

## ADMISSION AS A PARTICIPANT

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To outline to applicants the requirements they must meet to be admitted as a participant in the ASX market and to assist them in preparing their application</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>The application process generally</li> <li>The common admission requirements that apply to most applicants seeking admission to an ASX market or clearing and settlement facility and how they are applied in the context of applicants seeking admission as a participant in the ASX market</li> <li>The additional admission requirements that apply to applicants seeking admission as a participant in the ASX market</li> <li>Further admission requirements that apply to applicants incorporated or carrying on business outside Australia</li> <li>The ongoing obligation of participants to comply with the admission requirements</li> </ul>
<p><b>Related materials you should read</b></p>	<ul style="list-style-type: none"> <li><del>Guidance Note 3 <i>Changes in Participation</i></del></li> <li>Guidance Note 4 <i>Waivers and <del>in</del>-Principle Advice</i></li> <li><del>Guidance Note 7 <i>Client Agreements</i></del></li> <li>Guidance Note 9 <i>Offshoring and Outsourcing</i></li> <li>ASIC Regulatory Guide 104 <a href="#">LicensingAFS licensing: Meeting the general obligations</a></li> <li>ASIC Regulatory Guide 105 <a href="#">LicensingAFS licensing: Organisational competence</a></li> </ul>

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**Important notice:** ASX has published this Guidance Note to assist applicants considering a participation in the ASX market to understand the applicable admission requirements. It sets out ASX's interpretation of the ASX 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 Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and applicants 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 by ASX Limited ("ASX") to outline to applicants the requirements they must meet to be admitted as a participant in the ASX market and to assist them in preparing their application.

## 2. The application process generally

### 2.1 The role of ASX Participant Transitions

The receipt and processing of applications for admission as a participant in the ASX market are co-ordinated within ASX by a team known as "Participant Transitions".

Before submitting an application for admission as a participant, ASX recommends that applicants first discuss the matter with Participant Transitions at the earliest opportunity.

Participant Transitions will be able to provide general advice on the application process, the business models supported by ASX, the requirements for admission as a participant and the expected timeframe for completion of the admission process, given the nature and complexity of the application and the current workloads within ASX.

Participant Transitions can be contacted by ~~telephone on 1300 735 713 for domestic calls and on +61 2 8298 8249 for international calls or by email at participant.transitions@asx.com.au~~ email at [participant.transitions@asx.com.au](mailto:participant.transitions@asx.com.au).

### 2.2 The admission application

To apply for admission as a participant in the ASX market, the applicant must complete an application in the prescribed form ~~and give it to ASX~~.<sup>1</sup> An editable version of the application form can be downloaded from:

~~[www.asx.com.au/regulation/compliance/compliance-downloads.htm](http://www.asx.com.au/regulation/compliance/compliance-downloads.htm)~~ <https://asxonline.com/public/documents/participant-application-kit/application-documentation-for-asx--asx-24--asx-clear--asx-clear-.html>.

ASX uses a common application form<sup>2</sup> for applicants seeking admission as:

- a participant in the ASX market operated by ASX Limited;
- a participant in the ASX Clear facility operated by ASX Clear Pty Limited;

<sup>1</sup> ASX Operating Rule 1000.

<sup>2</sup> The ASX markets and facilities referred to in the text have a significant number of common admission requirements. Using a common application form therefore simplifies and streamlines the admission process for those applicants seeking admission to multiple ASX markets and/or facilities.

- a general settlement participant, ~~or account participant or product issuer settlement~~ participant in the ASX Settlement facility operated by ASX Settlement Pty Limited;<sup>3</sup>
- a participant in the ASX 24 market operated by Australian Securities Exchange Limited; and
- a participant in the ASX Clear (Futures) facility operated by ASX Clear (Futures) Pty Limited.

The application form is divided into separate parts. Part A applies to all of the above markets and facilities and must be completed by all applicants. Parts B through F respectively apply to each of the markets and facilities mentioned above and must be completed by applicants seeking admission to those markets and facilities. Hence, applicants seeking admission to the ASX market must complete Parts A and B of the application.<sup>4</sup>

The application must be properly completed, dated and executed by the applicant.<sup>5</sup> It must also be accompanied by the annexures and any other supporting documentation, as applicable, specified in the application form. ASX may reject or defer consideration of an application for admission as a participant that is not properly completed and executed or that is not accompanied by all of the required annexures and, as applicable, supporting documentation.

If the applicant is seeking a waiver from, or in-principle advice about the application of, any Operating Rule, the application should also attach a letter from the applicant or its advisers detailing the waiver or advice sought and providing the information set out in ASX Operating Rules Guidance Note 4 *Waivers and in-Principle Advice*.

All applications for admission as a participant and accompanying annexures should be lodged with Participant Transitions. They can be provided either in hard copy to: in soft copy via the application form upload facility under "Applications" on ASX Online using log-on credentials provided by Participant Transitions. The upload facility requires the application form and each relevant annexure to be uploaded as separate files. Some information may need to be provided directly to Participant Transitions, which will be detailed in the Application Form.

ASX Participant Transitions  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000

or in soft copy to [participant.transitions@asx.com.au](mailto:participant.transitions@asx.com.au).

~~If the annexures to the application are provided in hard copy, ASX would appreciate them being placed into a folder and separated by dividers that are marked with the applicable annexure number. If the annexures are provided in soft copy in a merged file, ASX would appreciate separator pages being included which identify where each annexure begins. If the annexures are provided in soft copy in separate files, ASX would appreciate each separate file having a name that incorporates the applicable annexure number.~~

### 2.3 Payment of application fee

An application for admission to the ASX market ~~must be accompanied by~~ will require payment of the relevant application fee set out in ASX's published schedule of fees.<sup>6</sup>

<sup>3</sup> The common application form does not apply to applicants seeking to be admitted as a specialist settlement participant in the ASX Settlement facility. Specialist settlement participants are generally only admitted as participants of ASX Settlement for a short period and for a specific purpose. They are subject to a different, more streamlined, admission process and must complete a different application form. It is also available online at: [www.asx.com.au/regulation/compliance/compliance-downloads.htm](http://www.asx.com.au/regulation/compliance/compliance-downloads.htm).

<sup>4</sup> An applicant will also have to complete Part C if they are seeking admission as a participant in the ASX Clear facility, Part D if they are seeking admission as a general settlement participant, ~~or account participant or product issuer settlement~~ participant in the ASX Settlement facility, Part E if they are seeking admission as a participant in the ASX 24 market, and/or Part F if they are seeking admission as a participant in the ASX Clear (Futures) facility.

<sup>5</sup> The cover page of the application form has instructions for its completion. The form is signed at the foot of Section 2 of Part A (just above the shaded box with the instructions on how to sign the form).

<sup>6</sup> ~~Available online at:~~ [https://www.asxonline.com/intradoc/cgi/groups/participant\\_services/documents/information/asx\\_027373.pdf](https://www.asxonline.com/intradoc/cgi/groups/participant_services/documents/information/asx_027373.pdf). Available online at: <https://www.asx.com.au/participants/apply-to-become-a-participant/asx-participant-fee-schedule>

~~Payment can be made either by cheque made payable to ASX Operations Pty Ltd or by electronic funds transfer. Once an application has completed pre-acceptance validation, Participant Transitions will raise an invoice to the following account:~~

~~Bank: National Australia Bank  
Account Name: ASX Operations Pty Ltd  
BSB: 082 057  
A/C: 494728375  
Swift Code (Overseas Customers): NATAAU3302S~~

~~If payment is made by electronic funds transfer, the applicant should for the application fee. This invoice will be sent to the nominated email ~~its~~ contact and include the applicable fee and remittance advice to ~~ar~~@asx.com.au or fax it to (612) 9227 0553, describing the ~~for~~ payment as “participant application fee” and including the name of the applicant and the amount paid.~~

~~Applicants will need to ensure that any application fee is paid in full prior to admission.~~

## 2.4 Pre-acceptance validation

Upon receipt ~~of the application form and any applicable supporting documentation~~, Participant Transitions will check that an application for admission to the ASX market has been properly completed and executed and attaches all of the required documents. If it is and does, Participant Transitions will then forward the application to another ASX business unit, Participants Compliance, for an initial pre-acceptance review.

Participants Compliance will validate that the application contains sufficient information to assess whether the applicant will meet ASX's requirements for admission. ~~Usually this review takes no more than 5 business days.~~

If an application passes this pre-acceptance validation check, Participant Transitions will notify the applicant in writing that the application has been accepted and ASX will commence its formal review of the application. If it does not pass this pre-acceptance validation check, Participant Transitions will discuss with the applicant what additional information or documentation is required before the application can be accepted.

At the same time as notifying the applicant that it has accepted its application, ASX will also notify the Australian Securities and Investments Commission (ASIC)<sup>7</sup> of the receipt and acceptance of the application.

## 2.5 Detailed assessment

Upon acceptance of an application, Participants Compliance will conduct a detailed review of the application to assess whether it conforms to the admission requirements in the ASX Operating Rules. Participants Compliance will also review any waiver requested from the ASX Operating Rules to assess whether it conforms to the underlying principles of the Rules<sup>8</sup> and ASX policy.

If the application does not fully conform to the requirements of the ASX Operating Rules and a specific waiver has not been sought by the applicant, Participants Compliance will contact the applicant to discuss amendments to the application to meet those requirements or, in an appropriate case, whether the applicant should apply for a waiver.

Other ASX teams will ~~also, as necessary~~, review the application to assess whether it conforms to ASX's operational, technology, risk and legal requirements ~~and liaise with the applicant in relation to those issues~~.

The assessment process is generally an iterative and collaborative one, where ASX endeavours to address issues with the participant as they arise and to resolve them to everyone's satisfaction.

<sup>7</sup> The primary regulator of the ASX market.

<sup>8</sup> The fundamental principle underlying all ASX Operating Rules is that the ASX market should be fair, orderly and transparent.

### 2.6 ASX's admission decision

Once the assessment of the application has progressed sufficiently, ASX will notify the applicant that it is ready to make a decision on the application. At that stage, ASX may make a decision:

- if the applicant is ready to commence operations and has met all of ASX's requirements, to approve the application and admit the applicant as a participant in the ASX market;
- if the applicant is not ready to commence operations or has not met all of ASX's requirements, to approve the application in-principle but to defer the formal decision to admit the applicant as a participant until the applicant is ready to commence operations and has met all of ASX's requirements; or
- to reject the application.<sup>9</sup>

The decision on whether or not to admit a participant is made by ASX's [Participant Admission Committee Chief Compliance Officer](#) on the advice and recommendation of the various ASX business units involved in the process. Such a decision is at the absolute discretion of ASX and ASX may grant or refuse admission without giving any reasons.<sup>10</sup>

Where ASX admits an applicant as a participant, it may at that time, or at any later time, impose any conditions on the participant's admission it considers appropriate.<sup>11</sup>

### 2.7 Notification of decision to applicant

Once ASX has made a decision on an admission application, Participant Transitions will communicate that decision to the applicant. If ASX decides formally or in-principle to admit an applicant as a participant, the communication will state what (if any) further requirements the applicant must satisfy:

- in the case of a formal decision to admit the applicant as a participant, to commence its activities in the ASX market; or
- in the case of an in-principle decision to approve the admission of the applicant, before a formal decision to admit the applicant will be made.

Thereafter Participant Transitions will act as a point of liaison between the applicant and the relevant ASX business units in working towards satisfying those requirements in a timely manner.

Participant Transitions will notify the applicant of the date on which all of ASX's requirements have been met and when it can commence its activities in the ASX market.

## 3. Common admission requirements for most ASX markets and facilities

The following admission requirements are common to most applicants seeking to be admitted as a participant in the ASX markets and clearing and settlement facilities mentioned under [heading "2.2 The admission application"](#) above. They are addressed in Part A of ASX's standard application form. The guidance below addresses how an applicant seeking admission as a participant in the ASX market should complete Part A.

### 3.1 Corporate capacity

An applicant seeking admission as a participant in the ASX or ASX 24 markets or the ASX Clear or ASX Clear (Futures) facilities must be a body corporate carrying on business in its own right and not as a trustee of a trust.<sup>12</sup>

<sup>9</sup> Given the iterative and collaborative nature of the application process, this would be a relatively rare occurrence. If an applicant is unable to meet all of ASX's requirements for admission, ASX will usually encourage the applicant to withdraw its application rather than have it formally rejected.

<sup>10</sup> ASX Operating Rule 1200.

<sup>11</sup> ASX Operating Rule 1210.

<sup>12</sup> In the case of the ASX market, see ASX Operating Rule 1000(a). This requirement does not apply to an applicant seeking admission as a participant in the ASX Settlement facility.

The applicant must confirm this fact by checking the “Confirmed” box as its response to question A.1.9 of the application form. The applicant must also list the exchanges to which it holds existing memberships in response to question A.1.10.

### 3.2 Proposed business activities and structure

An applicant seeking admission as a participant in any ASX market or facility must annex to its application:

- a statement outlining the applicant’s objectives for becoming a participant, including the types of business it wishes to conduct, the types of products in which it wishes to transact, and its target clients (including whether they are retail and/or wholesale and where they are, or are likely to be, located);<sup>13</sup>
- a group structure chart showing the applicant’s corporate ownership structure from its ultimate holding company to the applicant and from the applicant to all of its subsidiaries. It must also show the relationship between the applicant and any other group entity with which it has, or proposes to have, inter-group balances;<sup>14</sup>
- a management structure chart showing the key personnel involved in managing the applicant’s proposed ASX activities and their titles, roles and reporting lines;<sup>15</sup> and
- a technology process flow diagram showing the key systems that the applicant intends to use to conduct its proposed ASX activities and the process flows between those systems and ASX’s systems.<sup>16</sup>

In the case of an applicant seeking admission to the ASX market, its technology process flow diagram should contain sufficient information to allow ASX to assess whether the applicant will meet the technical and performance requirements of the ASX Operating Rules, including having adequate arrangements for connectivity to the ASX trading platform and to its clearing participant.<sup>17</sup>

In particular, the process flow diagram should identify:

- where the applicant’s infrastructure is or will be located ~~(eg, in ASX’s Australian Liquidity Centre in Sydney or in ASX’s data centre in Singapore or Chicago);~~
- how the applicant’s systems will connect to ASX’s systems;
- the number and location of access points for the entry of trading orders and/or clearing and settlement instructions;
- to the extent applicable, the transaction flow from the receipt of an order to its execution, clearing and settlement;
- which of the applicant’s systems are proprietary and which are provided by third party vendors; and
- in the case of trading systems, whether the system is automated or requires the manual input of orders.

<sup>13</sup> Question A.2.1 and Annexure A1 to the application form.

<sup>14</sup> Question A.2.2 and Annexure A2 to the application form.

<sup>15</sup> Question A.2.3 and Annexure A3 to the application form. The applicant will need to generate a document setting out its management structure and its allocation of responsibilities among its “responsible executives” and provide that document to ASIC within 10 business days of becoming an ASX participant: see Rule 2.1.2 of the ASIC Market Integrity Rules (Securities Markets) 2017 (referred to in this Guidance Note as the “ASIC Market Integrity Rules”). An applicant may wish to consider preparing a single group structure chart that meets both ASIC’s and ASX’s requirements.

<sup>16</sup> Question A.2.4 and Annexure A4 to the application form.

<sup>17</sup> ASX Operating Rules 1000(e) and (f) and the related Procedure.

### 3.3 AFSL

For most participation types in most ASX markets and facilities,<sup>18</sup> an applicant seeking admission as a participant must hold an Australian financial services licence (AFSL) that authorises the applicant to carry on its business as a participant,<sup>19</sup> unless it can demonstrate to ASX's satisfaction that such a licence is not required by the Corporations Act 2001 (Cth).<sup>20</sup>

ASX would generally expect a participant in the ASX market to require an AFSL authorising it:

- to deal in securities;
- if it intends to execute orders to buy or sell units in listed trusts or in exchange traded funds that are established as managed investment schemes, to deal in managed investment products; and
- if it intends to execute orders to buy or sell ASX exchange traded options (ETOs) ~~or ASX futures,~~ to deal in derivatives,<sup>21</sup>

unless:

- its financial services activities in Australia are confined to dealing on its own account – that is, its only financial services activities in Australia are:
  - acting as a proprietary trader on its own account; and/or
  - clearing and settling market transactions on its own account;<sup>22</sup>
- it intends to deal exclusively for wholesale clients, it is regulated by an approved overseas regulatory authority and it ~~has relief from ASIC to hold such an AFSL under section 911A(2)(h) of the Corporations Act and is appropriately licensed or exempt in accordance with~~ ASIC Regulatory Guide 176 *Licensing: Discretionary powers – wholesale foreign* ~~Foreign~~ financial services providers;<sup>23</sup> or
- its operations (including its staff, premises, technology and clients) are based wholly offshore and it is not otherwise carrying on a financial services business in Australia.<sup>24</sup>

<sup>18</sup> ~~There is no specific requirement for an applicant for admission as a product issuer settlement participant or specialist settlement participant in the ASX Settlement facility to hold an AFSL (although they may well do so, depending on their other business activities).~~

<sup>19</sup> In the case of the ASX market, see ASX Operating Rule 1000(b).

<sup>20</sup> Referred to in this Guidance Note as the "Corporations Act". Unless otherwise indicated, a reference to a section of an Act is a reference to a section of the Corporations Act.

<sup>21</sup> See sections 766A(1)(b) and 911A(1) and the definition of "dealing" in section 766C ~~of the Corporations Act~~.

<sup>22</sup> Participants who deal solely on their own account typically will not require an AFSL by virtue of the operation of section 766C(3) ~~of the Corporations Act~~ (the exclusion of dealing on one's own behalf from the definition of "dealing"). Note that this exclusion does not apply if and to the extent that a person is an issuer of financial products (see paragraphs (a) and (b) of section 766C(3)). A participant who enters into an over-the-counter derivative with another person is taken to be an issuer of that derivative under section 761E(5) and hence this exclusion does not apply to participants who issue over-the-counter derivatives vis-à-vis their dealings in those derivatives.

Note also that this exclusion does not apply to participants who make a market in a financial product in Australia. Making a market is more than "dealing" and is considered a separate financial service in its own right (see sections 766A(1)(c) and 911A(1) and the definition of "makes a market" in section 766D of the Corporations Act).

<sup>23</sup> ~~Section 911A(2)(h) requires a written exemption from ASIC before it applies. This may be granted on a one-off basis or to a category of offshore service providers under a class order. See ASIC Corporations (Foreign Financial Services Providers – Limited Connection) Instrument 2017/182 and ASIC Corporations (Repeal and Transitional) Instrument 2016/396.~~

<sup>24</sup> Section 911A(1) only requires a person to hold an AFSL if and to the extent that they are carrying on a financial services business in Australia. Note that if an ASX participant executes orders for clients based in Australia then, under section 911D, it runs a significant risk of being considered to be carrying on a financial services business in Australia and therefore requiring an AFSL authorising that activity. Accordingly, any applicant that is seeking to be admitted as a participant in the ASX market on the basis that it does not require an AFSL because it is not carrying on a financial services business in Australia must have robust systems and processes in place to ensure that it does not execute orders for any client based in Australia except where it is permitted by law to do so.



ASX would also generally expect a participant that is appointed as a market maker in relation to particular ASX products<sup>25</sup> to require an AFSL authorising it to make a market in those types of products unless it has the benefit of an ASIC exemption from that requirement.<sup>26</sup>

The applicant must indicate in its response to question A.3.1 of the application form whether it:

- has an existing AFSL – in which case it must attach a full copy of its AFSL (including any variations) as Annexure A5 to its application;
- is seeking a variation to an existing AFSL – in which case, it must [state in its response to question A.3.1 the date it lodged its application for attach a variation copy](#) of its [draft AFSL with ASIC variation](#) and then lodge a full copy of its new AFSL, including the variation, with ASX when it has been issued by ASIC;
- is obtaining a new AFSL – in which case, it must [state in its response to question A.3.1 the date it lodged its application for an AFSL with ASIC attach a copy of its draft AFSL](#) and then lodge a full copy of its new AFSL with ASX when it has been issued by ASIC;
- has ASIC relief from the requirement to hold an AFSL – in which case, it must attach a copy of the relief as Annexure A5 to its application;
- is seeking ASIC relief from the requirement to hold an AFSL – in which case, it must state in its response to question A.3.1 the date it lodged its application for relief with ASIC and then lodge a full copy of the relief with ASX when it has been issued by ASIC; or
- is not required to hold an AFSL – in which case, it must indicate (relevantly) whether that is:
  - because it will only be dealing on its own account; or
  - for some other reason, in which case, it must attach a copy of a legal opinion from a recognised Australian law firm confirming that the applicant is not required to hold an AFSL as Annexure A5 to its application.

The requirement for an applicant to have an AFSL authorising it to carry on its business as a participant can lead to a circularity in those cases where ASIC makes it a condition to the issue of an AFSL, or of a variation to an AFSL, that the applicant has been admitted as a participant in the ASX market. To address this circularity, if the applicant meets all of ASX's other requirements for admission as a participant apart from holding an AFSL that authorises it to carry on its business as a participant, ASX will [usually coordinate the admission with ASIC or](#) admit the applicant on condition that it [obtain obtains](#) the requisite AFSL or variation and [provide provides](#) a copy to ASX before it commences any activities in the ASX market.

An applicant seeking admission as a participant in an ASX market or facility should take its own legal advice on whether it needs to hold an AFSL, which takes account of its particular business model and its proposed activities in Australia.

It should be noted that issues about the requirement to hold an AFSL are within the regulatory remit of ASIC. Any questions about that requirement should be directed to ASIC rather than ASX.

### 3.4 High business integrity

An applicant seeking admission as a participant in any ASX market or facility must satisfy ASX that it is of high business integrity.<sup>27</sup> There are [three ways in which the applicant may provide evidence of its high business integrity](#) [four ways in this can be satisfied](#):

<sup>25</sup> See ASX Operating Rule 3440.

<sup>26</sup> See note [22221](#) above and the text accompanying note [5541](#) below.

<sup>27</sup> In the case of the ASX market, see ASX Operating Rule 1000(c).

- if the applicant is an ADI,<sup>28</sup> it may simply confirm to ASX that it has in place a “fit and ~~proper~~proper” policy that meets the requirements of the Australian Prudential Regulation Authority Prudential Standard CPS 520;<sup>29</sup>
- if the applicant holds an AFSL (as most will), it may simply confirm to ASX that it has in place measures to ensure its responsible managers are ~~of good fame~~fit and ~~character~~proper persons, as required in ASIC Regulatory Guides 105-~~33~~ and 2-~~162~~, which are also applied to any of its directors who are not responsible managers;<sup>30</sup> ~~or~~
- if the applicant is an existing participant of an ASX market or clearing and settlement facility; or
- in all other cases, it must provide statutory declarations to ASX in relation to itself and from each of its directors ~~confirming that:~~<sup>31</sup>
  - ~~they have not been the subject of any previous bankruptcy, insolvency, receivership, administration, or similar event;~~
  - ~~they have not been charged with or convicted of any offences relating to dishonesty, fraud, financial markets-related conduct, or money laundering;~~
  - ~~they have not been the subject of any fines, civil penalties, banning, suspension or other disciplinary measures for financial markets-related conduct;~~
  - ~~they have not been the subject of any disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, the Commission, ASX, an approved clearing facility, an approved settlement facility, and any other exchange, market operator or clearing and/or settlement facility;~~
  - ~~they have not been refused membership of any financial markets-related, legal or accounting professional organisation or had such a membership revoked; and~~
  - ~~they have not had an application for participant status (or equivalent status) on another exchange, market, approved clearing facility or approved settlement facility refused,~~

~~whether in Australia or elsewhere and that they are not aware of any open or pending investigations or threatened proceedings that could lead to any of the above.~~<sup>32</sup>

The applicant must indicate in its response to question A.4.1 of the application form which ~~of these 3 options~~option it is taking. If it indicates that it is taking the ~~third~~fourth option, the required statutory declarations must be attached to the application form as Annexure A6.

~~An editable version of a sample statutory declaration can be downloaded from:~~  
~~[www.asx.com.au/regulation/compliance/compliance-downloads.htm](http://www.asx.com.au/regulation/compliance/compliance-downloads.htm)~~

<sup>28</sup> That is, an authorised deposit-taking institution which has been granted authority to carry on a banking business in Australia under the Banking Act 1959 (Cth).

<sup>29</sup> The applicant must be able to provide evidence of this policy to ASX upon request at any time: see paragraph (a) of ASX Operating Rules Procedure 1000(c).

<sup>30</sup> The applicant must be able to provide evidence of these measures to ASX upon request at any time: see paragraph (b) of ASX Operating Rules Procedure 1000(c).

<sup>31</sup> ~~An editable version of a sample statutory declaration can be downloaded from:~~  
~~<https://asxonline.com/public/documents/participant-application-kit/application-documentation-for-asx--asx-24--asx-clear--asx-clear-.html>~~

~~If the applicant or any of its directors cannot provide such a statutory declaration confirming these matters, they must include with Annexure A6 a statement to that effect and a detailed explanation of the circumstances involved.~~

~~<sup>32</sup> If the applicant or any of its directors cannot provide such a statutory declaration confirming these matters, they must include with Annexure A6 a statement to that effect and a detailed explanation of the circumstances involved.~~

The applicant must also consent to ASX obtaining information on the creditworthiness of the applicant. It does so by checking the “Confirmed” box as the response to question A.4.2 of the application form.

ASX may have regard to any information in its possession from any source in determining whether an applicant is of high business integrity.<sup>33</sup>

### 3.5 Resources and processes

An applicant seeking admission as a participant in any ASX market or facility must provide a written certification to ASX ~~on or~~ before its admission as a participant that it has the resources and processes in place to comply with its obligations under the applicable Operating Rules.<sup>34</sup> ~~It must indicate in its response to question A.5.1 of the application form whether it is providing the required certification with its application (in which case it must attach the certification as Annexure A7 to its application) or whether it will be providing the certification later.~~<sup>35</sup>

For these purposes, “resources” include financial, technological and human resources and “processes” include management supervision, training, compliance, risk management, business continuity and disaster recovery processes.<sup>36</sup>

The prescribed form of written certification can be downloaded from:

[www.asx.com.au/regulation/compliance/compliance-downloads.htm](https://www.asx.com.au/regulation/compliance/compliance-downloads.htm)<https://asxonline.com/public/documents/participant-application-kit/application-documentation-for-asx--asx-24--asx-clear--asx-clear-.html>.

In providing this certification to ASX, an applicant seeking admission as a participant in the ASX market must have regard to:

- the ASX Operating Rules;
- this Guidance Note;
- ASX Operating Rules Guidance Note 9 *Offshoring and Outsourcing*;
- the standards expected of financial services licensees set out in ASIC Regulatory Guide 104 [Licensing AFS licensing: Meeting the general obligations](#) and ASIC Regulatory Guide 105 [Licensing AFS licensing: Organisational competence](#) (this applies even if the applicant does not hold an AFSL);<sup>37</sup> and
- the standards expected of ASX market participants set out in ASIC Regulatory Guide [244265 Guidance on ASIC market integrity rules for ASX and ASX 24 participants of securities markets](#).

It is up to each applicant to determine what resources and processes it needs to have in place to comply with its obligations under the ASX Operating Rules, having regard to the materials [listed](#) above and to the nature and scale of its intended business activities.

~~If required by ASX, the An~~ applicant must ~~be able~~ also have regard to the “key processes” set out in Schedule 1 to this Guidance Note when determining how it will demonstrate, to the satisfaction of ASX, ~~at any time, the basis on which the above certification is or was provided.~~<sup>38</sup> ~~This applies both before resources~~ and after the applicant is admitted as a participant.

<sup>33</sup> ASX Operating Rules Procedure 1000(c) (concluding sentence).

<sup>34</sup> In the case of the ASX market, see ASX Operating Rule 1000(d) and the related Procedure.

<sup>35</sup> ~~The option for an applicant to provide the required form of certification later is given in recognition of the fact that an applicant may not wish to go to the trouble and expense of obtaining all of the necessary resources, and putting in place all of the necessary processes, until it has a reasonable degree of certainty that it will be admitted as a participant.~~

<sup>36</sup> ASX Operating Rule 1000(d).

<sup>37</sup> ASX Operating Rules Procedure 1000(d).

<sup>38</sup> ~~ASX Operating Rules Procedure 1000(d).~~

To be able to demonstrate the basis on which the certification is provided, ASX would expect the applicant to have documented its key processes for meeting its obligations under the relevant Operating Rules and to be able to produce an internal sign-off from a director, chief executive, head of compliance or other senior officer at the applicant that lists those documented processes and states that the signatory is satisfied that they have in place are sufficient for the applicant to comply with its obligations under those Operating Rules.

In the case of an applicant seeking admission as a participant in the ASX market, its “key processes” for these purposes would include:

- ~~its compliance framework, that is, its general processes for identifying and monitoring compliance with its key legal and regulatory obligations and for identifying, remediating and reporting on any compliance breaches;<sup>39</sup>~~
- ~~its risk management framework,<sup>40</sup> that is, its general processes for identifying and managing or mitigating the risks it faces, including but not limited to market risk, liquidity risk, counterparty risk, operational risk and cyber risk;<sup>41</sup>~~
- ~~its processes for maintaining adequate clearing arrangements (including, if the applicant intends to have its transactions cleared through more than one clearer, its processes for ensuring transactions are not misdirected);<sup>42</sup>~~
- ~~its processes to prevent any action or inaction which might interfere with the operational efficiency or proper functioning of the ASX trading platform or which might result in a market for a product not being both fair and orderly;<sup>43</sup>~~
- its processes for ensuring that each cash market transaction to which it is a party is settled on the third business day following the date the transaction was created on or reported to the market;<sup>44</sup>
- ~~if the applicant intends to transact for clients, its processes for ensuring that it has the requisite client agreements, and gives to its clients any other documents, required under the ASX Operating Rules;<sup>45</sup>~~
- ~~if the applicant intends to accept orders for option market contracts from eligible broker-dealers or an eligible institution in the United States, its processes to comply with the relevant obligations in the ASX Operating Rules;<sup>46</sup>~~
- if the applicant intends to enter into transactions involving the managed fund settlement service (mFund), its processes to comply with the relevant obligations in the ASX Operating Rules;<sup>47</sup>

<sup>39</sup> Applicants should have regard to the guidance given by ASIC about compliance measures in section C and the Appendix 1 (Table 2) of ASIC Regulatory Guide 104 *Licensing AFS licensing: Meeting the general obligations*. This includes ASIC’s guidance about the recording and reporting of compliance breaches and regularly reviewing compliance measures to take account of past breaches.

<sup>40</sup> Applicants should have regard to the guidance given by ASIC about risk management systems in section D and the Appendix 1 (Table 3) of ASIC Regulatory Guide 104 *Licensing AFS licensing: Meeting the general obligations*.

<sup>41</sup> Applicants should have regard to the good practice guidance published by ASIC about cyber resilience available online at <http://www.asic.gov.au/regulatory-resources/digital-transformation/cyber-resilience/>. Applicants should also consider the latest global standards on cyber resilience, such as the National Institute of Standards and Technology Cybersecurity Framework (refer <https://www.nist.gov/topics/cybersecurity>), and any local guidance provided by Australian regulatory bodies and government departments, such as the Australian Signals Directorate (refer <https://www.asd.gov.au/>).

<sup>42</sup> See “4.2 Clearing arrangements” on page 13.” of this Guidance Note.

<sup>43</sup> ASX Operating Rules 1000(e) and (f) and the related Procedure.

<sup>44</sup> ASX Operating Rule 3600.

<sup>45</sup> ASX Operating Rules 3800—3805 and the related Procedures. See also ASX Operating Rules Guidance Note 7 *Client Agreements*.

<sup>46</sup> ASX Operating Rules 2240 and 2241 and the related Procedures.

<sup>47</sup> ASX Operating Rules 4650—4656 and the related Procedures. See also ASX Operating Rules Guidance Note 15 *ASX Managed Funds Service*.

- ~~its processes for meeting the minimum technical requirements prescribed by ASX for access to the ASX market including connectivity, testing and accreditation requirements;<sup>48</sup> and~~
- ~~if the applicant intends to offshore or outsource any of its trading activities, its processes for meeting the expectations outlined in ASX Operating Rules Guidance Note 9 *Offshoring and Outsourcing*.~~

~~As part of the application~~ During the assessment process, ASX may will ask an applicant to provide ASX with a copy of documentation that evidences how the applicant meets some or all of the processes ~~above so that ASX can verify that they are in place~~ set out in Schedule 1 to this Guidance Note, as well as the resources it has (or intends to have) in place (including human and technical) to support its participation.

Applicants should note that they will also have obligations under the ASIC Market Integrity Rules (Securities Markets) 2017<sup>49</sup> to have appropriate management structures and supervisory policies and procedures in place that may require additional documentation to the processes set out above.<sup>50</sup> These requirements are administered by ASIC.

When documenting ~~their~~ key processes, ~~applicant~~ an applicant should further note the guidance given by ASIC about compliance measures generally:<sup>51</sup>

“It is not enough just to document your measures. You also need to fully implement them. This means you need to put them into practice and integrate them into the day-to-day conduct of your business.”

### 3.6 Nominated contacts ~~and authorised signatories~~

An applicant seeking admission as a participant in any ASX market or facility must provide a completed and signed ASX Online Initial Access Form<sup>52</sup> to nominate at least two individuals to access the ASX web-based system interface known as ASX Online.<sup>53</sup> The individuals will be granted permission to access ASX Online as ~~“Enterprise Administrators”~~ “Administrators” for the applicant entity and will be responsible for setting-up ~~“roles”~~ “roles” in ASX Online, ~~including persons with the authority to deal with various operational, risk or compliance issues on its behalf~~ following its admission as a participant.<sup>54</sup> The completed form is required to be provided as Annexure A8 to its application.

An editable version of the ASX Online Initial Access Form can be downloaded from:

~~[www.asx.com.au/regulation/compliance/compliance-downloads.htm](http://www.asx.com.au/regulation/compliance/compliance-downloads.htm)~~ <https://asxonline.com/public/documents/participant-application-kit/application-documentation-for-asx--asx-24--asx-clear--asx-clear-.html>

## 4. Additional admission requirements for the ASX market

In addition to the common admission requirements mentioned under heading “3 Common admission requirements for most ASX markets and facilities” above, an applicant seeking admission as a participant in the ASX market must meet the following additional admission requirements. ~~They (which~~ are addressed in Part B of the application form.)

<sup>48</sup> ~~ASX’s technical requirements will depend on the business model and connectivity options selected by the applicant. Further information about the technical requirements for the ASX market can be obtained from ASX Participant Transitions.~~

<sup>49</sup> ~~See~~ Referred to in this Guidance Note as the “ASIC Market Integrity Rules 2.1.1 – 2.1.3.”

<sup>50</sup> See ASIC Market Integrity Rules 2.1.1 - 2.1.3.

<sup>51</sup> ASIC Regulatory Guide 104 AFS Licensing: Meeting the general obligations, at paragraph 27.

<sup>52</sup> See question A.6.1 of the application form.

<sup>53</sup> ASX Online is a secure extranet site provided by ASX to enable participants to, among other things, ~~to~~ receive ASX notices; lodge regulatory reports; submit participant forms; raise service requests and establish authorisation credentials for activities relating to their ASX participation.

<sup>54</sup> ~~ASX Operating Rules 1000(e) and (f) and related Procedure; and ASX Operating Rule 6510. For the purposes of ASX Operating Rules Procedures 1000(e) and (f), ASX expects nominated persons to be authorised signatories appointed under ASX Operating Rule 6510.~~ Mandatory roles specified on the ASX Online Initial Access Form are required to be set up by the applicant’s enterprise administrator prior to the applicant’s admission as an ASX participant.

### 4.1 Type of participation and products to be traded

ASX currently offers ~~three~~two participation types in the ASX market:

- a trading participant (that is, a market participant which has trading permission in respect of one or more products traded on the ASX market), other than a principal trader; or
- ~~a principal trader (that is, a market participant whose trading permissions limitpermission limits it to trading on its own behalf); or~~
- ~~a non-trading market participant (that is, a participant that will not execute any orders in the ASX platform but instead will transact through another trading participant).~~

An applicant seeking admission as a participant in the ASX market must indicate in its response to question B.1.1 of the application form the type of a participation for which it is applying.

~~Unless it is applying to be a non-trading market participant, the~~The applicant must also indicate in its response to question B.1.2 of the application form for which of the following types of products it is seeking trading permission:

- cash market ~~transactions;~~products; and/or
- ASX options market ~~transactions~~contracts (ETOs); ~~and/or~~.
- ~~ASX futures market transactions.~~

If the applicant is seeking permission to provide its clients with Type 1 Client Access (that is, to permit a client or an agent of a client to submit trading messages through the applicant's trading system),<sup>55</sup> it must check the box in its response to question B.1.3.

~~If the applicant is seeking permission to participate in ASX BookBuild, it must check the box in its response to question B.1.4. If the applicant intends to enter transactions in a managed fund product using the mFund settlement service it must indicate this in its response to question B.1.5 and provide a signed certification of compliance for mFund activities confirming that it has designed and implemented procedures that comply with the requirements set out in ASX Operating Rules Procedure 4655(a) as Annexure B1 to its application.~~<sup>56</sup>

If the applicant wishes to become an ASX market maker, it must check the box in its response to question B.1.~~64~~. Note that if the applicant checks this box, it must have an AFSL that authorises it to make a market in the relevant products or otherwise satisfy ASX that it is exempt from the requirement that it hold such a licence.<sup>57</sup>

An applicant that is not seeking to become an official ASX market maker should not hold itself out or describe itself as "making markets" in ASX products, either generally or in relation to specific products.<sup>58</sup> This applies even if the applicant intends to regularly post orders on both sides of the book in the relevant ASX products and it considers its activities will add to the depth of the ASX market. If the applicant is not intending to be an official ASX market maker, using such a description is potentially misleading and can raise difficult licensing issues.<sup>59</sup>

<sup>55</sup> ASX Operating Rule 1140 and the related Procedure, and ASIC Regulatory Guide 241 *Electronic Trading*~~trading~~.

<sup>56</sup> ~~The option for an applicant to provide a signed certification after lodging its application and before its admission is offered in recognition of the fact that an applicant may not wish to design and implement procedures to address ASX Operating Rules Procedure 4655(a) until it has a reasonable degree of certainty that it will be admitted as a participant.~~

<sup>57</sup> ASX Operating Rule 1001(b). An applicant seeking to be admitted as a market maker in the ASX market will generally require an AFSL authorising it to undertake that activity unless it has the benefit of an ASIC exemption from that requirement: see note 2221 above.

<sup>58</sup> This applies to any description of its business on its website or in its marketing materials and, particularly, in its AFSL application.

<sup>59</sup> Among other things, it may lead to an argument as to whether the applicant should hold an AFSL authorising it to make a market in the relevant ASX products: see note 2221 above.

### 4.2 Clearing arrangements

An applicant seeking admission as a participant in the ASX market must have in place and maintain adequate clearing arrangements in accordance with ASX Operating Rule 1003 and Schedule 1.<sup>60</sup>

The applicant must indicate in its response to question B.2.1 of the application form, who will be its clearer for each product class for which it is seeking trading permission. The applicant should insert “self” if it intends to self-clear any such product class.

If the applicant intends to use any third party clearers ~~or clearers~~ for any product class, it must indicate provide in its response to question B.2.2 ~~whether a copy of the draft clearing agreement(s) it has entered into with the third party clearer(s) with its application.~~<sup>61</sup>

- ~~it is providing a copy of the executed clearing agreement(s) it has entered into with the third party clearer(s) with its application, in which case it must attach a copy of the executed agreement(s) as Annexure B2 to its application; or~~
- ~~it will be providing a copy of the executed clearing agreement(s) later,<sup>62</sup> in which case it must provide to ASX a copy of the draft clearing agreement(s) as Annexure B2 to its application, with a copy of the executed clearing agreement(s) with the third party clearer(s) to be provided before it will be admitted as a participant in the ASX market.~~

An applicant can have different clearers for different product classes. However, it should be noted that a principal trader may only appoint one clearing participant;<sup>63</sup> a market participant that self-clears<sup>clears</sup> may only appoint one other clearing participant;<sup>64</sup> and all other market participants may only appoint two clearing participants, for any particular product class.<sup>65</sup>

### 4.3 Other compliance requirements

Where applicable, an applicant seeking admission as a participant in the ASX market must meet the following additional compliance requirements:

- if the applicant intends to deal in:
  - ~~ASX futures on behalf of retail or wholesale clients (including any related body corporate), it must attach a pro forma client agreement for those transactions as Annexure B3 to its application highlighting where the minimum terms required by ASX Operating Rules Procedures Appendix 3801-1 are contained;<sup>64</sup>~~
  - ETOs on behalf of retail clients, it must attach a pro forma client agreement for those transactions as Annexure ~~B3~~B4 to its application ~~highlighting mapping~~ where the minimum terms required by ASX Operating Rules Procedures Appendix 3801-2 are contained;<sup>65</sup>

<sup>60</sup> ASX Operating Rule 1000(g).

<sup>61</sup> An applicant must provide a copy of the executed Clearing Agreement(s) before it will be admitted as a participant.

<sup>62</sup> ~~The option for an applicant to provide copies of executed clearing agreements after lodging its application and before its admission is offered in recognition of the fact that an applicant may not wish to go to the trouble and expense of appointing a third party clearer until it has a reasonable degree of certainty that it will be admitted as a participant.~~

<sup>63</sup> ASX Operating Rules Schedule 1 Rule 1.1010(c) and the related Procedure.

<sup>64</sup> ~~See question B.3.1 of the application form and ASX Operating Rule 3801. If the applicant is applying to be a principal trader or is not intending to deal in ASX futures on behalf of retail or wholesale clients, it should check the “Not applicable” box in its response to this question.~~

<sup>65</sup> See question B.3.2<sup>1</sup> of the application form and ASX Operating Rule 3801 and the related Procedure. If the applicant is applying to be a principal trader or is not intending to deal in ETOs on behalf of retail clients, it should check the “Not applicable” box in its response to this question.

- warrants on behalf of retail clients, it must attach a pro forma client agreement for those transactions as Annexure B5 to its application [highlightingmapping](#) where the minimum terms required by ASX Operating Rules Procedures Appendix 3801-3 are contained;<sup>66</sup> and
- partly paid securities on behalf of retail clients, it must attach a pro forma client agreement for those transactions as Annexure B6 to its application [highlightingmapping](#) where the minimum terms required by ASX Operating Rules Procedures Appendix 3801-4 are contained.<sup>67</sup>

If any of Annexures [B3B4](#) – B6 are the same, the applicant should submit them once only but identify where the required minimum terms in each applicable Appendix are contained;

- if the applicant intends to deal in ETOs on behalf of US persons, it must confirm that it is aware of the requirements in ASX Operating Rules 2240 and 2041 by checking the “Confirmed” box in its response to question B.3.54 of the application form;<sup>68</sup> and
- if the applicant intends to operate an automated order processing system, it must attach a copy of the confirmations provided to and received from ASIC in respect of that system as Annexure B7 to its application.<sup>69</sup>

## 5. Further admission requirements that apply to applicants incorporated or carrying on business outside Australia

### 5.1 ASX’s power to impose additional requirements for admission

Applications to be admitted as a participant in an ASX market or facility from entities that are incorporated or intend to carry on any part of their ASX activities outside Australia raise a number of different considerations compared to applications from entities that are incorporated and intend to carry on business wholly in Australia. These are addressed by ASX on a case-by-case basis.

Where an applicant is incorporated or intends to carry on any part of its business as an ASX participant outside Australia and ASX considers it appropriate to do so, ASX has the power under ASX Operating Rule 1002 and the related Procedure to impose additional requirements for the applicant to be eligible to be admitted as a participant in the ASX market. These may include requirements that:

- the applicant or a related body corporate ~~currently~~ conducts trading operations which are regulated by a foreign derivatives or securities exchange or foreign regulatory authority acceptable to ASX;
- the applicant, or persons connected with the applicant, give an additional undertaking or undertakings governed by Australian law in respect of any matter which ASX considers reasonable including, without limitation, undertakings as to:
  - the amount of resources and number of employees to be located in Australia;
  - access by ASX to records required to be kept under the ASX Operating Rules;

<sup>66</sup> See question B.3.32 of the application form and ASX Operating Rule 3801 and the related Procedure. If the applicant is applying to be a principal trader or is not intending to deal in warrants on behalf of retail clients, it should check the “Not applicable” box in its response to this question.

<sup>67</sup> See question B.3.43 of the application form and ASX Operating Rule 3801 and the related Procedure. If the applicant is applying to be a principal trader or is not intending to deal in partly paid securities on behalf of retail clients, it should check the “Not applicable” box in its response to this question.

<sup>68</sup> See question B.3.54 of the application form. [Where the applicant selects “confirmed” ASX will request additional information on the processes the applicant has in place to ensure ongoing compliance with this obligation.](#) If the applicant is applying to be a principal trader or is not intending to deal in ETOs on behalf of US persons, it should check the “Not applicable” box in its response to this question.

<sup>69</sup> See question B.3.65 of the application form and ASX Operating Rule 1000(e) & (f) and 1401(a) and the related Procedures. If the applicant is not intending to operate an automated order processing system, it should check the “Not applicable” box in its response to this question.



- foreign taxes that might be payable; and
- the law governing the applicant's activities under the ASX Operating Rules and the applicant's submission to jurisdiction;
- the applicant ~~provide~~[provides](#) a legal opinion, from independent lawyers acceptable to ASX and paid for by the applicant, which deals with matters required by ASX and which is acceptable to ASX;
- the applicant ~~provide~~[provides](#) a performance bond in the form and substance acceptable to ASX; and
- if the applicant proposes to conduct any "Overseas Activity" (as defined in ASX Operating Rule 6400), the applicant ~~notify~~[notifies](#) ASX of the details of the proposed Overseas Activity and ~~demonstrate~~[demonstrates](#) that the proposed Overseas Activity will comply with ASX Operating Rules Procedure 6400.

## 5.2 Applicants incorporated overseas

If an applicant seeking admission as a participant in an ASX market or facility is incorporated in a place outside Australia, it must either be registered as a foreign company carrying on business in Australia under Part 5B.2 Division 2 of the Corporations Act or appoint an agent in Australia approved by ASX for the service of process in Australia.<sup>70</sup>

An applicant incorporated overseas must indicate in its response to question A.7.1 of the application form whether:

- it is already registered as a foreign company carrying on business in Australia;
- it intends to register as a foreign company carrying on business in Australia (in which case it must complete the registration process before it will be admitted as a participant)<sup>71</sup>;
- it has appointed an agent in Australia for the service of process, in which case, it must attach as Annexure A9 to its application a copy of the appointment and the agent's acceptance of the appointment; or
- it intends to appoint an agent in Australia for the service of process, in which case, it must also specify the agent's name, address, telephone number and email and lodge a copy of the appointment and the agent's acceptance of its appointment before it will be admitted as a participant.<sup>72</sup>

If the applicant has, or is seeking, an ASIC exemption from the requirement to hold an AFSL on the basis of a licence it has in a foreign jurisdiction, or if it maintains that it is not required to hold an AFSL but has a licence in a foreign jurisdiction that will cover its ASX activities, it must also attach as Annexure A10 to its application a document providing details of the law under which that licence is issued and a copy of that licence.<sup>73</sup>

In terms of which option an applicant should select in its answer to question A.7.1, an applicant that is not incorporated in Australia should be aware that if it intends to do anything that constitutes "carrying on business" in Australia, it must register as a foreign company carrying on business in Australia under section 601CD of the Corporations Act.<sup>74</sup> In this regard, if it intends to have premises,<sup>75</sup> staff or clients in Australia, it will almost certainly

<sup>70</sup> In the case of the ASX market, see ASX Operating Rule 6404. A participant must also inform ASX of the intended effective date of any agent ceasing for any reason to act as agent for the participant and, where that applies, appoint as soon as practicable, and in any case before the outgoing agent ceases acting as agent for the participant, a new agent approved by ASX.

<sup>71</sup> The option for an applicant to complete the process of registering as a foreign company after lodging its application and before its admission is offered in recognition of the fact that an applicant may not wish to go to the trouble and expense of registering as a foreign company until it has a reasonable degree of certainty that it will be admitted as a participant.

<sup>72</sup> ~~Again, the option for an applicant to appoint an agent in Australia for service of process after lodging its application and before its admission is offered in recognition of the fact that an applicant may not wish to go to the trouble and expense of appointing an agent until it has a reasonable degree of certainty that it will be admitted as a participant.~~

<sup>73</sup> See question A.7.2 of the application form.

<sup>74</sup> Section 601CD of the Corporations Act prohibits a foreign company from carrying on business in Australia unless it is registered under Division 2 of Part 5B.2 of that Act. ~~A breach of section 601CD is a criminal offence (section 1311(1)) punishable by a fine of 5 penalty units (section 1311(5)).~~

<sup>75</sup> ~~See section 21(1).~~

be taken to be carrying on business<sup>76</sup> in Australia and therefore have to register under that section. Even if it does not intend to have premises, staff or clients in Australia, it may still need to register as a foreign company carrying on business in Australia under that section, depending on its particular business model and its proposed activities in Australia.

An applicant seeking admission as a participant in an ASX market or facility should take its own legal advice on whether it needs to register as a foreign company carrying on business in Australia, which takes account of its particular business model and its proposed activities in Australia.

Applicants seeking admission as a participant in the ASX market, in particular, should note ASX's view that the activities of principal traders generally will not fall within section 21(3)(j) of the Corporations Act (the provision deeming a body corporate not to carry on business in Australia "merely because" it "invests any of its funds or holds any property" in Australia). ~~ASX understands that ASIC shares this view.~~ Section 21(3)(j) plainly also does not apply to trading done by participants on behalf of clients. Accordingly, applicants seeking admission as a participant in the ASX market should not rely on section 21(3)(j) to support the proposition that they are not carrying on business in Australia.

~~Registration as a foreign company carrying on business in Australia brings with it a number of regulatory obligations, including:~~

- ~~• to have a registered office in Australia to which communications and notices may be addressed that is open between certain hours and at which a representative of the company is present at all times the office is open;<sup>77</sup>~~
- ~~• to display its name and its place of origin in a conspicuous position and in legible characters outside its registered office and every office and place of business in Australia that is open and accessible to the public;<sup>78</sup>~~
- ~~• to display its name, its Australian Registered Body Number (ARBN), its place of origin and, if the liability of the members is limited and the last word of its name is neither 'Limited' nor 'Ltd.', notice of the fact that the liability of its members is limited on:
  - ~~• every public document issued, signed or published by or on behalf of the company in Australia; and~~
  - ~~• every negotiable instrument signed or issued by or on behalf of the company in Australia;<sup>79</sup>~~~~
- ~~• to retain a local agent who is answerable for the doing of all acts, matters and things that the company is required to do by or under the Corporations Act;<sup>80</sup>~~
- ~~• unless exempted by ASIC,<sup>81</sup> to lodge financial statements with ASIC at least once every calendar year and at intervals of not more than 15 months comprising:
  - ~~• a copy of the company's balance sheet, profit and loss statement and cash flow statement (all made up to the end of the last financial year), and~~~~

<sup>76</sup> See section 21(1) of the Corporations Act.

<sup>77</sup> See section 911D.

<sup>78</sup> Section 601CW.

<sup>79</sup> Section 601DE. The company must also display its ARBN on all documents required to be lodged with ASIC under the Corporations Act: Corporations Regulations 1.0.07—1.0.10.

<sup>80</sup> Section 601CF.

<sup>81</sup> ASIC may declare some types of registered foreign company to be exempt from these financial reporting requirements: see ASIC Regulatory Guide 58 *Reporting requirements—registered foreign companies and Australian companies with foreign company shareholders*. An exempt registered foreign company must lodge a Form 406 *Annual return of a foreign company* instead of a Form 405 (see note 78 and the accompanying text).

- any other documents the company is required to prepare by the law that applies in the company's place of origin,  
together with a Form 405 Statement to verify financial statements of a foreign company.<sup>82</sup>

It should be noted that issues about the requirement to be registered as a foreign company carrying on business in Australia are within the regulatory remit of ASIC. Any questions about that requirement should be directed to ASIC rather than ASX.

Further information about the process for registering as a foreign company and the ongoing obligations that apply to registered foreign companies can be found on the ASIC website at: <http://www.asic.gov.au/for-business/starting-a-company/how-to-start-a-company/foreign-companies/>; <https://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/foreign-companies/>

As mentioned previously, under ASX Operating Rule 1002, ASX can impose additional admission requirements in respect of an applicant incorporated outside Australia. Typically, ASX will require such an applicant to provide a legal opinion from a recognised law firm in the place where it is incorporated confirming either that the applicant holds all necessary overseas licences and authorisations to conduct its ASX activities or that the applicant is not required to hold any overseas licence or authorisation to conduct its ASX activities (as the case may be).

### 5.3 Applicants with overseas activities

An applicant seeking admission as a participant in any ASX market or facility must indicate in its response to question A.8.1 of the application form whether it proposes to locate any part of its ASX activities or any employees engaged in those activities outside Australia (overseas activity). If it does, it must attach as Annexure A11 to its application a statement setting out full details of the proposed overseas activity and evidence that it has obtained all necessary regulatory approvals from any relevant governmental agency or regulatory authority in Australia or elsewhere in respect of the overseas activity.

This applies whether the applicant is incorporated in Australia or overseas and regardless of the nature, scale or materiality of the overseas activity.

The statement should confirm that the overseas activity will not interfere with the ability of the applicant to comply with its ongoing obligation under the [relevant ASX Operating Rules](#) to ensure that it has in place appropriate arrangements so that it and ASX can communicate with each other and receive each other's responses quickly on a day-to-day operational basis and so that it can promptly comply with those [Operating Rules operating rules](#) or a request of ASX.<sup>83</sup>

ASX will use the information in this statement to assess whether it should apply further requirements for the applicant to be eligible to be admitted as a participant in the ASX market in accordance with ASX Operating Rule 1002.

Depending on the nature of the overseas activity, this may include requiring the applicant to provide a legal opinion from a recognised law firm in the place where it intends to conduct its overseas activity confirming either that the applicant holds all necessary overseas licences and authorisations to conduct the overseas activity or that the applicant is not required to hold any overseas licence or authorisation to conduct the overseas activity (as the case may be).

<sup>82</sup> Section 601CK. When a foreign company that holds an AFSL lodges its financial statements with ASIC, it can either: (a) rely on ASIC Class Orders [CO 03/823] or [CO 06/68] and lodge a Form 405 (in which case it must include an auditor's report with this form); or (b) lodge Forms FS70 Australian financial services licensee profit and loss statement and balance sheet and FS71 Australian financial services licensee audit report.

<sup>83</sup> In the case of the ASX market, see ASX Operating Rule 6403.

### 5.4 Foreign applicants without an AFSL

An applicant that is incorporated outside Australia and that does not hold an AFSL should note the “minimum presence” requirements in ASIC Market Integrity Rule 2.6.1.<sup>84</sup>

This Rule requires a foreign market participant that does not hold an AFSL, before it enters into any transactions on the ASX market, to execute and provide to ASIC a deed for the benefit of and enforceable by ASIC and the other persons referred to in section 659B(1) of the Corporations Act, ~~which provides that:~~

### 6. No right of appeal

A decision by ASX to deny the admission of an applicant as a participant in the ASX market or to impose conditions on its admission is final. The applicant is not entitled to appeal that decision to the ASX Appeals Tribunal.<sup>85</sup>

### 7. Ongoing compliance with admission requirements

Once admitted, a participant in the ASX market has an ongoing obligation to continue to satisfy the applicable admission requirements.<sup>86</sup>

- ~~(a) the deed is irrevocable except with the prior written consent of ASIC;~~
- ~~(b) the participant submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the Australian Securities and Investments Commission Act 2001 (Cth)<sup>87</sup>) and, in relation to proceedings relating to a financial services law, by any person referred to in section 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise;~~
- ~~(c) the participant covenants to comply with any order of an Australian court in respect of any matter relating to the activities or conduct of the participant in relation to the ASX market or in relation to financial products traded on that market, including but not limited to any matter relating to the participant’s obligations under the ASIC Act, Corporations Act and Corporations (Fees) Act 2001 (Cth);~~
- ~~(d) if the participant is not registered as a foreign company carrying on business in Australia under Part 5B.2 Division 2 of the Corporations Act:
  - ~~(i) the participant must have at all times an agent who is a natural person or a company resident in Australia and authorised to accept, on behalf of the participant, service of process and notices; and~~
  - ~~(ii) the participant must notify ASIC of any change to the agent or the name and address<sup>88</sup> of the agent; and~~
  - ~~(iii) service of process on the participant in relation to legal proceedings conducted by ASIC (including under section 50 of the ASIC Act), and in relation to proceedings relating to a financial services law, by any person referred to in section 659B(1) of the Corporations Act and whether brought in the name of ASIC or the Crown or otherwise, can be effected by service on the agent;~~~~
- ~~(e) the deed applies notwithstanding that the participant may have ceased to be an ASX market participant; and~~
- ~~(f) such additional terms notified by ASIC to the participant.~~

<sup>84</sup> A breach of this Rule carries a potential penalty of up to \$1,000,000.

<sup>85</sup> Rule 3.1.1 of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure sets out the only rights of appeal in relation to decisions under the ASX Operating Rules.

<sup>86</sup> ASX Operating Rule 1400.

<sup>87</sup> Referred to in this Guidance Note as the ASIC Act.

<sup>88</sup> If the agent is a company, address means the address of the registered office of the company.

### ~~6.1. Ongoing compliance with admission requirements~~

~~Once admitted, a participant in the ASX market has an ongoing obligation to continue to satisfy the applicable admission requirements.<sup>89</sup>~~

In this regard, there are ~~3~~<sup>three</sup> admission requirements of particular significance that continue to apply to an ASX market participant after its admission:

- the requirement to hold an AFSL that authorises the participant to carry on its business as a participant, unless such a licence is not required by the Corporations Act;<sup>90</sup>
- the requirement to have “adequate resources and processes” to comply with its obligations as a participant under the ASX Operating Rules;<sup>91</sup> and
- the requirement to meet the technical and performance requirements of the ASX Operating Rules, including having:
  - adequate arrangements for connectivity to the ASX trading platform and to its clearing participant; and
  - adequate resources and processes to prevent any action or inaction which might interfere with the operational efficiency or proper functioning of the ASX trading platform or which might result in a market for a product not being both fair and orderly.<sup>92</sup>

In ASX’s view, the ongoing obligation for a participant to have “adequate resources and processes” effectively imposes a continuing obligation on a participant to have up-to-date documented processes to comply with its primary obligations under the ASX Operating Rules, as outlined under ~~“3.5 Resources and processes”~~<sup>“3.5 Resources and processes”</sup> above.

Participants should note the guidance given by ASIC about compliance measures generally:<sup>93</sup>

“Regularly reviewing your measures will help to ensure they remain effective. In some cases, it may be sensible for you to consider external review. Where compliance issues have arisen (such as major breaches or repeated compliance failures), external compliance review is particularly appropriate.

You need to review your measures when there are changes to your obligations, your business or the environment in which you operate. We expect that you will have a process for identifying changes that may impact on the effectiveness of your measures.”

Participants should also note that the requirement for an applicant for admission to provide a written certification that it has the necessary resources and processes in place to comply with its obligations under the ASX Operating Rules<sup>94</sup> only operates on or before admission and therefore only applies to new applicants. Once admitted, participants will be expected to continue to have the resources and processes in place to comply with their obligations under the ASX Operating Rules but they will not be required to provide any form of certification to ASX in that regard.

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<sup>89</sup> ~~ASX Operating Rule 1400.~~

<sup>90</sup> ASX Operating Rule 1000(b).

<sup>91</sup> ASX Operating Rule 1000(d).

<sup>92</sup> ASX Operating Rules 1000(e) and (f) and [where applicable](#), the related Procedure.

<sup>93</sup> ASIC Regulatory Guide 104 [Licensing/licensing: Meeting the general obligations](#), at paragraphs 31 ([RG 104.31](#)) and 32- ([RG 104.32](#)).

<sup>94</sup> ASX Operating Rules Procedure 1000(d).

### Schedule 1

As noted above, ASX will ask an applicant to provide ASX with documentation that evidences how the applicant meets some or all of the processes set out below. An applicant seeking admission to the ASX market should have regard to the “key processes” detailed below when considering how it can demonstrate it has documentation in place to support its admission.

#### Key processes:

- its compliance framework, that is, its general processes for identifying and monitoring compliance with its key legal and regulatory obligations and for identifying, remediating and reporting on any compliance breaches;<sup>95</sup>
- its risk management framework;<sup>96</sup> that is, its general processes for identifying and managing or mitigating the risks it faces, including but not limited to market risk, liquidity risk, counterparty risk, operational risk and cyber risk;<sup>97</sup>
- its processes for maintaining adequate clearing arrangements (including, if the applicant intends to have its transactions cleared through more than one clearer, its processes for ensuring transactions are not misdirected);<sup>98</sup>
- its processes to prevent any action or inaction which might interfere with the operational efficiency or proper functioning of the ASX trading platform or which might result in a market for a product not being both fair and orderly;<sup>99</sup>
- its processes for maintaining adequate authorised signatories;<sup>100</sup>
- its processes for ensuring that each cash market transaction to which it is a party is settled on the second business day following the date the transaction was created on or reported to the market;<sup>101</sup>
- if the applicant intends to transact for clients, its processes for ensuring that it has the requisite client agreements, and gives to its clients any other documents, required under the ASX Operating Rules;<sup>102</sup>
- if the applicant intends to accept orders for option market contracts from eligible-broker dealers or an eligible institution in the United States, its processes to comply with the relevant obligations in the ASX Operating Rules;<sup>103</sup>

<sup>95</sup> Applicants should have regard to the guidance given by ASIC about compliance measures in section C and the Appendix 1 (Table 2) of ASIC Regulatory Guide 104 *AFS licensing: Meeting the general obligations*. This includes ASIC's guidance about the recording and reporting of compliance breaches and regularly reviewing compliance measures to take account of past breaches.

<sup>96</sup> Applicants should have regard to the guidance given by ASIC about risk management systems in section D and the Appendix 1 (Table 3) of ASIC Regulatory Guide 104 *AFS licensing: Meeting the general obligations*.

<sup>97</sup> Applicants should have regard to the good practice guidance published by ASIC about cyber resilience available online at <http://www.asic.gov.au/regulatory-resources/digital-transformation/cyber-resilience/>. Applicants should also consider the latest global standards on cyber resilience, such as the National Institute of Standards and Technology Cybersecurity Framework (refer <https://www.nist.gov/topics/cybersecurity>), and any local guidance provided by Australian regulatory bodies and government departments, such as the Australian Signals Directorate (refer <https://www.asd.gov.au/>).

<sup>98</sup> See “4.2 Clearing arrangements” on page 13.” of this Guidance Note.

<sup>99</sup> ASX Operating Rules 1000(e) and (f) and the related Procedure.

<sup>100</sup> ASX Operating Rules 1000(e) and (f) and related Procedure; and ASX Operating Rule 6510. For the purposes of ASX Operating Rules Procedures 1000(e) and (f), ASX expects nominated persons to be authorised signatories appointed under ASX Operating Rule 6510.

<sup>101</sup> ASX Operating Rule 3600.

<sup>102</sup> ASX Operating Rules 3800 – 3805 and the related Procedures. See also ASX Operating Rules Guidance Note 7 *Client Agreements*.

<sup>103</sup> ASX Operating Rules 2240 and 2241 and the related Procedures.

- its processes for meeting the minimum technical requirements prescribed by ASX for access to the ASX market including connectivity, testing and accreditation requirements;<sup>104</sup> and
- if the applicant intends to offshore or outsource any of its trading activities, its processes for meeting the expectations outlined in ASX Operating Rules Guidance Note 9 *Offshoring and Outsourcing*.

### **7.1. No right of appeal**

~~A decision by ASX to deny the admission of an applicant as a participant in the ASX market or to impose conditions on its admission is final. The applicant is not entitled to appeal that decision to the ASX Appeals Tribunal.<sup>105</sup>~~

<sup>104</sup> ASX's technical requirements will depend on the business model and connectivity options selected by the applicant. Further information about the technical requirements for the ASX market can be obtained from ASX Participant Transitions.

<sup>105</sup> Rule 3.1.1 of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure sets out the only rights of appeal in relation to decisions under the ASX Operating Rules.