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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 period ending 31 March 2024. Investigations in relation to other enforcement matters are ongoing.

### **Enforcement Decisions**

#### **Merrill Lynch Equities (Australia) Limited - Non-compliance with Securities Lending Reporting Obligations**

ASX Limited's Chief Compliance Officer imposed a penalty of \$20,000 (plus GST) on Merrill Lynch 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-notice/2024/disciplinary-notice-merrill-lynch-equities-australia-limited.pdf>

#### **J.P. Morgan Nominees Australia Pty Limited - Non-compliance with Securities Lending Reporting Obligations**

ASX Limited's Chief Compliance Officer imposed a penalty of \$20,000 (plus GST) on J.P. Morgan Nominees Australia Pty 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; and

(b) ASX SR 6.8A.5(c) and its related procedure, being its obligation to report its Securities Committed Position.

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/2024/disciplinary-notice-jp-morgan-nominees-australia-pty-limited.pdf>

## **Warning Letters**

### **Late payment of ASX Clear Futures margin**

On 31 January 2024, ASX issued a warning letter to a Participant for the late payment of an ASX Clear Futures margin.

On 23 November 2023, the Participant was required to pay ASX Clear (Futures) a margin amount of NZD \$1,319,753.20 for its Client Account by 11:00am (AEDT). The payment was not settled however until 11:14am.

The Participant's first attempt to make this payment from an offshore NZD account was unsuccessful due to insufficient funds being available. The Participant then arranged an alternative payment from their AUD account, however, this payment was delayed by their bank due to the impact of a public holiday for the offshore bank responsible for exchanging foreign currency. The bank processed the transaction on an exceptional basis, however, this delay contributed to the margin payment ultimately being made 14 minutes late.

The Reserve Bank of Australia ('RBA') has determined the Financial Stability Standards ('FSS') for licensed clearing facilities such as ASX Clear (Futures) ('CCP Standards'). Under Standard 6 of the CCP Standards, the RBA stipulates that central counterparties such as ASX are required to establish and rigorously enforce timelines for margin collections and payments, as well as set appropriate consequences for the failure by Participants to pay within the required timeframe.

A Participant's processes for meeting its margin obligations to ASX are considered key processes under ASX Clear (Futures) organisational requirements. ASX expects that all margin settlement processes, including back-up processes, are tested on a regular basis to ensure they remain up to date and the Participant is prepared to respond to any issues which may delay payment. ASX would expect that these processes and their testing take into account potential bank delays due to known events, for example overseas public holidays and the need for foreign exchange conversion.

The Participant has since updated its contact tree to ensure timely escalations, and has incorporated a list of relevant public holidays into its processes to assist with planning timely foreign exchange conversion payments.

### **Inadequate compliance processes**

On 31 January 2024, ASX issued a warning letter to a Participant over concerns that it did not have adequate resources and processes to comply with its obligations under the ASX Operating Rules, including compliance processes.

These concerns were raised following three separate events:

- (a) The failure by the Participant to submit their Annual Audited Return ('**AAR**') package by the required timeframe, as required by ASX Clear Operating Rule 4.4.3;
- (b) The failure by the Participant to notify ASX of a change to its AFSL immediately, as required by ASX Operating Rule ('**ASXOR**') Procedure 1400(e)(2)(b)(i); and
- (c) The failure by the Participant to notify ASX of the appointment of a director within 10 Business Days of the appointment, as required by ASXOR Procedure 1400(e)(2)(a).

The evidence indicated that the Participant had:

- (a) Failed to provide required information to ASX within the required timeframe;
- (b) Failed to adequately respond to ASX Requests for Information, including by providing ASX with incomplete answers;
- (c) Significant key person risk, with many key functions being performed by the Compliance Manager;
- (d) Failed to demonstrate an intention to implement changes to its processes to improve compliance; and
- (e) Failed to implement training to improve its staff's understanding of its ASX obligations.

ASX has required that the Participant undertake substantive remedial actions, including to:

- (a) Update its Obligations Matrix or an equivalent document or procedure to include;
  - (i) all relevant ASX obligations, with references to the relevant ASX rules;
  - (ii) the staff positions responsible for any required actions to comply with the ASX obligations;
  - (iii) relevant dates and deadlines to meet ASX obligations; and
  - (iv) relevant controls and procedures for ensuring compliance with each ASX obligation.
- (b) Implement staff training on ASX obligations;
- (c) Complete a review of its processes in relation to the provision of required information to ASX, within required timeframes; and
- (d) Table a copy of ASX's Warning Letter to the Participant at the next board meeting.