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## **ASX Compliance Enforcement Activity**

Under the Corporations Act, as a licensed operator of financial markets, ASX is obliged to have adequate arrangements for monitoring and enforcing compliance with the operating rules of those markets. It is also obliged, as a licensed operator of clearing and settlement facilities, to have adequate arrangements for supervising those facilities and for enforcing compliance with their operating rules.

The purpose of this circular is to notify participants in those markets and facilities of some of the enforcement activities recently undertaken by ASX Compliance, so that they are aware of potential areas of concern for ASX and of ASX's enforcement activities in those areas.

This circular covers enforcement activities that were finalised during the quarter ending 30 June 2022. Investigations in relation to other enforcement matters are ongoing.

### **Enforcement Decision**

ASX's Chief Compliance Officer has imposed a penalty of \$40,000 (plus GST) on Interactive Brokers Australia Pty Ltd. The matter concerned breaches of:

- (i) ASX Operating Rule ('**ASX OR**') 3501, requiring a participant in the ASX Market to submit daily to the ASX a short sales report setting out the cash market products sold by the participant in the relevant period;
- (ii) ASX OR 6704 and 6710, requiring a participant to ensure that information given to the ASX is complete, accurate and not misleading and any report required to be submitted is in the manner and form specified under the rules;
- (iii) ASX OR 5000 and the related procedure, requiring a participant to immediately notify ASX in writing if the participant becomes aware it has breached a rule or procedure and that breach is significant; and
- (iv) ASX OR 1400(a), to maintain adequate resources and processes to comply with the participants ongoing obligations under the rules.

Further details of this matter are available in the following circular:

[https://www.asxonline.com/content/dam/asxonline/public/notices/2022/may/disciplinary\\_matter\\_interactive\\_brokers\\_australia.pdf](https://www.asxonline.com/content/dam/asxonline/public/notices/2022/may/disciplinary_matter_interactive_brokers_australia.pdf)

### **Warning Letters**

#### **Open Interest and Position Reporting Requirements**

ASX issued a warning letter to a participant for breaches of:

- (i) ASX Clear (Futures) Operating Rules 46.1, 46.5 and the related procedures, which require a participant to close out daily the back-to-back open positions within each individual account held with it; and
- (ii) ASX24 Operating Rule 4840 and the related procedure, which requires a participant to accurately report daily the open positions held by each of the participants clients.

To ensure that the open interest is accurately reflected, a participant must exclude those positions that do not contribute to market liquidity. As such, those positions that are back-to-back within each individual account must be closed out, unless there are explicit instructions given that the client would like the account treated as an affiliated account.

In relation to the matter the following issues were identified:

- a failure to retain a record of explicit instructions given by four clients requesting their account be treated as an affiliated account, including a record of the rationale as to why these clients wanted the account to be treated in this manner;
- system configurations had not been reviewed to ensure that automatic functions relating to open positions matched the client instructions and what was reported to the exchange; and
- an inconsistent treatment of open positions in several affiliate accounts, which had resulted in inaccurate representations of the open positions within the participant's clearing accounts and the daily beneficial ownership reporting.

The participant has remedied these breaches by correcting the records for the relevant clients and amending their systems to ensure recorded close-out instructions reflect their client's instructions.

Additionally, ASX has required the participant to:

- (i) assess whether the scope of the review conducted on their clearing obligations was sufficient to address the underlying compliance failures and to action further changes and remediation as required; and
- (ii) then provide the ASX with a report of the completed assessment and remediation actions taken.

### **Exchange Traded Option (ETO) Margin Obligation**

ASX has issued a warning letter to a participant for a breach of ASX Clear Operating Rule 12.17.1, which concerns the obligation of a participant to meet an ETO margin obligation.

On the relevant date, a participant was delayed in settling a margin amount of AUD \$2,440,224.84 by the prescribed time of AEST 10:30 am. The delay resulted from an employee's failure to follow the participant's procedures governing payment of ETO margins, which ensure that funds had been moved into the relevant account used to meet any margin call. The amount was subsequently settled at AEST 11:35 am on the same day. The participant had a contingent payment arrangement in place with a payment provider and had conducted reviews that this facility was available. The reviews conducted by the participant however failed to extend to whether the contingent payment arrangement was actually operationally ready, meaning that on the relevant date the participant was not able to utilise this contingency process.

In response to the breach, the participant has strengthened its procedures and controls relating to maintaining sufficient funds, evidencing payment has been settled by the prescribed time, incorporating an escalation process to ASX in the event of potential delays, and implementing automated email alerts. Additionally, the participant has introduced supplementary steps in its review process to ensure contingent payment arrangements remain operationally ready.

### **Prohibition on Holdings of less than a Marketable Parcel**

ASX has issued a warning letter to a participant for a breach of ASX Settlement Operating Rule 8.10.2, which concerns the registering of a holding of less than a marketable parcel which was the result of on-market trading. The participant maintained procedures for broker to broker transfers but the procedures did not extend to registering a holding through an on-market transaction. Further, the participant had allowed a client to be exempted from controls relating to validations of marketable parcel size for broker to broker transfers.

In response to the breach, the participant implemented a pre-trade check in its order management system, revised procedures requiring that DTRs check holdings to ensure marketable parcels where applicable, and enhanced the reporting on transfers that could create a holding which is less than a marketable parcel.