

KEY TOPICS

1. Purpose of the Rule
2. No change in beneficial ownership
3. Steps to avoid breaching the Rule
4. Indications of manipulative purpose
5. Trading with the open market
6. Execution only services
7. Reporting unusual trading

ASX Market Rules

1. 13.4

Cross-reference

1. Section 1041B

Guidance Note History

Re-issued -
3 January 2006

Previously
11 March 2004
Introduction of New
Rule Book
15 August 2001
ASX GN 11/01

PREVENTION OF MANIPULATIVE TRADING – Transactions Involving No Change in Beneficial Ownership

Purpose

This Guidance Note provides assistance to Market Participants in the area of transactions involving no change in beneficial ownership.

This note gives guidance on when these types of trades are likely to breach ASX Market Rules (“the Rules”).

Purpose of Rule 13.4

The purpose of Rule 13.4 is to prevent trading activity which may, or is intended to, result in:

- a false or misleading appearance of active trading in a Product;
- a false or misleading appearance as to the market for a Product; or
- a false or misleading appearance as to the price of a Product.

These false or misleading appearances are referred to as “manipulation” in this Guidance Note.

No change in beneficial ownership

ASX interprets the phrase “no change in beneficial ownership” in light of the Corporations Act. This means ASX regards a transaction as involving no change in beneficial ownership if a person, or that person’s associate, had an interest in the Products before the transaction and has an interest in the same Products after the transaction.

Trading on account of a client and the “circumstances of the Order”.

Rule 13.4.1(b) prohibits a Market Participant from making a Bid or Offer for, or dealing in any Product for a client where the Market Participant intends to create, or is aware or ought reasonably suspect that the client intends to create, a false or misleading appearance of active trading in, or with respect to the market for, or price of a Product. Rule 13.4.1(b)(iii) provides that, in considering whether a client ought reasonably be suspected of having placed an order with such an intention, a Market Participant must take into account the circumstance of the order. Rule 13.4.2 sets out particular circumstances of an order that must be taken into account for the purposes of Rule 13.4.1(b)(iii). Under Rule 13.4.2 a transaction in which a Bid or Offer the execution of which may result in no change in beneficial ownership is one of the circumstances which must be considered for the purposes of Rule 13.4.1(b)(iii).

The Rule covers similar ground to section 1041B of the Corporations Act. That section deems a person to have created a false or misleading appearance of active trading if that person enters into, or carries out any transaction that does not involve a change in beneficial ownership. However, whereas under that section a transaction involving no change in beneficial ownership may be an offence, under the Rules the transaction is an indicator of a breach of the Rules. Hence, a transaction involving no change in beneficial ownership may involve a breach of the law, even though it does not involve a breach of the Rules.

Trading as principal

Rule 13.4.1(a) prohibits a Market Participant from dealing as Principal with the intention or likely effect of creating a false or misleading appearance of active trading in, or with respect to the market for, or price of a Product. However, as a Trading Participant is taken to be aware of its own intentions, Rule 13.4.1(a) (unlike Rule 13.4.1(b)(iii)) does not require a Market Participant to take account of the circumstances of an order when considering whether or not it entered into a Bid, Offer or dealing, as principal, with the intention or likely effect of creating such a false or misleading appearance.

ASX recognises the growth of principal automated program trading using Automated Order Processing (“AOP”). Rule 17.2.2 permits “accidental” Crossings being effected by the matching in a Trading Platform of a Bid or Offer entered or amended using AOP with a pre-existing or simultaneously entered or amended Bid or Offer of a Trading Participant, if:

- (a) the Trading Participant has made the disclosure required under Rule 7.7;
- (b) the Trading Participant has not pre-arranged the entry of the Bids or Offers; and
- (c) the same Authorised Person does not enter both sides of the Crossing.

ASX recognises that program trading and AOP trading sourced from different trading engines or origins may result in the “accidental” Crossing of principal orders with no change in beneficial ownership. ASX takes the view that principal trading of this type which results in a transaction with no change in beneficial ownership is less likely to be considered creating of a false or misleading appearance of active trading in any Product or with respect to the market for, or the price of, any Product if:

- the Trading Participant has not pre-arranged the entry of the Bids or Offers;
- the same Authorised Person does not enter both sides of the Crossing; and
- it can be demonstrated that the Orders originated from a defined program or algorithm-driven trading strategy application.

However, ASX expects that Trading Participants using AOP for principal program trading that may result in “accidental” principal Crossings with no change in beneficial ownership would closely monitor trading patterns for volume, value and frequency of such Crossings. Where material volumes, values or frequencies of “accidental” principal Crossings are evident, ASX expects that appropriate action be taken to restrict the possibility of further “accidental” principal Crossings.

ASX is of the view that a principal transaction involving no change in beneficial ownership is more likely to be considered creating a false or misleading appearance of active trading if

- the Crossing is effected by the matching in the Trading Platform of a Bid or Offer entered or amended by a DTR with a pre-existing or simultaneously entered or amended Bid or Offer of a Trading Participant; or
- the same Authorised Person enters both sides of the Crossing.

Execution Only Services

Market Participants, using AOP for principal trading or providing Automated Client Order Processing (“ACOP”) services, need to consider the nature of the filters and post trade review processes required to identify and prevent potential breaches of Rule 13.4 and 1041B of the Corporations Act. Persons certifying ACOP filters for the purpose of Rule 13.3.4 also need to consider this issue.

Market Participants providing execution only services using call centres, where clients may place trades through a number of different operators, should consider the processes they have in place to identify and prevent potential breaches of Rule 13.4 and 1041B of the Corporations Act.

Reporting Unusual Trading

Market Participants which suspect that the market for a stock may be uninformed or that trading in a stock is unusual are encouraged to raise their concerns with Surveillance. Contacts can be confidential.

Surveillance may be contacted by email at surveillance@asx.com.au or on telephone (02) 9227 0521.

If a representative of a Market Participant has any question or concern in relation to a particular transaction, they should refer to the Market Participant's compliance policy or contact their compliance officer before executing the transaction.

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 may contact ASX to ensure they have the latest version.