



# **ASX ENFORCEMENT AND APPEALS RULEBOOK**

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## SECTION 1 SCOPE OF RULEBOOK

### PROCEDURE 1.12.1 DEFINITIONS

The Effective Time shall be the date of commencement of Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010*.

Amended 01/08/10

### PROCEDURE 1.14.1 METHODS OF GIVING NOTICE IN WRITING

Unless otherwise specified in correspondence with an Eligible Appellant, documents to be given to an Appeal Tribunal should be addressed to:

The Chairperson  
c/o Legal Counsel to the Appeal Tribunal  
Exchange Centre  
20 Bridge Street,  
SYDNEY NSW 2000  
e-mail: [Tribunals@asx.com.au](mailto:Tribunals@asx.com.au)  
Fax: 02 9227 0917

Unless otherwise specified by an Appeal Tribunal, any notice or correspondence to an Appeal Tribunal may be given by:

- (a) leaving it at or by sending it by courier or post to the address specified above;
- (b) facsimile to the facsimile number specified above; or
- (c) e-mail to the e-mail address specified above.

Amended 01/08/10, 20/12/10, 25/05/15

### PROCEDURE 1.14.2 DELIVERY OF NOTICE

Notice or correspondence by:

- (a) post is taken to be given on the second Business Day after the document is put in the post, in a stamped envelope or other covering addressed to the address referred to in Procedure 1.14.1;
- (b) delivery in person or by courier is taken to be given at the time of delivery to the address referred to in Procedure 1.14.1;
- (c) facsimile is taken to be given when the sender's facsimile machine indicates a successful transmission to the facsimile number referred to in Procedure 1.14.1;
- (d) an e-mail to the address nominated in Procedure 1.14.1 is taken to be given 2 hours after the time the e-mail enters the recipient's information system.

Amended 01/08/10, 25/05/15

## SECTION 2 ENFORCEMENT ACTION

### PROCEDURE 2.2.1 ENFORCEMENT POWERS IN RELATION TO PARTICIPANTS

The maximum monetary penalty that can be imposed by ASX under Rule 2.2.1(b) is \$250,000 (for ASX Operating Rules and ASX 24 Operating Rules) and \$1,000,000 (for the remaining Operating Rules), exclusive of GST.

In determining a sanction, ASX shall take into account the guidelines set out at Annexure 'A' of these Procedures.

*Amended 01/08/10, 25/05/15*

### PROCEDURE 2.2.2 ENFORCEMENT POWERS IN RELATION TO ISSUERS UNDER ASX SETTLEMENT OPERATING RULES

Other than in the circumstances set out in Rules 2.2.2(b), (c) or (d) the sanction that is to be imposed by ASX under Rule 2.2.2 will be a censure.

The total amount for which ASX can direct an Issuer to pay under Rule 2.2.2 (b) or (c) must not exceed \$250,000.

*Amended 01/08/10, 25/05/15*

### PROCEDURE 2.2.2A ENFORCEMENT POWERS IN RELATION TO OTHER FACILITY USERS UNDER ASX SETTLEMENT OPERATING RULES

Other than in the circumstances set out in Rules 2.2.2A(b) or (c) the sanction that is to be imposed by ASX under Rule 2.2.2A will be a censure.

*Introduced 25/05/15*

## PROCEDURE 2.3 NOTIFICATION OF PROPOSED ACTION

### **Submission Notice**

For the purposes of Rule 2.3.1(a) the Submission Notice will include, but is not limited to, the following information:

- (a) the Operating Rules that are alleged to have been contravened or the condition(s) alleged to have been breached by the Participant, Issuer or Other Facility User;
- (b) the factual circumstances giving rise to the alleged contravention or breach;
- (c) a preliminary indication of the range of sanction that may apply to the contravention or breach;
- (d) in the case of a Participant, the principles or factors under Annexure "A" to these Procedures taken into account by ASX in proposing the range of sanction;

- (e) a preliminary indication of the type of notice that ASX is likely to issue to the Participant, Issuer or Other Facility User (that is, whether it is likely to issue an Alleged Minor Infringement Notice or an Enforcement Notice);
- (f) the process by which the Participant, Issuer or Other Facility User can respond in writing to the Submission Notice and the time in which the submission must be received; and
- (g) the steps ASX may take following receipt and consideration of written submissions from the Participant, Issuer or Other Facility User in response to the Submission Notice (these being ASX to take no further action; issue an Alleged Minor Infringement Notice; or issue an Enforcement Notice).

Introduced 01/08/10 Amended 20/12/10, 25/05/15

## PROCEDURE 2.4 NOTIFICATION OF ALLEGED MINOR INFRINGEMENTS

### Procedure 2.4.1(c)

For the purposes of Rule 2.4.1(c) the matters ASX will have regard to include, but are not limited to, the following:

- the matter is self-reported; and
- the conduct is isolated and is not continuing; and
- no client or third party sustained loss or damage; and
- the conduct was inadvertent, accidental and unintentional; and
- the conduct concerns a minor administrative contravention; and
- the conduct is not indicative of systemic failings in the Participant's, Issuer's or Other Facility User's compliance processes; and
- the disciplinary or enforcement action history (including pursuant to Rule 2.4) of the Participant, Issuer or Other Facility User; and
- the proposed sanction is within the range of a Level 1 Contravention (see Annexure A).

Amended 25/05/15

### Procedure 2.4.1

For the purposes of Rule 2.4.1 the Alleged Minor Infringement Notice will include, but is not limited to, the following information:

- the Operating Rule(s) alleged to have been contravened or the condition(s) alleged to have been breached by the Participant, Issuer or Other Facility User;
- details of the alleged contravention or breach by the Participant, Issuer or Other Facility User;
- the sanction determined by ASX in relation to the alleged contravention or breach;

- the principles or factors under Annexure “A” to these Procedures taken into account by ASX in determining such sanction;
- the consequences of complying or not complying with the sanction determined.

Amended 25/05/15

#### **Procedure 2.4.2, 2.4.3 and 2.4.4**

For the purposes of Rules 2.4.2, 2.4.3 and 2.4.4 the compliance period is 28 business days from the date of the Alleged Minor Infringement Notice.

Introduced 01/08/10 Amended 25/05/15

### **PROCEDURE 2.5 NOTIFICATION OF ENFORCEMENT ACTION**

#### **Procedure 2.5.1**

For the purposes of Rule 2.5.1 the Enforcement Notice will include, but is not limited to, the following information:

- the Operating Rule(s) contravened or the condition(s) breached by the relevant Participant, Issuer or Other Facility User;
- details of the contravention or breach by the Participant, Issuer or Other Facility User;
- the sanction determined by ASX in relation to the contravention or breach;
- the principles or factors under Annexure “A” to these Procedures taken into account by ASX in determining such sanction;
- the consequences of not complying with the sanction determined.

Introduced 01/08/10 Amended 25/05/15

## SECTION 3 APPEALS

### PROCEDURE 3.1 DECISIONS THAT MAY BE APPEALED

Each notice of appeal (“Appeal Notice”) must identify the decision against which the appeal is made and set out the grounds of appeal. For the purposes of Rule 3.1, any Appeal Notice to be lodged shall be in the format specified in the table below and:

- (a) addressed to the chairperson of the Appeal Tribunal Panel at the following address:

The Chairperson  
c/o Legal Counsel to the Appeal Tribunal  
Exchange Centre  
20 Bridge Street,  
SYDNEY NSW 2000  
e-mail: [Tribunals@asx.com.au](mailto:Tribunals@asx.com.au)  
Fax: 02 9227 0917

- (b) accompanied by a bank cheque or electronic funds transfer payable to ASX Operations Pty Limited for the appeal fee set out in the table below.

**If payment is made by electronic funds transfer, the payment should be made to the following account:**

Bank: National Australia Bank  
Account Name: ASX Operations Pty Ltd  
BSB: 082 057  
A/C: 494728375  
Swift Code (Overseas Customers): NATAAU3302S

**and the applicant should email its remittance advice to [ar@asx.com.au](mailto:ar@asx.com.au) or fax it to (612) 9227-0553, describing the payment as “appeal fee” and including the name of the appellant and the amount paid.**

In the case of an appeal under Rule 3.1.1(e) or Rule 3.1.5(c), the appeal fee must be paid to ASX Operations Pty Limited by bank cheque or electronic funds transfer no later than 1 Trading Day from the lodgement of the Appeal Notice (irrespective of the outcome of the appeal).

Type of Appeal	Form of Appeal Notice	Time to lodge Appeal Notice	Appeal Fees
<b>3.1.1 ASX Operating Rules Appeals</b>			
Rule 3.1.1 (a)	Written notice	No later than 20 Business Days from receipt of the Enforcement Notice.	\$5000 GST exclusive

Type of Appeal	Form of Appeal Notice	Time to lodge Appeal Notice	Appeal Fees
Rule 3.1.1(b)	Written notice	No later than 10 Business Days from receipt of notification of ASX's decision.	\$5000 GST exclusive
Rule 3.1.1 (c)	Written notice	No later than 1 Trading Day from receipt of notification of ASX's decision.	\$5000 GST exclusive
Rule 3.1.1(d)	Written notice	No later than 1 Trading Day from receipt of notification of ASX's decision.	\$5000 GST exclusive
Rule 3.1.1(e)	Written notice	Within 5 minutes of notification of ASX's decision to cancel or not cancel the trade.	\$5000 GST exclusive
<b>3.1.2 ASX Settlement Operating Rule Appeals</b>			
Rule 3.1.2(a)	Written notice	No later than 20 Business Days from receipt of the Enforcement Notice.	\$5000 GST exclusive
Rules 3.1.2(b), (d) – (h)	Written notice	No later than 10 Business Days from receipt of notification of ASX's decision.	\$5000 GST exclusive
Rule 3.1.2(c)	Written notice	No later than 10 Business Days from receipt of notification of ASX's decision.	\$5000 GST exclusive
<b>3.1.3 ASX Clear Operating Rule Appeals</b>			
Rule 3.1.3 (a)	Written notice	No later than 20 Business Days from receipt of the Enforcement Notice.	\$5000 GST exclusive
All appeals except for those referred to in Rule 3.1.3(a)	Written notice	No later than 10 Business Days from receipt of notification of ASX's decision.	\$5000 GST exclusive
<b>3.1.4 ASX Listing Rule Appeals – [Deleted]</b>			
<b>3.1.5 ASX 24 Operating Rule Appeals</b>			
Rule 3.1.5(a)	Written notice	No later than 20 Business Days from receipt of the Enforcement Notice.	\$5000 GST exclusive
Rule 3.1.5(b)	Written notice	No later than 10 Business Days from receipt of notification of ASX's decision.	\$5000 GST exclusive

Type of Appeal	Form of Appeal Notice	Time to lodge Appeal Notice	Appeal Fees
Rule 3.1.5(c)	Written notice	Within 5 minutes of notification of ASX's decision to cancel or not cancel the trade.	\$5000 GST exclusive
<b>3.1.6 ASX Clear (Futures) Operating Rule Appeals</b>			
Rule 3.1.6(a)	Written notice	No later than 20 Business Days from receipt of the Enforcement Notice.	\$5000 GST exclusive
Rule 3.1.6(b)	Written notice	No later than 10 Business Days from receipt of notification of ASX's decision.	\$5000 GST exclusive
Rule 3.1.6(c)	Written notice	No later than 10 Business Days from receipt of notification of ASX's decision.	\$5000 GST exclusive
<b>3.1.7 Austraclear Appeals</b>			
Rule 3.1.7(a)	Written notice	No later than 20 Business Days from receipt of the Enforcement Notice.	\$5000 GST exclusive
Rule 3.1.7(b) and (c)	Written notice	No later than 10 Business Days from receipt of notification of ASX's decision.	\$5000 GST exclusive

Amended 01/08/10, 20/12/10, 25/05/15, 15/06/15, 24/12/15

### PROCEDURE 3.5.1 APPEAL TRIBUNAL PANEL

ASX will establish an Appeal Tribunal Panel comprising not less than 6 persons appointed by ASX from time to time.

In selecting persons for appointment as members of the Appeal Tribunal Panel, ASX shall have regard to relevant financial markets and industry experience, knowledge and expertise, or such other qualifications ASX considers relevant to that appointment.

Persons appointed to the Appeal Tribunal Panel may include directors or employees of ASX.

Amended 25/05/15, 01/01/17

### PROCEDURE 3.5.3 CHAIRPERSON

ASX shall select and appoint, from the members appointed under Rule 3.5.1, one or more chairpersons of the Appeal Tribunal Panel to perform the functions of the chairperson prescribed by the Rules and Procedures.

A chairperson may at any time appoint another member of the Appeal Tribunal Panel to act as the chairperson's delegate for performing all or any of the functions of the chairperson prescribed by the Rules and Procedures. The chairperson may revoke any such delegation at any time.

In selecting persons for appointment as chairperson, ASX shall have regard to relevant financial markets and industry experience, knowledge and expertise, or such other qualifications ASX considers relevant to that appointment.

A chairperson who is determining an appeal from an ASX enforcement action matter shall be a retired judge, or a barrister, or a solicitor of a State or Territory of Australia or of the High Court of Australia. For the avoidance of doubt this requirement does not apply to a chairperson who is determining an appeal from a matter other than an ASX enforcement action.

*Amended 01/08/10, 25/05/15*

#### **PROCEDURE 3.5.4 COMPOSITION OF APPEAL TRIBUNAL**

An Appeal Tribunal will comprise of 3 or more members, appointed by the chairperson, drawn from the Appeal Tribunal Panel.

An Appeal Tribunal hearing an appeal under Rule 3.1.1(c) or Rule 3.1.1(d) may be constituted as follows:

- (a) one member of the Appeal Tribunal may be an agent or employee of ASX; but
- (b) no person who has an interest in the matter being considered by an Appeal Tribunal may be appointed to, or take part in the deliberations of, the Appeal Tribunal; and
- (c) in the case of a matter which has been referred by ASX to a Warrants Committee or AQUA Products Committee under ASX Operating Rules S10 or S10A (respectively), no person who was a member of the committee which considered the matter, may be appointed to, or take part in the deliberations of, the Appeal Tribunal.

The fact a member or proposed member of an Appeal Tribunal is an employee or agent of ASX, or a Related Body Corporate of ASX, will not be regarded as an interest provided that such person has not taken part or been concerned in a decision or determination of ASX in relation to the matter being considered by the Appeal Tribunal.

In respect of an appeal under Rule 3.1.1(e) or Rule 3.1.5(c), one member of an Appeal Tribunal may be an agent or an employee of ASX.

*Amended 01/08/10, 25/05/15*

#### **PROCEDURE 3.5.5 PROCEEDING DATE**

Other than in relation to appeals under Rule 3.1.1(c), Rule 3.1.1(d), Rule 3.1.1(e) or Rule 3.1.5(c), where an Appeal Tribunal will consider a matter on written submissions only, the chairperson shall cause notice to be given to the parties of the date appointed for that hearing.

An Appeal Tribunal may vacate a date on which it will consider a matter on written submissions only and cause notice to be given to the parties of the revised date appointed for that hearing.

Where an Appeal Tribunal has requested the appearance of an Eligible Appellant or Employee of the Eligible Appellant, the chairperson shall cause reasonable notice to be given to the parties of the date, time and place appointed for that hearing.

An Appeal Tribunal may vacate a date on which it will consider a matter for which it has requested the appearance of an Eligible Appellant or Employee of the Eligible Appellant and cause reasonable notice to be given to the parties of the revised date, time and place appointed for that hearing.

Amended 01/08/10, 20/12/10, 25/05/15

### PROCEDURE 3.6.1 POWERS OF APPEAL TRIBUNAL

Where a Participant, Issuer or Other Facility User appeals a decision of ASX under Rule 3.1.1(a), 3.1.2(a), 3.1.3(a), 3.1.5(a), 3.1.6(a) or 3.1.7(a), the Participant, Issuer or Other Facility User can elect that the appeal be conducted as a fresh hearing to be decided on the basis of the facts and law and submissions made to the Appeal Tribunal as at the date of the fresh hearing (a Rehearing). In order to make this election the Participant, Issuer or Other Facility User must specify in its notice of appeal that it elects that the appeal be conducted as a Rehearing.

*Note: If an appeal of an ASX decision referred to in this Procedure 3.6.1 is conducted as a Rehearing, the Appeal Tribunal will rehear the matter (ie whether a Participant, Issuer or Other Facility User has contravened an Operating Rule or breached a condition imposed by ASX under the Operating Rules and if so, what if any sanction(s) under Rule 2.2.1, 2.2.2 or 2.2.2A should be imposed), and the issues of fact and/or law will be reargued before the Appeal Tribunal. In these cases, the Participant, Issuer or Other Facility User has the right to introduce new material not before ASX when it made its decision.*

*In all other cases, the Appeal Tribunal will review the decision of ASX (ie to issue an Enforcement Notice (being a decision that a Participant, Issuer or Other Facility User has contravened an Operating Rule or breached a condition imposed by ASX under the Operating Rules and that a sanction be imposed under Rule 2.2.1, 2.2.2 or 2.2.2A) or the sanction(s) imposed under Rule 2.2.1, 2.2.2 or 2.2.2A in the Enforcement Notice) to determine whether there was an error which results in the decision not being correct based on the material before ASX and the law at the time the decision was made.*

In the case of an appeal of an ASX decision conducted as a Rehearing under this Procedure 3.6.1, the Appeal Tribunal may affirm, vary or set aside the ASX decision. The Appeal Tribunal will:

- (a) affirm the ASX decision – where the Appeal Tribunal has determined in respect of one or more contravention or breach of Operating Rule(s) or condition(s) the subject of the Enforcement Notice:
  - (i) that the Participant, Issuer or Other Facility User has contravened or breached such Operating Rule(s) or condition(s); and
  - (ii) that sanctions be imposed under Rule 2.2.1, Rule 2.2.2 or Rule 2.2.2A which are the same as the sanctions imposed by ASX in the Enforcement Notice; or
- (b) vary the ASX decision – where the Appeal Tribunal has determined in respect of one or more (but in the case of (i) or (ii)(B) below, not each) contravention or breach of Operating Rule(s) or condition(s) the subject of the Enforcement Notice:

- (i) that the Participant, Issuer or Other Facility User has not contravened or breached such Operating Rule(s) or condition(s); or
- (ii) that:
  - (A) sanctions be imposed under Rule 2.2.1, Rule 2.2.2 or Rule 2.2.2A which are different to the sanctions imposed by ASX in the Enforcement Notice; or
  - (B) no sanctions be imposed under Rule 2.2.1, Rule 2.2.2 or Rule 2.2.2A; or
- (c) set aside the ASX decision – where the Appeal Tribunal has determined in respect of each contravention or breach of Operating Rule(s) or condition(s) the subject of the Enforcement Notice:
  - (i) that the Participant, Issuer or Other Facility User has not contravened or breached such Operating Rule(s) or condition(s); or
  - (ii) that no sanctions be imposed under Rule 2.2.1, Rule 2.2.2 or Rule 2.2.2A.

Introduced 01/08/10 Amended 20/12/10, 25/05/15

### **PROCEDURE 3.6.2 DETERMINATION ON THE PAPERS**

Any oral hearing of an Appeal Tribunal shall take place in private.

The parties may have up to two representatives present to make submissions and, with the permission of an Appeal Tribunal, the parties may have more than two representatives present.

A representative may be an Employee of the party represented, or any other person approved by an Appeal Tribunal, or a barrister or solicitor of the Supreme Court of a State or Territory of Australia or of the High Court of Australia.

ASX may specify one or more other persons who may attend the Appeal proceedings as observers.

### **PROCEDURE 3.6.3 WRITTEN SUBMISSIONS**

Where an entity has lodged its written submissions in relation to a matter other than an appeal from an ASX enforcement action, ASX may review such submissions and may determine to overturn its earlier decision so as to avoid the need for the continuation of the appeal process.

Amended 01/08/10

### **PROCEDURE 3.6.5 PROCEDURAL FAIRNESS**

Where its obligations as an operator of a licensed market or facility would deem it necessary to deal with appeals in an expedited manner, ASX may determine that an Eligible Appellant be given a shorter period of time to lodge a notice of appeal as set out in Procedure 3.1 and that no written hearing date will be provided by the relevant Appeal Tribunal.

An appeal under Rule 3.1.1(e) or 3.1.5(c) will be dealt with in an expedited manner in accordance with Rule 3.6.13.

Amended 01/08/10, 25/05/15

### PROCEDURE 3.6.9 ABILITY OF THE APPEAL TRIBUNAL TO AWARD COSTS OR REFUND OF APPEAL FEE

For the purposes of Rule 3.6.9, the Appeal Tribunal may order that ASX refund the appeal fee paid to bring the appeal where the appeal is from a determination of ASX under Section 2 of the Rulebook to issue an Enforcement Notice or any sanction imposed in the notice and the Appeal Tribunal:

- (a) sets aside the decision of ASX to issue the Enforcement Notice or the sanction imposed in the notice; or
- (b) varies the decision of ASX to issue the Enforcement Notice or the sanction imposed in the notice in the manner sought by the Participant, Issuer or Other Facility User.

Introduced 01/08/10, 25/05/15

### PROCEDURE 3.6.11 REASONS FOR DECISION

An Appeal Tribunal shall within 90 days, or such longer period as advised to the parties by the chairperson if required, of making its decision, notify ASX and the other party of the decision and the reasons for its decision in writing.

Having regard to the expedited manner in which an appeal under Rule 3.1.1(e) or 3.1.5(c) is required to be determined under Rule 3.6.13, an Appeal Tribunal may notify the parties of its determination in respect of such appeal orally and in summary form.

Amended 01/08/10, 25/05/15

## SECTION 4 ASX ANNOUNCEMENT AND IMPOSITION OF PENALTY

### PROCEDURE 4.1.1 ANNOUNCEMENT

For the purposes of Rule 4.1.1(c)(i) if an Alleged Minor Infringement Notice is complied with within the specified time in accordance with Rule 2.4.2 the publication of such enforcement action by ASX will not name the Participant, Issuer or Other Facility User the subject of the Alleged Minor Infringement Notice.

Introduced 01/08/10, 25/05/15

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