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SECTION 2 ENFORCEMENT ACTION

2.1 GROUNDS FOR ENFORCEMENT ACTION

2.1.1 Grounds for enforcement action for breach of rules

ASX may take enforcement action under this Section 2 if ASX considers that a Relevant Person, other than an entity as defined in the ASX Listing Rules, has contravened an Operating Rule or breached a condition imposed by ASX under the Operating Rules.

Note: Where an entity under the ASX Listing Rules is considered to have breached an ASX Listing Rule, ASX refers the matter to ASIC.

Amended 01/08/10

2.2 SANCTION POWERS OF ASX IN ENFORCEMENT ACTION

2.2.1 General Powers

If ASX considers that a Relevant Person, other than an Issuer, 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 Relevant Person;
- (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 for each contravention by it or any of its Relevant Persons;
- (c) specify 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 Rules by the Relevant Person and its Employees, and direct the Relevant Person to implement such a programme to the satisfaction of ASX;
- (d) where the contravention arose from conduct of a particular individual involved in the business of the Participant, direct that the Participant cease to permit that individual to remain involved or that the Participant change that individual's role in the business in some way;
- (e) where the Relevant Person against which enforcement action is taken is not a Participant, direct the relevant Participant to:
 - (i) suspend that person's role as a Relevant Person of that Participant for a period not exceeding 3 months upon such terms and conditions as ASX thinks fit; or
 - (ii) where ASX makes a finding of Unprofessional Conduct, terminate that person's role as a Relevant Person of that Participant;
- (f) where the Relevant Person determined to have contravened the Rules is not a Participant, make an order that the Relevant Person not be employed, or

otherwise appointed, as a Responsible Executive (as applicable) for a period ASX thinks fit; and

- (g) impose conditions or restrictions in relation to:
 - (i) any actions taken under this Rule 2.2.1;
 - (ii) a Relevant Person's participation rights in the relevant ASX Licensee's facilities;
 - (iii) the future conduct of a Relevant Person;
 - (iv) any other matter ASX sees fit.

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

Amended 01/08/10

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

If ASX Settlement considers that an Issuer has contravened the ASX Settlement Operating Rules:

- (a) ASX Settlement may exercise any one or more of the following powers against that Issuer:
 - (i) impose a censure;
 - (ii) 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;
 - (iii) 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 (but not including loss or damage as a consequence of any fine, penalty, fee or charge imposed on the Participant by ASX Settlement or the Approved Market Operator), direct the Issuer to pay to the Participant an amount not exceeding the amount of that loss or damage.
- (b) In relation to the exercise of any power under Rule 2.2.2(a):
 - (i) the total amounts which ASX Settlement directs an Issuer to pay must not exceed the sum set out in the Procedures for a single contravention;
 - (ii) ASX Settlement may give an Issuer more than one direction in respect of a single contravention.

Amended 01/08/10

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 Relevant Person 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 shall not impose on the Relevant Person monetary penalties that, in total, exceed the maximum monetary penalty that would be applicable in respect of one contravention by the Relevant Person of that Operating Rule.

Amended 01/08/10

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 Clearing or Approved Settlement Facility or the relevant Approved Market Operator

In relation to contraventions under the ASX Clear Operating Rules or ASX Settlement Operating Rules, if ASX Clear or ASX Settlement (as applicable) propose to impose a penalty on, or give directions to, a Clearing Participant (as defined in the ASX Settlement Operating Rules) or a Settlement Participant (as defined in the ASX Clear Operating Rules) or a participant of an Approved Market Operator other than ASX (as defined in the ASX Settlement Operating Rules) involving conditions or restrictions on participation in the Settlement Facility (in relation to contraventions under the ASX Clear Operating Rules) or ASX Clear (in relation to contraventions under the ASX Settlement Operating Rules), the following provisions apply:

- (a) ASX Clear or ASX Settlement (as applicable) must not impose the penalty or give directions without first giving the Approved Settlement Facility (in relation to contraventions under the ASX Clear Operating Rules) or Approved Clearing Facility (in relation to contraventions under the ASX Settlement Operating Rules) or the relevant Approved Market Operator (in relation to contraventions under either the ASX Clear Operating Rules or the ASX Settlement Operating Rules) 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 Clear or ASX Settlement must, before taking any action to give effect to that penalty:

- (i) give notice of the penalty or directions to the Approved Settlement Facility (in relation to contraventions under the ASX Clear Operating Rules) or Approved Clearing Facility (in relation to contraventions under the ASX Settlement Operating Rules) or the relevant Approved Market Operator; and
- (ii) afford the Approved Settlement Facility (in relation to contraventions under the ASX Clear Operating Rules) or Approved Clearing Facility (in relation to contraventions under the ASX Settlement Operating Rules) or the Approved Market Operator (in relation to contraventions under either the ASX Clear Operating Rules or the ASX Settlement Operating Rules) 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 or Approved Clearing Facility or the Approved Market Operator (as the case may be) that may result from the enforcement of the penalty or compliance with the directions.

Amended 01/08/10

2.3 NOTIFICATION OF PROPOSED ACTION

2.3.1 Submission Notice

Unless it does not consider it appropriate having regard to Rule 1.10.2, ASX will, prior to issuing an Alleged Minor Infringement Notice or Enforcement Notice (as applicable):

- (a) issue a Submission Notice to the relevant Relevant Person which includes the information set out in the Procedures and any other information that ASX considers appropriate; and
- (b) allow the Relevant Person 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

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 Relevant Person, other than an entity as defined in the ASX Listing Rules, 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 or Rule 2.2.2; 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 issue an Alleged Minor Infringement Notice to the Relevant Person which includes the information set out in the Procedures and any other information that ASX considers appropriate.

Introduced 01/08/10

2.4.2 Effect of issue and compliance with Alleged Minor Infringement Notice

If within the compliance period set out in the Procedures for the Alleged Minor Infringement Notice the Relevant Person:

- (a) pays the monetary penalty set out in the Alleged Minor Infringement Notice; and
- (b) to the extent that there are any other non-monetary sanctions set out in the Alleged Minor Infringement Notice, complies or agrees to comply (as applicable), in a manner acceptable to ASX, with such other sanctions,

then:

- (c) the Relevant Person is not by reason only of paragraphs (a) and (b) above, regarded as having contravened the relevant Operating Rule or breached the condition specified in the Alleged Minor Infringement Notice;
- (d) ASX will not issue an Enforcement Notice to the Relevant Person 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

2.4.3 Effect of non-compliance with Alleged Minor Infringement Notice

If within the compliance period set out in the Procedures for the Alleged Minor Infringement Notice the Relevant Person fails to:

- (a) pay the monetary penalty set out in the Alleged Minor Infringement Notice; or
- (b) to the extent that there are any other non-monetary sanctions set out in the Alleged Minor Infringement Notice, comply or agree to comply (as applicable), in a manner acceptable to ASX, with such other sanctions,

then unless ASX is satisfied that it is not appropriate to do so, ASX will issue an Enforcement Notice to the Relevant Person 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

2.4.4 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 the issue of 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 Relevant Person does not comply with the Alleged Minor Infringement Notice in accordance with Rule 2.4.2.

Introduced 01/08/10

2.4.5 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

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 Relevant Person, other than an entity as defined in the ASX Listing Rules, 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 or Rule 2.2.2,

ASX will issue an Enforcement Notice to the Relevant Person which includes the information set out in the Procedures and any other information that ASX considers appropriate.

Introduced 01/08/10

2.5.2 Compliance with Enforcement Notice

- (a) Subject to paragraph (b) below, the Relevant Person must comply with the sanction(s) imposed by ASX in the Enforcement Notice.
- (b) Where the Relevant Person has appealed the determination 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 Relevant Person 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 Relevant Person is not required to comply with such sanction(s) as set aside by the Appeal Tribunal.

Introduced 01/08/10

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 clause 2.4) against a Relevant Person 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 Relevant Person 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 clause 2.4) jointly.

Amended 01/08/10

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 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

2.7 ENFORCEMENT ACTION – MORE THAN ONE RELEVANT PERSON

2.7.1 ASX may take multiple enforcement actions in same circumstances

ASX is entitled to take enforcement action (including pursuant to clause 2.4) against more than one Relevant Person in respect of the same or similar circumstances.

Amended 01/08/10

2.8 CERTAIN OBLIGATIONS OF CERTAIN RELEVANT PERSONS CONTINUE

2.8.1 Jurisdiction continues

After a Relevant Person ceases to be a Relevant Person under these Rules:

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

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