

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 2019. Investigations in relation to other enforcement matters are ongoing.

Enforcement decisions

ASX finalised two enforcement proceedings in the period:

- ASX's Chief Compliance Officer (the "**CCO**") imposed a penalty of \$30,000 (plus GST) on Citicorp Nominees Pty Ltd for breaches the ASX Settlement Operating Rules ("**ASX SR**") relating to the reporting of securities lending activity.

Further details are available in the following ASX circular:

<https://www.asx.com.au/communications/notices/2019/Citicorp-Nominees-Pty-Ltd---disciplinary-circular.pdf>

- The CCO imposed a penalty of \$40,000 (plus GST) on BTIG Australia Limited ("**BTIG**") for breaches of the ASX Operating Rules ("**ASX OR**") relating to BTIG's failure to ensure that client orders were directed to a relevant clearing participant.

Further details are available in the following ASX circular:

<https://www.asxonline.com/content/dam/asxonline/public/notices/2019/May/20190523-btig-australia-limited-disciplinary-circular.pdf>

Failure to maintain adequate clearing arrangements

ASX issued a warning letter to a trading participant for failing to direct two orders to the relevant clearing participant in breach of ASX OR 1003. The orders, which were placed using a new automated order processing system, did not include a correct clearing ID when submitted to the exchange.

Compliance with annual audit requirement

ASX issued a warning letter to a futures clearing participant following its failure to lodge its annual audit certificate by the due date of 31 March 2019, in breach of ASX Clear (Futures) Operating Rule ("**ASX CFR**") 4.14(a).

Accurate reporting of open interest

ASX issued a warning letter to a futures clearing participant for a failure to calculate and report the number of open positions which it wished to remain open at the end of each trading day.

Open interest figures are published to allow market users to gauge the depth of liquidity in the market and to provide them with the opportunity to make informed decisions. Under the ASX CFR, participants must exclude positions that do not contribute to market liquidity before submitting the number of open positions to be left open. Accordingly, participants must close out back-to-back open positions within each individual account on the business day following their creation. They must do this in accordance with the relevant procedure.



The participant's process involved netting open positions held in separate sub-accounts, which resulted in the gross sum of open positions held in each individual account not being accurately reported to ASX. This was contrary to the relevant procedure.

ASX determined that:

- The impact of the breach was not significant in the context of the whole market.
- The participant subsequently and effectively remediated its arrangements.
- The participant initiated discussions with ASX to assess whether its arrangements complied with the rules.

The participant was required to:

- a. undertake a review of its ASX reporting obligations by 31 July 2019;
- b. provide ASX with any reports produced from the review, which should include details of any changes to its reporting processes or compliance framework; and
- c. undertake periodic reviews to ensure ongoing compliance with its procedure for the opening of new accounts contained in its procedures manual.

Failure to maintain a valid sponsorship agreement with clients

ASX has issued a warning letter to a settlement participant for failing to maintain a sponsorship agreement in accordance with ASX SR 6.3.2 and 6.3.3.

A participant is required to have a valid sponsorship agreement in place with any client with a participant sponsored holding on the CHESS subregister which sets out the terms and conditions on which the participant maintains that holding. The participant in question terminated existing sponsorship agreements with a number of clients, while maintaining the corresponding holding on the CHESS subregister, in breach of this obligation.

The breach impacted the affected clients' ability to take action on their holding due to the ensuing uncertainty as to the identity of their controlling participant.

The participant undertook remedial action to address process changes and to issue new sponsorship agreements to those clients who wished to maintain holdings with the participant. The participant was required to evidence that valid sponsorship agreements had been put in place or that the relevant holder identification numbers ("HINs") had been cancelled and the holdings converted to issuer-sponsored.

Compliance with reconciliation of client money requirements

ASX has issued a warning letter to a clearing participant for failing to comply with ASX Clear Operating Rule ("ASX CR") 4.23.

The participant identified and self-reported a deficiency of \$9,074.94 in its trust account on a particular day which was caused by a processing error. Breaches by the participant of the following ASX CR were identified during ASX's investigation:

- 4.23.2, as it failed to ensure that client monies are held in the trust account at all times;
- 4.23.7, as it failed to notify ASX of a deficiency in the trust account within the required timeframe;
- 7.1.1, as it failed to establish that it had entered into a client agreement with a particular client prior to agreeing to clear derivative market transactions for the client; and
- 7.1.4, as it failed to retain a copy of the client agreement.

The participant remediated by:

- a. rectifying the deficiency of client funds;
- b. entering into a client agreement with the relevant client;



- c. revising its processes to allocate suspense trades to a new client holding account, such that there is no longer a requirement to transfer client funds from its house suspense account to the trust account when suspense trades are re-allocated from the client-holding account to the designated client account; and
- d. identifying a discrepancy of \$1.51 between its internal ledger and the external balance in the ASX Exchange Account on a specific date, which it attributed to GMI rounding adjustments.

The participant was required to:

- i. review its processes to ensure rounding differences arising from its trust account reconciliation process are posted in the ledger in a timely manner to match the balance in the trust account and ASX Exchange Account; and
- ii. review its processes for entering and retaining copies of client agreements and implement changes, as necessary, to prevent a recurrence, and to confirm these to ASX in writing.

