



ANNEXURES TO ASX ENFORCEMENT AND APPEALS RULEBOOK PROCEDURES

ANNEXURE A ASX GUIDELINES FOR PARTICIPANT SANCTIONS

These Guidelines set out the principles and factors that ASX will generally take into account when determining the sanctions to be imposed for a contravention of the Operating Rules by Participants. These Guidelines are not intended to be exhaustive and ASX may take account of other relevant circumstances in any individual case.

Introduced 20/12/10 Amended 25/05/15

The types of sanctions that may be imposed

Under Rule 2.1.1 of the Rules, ASX may take enforcement action if it considers that a Participant, Issuer or Other Facility User has contravened an Operating Rule¹.

Rule 2.2 provides ASX with a range of sanction powers. In the case of a Participant, those powers include:

- censure;
- the imposition of a monetary penalty of up to \$250,000 (for ASX and ASX 24 Participants) or \$1,000,000 (for ASX Clear, ASX Clear (Futures), ASX Settlement and Austraclear Participants);
- specifying the form, objectives and timeframe for a new, or an enhanced version of an existing, education and compliance programme designed to prevent future contravention of the Operating Rules by the Participant and its Employees, and a direction the Participant implement such a programme to the satisfaction of ASX;
- where a particular individual was involved in the contravention, orders requiring a Participant to change or cease that individual's role or involvement in the Participant's business as a Participant of ASX markets or facilities; and
- the imposition of conditions or restrictions on the Participant's participation rights in an ASX market or facility or on their future conduct.

Introduced 20/12/10 Amended 25/05/15

¹ References in this Guidance Note to a contravention of an Operating Rule include a breach of a condition imposed under the Operating Rules.

General principles in determining sanctions

ASX is guided by the following general principles in determining the type and level of sanction to be imposed for a contravention of the Operating Rules:

- (a) sanctions are imposed to protect the interests of ASX and the participants and users of the markets and facilities it operates and, in particular, to protect:
 - the fairness, orderliness and transparency of the markets ASX operates;
 - the fairness and effectiveness of the clearing and settlement facilities ASX operates;
 - ASX's compliance with the Reserve Bank's financial stability standards; and
 - the reputation of ASX and its markets and facilities;
- (b) sanctions should be proportionate to the seriousness of the contravention and the culpability of the Participant in committing the contravention and take account of any relevant mitigating or aggravating factors;
- (c) sanctions should encourage positive compliance outcomes, where the Participant, of their own volition promptly report and rectify contraventions of the Operating Rules;
- (d) Participants who strive "to do the right thing" and who have an effective compliance program, a strong risk management framework and robust financial, operational and technological processes² should receive positive recognition for those measures when ASX imposes a sanction for any contravention of the Operating Rules that has occurred despite those measures;
- (e) where appropriate, sanctions should serve as a deterrent to future contraventions by the Participant, and as a deterrent to all other Participants from engaging in similar contraventions;
- (f) sanctions should be more severe for repeat misconduct, or where the relevant misconduct evidences a disregard for the Operating Rules;
- (g) sanctions, particularly non-monetary sanctions, should be tailored to address the relevant misconduct;
- (h) sanctions should be consistently applied in comparable circumstances;
- (i) sanctions should be determined on the basis of the evidence and submissions before ASX; and
- (j) sanctions should have regard to the totality principle³.

Introduced 20/12/10 Amended 25/05/15

The Principal factors in determining sanctions

The single most important factor in determining the type and level of sanction to be imposed for a contravention of the Operating Rules is the seriousness of the contravention.

² ASX expects Participants to have an effective compliance program in place to mitigate the risk that they may breach their legal or regulatory obligations, including their obligations under the Operating Rules, and to have a strong risk management framework and robust financial, operational and technological processes, appropriate for the scale and complexity of the business they undertake. A failure to do so falls short of the standards of organisational competence required of Participants in ASX markets and facilities under the Operating Rules and goes directly to the culpability of a Participant for any contravention of the Operating Rules that occurs as a consequence.

³ Refer to "Consideration of multiple contraventions" below.

For these purposes, ASX grades contraventions into three levels of seriousness:

- **Level 1 (Minor Contravention)**

The contravention has not caused any loss or damage to clients or counterparties or, if it has, those clients or counterparties have been, or will be, identified and fully compensated for that loss or damage

AND

The contravention has not had, and was not likely to have had, any adverse impact on:

- the fairness, orderliness or transparency of the markets ASX operates;
- the fairness or effectiveness of the clearing and settlement facilities ASX operates;
- ASX's compliance with the Reserve Bank's financial stability standards; or
- the reputation of ASX and the markets and facilities it operates.

Likely range of monetary penalty: \$nil to \$20,000

- **Level 2 (Material Contraventions)**

The contravention is neither a "minor contravention" nor a "serious contravention".

Likely range of monetary penalty: \$20,000 to \$100,000

- **Level 3 (Serious Contravention)**

The contravention has had, or could have had, a serious impact on:

- the fairness, orderliness or transparency of a market ASX operates;
- the fairness or effectiveness of a clearing and settlement facility ASX operates;
- ASX's compliance with the Reserve Bank's financial stability standards; or
- the reputation of ASX or a market or facility it operates.

Likely range of monetary penalty:

\$100,000 to \$250,000 for a breach of the ASX or ASX 24 Operating Rules

\$100,000 to \$1,000,000 for a breach of the ASX Clear, ASX Clear (Futures) or ASX Settlement Operating Rules or of the Austraclear Regulations

The descriptions above of the levels of seriousness of a contravention and of the likely range of monetary penalties are for the purposes of guidance only. ASX retains the discretion to impose whatever it considers to be an appropriate sanction for a contravention of the Operating Rules even if it falls outside of the likely ranges of monetary penalties specified above.

Another important factor in determining the type and level of sanction to be imposed for a contravention of the Operating Rules is the culpability of the Participant in committing the contravention. ASX may have regard to the following factors in assessing the culpability of a Participant for a contravention:

Lower culpability	Higher culpability
The contravention was unintentional and/or inadvertent	The contravention was deliberate or arose because of gross negligence or recklessness on the part of the Participant
The contravention occurred despite the Participant having an effective compliance program ⁴ in place at the time	At the time of the contravention, the Participant did not have an effective compliance program in place
The contravention occurred despite the Participant having a strong risk management framework and robust financial, operational and technological processes ⁵	The contravention occurred because of, or is indicative of, serious weaknesses in the Participant's risk management framework or in its financial, operational or technological processes
The contravention occurred despite the Employee(s) involved in the contravention being subject to an appropriate level of supervision	<p>The Employee(s) involved in the contravention were not subject to an appropriate level of supervision</p> <p>The employee(s) involved in the contravention were directors or senior managers</p> <p>Directors or senior managers of the Participant were aware of the contravention and condoned it or were tolerant of it</p>
The Participant did not derive a financial benefit or other commercial advantage from the contravention	The Participant derived a financial benefit or other commercial advantage from the contravention
The contravention did not involve the Participant acting unconscionably towards, or otherwise unfairly taking advantage of, clients or counterparties	The contravention involved the Participant acting unconscionably towards, or otherwise unfairly taking advantage of, clients or counterparties

The more culpable a contravention:

- (a) the more likely ASX is to impose a monetary penalty rather than (or in addition to) a censure or other non-monetary sanction; and
- (b) the higher that monetary penalty is likely to be.

Introduced 20/12/10 Amended 25/05/15

Mitigating and aggravating factors

In determining an appropriate sanction for a contravention of the Operating Rules, ASX may take account of relevant mitigating or aggravating factors, including:

⁴ See note 3 above.

⁵ See note 3 above.

Mitigating factors	Aggravating factors
The Participant reported the contravention to ASX promptly and candidly	The Participant failed to report, or unreasonably delayed reporting, the contravention to ASX When it reported the contravention, the Participant did not report all material facts of which it was aware concerning the contravention
The Participant assisted and cooperated with ASX in its investigation	The Participant resisted or hindered ASX in its investigation
The Participant made an early decision to admit, or not to contest, the contravention	The Participant contested the contravention despite clear evidence that it had occurred
The Participant has demonstrated genuine contrition in relation to the contravention	The Participant has not demonstrated any genuine contrition in relation to the contravention
The Participant has taken appropriate and proportionate disciplinary action against the Employee(s) involved in the contravention	The Participant has failed to take appropriate and proportionate disciplinary action against the Employee(s) involved in the contravention
The Participant has implemented, or has undertaken to implement, meaningful measures to prevent a recurrence of the contravening conduct	The Participant has not implemented, and has not undertaken to implement, any meaningful measures to prevent a recurrence of the contravening conduct
The contravention was an isolated incident	The contravention: <ul style="list-style-type: none"> • is a recurring contravention; or • occurred over an extended period of time
The Participant has a good history of complying with the Operating Rules ⁶	The Participant has a poor history of complying with the Operating Rules ⁷
The Participant placed reasonable reliance upon independent professional and considered accounting or legal advice that the conduct in question did not contravene the Operating Rules	

⁶ Whether a Participant has a good history or a poor history of complying with the Operating Rules would be evidenced by the number of previous successful enforcement actions by ASX against the Relevant Person (whether under the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook or under Rules 2.4 or 2.5 of this Rulebook).

⁷ Refer to footnote 6.

A preponderance of mitigating factors over aggravating factors will generally result in a lower penalty, while a preponderance of aggravating factors over mitigating factors will generally result in a higher penalty, subject in all cases to the penalty being appropriate for the seriousness and culpability of the contravention concerned.

Introduced 20/12/10 Amended 25/05/15

Encouraging positive compliance outcomes

In determining a sanction for a contravention of the Operating Rules, ASX will view with favour a Participant who, of its own volition, promptly reports and rectifies that contravention. By doing so, the Participant is implementing positive measures that serve to mitigate both the seriousness of the contravention and the culpability of the Participant in committing the contravention.

What amounts to rectification of a contravention of the Operating Rules will depend on the circumstances of each case. It may require a Participant, for example:

- to conduct a thorough investigation to identify any clients or counterparties who have suffered loss or damage as a result of the contravention with a view to compensating them for that loss or damage;
- to take appropriate and proportionate disciplinary action against the Employee(s) involved in the contravention;
- to enhance their supervisory arrangements or financial, operational and technological processes to prevent a recurrence of the contravening conduct; or
- to enhance their compliance program or risk management framework to prevent a recurrence of the contravening conduct and also to reflect the lessons learned from the contravention.

Introduced 20/12/10 Amended 25/05/15

Consideration of multiple contraventions

Under the totality principle, where a single transaction or course of conduct has led to multiple contraventions of the Operating Rules, ASX will generally consider whether the aggregate of the individual monetary penalties that might otherwise be imposed for each individual contravention is appropriate, taking into account all the circumstances.

ASX may impose a monetary penalty (or other sanction) in respect of each contravention or it may choose to apply an overall monetary penalty (as well as other sanctions), which may be lower than the sum of the individual monetary penalties that might otherwise be imposed for those breaches if they were considered in isolation.

In addition, under Rule 2.2.4, where a Participant has been found to have engaged in two or more contraventions involving the same provision of the relevant Operating Rules, being contraventions that appear to ASX to have been of the same nature or a substantially similar nature and to have occurred at or about the same time or as part of a single course of conduct, ASX cannot impose monetary penalties that, in total, exceed the maximum monetary penalty applicable to a single contravention of that Operating Rule.

Under the Rules, ASX has jurisdiction to simultaneously deal with matters that relate to contraventions of Operating Rules from different Rule books. Again, ASX may impose a monetary penalty (or other sanction) in respect of each contravention or apply an overall monetary penalty (as well as other sanctions), which is lower than the total of the individual

monetary penalties that might otherwise be imposed for those breaches if they were considered in isolation.

Introduced 20/12/10 Amended 25/05/15

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