

Chapter 11: Exchange Powers, Discretions and Fees

OVERVIEW

This chapter sets out powers of the Exchange and discretions in relation to its administration of the business rules.

In particular, this chapter deals with decisions, waivers, transitional arrangements, limitations on Exchange liabilities and Exchange broker indemnities. It also describes the various fees and levies payable by Exchange brokers.

Decisions of the Exchange

- 11.1 The Exchange may at any time vary or revoke any decision it makes under, or in relation to, the rules. It may do so on its own accord or at the request of an Exchange broker. Any such variation or revocation has effect from the date specified by the Exchange.
- 11.2 A decision by the Exchange is not invalidated by any procedural defect. If an Exchange broker reasonably believes a defect may cause it substantial injustice it may request the Exchange to review its decision.

Waivers

- 11.3 The Exchange may at any time, on its own accord or at the request of an Exchange broker, waive all or part of business rules 1.1 to 1.8, 2.5, 2.23, 2.27, 2.28, 3.1 to 3.8 or 5.1(c).
- 11.4 If the Exchange waives a, or part of a rule, it may do so on conditions it regards as appropriate in the circumstances. Any such conditions must be complied with for the waiver to be effective.
- 11.5 The Exchange may at any time withdraw a waiver given under rule 11.3.
- 11.6 The Exchange will periodically publish summary details of waivers granted under rule 11.3.

Transitional Arrangements

- 11.7 The Exchange may from time to time publish transitional arrangements in relation to any new rule or rules. An Exchange broker must comply with any transitional arrangements published by the Exchange.

Limitations on Liability

- 11.8 Subject to rules 11.9 and 11.10, the Exchange, its related companies and their respective employees and agents have no obligation or liability of any kind to an Exchange broker or to any of their clients for any loss or damage (including consequential loss or damage) that may be suffered or incurred or which may arise directly or indirectly in relation to the supply of goods or services by the Exchange or any of its related companies, an Exchange broker's use or inability to use the Exchange trading system or in respect of any failure, error or omission on the part of the Exchange or any of its related companies, including any loss or damage in respect of:
 - (a) the results of trading on the market or the suspension, interruption, cancellation or closure of trading on the market; or
 - (b) the exercise by the Exchange of a decision making power under the rules,

whether such loss or damage is caused wholly or partially by negligence on the part of the Exchange, its related companies or any of their respective employees or agents.

- 11.9 The Exchange and its related companies exclude all conditions and warranties implied by statute, general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause any of the rules in this chapter 11 to be void.
- 11.10 To the maximum extent permitted by law, the liability of either or both the Exchange and its related companies for breach of any statutory provision or arising, directly or indirectly, from the performance of the contract constituted by the rules is limited to either of the following at the discretion of the Exchange:
- (a) in the case of goods:
 - (i) the replacement of the goods; or
 - (ii) the repair of the goods; and
 - (b) in the case of services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

Broker Indemnities

- 11.11 Each Exchange broker indemnifies and agrees to keep indemnified the Exchange, its related companies and their respective employees, contractors and agents ("those indemnified") from and against any loss (including their legal costs and expenses on a solicitor/client basis) or liability reasonably incurred or suffered by those indemnified arising from any proceedings against those indemnified where such loss or liability arose out of:
- (a) any breach by the Exchange broker of its obligations under the rules; or
 - (b) any wilful, unlawful or negligent act or omission by the Exchange broker.
- 11.12 Nothing in this chapter 11 excludes, restricts or modifies any condition or warranty implied in the contract constituted by the rules by any applicable statute (including the Trade Practices Act 1974) where to do so would render any part of the rules void.

Maintenance of Documents and Information

- 11.13 Any documents or information that an Exchange broker is required to prepare under the rules must be maintained in the manner and for the period of time prescribed by the Exchange from time to time.

Exchange Broker Fees and Levies

- 11.14 An applicant to become recognised as an Exchange broker must pay the current application fee of the Exchange, fidelity fund contribution fee and other fees, contributions or levies prescribed by the Exchange.
- 11.15 If the Exchange does not accept an application the Exchange will refund to the applicant its current refund fee.
- 11.16 Each year an Exchange broker must pay the current annual Broker fee of the Exchange, annual fidelity fund contribution fee and any other fees, contributions or levies prescribed by the Exchange.

11.17 An Exchange broker must pay any additional fees or levies set and published by the Exchange from time to time.

11.18 Fees are payable to the Exchange at the time and in the manner set and published by the Exchange from time to time.

Other Obligations

11.19 An Exchange broker must provide the Exchange with any information, document or explanation the Exchange asks for to enable the Exchange to comply with its obligations under s792A(c)(i) of the Act and regulations made under s798E of the Act. If requested to do so by the Exchange, the Exchange broker must provide the information, document or explanation within the time specified by the Exchange.