

## **CHAPTER 2**

# **DEALERS' ENTRY STANDARDS**

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This **Chapter** sets out the requirements that \* APX has established for the admission of \* affiliates and \* APX brokers. \* Affiliates and \* APX brokers are entitled to describe themselves as members of \* APX.

\* Affiliates must have appropriate qualifications, experience and financial resources to meet their obligations. \* APX brokers must have two \* directors or a \* director and the senior executive of its \* APX broking operations who are \* affiliates.

\* Approved representatives of \* APX brokers will require appropriate business experience and educational qualification as well as three references.

\* APX shall not reject an application without providing natural justice by offering the applicant a hearing and the decision may be appealed to the \* Appeal Tribunal.

**AFFILIATES.**

**APPLICATION PROCEDURE.**

- 2.1.1.** A natural person may apply to \*APX for recognition as an \*affiliate. The application must be in the form approved by \*APX. Each application must be signed by the applicant.
- 2.1.2.** \*APX may request, and each applicant must provide, such additional information in relation to an application as \*APX reasonably requires to assess the application.
- 2.1.3.** \*APX will make a determination in relation to an application under **Rule 2.1.1** within 6 months after receiving the application and any additional information requested under **Rule 2.1.2**.

**ADMISSION REQUIREMENTS.**

- 2.2.1.** Subject to **Rules 2.1.1** to **2.5**, \*APX may recognise a natural person as an “affiliate (Property)”; “affiliate (Fixed Interest)” and/or “affiliate (Equity)”.
- 2.2.2.** The minimum requirements for any applicant who wishes to be recognised as an \*affiliate are that the applicant must:
- (a) be a responsible officer of a financial services licensee which is authorised to carry on business as an \*APX broker and who satisfies the requirements of ASIC Policy Statement 164; and
  - (b) within 3 months prior to lodging the application, have obtained a pass mark of at least 65% for the recognition examination set by \*APX to satisfy \*APX as to the applicant’s knowledge of the Rules and the customs and usages of \*APX.
- 2.2.3.** In addition to the requirements of **Rule 2.2.2**:
- (a) any applicant who wishes to be recognised as an \*affiliate (Property) must have qualifications and or experience which satisfies the requirements of \*ASIC Policy Statement 164 and which, in the reasonable opinion of \*APX, qualifies a person to carry on a financial services business in relation to \*property securities;
  - (b) any applicant who wishes to be recognised as an \*affiliate (Fixed Interest) must have qualifications and or experience which satisfies the requirements of \*ASIC Policy Statement 164 and which, in the reasonable opinion of \*APX, qualifies a person to carry on a financial services business in relation to \*fixed interest securities;
  - (c) any applicant who wishes to be recognised as an \*affiliate (Equity) must have qualifications and or experience which satisfies the requirements of \*ASIC Policy Statement 164 and which, in the reasonable opinion of \*APX, qualifies a person to carry on a financial services business in relation to \*equity securities.

**REFUSAL OF APPLICATION.**

- 2.3.1.** Subject to **Rule 2.19.1**, \*APX must refuse an application under **Rule 2.1.1**, if the application does not satisfy the requirements of **Rules 2.1.1** to **2.5** or if \*APX has reason to believe that the applicant:
- (a) is under 18 years of age;

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- (b) is not of good fame and character and high business integrity;
- (c) is disqualified from managing corporations under Part 2D.6 of the \* Act;
- (d) is the subject of a banning order under section 920A of the \* Act.

**2.3.2.** In considering whether or not an applicant is of good fame and character, but without limiting the discretion of \* APX, \* APX shall be entitled to take into account:

- (a) submissions made by existing \* APX brokers under **Rule 2.4**;
- (b) any conviction of the applicant for any offence (other than a traffic offence) and whether the applicant has been charged with such an offence at any time;
- (c) whether the applicant has at any time been adversely mentioned in a report made by or at the request of any government or governmental authority or agency.

#### **NOTICE TO APX BROKERS.**

**2.4.** \* APX must, at least 10 \* business days before the date on which \* APX considers an application under **Rule 2.1.1 or 2.11.1**, give notice of the application to all existing \* APX brokers (if any). The notice must include the name of the applicant. An \* APX broker who wishes to make a submission to \* APX relating to an application must lodge the submission in writing before the date on which \* APX considers the application.

#### **FEE.**

**2.5.** Each \* affiliate must pay to \* APX such fees as are prescribed by \* APX from time to time.

#### **CERTIFICATE.**

**2.6.** \* APX may issue to an \* affiliate a certificate of recognition as an \* affiliate. Such a certificate remains the property of \* APX and must be returned to \* APX on demand. \* APX may institute proceedings for the recovery of the certificate retained by any person who is not an \* affiliate.

#### **REGISTRATION BY AFFILIATE OF ASSOCIATED APX BROKER.**

**2.7.** An \* affiliate must register with \* APX the name and address of the \* APX broker with which he or she is associated. For this purpose an \* affiliate is associated with an \* APX broker if he or she is an officer or a \* representative of the \* APX broker or in the opinion of \* APX is otherwise associated with the \* APX broker.

#### **SURRENDER OF AFFILIATE STATUS.**

**2.8.** An \* affiliate may surrender his or her recognition as an \* affiliate by giving notice in writing to \* APX. The surrender does not take effect until it is accepted by \* APX. \* APX must not unreasonably refuse to accept a surrender.

#### **REGISTER.**

**2.9.1.** \* APX must maintain a register of \* affiliates recording the following information about each \* affiliate:

- (a) the name and home address of the \* affiliate;

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- (b) the name of each \*APX broker with which the \*affiliate is associated within the meaning of **Rule 2.7**; and
  - (c) such other details as may be prescribed by \*APX.
- 2.9.2.** Each \*affiliate must provide to \*APX such information about the \*affiliate as \*APX may reasonably request in order to maintain the register of \*affiliates.
- 2.9.3.** Any \*affiliate may examine the register of \*affiliates during business hours.
- 2.9.4.** \*APX may publish details set out in the \*register as it thinks fit and no \*affiliate or \*APX broker will have any claim against \*APX in relation to such publication.

#### CEASING TO BE AN AFFILIATE.

- 2.10.1.** Subject to **Rule 2.19.1**, \*APX may withdraw its recognition of a person as an \*affiliate if the \*affiliate:
- (a) ceases to be a responsible officer of a financial services licensee for a period of more than 6 months;
  - (b) made a wilful omission or misstatement on a material point in connection with the \*affiliate's application for recognition;
  - (c) is disqualified from managing corporations under Part 2D.6 of the \*Act or is liable to be so disqualified;
  - (d) is the subject of a banning order under section 920A of the \*Act or is liable to have a banning order made against him or her; or
  - (e) no longer meets, or is no longer able to meet, the requirements for recognition as an \*affiliate described in **Rule 2.2**.
- 2.10.2.** An \*affiliate ceases to be an \*affiliate and on the later of:
- (a) the date specified by \*APX in its notice of determination under **Rule 2.19.3**; or
  - (b) in the case where the \*affiliate:
    - (i) does not make an appeal pursuant to **Rules 8.17.1 to 8.17.4**, the end of 14 days after the receipt in writing by the \*affiliate of the reasons for the decision; or
    - (ii) makes an appeal pursuant to **Rules 8.17.1 to 8.17.4** and the appeal is rejected by the \*Appeal Tribunal, the date on which the appeal is so rejected.
- 2.10.3.** The rights of an \*affiliate are personal to the person for the time being recognised by \*APX as an \*affiliate and such rights are not capable of assignment or transmission. The recognition of a person as an \*affiliate by \*APX ceases on the death of that person. The legal personal representatives of a deceased \*affiliate shall have no legal claim whatsoever on the property or funds of \*APX.

**APX BROKERS.**

**APPLICATION PROCEDURE.**

- 2.11.1.** A company may apply to \*APX for recognition as an \*APX broker. The application must be in the form approved by \*APX. Each application must be executed on behalf of the applicant.
- 2.11.2.** \*APX may request, and each applicant must provide, such additional information in relation to an application as \*APX reasonably requires to assess the application.
- 2.11.3.** \*APX will make a determination in relation to an application under **Rule 2.11.1** within 6 months after receiving the application and any additional information requested under **Rule 2.11.2**.

**ADMISSION REQUIREMENTS.**

- 2.12.1.** Subject to **Rules 2.11.1** to **2.14**, \*APX may recognise a company as a “APX broker (Property)”, “APX broker (Equity)” and/or “APX broker (Fixed Interest)”.
- 2.12.2.** The minimum requirements for any applicant who wishes to be recognised as an \*APX broker are that the applicant must:
- (a) be a financial services licensee who is authorised under that financial services licence to carry on business consistent with acting as an \*APX broker; and
  - (b) have a board of \*directors which includes two \*directors who are \*affiliates; or
  - (c) have one \*director who is an \*affiliate and the person who has ultimate executive responsibility for the \*APX broking operations of the applicant must also be an \*affiliate.
- 2.12.3.** In addition to the requirements of **Rules 2.12.2**:
- (a) any applicant who wishes to be recognised as an \*APX broker (Property) must have at least one \*director who is an \*affiliate (Property);
  - (b) any applicant who wishes to be recognised as an \*APX broker (Fixed Interest) must have at least one \*director who is an \*affiliate (Fixed Interest);
  - (c) any applicant who wishes to be recognised as an \*APX broker (Equity) must have at least one \*director who is an \*affiliate (Equity);
- 2.12.4.** The applicant must be a corporation incorporated in Australia and a majority of the \*directors of the applicant must be residents of a State or Territory of Australia.
- 2.12.5.** The voting shares of the applicant carry one vote per share and otherwise confer identical voting rights on each security holder according to his shareholding. \*APX may in its discretion waive this requirement.

**REFUSAL OF APPLICATION.**

**2.13.** Subject to **Rule 2.19.1**, \*APX must refuse an application under **Rule 2.11.1**, if the application does not satisfy the requirements of **Rules 2.12.1 to 2.14** or if \*APX has reason to believe that:

- (a) a \*director of the applicant who is not recognised as an \*affiliate;
  - (i) is not of good fame and character and high business integrity (**Rule 2.3.2** applies);
  - (ii) is disqualified from managing corporations under Part 2D.6 of the \*Act;
  - (iii) is the subject of a banning order under section 920A of the \*Act;
- (b) the applicant does not have the resources (financial, technical and human) necessary to comply with its obligations as an \*APX broker on an ongoing basis.

**FEE.**

**2.14.** Each \*APX broker must pay to \*APX such fees as are prescribed by \*APX from time to time.

**CERTIFICATE.**

- 2.15.** (a) \*APX may issue to an \*APX broker a certificate of recognition as an \*APX broker. Such a certificate remains the property of \*APX and must be returned to \*APX on demand. \*APX may institute proceedings for the recovery of the certificate retained by any person who is not an \*APX broker.
- (b) An \*APX broker must provide confirmation of its financial services licensee status to \*APX on an annual basis or on request.

**SURRENDER OF APX BROKER STATUS.**

**2.16.** An \*APX broker may surrender its recognition as an \*APX broker by giving notice in writing to \*APX. The surrender shall not take effect until it is accepted by \*APX. \*APX shall not unreasonably refuse to accept a surrender.

**CEASING TO BE AN APX BROKER.**

**2.17.1** Subject to **Rule 2.19.1**, \*APX may withdraw its recognition of a company as an \*APX broker if:

- (a) the \*APX broker is insolvent, is an externally administered body corporate or is deregistered;
- (b) the \*APX broker ceases to be a financial services licensee or ceases under its financial services licence to be authorised to carry on business consistent with acting as an \*APX broker;
- (c) a person acting for, or on behalf of, the \*APX broker made a willful omission or misstatement on a material point in connection with the \*APX broker's application for recognition;
- (d) the \*APX broker no longer meets, or is no longer able to meet, the requirements for recognition as an \*APX broker described in **Rule 2.12**, or

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- (e) the \*APX broker, for a period of more than 12 months, does not comply with **Rules 2.12.2(b)** or **2.12.2(c)** or **2.12.3**.

**2.17.2** An \*APX broker ceases to be an \*APX broker on the later of:

- (a) the date specified by \*APX in its notice of determination under **Rule 2.19.3**; or
- (b) in the case where the \*APX broker:
  - (i) does not make an appeal pursuant to **Rules 8.17.1** to **8.17.4**, the end of 14 days after the receipt in writing by the \*APX broker of the reasons for the decision; or
  - (ii) makes an appeal pursuant to **Rules 8.17.1** to **8.17.4** and the appeal is rejected by the \*Appeal Tribunal, the date on which the appeal is so rejected.

**2.17.3** The rights of an \*APX broker are personal to the company for the time being recognised by \*APX as an \*APX broker and such rights are not capable of assignment.

#### APPROVED REPRESENTATIVES.

**2.18.1.** An \*APX broker (“applicant”) may apply to \*APX, in a form approved by \*APX, for the registration of a natural person (“candidate”) as an \*approved representative. The application must be accompanied by:

- (a) three written references in relation to the candidate from persons of repute (but not from any officer or employee of the applicant) including, where applicable, a reference from the previous employer of the candidate; and
- (b) particulars of the business experience and educational qualifications of the candidate.

**2.18.2.** \*APX must keep a register of all \*approved representatives which records in respect of each \*approved representative the following details:

- (a) the name and current residential address of the \*approved representative;
- (b) the name of the \*APX broker with whom the \*approved representative is associated.

**2.18.3.** Within 14 days after receiving an application under **Rule 2.18.1**, \*APX must enter the details of the candidate in the register kept under **Rule 2.18.2** unless \*APX has reason to believe that the candidate:

- (a) is not an officer or a \*representative of the applicant;
- (b) does not have the equivalent of at least 3 years relevant industry experience in the 5 years prior to the date of application;
- (c) has not, within 3 months prior to the date of the application, obtained a pass mark of at least 65% for the recognition examination set by \*APX to satisfy \*APX as to the applicant’s knowledge of the **Rules** and the customs and usages of \*APX;
- (d) is not of good fame and character and high business integrity (**Rule 2.3.2** applies);

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- (e) is disqualified from managing corporations under Part 2D.6 of the \* Act;
- (f) is the subject of a banning order under section 920A of the \* Act;

**2.18.4.** In respect of each person who is an \* approved representative of an \* APX broker, the \* APX broker must notify \* APX of the following changes within two \* business days after becoming aware of the change:

- (a) any change to the name or residential address of an \* approved representative;
- (b) the \* approved representative ceases to be an officer or employee of the \* APX broker;
- (c) the \* approved representative ceases to be a \* representative of an \* APX broker.

**2.18.5.** Subject to **Rule 2.18.1**, \* APX may cancel the registration of an \* approved representative in relation to an \* APX broker if, in the opinion of \* APX:

- (a) the \* approved representative is responsible for the \* APX broker materially breaching any of the Rules;
- (b) the \* approved representative ceases to be an officer or employee of the \* APX broker;
- (c) the \* approved representative ceases to be a \* representative of an \* APX broker;
- (d) is not of good fame and character and high business integrity (**Rule 2.3.2** applies);
- (e) is disqualified from managing corporations under Part 2D.6 of the \* Act;
- (f) is the subject of a banning order under section 920A of the \* Act;

**2.18.6.** If \* APX cancels the registration of an \* approved representative in relation to an \* APX broker under **Rule 2.18.5**, \* APX must immediately notify the former \* approved representative and the relevant \* APX broker of that fact.

### PROCEDURAL RIGHTS.

**2.19.1.** If \* APX intends to:

- (a) reject an application by a person for recognition as an \* affiliate or as an \* APX broker;  
or
- (b) withdraw its recognition of a person as an \* affiliate or as an \* APX broker;

then \* APX must notify the person concerned of its intention and inform the person of their right to request a hearing before \* APX and make submissions to \* APX in relation to the rejection of the application or withdrawal of recognition. The person concerned may elect to make submissions to \* APX without appearing at a hearing. If \* APX does not receive a written request for a hearing from the person concerned within 14 days after notifying the person in accordance with this **Rule**, then the person is deemed to have waived their right to a hearing.

**2.19.2.** The following provisions apply to each hearing by \* APX conducted in accordance with these Rules:

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\* See Chapter 1 for defined terms.

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- (a) The hearing must be held in private, provided that \*APX may consider submissions or information received from any person and may give directions as to the persons who may be present at the hearing.
- (b) All evidence and material placed before \*APX or considered by it at a hearing must be kept confidential, but nothing in this **Rule** prevents \*APX from disclosing confidential information to its employees, related corporations and advisers on a “need to know” basis or otherwise disclosing confidential information as required by these Rules or by law.
- (c) The person who requested the hearing, and any other person authorised by \*APX, may appear in person and make submissions and is entitled to be represented by:
  - (i) an employee or officer of the person;
  - (ii) a barrister or solicitor of the Supreme Court of a State or Territory of Australia or of the High Court of Australia; or
  - (iii) any other person approved by \*APX.
- (d) The hearing must be conducted with as little formality and technicality and with as much expedition as a proper consideration of the matters before \*APX permits. \*APX may make a transcript of proceedings at a hearing.
- (e) \*APX must make its decision free of bias and shall give the person who requested the hearing a fair hearing and shall in all other respects observe the rules of natural justice.

**2.19.3.** If, after a hearing has been held or the right to a hearing has been waived, \*APX intends to:

- (a) reject an application by a person for recognition as an \*affiliate or as an \*APX broker; or
- (b) withdraw its recognition of a person as an \*affiliate or as an \*APX broker;

then \*APX must give the person concerned written notice of its determination and the reasons for its determination. If \*APX has determined to withdraw its recognition of a person as an \*affiliate or as an \*APX broker, the notice must specify the date that the person ceases to be an \*affiliate or an \*APX broker. \*APX gives its written reasons by dispatching them, within 30 days after the conclusion of the hearing, to the person concerned at the address of the person last known to \*APX.

**2.19.4.** \*APX and each party to a hearing must bear their own costs and expenses incurred in connection with the hearing.

#### APPEALS.

**2.20.1.** Each of the following persons is a “person aggrieved” by a decision of \*APX:

- (a) a person whose application for recognition as an \*affiliate or an \*APX broker has been rejected by \*APX;
- (b) in relation to an application for registration of a natural person as an \*approved representative which has been rejected by \*APX – the \*APX broker or the natural person concerned;

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- (c) a person whose recognition as an \*affiliate or an \*APX broker has been withdrawn by \*APX;
- (d) in relation to a natural person whose registration as an \*approved representative has been cancelled by \*APX – the \*APX broker or the natural person concerned; and
- (e) any other person who is deemed by these Rules to be a person aggrieved for the purposes of this **Rule 2.20.1**.

**2.20.2.** A person aggrieved may appeal to the \*Appeal Tribunal by lodging with the \*secretary a notice of appeal in the form approved by \*APX. The notice of appeal must set out the grounds of appeal and must be lodged within 30 days after \*APX has notified the person aggrieved of the decision the subject of the appeal.

**2.20.3.** The appeal shall be conducted in the manner provided by **Rules 8.27.1 to 8.29(k)**.

#### STATUS OF DECISION OF APPEAL TRIBUNAL.

**2.21.** The decision of the \*Appeal Tribunal shall be final and binding upon the parties.

#### HONORARY FELLOW OF THE APX.

**2.22.** \*APX may appoint as an Honorary Fellow of \*APX any person who, in its opinion, has rendered distinguished service to \*APX. Any appointment made under this **Rule** shall not confer any rights or obligations under these \*Business Rules. \*APX may, in its absolute discretion, revoke any such appointment.

#### MEMBER OF THE APX.

**2.23.** \*Affiliates and \*APX brokers are entitled to describe themselves as members of \*APX.

#### FEES & OTHER CHARGES.

**2.24.1.** Without limiting any other provision in these Rules concerning fees, \*APX may charge to:

- (a) \*APX brokers in connection with their continued recognition as \*APX brokers and their access to and use of markets and facilities and other services operated or provided by \*APX;
- (b) \*Affiliates in connection with their continued recognition as \*affiliates and use of facilities and other services operated or provided by \*APX;

such fees, including late fees, as \*APX may from time to time prescribe.

**2.24.2.** Fees charged under **Rule 2.24.1** must be paid to \*APX by the times and in the manner prescribed by \*APX.

**2.24.3.** Any fees charged under **Rule 2.24.1**, and any changes to those fees, will take effect at a time determined by \*APX and notified to, as appropriate, \*APX brokers or \*affiliates.