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## **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 quarter ending 31 March 2022. Investigations in relation to other enforcement matters are ongoing.

### **Inaccurate Financial Reporting**

ASX issued a warning letter to a participant after an apparent breach of ASX Clear Operating Rule (ASXCR) 5.1.1, and S1.2.10(1)(a) and (b) of Schedule 1 of ASXCR. Under ASXCR Schedule 1 S1.2.10(1), a participant is required to submit its Capital Liquidity Returns, Business Activity Reports and Annual Audited Returns (together the "**Financial Reports**") accurately and in the prescribed format. The Financial Reports submitted to ASX for FY2021 and FY2022 by this participant contained errors which impacted accuracy and failed to meet the prescribed format. ASX is of the view that these errors indicate a weakness in the Participant's processes.

The Participant took the following steps to remediate the errors in reporting to prevent future occurrences, which ASX considers reasonable:

- The Financial Reports are completed earlier to allow for additional time to review;
- Introduction of a peer review process to ensure that all amounts reported in the Financial Reports are cross checked with source documentation;
- Cross training of staff in Financial Reporting; and
- Implementation of a "four eye check" to ensure submissions to ASX are in the prescribed format.

### **Transfer/Conversion of Holder Identification Numbers ("HINs")**

ASX has issued two warning letters in relation to apparent failures by two participants to transfer or convert HINs by the prescribed Scheduled Time in accordance with ASX Settlement Operating Rules 7.1.2, 7.2.2(g), 9.6.3 and the related Appendix 1 (the 'Rules'). The Rules require a Sponsoring Participant to initiate any Transfer or Conversion to give effect to Withdrawal Instructions of a Participant Sponsored Holder within two business days of the instruction being received (transfers), and of the holdings being in a convertible form (conversion).

Details of the two matters are as follows:

- **Transfer of Holding** - The first matter concerned a participant's workflow management system not being appropriately configured to differentiate sponsored client transfer requests from other requests which impacted the participant processing the requests within the required timeframes. In addition, the participant had failed to embed the two Business Day requirement to complete the transfer into its related procedures. While ASX considers it reasonable for a participant to facilitate

checks to verify instructions received from the holder (for example being satisfied they can provide the statutory warranties and indemnities under the Corporations Regulations 2001 (Cth), to ensure they have the authority of the holder to effect a transfer), this matter suggests undue delay in transfers due to process breakdowns and lack of awareness of the Rule requirements.

- Conversion of holding - The second matter concerned a change in the Participant's internal processes for initiating Conversion requests. The change structured the conversion process to involve two separate teams - one to receive the request and one to action the request. Each team assumed it had 2 Business Days to complete its role in the Conversion process, resulting in Conversions failing to be completed within the required timeframes.

By way of remediation, both Participants improved their respective procedures to ensure that they more accurately reflect the requirements of the Rules including detailing the prescribed times in procedures.

### **Incorrect Residency Indicator for Foreign Ownership Restriction ("FOR") Financial Products**

ASX issued a warning letter to a participant for apparent breaches of ASX Settlement Operating Rule (ASXSR) 8.7.3. Under ASXSR 8.7.3, a participant is required to apply a Residency Indicator of "F" where a Foreign Person establishes any new holding of FOR Financial Products. In this matter the participant had incorrectly assessed itself to be domestic and applied a Residency Indicator of "D" (Domestic) for the holding of two FOR Financial Products.

Whilst the Participant was the legal owner of the holdings and the participant was incorporated within Australia, after analysis of the relevant definition of Foreign Person under the governing legislation or constitution of the participant it was determined that as the participant was wholly owned by a foreign parent, it was deemed to be Foreign requiring the holding to have a Residency Indicator F.

The Participant remediated the issue by updating its internal procedures to document the usage of the Foreign HIN including identification of new FOR Products, staff supervision, and escalation of issues, ongoing annual training on the FOR requirements, registration of a new HIN with ASX with a Foreign Residency Indicator which will be used to hold the relevant securities, and enhanced IT developments to calculate the number of FOR Financial Products to be transferred to the new HIN.

ASX would note there are differing definitions of "Foreign Person" under the governing legislation or constitution of different Issuers with aggregate foreign ownership restrictions. A Holder's status (for the purposes of settling transactions in FOR Financial Products) may differ between Issuers.