Disbursements” means a payment in accordance with clause 4.

“Effective Date” means 11 March 2004.

“Fund” means the fund established pursuant to this document, which will be known as the ASX Supplemental Compensation Fund.

“Insolvency Event” means circumstances which include where:

- (a) the company becomes subject to the appointment of an administrator;
- (b) steps are taken by any person towards making the company externally administrated;
- (c) a controller as defined under the Corporations Act is appointed of any of the property of the defaulting party or any steps are taken in relation to this;
- (d) the company has failed to comply with a statutory demand within the meaning of the Corporations Act; or
- (e) a compromise, arrangement, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure occurs.

“Market Rules” means the Market Rules, forming part of the operating rules, of ASX Limited.

Amended 20/07/07

“Market Participant” has the meaning given that term in the Market Rules.

“Non-NGF Products” means financial products which are not:

- (a) “securities” as defined in Corporations Regulation 7.5.09;
- (b) warrant products as referred to in Schedule A of ASIC Class Order 02/312 (warrants admitted to trading status under the operating rules of the financial market operated by ASX); or
- (c) option contracts within the meaning of paragraph 92(1)(e) of the old Corporations Act.

“Permitted Claim” means a Claim, which has been permitted by the Claims Review Panel in accordance with these Compensation Rules.

“Permitted Return” means a return of part of the Fund pursuant to Rule 11.

“Prescribed Amount” means \$2,000,000.

“Prescribed Rate” means 10% per annum.

“**Purposes of the Fund**” means the purposes described in clause 2.

Related Body Corporate has the same meaning as is set out in section 50 of the Corporations Act.

“**Relevant Circumstances**”, in relation to a claim, means an Insolvency Event having occurred to the Market Participant to which the claim relates since the time that the property giving rise to the claim was given or entrusted to the Market Participant.

“**Relevant Date**” means the date on which ASX ceases to be bound by the Corporations Act to maintain the compensation arrangements provided for in these Compensation Rules.

“**Relevant Entrusted Property Losses**” means Relevant ASX Entrusted Property Losses and Relevant ASXF Entrusted Property Losses.

“**Relevant ASX Entrusted Property Losses**” means losses of a kind described in Section 885C of the Corporations Act, construed subject to section 885D.

“**Relevant ASXF Entrusted Property Losses**” means, provided that the relevant claim is notified to the Authority by 10 September 2004, losses of a kind described in Section 1239(1) of the Corporations Act as in effect on 15 July 2001, construed as if references in that sub-section to “a futures organisation” were references to ASXF.

“**Relevant Market Participant**” means a Market Participant with Trading Permission to deal in Non-NGF Products.

“**Required Form**” means such form as the Authority has determined from time to time and made available by a link on the web-site of ASX Limited.

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16. INTERPRETATION

16.1. General

In these Rules, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or any legislative provision substituted for, and any statutory instruments issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice-versa;
- (c) a reference to an individual or person includes a corporation, partnership, trust, firm, authority, government and governmental agency and vice-versa;
- (d) a word denoting any gender includes all genders;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

- (f) where there is a reference to the power of the Authority to make, demand or impose a requirement on a person there is a corresponding obligation of that person to comply with that demand or requirement in all respects;
- (g) a reference to writing includes typing, printing, lithography, photography, telex, facsimile or any other mode of representing or reproducing words in a visible form;
- (h) a reference to time is to the time in Sydney, Australia; and
- (i) a reference to currency is a reference to Australian currency.

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16.2. Headings

Headings are for convenience of reference only and do not affect the interpretation of the Rules.

16.3. Corporations Act interpretation

Unless the contrary intention appears, words that are not specifically defined in the Rules but are given a particular meaning in the Corporations Act, or the Acts Interpretation Act, have the same meaning in these Rules. If there is any inconsistency between the Corporations Act and the Acts Interpretation Act, the meaning in the Corporations Act prevails.

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16.4. Purpose and object of Rule

In the interpretation of a Rule, a construction that would promote the purpose or object underlying the Rules (whether that purpose or object is expressly stated in the Rules or not) is to be preferred to a construction which would not promote that purpose or object.

16.5. Effect of amendment to Rule

Unless expressly stated otherwise, where a Rule is:

- (a) amended;
- (b) deleted; or
- (c) lapses or otherwise ceases to have effect,

that circumstance does not:

- (d) revive anything not in force or existing at the time at which that circumstance takes effect;
- (e) affect the previous operations of that Rule or Procedure or anything done under that Rule;
- (f) affect any right, privilege, obligation or liability acquired, accrued or incurred under that Rule;

- (g) affect any penalty, forfeiture, suspension, expulsion or disciplinary action taken or incurred in respect of any breach of that Rule; or
- (h) affect any investigation, disciplinary proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, suspension, expulsion or disciplinary action,

and any such investigation, disciplinary proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, suspension, expulsion or disciplinary action may be imposed as if the circumstance had not taken effect.

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