



## ASX Clearing Corporation Notice

**Date:** 30 November 2012

### Key topics

1. Enforcement Activity

### Reading List

Compliance Managers  
Office Managers  
Operations Managers (back office)

### Authorised by

Kevin Lewis

### Contact

Ben Wachter  
(02) 9227 0671

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 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 activities for the 3 month period ended 30 November 2012.

### 1. Failure to comply with requirements for crossings

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$10,000 (plus GST) against a Participant for an alleged breach of ASX Operating Rule 4060.

On 20 January 2011, the Participant purported to effect a late trade crossing in accordance with ASX Operating Rule 3320 in circumstances where the ASX Operating Rule Procedures did not permit the crossing.

Instructions from clients with a matching offer and bid were received by the Participant at approximately 16:04:19 and 16:04:23 respectively. The corresponding orders were immediately entered into the market. At 16:10:15 the Participant deleted the offer from the market, denying other market participants the opportunity to accept the offer. At 16:10:28 the Participant also deleted the bid.

At approximately 16:12:45, after market closed, the Participant reported a crossing as a late trade crossing. The volume and price of the relevant securities transacted in the crossing corresponded exactly to the earlier bid and offer.

The relevant client instructions that resulted in the crossing were received between 7 am and 4:12 pm and therefore were not permitted to be effected as a late trade crossing under ASX Operating Rule 3320.

### 2. Failure to comply with exchange for physical requirements

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$30,000 (plus GST) against a Participant for an alleged breach of ASX 24 Operating Rule 4801(a).

On 11 occasions between 20 May 2011 and 28 September 2011, the Participant reported exchange for physical ("EFP") transactions entered into by its clients without executing a genuine transaction in a physical commodity or instrument, as specified in the Procedures.

In imposing the penalty, ASX had regard to the fact that since the alleged breach occurred, the Participant had implemented meaningful measures to prevent a recurrence of the alleged misconduct including:

- providing a notice to all external clients and relevant internal traders outlining the requirements when transacting an EFP;
- notifying middle office staff of the requirements to transact an EFP transaction;
- updating its Operations Procedures Manual to include the specific requirement to obtain 4 trade confirmation numbers for each EFP relating to each leg of the EFP;
- providing training to relevant personnel on the rules regulating EFP transactions; and
- implementing a quarterly random checking process.

### 3. Failure to provide advice as to the number of open positions

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$5,000 (plus GST) against a Participant for an alleged breach of ASX Clear (Futures) Rule 46.1.

Due to an administrative error, the Participant failed to comply with Schedule 6 of the ASX Clear (Futures) Rules by not providing any advice to ASX Clear (Futures) as to the number of Open Positions in two contracts which it wished to close out on two consecutive days.

This failure resulted in significant over-reporting of lots of open interest in the two contracts over the two days and led to a subsequent significant reduction in open interest in these two contracts (38% and 60% respectively) on the day following, when the administrative error was corrected.

### 4. Breach of minimum core capital requirements

ASX issued an Enforcement Notice and fined a Participant \$20,000 (plus GST) for contravening the minimum core capital requirements in ASX Clear Operating Rule 5.1.1 for a period of 10 days.

During the relevant period, the Participant's core capital was approximately \$58,472 below the prescribed minimum of \$5,000,000 required by Schedule 1.2.1(1)(b) of the ASX Clear Operating Rules, due to the Participant having underestimated its loss after tax for the preceding month.

Further details of the matter can be found in ASX Clear Notice 046 dated 12 September 2012, available online at:

[https://www.asxonline.com/intradoc/cgi/groups/derivatives/documents/communications/asx\\_034730.pdf](https://www.asxonline.com/intradoc/cgi/groups/derivatives/documents/communications/asx_034730.pdf)

### 5. Failure to deliver bank bills by the prescribed time

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Clear (Futures) Operating Rule 63.3 for failing to deliver bank bills in the correct denomination to cover a short Bank Accepted Bill futures position.

The Participant's client held a short position in a 90 Day Bank Accepted Bill futures contract. On the afternoon that the contract ceased trading the Participant confirmed to ASX Clear (Futures) that it would settle the contract. The client subsequently advised that they were having difficulty sourcing the bills for settlement, as the bills they had received from their counterparty were in the wrong denominations. The Participant then spent the next 4 hours liaising with the client and the Exchange in order to source the correct denominations. These were finally deposited at 7.33 pm, some 2 hours and 33 minutes after the prescribed deadline of 5 pm.

The requirement for clearing participants to deliver bank bills in the correct denomination on the expiry of bank bill futures is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

As this was the first instance in which the Participant had breached the rule in question and the Participant had substantially enhanced its procedures and controls with respect to the bank bill delivery process, ASX decided to take no further action in respect of this breach other than to issue a formal warning that similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

### 6. Submitting test orders into the "live" market

ASX issued a formal warning letter to an ASX 24 Trading Participant for an apparent breach of ASX 24 Operating Rule 3000, for submitting 8 non bona fide "test" orders into the live market.

The breach arose following the implementation by the Participant of a new trading desk tool to execute orders on the ASX 24 market. The initial orders submitted using the tool were rejected. The Participant in conjunction with ASX Market Access established that the rejections were due to the trading limits established on the Participant's ASX 24 gateways, which were subsequently increased. In order to confirm that the amended trading limits had corrected the issue, a member of the Participant's trading desk submitted test spread orders into the live market. These orders were subsequently cancelled 46 seconds later.

The requirement for trading participants to submit bona fide orders only into the market is fundamental to the orderliness and transparency of the ASX 24 Market.

ASX acknowledges in this case that due to the large number of orders ahead of the test orders, those orders would not have been visible to market participants (only the top 5 bid/offers are displayed) and that the prices were well out of the market and the size of each order was for 1 lot only. Nevertheless, it is not appropriate for market participants to submit orders into the live market to test system changes.

Given the circumstances and as this was the first instance of its kind involving the Participant, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

## **7. Failure to maintain a fair and orderly market**

ASX issued a formal warning letter to a Participant for an apparent breach of ASX Operating Rule 3101(a) and 1401(a).

The Participant entered a sell order via its DMA facility at a price that had not been adjusted to reflect the fair market value of the securities following a reconstruction of capital. This erroneous order had the effect of causing the reconstructed securities to trade down to 20% of the fair market value of the post-reconstructed share price.

The Participant had controls in place that would have prevented the erroneous order from entering into the market but in this instance they failed to operate as intended. The Participant has subsequently implemented additional surveillance and enhanced monitoring controls around the operation of its DMA filters.

Given the circumstances and as this was the first instance the Participant had contravened the rules in question, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should the Participant in future submit orders that bring into question the fairness and orderliness of the ASX Market, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

## **8. Pre-arrangement of a derivatives crossing**

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule Procedure 4600.

The Participant's sales trader received an instruction from a client to sell a specified number of option contracts following confirmation from a market maker of the current price range in the specific series. The sales trader contacted a derivatives trader employed by a related entity, who agreed to buy the option contracts at an agreed price, which was within the quote price range provided by the market maker.

The derivatives trader entered a bid via an AOP system into the market, which was immediately matched to the ask from the sales trader, resulting in an on-market crossing.

The DTR and the derivatives trader thought the crossing was permitted under ASX Operating Rule 4060 Procedure Part B 9(b) because it occurred via an AOP system. However, that procedure only applies where the trading participant has not pre-arranged the entry of bids or offers, which was not the case here. Accordingly, this crossing should have been executed under ASX Operating Rule 4060 Procedure Part B 2 using the cross single series function in TradeMatch. This would have required the Participant to offer to buy and sell 50% of the volume to be crossed before executing the crossing.

The requirement for trading participants to submit crossings in accordance with ASX Operating Rules is fundamental to the fairness, orderliness and transparency of the ASX Market.

The Participant in this case took immediate action to caution and direct the sales trader and the derivatives trader to effect crossings in accordance with the correct trading system rules. Given the circumstances and as this was the first instance the

Participant had contravened the above mentioned rules, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should the Participant in future attempt to pre-arrange derivatives crossings via AOP in an effort to by-pass the proper procedures for effecting crossings in TradeMatch, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

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

ASX issued formal warning letter to a Participant for an 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+12 and T+13 respectively.

The requirement for 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 failed settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

## 10. Failure to pay net payment amount with the prescribed time

ASX issued a formal warning letter to a Participant for the apparent breach of ASX Clear Operating Rule 12.17.1 for failing to pay a net payment amount by the prescribed time of 10.30 am on two separate occasions.

In the first instance, the Participant's procedures were not sufficiently followed and the cause of the delay was not properly escalated or rectified, resulting in a failure to pay net amount due to ASX until 10.36 am.

In the second instance, an exchange traded option trade was not given up to the third party clearer in accordance with normal procedures and the employee responsible for monitoring the settlement obligations was absent on that day. The required payment was settled at 10.38 am.

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

Having regard to the circumstances and given the remediation action undertaken by the Participant in both instances, ASX determined it was sufficient to issue a formal warning that should the Participant fail to meet a net payment obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

Kevin Lewis  
**Chief Compliance Officer**



## ASX 24 NOTICE NO. 269/12

Date of Issue: 30 November 2012  
Effective Date: 30 November 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 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 activities for the 3 month period ended 30 November 2012.

#### 1. Failure to comply with requirements for crossings

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$10,000 (plus GST) against a Participant for an alleged breach of ASX Operating Rule 4060.

On 20 January 2011, the Participant purported to effect a late trade crossing in accordance with ASX Operating Rule 3320 in circumstances where the ASX Operating Rule Procedures did not permit the crossing.

Instructions from clients with a matching offer and bid were received by the Participant at approximately 16:04:19 and 16:04:23 respectively. The corresponding orders were immediately entered into the market. At 16:10:15 the Participant deleted the offer from the market, denying other market participants the opportunity to accept the offer. At 16:10:28 the Participant also deleted the bid.

At approximately 16:12:45, after market closed, the Participant reported a crossing as a late trade crossing. The volume and price of the relevant securities transacted in the crossing corresponded exactly to the earlier bid and offer.

The relevant client instructions that resulted in the crossing were received between 7 am and 4:12 pm and therefore were not permitted to be effected as a late trade crossing under ASX Operating Rule 3320.

#### 2. Failure to comply with exchange for physical requirements

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$30,000 (plus GST) against a Participant for an alleged breach of ASX 24 Operating Rule 4801(a).

On 11 occasions between 20 May 2011 and 28 September 2011, the Participant reported exchange for physical ("EFP") transactions entered into by its clients without executing a genuine transaction in a physical commodity or instrument, as



specified in the Procedures.

In imposing the penalty, ASX had regard to the fact that since the alleged breach occurred, the Participant had implemented meaningful measures to prevent a recurrence of the alleged misconduct including:

- providing a notice to all external clients and relevant internal traders outlining the requirements when transacting an EFP;
  - notifying middle office staff of the requirements to transact an EFP transaction;
  - updating its Operations Procedures Manual to include the specific requirement to obtain 4 trade confirmation numbers for each EFP relating to each leg of the EFP;
  - providing training to relevant personnel on the rules regulating EFP transactions; and
  - implementing a quarterly random checking process.
3. **Failure to provide advice as to the number of open positions**

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$5,000 (plus GST) against a Participant for an alleged breach of ASX Clear (Futures) Rule 46.1.

Due to an administrative error, the Participant failed to comply with Schedule 6 of the ASX Clear (Futures) Rules by not providing any advice to ASX Clear (Futures) as to the number of Open Positions in two contracts which it wished to close out on two consecutive days.

This failure resulted in significant over-reporting of lots of open interest in the two contracts over the two days and led to a subsequent significant reduction in open interest in these two contracts (38% and 60% respectively) on the day following, when the administrative error was corrected.

#### 4. **Breach of minimum core capital requirements**

ASX issued an Enforcement Notice and fined a Participant \$20,000 (plus GST) for contravening the minimum core capital requirements in ASX Clear Operating Rule 5.1.1 for a period of 10 days.

During the relevant period, the Participant's core capital was approximately \$58,472 below the prescribed minimum of \$5,000,000 required by Schedule 1.2.1(1)(b) of the ASX Clear Operating Rules, due to the Participant having underestimated its loss after tax for the preceding month.

Further details of the matter can be found in ASX Clear Notice 046 dated 12 September 2012, available online at:

[https://www.asxonline.com/intradoc-cgi/groups/derivatives/documents/communications/asx\\_034730.pdf](https://www.asxonline.com/intradoc-cgi/groups/derivatives/documents/communications/asx_034730.pdf)

#### 5. **Failure to deliver bank bills by the prescribed time**

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Clear (Futures) Operating Rule 63.3 for failing to deliver bank bills in the correct denomination to cover a short Bank Accepted Bill futures position.

The Participant's client held a short position in a 90 Day Bank Accepted Bill futures contract. On the afternoon that the contract ceased trading the Participant confirmed to ASX Clear (Futures) that it would settle the contract. The client subsequently advised that they were having difficulty sourcing the bills for settlement, as the bills they had received from their counterparty were in the wrong denominations. The Participant then spent the next 4 hours liaising with the client and the Exchange in order to source the correct denominations. These were finally deposited at 7.33 pm, some 2 hours and 33 minutes after the prescribed deadline of 5 pm.



The requirement for clearing participants to deliver bank bills in the correct denomination on the expiry of bank bill futures is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

As this was the first instance in which the Participant had breached the rule in question and the Participant had substantially enhanced its procedures and controls with respect to the bank bill delivery process, ASX decided to take no further action in respect of this breach other than to issue a formal warning that similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### **6. Submitting test orders into the "live" market**

ASX issued a formal warning letter to an ASX 24 Trading Participant for an apparent breach of ASX 24 Operating Rule 3000, for submitting 8 non bona fide "test" orders into the live market.

The breach arose following the implementation by the Participant of a new trading desk tool to execute orders on the ASX 24 market. The initial orders submitted using the tool were rejected. The Participant in conjunction with ASX Market Access established that the rejections were due to the trading limits established on the Participant's ASX 24 gateways, which were subsequently increased. In order to confirm that the amended trading limits had corrected the issue, a member of the Participant's trading desk submitted test spread orders into the live market. These orders were subsequently cancelled 46 seconds later.

The requirement for trading participants to submit bona fide orders only into the market is fundamental to the orderliness and transparency of the ASX 24 Market.

ASX acknowledges in this case that due to the large number of orders ahead of the test orders, those orders would not have been visible to market participants (only the top 5 bid/offers are displayed) and that the prices were well out of the market and the size of each order was for 1 lot only. Nevertheless, it is not appropriate for market participants to submit orders into the live market to test system changes.

Given the circumstances and as this was the first instance of its kind involving the Participant, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### **7. Failure to maintain a fair and orderly market**

ASX issued a formal warning letter to a Participant for an apparent breach of ASX Operating Rule 3101(a) and 1401(a).

The Participant entered a sell order via its DMA facility at a price that had not been adjusted to reflect the fair market value of the securities following a reconstruction of capital. This erroneous order had the effect of causing the reconstructed securities to trade down to 20% of the fair market value of the post-reconstructed share price.

The Participant had controls in place that would have prevented the erroneous order from entering into the market but in this instance they failed to operate as intended. The Participant has subsequently implemented additional surveillance and enhanced monitoring controls around the operation of its DMA filters.

Given the circumstances and as this was the first instance the Participant had contravened the rules in question, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should the Participant in future submit orders that bring into question the fairness and orderliness of the ASX Market, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.



## 8. Pre-arrangement of a derivatives crossing

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule Procedure 4600.

The Participant's sales trader received an instruction from a client to sell a specified number of option contracts following confirmation from a market maker of the current price range in the specific series. The sales trader contacted a derivatives trader employed by a related entity, who agreed to buy the option contracts at an agreed price, which was within the quote price range provided by the market maker.

The derivatives trader entered a bid via an AOP system into the market, which was immediately matched to the ask from the sales trader, resulting in an on-market crossing.

The DTR and the derivatives trader thought the crossing was permitted under ASX Operating Rule 4060 Procedure Part B 9(b) because it occurred via an AOP system. However, that procedure only applies where the trading participant has not pre-arranged the entry of bids or offers, which was not the case here. Accordingly, this crossing should have been executed under ASX Operating Rule 4060 Procedure Part B 2 using the cross single series function in TradeMatch. This would have required the Participant to offer to buy and sell 50% of the volume to be crossed before executing the crossing.

The requirement for trading participants to submit crossings in accordance with ASX Operating Rules is fundamental to the fairness, orderliness and transparency of the ASX Market.

The Participant in this case took immediate action to caution and direct the sales trader and the derivatives trader to effect crossings in accordance with the correct trading system rules. Given the circumstances and as this was the first instance the Participant had contravened the above mentioned rules, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should the Participant in future attempt to pre-arrange derivatives crossings via AOP in an effort to by-pass the proper procedures for effecting crossings in TradeMatch, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

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

ASX issued formal warning letter to a Participant for an 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+12 and T+13 respectively.

The requirement for 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 failed settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### **10. Failure to pay net payment amount with the prescribed time**

ASX issued a formal warning letter to a Participant for the apparent breach of ASX Clear Operating Rule 12.17.1 for failing to pay a net payment amount by the prescribed time of 10.30 am on two separate occasions.

In the first instance, the Participant's procedures were not sufficiently followed and the cause of the delay was not properly escalated or rectified, resulting in a failure to pay net amount due to ASX until 10.36 am.

In the second instance, an exchange traded option trade was not given up to the third party clearer in accordance with normal procedures and the employee responsible for monitoring the settlement obligations was absent on that day. The required payment was settled at 10.38 am.

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

Having regard to the circumstances and given the remediation action undertaken by the Participant in both instances, ASX determined it was sufficient to issue a formal warning that should the Participant fail to meet a net payment obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

Kevin Lewis  
Chief Compliance Officer



ASX 24 NOTICE NO. 270/12

Date of Issue: 30 November 2012  
Effective Date: 30 November 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 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 activities for the 3 month period ended 30 November 2012.

### 1. Failure to comply with requirements for crossings

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$10,000 (plus GST) against a Participant for an alleged breach of ASX Operating Rule 4060.

On 20 January 2011, the Participant purported to effect a late trade crossing in accordance with ASX Operating Rule 3320 in circumstances where the ASX Operating Rule Procedures did not permit the crossing.

Instructions from clients with a matching offer and bid were received by the Participant at approximately 16:04:19 and 16:04:23 respectively. The corresponding orders were immediately entered into the market. At 16:10:15 the Participant deleted the offer from the market, denying other market participants the opportunity to accept the offer. At 16:10:28 the Participant also deleted the bid.

At approximately 16:12:45, after market closed, the Participant reported a crossing as a late trade crossing. The volume and price of the relevant securities transacted in the crossing corresponded exactly to the earlier bid and offer.

The relevant client instructions that resulted in the crossing were received between 7 am and 4:12 pm and therefore were not permitted to be effected as a late trade crossing under ASX Operating Rule 3320.

### 2. Failure to comply with exchange for physical requirements

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$30,000 (plus GST) against a Participant for an alleged breach of ASX 24 Operating Rule 4801(a).



On 11 occasions between 20 May 2011 and 28 September 2011, the Participant reported exchange for physical (“EFP”) transactions entered into by its clients without executing a genuine transaction in a physical commodity or instrument, as specified in the Procedures.

In imposing the penalty, ASX had regard to the fact that since the alleged breach occurred, the Participant had implemented meaningful measures to prevent a recurrence of the alleged misconduct including:

- providing a notice to all external clients and relevant internal traders outlining the requirements when transacting an EFP;
  - notifying middle office staff of the requirements to transact an EFP transaction;
  - updating its Operations Procedures Manual to include the specific requirement to obtain 4 trade confirmation numbers for each EFP relating to each leg of the EFP;
  - providing training to relevant personnel on the rules regulating EFP transactions; and
  - implementing a quarterly random checking process.
3. **Failure to provide advice as to the number of open positions**

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$5,000 (plus GST) against a Participant for an alleged breach of ASX Clear (Futures) Rule 46.1.

Due to an administrative error, the Participant failed to comply with Schedule 6 of the ASX Clear (Futures) Rules by not providing any advice to ASX Clear (Futures) as to the number of Open Positions in two contracts which it wished to close out on two consecutive days.

This failure resulted in significant over-reporting of lots of open interest in the two contracts over the two days and led to a subsequent significant reduction in open interest in these two contracts (38% and 60% respectively) on the day following, when the administrative error was corrected.

#### 4. **Breach of minimum core capital requirements**

ASX issued an Enforcement Notice and fined a Participant \$20,000 (plus GST) for contravening the minimum core capital requirements in ASX Clear Operating Rule 5.1.1 for a period of 10 days.

During the relevant period, the Participant’s core capital was approximately \$58,472 below the prescribed minimum of \$5,000,000 required by Schedule 1.2.1(1)(b) of the ASX Clear Operating Rules, due to the Participant having underestimated its loss after tax for the preceding month.

Further details of the matter can be found in ASX Clear Notice 046 dated 12 September 2012, available online at:

[https://www.asxonline.com/intradoc-cgi/groups/derivatives/documents/communications/asx\\_034730.pdf](https://www.asxonline.com/intradoc-cgi/groups/derivatives/documents/communications/asx_034730.pdf)

#### 5. **Failure to deliver bank bills by the prescribed time**

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Clear (Futures) Operating Rule 63.3 for failing to deliver bank bills in the correct denomination to cover a short Bank Accepted Bill futures position.

The Participant’s client held a short position in a 90 Day Bank Accepted Bill futures contract. On the afternoon that the contract ceased trading the Participant confirmed to ASX Clear (Futures) that it would settle the contract. The client



subsequently advised that they were having difficulty sourcing the bills for settlement, as the bills they had received from their counterparty were in the wrong denominations. The Participant then spent the next 4 hours liaising with the client and the Exchange in order to source the correct denominations. These were finally deposited at 7.33 pm, some 2 hours and 33 minutes after the prescribed deadline of 5 pm.

The requirement for clearing participants to deliver bank bills in the correct denomination on the expiry of bank bill futures is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

As this was the first instance in which the Participant had breached the rule in question and the Participant had substantially enhanced its procedures and controls with respect to the bank bill delivery process, ASX decided to take no further action in respect of this breach other than to issue a formal warning that similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### **6. Submitting test orders into the "live" market**

ASX issued a formal warning letter to an ASX 24 Trading Participant for an apparent breach of ASX 24 Operating Rule 3000, for submitting 8 non bona fide "test" orders into the live market.

The breach arose following the implementation by the Participant of a new trading desk tool to execute orders on the ASX 24 market. The initial orders submitted using the tool were rejected. The Participant in conjunction with ASX Market Access established that the rejections were due to the trading limits established on the Participant's ASX 24 gateways, which were subsequently increased. In order to confirm that the amended trading limits had corrected the issue, a member of the Participant's trading desk submitted test spread orders into the live market. These orders were subsequently cancelled 46 seconds later.

The requirement for trading participants to submit bona fide orders only into the market is fundamental to the orderliness and transparency of the ASX 24 Market.

ASX acknowledges in this case that due to the large number of orders ahead of the test orders, those orders would not have been visible to market participants (only the top 5 bid/offers are displayed) and that the prices were well out of the market and the size of each order was for 1 lot only. Nevertheless, it is not appropriate for market participants to submit orders into the live market to test system changes.

Given the circumstances and as this was the first instance of its kind involving the Participant, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### **7. Failure to maintain a fair and orderly market**

ASX issued a formal warning letter to a Participant for an apparent breach of ASX Operating Rule 3101(a) and 1401(a).

The Participant entered a sell order via its DMA facility at a price that had not been adjusted to reflect the fair market value of the securities following a reconstruction of capital. This erroneous order had the effect of causing the reconstructed securities to trade down to 20% of the fair market value of the post-reconstructed share price.

The Participant had controls in place that would have prevented the erroneous order from entering into the market but in this instance they failed to operate as intended. The Participant has subsequently implemented additional surveillance and enhanced monitoring controls around the operation of its DMA filters.



Given the circumstances and as this was the first instance the Participant had contravened the rules in question, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should the Participant in future submit orders that bring into question the fairness and orderliness of the ASX Market, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### **8. Pre-arrangement of a derivatives crossing**

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule Procedure 4600.

The Participant's sales trader received an instruction from a client to sell a specified number of option contracts following confirmation from a market maker of the current price range in the specific series. The sales trader contacted a derivatives trader employed by a related entity, who agreed to buy the option contracts at an agreed price, which was within the quote price range provided by the market maker.

The derivatives trader entered a bid via an AOP system into the market, which was immediately matched to the ask from the sales trader, resulting in an on-market crossing.

The DTR and the derivatives trader thought the crossing was permitted under ASX Operating Rule 4060 Procedure Part B 9(b) because it occurred via an AOP system. However, that procedure only applies where the trading participant has not pre-arranged the entry of bids or offers, which was not the case here. Accordingly, this crossing should have been executed under ASX Operating Rule 4060 Procedure Part B 2 using the cross single series function in TradeMatch. This would have required the Participant to offer to buy and sell 50% of the volume to be crossed before executing the crossing.

The requirement for trading participants to submit crossings in accordance with ASX Operating Rules is fundamental to the fairness, orderliness and transparency of the ASX Market.

The Participant in this case took immediate action to caution and direct the sales trader and the derivatives trader to effect crossings in accordance with the correct trading system rules. Given the circumstances and as this was the first instance the Participant had contravened the above mentioned rules, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should the Participant in future attempt to pre-arrange derivatives crossings via AOP in an effort to by-pass the proper procedures for effecting crossings in TradeMatch, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

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

ASX issued formal warning letter to a Participant for an 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+12 and T+13 respectively.

The requirement for 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 failed settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### **10. Failure to pay net payment amount with the prescribed time**

ASX issued a formal warning letter to a Participant for the apparent breach of ASX Clear Operating Rule 12.17.1 for failing to pay a net payment amount by the prescribed time of 10.30 am on two separate occasions.

In the first instance, the Participant's procedures were not sufficiently followed and the cause of the delay was not properly escalated or rectified, resulting in a failure to pay net amount due to ASX until 10.36 am.

In the second instance, an exchange traded option trade was not given up to the third party clearer in accordance with normal procedures and the employee responsible for monitoring the settlement obligations was absent on that day. The required payment was settled at 10.38 am.

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

Having regard to the circumstances and given the remediation action undertaken by the Participant in both instances, ASX determined it was sufficient to issue a formal warning that should the Participant fail to meet a net payment obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

Kevin Lewis  
**Chief Compliance Officer**



## ASX Circular

**Date:** 30 November 2012

**Key topics**

1. Enforcement Activity

**Reading List**

Compliance Managers  
Office Managers  
Operations Managers (back office)

**Authorised by**

Kevin Lewis

**Contact**

Ben Wachter

**Telephone**

(02) 9227 0671

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 activities for the 3 month period ended 30 November 2012.

### 1. Failure to comply with requirements for crossings

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$10,000 (plus GST) against a Participant for an alleged breach of ASX Operating Rule 4060.

On 20 January 2011, the Participant purported to effect a late trade crossing in accordance with ASX Operating Rule 3320 in circumstances where the ASX Operating Rule Procedures did not permit the crossing.

Instructions from clients with a matching offer and bid were received by the Participant at approximately 16:04:19 and 16:04:23 respectively. The corresponding orders were immediately entered into the market. At 16:10:15 the Participant deleted the offer from the market, denying other market participants the opportunity to accept the offer. At 16:10:28 the Participant also deleted the bid.

At approximately 16:12:45, after market closed, the Participant reported a crossing as a late trade crossing. The volume and price of the relevant securities transacted in the crossing corresponded exactly to the earlier bid and offer.

The relevant client instructions that resulted in the crossing were received between 7 am and 4:12 pm and therefore were not permitted to be effected as a late trade crossing under ASX Operating Rule 3320.

### 2. Failure to comply with exchange for physical requirements

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$30,000 (plus GST) against a Participant for an alleged breach of ASX 24 Operating Rule 4801(a).

On 11 occasions between 20 May 2011 and 28 September 2011, the Participant reported exchange for physical ("EFP") transactions entered into by its clients without executing a genuine transaction in a physical commodity or instrument, as specified in the Procedures.

In imposing the penalty, ASX had regard to the fact that since the alleged breach occurred, the Participant had implemented meaningful measures to prevent a recurrence of the alleged misconduct including:

- providing a notice to all external clients and relevant internal traders outlining the requirements when transacting an EFP;
- notifying middle office staff of the requirements to transact an EFP transaction;
- updating its Operations Procedures Manual to include the specific requirement to obtain 4 trade confirmation numbers for each EFP relating to each leg of the EFP;
- providing training to relevant personnel on the rules regulating EFP transactions; and
- implementing a quarterly random checking process.

### 3. Failure to provide advice as to the number of open positions

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$5,000 (plus GST) against a Participant for an alleged breach of ASX Clear (Futures) Rule 46.1.

Due to an administrative error, the Participant failed to comply with Schedule 6 of the ASX Clear (Futures) Rules by not providing any advice to ASX Clear (Futures) as to the number of Open Positions in two contracts which it wished to close out on two consecutive days.

This failure resulted in significant over-reporting of lots of open interest in the two contracts over the two days and led to a subsequent significant reduction in open interest in these two contracts (38% and 60% respectively) on the day following, when the administrative error was corrected.

### 4. Breach of minimum core capital requirements

ASX issued an Enforcement Notice and fined a Participant \$20,000 (plus GST) for contravening the minimum core capital requirements in ASX Clear Operating Rule 5.1.1 for a period of 10 days.

During the relevant period, the Participant's core capital was approximately \$58,472 below the prescribed minimum of \$5,000,000 required by Schedule 1.2.1(1)(b) of the ASX Clear Operating Rules, due to the Participant having underestimated its loss after tax for the preceding month.

Further details of the matter can be found in ASX Clear Notice 046 dated 12 September 2012, available online at:

[https://www.asxonline.com/intradoc-cgi/groups/derivatives/documents/communications/asx\\_034730.pdf](https://www.asxonline.com/intradoc-cgi/groups/derivatives/documents/communications/asx_034730.pdf)

### 5. Failure to deliver bank bills by the prescribed time

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Clear (Futures) Operating Rule 63.3 for failing to deliver bank bills in the correct denomination to cover a short Bank Accepted Bill futures position.

The Participant's client held a short position in a 90 Day Bank Accepted Bill futures contract. On the afternoon that the contract ceased trading the Participant confirmed to ASX Clear (Futures) that it would settle the contract. The client subsequently advised that they were having difficulty sourcing the bills for settlement, as the bills they had received from their counterparty were in the wrong denominations. The Participant then spent the next 4 hours liaising with the client and the Exchange in order to source the correct denominations. These were finally deposited at 7.33 pm, some 2 hours and 33 minutes after the prescribed deadline of 5 pm.

The requirement for clearing participants to deliver bank bills in the correct denomination on the expiry of bank bill futures is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

As this was the first instance in which the Participant had breached the rule in question and the Participant had substantially enhanced its procedures and controls with respect to the bank bill delivery process, ASX decided to take no further action in respect of this breach other than to issue a formal warning that similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

### 6. Submitting test orders into the "live" market

ASX issued a formal warning letter to an ASX 24 Trading Participant for an apparent breach of ASX 24 Operating Rule 3000, for submitting 8 non bona fide "test" orders into the live market.



The breach arose following the implementation by the Participant of a new trading desk tool to execute orders on the ASX 24 market. The initial orders submitted using the tool were rejected. The Participant in conjunction with ASX Market Access established that the rejections were due to the trading limits established on the Participant's ASX 24 gateways, which were subsequently increased. In order to confirm that the amended trading limits had corrected the issue, a member of the Participant's trading desk submitted test spread orders into the live market. These orders were subsequently cancelled 46 seconds later.

The requirement for trading participants to submit bona fide orders only into the market is fundamental to the orderliness and transparency of the ASX 24 Market.

ASX acknowledges in this case that due to the large number of orders ahead of the test orders, those orders would not have been visible to market participants (only the top 5 bid/offers are displayed) and that the prices were well out of the market and the size of each order was for 1 lot only. Nevertheless, it is not appropriate for market participants to submit orders into the live market to test system changes.

Given the circumstances and as this was the first instance of its kind involving the Participant, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 7. Failure to maintain a fair and orderly market

ASX issued a formal warning letter to a Participant for an apparent breach of ASX Operating Rule 3101(a) and 1401(a).

The Participant entered a sell order via its DMA facility at a price that had not been adjusted to reflect the fair market value of the securities following a reconstruction of capital. This erroneous order had the effect of causing the reconstructed securities to trade down to 20% of the fair market value of the post-reconstructed share price.

The Participant had controls in place that would have prevented the erroneous order from entering into the market but in this instance they failed to operate as intended. The Participant has subsequently implemented additional surveillance and enhanced monitoring controls around the operation of its DMA filters.

Given the circumstances and as this was the first instance the Participant had contravened the rules in question, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should the Participant in future submit orders that bring into question the fairness and orderliness of the ASX Market, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 8. Pre-arrangement of a derivatives crossing

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule Procedure 4600.

The Participant's sales trader received an instruction from a client to sell a specified number of option contracts following confirmation from a market maker of the current price range in the specific series. The sales trader contacted a derivatives trader employed by a related entity, who agreed to buy the option contracts at an agreed price, which was within the quote price range provided by the market maker.

The derivatives trader entered a bid via an AOP system into the market, which was immediately matched to the ask from the sales trader, resulting in an on-market crossing.

The DTR and the derivatives trader thought the crossing was permitted under ASX Operating Rule 4060 Procedure Part B 9(b) because it occurred via an AOP system. However, that procedure only applies where the trading participant has not pre-arranged the entry of bids or offers, which was not the case here. Accordingly, this crossing should have been executed under ASX Operating Rule 4060 Procedure Part B 2 using the cross single series function in TradeMatch. This would have required the Participant to offer to buy and sell 50% of the volume to be crossed before executing the crossing.

The requirement for trading participants to submit crossings in accordance with ASX Operating Rules is fundamental to the fairness, orderliness and transparency of the ASX Market.

The Participant in this case took immediate action to caution and direct the sales trader and the derivatives trader to effect crossings in accordance with the correct trading system rules. Given the circumstances and as this was the first instance the Participant had contravened the above mentioned rules, ASX decided to take no further action in respect of this breach other

than to issue a formal warning that should the Participant in future attempt to pre-arrange derivatives crossings via AOP in an effort to by-pass the proper procedures for effecting crossings in TradeMatch, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

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

ASX issued formal warning letter to a Participant for an 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+12 and T+13 respectively.

The requirement for 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 failed settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 10. Failure to pay net payment amount with the prescribed time

ASX issued a formal warning letter to a Participant for the apparent breach of ASX Clear Operating Rule 12.17.1 for failing to pay a net payment amount by the prescribed time of 10.30 am on two separate occasions.

In the first instance, the Participant's procedures were not sufficiently followed and the cause of the delay was not properly escalated or rectified, resulting in a failure to pay net amount due to ASX until 10.36 am.

In the second instance, an exchange traded option trade was not given up to the third party clearer in accordance with normal procedures and the employee responsible for monitoring the settlement obligations was absent on that day. The required payment was settled at 10.38 am.

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

Having regard to the circumstances and given the remediation action undertaken by the Participant in both instances, ASX determined it was sufficient to issue a formal warning that should the Participant fail to meet a net payment obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

Kevin Lewis  
Chief Compliance Officer



## ASX Settlement Corporation Bulletin

**Date:** 30 November 2012

### Key topics

1. Enforcement Activity

### Reading List

Compliance Managers  
Office Managers  
Operations Managers (back office)

### Authorised by

Kevin Lewis

### ASX Contact

Ben Wachter

### Telephone

(02) 9227 0671

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.

## 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 activities for the 3 month period ended 30 November 2012.

### 1. Failure to comply with requirements for crossings

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$10,000 (plus GST) against a Participant for an alleged breach of ASX Operating Rule 4060.

On 20 January 2011, the Participant purported to effect a late trade crossing in accordance with ASX Operating Rule 3320 in circumstances where the ASX Operating Rule Procedures did not permit the crossing.

Instructions from clients with a matching offer and bid were received by the Participant at approximately 16:04:19 and 16:04:23 respectively. The corresponding orders were immediately entered into the market. At 16:10:15 the Participant deleted the offer from the market, denying other market participants the opportunity to accept the offer. At 16:10:28 the Participant also deleted the bid.

At approximately 16:12:45, after market closed, the Participant reported a crossing as a late trade crossing. The volume and price of the relevant securities transacted in the crossing corresponded exactly to the earlier bid and offer.

The relevant client instructions that resulted in the crossing were received between 7 am and 4:12 pm and therefore were not permitted to be effected as a late trade crossing under ASX Operating Rule 3320.

### 2. Failure to comply with exchange for physical requirements

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$30,000 (plus GST) against a Participant for an alleged breach of ASX 24 Operating Rule 4801(a).

On 11 occasions between 20 May 2011 and 28 September 2011, the Participant reported exchange for physical ("EFP") transactions entered into by its clients without executing a genuine transaction in a physical commodity or instrument, as specified in the Procedures.

In imposing the penalty, ASX had regard to the fact that since the alleged breach occurred, the Participant had implemented meaningful measures to prevent a recurrence of the alleged misconduct including:

- providing a notice to all external clients and relevant internal traders outlining the requirements when transacting an EFP;
- notifying middle office staff of the requirements to transact an EFP transaction;
- updating its Operations Procedures Manual to include the specific requirement to obtain 4 trade confirmation numbers for each EFP relating to each leg of the EFP;
- providing training to relevant personnel on the rules regulating EFP transactions; and
- implementing a quarterly random checking process.

### 3. Failure to provide advice as to the number of open positions

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$5,000 (plus GST) against a Participant for an alleged breach of ASX Clear (Futures) Rule 46.1.

Due to an administrative error, the Participant failed to comply with Schedule 6 of the ASX Clear (Futures) Rules by not providing any advice to ASX Clear (Futures) as to the number of Open Positions in two contracts which it wished to close out on two consecutive days.

This failure resulted in significant over-reporting of lots of open interest in the two contracts over the two days and led to a subsequent significant reduction in open interest in these two contracts (38% and 60% respectively) on the day following, when the administrative error was corrected.

### 4. Breach of minimum core capital requirements

ASX issued an Enforcement Notice and fined a Participant \$20,000 (plus GST) for contravening the minimum core capital requirements in ASX Clear Operating Rule 5.1.1 for a period of 10 days.

During the relevant period, the Participant's core capital was approximately \$58,472 below the prescribed minimum of \$5,000,000 required by Schedule 1.2.1(1)(b) of the ASX Clear Operating Rules, due to the Participant having underestimated its loss after tax for the preceding month.

Further details of the matter can be found in ASX Clear Notice 046 dated 12 September 2012, available online at:

[https://www.asxonline.com/intradoc-cgi/groups/derivatives/documents/communications/asx\\_034730.pdf](https://www.asxonline.com/intradoc-cgi/groups/derivatives/documents/communications/asx_034730.pdf)

### 5. Failure to deliver bank bills by the prescribed time

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Clear (Futures) Operating Rule 63.3 for failing to deliver bank bills in the correct denomination to cover a short Bank Accepted Bill futures position.

The Participant's client held a short position in a 90 Day Bank Accepted Bill futures contract. On the afternoon that the contract ceased trading the Participant confirmed to ASX Clear (Futures) that it would settle the contract. The client subsequently advised that they were having difficulty sourcing the bills for settlement, as the bills they had received from their counterparty were in the wrong denominations. The Participant then spent the next 4 hours liaising with the client and the Exchange in order to source the correct denominations. These were finally deposited at 7.33 pm, some 2 hours and 33 minutes after the prescribed deadline of 5 pm.

The requirement for clearing participants to deliver bank bills in the correct denomination on the expiry of bank bill futures is fundamental to the efficient operation of the ASX Clear (Futures) clearing and settlement facility.

As this was the first instance in which the Participant had breached the rule in question and the Participant had substantially enhanced its procedures and controls with respect to the bank bill delivery process, ASX decided to take no further action in respect of this breach other than to issue a formal warning that similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

### 6. Submitting test orders into the "live" market

ASX issued a formal warning letter to an ASX 24 Trading Participant for an apparent breach of ASX 24 Operating Rule 3000, for submitting 8 non bona fide "test" orders into the live market.

The breach arose following the implementation by the Participant of a new trading desk tool to execute orders on the ASX 24 market. The initial orders submitted using the tool were rejected. The Participant in conjunction with ASX Market Access established that the rejections were due to the trading limits established on the Participant's ASX 24 gateways, which were subsequently increased. In order to confirm that the amended trading limits had corrected the issue, a member of the Participant's trading desk submitted test spread orders into the live market. These orders were subsequently cancelled 46 seconds later.

The requirement for trading participants to submit bona fide orders only into the market is fundamental to the orderliness and transparency of the ASX 24 Market.

ASX acknowledges in this case that due to the large number of orders ahead of the test orders, those orders would not have been visible to market participants (only the top 5 bid/offers are displayed) and that the prices were well out of the market and the size of each order was for 1 lot only. Nevertheless, it is not appropriate for market participants to submit orders into the live market to test system changes.

Given the circumstances and as this was the first instance of its kind involving the Participant, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should similar behaviour occur again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 7. Failure to maintain a fair and orderly market

ASX issued a formal warning letter to a Participant for an apparent breach of ASX Operating Rule 3101(a) and 1401(a).

The Participant entered a sell order via its DMA facility at a price that had not been adjusted to reflect the fair market value of the securities following a reconstruction of capital. This erroneous order had the effect of causing the reconstructed securities to trade down to 20% of the fair market value of the post-reconstructed share price.

The Participant had controls in place that would have prevented the erroneous order from entering into the market but in this instance they failed to operate as intended. The Participant has subsequently implemented additional surveillance and enhanced monitoring controls around the operation of its DMA filters.

Given the circumstances and as this was the first instance the Participant had contravened the rules in question, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should the Participant in future submit orders that bring into question the fairness and orderliness of the ASX Market, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 8. Pre-arrangement of a derivatives crossing

ASX issued a formal warning letter to an ASX Participant for an apparent breach of ASX Operating Rule Procedure 4600.

The Participant's sales trader received an instruction from a client to sell a specified number of option contracts following confirmation from a market maker of the current price range in the specific series. The sales trader contacted a derivatives trader employed by a related entity, who agreed to buy the option contracts at an agreed price, which was within the quote price range provided by the market maker.

The derivatives trader entered a bid via an AOP system into the market, which was immediately matched to the ask from the sales trader, resulting in an on-market crossing.

The DTR and the derivatives trader thought the crossing was permitted under ASX Operating Rule 4060 Procedure Part B 9(b) because it occurred via an AOP system. However, that procedure only applies where the trading participant has not pre-arranged the entry of bids or offers, which was not the case here. Accordingly, this crossing should have been executed under ASX Operating Rule 4060 Procedure Part B 2 using the cross single series function in TradeMatch. This would have required the Participant to offer to buy and sell 50% of the volume to be crossed before executing the crossing.

The requirement for trading participants to submit crossings in accordance with ASX Operating Rules is fundamental to the fairness, orderliness and transparency of the ASX Market.

The Participant in this case took immediate action to caution and direct the sales trader and the derivatives trader to effect crossings in accordance with the correct trading system rules. Given the circumstances and as this was the first instance the Participant had contravened the above mentioned rules, ASX decided to take no further action in respect of this breach other than to issue a formal warning that should the Participant in future attempt to pre-arrange derivatives crossings via AOP in an effort to by-pass the proper procedures for effecting crossings in TradeMatch, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

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

ASX issued formal warning letter to a Participant for an 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+12 and T+13 respectively.

The requirement for 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 failed settlement obligation within the prescribed timeframe again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

#### 10. Failure to pay net payment amount with the prescribed time

ASX issued a formal warning letter to a Participant for the apparent breach of ASX Clear Operating Rule 12.17.1 for failing to pay a net payment amount by the prescribed time of 10.30 am on two separate occasions.

In the first instance, the Participant's procedures were not sufficiently followed and the cause of the delay was not properly escalated or rectified, resulting in a failure to pay net amount due to ASX until 10.36 am.

In the second instance, an exchange traded option trade was not given up to the third party clearer in accordance with normal procedures and the employee responsible for monitoring the settlement obligations was absent on that day. The required payment was settled at 10.38 am.

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

Having regard to the circumstances and given the remediation action undertaken by the Participant in both instances, ASX determined it was sufficient to issue a formal warning that should the Participant fail to meet a net payment obligation on time again, the matter will be referred to ASX's Enforcement Unit to consider formal enforcement action.

Kevin Lewis  
Chief Compliance Officer