



# Incident & Breach Policy

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Symmetry Group Pty Ltd  
AFSL 426385

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Owner	Responsible Manager

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## Incidents and breaches

### 1. Purpose

Symmetry Group Pty Ltd (“Symmetry”) is committed to conducting its business in accordance with all applicable laws and regulations, and in a way that enhances its reputation in the market.

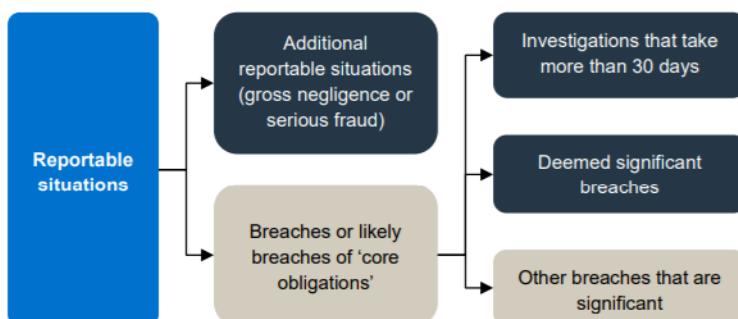
The timely identification, escalation and rectification of incidents enables efficient management of the actual or potential impact that they may have on the business. Incident and breach reporting is a key element of the Risk Management Framework. This policy details the requirements for the timely identification, escalation and reporting of incidents and breaches through appropriate channels.

### 2. Background

In accordance with s912D of the Corporations Act 2001, it is crucial that all actual and likely compliance breaches, no matter how minor they may be, are recorded in Symmetry’s internal Incidents and Breaches Register as soon as they are identified. This may include actual and likely breaches of the Corporations Act 2001, ASIC Regulatory Guides, AFS licence conditions, and internal compliance policies and procedures.

### 3. Key requirements

**Figure 1: Reportable situation, core obligations and objective determinations of ‘significance’**



#### 3.1 Reportable Situations

All reportable situations, as defined by s912DAA of the Corporations Act, must be reported to ASIC. There are four types of reportable situations:

- breaches or likely breaches of core obligations that are significant;
- investigations into breaches or likely breaches that are significant that have continued for more than 30 days;
- additional reportable situations (such as gross negligence or serious fraud); and
- reportable situations about other licensees.

Symmetry must report breaches committed by the licensee and/or by its representatives to ASIC within 30 days after it is identified that there are reasonable grounds to believe that a reportable situation has occurred.

### **3.2 Core obligations**

Symmetry must report to ASIC any significant breach or likely significant breach of core obligations, as defined in s912D(3) of the Corporations Act. The core obligations include:

- The s912A General Obligations, other than s912A(1)(c), which is the obligation to comply with financial services laws;
- The obligation under s912A(1)(c), which is to comply with financial services laws, as defined by s761A but only those parts of the definition set out in s912D(3)(b); and
- The General Obligations under s912B of the Corporations Act, which set out the licensee's obligation to have adequate compensation arrangements in place.

### **3.3 Significant breaches**

Symmetry must report any breach or likely breach of a core obligation if the breach is deemed significant, which can be done in one of two ways:

- Deemed significant breaches – a breach or likely breach of a core obligation is taken to be significant, this includes:
  - i. *Breaches that constitute the commission of an offence and the commission of the offence is punishable on conviction by a penalty that may include imprisonment for three months or more if it involves dishonesty; or 12 months or more in any other case;*
  - ii. *Breaches of a civil penalty provision;*
  - iii. *Breaches of s1041H of the Corporations Act or 12DA(1) of the ASIC Act, whereby there has been an instance of misleading or deceptive conduct; or*
  - iv. *Breaches that result or are likely to result in material loss or damage to clients.*

or
- Other breaches that may be significant – a breach or likely breach of a core obligation will need to be considered against the following factors to determine if the breach is significant:
  - i. *the number or frequency of similar previous Breaches;*
  - ii. *the impact of the Breach or likely Breach on the licensee's ability to provide the financial services covered by the licence;*
  - iii. *the extent to which the Breach or likely Breach indicates that the licensee's arrangements to ensure compliance with those obligations is inadequate; and*
  - iv. *any other matters prescribed by regulations made for the purposes of this paragraph.*

*Appendix A- contains factors that must be considered in determining whether the breach or likely breach is 'significant'. It may assist the Responsible Manager to arrive at a categorisation of a breach when documenting it in the Incident and Breach Register.*

### **3.4     *Investigations that are reportable***

Symmetry must report to ASIC on investigations into whether a significant breach, or likely significant breach has occurred, and that continue for over **30 days**. Symmetry will ensure investigations are commenced and concluded in a timely manner and without unreasonable delay.

Where an investigation commences and concludes within 30 days and there are no grounds to believe that a reportable situation has arisen, there is no requirement to report to ASIC.

Where an investigation commences and concludes within 30 days and there is reasonable grounds to believe that a reportable situation has arisen, Symmetry will report to ASIC within 30 calendar days.

### **3.5     *Reportable situations about other licensees***

Symmetry may be required to lodge a breach report in relation to a reportable situation about another licensee.

Symmetry will report to ASIC, within 30 days after first identifying, if it has reasonable grounds to believe that a reportable situation, other than a reportable situation involving an investigation, has arisen in relation to an individual who:

- Provides personal advice to retail clients about relevant financial products; and
- Is any of the following:
  - another AFS licensee or credit licensee;
  - an employee of another AFS or credit licensee, acting within the scope of the employee's employment;
  - a director of another AFS or credit licensee, acting within the scope of the director's duties as a director; or
  - a representative of another AFS or credit licensee, acting within the scope of the representative's authority given by the licensee.

Symmetry will provide a copy of the relevant breach report to the other licensee within 30 days of identifying that there are reasonable grounds to believe that a reportable situation has arisen.

## **4. Reporting**

Who is responsible for identifying and reporting incidents and breaches?

All Symmetry staff members and its representatives are responsible for identifying incidents and breaches. The Responsible manager, in addition, is responsible for:

- Recording the incidents and breaches on Symmetry's register
- Reporting significant breaches to ASIC; and
- Ensuring that the incident or breach is resolved in a timely manner.

Symmetry recognises that occasionally incidents may arise that need to be assessed and dealt with to ensure that the integrity of the overall compliance framework is not compromised.

It is important to recognise that not all incidents are breaches, some may just trigger a risk assessment or simply be a training item. Symmetry recognises that it is essential for all personnel to be aware of and report incidents to the Compliance Manager or Responsible Manager.

Some circumstances that may assist with identifying an incident:

- Instances that are outside of the norm,
- A process change in one area creates a deficiency in another, or
- Personnel behaviour creates an issue.

#### **4.1      *Breaches***

Symmetry will report to ASIC if there are reasonable grounds to believe that a reportable situation has arisen, within 30 days of identification of the reportable situation.

In order to ensure compliance with s912DAA(3) of the Corporations Act, Symmetry will **not** wait until after the following events to lodge a breach report:

- the reportable situation has been considered by the Board of Directors;
- the reportable situation has been considered by internal or external legal advisers;
- the breach has been rectified, or steps have been taken to rectify the breach of a core obligation or an additional reportable situation; or
- in the case of a likely breach, the breach has in fact occurred.

#### **4.2      *Investigations***

Symmetry will only report in relation to investigations that have continued for more than 30 days. The investigation becomes a reportable situation on day 31 of the investigation, and Symmetry will report to ASIC within 30 days of this date.

#### **4.3      *Reporting to ASIC***

Symmetry will report reportable situations to ASIC through the ASIC regulatory portal, completing all information required in the prescribed form, as follows:

- date of the reportable situation;
- nature of the reportable situation, including whether it is a significant breach or likely significant breach of a core obligation; an additional reportable situation; an investigation into whether a breach or likely breach of a

core obligation has occurred that has continued for over 30 days; or a reportable situation about another licensee;

- description of the reportable situation;
- why the breach is significant;
- how the reportable situation was identified;
- information about representatives, if applicable;
- whether and how the reportable situation has been rectified;
- whether and when affected clients have been compensated; and
- future compliance.

## 5. Internal Compliance Arrangements

### 5.1 *Incident and Breach Register*

Symmetry maintains an Incident and Breach Register to identify and record incidents and breaches that occur.

When documenting all compliance breaches, the following will be recorded:

- date of the reportable situation;
- date the reportable situation was identified;
- where applicable, date the investigation of the reportable situation commenced and concluded;
- date to be reported to ASIC if deemed to be reportable (i.e., 30 calendar days after the date of identification or conclusion of investigation);
- Nature of the reportable situation, including which of the following categories it fits:
  - Breach or likely breach of core obligation
  - Additional reportable situation (gross negligence or serious fraud)
  - Investigation that takes over 30 days
  - Deemed significant breaches
  - Other breach that are significant
- Description of the reportable situation, including the relevant section of the Corporations Act, financial services law or licence condition that is applicable.
- If applicable, why the breach is deemed significant.

- How the reportable situation was identified.
- How long the breach lasted, including whether it is continuing.
- If applicable, information about representatives.
- Whether and how the reportable situation has been rectified.
- If applicable, when affected clients have been compensated and details of any remediation programs that have been developed, including start and conclusion dates.
- Any steps that have or will be taken to ensure future compliance.

### 5.2 *Training*

All representatives of Symmetry are required to understand this Policy, specifically, the procedures to identify and report on incidents and breaches. Consequently, all representatives will have access to this Policy from the commencement of their employment. Training and information sessions on the reporting process will be scheduled and conducted at the discretion of the Responsible Manager.

### 5.3 *Record retention*

Symmetry's record keeping policy requires retention of records for as long as required by applicable laws, rules and regulations, which may change from time to time.

## **Appendix A Identifying a Significant Breach**

The new breach reporting guidelines identify three situations where a breach of core obligations is deemed to be significant:

1. The provision breached is an offence that may involve imprisonment for certain maximum periods,
2. The provision breached is a civil penalty provision (s1041H(1) of the Corporations Act or s12DA(1) of the ASIC Act)
3. The breach results (or is likely to result) in material loss or damage to clients or members.

Symmetry are still required to consider the ‘significant breach’ factors outlined in RG78.

ASIC has noted the following factors to assist licensees in determining if a breach (or likely breach) is significant, and therefore reportable:

<b>Significant Breach Factors</b>	<b>Likely Determination</b>
<b>The number or frequency of similar previous breaches</b>	The more frequent the number of similar breaches, the more likely the breach will be significant.
<b>The impact the breach (or likely breach) on the licensee's ability to provide the financial services covered by their AFSL</b>	Where the ability or capacity to provide financial services covered by the AFSL is reduced, then the breach (or likely breach) may be significant.
<b>The extent to which the breach (or likely breach) indicates that the licensee's arrangements to ensure compliance with their obligations are inadequate</b>	If the breach (or likely breach) indicates the compliance arrangements are inadequate only in an isolated instance, then the breach may not be significant.  Where the breach or likely breaches indicate the compliance arrangements have broader inadequacies, it is more likely to be significant.
<b>The actual or potential financial loss to the clients or to the licensee resulting from the breach (or likely breach)</b>	If the breach (or likely breach) causes actual or potential financial loss to clients, it is likely to be significant. However, if the breach is isolated or occasional, the amount of the loss is minimal and affects only a small number of clients, the breach is less likely to be significant.  If the breach or likely breach causes actual or potential loss to the licensee, then whether it is significant or not depends on the size of the loss as compared to the overall business.

<b>Any other matter prescribed by regulations</b>	Determinations will vary depending on regulation requirement.
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### **What are an AFS licensee's core obligations?**

<b>General obligations</b>  <b>Under s912A or 912B</b>	<ul style="list-style-type: none"> <li>• do all things necessary to ensure that the financial services covered by your licence are provided efficiently, honestly and fairly</li> <li>• have in place adequate arrangements for the management of conflicts of interest</li> <li>• comply with the conditions of your licence</li> <li>• take reasonable steps to ensure that your representatives comply with the financial services laws</li> <li>• if you are the operator of an Australian passport fund, or a person with responsibilities in relation to an Australian passport fund—comply with the law of each host economy for the fund</li> <li>• comply with the ASIC reference checking and information sharing protocol</li> <li>• have adequate resources to provide the financial services covered by your licence and to carry out supervisory arrangements (unless you are a body regulated by APRA—see RG 78.151–RG 78.152)</li> <li>• be competent to provide the financial services</li> <li>• have trained and competent representatives</li> <li>• have an IDR procedure for retail clients that complies with standards and requirements made or approved by ASIC in accordance with the regulations</li> <li>• have adequate risk management systems (unless you are a body regulated by APRA—see RG 78.151–RG 78.152)</li> <li>• have compensation arrangements in accordance with s912B</li> <li>• comply with any other obligations prescribed by Corporations Regulations, including the requirement to cooperate with AFCA</li> </ul>
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<b>Obligation under s912A(1)(c)</b>	comply with the ‘financial services laws’ as defined in s761A, but only those parts that are set out in s912D(3)(b)
<b>Obligations under the Commonwealth legislation administered by APRA</b>	<ul style="list-style-type: none"> <li>• Australian National Registry of Emissions Units Act 2011</li> <li>• Banking Act 1959</li> <li>• Carbon Credits (Carbon Farming Initiative Act) 2011</li> <li>• Clean Energy Act 2011 (no longer in force)</li> <li>• Financial Sector (Collection of Data) Act 2001</li> <li>• Financial Sector (Shareholdings) Act 1998</li> <li>• Financial Sector (Transfer of Business) Act 1999</li> <li>• Insurance Acquisitions and Takeovers Act 1991</li> <li>• Insurance Act 1973</li> <li>• Insurance Contracts Act 1984</li> <li>• Life Insurance Act 1995</li> <li>• Retirement Savings Accounts Act 1997</li> <li>• Superannuation Industry (Supervision) Act 1993</li> <li>• Superannuation (Resolution of Complaints) Act 1993;</li> </ul>
<b>FASEA Obligations</b>	<p><b>12 FASEA Standards:</b></p> <ol style="list-style-type: none"> <li>1. You must act in accordance with all applicable laws, including this Code, and not try to avoid or circumvent their intent.</li> <li>2. You must act with integrity and in the best interests of each of your clients.</li> <li>3. You must not advise, refer or act in any other manner where you have a conflict of interest or duty.</li> <li>4. You may act for a client only with the client’s free, prior and informed consent. If required in the case of an existing client, the consent should be obtained as soon as practicable after this Code commences.</li> </ol>

	<p>5. All advice and financial product recommendations that you give to a client must be in the best interests of the client and appropriate to the client's individual circumstances. You must be satisfied that the client understands your advice, and the benefits, costs and risks of the financial products that you recommend, and you must have reasonable grounds to be satisfied.</p> <p>6. You must take into account the broad effects arising from the client acting on your advice and actively consider the client's broader, long-term interests and likely circumstances.</p> <p>7. The client must give free, prior and informed consent to all benefits you and your principal will receive in connection with acting for the client, including any fees for services that may be charged. If required in the case of an existing client, the consent should be obtained as soon as practicable after this code commences. Except where expressly permitted by the Corporations Act 2001, you may not receive any benefits, in connection with acting for a client, that derive from a third party other than your principal. You must satisfy yourself that any fees and charges that the client must pay to you or your principal, and any benefits that you or your principal receive, in connection with acting for the client are fair and reasonable, and represent value for money for the client.</p> <p>8. You must ensure that your records of clients, including former clients, are kept in a form that is complete and accurate.</p> <p>9. All advice you give, and all products you recommend, to a client must be offered in good faith and with competence and be neither misleading nor deceptive.</p> <p>10. You must develop, maintain and apply a high level of relevant knowledge and skills.</p> <p>11. You must cooperate with ASIC and monitoring bodies in any investigation of a breach or potential breach of this Code.</p> <p>12. Individually and in cooperation with peers, you must uphold and promote the ethical standards of the profession and hold each other accountable for the protection of the public interest.</p>
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## **Definitions**

### **1. What is an Incident?**

An incident is an event that has occurred that can likely result in a risk issue and/or a breach.

It may also be a break in process, either something that was not planned for or something that did not go to plan. Incidents may be a breakdown in legislative, best practice or internal process.

### **2. What is a Breach?**

A breach is a type of incident where Symmetry fails to comply with their AFSL licence obligations, the financial services law, Licensee procedures and/or Code of Conduct requirements.

### **3. What is a likely breach?**

A 'likely breach' is one that has not yet happened but is foreseeable. For example, you become aware that on a future date something is going to change that will affect Symmetry's ability to comply with financial requirements obligations.

### **4. What is a 'reportable situation'?**

Not all breaches (or likely breaches) need to be reported to ASIC, but all breaches need to be investigated and actioned appropriately. Only breaches deemed to be 'significant' need to be reported, and this will be determined by a variety of factors.