

Chapter 5: Business Obligations of Exchange Brokers

OVERVIEW

This chapter outlines the business obligations Exchange brokers must comply with on an ongoing basis.

Carrying on Business

- 5.1 An Exchange broker:
- (a) must comply with the rules at all times;
 - (b) must not carry on the business of stockbroking unless they hold an Australian financial services licence under the Corporations Act which authorises the holder to engage in the business of stockbroking; and
 - (c) must not carry on business in partnership with any other person.

Responsibility for Approved Representatives

- 5.2 An Exchange broker is responsible to the Exchange for the conduct of each of their approved representatives. In particular, the Exchange broker is responsible to the Exchange for:
- (a) the compliance by the approved representative with the provisions of the Rules; and
 - (b) all debts, liabilities and actions incurred or undertaken by the approved representative in their capacity as an approved representative of the Exchange broker or in any way arising out of their connection with the Exchange broker.

Insurance

- 5.3 A Exchange broker must:
- (a) take out and maintain in full force and effect at all times insurance policies covering and indemnifying the Exchange broker against liability for negligence, errors, omissions, mis-statements, statutory warranties and indemnities, civil liability, infidelity of staff and loss, destruction or deprivation of cash, securities or other documents of title;
 - (b) ensure that the insurance obtained under rule 5.3(a), is of a type and amount that a reasonable stockbroker would regard as adequate having regard to the nature and extent of business carried on by the Exchange broker;
 - (c) make any changes the Exchange reasonably requires to the type and amount of the insurance they have obtained to comply with rule 5.3(a) if requested to do so by the Exchange; and
 - (d) provide the Exchange with a copy of the certificate of currency for each such insurance policy within 14 business days of the end of each financial year.
- 5.4 If an Exchange broker becomes aware of a claim or potential claim being made against them in relation to any of the matters referred to in rule 5.3(a), they must immediately notify the Exchange of:
- (a) the existence of the claim or potential claim;

- (b) the receipt of a notice from any person of any intention to make a claim; and
- (c) the details of any claim or potential claim.

Information to be Provided to the Exchange

- 5.5 An Exchange broker must provide the Exchange with such information as the Exchange requests from time to time.
- 5.6 Without limiting the generality of Rule 5.5, an Exchange broker must:
- (a) where it proposes amending its constitution, provide the Exchange with copies of each draft resolution and any explanatory material it proposes providing to its shareholders at least 14 days prior to sending the material to its shareholders;
 - (b) if requested by the Exchange, provide to the Exchange within two business days any information regarding its members that could be obtained if Part 6C.2 of the Corporations Act applied to the Exchange broker;
 - (c) notify the Exchange immediately of:
 - (i) any action which may place the Exchange broker into bankruptcy or liquidation (as the case may be);
 - (ii) any issue of securities in the Exchange broker (including the names of the allottees); and
 - (iii) any change in shareholders in the Exchange broker;
 - (d) notify the Exchange by the end of the next business day of any change in the directors of the Exchange broker;
 - (e) notify the Exchange by the end of the next business day if they are advised by ASIC or its delegates or any other person authorised by the Corporations Act, of any action that may be taken against them;
 - (f) notify the Exchange within two business days of receiving written notification of any alteration or variation of the conditions of their Australian financial services licence.

Business Offices

- 5.7 An Exchange broker must notify the Exchange of the address of its principal place of business and the address of each other place at which they carry on business.
- 5.8 If an Exchange broker proposes changing its principal place of business or any other place of business or opening a new place of business, they must notify the Exchange in advance.
- 5.9 An Exchange broker must ensure that each place at which they carry on business is under the supervision and direct control of an approved representative who is located at the place of business.

Business Name

- 5.10 An Exchange broker must obtain the approval of the Exchange for any business name that the Exchange broker proposes to use to carry on business as a stockbroker.
- 5.11 The Exchange may at any time, and without providing reasons, withdraw its approval for an Exchange broker to use a particular business name. If the Exchange does so, the Exchange broker must cease carrying on business under that business name.

Cessation of Business by an Exchange Broker

- 5.12 Subject to rule 5.13, the personal representatives or estate of a deceased natural person Exchange broker or the liquidator of a corporate Exchange broker have no legal claim whatsoever on the property or funds of the Exchange.
- 5.13 If the Exchange broker was, or is, a shareholder of the Exchange, any rights their personal representatives or liquidator (as the case may be) have in relation to the property or funds of the Exchange are limited to their rights as shareholders under the provisions of the constitution of the Exchange.
- 5.14 The Exchange may permit the business of a deceased natural person Exchange broker to be carried on for such period as it may determine pending the grant of probate of the will or letters of administration of the estate of the Exchange broker or for such further period as may be agreed upon between the Exchange and the executors or administrators of the Exchange broker. Such business may be conducted through another Exchange broker or a person appointed by the Exchange. The terms upon which the business is conducted will be as agreed between that person and the executors or administrators. If requested by the Exchange, those terms must be disclosed to the Exchange. The Exchange may revoke or vary any permission given under this rule 5.14 at any time.

Complaints

- 5.15 An Exchange broker must maintain a register which includes copies of any written complaints received from clients and records of verbal complaints and copies of the Exchange broker's responses to such complaints.
- 5.16 Copies of complaints and responses must be maintained for a period of not less than 5 years from the date of the last correspondence in relation to the relevant complaint.
- 5.17 An Exchange broker must provide the Exchange with access to the register if requested by the Exchange.