



# ANNEXURES TO ASX ENFORCEMENT AND APPEALS RULEBOOK PROCEDURES

## ANNEXURE A ASX SANCTION GUIDELINES

These Guidelines set out the principles and factors that ASX will generally take into account when determining the sanctions to be imposed for a contravention of the Operating Rules. These Guidelines are not intended to be exhaustive and ASX may take account of other relevant circumstances in any individual case.

Introduced 20/12/10

### The types of sanctions that may be imposed

Under Rule 2.1.1 of the Rules, ASX may take enforcement action if it considers that a Relevant Person has contravened an Operating Rule<sup>1</sup>.

Rule 2.2 provides ASX with a range of sanction powers. In the case of a contravention by an Issuer of the ASX Settlement Operating Rules, those powers include the imposition of a censure or an order to pay damages to ASX Settlement or any Participant of ASX Settlement who has suffered loss or damage as a result of the contravention. In all other cases, those powers include:

- censure;
- the imposition of a monetary penalty of up to \$250,000 (for ASX and Australian Securities Exchange<sup>2</sup> Participants) or \$1,000,000 (for ASX Clear, ASX Clear (Futures), ASX Settlement and Austraclear Participants);
- specifying the form, objectives and timeframe for a new, or an enhanced version of an existing, education and compliance programme designed to prevent future contravention of the Operating Rules by the Relevant Person and its Employees, and a direction the Relevant Person implement such a programme to the satisfaction of ASX;
- where a particular individual was involved in the contravention, orders requiring a Relevant Person employing the individual to change or cease that individual's role or involvement or where the Relevant Person against which the enforcement action is

---

<sup>1</sup> References in this Guidance Note to a contravention of an Operating Rule include a breach of a condition imposed under the Operating Rules.

<sup>2</sup> Australian Securities Exchange Limited is the operator of the ASX 24 market.

taken is not a Participant, orders requiring that the individual not be employed or otherwise appointed as a Responsible Executive of a Participant; and

- the imposition of conditions or restrictions on a Relevant Person's participation rights in an ASX market or facility or on their future conduct.

Introduced 20/12/10

## **General principles in determining sanctions**

ASX is guided by the following general principles in determining the type and level of sanction to be imposed for a contravention of the Operating Rules:

- (a) sanctions are imposed to protect the interests of ASX and the participants and users of the markets and facilities it operates and, in particular, to protect:
  - the fairness, orderliness and transparency of the markets ASX operates;
  - the fairness and effectiveness of the clearing and settlement facilities ASX operates;
  - ASX's compliance with the Reserve Bank's financial stability standards; and
  - the reputation of ASX and its markets and facilities;
- (b) sanctions should be proportionate to the seriousness of the contravention and the culpability of the Relevant Person in committing the contravention and take account of any relevant mitigating or aggravating factors;
- (c) sanctions should encourage positive compliance outcomes, where Relevant Persons of their own volition promptly report and rectify contraventions of the Operating Rules;
- (d) Relevant Persons who strive "to do the right thing" and who have an effective compliance program, a strong risk management framework and robust financial, operational and technological processes<sup>3</sup> should receive positive recognition for those measures when ASX imposes a sanction for any contravention of the Operating Rules that has occurred despite those measures;
- (e) where appropriate, sanctions should serve as a deterrent to future contraventions by the Relevant Person, and as a deterrent to all other Relevant Persons from engaging in similar contraventions;
- (f) sanctions should be more severe for repeat misconduct, or where the relevant misconduct evidences a disregard for the Operating Rules;
- (g) sanctions, particularly non-monetary sanctions, should be tailored to address the relevant misconduct;
- (h) sanctions should be consistently applied in comparable circumstances;
- (i) sanctions should be determined on the basis of the evidence and submissions before ASX; and

---

<sup>3</sup> ASX expects Relevant Persons to have an effective compliance program in place to mitigate the risk that they may breach their legal or regulatory obligations, including their obligations under the Operating Rules, and to have a strong risk management framework and robust financial, operational and technological processes, appropriate for the scale and complexity of the business they undertake. A failure to do so falls short of the standards of organisational competence required of Participants in ASX markets and facilities under the Operating Rules and goes directly to the culpability of a Relevant Person for any contravention of the Operating Rules that occurs as a consequence.

(j) sanctions should have regard to the totality principle<sup>4</sup>.

Introduced 20/12/10

### **The Principal factors in determining sanctions**

The single most important factor in determining the type and level of sanction to be imposed for a contravention of the Operating Rules is the seriousness of the contravention.

For these purposes, ASX grades contraventions into three levels of seriousness:

- ***Level 1 (Minor Contravention)***

The contravention has not caused any loss or damage to clients or counterparties or, if it has, those clients or counterparties have been, or will be, identified and fully compensated for that loss or damage

AND

The contravention has not had, and was not likely to have had, any adverse impact on:

- the fairness, orderliness or transparency of the markets ASX operates;
- the fairness or effectiveness of the clearing and settlement facilities ASX operates;
- ASX's compliance with the Reserve Bank's financial stability standards; or
- the reputation of ASX and the markets and facilities it operates.

Likely range of monetary penalty: \$nil to \$20,000

- ***Level 2 (Material Contraventions)***

The contravention is neither a "minor contravention" nor a "serious contravention".

Likely range of monetary penalty: \$20,000 to \$100,000

- ***Level 3 (Serious Contravention)***

The contravention has had, or could have had, a serious impact on:

- the fairness, orderliness or transparency of a market ASX operates;
- the fairness or effectiveness of a clearing and settlement facility ASX operates;
- ASX's compliance with the Reserve Bank's financial stability standards; or
- the reputation of ASX or a market or facility it operates.

Likely range of monetary penalty:

\$100,000 to \$250,000 for a breach of the ASX or ASX 24 Operating Rules

\$100,000 to \$1,000,000 for a breach of the ASX Clear, ASX Clear (Futures) or ASX Settlement Operating Rules or of the Austraclear Regulations

The descriptions above of the levels of seriousness of a contravention and of the likely range of monetary penalties are for the purposes of guidance only. ASX retains the discretion to impose whatever it considers to be an appropriate sanction for a contravention of the Operating Rules even if it falls outside of the likely ranges of monetary penalties specified above.

---

<sup>4</sup> Refer to "Consideration of multiple contraventions" below.

Another important factor in determining the type and level of sanction to be imposed for a contravention of the Operating Rules is the culpability of the Relevant Person in committing the contravention. ASX may have regard to the following factors in assessing the culpability of a Relevant Person for a contravention:

Lower culpability	Higher culpability
The contravention was unintentional and/or inadvertent	The contravention was deliberate or arose because of gross negligence or recklessness on the part of the Relevant Person
The contravention occurred despite the Relevant Person having an effective compliance program <sup>5</sup> in place at the time	At the time of the contravention, the Relevant Person did not have an effective compliance program in place
The contravention occurred despite the Relevant Person having a strong risk management framework and robust financial, operational and technological processes <sup>6</sup>	The contravention occurred because of, or is indicative of, serious weaknesses in the Relevant Person's risk management framework or in its financial, operational or technological processes
The contravention occurred despite the Employee(s) involved in the contravention being subject to an appropriate level of supervision	The Employee(s) involved in the contravention were not subject to an appropriate level of supervision The employee(s) involved in the contravention were directors or senior managers Directors or senior managers of the Relevant Person were aware of the contravention and condoned it or were tolerant of it
The Relevant Person did not derive a financial benefit or other commercial advantage from the contravention	The Relevant Person derived a financial benefit or other commercial advantage from the contravention
The contravention did not involve the Relevant Person acting unconscionably towards, or otherwise unfairly taking advantage of, clients or counterparties	The contravention involved the Relevant Person acting unconscionably towards, or otherwise unfairly taking advantage of, clients or counterparties

The more culpable a contravention:

- (a) the more likely ASX is to impose a monetary penalty rather than (or in addition to) a censure or other non-monetary sanction; and
- (b) the higher that monetary penalty is likely to be.

Introduced 20/12/10

<sup>5</sup> See note 3 above.

<sup>6</sup> See note 3 above.

## Mitigating and aggravating factors

In determining an appropriate sanction for a contravention of the Operating Rules, ASX may take account of relevant mitigating or aggravating factors, including:

Mitigating factors	Aggravating factors
The Relevant Person reported the contravention to ASX promptly and candidly	The Relevant Person failed to report, or unreasonably delayed reporting, the contravention to ASX  When it reported the contravention, the Relevant Person did not report all material facts of which it was aware concerning the contravention
The Relevant Person assisted and cooperated with ASX in its investigation	The Relevant Person resisted or hindered ASX in its investigation
The Relevant Person made an early decision to admit, or not to contest, the contravention	The Relevant Person contested the contravention despite clear evidence that it had occurred
The Relevant Person has demonstrated genuine contrition in relation to the contravention	The Relevant Person has not demonstrated any genuine contrition in relation to the contravention
The Relevant Person has taken appropriate and proportionate disciplinary action against the Employee(s) involved in the contravention	The Relevant Person has failed to take appropriate and proportionate disciplinary action against the Employee(s) involved in the contravention
The Relevant Person has implemented, or has undertaken to implement, meaningful measures to prevent a recurrence of the contravening conduct	The Relevant Person has not implemented, and has not undertaken to implement, any meaningful measures to prevent a recurrence of the contravening conduct
The contravention was an isolated incident	The contravention: <ul style="list-style-type: none"> <li>• is a recurring contravention; or</li> <li>• occurred over an extended period of time</li> </ul>
The Relevant Person has a good history of complying with the Operating Rules <sup>7</sup>	The Relevant Person has a poor history of complying with the Operating Rules <sup>8</sup>

<sup>7</sup> Whether a Participant has a good history or a poor history of complying with the Operating Rules would be evidenced by the number of previous successful enforcement actions by ASX against the Relevant Person (whether under the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook or under Rules 2.4 or 2.5 of this Rulebook).

<sup>8</sup> Refer to footnote 7.

Mitigating factors	Aggravating factors
The Relevant Person placed reasonable reliance upon independent professional and considered accounting or legal advice that the conduct in question did not contravene the Operating Rules	

A preponderance of mitigating factors over aggravating factors will generally result in a lower penalty, while a preponderance of aggravating factors over mitigating factors will generally result in a higher penalty, subject in all cases to the penalty being appropriate for the seriousness and culpability of the contravention concerned.

Introduced 20/12/10

### **Encouraging positive compliance outcomes**

In determining a sanction for a contravention of the Operating Rules, ASX will view with favour a Relevant Person who, of its own volition, promptly reports and rectifies that contravention. By doing so, the Relevant Person is implementing positive measures that serve to mitigate both the seriousness of the contravention and the culpability of the Relevant Person in committing the contravention.

What amounts to rectification of a contravention of the Operating Rules will depend on the circumstances of each case. It may require a Relevant Person, for example:

- to conduct a thorough investigation to identify any clients or counterparties who have suffered loss or damage as a result of the contravention with a view to compensating them for that loss or damage;
- to take appropriate and proportionate disciplinary action against the Employee(s) involved in the contravention;
- to enhance their supervisory arrangements or financial, operational and technological processes to prevent a recurrence of the contravening conduct; or
- to enhance their compliance program or risk management framework to prevent a recurrence of the contravening conduct and also to reflect the lessons learned from the contravention.

Introduced 20/12/10

### **Consideration of multiple contraventions**

Under the totality principle, where a single transaction or course of conduct has led to multiple contraventions of the Operating Rules, ASX will generally consider whether the aggregate of the individual monetary penalties that might otherwise be imposed for each individual contravention is appropriate, taking into account all the circumstances.

ASX may impose a monetary penalty (or other sanction) in respect of each contravention or it may choose to apply an overall monetary penalty (as well as other sanctions), which may be lower than the sum of the individual monetary penalties that might otherwise be imposed for those breaches if they were considered in isolation.

In addition, under Rule 2.2.4, where a Relevant Person has been found to have engaged in two or more contraventions involving the same provision of the relevant Operating Rules, being contraventions that appear to ASX to have been of the same nature or a substantially similar nature and to have occurred at or about the same time or as part of a single course of conduct,

ASX cannot impose monetary penalties that, in total, exceed the maximum monetary penalty applicable to a single contravention of that Operating Rule.

Under the Rules, ASX has jurisdiction to simultaneously deal with matters that relate to contraventions of Operating Rules from different Rule books. Again, ASX may impose a monetary penalty (or other sanction) in respect of each contravention or apply an overall monetary penalty (as well as other sanctions), which is lower than the total of the individual monetary penalties that might otherwise be imposed for those breaches if they were considered in isolation.

Introduced 20/12/10

**End of Document**