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SECTION 2 ENFORCEMENT ACTION

2.1 GROUNDS FOR ENFORCEMENT ACTION

2.1.1 Grounds for enforcement action for contravention of rules

ASX may take enforcement action under this Section 2 if ASX considers that a Participant, Issuer or Other Facility User has contravened an Operating Rule or breached a condition imposed by ASX under the Operating Rules.

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

2.2 SANCTION POWERS OF ASX IN ENFORCEMENT ACTION

2.2.1 Enforcement powers in relation to Participants

If ASX considers that a Participant has contravened the Operating Rules or breached a condition imposed by ASX under the Operating Rules, ASX may exercise any one or more of the following powers:

- (a) censure the Participant;
- (b) subject to Rule 2.2.4, impose a monetary penalty not exceeding the amount determined by ASX and set out in the Procedures, on the Participant in relation to that contravention;
- (c) specify the form, objectives and timeframe for a new, or an enhanced version of an existing compliance program designed to prevent future contravention of the Operating Rules by the Participant and its Employees, and direct the Participant to implement such a programme to the satisfaction of ASX;
- (d) where the contravention arose from conduct of a particular Employee, direct that the Participant:
 - (i) cease to permit that Employee to remain involved in the Participant's business as a Participant of ASX markets or facilities;
 - (ii) suspend that Employee's involvement in that business for a period; or
 - (iii) change that Employee's role in that business in some way; or
- (e) [deleted]
- (f) [deleted]
- (g) impose conditions or restrictions in relation to:
 - (i) any actions taken under this Rule 2.2.1;
 - (ii) the Participant's right to participate in the relevant ASX Licensee's markets or facilities;

- (iii) the future conduct of the Participant; or
- (iv) any other matter ASX sees fit.

Note: Rule 2.2.1 does not apply to Issuers or Other Facility Users under the ASX Settlement Operating Rules. Refer to Rule 2.2.2 and Rule 2.2.2A for penalties that can be imposed on Issuers and Other Facility Users pursuant to the ASX Settlement Operating Rules.

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

2.2.2 Enforcement powers in relation to Issuers under the ASX Settlement Operating Rules

If ASX considers that an Issuer has contravened the ASX Settlement Operating Rules or breached a condition imposed by ASX under the ASX Settlement Operating Rules, ASX may exercise any one or more of the following powers against that Issuer:

- (a) censure the Issuer;
- (b) if, because of the conduct constituting the contravention, ASX Settlement has suffered loss or damage, direct the Issuer to pay to ASX Settlement an amount not exceeding the amount of that loss or damage;
- (c) if, because of the conduct constituting the contravention, a Participant of ASX Settlement has suffered loss or damage which was reasonably foreseeable at the time when the conduct occurred (other than as a consequence of any fine, penalty, fee or charge imposed on the Participant by ASX Settlement or an Approved Market Operator), direct the Issuer to pay to the Participant an amount not exceeding the amount of that loss or damage; or
- (d) impose conditions or restrictions in relation to the Issuer's right to participate in the Settlement Facility.

ASX may give an Issuer more than one direction in respect of a single contravention under this Rule but the total amounts which ASX directs an Issuer to pay must not exceed the sum set out in the Procedures for a single contravention.

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

2.2.2A Enforcement powers in relation to Other Facility Users under the ASX Settlement Operating Rules

If ASX considers that an Other Facility User has contravened the ASX Settlement Operating Rules or breached a condition imposed by ASX under the ASX Settlement Operating Rules, ASX may exercise any one or more of the following powers:

- (a) censure the Other Facility User;
- (b) specify the form, objectives and timeframe for a new, or an enhanced version of an existing compliance program designed to prevent future contravention of the Operating Rules by the Other Facility User and its Employees, and direct the Other Facility User to implement such a programme to the satisfaction of ASX; or

- (c) impose conditions or restrictions in relation to the Other Facility User's right to participate in the Settlement Facility.

Introduced 25/05/15

2.2.3 Exercise of enforcement powers

In the exercise of any enforcement powers under these Rules, ASX is bound by, and shall enforce the provisions of, the Operating Rules.

Introduced 01/08/10

2.2.4 Penalty where conduct arises from the same circumstances

Where in respect of an enforcement action the subject of a single Alleged Minor Infringement Notice or single Enforcement Notice (as applicable) ASX considers that a Participant has committed 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 may not impose on the Participant monetary penalties that, in total, exceed the maximum monetary penalty that would be applicable in respect of one contravention by the Participant of that Operating Rule.

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

2.2.5 Enforcement action may deal with more than one contravention

Subject to Rule 2.2.4, ASX may in respect of enforcement action the subject of a single Submission Notice, Alleged Minor Infringement Notice or Enforcement Notice (as applicable) deal with more than one alleged contravention of the relevant Operating Rules or breach of a condition imposed under the relevant Operating Rules.

Introduced 01/08/10

2.2.6 Consultation with an Approved Settlement Facility

If, in relation to a contravention of the ASX Clear Operating Rules, ASX proposes to impose a penalty on, or give directions to, a Participant involving conditions or restrictions on participation in an Approved Settlement Facility other than ASX, the following provisions apply:

- (a) ASX must not impose the penalty or give directions without first giving the Approved Settlement Facility a reasonable opportunity to make submissions as to the penalty that should be imposed, or the directions that should be given;
- (b) if such a penalty is imposed or direction given ASX must, before taking any action to give effect to that penalty:
 - (i) give notice of the penalty or directions to the Approved Settlement Facility; and
 - (ii) afford the Approved Settlement Facility a reasonable time in which to take action to reduce or avoid any risk of impairment to the efficient

operation of the Approved Settlement Facility that may result from the enforcement of the penalty or compliance with the directions.

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

2.2.7 Consultation with an Approved Clearing Facility

If, in relation to a contravention of the ASX Settlement Operating Rules, ASX proposes to impose a penalty on, or give directions to, a Participant involving conditions or restrictions on participation in an Approved Clearing Facility other than ASX, the following provisions apply:

- (a) ASX must not impose the penalty or give directions without first giving the Approved Clearing Facility a reasonable opportunity to make submissions as to the penalty that should be imposed, or the directions that should be given;
- (b) if such a penalty is imposed or direction given ASX must, before taking any action to give effect to that penalty:
 - (i) give notice of the penalty or directions to the Approved Clearing Facility; and
 - (ii) afford the Approved Clearing Facility a reasonable time in which to take action to reduce or avoid any risk of impairment to the efficient operation of the Approved Clearing Facility that may result from the enforcement of the penalty or compliance with the directions.

Introduced 25/05/15

2.2.8 Consultation with an Approved Market Operator

If, in relation to contraventions under the ASX Clear Operating Rules or ASX Settlement Operating Rules, ASX proposes to impose a penalty on, or give directions to, a Participant involving conditions or restrictions on participation in a financial market operated by an Approved Market Operator other than ASX, the following provisions apply:

- (a) ASX must not impose the penalty or give directions without first giving the Approved Market Operator a reasonable opportunity to make submissions as to the penalty that should be imposed, or the directions that should be given;
- (b) if such a penalty is imposed or direction given ASX must, before taking any action to give effect to that penalty:
 - (i) give notice of the penalty or directions to the Approved Market Operator; and
 - (ii) afford the Approved Market Operator a reasonable time in which to take action to reduce or avoid any risk of impairment to the efficient operation of the Approved Market Operator that may result from the enforcement of the penalty or compliance with the directions.

Introduced 25/05/15

2.3 NOTIFICATION OF PROPOSED ACTION

2.3.1 Submission Notice

Unless it does not consider it appropriate having regard to Rule 1.5.1, ASX will, prior to issuing an Alleged Minor Infringement Notice or Enforcement Notice (as applicable):

- (a) issue a Submission Notice to the relevant Participant, Issuer or Other Facility User which includes the information set out in the Procedures and any other information that ASX considers appropriate; and
- (b) allow the Participant, Issuer or Other Facility User to make written submissions within the time permitted in the Submission Notice in response to the matters set out in the Submission Notice.

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

2.4 NOTIFICATION OF ALLEGED MINOR INFRINGEMENTS

2.4.1 Alleged Minor Infringement Notice

Subject to Rule 2.3, if ASX:

- (a) considers that a Participant, Issuer or Other Facility User has contravened an Operating Rule or breached a condition imposed by ASX under the Operating Rules;
- (b) has decided to exercise any of its powers under Rule 2.2.1, Rule 2.2.2 or Rule 2.2.2A in relation to that contravention or breach; and
- (c) considers that having regard to the matters set out in the Procedures, the contravention, breach or conduct should be dealt with under this Rule 2.4,

then in lieu of issuing an Enforcement Notice, ASX may instead issue an Alleged Minor Infringement Notice to the Participant, Issuer or Other Facility User which includes the information set out in the Procedures and any other information that ASX considers appropriate.

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

2.4.2 Election to comply with Alleged Minor Infringement Notice

A Participant, Issuer or Other Facility User may comply with an Alleged Minor Infringement Notice:

- (a) where a monetary penalty is set out in the Alleged Minor Infringement Notice, by paying the monetary penalty (plus any applicable GST) to ASX; and
- (b) if there are any non-monetary sanctions set out in the Alleged Minor Infringement Notice, by complying or agreeing to comply (as applicable), in a manner acceptable to ASX, with such sanctions,

in each case within the compliance period set out in the Procedures.

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

2.4.3 Effect of compliance with Alleged Minor Infringement Notice

If a Participant, Issuer or Other Facility User complies fully with an Alleged Minor Infringement Notice within the compliance period set out in the Procedures, then:

- (a) the Participant, Issuer or Other Facility User is not by reason only of having complied with the Alleged Minor Infringement Notice regarded as having:
 - (i) admitted the contravention of the relevant Operating Rule or breach of the condition specified in the Alleged Minor Infringement Notice;
 - (ii) contravened the relevant Operating Rule or breached the condition specified in the Alleged Minor Infringement Notice;
- (b) ASX may not issue an Enforcement Notice to the Participant, Issuer or Other Facility User in respect of that alleged contravention of the relevant Operating Rule or breach of the condition specified in the Alleged Minor Infringement Notice; and
- (c) ASX may make an announcement under Rule 4.1 in relation to the Alleged Minor Infringement Notice but must not name the Participant, Issuer or Other Facility User in the announcement.

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

2.4.4 Effect of non-compliance with Alleged Minor Infringement Notice

If a Participant, Issuer or Other Facility User fails to comply fully with an Alleged Minor Infringement Notice within the compliance period set out in the Procedures, ASX may issue an Enforcement Notice to the Participant, Issuer or Other Facility User in respect of the alleged contravention of the relevant Operating Rule or breach of the condition specified in the Alleged Minor Infringement Notice.

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

2.4.5 ASX discretion

- (a) The decision to issue an Alleged Minor Infringement Notice and invoke the processes set out in this Rule 2.4 in lieu of issuing an Enforcement Notice is at the absolute discretion of ASX and for the avoidance of doubt, ASX is not bound to issue or not issue an Alleged Minor Infringement Notice irrespective of whether the contravention, breach or conduct (including the sanction sought to be imposed in respect thereof) is, or is not, of a type set out in the Procedures to Rule 2.4.1(c).
- (b) Where ASX issues an Alleged Minor Infringement Notice, this does not prevent ASX or an Appeal Tribunal (as applicable) from imposing in a later Enforcement Notice a greater sanction (including a larger monetary penalty) than the sanction specified in the Alleged Minor Infringement Notice if the Participant,

Issuer or Other Facility User does not comply fully with the Alleged Minor Infringement Notice in accordance with Rule 2.4.2.

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

2.4.6 Notification or publication

Nothing in this Rule 2.4 prevents the notification or publication by ASX of the matters dealt with in this Rule 2.4:

- (a) to any governmental agency or regulatory authority or any other third parties as considered appropriate by ASX; or
- (b) as permitted under Rule 4.1.

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

2.5 NOTIFICATION OF ENFORCEMENT ACTION

2.5.1 Enforcement Notice

Subject to Rules 2.3 and 2.4, if ASX:

- (a) considers 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
- (b) has decided to exercise any of its powers under Rule 2.2.1, Rule 2.2.2 or Rule 2.2.2A in relation to that contravention or breach,

ASX may issue an Enforcement Notice to the Participant, Issuer or Other Facility User which includes the information set out in the Procedures and any other information that ASX considers appropriate.

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

2.5.2 Compliance with Enforcement Notice

- (a) Subject to paragraph (b) below, the Participant, Issuer or Other Facility User must comply with the sanction(s) imposed by ASX in an Enforcement Notice.
- (b) Where the Participant, Issuer or Other Facility User has appealed the decision of ASX under Section 2 of this Rulebook to issue an Enforcement Notice or any sanctions imposed in the Enforcement Notice, in accordance with Section 3 of these Rules, and the Appeal Tribunal:
 - (i) affirms or varies the decision to issue the Enforcement Notice or the sanction(s) imposed in the Enforcement Notice (as applicable) pursuant to Section 3 of these Rules - the Participant, Issuer or Other Facility User must comply with such sanction(s) as affirmed or varied by the Appeal Tribunal;
 - (ii) sets aside the decision to issue the Enforcement Notice or the sanction(s) imposed in the Enforcement Notice (as applicable)

pursuant to Section 3 of these Rules - the Participant, Issuer or Other Facility User is not required to comply with those sanction(s) set aside by the Appeal Tribunal.

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

2.6 CONSOLIDATION OF ENFORCEMENT ACTION – ASX LICENSEES

2.6.1 ASX may consolidate enforcement action

Subject to Rule 2.6.2 if:

- (a) an ASX Licensee is entitled to take enforcement action (including pursuant to Rule 2.4) against a Participant, Issuer or Other Facility User under Section 2 in respect of particular circumstances; and
- (b) another one or more ASX Licensees have similar powers under their Operating Rules and are entitled to exercise those powers against the same Participant, Issuer or Other Facility User in respect of the same or similar circumstances,

each ASX Licensee need not exercise their powers separately but may, exercise those powers together. Without limiting this Rule 2.6, each ASX Licensee considering the taking of enforcement action in respect of particular circumstances (which are the same or similar) may at the same time, take enforcement action (including pursuant to Rule 2.4) jointly.

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

2.6.2 Consolidation does not affect powers

Even though the exercise of powers or enforcement action is consolidated under this Rule 2.6, ASX must comply with the Rules or Operating Rules which govern those powers and enforcement action. The consolidation of the exercise of powers or enforcement action under this Rule 2.6 does not confer on ASX any powers in addition to those conferred on ASX by these Rules or the Operating Rules of the relevant ASX Licensee.

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

2.7 ENFORCEMENT ACTION – MORE THAN ONE PARTICIPANT, ISSUER OR OTHER FACILITY USER

2.7.1 ASX may take multiple enforcement actions in same circumstances

ASX is entitled to take enforcement action (including pursuant to Rule 2.4) against more than one Participant, Issuer or Other Facility User in respect of the same or similar circumstances.

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

2.8 CERTAIN OBLIGATIONS CONTINUE

2.8.1 Jurisdiction continues

Notwithstanding that a Participant, Issuer or Other Facility User has ceased to be a Participant, Issuer or Other Facility User under the Operating Rules:

- (a) these Rules continue to apply and ASX will continue to have jurisdiction in respect of the Participant, Issuer or Other Facility User concerning any conduct or any failure to comply with the Operating Rules which occurred before the Participant, Issuer or Other Facility User ceased to be a Participant, Issuer or Other Facility User, whether that conduct or failure was by the Participant, Issuer or Other Facility User or by any other person for whose conduct the Participant, Issuer or Other Facility User was responsible;
- (b) the Participant, Issuer or Other Facility User continues to be bound by any indemnity given by them under these Rules or the Operating Rules; and
- (c) these Rules and the Operating Rules continue to apply in respect of the Participant, Issuer or Other Facility User to the extent required to give effect to paragraphs (a) and (b).

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

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