



BUSINESS RULE GUIDANCE NOTE

Title: ORDER RECORD KEEPING – RULES 1.2.1 AND 7.3.2

No: 12/01

Date: 12 September 2001

Purpose

The purpose of this Guidance Note is to provide assistance to market participants in the interpretation of recent amendments to the ASX Business Rules relating to Order Record Keeping, in particular Rules 1.2.1 and 7.3.2. This Guidance Note replaces Guidance Note 4/01 which related to the same amendments to Rules 1.2.1 and 7.3.2 but which was withdrawn.

Background

Participating Organisations are required to maintain order records in both the Equities (Rule 1.2.1) and Derivatives markets (Rules 7.3.2.5 to 7.3.2.8). One reason for this is so that instructions (whether executed or not) can be established if a dispute arises. The requirements also promote good business practice and provide an audit trail for compliance purposes.

Amended Rules 1.2.1 and 7.3

To ensure that the order record requirements in the Equities market are expressed in the same language as the Derivatives market, ASX has changed the format of the equity record keeping requirements in Rule 1.2.1, remodelling it largely on the Derivatives record keeping requirements contained in Rules 7.3.2.5 to 7.3.2.8. In the interests of having one standard of record keeping apply to the different types of transactions and orders which relate to ASX's markets, the new record keeping requirements in Rule 1.2.1 are reproduced in Rule 7.3.2 to apply to the Derivatives market too.

The amended Rules expressly require Participating Organisations to:

- (a) make the records *immediately* after the orders are received (Rules 1.2.1.3 and 7.3.2.6);
- (b) maintain records of principal orders as well as client orders and orders made on a discretionary account (Rules 1.2.1.2 and 7.3.2.5). In respect of these orders the record keeping requirements are the same; and
- (c) keep records of any changes made to orders, for example, changes to quantity and price instructions, cancellation of orders and other types of change (Rule 1.2.1.5). Other instructions from a client should also be recorded, for example, when restrictions are placed on an order.

In respect of the requirement to make records *immediately*, it should be noted that the ordinary English meaning of the word “immediately” is to apply. That is, “without delay” or “directly”. By way of example:

- (i) if an order taker/advisor receives an instruction to deal in securities out of business hours when not in the office, the order taker should make the record of those instructions as soon as possible, for example, by making a diary note of the details or, on returning to the office, entering the instructions on an order pad or computer system;
- (ii) if orders are recorded using an electronic order system and if there is a system malfunction such that an order taker/advisor cannot enter the instructions received into that system, a manual system of recording orders should be available and details of instructions should be made manually as soon as possible after the instructions are received; and
- (iii) if a Participating Organisation encounters exceptional circumstances such as a period of frenetic market activity, for example, if it is inundated with orders due to a market correction, it is vital that attention to order recording keeping not be relaxed. On these limited occasions, order takers must still record instructions received, however, the exchange understands that complete order records may not be made contemporaneously with the instructions received. In these circumstances a maximum period of no more than 15 minutes should expire between the time of receipt of instructions and the completion of the order records containing the details required by Rule 1.2.1 and 7.3.2.

Records should be a complete and accurate account of the client’s actual instructions. A record of the trade resulting from the instruction will not satisfy the requirement.

New Rule 1.2.1.2 is intended to make existing Rule 2.2.1(6) more explicit, as well as extending it slightly and being more consistent with Rule 7. It introduces some formality into the recording of decisions to trade by Participating Organisations, even when acting as principal. It assists in identifying which orders - whether from a client, by a Participating Organisation using its discretion for a client or by a broker for its Participating Organisation’s own account – have resulted in trades and which have not been executed. Records may be kept electronically, and are no longer required to be serially numbered.

Trading as Principal

The purpose of the amendments, as they relate to trading on a Participating Organisation's own account (***Principal Trading***), is to ensure that at all times a Participating Organisation is able to identify the source of each entry into SEATS and DTF/CLICK. In other words, a Participating Organisation must be able to establish through its procedures:

- what led to that entry being made;
- who was responsible for the entry; and
- the other person/system on whose behalf that entry was made.

ASX recognises that, in respect of Principal entries, the entry of the order into SEATS or DTF/CLICK to buy/sell shares/options will usually immediately follow an instruction or decision to buy/sell. For Principal Trading, a Participating Organisation will be entitled to rely on data captured and retained by ASX for entries made in SEATS and DTF/CLICK in order to comply with the order record requirements of ASX Business Rules 1.2.1.2 and 7.3.2.5, respectively, provided that the order is entered into SEATS or DTF/CLICK immediately after the decision to trade is made and the Participating Organisation has procedures to govern and retains sufficient data to enable it to:

- (a) identify the Designated Trading Representative (DTR) (and where applicable the user name for the relevant electronic trading platform responsible) responsible for entering the bid/offer into SEATS or DTF/CLICK as Principals;
- (b) where the person making the decision to buy/sell is not the DTR responsible for entering the relevant bid/offer into SEATS or DTF/CLICK, the identity of the person who instructed the DTR to make the entry into SEATS or DTF/CLICK.

When the entry of the order into SEATS or DTF/CLICK does not immediately follow a decision to trade, the Participating Organisation will not be entitled to rely on the data captured and retained by SEATS and DTF/CLICK. Instead, the Participating Organisation will be required to comply in all respects with ASX Business Rules 1.2.1.2 and 7.3.2.5 in relation to equity and options transactions respectively.

The order record keeping requirements are not intended to be onerous. From an informal survey conducted by ASX, it appears many brokers already use the cross-reference field provided in SEATS when they enter orders into SEATS, so as to identify the client for which they are acting. This field could also be used when the order is placed as principal.

In the case of electronically generated orders or amendments or cancellations to orders for a portfolio transaction or for orders generated by an automated market making system, which go through an Automated Order Processing system into SEATS, the Rule would be satisfied by simply retaining a copy of the electronic file recording the orders, amendments or cancellations. This is on the condition that the electronic records are made immediately.

Client Option Orders

ASX Business Rule 7.3.2.5 requires a Participating Organisation to record the time and date a client order is received and the name of the order taker/adviser receiving that order. In addition to these details, Rule 7.3.2.5(b) and (c) requires the Participating Organisation to maintain additional records which identify:

- the time the order is communicated to the DTR;
- the time the order is executed; and
- the name of the person who communicated the order to the DTR.

ASX is of the view that, provided that the order is communicated to the DTR and entered into DTR/CLICK immediately after it is received by the DTR, and provided that the Participating Organisation retains records which identify both the adviser and the DTR involved in the order and the records can be used to connect them to the order, the Participating Organisation will be entitled to rely on data captured and retained by ASX on DTR/CLICK in order to meet the additional requirements of Rule 7.3.2.5(b) and (c).

However, if:

- (a) the order is not communicated to the DTR immediately when it was received by the advisor;
- (b) the order is not entered into DTF/CLICK immediately after communication of the order to the DTR;
- (c) the data entered into DTF/CLICK for the order is not sufficient to identify the DTR; or
- (d) the records identifying advisers and DTRs as being connected with certain types of securities are not precise enough to connect both an adviser and a DTR to a particular order or sequence of events;

then the Participating Organisation will be required to comply in all respects with Rule 7.3.2.5.

Qualification

ASX has published this note to promote commercial certainty and to assist 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 Guidance Note at any time without further express notice to any particular person. Readers should contact ASX to ensure they have the latest version.

Enquiries

Enquiries about this Guidance Note can be made to your Account Manager, Client Relations or your Compliance Advisor.