

The purpose of this document is to articulate how the ASX Group meets its obligation under the *Corporations Act 2001* (Cth)¹ to have adequate arrangements for monitoring and enforcing compliance with its Listing Rules.²

The obligation to comply with the Listing Rules

Under its listing agreement with ASX, each entity admitted to the ASX official list is contractually bound to ASX to comply with the Listing Rules. This contract is effectively given the force of law under the *Corporations Act*.³

Broadly speaking, the Listing Rules impose 4 main types of obligations on listed entities:

- (1) the requirements an entity must meet in order to be admitted to and remain in the ASX official list;
- (2) the obligation to disclose certain information to the market;
- (3) the obligation for certain transactions to be subject to security holder approval;⁴ and
- (4) sundry other obligations, such as the requirement for directors to submit themselves to re-election every 3 years⁵ and the contents required to be included in proxy forms.⁶

There are two main types of disclosure obligations under the Listing Rules:

- (1) the continuous disclosure obligations in Chapter 3, chief amongst which is the obligation in Listing Rule 3.1 for 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; and
- (2) the periodic (quarterly, half-yearly and annual) reporting obligations in Chapters 4 and 5.

The role of ASX Compliance

The responsibility for ensuring that ASX has adequate arrangements for monitoring and enforcing compliance with the Listing Rules resides primarily with the Listings Unit in ASX Compliance.

The Listings Unit carefully reviews all applications for admission to the official list to verify that the applicant meets the admission requirements in the Listing Rules.⁷

Once admitted, the Listings Unit assigns each ASX listed entity a listings adviser, who is their primary point of contact at ASX on Listing Rule issues. The listings adviser is available to advise the entity on any questions or concerns it may have, and will liaise with the entity on any questions or concerns ASX may have, under the Listing Rules. The listings adviser is also responsible for reviewing any complaint from a third party which alleges that the listed entity has breached the Listings Rules and discussing with the entity whether there has been a breach and, if so, how the entity intends to remedy it.

Monitoring and surveillance activities

ASX conducts various monitoring and surveillance activities to detect possible breaches of the Listing Rules.

Particular attention is paid to monitoring the continuous disclosure requirements in Listing Rule 3.1, which are central to the integrity and efficiency of the ASX market and other markets that trade in ASX quoted securities or derivatives of those securities.⁸

The listings adviser assigned to a listed entity monitors all of the announcements the entity makes on the ASX Market Announcements Platform and will follow up with it if an announcement raises any issues under the Listing Rules.

The Listings Unit reviews all major state and national newspapers before the market opens each business day to identify any article about an ASX listed entity that may raise continuous disclosure issues. If such an article is identified, it is referred to the relevant listings adviser to follow up with the entity.

The Listings Unit also has a Surveillance Group, which 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 abnormal trading⁹ which could indicate that there has been a leak of market sensitive information yet to be announced under Listing Rule 3.1. The Surveillance Group also reviews various news services, investor forums, chat sites and published broker research looking for similar indications. Again, any concerns that the Surveillance Group may have on this score are referred to the relevant listings adviser to follow up with the entity.

The Listings Unit monitors whether listed entities meet their quarterly, half-yearly and annual reporting requirements under Chapter 4 and 5 of the Listing Rules and will suspend the quotation of trading in the securities of entities that do not meet the filing deadlines for the lodgement of these reports.¹⁰

Where a matter requires security holder approval under the Listing Rules,¹¹ a draft of the entity's notice of meeting and proxy form must be lodged with ASX for review prior to dispatch to security holders.¹² The relevant listings adviser will review these documents to verify that they comply with the form and content requirements in the Listing Rules.

Requests for further information

If ASX is concerned that a listed entity may have breached the Listing Rules, ASX may 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

Depending on the nature of the information requested, ASX may require that information to be released to the market.¹⁴

Corrective action

If ASX finds that a listed entity has breached the Listing Rules, ASX can require the entity to take corrective action.¹⁵ The type of corrective action ASX will usually require to remedy a breach will depend on the nature of the breach. For example, if it is a disclosure breach, ASX may require the entity to make a corrective announcement to the market. If it is a failure to obtain security holder approval for acquiring a substantial asset from, or disposing of a substantial asset to, a person in a position of influence, ASX may require the entity to cancel the transaction unless security holder approval is obtained.¹⁶ If it is a failure to obtain security holder approval to an issue of securities to a person in a position of influence, ASX may require the securities to be disposed of.¹⁷

It should be noted that the Listing Rules are not law, as such, and ASX cannot fine or impose any other criminal or civil penalties on a listed entity for breaching the Listing Rules. If a listed entity refuses to comply with its obligations under the Listing Rules, ASX's ultimate sanction is to suspend trading in its securities¹⁸ or, in an extreme case, to terminate its listing.¹⁹ This is not a sanction that ASX exercises lightly, since it can have a significant impact on investors, by taking away their ability to buy or sell securities in the entity on the ASX market.

Usually the threat of suspension or termination will be enough to get a listed entity to co-operate with ASX. However, if a listed entity refuses to co-operate, aside from suspension or termination, ASX's only remedy will be to take legal action against the entity to obtain a court order requiring it to comply with its obligations under the Listing Rules.

Referrals 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, secretary or other officer of a listed entity) has committed a significant contravention of the Corporations Act, it is required under that Act²⁰ 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 criminal or other regulatory action in relation to the breach.

The limits on ASX's investigation and enforcement powers

ASX is not an arm of the government that can exercise police powers. It cannot conduct searches, seize evidence, examine people on oath or arrest people who don't co-operate, in the way that ASIC or other government regulators can. Its ability to investigate is limited to its power under the Listing Rules to request information from a listed entity mentioned above.

ASX can only investigate and take action in relation to matters that are regulated by the Listing Rules.

Many of the complaints ASX receives relate to conduct that is not regulated by the Listing Rules. In particular, ASX often receives complaints about matters that are regulated by ASIC under the Corporations Act or the Market Integrity Rules made by ASIC under that Act, rather than by ASX under the Listing Rules. ASX is powerless to do anything about these types of complaints, other than to refer them to ASIC under the provisions mentioned above.

More information about the types of matters that are regulated by ASIC under the Corporations Act and those that are regulated by ASX under the Listing Rules is available on the ASX website at:

<http://www.asx.com.au/documents/about/corporations-act-vs-listing-rules-matters.pdf>

The supervision of ASX as a listed entity

ASX itself is a listed entity on the ASX market. Clearly, ASX would have a 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. ASX does not perform this function in relation to itself.

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- ¹ Referred to in this document as the "Corporations Act". References in this document to sections are to sections of the Corporations Act.
 - ² Section 792A(c)(ii).
 - ³ Sections 793B and 793C.
 - ⁴ This includes, for example, the disposal of a listed entity's main undertaking, various transactions with persons in a position of influence, some security issues and some option reconstructions: see respectively Listing Rules 11.2; 10.1, 10.11, 10.17 and 10.19; 7.1 and 7.1A; and 6.23.
 - ⁵ Listing Rule 14.4.
 - ⁶ Listing Rule 14.2.
 - ⁷ Subject to any applicable waivers that ASX may grant.
 - ⁸ ASX Listing Rule Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1-3.1B* has further information about ASX's enforcement practices regarding Listing Rule 3.1.
 - ⁹ Such as a sudden and significant movement in the market price or traded volumes of a listed entity's securities which cannot be explained by announcements the entity has made or by movements in the market or its sector generally.
 - ¹⁰ Listing Rule 17.5.
 - ¹¹ See note 4 above
 - ¹² Listing Rule 15.1.7.
 - ¹³ Listing Rule 18.7.
 - ¹⁴ Listing Rule 18.7A.
 - ¹⁵ Listing Rule 18.8.
 - ¹⁶ Listing Rule 10.9.
 - ¹⁷ Listing Rule 18.8.
 - ¹⁸ Listing Rule 17.3.1.
 - ¹⁹ Listing Rule 17.12.
 - ²⁰ Section 792B(2)(c).