



ASX Circular

Date: 1 June, 2007

Key topics

1. Supervisory Powers & Processes

Reading List

Compliance Managers
 Managing Directors
 ASTC Participants
 Office Managers
 Operations Managers (back office)
 ACH Participants
 Market Participants

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SUPERVISORY POWERS AND PROCESSES

Announcement of changes foreshadowed in "[Supervisory Powers and Processes](#)" paper.

ASX thanks Participants and industry bodies who responded to this consultation paper. ASX has considered feedback and is pleased to advise the following:

Part A of this paper set out a number of administrative changes which have been, or are in the process of being implemented. The cumulative objective is to improve the efficiency and effectiveness of the ASX Group supervisory processes for the benefit of all stakeholders. Changes include:

- Formalised [Statement of Approach to Supervision](#);
- Improved internal processes to provide greater consistency of outcomes and clarity of the escalation processes;
- Streamlined process of progressing an investigation and preparing documentation for the Disciplinary Tribunals;
- Facilitation of earlier negotiated settlement of matters before the Disciplinary Tribunals;
- Greater recognition for cooperation in achieving regulatory objectives; and
- Monies arising from penalties determined by the Disciplinary Tribunals to be set aside for education and research purposes.

All of these proposals have been adopted and will be implemented as soon as practicable. There may be timing differences in the implementation of the proposals across the range of Operating Rules.

The changes to the Operating Rules to facilitate earlier negotiated settlement of matters before the Disciplinary Tribunals will be made concurrently with changes to facilitate the integration of the Disciplinary Tribunals (see below).

The changes to the use of monies arising from penalties determined by the Disciplinary Tribunals (net of any external expenses incurred by ASX during the course of investigation and enforcement of a matter before the Disciplinary Tribunal) was given effect to from 1 January this year.

The types of uses to which the monies will be put include training courses conducted by ASX for Participants and listed entities in relation to supervisory issues, and targeted training and education as needed from time to time, based on an analysis of recent breaches.

Part B of the paper set out matters on which ASX sought specific comment. These matters are addressed in more detail below and include:

- Publication of Disciplinary Tribunal determinations;
- Introduction of Breach Notices;
- Increase in the maximum fine determined by the Disciplinary Tribunals; and
- Time to pay fines.

Proposal 1: Publication of Disciplinary Tribunal determinations

Proposal adopted.

ASX will recommend to the Tribunal that it consider publication of a greater level of detail about the circumstances in which a breach occurred. Any changes will be made concurrently with changes to facilitate the integration of the Disciplinary Tribunals (see below).

Proposal 2: "Breach Notices"

Proposal adopted.

ASX will introduce a Breach Notice for less significant contraventions that fall into a category 1 type as outlined in ASX Guidance Note 18 "ASX's Disciplinary Tribunals – Penalties".

For all Breach Notices a fine of \$2,000 (two thousand) will be recommended to the Tribunal.

In response to submissions, ASX will extend the response period to Breach Notices from the proposed 10 days to 28 days.

The paper proposed that, unlike the outcomes of hearing matters, ASX would submit to the Tribunal that the issuance of Breach Notices would not be published immediately but would be published quarterly on an anonymous basis. In response to submissions, ASX proposes to amend the rules for publication of all Tribunal determinations from the current ASX position. Amended Operating Rules will provide that all disciplinary penalty outcomes will include the name of the Participant unless the Tribunal determines to publish only the outcome and not the name.

This change will be made concurrently with changes to facilitate the integration of the Disciplinary Tribunals (see below).

Proposal 3: Maximum dollar penalty determined by Disciplinary Tribunals

ASX advises that the maximum dollar penalty which may be determined by Tribunals will be \$1,000,000 (one million), instead of the proposed \$2,000,000 (two million). The \$1,000,000 maximum fine is in line with fines for similar offences under the Corporations Act. ASX anticipates that the maximum dollar penalty which may be determined by Tribunals will be regularly reviewed against the Corporations Act penalty benchmarks. In this regard ASX is cognisant of the current Treasury review of penalties under the Corporations Act.

ASX also proposes to clarify that where disciplinary action is instigated involving two or more rule breaches that appear 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, the maximum fine that would be applicable as a result of that action will be \$1,000,000 rather than \$1,000,000 per rule breached.

This change will be made concurrently with changes to facilitate the integration of the Disciplinary Tribunals (see below).

Proposal 4: Time to pay fines

Proposal adopted.

ASX will amend the Operating Rules to the effect that a fine which is imposed by a Tribunal is payable within 30 days from the date of the conclusion of the appeal period. At present no time frame is specified in the Rules.

This change will be made concurrently with changes to facilitate the integration of the Disciplinary Tribunals (see below).

Integrated Disciplinary Tribunal

ASX is currently reviewing submissions received in relation to the paper [*Approach to the integration of disciplinary tribunals and appeal processes for the Australian Securities Exchange*](#). The deadline for comments on this paper was 16 May 2007. ASX expects to announce the outcome of its review in June 2007.

At this stage it is envisaged that any changes to facilitate the integration of the Disciplinary Tribunals will be introduced in 2008.