

Chapter 4: Obligations to Clients

OVERVIEW

This chapter sets out the obligations owed by Exchange brokers to their clients under the business rules.

These obligations are in addition to the obligations Exchange brokers owe to their clients under Chapter 7 of the Corporations Act including, in particular, provisions relating to acting as principal in a transaction with a client, contract notes and insider trading. In several areas the Exchange business rules simply expand the obligations of Exchange brokers under the Corporations Act. Exchange brokers therefore need to be well aware of the obligations they owe their clients both under the Corporations Act and the Exchange business rules.

GENERAL REQUIREMENTS

Exchange Broker Acting as Principal

- 4.1 A Exchange broker must keep a register of prescribed persons to assist the Exchange broker in complying with the provisions of the Corporations Act which apply where the Exchange broker acts as principal in any transaction.

Prohibition on Advice to Client

- 4.2 For the purposes of this rule:
- (a) client includes a shareholder in a Exchange broker; and
 - (b) a chinese wall means an arrangement of the type described in sections 1043F and 1043G of the Corporations Act.
- 4.3 If as a result of their relationship with a client, an Exchange broker is in possession of information in relation to a security that is not generally available and which would be likely to materially affect the price of the security if the information was generally available, the Exchange broker must not give any advice to any other client of a nature that would damage the interests of either client.
- 4.4 An Exchange broker is not regarded as having possession of information described in Rule 4.3 if:
- (a) the Exchange broker has a chinese wall in place; and
 - (b) the person actually advising the client is not in possession of that information.
- 4.5 A Exchange broker who informs a client they are precluded from giving the client advice is not, for the purposes of this rule, regarded as giving advice.

Incapacity of a Client

- 4.6 If after a client has ordered an Exchange broker to buy or sell securities on their behalf:
- (a) the client dies or becomes incapable of receiving and paying for or delivering or transferring the securities; and
 - (b) the Exchange broker is unable to establish anyone legally authorised to complete the contract on the client's behalf after making reasonable enquires

the Exchange broker may, with the approval of the Exchange, re-sell or re-purchase the securities and the client (or their estate) is liable for any deficiency and entitled to any surplus which may result.

Expenses

- 4.7 An Exchange broker may charge a client for additional expenses incurred in the purchase or sale of securities, but those charges must not be covered by an increase or decrease in the price for the securities.

Nominee Shareholdings

- 4.8 An Exchange broker may establish a nominee company to hold securities that are beneficially owned by clients of the Exchange broker. The nominee company must:

- (a) be incorporated in Australia;
- (b) be beneficially owned and operated by the Exchange broker;
- (c) include the word "nominee" in its name; and
- (d) include provisions in its constitution that prohibit the nominee company from beneficially owning any securities or other property except cash.

- 4.9 An Exchange broker must not register securities it does not beneficially own in its own name or in the name of any of its associates.

Disclosure of Underwriting Shortfall

- 4.10 Where an Exchange broker acquires securities as an underwriter or sub-underwriter they must not offer such securities to a client unless they first inform the client of the closing date of the issue or offering of the securities and the reasons for their acquisition of the securities. This rule ceases to apply 90 days after the closing date of the relevant issue or offering of securities.

Contract Notes

- 4.11 In addition to complying with the requirements of the Corporations Act in relation to contract notes, an Exchange broker must ensure that a contract note issued to a client states that it is subject to:
- (a) the rules, customs and usages of the Exchange; and
 - (b) the correction of errors and omissions.

DISCRETIONARY ACCOUNTS

Authorisation

- 4.12 An Exchange broker may manage or operate a discretionary account for a client if the client has provided a written authorisation to the Exchange broker setting out the terms and conditions of operation of the discretionary account (including the rates of brokerage which may be charged by the Exchange broker).

Excessive Transactions

- 4.13 An Exchange broker that manages or operates a discretionary account for a client must not enter into a number of transactions on behalf of the client which is excessive in the circumstances.

Reports

- 4.14 An Exchange broker that manages or operates a discretionary account on behalf of a client must, if requested by the client, prepare and forward to the client a report on the client's discretionary account made up to the end of each quarter in each year setting out for the relevant period:
- (a) the value of transactions in securities entered into on behalf of the client; and
 - (b) the total brokerage, commission, management fees and other fees charged to the client.
- 4.15 Reports prepared under Rule 4.14 must be sent by the Exchange broker to their client within 14 days of the date to which the report is made up.

Register

- 4.16 An Exchange broker that operates a discretionary account for a client must keep a written register including the following information:
- (a) the date on which the account commenced;
 - (b) the name and address of the client;
 - (c) the date of the client's written authorisation;
 - (d) the client's account number or numbers;
 - (e) any qualifications, limitations or other client directions as to the disposition of the discretionary account; and
 - (f) any other information required from time to time by the Exchange.

Disputes and Complaints

- 4.17 The Exchange will consider any complaint against an Exchange broker submitted to it in writing by a person who is not an Exchange broker.
- 4.18 Any dispute between Exchange brokers arising (other than arising out of dealings at a trading session on the Exchange) or between a person who is not an Exchange broker and an Exchange broker will be referred to the Exchange and the Exchange will assess and if thought fit investigate the dispute unless it considers that:
- (a) the issue in dispute is such that it does not warrant an investigation by the Exchange; or
 - (b) it would be more appropriate for the dispute to be investigated and heard by a court or other body with jurisdiction to make a decision in respect of the dispute.