

## **CHAPTER 7**

# **PREVENTION OF FRAUD, DISHONESTY AND MANIPULATIVE BEHAVIOUR**

**CHAPTER 7 - SCOPE OF CHAPTER**  
**PREVENTION OF FRAUD, DISHONESTY AND MANIPULATIVE BEHAVIOUR**

\* APX brokers are responsible for the conduct of their \* affiliates and \* representatives.

\* APX brokers must supply to \* APX, details concerning changes to their company's constitution, common ownership details and information concerning control.

\* APX brokers must maintain adequate professional indemnity insurance.

\* APX brokers must maintain a register of complaints.

**RESPONSIBILITY FOR AFFILIATES AND REPRESENTATIVES.**

**7.1.1.** Each \*APX broker is responsible to \*APX for the conduct of:

- (a) each \*approved representative of the \*APX broker; and
- (b) any \*affiliate of that \*APX broker;

as provided below in **Rule 7.1.2.**

**7.1.2.** The \*APX broker is responsible to \*APX for.

- (a) the compliance by the \*approved representative or the \*affiliate with the provisions of the Rules; and
- (b) all debts liabilities and engagements incurred or undertaken by the \*representative or the \*affiliate;

in his or her capacity as a \*representative to, or an \*affiliate of, that \*APX broker or in any way arising out of his or her connection with that \*APX broker.

**APX BROKERS.**

**CHANGES TO CONSTITUTION.**

**7.2.** Where an \*APX broker proposes to make any change in its constitution, a copy of the draft resolution together with any explanatory material proposed to be given to \*security holders must be lodged with \*APX at least 10 \*business days before a notice convening a general meeting to consider the proposed changes is given to \*security holders.

**COMMON OWNERSHIP.**

**7.3.1.** If an \*APX broker has access to the \*trading system of \*APX as an \*APX broker, then no other \*APX broker which is associated or connected with that \*APX broker within the meaning of this **Rule** is entitled to have independent access to the \*trading system of \*APX as an \*APX broker.

**7.3.2.** An \*APX broker is associated or connected with another \*APX broker if:

- (a) an officer or , \*representative of the \*APX broker is an officer or \*representative of the other \*APX broker and that person's duties include trading or dealing in \*securities;
- (b) the second \*APX broker is a related body corporate of the first \*APX broker;
- (c) a person who is entitled to shares in the second \*APX broker is also entitled to shares in the first \*APX broker (unless the first \*APX broker is a listed corporation and the shares constitute less than 10% of the shares of that Corporation);
- (d) the second \*APX broker shares computer facilities with or allows its computer facilities to be linked with, the first \*APX broker, unless the proposed sharing or linkage is approved by \*APX.

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- 7.3.3.** Where a person is a director of more than one \*APX broker:
- (a) that person must nominate one \*APX broker as a primary \*APX broker and the director must provide written advice to \*APX of the nominated primary \*APX broker; and
  - (b) the director must not request access to the records of orders referred to at **Rule 3.3(c)** of \*APX brokers other than the primary \*APX broker, unless the director has obtained the prior approval of \*APX.
- 7.3.4.** \*APX may require an \*APX broker to give an undertaking to \*APX that, in relation to another company which conducts operations by means of a facility of \*APX:
- (a) it is not associated with or connected with another \*APX broker in circumstances which would preclude it from attending an official meeting by virtue of **Rule 7.3.1**; and
  - (b) the \*APX broker will not allow any person who is not an officer or \*representative of the \*APX broker to have access to its order book or clients' records, other than as required by law or by \*APX.
- 7.3.5.** An \*APX broker must advise \*APX immediately on becoming associated with or connected with another \*APX broker under **Rule 7.3.2**.
- 7.3.6.** An \*APX broker which is the subject of these **Rules 7.3.1 to 7.3.6** must fully inform its clients in a manner approved by \*APX, of the type of business carried on by the \*APX broker.

#### PROVISION OF INFORMATION TO APX CONCERNING OWNERSHIP AND CONTROL.

- 7.4.1.** An \*APX broker must advise \*APX in writing by no later than the next \*business day of any change in its \*affiliate directors or of any resignation by a director who is not an \*affiliate.
- 7.4.2.** An \*APX broker must give \*APX 10 days written notice before appointing a new director who is not an \*affiliate.

#### APX BROKER - PARTNERSHIPS.

**7.5** \*APX will not recognise any partnership as an \*APX broker.

#### PROVISION OF INFORMATION TO THE APX.

- 7.6.1.** If any of the following events occurs, the affected \*APX broker must immediately give notice in writing to \*APX stating the particulars:
- (a) anything occurs in relation to the \*APX broker which, under **Rule 2.17.1**, would entitle \*APX to withdraw its recognition of that \*APX broker;
  - (b) anything occurs in relation to an \*affiliate of the \*APX broker which, under **Rule 2.10.1**, would entitle \*APX to withdraw its recognition of that \*affiliate.
- 7.6.2.** \*Affiliates and \*APX brokers must advise \*APX in writing by no later than the next \*business day after they have been advised by \*ASIC or its delegate or any other person who may be authorised pursuant to the \*Act, of any action which may be taken against them by the \*ASIC, its delegate or an authorised person under the \*Act.

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**7.6.3.** Each \*APX broker must lodge with \*APX a copy of its Australian financial services licence held under the \*Act. Within 2 \*business days of an \*APX broker receiving written notification of any alteration to its Australian financial services licence, the \*APX broker must lodge with \*APX a copy of the altered Australian financial services licence.

#### **BUSINESS NAMES.**

**7.7.1.** An \*APX broker must not carry on a financial services business as an \*APX broker under a business name unless:

- (a) the business name consists of the company name of the \*APX broker without any addition; or
- (b) \*APX has not objected to the use of the \*business name by the \*APX broker.

**7.7.2.** Except in accordance with **Rule 7.7.1(a)**, an \*APX broker must, before using a business name, immediately notify \*APX in writing of:

- (a) the business name;
- (b) the address or addresses where the financial services business of the \*APX broker is or is proposed to be carried on; and
- (c) the company name of the \*APX broker which will be carrying on business as an \*APX broker under the \*business name.

**7.7.3.** Without limiting the discretion of \*APX, \*APX may object to the use of a business name if, in the reasonable opinion of \*APX, the use of the business name by the \*APX broker:

- (a) will be misleading or confusing;
- (b) will give an unfair advantage to the \*APX broker; or
- (c) is otherwise undesirable.

**7.7.4.** \*APX may at any time object to the use of a business name if \*APX is satisfied that the particulars provided pursuant to **Rule 7.7.2** are incorrect.

**7.7.5.** If \*APX objects to a business name under this **Rule**, it must give written notice of its objections to the \*APX broker and, on receipt of such notice, the \*APX broker must cease to use the business name.

#### **BUSINESS OFFICES.**

**7.8.1.** Each \*APX broker must notify \*APX in writing of:

- (a) the address of its principal place of business;
- (b) the address of each place at which the \*APX broker carries on a financial services business; and
- (c) each change to the above addresses.

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- 7.8.2.** Each place at which an \*APX broker carries on a financial services business must be under the supervision and direct control of an \*affiliate or an \*approved representative who must be located at that office.
- 7.8.3.** If a place at which an \*APX broker carries on a financial services business ceases to comply with **Rule 7.8.2**, the \*APX broker must give written notice to \*APX of that fact within two \*business days.

#### ENGAGING IN CONDUCT AS A REPRESENTATIVE.

- 7.9.1.** For the purpose of this **Rule**, the terms ‘authorised representative’ or ‘\*representative’ must be interpreted having regard to any relevant policy published by \*ASIC.
- 7.9.2.** An \*APX broker must not permit a person to do an act or engage in conduct as a \*representative of an \*APX broker unless the person is:
- (a) an \*affiliate;
  - (b) an \*approved representative of the \*APX broker;
  - (c) an employee of the \*APX broker; or
  - (d) under the supervision and direct control of an \*affiliate or \*approved representative of the \*APX broker in accordance with the standards set by \*APX from time to time.

#### CLIENT ORDERS - PRECEDENCE.

- 7.10.1.** In this **Rule**, a reference to an \*APX broker or \*prescribed person placing an order for its own account means that the \*securities to be bought or sold are, or will be on the completion of part or all of the order, beneficially owned by the \*APX broker or \*prescribed person. The \*securities beneficially owned by an \*APX broker or \*prescribed person include \*securities which would appear as assets on the balance sheet or consolidated balance sheet of that \*APX broker or \*prescribed person.
- 7.10.2.** An \*APX broker must not buy or sell \*securities on its own account, or on the account of a \*prescribed person as defined in this **Rule**, while the \*APX broker holds an unexecuted order on the same terms from a client to deal in such \*securities. For the purpose of this **Rule** a limit order which cannot be executed owing to price differences is not an uncompleted order. This **Rule** does not apply to an \*APX broker which confines its clients to \*professional investors and which executes each transaction to the best advantage of the \*professional investor.
- 7.10.3.** No business may be transacted on account of:
- (a) an employee of an \*APX broker; or
  - (b) an \*associate of any such employee; or
  - (c) the \*immediate family of an employee of an \*APX broker; or
  - (d) any account in which any such employee has any interest either direct or indirect;

except with the prior written consent of a director or the appointee of a director of the \*APX broker for each transaction. This **Rule** does not apply to a director of an \*APX broker.

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**7.10.4.** No business may be transacted on account of:

- (a) a \*representative to, or an \*affiliate, of, an \*APX broker who is not an employee of the \*APX broker (“commissioned agent”); or
- (b) the \*immediate family, a \*family company, or a \*family trust of a commissioned agent; or
- (c) any account in which a commissioned agent has any direct or indirect interest;

except with the prior written consent of a director or the appointee of the director of the \*APX broker given in respect of that transaction or given in respect of transactions or particular categories of transactions generally.

**7.10.5.** An \*APX broker must not allocate a sale or purchase of \*securities to fulfil all or part of an order for a \*prescribed person or for its own account when it has an unfulfilled order on the same terms for those securities from a client which is not a \*prescribed person. Such action by the \*APX broker is \*prohibited conduct.

#### TRANSACTIONS FOR EMPLOYEE OF ANOTHER APX BROKER.

**7.11.1.** An \*APX broker must ensure that its employees, consultants, directors and \*affiliates and their \*immediate families, \*family companies and \*family trusts do not, as principal, buy or sell \*securities or rights or interests in \*securities unless the \*APX broker acts as agent for the employee, consultant, director or \*affiliate of the \*APX broker or their \*immediate families, \*family companies, and \*family trusts.

**7.11.2.** Except where an \*APX broker receives a prior waiver from \*APX, an \*APX broker must not buy or sell \*securities for any person who is an employee, consultant, director or \*affiliate of another \*APX broker or their \*immediate families, \*family companies or \*family trusts.

**7.11.3.** It is a defense to any charge brought against an \*APX broker under this **Rule** that none of its directors who were aware of the transaction knew, and could not be reasonably expected to have known, that the person for whom \*securities were bought or sold was an employee, consultant, director or \*affiliate of another \*APX broker or their \*immediate families, \*family companies or \*family trusts.

#### CREDIT TO EMPLOYEES AND OTHERS TO BUY SECURITIES.

**7.12.** An \*APX broker must ensure that it receives the funds for the purchase of or subscription for any \*securities on behalf of an employee or director of the \*APX broker or the \*immediate family, \*family company or \*family trust of an employee or director of the \*APX broker at the time that, or before, the \*APX broker is required to settle the transaction.

#### COMPLAINTS.

**7.13.1.** An \*APX broker must handle complaints and keep records of complaints in accordance with the \*Act and any relevant conditions to its Australian financial services licence.

An \*APX broker must, immediately on request, make available to \*APX the records of the \*APX broker in relation to complaints made against the \*APX broker.