

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

Enforcement proceeding

ASX finalised one enforcement proceeding in the period.

The ASX Chief Compliance Officer imposed a penalty of \$50,000 (plus GST) on Pershing Securities Australia Pty Ltd for a breach of ASX Clear Operating Rule 5.1.1 following its failure to comply with the Risk Based Capital Requirements set out in Schedule 1 to those rules.

Further details are available in the following ASX circular:

[http://www.asx.com.au/communications/notices/2017/20171030_pershing_securities_australia_pty_ltd_circular_\(final\).pdf](http://www.asx.com.au/communications/notices/2017/20171030_pershing_securities_australia_pty_ltd_circular_(final).pdf)

Breach of organisational requirements and client money rules

ASX has issued a warning letter to a participant for a breach of ASX Clear Operating 3.5.1 and ASX Settlement Operating Rule 4.3.1(h), which each require an applicant for admission as a participant to have adequate resources and processes to comply with its obligations as a participant. These obligations become ongoing obligations of a participant under ASX Clear Operating 4.4.1(a) and ASX Settlement Operating Rule 6.1.1(a).

For these purposes, "resources" is defined to include "technological resources", and "processes" is defined to include "business continuity and disaster recovery processes." The associated procedures direct participants to have regard to the content of Guidance Note 10 *Business Continuity and Disaster Recovery* to inform them of the scope of their obligations to have adequate resources and processes under the organisational requirements.

The incident in question involved a failure of a scheduled banking settlement batch job in the participant's back office system, which resulted in it being unable to complete cash payments to certain clients in a timely fashion for settlement dates 12 and 13 April 2017. ASX's investigation provided sufficient basis for it to conclude that the participant did not "have access to a suitable test environment for all critical technology to seek to reproduce disruptions to technology and to find resolutions to them", as required by section 4.3 of Guidance Note 10, and that this affected the timeliness of the resolution process.

Additionally, and at the time of the incident, the participant's personnel came to the erroneous view that an 'items in trust' report was not required to be produced on the basis that manual payments to clients were still being processed. The failure to produce this report gave rise to breaches of:

- ASX CR 4.23.6(b), as the participant had failed to perform the trust account reconciliation for each person on whose behalf money was held in the trust account;
- ASX CR 4.23.6, as the trust account reconciliation performed was not accurate in all respects; and
- ASX CR 4.23.7, as the participant failed to notify ASX of the above breaches within two business days.



Breach of special condition relating to daily beneficial ownership reports

ASX has issued a warning letter to an ASX 24 principal trader whose admission was subject to a condition that it submit its Daily Beneficial Ownership Reports (“**DBORs**”) to ASX on T+1. Due to an oversight by a participant through whom the trader submitted orders, ASX had been receiving the trader’s DBORs on T+2 rather than T+1. This amounted to a breach of ASX 24 Operating Rule 1400(a) and (b), which requires a trading participant to comply at all times with:

- the applicable admission requirements; and
- any conditions imposed on the trading participant under the rules.

The obligation to ensure the correct DBORs data was submitted to ASX under the ASX 24 Operating Rules was that of the principal trader, notwithstanding that another participant was physically submitting the data to ASX on its behalf.

Thematic review of compliance with liquidity risk management requirements

ASX has issued warning letters to 8 participants for failure to comply with the requirements of ASX Clear Guidance Note 13 *Managing Liquidity Requirements*, including the requirement to have:

- a formal liquidity risk framework in place that is appropriate to the nature, scale and complexity of their activities;
- a nominated officer responsible for liquidity management; and
- a board approved annual liquidity plan which considers both “normal” and “stress” conditions and robust liquidity-related operational processes and management reporting.

The requirements in the Guidance Note became effective on 28 February 2017 and were preceded by a consultation period and 6 month grace period from 31 August 2016.

Failure to comply with the Guidance Note represents a breach of the requirements for admission that a participant meet the organisational requirements established by ASX Clear Operating Rules 3.2.1(e) and 3.5.1, namely that a participant have adequate resources (including financial and human resources) and processes (including management supervision, compliance and risk management processes) to comply with its obligations.

