

CHAPTER 5

CLIENT RELATIONSHIP

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A *client agreement form must be completed, executed and received by *APX before a client of an *APX broker may commence trading on the market.

Chapter 5 Client Relationship.

- 5.1.1.** *APX must not enter a *bid or *offer on behalf of a person in relation to the market unless:
- (a) that person has entered into a *client agreement (as set out in **Appendix 5-1**) with an *APX broker; and
 - (b) the *APX broker has given *APX a signed copy of the *client agreement.
- 5.1.2.** A person who has entered into a *client agreement with an *APX broker is a client of the *APX broker for the purposes of these *Rules.

CREDIT REFERENCE.

- 5.2.1.** Each *APX broker must at all times maintain membership of The Stockbrokers' Mutual Reference Society Limited ACN 000 741 104 (SMRS).
- 5.2.2.** Each *APX broker must not transact business for a person or company for whom it has not previously transacted business unless:
- (a) an enquiry has first been made to SMRS; or
 - (b) the *APX broker reasonably believes that an enquiry to the SMRS is unnecessary in the circumstances.
- 5.2.3.** If an *APX broker terminates its *client agreement with a person because the person has failed to meet its obligations in relation to the settlement of a transaction(s), then the *APX broker must notify SMRS of the name and address of the person.

CLIENT SETTLEMENT ARRANGEMENTS - DISCLOSURE.

- 5.3** Each *client agreement shall include the following:
- (a) the name, telephone number and principal business address of any *settlement agent acting for the *APX broker;
 - (b) a statement that the *APX broker is responsible for the settlement obligations in respect of all *securities transactions of the client on the *APX market;
 - (c) provisions that if the client fails to:
 - (i) pay any amount due in respect of a *securities transaction; or
 - (ii) complete a contract under **Rules 5.10.1 to 5.13**;the *APX broker has rights against the client, including rights under these Rules to sell *securities purchased on behalf of the client.

5.4–5.8 inclusive deleted.

PROHIBITION OF ADVICE TO CLIENT.

- 5.9.1** For the purposes of **Rules 5.9.2** and **5.9.3**, “client” includes a security holder in an *APX broker.

Chapter 5

Client Relationship.

5.9.2 Subject to **Rule 5.9.3**, where, as a result of its relationship with a client, an *APX broker is in possession of *inside information, that *APX broker must not give advice to another client of a nature that would damage the interest of either of those clients.

5.9.3 **Rule 5.9.2** does not apply where an *APX broker has *chinese walls in place and the person advising a client is not in possession of the *inside information.

CLIENT - SETTLEMENT.

SETTLEMENT BY CLIENTS.

5.10.1 In relation to each *securities transaction executed on behalf of a client on the market, the client is responsible to the *APX broker for meeting its obligations under these Rules to settle *securities transaction.

5.10.2 Without limiting **Rules 5.11.1 to 5.11.5**, where the confirmation has been dispatched in accordance with **Rules 5.14.1 to 5.14.9**, a client shall be deemed to have failed to complete a contract if the *APX broker does not receive from the client by the time (if applicable) and date for settlement shown on the confirmation:

- (a) if the client has bought *securities – payment in full of the purchase price for the *securities and other charges for delivery of *securities; or
- (b) if the client has sold *securities – all details and documents necessary to transfer title in the *securities sold to the purchaser.

FAILURE TO COMPLETE CONTRACT.

5.11.1 Failure by a client to deliver or to accept and pay on delivery does not make a contract void or liable to repudiation or termination unless the parties agree otherwise.

5.11.2 If a client of an *APX broker fails to complete a contract or a number of contracts or a portion of a contract in accordance with **Rules 5.10.1 to 5.10.2**, the *APX broker may, on making a demand on the client after the failure of the client to complete, sell or purchase, or cause to be sold or purchased (as the case may be) sufficient of the *securities the subject of the contract or contracts at the client's risk and expense which expense shall include brokerage and stamp duty.

5.11.3 If a loss results, the client shall account to the *APX broker for the loss. If a profit results, the *APX broker shall account to the client for the profit.

5.11.4 If a client fails to complete a contract or a number of contracts or a portion of a contract by the due date, the client may be charged an administration fee calculated by reference to the additional cost which may be incurred by the *APX broker as a result of the client's failure to complete the contract or contracts by the due date.

5.11.5 Any demand made under **Rule 5.11.2** may be made verbally or in writing. A written demand must be made in accordance with **Rules 5.22.1 to 5.22.3**.

REQUIREMENTS OF LISTEE.

5.12. If a client fails to comply with the requirements of a *listee, including those in a *listee's *constitution, then the client is deemed to have failed to have met its settlement obligations in relation to the contract and the provisions of **Rules 5.11.1 to 5.11.5** apply.

DEATH OR INCAPACITY OF A CLIENT.

5.13 If a client dies or becomes otherwise incapable of receiving and paying for, or delivering or transferring *securities, which the client has ordered to be bought or sold and after reasonable enquiry the *APX broker has no knowledge of anyone legally authorised to complete such purchases or sales on the client's behalf, the *APX broker is entitled, with the approval of *APX, to re-sell or re-purchase, or cause to be resold or re-purchased (as the case may be), the *securities and the client (or his or her estate) is liable for any deficiency and is entitled to any surplus which may result.

CONFIRMATIONS.

5.14.1 In respect of each purchase or sale of *securities executed for a client of an *APX broker, the *APX broker must confirm the transaction in accordance with section 1017F of the *Act (the "confirmation").

5.14.2 The *APX broker may dispatch electronically the confirmation to a client and/or the *APX broker under these Rules, if the client has consented to electronic dispatch and that consent has not been withdrawn. The *APX broker is not required to issue an electronic confirmation with the statement referred to in **Rule 5.14.5** if the *APX broker has obtained an acknowledgment from the client that the conditions set out in **Rule 5.14.5(a)** and **(b)** apply to confirmations dispatched electronically.

5.14.3 The *APX broker must keep a written record of:

- (a) a consent or withdrawal of consent by a client to the electronic dispatch of confirmations under **Rule 5.14.2**; and
- (b) an acknowledgment from a client that the conditions set out in **Rule 5.14.5(a)** and **(b)** apply to confirmations dispatched electronically under **Rule 5.14.2**.

5.14.4 Except in the case of transactions in *securities classified by *APX as deferred delivery:

- (a) the confirmation shall also have reproduced on it:
 - (i) in the case of a sale, the date by which the client must provide all documents and *security holder information (including the holder identification number), and, if applicable, *security holder reference number; or
 - (ii) in the case of a purchase, the date by which the client must provide the consideration specified in the confirmation,

required by the *APX broker for the transaction to meet its *settlement obligations; and
 - (iii) in the case of a sale, the date on which the net consideration to the client falls due; and
- (b) the confirmation may have reproduced on it the time by which the client must provide the documents referred to in **Rule 5.14.4(a)(i)** or **(ii)**.

5.14.5 Subject to **Rule 5.14.2**, the confirmation must state that it is subject to:

- (a) the Rules, customs and usages of *APX; and

(b) the correction of errors and omissions.

5.14.6 A confirmation in respect of a * conditional sale referred to in **Rules 4.30 to 4.34** and the corresponding confirmation in respect of the * conditional purchase of the * securities, shall be endorsed as conditional and state the * condition and the effect of non-fulfilment of that condition.

5.14.7 The confirmation must identify the * APX broker which executed the purchase or sale.

5.14.8 Where * securities are sold to clients pursuant to **Rule 5.18**, the confirmation must be endorsed with a statement to that effect.

5.14.9 Where the provisions of **Rule 5.19** apply and the * APX broker advises the * selling * APX broker that it is acting for the * bidder(s), and that it was unable to give the * selling * APX broker advice in respect of the proposed sale, the confirmation shall be endorsed with a statement indicating that the * APX broker was unable to give advice to the * selling * APX broker and that no advice was given.

CORNERS.

5.15.1 When, in the opinion of *APX, a person or company or two or more persons and/or companies acting in concert, have acquired such control of a *security admitted to quotation by *APX, that the *security cannot be obtained for delivery on existing contracts (“affected contracts”) except at prices or on terms arbitrarily dictated by such persons and/or companies which are unfair, harsh, or unconscionable, *APX may, for the purpose of enabling equitable settlement to be effected on the affected contracts:

- (a) from time to time postpone the times for deliveries on affected contracts; and
- (b) at any time by resolution declare that if such *security is not delivered on any affected contract requiring delivery, on or before the time to which delivery has been postponed, the affected contract must be settled by payment to the party entitled to receive the *security or by the credit to such party of a *fair settlement price determined in accordance with **Rule 5.15.2**.

5.15.2 If the parties to an affected contract do not agree on a *fair settlement price and set a date for payment, they are deemed to have agreed:

- (a) to submit the matter in dispute to arbitration by a special committee, comprising three persons appointed by *APX for that purpose; and
- (b) to be bound by the decision of that special committee.

5.15.3. The special committee must hear and determine the matter in dispute as near as practicable in accordance with the rules and procedures adopted by the Australian Commercial Disputes Centre Limited in arbitrating disputes (as those rules and procedures are amended, replaced or substituted from time to time and as varied by this **Rule**). The arbitration will be conducted at Melbourne and otherwise held in accordance with and subject to the laws of the State of Victoria. Each party must bear their own costs and expenses incurred in relation to the arbitration. The special committee will not charge a fee for hearing and determining the dispute.

5.15.4. No *affiliate shall be appointed to the special committee without the consent of all parties.

5.15.5 Either party to an affected contract on which delivery has been postponed under **Rule 5.15.1**, may require *APX at any time to appoint a special committee under **Rule 5.15.2**.

EXPENSES.

5.16. An *APX broker is entitled to charge a client out-of-pocket expenses incurred in the purchase or sale of *securities but any such charge must not be covered by an increase or reduction in the price.

NOMINEE SHAREHOLDINGS.

5.17. Where an *APX broker it is not the beneficial owner of *securities, the *APX broker must not register those *securities in its own name or in the name of its directors or employees. Any such *securities may only be registered in the name of a nominee company incorporated in Australia with a name which contains the word “nominee”. The constitution of the nominee company must preclude the nominee company from beneficially owning any *securities or other property except cash. The nominee company must be beneficially owned and operated by the *APX broker.

DISCLOSURE OF SHORTFALL.

5.18. An *affiliate of an *APX broker, a director of an *APX broker, an *approved representative and an *APX broker or an employee of an *APX broker, which is required to acquire *securities as underwriter or sub-underwriter must not offer those *securities to a client without first disclosing to the client the closing date of the issue or offering of the *securities and the reasons for the acquisition. This **Rule** ceases to apply after 90 days from the closing date.

TAKEOVERS - ACTING FOR BIDDER; ON-MARKET BUY-BACKS.

5.19. Where an *APX broker:

- (a) has an order from an *bidder under a *takeover in relation to the *securities the subject of the *takeover; or
- (b) acts for a *listee involved in an on-market buy-back of *securities under the *Act;

the *APX broker shall not accept, or transact, an order to sell the relevant *securities unless the *APX broker:

- (c) discloses to the *selling *APX broker of the *securities that;
 - (i) it is acting for the *bidder or the *listee involved in the on-market buy-back; and
 - (ii) it is unable to advise the *selling *APX broker in respect of the proposed sale; and
- (d) does not give the *selling *APX broker any advice in respect of the proposed sale.

SUPPLY OF INFORMATION.

SPECIFIC REQUEST FOR INFORMATION.

5.20. Without derogating from the powers of *APX to obtain information and to conduct inspections in relation to the affairs of an *affiliate or an *APX broker, *APX may request that an *APX broker provide specified information relating to the terms and circumstances of, and parties to, any dealings in *securities by clients and/or former clients of that *APX broker. Such a request must be in writing and the *APX broker must provide the information to *APX within such period as is specified by *APX, being a period of not less than two *business days after the date of the request .

PERMITTED DISCLOSURE.

5.21.1. *APX shall take all reasonable measures to protect from unauthorised use or disclosure, information provided to *APX in confidence by, or on behalf of, an *APX broker pursuant to the Rules. For the purposes of this **Rule** the disclosure of the following information does not constitute unauthorised use or disclosure:

- (a) pursuant to a *reciprocal arrangement;

Chapter 5 Client Relationship.

- (b) required to be disclosed by *APX under any law or any order of any court or tribunal, authority or regulatory body;
- (c) which at the time of disclosure to or by *APX, was generally available to and known by the public;
- (d) for the purposes of monitoring compliance with, and/or the enforcement of the Rules or the adjudication of such matters;
- (e) to any governmental agency or regulatory authority including, without limitation, a stock exchange (in Australia or elsewhere) which, in the proper exercise of its powers relating to;
 - (i) the order and good government of *affiliates or *APX brokers; or
 - (ii) the fair, orderly and transparent trading of *securities (in Australia or elsewhere); or
- (f) required to be disclosed by *APX to any dispute resolution body operating an external dispute resolution scheme approved by *ASIC under the *Act.

requests that *APX provide the information to it.

5.21.2. Nothing in **Rule 5.21.1** limits what may at common law otherwise constitute, for the purposes of this **Rule**, authorised use or disclosure of information.

NOTICES.

5.22.1. For the purposes of these Rules, where a notice or other communication (“**Notice**”) is required by these Rules to be in writing, the Notice:

- (a) may be written on paper or in electronic form capable of being reproduced on paper; and
- (b) may be given to a company by:
 - (i) leaving the Notice at, or posting it to, the company’s registered office or principal place of business; or
 - (ii) sending the Notice by facsimile to the facsimile number of the company last known to the person sending the Notice; or
 - (iii) giving the Notice to a director of the company in accordance with **Rule 5.22.1(c)**; or
- (c) may be given to an individual by:
 - (i) delivering the Notice to the individual personally; or
 - (ii) leaving the Notice at, or posting it to, the residential or business address of the individual last known to the person sending the Notice; or
 - (iii) sending the Notice by facsimile to the facsimile number of the individual last known to the person sending the Notice; or

* See Chapter 1 for defined terms.

- (iv) sending the Notice by electronic mail to the electronic mail address of the individual last known to the person sending the Notice; or

5.22.2. A Notice is deemed given and received:

- (a) if delivered, on delivery;
- (b) if sent by post within Australia, on the 2nd *business day after posting;
- (c) if sent by post to an address outside Australia, on the 7th *business day after posting;
- (d) if sent by facsimile or electronic mail before 5 p.m. on a *business day, on the day it is sent and otherwise on the next *business day.

5.22.3. Despite **Rule 5.22.2(d)**:

- (a) a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent; and
- (b) an electronic mail message is not deemed given or received if the sender receives any notification, from the computer system of either the sender or the addressee, that the electronic mail message has not been successfully delivered to the addressee.