

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 period ending 31 December 2020. Investigations in relation to other enforcement matters are ongoing.

Client money requirements

ASX issued a warning letter to a participant in relation to apparent breaches of ASX Clear Operating Rules ('**ASX CR**') 4.23.2 and 4.23.6(a), being the obligations to hold money to which Division 2 of Part 7.8 of the Corporations Act applies on trust, and to perform an accurate reconciliation at the close of business on each business day of the aggregate balance held by it on trust and the corresponding balance as recorded in the participant's accounting records.

Over a roughly eight-month period, the trust account maintained by the participant for a particular group of clients was deficient over each night in that period. The daily report that was produced by the participant to calculate the amount it needed to hold on trust each day was produced in the morning and did not include receipt of payments from leveraged equities in relation to those clients during the day which were to be applied to their ETO margin obligations.

In response, the participant updated its reporting process to incorporate an afternoon runtime, conducted compliance training, and made copies of its procedures more available. ASX also required the participant to review its daily trust account reconciliation process and update its procedures to ensure:

- it is performing its reconciliation in accordance with ASX CR 4.23.6(a) and the relevant procedures, including *Guidance Note 12 Trust and Client Segregated Accounts* – Section 7 'Trust account reconciliation requirements';
- its procedures clearly set out the supporting reports for the reconciliation process and ensure the time these reports are generated accurately reflects the actual balance held in trust account in question at close of business and the close of business trust general ledger balance on each business day; and
- complete these required actions by a specified time and provide copies of the updated procedures to ASX.

Establishment of a holding on the CHESSE sub-register

ASX issued a warning letter to a participant in relation to a breach of ASX Settlement Operating Rules ('**ASX SR**') 6.3.2 and 8.7.1, which restrict a sponsoring participant from establishing or maintaining a participant sponsored holding on a CHESSE sub-register unless the sponsoring participant and the holder have entered into a sponsorship agreement.

The breach arose in relation to clients in respect of whom were established participant-sponsored holdings instead of direct holdings. The participant had outsourced certain business activities including the establishment of Holder Identification Numbers ('**HINs**'). The third-party's system used to establish holdings defaulted to sponsored holdings. Because the participant understood that its provider would set up direct holdings for those customers, it did not enter into a sponsorship agreement with any of the affected customers. Whilst there was minimal impact to the participant's clients, the error affected approximately 36,500 active custodial HINs dating back to 2004.



The participant undertook or facilitated the following remediation actions:

- The third-party provider implemented a code change to ensure all custodial HINs are created as “direct.”
- The matter was escalated internally and was assessed as a significant breach.
- The participant implemented supplier monitoring controls to strengthen and provide greater transparency over the services provided.

Further to these, ASX required the participant to:

- pursuant to ASX SR 6.12.4, assess the impact to issuers who will be inadvertently charged by the change from holding type “sponsored” to “direct”, and provide ASX written notice of its assessment and action plan;
- remediate the population of HINs with the incorrect holding type by a specified date and confirm to ASX in writing when complete; and
- provide written notice to ASX of any new findings or outcomes from the review of the participant’s supplier/provider monitoring controls.

