
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 period ending 30 September 2023. Investigations in relation to other enforcement matters remain ongoing.

Enforcement Decisions

BNP Paribas – Securities Lending Reporting

ASX's Chief Compliance Officer (the 'CCO') imposed a penalty of \$50,000 (plus GST) on BNP Paribas, who on 1 October 2022 assumed the liabilities and obligations of BNP Paribas Securities Services ('BPSS'), for BPSS's contraventions of:

- (i) ASX Settlement Operating Rule ('ASX SR') 6.8A.5(a) and its related procedure, being its obligation to report its Securities On Loan Position by the prescribed time;
- (ii) ASX SR 6.8A.5(b) and its related procedure, being its obligation to report its Securities Borrowed Position by the prescribed time;
- (iii) ASX SR 6.8A.5(c) and its related procedure, being its obligation to report its Securities Committed Position by the prescribed date and time;
- (iv) ASX SR 6.2.2, being its obligation to ensure that all information given to ASX Settlement is complete, accurate and not misleading; and
- (v) ASX SR 6.1.1(a), being its obligation to at all times continue to satisfy the admission requirements under ASX Settlement Operating Rules 4.3.1(h) and 4.18.1, to have adequate processes to comply with its obligations under the rules.

Further details in respect of this matter are set out in the following circular:

<https://www.asx.com.au/content/dam/asx/about/asx-compliance/disciplinary-notice-2023/disciplinary-notice-bnp-paribas.pdf>

Morrison Securities Pty Ltd – Trust Money

The CCO imposed a penalty of \$80,000 (plus GST) on Morrison Securities Pty Ltd for contraventions of:

- (i) ASX Clear Operating Rule ('ASX CR') 4.23.2, being its obligation to hold in trust money in relation to Market Transactions to which Division 2 of Part 7.8 of the Corporations Act applies;

- (ii) ASX CR 4.24.1, being the prohibition on withdrawing from its clients' trust account money received in connection with a client purchase of financial products until it has taken steps for the financial products to be registered in the name of the client;
- (iii) ASX CR 4.23.6, being the obligation to perform a reconciliation, in the time, form and manner set out in the related procedure that is accurate in all respects, of balances held in its clients' trust accounts and the corresponding balances as recorded in its accounting records; and
- (iv) ASX CR 4.1.1(a), being its obligation to at all times continue to satisfy the admission requirements in ASX CR 3.2.1(e) and 3.5.1 to have adequate processes to comply with its obligations under the ASX CRs.

Further details in respect of this matter are set out in the following circular:

<https://www.asx.com.au/content/dam/asx/about/asx-compliance/disciplinary-notices/2023/disciplinary-notice-morrison-securities-pty-ltd.pdf>

Deutsche Bank AG – Late Margin Payments

The CCO imposed a penalty of \$50,000 (plus GST) on Deutsche Bank AG for contraventions of:

- (i) ASX Clear (Futures) Operating Rules ('ASX CFR') 43.1 and 44.4, being its obligation to settle an initial margin / daily settlement obligation by the prescribed time of 11:00am (AEST) on 24 January 2022;
- (ii) ASX CFR 4.10, being its requirement to at all times ensure that it satisfies its continuing requirements under ASX CFR 4.2(e), to have adequate resources and processes to comply with its obligations as a clearing participant under the ASX CFRs; and
- (iii) ASX Clear (Futures) Operating Rule 45.1, being its obligations to settle a USD 2am Intra-Day Margin by the prescribed time of 4:54am (AEST) on 6 April 2022.

Further details in respect of this matter are set out in the following circular:

<https://www.asx.com.au/content/dam/asx/about/asx-compliance/disciplinary-notices/2023/disciplinary-notice-25-09-23.pdf>

Warning Letters

Adequate processes to identify and prevent any orders that could lead to a dis-orderly market

On 18 August 2023, ASX issued a warning letter to a Participant for apparent breaches of ASX Operating Rules 1000(e) and 1400(a) as a result of inadequate processes to identify and prevent any orders that could lead to a dis-orderly market. In particular, pre-trade vetting by the Participant failing to identify where pricing had not been adjusted when trading ex-entitlement.

ASX is required by the Corporations Act to ensure that the markets it operates are fair, orderly and transparent. The efficient operation of a fair and orderly financial market is essential to ongoing trust and confidence in our financial system.

Market Participants are reminded that they must, at all times, continue to have adequate resources and processes to prevent any action or inaction which might result in a market for a product not being both fair and orderly. While ASX has implemented controls to support its requirements to operate a fair and orderly market, these do not relieve a Participant from ensuring it has adequate management supervision, training,

compliance, and risk management processes to comply with its obligations as a Participant under the ASX Operating Rules.

Inclusion of mandatory terms within sponsorship agreements. Notification to ASX of a change in auditor within 10 business days.

On 28 September 2023, ASX issued a warning letter to a Participant in relation to its failure to include mandatory notifications within its Sponsorship Agreements relating to claims for compensation. The warning letter also referred to the Participant's late notification to ASX that it had removed its auditor as well as its late notification to ASX of the appointment of the new auditor.

ASX Settlement Operating Rule (ASX SR) 7.2.4 outlines that Sponsorship Agreements must include in a prominent position notifications in relation to the Participant Sponsored Holder's rights to make a claim for compensation, including a statement that the ability of the Sponsoring Participant to satisfy claims for compensation will depend upon the financial circumstances of that Participant. ASX is concerned that clients of the Participant were not notified of important information about claims for compensation, and that they may have made decisions while unaware of this information and the associated risks. The Participant has modified its processes and its current Client Agreement has been reviewed by independent legal advisors to ensure it is compliant with ASX SR 7.2.

ASX expects Sponsoring Participants to review the mandatory terms within their Sponsoring Agreements regularly, particularly when they experience significant changes to their business or update client facing documentation.

ASX Clear Operating Rule 4.5.3 requires Participants to notify ASX Clear of the appointment, removal or resignation of an auditor no later than 10 Business Days following the event. ASX has informed the Participant of concerns that it did not have an adequate understanding of its notification obligations and that these obligations have not been successfully embedded into day-to-day practice. The Participant has updated its Regulatory Notifications and Reporting Policy as well as its notification procedures to reflect ASX notification requirements.

ASX expects Participants to regularly review their processes to ensure they have a robust framework in place to report within the expected timeframe.

ASX has recently added a document on notification obligations to its suite of educational material available for Participants on its website. [Notification Obligations for Participants](#)

There is also a detailed Guidance Note (Guidance Note 8 *Notification Obligations*) setting out ASX's notification requirements for the relevant rulebook.