

## **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 2018. Investigations in relation to other enforcement matters are ongoing.

### **Daily beneficial ownership reporting**

ASX has issued a warning letter to a participant in relation to a breach of ASX 24 Operating Rule (“**ASX 24 OR**”) 4840 and its related procedure. A logic error in the participant's post-trade futures operations system caused the incorrect beneficial ownership name and number to be applied to certain sub-accounts in its reports between October 2014 and August 2018. The error was detected by a global review of non-financial regulatory reporting obligations by the participant's parent entity.

ASX found that the error did not affect the open positions that the participant reported to ASX. However, the participant's failure to identify the issue suggested that it did not perform periodic reviews of its ASX obligations and that its change management processes were not designed and functioning to ensure that changes to its key ASX obligations were identified, thoroughly assessed, tested, and authorised prior to their implementation.

ASX acknowledged the prompt and effective remediation undertaken by the participant.

### **Holder records for FOR financial products**

ASX has issued a warning letter to a participant in relation to a breach of the requirement under ASX Settlement Operating Rule (“**ASX SR**”) 8.7.3 to apply a residency indicator of “F” where a Foreign Person establishes any new holding of FOR financial products. Between 2012 and 1 March 2018, a hard-coding error in the participant's settlement management system resulted in a domestic residency indicator being applied to all holder records. The participant confirmed that of the 2,110 accounts affected by the error, 175 accounts (792 holdings) were in breach of ASX SR 8.7.3 until their rectification.

The ASX SR framework for FOR financial products is designed to assist listed entities in monitoring and enforcing compliance with ownership restrictions imposed by legislation or under the constitution of an issuer. Accordingly, listed entities rely on participants submitting true and accurate holder record information to CHESS. The length of time that the error persisted indicated to ASX that the participant failed to perform periodic due diligence to ensure that information submitted to CHESS was accurate and representative of clients' residency status.

Having detected the error, the participant took prompt steps to report the matter to ASX and rectify all affected accounts.

### **Settlement of less than a marketable parcel**

ASX has issued a warning letter to a participant in relation to a failure to comply with ASX SR 8.10.2, which prohibits a participant from initiating a transfer if it would result in a CHESS or issuer-sponsored holding of less than a marketable parcel unless the limited exceptions in that rule apply.

The participant introduced an automated control to its back office system to calculate and issue warning messages for potential breaches of ASX SR 8.10.2 when its operations team manually processed written requests for transfer. The participant did not conduct regular compliance reviews to assess the control. An external enquiry triggered a review into the control's data feed and identified that it was incorrectly mapping



price information from both domestic and international security references, meaning the warning message was ineffective from its inception in 2013.

ASX acknowledged the prompt remediation actions taken by the participant to amend its manual transfer processes to ensure future compliance with ASX SR 8.10.2.

### **Nominated person readily available to make decisions regarding trading**

ASX issued a warning to a participant in relation to an apparent breach of the requirement to have a nominated person readily available to make decisions regarding trading, as required under the procedure to ASX 24 OR 1000(e) and (f). These nominees are expected to be authorised signatories under ASX 24 OR 6510 so their identity can be properly verified by ASX. The participant had entered a number of trades in the mini SPI that were in the qualifying cancellation range or the extreme trade range. ASX's trading operations team attempted to contact an authorised person for over 30 minutes before being able to speak to someone with authority to resolve the matter.

Following the incident, the participant undertook to review its procedures regarding trade cancellations. ASX recommended that the participant appoint at least two authorised signatories located in the Australian time zone to ensure that an alternative is always available during periods of leave or illness.

### **Disaster recovery and business continuity arrangements**

ASX has issued a warning letter to a participant in relation to a self-reported incident affecting its ability to reliably communicate with CHES. The issue was caused by an infrastructure failure at the participant's primary site. Full connection and processing of affected transactions was achieved around 22 hours after the outage began.

The event represented a breach of the requirement to reliably communicate with CHES as required by ASX SR 4.7.1(a) and 4.12.4. It also constituted:

- a failure to maintain adequate resources and processes to comply with its obligations as a participant, specifically its business continuity and disaster recovery processes (ASX SR 4.18.1); and
- a failure to maintain appropriate disaster recovery and business continuity arrangements (ASX SR 6.21.1 and Guidance Note 10).

The participant advised that it would remediate the breach by replacing its existing network connection, and was required to notify ASX of its completion.

### **Compliance with the client money requirements**

ASX has issued warning letters to two participants for failing to conduct their trust account reconciliation processes in accordance with ASX Clear Operating Rule ("ASX CR") 4.23.6 and ASX CR Guidance Note 12.

In the case of one participant, it had identified a deficiency of \$743,630.79 in client funds held in the trust account as a result of a human processing error, also representing a breach of ASX CR 4.23.2. The deficiency was replenished on the following day.

Each of the participants remediated the breach following consultation with ASX.

