

Matters regulated by ASIC -vs- Matters regulated by ASX



The ASX Limited group ('ASX') has published [rules](#) that regulate the conduct of the various parties that transact business in its financial markets and clearing and settlement facilities. This includes:

- the ASX Listing Rules,¹ which regulate conduct by companies and trusts listed on the ASX market ('**listed entities**');
- the ASX AQUA/Warrant Rules,² which regulate conduct by the issuers of investment products³ traded on the ASX market or cleared through ASX's mFund settlement service ('**investment product issuers**'); and
- the Operating Rules of the various financial markets and clearing and settlement facilities operated by the ASX group,⁴ which regulate conduct by brokers, clearers, settlement agents and other parties authorised to transact business in those markets and facilities ('**participants**').

The purpose of this document is to explain the matters involving listed entities, investment product issuers and participants that are regulated by the Australian Securities and Investments Commission ('ASIC') under the Corporations Act 2001 (Cwth),⁵ and those that are regulated by ASX under the various rules mentioned above.

1. Market matters regulated by ASIC under the Corporations Act

ASIC is the market regulator in Australia. It oversees the laws governing the licensing and operation of financial markets and clearing and settlement facilities, and the provision of financial services, in Australia.

As market regulator, ASIC is responsible for administering (among other things) the provisions in the Corporations Act regulating:

- insider trading;
- market manipulation;
- short selling;
- high frequency trading;
- prospectuses and product disclosure statements;
- the continuous disclosure obligations of entities listed on a financial market in Australia;⁶
- misleading or deceptive conduct in relation to financial products;

¹ Referred to in the remainder of this document as the 'Listing Rules'.

² Being the rules set out in schedules 10 and 10A of the ASX Operating Rules. Those rules are referred to in the remainder of this document as the 'AQUA/Warrant Rules'.

³ The term 'investment product' refers to warrants admitted to quotation on the ASX market under Schedule 10 of the ASX Operating Rules (often referred to as the 'warrant rules'), and to shares or units in an exchange traded fund (ETF), units in an exchange traded managed fund (ETMF) and structured products admitted to quotation on the ASX market under Schedule 10A of the ASX Operating Rules (often referred to as the 'AQUA rules').

⁴ Being the ASX and ASX 24 markets and the ASX Clear, ASX Clear (Futures), ASX Settlement and Austraclear clearing and settlement facilities. The rules of those markets and facilities are referred to in the remainder of this document as the 'Operating Rules'.

⁵ Referred to in the remainder of this document as the 'Corporations Act'. Unless otherwise indicated, references in this document to a Part, Division or section of an Act are to a Part, Division or section of the Corporations Act.

References in this document to the Corporations Act also include the ASIC Market Integrity Rules made by ASIC under section 798G. The relevant market operator and market participants are obliged to comply with the ASIC Market Integrity Rules applicable to that market under section 798H.

⁶ Section 674.

- the requirement for the holder of an Australian financial service license ('AFSL')⁷ to act efficiently, honestly and fairly;⁸
- the obligation of an AFSL holder to maintain trust accounts and/or client segregated accounts for client money;⁹
- the obligation of an AFSL holder to have adequate supervisory arrangements and risk management systems;¹⁰
- the procedures an AFSL holder must have for resolving disputes with retail clients;¹¹
- the mandatory provisions that ASIC's Market Integrity Rules require to be included in agreements between market participants and their clients;¹²
- the obligation of a market participant to act in accordance with client instructions;
- the order and trade records that a market participant must keep and the transaction confirmations it must give to its clients;
- when a market participant can execute a trade off-market;
- a market participant dealing with its clients as principal;
- the 'best execution' obligation of a securities market participant;
- the obligation of a securities market participant not to do anything that results in a market for a financial product not being both fair and orderly, and not to fail to do anything where failure has that result;¹³
- the accreditation requirements a client adviser must satisfy to advise retail clients about options, warrants and futures traded on a securities market; and
- the prohibition against securities market participants carrying out excessive transactions on a managed discretionary account for a retail client.

2. Corporate matters regulated by ASIC under the Corporations Act

ASIC is also the corporate regulator in Australia. It oversees the laws governing the conduct of companies and managed investment schemes¹⁴ registered in Australia under the Corporations Act ('**Australian entities**').

As the corporate regulator, ASIC is responsible for administering, among other things, the provisions in the Corporations Act governing:

- the keeping of proper books and records by Australian entities;
- compliance by Australian entities with Australian accounting and auditing standards;
- false or misleading statements in or omissions from:

⁷ Most investment product issuers and most participants will hold an AFSL.

⁸ Section 912A(1)(a).

⁹ Part 7.8 Division 2 of the Corporations Act.

¹⁰ Section 912A(1)(d) and (h).

¹¹ Section 912A(1)(g).

¹² This and subsequent matters in the list above are primarily regulated under the ASIC Market Integrity Rules governing securities and futures markets in Australia: see note 5 above.

¹³ This obligation is imposed under rule 5.9.1 of the ASIC Market Integrity Rules (Securities Markets) 2017.

¹⁴ A significant majority of ASX listed companies are Australian-incorporated companies regulated by ASIC. Nearly all ASX listed trusts and many investment product issuers are Australian registered managed investment schemes regulated by ASIC.

- an Australian entity's annual and half-yearly financial statements; or
- other documents lodged by an Australian entity with ASIC under the Corporations Act;
- insolvent trading by an Australian entity;
- takeovers of, and the notification of substantial holdings in, listed Australian entities;
- related party transactions entered into by public Australian entities;
- in the case of an Australian company:
 - the appointment or removal of directors of the company;
 - breaches of duty by the directors, officers and employees of the company;
 - the 'two strikes' rule for votes on executive remuneration; and
 - the convening of shareholder meetings; and
- in the case of an Australian registered managed investment scheme:
 - the appointment or removal of the responsible entity of the scheme;
 - breaches of duty by the responsible entity of the scheme or by its officers and employees; and
 - the convening of unitholder meetings.

3. Reporting possible breaches of the Corporations Act

ASX has no power to investigate or take enforcement action in relation to possible breaches of the Corporations Act. Only ASIC has that power.

Accordingly, subject to the three exceptions mentioned in section 8 below, if you wish to report or make a complaint about a possible breach of the Corporations Act provisions mentioned in section 1 or 2 above, you should submit it to ASIC rather than ASX. You can do so using ASIC's online complaint service at:

<https://asic.gov.au/about-asic/contact-us/how-to-complain/report-misconduct-to-asic/>

4. Listed entity matters regulated by ASX under the Listing Rules

As the licensed operator of the ASX market, ASX is responsible for monitoring and enforcing compliance by ASX listed entities with their obligations under the Listing Rules. Some of the key Listing Rule requirements that ASX oversees in this regard include the requirements in:

- Chapter 1 that an entity must meet to be admitted to the ASX official list;
- Chapter 2 that an entity's securities must meet to be quoted on ASX;
- Chapter 3 for listed entities to disclose various matters to ASX in a timely manner including, importantly, their obligation under Listing Rule 3.1,¹⁵ if they become aware of information concerning them that a reasonable person would expect to have a material effect on the price or value of their securities, to release that information to the market immediately, unless certain exceptions apply;
- Chapter 4 for listed entities to lodge annual, half-yearly and, in some cases, quarterly financial statements and reports with ASX by certain dates;

¹⁵ This is the Listing Rule imposing continuous disclosure obligations on ASX listed entities that is given statutory force by section 674 of the Corporations Act (see note 6 above and the accompanying text). Consequently, continuous disclosure breaches are within the regulatory remit of both ASIC and ASX.

- Chapter 5 for mining entities and oil and gas entities to comply with certain additional reporting requirements;
- Chapter 6 regulating the terms that apply to a listed entity's equity securities;
- Chapter 7 for issues of securities above certain limits or in certain situations to be approved by security holders;
- Chapter 8 dealing with transfers of securities and their registration;
- Chapter 9 for so-called 'restricted securities' to be held in escrow and not disposed of for a prescribed period;
- Chapter 10 for certain transactions involving a person in a position of influence to be approved by security holders;
- Chapter 11 for certain other significant transactions to be approved by security holders;
- Chapter 12 that listed entities must continue to meet while they remain quoted on ASX;
- Chapter 14¹⁶ regarding notices of meeting and proxy forms and also for directors of a listed company to submit themselves to re-election every 3 years;
- Chapter 15 regulating when and how documents are lodged with ASX;
- Chapter 16 setting out the fees that listed entities must pay to ASX;
- Chapter 17 dealing with trading halts, suspensions and the removal of entities from the ASX official list; and
- Chapter 18 dealing with ASX's enforcement powers and its power to grant waivers of the Listing Rules.

5. Investment product issuer matters regulated by ASX under the AQUA/Warrant Rules

As the licensed operator of the ASX market, ASX is responsible for monitoring and enforcing compliance by investment product issuers with their obligations under the AQUA/Warrant Rules. Some of the key Operating Rule requirements that ASX oversees in this regard include:

- the requirements issuers must meet to be approved to issue investment products;
- the requirements investment products must meet to be quoted on ASX;
- compliance by issuers with their liquidity support requirements for an investment product;
- compliance by issuers with their disclosure and reporting requirements under the AQUA/Warrant Rules; and
- the obligation of issuers to notify ASX of various matters.

6. Participant matters regulated by ASX under its Operating Rules

As the licensed operator of markets and clearing and settlement facilities, ASX is responsible for monitoring and enforcing compliance by the participants in those markets and facilities with their obligations under the Operating Rules. Some of the key Operating Rule requirements that ASX oversees in this regard include:

- the initial requirements an entity must meet to be admitted as a participant;

¹⁶ Currently, there are no provisions in Chapter 13 of the Listing Rules.

- the ongoing requirements a participant must meet to stay a participant;
- the mandatory provisions that the Operating Rules require to be included in agreements between participants and their clients;
- the procedures and timelines for executing, clearing and settling market transactions;
- the requirements a market participant must meet when executing or reporting orders on the trading platform, including in relation to crossings and other off-market trades;
- the obligation of an ASX market participant not to do anything that results in the ASX market for a financial product not being both fair and orderly, and not to fail to do anything where failure has that result;¹⁷
- the obligation of an ASX Clear participant to maintain a trust account and/or client segregated account for client money;¹⁸ and
- the requirements a sponsoring ASX Settlement participant must meet when transferring financial products to a new sponsoring participant.

7. Reporting possible breaches of ASX's Rules

Subject to the exceptions mentioned in section 8 below, if you wish to report or make a complaint about a possible breach of any of the ASX rule provisions mentioned in sections 4, 5 or 6 above, you should submit it to ASX in the first instance. You can do so using ASX's online 'Report Misconduct' service at:

<https://www2.asx.com.au/about/contact-asx/report-misconduct>

8. Matters regulated both by ASIC and ASX

Compliance by listed entities with their continuous disclosure obligations is regulated both by ASIC under the Corporations Act and by ASX under the Listing Rules.¹⁹ If you wish to report or make a complaint about a possible breach by a listed entity of its continuous disclosure obligations, you may submit it either to ASIC or to ASX, using their respective online facilities mentioned in sections 3 and 7 above.

Compliance by participants with:

- the requirement for an ASX market participant not to do anything that results in an ASX market for a financial product not being both fair and orderly, and not to fail to do anything where failure has that result;²⁰ and
- the requirement for an ASX Clear participant to maintain a trust account and/or client segregated account for client money,²¹

are regulated both by ASIC under the Corporations Act and by ASX under the Operating Rules. If you wish to report or make a complaint about a possible breach by an ASX market participant of the former obligation, or ASX Clear participant of the latter obligation, you may do so with ASIC or ASX, using their respective online facilities mentioned in sections 3 and 7 above. Under a protocol agreed between ASIC and ASX, where either ASIC or ASX receives a report of misconduct or a complaint involving a participant that falls within their joint regulatory responsibility, it will discuss with the other which of them is best placed to take the carriage of

¹⁷ This obligation is imposed under rule 3101(a) of the ASX Operating Rules.

¹⁸ This obligation is imposed under rule 4.23 of the ASX Clearing Operating Rules.

¹⁹ See notes 4 and 15 above and the accompanying text.

²⁰ See notes 13 and 17 above.

²¹ See notes 9 and 18 above.

any investigation or enforcement action in relation to the matter.

9. Overseas entities

In the case of a listed entity, investment product issuer or participant established in a jurisdiction outside Australia, the matters listed in section 2 above will generally be regulated by the corporate regulator in that jurisdiction equivalent to ASIC, under legislation in that jurisdiction equivalent to the Corporations Act. If you wish to report or make a complaint about a matter listed in section 2 above involving a listed entity, investment product issuer or participant established in a jurisdiction outside Australia, you should submit it to the relevant corporate regulator in that jurisdiction, rather than to ASIC or ASX.
