

Listed entities: matters regulated by ASIC vs matters regulated by ASX



The purpose of this document is to explain the matters involving listed entities that are regulated by the Australian Securities and Investments Commission ('ASIC') under the Corporations Act 2001 (Cth)¹ and those that are regulated by ASX Limited ('ASX') under the ASX Listing Rules.²

1. Market matters regulated by ASIC under the Corporations Act

ASIC is the market regulator for all financial markets operating in Australia. In that capacity, it is responsible for administering, among other things, the provisions in the Corporations Act regulating:

- insider trading;
- market manipulation;
- short selling;
- prospectuses and product disclosure statements;
- the continuous disclosure obligations of entities listed on a financial market in Australia;³ and
- misleading or deceptive conduct in relation to the securities of listed entities.⁴

2. Corporate matters regulated by ASIC under the Corporations Act

ASIC is also the corporate regulator of listed entities established in Australia as a company or registered as a managed investment scheme under the Corporations Act. In that capacity, ASIC is responsible for administering, among other things, the provisions in the Corporations Act regulating:

- the keeping of proper books and records by the entity;
- compliance by the entity with Australian accounting and auditing standards;
- false or misleading statements in or omissions from:
 - the entity's annual and half-yearly financial statements; or
 - other documents lodged by the entity with ASIC under the Corporations Act;
- insolvent trading by the entity;
- in the case of a company:
 - the appointment or removal of directors of the company;
 - breaches of duty by the directors, officers and employees of the company;
 - the 'two strikes' rule for votes on executive remuneration;
- in the case of a registered managed investment scheme:
 - the appointment or removal of the responsible entity of the scheme;
 - breaches of duty by the responsible entity of the scheme or by its officers and employees;

¹ Referred to in the remainder of this document as the 'Corporations Act'. Unless otherwise indicated, references in this document to sections are to sections of the Corporations Act.

² Referred to in the remainder of this document as the 'Listing Rules'.

³ Regulated by ASIC under section 674 of the Corporations Act.

⁴ This includes the making of misleading or deceptive market announcements by the listed entity itself.

- related party transactions;
- takeovers of, and the notification of substantial holdings in, the entity; and
- the convening and conduct of security holder meetings.

3. Reporting possible breaches of the Corporations Act

ASX has no power to investigate or take enforcement action in relation to possible breaches of the Corporations Act. Only ASIC has that power.

Accordingly, subject to the exceptions in sections 6 and 7 below, if you wish to report or make a complaint about a possible breach of any of the Corporations Act provisions mentioned in sections 1 and 2 above, you should submit it to ASIC rather than ASX. You can do so using ASIC's online complaint service at:

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

4. Matters regulated by ASX under the Listing Rules

As the licensed operator of the ASX market, ASX is responsible for monitoring and enforcing compliance by ASX listed entities with their obligations under the Listing Rules. Some of the key Listing Rule requirements that ASX oversees in this regard include the requirements in:

- Chapter 1 that an entity must meet to be admitted to the ASX official list;
- Chapter 2 that an entity's securities must meet to be quoted on ASX;
- Chapter 3 for listed entities to disclose various matters to ASX in a timely manner including, importantly, their obligation under Listing Rule 3.1,⁵ if they become aware of information concerning them that a reasonable person would expect to have a material effect on the price or value of their securities, to release that information to the market immediately, unless certain exceptions apply;
- Chapter 4 for listed entities to lodge annual, half-yearly and, in some cases, quarterly financial statements and reports with ASX by certain dates;
- Chapter 5 for mining entities and oil and gas entities to comply with certain additional reporting requirements;
- Chapter 6 regulating the terms that apply to a listed entity's equity securities;
- Chapter 7 for issues of securities above certain limits or in certain situations to be approved by security holders;
- Chapter 8 dealing with transfers of securities and their registration;
- Chapter 9 for so-called 'restricted securities' to be held in escrow and not disposed of for a prescribed period;
- Chapter 10 for certain transactions involving a person in a position of influence to be approved by security holders;
- Chapter 11 for certain other significant transactions to be approved by security holders;
- Chapter 12 that listed entities must continue to meet while they remain quoted on ASX;

⁵ This is the Listing Rule imposing continuous disclosure obligations on ASX listed entities that ASIC also regulates under section 674 of the Corporations Act (see note 3 above and the accompanying text).

- Chapter 14⁶ regarding notices of meeting and proxy forms and also for directors of a listed company to submit themselves to re-election every 3 years;
- Chapter 15 regulating when and how documents are lodged with ASX;
- Chapter 16 setting out the fees that listed entities must pay to ASX;
- Chapter 17 dealing with trading halts, suspensions and the removal of entities from the ASX official list; and
- Chapter 18 dealing with ASX's enforcement powers and its power to grant waivers of the Listing Rules.

5. Reporting possible breaches of the Listing Rules

Subject to the exception mentioned in section 6 below, if you wish to report or make a complaint about a possible breach by a listed entity of any of the Listing Rule provisions mentioned in section 4 above, you should submit it to ASX in the first instance. You can do so using ASX's online 'Report Misconduct' service at:

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

6. Continuous disclosure breaches

Compliance by ASX listed entities with their continuous disclosure obligations is regulated both by ASIC under the Corporations Act and by ASX under the Listing Rules.⁷ If you wish to report or make a complaint about a possible breach by a listed entity of its continuous disclosure obligations, you may submit it either to ASIC or to ASX, using their respective online facilities mentioned in sections 3 and 5 above.

7. Overseas listed entities

In the case of a listed entity established in a jurisdiction outside Australia, the matters listed in section 2 above will generally be regulated by the corporate regulator in that jurisdiction equivalent to ASIC, under legislation in that jurisdiction equivalent to the Corporations Act. If you wish to report or make a complaint about a matter listed in section 2 above involving a listed entity established in a jurisdiction outside Australia, you should submit it to the relevant corporate regulator in that jurisdiction, rather than to ASIC or ASX.

⁶ Currently, there are no provisions in Chapter 13 of the Listing Rules.

⁷ See notes 3 and 5 above and the accompanying text.