

CHAPTER 8

MONITORING, SURVEILLANCE AND ENFORCEMENT

MONITORING, SURVEILLANCE AND ENFORCEMENT

* APX will appoint * examining accountants whose responsibility is to receive on behalf of * APX returns from * APX brokers and to examine the * APX broker's books and records.

* APX will appoint * APX inspectors whose responsibility is to determine whether or not * APX brokers are complying with the provision of the Rules. * APX inspectors will have access to * APX brokers records.

* APX must appoint a * complaints officer whose responsibility is to resolve complaints that * APX brokers are unable to resolve.

* APX may undertake investigation into alleged breaches by * APX brokers of the Rules. * APX may discipline * affiliates and * APX brokers by censuring them, fining them, suspending their access to the * trading system or even cancelling their membership of * APX. * APX will not cancel the recognition of an * affiliate or * APX broker without a hearing. The decision of a hearing may be appealed to the * Appeal Tribunal.

SURVEILLANCE, INSPECTION AND INVESTIGATIONS.

APX EXAMINING ACCOUNTANT.

- 8.1.1.** *APX may appoint as *examining accountants one or more persons who are accountants or firms of accountants and must notify *APX brokers of the names and addresses of the accountants or firms so appointed.
- 8.1.2.** During the term of appointment, an *examining accountant must not act as *auditor of any *APX broker, nor may it act for an *APX broker in any other capacity without the prior consent of *APX.
- 8.1.3.** An *examining accountant may receive on behalf of *APX, returns and documents which are required to be lodged by *APX brokers under the provisions of the Rules and after receipt it must report on them to *APX.
- 8.1.4.** An *examining accountant may carry out a special examination of an *APX broker's books and records either:
- (a) at its discretion after considering an *APX broker's accounts received under the Rules or any returns received from an *APX broker under these Rules; or
 - (b) at the direction of *APX.
- 8.1.5.** In the course of a special examination, the *examining accountant is entitled to examine:
- (a) the working papers of the *APX broker's *auditor compiled during the audit of the *APX broker; and
 - (b) the records relating to the *APX broker's financial affairs held with its bankers;
- and for this purpose the *APX broker must authorise the inspection of those papers and records by the *examining accountant and must authorise its *auditors and bankers to discuss the *APX broker's financial affairs generally with the *examining accountant.
- 8.1.6.** An *examining accountant may communicate directly with an *APX broker. An *APX broker must give to an *examining accountant such information and explanations as the *examining accountant may request to enable the *examining accountant to determine whether the provisions of the Rules in respect of accounts, audit and capital requirements are being observed.
- 8.1.7.** All returns and documents submitted to the *examining accountant under **Rule 8.1.3** must be retained by the *examining accountant on behalf of *APX, for such period as *APX may determine, and must be kept confidential and no disclosure of that information may be made to any person except as required by the *Act or under **Rule 8.1.2**.
- 8.1.8.** The *examining accountant, in addition to the duties set out in the Rules, must act generally as a consultant to *APX as required from time to time. The *examining accountant must confer with *APX as required and in any event not less than quarterly on matters arising out of its duties under these Rules.
- 8.1.9.** *APX is responsible for and must pay the *examining accountant's fees, provided that where those fees relate specifically to duties of an extraordinary nature and in respect of an *APX

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broker, *APX may, if it considers that the circumstances warrant, impose a charge on the *APX broker to reimburse *APX for the cost of the investigation.

APX INSPECTORS.

- 8.2.1.** *APX may appoint as *APX inspectors one or more persons who is suitably qualified for appointment.
- 8.2.2.** *APX may direct one or more of the *APX inspectors to determine whether or not an *APX broker has failed to comply with the Rules or engaged in *prohibited conduct. The *APX broker must make available to the *APX inspector all relevant accounts and other records relating to itself, which are within its possession or control and which are required by the *APX inspector.
- 8.2.3.** For the purposes of complying with a direction given by *APX under **Rule 8.2.2**, an *APX inspector shall have access to those accounts and other records relating to the *APX broker or business of the *APX broker which are within the possession or control of the *APX broker, including all accounts and other records held by *APX on behalf of the *APX broker, or by the *APX broker's *auditors or bankers or by an *examining accountant.
- 8.2.4.** *APX may act under **Rules 8.13.2 to 8.13.7**, if a report by an *APX inspector discloses:
- (a) a failure by an *APX broker to comply with any provision of these Rules; or
 - (b) the existence of *prohibited conduct.
- 8.2.5.** Details of any report made in accordance with **Rule 8.2.4** must be supplied by *APX to the *APX broker the subject of the report.

APX INVESTIGATION.

- 8.3.** Any report submitted by the *examining accountant may be accepted by *APX as sufficient grounds for the commencement of an investigation under **Rules 8.6.1 to 8.6.2**.

COMPLAINTS OFFICER.

- 8.4.1.** *APX must appoint a suitably qualified person as its complaints officer.
- 8.4.2.** An *APX broker must attempt to resolve any complaint it receives from a client in accordance with the complaints handling procedures required by the *Act.
- 8.4.3.** An *APX broker who cannot resolve a client's complaint itself must, among other things, refer the complaint to the complaints officer of *APX. *APX complaints officer must use all reasonable endeavours to resolve the complaint in accordance with the complaints handling procedures of *APX.

INSPECTIONS BY APX.

- 8.5.1.** *APX may require an *APX broker to produce without delay for inspection by *APX, or its duly appointed representatives, all books relating to the business of the *APX broker.
- 8.5.2.** *APX may require an *APX broker and its, officers or *representatives to appear before *APX or its delegates at any reasonable time to:

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- (a) give any required information relating to the business of the *APX broker; or
- (b) enable *APX to consider whether or not the *APX broker continues to comply with recognition requirements for the purposes of **Rules 2.12.1 to 2.12.3**.

8.5.3. *APX may require an *affiliate to appear before *APX or its delegates at any reasonable time to:

- (a) give any required information relating to the *affiliate; or
- (b) enable *APX to consider whether or not the *affiliate continues to comply with recognition requirements for the purposes of **Rules 2.2.1 to 2.2.3**.

8.5.4. When requested by *APX, an *APX broker must provide to *APX information and data in relation to financial statistics and transaction details as *APX determines.

INVESTIGATIONS.

ACCOUNTANT'S REPORT.

8.6.1. *APX may direct any *affiliate or *APX broker to supply to *APX a report of an *accountant approved by *APX in the form and within the time that *APX reasonably requires. If *APX considers that the information contained in the report warrants a further investigation it may direct the *affiliate or *APX broker to furnish further information or require the *affiliate or *APX broker to cause the *accountant to submit a report covering any further matters as are requested by *APX.

8.6.2. If an *affiliate or *APX broker fails to comply with a direction by *APX under **Rule 8.6.1**, then *APX may appoint an *accountant to investigate the affairs of the *affiliate or *APX broker and prepare a report in the form and within the time that *APX reasonably requires. An *affiliate or *APX broker must assist the *accountant to prepare his or her report and must, at the request of the *accountant, direct third parties to make available the information that he or she requires.

DEEMED APPOINTMENT OF ACCOUNTANT.

8.7.1. Each person who applies to become an *affiliate or an *APX broker, thereby appoints any *accountant appointed under **Rule 8.6.2** as its attorney for the purpose of obtaining any information or documents from third parties which in the opinion of the *accountant are necessary for him or her to prepare their report.

8.7.2. Unless *APX otherwise directs, the cost of the report of the *accountant prepared under **Rule 8.6.1** or **8.6.2** must be met by the *affiliate or *APX broker directed under **Rule 8.6.1** or **8.6.2** to supply a report.

DISCIPLINARY ACTION: INTERESTS OF APX, PUBLIC, REGARDING INSUFFICIENT CAPITAL.

ACTION AGAINST AFFILIATE.

8.8.1. If, in the opinion of *APX, it is desirable to do so in order to protect the interests of *APX or the public, *APX may resolve either to suspend or, subject to **Rule 8.10.1**, to cancel the

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recognition of an *affiliate. No such resolution may be passed in relation to a matter to which, in the opinion of *APX, **Rules 8.13.2 to 8.13.7** apply.

8.8.2. The period of suspension for an *affiliate must not exceed one month but the period may be extended by resolution of *APX for not more than one month on each occasion.

ACTION AGAINST APX BROKER.

8.9.1. If, in the opinion of *APX:

- (a) it is desirable to do so in order to protect the interests of *APX or the public; or
- (b) an *APX broker has insufficient capital for the conduct of its business;

*APX may resolve to suspend or, subject to **Rule 8.10.1**, to cancel the recognition of the *APX broker.

8.9.2. No resolution may be passed under **Rule 8.9.1** in relation to a matter to which, in the opinion of *APX, **Rules 8.13.2 to 8.13.7** apply.

8.9.3 If an *APX broker is suspended:

- (a) the period of suspension must not exceed 1 month but the period may be extended by resolution of *APX for not more than 1 month on each occasion;
- (b) the *APX broker must not enter into any new transactions with other parties without the approval of *APX but is liable to complete all transactions (including time contracts) with other parties which were open at the time of suspension;
- (c) the *APX broker must not deliver any *securities or settle any transactions without the approval of *APX;
- (d) *APX may during the suspension appoint any person to be the manager of the business of the *APX broker and may remove the manager and appoint another manager in the manager's place and may fix the remuneration of any manager. That remuneration must be paid by the *APX broker or may be retained by the manager from the proceeds of realisation of the assets of the *APX broker;
- (e) each manager appointed by *APX is the agent of the *APX broker and the *APX broker is responsible for the manager's acts and defaults. Any manager so appointed is bound to carry out any directions which may be given to such manager by *APX in relation to the business of the *APX broker and may, without the need for any consent from the *APX broker, do all things necessary or convenient to be done, including delivery of *securities and settling of transactions, and to conduct the business and management of the *APX broker in such manner as the manager thinks fit.

8.9.4 If during the period of suspension of an *APX broker, *APX from its own investigations or from the investigations carried out by the manager of the *APX broker, is of the opinion that the *APX broker has insufficient capital for the conduct of business, it may resolve that the recognition of the *APX broker be cancelled.

8.9.5 Each person who applies to become an *APX broker appoints APX as its attorney and thereby irrevocably grants to *APX the right to appoint a manager in accordance with **Rules 8.9.3(d)** and **8.9.3(e)**.

* See Chapter 1 for defined terms.

PROCEDURAL REQUIREMENTS.

- 8.10.1** *APX must not cancel the recognition of an *affiliate or *APX broker under **Rules 8.8, 8.9, 8.15 or 8.16** unless *APX first notifies the *affiliate or *APX broker concerned about the proposed cancellation and informs the *affiliate or *APX broker concerned of their right to request a hearing and make submissions to *APX in relation to the cancellation.
- 8.10.2** If an *affiliate or an *APX broker requests a hearing under **Rule 8.10.1**, then **Rule 2.19.2** applies to the hearing.
- 8.10.3** If *APX resolves to suspend an *affiliate under **Rule 8.8.1** or resolves to suspend an *APX broker under **Rule 8.9.1**, then *APX must give its written reasons for the suspension to the *affiliate or the *APX broker concerned. *APX gives its written reasons by dispatching them, within 30 days after the date of the resolution, to the person concerned at their address last known to *APX.
- 8.10.4** If, after a hearing, *APX resolves to cancel the recognition of an *affiliate or *APX broker, *APX must give its written reasons for the cancellation to the *affiliate or the *APX broker concerned and must specify the date from which the cancellation takes effect. *APX gives its written reasons by dispatching them, within 30 days after the conclusion of the hearing, to the person concerned at their address last known to *APX.
- 8.10.5** *APX may, notwithstanding the provisions of **Rules 8.10.1 or 8.10.2**, suspend an *affiliate or *APX broker. If before the expiration of the period of suspension *APX determines to cancel the recognition of the *affiliate or *APX broker, the suspension is removed with effect from the effective date of cancellation.

ACTION CONCERNING DEFAULTERS.

ACTION AGAINST AFFILIATE.

- 8.11.1** Where an *affiliate:
- (a) in the opinion of *APX has failed or is unable to fulfil the *affiliate's obligations; or
 - (b) is insolvent; or
 - (c) is a director of an *APX broker which is a defaulter under **Rule 8.12.1**,
- *APX may declare the *affiliate to be a defaulter and the *affiliate will cease to be an *affiliate from the date of the declaration.
- 8.11.2** If any *affiliate fails to pay any money for which he or she is liable to *APX, within 1 month from the time it became payable, that money will carry interest at the rate determined by *APX and *APX may, on 7 days notice, suspend the *affiliate from all privileges of status as an *affiliate until the money and interest is paid and he or she will be reported as being suspended. If, after the expiry of 3 months of suspension, the money and interest is still not paid *APX may declare the *affiliate to be a defaulter and the *affiliate will cease to be an *affiliate from the date of the declaration.

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ACTION AGAINST APX BROKER AND ASSOCIATED AFFILIATES.

8.12.1 Where an *APX broker:

- (a) in the opinion of *APX, has failed or is unable to fulfil its obligations; or
- (b) fails to act in accordance with **Rules 8.6.1 to 8.6.2**; or
- (c) is insolvent; or
- (d) has a substantial *security holder or director who is a defaulter under **Rule 8.11.1**;

*APX may declare the *APX broker to be a defaulter and the *APX broker will cease to be entitled to carry on business as an *APX broker from the date of the declaration.

8.12.2 If an *APX broker fails to pay any money for which it is liable to *APX, within 1 month from the time when it became payable, that money will carry interest at the rate determined by *APX and *APX may, on 7 days notice, suspend the *APX broker from all privileges of status as an *APX broker until the money and interest is paid and it will be reported as being suspended. If, after the expiry of 3 months of suspension, the money and interest is still not paid, *APX may declare the *APX broker a defaulter and the *APX broker will cease to be an *APX broker from the date of the declaration.

8.12.3 *APX may allow a transaction with a defaulter to be closed.

8.12.4 At any time after an *APX broker is declared to be a defaulter, *APX may appoint a person who is a registered liquidator under the *Act to be a receiver or receiver and manager (“receiver”) of the defaulter’s business. *APX may remove a receiver and appoint another receiver in his or her place. *APX may fix the remuneration of the receiver and that remuneration must be paid by the defaulter or, subject to the *Act, may be recovered by the receiver from the proceeds of realisation of the defaulter’s assets.

8.12.5 Each receiver appointed by *APX is the agent of the defaulter and the defaulter alone is responsible for his or her acts and defaults. Each receiver appointed by *APX may, without the need for any consent on the part of the defaulter, do all things necessary or convenient to be done for or in connection with, or incidental to, the conduct of the business and management, and realisation of the assets, of the defaulter in such manner as the receiver thinks fit. The receiver may exercise all the powers conferred under the *Act.

8.12.6 Each person who applies to become an *APX broker appoints *APX as its attorney and thereby irrevocably grants to *APX the right to appoint a receiver in accordance with **Rules 8.12.4**.

DISCIPLINARY ACTION: BREACH OF RULES, PROHIBITED CONDUCT.

BREACH OF RULES OR PROHIBITED CONDUCT.

8.13.1 The provisions of Chapter 7 of the *Act regarding the conduct of dealers apply to each *APX broker, and any breach of those provisions by an *APX broker constitutes *prohibited conduct under these Rules.

8.13.2 If *APX considers that an *affiliate or *APX broker should be charged with a breach of any of the Rules or *prohibited conduct, it must give the *affiliate or *APX broker concerned

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written notice of the particulars of the charge and of the date (being not less than 7 days after the date when such notice is served) when the hearing of the charge will be heard. The *affiliate or any officer or employee of the *APX broker has the right to be heard in answer to the charge. *APX must not cancel the recognition of an *affiliate or *APX broker under this **Rule** unless *APX first notifies the *affiliate or *APX broker concerned about the proposed cancellation and informs the *affiliate or *APX broker concerned of their right to request a hearing and make submissions to *APX in relation to the cancellation.

- 8.13.3** If any officer or *representative of an *APX broker by his or her act or omission breaches the Rules or engages in *prohibited conduct, such act or omission is deemed for the purposes of **Rules 8.13.1 to 8.13.7** to be the act or omission of the *APX broker concerned.
- 8.13.4** In the case where an *affiliate who is a officer or *representative of an *APX broker is charged under this **Rule** *APX may also charge the *APX broker concerned, and the charges must be heard and determined as if they constituted separate contraventions provided the aggregate fines imposed in any case arising out of any one charge must not exceed \$50,000.
- 8.13.5** The *APX Adjudicatory Tribunal may, without conducting a hearing, make a preliminary determination in relation to a charge made against an *affiliate or an *APX broker under **Rule 8.13.2**.
- 8.13.6** If the *APX Adjudicatory Tribunal makes a preliminary determination that an *affiliate or an *APX broker has breached any of the Rules or engaged in *prohibited conduct, then it must notify the *affiliate or *APX broker concerned in writing about:
- (a) the preliminary determination, the reasons for the determination and the proposed penalty; and
 - (b) the right of the *affiliate or *APX broker concerned, exercisable within 14 days after the date of the notice, to request a hearing and make submissions to the *APX Adjudicatory Tribunal in relation to the preliminary determination.
- 8.13.7** After the *APX Adjudicatory Tribunal has made a preliminary determination that an *affiliate or an *APX broker has breached the Rules or engaged in *prohibited conduct, *APX may suspend the *affiliate or *APX broker concerned pending a final determination under **Rule 8.13.9**.
- 8.13.8** The following provisions apply to each hearing by the *APX Adjudicatory Tribunal conducted in accordance with these Rules:
- (a) The hearing must be held in private, provided that the *APX Adjudicatory Tribunal 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 the *APX Adjudicatory Tribunal or considered by it at a hearing must be kept confidential, but nothing in this **Rule** prevents the *APX Adjudicatory Tribunal from disclosing confidential information to *APX and 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 the *APX Adjudicatory Tribunal, may appear in person and make submissions and is entitled to be represented by:

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- (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 the *APX Adjudicatory Tribunal.
- (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 the *APX Adjudicatory Tribunal permits. The *APX Adjudicatory Tribunal may make a transcript of proceedings at a hearing.
- (e) The *APX Adjudicatory Tribunal 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.

8.13.9 If an *affiliate or an *APX broker:

- (a) has not requested a hearing within 14 days after the date of a notice given in accordance with **Rule 8.13.6**; or
- (b) has requested a hearing within 14 days after the date of a notice given in accordance with **Rule 8.13.6** and the hearing has been held in accordance with **Rule 8.13.8**,

then the *APX Adjudicatory Tribunal may make a final determination in relation to a charge made against an *affiliate or an *APX broker under **Rule 8.13.2**.

8.13.10 If the *APX Adjudicatory Tribunal makes a final determination that an *affiliate or an *APX broker has contravened any of the Rules or engaged in *prohibited conduct, the *APX Adjudicatory Tribunal may:

- (a) censure the *affiliate or *APX broker; or
- (b) impose a fine not exceeding \$50,000 on the *affiliate or *APX broker; and/or
- (c) suspend the *affiliate or *APX broker from all or any of the privileges of the status of *affiliate or *APX broker (as the case may be); and/or
- (d) prohibit the *affiliate or *APX broker from transacting any business with or through any *APX broker for a period not exceeding 3 months on such terms and conditions as the *APX Adjudicatory Tribunal thinks fit; and/or
- (e) require that the *APX broker upgrade its education and compliance programs to the satisfaction of the *APX Adjudicatory Tribunal; and/or
- (f) require the *affiliate or *APX broker to pay the total commission or gross profit or part thereof arising from the transaction concerned to the *APX Adjudicatory Tribunal and the *APX Adjudicatory Tribunal may deal with that amount in such manner as it thinks fit; and/or
- (g) in the case of *prohibited conduct only, cancel the recognition of the *affiliate or *APX broker.

COSTS.

8.14 If any *affiliate or *APX broker is found guilty of an offence under the Rules, *APX may, in addition to any other penalty which it imposes, direct an *affiliate or *APX broker to pay the reasonable costs or part thereof incurred by *APX in connection with the hearing of the matter.

CANCELLATION OF RECOGNITION: FAILURE TO FULFIL REQUIREMENTS FOR RECOGNITION.

CANCELLATION OF RECOGNITION OF AFFILIATE.

8.15. *APX may withdraw its recognition of a person as an *affiliate in accordance with **Rule 2.10.1.**

CANCELLATION OF RECOGNITION OF APX BROKER.

8.16 *APX may withdraw its recognition of a person as an *APX broker in accordance with **Rule 2.17.1.**

APPEAL TO APPEAL TRIBUNAL.

RIGHT OF APPEAL.

8.17.1 An *affiliate may appeal to the *Appeal Tribunal if:

- (a) his or her recognition as an *affiliate is suspended or cancelled under **Rules 8.8.1 to 8.8.2;** or
- (b) he or she is dealt with under **Rule 8.13.4.**

8.17.2 An *APX broker may appeal to the *Appeal Tribunal if:

- (a) the recognition of an *APX broker is suspended or cancelled under **Rules 8.9.1 to 8.9.4;** or
- (b) the *APX broker is dealt with under **Rule 8.13.4.**

8.17.3 A *Sponsor broker may appeal to the *Appeal Tribunal if:

- (a) the recognition of a *Sponsor is cancelled under **Rules 9.5.1 and 9.5.2;** or
- (b) the *Sponsor is dealt with under **Rule 9.6.**

8.17.4 A *Research Panellist broker may appeal to the *Appeal Tribunal if:

- (a) the recognition of a *Research Panellist is cancelled under **Rules 9.11.1 to 9.11.2;** or
- (b) the *Research Panellist is dealt with under **Rule 9.12.**

8.17.5 *APX may appeal to the *Appeal Tribunal if *APX is dissatisfied with a determination made or penalty imposed under **Rules 8.13.1 to 8.13.7.**

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- 8.17.6** Notice of appeal setting out the grounds of appeal must be lodged with the *secretary within 14 days after receipt by the appellant of the reasons in writing for the decision against which the appeal is made. No person who was a member of the *APX Adjudicatory Tribunal which made the decision may participate in the determination of the appeal.
- 8.17.7** Subject to **Rule 8.17.6**, no action may be taken by *APX to implement or announce a decision made in relation to an *affiliate, an *APX broker, a *Sponsor or a *Research Panellist until expiry of the time allowed for an appeal, or where notice of appeal is lodged under **Rule 8.17.1** or **8.17.2**, until the appeal is determined.
- 8.17.8** *APX may implement and announce a decision to suspend an *affiliate, an *APX broker, a *Sponsor or a *Research Panellist before expiry of the time allowed for an appeal or before the appeal is determined.

BREACH OF UNDERTAKING.

- 8.18.1** An *APX broker or its substantial holder or non-affiliate director that receives a notice from *APX that the undertaking given or required to be given to *APX under **Rule 2.13** has been breached or has not been given as required, may appeal the content of the notice to the *Appeal Tribunal.
- 8.18.2** A notice of appeal under **Rule 8.18.1**, setting out the grounds of appeal, must be lodged with the *secretary within 14 days after receipt by the *APX broker or its substantial holder or non-affiliate director, of the notice from *APX against which the appeal is made.
- 8.18.3** No action may be taken by *APX to implement or announce a decision to give a notice to an *APX broker or its substantial holder or non-affiliate director, until expiry of the time allowed for an appeal, or where notice of appeal is lodged under **Rule 8.18.1**, until the appeal is determined.

PROVISION OF INFORMATION BY APX TO APPEAL TRIBUNAL.

- 8.19.1** *APX may inform its employees and related bodies corporate and the *Appeal Tribunal of any matter relating to any act, omission or conduct in respect of which an *affiliate or *APX broker may be or has been penalised under these Rules.
- 8.19.2** Where information is communicated under **Rule 8.19.1**, *APX must give to the relevant *affiliate or *APX broker details of the communication.

ROLE OF OBSERVER.

- 8.20.** A person appointed by *APX as an observer may observe such of the proceedings of *APX, the *APX Adjudicatory Tribunal, the *Appeal Tribunal or any committee as *APX may from time to time determine. An observer must be independent of any *affiliate or *APX broker involved in the proceedings and is entitled to be present during the proceedings.

RECORD OF DISCIPLINARY ACTION.

- 8.21.1** Where the *APX Adjudicatory Tribunal makes a final determination under **Rules 8.13.1** to **8.13.7** that an *affiliate or an *APX broker has contravened the Rules or engaged in *prohibited conduct, *APX must record details of the determination in a register. Where an *affiliate or an *APX broker has been suspended or had their recognition cancelled under **Rules 8.8.1** to **8.10.4** *APX must record details of the determination in a register. The

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register must be made available to any person for their inspection during normal business hours. Without limiting the generality of the foregoing, the register must include:

- (a) the name of the *affiliate or *APX broker;
- (b) summary details of:
 - (i) in the case of a determination under **Rules 8.13.1 to 8.14**, the charge or charges established against the *affiliate or *APX broker;
 - (ii) the determination of the *APX Adjudicatory Tribunal;
 - (iii) details of any penalty imposed; and
 - (iv) the reasons for that determination and (if applicable) penalty.

8.21.2 No record may be made in the register in respect of a determination which may be appealed until expiry of the time allowed for the lodging of an appeal; or where a notice of appeal is lodged in accordance with the Rules, until the appeal is determined. After an appeal, the details recorded in the register shall only relate to determinations of the *Appeal Tribunal.

ANNOUNCEMENT BY THE APX.

8.22.1 If any *affiliate or *APX broker has:

- (a) been declared a defaulter under **Rules 8.11.1 to 8.12.6**; or
- (b) been censured; or
- (c) been fined; and/or
- (d) been prohibited from trading; and/or
- (e) been suspended; and/or
- (f) been required to initiate or upgrade an education and compliance program; and/or
- (g) been required to pay the total commission or gross profit or part thereof arising from the transaction concerned to *APX; and/or
- (h) ceased to be an *affiliate or *APX broker,

*APX may:

- (i) in its discretion, make an announcement of the decision and the name of the *affiliate or *APX broker concerned, to other *affiliates and *APX brokers in such form and manner as it thinks fit; and
- (j) in its discretion, make a public announcement of the decision in such form and manner as it thinks fit.

8.22.2 No action or other proceeding may be brought by the person or *APX broker referred to in an announcement against any person for publishing or circulating the same, and these Rules

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8.22.1 to 8.22.2 authorise any person to publish and circulate each announcement accordingly.

DISPUTES AND COMPLAINTS.

8.23.1 *APX will consider any complaint submitted to it in writing by a person who is not an *affiliate against an *affiliate or *APX broker.

8.23.2 Any dispute between *affiliates or *APX brokers arising under the Rules (other than arising out of dealings at an official meeting) or between a person who is not an *affiliate and an *affiliate or APX broker must be referred to *APX and *APX must investigate the dispute unless *APX considers that:

- (a) the issue in dispute is such that it does not warrant investigation by *APX; or
- (b) it would be more appropriate for the dispute to be investigated and heard by a court or other body with jurisdiction to make a decision in respect of the dispute.

8.23.3 A decision of *APX in respect of a dispute is final.

8.23.4 Each *affiliate or *APX broker affected must carry out and abide by a decision of *APX under **Rule 8.23.2**. Failure to carry out and abide by the decision constitutes a breach of the Rules and in the event of such failure *APX may proceed under **Rules 8.13.1 to 8.13.7**.

LEGAL PROCEEDINGS.

8.24. Each *affiliate and *APX broker who is a party to any legal action by or against a client in connection with any matter which arose from their relationship as broker and client must, on becoming aware of an aspect of the action which may affect the operations of *APX or the interpretation of the Rules, within 14 days give *APX written particulars of the action. If *APX is of the opinion that it is necessary or desirable to do so in the interest of *APX or in order to support and uphold the Rules, *APX may give directions to the *affiliate or *APX broker as to how the action should be conducted. The *affiliate or *APX broker must conduct the action in accordance with any directions given by *APX under this Rule and must permit and authorise *APX or its duly appointed representatives to take part in the conduct of the action and to instruct solicitors and employ counsel in the action on behalf of and in the name of the *affiliate or *APX broker.

TIME OF RECEIPT OF NOTICES, DETERMINATION OR REASONS.

8.25. The provisions of **Rules 5.22.1 to 5.22.3** apply to any notice, determination or reasons provided by *APX, the *APX Adjudicatory Tribunal or the *Appeal Tribunal under the **Rules of Chapter 2 or Chapter 8** to an applicant, *affiliate or *APX broker.

EXERCISE OF POWERS BY DELEGATE OF APX.

8.26.1 *APX must delegate to the *APX Adjudicatory Tribunal and/or the *Appeal Tribunal all powers and discretion conferred on *APX by **Chapter 8** of these Rules and each power or discretion exercised by the *APX Adjudicatory Tribunal and/or the *Appeal Tribunal is deemed to have been exercised by *APX.

8.26.2 The board of directors of *APX may make a delegation or appointment under **Rule 8.26.1** subject to such terms and conditions as they think fit, provided that each delegate or

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appointee must agree to comply with these Rules in the exercise of their powers and discretions.

8.26.3 Unless otherwise specified under the terms of delegation, the delegation of any powers pursuant to either **Rule 8.26.1** or **Rule 8.26.2** will amount to a full delegation of powers by *APX or the board of directors of *APX (as the case may be), such that *APX or the board of the directors of *APX (as the case may be) will be prevented from themselves exercising any of the delegated powers.

TRIBUNALS.

APX ADJUDICATORY TRIBUNAL.

8.27.1 Without limitation to **Rule 8.26.1**, *APX must, by resolution of its board of directors, establish and maintain an *APX Adjudicatory Tribunal consisting of at least 3 persons for the following purposes:

- (a) carrying out any function given to the *APX Adjudicatory Tribunal under the Rules; and
- (b) performing such other functions delegated to it by *APX.

8.27.2 The *APX Adjudicatory Tribunal shall comprise the following members:

- (a) a Chairman appointed by the *APX Board in accordance with **Rule 8.27.3**;
- (b) at least one member in addition to the Chairman appointed by the *APX Board in accordance with **Rule 8.27.3**; and
- (c) no more than one member appointed by the *APX Board in accordance with **Rule 8.27.4**.

8.27.3 The Chairman of the *APX Adjudicatory Tribunal and each member (other than a member appointed under **Rule 8.27.4**) must:

- (a) be appointed by resolution of the *APX Board for a term of not more than 3 years;
- (b) be of good fame and character and high business integrity;
- (c) have at least 10 years experience:
 - (i) working in the financial services industry (including capital markets) at the level of senior management or above;
 - (ii) as a professional adviser to the financial services industry (including capital markets);
 - (iii) working at a senior level for an Australian market licensee (or a foreign organisation which, in the reasonable opinion of the *APX Board, is equivalent to an Australian market licensee);
 - (iv) working at a senior level for a regulator of the financial services industry (including capital markets); or

* See Chapter 1 for defined terms.

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- (v) working in any combination of the above roles;
 - (d) be an *independent external person.
- 8.27.4** The *APX Board may appoint not more than one member of the *APX Adjudicatory Tribunal who is a representative of *APX. A member of the *APX Adjudicatory Tribunal appointed under this **Rule 8.27.4** must:
- (a) be appointed by resolution of the *APX Board for a term of not more than 3 years;
 - (b) be of good fame and character and high business integrity;
 - (c) not be a member of the *APX Board.
- 8.27.5** Members of the *APX Adjudicatory Tribunal must comply with all applicable requirements of the *Conflict Management Plan. If any member of the *APX Adjudicatory Tribunal has a material interest in the outcome of a decision before a meeting of the *APX Adjudicatory Tribunal, then that member is disqualified from attending or voting at that meeting.
- 8.27.6** A quorum for meetings of the *APX Adjudicatory Tribunal is 3 members. If, by operation of **Rule 8.27.5**, there is an insufficient number of members available to form a quorum at a meeting of the *APX Adjudicatory Tribunal, then the *independent directors of the *APX Board must appoint sufficient temporary replacement members to satisfy the quorum requirements for that meeting. Each temporary replacement member appointed must satisfy the requirements of the member whom he or she is replacing. A duly appointed temporary replacement member has the same rights and obligations as a full member of the *APX Adjudicatory Tribunal but ceases to be a member at the close of the relevant meeting.
- 8.27.7** The position of a member of the *APX Adjudicatory Tribunal becomes vacant if the member:
- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (b) becomes bankrupt or makes any arrangement or composition with his or her creditors; or
 - (c) ceases to be qualified for appointment as a member in accordance with the Rule under which he or she was appointed to the *APX Adjudicatory Tribunal.
- 8.27.8** Any member of the *APX Adjudicatory Tribunal may retire by giving notice in writing to *APX of his or her intention to do so.
- 8.27.9** Members of the *APX Adjudicatory Tribunal may be paid the remuneration determined by the independent members of the *APX Board. Members may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the *APX Adjudicatory Tribunal.
- 8.27.10** The Chairman of the *APX Adjudicatory Tribunal must appoint a date, time and place for the hearing and must specify those details in a written notice to each of *APX and the parties to the proceeding. The *APX Adjudicatory Tribunal may vacate a hearing date for which reasonable notice has previously been given and appoint a substitute hearing date provided reasonable notice of the later date is given to the parties and may adjourn and re-convene its proceedings as it thinks fit.

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8.27.11 The proceedings of the *APX Adjudicatory Tribunal shall be in accordance with the requirements set out in **Rule 8.29**.

8.27.12 The *APX Adjudicatory Tribunal must, within 30 days of making its decision give to *APX and each person affected by the decision, the reasons in writing for its decision.

APPEAL TRIBUNAL.

8.28.1 Without limitation to **Rule 8.26.1**, *APX must, by resolution of its board of directors, establish and maintain an *Appeal Tribunal consisting of 3 persons for the purposes of hearing appeals against decisions of the *APX Adjudicatory Tribunal on lodgment of a notice of appeal.

8.28.2 The *Appeal Tribunal shall comprise the following members:

- (a) a Chairman appointed by the *APX Board in accordance with **Rule 8.28.3**;
- (b) a member appointed by the *APX Board in accordance with **Rule 8.28.4**; and
- (c) one or more members appointed by the *APX Board in accordance with **Rule 8.28.5**;

but no current member of the *APX Adjudicatory Tribunal is eligible to be appointed as a member of the *Appeal Tribunal.

8.28.3 The Chairman of the *Appeal Tribunal shall be appointed by resolution of the *APX Board for a term of not more than 3 years. The Chairman must:

- (a) be either:
 - (i) a retired judge; or
 - (ii) a person who has been admitted to practice as a barrister or a solicitor of a State or Territory of Australia or of the High Court of Australia for a period of at least 20 years; and
- (b) be an *independent external person.

8.28.4 The *APX Board may appoint not more than one member of the *Appeal Tribunal who is a representative of *APX. A member of the *Appeal Tribunal appointed under this **Rule 8.28.4** must:

- (a) be appointed by resolution of the *APX Board for a term of not more than 3 years;
- (b) be of good fame and character and high business integrity;
- (c) not be a member of the *APX Board.

8.28.5 Members of the *Appeal Tribunal (other than members appointed under **Rule 8.28.3** or **8.28.4**) shall be appointed by resolution of the *APX Board for a term of not more than 3 years. A member of the *Appeal Tribunal appointed under this **Rule 8.28.5** must:

- (a) be of good fame and character and high business integrity;

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- (b) have at least 10 years experience:
 - (i) working in the financial services industry (including capital markets) at the level of senior management or above;
 - (ii) as a professional adviser to the financial services industry (including capital markets);
 - (iii) working at a senior level for an Australian market licensee (or a foreign organisation which, in the reasonable opinion of the *APX Board, is equivalent to an Australian market licensee);
 - (iv) working at a senior level for a regulator of the financial services industry (including capital markets); or
 - (v) working in any combination of the above roles;
- (c) be an *independent external person.

8.28.6 Members of the *Appeal Tribunal must comply with all applicable requirements of the *Conflict Management Plan. If any member of the *Appeal Tribunal:

- (a) has participated in a meeting of the *APX Adjudicatory Tribunal which made the decision the subject of the appeal; or
- (b) otherwise has a material interest in the outcome of a decision before a meeting of the *Appeal Tribunal;

then that member is disqualified from attending or voting at the meeting of the *Appeal Tribunal.

8.28.7 A quorum for meetings of the *Appeal Tribunal is 3 members. If, by operation of **Rule 8.28.6**, there is an insufficient number of members available to form a quorum at a meeting of the *Appeal Tribunal, then the independent members of the *APX Board must appoint sufficient temporary replacement members to satisfy the quorum requirements for that meeting. Each temporary replacement member appointed must satisfy the requirements of the member whom he or she is replacing. A duly appointed temporary replacement member has the same rights and obligations as a full member of the *Appeal Tribunal but ceases to be a member at the close of the relevant meeting.

8.28.8 The position of a member of the *Appeal Tribunal becomes vacant if the member:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors; or
- (c) ceases to be qualified for appointment as a member in accordance with the Rule under which he or she was appointed to the *Appeal Tribunal.

8.28.9 Any member of the *Appeal Tribunal may retire by giving notice in writing to *APX of his or her intention to do so.

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- 8.28.10** Members of the *Appeal Tribunal may be paid the remuneration determined by the independent members of the *APX Board. Members may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the *Appeal Tribunal.
- 8.28.11** Within 14 days of receipt of a notice of appeal, the Chairperson must appoint a date, time and place for the appeal hearing and must specify those details in a written notice to each of *APX and the parties to the appeal. The date appointed for the hearing shall be not more than 60 days and not less than 21 days after the date of the notice. The *Appeal Tribunal may vacate the hearing date and appoint a substitute hearing date provided that reasonable notice of the later date is given to the parties and may adjourn and re-convene its proceedings as it thinks fit.
- 8.28.12** Each appeal shall not be conducted as a re-hearing, but the *Appeal Tribunal may review any findings of fact or law reached in the decision under appeal. The *Appeal Tribunal may affirm, vary or set aside the appealed decision and any penalty.
- 8.28.13** The *Appeal Tribunal must, within 30 days of making its decision, give to *APX and the parties to the appeal the reasons in writing for its decision.
- 8.28.14** The unsuccessful party to an appeal must pay the reasonable costs of the successful party unless the *Appeal Tribunal determines otherwise. If the successful appellant is *APX, the *Appeal Tribunal may, in its discretion, determine that the respondent must pay some or all of the reasonable costs of *APX with respect to the investigation and initial hearing of the proceedings the subject of the appeal.
- 8.28.15** The proceedings of the *Appeal Tribunal must be conducted in accordance with the requirements of **Rule 8.29**.
- 8.28.16** The decision of the *Appeal Tribunal shall be final and binding upon the parties.

PROCEEDINGS OF TRIBUNAL.

- 8.29.** The following provisions apply to the proceedings of a tribunal conducted in accordance with these Rules:
- (a) The proceedings must be held in private, except that the tribunal must permit at least 2 duly appointed representatives of each of *APX and the parties to the proceeding to be present and make submissions.
 - (b) The parties to the proceeding and *APX may appear in person and make submissions and are 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 the tribunal.
 - (c) If a party to the proceeding or *APX does not wish to appear in person or be represented before the tribunal, that party or *APX may, not less than 5 days before

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the date of the hearing, lodge with the tribunal a written submission for consideration by the tribunal in relation to the hearing.

- (d) All evidence and material placed before a tribunal or considered by it at a hearing must be kept confidential, but nothing in this **Rule** prevents a tribunal from disclosing confidential information:
 - (i) to a party to the proceeding, its employees, related corporations and advisers;
 - (ii) to *APX, its employees, related corporations and advisers;
 - (iii) to any advisers to the tribunal;
 - (iv) as required by these Rules or by law.
- (e) The proceedings must be conducted with as little formality and technicality and with as much expedition as a proper consideration of the matters before the *tribunal permits. Subject to this **Rule 8.29**, a tribunal may conduct its proceedings as it thinks fit.
- (f) A tribunal may make a transcript of proceedings at a hearing, a copy of which must be made available to the parties to the proceedings and *APX. Where an *affiliate is the subject of the proceedings, a copy of the transcript of the proceedings must be made available to the *APX broker with whom that *affiliate was connected at the relevant time.
- (g) The decision of a tribunal must be determined according to a simple majority of votes of the tribunal members. Each member has a deliberative vote. The chairperson has a deliberative vote but not a casting vote.
- (h) A tribunal may obtain such legal advice as it thinks appropriate in the circumstances and may have its legal advisers present at a hearing.
- (i) A tribunal may conduct proceedings at 2 or more venues simultaneously using technology consented to by all of the members of the tribunal. The consent may be a standing one. A member of the tribunal may only withdraw their consent within a reasonable time before the hearing.
- (j) A tribunal must make its decision free of bias and must give the parties to the proceedings and *APX a fair hearing and must in all other respects observe the rules of natural justice.
- (k) A tribunal must comply with any provisions of the constitution of *APX which specifically regulate the meetings of that particular tribunal or tribunals generally.

INDEMNIFICATION OF TRIBUNAL MEMBERS.

8.30.1 Each member of the *APX Adjudicatory Tribunal and the *Appeal Tribunal (“Indemnified Party”) is indemnified by *APX against:

- (a) all losses suffered by an Indemnified Party;
- (b) all liabilities incurred by an Indemnified Party; and

* See Chapter 1 for defined terms.

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- (c) all legal costs (on a solicitor and own client or full indemnity basis, whichever is the greater) in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with the determination of a hearing other than any liability in respect of any negligence, wilful default, breach of duty or breach of trust by an Indemnified Party.

8.30.2 Notwithstanding anything contained in **Rule 8.30.1** each Indemnified Party is indemnified by *APX against any liability incurred by the Indemnified Party in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the Indemnified Party or in which the Indemnified Party is acquitted or in connection with any application in relation to any such proceedings in which relief is under the *Act granted to the Indemnified Party by any court of competent jurisdiction.

8.31. Deleted.

FIDELITY FUND.

8.32.1 Deleted.

APX COMPENSATION FUND.

8.33.1 *APX must establish and, as long as it remains a financial market recognised or approved under the *Act, maintain a fund to be known as the APX Compensation Fund. The APX Compensation Fund must be held on trust by *APX in accordance with the terms and conditions of the APX Compensation Arrangements set out in **Appendix 8-2** (“Compensation Rules”).

8.33.2 *APX and each *APX broker must make contributions to the APX Compensation Fund in accordance with the Compensation Rules.

8.33.3 The money in the APX Compensation Fund, until invested or applied in accordance with the Compensation Rules, must be kept in a separate account with an Australian Bank.

8.33.4 *APX may only make payments from the APX Compensation Fund which are permitted by the Compensation Rules.

8.33.5 Each *APX broker must comply with the procedures as prescribed by *APX from time to time for determining *APX’s exposure to the risk of claims against the APX Compensation Fund.

RISK DISCLOSURE STATEMENT.

8.34 For one year from the date of commencement of trading of *APX, each *affiliate or *APX broker must issue a risk disclosure statement, as prescribed by *APX and set out in **Appendix 8-1**, to each client before that client places its first order on *APX.

* See Chapter 1 for defined terms.