

Monitoring and Enforcing Compliance with ASX's Listing Rules



1. Introduction

As the licensed operator of a market providing listing services, ASX Limited (“ASX”) is obliged under the *Corporations Act 2001* (Cth)¹ to have rules (“**listing rules**”²) governing the conduct of the entities (“**listed entities**”) admitted to the ASX official list.³ It is also obliged to have “adequate arrangements ... for monitoring and enforcing compliance” with the listing rules.⁴

This document summarises some of the arrangements that ASX has in place for monitoring and enforcing compliance by listed entities with the listing rules.

2. The obligation of listed entities to comply with the listing rules

Upon being admitted to the ASX official list,⁵ a listed entity becomes legally bound to comply with the listing rules.⁶

Broadly speaking, the obligations imposed on listed entities under the listing rules fall into seven main categories:

- the requirements an entity must meet in order to be admitted to the ASX official list;
- the requirements an entity’s securities must meet in order for them to be quoted on ASX;
- the obligation to disclose certain information to the market;
- the obligation to obtain security holder approval for certain matters;
- the continuing obligations of listed entities in chapter 12 of the listing rules;
- the rules governing meetings of security holders in chapter 14 of the listing rules; and
- other obligations.

The disclosure obligations imposed on listed entities under the listing rules in turn fall into three main categories:

- the continuous disclosure obligations in chapter 3 of the listing rules, chief amongst which is the obligation in rule 3.1, requiring a listed entity to disclose immediately any information that a reasonable person would expect to have a material effect on the price or value of its securities;
- the periodic (annual, half-yearly and, in some cases, quarterly) reporting obligations in chapter 4 of the listing rules; and
- the additional reporting requirements that apply to mining entities and oil and gas entities in chapter 5 of the listing rules.

3. The role of ASX Listings Compliance

ASX Listings Compliance (“**Listings Compliance**”) is a specialist unit within ASX with overall responsibility for monitoring and enforcing compliance by listed entities with the listing rules.⁷ It reports to the ASX Chief Compliance Officer (“**CCO**”).⁸

Listings Compliance has the delegated authority from the ASX Board to make compliance and enforcement decisions under the listing rules, including:

- deciding whether or not to admit an applicant to the official list;
- deciding whether or not to quote an entity’s securities;

- agreeing to requests from a listed entity for a trading halt, voluntary suspension or removal from the official list;
- making enquiries about a suspected breach by a listed entity of the listing rules;
- taking action against a listed entity for breaching the listing rules (for example, by suspending the entity's securities from quotation or removing the entity from the official list); and
- granting waivers of the listing rules.

Admission applications

Listings Compliance reviews all applications by entities for admission to the official list to verify that the entity meets all of the admission requirements in the listing rules.⁹ It also makes the decision on behalf of ASX on whether or not to approve the application and admit the entity to the official list. In doing so, it can exercise ASX's absolute discretion under the listing rules to reject an application for admission to the official list for any reason.¹⁰

ASX listings advisers

When an entity is admitted to the official list, Listings Compliance will assign one of its listing advisers to be the entity's primary ASX contact for listing rule matters. The role of the listings adviser is to assist the entity on any questions or concerns it may have, and liaise with the entity on any questions or concerns Listings Compliance may have, under the listing rules.

Monitoring activities

Listings Compliance conducts various monitoring activities to detect possible breaches of the listing rules.

The listings adviser assigned to a listed entity monitors the announcements the entity makes on the ASX Market Announcements Platform ("MAP") and will follow up with it if an announcement appears to raise issues under the listing rules.

In conjunction with ASX Surveillance (see below), Listings Compliance monitors the media for potential disclosure issues. This includes reviewing all major state and national newspapers (including online media) before the market opens each business day to identify any article about an ASX listed entity that may raise disclosure issues. If such an article is identified, it is referred to the relevant listings adviser to follow up with the entity.

Listings Compliance monitors whether listed entities meet their quarterly, half-yearly and annual reporting requirements under chapter 4 of the listing rules and, if they are a mining or oil and gas entity, the applicable reporting requirements in chapter 5 of the listing rules. Listed entities that do not meet the deadline for lodging their periodic financial reports with ASX are automatically suspended from trading from the morning after the due date until those reports are ultimately lodged.¹¹

Where a matter requires security holder approval under the listing rules, a draft of the entity's notice of meeting seeking that approval must be lodged with ASX for review before it is dispatched to security holders.¹² The relevant listings adviser will review the draft notice to verify that it conforms to the listing rules.

Complaints, tip-offs and referrals

Complaints and tip-offs are an important source of intelligence on potential breaches of the listing rules. Listings Compliance receives and assesses:

- all complaints or tip-offs made to ASX alleging that a listed entity has breached its obligations under the listing rules;

- all compliance-related notifications by listed entities under the listing rules; and
- referrals from other ASX control groups regarding suspected breaches of the listing rules they may have detected in the course of their activities (see section 4 below),

to determine whether they warrant further action by Listings Compliance.

Enquiries

If Listings Compliance is concerned that a listed entity may have breached the listing rules, it can ask the entity to provide ASX with any information, document or explanation about that matter to enable ASX to be satisfied that the entity is in compliance with its obligations under the listing rules. The entity must comply with that request within the time specified by ASX.¹³

If a listed entity does not co-operate with Listings Compliance in providing the required information, document or explanation, that will constitute a separate actionable breach of the listing rules.

Corrective action

If Listings Compliance finds that a listed entity has breached the listing rules, it can require the entity to take corrective action.¹⁴ The type of corrective action it may require will depend on the nature and seriousness of the breach.

It should be noted that ASX cannot fine, or impose any other criminal or civil penalties on, a listed entity for breaching the listing rules. If a listed entity fails to comply with its obligations under the listing rules, ASX's primary sanction is to suspend trading in its securities¹⁵ until it does comply. In an extreme case, ASX has the ultimate sanction of removing the entity from the official list.¹⁶ Suspension and removal are not sanctions that ASX imposes lightly, since they have a significant impact on investors by taking away their ability to buy or sell securities in the entity on the ASX market. However, they are sanctions that ASX will impose in an appropriate case if ASX considers that to be in the interests of the broader market.

Not all breaches of the listing rules by a listed entity will warrant corrective action by Listings Compliance. For less serious breaches, Listings Compliance may simply:

- send a formal warning letter to the listed entity acknowledging the breach and noting that ASX is likely to take further action if the breach is repeated or if the listed entity does not implement steps to avoid the breach being repeated; or
- send a "no escalation" letter to the listed entity acknowledging the breach but indicating that ASX does not intend to take the matter further.¹⁷

Waiver decisions

Listings Compliance reviews and decides all applications for a waiver of a listing rule by a listed entity or by an entity applying to be admitted to the official list.

Listings Compliance will generally only grant a waiver of a listing rule if it is satisfied that the waiver conforms to ASX policy and the applicant has a good business reason for requesting it.¹⁸

4. The role of other ASX control groups

Listings Compliance is not the only ASX control group responsible for monitoring and enforcing compliance by listed entities with the listing rules. Other ASX control groups, mentioned below in this section, also play a role in monitoring and enforcing compliance with the listing rules.

ASX Surveillance

The ASX Surveillance team sits within the ASX Market Operations group. It uses sophisticated computer technology to monitor trading in ASX-quoted securities on a real time basis across all licensed markets in

Australia seeking to identify (among other things) abnormal trading which could indicate a potential breach by the listed entity of rule 3.1. The Surveillance Group also reviews various news services, investor forums and chat sites looking for similar indications. Any concerns that the Surveillance team may identify on this score are referred to the relevant listings adviser to follow up with the listed entity.

ASX Market Announcements Office (“MAO”)

The MAO also sits within the ASX Market Operations group and processes announcements by listed entities for release to the market. When an announcement is received by the MAO, it is quickly reviewed on-screen by specialist staff to determine whether it is appropriately formatted, how it should be catalogued, whether it is market-sensitive (in which case, the MAO will initiate a brief halt to trading in the relevant securities to allow the market to absorb and react to the information in the announcement) and whether it needs cross-releasing against another listed entity.

While it does not specifically review announcements for compliance with the listing rules, if as part of its review the MAO does happen to identify concerns about the contents of an announcement, the MAO may defer the release of the announcement and refer those concerns to the relevant listings adviser to follow up with the listed entity.

5. Notifications to ASIC

If ASX suspects that a listed entity has committed a significant contravention of the listing rules, or that a listed entity or other person (such as a director or other officer of a listed entity) has committed a significant contravention of the Corporations Act, it is required under that Act¹⁹ to give a notice to the Australian Securities and Investments Commission (“ASIC”) with details of the contravention. The purpose of the notice is so that ASIC can then consider whether it wishes to take regulatory action in relation to the suspected breach.

6. The supervision of ASX as a listed entity

ASX itself is a listed entity on the ASX market. Clearly, ASX would have a significant conflict in supervising its own conduct as a listed entity under the listing rules. To address this, the Corporations Act and chapter 20 of the listing rules provide that ASIC is responsible for supervising ASX and monitoring ASX’s compliance with the listing rules.

¹ Referred to in this document as the “Corporations Act”. References in this document to sections are to sections of the Corporations Act.

² References in this document to rules are to the ASX listing rules.

³ The listing rules must deal with the matters prescribed by the Corporations Regulations (section 793A(1)).

⁴ Section 792A(c)(ii).

⁵ Admission to the ASX official list is a prerequisite for a listed entity to have its securities quoted on ASX.

⁶ In the listing application an entity seeking admission to the official list submits to ASX, the entity agrees to comply with the listing rules in force from time to time even if the quotation of its securities is deferred, suspended or subject to a trading halt (see clause 5 in Appendices 1A, 1B and 1C of the listing rules). The listing rules themselves contain a similar provision (rule 18.6). In addition, if a listed entity does not comply with the listing rules, the Court may make an order compelling it to do so (section 793C).

⁷ Listings Compliance also has a specialist investment products compliance team that monitors and enforces compliance by issuers of investment products with the ASX Operating Rules governing the quotation of those products.

⁸ The CCO reports jointly to the ASX Audit and Risk Committee and to the ASX Managing Director and CEO.

⁹ Subject to any applicable waivers that Listings Compliance may be prepared to grant.

¹⁰ Rule 1.19.

¹¹ Rule 17.5.

¹² Rule 15.1.7.

¹³ Rule 18.7.

¹⁴ Rule 18.8.

¹⁵ Rule 17.3.1.

¹⁶ Rule 17.12.

¹⁷ This may be given on a conditional basis (ie that ASX will not take further action provided the listed entity meets certain conditions specified in the letter).

¹⁸ Refer to ASX Listing Rules Guidance Note 17 *Waivers and In-Principle Advice* for a more complete description of the factors that ASX takes into account when considering an application for a waiver of a listing rule.

¹⁹ Section 792B(2)(c).