

## SECTION 28 SUPERVISION, DISCIPLINARY MATTERS, TRIBUNAL PROCEEDINGS AND APPEALS

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## **SECTION 28      SUPERVISION, DISCIPLINARY MATTERS, TRIBUNAL PROCEEDINGS AND APPEALS**

This Section deals with supervision and disciplinary matters including:

- (a) investigating the activities of a Regulated Person and the powers of ASX to obtain information, inspect records and obtain an Accountant's report at the cost of a Regulated Person;
- (b) the requirement that a Regulated Person must report certain matters to ASX;
- (c) the taking of disciplinary action;
- (d) enforcement action including the power of ASX to suspend or terminate a Regulated Person; and
- (e) the consolidation of investigations.

The establishment and composition of the Tribunal Panels, the Disciplinary Tribunal and the Appeal Tribunals, the powers of those Tribunals and how proceedings before the Disciplinary Tribunal and the Appeal Tribunal are to be conducted are set out in the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

### **28.1      MONITORING COMPLIANCE**

#### **28.1.1      Obtaining information**

ASX may at any time investigate the activities of a Regulated Person. As part of any investigation, ASX may require a Regulated Person to do one or both of the following:

- (a) to provide any information known to the Regulated Person; and
- (b) by notice in writing, to provide or permit inspection at the offices of the Regulated Person or any other place notified by ASX of any records in the custody, control or possession of the Regulated Person,

in connection with the performance by the Regulated Person or the relevant Market Participant of their obligations under the Rules.

ASX may also require, by notice in writing, that a Regulated Person provide specified information relating to the terms and circumstances of, and the parties to, any dealings in Products by clients and former clients of the relevant Market Participant.

Introduced 11/03/04 Origin ASXF 17.1.1

#### **28.1.2      Regulated Person to comply**

If a Regulated Person is required to provide information or receives a notice under Rule 28.1.1, the Regulated Person must:

- (a) provide the information, or provide or permit inspection of the records in accordance with the notice;

- (b) provide assistance to ASX as ASX may reasonably require in relation to the information required or the notice; and
- (c) bear any costs incurred by the Regulated Person in connection with providing the information or complying with the notice or providing assistance to ASX.

Introduced 11/03/04 Origin ASXF 17.1.2

### **28.1.3 Attendance of individuals before ASX**

Without limiting the powers under Rule 28.1.1, ASX may, in connection with an investigation, require a Regulated Person and its Employees to appear for interviews before ASX to give any information required by ASX in relation to the business of the relevant Market Participant or to enable ASX to consider whether or not the Market Participant continues to comply with the Admission Requirements and whether the Regulated Person has complied with the Regulated Person's obligations under these Rules. A Regulated Person must comply, and must ensure that its Employees comply, with any requirement of ASX under this Rule 28.1.3.

Introduced 11/03/04 Origin ASX 13.1(1), ASXF 17.1.4 Amended 22/05/06, 31/03/08, 19/08/09

### **28.1.4 Other requirements of investigation**

ASX may, in connection with any investigation, do one or more of the following:

- (a) give directions about who may be present at an interview of another person;
- (b) impose conditions on the attendance of a person, including in relation to appropriate undertakings as to confidentiality; and
- (c) impose any other requirement which ASX considers to be reasonably necessary to preserve the integrity of the investigation.

A Regulated Person must comply, and ensure that its Employees comply, with any requirement imposed under this Rule 28.1.4.

Introduced 11/03/04 Origin ASXF 17.1.5

### **28.1.5 ASX may request Accountant's report**

ASX may direct a Regulated Person at any time to supply to ASX a report of an Accountant approved by ASX in a form and within a time determined by ASX.

If ASX considers that the information contained in the report warrants a further investigation it may direct the Regulated Person to give to ASX or the Accountant further information which ASX considers appropriate having regard to Rule 1.13 or require the Regulated Person to cause the Accountant to submit a further report covering further matters specified by ASX.

Introduced 11/03/04 Origin ASX 13.2.1(1), ASXF 17.1.6

### **28.1.6 ASX may appoint Accountant**

If a Regulated Person fails to comply with a direction by ASX under Rule 28.1.5, ASX may appoint an Accountant to investigate the Regulated Person and prepare a report in a form and within a time determined by ASX. The Regulated Person must give all

necessary assistance required by the Accountant to prepare the report and must at the request of the Accountant direct third parties to make available all information the Accountant requires.

Introduced 11/03/04 Origin ASX 13.2.1(2), ASXF 17.1.7

#### **28.1.7 Authority of Accountant appointed by ASX**

An Accountant appointed by ASX under Rule 28.1.6 is taken to be the Regulated Person's attorney for the purpose of obtaining any information or documents from third parties which in the opinion of the Accountant or ASX are necessary for the Accountant to prepare the report or further report.

Introduced 11/03/04 Origin ASX 13.2.2(1), ASXF 17.1.8

#### **28.1.8 Cost of Accountant**

Unless ASX otherwise determines, the relevant Regulated Person must pay the costs of the report of the Accountant prepared under this Rule 28.1.

Introduced 11/03/04 Origin ASX 13.2.2(2), 17.1.9

### **28.2 PROVISION OF AUDIT REPORT TO ASX**

#### **28.2.1 Audit of Regulated Persons**

ASX may by notice to a Regulated Person require the Regulated Person to provide a report from an independent auditor or other expert approved by ASX expressing an opinion as to:

- (a) the performance by the Regulated Person and any third party provider of the Regulated Person of the Regulated Person's obligations under the Rules;
- (b) the Regulated Person's capacity to continue to meet the requirements for admission as a Regulated Person; or
- (c) any other matter which in the opinion of ASX is necessary to assist ASX in the discharge of its functions under these Rules.

Introduced 11/03/04 Amended 27/05/05

#### **28.2.2 Notice, reporting and costs of audit of obligations**

If ASX gives notice to a Regulated Person requiring that Regulated Person to provide a report under Rule 28.2.1,

- (a) ASX must specify in that notice the date and time by which the Regulated Person is to provide the report and that date must be a date not less than one month from that date that ASX gives the notice; and
- (b) the Regulated Person must:
  - (i) provide that report to ASX within the time specified in the notice; and
  - (ii) bear any costs incurred by the Regulated Person in obtaining the report.

Introduced 11/03/04

### 28.2.3 Notice by Regulated Person

A Regulated Person must notify ASX in writing immediately if:

- (a) it becomes aware that it has breached any of the Rules and that breach is significant;
- (b) the Regulated Person is also a Clearing Participant and any circumstance exists which constitutes an event of default under the operating rules of an Approved Clearing Facility;
- (c) the Regulated Person or any of its Employees is the subject of any regulatory or disciplinary action by any exchange, market operator, clearing and settlement facility, the Commission or any other regulatory authority (or if the Market Participant becomes aware that any Clearing Participant through which it clears Market Transactions or any of the Clearing Participant's Employees is the subject of any action of that type);
- (d) the Regulated Person suspects or becomes aware that any Employee has engaged in fraudulent conduct or other conduct which might constitute Unprofessional Conduct; or
- (e) the Regulated Person becomes aware or has reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules.

For the purposes of determining whether a breach is significant for the purposes of paragraph (a), a Regulated Person must have regard to the following:

- (f) the number or frequency of similar breaches;
- (g) the impact of the breach on the Market Participant's ability to comply with any other Rule or Procedure or to conduct its business operations;
- (h) the extent to which the breach indicates that a Market Participant's arrangements to ensure compliance with the Rules and Procedures is inadequate;
- (i) the actual or potential financial loss to clients of the Market Participant, or the Market Participant itself, arising from the breach; and
- (j) any other matters specified by ASX from time to time.

Introduced 11/03/04

### 28.2.4 Notice by other Regulated Person

A Regulated Person (other than a Market Participant) must notify ASX in writing immediately if the Regulated Person:

- (a) fails to perform any of his or her responsibilities under these Rules;
- (b) is the subject of any regulatory or disciplinary action by any market operator, clearing and settlement facility, the Commission or any other regulatory authority; or

- (c) becomes aware of any other event or circumstance which adversely affects or may adversely affect his or her ability to perform any of his or her responsibilities under these Rules, or the Market Participant's ability to perform any of its responsibilities under these Rules.

Introduced 11/03/04

## **28.3 DISCIPLINARY ACTION**

### **28.3.1 Grounds for disciplinary action**

If ASX considers that a Regulated Person has contravened the Rules or engaged in Unprofessional Conduct ASX may take disciplinary action in accordance with the provisions of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

Introduced 11/03/04 Origin ASX 13.5.1(1), ASXF 17.2.1 Amended 24/05/04, 31/03/08

### **28.3.2 Expedited disciplinary procedure – [Deleted]**

Introduced 11/03/04 Origin ASX 13.5.1(6)(a) ASXF 17.2.2 Amended 12/10/04, 22/05/06 Deleted 31/03/08

### **28.3.3 Regulated Person may elect for Disciplinary Tribunal hearing – [Deleted]**

Introduced 11/03/04 Origin ASX 13.5.1(6)(b), ASXF 17.2.3 Deleted 31/03/08

### **28.3.4 Action to enforce expedited determination – [Deleted]**

Introduced 11/03/04 Origin ASX 13.5.1(6)(b), ASXF 17.2.4 Deleted 31/03/08

### **28.3.5 Commencement of disciplinary proceedings – [Deleted]**

Introduced 11/03/04 Origin ASX 13.5.1(1), ASXF 17.2.5 Deleted 31/03/08

### **28.3.6 Proceedings of Disciplinary Tribunal – [Deleted]**

Introduced 11/03/04 Origin ASX 14.2.1(4), ASXF 17.2.6 Deleted 31/03/08

### **28.3.7 Exercise of powers of Disciplinary Tribunal in disciplinary proceedings – [Deleted]**

Introduced 11/03/04 Origin ASX 13.5.1(3), ASXF 17.2.7 Amended 24/05/04, 12/10/04, 28/11/05 Deleted 31/03/08

### **28.3.8 Register of banned Regulated Persons – [Deleted]**

Introduced 12/10/04 Amended 28/11/05 Deleted 31/03/08

## **28.4 IMMEDIATE ACTION WHERE EVENT OF DEFAULT**

### **28.4.1 Action pursuant to Rule 28.4**

ASX may exercise its powers under this Rule 28.4 to suspend or terminate the admission of a Market Participant from all or any of the privileges of being a Market Participant for one or more Products without following the procedures set out in Rule 28.3. Action by ASX under this Rule 28.4 does not prevent ASX from commencing proceedings under Rule 28.3 in connection with the circumstances giving rise to that action or from taking any other action under this Rule 28.4.

Introduced 11/03/04 Origin ASXF 17.3.1 Amended 28/11/05, 31/03/08



## 28.4.2 Events of default

ASX may regard any of the following events as an event of default by a Market Participant:

- (a) if the Market Participant is a Clearing Participant, the Market Participant ceases to be a Clearing Participant under the Clearing Rules and does not then comply with Section 5;
- (b) if the Market Participant is a Clearing Participant, the Market Participant is suspended from being a Clearing Participant, or suspended from clearing certain categories of Market Transaction under the Clearing Rules and does not then comply with Section 5;
- (c) if the Market Participant is not a Clearing Participant, the Market Participant does not comply with Section 5;
- (d) the Market Participant fails to pay any amount due and payable to ASX or an Approved Clearing Facility or fails to perform any of its obligations to ASX or an Approved Clearing Facility or fails to comply with any reasonable direction, decision or requirement of ASX or an Approved Clearing Facility;
- (e) the Market Participant indicates that it will or may suspend payment to ASX, an Approved Clearing Facility or to creditors;
- (f) the Market Participant is or states that it is insolvent under administration, or ceases or indicates that it will or may cease to carry on business;
- (g) the Market Participant becomes, or the Market Participant or any other person takes any step which might result in the Market Participant becoming, an externally-administered body corporate or an insolvent under administration (as those terms are defined in section 9 of the Corporations Act);
- (h) any distress, execution or other process is levied or enforced or served upon or against any property of the Market Participant;
- (i) an investigator, inspector or other officer is appointed, or an investigation directed or commenced under the Corporations Act or other legislation to investigate all or part of the affairs of the Market Participant or a related entity, in circumstances which are, in the opinion of ASX, material to the capacity of the Market Participant to meet its obligations to other Market Participants, ASX or an Approved Clearing Facility;
- (j) the Market Participant does not have the level of capital required under Section 6 (or fails to comply with any exemption under Rule 6.3);
- (k) the Market Participant no longer satisfies the criteria for admission as a Market Participant or fails to comply with any condition of admission as a Market Participant;
- (l) the Market Participant made a wilful omission or misstatement in respect of a material matter prior to, or in connection with, its application for admission as a Market Participant;
- (m) the Market Participant has failed to comply with Rule 28.1;

- (n) the Market Participant has failed to comply with a determination made by a Disciplinary Tribunal pursuant to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook;
- (o) the Market Participant is suspended, expelled or terminated as a member or participant of any Australian or overseas derivatives, securities, commodity or stock exchange or market or any clearing house or clearing and/or settlement facility or is subject to sanctions imposed by an Australian or overseas regulatory authority; and
- (p) if the Market Participant is an individual, he or she dies.

Introduced 11/03/04 Origin ASXF 17.3.2 Amended 31/03/08

### 28.4.3 Other significant events

If an event, or series of events whether related or not, occurs in relation to a Market Participant or a related entity of a Market Participant, which is not an event of default under Rule 28.4.2, including without limitation:

- (a) the Market Participant fails to comply, or indicates that it will or may fail to comply with any of the Rules or the terms of any agreement with ASX;
- (b) the Market Participant fails to comply, or indicates that it will or may fail to comply with any of the rules of, or the terms of any agreement with, an Approved Clearing Facility; or
- (c) ASX is informed by another derivatives, securities, commodity or stock exchange or market or any clearing house or clearing and/or settlement facility that the Market Participant or a Related Body Corporate of the Market Participant is not complying with its obligations to that exchange, market, clearing house or clearing and/or settlement facility,

and ASX considers the event or series of events has or may have a material adverse effect on:

- (d) the capacity of the Market Participant to meet all its obligations to ASX, a related entity of ASX or an Approved Clearing Facility or other Market Participants;
- (e) the financial position of ASX, an Approved Clearing Facility or the Market Participant; or
- (f) the Market or an Underlying Market,

ASX immediately after giving written notice to the Market Participant of its intention to rely on this Rule, may take any or all of the actions set out in Rule 28.4.4 in relation to the Market Participant as if an event of default under Rule 28.4.2 had occurred.

Introduced 11/03/04 Origin ASXF 17.3.3

### 28.4.4 Powers

If ASX considers that an event of default under Rule 28.4.2 has occurred, or if Rule 28.4.3 applies, ASX may take any or all of the following actions in respect of the Market Participant, in the name of (if appropriate) and at the expense of the Market Participant,

in any order immediately or at any other time ASX determines, and without the need for any prior notice to or consent of the Market Participant or any other person:

- (a) cancel a Derivatives Market Transaction effected by the Market Participant which has not been reported to an Approved Clearing Facility for registration;
- (b) subject to Rule 28.5, suspend or terminate the Market Participant's admission as a Market Participant, or impose restrictions on its rights or privileges as a Market Participant;
- (c) without prejudice to any other rights which ASX may have under the Rules, under statute, at law or in equity, take any other action, or take no action, or direct the Market Participant to take any action or no action, in order to eliminate or minimise risk with respect to Market Transactions entered into by the Market Participant or which ASX considers appropriate for the protection of ASX, an Approved Clearing Facility, the Market or other Market Participants.

Introduced 11/03/04 Origin ASXF17.3.4 Amended 28/11/05

#### **28.4.5 Notification to Market Participants of ASX action**

ASX will, as soon as practicable, notify the Market Participant of action taken by ASX under this Rule 28.4, and its reasons for taking that action. If ASX cancels a Market Transaction under Rule 28.4.4(a), ASX will notify the other Market Participant which was party to that Market Transaction of that cancellation.

Introduced 11/03/04 Origin ASXF 17.3.5

#### **28.4.6 Appointment of ASX as agent**

Each Market Participant irrevocably appoints severally ASX, and every officer, employee, agent and other representative for the time being of ASX, at the option of ASX, to be the agent of the Market Participant and irrevocably authorises ASX and every officer, employee, agent and other representative for the time being of ASX, at the option of ASX, to do all acts and execute all documents on its behalf for the purpose of exercising the powers conferred on ASX by this Rule 28.4.

Introduced 11/03/04 Origin ASXF 17.3.6

#### **28.4.7 No liability of ASX**

Without limiting Rule 1.8, none of ASX, its officers, representatives, agents or contractors are liable to a Market Participant or to any other person for any loss, liability, damage, cost or expense arising in any way (including, without limitation, by negligence) from the bona fide exercise of any power, right or discretion conferred upon ASX by this Rule 28.4.

Introduced 11/03/04 Origin ASXF 17.3.7

#### **28.4.8 Indemnity**

Each Market Participant indemnifies and will keep indemnified ASX and its officers, representatives, agents and contractors against all actions, proceedings, claims, demands, damages, costs, expenses and any other amounts against or incurred by any of ASX or its officers, employees, agents or contractors arising out of or in connection with any event of default under Rule 28.4.2, any circumstances under Rule 28.4.3 or any action taken

by, or any inaction by, any of ASX or its officers, employees, agents or contractors under this Rule 28.4.

Introduced 11/03/04 Origin ASXF 17.3.8

#### **28.4.9 Protection of third parties**

No person need enquire whether any action taken under this Rule 28.4 is properly or validly taken nor will a person be affected by any notice or claim that any action taken under this Rule 28.4 is improper or unnecessary.

Introduced 11/03/04 Origin ASXF 17.3.9

#### **28.4.10 Survival of powers**

The rights, powers and remedies of ASX under this Rule 28.4 in relation to a Market Participant survive the termination of the Market Participant's admission as a Market Participant.

Introduced 11/03/04 Origin ASXF 17.3.10

#### **28.4.11 Notice of suspension or termination**

ASX will, as soon as practicable, notify the Market Participant of action taken by ASX under this Rule 28.4 to suspend or terminate the Market Participant, and its reasons for taking that action.

#### **28.4.12 Failure to pay sums payable**

If any Market Participant fails to pay any levy, fee, fine or any sum of money (in this Rule 28.4.12, a "Sum") for which it is liable to ASX or any Related Party of ASX, within 1 month from the time when such sum became payable, the amount of such sum will carry interest at the rate determined in accordance with Schedule 5 of the *Uniform Civil Procedure Rules 2005* (NSW).

Introduced 11/03/04 Amended 24/05/04, 19/08/09

### **28.5 SUSPENSION AND TERMINATION OF MARKET PARTICIPANTS**

#### **28.5.1 Suspension**

If ASX suspends a Market Participant from the privileges of being a Market Participant under Rule 28.4.4:

- (a) the initial period of suspension must not exceed one month although ASX may extend that period for additional periods of not more than one month at a time if it reasonably believes an extension is necessary or desirable;
- (b) the Market Participant must not hold itself out as a Market Participant during a period of suspension; and
- (c) during a period of suspension, ASX may, pursuant to its powers under Rule 28.4.4(b) but subject to Rule 28.5.2, terminate the admission of the Market Participant.

Introduced 11/03/04 Origin ASX 13.3.2(2)&(4), ASXF 17.4.1

## **28.5.2 No termination without hearing**

ASX must not terminate the admission of a Market Participant under Rule 28.4.4 (except if the Market Participant commits an event of default under Rule 28.4.2, paragraph (a), (d), (f), (g) or (h)) unless ASX first gives the Market Participant an opportunity to do one or both of the following, at the option of the Market Participant:

- (a) appear in person or be represented before ASX; and
- (b) lodge with ASX a written submission for consideration by ASX, in relation to the proposed termination.

ASX must determine the matter without bias and must give the Market Participant a fair hearing and otherwise observe the rules of procedural fairness.

Introduced 11/03/04 Origin ASXF 17.4.2

## **28.6 SUSPENSION AND TERMINATION OF OTHER REGULATED PERSONS**

### **28.6.1 Regulated Person declared a defaulter**

Where a Regulated Person (other than a Market Participant):

- (a) in the opinion of ASX, has failed or is unable to fulfil the person's obligations or responsibilities under the Rules;
- (b) becomes an insolvent under administration; or
- (c) is a director or partner of a Market Participant whose admission as a Market Participant is terminated by ASX under these Rules,

ASX may, by notice to the Regulated Person, declare the Regulated Person a defaulter. The recognition of the person as a Regulated Person ceases on the issue of that notice.

Introduced 11/03/04

### **28.6.2 Suspension or termination in interests of ASX**

ASX may suspend or terminate the recognition of the Regulated Person (other than a Market Participant), if, in the opinion of ASX, having regard to Rule 1.13, it is appropriate.

Introduced 11/03/04

### **28.6.3 Suspension**

If ASX suspends the recognition of a Regulated Person under Rule 28.6.1:

- (a) the initial period of suspension must not exceed one month although ASX may extend that period for additional periods of not more than one month at a time if it reasonably believes an extension is necessary or desirable;
- (b) the Regulated Person must not hold itself out as a Regulated Person during a period of suspension; and

- (c) during a period of suspension, ASX may, pursuant to its powers under Rule 28.6.1 but subject to Rule 28.6.4, terminate the recognition of the Regulated Person.

Introduced 11/03/04

#### **28.6.4 No termination without hearing**

ASX must not terminate the recognition of a Regulated Person under Rule 28.6.1 unless ASX first gives the Regulated Person an opportunity to do one or both of the following, at the option of the Regulated Person:

- (a) appear in person or be represented before ASX; and
- (b) lodge with ASX a written submission for consideration by ASX, in relation to the proposed termination.

ASX must determine the matter without bias and must give the Regulated Person a fair hearing and otherwise observe the rules of procedural fairness.

Introduced 11/03/04

### **28.7 APPEALS**

#### **28.7.1 Appeal from decision of Disciplinary Tribunal**

If a Regulated Person or ASX is dissatisfied with a determination of the Disciplinary Tribunal it may appeal to the Appeal Tribunal in accordance with the provisions of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

Introduced 11/03/04 Origin ASX 13.7.1, ASXF 17.5.2 Amended 31/03/08

#### **28.7.2 Appeal from decision of ASX under Rule 28.4**

If a Market Participant is dissatisfied with a decision of ASX to suspend or terminate the admission of a Market Participant under Rule 28.4, the Market Participant may appeal to the Appeal Tribunal in accordance with the provisions of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

Introduced 11/03/04 Amended 31/03/08

#### **28.7.3 Appeal from decision of ASX under Rule 28.6.2**

If a Regulated Person is dissatisfied with a decision of ASX to suspend or terminate the recognition of a Regulated Person under Rule 28.6.2, the Regulated Person may appeal to the Appeal Tribunal in accordance with the provisions of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

Introduced 11/03/04 Amended 31/03/08

#### **28.7.4 Action which may be implemented pending appeal**

ASX may implement and announce a decision to suspend a Market Participant pursuant to Rule 28.4 or a Regulated Person under Rule 28.6.2 before the expiry of the time for

giving a notice of appeal or before the appeal is determined, if ASX considers it appropriate having regard to Rule 1.13 to do so.

Introduced 11/03/04 Origin ASXF 17.5.3

#### **28.7.5 Action which may not be implemented pending appeal**

Neither ASX, nor the Disciplinary Tribunal, may implement or announce a decision to:

- (a) discipline a Regulated Person under Rule 2.4.1 of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook;
- (b) terminate a Market Participant's admission as a Market Participant under Rule 2.4.1 of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook or Rule 28.4 of this Rulebook; or
- (c) terminate a Regulated Person's recognition as a Regulated Person under Rule 28.6.2,

before the expiry of the time for giving a notice of appeal or, if a notice of appeal is given, before the appeal is determined.

Introduced 11/03/04 Origin ASX 13.7.1(5) Amended 31/03/08

### **28.8 RECORD OF ACTION AND ANNOUNCEMENT – [DELETED]**

#### **28.8.1 Record to be made – [Deleted]**

Introduced 11/03/04 Origin ASX 13.9.1(1)&(2), ASXF 17.6.1 Deleted 31/03/08

#### **28.8.2 Action pending appeal – [Deleted]**

Introduced 11/03/04 Origin ASX 13.9.1(4), ASXF 17.6.2 Deleted 31/03/08

#### **28.8.3 Announcement – [Deleted]**

Introduced 11/03/04 Origin ASX 13.9.2, ASXF 17.6.3 Deleted 31/03/08

#### **28.8.4 Disclosure – [Deleted]**

Introduced 11/03/04 Origin ASX 13.9.3, ASXF 17.6.4 Deleted 31/03/08

### **28.9 CONSOLIDATION OF INVESTIGATIONS – RELATED BODIES CORPORATE**

#### **28.9.1 ASX may consolidate investigation**

Subject to Rule 28.9.4, if:

- (a) ASX is entitled to exercise its powers against a Regulated Person under Rule 28.1 in respect of particular circumstances; and
- (b) a Related Body Corporate of ASX has similar powers under its operating rules and is entitled to exercise those powers against the same Regulated Person in respect of the same or similar circumstances,

ASX need not exercise those powers separately but may, exercise those powers together with the exercise by the Related Body Corporate of its powers.

Introduced 11/03/04 Origin ASXF 17.7.1

#### **28.9.2 ASX may consolidate disciplinary proceedings – [Deleted]**

Introduced 11/03/04 Origin ASXF 17.7.2 Deleted 31/03/08

#### **28.9.3 ASX may consolidate appeal proceedings – [Deleted]**

Introduced 11/03/04 Origin ASXF 17.7.3 Deleted 31/03/08

#### **28.9.4 Consolidation does not affect powers**

Even though the exercise of powers or hearings are consolidated under this Rule 28.9, ASX must comply with the Rules which govern those powers and hearings. The consolidation of the exercise of powers or hearings under this Rule 28.9 does not confer on ASX or on the Related Body Corporate any powers in addition to those conferred on them by these Rules or the rules of the Related Body Corporate.

Introduced 11/03/04 Origin ASXF 17.7.4 Amended 31/03/08

### **28.10 CONSOLIDATION OF INVESTIGATIONS AND PROCEEDINGS – REGULATED PERSONS – [DELETED]**

#### **28.10.1 ASX may combine proceedings – [Deleted]**

Introduced 11/03/04 Deleted 31/03/08

#### **28.10.2 Right to object – [Deleted]**

Introduced 11/03/04 Deleted 31/03/08

#### **28.10.3 Appeals – [Deleted]**

Introduced 11/03/04 Deleted 31/03/08

### **28.11 CORPORATIONS ACT COMPLIANCE AND CONTRAVENTIONS**

#### **28.11.1 Enforcement of contractual provisions**

Where these Rules require a Regulated Person to comply with a provision of the Corporations Act (and therefore, contemplate that ASX may take action against a Regulated Person for a contravention of that provision):

- (a) ASX may enforce that provision as if it were repeated as a Rule;
- (b) any action taken or determination by ASX is not to be regarded as taking action or making a determination under the Corporations Act but rather as taking action or making a determination under the contract constituted by these Rules in relation to a contravention of the contractual term referred to in paragraph (a);



- (c) ASX may take action or make a determination under this Section 28 regardless of whether a court, the Commission or any other authority has commenced or completed any investigation, prosecution or other action in relation to the alleged contravention of that provision; and
- (d) any action or determination by ASX or any Tribunal is not affected by any previous or subsequent action or determination by any court, the Commission or any other authority in relation to an alleged contravention of that provision.

Introduced 11/03/04 Origin ASXF 17.8.1 Amended 28/11/05, 31/03/08

## 28.11.2 Interpretation

In Rule 28.11:

- (a) "**taking action**" includes commencing or continuing any inquiry or investigation, holding any hearing or engaging in any procedure; and
- (b) "**determination**" includes any decision of an interim nature.

Introduced 11/03/04 Origin ASXF 17.8.2

## 28.12 CERTAIN OBLIGATIONS OF CERTAIN REGULATED PERSONS CONTINUE

### 28.12.1 Jurisdiction continues

After a Regulated Person, other than a Market Participant, ceases to be a Regulated Person under these Rules:

- (a) the Rules continue to apply and ASX will continue to have jurisdiction in respect of the Regulated Person concerning any conduct or any failure to comply with the Rules which occurred before the Regulated Person ceased to be a Regulated Person, whether that conduct or failure was by the Regulated Person or by any other person for whose conduct the Regulated Person was responsible;
- (b) the Regulated Person continues to be bound by any indemnity given by the Regulated Person under these Rules; and
- (c) other Rules continue to apply in respect of the Regulated Person to the extent required to give effect to paragraphs (a) and (b).

Introduced 11/03/04

## 28.13 TRIBUNAL PANEL – [DELETED]

### 28.13.1 Composition of Tribunal Panel – [Deleted]

Introduced 11/03/04 Origin ASX 14.2.1, ASXF 18.2 Deleted 31/03/08

## 28.14 DISCIPLINARY TRIBUNAL – [DELETED]

### 28.14.1 Disciplinary Tribunal – [Deleted]

Introduced 11/03/04 Origin ASXF 18.11 Deleted 31/03/08

- 28.14.2 Role of Tribunal – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.1(1)(a), ASXF 18.3.1 Deleted 31/03/08
- 28.14.3 Chairperson and deputy chairperson – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.1(1)(b), ASXF 18.3.2 Deleted 31/03/08
- 28.14.4 Composition of Tribunal – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.1(1)(c), ASXF 18.3.3 Deleted 31/03/08
- 28.14.5 Hearing date – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.1(2), ASXF 18.3.4 Deleted 31/03/08
- 28.14.6 Powers of Disciplinary Tribunal – [Deleted]**  
Introduced 11/03/04 Origin ASXF 18.3.5 Deleted 31/03/08
- 28.14.7 Reasons for decision – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.1(3), ASXF 18.3.6 Deleted 31/03/08
- 28.14.8 Conduct of proceedings – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.1(4), ASXF 18.3.7 Deleted 31/03/08
- 28.15 APPEAL PROCESS – [DELETED]**
- 28.15.1 Notice of appeal by person other than ASX – [Deleted]**  
Introduced 11/03/04 Origin ASXF 18.4.1 Deleted 31/03/08
- 28.15.2 Notice of appeal by ASX – [Deleted]**  
Introduced 11/03/04 Origin ASX 13.7.1(3), ASXF 18.4.2 Deleted 31/03/08
- 28.15.3 ASX to notify relevant Tribunal – [Deleted]**  
Introduced 11/03/04 Origin ASXF 18.4.3 Deleted 31/03/08
- 28.16 APPEAL TRIBUNAL – [DELETED]**
- 28.16.1 Appeal Tribunal – [Deleted]**  
Introduced 11/03/04 Origin ASXF 18.1.2 Deleted 31/03/08
- 28.16.2 Role of Appeal Tribunal – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.2(1)(c), ASXF 18.5.1 Deleted 31/03/08
- 28.16.3 Chairperson and deputy chairperson – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.2(1)(b), ASXF 18.5.2 Deleted 31/03/08

- 28.16.4 Composition of Appeal Tribunal – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.2(1)(c), ASXF 18.5.3 Deleted 31/03/08
- 28.16.5 Hearing date – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.2(2), ASXF 18.5.4 Deleted 31/03/08
- 28.16.6 Powers of Appeal Tribunal – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.2(3), ASXF 18.5.5 Deleted 31/03/08
- 28.16.7 Ability of the Appeal Tribunal to award costs – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.2(4), ASXF 18.5.6 Deleted 31/03/08
- 28.16.8 Ability of the Appeal Tribunal to award costs incurred at the Disciplinary Tribunal – [Deleted]**  
Introduced 11/03/04 Deleted 31/03/08
- 28.16.9 Order for costs – [Deleted]**  
Introduced 11/03/04 Deleted 31/03/08
- 28.16.10 Reasons for decision – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.2(5), ASXF 18.5.7 Deleted 31/03/08
- 28.16.11 Decision final and binding – [Deleted]**  
Introduced 11/03/04 Origin ASXF 18.5.8 Deleted 31/03/08
- 28.16.12 Conduct of proceedings – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.2(6), ASXF 18.5.9 Deleted 31/03/08
- 28.17 CONDUCT OF TRIBUNAL PROCEEDINGS – [DELETED]**
- 28.17.1 Attendance – [Deleted]**  
Introduced 11/03/04 Origin ASX 13.8, 14.2.3(1), ASXF 18.6.1 Deleted 31/03/08
- 28.17.2 Written submissions – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.3(2), ASXF 18.6.2 Deleted 31/03/08
- 28.17.3 Formalities, recording and transcripts – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.3(3), ASXF 18.6.3 Deleted 31/03/08
- 28.17.4 Procedural fairness – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.3(4), ASXF 18.6.4 Deleted 31/03/08
- 28.17.5 Voting – [Deleted]**  
Introduced 11/03/04 Origin ASX 14.2.3(5), ASXF 18.6.5 Deleted 31/03/08

**28.17.6 Tribunal may obtain legal advice – [Deleted]**

Introduced 11/03/04 Origin ASX 14.2.3(6), ASXF 18.6.6 Deleted 31/03/08

**28.17.7 Participation in proceedings – [Deleted]**

Introduced 11/03/04 Origin ASX 14.2.3(7), ASXF 18.6.7 Deleted 31/03/08

**28.18 INDEMNITY FOR TRIBUNAL MEMBERS AND ASX OFFICERS – [DELETED]**

**28.18.1 Limitation of liability and indemnity – [Deleted]**

Introduced 11/03/04 Origin ASX 14.3(1), ASXF 18.7.1 Deleted 31/03/08

**28.18.2 Indemnity for certain legal proceedings – [Deleted]**

Introduced 11/03/04 Origin ASX 14.3(2), ASXF 18.7.2 Deleted 31/03/08

**28.19 PROVISION OF INFORMATION BY EXCHANGE TO TRIBUNAL – [DELETED]**

**28.19.1 ASX may provide information – [Deleted]**

Introduced 11/03/04 Origin ASX 13.7.3(1) & (2) Deleted 31/03/08

**28.19.2 Regulated Person to be informed – [Deleted]**

Introduced 11/03/04 Origin ASX 13.7.3(3) Deleted 31/03/08

**28.20 TRANSITIONAL PROVISIONS**

**28.20.1 Transitional Provisions**

Following the Effective Time:

- (a) the Disciplinary Tribunal and Appeal Tribunal will have jurisdiction pursuant to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook and may Commence disciplinary proceedings or appeal proceedings under those Rules (including the holding of any hearings or engaging in any procedures) after the Effective Time in respect of a Transitional Regulated Person concerning any conduct under, any failure to comply with, or any engagement in Unprofessional Conduct under, these Rules, irrespective of whether that conduct or failure occurred before or after the Effective Time or when ASX became aware of, or should have become aware of, that conduct or failure;
- (b) where disciplinary proceedings or appeal proceedings (including the holding of any hearings or engaging in any procedures) have Commenced prior to the Effective Time in respect of a Transitional Regulated Person concerning any conduct under, any failure to comply with, or any engagement in Unprofessional Conduct under, these Rules, the relevant Old Tribunal shall continue to conduct the relevant disciplinary proceedings (including any appeal proceedings from those disciplinary proceedings) or appeal proceedings (as the case may be) in accordance with, and pursuant to its jurisdiction under, the provisions of the Old ASX Rules;
- (c) the maximum penalty that may be imposed on a Participant or Transitional Regulated Person shall be the maximum penalty that would have been imposed

for the relevant conduct under the Rules in existence at the time that the relevant conduct occurred, irrespective of whether the disciplinary proceedings or appeal proceedings (as the case may be) were Commenced before or after the Effective Time or whether the disciplinary proceedings or appeal proceedings (as the case may be) were conducted by an Old Tribunal pursuant to the Old ASX Rules or the Disciplinary Tribunal or Appeal Tribunal (as the case may be) pursuant to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook;

- (d) the Old Tribunal pursuant to the Old ASX Rules and the Disciplinary Tribunal and Appeal Tribunal pursuant to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook shall conduct the disciplinary proceedings or appeal proceedings (as the case may be) with due regard to the relevant Rules that were in force at the time that they were alleged to be contravened; and
- (e) Old ASX Rules continue to apply in respect of the Transitional Regulated Person to the extent required to give effect to the paragraphs above.

Introduced 31/03/08

## 28.20.2 Definitions

For the purposes of this Rule 28.20 the following definitions apply:

**“Commence”** means:

- (a) in relation to disciplinary proceedings prior to the Effective Time, the provision of a contravention notice by ASX to the Transitional Regulated Person pursuant to Rule 28.3.5 of the Old ASX Rules in force immediately before the Effective Time;
- (b) in relation to disciplinary proceedings following the Effective Time, the provision of a notice by ASX to a Transitional Regulated Person pursuant to Rule 2.1 of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook;
- (c) in relation to appeal proceedings prior to the Effective Time, the provision of notice of appeal by the Transitional Regulated Person or ASX pursuant to Rules 3.1.3, 3.8.3, 8.2.10, 8.12, 10.14, 12.1.6, 15.5, 23.1.8, 23.7.3, 23.8.4, 28.7 or 30.5.2 of the Old ASX Rules in force immediately before the Effective Time; and
- (d) in relation to appeal proceedings following the Effective Time, the provision of a notice of appeal by the relevant person pursuant to Rule 3.1 of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

**“Effective Time”** means the date set out in the Procedures to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook;

**“Old ASX Rules”** means the ASX Market Rules which were in force immediately before the Effective Time; and

**“Old Tribunal”** means the Disciplinary Tribunal or Appeal Tribunal (as the context requires) in existence immediately before the Effective Time.

**“Transitional Regulated Person”** means a Regulated Person, Warrant-Issuer, an Existing Participating Organisation or a person applying to ASX Limited for admission as a Market Participant pursuant to Rule 3.1 of the Rules.

Introduced 31/03/08

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