

## **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 four month period ending 30 June 2020. Investigations in relation to other enforcement matters are ongoing.

### **Enforcement decisions**

ASX finalised three enforcement proceeding in the period:

- ASX's Chief Compliance Officer (the '**CCO**') imposed a penalty of \$20,000 plus GST on a participant in relation to an alleged breach of its obligation under ASX Clear (Futures) Operating Rule ('**ASX CFR**') 43.1 / 44.4 to pay an intra-day margin / daily settlement amount by the prescribed time of 11:00am. The denomination of the payment was New Zealand dollars ('**NZD**') and, although not considerable, the amount exceeded the participant's facility limit for that currency with its participating bank. The participant undertook substantial voluntary remediation, including updating its procedures and escalation protocols, increasing the relevant facility limit, and increasing headcount and training.
- The CCO imposed a penalty of \$20,000 plus GST on a second participant in relation to a breach of its obligation under ASX CFR 43.1 / 44.4 to pay an intra-day margin / daily settlement amount by the prescribed time of 11:00am. The amount in this case was also payable in NZD. The breach occurred primarily as a result of the participant failing to make arrangements for an NZD credit facility after NZClear, which had been operated by the Reserve Bank of New Zealand, was decommissioned. The participant undertook to improve its processes in monitoring the balance of the account designating for paying NZD margin calls and escalating issues with its participating bank, and to implement an NZD 1 million "margin buffer" with ASX.
- The CCO imposed a penalty of \$15,000 plus GST on a third participant in relation to a breach of its obligations under ASX CFR 45.1 to pay an intra-day margin amount in respect of open contracts held by it as a clearing participant. Following the decommissioning of NZClear, the participant migrated to a replacement facility, which imposed a sanctions screening process in certain circumstances. The participant was not aware that payment requests submitted by it may be affected by this process and, on the occasion in question, the process delayed the settling of the participant's margin amount. In remediation, the participant updated its procedures for contacting its bank with respect to margin payments, provided updated training to its staff, and caused its bank to remove the screening process and increase intra-day payment limits.

### **Organisational competency**

ASX issued a warning letter to a participant in relation to events stemming from a material change to its business systems that triggered a number of operational issues impacting the participant's ability to comply with its obligations as an ASX clearing participant.

Over the course of the period concerned and in response to the operational concerns identified, ASX imposed on the participant:

- additional capital requirements;
- additional conditions on the participant's admission; and



- the requirement to appoint independent experts to review its systems, infrastructure and business continuity arrangements, and its processes for key clearing obligations including, but not limited to, its business continuity and client money arrangements.

All remediation actions arising from the reviews were completed by and on behalf of the participant to ASX's satisfaction, and the additional requirements and conditions imposed by ASX have now been removed.

Noting the actions mentioned above that ASX had already taken in relation to these matters, the open and co-operative approach taken by the participant in its dealings with ASX, the significant time, cost and effort undertaken by the participant in remediating its breaches of the ASX Clear Operating Rules, and enforcement action taken by ASIC in relation to a number of these matters, ASX determined that a formal warning letter represented an appropriate regulatory outcome from ASX's perspective.

