

What's this about?

Effective date: 29/05/2015

<input checked="" type="checkbox"/> ASX Trade	<input checked="" type="checkbox"/> ASX 24					
<input checked="" type="checkbox"/> Trading	<input checked="" type="checkbox"/> Clearing	<input checked="" type="checkbox"/> Settlement				
<input type="checkbox"/> Operations	<input type="checkbox"/> Technology	<input type="checkbox"/> Market Data	<input checked="" type="checkbox"/> Rules	<input checked="" type="checkbox"/> Compliance	<input type="checkbox"/> Risk	<input type="checkbox"/> Other

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 that were finalised during the 3 month period ended 31 May 2015. Investigations in relation to other enforcement matters are ongoing.

Exchange for Physical (EFP) contraventions

ASX issued an Alleged Minor Infringement Notice and imposed a monetary penalty of \$10,000 (plus GST) against an ASX 24 participant for alleged contraventions of ASX 24 Operating Rules 4800, 4801(a) and 4803 on 31 December 2014 in that it effected two EFP transactions for its client:

- i) not in accordance with the ASX 24 Operating Rule Procedures. The two EFP transactions were registered as Exchange for Risk without a bona fide physical transaction being completed, contrary to the requirements of Procedure 4800.1; and thereby
- ii) a genuine transaction in a physical commodity or instrument was not executed; and
- iii) the participant transacted on behalf of its client as both the buyer and seller of both components of the EFP transaction.

The participant had previously, in November 2013, received a "no escalation letter" from ASX in relation to apparent contraventions of the EFP requirements. At that time the participant advised ASX it would update its EFP procedures to minimise the chance of a recurrence. The updated procedures did not prevent the alleged contravention on 31 December 2014. The participant has subsequently implemented meaningful measures to prevent any further contraventions of the requirements of ASX 24 Operating Rules 4800, 4801(a) and 4803.

Failure to discharge net clearing obligations for derivatives CCP contracts and cash market margin in accordance with the times prescribed under the ASX Clear Operating Rules

ASX issued a formal warning letter to a participant for apparent breaches of ASX Clear Operating Rule 12.17.1 on 5 December 2014 for failing to:

- pay the required net amount for cash market margining due to ASX Clear; and
 - match or settle the net amount due to be received from ASX Clear for margins relating to options market transactions ("ETO Margins"),
- by the prescribed time of 10:30am (AEDT).

The participant confirmed that the apparent breaches were caused by an internet access outage. The outage was identified by the participant at 8:09am on 5 December 2014 and was escalated both internally and to the participant's internet service provider upon identification.

At 9:55am, when it became evident that the internet would not be restored by 10:30am, the participant's Operations Manager escalated the issue to ASX Clearing and Settlement Operations and requested their assistance in completing both payments due that day through Austraclear.

At 10:00am, ASX provided the participant with the "Austraclear Assisted Transaction Request Form" to complete and submit to instruct ASX to facilitate the assisted transaction.

At 10:22am, ASX Clearing and Settlement Operations received an executed "Assisted Transaction Request Form" from the participant and processed both payments as follows:

- one payment to ASX Clear for Cash Market Margins which reached "settled" state at 10:40am, 10 minutes after the time prescribed under ASX Clear Operating Rules Procedure 12.17.1; and
- one payment to the participant for ETO margins which reached "matched" state at 10:33am, 3 minutes after the time prescribed by ASX Clear under ASX Clear Operating Rules Procedure 12.17.2.

It appears that the participant did not have alternate business continuity arrangements for the Austraclear system to enable it to adequately meet its obligations under ASX Clear Operating Rules 12.17.1 and 12.17.2, other than to request assistance from ASX.

ASX published detailed guidance on disaster recovery and business continuity arrangements for ASX Clear and Austraclear participants in 2014 (Guidance Notes 9 and 10, respectively) containing the key requirements that participants should address to comply with the requirement to maintain adequate business continuity and disaster recovery arrangements under ASX Clear Operating Rules 4.1.1(g) and 4.2.1 and Austraclear Regulation 2.4(b)(i) and (iii).

ASX alleged that, in addition to representing apparent breaches of ASX Clear Operating Rules 12.17.1 and 12.17.2, this event also represented an apparent breach of:

- ASX Clear Operating Rules 4.1.1(g) and 4.2.1 for not maintaining adequate disaster recovery and business continuity arrangements to ensure the timely recovery of its usual ASX Clear operations; and
- Austraclear Regulation 2.4(b)(i) and (iii) for not maintaining appropriate operational capacity and appropriate complementary business continuity arrangements for the Austraclear system to enable it to meet its ongoing obligations in a timely manner in a form satisfactory to Austraclear in its discretion.

What do I need to do and by when?

For your information only.

Need more information?

Issued by

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