

Member Update

UPDATE 04 of 19 • 24 January 2019

TOPIC: Notice of Revision to GTA Trade Rule 17.3 (c)

DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.

1. Purpose

The purpose of this Member Update is to provide GTA Members with notice of a revision to GTA Trade Rule 17.3 (c).

Members are advised this revision shall take effect from 1st February 2019.

2. Background

[GTA Trade Rule 17](#) (and its sub-components) deal with the situations of contract **Default**.

GTA has received feedback from Members around possible ambiguity in GTA Trade Rule 17.3 (c). This ambiguity related to potential confusion in the situation of contract default as to whether a non-defaulting party should be obliged to pay a defaulting party if the defaulting party's contract is in-the-money. It has been suggested this ambiguity arose from the words "at Fair Market Price" being included in the Trade Rule 17.3 (c).

Trade Rule 17.3 currently states:

The party in receipt of such notice must immediately, or as soon as is reasonably practical, notify the other party of its election to either;

- a) affirm the contract; or*
- b) buy in, or sell against the defaulter; or*
- c) cancel all or any part of the defaulted portion **at Fair Market Price**.*

The inclusion of 'at Fair Market Price' in Trade Rule 17.3 (c) may imply a counterparty has an obligation to settle the difference between the Contract Price and the Fair Market Price.

For example, if a Buyer defaults on a contract (when the market is in the Seller's favour) the Seller can re-sell the defaulted portion for more than the contract price.

It was viewed Trade Rule 17.3(c) as worded is open to potential confusion as it may be read that the Seller may have to pay the Buyer the difference in value, which would not be consistent with the principle that the non-defaulting party should not necessarily have to pay the defaulter if the non-defaulting party contract is in the money.

3. Revision to Trade Rule 17.3(c) Approved by the GTA Board

GTA Commerce Committee considered the issue as described above and noted whilst Trade Rules 17.5 and 17.6 clarify the relevant position of counterparties with regards to Fair Market Price and make it clear overall, the GTA Commerce Committee recommended to the GTA Board a proposal to remove the words “**at Fair Market Price**” in 17.3(c), so that the clause shall read:

17.3

The party in receipt of such notice must immediately, or as soon as is reasonably practical, notify the other party of its election to either;

- a) affirm the contract; or*
- b) buy in, or sell against the defaulter; or*
- c) cancel all or any part of the defaulted portion ~~at Fair Market Price.~~*

The GTA Board have considered and approved the recommended change.

GTA Standard Operating Procedures provide for such changes to be implemented following formal notice to Members.

Members are advised this revision shall take effect from 1st February 2019 and the revised GTA Trade Rules will be published on the [GTA website](#).

4. Further Details

Contact GTA if more details are required. <http://www.graintrade.org.au>