

KEY TOPICS

1. Principles for waiver decisions
2. Information to be provided in support of application
3. ASX decision-making process
4. Appeals
5. Publication of waivers

ASX Market Rules

1. 1.5
2. Sections 10, 10A and 10B

Cross-reference

1. ACH Guidance Note: “Waivers of ACH Clearing Rules”
2. ASTC Guidance Note: “Waivers of ASTC Settlement Rules”
3. ASX Guidance Note: “Waivers of ASX Market Rules – Market Participants”

Guidance Note History

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31 March 2008
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WAIVERS OF ASX MARKET RULES – Warrant-Issuers and AQUA Product Issuers

Purpose

This Guidance Note is published to assist Warrant-Issuers, AQUA Product Issuers, Market Participants and their advisers to understand how ASX deals with applications for waivers of Sections 10, 10A and 10B of the ASX Market Rules. This Guidance Note only considers waivers for Warrant-Issuers pursuant to Section 10 “Warrants” of the ASX Market Rules and waivers for AQUA Product Issuers pursuant to Sections 10A and 10B of the ASX Market Rules. For the purpose of this Guidance Note Warrant-Issuers and AQUA Product Issuers are referred to as ‘Issuers’.

Background

The ASX Structured Products unit is responsible for the warrants market and the AQUA market operated by ASX. ASX Structured Products Management will make decisions concerning warrants and AQUA Products under the Market Rules. This includes decisions about:

- approval of institutions to be Issuers or guarantors;
- applications for admission to trading status for warrants and AQUA Products (including the granting of waivers from the Market Rules);
- suspension, trading halts or removal of warrants and AQUA Products from trading status; and
- requests for information or reports from Issuers and/or guarantors.

Waiver provisions

The ASX Market Rules permit ASX to relieve any person or class of person from the obligation to comply with a provision of the Rules, either generally or in a particular case or category, and either unconditionally or subject to such conditions as ASX thinks fit. If any conditions on a waiver are imposed, all of the conditions must be complied with for the waiver to be effective. A failure to comply with a condition of a waiver constitutes a breach of the Rules. ASX may specify the period or specific event during

which any relief from an obligation to comply with a provision of these Rules may apply.

ASX may withdraw a waiver at any time.

Decision-making principles

The broad principle underlying decisions regarding Market Rules relief is that ASX does not wish to inhibit legitimate transactions and business processes that do not undermine the core principles on which the Market Rules are based. In determining whether relief should be granted, ASX will balance commercial need with the need to maintain the integrity of the market.

Waivers will not be granted retrospectively.

Submissions for waivers

Any request by an Issuer for a waiver must be in writing. The Issuer should initially consult with ASX Structured Products regarding a matter or proposal.

The Issuer, or its professional adviser acting on its behalf (for example, its legal adviser), may then make a request in writing for a waiver. The request should be addressed to the National Manager, Structured Products. If the ASX Market Rule for which a waiver is sought has an equivalent rule in the ACH Clearing Rules or the ASTC Settlement Rules the submission should, if appropriate, include a request for waivers of those other rules. The mere fact that a waiver has been requested does not constitute or imply consent by ASX or that a waiver will be granted.

In preparing a waiver application, the onus is on the Issuer to establish that there is sufficient commercial and policy justification to waive a Market Rule and that a waiver of the Rule will not have adverse policy implications. A written waiver application should include:

- Identification of the Warrant Series or AQUA Product Series to which the waiver application relates;
- The Market Rule to be waived;
- The rationale for the waiver in sufficient detail to enable ASX to fully assess the application for the waiver and ensure there are no adverse policy implications if it were to be approved.

Failure to provide this information in the first instance may lead to a delay in finalising the decision on the waiver application.

The ASX decision-making process

In determining waivers from the rules it is important that there be consistency in decision-making. Accordingly, decisions in relation to ASX Market Rules Sections 10, 10A and 10B will be made by, or in consultation with, the National Manager Structured Products.



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In certain circumstances ASX may decide to take “no action” in response to a request for a waiver rather than grant a waiver. A “no action” advice does not constitute a waiver of the relevant Rule. Whilst ASX may take “no action” to enforce compliance with a Rule, section 793C of the Corporations Act provides that the Courts may, if an application has been made pursuant to that section, enforce compliance with the Rule.

The Issuer will be informed in writing of the decision as soon as practicable.

“Decision” and “Basis for Decision”

Following consideration of a request for a waiver, an Issuer will be informed in writing, whether or not that waiver is granted. The format will include a “Decision” and a “Basis for Decision”.

The “Decision” will set out the details of the waiver. The “Basis for Decision” will set out the underlying policy behind the rule and the present application of the fact or situation relating to the Issuer. The present application may include excerpts from the materials in support of the matter or proposal provided by the Issuer.

Publication of waivers

The Market Rules require that waivers granted by ASX are published in a waivers register. The waivers register includes the details required by the Market Rules, the “Decision” and the “Basis for Decision”. The publication of the waivers register facilitates the transparency of decisions made by ASX.

Details of waivers will be on the public record on or about the 10th day or the 25th day of each month.

If the timing of public disclosure is cause for concern for reasons of commercial sensitivity and the Issuer seeks comfort regarding whether or not a waiver would be granted if it were to apply at a time more acceptable to it, the Issuer should consider seeking “In principle” advice.

The names of individuals will not be published in the waiver register but will be replaced by reference to “Person A” (or similar) for privacy purposes.

The waivers register is available from the ASX website (www.asx.com.au). ASX also reports all waivers to the Australian Securities and Investments Commission (“ASIC”).

“In principle” advice

In appropriate cases (for example where details of a proposed transaction are commercially time sensitive and an Issuer or Market Participant seeks certainty but does not wish details of the transaction to be included on the public register ahead of the transaction occurring for commercially sensitive reasons) ASX may be prepared to give “in principle” advice on the position it is likely to take on a matter. The Issuer or Market Participant will be required to make both a formal request for the “in principle” advice and a subsequent formal request for the



waiver at the relevant later date. An Issuer or Market Participant should consult with ASX Structure Products if it is thought that an ‘in principle’ submission may be appropriate.

“In principle” advice will be non-binding expressions of ASX’s intent based on facts as known at the time. They will be subject to certain conditions and warranties and will be for a limited time only.

Appeals

An appeal may be conducted in accordance with the provision of the Australian Securities Exchange Disciplinary Procedures and Appeals Rulebook.

Qualification

ASX has published this note to promote commercial certainty and to assist Issuers and Market 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.