

Guidance Note

Released:

07 June 2019

Version: 3

Key concepts:

Announcements regarding breaches of Operating Rules by Trading Participants, Clearing Entities and Derivatives Staff Members

Related information:

FEX Operating Rules

1.4.4, 7.5.1, 7.5.2, 8.5.2 and 8.6.13

FEX Procedures

7.5.1

Recommended Audience:

Compliance Managers

Operations Managers

Derivatives Staff Members

Previous Issues:

Nil

GN 21 – Communications Surrounding Compliance Matters

Introduction

The Operating Rules allow FGL to make announcements to the public regarding Trading Participants, Clearing Entities and Derivatives Staff Members where they have breached the Operating Rules. This Guidance Note provides an explanation of when and how such breaches will be made public.

Guidance

Public Announcements by FGL

Where disciplinary action has been taken against a Trading Participant, Clearing Entity or Derivatives Staff Member for a breach of the Operating Rules, the Compliance and Conduct Committee (CCC) will direct the Exchange to make an announcement to the public. Any such announcement will include a statement that disciplinary action has been taken, the sanction imposed, the name of the Trading Participant, Clearing Entity or Derivatives Staff Member and any other information the CCC consider relevant.

In certain circumstances, the CCC may direct the Exchange to withhold the name of the Trading Participant, Clearing Entity or Derivatives Staff Member. For example, the Exchange may take the view that there is no regulatory benefit in specifically naming the Trading Participant, Clearing Entity or Derivatives Staff Member involved in the breach but it nevertheless wishes to publicise the nature of the breach to ensure other Trading Participants, Clearing Entities and Derivatives Staff Members are aware of the fact that the CCC considers the matter to be of a sufficient level of seriousness to attract the type of disciplinary action disclosed in the announcement. On the basis that all disciplinary action serves as a precedence factor, it is important that an announcement is made.

Additional information that the CCC consider relevant can also be disclosed in the announcement, this may include:

- How the matter was identified by the Exchange for investigation e.g. from Client complaint, from complaint by a Trading Participant or Clearing Entity, from the Exchanges own surveillance activities;
- Whether a Client was involved;
- Whether any Client suffered loss: and
- Whether the Trading Participant or Clearing Entity suffered loss or generated profit at the detriment of another person.

The Exchange may make the announcement when the CCC determines that the Trading Participant, Clearing Entity or Derivatives Staff Member breached the Operating Rules. The announcement may, in circumstances other than those described below, be made prior to the expiry of the time for giving notice of an appeal or, if a notice of appeal has been given, before any appeal is determined (finally resolved).

No announcement will be made where the disciplinary action involves the imposition of a fine (excluding an Administrative Fine), a direction as to publication, costs, payment of commissions, termination of a person's role, non-employment or termination of a Trading Participant or Clearing Entity until the disciplinary proceedings are finally resolved.

The Exchange may make more than one announcement in relation to the same disciplinary proceedings. For example, where the Exchange makes an announcement at the conclusion of the CCC's disciplinary proceedings. If the proceedings are then appealed, it may make a further announcement when the disciplinary proceedings are finally resolved. The Exchange may also make supplementary announcements concerning disciplinary action taken against a Trading Participant, Clearing Entity or Derivatives Staff Member where it considers it appropriate.

Other announcements by FGL

Where the CCC determines during disciplinary proceedings that a Trading Participant, Clearing Entity or Derivatives Staff Member has breached the Operating Rules, the CCC may direct the Exchange to make public the following information:

- The disciplining of the Trading Participant, Clearing Entity or Derivatives Staff Member;
- The powers being exercised by the CCC against the Trading Participant, Clearing Entity or Derivatives Staff Member (including termination or suspension as a Trading Participant or Clearing Entity);
- The name of the Trading Participant, Clearing Entity or Derivatives Staff Member (unless the CCC has determined otherwise).

The CCC will direct the Exchange to make public this information where it considers appropriate in the circumstances. This is at the complete discretion of the CCC. When considering whether to disclose this information, the CCC will consider the interests of FGL, the Exchange Market, Trading Participants or Clearing Entities and the public.

Form of announcements

FGL will determine the appropriate form for this information to be disclosed. FGL will publish this information via Exchange notices that will be sent to all Trading Participants and Clearing Entities and will be available with all FGL notices on the FGL website.

Trading Participants, Clearing Entities and Derivatives Staff Members should be aware that information published on the FGL website may then be republished in other locations by other parties unrelated to the Exchange, for example, in newspapers.

Confidentiality and privacy

Information obtained by the Exchange or the CCC during disciplinary proceedings or by the Appeals Tribunal during appeals is confidential.

However, this information can be disclosed for various purposes, including:

- To conduct an investigation or disciplinary proceedings in respect of a breach or alleged or potential breach of the Operating Rules;
- To any securities commission (including ASIC), derivatives exchange or stock exchange (including ASX24 and ASX) in Australia or in an Offshore Jurisdiction where required under information sharing arrangements between FGL and such entities; or
- Where the CCC, Appeals Tribunal or the Board determines that disclosure is in the interests of FGL, the Exchange Market, Trading Participants, Clearing Entities or the public.

As noted above, the announcements may include the name of the Trading Participant, Clearing Entity or Derivatives Staff Member. During the application process, the Trading Participant or Clearing Entity acknowledged that their name could be disclosed in announcements regarding breaches of Operating Rules. Under the Operating Rules, the Trading Participant or Clearing Entity is required to obtain acknowledgements to the same effect from its Derivatives Staff Members.

Liability

FGL has no liability for any loss caused by the publication of an announcement, including in relation to the disclosure of any confidential information.

This document provides information only and may be subject to change without notice. No responsibility is accepted for any inaccuracies contained in the matters published. FEX Global Pty Limited (ACN 124 127 224) (FGL) and its related bodies corporate (FEX Group) make no representation or warranty with respect to the ongoing accuracy, reliability or completeness of this information. To the maximum extent permitted by law, FEX Group and its employees, officers and contractors shall not be held liable for any loss or damage arising in any way, including by way of negligence, in connection with this information.