



# Trust and Client Segregated Accounts

**Consultation on proposed changes to the ASX Clear Operating Rules, Procedures and Guidance Note regarding trust and client segregated account**

30 November 2020

## Invitation to comment

ASX is seeking submissions on the proposed guidance note amendments accompanying this paper.

Submissions are due by **Monday, 8 February 2021** and should be sent by email to:

[participants.compliance@asx.com.au](mailto:participants.compliance@asx.com.au)

or by mail to:

ASX Limited

PO Box H224

Australia Square NSW 1215

Attention: Bill Woods

ASX would prefer to receive submissions in electronic form.

Submissions not marked as 'confidential' will be made publicly available on ASX's website. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in your submission.

ASX is available to meet with interested parties for bilateral discussions on the changes to Trust and Client Segregation Accounts.

## Contacts

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# Trust and Client Segregated Accounts

## Consultation on proposed changes to the ASX Clear Operating Rules, Procedures and Guidance Note regarding trust and client segregated account

November 2020

### 1. Introduction

This Consultation Paper seeks stakeholders' input on ASX's proposal to amend the ASX Clear Operating Rules and Procedures<sup>1</sup> and ASX Clear Operating Rules Guidance Note 12 *Trust and Client Segregated Accounts* to provide an improved framework and additional guidance to assist participants to comply with their client money obligations.

The proposed changes are intended to address a number of issues that ASX has observed in recent years with the trust accounts systems and processes of some ASX Clear Participants.

### 2. Proposed Amendments to Rules and Procedures

ASX's proposed amendments to the ASX Clear Operating Rules and Procedures are set out in mark-up format in Annexure A to this Consultation Paper. That annexure has drafting notes to explain the purpose of the each amendment.

In summary, the key amendments are:

#### 2.1. Reconciliation requirements

ASX is proposing to adopt the concept of a "nominated reconciliation time" used in the ASIC Client Money Reporting Rules 2017. This will assist in providing further clarity around the effective time at which trust and client segregated account reconciliations are being performed and the balances being used. It will also provide participants with the flexibility to determine a reconciliation time of day that best suits their internal systems and processes.

Guidance Note 12 will recommend that the reconciliation of all client money (not just for ASX market transactions) is completed at this time to mitigate the risk of money being moved inappropriately between accounts.

ASX is proposing to amend Rule 4.23.6, which currently requires a daily reconciliation of aggregate trust account balances and a weekly reconciliation of individual client trust account balances, to instead require a daily reconciliation of individual client trust account balances. This is consistent with the daily reconciliation requirement under the ASIC Client Money Reporting Rules 2017.

Based on its recent reviews, ASX understands that most ASX Clear participants are already reconciling their trust accounts on a daily basis to the client level and so, for most participants, this change should not require any material additional work or system or process changes.

ASX is proposing to prescribe a standard format for trust reconciliations (a standard format already exists for client segregated account reconciliations). ASX's reviews have identified that participants use different formats for their trust account reconciliations and that some of the formats being used have the potential to result in reconciliation errors

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<sup>1</sup> Unless otherwise indicated, a reference in this consultation paper to a rule or procedure is to the applicable rule or procedure in the ASX Clear Operating Rules and Procedures and a reference to a participant is to a participant of ASX Clear.

and/or miss or conceal potential deficiencies in client moneys in the trust account. Prescribing the format will assist participants ensure the accuracy of their trust account reconciliations and more readily identify any potential deficiency of client moneys in their trust account. Additionally, a standard reconciliation process across the industry will also assist external parties, such as auditors and regulators, to understand more clearly participants' reconciliation processes and more readily identify potential breaches or issues.

## 2.2. Notification requirements

ASX proposes to amend Rule 4.23.7 to make it clear that a deficiency of funds in a participant's trust account must be reported to ASX regardless of the amount of the deficiency.

ASX also proposes to amend Procedure 4.23.7 to require participants to provide a more granular report to ASX regarding any identified deficiency of client moneys in a trust account or client segregated account. The report must include:

- details of the deficiency;
- an explanation of any remedial action taken or proposed to be taken by the participant in relation to the deficiency;
- a copy of the relevant reconciliation, with all relevant supporting documentation; and
- any other information the participant considers necessary to explain the matters detailed in the report.

The amendments to Procedure 4.23.7 are consistent with the reporting requirements in the ASIC Client Money Reporting Rules 2017.

## 2.3. Policies and procedures

ASX proposes to add a new Rule 4.23.8 requiring participants to establish and maintain policies and procedures designed to ensure compliance with Rule 4.23 and that have regard to the matters set out in the Procedures.

ASX also proposes to add a new Procedure 4.23.8 stating that for the purposes of Rule 4.23.8, a participant should have regard to ASX Clear Operating Rules Guidance Note 12 *Trust and Client Segregated Accounts*.

## 3. Proposed Amendments to Guidance Note 12

ASX's proposed amendments to ASX Clear Operating Rules Guidance Note 12 *Trust and Client Segregated Accounts* ('GN 12') are set out in mark-up format in Annexure B to this Consultation Paper.

ASX considers that the amendments to GN 12 are largely self-explanatory. In addition to changes reflecting the proposed amendments to the Rules and Procedures mentioned above, they include more detailed guidance on:

the policies and procedures a participant should have in place to comply with their client money obligations;

the types of reviews that participants should be conducting periodically or as part of their change management processes into their client money processes; and

ASX's expectations as to the matters a participant's external auditor should be examining as part of the annual audit of the participant's compliance with its client money obligations. This includes:

- ascertaining the participant's systems and processes for reconciling trust and client segregated accounts to assess whether they comply with the ASX Clear Operating Rules and this Guidance Note;
- obtaining a random and representative sample of the reconciliations conducted by the participant and conducting appropriate tests to validate that the figures are supported by accurate source records and the reconciliations have been performed correctly;
- examining the participant's compliance during the financial year in question with its obligation to notify ASX of any failure to conduct a reconciliation in accordance with the ASX Clear Operating Rules or of any deficiency identified as a result of a reconciliation; and

- examining the participant’s breach register, complaint register and incident register to support its assessment.

#### 4. Effective date for the amendments

Subject to consultation feedback, ASX is proposing a 12-month transition period for participants to align their arrangements with the revised Rules, Procedures and Guidance Note. That period will commence on the date of publication of the revised Rules, Procedures and Guidance Note.

#### 5. Questions for Feedback

**ASX is seeking written replies to this consultation paper and specifically to the questions below:**

1. Whether participants agree with ASX’s proposed changes to strengthen the client money framework.

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2. Whether the transition arrangements mentioned above are sufficient for participants to align their current framework with the proposed changes.

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#### Annexures

Annexed to this Consultation Paper are:

- A. ASX’s proposed changes to the ASX Clear Operating Rules and Procedures
- B. ASX’s proposed changes to ASX Clear Operating Rules Guidance Note 12 *Trust and Client Segregated Accounts*

# Annexure A

## Changes to ASX Clear Operating Rules

### 4.1 PARTICIPANTS ONGOING COMPLIANCE

#### 4.1.1 General compliance

A Participant must at all times:

- (a) continue to satisfy the applicable Admission Requirements;
- (b) comply with any conditions on admission imposed under Rule 3.1.4;
- (c) comply with any provisions of the Corporations Act governing:
  - (i) the provision of periodic reports or statements to the Participant's Clients in relation to the service provided by the Participant;
  - (ii) the treatment of money paid, or property given, to the Participant in connection with services provided to, or products held by, clients of the Participant in respect of their business. In addition to the client arrangements required under this Rule, ASX Clear may, having regard to Rule 1.15, prescribe additional client arrangements by way of Procedures, practices, directions or requirements;
- (d) not dispose, transfer, lease, assign or encumber any rights or obligations under these Rules, except:
  - (i) as expressly permitted under these Rules; or
  - (ii) with the prior written approval of ASX Clear.
- (e) ensure that it does not engage (by act or omission) in Unprofessional Conduct;
- (f) [deleted]
- (g) comply with the disaster recovery requirements of this Section;
- (h) comply with the insurance requirements of this Section;
- (i) comply with the financial record requirements of this Section;
- (j) comply with the audit requirements of this Section;
- (k) comply with the record keeping requirements of this Section;
- (l) comply with the notification requirements of this Section;
- (m) [deleted]
- (n) [deleted]
- (o) [deleted]

- (p) comply with the credit requirements of this Section;
- (q) comply with the nominee holding requirements of this Section;
- (r) comply with the authorised signatory requirements of this Section;
- (s) comply with the legal proceedings requirements of this Section;
- (t) comply with the information requirements of this Section;
- (u) comply with the periodic reporting requirements of this Section;
- (v) comply with the undertaking requirements of this Section;
- (w) comply with the ~~reconciliation of~~ client money requirements in this Section; and
- (x) comply with the default broker requirements in this Section (if applicable).

Introduced 11/03/04 Origin OCH 2.9.1, 2.9G.1, 2B.5, 2.8, 2B.6 Amended 19/10/05, 06/10/09, 15/06/15, 01/01/18, ~~xx/xx/20~~

**Purpose of amendment:**

ASX is proposing to amend Rule 4.1.1(w) to reflect the fact that Rule 4.23 imposes other obligations in relation to client moneys, in addition to reconciliation obligations.

...

## 4.23 ~~RECONCILIATION OF~~ CLIENT MONEY REQUIREMENTS

### 4.23.1 Application

This Rule 4.23 sets out the ~~reconciliation of~~ client money requirements of this Section.

Introduced 06/10/09 Amended ~~xx/xx/20~~

**Purpose of amendment:**

ASX is proposing to amend Rule 4.23.1 to reflect the fact that Rule 4.23 imposes other obligations in relation to client moneys, in addition to reconciliation obligations.

### 4.23.2 Obligation to comply with Corporations Act

~~A Participant must comply with Money in relation to Market Transactions to which Division 2 of Part 7.8 of the Corporations Act in relation to client money received in connection with Market Transactions applies is to be held in trust by the Participant to which that Division applies.~~

Introduced 06/10/09 Amended ~~xx/xx/20~~

**Purpose of amendment:**

ASX is proposing to amend Rule 4.23.2 to make it clearer that a participant is expected to comply with Division 2 of Part 7.8 of the Corporations Act in relation to client money received in connection with Market Transactions to which that Division applies.

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#### 4.23.5 Reconciliation of clients' segregated accounts

A Participant must perform a reconciliation, in the time, form and manner set out in the Procedures and that is accurate in all respects, of the aggregate balance held by it ~~at the time specified in the Procedures at a nominated time~~ on each Business Day in clients' segregated accounts maintained pursuant to Rule 4.23.4 and the corresponding balance as recorded in the Participant's accounting records. The Participant must be able to produce the reconciliation and all relevant supporting documentation to ASX upon request.

Introduced 06/10/09 Amended 15/06/15, xx/xx/20

##### **Purpose of amendment:**

ASX is proposing to amend Rule 4.23.5 to adopt the concept of a "nominated reconciliation time" used in the ASIC Client Money Reporting Rules 2017.

The process for determining the "nominated reconciliation time" for the purposes of ASXCR 4.23.5 will be set out in the Procedures.

ASX is also proposing to add a requirement that a participant must be able to produce all relevant supporting documentation for a client segregated account reconciliation to ASX upon request.

#### 4.23.6 Reconciliation of trust accounts

A Participant must perform a reconciliation, in the time, form and manner set out in the Procedures and that is accurate in all respects of:

~~(a) the aggregate balance held by it at the close of business on each Business Day in clients' trust accounts maintained pursuant to Rule 4.23.3 or 4.23.4 and the corresponding balance as recorded in the Participant's accounting records; and~~

~~(b) the balance held by it at ~~the close of business~~ a nominated time on ~~the last each~~ Business Day ~~of each week on trust~~ for each client in a trust account maintained pursuant to Rule 4.23.3 or 4.23.4 and the corresponding balance as recorded in the Participant's accounting records.~~

The Participant must be able to produce the reconciliation and all relevant supporting documentation to ASX upon request.

Introduced 06/10/09 Amended 15/06/15, xx/xx/20



**Purpose of amendment:**

ASX is proposing to amend Rule 4.23.6, which currently requires a daily reconciliation of aggregate trust account balances and a weekly reconciliation of individual client trust account balances, to instead require a daily reconciliation of individual client trust account balances. This is consistent with the daily reconciliation requirement under the ASIC Client Money Reporting Rules 2017.

ASX is further proposing to amend Rule 4.23.6 to adopt the concept of a “nominated reconciliation time” used in the ASIC Client Money Reporting Rules 2017.

The process for determining the “nominated reconciliation time” for the purposes of ASXCR 4.23.6 will be set out in the Procedures.

ASX is also proposing to add a requirement that a participant must be able to produce all relevant supporting documentation for a client trust account reconciliation to ASX upon request.

#### 4.23.7 Obligation to notify ASX Clear in respect of client money

A Participant must notify ASX Clear within 2 Business Days in the manner set out in the Procedures if:

- (a) a reconciliation has not been performed in accordance with Rule 4.23.5 and the Procedures under that Rule;
- (b) a reconciliation has not been performed in accordance with Rule 4.23.6 and the Procedures under that Rule;
- (c) according to a reconciliation performed pursuant to Rule 4.23.5, Total Deposits (as ~~defined set out~~ in the form ~~set out in~~ ASX Clear Operating Rules Procedures Annexure the Procedure to Rule 4.23.5) is less than Total Third Party Client Monies (as ~~defined set out~~ in the form ~~set out in~~ ASX Clear Operating Rules Procedures Annexure the Procedure to Rule 4.23.5); or
- (d) according to a reconciliation performed pursuant to Rule 4.23.6, there is a deficiency of funds held in its trust accounts (~~or, in respect of a reconciliation performed pursuant to Rule 4.23.6(b), a deficiency in respect of any particular client (regardless of the amount of the deficiency) or if it is unable to reconcile its trust accounts pursuant to Rule 4.23.6.~~

*Note: — A Participant may notify ASX Clear of the matters referred to in this Rule 4.23.7 by copying ASX Clear in on any corresponding notification given to ASIC under Rule 3.5.10 of the ASIC Market Integrity Rules (ASX Market) 2010.*

Introduced 06/10/09 Amended 15/06/15, ~~xx/xx/20~~

**Purpose of amendment:**

ASX proposes to amend Rule 4.23.7 to reflect the changes to Rule 4.23.6 above and to improve its drafting. It is also proposing to make it clear that a deficiency of funds in a participant's trust account must be reported to ASX regardless of the amount of the deficiency.

4.23.8

**Policies and procedures~~Schedule of trust amounts~~ – [Deleted]**

A Participant must establish and maintain policies and procedures designed to ensure compliance with this Rule 4.23 and that have regard to the matters set out in the Procedures.

Introduced xx/xx/20

**Purpose of amendment:**

ASX proposes to add a new Rule 4.23.8 requiring participants to establish and maintain policies and procedures designed to ensure compliance with Rule 4.23 and that have regard to the matters set out in the Procedures.

# Changes to ASX Clear Procedures

## PROCEDURE 4.23.5 RECONCILIATION OF CLIENTS' SEGREGATED ACCOUNTS

For the purposes of ~~Clearing~~ Rule 4.23.5, the time, form and manner in which a reconciliation must be prepared are as follows:

- (a) the reconciliation must be prepared as at a nominated reconciliation time (see below) on each Business Day;
- (b) the reconciliation must be prepared by 7.00pm on the Business Day after the Business Day to which the reconciliation relates; and
- (cb) the reconciliation must be prepared in the form set out in Annexure 4.23.5.

For these purposes, a Participant must determine, in writing, the time of day and the time zone at which it will perform the reconciliations required under Rule 4.23.5 and notify ASX Clear in writing of its determination. A Participant may change its nominated reconciliation time by notice in writing to ASX Clear but the change must not take effect until after that notice has been given.

Introduced 06/10/09 Amended 23/07/18, ~~xx/xx/20~~

### **Purpose of amendment:**

ASX proposes to introduce a concept of “nominated reconciliation time”, similar to that used by ASIC in the ASIC Client Money Reporting Rules 2017, and to prescribe the form that the reconciliation under Rule 4.23.5 should take (being the form set out in Annexure 4.23.5).

## PROCEDURE 4.23.6 RECONCILIATION OF TRUST ACCOUNTS

For the purposes of Rule 4.23.6, the time, form and manner in which a reconciliation must be prepared are as follows:

- (a) the reconciliation must be prepared as at a nominated reconciliation time (see below) on each Business Day;
- (b) the reconciliation must be prepared by 7.00pm on the Business Day after the Business Day to which the reconciliation relates; and
- (c) the reconciliation must be prepared in the form set out in Annexure 4.23.6.

For these purposes, a Participant must determine, in writing, the time of day and the time zone at which it will perform the reconciliations required under Rule 4.23.6 and notify ASX Clear in writing of its determination. A Participant may change its nominated reconciliation time by notice in writing to ASX Clear but the change must not take effect until after that notice has been given.

Introduced 06/10/09 Amended 23/07/18, ~~xx/xx/20~~

**Purpose of amendment:**

ASX proposes to introduce a concept of “nominated reconciliation time”, similar to that used by ASIC in the ASIC Client Money Reporting Rules 2017, and to prescribe the form that the reconciliation under Rule 4.23.6 should take (being the form set out in Annexure 4.23.6).

**PROCEDURE 4.23.7 OBLIGATION TO NOTIFY ASX CLEAR IN RESPECT OF CLIENT MONEY RECONCILIATION**

For the purposes of ~~Clearing~~ Rule 4.23.7, the notification must be in writing and:

- (a) state the paragraph of Rule 4.23.7 to which the notification relates;
- (b) contain details of the failure or deficiency, as applicable;
- (c) explain any remedial action taken or proposed to be taken by the Participant in relation to the matters in the notification;
- (d) if paragraph (c) or (d) of Rule 4.23.7 applies, include a copy of the reconciliation to which the notification relates (with all relevant supporting documentation);
- (e) contain any other information the Participant considers necessary to explain the matters detailed in the notification; and
- (f) be lodged via ASX Online ~~or forwarded to:~~

~~The Manager, Participants Compliance  
ASX Limited  
Exchange Centre, 20 Bridge Street  
SYDNEY NSW 2000~~

Note: A Participant may notify ASX Clear of the matters referred to in this Procedure 4.23.7 by copying ASX Clear in on any corresponding notification given to ASIC under Rule 3.5.10 of the ASIC Market Integrity Rules (Securities Markets) 2017, provided the notification contains all of the information set out above.

**Purpose of amendment:**

ASX proposes to introduce new requirements regarding the information required in a notification under Rule 4.23.7. The new notification requirements are consistent with the notification requirements imposed under the ASIC Client Money Reporting Rules 2017.

**PROCEDURE 4.23.8 POLICIES AND PROCEDURES**

For the purposes of Rule 4.23.8, the Participant should have regard to ASX Clear Operating Rules Guidance Note 12 Trust and Client Segregated Accounts.

Introduced xx/xx/20

**Purpose of amendment:**

To support the introduction of new Rule 4.23.8, ASX proposes to cross-reference the guidance it has given in Guidance Note 12 on the policies and procedures that a participant should have in place in relation to client money.

# Changes to ASX Clear Operating Rules Procedures Annexures

## ANNEXURE 4.23.5

RECONCILIATION OF CLIENT FUNDS AS AT [TIME] ON [DATE] \_\_\_\_\_

[PARTICIPANT NAME] \_\_\_\_\_

	<u>Date Above</u> \$	<u>Prior Business</u> <u>Day</u> \$
<b>CLIENT MONIEYS (Liabilities)</b>		
Total Futures Client Monieys	<input type="text"/>	<input type="text"/>
Less: Associated/Related Company Monies	<input type="text"/>	<input type="text"/>
Director/Employee Monies	<input type="text"/>	<input type="text"/>
<b>Total Third Party Client Monieys (1)</b>	<input type="text"/>	<input type="text"/>
<b>DEPOSITS (Assets)</b>		
Clients' Segregated Account at Bank	<input type="text"/>	<input type="text"/>
Deposits with ASX Clear Client Account	<input type="text"/>	<input type="text"/>
Deposits with ASX Clear (Futures) Client Account	<input type="text"/>	<input type="text"/>
Deposits with ASX Clear <del>Futures Clearing</del> Participant	<input type="text"/>	<input type="text"/>
Deposits with ASX Clear (Futures) Participant	<input type="text"/>	<input type="text"/>
Deposits with an ASX Market Participant	<input type="text"/>	<input type="text"/>
Deposits with an Australian Securities Exchange Limited Participant	<input type="text"/>	<input type="text"/>
Deposits with an Overseas Broker	<input type="text"/>	<input type="text"/>
Funds invested in accordance with Section 1209(5) of the <u>old</u> Corporations Act	<input type="text"/>	<input type="text"/>
<b>Total Deposits (2)</b>	<input type="text"/>	<input type="text"/>
<b><u>DIFFERENCE</u>ifference [(1) less (2)]</b>	<input type="text"/>	<input type="text"/>

**Explanation of difference:**

**Explanation of difference (if any):**

**Explanation of material movement (if any):**

*(where the movement in Total ~~Futures~~ Client Monieys from the prior business day is greater than 20% ~~from prior day~~ an explanation must be provided)*

The signature below evidences that the signatory believes that the reconciliation, ~~and has no reason not to believe,~~ is accurate in all respects.

**Signature** .....

**Name** .....

**Signature** .....

**Date and time:** .....

**Purpose of amendment:**  
ASX proposes to amend the form of reconciliation in Annexure 4.23.5 to ~~correct update~~ redundant terminology.

**ANNEXURE 4.23.6**

**TRUST RECONCILIATION AS AT [TIME] ON [DATE]**

**[PARTICIPANT NAME]**

**[Bank account details (bank and account name and number)]**

<u>A</u>	<b><u>Trust Bank Account Statement Balance</u></b>	<u>XX</u>
<u>B</u>	<u>Less: Unpresented Cheques</u>	<u>(XX)</u>
<u>C</u>		<b><u>XXX</u></b>
-		
<u>D</u>	<b><u>Trust Ledger Balance</u></b>	<u>XX</u>
<u>E</u>	<u>Difference (C - D)</u>	<b><u>XXX</u></b>
-		
-	<b><u>Breakdown of Difference (E)</u></b>	
-		
<u>F</u>	<u>Items on Trust Bank Account Statement not in Ledger*</u>	
-	<u>Item 1 Description</u>	<u>XX</u>
-	<u>Item 2 Description</u>	<u>XX</u>
-		
<u>G</u>	<u>Items in Ledger not in Trust Bank Account Statement*</u>	-
-	<u>Item 1 Description</u>	<u>(XX)</u>
-	<u>Item 2 Description</u>	<u>(XX)</u>
-		
<u>H</u>	<b><u>Balance (F-G) = E</u></b>	<b><u>XXX</u></b>
-		

\* Items making up the difference should be listed individually, if small in number, or otherwise given as a total supported by a detailed report attached.

<b><u>Trust Account Reconciliation [Participant Name]</u></b>				<b><u>Date (to which the reconciliation relates):</u></b>
-	-	-	-	-
<u>A</u>	<b><u>Trust Bank Account Statement Balance</u></b>	-	-	<b><u>**</u></b>
<u>B</u>	<u>Less: Unpresented Cheques</u>	-	-	<b><u>(**)</u></b>
<u>C</u>	-	-	-	<b><u>***</u></b>
-				
<u>D</u>	<b><u>Trust Ledger Balance</u></b>	-	-	<b><u>**</u></b>
<u>E</u>	<u>Difference (C - D)</u>	-	-	<b><u>***</u></b>
-				
-	<b><u>Breakdown of Difference (E)</u></b>	-	-	-
-				
<u>F</u>	<u>Items on Trust Bank Account Statement not in Ledger*</u>	-	-	-
-	<u>Item 1 Description</u>	-	-	<b><u>**</u></b>
-	<u>Item 2 Description</u>	-	-	
-				
<u>G</u>	<u>Items in Ledger not in Trust Bank Account Statement*</u>	-	-	-
-	<u>Item 1 Description</u>	-	-	<b><u>(**)</u></b>
-	<u>Item 2 Description</u>	-	-	<b><u>**</u></b>
-				
<u>H</u>	<b><u>Balance (F-G) = E</u></b>	-	-	<b><u>***</u></b>



- - - - -  
- - - - -

The signature below evidences that the signatory believes that the reconciliation is accurate in all respects.

Name:

Signature:

Date and time:

- - - - -

The signature below evidences that the signatory believes that the reconciliation is accurate in all respects.

Signature .....

Name .....

Date and time: .....

\* ..... Items making up the difference should be listed individually, if small in number, or otherwise given as a total supported by a detailed report attached.

**Purpose of amendment:**

ASX proposes to add a form for reconciliations under Rule 4.23.6 in new Annexure 4.23.6. This effectively replaces the sample reconciliation forms in Appendices 1 and 2 of ASX Clear Operating Rules Guidance Note 12 *Trust and Client Segregated Accounts*.



### TRUST AND CLIENT SEGREGATED ACCOUNTS

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To assist participants to understand their obligations under the ASX Clear Operating Rules in relation to trust and client segregated accounts</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>Corporations Act requirements for trust and client segregated accounts</li> <li>Naming conventions for trust and client segregated accounts</li> <li>Permitted payments into trust and client segregated accounts</li> <li>Permitted payments out of trust and client segregated accounts</li> <li>The use of buffers in trust and client segregated accounts</li> <li>Reconciliation requirements for trust and client segregated accounts</li> <li>The obligation to notify ASX of certain matters relating to reconciliations</li> <li>Trust and client segregated account supervisory procedures</li> </ul>
<p><b>Related materials you should read</b></p>	<ul style="list-style-type: none"> <li>ASX Clear Operating Rules 4.23.2 – 4.23.7 and 4.24</li> </ul>

**History:** Guidance Note 12 amended ~~31/01/19~~ **XX/XX/2020**. Previous versions of this Guidance Note were issued in 04/14, 06/15 and ~~06/15~~ 01/19.

**Important notice:** ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Clear Operating Rules. It sets out ASX's interpretation of the ASX Clear Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Clear Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and participants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

This Guidance Note is published to assist participants to understand their obligations under the ASX Clear Operating Rules in relation to trust and client segregated accounts.<sup>1</sup>

## 2. Corporations Act requirements

Under Division 2 of Part 7.8 of the Corporations Act 2001 (Cth),<sup>2</sup> a financial services licensee must ensure that client money is paid, on the day it is received by the licensee or on the next business day, into an account:<sup>3</sup>

- with an Australian ADI or of a kind prescribed by the regulations;<sup>4</sup>
- that is designated as an account for the purposes of section 981B;

<sup>1</sup> Participants should also have regard to ASIC Regulatory Guide 212 *Client money relating to dealing in OTC derivatives* (“RG 212”) available online at: <https://download.asic.gov.au/media/4689679/rg212-published-4-april-2018.pdf>. While RG 212 relates to the ASIC Client Money Reporting Rules 2017 for OTC derivatives, it provides a general overview of the client money provisions in Division 2 of Part 7.8 of the Corporations Act.

<sup>2</sup> Referred to in this Guidance Note as the “Corporations Act”. References in this Guidance Note to sections are to sections of the Corporations Act, unless otherwise indicated. References in this Guidance Note to regulations are to the Corporations Regulations, unless otherwise indicated.

<sup>3</sup> The licensee may maintain a single account or two or more accounts for the purposes of section 981B (section 981B(2)).

<sup>4</sup> Under regulation 7.8.01(2), accounts with approved foreign banks (as defined in regulation 1.1.02(1)) and cash management trusts are prescribed.

- into which only certain money is paid;<sup>5</sup> and
- that satisfies any additional requirements imposed by the regulations and/or the licensee's licence conditions.<sup>6</sup>

For these purposes, "client money" means money paid to a financial services licensee:

- in connection with a financial service that has been provided, or that will or may be provided, to the client or a financial product held by a client; and
- the money is paid by the client, by a person acting on behalf of the client or to the licensee in the licensee's capacity as a person acting on behalf of the client,<sup>7</sup>

but (relevantly) does not include money to the extent that it is:

- paid by way of remuneration payable to the licensee or is money that the licensee is entitled to deduct remuneration from;<sup>8</sup>
- paid:
  - to reimburse the licensee for payments made to acquire, or acquire an increased interest in, a financial product; or
  - to discharge a liability incurred by the licensee in respect of the acquisition of a financial product or an increased interest in a financial product, or to indemnify the licensee in respect of such a liability;<sup>9</sup>
- paid to acquire, or acquire an increased interest in, a financial product from the licensee, whether by way of issue or sale by the licensee;<sup>10</sup>
- loan money to which Subdivision B of Division 2 of Part 7.8 of the Corporations Act applies;<sup>11</sup>
- paid to the licensee in order for it to be deposited to the credit of a deposit product held by the person or another person with the licensee;<sup>12</sup> or
- otherwise prescribed not to be client money under the regulations.<sup>13</sup>

These Corporation Act requirements are reinforced by the ASX Clear Operating Rules.

ASX Clear Operating Rule 4.23.2 requires ~~all money in relation to ASX market transactions to which a participant to comply with~~ Division 2 of Part 7.8 of the Corporations Act in relation to client money received in connection with market transactions to which that division applies ~~to be held in trust by a participant~~.<sup>14</sup>

<sup>5</sup> See '4. Permitted payments into trust and client segregated accounts' on page 4.

<sup>6</sup> Section 981B(1).

<sup>7</sup> Section 981A(1).

<sup>8</sup> Section 981A(2)(a).

<sup>9</sup> Section 981A(2)(b).

<sup>10</sup> Section 981A(2)(c).

<sup>11</sup> Section 981A(2)(d).

<sup>12</sup> Section 981A(3).

<sup>13</sup> Section 981A(4).

<sup>14</sup> ASX Clear Operating Rule 19.11.1 provides that where a rule requires compliance with a Corporations Act provision, ASX may enforce that provision as if it were a rule and make a determination or take action against a participant for a contravention of such a provision as if it was a contravention of the rules.

ASX Clear Operating Rule 4.23.3 requires a participant to establish one or more clients' trust accounts for money received by the participant in connection with dealings in cash market transactions, options market transactions or OTC options market transactions.

ASX Clear Operating Rule 4.23.4 requires a participant to establish either one or more clients' trust accounts or clients' segregated accounts for money received by the participant in connection with dealings in futures market transactions and options market transactions over an underlying product which is a futures market contract.

### 3. Naming conventions for trust and client segregated accounts

An account under section 981B must be designated and operated as a trust account and the funds in it (other than moneys paid to the financial services licensee in relation to its obligation to call margins from clients under the Market Integrity Rules or the rules of a licensed market or licensed clearing and settlement facility) must be held on trust for the persons entitled to them.<sup>15</sup>

A licensee who is required to call margins under the Market Integrity Rules or the operating rules of a licensed market or licensed clearing and settlement facility, however, is permitted to operate an account under section 981B as a client segregated account instead of a trust account, provided it does so in accordance with the provisions of the Market Integrity Rules or the operating rules of that licensed market or licensed clearing and settlement facility.<sup>16</sup>

To comply with the above requirements, the name of a trust account must contain the word 'trust'. It is not sufficient to name it, for example, a 'client account' or 'clearing account'. The name of a client segregated account should contain the words 'client segregated account' or, if the number of permitted characters for the account name will not accommodate that, an abbreviated version that clearly denotes that the account is a client segregated account for the purposes of section 981B (for example, 'client seg a/c').

### 4. Permitted payments into trust and client segregated accounts

The Corporations Act prescribes that only the following types of money may be paid into an account under section 981B:

- client money;<sup>17</sup>
- interest on the amount from time to time standing to the credit of the account;
- interest, or other similar payments, on an investment made in accordance with the regulations referred to in section 981C, or the proceeds of the realisation of such an investment; or
- other money permitted to be paid into the account by the regulations.<sup>18</sup>

The regulations (relevantly) permit the following amounts to be paid into a section 981B account:

- "make good" amounts under regulation 7.8.02(3)(a)(iv);<sup>19</sup>
- moneys required by the Market Integrity Rules or the operating rules of a licensed financial market to be paid into a section 981B account;<sup>20</sup>

<sup>15</sup> Regulation 7.8.01(5).

<sup>16</sup> Regulation 7.8.01(8).

<sup>17</sup> This may be money paid by, on behalf of, or for the benefit of, several different clients (section 981B(1)(b)(i)). For example, the receipt by a participant of the net amount payable from ASX under ASX Clear Operating Rule 12.17.2 in relation to derivatives CCP contracts should be paid into a trust account unless the participant can clearly identify that the net amount does not include any client monies.

<sup>18</sup> Section 981B(1)(b).

<sup>19</sup> Regulation 7.8.01(3).

<sup>20</sup> Regulation 7.8.01(4A).

- moneys received for the issuance of financial products under section 1017E;<sup>21</sup>
- “mixed money” (that is, money that may include client money and non-client money);<sup>22</sup> and
- “unidentified money” (that is, money which hasn’t yet been identified as client money or non-client money).<sup>23</sup>

Where mixed money or unidentified money is paid into a section 981B account, the licensee is required to identify any amount that is not client money and remove it from the account “as soon as practicable”.<sup>24</sup> In the case of mixed money, the non-client component must be removed within a maximum period of one month after the mixed money is paid into the account.<sup>25</sup>

Participants who identify non-client money pursuant to a trust account or client segregated account reconciliation should therefore be withdrawing that money from the account as soon as practicable, which in ASX’s view would usually mean within one business day of the money having been identified as non-client money.

Under ASX Clear Operating Rule 4.25.1(b) if the participant has appointed a settlement participant as its agent to settle its cash CCP transactions through the approved settlement facility, all obligations under ASX Settlement Operating Rules 6.3B and 10.10A for the settlement participant to pay an amount to the clients’ trust account maintained by the participant pursuant to ASX Clear Operating Rule 4.23 (or to ensure that such payment occurs), are to be treated also as obligations of the participant under the ASX Clear Operating Rules and the participant must do all things in its capacity as a participant to enable compliance by the settlement participant with its obligations under the ASX Settlement Operating Rules.

## 5. Permitted payments out of trust and client segregated accounts

The regulations (relevantly) specify the following types of payments that may be made out of an account under section 981B:

- a payment to, or in accordance with the written direction of, a person entitled to the money;<sup>26</sup>
- a payment to defray brokerage and other proper charges;<sup>27</sup>
- a payment to the financial services licensee of money to which the financial services licensee is entitled;<sup>28</sup>
- a payment that is otherwise authorised by law;<sup>29</sup>
- a payment to the financial services licensee of money to which the financial services licensee is entitled pursuant to the Market Integrity Rules or the operating rules of a licensed financial market;<sup>30</sup> and
- a payment made with the client’s prior written agreement or written consent into certain permitted types of investments.<sup>31</sup>

<sup>21</sup> Regulation 7.8.01(7).

<sup>22</sup> Regulation 7.8.01(11)(a).

<sup>23</sup> Regulation 7.8.01(11)(b).

<sup>24</sup> Regulation 7.8.01(12) and (13).

<sup>25</sup> Regulation 7.8.01(12).

<sup>26</sup> Corporations Regulations 7.8.02(1)(a).

<sup>27</sup> Corporations Regulations 7.8.02(1)(b).

<sup>28</sup> Corporations Regulations 7.8.02(1)(c).

<sup>29</sup> Corporations Regulations 7.8.02(1)(e).

<sup>30</sup> Corporations Regulations 7.8.02(1)(f).

<sup>31</sup> Corporations Regulations 7.8.02(3).

If client money relates to a dealing in derivatives, the money concerned may also be used for the purpose of meeting obligations incurred by the licensee in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by the licensee (including dealings on behalf of people other than the client).<sup>32</sup>

Under ASX Clear Operating Rule 4.24.1, a participant must not withdraw from a client's trust account maintained under rule 4.23 money received by the participant in connection with the purchase of financial products under a cash market transaction until the participant has taken all the steps specified<sup>33</sup> in order for the financial products to be registered or held in the name of the client (or such other person as instructed by the client).<sup>34</sup>

The restriction in rule 4.24.1 does not apply to the extent that:

- the money was paid by way of remuneration payable to the participant in connection with the relevant cash market transaction or the participant is entitled to deduct from the money remuneration payable to the participant in connection with that cash market transaction;
- the money is paid out of the clients' trust account to defray brokerage and other proper charges in connection with the relevant cash market transaction;
- the money is paid out of the clients' trust account:
  - in accordance with the written direction of the client; or
  - to the participant where the participant is entitled to the money,
- the money is paid in connection with a transfer authorised by the client of financial products acquired under that cash market transaction which is a transfer other than a transfer to a holding contemplated in rule 4.24.1; or
- the money is paid out of the clients' trust account to the client.<sup>35</sup>

Under ASX Clear Operating Rule 14.8.1 a participant must not, among other things, use cash that belongs to a client for the purposes of meeting the participant's margin obligations to ASX in connection with cash CCP transactions, whether those transactions were entered into on behalf of the client or otherwise.<sup>36</sup>

In addition, where in accordance with ASX Settlement Operating Rule 6.3B.4 a participant transfers financial products from its settlement account to a CHES holding (other than its accumulation account) in connection with the purchase of financial products under a cash market transaction and includes a 'client trust deductible amount'<sup>37</sup> in the message, it must ensure that funds equal to that amount are held ~~in the trust account~~ at the time of the

<sup>32</sup> Section 981D.

<sup>33</sup> ASX Clear Operating Rules Procedure 4.24.1 specifies that the participant must take all steps (including transmitting to ASX Settlement a valid originating message that initiates a CHES to issuer sponsored demand transfer or conversion in accordance with ASX Settlement Operating Rule 9.7.1 or a demand transfer or conversion to a CHES holding in accordance with ASX Settlement Operating Rule 8.8.1 (as applicable)) in order for the relevant number of financial products acquired under the cash market transaction to be recorded in either the issuer sponsored subregister against an issuer sponsored holding or the CHES subregister against a CHES holding, in the name of the client (or if the client has instructed the financial products be registered in the name of another person, then in the name of that other person).

If the cash market transaction is settled through the transfer of CDIs or FDIs, the participant is required to take all steps in order for the relevant number of CDIs or FDIs acquired under the cash market transaction to be recorded in a holding on the principal register or the CDI register in the name of the client (or if the client has instructed the CDIs or FDIs be in the name of another person, then in the name of that other person).

<sup>34</sup> ASX Clear Operating Rule 4.24.1.

<sup>35</sup> ASX Clear Operating Rule 4.24.2.

<sup>36</sup> ASX Clear Operating Rule 14.8.1(b).

<sup>37</sup> As defined in ASX Settlement Operating Rule 6.3B.8.

transfer, in a trust account that conforms to the Corporations Act and the ASX Clear Operating Rules, and that those funds will remain in trust until ~~after~~ batch settlement has occurred.<sup>38</sup>

## 6. The use of buffers in trust and client segregated accounts

The Corporations Act prescriptions on what money can be paid and retained in a section 981B account identified above have the effect of precluding a participant from including a 'buffer' in such an account – that is, a participant depositing its own funds into the account, or failing to withdraw funds from the account to which it is entitled, for example, to cover or make allowance for any potential shortfall or reconciliation error in the account.

Such buffers are unacceptable from a regulatory perspective since they can disguise major shortcomings in a participant's processes, as well as potential client losses. They may also compromise the protection of client money if the participant goes into administration or receivership, especially if the buffer is hiding reconciliation issues which are not in favour of the client or is concealing inherent or systemic problems with the handling of client money.

The retention of a buffer does not remove the need for a participant to self-report a shortfall in client money in a trust account or client segregated account that would arise or be apparent but for the buffer, since the buffer is not client money.

Participants' attention is drawn to ASIC Market Supervision Update Issue 25, September 2012, where ASIC reminded participants of their obligations relating to client money and the inappropriate use of buffers.

## 7. Trust account reconciliation requirements

ASX Clear Operating Rule 4.23.6 requires a participant to perform ~~(and be able to produce to ASX upon request)~~ a reconciliation that is accurate in all respects of:

~~(a) — the aggregate balance held by it at the close of business ("COB")~~ a "nominated time" on each business day for each client in clients' a trust accounts account maintained pursuant to rule 4.23.3 or 4.23.4 and the corresponding balance as recorded in the participant's accounting records; ~~and. The participant must be able to produce the reconciliation and all relevant supporting documentation to ASX upon request.~~

~~(b) — the balance held by it at the close of business on the last business day of each week on trust for each client in a trust account maintained pursuant to rule 4.23.3 or 4.23.4 and the corresponding balance as recorded in the participant's accounting records.~~

For these purposes, the "nominated time" is a time (and time zone) determined in writing by a participant at which it will perform the reconciliations required under ASX Clear Operating Rule 4.23.6 and notified to ASX in writing.<sup>39</sup>

The nominated time should be a time when a participant's back office processes have been completed and no further processing is expected that might impact the trust account balance for the relevant business day.<sup>40</sup>

The reconciliation must be prepared by 7.00 pm on the business day after the business day to which the reconciliation relates and be in the form set out in ASX Clear Operating Rules Procedures Annexure 4.23.6.<sup>41</sup>

<sup>38</sup> For example, where moneys are withdrawn from a client's cash management trust (CMT) account to pay for thea purchase, they can only be included in the 'client trust deductible ~~amount~~ amount' if the money has been received in a trust account by the participant from the CMT provider and deposited into a trust account that complies with the Corporations Act and the ASX Clear Operating Rules.

<sup>39</sup> ASX Clear Operating Rules Procedure 4.23.6. A participant may change its nominated reconciliation time by notice in writing to ASX but the change must not take effect until after that notice has been given.

<sup>40</sup> While the ASX Clear Operating Rules apply only in relation to client money received in respect of ASX market transactions, to mitigate the risk of money being moved inappropriately between different accounts, it is recommended that a participant conduct all client money reconciliations for all of its businesses at the nominated time.

For that reason (and given the inter-relationship of movements of client securities and funds and the need to hold these in trust), a participant who is required by ASX Settlement Operating Rule 6.3A.3 to complete a reconciliation of its accumulation account should also complete that reconciliation as at the nominated time.

<sup>41</sup> ASX Clear Operating Rules Procedure 4.23.6.



ASX notes that participants typically conduct a daily funding calculation and run a daily trust/general account movement report to ensure the trust account is appropriately funded for anticipated payment obligations at **COB close of business** on each business day. While the funding calculation and movement report are acknowledged to be an integral part of participants' operational procedures, participants should not confuse this with the need to conduct a separate trust account reconciliation which meets the requirements of rule 4.23.6.

To meet the reconciliation requirement, a participant will need to identify:

- the actual balances held in the trust bank account(s) at **COBthe nominated reconciliation time** (ie, after all processing is completed) on each business day ~~(rule 4.23.6(a)) and at a client account level at the COB on the last business day of each week (rule 4.23.6(b));~~
- the actual balance(s) held in trust **for each client** according to the participant's accounting records at **an aggregate level at COBthe nominated reconciliation time** on each business day ~~(rule 4.23.6(a)) and at a client account level at the COB on the last business day of each week (rule 4.23.6(b));~~ and
- the difference between the two balances, which should be listed and categorised accordingly, for example:
  - unpresented cheques;
  - items on bank statement not in trust; and
  - items in trust not on bank statement.

The items making up the difference should be listed individually, if small in number, or otherwise given as a total supported by a detailed report attached.

A participant should make appropriate arrangements with its bank to ensure that bank charges and dishonours are not debited to its trust account.<sup>42</sup>

~~Appendix 1 sets out a sample format of a daily trust account reconciliation conducted pursuant to rule 4.23.6(a) and Appendix 2 sets out a sample format of a weekly trust account reconciliation conducted pursuant to rule 4.23.6(b).~~

To meet the accuracy requirement in rule 4.23.6~~(e)~~, ASX would generally expect a participant to:

- cross check that the balances and entries used in the trust account reconciliation correctly reflect the relevant balances and entries that appear in the applicable system reports and bank statements; and
- retain copies of reports and statements to support the figures appearing on the trust account reconciliation and thus support the accuracy of the reconciliations. Soft copies which can be retrieved when required would be sufficient.

ASX **also** expects a participant to retain sufficient supporting evidence of all **COB** balances used in the trust account reconciliation. This could include:

- ~~COB balances for rule 4.23.6(a): a report generated from the participant's system stating the aggregate balance held in each trust account (for example, a 'Trust Balance Report' or equivalent system report), with the balance on the report being cross-checked against the balance used in the trust account reconciliation;~~
- ~~COB balances for rule 4.23.6(b): a report generated from the participant's system providing a breakdown of the amount held by the participant on trust for each client at the nominated reconciliation time (for example, an 'Items in Trust Report', 'Detailed Trust Position Report' or equivalent system report), with the balances on the report being cross-checked against the balances used in the trust account reconciliation;~~

<sup>42</sup> These debits may represent an unauthorised withdrawal from trust and generally result in a deficiency in trust which should be notified to ASX, as set out in '10 ~~The obligation to notify ASX of certain matters relating to reconciliations~~ The obligation to notify ASX of certain matters relating to client money' on page 9.

- ~~COB bank balances:~~ bank statements, bank produced transaction reports or equivalent reports for the date being reconciled, showing the opening balance, all transactions conducted and the closing balance, and with the closing balance on the statements being cross-checked against the balance used in the trust account reconciliation;
- unrepresented cheques drawn on the trust account: a report that breaks-down each amount and to which client it relates; and
- appropriate records to track all unknown items or unreconciled balances, including:
  - the date they first appeared on the trust account reconciliation, so as to facilitate tracking of aged items or balances;
  - the names of those who are investigating the matter; and
  - confirmation of escalation to management, if applicable.

## 8. Client segregated account reconciliation requirements

ASX Clear Operating Rule 4.23.5 requires a participant to perform ~~(and be able to produce to ASX upon request)~~ a reconciliation that is accurate in all respects of the aggregate balance held by it at ~~the~~ “nominated time specified in the Procedures” on each business day in clients’ segregated accounts maintained pursuant to rule 4.23.4 and the corresponding balance as recorded in the participant’s accounting records. The participant must be able to produce the reconciliation and all relevant supporting documentation to ASX upon request.

For these purposes, again the “nominated time” is a time (and time zone) determined in writing by a participant at which it will perform the reconciliations required under ASX Clear Operating Rule 4.23.5 and notified to ASX in writing.<sup>43</sup>

The nominated time should be a time when a participant’s back office processes have been completed and no further processing is expected that might impact the client segregated account balance for the relevant business day.<sup>44</sup>

The reconciliation must be prepared by 7.00 pm on the business day after the business day to which the reconciliation relates and be in the form set out in ASX Clear Operating Rules Procedure Annexure 4.23.5.<sup>45</sup>

~~ASX Clear Operating Rules Procedure Annexure 4.23.5 sets out the required format of the segregated account reconciliation under rule 4.23.5. Where~~Under that form, where the movement in “Total Futures Client Monies” from the prior business day is greater than 20% from the prior day, %, an explanation is required to be provided set out in the form, along with the reconciliation.

Again, to meet the accuracy requirement in ASX Clear Operating Rule 4.23.5(a),<sup>1</sup> ASX would generally expect a participant to:

- cross check that the balances and entries used in the client segregated account reconciliation correctly reflect the relevant balances and entries that appear in the applicable system reports and bank statements; and
- retain copies of reports and statements to support the figures appearing on the client segregated account reconciliation and thus support the accuracy of the reconciliations. Soft copies which can be retrieved when required would be sufficient.

<sup>43</sup> ASX Clear Operating Rules Procedure 4.23.5. A participant may change its nominated reconciliation time by notice in writing to ASX but the change must not take effect until after that notice has been given.

<sup>44</sup> See note 40 above.

<sup>45</sup> ASX Clear Operating Rules Procedure 4.23.5.

### 9. Signing off The requirement for reconciliations to be signed off

~~While it is not a requirement under the Rules, ASX would generally expect~~ The prescribed forms set out in ASX Clear Operating Rules Procedures for trust and client segregated account reconciliations<sup>46</sup> require the name and signature of the employee conducting the reconciliation and the time and date at which it was completed to be inserted in the form.

ASX expects the relevant employee at the participant who conducts a trust or client segregated account reconciliation to be of appropriate seniority and ~~satisfies themselves as to its accuracy to include their name~~ have the requisite skills and ~~signature on the paperwork for~~ experience to undertake that reconciliation task competently.

~~Trust and client segregated account reconciliations are required to be performed by 7.00 pm on the business day after the business day to which they relate. To evidence compliance with this requirement, the employee conducting the reconciliation should note on the paperwork for the reconciliation the date and time at which it was completed.~~

ASX ~~would~~ also expect expects there to be an appropriate level of managerial oversight of the reconciliation process to ensure that:

- differences which have been identified are ~~being~~ actively investigated;
- 'old' or recurring differences have been appropriately escalated; and
- the causes of recurring differences (for example, system rounding issues, mis-postings, duplicate entries etc) are ~~being~~ actively investigated and resolved.

### 10. The obligation to notify ASX of certain matters relating to reconciliations client money

ASX Clear Operating Rule 4.23.7 requires a participant to notify ASX within 2 business days if:

- a trust account or client segregated account reconciliation has not been performed in accordance with rule 4.23.6 or 4.23.5 and the Procedures under those rules;<sup>47</sup>
- according to a trust account reconciliation performed pursuant to rule 4.23.6, there is a deficiency of funds held in its trust accounts ~~(or, in respect of a reconciliation performed pursuant to rule 4.23.6(b), a deficiency in respect of any particular client) or if it is unable to reconcile its trust accounts pursuant to rule 4.23.6; (regardless of the amount of the deficiency);<sup>48</sup>~~ or
- according to a client segregated account reconciliation performed pursuant to rule 4.23.5, 'Total Deposits' are less than 'Total Third Party Client Monies' (as ~~those terms are defined in the form~~ set out in the form in ASX Clear Operating Rules Procedure Annexure 4.23.5).

The notification must be in writing and:

- state the paragraph of rule 4.23.7 to which the notification relates;
- contain details of the failure or deficiency, as applicable;

<sup>46</sup> ASX Clear Operating Rules Procedures Annexures 4.23.5 and 4.23.6.

<sup>47</sup> In some instances a participant may need to invoke its business continuity plan ("BCP" – refer ASX Clear Operating Rules Guidance Note 10 *Business Continuity and Disaster Recovery*) if it is unable to perform a trust reconciliation. Consideration should be given to including this in the participant's BCP processes and testing.

<sup>48</sup> Irrespective of whether the deficiency is rectified prior to the reconciliation being completed, or the deficiency is caused by a third party. In instances where a deficiency is corrected such that the subsequent reconciliation is not in deficit, there may nevertheless be a breach of the general obligation under ASX Clear Operating Rule 4.23.2 and the matter must be reported to ASX (and ASIC) in accordance with rule 4.23.7 and related procedure.

- explain any remedial action taken or proposed to be taken by the participant in relation to the matters in the notification;
- if paragraph (c) or (d) of Rule 4.23.7 applies, include a copy of the reconciliation to which the notification relates (with all relevant supporting documentation);
- contain any other information the participant considers necessary to explain the matters detailed in the notification; and
- be lodged via ASX Online.<sup>49</sup>

A participant may notify ASX of the matters referred to above by copying ASX in on any corresponding notification given to ASIC under Rule 3.5.10 of the ASIC Market Integrity Rules (~~ASX Market) 2010. The Securities Markets) 2017, provided the notification should be submitted to ASX via ASX Online or forwarded to the Manager, ASX Participants Compliance.<sup>50</sup>~~includes all of the details above.

A participant should note that it may have an obligation to report a significant rule breach regarding client moneys under ASX Clear Operating Rule 19.1.1A, as well as under ASX Clear Operating Rule 4.23.7, depending on the nature or severity of the breach.<sup>51</sup>

In ASX's opinion, there is a reportable deficiency of funds in a participant's trust account or client segregated account if the amount of client money in that account is less than the amount of client money that should be held in that account. A buffer of non-client money in a trust account or client segregated account cannot be used to offset a deficiency in client money.

ASX has observed a number of instances where bank fees and charges deducted from a trust account or client segregated account have caused a deficiency in client money and that deficiency has not been reported to ASX in accordance with the rule 4.23.7. ASX has also observed a number of instances where participants have been retaining a buffer in their trust account or client segregated account to cover unexpected bank fees and charges in the (mistaken) belief that this would avoid a reportable deficiency.

Participants should have arrangements with their banks so that reversals for dishonoured client payments and bank fees and charges on a trust account or client segregated account are charged to or deducted from a general account rather than to the trust account/client segregated account to avoid this issue. If a bank does not provide these arrangements, participants need to have processes in place to ensure that any dishonoured client payments, bank fees and charges deducted from a trust account or client segregated account are actioned on the same day so as to avoid an overnight deficiency in client money.

Where there is an overnight deficiency in client money due to unexpected or unactioned dishonoured client payments or bank fees and/or charges, that matter needs to be escalated for remediation and a notice of deficiency given to ASX under rule 4.23.7.

Participants should not retain buffers in their trust accounts or client segregated accounts to cover unexpected bank fees and charges since, as noted above, that breaches the Corporations Regulation requirement to identify and remove non-client money from section 981B accounts as soon as practicable.

## 11. Trust Policies and client segregated account supervisory procedures

Under ASX Clear Operating Rule 4.23.8 participants are required to establish and maintain policies and procedures designed to ensure compliance with ASX Clear Operating Rule 4.23 and that have regard to the matters set out in

<sup>49</sup> ASX Clear Operating Rules Procedure 4.23.7. For further information about lodging notifications via ASX Online, see ASX Clear Operating Rules Guidance Note 8 Notification Obligations.

<sup>50</sup> ASX Clear Operating Rules Procedure 4.23.7. For further information about lodging notifications via ASX Online see ASX Clear Operating Rules Guidance Note 8 Notification Obligations.

<sup>51</sup> See the section on significant breaches in ASX Clear Operating Rules Guidance Note 8 Notification Obligations.

the Procedures. ASX Clear Operating Rules Procedure 4.23.8 requires a participant to have regard to this Guidance Note for these purposes.

Under ASX Clear Operating Rule 3.5.1(a), participants also have a general obligation to have and maintain appropriate supervisory policies and procedures over all parts of their business relating to ASX Clear.

~~In the case of trust and client segregated accounts, those policies and procedures should cover:~~

- ~~• how to deal with exceptions or outstanding items identified by the reconciliation process;~~
- ~~• the need to escalate and rectify significant, old or recurring issues identified by the reconciliation process; and~~
- ~~• the requirement to report deficiencies in client money to ASX.~~

~~It is also recommended that participants conduct periodic reviews to check that:~~

~~their~~A participant's systems and processes for dealing with client money are critical to its reputation and integrity and the proper and efficient conduct of its business. Those systems and processes must be properly documented and have clear allocations of responsibilities to the key employees involved. They must also be carefully designed to ensure that:

- the participant's trust and client segregated accounts use the correct naming conventions;
- the configuration of the participant's systems, account structures and account mappings support, at all times, the correct attribution of client moneys;
- the flow of funds to and from ~~their~~ clients and ~~the payments~~ to and from ~~their~~the participant's trust and client segregated accounts (including in relation to rejected funds and bank fees and charges) meet, at all times, the client money requirements in the Corporations Act ~~and Regulations;~~
- ~~• their processes for reconciling their trust and client segregated accounts comply with the ASX Clear Operating Rules;~~
- ~~their~~the processes for identifying non-client money in ~~their~~the participant's trust and client segregated accounts and the timeliness with which that money is removed comply with the Corporations Act ~~and Regulations; and;~~
- ~~their~~the participant's system and processes for reconciling trust and client segregated accounts and notifying ASX of any deficiencies comply with the ASX Clear Operating Rules and this Guidance Note;
- the participant's processes for dealing with old unrepresented cheques and other unclaimed ~~moneys~~moneys meet ~~their~~the participant's legal obligations under applicable laws; and

### Appendix 1 – Sample form of daily reconciliation under ASX Clear Operating Rule 4.23.6(a)

-	-	-	-	-	-	-	-
-	<b>Daily Trust Account Reconciliation [Participant Name]</b>				-	-	-
-	-	-	-	-	-	-	-
Trust Bank Account Name:	-	-	-	Date:	-	-	-
Name of Bank (ADI):	-	-	-	-	-	-	-
Trust Bank Account Number:	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
A	<b>COB Trust Bank Account Statement Balance</b>				-	xx	-
B	Less: Unpresented Cheques				-	xx	-
C	-	-	-	-	-	xxx	-
-	-	-	-	-	-	-	-
D	<b>COB General Ledger Balance</b>				-	xx	-
E	Difference (C-D)				-	xxx	-
-	-	-	-	-	-	-	-
-	<b>Breakdown of Difference (E)</b>				-	-	-
-	-	-	-	-	-	-	-
F	Items on Trust Bank Account Statement not in Ledger*				-	-	-
-	Item 1 Description				-	xx	-
-	Item 2 Description				-	(xx)	-
-	MT186 movement**				-	xx/(xx)	-
-	-	-	-	-	-	-	-
G	Items in Ledger not in Trust Bank Account Statement*				-	-	-
-	Item 1 Description				-	(xx)	-
-	Item 2 Description				-	xx	-
-	-	-	-	-	-	-	-
H	<b>Balance (F-G) = E</b>				-	xxx	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
<b>Reconciliation performed by:</b>							
Name:	-	-	-	-	-	-	-
Signature:	-	-	-	-	-	-	-
Date:	-	-	-	-	-	-	-
Time:	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

\* Items making up the difference should be listed individually, if small in number, or otherwise given as a total supported by a detailed report attached.

\*\* This CHES message ('Net Trust Amount Movement') provides the participant with the net trust movement that has been notified to its payment provider (at the payment facility level) at the time of batch settlement. This item may not be required on the reconciliation if the participant's system automatically takes account of this movement.

### Appendix 2 – Sample form of weekly reconciliation under ASX Clear Operating Rule 4.23.6(b)

-	-	-	-	-	-	-
-	<b>Weekly Trust Account Reconciliation [Participant Name]</b>				-	-
-	-	-	-	-	-	-
Trust Account Name:	-	-	-	Week Ending:	-	-
Name of Bank (ADI):	-	-	-	-	-	-
Trust Bank Account Number:	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
A	<b>COB Trust Bank Account Statement Balance</b>				-	xx
B	Less: Unpresented Cheques				-	xx
C	-	-	-	-	-	xxx
-	-	-	-	-	-	-
D	<b>COB General Ledger Balance*</b>				-	xx
E	Difference (C-D)				-	xxx
-	-	-	-	-	-	-
-	<b>Breakdown of Difference (E)</b>				-	-
-	-	-	-	-	-	-
F	Items on Trust Bank Account Statement not in Ledger**				-	-
-	Item 1 Description				-	xx
-	Item 2 Description				-	(xx)
-	MT186 movement***				-	xx/(xx)
-	-	-	-	-	-	-
G	Items in Ledger not in Trust Bank Account Statement**				-	-
-	Item 1 Description				-	(xx)
-	Item 2 Description				-	xx
-	-	-	-	-	-	-
H	<b>Balance (F-G) = E</b>				-	xxx
-	-	-	-	-	-	-
-	-	-	-	-	-	-
<b>Reconciliation performed by:</b>						
Name:	-	-	-	-	-	-
Signature:	-	-	-	-	-	-
Date:	-	-	-	-	-	-
Time:	-	-	-	-	-	-
-	-	-	-	-	-	-

\* The General Ledger trust balance should be a total supported by a detailed report at the client level attached.

\*\* Items making up the difference should be listed individually, if small in number, or otherwise given as a total supported by a detailed report attached.

• \*\*\* This CHES message ('Net Trust Amount Movement') provides the participant with the net trust movement that has been notified to its payment provider (at the payment facility level) at the time of batch settlement. This item may not be required on the reconciliation if the participant's system automatically takes account of this movement. any manual steps involved in the participant's payment processes are robust and have appropriate protections to prevent fraud or misappropriation.

It is recommended that a participant keep an up-to-date process map (or similar document) that it can produce to new staff or a regulator or auditor that identifies simply and clearly:

- the different trust and client segregated accounts maintained by the participant;
- the key systems and processes involved in the movement of client money or property and the timeframes within which those movements occur; and
- the flow of funds between those systems and the participant's trust and client segregated accounts.

## **12. Periodic reviews and change management**

Given the importance of a participant's client money processes, a participant should be conducting periodic reviews of those processes to test their integrity. Those periodic reviews preferably should be conducted by someone independent of the business unit involved in the day-to-day operation of those processes, such as the participant's compliance, risk or internal audit functions. ASX would recommend that such periodic reviews are conducted at least once every two years.

A participant should also undertake a thorough and timely assessment of the impact on its client money processes of any proposed change to:

- the participant's systems, account structures, account mappings or payment flows that could affect its client money processes; or
- the client money requirements in the Corporations Act or ASX Clear Operating Rules, Procedures or Guidance Notes.

## **13. Audit requirements for trust and client segregated accounts**

A participant that holds an Australian financial services licence is required under the Corporations Act<sup>52</sup> to engage an auditor to prepare a report in respect of its financial statements for each financial year. The report must be in the prescribed form (ASIC Form FS 71) and, among other things, express an opinion on the effectiveness of the internal controls used by the participant during the financial year to comply with the client money provisions in Division 2 of Part 7.8 of the Corporations Act and also whether each client money account required to be maintained by the participant under section 981B of the Corporations Act during the financial year was operated and controlled in accordance with that section.<sup>53</sup>

A participant must immediately notify ASX in writing if an auditor identifies a significant issue in an ASIC Form FS 71 or equivalent report lodged with ASIC.<sup>54</sup>

The Auditing and Assurance Standards Board has published Guidance Statement GS 003 *Assurance Relating to Australian Financial Services Licences issued under the Corporations Act 2001* with guidance for auditors on the steps they should take to determine whether a licensee has suitable controls to comply with the relevant requirements of the Corporations Act and to test whether those controls have been operating effectively.

ASX would note that the client money reconciliation requirements in the ASX Clear Operating Rules<sup>55</sup> are important controls that are directed to ensuring that a participant complies with its client money obligations under Division 2 of Part 7.8 of the Corporations Act.<sup>56</sup> Accordingly, ASX would expect a participant's auditor, in the course of undertaking the necessary audit work to provide the report required under ASIC Form FS 71 on the effectiveness

<sup>52</sup> Section 989B(3)(b)(ii) or 989B(3)(c) of the Corporations Act (as modified by Corporations Regulation 7.8.12A).

<sup>53</sup> Corporations Regulation 7.8.13.

<sup>54</sup> ASX Clear Operating Rule 4.5.4.

<sup>55</sup> ASX Clear Operating Rules 4.23.5, 4.23.6 and 4.23.7.

<sup>56</sup> See also ASX Clear Operating Rule 4.23.2.



of the internal controls used by the participant to comply with that Division, to examine the participant's compliance with the ASX Clear Operating Rules client money requirements.<sup>57</sup> ASX would expect this examination to include:

- ascertaining the participant's systems and processes for reconciling trust and client segregated accounts to assess whether they comply with the ASX Clear Operating Rules and this Guidance Note;
- obtaining a random and representative sample of the reconciliations conducted by the participant and conducting appropriate tests to validate that the figures are supported by accurate source records and the reconciliations have been performed correctly;
- examining the participants compliance during the financial year in question with its obligation to notify ASX of any failure to conduct a reconciliation in accordance with the ASX Clear Operating Rules or of any deficiency identified as a result of a reconciliation;<sup>58</sup> and
- examining the participant's breach register, complaint register and incident register to support its assessment.

ASX would further note that an auditor who, in the course of performing his or her duties as auditor of a participant, becomes aware of a breach by the participant of the client money provisions in Subdivision A or B of Division 2 of the Corporations Act must, within 7 days of becoming aware of the breach, lodge a written report about the breach with ASIC and provide a copy of that report to ASX.<sup>59</sup> This applies regardless of the significance of the breach.

In setting the terms of engagement of its auditor for its annual audit, a participant should ensure that the scope of work to be performed includes an examination of its compliance with the client money reconciliation requirements in the ASX Clear Operating Rules in accordance with the guidance set out above. If a participant fails to do so, ASX will give careful consideration to whether it should take action against the participant for not complying with ASX Clear Operating Rules 4.23.8 and/or 3.5.1.

<sup>57</sup> ASX understands that ASIC has the same view of the client money reconciliation requirements applicable to ASX market participants under rules 3.5.8, 3.5.9 and 3.5.10 of the ASIC Market Integrity Rules (Securities Markets) 2017.

<sup>58</sup> As required under ASX Clear Operating Rule 4.23.7.

<sup>59</sup> Section 990K(2)(b)(i).