

Stockbroking and Share Trading Checklist



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LexisNexis Regulatory Compliance helps you forge a clear path to compliance.

With LexisNexis content know-how at the core, our compliance registers, alerts, and information-driven solutions make compliance uncomplicated for GRC professionals across the globe.

Contents from this checklist are taken from the Stockbroking and Share Trading compliance register.

The LexisNexis Regulatory Compliance Stockbroking and Share Trading Compliance Register

The Stockbroking and Share Trading compliance register provides information and guidance to organisations on how to comply with their legal responsibilities when:

- » Providing stockbroking services to clients
- » Participating in licensed financial markets

The register covers compliance requirements related to Conduct Obligations Relating to the Issue, Sale and Purchase of Financial Products, Market Misconduct, Complying with the Market Integrity Rules for Securities Markets, ASX Trading, Clearing and Settlement and more.

About the Expert

Douglas Gratton

Barrister at List G Barristers



Douglas has appeared at first instance and on appeal in the Supreme Courts of Victoria, New South Wales, Queensland and South Australia as well as the Federal Court of Australia.

Douglas was a director of Clarendon Lawyers before signing the Bar Roll in 2008. From 2001 to 2007, he was the Company Secretary of Telstra Corporation Limited. He was a director of the Telstra Superannuation Scheme for 7 years and was the senior Telstra executive with responsibility for liaising with law enforcement and national security agencies and on a number of occasions represented Telstra before Senate Estimates and other Parliamentary committees.

Before joining Telstra, Douglas was a partner in the Melbourne office of Mallesons Stephen Jaques. He specialised in corporate finance and securities law, mergers and acquisitions and joint ventures and also advised on telecommunication regulatory matters.

In 2006, he completed the Advanced Management Program at Harvard Business School. He was the 2011 National President of Chartered Secretaries Australia and previously chaired their Legislation Review Committee.

STOCKBROKING AND SHARE TRADING

This checklist has been designed to help you identify your compliance requirements related to stockbroking and share trading in Australia

Operating as a Financial Service Provider

Requirements	Needs work	Don't know	Meets requirements
Does the person who carries on a stockbroking business in Australia ensure that they are licensed, unless an exemption applies, and that any person acting on their behalf does so in accordance with applicable requirements?			
Does the stockbroker have policies and procedures in place to ensure that it complies with the general operational requirements imposed on financial services licensees?			
Does the stockbroker have procedures in place to ensure that it complies with financial requirements established by the Australian Securities and Investments Commission (ASIC)?			
Does the stockbroker have an anti-money laundering and counter-terrorism financing program in place to identify, mitigate and manage the risk that its services will be used for money laundering or terrorism financing?			
Does the stockbroker ensure that it meets its obligations in relation to the protection of consumers in the provision of stockbroking and other financial services, including not engaging in conduct that is misleading, deceptive or unconscionable?			
Does the stockbroker have policies and procedures in place to ensure that it complies with the disclosure obligations in relation to financial products and the provision of financial services?			
Does the stockbroker ensure that, when providing financial product advice to a retail client, it is acting in the best interests of the client and complying with the requirements relating to certain forms of banned remuneration?			
Does the stockbroker ensure that a client's money and other property are held on trust where required and only used for permitted purposes?			
Does the stockbroker ensure that the stockbroker complies with client money reporting rules?			
Does the stockbroker ensure that it creates and maintains the required records and statements?			
Does the stockbroker ensure that it properly appoints an auditor to report on the position of the stockbroker?			
Does the stockbroker ensure that it complies with the Australian Privacy Principles in relation to client records where applicable?			
If the stockbroker is a member of the Stockbrokers and Financial Advisers Association (SAFAA), does it comply with the SAFAA Code of Ethical Conduct?			

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Conduct Obligations Relating to the Issue, Sale and Purchase of Financial Products

Requirements	Needs work	Don't know	Meets requirements
Does the stockbroker ensure that it gives priority to a client's order to buy or sell financial products that are able to be traded on a licensed market?			
Does the stockbroker, as an Australian financial services licensee, comply with prohibitions and requirements in relation to dealings involving employees and non-licensees, including disclosing if it is acting on its own behalf in a transaction with a non-licensee in relation to a financial product that is able to be traded on a licensed market?			
Does the stockbroker transmit all instructions to deal in a class of financial products at or near the prevailing market price, ensuring that the instructions are transmitted in the sequence in which they are received and that client instructions are kept confidential?			
Does the stockbroker ensure that it does not make an unsolicited offer to purchase financial products off-market unless the offer complies with certain conditions?			
Does the stockbroker ensure that it does not engage in the naked short selling of securities, unless an exception applies, and that it complies with the short sale transaction and short position reporting requirements?			

Market Misconduct

Requirements	Needs work	Don't know	Meets requirements
Does the stockbroker have policies and procedures in place to ensure that it does not engage in market manipulation, false trading or market rigging in relation to a financial market operated in Australia?			
Does the stockbroker ensure it does not participate in the dissemination of any statement or information to the effect that the price for trading in a financial product on a financial market operated in Australia will (or is likely to) rise, fall or be maintained because of an illegal transaction?			
Does the stockbroker have policies and procedures in place to ensure that it does not engage in misleading or dishonest conduct in relation to financial products and markets?			
Does the stockbroker have policies and procedures in place to ensure that it does not engage in insider trading?			

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Complying with the Market Integrity Rules for Securities Markets

Requirements	Needs work	Don't know	Meets requirements
Does the stockbroker ensure that when participating in securities markets it has appropriate management structures and supervisory procedures in place and that all advice is provided, and trading is carried out, by appropriately qualified representatives?			
Does the stockbroker ensure that when participating in securities markets it maintains appropriate professional indemnity insurance and that it notifies ASIC and the relevant market operator of the commencement of certain legal proceedings?			
Does the stockbroker ensure that when participating in securities markets it enters into an agreement with a retail client before entering into particular types of transactions on behalf of the client and, where necessary, does it ensure that a wholesale client has executed and lodged a wholesale client agreement with a clearing facility?			
Does the stockbroker ensure that when participating in securities markets it has policies and procedures in place to ensure that it takes reasonable steps to obtain the best outcome for its client when it is handling and executing an order for the client, and does it disclose its best execution arrangements to clients?			
Before accepting an order from a client for the first time, does the stockbroker provide the client with the required disclosure material and, before accepting subsequent orders, provide updated disclosure material if the information in the original disclosure material has changed?			
Does the stockbroker ensure that when participating in securities markets it meets requirements in relation to accepting and executing client instructions, providing confirmation of transactions to clients, and avoid the provision of prohibited advice to clients?			
Does the stockbroker ensure that when participating in securities markets it establishes one or more clients' trust accounts and/or clients' segregated accounts for the receipt of client money by the stockbroker in connection with dealings in particular financial products, and comply with related requirements, including the requirement to perform reconciliations of amounts held?			
Does the stockbroker ensure that when participating in securities markets it complies with general requirements in relation to its trading-related activities, including by ensuring that it deals fairly and in due turn with orders it receives, and that it has appropriate trading infrastructure in place?			

STOCKBROKING AND SHARE TRADING

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If the stockbroker is a participant of securities markets and operates a crossing system, does it ensure that it complies with all relevant requirements for doing so, including requirements to submit reports and notifications to ASIC and to ensure fair treatment of users of the system?

If the stockbroker is a trading participant of securities markets and uses its systems for automated order processing (AOP), does it ensure that it has obtained approval from ASIC to do so, and that it complies with ongoing requirements in relation to the operation of the AOP system?

Does the stockbroker ensure that when participating in securities markets it does not enter into a transaction unless the order is pre-trade transparent (or an exception applies) and that it reports post-trade information to a market operator when required?

Does the stockbroker ensure that when participating in securities markets it does not engage in manipulative trading or conduct that is likely to result in a market being unfair or disorderly, and that it does not match an order or execute a transaction in connection with an order if the relevant financial product is in a trading suspension on all markets on which the product is quoted?

Does the stockbroker ensure that when participating in securities markets it notifies ASIC of suspicious activity as soon as practicable after the stockbroker has determined that the suspicion is reportable?

Does the stockbroker ensure that when participating in securities markets it complies with applicable requirements if it deals in cash market products, including ensuring that it does not deal in certain cash market products for which official quotation will be sought, and that it does not deal in cash market products that have been suspended from quotation or trading on a market, unless an exception applies?

Does the stockbroker ensure that when participating in securities markets it complies with relevant obligations when it acts on behalf of a client in a takeover market bid or a takeover off-market bid, including by announcing a takeover market bid to the market where cash market products in the bid class have been granted official quotation?

Does the stockbroker ensure that when participating in securities markets it provides regulatory data to a market operator in an order transmitted to an order book of the market operator and in a trade report made to the market operator?

Does the stockbroker ensure that when participating in securities markets it maintains accurate records with regard to particular matters relating to its business, including records of all money received or paid, dealings with clients, and dealings on the stockbroker's own account?

Does the stockbroker ensure that when participating in securities markets it complies with the securities capital rules established by ASIC, including by complying with risk-based capital requirements and reporting obligations?

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Complying with the Market Integrity Rules for Futures Markets

Requirements	Needs work	Don't know	Meets requirements
Does the stockbroker ensure that when participating in relevant futures markets it complies with the general supervision and risk management requirements of the market integrity rules, including by ensuring that it has appropriate supervisory policies and procedures in place?			
Does the stockbroker ensure that when participating in relevant futures markets it has in force, before the commencement of trading for a client, a duly signed agreement with the client that contains the required minimum terms, unless an exception applies?			
Does the stockbroker who is a market participant in relevant futures markets maintain order records and accounting records and does it make a recording of all conversations with clients and other parties relating to client instructions?			
Does the stockbroker who is a participant of relevant futures markets establish one or more clients' segregated accounts for the receipt of client money by the stockbroker, and does it comply with related requirements, including the requirement to top up money in the account in particular circumstances?			
Does the stockbroker who is a participant in relevant futures markets perform reconciliations in relation to client money held in clients' segregated accounts and does it provide certain information relating to the reconciliations to the ASIC?			
Does the stockbroker who is a participant in relevant futures markets comply with the trading principles under the market integrity rules for futures markets, including requirements in relation to the transmission, execution and allocation of orders?			
Does the stockbroker who is a participant in relevant futures markets have documented policies and procedures in place to ensure that it does not engage in unfair or manipulative trading conduct?			
Does the stockbroker who is a participant in relevant futures markets comply with the trading principles in relation to strategy trades, pre-negotiated business orders, block trades and exchange for physical transactions?			
If the stockbroker is a participant in the ASX 24 market and operates a crossing system, does it ensure that it complies with all relevant requirements for doing so, including requirements to submit reports and notifications to ASIC and to ensure fair treatment of users of the system?			

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If the stockbroker is a trading participant in relevant futures markets, does it comply with its obligations in relation to margins and the right of closeout, including requirements to call initial margin and variation margin under certain circumstances?

If the stockbroker is a participant in relevant futures markets, does it comply with the futures capital rules established by ASIC, including by complying with the net tangible assets requirement and reporting obligations?

ASX Trading, Clearing and Settlement

Requirements	Needs work	Don't know	Meets requirements
If the stockbroker acts as a trading participant on the ASX Trade market, does it comply with the requirements of the ASX Operating Rules and associated procedures?			
If the stockbroker acts as a trading participant on the ASX Trade24 market, does it comply with the requirements of the ASX 24 Operating Rules and associated procedures?			
If the stockbroker acts as a general participant or direct participant on ASX Clear, does it comply with the requirements of the ASX Clear Operating Rules and associated procedures?			
If the stockbroker acts as a clearing participant on ASX Clear (Futures), does it comply with the requirements of the ASX Clear (Futures) Operating Rules and associated procedures?			
If the stockbroker acts as a settlement participant on ASX Settlement, does it comply with the requirements of the ASX Settlement Operating Rules and associated procedures?			
Participating in Other Major Licensed Markets in Australia			
If the stockbroker acts as a participant on the Chi-X market, does it comply with the requirements of the Chi-X Operating Rules and associated procedures?			
If the stockbroker acts as a participant on the SSX market, does it comply with the requirements of the SSX Business Rules and associated procedures?			
If the stockbroker acts as a participant on the NSX market, does it comply with the requirements of the NSX Business Rules?			
If the stockbroker acts as a participant on the FEX market, does it comply with the requirements of the FGL Operating Rules?			

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International Markets and Clients

Requirements	Needs work	Don't know	Meets requirements
Does the stockbroker that provides its clients with access to international financial exchanges comply with all applicable legal requirements for doing so and does it ensure that its arrangements for accessing such exchanges are appropriately factored into the broker's compliance program?			
Does the stockbroker have policies and procedures in place that are designed to ensure that it does not provide a sanctioned service, or engage in a sanctioned commercial activity or other prohibited commercial activity, in contravention of a United Nations Security Council sanctions regime or an Australian autonomous sanctions regime?			
Does the stockbroker have policies and procedures in place that are designed to ensure that it does not make an asset available to a designated person or entity, or use or deal with assets owned or controlled by designated persons or entities, in contravention of a United Nations Security Council sanctions regime or an Australian autonomous sanctions regime?			

Your Free Demonstration.

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