

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 30 November 2016. Investigations in relation to other enforcement matters are ongoing.

Daily Beneficial Ownership Reports

ASX issued a formal warning letter to a participant for breaching its requirement to submit a daily beneficial ownership report ("DBOR") pursuant to ASX 24 Operating Rule 3500. The participant had received a waiver of the rule allowing it to submit positions held in the account of a nominated offshore related body corporate at the omnibus level by 8am on each business day (the "Day One DBOR"), and an additional report containing a breakdown of the positions in the omnibus account by 8.00am on the day after that submission (the "Day Two DBOR").

ASX became aware of the breaches when conducting a regular review of the participant's compliance with rule 3500. The review identified two instances where the omnibus positions reported by the participant in the Day One DBOR did not reconcile with the breakdown reported in the Day Two DBOR, a breach of ASX 24 Operating Rules 3500, 6704 and 1000(d). The participant had received four "no escalation" findings with respect to breaches of rule 3500 in the previous 10 months.

ASX has required the participant, among other things, to review its resources and processes relating to completing and submitting DBORs to ensure they are sufficient to meet its obligations under the operating rules, to report on the outcome of the review, and to provide training on DBOR obligations to all existing and any new key personnel.

Client money requirements

ASX has issued formal warning letters to seven participants of ASX Clear with respect to breaches of the trust account and related client money requirements in the ASX Clear Operating Rules, following a recent thematic review by ASX of compliance with these requirements.

Among other things, the review identified the following issues:

- A participant was found to have failed to reconcile its trust account for the last business day of each week in accordance with rule 4.23.6(b) and to have committed associated breaches of rule 4.23.2.
- The reconciliations of a participant were found to be deficient in not using the ledger balance as a base line to add or deduct adjustments to work back to the adjusted bank balance, and in not clearly categorising reconciliation items and stating the net variance.
- The reconciliations provided by a participant in response to ASX's request for sample trust account reconciliations were found to be trust movement reports and therefore did not meet the requirements of rule 4.23.6. The participant also indicated that it had not completed one particular reconciliation within the timeframe required under rule 4.23.6.
- A participant identified that it had a deficiency in its trust account as a result of an audit fee being incorrectly processed by its bank without proper authorisation from the participant, which was then not reported to ASX in breach of rules 4.23.2 and 4.23.7.



- The reconciliations of a participant were found to be deficient in not clearly stating the net variance between the ledger balance and the bank balance and the reconciliation items comprising the variance, as set out in the sample reconciliation form in Guidance Note 12.
- A participant identified a breach of rule 4.23.2 in relation to dishonours being withdrawn from the trust account by its payment provider, which ASX then found had resulted in a deficiency in the trust account which had not been reported to ASX as required under rule 4.23.7.
- A participant self-reported a breach of rule 4.23.7 in relation to a deficiency in the trust account. ASX's investigation identified that the trust account reconciliations provided by the participant were trust movement / funding calculations and not trust account reconciliations that met the requirements of rule 4.23.6.

In each of the above cases the participant was required to conduct specific remediation activities, including conducting a review of its trust account reconciliation procedures to ensure alignment with Guidance Note 12, implementing a program of quarterly independent compliance reviews of its trust account reconciliations, and implementing additional controls with respect to related issues (such as notifications to ASX).

ASX also issued formal warning letters to two participants for other trust-related breaches. The first concerned a deficiency of \$2,284,457.22 in the trust account of a participant. The deficiency arose from a processing error, however it was reported to ASX outside the relevant time frame in breach of rules 4.23.2 and 4.23.7. During the course of its investigation into the matter, ASX also became aware that the participant had not performed reconciliations that meet the requirements of rule 4.23.6 with respect to its trust account for three business days in July 2016. In addition to the new controls proposed by the participant, ASX required the participant to take a number of remediation actions, including a review of its trust account reconciliation procedures to ensure alignment with Guidance Note 12, implement additional controls to ensure any deficiencies in the trust account can be identified and reported promptly, and implement a program of quarterly independent compliance reviews of its trust account reconciliations.

A second warning letter was issued to a participant who self-reported pursuant to rule 4.23.7 two instances of deficiencies in its trust account. ASX required the participant to resolve with its participating bank a means of obtaining sufficient information for its end of day process (particularly the ability to identify duplicate transactions) and implement quarterly independent compliance reviews of its trust account reconciliations.

Mandatory provisions of sponsorship agreements

ASX issued a formal warning letter to a participant with permission to establish and maintain participant sponsored holdings under a sponsorship agreement established pursuant to ASX Settlement Operating Rule 7.2.2. The participant received notice of a deceased estate and applied a holding lock to the deceased holder's record, however the account became active following a system upgrade by the general settlement participant with whom the participant had arrangements to hold, transfer and settle trades in batch settlement on its behalf. An adviser with the participant executed unauthorised trades on the account for portfolio re-balancing purposes. ASX conducted an investigation which required frequent requests for information from the participant to establish the circumstances. These events, taken as a whole, constituted a breach of:

- Rule 7.2.2(h) as the participant did not comply with the mandatory provisions of its sponsorship agreement by initiating transfers into and out of the deceased holder's participant sponsored holding without the express authority of the deceased holder's lawfully appointed representative; and
- Rule 6.2.2 as there was evidence that the participant did not meet the information requirements by providing incomplete, inaccurate and misleading information to ASX on a number of separate occasions.

