

ASX Disciplinary Matter – OpenMarkets Australia Limited

The Chief Compliance Officer (“CCO”) of ASX Compliance Pty Limited has determined that OpenMarkets Australia Limited (“OpenMarkets”) did not comply with ASX Clear Operating Rule (“ASX CR”) 12.17.1, by failing to pay to ASX Clear amounts owing as a result of the calculation, set off and notification of net payment amounts by ASX Clear in accordance with ASX CR 12.16.2 and its associated procedure (the “Contravention”). The CCO imposed a fine of \$15,000 (plus GST) for the Contravention.

The circumstances of this matter are as follows:

On 12 February 2016, ASX notified OpenMarkets in accordance with ASX CR 12.17.1 of its obligation to pay the amount arising from OpenMarkets’ derivatives market transactions of \$43,046.19 (the “ETO Payment Obligation”) by 10.30am on the next Business Day in the manner provided in ASX CR 12.16.2 and its corresponding procedure. The payment was required to be made via Austraclear by OpenMarkets “matching” ASX’s message and OpenMarkets’ participating bank settling the obligation on 15 February 2016.

At around 9.00 am on 15 February 2016 the ETO Payment Obligation “matched” in Austraclear, at which time OpenMarkets’ general account with its participating bank did not have sufficient funds.

At some time between 9.00am and 10.18am, the relevant operations manager at OpenMarkets identified that there were insufficient funds in the general account and informed OpenMarket’s Chief Operating Officer. At around 10.18am the operations manager caused cleared funds to be placed into the general account.

Between 10.18am and 10:35am, OpenMarkets contacted ASX a number of times to confirm that it was aware that the ETO Payment Obligation had not settled and that this was attributable to the funds OpenMarkets held to settle the ETO Payment Obligation initially being in the wrong bank account (ie. not in its settlement account), that cleared funds had now been placed into the correct account, and that the participating bank had been contacted to effect settlement. The ETO Payment Obligation settled at 10:45am.

In determining penalty, the CCO, among other things, took into account the following matters:

- a) Payment by a Participant of its settlement obligations serve to protect the integrity of ASX’s market. As a central counterparty, ASX is required to establish and rigorously enforce timelines for collections and payments. This includes imposing appropriate consequences if a participant does not meet its requirements in compliance with the ASX CR.
- b) The ASX CR sets out a number of events or circumstances which are treated as an “event of default” by a clearing participant. Events of default include where a clearing participant fails to meet any obligation to the clearing house under the ASX CR (ASX CR 15.1.1(c)) or fails to pay any amount due and payable to ASX Clear under the ASX CR (ASX CR 15.1.1(b)). The Contravention was therefore a potential event of default under the ASX CR.
- c) OpenMarkets’ compliance history with rules relating to settlement payments, including no-escalation decisions from ASX in respect of prior incidents.
- d) The Contravention was unintentional.
- e) The Contravention did not involve unconscionable conduct or the taking of unfair advantage of clients or counterparties on the part of OpenMarkets.
- f) OpenMarkets promptly and fully responded to ASX’s enquiries and cooperated with its investigation.

- g) At the time OpenMarkets was required to make the payment to ASX, OpenMarkets was capable of making the payment and had made arrangement for the payment to be made.
- h) OpenMarkets or its clients did not receive any advantage from the Contravention.
- i) Previous disciplinary decisions.

Sanction Guidelines

The CCO determined that given the circumstances in this matter a fine of \$15,000 (plus GST) was an appropriate sanction.

The CCO is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and its Participants.