



## ASX Clearing Corporation Notice

Date: 31 August, 2012

### Key topics

1. ASX Compliance Enforcement Activity

### Reading List

Compliance Managers  
Office Managers  
Operations Managers (back office)

### Authorised by

Brendon Luscombe

### Contact

Lyn Allsop-Guest  
(02) 9227 0995

ASX Clear Pty Limited  
ABN 48 001 314 503  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000  
PO Box H224  
Australia Square NSW 1215

Internet: <http://www.asx.com.au>

No responsibility is accepted for any inaccuracies contained in the matter published.

## ASX Compliance Enforcement Activity

Under the Corporations Act, as a licensed operator of financial markets, ASX is obliged to have adequate arrangements for monitoring and enforcing compliance with the operating rules of those markets. It is also obliged, as a licensed operator of clearing and settlement facilities, to have adequate arrangements for supervising those facilities and for enforcing compliance with their operating rules.

The purpose of this bulletin is to notify Participants in those markets and facilities of some of the enforcement activities recently undertaken by ASX Compliance, so that they are aware of potential areas of concern for ASX and of ASX's enforcement activities in those areas.

This bulletin covers enforcement activity for the 3 month period ended 31 August 2012.

### 1. Failure to comply with the directions of ASX Market Control

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule 1400(c) for failing to follow the directions of ASX Market Control.

ASX Market Control had received a request from the Participant to cancel a transaction more than 10 minutes after the trade had been executed. ASX Market Control advised the Participant that since the request had been received outside the prescribed timeframe, the transaction could not be cancelled. Notwithstanding this, the Participant went ahead and cancelled the transaction with the agreement of the counterparty.

The cancellation in this case was motivated by the fact that the original transaction involved no change in beneficial ownership and therefore potentially breached the Corporations Act. However, the proper course for the Participant and the counterparty to have followed would have been to trade out of the position, rather than act in direct disregard of a direction from ASX Market Control.

The requirement for trading participants to comply with the directions of ASX Market Control is fundamental to the fairness and orderliness of the ASX market.

Given the circumstances, and as this was the first instance in which the Participant had been found to have disregarded a direction from ASX Market Control, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant disregard a direction from ASX Market Control again, the matter will be referred to ASX's Enforcement Unit to consider enforcement action.

### 2. Failure to close out a settlement obligation on T+5

ASX issued a formal warning letter to an ASX Settlement Participant for the apparent breach of ASX Settlement Rule 10.11.12, for failing to close out a settlement shortfall within the required period of T+5.

ASX Settlement Rule 10.11.12 requires a participant on the second business day after the day on which a rescheduled batch instruction was originally scheduled for settlement (that is, on T+5) to either:

- acquire on a market conducted by an approved market operator the number of financial products of the relevant class equal to the failed settlement shortfall; or
- acquire under a securities lending arrangement the number of financial products of the relevant class equal to the failed settlement shortfall.

Even though there was available liquidity in the relevant security at the time, the Participant failed to close out the positions in question until T+8 and T+11 respectively.

The requirement for clearing participants to meet their settlement obligations on time is fundamental to the efficient operation of the ASX Clear clearing and settlement facility.

As this was the first instance in which the Participant had been found to have failed to close out a settlement obligation on T+5, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to close out a settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

### 3. Prevention of client-related manipulative trading

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined a total of \$100,000 plus GST by the ASX Appeal Tribunal for a contravention of former ASX Market Rule 13.4.1(b)(iii) (prevention of client-related manipulative trading).

The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX Market) 2010.

The Tribunal found that the Participant had entered bid orders into the ASX Trading Platform where, taking into account the circumstances of the orders, and the factors set out in former ASX Market Rule 13.4.2 to which the Participant was required to have regard, the Participant ought reasonably to have suspected that the client had placed the orders with the intention of creating a false and misleading appearance with respect to the price of the securities concerned.

Further details of the matter can be found in ASX Circular 251/12 dated 21 June 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_appeal\\_tribunal\\_matter\\_etrade\\_australia\\_securities\\_june\\_2012.pdf](http://www.asx.com.au/supervision/pdf/asx_appeal_tribunal_matter_etrade_australia_securities_june_2012.pdf)

### 4. Failure to report accurate DBOR information

ASX issued formal warning letters to two separate ASX 24 Participants for an apparent breach of ASX 24 Operating Rule 3500 Procedure 6 for failing to maintain and report accurate Daily Beneficial Ownership ("DBOR") information.

As part of its activities in monitoring trading on the ASX 24 market for fairness and orderliness, ASX monitors DBOR information on a daily basis, including and especially around expiry. ASX also supplies DBOR information to ASIC to use in its market surveillance activities. The provision of accurate DBOR data is critical to ASX's and ASIC's ability to perform their respective functions.

In the first case, following enquiries from ASX, the Participant confirmed that in their DBOR they had been incorrectly reporting the beneficial owner of a number of accounts for a particular client as a related body corporate of the client. The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.

Given the circumstances, and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant submit inaccurate DBOR information again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

In the second case, it was identified that the Participant had failed to properly reconcile its balances in OMSecur against its DBOR reports and also failed to perform the required daily net-down of back-to-back positions. The cause was determined to be issues with the manner in which its computer systems processed internal transfers between house accounts and that these

issues would not be able to be resolved for a number of months. As an interim measure, the Participant agreed to provide ASX with weekly reconciliations between its DBOR reports and the information in OMSecur and to action any breaks that were identified.

Given the circumstances, and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant not have its systems rectified by the promised date, and as a consequence continue to submit inaccurate DBOR information, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 5. Failure to pay initial margin by the prescribed time

ASX issued a formal warning letter to a Participant of ASX Clear (Futures) for the apparent breach of ASX Clear (Futures) Operating Rules 43.1 and 44.4 and Schedule 3 of the Procedures, Determination and Practice Notes for failing to pay initial margin by the prescribed time of 11.00am.

The breach arose on an Australia Day holiday when the Participant had allowed its operations team to take leave without making appropriate arrangements to verify whether it had any NZD margin obligation on that day and, if it did, to pay that margin. This resulted in delays in meeting its NZD margin payment until 11.06am, some 6 minutes after the prescribed 11.00am payment time.

The requirement for clearing participants to meet their margin payments on time is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.

Given the circumstances, and as this was the first instance in which the Participant had been found to have failed to meet its NZD margin payment obligations on time, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to meet a margin obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 6. Incorrect withdrawals from client segregated accounts

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined \$30,000 plus GST by the ASX Disciplinary Tribunal for a contravention of former SFE Operating Rule 2.2.26(d) (permissible withdrawals from clients' segregated accounts).

The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX 24 Market) 2010.

The Tribunal found that the Participant had mistakenly withdrawn funds from its client segregated account and paid them over to a related body corporate, when the funds should have been withdrawn from its house account.

Further details of the matter can be found in ASX Circular 292/12 dated 9 July 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_circular\\_disciplinary\\_tribunal\\_matters\\_barclays\\_bank\\_plc\\_9july2012.pdf](http://www.asx.com.au/supervision/pdf/asx_circular_disciplinary_tribunal_matters_barclays_bank_plc_9july2012.pdf)



ASX 24 NOTICE NO. 205/12

Date of Issue: 31 August 2012  
Effective Date: 31 August 2012

---

## ASX Clear (Futures) - ASX Compliance Enforcement Activity

Under the Corporations Act, as a licensed operator of financial markets, ASX is obliged to have adequate arrangements for monitoring and enforcing compliance with the operating rules of those markets. It is also obliged, as a licensed operator of clearing and settlement facilities, to have adequate arrangements for supervising those facilities and for enforcing compliance with their operating rules.

The purpose of this notice is to notify Participants in those markets and facilities of some of the enforcement activities recently undertaken by ASX Compliance, so that they are aware of potential areas of concern for ASX and of ASX's enforcement activities in those areas.

This notice covers enforcement activity for the 3 month period ended 31 August 2012.

### 1. Failure to comply with the directions of ASX Market Control

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule 1400(c) for failing to follow the directions of ASX Market Control.

ASX Market Control had received a request from the Participant to cancel a transaction more than 10 minutes after the trade had been executed. ASX Market Control advised the Participant that since the request had been received outside the prescribed timeframe, the transaction could not be cancelled. Notwithstanding this, the Participant went ahead and cancelled the transaction with the agreement of the counterparty.

The cancellation in this case was motivated by the fact that the original transaction involved no change in beneficial ownership and therefore potentially breached the Corporations Act. However, the proper course for the Participant and the counterparty to have followed would have been to trade out of the position, rather than act in direct disregard of a direction from ASX Market Control.

The requirement for trading participants to comply with the directions of ASX Market Control is fundamental to the fairness and orderliness of the ASX market.

Given the circumstances, and as this was the first instance in which the Participant had been found to have disregarded a direction from ASX Market Control, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant disregard a direction from ASX Market Control again, the matter will be referred to ASX's Enforcement Unit to consider enforcement action.



## 2. Failure to close out a settlement obligation on T+5

ASX issued a formal warning letter to an ASX Settlement Participant for the apparent breach of ASX Settlement Rule 10.11.12, for failing to close out a settlement shortfall within the required period of T+5.

ASX Settlement Rule 10.11.12 requires a participant on the second business day after the day on which a rescheduled batch instruction was originally scheduled for settlement (that is, on T+5) to either:

- acquire on a market conducted by an approved market operator the number of financial products of the relevant class equal to the failed settlement shortfall; or
- acquire under a securities lending arrangement the number of financial products of the relevant class equal to the failed settlement shortfall.

Even though there was available liquidity in the relevant security at the time, the Participant failed to close out the positions in question until T+8 and T+11 respectively.

The requirement for clearing participants to meet their settlement obligations on time is fundamental to the efficient operation of the ASX Clear clearing and settlement facility.

As this was the first instance in which the Participant had been found to have failed to close out a settlement obligation on T+5, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to close out a settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

## 3. Prevention of client-related manipulative trading

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined a total of \$100,000 plus GST by the ASX Appeal Tribunal for a contravention of former ASX Market Rule 13.4.1(b)(iii) (prevention of client-related manipulative trading).

The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX Market) 2010.

The Tribunal found that the Participant had entered bid orders into the ASX Trading Platform where, taking into account the circumstances of the orders, and the factors set out in former ASX Market Rule 13.4.2 to which the Participant was required to have regard, the Participant ought reasonably to have suspected that the client had placed the orders with the intention of creating a false and misleading appearance with respect to the price of the securities concerned.

Further details of the matter can be found in ASX Circular 251/12 dated 21 June 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_appeal\\_tribunal\\_matter\\_etrade\\_australia\\_securities\\_june\\_2012.pdf](http://www.asx.com.au/supervision/pdf/asx_appeal_tribunal_matter_etrade_australia_securities_june_2012.pdf)

## 4. Failure to report accurate DBOR information

ASX issued formal warning letters to two separate ASX 24 Participants for an apparent breach of ASX 24 Operating Rule 3500 Procedure 6 for failing to maintain and report accurate Daily Beneficial Ownership ("DBOR") information.



As part of its activities in monitoring trading on the ASX 24 market for fairness and orderliness, ASX monitors DBOR information on a daily basis, including and especially around expiry. ASX also supplies DBOR information to ASIC to use in its market surveillance activities. The provision of accurate DBOR data is critical to ASX's and ASIC's ability to perform their respective functions.

In the first case, following enquiries from ASX, the Participant confirmed that in their DBOR they had been incorrectly reporting the beneficial owner of a number of accounts for a particular client as a related body corporate of the client. The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.

Given the circumstances, and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant submit inaccurate DBOR information again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

In the second case, it was identified that the Participant had failed to properly reconcile its balances in OMSecur against its DBOR reports and also failed to perform the required daily net-down of back-to-back positions. The cause was determined to be issues with the manner in which its computer systems processed internal transfers between house accounts and that these issues would not be able to be resolved for a number of months. As an interim measure, the Participant agreed to provide ASX with weekly reconciliations between its DBOR reports and the information in OMSecur and to action any breaks that were identified.

Given the circumstances, and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant not have its systems rectified by the promised date, and as a consequence continue to submit inaccurate DBOR information, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

## **5. Failure to pay initial margin by the prescribed time**

ASX issued a formal warning letter to a Participant of ASX Clear (Futures) for the apparent breach of ASX Clear (Futures) Operating Rules 43.1 and 44.4 and Schedule 3 of the Procedures, Determination and Practice Notes for failing to pay initial margin by the prescribed time of 11.00am.

The breach arose on an Australia Day holiday when the Participant had allowed its operations team to take leave without making appropriate arrangements to verify whether it had any NZD margin obligation on that day and, if it did, to pay that margin. This resulted in delays in meeting its NZD margin payment until 11.06am, some 6 minutes after the prescribed 11.00am payment time.

The requirement for clearing participants to meet their margin payments on time is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.

Given the circumstances, and as this was the first instance in which the Participant had been found to have failed to meet its NZD margin payment obligations on time, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to meet a margin obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.



## 6. Incorrect withdrawals from client segregated accounts

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined \$30,000 plus GST by the ASX Disciplinary Tribunal for a contravention of former SFE Operating Rule 2.2.26(d) (permissible withdrawals from clients' segregated accounts).

The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX 24 Market) 2010.

The Tribunal found that the Participant had mistakenly withdrawn funds from its client segregated account and paid them over to a related body corporate, when the funds should have been withdrawn from its house account.

Further details of the matter can be found in ASX Circular 292/12 dated 9 July 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_circular\\_disciplinary\\_tribunal\\_matters\\_barclays\\_bank\\_plc\\_9july2012.pdf](http://www.asx.com.au/supervision/pdf/asx_circular_disciplinary_tribunal_matters_barclays_bank_plc_9july2012.pdf)

Brendon Luscombe  
Acting General Manager, Participants



ASX 24 NOTICE NO. 206/12

Date of Issue: 31 August 2012

Effective Date: 31 August 2012

---

## ASX 24 - ASX Compliance Enforcement Activity

Under the Corporations Act, as a licensed operator of financial markets, ASX is obliged to have adequate arrangements for monitoring and enforcing compliance with the operating rules of those markets. It is also obliged, as a licensed operator of clearing and settlement facilities, to have adequate arrangements for supervising those facilities and for enforcing compliance with their operating rules.

The purpose of this notice is to notify Participants in those markets and facilities of some of the enforcement activities recently undertaken by ASX Compliance, so that they are aware of potential areas of concern for ASX and of ASX's enforcement activities in those areas.

This notice covers enforcement activities for the 3 month period ended 31 August 2012.

### 1. Failure to comply with the directions of ASX Market Control

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule 1400(c) for failing to follow the directions of ASX Market Control.

ASX Market Control had received a request from the Participant to cancel a transaction more than 10 minutes after the trade had been executed. ASX Market Control advised the Participant that since the request had been received outside the prescribed timeframe, the transaction could not be cancelled. Notwithstanding this, the Participant went ahead and cancelled the transaction with the agreement of the counterparty.

The cancellation in this case was motivated by the fact that the original transaction involved no change in beneficial ownership and therefore potentially breached the Corporations Act. However, the proper course for the Participant and the counterparty to have followed would have been to trade out of the position, rather than act in direct disregard of a direction from ASX Market Control.

The requirement for trading participants to comply with the directions of ASX Market Control is fundamental to the fairness and orderliness of the ASX market.

Given the circumstances, and as this was the first instance in which the Participant had been found to have disregarded a direction from ASX Market Control, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant disregard a direction from ASX Market Control again, the matter will be referred to ASX's Enforcement Unit to consider enforcement action.





## 2. Failure to close out a settlement obligation on T+5

ASX issued a formal warning letter to an ASX Settlement Participant for the apparent breach of ASX Settlement Rule 10.11.12, for failing to close out a settlement shortfall within the required period of T+5.

ASX Settlement Rule 10.11.12 requires a participant on the second business day after the day on which a rescheduled batch instruction was originally scheduled for settlement (that is, on T+5) to either:

- acquire on a market conducted by an approved market operator the number of financial products of the relevant class equal to the failed settlement shortfall; or
- acquire under a securities lending arrangement the number of financial products of the relevant class equal to the failed settlement shortfall.

Even though there was available liquidity in the relevant security at the time, the Participant failed to close out the positions in question until T+8 and T+11 respectively.

The requirement for clearing participants to meet their settlement obligations on time is fundamental to the efficient operation of the ASX Clear clearing and settlement facility.

As this was the first instance in which the Participant had been found to have failed to close out a settlement obligation on T+5, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to close out a settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

## 3. Prevention of client-related manipulative trading

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined a total of \$100,000 plus GST by the ASX Appeal Tribunal for a contravention of former ASX Market Rule 13.4.1(b)(iii) (prevention of client-related manipulative trading).

The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX Market) 2010.

The Tribunal found that the Participant had entered bid orders into the ASX Trading Platform where, taking into account the circumstances of the orders, and the factors set out in former ASX Market Rule 13.4.2 to which the Participant was required to have regard, the Participant ought reasonably to have suspected that the client had placed the orders with the intention of creating a false and misleading appearance with respect to the price of the securities concerned.

Further details of the matter can be found in ASX Circular 251/12 dated 21 June 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_appeal\\_tribunal\\_matter\\_etrade\\_australia\\_securities\\_june\\_2012.pdf](http://www.asx.com.au/supervision/pdf/asx_appeal_tribunal_matter_etrade_australia_securities_june_2012.pdf)

## 4. Failure to report accurate DBOR information

ASX issued formal warning letters to two separate ASX 24 Participants for an apparent breach of ASX 24 Operating Rule 3500 Procedure 6 for failing to maintain and report accurate Daily Beneficial Ownership ("DBOR") information.

As part of its activities in monitoring trading on the ASX 24 market for fairness and orderliness, ASX monitors DBOR information on a daily basis, including and especially around expiry. ASX also supplies DBOR information to ASIC to use



in its market surveillance activities. The provision of accurate DBOR data is critical to ASX's and ASIC's ability to perform their respective functions.

In the first case, following enquiries from ASX, the Participant confirmed that in their DBOR they had been incorrectly reporting the beneficial owner of a number of accounts for a particular client as a related body corporate of the client. The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.

Given the circumstances, and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant submit inaccurate DBOR information again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

In the second case, it was identified that the Participant had failed to properly reconcile its balances in OMSecur against its DBOR reports and also failed to perform the required daily net-down of back-to-back positions. The cause was determined to be issues with the manner in which its computer systems processed internal transfers between house accounts and that these issues would not be able to be resolved for a number of months. As an interim measure, the Participant agreed to provide ASX with weekly reconciliations between its DBOR reports and the information in OMSecur and to action any breaks that were identified.

Given the circumstances, and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant not have its systems rectified by the promised date, and as a consequence continue to submit inaccurate DBOR information, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

## **5. Failure to pay initial margin by the prescribed time**

ASX issued a formal warning letter to a Participant of ASX Clear (Futures) for the apparent breach of ASX Clear (Futures) Operating Rules 43.1 and 44.4 and Schedule 3 of the Procedures, Determination and Practice Notes for failing to pay initial margin by the prescribed time of 11.00am.

The breach arose on an Australia Day holiday when the Participant had allowed its operations team to take leave without making appropriate arrangements to verify whether it had any NZD margin obligation on that day and, if it did, to pay that margin. This resulted in delays in meeting its NZD margin payment until 11.06am, some 6 minutes after the prescribed 11.00am payment time.

The requirement for clearing participants to meet their margin payments on time is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.

Given the circumstances, and as this was the first instance in which the Participant had been found to have failed to meet its NZD margin payment obligations on time, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to meet a margin obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

## **6. Incorrect withdrawals from client segregated accounts**

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined \$30,000 plus GST by the ASX Disciplinary Tribunal for a contravention of former SFE Operating Rule 2.2.26(d) (permissible withdrawals from clients' segregated accounts).



The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX 24 Market) 2010.

The Tribunal found that the Participant had mistakenly withdrawn funds from its client segregated account and paid them over to a related body corporate, when the funds should have been withdrawn from its house account.

Further details of the matter can be found in ASX Circular 292/12 dated 9 July 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_circular\\_disciplinary\\_tribunal\\_matters\\_barclays\\_bank\\_plc\\_9july2012.pdf](http://www.asx.com.au/supervision/pdf/asx_circular_disciplinary_tribunal_matters_barclays_bank_plc_9july2012.pdf)

Brendon Luscombe  
Acting General Manager, Participants



## ASX Circular

Date: 31 August 2012

Key topics

1. ASX Compliance Enforcement Activity

Reading List

Compliance Managers  
Office Managers  
Operations Managers (back office)

Authorised by

Brendon Luscombe

Contact

Lyn Allsop-Guest

Telephone

(02) 9227 0995

ASX Limited  
ABN 98 008 624 691  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000  
PO Box H224  
Australia Square NSW 1215

Internet: <http://www.asx.com.au>

No responsibility is accepted for any inaccuracies contained in the matter published.

## ASX Compliance Enforcement Activity

Under the Corporations Act, as a licensed operator of financial markets, ASX is obliged to have adequate arrangements for monitoring and enforcing compliance with the operating rules of those markets. It is also obliged, as a licensed operator of clearing and settlement facilities, to have adequate arrangements for supervising those facilities and for enforcing compliance with their operating rules.

The purpose of this circular is to notify Participants in those markets and facilities of some of the enforcement activities recently undertaken by ASX Compliance, so that they are aware of potential areas of concern for ASX and of ASX's enforcement activities in those areas.

This circular covers enforcement activity for the 3 month period ended 31 August 2012.

### 1. Failure to comply with the directions of ASX Market Control

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule 1400(c) for failing to follow the directions of ASX Market Control.

ASX Market Control had received a request from the Participant to cancel a transaction more than 10 minutes after the trade had been executed. ASX Market Control advised the Participant that since the request had been received outside the prescribed timeframe, the transaction could not be cancelled. Notwithstanding this, the Participant went ahead and cancelled the transaction with the agreement of the counterparty.

The cancellation in this case was motivated by the fact that the original transaction involved no change in beneficial ownership and therefore potentially breached the Corporations Act. However, the proper course for the Participant and the counterparty to have followed would have been to trade out of the position, rather than act in direct disregard of a direction from ASX Market Control.

The requirement for trading participants to comply with the directions of ASX Market Control is fundamental to the fairness and orderliness of the ASX market.

Given the circumstances, and as this was the first instance in which the Participant had been found to have disregarded a direction from ASX Market Control, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant disregard a direction from ASX Market Control again, the matter will be referred to ASX's Enforcement Unit to consider enforcement action.

### 2. Failure to close out a settlement obligation on T+5

ASX issued a formal warning letter to an ASX Settlement Participant for the apparent breach of ASX Settlement Rule 10.11.12, for failing to close out a settlement shortfall within the required period of T+5.

ASX Settlement Rule 10.11.12 requires a participant on the second business day after the day on which a rescheduled batch instruction was originally scheduled for settlement (that is, on T+5) to either:

- acquire on a market conducted by an approved market operator the number of financial products of the relevant class equal to the failed settlement shortfall; or
- acquire under a securities lending arrangement the number of financial products of the relevant class equal to the failed settlement shortfall.

Even though there was available liquidity in the relevant security at the time, the Participant failed to close out the positions in question until T+8 and T+11 respectively.

The requirement for clearing participants to meet their settlement obligations on time is fundamental to the efficient operation of the ASX Clear clearing and settlement facility.

As this was the first instance in which the Participant had been found to have failed to close out a settlement obligation on T+5, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to close out a settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

### 3. Prevention of client-related manipulative trading

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined a total of \$100,000 plus GST by the ASX Appeal Tribunal for a contravention of former ASX Market Rule 13.4.1(b)(iii) (prevention of client-related manipulative trading).

The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX Market) 2010.

The Tribunal found that the Participant had entered bid orders into the ASX Trading Platform where, taking into account the circumstances of the orders, and the factors set out in former ASX Market Rule 13.4.2 to which the Participant was required to have regard, the Participant ought reasonably to have suspected that the client had placed the orders with the intention of creating a false and misleading appearance with respect to the price of the securities concerned.

Further details of the matter can be found in ASX Circular 251/12 dated 21 June 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_appeal\\_tribunal\\_matter\\_etrade\\_australia\\_securities\\_june\\_2012.pdf](http://www.asx.com.au/supervision/pdf/asx_appeal_tribunal_matter_etrade_australia_securities_june_2012.pdf)

### 4. Failure to report accurate DBOR information

ASX issued formal warning letters to two separate ASX 24 Participants for an apparent breach of ASX 24 Operating Rule 3500 Procedure 6 for failing to maintain and report accurate Daily Beneficial Ownership ("DBOR") information.

As part of its activities in monitoring trading on the ASX 24 market for fairness and orderliness, ASX monitors DBOR information on a daily basis, including and especially around expiry. ASX also supplies DBOR information to ASIC to use in its market surveillance activities. The provision of accurate DBOR data is critical to ASX's and ASIC's ability to perform their respective functions.

In the first case, following enquiries from ASX, the Participant confirmed that in their DBOR they had been incorrectly reporting the beneficial owner of a number of accounts for a particular client as a related body corporate of the client. The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.

Given the circumstances and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant submit inaccurate DBOR information again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

In the second case, it was identified that the Participant had failed to properly reconcile its balances in OMSecur against its DBOR reports and also failed perform the required daily net-down of back-to-back positions. The cause was determined to be issues with the manner in which its computer systems processed internal transfers between house accounts and that these issues would not be able to be resolved for a number of months. As an interim measure, the Participant agreed to provide ASX

with weekly reconciliations between its DBOR reports and the information in OMSecur and to action any breaks that were identified.

Given the circumstances, and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant not have its systems rectified by the promised date, and as a consequence continue to submit inaccurate DBOR information, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 5. Failure to pay initial margin by the prescribed time

ASX issued a formal warning letter to a Participant of ASX Clear (Futures) for the apparent breach of ASX Clear (Futures) Operating Rules 43.1 and 44.4 and Schedule 3 of the Procedures, Determination and Practice Notes for failing to pay initial margin by the prescribed time of 11.00am.

The breach arose on an Australia Day holiday when the Participant had allowed its operations team to take leave without making appropriate arrangements to verify whether it had any NZD margin obligation on that day and, if it did, to pay that margin. This resulted in delays in meeting its NZD margin payment until 11.06am, some 6 minutes after the prescribed 11.00am payment time.

The requirement for clearing participants to meet their margin payments on time is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.

Given the circumstances, and as this was the first instance in which the Participant had been found to have failed to meet its NZD margin payment obligations on time, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to meet a margin obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 6. Incorrect withdrawals from client segregated accounts

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined \$30,000 plus GST by the ASX Disciplinary Tribunal for a contravention of former SFE Operating Rule 2.2.26(d) (permissible withdrawals from clients' segregated accounts).

The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX 24 Market) 2010.

The Tribunal found that the Participant had mistakenly withdrawn funds from its client segregated account and paid them over to a related body corporate, when the funds should have been withdrawn from its house account.

Further details of the matter can be found in ASX Circular 292/12 dated 9 July 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_circular\\_disciplinary\\_tribunal\\_matters\\_barclays\\_bank\\_plc\\_9july2012.pdf](http://www.asx.com.au/supervision/pdf/asx_circular_disciplinary_tribunal_matters_barclays_bank_plc_9july2012.pdf)



## ASX Settlement Corporation Bulletin

Date: 31 August 2012

### Key topics

1. ASX Compliance Enforcement Activity

### Reading List

Compliance Managers  
Office Managers  
Operations Managers (back office)

### Authorised by

Brendon Luscombe

### ASX Contact

Lyn Allsop-Guest

### Telephone

(02) 9227 0995

ASX Settlement Pty Ltd  
ABN 49 008 504 532  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000  
PO Box H227  
Australia Square NSW 1215  
Telephone 1800 814 051  
Facsimile 61 2 9227 0265  
Internet: <http://www.asx.com.au>  
DX 10234 Stock Exchange Sydney

No responsibility is accepted for any inaccuracies contained in the matter published.

## PARTICIPANT BULLETIN

### ASX Compliance Enforcement Activity

Under the Corporations Act, as a licensed operator of financial markets, ASX is obliged to have adequate arrangements for monitoring and enforcing compliance with the operating rules of those markets. It is also obliged, as a licensed operator of clearing and settlement facilities, to have adequate arrangements for supervising those facilities and for enforcing compliance with their operating rules.

The purpose of this bulletin is to notify Participants in those markets and facilities of some of the enforcement activities recently undertaken by ASX Compliance, so that they are aware of potential areas of concern for ASX and of ASX's enforcement activities in those areas.

This bulletin covers enforcement activity for the 3 month period ended 31 August 2012.

#### 1. Failure to comply with the directions of ASX Market Control

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule 1400(c) for failing to follow the directions of ASX Market Control.

ASX Market Control had received a request from the Participant to cancel a transaction more than 10 minutes after the trade had been executed. ASX Market Control advised the Participant that since the request had been received outside the prescribed timeframe, the transaction could not be cancelled. Notwithstanding this, the Participant went ahead and cancelled the transaction with the agreement of the counterparty.

The cancellation in this case was motivated by the fact that the original transaction involved no change in beneficial ownership and therefore potentially breached the Corporations Act. However, the proper course for the Participant and the counterparty to have followed would have been to trade out of the position, rather than act in direct disregard of a direction from ASX Market Control.

The requirement for trading participants to comply with the directions of ASX Market Control is fundamental to the fairness and orderliness of the ASX market.

Given the circumstances, and as this was the first instance in which the Participant had been found to have disregarded a direction from ASX Market Control, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant disregard a direction from ASX Market Control again, the matter will be referred to ASX's Enforcement Unit to consider enforcement action.

## 2. Failure to close out a settlement obligation on T+5

ASX issued a formal warning letter to an ASX Settlement Participant for the apparent breach of ASX Settlement Rule 10.11.12, for failing to close out a settlement shortfall within the required period of T+5.

ASX Settlement Rule 10.11.12 requires a participant on the second business day after the day on which a rescheduled batch instruction was originally scheduled for settlement (that is, on T+5) to either:

- acquire on a market conducted by an approved market operator the number of financial products of the relevant class equal to the failed settlement shortfall; or
- acquire under a securities lending arrangement the number of financial products of the relevant class equal to the failed settlement shortfall.

Even though there was available liquidity in the relevant security at the time, the Participant failed to close out the positions in question until T+8 and T+11 respectively.

The requirement for clearing participants to meet their settlement obligations on time is fundamental to the efficient operation of the ASX Clear clearing and settlement facility.

As this was the first instance in which the Participant had been found to have failed to close out a settlement obligation on T+5, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to close out a settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

## 3. Prevention of client-related manipulative trading

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined a total of \$100,000 plus GST by the ASX Appeal Tribunal for a contravention of former ASX Market Rule 13.4.1(b)(iii) (prevention of client-related manipulative trading).

The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX Market) 2010.

The Tribunal found that the Participant had entered bid orders into the ASX Trading Platform where, taking into account the circumstances of the orders, and the factors set out in former ASX Market Rule 13.4.2 to which the Participant was required to have regard, the Participant ought reasonably to have suspected that the client had placed the orders with the intention of creating a false and misleading appearance with respect to the price of the securities concerned.

Further details of the matter can be found in ASX Circular 251/12 dated 21 June 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_appeal\\_tribunal\\_matter\\_etrade\\_australia\\_securities\\_june\\_2012.pdf](http://www.asx.com.au/supervision/pdf/asx_appeal_tribunal_matter_etrade_australia_securities_june_2012.pdf)

## 4. Failure to report accurate DBOR information

ASX issued formal warning letters to two separate ASX 24 Participants for an apparent breach of ASX 24 Operating Rule 3500 Procedure 6 for failing to maintain and report accurate Daily Beneficial Ownership ("DBOR") information.

As part of its activities in monitoring trading on the ASX 24 market for fairness and orderliness, ASX monitors DBOR information on a daily basis, including and especially around expiry. ASX also supplies DBOR information to ASIC to use in its market surveillance activities. The provision of accurate DBOR data is critical to ASX's and ASIC's ability to perform their respective functions.

In the first case, following enquiries from ASX, the Participant confirmed that in their DBOR they had been incorrectly reporting the beneficial owner of a number of accounts for a particular client as a related body corporate of the client. The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.



Given the circumstances, and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant submit inaccurate DBOR information again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

In the second case, it was identified that the Participant had failed to properly reconcile its balances in OMSecur against its DBOR reports and also failed to perform the required daily net-down of back-to-back positions. The cause was determined to be issues with the manner in which its computer systems processed internal transfers between house accounts and that these issues would not be able to be resolved for a number of months. As an interim measure, the Participant agreed to provide ASX with weekly reconciliations between its DBOR reports and the information in OMSecur and to action any breaks that were identified.

Given the circumstances, and as this was the first instance in which the Participant had been found to have submitted inaccurate DBOR data, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant not have its systems rectified by the promised date, and as a consequence continue to submit inaccurate DBOR information, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 5. Failure to pay initial margin by the prescribed time

ASX issued a formal warning letter to a Participant of ASX Clear (Futures) for the apparent breach of ASX Clear (Futures) Operating Rules 43.1 and 44.4 and Schedule 3 of the Procedures, Determination and Practice Notes for failing to pay initial margin by the prescribed time of 11.00am.

The breach arose on an Australia Day holiday when the Participant had allowed its operations team to take leave without making appropriate arrangements to verify whether it had any NZD margin obligation on that day and, if it did, to pay that margin. This resulted in delays in meeting its NZD margin payment until 11.06am, some 6 minutes after the prescribed 11.00am payment time.

The requirement for clearing participants to meet their margin payments on time is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

The Participant took action to update its processes and procedures to prevent a similar issue occurring in the future.

Given the circumstances, and as this was the first instance in which the Participant had been found to have failed to meet its NZD margin payment obligations on time, ASX determined that it was sufficient in this case to issue a formal warning that should the Participant fail to meet a margin obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 6. Incorrect withdrawals from client segregated accounts

As a result of enforcement action brought by ASX Compliance, an ASX Participant was fined \$30,000 plus GST by the ASX Disciplinary Tribunal for a contravention of former SFE Operating Rule 2.2.26(d) (permissible withdrawals from clients' segregated accounts).

The finding related to conduct that occurred prior to 1 August 2010, when responsibility for market supervision was transferred from ASX to ASIC. This particular rule now forms part of the ASIC Market Integrity Rules (ASX 24 Market) 2010.

The Tribunal found that the Participant had mistakenly withdrawn funds from its client segregated account and paid them over to a related body corporate, when the funds should have been withdrawn from its house account.

Further details of the matter can be found in ASX Circular 292/12 dated 9 July 2012, available online at:

[http://www.asx.com.au/supervision/pdf/asx\\_circular\\_disciplinary\\_tribunal\\_matters\\_barclays\\_bank\\_plc\\_9july2012.pdf](http://www.asx.com.au/supervision/pdf/asx_circular_disciplinary_tribunal_matters_barclays_bank_plc_9july2012.pdf)