



6 January 2010

ASX Markets Supervision (ASXMS) Quarterly Activity Report – December 2009

Activity	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
Total company announcements	35,024	30,791	26,000	25,268	33,249
Number of new listings	38	13	3	8	9
Number of delistings	28	39	20	16	19

Activity in Australia's primary capital raising market continued its recovery with 38 new listings in Q2 FY10, including Myer Holdings Limited (\$2.4 billion) and Kathmandu Holdings Limited (\$0.3 billion). Secondary capital raisings remained robust, whilst dominated by raisings under \$1 billion, with notable exceptions including Woodside Petroleum Limited (\$2.5 billion), ANZ CPS2 (\$2.0 billion) and Prime Infrastructure Group (formerly known as Babcock & Brown Infrastructure) (\$1.5 billion).

On 30 October 2009 ASX Company Announcements Office received 1,407 announcements, the highest number recorded for a single day. That day was the final lodgement deadline for the September quarter mining exploration or production activity reports, Appendix 4C Quarterly cash flow reports and 30 June 2009 annual reports. The previous highest number for a single day was 1,335 announcements received on 31 October 2007.

As at end of quarter	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
Listed entities supervised	2106	2,095	2,121	2,138	2,146
Participants ¹ – ASX, ACH, ASTC	189	188	182	179	189
Participants – SFE, SFECC	37	37	37	37	35

ASX released a circular on Thursday 10 December 2009 confirming it has amended the ASX Market Rules and ASX Market Rules Procedures to reflect changes to the transactional reporting requirements for short selling that were contained in recent changes to the Corporations Act and Regulations. The scope of the ASX Market Rules is limited to the timing and method of reporting of short sales. The effective date for these amendments is 11 December 2009.

Daily reporting of securities lending positions to ASTC by Settlement Participants was introduced on Wednesday 16 December 2009. Quarterly reporting of Securities Committed Positions to ASTC by Settlement Participants will be required from Wednesday 6 January 2010.

¹ Total number of active Participants only.

Waivers granted	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
Listing Rules	344	328	194	169	175
Market Rules	0	0	2	0	0
ASTC and ACH Rules ²	1	8	7	10	0
SFE Operating Rules	11	23	5	15	11
SFE Clearing Rules	1	1	4	2	1

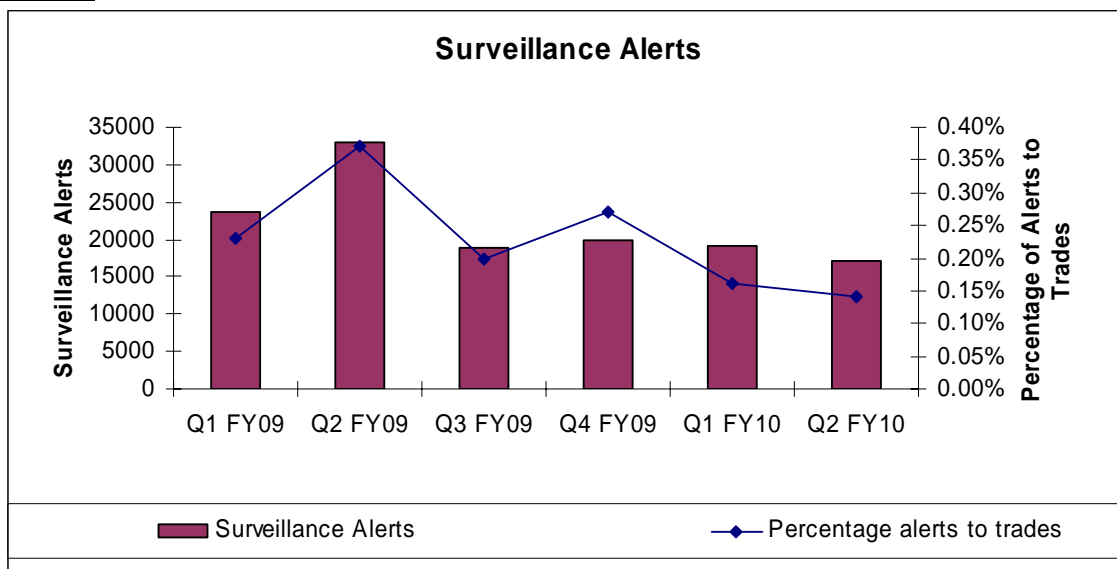
There were 344 Listing Rule waivers granted in Q2 FY10. The majority of the Listing Rule waivers were granted to entities undertaking capital raisings through share purchase plan offers up to \$15,000 permitted under the revised ASIC class order. These waivers are technical in nature to align a listing rule exception with the revised class order.

There was one waiver of an ASTC Rule granted. Since that time the relevant rule has been amended.

The increase in SFE exemptions over the second half of 2009 relates to the granting of extensions of time for a number of new Proprietary Full Participants to lodge their annual returns. The end of this period marked the first time many of this participant class had been required to lodge these returns and a number of participants initially experienced some difficulties in satisfactorily meeting the Exchange's requirements.

Market surveillance

Real-time



There were 17, 097³ alerts in the quarter ending 31 December 2009 compared to 19,114 alerts triggered in the previous quarter. The number of alerts was slightly lower, not surprisingly because the broader market traded in a narrower range compared to the previous quarter. The All Ordinaries traded in a range of less than 400 points in the December quarter, compared to a range of over 1,000 points in the previous quarter. The percentage of alerts to trades was also slightly lower.

² Statistics for waivers under the ASTC Rules granted to listed entities are from 1 Jan 2009.

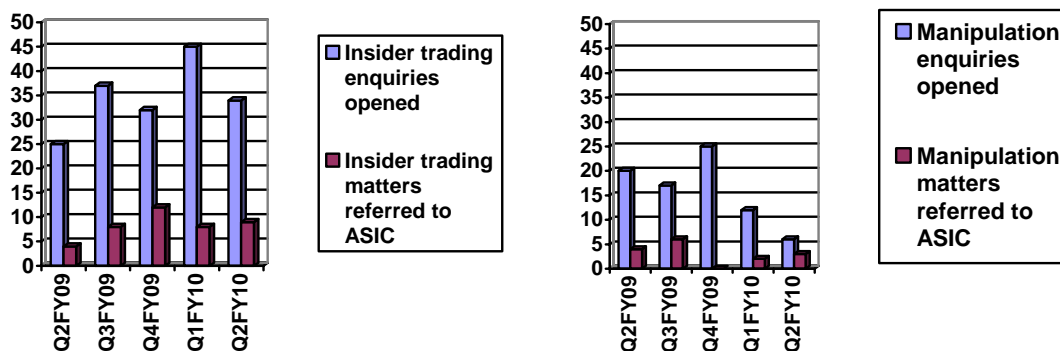
³ The ASXMS surveillance system monitors real-time trading information and highlights any unusual price or volume movements in the form of alerts.

Insider trading and market manipulation

Activity	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
Insider trading enquiries commenced	34	45	32	37	25
Market manipulation enquiries commenced	6	12	25	17	20

During the period, 34 insider trading and six market manipulation enquiries were opened. The decline in the incidence of indicators of apparent market manipulation (represented by the number of matters opened) is consistent with a rising market. The number of insider trading enquiries opened remained relatively steady. As at the end of December, nine insider trading and four market manipulation enquiries remained open.

Note that an increase (or decrease) in the number of matters commenced is not indicative of an increase (or decrease) in the incidence of insider trading or market manipulation, but is an increase (or decrease) in trading patterns which may indicate insider trading or market manipulation.



Issuer monitoring

Continuous disclosure (CD)⁴

Activity ⁵	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
CD queries made by ASXMS	175	191	224	240	224
Price queries made by ASXMS	219	272	243	211	109
Total CD and price queries made by ASXMS	394	463	467	451	333
Announcements made following CD query	219	233	274	238	203
Trading halts at company's request	373	366	323	206	190
Trading halts following query by ASXMS	24	21	23	17	13

⁴ ASXMS raises continuous disclosure queries with listed entities when it has concerns that the entity may not be in compliance with its continuous disclosure obligations as set out in Listing Rule 3.1. Examples include queries made following broker or media reports. Price queries are a specific category of queries which are raised as a result of unusual movement in a listed entity's share price or trading volume that has been detected by ASXMS' market surveillance systems.

⁵ Note that activity data between FY08 and FY09 are not strictly comparable for a range of reasons including changes made to Query and Announcement classifications.

Activity ⁵	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
Suspensions at company's request	38	41	30	28	24
Suspensions imposed by ASXMS for breach of the Listing Rules	25	5	8	32	36
Aware letters ⁶ sent by ASXMS	24	16	21	27	16

There were 373 trading halts requested by entities during the quarter. In line with recent quarters, many trading halts were requested in the context of entities undertaking material capital raisings.

ASXMS made 175 queries in relation to compliance with continuous disclosure requirements and there were 219 price queries made of entities.

Of the 25 suspensions imposed by ASXMS, 23 entities' securities were suspended by ASXMS in Q2 FY10 following failure to lodge full year statutory accounts for the period ended 30 June 2009 in accordance with the listing rules.

In November 2009, the results of a review by ASX Markets Supervision (ASXMS) on all Directors' Interest Notices lodged by listed entities from 1 July 30 to September 2009 were released. Of the 3,077 Notices lodged during the latest three-month period, 91.9% were found to have been lodged correctly and within five business days allowed by the ASX listing rule. ASXMS made 43 telephone calls and sent 197 letters to listed entities which had breached the rule seeking explanations (either because of incompleteness or late disclosure), of which 179 letters were released to the market.

The Q3 2009 (91.9%) compliance level is slightly lower than the prior corresponding period (Q3 2008) when 93.6% of Directors' Interest Notices were lodged correctly and within time. Also, it is slightly lower than the level when the review was last completed (Q1 2009) when 92.7% of the Notices complied with the ASX listing rule.

106 (3.4% of total Notices or 42.4% of all breaches) also involved a potential breach of the Corporations Act by being lodged later than 14 calendar days. ASXMS has referred all 106 potential breaches of the Corporations Act to ASIC.

ASXMS will follow on this review with an examination of directors' trading during the "black-out" period with results to be released later in January 2010.

On 4 December 2009, ASX released for public consultation proposed listing rules affecting entities policies on trading windows and blackout periods. ASX is seeking to require listed entities to:

- Adopt and disclose a trading policy on trading in entity securities by directors and key management personnel;
- Include restrictions and clearance procedures in the policy as to when trading can and cannot occur; and
- Publicly disclose whether any trading by directors occurred during an otherwise restricted period.

ASX Markets Participant monitoring

Matters commenced	Q2 FY 10 ⁷	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
ASX Participant-related enquiries ⁸ commenced	163	247	190	180	506
ASX Participant-related investigations commenced	13	17	13	24	33

While there was a decrease in the number of compliance related Participant enquiries in Q2FY10 compared to the previous quarter, compliance matters have steadily increased since the beginning of the quarter due to a number of new

⁶ Aware letters are letters sent by ASXMS following an announcement by a listed entity where ASXMS asks for details of when the listed entity became aware of the material information contained in the announcement.

⁷ Numbers as at 23 December 2009

⁸ Matters include ad hoc queries, on-site reviews, self assessments, spot reviews and queries arising from complaints made against a Participant.

programs implemented to review compliance with some recent rule changes. In addition, the quarter has seen an industry trend of increased direct market access activity.

The decline in the number of investigations commenced is reflective of the decline in the incidence of apparent market manipulation, consistent with a rising market, and a decline in the incidence of disorderly markets possibly reflecting the effectiveness of prior supervisory actions.

Futures supervision and capital monitoring

Matters commenced	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
SFE Participant-related matters ⁹ commenced	19	18	12	12	14
SFE Participant-related investigations commenced	24	22	18	28	29

All futures contract expiries, in particular the bonds and SPI futures, expiring in December 2009, were conducted in an orderly manner.

In particular, holdings in the Three and Ten Year Bond contracts reduced in a very orderly fashion as the contracts approached expiry and the positions held in the last two days of these contracts were significantly reduced compared to previous expiries. The differential between the underlying physical Commonwealth bonds and the futures contracts remained extremely tight and well correlated over the life of the December contracts.

Enforcement

Referrals to ASIC	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
Total referrals ¹⁰ to ASIC	21	18	22	21	23
Which include the following breaches:					
Continuous disclosure	2	4	4	5	5
Market manipulation	5	2	0	6	4
Insider trading	11	8	12	8	4
Other	12	6	8	5	14

21 referrals relating to 30 potential breaches were sent to ASIC in Q2 FY10. This is approximately 17 % more than the previous quarter (18 referrals).

The majority of the matters referred to ASIC were in relation to potential breaches in relation to Market Manipulation (5); and breaches relating to Insider Trading (11). There were two suspected continuous disclosure breaches sent to ASIC. There were also a significant number of 'Other' breaches referred to ASIC (12). These referrals mainly related to failure by director/s to lodge Director's Interest Notices; failure to lodge Substantial Holder notices; providing false information and/or or making false & misleading statements, and breaches of 912A of the Corporations Act;.

The general lift in the number of insider trading referrals since Q2 FY 09 can be attributed to an increase in the level of corporate activity as the market recovered from its lowest point in March 2009.

As at 31 December 2009, there were 88 ASIC investigations of ASXMS referrals ongoing.

⁹ Includes inspections, exemption requests, financial return reviews, self assessments and other ad hoc and administrative reviews

¹⁰ A single referral may comprise more than one potential breach.

Disciplinary Tribunal

Matters commenced	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
Matters received by the Disciplinary and Appeal Tribunal during the period	16	9	12	7	5
Disciplinary Circulars released during the period	9	11	4	3	7
Disciplinary matters in progress as at the end of the period	21	13	18	10	8
Fines imposed during the period (excl GST) ¹¹	\$335,000	\$1,625,000	\$290,000	\$80,000	\$162,500

Disciplinary Circulars released during the quarter:

- **Macquarie Equities Limited (2007091)** - The Tribunal determined a fine of \$15,000 plus GST be imposed and the release of ASTC Bulletin. Contravention of ASTC Settlement Rule 8.10.2 by initiating the transfer of a security creating a new CHESS Holding of less than a Marketable Parcel on 54 occasions.
- **Aegus Securities Pty Ltd (2008104)** - The Tribunal determined a fine of \$50,000 plus GST be imposed and the release of a Disciplinary Circular. Aegus contravened ASX Market Rule 14.1.1 by taking an action which resulted in a market for a Product not being both fair and orderly.
- **ETRADE Australia Securities Limited (2008079)** - The Tribunal determined a fine of \$20,000 plus GST be imposed and the release of a Disciplinary Circular. Etrade contravened ASX Market Rule 14.1.1 by taking an action which resulted in a market for a Product not being both fair and orderly.
- **Euroz Securities Limited (2008059)** - The Tribunal determined a fine of \$40,000 plus GST be imposed and the release of a Disciplinary Circular. Euroz contravened ASX Market Rules 7.4.1(b) and 7.4.1(c) by entering into 87 Market Transactions for two of its clients and allocating those transactions to two of its clients' accounts without having specific instructions to do so.
- **CMC Markets Stockbroking Limited (2009014)** - The Tribunal determined a fine of \$30,000 plus GST be imposed and the release of a Disciplinary Circular. CMC contravened ASX Market Rule 14.1.1 by inadvertently entering into transactions which resulted in a market for a Product not being both fair and orderly.
- **Bell Potter Securities Limited (2008056)** - The Tribunal determined a fine of \$15,000 plus GST be imposed and the release of a Disciplinary Circular. Bell Potter contravened ASX Market Rule 4.10.1 by failing to create or maintain sufficiently detailed records in relation to client instructions to enter into Market Transactions.
- **ETRADE Australia Securities Limited (2007002, 2007003, 2007014 & 2007019)** - The Tribunal determined a fine of \$75,000 plus GST be imposed and the release of a Disciplinary Circular. ETRADE contravened ASX Market Rule 7.11.1 by ceasing to hold monies on trust in its Trust Accounts for the benefit of the persons entitled to those monies.
- **UBS Securities Australia Limited (2009020 & 2009021)** – The Tribunal determined a fine of \$55,000 plus GST be imposed and the release of a Disciplinary Circular. UBS contravened ASX Market Rule 14.1.1 by mistakenly

¹¹ Note that an examination of trends of total fines imposed by the Disciplinary Tribunal should take into account the \$1,350,000 plus GST fine imposed on Tricom Equities Limited in Q1 FY10 and the \$235,000 plus GST fine paid by State One Stockbroking Limited in Q4 FY09. Note too that the Disciplinary and Appeal Tribunal imposes sanctions in exercise of its powers under the Disciplinary Processes and Appeals Rulebook by reference to the monetary limits in place at the time of the relevant contravening conduct. For contraventions occurring after 31 March 2008, the maximum penalty applicable has been increased to \$1,000,000 regardless of when the relevant proceedings are commenced.

transposing the figures for price and volume. It also contravened ASX Market Rule 13.2.2 by submitting trading messages into the Trading Platform by a person who was not registered as the Designated Trading Representative ('DTR').

ASIC outcomes arising from ASXMS referrals

During the December quarter, ASIC action as a result of ASXMS referrals included:

- Mr Noel James Stephenson of Pymble, New South Wales, appeared in the Downing Centre Local Court on Tuesday 6 October 2009 on an insider trading charge brought by ASIC. ASIC alleged that on 26 April 2005, Mr Stephenson breached section 1043A (1) of the Corporations Act 2001 when he disposed of 4,514 shares in Sam's Seafoods Holdings Limited (Sam's Seafoods).
- On 14 October 2009, the Commonwealth Bank of Australia (CBA) paid a penalty of \$100,000 to ASIC relating to its alleged failure to comply with the continuous disclosure obligations in the Corporations Act 2001 (the Corporations Act).
- On 23 November 2009, the former director of Lion Selection Ltd (Lion), Mr John Francis O'Reilly of Twickenham London, pleaded guilty to one charge of insider trading in the Melbourne Magistrates' Court following an investigation by ASIC. The charge relates to an order Mr O'Reilly placed with his broker on 8 May 2008 to purchase 50,000 shares in copper and gold exploration company Indophil Resources NL (Indophil).
- On 10 December 2009, the former managing director of gold exploration company, Chameleon Mining NL (CHM), Mr Gregory Barnes was found guilty by a jury in the District Court of NSW on two counts of providing false and misleading information to ASX. Mr Barnes' guilty verdict followed an earlier guilty plea by Mr Landan Roberts, the former director and secretary of CHM, to three counts of providing false and misleading information. ASIC alleged that Messrs Roberts and Barnes made false or misleading representations concerning \$3 million purportedly raised by CHM during an Initial Public Offering (IPO) in 2003. As a result, CHM was listed on the ASX without raising the minimum subscription amount.
- On 17 November 2009, ASIC accepted Enforceable Undertakings from two former Adelaide based advisors of Macquarie Equities Limited (MEL), Paul Martin Kennedy of Heathfield, South Australia and Bradley David Dohrmann of Oakden, South Australia. The undertakings were offered following an investigation by ASIC into their conduct between September 2007 and July 2008 regarding options trading by clients utilising the Macquarie Trading Power (MTP) product.

ASXMS Education and Research Program

Fines imposed by the Disciplinary Tribunal since 1 January 2007 have been directed to the funding of the ASXMS Education and Research Program. The Program is focused on raising awareness of current supervisory issues and promoting compliance with ASX's Operating Rules. It supplements ASXMS's existing and regular program of presentations, road shows and newsletters to listed entities and ASX Group Participants.

Matters commenced	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09	Q2 FY09
Events held	7	14	52	1	10
Persons in attendance ¹²	140	303	2,197	44	889

¹² Actual attendance figures – in some instances estimates are used based upon numbers registered to attend the event.

Educational events

During the December quarter, educational campaigns commenced during previous quarters continued to be offered in partnership with industry organisations. These included:

- Courses for listed company directors in partnership with the Australian Institute of Company Directors; and,
- A futures compliance forum in partnership with the Australian Financial Markets Association.

Two courses were piloted with the aim of rolling them out in the first half of 2010:

- A compliance course for ASX group participants developed in association with the Australasian Compliance Institute; and
 - A course on capital monitoring obligations for ASX group participants.
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