

# Participants: matters regulated by ASIC vs matters regulated by ASX



The purpose of this document is to explain the matters involving participants that are regulated by the Australian Securities and Investments Commission ('ASIC') under the Corporations Act 2001 (Cwth),<sup>1</sup> and those that are regulated by ASX Limited and its subsidiaries ('ASX') under the Operating Rules governing the various financial markets and clearing and settlement facilities operated by ASX.<sup>2</sup>

## 1. Market matters regulated by ASIC under the Corporations Act

ASIC is the market regulator for all financial markets and clearing and settlement facilities 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;
- high frequency trading;
- the continuous disclosure obligations of entities listed on a financial market in Australia;
- misleading or deceptive conduct in relation to financial products;
- the requirement for participants to act efficiently, honestly and fairly;<sup>3</sup>
- the obligation of participants to maintain trust accounts and/or client segregated accounts for client money;<sup>4</sup>
- the obligation of participants to have adequate supervisory arrangements and risk management systems;<sup>5</sup>
- the procedures participants must have for resolving disputes with retail clients;<sup>6</sup>
- the mandatory provisions that ASIC's Market Integrity Rules require to be included in agreements between market participants and their clients;<sup>7</sup>
- the obligation of market participants to act in accordance with client instructions;
- the order and trade records that market participants must keep and the transaction confirmations they must give to their clients;
- when market participants can execute a trade off-market;
- market participants dealing with their clients as principal;

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<sup>1</sup> 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.

References in this document to the Corporations Act also include the ASIC Market Integrity Rules made by ASIC under section 798G. The relevant market operator and market participants are obliged to comply with the ASIC Market Integrity Rules applicable to that market under section 798H.

<sup>2</sup> Being the ASX and ASX 24 markets and the ASX Clear, ASX Clear (Futures), ASX Settlement and Austraclear clearing and settlement facilities. The rules of those markets and clearing and settlement facilities are referred to in the remainder of this document as the 'Operating Rules'.

<sup>3</sup> As holders of an Australian financial services licence ('AFSL') under section 912A(1)(a).

<sup>4</sup> As holders of an AFSL under Part 7.8 Division 2 of the Corporations Act.

<sup>5</sup> As holders of an AFSL under section 912A(1)(d) and (h).

<sup>6</sup> As holders of an AFSL under section 912A(1)(g).

<sup>7</sup> This and subsequent matters in the list above are primarily regulated under the ASIC Market Integrity Rules governing securities and futures markets in Australia: see note 1 above.

- the 'best execution' obligation of securities market participants;
- the obligation of a securities market participant not to do anything that results in a market for a financial product not being both fair and orderly, and not to fail to do anything where failure has that result;<sup>8</sup>
- the accreditation requirements a client adviser must satisfy to advise retail clients about options, warrants and futures traded on a securities market; and
- the prohibition against securities market participants carrying out excessive transactions on a managed discretionary account for a retail client.

## **2. Corporate matters regulated by ASIC under the Corporations Act**

ASIC is also the corporate regulator of participants established in Australia as a company 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 participant;
- compliance by the participant with Australian accounting and auditing standards;
- false or misleading statements in or omissions from:
  - the participant's annual and half-yearly financial statements; or
  - other documents lodged by the participant with ASIC under the Corporations Act; and
- insolvent trading by the participant.

## **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 two exceptions mentioned in section 6 below, if you wish to report or make a complaint about a possible breach by a participant of any of the Corporations Act provisions mentioned in section 1 or 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 Operating Rules**

As the licensed operator of markets and clearing and settlement facilities, ASX is responsible for monitoring and enforcing compliance by the participants in those markets and facilities with their obligations under the Operating Rules. Some of the key Operating Rule requirements that ASX oversees in this regard include:

- the initial requirements an entity must meet to be admitted as a participant;
- the ongoing requirements a participant must meet to stay a participant;
- the mandatory provisions that the Operating Rules require to be included in agreements between participants and their clients;
- the procedures and timelines for executing, clearing and settling market transactions;

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<sup>8</sup> This obligation is imposed under rule 5.9.1 of the ASIC Market Integrity Rules (Securities Markets) 2017.

- the requirements a market participant must meet when executing or reporting orders on the trading platform, including in relation to crossings and other off-market trades;
- the obligation of an ASX market participant not to do anything that results in the ASX market for a financial product not being both fair and orderly, and not to fail to do anything where failure has that result;<sup>9</sup>
- the obligation of an ASX Clear participant to maintain a trust account and/or client segregated account for client money;<sup>10</sup> and
- the requirements a sponsoring ASX Settlement participant must meet when transferring financial products to a new sponsoring participant.

## 5. Reporting possible breaches of the Operating Rules

Subject to the exceptions mentioned in section 6 below, if you wish to report or make a complaint about a possible breach by a participant of any of the Operating 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. Matters regulated both by ASIC and ASX

There are two matters that are regulated both by ASIC under the Corporations Act and by ASX under the Operating Rules. They are:

- the requirement for an ASX market participant not to do anything that results in an ASX market for a financial product not being both fair and orderly, and not to fail to do anything where failure has that result;<sup>11</sup> and
- the requirement for an ASX Clear participant to maintain a trust account and/or client segregated account for client money.<sup>12</sup>

If you wish to report or make a complaint about a possible breach by an ASX market participant of the former obligation, or ASX Clear participant of the latter obligation, you may do so with ASIC or ASX, using the online facilities mentioned above. Under a protocol agreed between ASIC and ASX, where either of them receives a report of misconduct or a complaint that falls within their joint regulatory responsibility, they will discuss which of them is best placed to take the carriage of any investigation or enforcement action in relation to the matter.

## 7. Overseas participants

In the case of a participant 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 participant established in a jurisdiction outside Australia, you should submit it to the relevant corporate regulator in that jurisdiction, rather than to ASIC or ASX.

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<sup>9</sup> This obligation is imposed under rule 3101(a) of the ASX Operating Rules.

<sup>10</sup> This obligation is imposed under rule 4.23 of the ASX Clearing Operating Rules.

<sup>11</sup> See notes 8 and 9 above.

<sup>12</sup> See notes 4 and 10 above.