

## MAINTENANCE OF A FAIR, ORDERLY AND TRANSPARENT MARKET

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To assist participants to understand how ASX:             <ul style="list-style-type: none"> <li>interprets and meets its general obligation under the Corporations Act to ensure that the ASX market is fair, orderly and transparent; and</li> <li>applies its specific powers under the ASX Operating Rules to take action to ensure that the market for a product is fair, orderly and transparent</li> </ul> </li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>The meaning of “fair, orderly and transparent”</li> <li>The circumstances in which ASX might consider shutting the market</li> <li>The circumstances in which ASX might consider suspending trading in a product</li> <li>The circumstances in which ASX might consider cancelling a trading error using its powers under the ASX Operating Rules to take action to ensure that the market for a product is fair, orderly and transparent</li> </ul>
<p><b>Related materials you should read</b></p>	<ul style="list-style-type: none"> <li>The tables in Annexure A to this Guidance Note summarising the circumstances in which ASX might close the ASX market, suspend trading in a product or cancel a trading error</li> <li>ASX’s <i>Fair, orderly and transparent markets</i> paper available online at: <a href="https://www2.asx.com.au/content/dam/asx/about/fair-orderly-and-transparent-paper.pdf">https://www2.asx.com.au/content/dam/asx/about/fair-orderly-and-transparent-paper.pdf</a></li> </ul>

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**Important notice:** ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Operating Rules. It sets out ASX’s interpretation of the ASX Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and applicants/participants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

This Guidance Note is published by ASX Limited (ASX) to assist participants to understand how ASX:

- interprets and meets its general obligation under the Corporations Act to ensure that the ASX market is “fair, orderly and transparent”; and
- applies its specific powers under the ASX Operating Rules to take action to ensure that the market for a product is “fair, orderly and transparent”.

This includes explaining the circumstances in which ASX might consider shutting the ASX market, suspending trading in a product or cancelling a trading error pursuant to these obligations and powers. For convenience, Annexure A to this Guidance Note has tables summarising those circumstances.

The circumstances set out in this Guidance Note when ASX may exercise its powers under the ASX Operating Rules are not intended to be exhaustive. In exercising its discretion to take or not to take action in respect of a matter, ASX will have regard to the facts and circumstances applicable at the time, as well as the relevant considerations under the ASX Operating Rules.

## 2. Regulatory framework

Under section 792A(a) of the Corporations 2001 (Cth)<sup>1</sup> ASX is required to do all things necessary, to the extent that it is reasonably practicable to do so, to ensure that the ASX market is fair, orderly and transparent.

ASX Operating Rule 3100 empowers ASX to take any action it considers necessary to ensure that a market for one or more products is fair, orderly and transparent, including (without limitation):

- suspending or halting trading in one or more products for any period of time;
- cancelling or amending any transaction;
- directing any market participant to take, or not to take, a specified action in connection with the affected markets;
- modifying or restricting access to a trading platform by one or more market participants;
- taking, or refraining from taking, any other action which ASX considers is appropriate;<sup>2</sup>
- requesting any relevant approved clearing facility (or any relevant alternative clearing facility) to exercise its powers relating to the situation or practice; and
- directing that products be offered or settled at a price other than that provided for by the ASX Operating Rules, in such manner and on such conditions as it may determine.<sup>3</sup>

The ASX Operating Rules also require a market participant:

- to have adequate resources and processes to prevent any action or inaction which might result in a market for a product traded on ASX not being both fair and orderly;<sup>4</sup> and
- not to do anything which results in a market for a product not being both fair and orderly, or fail to do anything where failure has that effect.<sup>5</sup>

<sup>1</sup> Referred to in this Guidance Note as the “Corporations Act”. References in this Guidance Note to sections are to sections of the Corporations Act, unless otherwise indicated.

<sup>2</sup> In exercising this power, ASX is required to have regard to ASX Operating Rule 6120. That rule in turn requires ASX to have regard to the obligations, duties, powers and discretions: (a) which ASX has as the holder of, or in connection with, the holding of an Australian market licence under Part 7.2 of the Corporations Act; (b) which an Approved Clearing Facility has as the holder of, or in connection with the holding of, an Australian CS facility licence under Part 7.3 of the Corporations Act; (c) which an Approved Settlement Facility has as the holder of, or in connection with the holding of, an Australian CS facility licence under Part 7.3 of the Corporations Act; and (d) which an operator of any Underlying Market has as the holder of, or in connection with the holding of, an Australian market licence under Part 7.2 of the Corporations Act. This would include its obligation as a market licensee under section 792A(a) to do all things necessary, to the extent that it is reasonably practicable to do so, to ensure that the ASX market is fair, orderly and transparent.

<sup>3</sup> The ASX Operating Rules also empower ASX to take any steps it considers appropriate to deal with a systems or communication failure (rule 3110), to maintain the operational efficiency and proper functioning of a market or the trading platform (rule 3130) and to deal with a state of emergency (rule 3140). In exercising these powers, ASX must also have regard to ASX Operating Rule 6120 (see note 2 above), which again, requires it to have regard to its obligation as a market licensee under section 792A(a) to do all things necessary, to the extent that it is reasonably practicable to do so, to ensure that the ASX market is fair, orderly and transparent.

<sup>4</sup> By virtue of ASX Operating Rule 1400(a) combined with ASX Operating Rule 1000(e).

<sup>5</sup> ASX Operating Rule 3101(a).

### 3. The meaning of “fair, orderly and transparent”

#### 3.1. The meaning of “fair”

In ASX’s opinion, in the context of section 792A(a) and ASX Operating Rule 3100, the word “fair” is used in one (or possibly both) of two senses – “something that conforms to the applicable rules” (as in a *fair* contest) and/or “free from bias or injustice” (as in a *fair* decision).<sup>6</sup>

ASX seeks to meet its obligation to operate a fair market by having Operating Rules (including Listing Rules<sup>7</sup>) that clearly set out:

- the criteria and process for someone to become a participant in the ASX market;
- the rights and obligations of participants under the rules;
- when participants can have their participation in the ASX market suspended or terminated;
- the criteria and process for entities to be admitted to the ASX official list or as approved product issuers and for their financial products to be quoted;
- the rights and obligations (including, but not limited to, disclosure obligations) of listed entities and approved product issuers under the rules;
- when entities may have their admission to the official list or their approval to issue quoted financial products terminated, or trading in their financial products halted, suspended or terminated,

and by seeking to apply those rules consistently and without inappropriate bias.

#### 3.2. The meaning of “orderly”

In ASX’s opinion, the word “orderly” is used in section 792A(a) and ASX Operating Rule 3100 in the sense of “arranged or disposed in order, in regular sequence, or in a tidy manner” or “according to established order or rule”.<sup>8</sup>

ASX seeks to meet its obligation to operate an orderly market by:

- having clear rules and processes governing:
  - how and when buy and sell orders will be matched;
  - the application of trading halts;
  - the correction or cancellation of trading errors; and

<sup>6</sup> See ASX’s *Fair, orderly and transparent markets* paper available online at <https://www2.asx.com.au/content/dam/asx/about/fair-orderly-and-transparent-paper.pdf>.

ASX considers that this reading of the word “fair” is supported by the decision in *Transmarket Trading Pty Limited v Sydney Futures Exchange Limited* [2010] FCA 534 (the “*Transmarket* case”), where the court observed (at paragraph 95) that “fairness” in this context refers to “a state of affairs in which all market participants are placed in an equal position such that there is level playing field.”

This formulation of fairness was accepted and applied by the ASX Disciplinary Tribunal in *ASX Compliance Pty Ltd and Timber Hill Australia Pty Ltd* (15 December 2010) Matter No. 2009018 & 2009026, at paragraph 5.14.1.

<sup>7</sup> The definition of “operating rules” in section 761A includes listing rules.

<sup>8</sup> Again, see ASX’s *Fair, orderly and transparent markets* paper available online at <https://www2.asx.com.au/content/dam/asx/about/fair-orderly-and-transparent-paper.pdf>.

ASX considers that this reading of the word “orderly” is supported by the decision in the *Transmarket* case, where the court observed (at paragraph 95) that the notion of “orderliness” in this context connotes “reliable market operations displaying price continuity and depth and in which unreasonable price variations between sales are avoided.”

This formulation of orderliness was accepted and applied by the ASX Disciplinary Tribunal in *ASX Compliance Pty Ltd and Timber Hill Australia Pty Ltd* (15 December 2010) Matter No. 2009018 & 2009026, at paragraph 5.14.2. That decision was affirmed on appeal by the ASX Appeal Tribunal (2 May 2011).

- the ability of ASX to suspend trading, correct or cancel trades, or take other corrective action<sup>9</sup> to help avoid or rectify a disorderly market;
- having trading systems that are secure, reliable and have sufficient capacity to handle reasonably foreseeable peak levels of trading; and
- endeavouring to ensure that there is nothing built into the specifications for the derivative contracts traded on the ASX market that is inherently likely to lead to a disorderly market.<sup>10</sup>

ASX notes that in relation to shares, managed investment products, certain other equity market products and CGS depository interests admitted to quotation on the ASX market, some aspects of the requirement for orderliness have been codified in Parts 8.1 and 8.2 of the ASIC Market Integrity Rules (Securities Markets) 2017. Those Parts require the operators of licensed markets that deal in relevant equity market products to have order entry controls to prevent anomalous orders, to calculate and disseminate an extreme trade range and to have controls that prevent transactions being executed in that range. The imposition of these requirements is consistent with the interpretation of the word “orderly” put forward in this Guidance Note.

### 3.3. The meaning of “transparent”

In ASX’s opinion, the obligation for a market to be “transparent” in section 792A(a) and ASX Operating Rule 3100 requires relevant information about the operation of the market to be visible or readily accessible to all participants, including in particular information about the prices and volumes at which orders to buy and sell financial products are being matched in the market.<sup>11</sup>

ASX seeks to meet its obligation to operate a transparent market by:

- making its Operating Rules<sup>12</sup> and Procedures and the specifications for derivative contracts traded on its market publicly available and readily accessible to all market participants;
- having systems and processes that:
  - allow participants and their clients to ascertain whether, and at what prices and in what volumes, they can deal when they choose to use the ASX market;
  - give participants and their clients timely access to information about the prices and volumes of all individual transactions concluded on the market; and
  - enable the prompt dissemination of material information provided by listed entities or approved product issuers to the market so that participants and their clients can make informed trading decisions.
- if ASX cancels trades, making the market aware of the cancellation and informing the parties to those trades of the reasons why;

<sup>9</sup> For example, the imposition of position limits or exercise limits on derivative positions.

<sup>10</sup> This might arise, for example, if a derivatives market contract imposed physical delivery requirements that, in practice, were difficult for market participants to meet.

<sup>11</sup> Again, see ASX’s *Fair, orderly and transparent markets* paper available online at <https://www2.asx.com.au/content/dam/asx/about/fair-orderly-and-transparent-paper.pdf>.

ASX considers that this reading of the word “transparent” is supported by the judgment in the *Transmarket* case. In finding that the market events in that case did not infringe the requirement for transparency, the court commented (at paragraph 96):

“Nor is there anything which would suggest that the operation of the market was other than transparent. The market log of all trades was available and it was not put, at any point, that there were market events which were concealed or not sufficiently exposed.”

<sup>12</sup> Including the ASX Listing Rules (see note 7 above).

- publishing information about any fee incentives it offers to participants to place orders in the market;<sup>13</sup>
- having rules that provide for the prompt disclosure by listed entities and approved product issuers of information that a reasonable person would expect to have a material effect on the price or value of their financial products;
- having effective rules and processes in place for halting or suspending trading in financial products where listed entities or approved product issuers do not comply with their obligations under the rules or where there is a false market<sup>14</sup> in their financial products; and
- if ASX takes material enforcement action against a participant,<sup>15</sup> listed entity<sup>16</sup> or approved product issuer,<sup>17</sup> at an appropriate time, making the market aware of that action and the reasons for it.

ASX again notes that in relation to shares, managed investment products, certain other equity market products and CGS depository interests admitted to quotation on the ASX market, some aspects of the requirement for transparency have been codified in Chapter 6 and Part 8.3 of the ASIC Market Integrity Rules (Securities Markets) 2017. Those provisions require the operators of licensed markets that deal in these products to meet certain pre-trade and post-trade transparency requirements and to have transparent trade cancellation policies. The imposition of these requirements is consistent with the interpretation of the word “transparent” put forward in this Guidance Note.

### 3.4. Balancing fairness, orderliness and transparency

The phrase “fair, orderly and transparent” is a composite phrase of three potentially conflicting elements. It is conceivable, for example, that something could be fair but not orderly or transparent, orderly but not fair or transparent, or transparent but not fair or orderly. It is also conceivable that something could affect different participants differently – that is, something might be fair to some participants but unfair to others.

ASIC has given guidance that:

*“Fair, orderly and transparent” should be treated as a composite phrase. If there is a conflict between the elements of the phrase, we expect a licensee to achieve an appropriate balance between the demands of each element.”<sup>18</sup>*

<sup>13</sup> This is consistent with ASIC’s guidance in Regulatory Guide 172 *Financial markets: Domestic and overseas operators* (May 2018) (“RG 172”), at paragraph 76, that: “All licensees should be transparent about how the market venue is operated. ... It may also be appropriate for tier 1 venues—especially exchanges—to publish information about the fee incentives they may offer to certain participants to post offers or invitations on the venue.”

<sup>14</sup> The term “false market” refers to a situation where there is material misinformation or materially incomplete information in the market that is compromising proper price discovery. This may arise, for example, where:

- a listed entity or approved product issuer has made a false or misleading announcement;
- there is other false or misleading information, including a false rumour, circulating in the market; or
- a segment of the market is trading on the basis of market sensitive information that is not available to the market as a whole (see section 6.1 of ASX Listing Rules Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*).

<sup>15</sup> This includes ASX imposing a material monetary penalty against a participant, censuring a participant, or suspending or terminating a participant’s admission to the ASX market for breaching the ASX Operating Rules.

<sup>16</sup> This includes ASX suspending the quotation of a listed entity’s securities, censuring a listed entity or removing a listed entity from the ASX official list for breaching the ASX Listing Rules.

<sup>17</sup> This includes ASX suspending the quotation of an issuer’s financial products or terminating its approval to issue quoted products for breaching the ASX Operating Rules.

<sup>18</sup> RG 172, at paragraph 73. The inclusion in section 792A(a) of the qualification “to the extent that it is reasonably practicable to do so” also lends support to this construction. In this regard, the Explanatory Memorandum for the Financial Services Reform Bill (2002), which enacted section 792A(a), made the following observations (at paragraph 7.38) about that section:

*“In interpreting the phrase ‘fairness, orderliness and transparency’, it is desirable that all the words in the phrase be considered together. One word taken out of context may lead to a course of action which conflicts with the other words in the phrase. Thus, transparency may on occasions be in conflict with liquidity, yet liquidity is needed for an orderly market. The tensions between the*

Judicial guidance on how to interpret another composite phrase – the obligation of financial service licensees to provide their services “efficiently, honestly and fairly”<sup>19</sup> – similarly suggests that for ASX to meet its obligations under section 792A(a) and ASX Operating Rule 3100, the ASX market must be fair having regard to the dictates of orderliness and transparency, orderly having regard to the dictates of fairness and transparency, and transparent having regard to the dictates of fairness and orderliness.<sup>20</sup>

ASX believes that the appropriate balance between fairness, orderliness and transparency is one which has regard to the systemically important role that the ASX market plays in the Australian financial system. ASX considers that the requirement for a market to be fair, orderly and transparent should be biased towards an outcome that achieves fairness from the perspective of most participants and orderliness and transparency from the perspective of the market as a whole rather than an outcome that delivers fairness to an individual participant at the expense of the orderliness and transparency of the market.

## 4. When ASX will consider shutting the market

### 4.1. ASX’s powers to shut the market

ASX has broad powers under the ASX Operating Rules to shut the ASX market<sup>21</sup> where:

- the market is not operating in a fair, orderly and transparent manner;<sup>22</sup>
- the trading platform is affected by a systems or communication failure;<sup>23</sup>
- ASX considers it appropriate to maintain the operational efficiency and proper functioning of the market or the trading platform;<sup>24</sup> or
- there is a state of emergency.<sup>25</sup>

### 4.2. When ASX will consider shutting the market

Given the systemically important role that the ASX market plays in the Australian financial system, the decision to close the ASX market is not one that ASX takes lightly.

Generally speaking, ASX will only consider such a drastic course of action if:

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*three words need to be resolved sensibly, so that an appropriate balance is struck between the demands of different market participants. This is specifically acknowledged in the clause ‘to the extent that those objectives are consistent with one another.’*

The phrase “to the extent that those objectives are consistent with one another” was replaced in the final form of section 792A by the phrase “to the extent that it is reasonably practicable to do so”.

<sup>19</sup> Section 912A(1)(a).

<sup>20</sup> *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661. The following observations of Young J, at 672, are a good illustration of the issues at play here.

*“Thus I turn to the phrase “efficiently, honestly and fairly”. In one sense it is impossible to carry out all three tasks concurrently. To illustrate, a police officer may very well be most efficient in control of crime if he just shot every suspected criminal on sight. It would save a lot of time in arresting, preparing for trial, trying and convicting the offender. However, that would hardly be fair. Likewise a judge could get through his list most efficiently by finding for the plaintiff or the defendant as a matter of course, or declining to listen to counsel, but again that would hardly be the most fair way to proceed. Considerations of this nature incline my mind to think that the group of words “efficiently, honestly and fairly” must be read as a compendious indication meaning a person who goes about their duties efficiently having regard to the dictates of honesty and fairness, honestly having regard to the dictates of efficiency and fairness, and fairly having regard to the dictates of efficiency and honesty ...”*

<sup>21</sup> ASX also has broad powers to shut the AQUA Quote Display Board and the Wholesale Loan Securities Market under ASX Operating Rules 4613 and 4712 respectively.

<sup>22</sup> ASX Operating Rule 3100.

<sup>23</sup> ASX Operating Rule 3110.

<sup>24</sup> ASX Operating Rule 3130.

<sup>25</sup> ASX Operating Rule 3140.

- ASX suffers a major systems failure that requires the market to be closed or the trading platform to be shut down and re-booted;<sup>26</sup>
- there is an event preventing ASX from operating both its primary and back-up sites (eg a major earthquake, flood or other calamity affecting both sites or simultaneous threats requiring staff to be evacuated at both sites);
- there is a widespread event (eg a major earthquake, flood or other calamity) preventing a significant proportion of participants from operating both their primary and back-up sites;<sup>27</sup>
- ASX is subject to a successful “denial of service” attack that prevents a significant proportion of participants from accessing the market;
- there is major failure in Australia’s communication infrastructure that prevents a significant proportion of participants from accessing the market;
- there is a state of emergency warranting the closure of the market (eg an armed invasion of the country, large scale civil unrest or a pandemic affecting large numbers of staff at ASX and/or at a significant proportion of participants); or
- there is a significant announcement from the government or a regulator affecting the entire market that, in ASX’s opinion, warrants the market being closed for a period to allow the market time to absorb the announcement (as occurred, for example, when ASIC announced a ban on short selling during the GFC).<sup>28</sup>

ASX may also be obliged to close the market if it receives a direction from ASIC under section 794D to do so.

The references above to a “significant proportion” of participants mean a proportion of participants that, in ASX’s opinion, is so significant that their inability to participate in the ASX market will affect the market’s ability to perform proper price discovery.

### 4.3. Loss of access by one or some participants

ASX would not regard the fact that an individual participant or group of participants is unable to access the ASX market as rendering the market unfair or disorderly, provided there are enough participants who can access the market to allow the market to perform proper price discovery.

For example, ASX did not shut the ASX market during the December 2014 Lindt Café siege in Martin Place even though a number of participants were unable to undertake normal operations because of the police exclusion zone around the site of the siege.

### 4.4. Events on other markets

ASX would not regard the fact that another market operator (such as Chi-X, NSX, SSE or FEX) is experiencing an unfair, disorderly or not transparent market, or that it has shut its market in response to, or to avoid, that occurring, as necessarily meaning that ASX’s market is also not fair, orderly and transparent or as requiring ASX to take similar action. Whether the ASX market is operating in a fair, orderly and transparent manner would need to be assessed by reference to the particular circumstances affecting the ASX market.

<sup>26</sup> As occurred, for example, in February 2011 when ASX had an issue with dissemination of post-trade information for stocks traded on partition 3 of the trading platform, which led to ASX shutting the entire market for a short period until the problem could be rectified: see ASX Trade Circular 2011/002.

<sup>27</sup> If a significant proportion of participants were affected by an event preventing them from operating their primary site, ASX might consider halting the market or, if it has not yet started trading, delaying the open, to allow participants to fail over to their back-up sites.

<sup>28</sup> Some of the changes that occurred at that time are mentioned in ASX Market Circular 466/08.



## 5. When ASX will consider suspending trading in a product

### 5.1. ASX's powers to suspend trading in a product

Again, ASX has broad powers under the ASX Operating Rules to suspend trading in a particular product where:

- the market for that product is not operating in a fair, orderly or transparent manner;<sup>29</sup>
- the trading platform is affected by a systems or communication failure;<sup>30</sup>
- ASX considers it appropriate to maintain the operational efficiency and proper functioning of the market or the trading platform;<sup>31</sup> or
- there is a state of emergency.<sup>32</sup>

### 5.2. When ASX will consider suspending trading in a product

For obvious reasons, ASX is more amenable to exercising its powers to suspend trading in a particular product than it is to shutting the entire market.

Generally speaking, ASX will consider suspending trading in a product:

- if there is clear evidence of disorderly trading in the product (eg due to the impact of a “rogue” algorithm) and it is appropriate to suspend trading to prevent that disorderly trading from continuing;<sup>33</sup>
- if there has been a false or misleading announcement lodged on the Market Announcements Platform that has had a material effect on the price or value of the product and it is appropriate to suspend trading to prevent orders being placed and/or transactions occurring at an inappropriate price;<sup>34</sup>
- if there has been an ASX system or process breakdown preventing the dissemination of information, or causing the dissemination of materially false or misleading information, about the specifications of a product or pre-trade or post-trade data about the product and it is appropriate to suspend trading to prevent orders being placed and/or transactions occurring at an inappropriate price;<sup>35</sup>
- in other circumstances prescribed in the ASX Operating Rules where ASX is empowered to suspend trading in the product, including if the product issuer fails to comply with the ASX Operating Rules;<sup>36</sup> or

<sup>29</sup> ASX Operating Rule 3100.

<sup>30</sup> ASX Operating Rule 3110.

<sup>31</sup> ASX Operating Rule 3130.

<sup>32</sup> ASX Operating Rule 3140.

<sup>33</sup> For example, on 4 July 2012, ASX suspended trading in FKP Limited shares when a participant algorithm went awry and submitted approximately 5,500 orders each to sell 30,000 shares.

<sup>34</sup> For example, on 4 October 2013, ASX halted trading in Rampart Energy Limited shares because of the confusion in the market caused by announcements it had made on 1 October 2013 at 3:54pm and on 4 October 2013 at 12:05pm regarding its 1 for 15 share consolidation. The announcements stated that its shares would be trading on a pre-consolidation basis on 4 October 2013, when in fact they were trading on a post-consolidation basis. This was not corrected until a further announcement late in the trading day on 4 October 2013.

Similarly, on 16 May 2014, ASX halted trading in Dicker Data Limited shares when it accidentally announced an interim dividend of \$0.70 per share at 11:35 am that morning and then, having realised its error, lodged a corrective announcement approximately one hour later that the dividend was in fact \$0.007 per share.

<sup>35</sup> For example, see ASX Notice 1339.14.11 dated 25 November 2014 concerning the suspension of trading in Medibank Private Limited ETOs due to the dissemination at the time of listing of incorrect expiry dates for those ETOs. Note that ASX would not necessarily suspend trading in a product just because there was a system or process breakdown affecting the Market Announcements Platform that prevented announcements being made about that product. Each such instance would be assessed on its merits having regard to whether an announcement was pending and, if so, the nature and content of the announcement.

<sup>36</sup> For example, under ASX Operating Rule 10.9.1 of Schedule 10 (suspension of trading in warrants), 10A.9.1 of Schedule 10A (suspension of trading in AQUA products) or 11.6.1 of Schedule 11 (suspension of trading in Government Bond Depository Interests).

- in the case of securities in a listed entity, or derivatives of such securities, in the circumstances prescribed in the Listing Rules where ASX is empowered to suspend trading in such securities, including if the listed entity fails to comply with the Listing Rules.<sup>37</sup>

In each of the circumstances above, where trading has occurred in a product ahead of the suspension at a clearly inappropriate price, ASX may also consider exercising its other powers under the ASX Operating Rules to rectify the situation, including by cancelling the transactions in question.<sup>38</sup>

ASX may also be obliged to suspend trading in a product if:

- it receives a direction from ASIC under section 794D to suspend trading in the product;
- it is required to suspend trading in the products under the ASX Operating Rules;<sup>39</sup> or
- in the case of securities in a listed entity, or derivatives of such securities, it is required to suspend trading in the securities under the ASX Listing Rules.<sup>40</sup>

### 5.3. Market misconduct and rumours

As mentioned previously, ASX considers that the word “fair” has a particular meaning in the context of section 792A(a) and ASX Operating Rule 3100. ASX would not regard the fact that:

- someone may be engaging in insider trading, market manipulation or other forms of market misconduct in relation to a particular product traded on the ASX market; or
- someone may have spread a false rumour materially affecting the price or value of a product traded on the ASX market,

to mean that the market in that product, or the ASX market generally, was not “fair”. Accordingly, ASX would have no power under ASX Operating Rule 3100 to suspend trading or to cancel or amend any trades on that score.<sup>41</sup> It would only be if the misconduct or rumour has somehow resulted in a disorderly market that ASX’s powers under ASX Operating Rule 3100 would be enlivened.<sup>42</sup>

### 5.4. Expiry day for ETOs

ASX will ordinarily suspend trading in a single stock ETO whenever the underlying security is in a trading halt or suspension. This reflects the view that the market for the underlying security needs to be available for proper price discovery and for hedging purposes in order for the single stock ETO market to operate efficiently.

The suspension from trading of a single stock ETO on its expiry day, however, would impede the ability of traders to manage expiring positions. It is ASX’s practice, therefore, whenever trading in a single stock ETO is suspended on its expiry day due to a trading halt or suspension affecting the underlying security, to lift the suspension in the

<sup>37</sup> For example, under ASX Listing Rules 17.2 and 17.3.

<sup>38</sup> For examples of ASX exercising its cancellation powers under ASX Operating Rule 3100, see ASX Trade Circular 2013/028 dated 7 October 2013 concerning the cancellation of trades in Rampart Energy Limited shares and ASX Notice 0503.14.05 dated 16 May 2014 concerning the cancellation of trades in Dicker Data Limited shares (see also note 34 above).

<sup>39</sup> For example, under ASX Operating Rule 3300 (suspension of cash market products from quotation or trading).

<sup>40</sup> For example, under ASX Listing Rules 17.4 – 17.6.

<sup>41</sup> Persons affected by insider trading are likely to have remedies available to them under sections 1043A, 1043L and 1317HA. Persons affected by the market manipulation or other market misconduct are likely to have remedies available to them under sections 1041A – 1041F, 1041I and 1317HA. Persons affected by a false or misleading market rumour are likely to have remedies available to them under sections 1041E, 1041H, 1041I and 1317HA.

<sup>42</sup> Plainly, such misconduct or rumour would not affect the transparency of the ASX market and therefore ASX would have no power under ASX Operating Rule 3100 to suspend trading or to cancel or amend any trades on that score.

affected ETO for approximately 2 hours to allow traders the opportunity to roll over or close out their ETO positions.<sup>43</sup>

Where trading in a single stock ETO is suspended on its expiry day for reasons other than a trading halt or suspension in the underlying security, ASX will also consider whether it would be in the interests of providing a fair, orderly and transparent ETO market to facilitate a trading window in the affected ETO on the expiry day to allow traders to roll over or close out their ETO positions.

## 6. Trading errors

### 6.1. ASX's regime for cancelling trading errors

ASX has a prescribed cancellation regime for dealing with trading errors<sup>44</sup> that has been adopted to meet the requirements of the ASIC Market Integrity Rules (Securities Markets) 2017 and to give a measure of certainty to participants as to when ASX will cancel an errant trade. Generally speaking, under that regime, subject to certain conditions and exceptions:

- a trade in the “extreme trade range” is automatically cancelled by ASX;<sup>45</sup>
- a trade in the “qualifying cancellation range” may be cancelled by ASX if a party to the trade notifies ASX within the prescribed time limit and the counterparty agrees to the cancellation; but
- a trade in the “no cancellation range” will not be cancelled by ASX.

Errant trades are primarily assessed for cancellation by ASX having regard to the specific requirements under ASX's prescribed cancellation regime.

### 6.2. The application of ASX Operating Rule 3100 to trading errors

While there is scope for ASX Operating Rule 3100 to apply to a trading error and to empower ASX to cancel the trade in question when it would not otherwise be able to be cancelled under the prescribed cancellation regime mentioned above, that would be very much the exception rather than the rule.

As mentioned previously, ASX considers that the words “fair” and “orderly” have a particular meaning in the context of ASX Operating Rule 3100. ASX would not regard the fact that a participant may have executed a trade or trades in a product in error at a price materially away from its current market price, of itself, to mean that the market in that product was not “fair” and “orderly” for the purposes of that rule.

Where the market in a product is trading normally either side of an errant trade or trades (that is, there are no unreasonable variations between prices immediately before and immediately after the errant trade or trades), ASX considers that the market is orderly even though the errant trade or trades may have been executed at a price that is materially away from the prevailing market price. The fact that the errant trade or trades happened at that price was a function of the order or orders submitted by the participant who made the error and the application of normal price-time priority rules, not a function of a disorderly market.

Generally speaking, the only circumstance where ASX would consider exercising its powers under ASX Operating Rule 3100 to cancel an errant trade would be where the trade has had a knock-on effect on the market for the product in question or in related derivative products and resulted in disorderly trading by other parties – in that case, ASX may consider cancelling the errant trade as part of cancelling all of the trades affected by the disorderly trading.

ASX might also consider cancelling an errant trade under ASX Operating Rule 3130 where the trade, if it was allowed to stand, would:

<sup>43</sup> As stated in ASX Clear Notice 2013/009, in the scenario of a trading platform related market interruption on ETO expiry day, ASX may also extend the trading day to afford traders the opportunity to roll over or close out their ETO positions where this is considered appropriate.

<sup>44</sup> See ASX Operating Rules 3200 and 3210 and the related Procedures.

<sup>45</sup> For certain products, eg ETOs and warrants, the cancellation of trades in the extreme trade range is also subject to prescribed time limits for the notification to, or identification by, ASX of the errant trade.

- materially distort important post-trade data relating to that product (eg its opening or closing price); or
- materially and adversely impact post-trade processing for that product (eg by materially changing the level of margins to be called in relation to that product).

It should be noted that under ASX Operating Rule 3000, a trading participant is responsible for the accuracy of the details, the integrity and bona fides of all trading messages submitted into the ASX Trading Platform with its unique identifier. If a trading participant submits an order in error and it results in a trade, then, unless the trade is cancelled under and in accordance with the ASX Operating Rules, the trading participant has to bear the consequences of that error, including any loss associated with the trade.

### Annexure A:

#### The circumstances in which ASX might, or might not, close the ASX market

ASX would consider closing the ASX market if:	ASX generally would not close the ASX market if:
<ul style="list-style-type: none"> <li>ASX suffers a major systems failure that requires the ASX market to be closed or the trading platform to be shut down and re-booted (as occurred, for example, in February 2011 when ASX had an issue with dissemination of post-trade information for stocks traded on partition 3 of the trading platform which led to ASX shutting the entire market for a short period until the problem could be rectified)</li> </ul>	<ul style="list-style-type: none"> <li>Another market operator (such as Chi-X, NSX, SSE or FEX) suffers a major systems failure that requires its market to be closed or its trading platform to be shut down and re-booted</li> </ul>
<ul style="list-style-type: none"> <li>There is an event preventing ASX from operating both its primary and back-up sites (a major earthquake, flood or other calamity affecting both sites or simultaneous threats requiring staff to be evacuated at both sites)</li> </ul>	<ul style="list-style-type: none"> <li>Despite the event, ASX can continue to operate effectively from its primary or back-up site</li> </ul>
<ul style="list-style-type: none"> <li>There is a widespread event (eg a major earthquake, flood or other calamity) preventing a significant proportion of participants from operating both their primary and back-up sites</li> </ul>	<ul style="list-style-type: none"> <li>Despite the event, in ASX's opinion, sufficient participants are able to operate effectively from their primary or back-up sites so that the market can perform proper price discovery (as occurred, for example in the Lindt café siege in Martin Place where even though a number of participants were unable to undertake normal operations at their primary sites due to the police exclusion zone around the site of the siege, ASX considered that sufficient participants were able to operate effectively so that the market could perform proper price discovery)</li> </ul>
<ul style="list-style-type: none"> <li>ASX is subject to a successful "denial of service" attack that prevents a significant proportion of participants from accessing the market</li> </ul>	<ul style="list-style-type: none"> <li>Despite the attack, in ASX's opinion, sufficient participants can still access the market so that the market can perform proper price discovery</li> </ul>
<ul style="list-style-type: none"> <li>There is major failure in Australia's communication infrastructure that prevents a significant proportion of participants from accessing the market</li> </ul>	<ul style="list-style-type: none"> <li>Despite the failure, in ASX's opinion, sufficient participants can still access the market so that the market can perform proper price discovery</li> </ul>
<ul style="list-style-type: none"> <li>There is a state of emergency warranting the closure of the market (eg an armed invasion of the country, large scale civil unrest or a pandemic affecting large numbers of staff at ASX and/or at a significant proportion of participants)</li> </ul>	<ul style="list-style-type: none"> <li>Despite the state of emergency, ASX can continue to operate effectively and, in ASX's opinion, sufficient participants are also able to operate effectively so that the market can perform proper price discovery</li> </ul>

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| <ul style="list-style-type: none"> <li>• There is a significant announcement from the government or a regulator affecting the entire market that, in ASX’s opinion, warrants the market being closed for a period to allow it time to absorb the announcement (as occurred, for example, when ASIC announced a ban on short selling during the GFC)</li> </ul> | <ul style="list-style-type: none"> <li>• The announcement is only relevant to a particular sector or product or, in ASX’s opinion, does not warrant the market being closed</li> </ul> |
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### The circumstances in which ASX might, or might not, suspend trading in a product

ASX would consider suspending trading in a product if:	ASX generally would not suspend trading in a product if:
<ul style="list-style-type: none"> <li>• There is clear evidence of disorderly trading in the product (eg due to the impact of a “rogue” algorithm) and it is appropriate to suspend trading to prevent that disorderly trading from continuing (as occurred, for example, in July 2012 when ASX suspended trading in FKP Limited shares when a participant algorithm went awry and submitted approximately 5,500 orders each to sell 30,000 shares)</li> </ul>	<ul style="list-style-type: none"> <li>• Someone is alleged to be engaging in insider trading, market manipulation or other forms of market misconduct in relation to a particular product traded on the ASX market but their conduct has not led to disorderly trading</li> </ul>
<ul style="list-style-type: none"> <li>• There has been a false or misleading announcement lodged on the Market Announcements Platform that has had a material effect on the price or value of the product and it is appropriate to suspend trading to prevent orders being placed and/or transactions occurring at an inappropriate price (as occurred, for example on 4 October 2013 when ASX halted trading in Rampart Energy Limited shares because of the confusion in the market caused by announcements it had made on 1 October 2013 at 3:54pm and on 4 October 2013 at 12:05pm regarding its 1 for 15 share consolidation which stated that its shares would be trading on a pre-consolidation basis on 4 October 2013, when in fact they were trading on a post-consolidation basis, and similarly on 16 May 2014 when ASX halted trading in Dicker Data Limited shares when it accidentally announced an interim dividend of \$0.70 per share at 11:35 am that morning and then, having realised its error, lodged a corrective announcement approximately one hour later that the dividend was in fact \$0.007 per share)</li> </ul>	<ul style="list-style-type: none"> <li>• Someone is alleged to have spread a false rumour (other than via an announcement lodged on the ASX platform) that may have materially affected the price or value of a product traded on the ASX market but the rumour has not led to disorderly trading</li> </ul>

<ul style="list-style-type: none"> <li>• There has been an ASX system or process breakdown preventing the dissemination of information, or causing the dissemination of materially false or misleading information, about the specifications of a product or pre-trade or post-trade data about the product and it is appropriate to suspend trading to prevent orders being placed and/or transactions occurring at an inappropriate price (as occurred, for example in November 2014 when ASX suspended trading in Medibank Private Limited ETOs due to the dissemination at the time of listing of incorrect expiry dates for those ETOs)</li> </ul>	<ul style="list-style-type: none"> <li>• There has been a system or process breakdown affecting the Market Announcements Platform preventing announcements being made about a product, however, no announcements are pending for the product or any announcement that is pending is not material having regard to the nature and content of the announcement (each such instance would be assessed on its merits)</li> </ul>
<ul style="list-style-type: none"> <li>• Other circumstances prescribed in the ASX Operating Rules apply empowering ASX to suspend trading in the product, including if the product issuer fails to comply with the ASX Operating Rules</li> </ul>	
<ul style="list-style-type: none"> <li>• In the case of securities in a listed entity, or derivatives of such securities, other circumstances prescribed in the Listing Rules apply empowering ASX to suspend trading in such securities, including if the listed entity fails to comply with the Listing Rules</li> </ul>	<ul style="list-style-type: none"> <li>• In the case of a single stock ETO suspended from trading on its expiry day due to the underlying security being subject to a trading halt or suspension under the Listing Rules, ASX will normally lift the suspension in the affected ETO for 2 hours on the expiry day to allow traders the opportunity to roll over or close out their existing ETO positions</li> </ul>

### The circumstances in which ASX might, or might not, cancel an errant trade outside of the prescribed cancellation regime

ASX would consider cancelling an errant trade if:	ASX generally would not cancel an errant trade if:
<ul style="list-style-type: none"> <li>• The errant trade has had a knock-on effect on the market for the product or in related derivative products and has caused disorderly trading by other parties</li> </ul>	<ul style="list-style-type: none"> <li>• Despite the errant trade being executed at a price materially away from the prevailing market price:               <ul style="list-style-type: none"> <li>• it has not resulted in disorderly trading by others in the product or in related derivative products;</li> <li>• allowing the trade to stand will not materially distort important post-trade data relating to that product (eg its opening or closing price); and</li> <li>• allowing the trade to stand will not materially and adversely impact post-trade processing in respect of that product</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• The trade, if it was allowed to stand, would materially distort important post-trade data relating to that product (eg its opening or closing price)</li> </ul>	
<ul style="list-style-type: none"> <li>• The trade, if it was allowed to stand, would materially and adversely impact post-trade processing for that product (eg by materially changing the level of margins to be called in relation to that product)</li> </ul>	