

Fact sheet: ASX's process for handling reports of misconduct by investment product issuers



The purpose of this document is to outline the process ASX Limited ('ASX') follows when it receives a complaint, tip-off or other communication (a 'report of misconduct') from a person (an 'informant') alleging that the issuer of:

- shares or units in an exchange traded fund (or ETF);
- units in a managed fund;
- structure products; or
- warrants,

(together 'investment products') traded on the ASX market has engaged in some form of misconduct.

1. ASX's FAQs on reporting misconduct

Before an informant submits to ASX a report of misconduct by the issuer of an investment product, ASX recommends that they first read the *Reporting Misconduct FAQs* on ASX's website at:

<https://www2.asx.com.au/about/contact-asx/report-misconduct/reporting-misconduct-to-asx-faqs>

The FAQs have information about the regulatory body to which different types of misconduct by the issuer of an investment product should be reported.

In this regard, ASX can take action against the issuer of an investment product only for conduct that breaches the ASX Operating Rules or the ASX Settlement Operating Rules (together 'ASX's rules').

A significant proportion of the reports of misconduct by issuers of investment products that ASX receives involve matters that are regulated by the Australian Securities and Investments Commission ('ASIC') under the Corporations Act 2001 (Cth),¹ rather than by ASX under ASX's rules. These reports of misconduct should be submitted to ASIC rather than to ASX.

Information about the types of matters involving investment product issuers that are regulated by ASIC under the Corporations Act, and those that are regulated by ASX under ASX's rules, is available on the ASX website at:

<https://www2.asx.com.au/content/dam/asx/about/corporations-act-vs-aqua-warrant-rule-matters.pdf>

A report of misconduct can be submitted to ASIC via the ASIC online complaint service at:

<https://asic.gov.au/about-asic/contact-us/how-to-complain/report-misconduct-to-asic/>

2. How to report misconduct by an investment product issuer to ASX

For legal and other reasons, ASX generally requires all communications from third parties alleging misconduct by the issuer of an investment product to be in writing² and, preferably, sent to ASX via its online facility for reporting misconduct at:

<https://www2.asx.com.au/about/contact-asx/report-misconduct>

The online facility has been designed to collect all of the information that ASX needs to pursue an allegation that the issuer of an investment product has breached ASX's rules, and to ensure that this information is promptly delivered to the team at ASX responsible for overseeing these matters.

¹ Referred to in this fact sheet as the 'Corporations Act'.

² References to a report of misconduct being 'in writing' include reports of misconduct made using ASX's online service for reporting misconduct or by email.

Reports of misconduct can be made anonymously. There is also an option in ASX's online facility for an informant to indicate that they do not wish to receive any communications from ASX regarding their report of misconduct.

3. Acknowledgement of receipt

When ASX receives a written report of misconduct by an investment product issuer, it will usually send an acknowledgment of receipt to the informant, so that the informant knows that ASX has received the report and is considering it.

If the report of misconduct is submitted through ASX's online facility mentioned above, the informant will receive an email acknowledging receipt upon its successful submission to that facility. If the report of misconduct is submitted by email or letter, ASX will use its best efforts to acknowledge receipt of the report by email within five business days of receiving it.

The acknowledgement will usually attach a copy of this Fact Sheet so that the informant is aware of the process that ASX will follow with respect to their report.

Of course, if an informant makes an anonymous report or does not provide their email address, ASX will not be able to email them an acknowledgement of receipt. Also, if an informant indicates in their report of misconduct that they do not wish to receive any communications from ASX regarding the report, ASX will respect that request and not send an acknowledgment of receipt.

4. Obscene, abusive or threatening reports of misconduct

For the safety and well-being of its staff, ASX may decline to accept or act upon a report of misconduct from an informant that contains obscenities or that uses abusive or threatening language against an ASX staff member. For serious or repeat offenders, ASX may also advise the informant that ASX will not accept any future reports of misconduct from the informant.

5. Initial assessment by ASX Compliance

As mentioned previously, ASX has the power to take action against the issuer of an investment product only for conduct that breaches ASX's rules.

When ASX receives a written report of misconduct by the issuer of an investment product, it is first referred to ASX Compliance, the ASX division responsible for monitoring and enforcing compliance by issuers of investment products with ASX's rules. ASX Compliance will make an initial assessment whether the reported misconduct may have breached those rules and, if so, whether it merits further enquiries by ASX.

If ASX's initial assessment is that the reported misconduct may have breached ASX's rules and merits further enquiries by ASX, ASX will undertake those enquiries (see section 6 below).

If ASX's initial assessment is that the reported misconduct does not raise any issues under ASX's rules or otherwise does not merit further enquiries by ASX, ASX will end its review of the report of misconduct.

6. Further enquiries by ASX

If ASX's initial assessment of a report of misconduct is that the reported misconduct may have breached ASX's rules and merits further enquiries by ASX, ASX will invoke its formal powers under those rules to conduct those enquiries.

ASX's rules require the issuer of an investment product to give to ASX:

- immediately upon request, any information or explanation concerning the issuer or any guarantor of the issuer that ASX asks for to avoid the establishment of a false market in, or that would be likely to materially affect the price of, that product; and

- within two business days or such other period as ASX may notify, any other information that ASX asks for about that product.

Depending on the nature and seriousness of the alleged misconduct, ASX may suspend trading in the issuer's investment products while ASX completes its enquiries.³ If it does so, it will usually make, or have the issuer make, a market announcement about the suspension and the reasons for it.

It should be noted that ASX's ability to investigate misconduct by the issuer of an investment product is limited to its powers under ASX's rules mentioned above. ASX does not, for example, have the power to conduct searches, seize evidence, examine people on oath or penalise people who do not cooperate with its enquiries, in the way that ASIC and other government regulators can.

7. Determination of breach and resulting action

Once ASX completes its enquiries into a report of misconduct by the issuer of an investment product, it will make a determination as to whether the reported misconduct constituted a breach by the issuer of ASX's rules and, if it did, what (if any) action ASX should take in relation to the breach.

The type of action ASX may take in relation to a breach of ASX's rules will depend on the nature and seriousness of the breach. For less serious breaches, for example, ASX may:

- send a formal warning letter to the issuer acknowledging the breach and noting that ASX is likely to take further action if the breach is repeated or if the issuer does not implement steps to avoid the breach being repeated; or
- send a "no escalation" letter to the issuer acknowledging the breach but indicating that ASX does not intend to take the matter further.⁴

For more serious breaches, ASX may:

- suspend trading in the issuer's products until the issuer has undertaken corrective action acceptable to ASX in relation to the breach; or
- in an extreme case, terminate the issuer's status as an approved issuer of investment products and/or the admission of its investment products to quotation on ASX.

Suspension and removal are not sanctions that ASX imposes lightly, since they have a significant impact on investors by taking away (temporarily in the case of a suspension and permanently in the case of a removal) their ability to buy or sell the issuer's investment products on the ASX market. However, they are sanctions that ASX will impose in an appropriate case if ASX considers suspension or removal to be in the interests of the broader market.

It should be noted that ASX does not have the power to impose fines or other monetary penalties against the issuer of an investment product for breaching ASX's rules.

8. ASX's discretion in enforcing ASX's rules

ASX's rules confer on ASX the power to decide what (if any) action should be taken against the issuer of an investment product for breaching those rules. In making that decision, ASX will have regard to a number of factors, including:

- the nature and seriousness of the breach;

³ ASX will typically suspend trading in the issuer's investment products if it considers there is a risk that trading could be occurring on an uninformed basis or in a false market.

⁴ This may be given on a conditional basis (ie that ASX will not take further action provided the issuer meets certain conditions specified in the letter).

- how long ago the breach occurred;
- what (if any) action the issuer has taken to correct the breach;
- whether the issuer has a history of repeatedly breaching ASX's rules;
- the likely impact that ASX's decision will have on innocent third parties, including holders of the issuer's products who had no involvement in the breach; and
- most importantly, ASX's view of what is in the interests of the broader market.

Different stakeholders may have a different view to ASX as to how a breach of ASX's rules should be addressed. Ultimately, however, that is a decision for ASX to make, consistent with its obligation as the licensed operator of markets and clearing and settlement facilities in Australia to have adequate arrangements for monitoring and enforcing compliance with its rules.⁵ ASX is held to account in this respect by its regulator, ASIC.

9. Further communications with an informant

There are three scenarios in which ASX will communicate with an informant after it has received a report of misconduct:

- (1) as mentioned above, when ASX receives a written report of misconduct, it will usually email an acknowledgment of receipt to the informant so that the informant knows that ASX has received the report and is considering it;
- (2) if ASX needs more information from the informant to address the matters in their report of misconduct, it will get in touch with the informant to ask for that information; and
- (3) if ASX receives a report of misconduct alleging that the issuer of an investment product has not complied with an obligation owed to the informant personally and:
 - the issuer has provided information to ASX that is relevant to whether or not the issuer has complied with that obligation and, if not, what the issuer is proposing to address its non-compliance; and
 - the issuer has given its consent for ASX to pass that information to the informant,

ASX may convey that information to the informant.

Outside of the three scenarios mentioned above, once ASX has received a report of misconduct by the issuer of an investment product from an informant, it is ASX's firm policy not to have any further communications with the informant about the matters in the report or about ASX's progress in addressing them.⁶ The reasons for this policy include the risk of further communications with the informant:

- being alleged to have put the informant in a privileged position by having information about ASX's enquiries that is not available to the rest of the market;
- being deliberately or inadvertently leaked by the informant, potentially compromising ASX's enquiries or enquiries by other regulators; or
- being used by the informant for collateral purposes not connected with the enforcement of ASX's rules.

In light of these risks, the only parties with whom ASX will have private communications about its enquiries into alleged misconduct by the issuer of an investment product are:

⁵ Sections 792A(c)(ii) and 821A(c)(ii) of the Corporations Act.

⁶ This includes responding to any enquiries or other communications from the informant on the matters mentioned in the text.

- the issuer and its representatives and advisers;
- persons who have specific information that may assist ASX in its enquiries; and
- relevant regulators, including ASIC.

If ASX considers it appropriate to make the market aware that ASX:

- is enquiring into a potential breach by the issuer of an investment product of ASX's rules; or
- has concluded following its enquiries that the issuer of an investment product has breached ASX's rules and ASX has decided to take action against the issuer in relation to that breach,

ASX will do so publicly, either by requiring the issuer to make, or itself making, an announcement to the market with that information.

ASX may also make the market aware of the results of its enquiries in due course by publishing a copy of its query letter(s) to the issuer and of the issuer's response(s).

10. Privacy matters

ASX will not, in the course of its enquiries into a report of misconduct by the issuer of an investment product, share with the issuer personal information about the informant, except where:

- ASX considers it reasonably necessary to do so in order to act on the report of misconduct;
- ASX is required or authorised by law to do so; or
- the informant has given their consent for ASX to do so.

It should be noted that there are limits to what ASX can do to protect the privacy of an informant. For example, if the informant has already had communications with the issuer of an investment product or publicly engaged with the media about the matters mentioned in their report of misconduct, it is quite possible that when ASX makes enquiries with the issuer about the same matters, the issuer may be able to infer that it was the informant who raised those matters with ASX.

Further, if ASX has reason to suspect that someone has committed, is committing, or is about to commit, a significant contravention of the Corporations Act or ASX's rules, ASX is required under that Act⁷ to give a notice to ASIC with details of the contravention and ASX's reasons for its suspicion. If ASX has to give such a notice to ASIC in relation to the matters mentioned in a report of misconduct, ASX may have to provide ASIC with the personal details of the informant, as well as a copy of their report of misconduct and any other information that they have provided to ASX about those matters.

Finally, ASX may be subject to legal process that could compel it to provide a copy of an informant's report of misconduct and any related documents to a regulator or other party.

[ASX's Privacy Statement](#) has further details on how ASX handles personal information and your rights in relation to your personal information held by ASX.

11. Informants who are not satisfied with ASX's handling of a report of misconduct

An informant who is not satisfied with ASX's handling of their report of misconduct by the issuer of an investment product may make a formal complaint to ASX's regulator, ASIC, via ASIC's online complaint service at:

<https://asic.gov.au/about-asic/contact-us/how-to-complain/report-misconduct-to-asic/>

⁷ Sections 792B(2)(c) and 821B(2)(c) of the Corporations Act.



In addition, if the reported misconduct did in fact amount to a breach of ASX's rules by the issuer, the informant may be able to obtain a court order under section 793C of the Corporations Act directing ASX to enforce ASX's rules against the issuer and/or directing the issuer to comply with its obligations under ASX's rules. An informant should take their own legal advice on their prospects of success in, and the likely costs of, such an action.
