



## **BUSINESS RULE GUIDANCE NOTE**

### **DEALING IN EQUITY SECURITIES OF UNLISTED ENTITIES**

No: 7/01

Date: 3 July 2001 (revised for implementation of ASX Business Rule 1A)

***This Guidance Note supersedes Guidance Note 3/96 dated 28 June 1996***

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#### **Purpose**

The purpose of this guidance note is to provide assistance to market participants on the interpretation of the Exchange's view of minimum disclosure to be made to clients when Participating Organisations deal in equity securities of unlisted entities. This procedure is to be regarded as "best practice" and is not mandatory. Participating Organisations should also consult ASIC Policy Statement Number 105.

#### **Background**

Participating Organisations should be aware that when dealing in the securities of unlisted entities, they have certain responsibilities.

#### **Business Rules**

Unless specific reference is made in the Business Rules to "quoted securities" or "securities to which official quotation has been granted" (such as Rule 2.3, 2.4 and 2.5), any reference to securities should be read as securities in listed or unlisted entities.

As such, Participating Organisations dealing in the securities of unlisted entities must continue to meet the ongoing requirements, where applicable, of the Business Rules. Whilst the following is not exhaustive, examples of such Rules which apply to transactions in both "listed" and "unlisted" securities are:

- Liquidity requirements - Rule 1A
- Order records - Rule 1.2.1(ii)
- Pay in or retain in trust, monies as prescribed - Rule 1.2.2
- Acting as principal - Rule 3.1
- Prohibition of advice to clients - Rule 3.5
- Contract notes - Rule 3.8
- Client order precedence - Rule 5.8
- Transactions for employee of another broker - Rule 5.10
- Credit to employees and others to buy securities - Rule 5.11

## **Corporations Act**

As well as the ongoing requirements of the Business Rules, Participating Organisations should also be aware of the continuing requirements of the Corporations Act when dealing in the securities of unlisted entities. For example:

- Section 849 requires advisers when making recommendations to clients, to advise those clients of any interest that may influence the recommendation. Section 851 requires Participating Organisations recommending securities in unlisted entities, to ensure that the recommendation is appropriate to the clients needs.

Certain Business Rules mirror sections of the Corporations Act. Care should therefore be taken (where a Business Rule is interpreted as referring only to quoted securities), that a section of the Corporations Act is not breached, because the Corporations Act does not differentiate between "quoted" and "unquoted" securities. For example:

- Whilst Rule 3.8 does not specifically refer to "quoted" or "listed" securities, the Rule may be interpreted by some Participating Organisations as a requirement to only issue contract notes for those sales and purchases of securities for and on behalf of clients, transacted in the ordinary course of business on a stock market. Nevertheless, Participating Organisations should be aware that section 842 of the Corporations Act requires a contract note to be issued immediately for any sale and purchase of securities on behalf of clients.

### **National Guarantee Fund ( Corporations Act, Chapter 7, Part 7.10)**

When dealing in the securities of unlisted entities, it is important to note that the claim provisions of Division 6 (completion of sales and purchases that are reportable transactions); Division 7 (unauthorised transfer) and Division 7A (contravention of certificate cancellation) covers only those securities quoted on ASX.

However, Division 8 protection (claims in respect of insolvent Participating Organisations) may apply where property (including unquoted securities) has been entrusted to a Broker in the course of its business in dealing in securities, and the Broker subsequently becomes insolvent and fails to meet its obligations in relation to the property.

### **Best Practice**

As clients would normally be used to dealing in securities quoted on ASX, the Exchange takes the view that when advising on, and dealing in, securities that are not quoted, "best practice" would see Participating Organisations:

- ensure that clients know that the securities are not quoted on ASX;
- endorsing the resulting contract note with a statement to the effect that the Securities are not quoted on ASX;
- advising clients that the full protection offered by the National Guarantee Fund is not available to such transactions.

## **Qualification**

ASX has published this note to promote commercial certainty, reduce costs to business 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 note at any time. Readers should contact ASX to ensure they have the latest version.

## **Enquiries**

As this note is only a guide to ASX practice, participants are advised to contact their Compliance Advisor to discuss their particular circumstances. General enquiries can be made to :

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