

Chapter 8: Supervision

OVERVIEW

This chapter sets out the supervisory arrangements for the Exchange.

The Exchange Accountant

- 8.1 The Exchange will appoint as the Exchange Accountant one or more persons who are accountants or firms of accountants.
- 8.2 During the term of their appointment, each person or firm appointed under rule 8.1 as the Exchange Accountant must not act as auditor of any Exchange broker or act for any Exchange broker or a director of any Exchange broker without the prior written consent of the Exchange.
- 8.3 The Exchange Accountant will receive on behalf of the Exchange the documents and returns required to be lodged by the Exchange brokers with the Exchange Accountant under the rules. If the Exchange Accountant believes it requires further information or explanation in relation to such documents or returns it will be entitled to request it from an Exchange broker and the Exchange broker must comply with the request.
- 8.4 The Exchange Accountant will carry out a special examination of an Exchange broker's books and records:
 - (a) if after considering the documents and returns lodged by an Exchange broker the Exchange Accountant believes a special examination should be conducted; or
 - (b) if directed to do so by the Exchange.
- 8.5 An Exchange broker that is subject to a special examination as provided in rule 8.4 will provide the Exchange Accountant with full access to all relevant financial books and records including the working papers of the Exchange broker's auditors and records relating to the Exchange broker's financial affairs held by their bankers. The Exchange broker will provide the Exchange with all necessary authorities and permission to access such books and records.
- 8.6 The Exchange Accountant will liaise with the Exchange as required and in any event not less than quarterly on matters arising out of its duties under the rules.

Surveillance Officers

- 8.7 The Exchange will appoint one or more suitably qualified persons to act as surveillance officers.
- 8.8 The Exchange may at any time direct a surveillance officer or surveillance officers to determine whether an Exchange broker selected by the Exchange is:
 - (a) complying with the rules, the provisions of chapter 7 of the Corporations Act or regulations made under that chapter, the conditions of the Australian financial services licence held by the Exchange broker;
 - (b) has behaved in a manner that constitutes unprofessional conduct; or
 - (c) has failed or is expected to fail to meet its obligations under commitments entered into on the Exchange.

A determination that a Broker has failed to comply with the provisions of chapter 7 of the Corporations Act or regulations made under that chapter or the conditions of its Australian financial services licence shall only be made with reference to ASIC.

- 8.9 An Exchange broker must provide or cause to be provided to a surveillance officer any accounts, records or documents of any kind whatsoever that are relevant to an inquiry being undertaken by the surveillance officer. The Exchange broker must also provide the surveillance officer with all reasonable assistance in relation to their inquiry.
- 8.10 A surveillance officer directed to carry out an inspection under rule 8.8 will provide a written report to the Exchange upon the completion of their investigation.
- 8.11 If a report of a surveillance officer indicates that, in the surveillance officer's opinion, an Exchange broker has:
- (a) failed to comply with its obligations under the rules;
 - (b) failed to comply with the provisions of chapter 7 of the Corporations Act or regulations made under that chapter;
 - (c) failed to comply with any condition of the Australian financial services licence held by the Exchange broker;
 - (d) behaved in a manner that constitutes unprofessional conduct; or
 - (e) failed or is expected to fail to meet its obligations under commitments entered into on the Exchange

the Exchange may take action against the Exchange broker under rule 8.13.

- 8.12 If the Exchange decides to take action against an Exchange broker under rule 8.13 on the basis of a surveillance officer's report the Exchange will provide a copy of the report to the Exchange broker.

Disciplining of Exchange Brokers

- 8.13 If, in the opinion of the Exchange, an Exchange broker has:
- (a) contravened:
 - (i) any of the rules;
 - (ii) any of the provisions of chapter 7 of the Corporations Act or regulations made under that chapter;
 - (iii) any condition of the Australian financial services licence held by the Exchange broker; or
 - (b) behaved in a manner that constitutes unprofessional conduct; or
 - (c) failed or is expected to fail to meet its obligations under commitments entered into on the Exchange

then the Exchange may give the Exchange broker written notice of the particulars of the charge and of the date (being not less than 7 days after the date the notice is served) when the charge will be heard.

- 8.14 For the purposes of rule 8.13, any act or omission by an officer, employee or authorised representative of an Exchange broker is deemed to be an act or omission of the Broker.

- 8.15 The Exchange will permit an Exchange broker that is the subject of a charge to appoint any officer, employee or other authorised representative to be heard in relation to the charge.
- 8.16 The Exchange will determine any charge without bias, give the Exchange broker a fair hearing and otherwise observe the rules of natural justice.

Penalties

- 8.17 If the Exchange makes a determination that an Exchange broker has contravened any of the rules, any of the provisions of chapter 7 of the Corporations Act or any regulations made under that chapter or any condition of the Australian financial services licence held by the Exchange broker or behaved in a manner that constitutes unprofessional conduct, the Exchange may censure the Exchange broker; or
- (a) impose a fine not exceeding \$25,000.00 upon the Exchange broker;
 - (b) suspend the Exchange broker from all or any of the rights of membership as a broker of the Exchange;
 - (c) prohibit the Exchange broker from transacting any business with or through any Exchange broker for a period not exceeding three months upon such terms and conditions as the Exchange thinks fit;
 - (d) require the Exchange broker to implement or upgrade an education and compliance program in a form directed by the Exchange which is designed to prevent further contraventions by the Exchange broker;
 - (e) require the Exchange broker to pay the total commission or gross profit or part thereof arising from the transaction concerned to the Exchange and the Exchange may deal with such amount in such manner as it thinks fit; and/or
 - (f) cancel the recognition of the Exchange broker.
- 8.18 In addition to any penalty imposed under rule 8.17, the Exchange may require the Exchange broker to pay the reasonable costs or part thereof incurred by the Exchange in determining the matter.

Reasons for Decision

- 8.19 If the Exchange makes a determination against an Exchange broker, the Exchange will notify the Exchange broker in writing of its determination, the reasons for its determination and any penalty imposed under rule 8.17.

Appeals

- 8.20 If the Exchange makes a determination against an Exchange broker, the Exchange broker may appeal the determination and any penalty imposed under rule 8.17 to the Compliance Committee.
- 8.21 A notice of appeal setting out the grounds of appeal must be lodged by the Exchange broker with the chairman of the Compliance Committee within 14 days of the Exchange broker receiving notice of the determination under rule 8.19.
- 8.22 No action will be taken by the Exchange to announce a determination or implement any penalty imposed upon an Exchange broker under rule 8.17 until expiry of the time allowed for an appeal or, where a notice of appeal is lodged under rule 8.20, until the appeal is determined by the Compliance Committee.

Suspension or Cancellation of Recognition

8.23 If, in the opinion of the Exchange:

- (a) it is desirable to do so in order to protect the interests of the Exchange or the public; or
- (b) an Exchange broker has insufficient capital for the conduct of their business

the Exchange may suspend or cancel the recognition of an Exchange broker.

8.24 If the Exchange suspends an Exchange broker:

- (a) the period of suspension will not exceed one month (unless extended by the Exchange, in which case it may not be extended by the Exchange by more than 1 month on each such occasion);
- (b) the Exchange broker must not enter into any new transaction with other parties without the approval of the Exchange but will be liable to complete all outstanding transactions with other parties that were uncompleted at the time of suspension;
- (c) the Exchange broker must not deliver any securities or settle any transactions without the approval of the Exchange;
- (d) the Exchange may at any time during the suspension appoint any person to manage the business of the Exchange broker and may remove the manager and appoint another manager in the manager's place and may fix the remuneration of any such manager. Such remuneration will be paid by the Exchange broker or may be retained by the manager from the proceeds of realisation of the assets of the Exchange broker;
- (e) any manager appointed under rule 8.24 (d) is the agent of the Exchange broker and the Exchange broker will be responsible for such manager's acts and defaults. The manager will be bound to carry out any directions which may be given to the manager by the Exchange in relation to the business of the Exchange broker and may, without any consent from the Exchange broker, do all things necessary or convenient to be done, including the delivery of securities and settling of transactions to conduct the business and management of the Exchange broker in such manner as the manager thinks fit;
- (f) an Exchange broker who is suspended under rule 8.23 irrevocably constitutes the Exchange as its attorney to appoint a manager for the purposes of this rule 8.24; and
- (g) if during the period of suspension of an Exchange broker the Exchange, from its own investigations or from the investigations carried out by the manager of the Exchange broker, reaches the opinion the Broker has insufficient capital for the conduct of its business the Exchange may cancel the recognition of the Exchange broker.

Default by an Exchange Broker

8.25 Where an Exchange broker:

- (a) has, in the opinion of the Exchange, failed or is unable to fulfil their obligations under the rules;
- (b) failed to pay to the Exchange any levy, fee, fine or other monies within one month of the time the levy, fee, fine or other monies were payable; or
- (c) is, in the opinion of the Exchange, insolvent

the Exchange may declare the Exchange broker to be a defaulter and thereupon the Exchange broker will cease to be entitled to carry on business as an Exchange broker.

- 8.26 Where an Exchange broker is declared as a defaulter all transactions in securities between the defaulter and other Exchange member that were uncompleted at the time the Exchange broker was declared a defaulter will be completed in a manner determined by the Exchange.
- 8.27 At any time after an Exchange broker is declared as a defaulter the Exchange may appoint a person who is a registered liquidator pursuant to the Corporations Act to be a receiver or receiver manager ("receiver") of the defaulter's business and may remove such receiver and appoint another receiver in his place and may fix the remuneration of any such receiver and such remuneration shall be paid by the defaulter or, subject to any applicable law, may be retained by the receiver from the proceeds of realisation of the Exchange broker's assets.
- 8.28 Any receiver appointed under rule 8.27 will be the agent of the Exchange broker and the Exchange broker alone will be responsible for his acts and defaults and such receiver so appointed will without any consent on the part of the Exchange broker have power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the conduct of the business and management, and the realisation of the assets, of the Exchange broker in such manner as the receiver thinks fit, and the receiver may exercise all the powers conferred, or which would have been conferred if the Exchange broker were a corporation, under the Corporations Act.
- 8.29 An Exchange broker who is declared a defaulter under rule 8.25 irrevocably constitutes any receiver appointed pursuant under rule 8.28 as their attorney for the purpose of enabling them on behalf of the Exchange broker:
- (a) to sign or sign, seal and deliver all such transfers, conveyances, mortgages, leases, instruments, notices, agreements and other documents whatsoever; and
 - (b) to take all such steps and proceedings and do all such acts and things whatsoever as may in the opinion of the receiver be necessary or expedient for carrying into effect, completing or facilitating anything done or proposed to be done by any such receiver in exercising the powers conferred on him under this rule and in particular to deliver to the persons entitled thereto moneys or documents held by the Exchange broker in trust.

Register of Determinations

- 8.30 If a determination is made against an Exchange broker, the Exchange will record details of the determination in a register and make the register available for inspection by any person during normal business hours at the registered office of the Exchange. The register will include:
- (a) the name of the Exchange broker;
 - (b) summary details of:
 - (i) the charge or charges established against the Exchange broker;
 - (ii) the Exchange's determination; and
 - (iii) details of any penalty imposed under rule 8.17.
- 8.31 The Exchange will not make a record in the register in relation to a determination until the expiry of the time allowed for an appeal under rule 8.20, or where a notice of appeal is lodged, until the appeal is determined. After an appeal the details recorded in the register will only relate to the determination of the Compliance Committee.

Limited right to inform

8.32 The Exchange is entitled to inform the Compliance Committee, members of any committee to whom the Exchange has delegated any of its powers, and such officers or employees of the Exchange or of a related corporation, as it sees fit, of any matter relating to any act, omission or conduct in respect of which an Exchange broker may be or has been:

- (a) censured;
- (b) fined;
- (c) suspended;
- (d) prohibited from transacting business;
- (e) required to initiate or upgrade an education and compliance program; and/or
- (f) expelled; or
- (g) declared a defaulter by the Exchange or otherwise penalised.

8.33 Without limiting the generality of rule 8.32 information which may be communicated includes any information which may be relevant to any investigation, or proposed investigation under the rules.