



SFE Bulletin No: 51/04
From: Sydney Futures Exchange ABN 83 000 943 377
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PROPOSAL FOR ASIC RELIEF FROM PDS REQUIREMENTS FOR EXECUTING BROKERS

Attached is a letter from the Australian Securities & Investments Commission (ASIC) seeking feedback from industry participants on the proposal outlined therein.

At ASIC's request, SFE is directing this letter to all SFE Full Participants, to ensure their awareness of the proposal and to provide them with the fullest opportunity to respond.

Please provide all submissions by 31 October 2004 **direct to ASIC** as indicated in the attached letter.

Should you have any queries please contact Mr Steven Cominos at ASIC on (02) 9911 2063.

A handwritten signature in black ink, appearing to read 'Michelle Wagner', with a long, sweeping underline.

MICHELLE WAGNER
MANAGER, COMPLIANCE & SURVEILLANCE



ASIC

Australian Securities & Investments Commission

Level 13, CGU Tower
485 LaTrobe Street
GPO Box 9827, Melbourne VIC 3001,
DX 423 Melbourne

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444

13 September 2004

Dear Sir/Madam,

PROPOSAL FOR ASIC RELIEF FROM PDS REQUIREMENTS FOR EXECUTING BROKERS

Background

Industry participants, particularly derivatives dealers, have raised an issue with the Australian Securities and Investments Commission ("ASIC") relating to product disclosure statements ("PDS") where there is an introducing and executing broker involved in one transaction. The issue concerns the disclosure obligations on introducing and executing brokers arising under Chapter 7 of the *Corporations Act 2001* ("Act") where both types of brokers are involved in arranging for a client to enter into or acquire the same derivative on a financial market.

The scenario we are examining is an introducing broker, acting on behalf of its client, instructing an executing broker to purchase a derivative (as defined in section 761D of the Act) on a financial market. In this case, subsection 761E(6) of the Act deems both the introducing broker and the executing broker to be issuers of the derivative.

There is a divergence of views that have been put to ASIC concerning such transactions. One group has suggested that the disclosure obligations in relation to a PDS should fall on the executing broker, whilst others have argued that those disclosure obligations should fall on the introducing broker.

What are the Disclosure Obligations?

As a result of subsection 761E(6), the disclosure obligations under the Act for introducing and executing brokers in the scenario outlined above are as follows:

Introducing Brokers

Introducing brokers will be required to:

- Prepare a PDS (under section 1013A of the Act); and
- Give a PDS to a retail client in a recommendation situation (s1012A(3)) or an issue situation (s1012B(3)).

Executing Brokers

Executing brokers will be required to:

- Prepare a PDS (under section 1013A of the Act); and
- Give a PDS to a retail client in an issue situation (s1012B(3)) where the executing broker issues the derivative to the retail client rather than issuing the derivative to the introducing broker¹.

The practical effect of the application of the provisions discussed above is that the obligation of preparing and giving a PDS falls on two different parties (the introducing broker and the executing broker) in respect of the same derivative contract entered into or acquired through the same transaction.

Proposed Solution

ASIC recognises the problems of requiring each 'issuer' to prepare a PDS that may result in the retail client receiving two PDS's in respect of the same financial product arising from the same transaction. ASIC also recognises that it may be particularly difficult for introducing brokers and executing brokers to prepare a joint PDS.

ASIC is proposing to issue an exemption to executing brokers from the requirement to prepare a PDS and give a PDS to a retail client so that these obligations fall solely on the introducing broker. This proposal is based on the view that the introducing broker, who has the primary relationship with the retail client, is in the best position to both give and prepare the PDS for that person.

Feedback Sought

ASIC is seeking feedback from industry participants on the proposal to exempt executing brokers from the obligation of preparing a PDS and giving the PDS to a retail client, which effectively places those obligations solely on the introducing broker.

Written submission should be sent to:

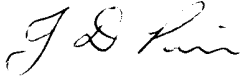
Steven Cominos
Lawyer
Australian Securities and Investments Commission
Level 18
1 Martin Place
SYDNEY NSW 2000

¹ Where a retail client is required to directly meet margin calls made by the executing broker on a futures contract, this is likely to give rise to an obligation for the executing broker to give a PDS to the retail client as this suggests that the derivative has been issued by the executing broker to retail client. Where the executing broker is only in a contractual relationship with the introducing broker, it is unlikely that there is an obligation to give a PDS to the client of the introducing broker.

Alternatively, submission can be sent by email to steven.cominos@asic.gov.au.

If you or your members have any questions in relation to any of the matters mentioned above, please contact Steven Cominos of the Financial Services Regulation Directorate on (02) 9911 2063.

Yours Faithfully,

A handwritten signature in cursive script, appearing to read 'J. Price'.

John Price
Director - Legal and Technical Operations
Financial Services Regulation