

Guidance Note

Released:

07 June 2019
Version: 3

Key concepts

Waivers

Related Information

FGL Operating Rules

1.7, 2.3 and 7.2

Recommended Audience

Compliance Managers

Legal Counsels

Chief Executives and
Managing Directors

Previous Issues:

Nil

GN 48 - Waivers

Introduction

The Exchange, via its dispensation powers, may relieve any person or class of person from the obligation to comply with a provision of the FGL Operating Rules, either generally or in a particular case or category, and either unconditionally or subject to such conditions as the Exchange sees fit, except for Operating Rule 2.3.9 which also requires consent from the Australian Securities & Investments Commission (ASIC). If any conditions on a waiver are imposed, all of the conditions must be complied with for the waiver to be effective.

The Exchange may withdraw a waiver at any time.

Guidance

Any request by a Trading Participant, Clearing Entity or group of parties for a waiver must be in writing. In preparing a waiver application, the onus is on the applicant to establish that there is sufficient commercial and policy justification to waive an Operating Rule and that a waiver will not have adverse policy implications. In order for a matter or proposal to be considered by FGL, complete materials in support of the matter or proposal must be provided to FGL.

Entities must ensure that all waiver applications include each of the following matters:

- 1 a comprehensive explanation of the circumstance or event triggering the application for a waiver, including comprehensive submissions on the rationale and any timing implications of the waiver;
- 2 identification of particular rule(s) from which relief is being sought;
- 3 identification of previous decisions (if any) that have been made by FGL in relation to the rule(s) from which a waiver is being sought by the entity, together with an explanation as to why those particular decisions are considered relevant to the entity (the FGL waivers register is available at: www.fex.com.au); and
- 4 any other information that is considered necessary for FGL to obtain a full understanding of the reasons for the application for a waiver from compliance with the identified rule(s).

A waiver application must be lodged with the FGL Chief Compliance Officer who will liaise with the applicant throughout the development of an internal management paper presenting the waiver application, which will be submitted to the FGL Board, and ASIC where appropriate, for approval.

Once a decision has been made by the FGL Board, with ASIC consent where appropriate, the details of the decision will be communicated to the applicant including any conditions attached to the decision and a description of the underlying basis and policy surrounding the decision. All waivers granted are published in a register on the FGL website within a fortnight of being communicated to the applicant. Unless this would breach applicant confidentiality provisions, all details and underlying policy surrounding a decision will be published.

If publication of the decision is cause for concern then the applicant may request that the decision be confidential and provide reasons as to why the application should be treated differently in this regard from other applications and request the time for which confidentiality may be required.

FGL reports all waivers granted to ASIC.

Where a waiver is granted that applies to all Trading Participants or Clearing Entities and is expected to be permanent then that waiver will be deemed to be an amendment to the FGL Operating Rules and an Operating Rule Amendment will be submitted for non-disallowance by the Minister through the normal rule amendment processes.

FGL's objective is to provide a decision in relation to a waiver application in the timeliest manner possible. If further information is required by FGL during the decision making process, or the matter raises new policy considerations or is complex, the decision may take longer to make. In these circumstances, any undertakings or representations as to the timeframe for decision-making may be altered to provide FGL with the opportunity to review such additional material, or until the matter has been duly considered by the FGL Board.

An appeal process is available if a decision is made not to grant a waiver to an applicant.

FGL has issued this Guidance Note to give general assistance to Trading Participants and Clearing Entities in their compliance with the Operating Rules. FGL is not bound by this Guidance Note in any particular case. This Guidance Note is not legal advice and Trading Participants and Clearing Entities should seek their own professional advice on their obligations under the Operating Rules in their particular circumstances. FGL may replace this Guidance Note at any time. Current Guidance Notes are available at www.fex.com.au/Guidance or by contacting FGL on enquiries@fex.com.au or on +61 2 8024 5200

Defined terms in this Guidance Note have the meaning given in the Operating Rules.