

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 August 2017. Investigations in relation to other enforcement matters are ongoing.

Compliance with organisation requirements and the obligation to notify ASX of a material change

ASX issued a formal warning letter to a participant for failing to notify ASX of its transition to a new derivatives clearing system offered by an offshore external provider, as required by ASX Clear Operating Rule (“**ASX CR**”) 4.7.1(d)(iii).

ASX CR 4.7.1(d)(iii) requires a participant to notify ASX of any material change concerning its business.

ASX CR Guidance Note 9 – *Offshoring and Outsourcing* (“**GN 9**”) notes that this rule extends to notifying ASX of the entry or termination of material offshored and outsourced activities. GN 9 further explains that an offshoring or outsourcing arrangement is considered by ASX to be “material” if disruption of the offshored or outsourced activity has the potential to impact materially on the participant’s ability to comply with its obligations under the ASX CR.

ASX relies on receiving timely notification of material changes to offshored or outsourced activities so that it can initiate enquiries to confirm that a participant has undertaken adequate due diligence to verify that it will continue to have the resources and processes in place to comply with its obligations under the ASXCR, noting that the participant will be liable for any breach of the ASXCR caused by the service provider to whom it has offshored or outsourced any of its clearing activities.

In November 2016, ASX became aware of a material change to the participant’s offshoring and outsourcing arrangements through discussions with a third party. ASX initiated enquiries with the participant to understand the due diligence it had undertaken prior to making this change. ASX’s enquiries revealed that the participant had not undertaken adequate due diligence to verify:

- that the service provider’s business continuity and disaster recovery arrangements aligned with the requirements outlined in ASX CR Guidance Note 10 – *Business Continuity and Disaster Recovery*; or
- that the participant had identified the potential business, operational and other risks involved with the arrangements with a view to ensuring that those risks had been appropriately addressed.

The participant was required to undertake a review of its management supervision processes regarding the offshored and outsourced arrangements to ensure that the activities continue to comply with all applicable obligations under the relevant operating rules.

