

## **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 31 December 2023. Investigations in relation to other enforcement matters are ongoing.

### **Warning Letters**

#### **Failure by a Trading Participant to ensure a market in a product is fair and orderly and the provision of information to ASX that may have been inaccurate, incomplete or misleading**

On 29 November 2023, ASX issued a warning letter to a Participant in relation to concerns that the Participant placed a sweep limit order in a stock post dilution without first considering the impact of the dilution. This resulted in a reference price that could have caused the market in the stock to become disorderly. ASX was required to halt trading for 120 seconds to reset the reference price.

ASX was also concerned that the Participant may have provided inaccurate or incomplete information to ASX in response to requests for information about the above event and another ASX investigation. Some of the provided information sought to deflect responsibility and if this had not been detected by ASX it had the potential to divert ASX resources and time when investigating the case.

ASX relies on accurate information from Participants to help it monitor and enforce compliance with ASX Operating Rules. When responding to ASX requests for information Participants must ensure the information is accurate and complete and includes all relevant information known at the time. If necessary, further updates can be provided, as more information becomes available.

### **Compliance with securities lending reporting obligations**

On 16 October 2023, ASX issued a warning letter to a Participant over concerns it failed to accurately advise ASX of its Securities On Loan Position. The root cause of the alleged breaches was human error when an Excel tool was used to 'net' data from two source systems to calculate reportable securities lending positions. Data was copied and pasted into the wrong sheet of an Excel tool, resulting in data errors. These errors were not identified and corrected prior to submission to ASX. The alleged breaches occurred between November 2022 and 15 May 2023. The Participant has undertaken remediation and changed their processes.

ASX Settlement Rule 6.2.2 requires Participants to ensure all information they provide to ASX is complete, accurate and not misleading. Securities Lending information reported to ASX is published for broader use by the market and regulators such as ASIC and the RBA and helps ensure that the markets ASX operates remain fair, orderly and transparent.

### **Enforcement Decisions**

#### **Credit Suisse Equities (Australia) Limited – Non-compliance with Securities Lending Reporting Obligations**

ASX Limited's Chief Compliance Officer imposed a penalty of \$30,000 (plus GST) on Credit Suisse Equities (Australia) Limited for contraventions of:

- (a) 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;
- (b) ASX SR 6.8A.5(b) and its related procedure, being its obligation to report its Securities Borrowed Position by the prescribed time; and
- (c) 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.

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-credit-suisse-equities-australia-limited.pdf>

#### **HSBC Custody Nominees (Australia) Limited - Non-compliance with Securities Lending Reporting Obligations**

ASX Limited's Chief Compliance Officer imposed a penalty of \$40,000 (plus GST) on HSBC Custody Nominees (Australia) Limited for contraventions of:

- (a) ASX Settlement Operating Rule ('ASX SR') 6.8A.4 and its related procedure, being its obligation to notify ASX if it is a Securities Lending Participant;
- (b) ASX SR 6.8A.5(a) and its related procedure, being its obligation to report its Securities On Loan Position;
- (c) ASX SR 6.8A.5(b) and its related procedure, being its obligation to report its Securities Borrowed Position;
- (d) ASX SR 6.8A.5(c) and its related procedure, being its obligation to report its Securities Committed Position; and
- (e) ASX SR 6.1.1(a), being its obligation to all times continue to satisfy the admission requirements in ASX SR 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-notices/2023/disciplinary-notice-hsbs-custody-nominees-australia-limited.pdf>

#### **Alleged Minor Infringement Notice**

ASX Limited's Chief Compliance Officer imposed a penalty of \$20,000 (plus GST) on a Participant in connection with:

- (a) ASX Clear Operating Rule ('ASX CR') 4.11.1, being its obligation to ensure that financial products which relate to a cash market transaction and which the Participant is not the beneficial owner of, are registered in the name of a nominee company that satisfies the requirements established by this rule; and
- (b) ASX CR 4.1.1, being its obligation to at all times continue to satisfy the admission requirements set out under ASX Clear Operating Rules 3.2.1 and 3.5.1, being to have adequate resources and processes to comply with its obligations under the rules.