

Monitoring Compliance with ASX'S Operating Rules

The purpose of this document is to articulate how ASX meets its obligations under the *Corporations Act 2001* (Cth)¹ to have adequate arrangements for monitoring compliance with the Operating Rules that govern the ASX and ASX 24 markets² and the supervising the ASX Clear, ASX Clear (Futures), ASX Settlement (CHESS) and Austraclear clearing and settlement facilities.³

Introduction

Broadly speaking, the Operating Rules impose 3 main types of obligations on participants:

1. the requirements that must be met in order to be admitted and remain as a participant in the relevant market or facility;
2. the rules that govern the operation of the market or facility; and
3. various administrative and notification obligations, such as the requirement for a participant to self-report to ASX any significant⁴ breach of the Operating Rules⁵ and certain other matters.

The role of ASX Compliance

The responsibility for ensuring that ASX has adequate arrangements for monitoring compliance with the Operating Rules resides primarily with the Participants Unit in ASX Compliance.

The Participants Unit carefully reviews all applications for admission as a participant to verify that the applicant meets the admission requirements in the Operating Rules.⁶

Once admitted, the Participants Unit assigns each participant a compliance adviser, who is their primary point of contact at ASX on Operating Rule issues. The compliance adviser is available to advise the participant on any questions or concerns it may have, and will liaise with the participant on any questions or concerns ASX may have, under the Operating Rules. They receive and review any self-report by the participant of a significant breach of the Operating Rules. They also review any complaint from a third party which alleges that the participant has breached the Operating Rules and will discuss with the participant whether there has been a breach and, if so, how the participant intends to remedy it and prevent it re-occurring.

The Participants Unit may decide that it is appropriate to institute an investigation into a possible breach of the Operating Rules. In some cases, this may be because whether there has been a breach and, if so, the magnitude of the breach may not be immediately apparent. In other cases, this may be because the breach is considered so significant that formal enforcement proceedings may be warranted and the investigation will be a precursor to those proceedings. In the latter case, the investigation will be carried out by the Reviews and Investigations team in the Participant's Unit.

Under the Operating Rules, ASX may require participants to provide information and access to books and records that may be relevant to assessing their compliance with those rules. ASX may also require any such information to be

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 Section 821A(c).

⁴ ASX Clear Futures Operating Rule 4.10 currently does not limit the self-reporting obligation to "significant matters". There is currently no breach reporting obligation in the Austraclear Regulations.

⁵ See ASX Operating Rule 5000, ASX Clear Operating Rule 19.2.3, ASX Settlement Operating Rule 12.18.1, ASX 24 Operating Rule 5000 and ASX Clear (Futures) Operating Rule 4.10.

⁶ Subject to any applicable waivers that ASX may grant.

verified by an independent auditor or other expert. ASX can, and does, use these powers when it conducts an investigation into a possible breach of the Operating Rules.

If a determination is made that ASX should institute formal enforcement proceedings against a participant, the matter will be referred to the Enforcement Unit in ASX Compliance¹ for it to conduct those proceedings.

Thematic compliance reviews

A central component of ASX's framework for monitoring and enforcing compliance with the Operating Rules are the scheduled and ad hoc risk-based thematic compliance reviews (often referred to as "spot reviews") conducted by the Participants Unit to monitor the level of compliance by participants with particular obligations under the Operating Rules. These thematic reviews often serve multiple purposes:

- to test and/or raise the level of understanding of, and compliance with, a particular rule obligation;
- to determine whether participants have made adequate changes to their operational and compliance arrangements to address a recently adopted or modified rule;
- to assess participants' readiness for an upcoming rule change; and
- generally, to signal to participants that the rule obligation being reviewed is of concern to ASX and that they themselves should be reviewing their operational and compliance arrangements around that obligation and, if necessary, enhancing them.

Thematic reviews are sometimes conducted across all participants affected by a particular rule requirement and sometimes on a "sample and test" basis across selected participants.

Participant-specific compliance reviews

Participant-specific reviews (often referred to as "onsite reviews" because they are typically carried out onsite at the offices of the participant) are initiated when the Participants Unit considers it appropriate to test the implementation and functioning of a participant's compliance processes, either generally or in relation to particular rule obligations. This may arise, for example, because there is a concern about the quality of the participant's compliance processes arising from the volume and/or seriousness of rule breaches involving the participant.

At the conclusion of a participant-specific review, it is not uncommon for the Participants Unit to discuss and agree with a participant a set of action items for the participant to undertake to improve its compliance processes.

Other review processes

In addition to thematic and participant-specific reviews mentioned above, the Participants Unit conducts a number of periodic reviews focusing on compliance with specific requirements under the Operating Rules. These include, but are not limited to, various checks around derivatives positions, daily beneficial ownership reporting reconciliations, crossing transactions, short sale reporting, securities lending transactions and transfers in and out of a client's sponsored holding.

The role of technology and other ASX control groups

Compliance with some Operating Rules is enforced through trading and clearing and settlement system constraints. For example, the types of order instructions that can be submitted to, and when and how orders are matched on, a market are governed by system rules in the trading platform for that market. Similarly, the types of settlement instructions that can be processed through CHES or Austraclear are governed by system rules in those platforms. No further processes or procedures are required to monitor or enforce compliance with system-enforced rules.

Compliance with some Operating Rules is also monitored by those ASX business units involved in operating or managing the risk associated with ASX's markets and clearing and settlement facilities. These include:

Trading Operations and Markets (TOM)

The day to day operation of the ASX and ASX 24 markets is monitored by TOM. Its responsibilities include:

- monitoring various trading and market data systems to ensure that they are functioning properly;
- managing market access;

- assessing and resolving cancellations;
- assessing trade reporting requests for compliance with the relevant ASX Operating Rules;
- performing daily settlement price calculations for the ASX and ASX 24 futures market;
- reviewing compliance with strip trade requirements before those trades are allowed to be entered into the trading system;
- identifying, assessing and responding to instances where a market may have become disorderly;
- ensuring that securities the subject of a sensitive announcement are appropriately halted and reopened; and
- recovering a market following a technical disruption.

Clearing & Settlement Operations (CSO)

The day to day operation of the ASX Clear, ASX Settlement, ASX Clear (Futures) and Austraclear clearing and settlement facilities is monitored by CSO. CSO has in place systems and processes to monitor the performance by participants of their primary clearing and settlement obligations (for example to pay initial and variation margins and to meet their delivery obligations at settlement). It also has in place processes to monitor ASX futures positions in the lead up to expiry and liaise with participants who have material physical delivery obligations under ASX deliverable futures contracts to ensure they are aware of those delivery obligations.

In its day to day processes CSO may also make determinations under the Operating Rules including, but not limited to:

- providing operational extensions (for example delay of batch processing where a participant is experiencing technical difficulties);
- approving products to be included in batch settlement;
- determining the appropriate treatment for corporate actions under the Operating Rules;
- managing business continuity events (both for participants and for the clearing and settlement facility);
- authorising participants to connect to CHES; and
- ensuring that a participant takes appropriate remedial action to ensure any breach of clearing and settlement obligations which could disrupt the integrity of the clearing and settlement facility is rectified as soon as practicable.

Clearing Risk Management (CRM)

The Operating Rules relating to the management of risk within ASX's two clearing houses, ASX Clear and ASX Clear (Futures), are administered by the CRM unit in ASX's Risk Division. This includes making determinations under the rules relating to:

- setting of initial and variation margins;
- calling intraday margins;
- setting capital based position limits, stress test exposure limits and position concentration limits;
- imposing exercise limits;
- approving withdrawals of excess collateral; and
- imposing clearing fund contributions and emergency assessments.

Compliance with the capital requirements in the ASX Clear and ASX Clear (Futures) Operating Rules⁷ is also monitored by the Counterparty Risk Assessment team within CRM. Participant capital returns are filed electronically with CRM via ASX's Return Lodgement and Monitoring ("RLM") system. RLM generates exception reports that identify any participant who misses a filing deadline. The system also generates a number of exception reports which assist CRM in identifying a potential breach of ASX's capital requirements.

ASX has the power under the Operating Rules to require participants to file ad hoc capital returns. This power can be applied across the board to all participants (for example, if there is a market wide risk event) or to an individual participant (for example, if there are concerns about the participant's capital position or solvency).

⁷ The capital requirements for ASX and ASX 24 trading participants who are not clearing participants of ASX Clear or ASX Clear (Futures) are regulated by ASIC under the ASIC Market Integrity Rules (ASX Market) and the ASIC Market Integrity Rules (ASX 24 Market) respectively.

CRM will follow up with any participant who is late filing a capital return or whose capital return indicates a breach of ASX's capital requirements to determine as a matter of priority what remedial action should be taken to rectify the breach.

Referrals to ASX Compliance

If in the course of their activities TOM, CSO or CRM detect a possible breach by a participant of the Operating Rules, it will refer the matter to the Participants Unit in ASX Compliance for it to determine whether an investigation or further action against the participant is warranted.

Follow-up action in relation to breaches

Where ASX finds that a participant has breached the Operating Rules, it may take action to redress the breach. Whether it does so, and the type of action it will take, will vary depending on the seriousness of the breach and a range of other factors,⁸ including whether the participant has a good or poor history of complying with the Operating Rules.

Further information about the types of follow-up action that ASX may take in relation to a breach of the Operating Rules is available on the ASX website at:

www.asx.com.au/documents/about/operating-rules-enforcement.pdf

⁸ The full list of factors ASX takes into account in this regard are spelt out in Annexure A (the sanction guidelines) of the ASX Enforcement and Appeals Rulebook Procedures.