



ASIC

Australian Securities & Investments Commission

REPORT 265

Market assessment report: ASX Group

ASX Limited, ACN 008 624 691

Australian Securities Exchange Limited, ACN 000 943 377

ASX Clear Pty Limited, ACN 001 314 503

ASX Clear (Futures) Pty Limited, ACN 050 615 864

ASX Settlement Pty Limited, ACN 008 504 532

Austraclear Limited, ACN 002 060 773

November 2011

About this report

This report summarises ASIC's:

- ninth assessment of ASX and Australian Securities Exchange under s794C(2) of the *Corporations Act 2001* (Corporations Act); and
- ninth assessment of ASX Clear, ASX Clear (Futures) and ASX Settlement, and seventh assessment of Austraclear, under s823C(2) of the Corporations Act.

This report relates to the period 1 July 2009 to 30 June 2010 (assessment period) and to specific events and issues that arose after that period. It does not cover the recent ASX market outage that occurred on 27 October 2011. This will be included in the next assessment report.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Recent ASX Group assessment reports

Entities	Report number	Date released
ASX, ASX Clear, ASX Settlement,	REP 222	November 2010
Australian Securities Exchange,	REP 168	September 2009
ASX Clear (Futures), Austraclear	REP 135	August 2008

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A The assessment

Key points

ASIC conducts annual assessments of market licensees and clearing and settlement licensees, such as those within the ASX Group, because it is required to do so under s794C(2) and s823C(2) of the Corporations Act, respectively.

The scope of our assessment must always include the obligations found in s792A(c) and s821A(c), but we can include other Ch 7 obligations too.

We use the licensee's self-assessment reports, information from our previous assessments, our observation of the licensee's performance, market intelligence and other things to form a view of how well the licensee has operated its market and clearing and settlement facilities.

Assessment period

- 1 The assessment covers the period from 1 July 2009 to 30 June 2010 and a number of specific market events that have occurred more recently, including ASX Group's technological matters up to August 2011. The assessment was also used to broadly understand the operational changes ASX Group has made as a result of the transfer of market supervision to ASIC on 1 August 2010.
- 2 While the report does have a primary focus on ASX Group's deployment of technological resources, it does not cover the ASX market outage on 27 October 2011. ASIC completed its review and sent its findings to ASX Group for comment on 11 October, before the market outage. The ASX market outage of 27 October will be included in our next assessment.
- 3 By way of background, ASX Group is required to prepare an annual self-assessment report, detailing the extent to which it has complied with its statutory obligations for the relevant reporting period. While the ASX Group reporting period is for the relevant financial year, recent ASIC assessment periods have been in respect of calendar years. We have used this assessment to realign the ASIC assessment and ASX Group self-assessment periods.
- 4 ASIC's next assessment has commenced and will cover the ASX Group regulatory reporting period of 1 July 2010 to 30 June 2011, and other subsequent market matters like the events of 27 October 2011. That will be the first ASX Group self-assessment report that covers the period of the transfer of market supervision from ASX Group to ASIC.
- 5 In this context, a particular focus of our next assessment will be a more detailed review of how the changes ASX Group has made as a result of the transfer of market supervision are now operating in practice.

Background

- 6 Under the Corporations Act, ASIC is required, under s794C(2), to assess how well a market licensee is complying with its obligations under s792A(c) at least once a year. We are also required, under s823C(2), to assess how well a clearing and settlement facility licensee is complying with its obligations under s821A(c) at least once a year.

Adequate ‘arrangements’

- 7 Before the transfer of market supervision on 1 August 2010, s792A(c) of the Corporations Act required a market licensee (such as ASX and Australian Securities Exchange) to have adequate arrangements for ‘supervising’ its market. This included arrangements for handling conflicts, monitoring the conduct of market participants, and enforcing compliance with the market’s operating rules.
- 8 From 1 August 2010, the responsibility for frontline supervision of certain ASX and ASX 24 market rules was transferred to ASIC. As a result, ASIC now supervises ASX and ASX 24 market participants’ compliance with the ASIC Market Integrity Rules (ASX Market) 2010 and ASIC Market Integrity Rules (ASX 24 Market) 2010. These market integrity rules are based on the rules previously contained in the ASX and ASX 24 market operating rules that predominantly dealt with matters such as participant conduct and participant–client relations.

Note: In this report, ‘ASIC Market Integrity Rules (ASX)’ refers to the ASIC Market Integrity Rules (ASX Market) 2010 and ‘ASIC Market Integrity Rules (ASX 24)’ refers to the ASIC Market Integrity Rules (ASX 24 Market) 2010.

- 9 From 1 August 2010, s792A(c) was amended in recognition of these new arrangements. From this date, a market licensee (such as ASX and Australian Securities Exchange) is required to have adequate arrangements for ‘operating’ (rather than ‘supervising’) its market. This still includes the requirement that a market licensee must have adequate arrangements for monitoring and enforcing compliance with its remaining operating rules, and still includes the requirement to handle conflicts of interest.
- 10 More broadly, since 1 August 2010, a market licensee continues to have:
- the overarching obligation to do all things necessary to ensure that its market operates, to the extent reasonably practicable to do so, in a manner that is fair, orderly and transparent; and
 - the same responsibilities in the critical area of its listing functions and in respect of its frontline supervision of compliance with the listing rules.
- 11 Relevant obligations in respect of clearing and settlement facilities also remain unchanged.

- 12 In this assessment report, where we refer to ASX Group's compliance with its statutory obligations for matters that have occurred since 1 August 2010, we do so, noting that from this date:
- ASX Group no longer has frontline responsibility for monitoring and enforcing certain market rules that were transferred to ASIC as ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (ASX 24);
 - amendments to the wording of s792A(c) were made to recognise this new arrangement; and
 - ASX Group's other obligations remain materially unchanged.

Sufficient resources

- 13 In accordance with s794C(1), we are permitted to extend the scope of our assessment to review how well a licensee complies with any or all of its obligations under Ch 7 of the Corporations Act. We extended the scope of this assessment to include a review of whether ASX Group had sufficient financial, technological and human resources to properly operate its facilities: see s792A(d) and s821A(d).

Our approach to assessments

ASIC's strategic priorities

- 14 ASIC's current strategic framework focuses on three key strategic priorities or outcomes.
- 15 These are to ensure:
- fair and efficient financial markets;
 - confident and informed investors and financial consumers; and
 - efficient registration and licensing.
- 16 The first two of these are particularly important for licensed markets and clearing and settlement facilities. For example, appropriate resourcing is fundamental to ensuring that markets operate in an efficient manner. Similarly, the effective monitoring and enforcement by a market operator of its continuous disclosure requirements is critical in ensuring that investors and consumers are confident and make informed decisions. For these reasons, we regard the assessment process as an important tool by which we continue to strive to meet our strategic outcomes.

Adequate arrangements

- 17 In assessing how well a licensee is complying with its statutory obligations to have adequate arrangements in place to operate its clearing and settlement facilities and supervise (before 1 August 2010) or operate (from 1 August 2010) its markets, we consider whether a licensee has adequate arrangements to monitor and enforce its operating rules, and to handle conflicts of interest.

Arrangements for monitoring and enforcing operating rules

- 18 In determining whether a licensee is complying with its obligations to monitor and enforce its operating rules, we consider how the licensee:
- deals with listed entities and monitors disclosure to detect potential or actual non-compliance with the law or the market's operating rules;
 - monitors trading and participant activity in respect of its operating rules to detect potential or actual non-compliance with the law or the market's operating rules;
 - plans and documents procedures for ensuring frequent and comprehensive assessment of its ongoing compliance with its obligations, and ongoing compliance by listed entities and market participants with their obligations;
 - deals with actual or suspected breaches of the law or the operating rules, including remedial, disciplinary and other deterrent measures;
 - deals with complaints about the market or market participants; and
 - shares information with ASIC and (where appropriate) operators of other markets and clearing and settlement facilities.

Arrangements for handling conflicts of interest

- 19 In assessing the adequacy of a market licensee's arrangements for managing conflicts of interest, it is relevant that the regulatory regime does not preclude the existence of conflicts. ASX Group must, however, manage any conflicts it does have so as not to allow its commercial interests to prevail over its obligation to operate a market that is fair, orderly and transparent.
- 20 Conflicts of interest may arise in any area where a market licensee makes decisions with respect to monitoring and enforcing its operating rules. For example, conflicts of interest may arise in connection with decisions about:
- admission of a person to the market as either a participant or a listed entity;
 - monitoring of a listed entity or market participant;
 - investigative or disciplinary action;
 - the exercise of discretions, such as granting waivers from the market's operating rules or charging variable fees; or

- participation in clearing and settlement facilities operated by the market licensee or a related entity.
- 21 In assessing a market licensee's arrangements for handling conflicts of interest, we consider a range of matters, including:
- whether, under current arrangements, actual or potential conflicts of interest are reliably anticipated, identified and appropriately responded to; and
 - whether the licensee's organisational and reporting structures separate its commercial activities from its monitoring activities to a significant degree.
- 22 For example, a suitable organisational and reporting structure is one where employees who are responsible for assessing the market licensee's compliance with its monitoring obligations report to a person who is not responsible for making commercial decisions.
- 23 In our next ASX Group assessment, we will review how ASX Group's conflict handling arrangements operate in practice, following the transfer of supervision: see paragraph 211.

Sufficient resources

- 24 In assessing how well a licensee is complying with its obligation, under s792A(d) or s821A(d), to have sufficient resources to properly operate the facility, we consider:
- how the licensee makes available and uses resources for supporting its arrangements for operating the facility, taking into consideration:
 - the financial, technological and human resources made available compared with previous assessment periods; and
 - a general expectation that resourcing should increase in step with the licensees' operations and that any reduction is appropriate only where changed circumstances or specific efficiencies can be clearly demonstrated;
 - the licensee's information technology system 'uptime' and instances of market disruption; and
 - our own experiences and observations, as well as those of market users, that there can be confidence that the market will operate in a reliable manner.

Market conditions

- 25 A discussion of the market conditions and various market events for the assessment period is contained in Section D of this report. Some key features of the market conditions for the 2009–10 financial year, and during the more recent period in which a number of other issues in paragraph 30 were assessed, were:
- Overall, the S&P/ASX 200 index (ASX 200) increased by 9% over the 2009–10 financial year. The ASX 200 continued to perform well throughout the 2010–11 financial year, rising by 7% to finish at 4,608 points. However, the first quarter of the 2011–12 financial year saw widespread declines across share markets. As a result, the ASX 200 fell 12.7% over this period.
 - Volatility levels tracked downwards over the first three quarters of the 2009–10 financial year. In the second half of 2010, volatility again rose, reflecting concerns over the European debt crisis. Volatility continued to trend downwards over the course of the 2010–11 financial year but rose dramatically during the first quarter of the 2011–12 financial year on the back of a range of weaker than expected economic indicators.
 - In addition to more recent volatility levels, the US market experienced the ‘flash crash’ on 6 May 2010. The ASX cash market was closed during the disruption in the United States, so there was no immediate impact. The ASX 24’s S&P/ASX 200 Futures contract reacted similarly to the US equity markets, falling 10.06% before swiftly recovering to 3.5% down from the session open. Partly to address the risk of an event like the flash crash occurring in Australia, ASIC has created market integrity rules that took effect on 31 October 2011. These require market operators to have order entry controls and extreme cancellation arrangements. On 20 October 2011, ASIC also commenced consultation on a range of further initiatives, including requiring market operators to put in place automated volatility controls.

Our methodology

- 26 A licensee’s obligations are ongoing and whether it is likely to comply with these obligations in the future cannot be judged merely by reference to its past compliance.
- 27 We therefore use the assessment process to:
- reach conclusions about the adequacy of the arrangements a licensee has in place in accordance with its obligations under s792A(c) and s821A(c) at the time of the assessment; and
 - identify issues, which in our view need, or may need, to be addressed to ensure ongoing compliance.

What we focused on for this assessment

- 28 The focus of this assessment was to review ASX Group's arrangements for the operation and supervision of its markets and clearing and settlement facilities, and assess the adequacy of resources devoted to their operation.
- 29 The assessment also sought to broadly understand the operational changes that ASX Group has made as a result of the transfer of market supervision to ASIC on 1 August 2010. A more detailed review of how these changes work in practice will be a key focus of our next assessment. This will be undertaken with the benefit of having ASX Group's annual regulatory report for the financial year ending 30 June 2011, which will be the first regulatory report that covers the transfer period.
- 30 In addition to assessing ASX Group's compliance with its statutory obligations in the ASX Group self-assessment reporting period of 1 July 2009 to 30 June 2010, this assessment also covers ASX Group's compliance with its statutory obligations in the course of dealing with a number of specific issues outlined below, many of which occurred recently, or were assessed against circumstances that occurred recently. These issues were:
- the performance of ASX Group's main trading platforms¹ and the adequacy of ASX Group's engagement with market participants about technology upgrades and changes;
 - ASX Group's approach to dealing with continuous disclosure issues, particularly in respect of dealings with listed entities;
 - ASX Group's monitoring of contracts on the ASX 24 market;
 - ASX Group's resourcing of its company announcements office; and
 - ASX Group's response to the agreed actions from our previous assessment.

What we considered

- 31 In conducting our assessment, we:
- held discussions with senior ASX Group personnel;
 - reviewed internal ASX Group documentation obtained under notices issued under s30 of the *Australian Securities and Investments Commission Act 2001*;
 - reviewed the annual regulatory report given to ASIC covering all ASX Group licensees, dated 30 September 2010, as required under s792F and s821E;

¹ This assessment does not cover the recent ASX market outage that occurred on 27 October 2011. This will be included in the next assessment report.

- considered information received from and about ASX Group licensees in the ordinary course of ASIC's dealings with them as market or clearing and settlement facility licensees;
- considered information from external sources, including media and industry commentary; and
- reviewed the operation of the market throughout the assessment period.

Consultation

- 32 Our findings are set out in Section C of this report. ASX Group has had the opportunity to view and comment on the factual accuracy of this report. Where appropriate, our findings in Section C reflect ASX Group's comments.

ASX Group name changes

- 33 Following the transfer of market supervision, ASX Group has changed the names of a number of entities in its corporate structure, as detailed in Table 1. This report refers to the entities by their new names, where appropriate.

Table 1: ASX Group entity name changes

Previous entity name (before 1 August 2010)	New entity names (from 1 August 2010)	Report reference	Status
ASX Limited	No change	ASX, the operator of the ASX market (ASX).	Market licensee and parent company of ASX Group. Listed on ASX.
Sydney Futures Exchange Limited	Australian Securities Exchange Limited	Australian Securities Exchange, the operator of the ASX 24 market (ASX 24).	Market licensee
Australian Clearing House Pty Limited	ASX Clear Pty Limited	ASX Clear	Clearing and settlement facility
SFE Clearing Corporation Pty Limited	ASX Clear (Futures) Pty Limited	ASX Clear (Futures)	Clearing and settlement facility
ASX Settlement and Transfer Corporation Pty Limited	ASX Settlement Pty Limited	ASX Settlement	Clearing and settlement facility
Austraclear Limited	No change	Austraclear	Clearing and settlement facility
ASX Markets Supervision Pty Limited	ASX Compliance Pty Limited	ASX Compliance	Supervisory/ compliance function
ASX Operations Pty Limited	No change	ASX Operations	Provides services to ASX Group

B Executive summary

Key points

Overall, our assessment concluded that ASX Group licensees met their statutory obligations in the assessment period and in respect of the other specific matters reviewed that are noted in paragraph 30. However, there are nine agreed actions that focus on aspects of ASX Group's activities. While important, these agreed actions do not detract from our overall conclusion.

Our report is divided into the following sections:

- Section B contains our executive summary;
- Section C contains our observations and agreed actions;
- Section D discusses market conditions throughout 2010 and since; and
- Section E outlines how ASX Group has addressed the agreed actions from our previous assessment.

Compliance with statutory obligations

- 34 ASIC is satisfied that, in terms of the standards set out in the Corporations Act, during the period of 1 July 2009 to 30 June 2010 (assessment period), and in respect of the other specific matters reviewed that are noted in paragraph 30 of this report:
- the operators of the ASX and ASX 24 markets had adequate arrangements in place for meeting their statutory obligations under s792A(c), and the provision of those services was sufficiently resourced under s792A(d); and
 - ASX Clear, ASX Settlement, ASX Clear (Futures) and Austraclear had adequate arrangements in place for meeting their statutory obligations under s821A(c), and the provision of those services was sufficiently resourced under s821A(d).

Agreed actions

- 35 ASIC's view is that ASX Group licensees complied with their statutory obligations—however, there are nine areas for attention that are agreed actions with the ASX Group. In some cases, ASX Group has already initiated steps to meet these agreed actions.
- 36 While these agreed actions are important, they do not cause us to qualify our overall conclusion that ASX Group licensees met their statutory obligations during the period of the review.

- 37 Set out below is a summary of the nine agreed actions. Further details can be found in Section C of this report.

Nature of agreed actions

- 38 These agreed actions can be broken down into several categories. The first relates to the obligation imposed on licensees to have sufficient resources, including technological resources, to properly operate their markets and clearing and settlement facilities.
- 39 Technology is a fundamental driver of the trading and post-trade industry and, in the context of ASIC's strategic priorities, it is critical for the operation of efficient markets. For this reason, technology will be an ongoing focus of ASIC's assessment of licensees, where its importance is likely to be even more critical in the foreseeable period. For this assessment, special attention was given to the adequacy and deployment of ASX Group's technological resources during the period of review: see Agreed Actions 1–5.
- 40 The second category of agreed actions relates to ASX Group's ongoing obligations to monitor and enforce compliance with its operating rules. In this respect, ASX Group's obligations remain unchanged for its listing rules, and its performance in monitoring and enforcing these rules is a critical ingredient in the overall integrity of ASX's market. In the context of ASIC's priorities, it is critical for investors and financial consumers to be confident and to make informed investment decisions. ASX Group's obligations to monitor and enforce compliance with its remaining market operating rules are also unchanged, and are important ingredients in its ability to ensure that its markets are operating in a fair and proper manner: see Agreed Actions 6–8.
- 41 The final agreed action relates to the development of a set of performance measures agreed between ASIC and ASX Group that take account of ASX Group's changed role in the frontline supervision of those market operating rules that are now part of the ASIC Market Integrity Rules (ASX) and ASIC Market Integrity Rules (ASX 24). The development of these measures will assist in providing points of reference to discuss ongoing indicators of the way in which activities are undertaken by licensees year-on-year. These measures could also provide points for ASIC to use in its ongoing discussions with licensees about ASIC's strategic objectives. These measures should be applicable across all like markets: see Agreed Action 9.

Agreed Action 1: Engagement with ASIC about innovative changes

- 42 ASX Group does, from time to time, make ASIC aware of certain technological changes over and above those that are required to support the formal operating rule amendment process.

- 43 Some technology changes, however, do not involve operating rule amendments. For instance, announcements by ASX Group in 2010 of a new data centre to meet its expanded co-location services, and the upgrade to the Genium trading platform (i.e. ASX Trade) for the ASX market, did not involve operating rule amendments.
- 44 ASX Group should inform us and its participants as early as possible about innovative changes, such as technology changes, even if the changes will not necessarily result in operating rule amendments. The early notification will assist ASIC in planning and determining the implications that these changes may have for our market supervision role and, importantly, will also assist industry in its internal planning.
- 45 ASX Group has stated that it is committed to working with its participants and ASIC. To that end, it has commenced and has agreed to continue to work to develop a forward-looking process with ASIC for keeping us and its participants² updated about its technological changes. This may result in an arrangement of sharing with ASIC ASX Group's implementation plans, project timelines and key milestones, appropriate project sign-offs, details of relevant assurances obtained about the particular changes, and the nature of stakeholder engagement and attestation. In some cases, depending on the materiality of the change and its potential impact on the operation of the market and/or its users, we may seek independent third-party verification regarding the particular change.
- 46 It is noteworthy that, in other jurisdictions such as Canada, market licensees and regulators have put in place change windows where changes may only be made during specified times. ASIC would consult with industry before settling on this or any other type of formal arrangement. We would expect that these types of arrangements, once settled, would be equally applicable across like markets.

Agreed Action 2: Communication improvements for major technological releases

- 47 ASX Group went live with updated versions of its trading platform for its ASX 24 market (called ASX Trade24) and ASX market (called ASX Trade) on 9 October 2010 and 29 November 2010, respectively. In the six months following the 'go-live' date, there were nine incidents across both trading platforms, which led to varying degrees of market unavailability and disruption.
- 48 Due to the number of incidents occurring in such a relatively short time, we had concerns about the robustness of the upgrades and the testing that was undertaken before the decision was made to go live. In the context of ASIC's strategic priorities, we were keen to confirm that the markets were operating

² See also other agreed actions.

in an efficient manner and that investors and consumers continued to be confident in the market.³ As a result, we reviewed the nature of ASX Group's processes for planning, testing, governance, communication and participant readiness for its trading platform upgrades.

- 49 ASX Group used a range of distribution channels to communicate with participants, vendors and stakeholders about matters during the implementation phase of its technology platform upgrades.
- 50 ASX Group was also provided with feedback from the Australian Financial Markets Association (AFMA), on behalf of some of its participants, who noted that they did not think the ASX Trade migration compared favourably with previous ASX migrations—in particular, with regard to ASX Group's transparency and its responsiveness to participant queries.
- 51 A recent theme in conversations between ASX Group and ASIC, and between ASX Group and its participants, has been how to manage the heightened technical and operational challenges faced by participants in a rapidly evolving market.
- 52 To assist participants and other stakeholders with their planning and resource allocation, and to enhance their ability to choose which ASX Trade execution services to use, ASX Group released a document in May 2011, outlining its approach to future release management and communication arrangements. In August 2011, ASX Group also released a document detailing its approach to managing technology releases relating to its clearing and settlement services. ASX Group has also held various forums to communicate with its participants.
- 53 Given that ASX Group has itself flagged the expectation of an increasing number of changes of this type in the post-competition environment, these steps are important to both ASIC and industry.
- 54 ASX Group has agreed to periodically publish similar publications to those issued in May and August 2011 for future releases of other key technology systems, so that industry has a rolling schedule of ASX Group information technology releases for the next 12 months, and has agreed to maintain an ongoing dialogue with industry to ensure that changes are released and managed in a way that limits any undue disruption to market users.

Agreed Action 3: Determine and publish agreed notice periods for minor technological changes

- 55 While ASX Group endeavoured to communicate clearly, through bulletins and updates, with relevant stakeholders for both the ASX Trade and ASX Trade24 upgrades, a potential issue is whether ASX Group allowed enough time for participants to cater for these platform changes.

³ This assessment does not cover the recent ASX market outage that occurred on 27 October 2011. This will be included in the next assessment report.

- 56 While some upgrades may have been considered ‘non-critical’, and therefore relatively minor, the knock-on effects for participants may have increased their technology burden and possibly reduced the effectiveness of implementation.
- 57 In addition to Agreed Action 2—that ASX Group inform participants of a scheduled period for major system upgrades (e.g. monthly, quarterly or annual)—ASX Group has initiated and committed to an agreed range of notice periods (depending on the type of change) to participants before rolling out more minor interim changes. This will allow participants time to reprogram, and perform conformance testing of, their own systems—particularly, any algorithm-related systems.

Agreed Action 4: Harmonise approach to participant readiness

- 58 As part of our review of ASX Group’s approach to these upgrades, we reviewed ASX Group documentation on participant readiness. In doing so, we noted different approaches taken for ASX Trade when compared with ASX Trade24. The different approach was based on ASX Group’s assessment of the impact each upgrade would have on participant systems and interfaces.
- 59 For ASX Trade, ASX Group required participants to requalify their systems, and maintained a spreadsheet documenting whether participants’ systems were in fact qualified.⁴ Information in this spreadsheet referenced more detailed test documentation relating to individual participant qualification. However, we did not observe any specific documentation demonstrating whether participants were internally prepared for the upgrade.
- 60 By contrast, and given that the go-live for ASX Trade24 was intended to have a comparatively minor impact on participants and vendors, ASX Group did not require that participants requalify their existing trading or market data applications for this trading platform. Participants were instead required to complete a readiness form and submit it to ASX Group. ASX Group subsequently tracked participants’ operational readiness.
- 61 As an enhancement to ASX Group’s practices, ASX Group has agreed, unless there are extenuating circumstances, to harmonise its approach to determining participant readiness for upgrades. This should include documenting the process for obtaining evidence about participant readiness, and outlining what measures will be taken, depending on the assessed implications of the upgrade. For this purpose, ASX Group has agreed that, for mandatory changes in relation to major platform upgrades to its key technology

⁴ Qualification of participant systems ensures that the integrity of the ASX trading platform is preserved by describing the key functionalities that an organisation must be able to demonstrate in order to connect to the upgraded platform.

systems, it will include a process for obtaining formal attestations from participants to confirm their system's functionality and connectivity, and their ability to comply with set implementation dates, including appropriate and necessary workarounds by ASX Group and participants, where attestations are unable to be obtained or it is impractical to do so.

Agreed Action 5: Determining participant readiness

- 62 During our discussions with ASX Group, it became apparent that coordinating participant readiness was also made more difficult by elements within certain individual participants that needed to be approached separately because of the proprietary and sensitive nature of some of their businesses. As a result, the information flow between some business units within the same participant may not have been optimal, which may have affected the particular participant's 'whole-of-business' readiness (or at least, ASX Group's ability to clearly ascertain that all parts of the participant's business were ready).
- 63 Each market participant needs to be accountable for ensuring that it is ready at an organisational level for system upgrades. To assist in achieving this, for participants with multiple business units, ASX Group has agreed to engage these participants about electing a single key person. This key person should be able to cross possible 'Chinese walls' within a participant's business to expedite and more clearly communicate to ASX Group relevant matters during key system upgrades and modifications.

Agreed Action 6: Approach to discussing and recording continuous disclosure matters

- 64 As is standard practice, ASX Group's Listings unit made referrals to ASIC recommending further inquiries into possible breaches of s674(2)⁵ and s1309(1)⁶, in which conversation records between the ASX Group listings adviser and the listed entity are typically of central relevance.
- 65 ASX Group's Listings unit retains records of conversations between its advisers and listed entities in the form of file notes that are appropriate for business record-keeping purposes, and ASX Group provides training and education to listings advisers about the importance of contemporaneous, detailed and accurate file notes of conversations with entities.
- 66 Based on our review, however, the file notes taken are invariably not verbatim accounts of the discussions held. As a result, the risk needs to be managed that these records may not be sufficiently detailed or adequate for

⁵ Section 674(2) requires that a listed entity must notify ASX (the market operator) immediately if it has information that is not generally available and that, if it were generally available, would have a material effect on the listed entity's securities.

⁶ Section 1309(1) makes it an offence for an officer of a company to give information to ASX (the market operator) that relates to the affairs of the company, that the company officer knows is false or misleading, or contains an omission which renders the information false or misleading.

evidential purposes in subsequent proceedings, particularly in providing evidence of the criminal standard required to support alleged breaches of s1309(1). It is also important that lines of inquiry undertaken by ASX Group's listings officers, when engaging with listed entities, are informed by the requirements that may be needed to establish a breach of the relevant law.

- 67 Because effective continuous disclosure is fundamental to ASIC's strategic objective of assisting investors to be more confident and better informed, ASX Group and ASIC have agreed the following action, which we believe has the potential to improve future referrals for alleged breaches of s1309(1) and s674(2).
- 68 ASX Group has agreed to ensure that its listings advisers undertake training, which ASIC is prepared to assist with, on:
- the specific requirements of evidence in actions for alleged breaches of s674(2) and s1309(1), particularly in the evidential requirements of criminal matters; and
 - ensuring that there is a detailed, clear and unambiguous record of a statement by the listed entity that is likely to merit further investigation when preparing referrals to ASIC concerning possible breaches of s1309(1).

Agreed Action 7: Approach to application of listing rule exceptions

- 69 We have recently dealt with a number of referrals from ASX Group for potential breaches of s674(2) and s1309(1), where the entity sought to rely on the confidentiality 'carve-out' in response to a query by the ASX Group listings officer.
- 70 ASX Group's Listings unit operates on the basis and understanding that, if a listings adviser queries an entity about a potential continuous disclosure issue, the entity must give full and frank answers to the adviser.⁷ This extends to an expectation that the entity will share information with the adviser, even if it might not be required to disclose that information under s674(2) because (for instance) the information could be covered by the exception to Listing Rule 3.1.
- 71 ASIC notes that ASX Group has recently commenced revising Guidance Note 8—Continuous disclosure: see Section E.
- 72 Because effective continuous disclosure is fundamental to ASIC's strategic objective of assisting investors to be more confident and better informed,

⁷ In fact, it is potentially a criminal offence to provide false information to ASX.

ASX Group has agreed to include enhanced disclosure in Guidance Note 8 to make it clearer to listed entities that:

- ASX expects them to give information in response to ASX queries, even in circumstances where the entity may believe it holds a legitimate view that it is not in breach of s674(2) and it can rely on ASX Listing Rule 3.1A; and
- even if listed entities have information that they regard as confidential or incomplete, they are still expected to disclose that information to ASX listings officers, if requested to do so, but that if ASX agrees that the information is exempt from disclosure under Listing Rule 3.1A, ASX will not require the information to be released to the market.

Agreed Action 8: Futures contract monitoring

- 73 Before the transfer of market supervision to ASIC on 1 August 2010, ASX Group monitored client positions across all its ASX 24 futures contracts (e.g. Treasury Bonds, Bank Accepted Bills, ASX SPI 200 Index and Greasy Wool). In our recent ongoing discussions with ASX Group, we have become aware that ASX Group has changed certain elements of its approach to monitoring futures contracts.
- 74 Before 1 August 2010, ASX Group's monitoring of contracts, particularly at expiry, was conducted across several ASX Group business units and included a range of daily, weekly, monthly and 'at-expiry' activities. Contract expiries provide particular opportunities for undesirable market situations to arise.
- 75 Since 1 August 2010, ASX Group has continued to perform a range of functions with a view to ensuring that trading, and clearing and settlement of ASX 24 futures contracts are monitored and properly managed. These include:
- daily activities, such as real-time monitoring of trading on the ASX 24 market (by its Trading Operations unit), and communicating with trading and clearing participants about orders, trade management and margins (by its Trading Operations, Compliance, and Clearing and Settlement Operations units); and
 - monthly activities, such as open interest spot reviews (by its Compliance unit), monitoring of futures contracts in the lead-up to expiry (by its Clearing and Settlement Operations unit), and monitoring of clearing risk limits (by its Clearing Risk unit).
- 76 However, while ASX Group continues to monitor client position limits for the three-year and 10-year bond contracts⁸, more recent practices in respect of other futures contracts appear to no longer involve routine client account level monitoring, with reliance instead being placed on the review of

⁸ In accordance with a particular operating rule it has retained.

clearing participant level holdings. While this may support the orderly settlement of contracts, it may fail to identify individual large positions across multiple participant accounts and, as a consequence, fail to identify circumstances that have the potential to lead to a disorderly market or to Corporations Act or market integrity rule breaches that ASX Group would be expected to refer to ASIC under s792B(2)(c).

- 77 ASIC notes that ASX Group's changed approach was based, in part, on its view that the monitoring undertaken by its analysts before 1 August 2010 was conducted in accordance with rules relating to market manipulation and the conduct of participants, which were subsequently transferred to ASIC and have now become part of ASIC's market integrity rules.
- 78 However, ASX Group recognises that ASIC considers that ASX Group monitoring ASX 24 futures contracts at a client account level throughout the life of the contract could provide information which will inform ASX's ongoing compliance with its obligation under s792A(a), to the extent that it is reasonably practicable to do so, to do all things necessary to ensure that the ASX 24 market is orderly.
- 79 On this basis, ASX Group has agreed that it will recommence monitoring all ASX 24 futures contracts at a client account level throughout the life of the contract, and review with ASIC the effectiveness of this activity over the next year.

Agreed Action 9: Performance indicators

- 80 In a previous ASIC assessment report (REP 135, July 2008), ASX Group and ASIC agreed that we would cooperate on the development and implementation of an agreed set of input and output based benchmarks for market supervision, and that these benchmarks would be in place for the 2009–10 assessment period. ASX Group has reported its performance against these benchmarks over that period.
- 81 As a result of the transfer of market supervision from ASX Group to ASIC on 1 August 2010, the responsibilities undertaken by ASX Compliance have changed. We agree with ASX Group's suggestion that the performance indicators previously agreed with ASIC for assessing the level of ASX Compliance resources and effectiveness, in this regard, are worthy of review.
- 82 ASX Group has agreed to work with ASIC over the next six months with a view to agreeing new performance measures that will assist in providing a point of reference to discuss ongoing indicators of the way in which activities are undertaken by licensees year-on-year. These measures will also assist ASIC in its ongoing dialogue with ASX Group licensees in respect of ASIC's strategic objectives, and should be applicable across all like markets.

Agreed actions from our previous assessment

- 83 In November 2010, we published our most recent assessment report of the ASX Group, which included eight agreed actions. Detail on the status of these agreed actions is set out in Section E.
- 84 One of these agreed actions was for ASX Group to establish a joint working group with ASIC to review Guidance Note 8 (continuous disclosure) to ensure it remains current in light of market conditions and disclosure practices. ASIC has identified to ASX Group areas where the guidance note can be improved. ASIC understands that ASX Group is currently working on an updated version of Guidance Note 8 and expects to release a consultation draft of that document during the first quarter of calendar 2012. ASIC strongly encourages ASX Group to progress this as a matter of particular priority.

C Our observations and agreed actions

Key points

We have considered the adequacy of ASX Group's arrangements and resources for the operation and supervision (as relevant) of its markets and clearing and settlement facilities.

Our view is that the ASX Group licensees complied with their statutory obligations as they existed at the time of the assessment period—however, we consider that the nine agreed actions will further enhance ASX Group's arrangements. These agreed actions relate to:

- ASX Group's technological resources (Agreed Actions 1–5);
- its obligations to monitor and enforce compliance with its operating rules (Agreed Actions 6–8); and
- the development of an agreed set of performance measures (Agreed Action 9).

While these agreed actions are important, they do not cause us to qualify our overall conclusion that ASX Group licensees met their statutory obligations during the assessment period.

Technology enhancements

Engagement with ASIC about innovative changes

- 85 ASX Group does, from time to time, make ASIC aware of certain technological changes over and above those that are required to support the formal operating rule amendment process under the Corporations Act.
- 86 Some technology changes, however, do not necessarily involve operating rule amendments. For instance, announcements by ASX Group in 2010 of a new data centre to meet its expanded co-location services, and the upgrade to the Genium trading platform (i.e. ASX Trade) for the ASX market, did not involve operating rule changes.
- 87 ASX Group should inform us and its participants (see also agreed actions below) as early as possible about innovative changes, such as technology changes, even if the changes will not necessarily result in operating rule amendments. The early notification will assist ASIC in planning and determining the implications that these changes may have for our market supervision role and, importantly, will also assist industry in its internal planning.

Agreed Action 1: Engagement with ASIC about innovative changes

ASX Group has commenced and has agreed to work to develop a forward-looking process with ASIC for keeping us and its participants⁹ updated about its technological changes.

This may result in an arrangement of sharing with ASIC ASX Group's implementation plans, project timelines and key milestones, appropriate project sign-offs, details of relevant assurances obtained about the particular changes, and the nature of stakeholder engagement and attestation.

In some cases, depending on the materiality of the change and its potential impact on the operation of the market and/or its users, we may seek independent third-party verification regarding the particular change.

- 88 It is noteworthy that, in other jurisdictions such as Canada, market licensees and regulators have put in place change windows where changes may only be made during specified times. We would consult with industry before settling on this or any other type of formal arrangement. We would expect that these types of arrangements, once settled, would be equally applicable across like markets.

Trading system upgrades

- 89 In April 2010, ASX Group announced that it would upgrade its equities trading platform by implementing ASX Trade—replacing its integrated equities and derivatives trading platform, Integrated Trading System (ITS). ASX Group expected to go live with this upgrade in November 2010.
- 90 The technology supporting ASX Trade is the NASDAQ OMX Genium trading platform. ASX Group's objective for upgrading to ASX Trade was to increase capacity to support in excess of 500 million order book changes and 5 million trades each day, and significantly reduce latency. ASX required participants and vendors to requalify their systems in order to access ASX Trade.
- 91 Also, in May 2010, ASX Group announced that it would upgrade its futures trading system by implementing ASX Trade24—replacing SYCOM IV. ASX Group expected to go live with this upgrade in the fourth quarter of 2010.
- 92 The objective of ASX Trade24 was to provide a generational upgrade to the SYCOM IV trading system and further enhance the processing capacity and performance of the trading system, while providing a technical platform for the development of future trading and access functionality.
- 93 Whilst the ASX Trade24 upgrade was a large upgrade, in that significant parts of the system were migrated to a more contemporary architecture, there

⁹ See also other agreed actions.

were no changes to the system's participant electronic interfaces. As a result, there was no requirement for participants or vendors to requalify their systems and perform a market rehearsal.

- 94 ASX went live with its ASX Trade24 trading platform on 9 October 2010 and its ASX Trade platform went live on 29 November 2010.
- 95 Since the ASX Trade24 and ASX Trade system upgrades went live—and prior to the ASX market outage of 27 October 2011¹⁰—there were nine incidents relating to trading on both platforms. The majority of these issues occurred in the first six months following the go-live date. We became concerned with the regularity of these interruptions and requested that ASX Group provide incident reports, outlining the causes and detailing the action taken to combat the interruptions. Table 2 lists the main issues with both trading platforms.

Table 2: Main incidents with ASX Trade24 and ASX Trade platforms since go-live

Issue	Date	Platform	Description
1	11 October 2010	ASX Trade24	Choice market—Interest rate spreads
2	27 October 2010	ASX Trade24	Spread calculation issue
3	29 November 2010	ASX Trade	Quote request facility: various
4	30 November 2010	ASX Trade	Tailor-made combinations
5	17 January 2011	ASX Trade	OSABE—Reliable Transaction Router issue
6	21 January 2011	ASX Trade24	Delayed AP (ASX SPI 200 futures) open
7	7 February 2011	ASX Trade24	3-year bond futures
8	28 February 2011	ASX Trade	Trade confirmation dissemination Partition 3
9	4 March 2011	ASX Trade	Trade dissemination Partition 3

- 96 The most severe of the issues listed above was Issue 2, which affected all users of ASX Trade24, and Issues 8 and 9, which affected all users of ASX Trade. These issues led to varying degrees of market outage.
- 97 While ASX has nearly 25 years experience in upgrading electronic trading systems, and has historically maintained very high availability on its critical systems of over 99.8%, due to the number of incidents in such a relatively short time, we had some concerns about the robustness of the upgrades and the testing that was undertaken before the decision was made to go live.

¹⁰ This assessment does not cover the recent ASX market outage that occurred on 27 October 2011. This will be included in the next assessment report.

98 In the context of ASIC's strategic priorities, we were keen to confirm that the markets were operating in an efficient manner and that investors and consumers continued to be confident in the market. As a result, we reviewed the nature of ASX Group's processes for planning, testing, governance, communication and participant readiness for its trading platform upgrades.

Planning

99 Following ASX Group's merger with SFE Corporation (SFE) in July 2006, ASX Group adopted a centralised process for the management and control of all projects requiring multifunctional resources, called the Project Management Office (PMO). The ASX PMO ensures that ASX's projects are managed in a common way, regardless of whether the project involves major system enhancements, supervisory developments or the launch of new products.

100 ASX Group's project framework involves a number of phases, including:

- concept creation;
- project definition;
- project delivery; and
- project closure.

Testing

Approach

101 ASX Group's approach for testing its trading system upgrades involved the preparation of comprehensive test material and documentation.

102 ASX Group's testing included:

- functional streams (i.e. existing and new functionality and regression);
- non-functional streams (e.g. performance, capacity, back-up/recovery);
- internal, integration and end-to-end streams;
- dry runs/rehearsals; and
- industry-wide tests.

103 For ASX Trade24, a test environment was available from 14 June 2010—ahead of the production implementation in October 2010.

104 For the ASX Trade upgrade, ASX provided participants and vendors with access to a functional test environment from 22 June 2010. Subsequent upgrades were made to the functional test environment as issues identified during ASX testing were resolved. ASX Trade was implemented into the production environment in November 2010.

- 105 Even though the ASX Trade upgrade was less complex than the previous trading platform upgrade, which involved combining a derivatives and equities platform, ASX Group commented that 25% more testing was undertaken for the ASX Trade release than the previous release.
- 106 In preparation for its ASX Trade upgrade, ASX undertook three industry-wide tests. After initially being scheduled for release on 8 November 2010, its ASX Trade platform went live on 29 November 2010. The delay in release was due to ASX's own assessment and feedback from participants and vendors that the market would benefit from further testing.
- 107 For the ASX Trade release, ASX Group commented that it worked more closely with its vendor (NASDAQ OMX) than was previously the case, by sharing its programming code and testing cases.

Trading platform issues

- 108 ASX Group classifies issues according to their priority (high/medium/low) and severity (show-stopper/high/medium/low) and works through these issues in accordance with these classifications. Our review of ASX Group documentation suggests that, while some of the issues identified both before and after go-live have been addressed through subsequent releases and fixes, a range of issues with severity classifications of high, medium and low, remain subject to 'ongoing monitoring' and are being assessed by ASX Group for forthcoming releases in accordance with their priority ratings. Based on this priority ranking, these issues have not been identified by ASX Group as a concern to the overall operation of the platforms.
- 109 ASX Group commented that, regardless of the amount of testing, it is not unusual to go live with an upgrade to a trading platform with a number of issues remaining on the risk register.¹¹

Governance

- 110 The ASX PMO provides guidance on how projects are to be governed. Technology upgrades are governed by an ASX Group internal steering committee and joint steering committee, given that upgrades are large projects and often have a vendor delivering a major component of the project. These committees are responsible for the overall direction and management of the projects and have responsibility and authority for the project.
- 111 The internal steering committee's role includes being responsible for identified risks and issues with the trading system upgrades before go-live, and considering whether the impact and risks to the organisation of the particular issues are acceptable to proceed to implementation.

¹¹ This means that the risk has not been totally resolved but is subject to ongoing monitoring.

- 112 The committee comprises representatives of all key ASX Group stakeholders, so that decisions are consensus ones and not reliant on one individual. If issues cannot be resolved, there is also an escalation process to the Enterprise Project Steering Committee. This committee provides overall direction and guidance on the project, ensuring it remains within scope and that required resources are committed, and arbitrates on any conflicts within the project or negotiates a solution to any problems between projects and/or external bodies.
- 113 The joint steering committee is responsible for dispute resolution between the vendor and ASX Group, as well as contract management. Delivery of the project is the responsibility of the project team under the leadership of the project manager. The project manager is responsible for delivering the project and leading and managing the project team and running the project on a day-to-day basis.
- 114 Our assessment indicates that ASX Group held regular project meetings on a weekly basis for both the ASX Trade and ASX Trade24 upgrades.

Communication

Approach

- 115 ASX Group used a range of distribution channels to communicate with participants, vendors and stakeholders about matters during the implementation phase of its platform upgrades. This included communicating via email, the ASX website, and notices, bulletins and circulars. There were 40 ASX Trade technical bulletins and approximately 80 emails distributed during the course of the implementation, relating to both test and production environments.
- 116 ASX Group commented that not every issue identified warranted a communication to all users. For example, some issues may have been internal only or may have been specific to a particular application, participant or vendor.
- 117 ASX Group invoked its published communication policy for market outages to provide participants and affected stakeholders with regular updates on market unavailability issues. For the 28 February 2011 issue involving ASX Trade, ASX Group also had direct consultation with industry practitioners to gather feedback on the events as they unfolded during the day.

Release management improvements for major technological releases

- 118 In early April 2011, ASX Group was also provided with feedback by AFMA on behalf of some ASX participants, who noted that they did not think the ASX Trade migration compared favourably with previous ASX migrations—in particular, with regard to ASX Group’s transparency and its

responsiveness to participant queries. A recurrent theme in conversations in recent months between ASX Group and ASIC, and between ASX Group and its participants, has been how to manage the heightened technical and operational challenges faced by participants in a rapidly evolving market and, in particular, following the implementation of competition in exchange market services.

- 119 In our discussions, ASX Group recognised the heightened regulatory, technical and operational challenges faced by participants. To assist participants and other stakeholders with their planning and resource allocation, and to enhance their ability to choose which ASX trade execution services to use, ASX Group released a document in May 2011, discussing its approach to release management.
- 120 This document details ASX Group's approach to managing technical releases for ASX Trade by:
- explaining how ASX categorises technical releases for ASX Trade and the responses available to users;
 - including information about communications, support and test environments; and
 - providing an overview of the schedule of planned mandatory and enhancement releases for ASX Trade for the next 18 months, including the first mandatory release in response to the requirements of the new ASIC market integrity rules.
- 121 The stated objectives of the document are to ensure that the impact of each technical release for ASX Trade is managed in a controlled and transparent manner, and the implementation of releases and change support are achieved as efficiently as possible for all users. There is also a question as to whether ASX Group should publish notice of its internal technology changes too, so that the market is aware of activities that could introduce potential risk.
- 122 ASX Group has flagged two broad categories of standard release: mandatory releases and enhancement releases. Mandatory releases require participants to amend and requalify their applications connected to ASX Trade. Enhancement releases allow participants to choose whether or not to amend their applications to take advantage of the new functionality. Qualification would be required against the enhancements.
- 123 ASX Group plans to implement no more than two mandatory releases per calendar year, in the second and fourth quarters. The only exceptions to this will be releases mandated by a regulator or regulatory obligation, or to fix a critical production fault. ASX Group will provide at least 90 days notice of a mandatory or enhancement release.

- 124 ASX Group will not implement any release other than a critical correction during the change freeze period, extending from 15 December until 15 January (unless required to do so by a regulator or regulatory obligation).
- 125 ASX Group aims to give users certainty on mandatory releases, while allowing them, to the greatest extent possible, to choose which enhancement releases to implement and when. This will support efficient resource allocation and business prioritisation for users, while delivering technical innovations to those sections of the market that value them most highly.
- 126 In August 2011, ASX Group also released a document detailing its approach to managing technology releases relating to its clearing and settlement services.

Communication improvements for major technological releases

- 127 ASX Group has implemented and published a release management approach and published a technology roadmap on a three-monthly basis since May 2011. ASX Group has also held a Customer Forum, ASX Technology Forum and reopened the ASX Online Technical Forum during 2011. This communication approach was outlined in the release management paper for ASX Trade. This document also flagged the following initiatives to improve its communication processes:
- *Notification:* ASX will publish a quarterly update to the schedule of system upgrades, detailing the anticipated implementation windows and content for each scheduled mandatory and enhancement release.
 - *Documentation:* Detailed documentation on the scope, technical specifications and projected timeframes for individual mandatory and enhancement releases will be provided by ASX no later than 90 days before the implementation date (unless required to do otherwise by a regulator or regulatory obligation, or to resolve a critical production issue). ASX will confirm by ASX Notice the go-live date of each release at least two weeks before implementation.
 - *Release faults:* ASX will maintain and publish a register of the status of all known faults in each release. The register will be accessible via ASX Online and will include the proposed dates by which the faults will be fixed.
 - *Release lock-down:* ASX will confirm a technical lock-down of the code in each release, including the known faults, at least 10 business days before implementation.
 - *Presentation:* ASX will host a presentation for users on the technical changes of each mandatory and enhancement release. The presentation may entail a distributed presentation such as a web-based seminar. The presentation will facilitate a question-and-answer session for users.

- *User online forum:* ASX will initiate and manage an online forum for each release. The forum will maintain a library of release development and other information, and will allow users to submit questions to ASX.

128 Given that ASX Group has itself flagged the expectation of an increasing number of changes of this type in the post-competition environment, these steps are important to both ASIC and industry.

Agreed Action 2: Communication improvements for major technological releases

ASX Group has agreed to periodically publish similar publications to those issued in May and August 2011 for future releases of other key technology systems, so that industry has a rolling schedule of ASX Group information technology releases for the next 12 months.

ASX Group has also agreed to maintain an ongoing dialogue with industry to ensure that changes are released and managed in a way that limits any undue disruption to market users.

129 While ASX Group endeavoured to communicate clearly, through bulletins and updates, with relevant stakeholders for both the ASX Trade and ASX Trade24 upgrades, a potential issue is whether ASX Group allowed enough time for participants to make changes to their systems to cater for these platform changes.

130 While some upgrades may have been considered ‘non-critical’, and therefore relatively minor, the knock-on effects for participants may have increased their technology burden and possibly reduced the effectiveness of implementation.

Agreed Action 3: Determine and publish agreed notice periods for minor technological changes

In addition to Agreed Action 2—that ASX Group inform participants of a scheduled period for major system upgrades (e.g. monthly, quarterly or annual)—ASX Group has committed to an agreed period of notice for participants before rolling out minor interim changes. This will allow participants time to reprogram, and perform conformance testing of, their own systems—particularly, any algorithm-related systems.

Participant readiness

131 To ensure that participants and vendors were ready for the technical installation of ASX Trade, ASX required participants to requalify their applications between 26 August 2010 and 19 October 2010. ASX Group qualified 106 participant applications, with the majority receiving qualification at their first attempt.

- 132 In reviewing the ASX Group documentation on participant readiness for ASX Trade and ASX Trade24, we noted the different approaches taken for ASX Trade when compared to ASX Trade24. The different approach to each upgrade was based on ASX Group's assessment of the impact each upgrade would have on participant systems and interfaces.
- 133 For ASX Trade, ASX Group required participants to requalify their systems, and maintained a spreadsheet documenting whether participants' systems were in fact qualified. Information in this spreadsheet referenced more detailed test documentation relating to individual participant qualification. We did not, however, observe any specific documentation demonstrating whether participants were internally prepared for the upgrade.
- 134 By contrast, and given that the go-live for ASX Trade24 was intended to have a comparatively minor impact on participants and vendors, ASX Group did not require that participants requalify their existing trading or market data applications for this trading platform. Participants were instead required to complete a readiness form and submit it to ASX Group. ASX Group subsequently tracked participants' operational readiness.

Agreed Action 4: Harmonise approach to participant readiness

As an enhancement to ASX Group's practices, ASX Group has agreed, unless there are extenuating circumstances, to harmonise its approach to determining participant readiness for upgrades. This should include documenting the process for obtaining evidence about participant readiness, and outlining what measures will be taken, depending on the assessed implications of the upgrade.

For this purpose, ASX Group has agreed that, for mandatory changes in relation to major platform upgrades to its key technology systems, it will include a process for obtaining formal attestations from participants to confirm their system's functionality and connectivity, and their ability to comply with set implementation dates, including appropriate and necessary workarounds by ASX Group and participants, where attestations are unable to be obtained or it is impractical to do so.

- 135 During our discussions with ASX Group, it became apparent that coordinating participant readiness was also made more difficult by elements within certain individual participants that needed to be approached separately because of the proprietary and sensitive nature of some of their businesses. As a result, the information flow between some business units within the same participant may not have been optimal, which may have affected the particular participant's 'whole-of-business' readiness (or at least, ASX Group's ability to clearly ascertain that all parts of the participant's business were ready).

Agreed Action 5: Determining participant readiness

Each market participant needs to be accountable for ensuring that it is ready at an organisational level for system upgrades.

To assist in achieving this, for participants with multiple business units, ASX Group has agreed to engage these participants about electing a single key person. This key person should be able to cross possible 'Chinese walls' within a participant's business to expedite and more clearly communicate to ASX Group relevant matters during key system upgrades and modifications.

Continuous disclosure**Approach to discussing and recording suspected matters**

- 136 ASX Group's Listings unit plays a key role in monitoring and enforcing compliance with the ASX Listing Rules.
- 137 The Listings unit allocates a dedicated listings adviser to each listed entity, and a key part of the adviser's role is to establish and maintain a good working relationship with the relevant officers of the listed entity, as well as becoming knowledgeable about the entity's history and operations. ASX's experience has shown that such relationships and knowledge are critical in ensuring effective communication and facilitating appropriate and timely compliance outcomes.
- 138 Listing Rule 3.1 and its requirement for listed entities to disclose material information in a timely manner is particularly important to the orderly conduct and reputation of ASX's markets.
- 139 ASX Listing Rule 3.1 provides that:
- Once an entity becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.
- 140 This rule is given statutory backing by s674, which imposes statutory liability for its breach in certain circumstances. Section 674(2) requires that a listed entity must notify ASX (the market operator) immediately if it has information that is not generally available and that, if it were generally available, would have a material effect on the listed entity's securities.
- 141 ASIC has primary responsibility for enforcing s674 and, although a breach of s674(2) is an offence, it is open to us to take administrative action in appropriate cases, and to issue an infringement notice as an alternative to civil or criminal proceedings. Liability is extended under s674(2A) to a person who is 'involved' in an entity's breach of s674(2).
- 142 Section 1309(1) is another relevant provision because it makes it an offence for an officer of a company to give information to a market operator, in

- relation to the affairs of the company, that the company officer knows is false or misleading, or contains an omission which renders the information false or misleading.
- 143 ASX is required under s792B(2)(c) to give ASIC written notice, as soon as practicable, if it has reason to suspect that a person has committed, is committing, or is about to commit a significant contravention of the market's operating rules or the Corporations Act. A memorandum of understanding exists between ASX and ASIC detailing the requirements.
- 144 As is standard practice, ASX Group's Listings unit makes referrals to ASIC, recommending further inquiries into possible breaches of s674(2) and s1309(1). There are strict rules of evidence that apply for criminal prosecutions and the standard of proof is high.
- 145 We typically rely on the accuracy and completeness of a listings adviser's record of conversation with an entity in any investigation for a breach of s674(2). The record may contain relevant background, or provide evidence that the entity has made inconsistent statements in a conversation with a listings adviser. In other cases, evidence of what the entity's officer has told the listings adviser might support the existence of an offence by an individual under s674(2A).
- 146 To consider whether a breach of s1309(1) can be established, we must identify evidence of a high standard and, at the very least, demonstrate knowledge and intent on the part of the person who is alleged to have made the false or misleading statement. Evidence that a false or misleading statement has been made must typically be based on a clear, detailed statement in a document, or captured in some other record in a detailed (preferably verbatim) and admissible form.
- 147 If it is alleged that the entity made a false or misleading statement verbally to the listings adviser in a telephone conversation, the record of that conversation will be of fundamental importance.
- 148 The content and quality of the listings adviser's record of the conversation with the entity is therefore a major consideration for ASIC when deciding whether to pursue an investigation further, or whether to take action against an entity or person.
- 149 ASX Group's Listings unit retains records of conversations between its advisers and listed entities in the form of file notes that are appropriate for business record-keeping purposes—however, these discussions are not recorded verbatim and may not be sufficiently detailed or adequate for evidential purposes in subsequent proceedings, particularly in providing evidence to support alleged breaches of s1309(1).
- 150 Listings advisers receive 'on the job' training in asking questions of entities, and this includes six months of mentoring for newly appointed advisers. All

listings advisers also receive formal training in making file notes for record-keeping purposes.

- 151 Listings advisers do not use standard or scripted questions when they speak to listed entities about suspected continuous disclosure matters, although similar types of questions may be used in common situations.
- 152 Listings advisers' file notes of conversations with entities are intended to be as clear and accurate as possible but they do not record conversations verbatim (given the circumstances in which the file notes are made, this is not possible). The adviser initially makes a short handwritten note, either at the time of the conversation or shortly afterwards, and subsequently logs the content of the file note onto the electronic issuers activity system (IAS) database the same day, and the original handwritten file note is then destroyed.
- 153 We acknowledge that the listings adviser will usually be asking questions in the context of an urgent and dynamic situation, and that they cannot conduct lengthy and detailed inquiries. We are also aware that listings advisers' file notes of conversations only contain a summary of the basic content and cannot record precisely what the entity's officer has said or the circumstances in which the comments were made.
- 154 Because effective continuous disclosure is fundamental to ASIC's strategic objective of assisting investors to be more confident and better informed, and also to ASX Group's fulfilment of its licence obligations, we have agreed actions that we believe have the potential to improve future referrals for alleged breaches of s1309(1) and s674(2).
- 155 We have agreed these actions because the original information obtained by listings advisers in their contact with entities will often be of central importance to the matters we may investigate and to the outcome of any investigation. ASIC and ASX Group are keen to manage the risk that these records may not be sufficiently detailed or adequate for evidential purposes in subsequent proceedings, particularly in providing evidence of the criminal standard required to support alleged breaches of s1309(1).

Agreed Action 6: Approach to discussing and recording suspected continuous disclosure matters

ASX Group has agreed to ensure that its listings advisers undertake training, which ASIC is prepared to assist with, on:

- the specific requirements of evidence in actions for alleged breaches of s674(2) and s1309(1), particularly in the evidential requirements of criminal matters; and
- ensuring that there is a detailed, clear and unambiguous record of a statement by the listed entity that is likely to merit further investigation when preparing referrals to ASIC concerning possible breaches of s1309(1).

Approach to application of listing rule exceptions

- 156 ASX Listing Rule 3.1A sets out an exception from the requirement to make immediate disclosure. The exception aims to protect the immediate commercial interest of listed entities in circumstances where market integrity is not adversely affected. The exception operates by providing that, where all elements are satisfied, the primary obligation in Listing Rule 3.1 does not apply to the particular information.
- 157 ASX Listing Rule 3.1A provides that:
- Listing Rule 3.1 does not apply to particular information while all of the following are satisfied.
- 3.1A.1 A reasonable person would not expect the information to be disclosed.
 - 3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential.
 - 3.1A.3 One or more of the following applies:
 - It would be a breach of the law to disclose the information.
 - The information concerns an incomplete proposal or negotiation.
 - The information comprises matters of supposition or is insufficiently definite to warrant disclosure.
 - The information is generated for the internal management purposes of the entity.
 - The information is a trade secret.
- 158 We have recently dealt with a number of referrals from ASX Group for potential breaches of s674(2) and s1309(1), where the entity sought to rely on the confidentiality ‘carve-out’ in response to a query by the ASX Group listings officer. The facts of each case indicated that entities do not always appreciate the extent of ASX’s expectation under Listing Rule 3.1 to disclose information to ASX in response to an ASX query—in particular, where the entity believes it can rely on the Listing Rule 3.1A exception regarding confidential information.
- 159 In the course of our discussions, ASX indicated that, where it identifies unusual movements and a possible lack of confidentiality regarding a particular price-sensitive event, and it approaches the entity to clarify its position, it expects the entity to tell ASX about all possible information immediately, even if the entity might not otherwise be obliged to disclose that information under s674(2). ASX believes that, even if the entity regards certain information as incomplete and/or confidential, it expects the entity to disclose information to ASX so that ASX can form a view as to whether the entity can rely on Listing Rule 3.1A.2 and can give advice to the entity on whether the information should be disclosed.

- 160 Where an entity believes it has nothing to disclose in response to an inquiry by a listings adviser, advisers normally press the entity with further questions to ascertain whether the entity does in fact have relevant information but believes it does not need to disclose it because it can rely on the Listing Rule 3.1A exception.
- 161 ASX Group's Listings unit recognises that entities can sometimes be in a difficult position, where they are reluctant to discuss a sensitive, incomplete and/or confidential transaction with ASX because of the risk that premature or misleading information could be leaked or disclosed to the market.
- 162 The Listings unit does not routinely warn entities in the course of these inquiries that the entity is obliged to tell ASX information in response to its query, even where the entity believes it can rely on Listing Rule 3.1A.
- 163 While the particular referrals in question may have been isolated incidents, we had reservations that listed entities may not be fully aware of, or do not fully understand, ASX's position, as outlined above, and that, accordingly, they do not always convey 'confidential' information to ASX in the context of ASX queries about suspected continuous disclosure issues. This may mean that entities sometimes do not seek advice from ASX where it would be beneficial to them and to the market to do so.
- 164 ASIC notes that ASX has recently commenced revising Guidance Note 8—Continuous disclosure: see Section E of this report.
- 165 Because effective continuous disclosure is fundamental both to ASIC's strategic objective of assisting investors to be more confident and better informed, and to the performance of ASX Group's compliance with its obligations, we have agreed the following.

Agreed Action 7: Approach to application of listing rule exceptions

ASX Group has agreed that it will include enhanced guidance in Guidance Note 8 to make it clearer to listed entities that:

- ASX expects them to give information in response to ASX queries, even where the entity may feel that it holds a legitimate view that it is not in breach of s674(2) and it can rely on ASX Listing Rule 3.1A; and
- even if listed entities have information that they regard as confidential or incomplete, they are still expected to disclose that information to ASX listings officers, if requested, but that if ASX agrees that the information is exempt from disclosure under Listing Rule 3.1A, ASX will not require the information to be released to the market.

Futures contract monitoring

166 Before the transfer of market supervision to ASIC on 1 August 2010, ASX Group monitored client positions across all its ASX 24 futures contracts (e.g. Treasury Bonds, Bank Accepted Bills, ASX SPI 200 Index and Greasy Wool). In our recent ongoing discussions with ASX Group, and as part of the review undertaken for this assessment, we have become aware that ASX Group has changed certain elements of its approach to monitoring futures contracts.

Before 1 August 2010

167 Before 1 August 2010, ASX Group's monitoring of contracts, particularly at expiry, was conducted across several ASX Group business units and included a range of daily, weekly, monthly and at-expiry activities conducted by a number of business units within the ASX Group.

168 ASX Group monitored price discrepancies and unusual behaviour because these may have been indicative of the development of an undesirable market situation.

169 Contract expiries provide particular opportunities for markets to become unfair or disorderly. This is because the boundary of settlement provides no opportunity for prices to normalise after a run, and volume driven into the physical market by the futures expiry can cause prices to behave abnormally when the settlement price is determined.

170 Throughout the life of a futures contract, especially as each expiry approached, ASX Group monitored the speed and nature of price convergence, as well as traders' holdings and trading patterns, looking for anything that appeared to be outside regularly observed patterns.

171 Holdings were drawn from participants' daily beneficial ownership reports (DBORs), which showed the underlying holder of each position. ASX Group combined these reports to ensure that holdings could be tracked across multiple participants. ASX Group then modelled this data to gain insight into how the market was likely to react to an upcoming boundary condition, such as an expiry, and whether pressures could exist that might threaten the fair, orderly and transparent nature of the market.

172 To help ASX Group's analysis, it sought further information, which often involved speaking to the trader controlling a position, or their participant. Typically, ASX Group spoke to anyone who was holding a large position as expiry approached, or who was trading in a manner that was inconsistent with their typical strategy. ASX Group might also have asked for input from traders who were holding smaller positions. This is because a number of

traders acting independently (and usually without any intent) have the potential to affect the determination of a settlement price.

- 173 ASX Group asked these questions in order to refine its model of what is likely to happen at expiry, especially with regard to whether it will be possible to achieve a fair and orderly settlement.
- 174 Once ASX Group refined its model, having received information from many traders, it assessed whether the expiry process was likely to be fair, orderly and transparent. If ASX Group had any concerns that this might not be the case, it could seek further information, or take action to prevent an undesirable market situation from occurring.
- 175 Under its operating rules, ASX Group could take action to correct an 'undesirable situation or practice'. Examples included a squeeze or a settlement price that did not reflect genuine (i.e. not futures-driven) activity in the underlying market.
- 176 If ASX Group considered that an undesirable situation was likely to occur, its actions could potentially include issuing a notice to inform the market that increased volatility may occur over expiry, or determining a settlement price if it believed that the one that had been arrived at was the result of an undesirable market situation.
- 177 ASX Group documentation suggests that it preferred to prevent undesirable market situations from arising, rather than taking disciplinary action after the fact. However, ASX Group could take disciplinary action against a participant, if it was warranted. Any suspicion that there had been a breach of the law would immediately have been reported to ASIC.

Since 1 August 2010

- 178 Since 1 August 2010, we have become aware that ASX Group has changed certain elements of its approach to monitoring futures contracts.
- 179 ASX Group has continued to perform a range of functions with a view to ensuring that trading, and clearing and settlement of ASX 24 futures contracts are monitored and properly managed. These include:
- daily activities, such as real-time monitoring of trading on the ASX 24 market (by its Trading Operations unit), and communicating with trading and clearing participants about orders, trade management and margins (by its Trading Operations, Compliance, and Clearing and Settlement Operations units); and
 - monthly and ongoing ad hoc activities, such as open interest spot reviews (by its Compliance unit), monitoring of futures contracts in the lead-up to expiry (by its Clearing and Settlement Operations unit), and monitoring of clearing risk limits (by its Clearing Risk unit).

- 180 However, while ASX Group continues to monitor client position limits for the three-year and 10-year bond contracts¹², more recent practices in respect of other futures contracts appear to no longer involve routine client account level monitoring, with reliance instead being placed on the review of clearing participant level holdings. While this may support the orderly settlement of contracts, it may fail to identify individual large positions across multiple participant accounts and, as a consequence, fail to identify circumstances that have the potential to lead to a disorderly market or to Corporations Act or market integrity rule breaches that ASX Group would be expected to refer to ASIC under s792B(2)(c).
- 181 ASIC notes that ASX Group's changed approach was based, in part, on its view that the monitoring undertaken by its analysts before 1 August 2010 was conducted in accordance with rules relating to market manipulation and the conduct of participants, which were subsequently transferred to ASIC and have now become part of ASIC's market integrity rules.
- 182 However, ASX Group recognises that ASIC considers that ASX Group monitoring ASX 24 futures contracts at a client account level throughout the life of the contract could provide information which will inform ASX's ongoing compliance with its obligation under s792A(a), to the extent that it is reasonably practicable to do so, to do all things necessary to ensure that the ASX 24 market is orderly. To that end, ASX Group has agreed to recommence monitoring all ASX 24 futures contracts at a client account level throughout the life of the contract.

Agreed Action 8: Futures contract monitoring

ASX Group has agreed to recommence monitoring all ASX 24 futures contracts at a client account level, throughout the life of the contract, and review with ASIC the effectiveness of this activity over the next year.

Performance indicators

- 183 In a previous ASIC assessment report (REP 135, July 2008), ASX Group and ASIC agreed that we would cooperate on the development and implementation of an agreed set of input and output based benchmarks for market supervision, and that these benchmarks would be in place for the 2009–10 assessment period. ASX Group has reported its performance against these benchmarks over that period.
- 184 As a result of the transfer of market supervision from ASX Group to ASIC on 1 August 2010, the responsibilities undertaken by ASX Compliance have

¹² In accordance with a particular operating rule it has retained.

changed for the ASX and ASX 24 market operating rules that were transferred to ASIC, and for which ASIC now has frontline supervision. We agree with ASX Group's suggestion that the performance indicators previously agreed with ASIC for assessing the level of ASX Compliance resources and effectiveness, in this regard, are therefore worthy of review.

Agreed Action 9: Performance indicators

ASX Group has commenced discussions with, and has agreed to continue to work with, ASIC over the coming six months, with a view to agreeing new performance measures that will assist in providing a point of reference to discuss ongoing indicators of the way in which activities are undertaken by licensees year-on-year. These measures will also assist ASIC in its ongoing dialogue with ASX Group licensees in respect of ASIC's strategic objectives, and should be applicable across all like markets.

Company announcements office

- 185 ASX Group's Company Announcements Office (CAO) is dedicated to:
- the receipt, processing, release and storage of company announcements lodged according to compliance obligations under the ASX Listing Rules and the Corporations Act;
 - keeping the market informed of these announcements in a timely manner;
 - administering compliance with periodic listing rule obligations; and
 - advising, educating, and communicating with listed entities about meeting their obligations in relation to the above.
- 186 During the assessment period, we were made aware of an incident whereby a sensitive company announcement, around the time of market open, was not released by the CAO until 28 minutes after it was received.
- 187 As a benchmark standard, the CAO seeks to initiate its processing of each announcement within 15 minutes of the receipt of that announcement. This benchmark is monitored and managed in real time within CAO through the use of a colour-coding scheme on the company announcement platform 'announcement queue'.
- 188 As a result of the incident above, we decided to assess the effectiveness of ASX Group's CAO by:
- reviewing the level of human resourcing in the CAO and ASX Group's processes for monitoring resources in the CAO; and
 - sampling data on the length of time taken by the CAO to release announcements.

CAO resourcing and monitoring

- 189 The CAO headcount has been static at six full-time equivalent (FTE) staff members since 30 June 2009. Since that time, the level of company announcements has remained relatively steady at around 116,000 announcements per year.
- 190 To ensure sufficient resources are available to facilitate the proper functioning of the CAO, ASX Group management has in place controls to provide an assessment of its resource requirements. These controls include:
- an established leadership hierarchy to mitigate key person risk and for succession planning;
 - a shift roster;
 - a robust recruitment process;
 - a detailed and collaborative objective setting and performance review process;
 - cross-training programs (both within the CAO and within ASX Operations generally); and
 - a skills matrix tool.
- 191 ASX Group's management reporting is used to assess the adequacy of staff levels including scheduled leave and general statistical data. To this end, ASX Group should consider the addition of further human resources following analysis of the number of announcements and trading halts processed, where there is an indication of a statistically significant increase in the volume of announcements or trading halts, in the absence of any technological or other operational changes that may also be considered to ensure that benchmarks are met. The CAO reports these key announcement metrics on a monthly basis to the executive management of ASX Group.
- 192 Internal ASX Group business units, including Regulatory Assurance and Internal Audit, also conduct reviews of CAO's performance, which include a review of compliance with relevant benchmarks and other regulatory requirements.

CAO release analysis

- 193 As mentioned previously, during the assessment period we were made aware of an incident whereby a sensitive company announcement took 28 minutes to be released after it was received, around the time of ASX's market open.
- 194 ASX Group considered that the particular announcement's header did not make it clear that it was sensitive, which led to the delay in its release. While this may have been an isolated incident, we wanted to assess the performance of ASX Group's CAO by sampling time release data for the week of the incident, and for another randomly selected week, for all company announcements received between 8 am and 11 am.

195 Our analysis showed that announcements received between 8 am and 11 am constituted approximately 25–35% of total daily announcements. The results showed that it was quite rare (1% or less) for an announcement (either market sensitive or non-market sensitive) not to be reviewed within 15 minutes or released within 30 minutes.

196 On average, it took less than three minutes to initiate processing of the announcement and less than seven minutes to release it. There were 10 announcements where release was delayed by longer than 30 minutes in the sample period (out of 1,287 announcements), and these were often on the ‘watchlist’, which meant that release needed to be authorised by ‘home branch’.

197 We were satisfied that the sample announcements we reviewed were handled appropriately by CAO.

ASX Group guidance

198 ASX Group has released several company updates in the past—in particular, Company Updates 07/10, 09/08 and 08/06—which provide guidance to listed entities about the consideration they should give to the timing of lodging announcements with ASX, especially around peak periods throughout the trading day, such as before market open and close.

199 The updates suggest that, during these periods, the number of announcements handled by CAO increases, and therefore the time taken in processing the announcements is lengthier than may be the case during the rest of the day. ASX Group’s guidance indicates that, during these peak periods, for an announcement to be processed before the required release time, listed entities should take into account the following guidelines:

- for an announcement that must be released before market open at 10 am Eastern Standard Time (AEST), the announcement should be submitted before 9.30 am AEST; and
- for an announcement that must be released before market close at 4 pm AEST, the announcement should be submitted before 3.40 pm AEST.

200 While, in our view, listed entities should not normally have to anticipate the workload of ASX Group’s CAO when considering releasing announcements, ASX Group considers that the CAO, as with any system operated by it, will have periods of greater or lesser activity. As a result, ASX Group believes that it is appropriate to be transparent with listed entities about this to ensure that they are in a position to meet their obligations.

201 While we have no specific recommendations, we ask that ASX Group continues to keep a close eye on the resourcing levels in the CAO—in particular, around peak times—to ensure that announcements are released in a timely manner.

Arrangements for handling conflicts of interest

- 202 The Corporations Act imposes an obligation on licensees (such as those within the ASX Group) to ensure that their commercial interests do not prevail over the requirement to ensure that their markets are fair, orderly and transparent, or that their clearing and settlement facilities are provided in a fair and effective way.
- 203 This obligation does not preclude the existence of conflicts of interest, and some examples of ASX Group's potential conflicts include:
- obtaining a commercial advantage by relaxing admissions criteria;
 - not properly enforcing the operating rules against its customers;
 - failing to adequately resource its operations, or compliance and enforcement functions;
 - imposing stricter requirements on a competitor; and
 - relaxing compliance and enforcement decisions in relation to an entity or participant that engages in business that affects ASX in a material way.
- 204 Despite the transfer of supervision to ASIC on 1 August 2010, a market licensee's conflict handling obligation has not changed.
- 205 For our assessment, we reviewed how ASX Group's conflict handling arrangements operated in practice during the assessment period, but also sought to understand the nature of the changes to those arrangements arising from the transfer of supervision to ASIC on 1 August 2010. A key focus of our next ASX Group assessment will include a further review of how ASX Group's conflict handling arrangements are operating in practice, following the transfer of supervision.

Operation of arrangements

- 206 To assess the operation of ASX Group's conflict handling arrangements during the assessment period, we reviewed ASX Group's procedures and practices for considering listing rule waivers and its decisions concerning review group entities and review participants.

Listing rule waivers

- 207 From a list of all waivers granted during the assessment period, we selected waivers granted in relation to Listing Rule 1.1 Conditions 7 and 8 (shareholder spread condition and profits/assets test, respectively), because we thought they would be suitable tests for potential conflicts of interest for ASX Group.

208 We reviewed ASX Group's documentation relating to a sample of waivers and were satisfied with the basis of its decision in each case. As an additional check, these decisions were also subject to internal review by ASX Group's Regulatory Assurance unit. We reviewed the unit's work in respect of the sample of waivers and did not notice anything significant for the waivers concerned.

Review group entities and review participants

209 Review group entities and review participants are:

- parties whose business is in direct competition with ASX Group's business in a material way;
- parties that hold a substantial shareholding in ASX Group, or ASX Group holds a substantial shareholding in the party; or
- parties where ASX Group and the party have entered into a joint venture arrangement that is material for both parties.

210 We reviewed a sample of decisions relating to selected review group entities and review participants. We were satisfied that, in so far as those decisions were concerned, ASX Group complied with its own procedures.

Changes to conflict handling arrangements

211 ASX Group has made certain changes to its internal arrangements and policies as a result of the transfer of supervision to ASIC on 1 August 2010.

212 These changes fall into four broad categories including:

- entry into a compliance and enforcement services agreement (CESA) between ASX and ASX Group licensees, ASX Operations and ASX Compliance to replace the previous supervisory services agreement (SSA), in place at the time, between ASX and ASX Markets Supervision;
- adoption of a new policy on conflict handling arrangements;
- adoption of an updated board charter by ASX Compliance; and
- adoption of changes to related ancillary supporting documents to give effect to the arrangements in these new policies.

213 The primary differences between the CESA and the SSA relate to the fact that ASX Group market licensees have a different statutory obligation under s792A(c). The main changes to ASX Group's conflict handling arrangements include:

- the regulatory assurance functions—provided before 1 August 2010 by the business unit Licence Compliance—are now provided by Regulatory Assurance (this change came into effect on 1 July 2010),

with former staff from Licence Compliance reporting to the General Manager of Regulatory Assurance;

- Regulatory Assurance reports to the ASX Group General Counsel—whereas Licence Compliance reported to the ASX Group Chief Executive Officer;
- Regulatory Assurance provides assurance services to the board of ASX Compliance in respect of the board’s responsibility under the CESA for approving and monitoring conflict handling arrangements—this reflects the former arrangements before 1 August 2010 involving Licence Compliance and the ASX Markets Supervision board, and is reflected in the amended provisions of the CESA and the ASX Compliance board charter; and
- the review participant and review group entity process, whereby Licence Compliance formerly oversaw the making of certain decisions, has been replicated by Regulatory Assurance, except that Regulatory Assurance does not undertake real-time oversight of the decision-making process. Instead, regular periodic oversight is undertaken on a post-decision basis. The concept of ‘review party’ has replaced the review group entity.

214 ASX Group has provided ASIC with a draft of its proposed conflicts handling framework, which entails a revised overarching policy and three sets of procedures to deal with the admission processes for new listings, participant admissions and AQUA/warrant admissions. ASIC will work with ASX Group over the coming months to review these arrangements.

ASX Group resourcing

Resource levels

215 During the assessment period, the licensees within the ASX Group retained responsibility for meeting their statutory obligations to supervise their respective markets and clearing and settlement facilities. Under the SSA, ASX Compliance provided specific supervisory services to the licensees to ensure that the licensees met the relevant licence obligations.

216 Since 1 August 2010, ASX Compliance has provided compliance and enforcement services to the various ASX Group entities that hold licences under the Corporations Act, and that operate markets or clearing and settlement facilities under the new CESA. In return, ASX Group is required to provide sufficient funding and resources (such as staff, equipment and software) to ASX Compliance.

- 217 At 30 June 2010, ASX Compliance's FTE headcount was 103.93. This was slightly lower than the FTE headcount of 110.8 at 30 June 2009, and largely represented ASX Group's decision not to fill some positions that became vacant just before the transfer of supervision to ASIC on 1 August 2010.
- 218 Since 30 June 2010, ASX Compliance's headcount has reduced by around 30 FTE staff—a result of the transfer of approximately 23 FTE staff to ASIC as part of the transfer of supervision on 1 August 2010 and an internal transfer of seven FTE staff from ASX Group's participant capital monitoring function to ASX Group's risk management function on 1 December 2010. The transfer of supervision to ASIC on 1 August 2010 resulted in the following FTE staff transfers from the ASX Group to ASIC:
- 5 from ASX Group's Surveillance unit;
 - 3 from ASX Group's Compliance unit;
 - 4 from ASX Group's Investigations unit;
 - 3 from ASX Group's Enforcement unit; and
 - 7.8 from ASX Group's Futures Supervision unit.

Resource monitoring

- 219 Key areas of the ASX Group actively and continuously monitor resourcing levels and experience, and benchmark against skill and experience matrices to ensure adequate resourcing levels are maintained to effectively monitor operational and business risks.
- 220 ASX Compliance uses a resource metric monitoring framework. The resource metrics monitoring tool comprises a range of workload drivers affecting ASX's core supervisory functions, which are tracked on a month-to-month basis. For instance, for the Issuers unit, these drivers include the number of listed entities supervised per adviser and, for the Surveillance unit, the number of surveillance alerts and price queries.
- 221 From July 2010, ASX Group decided to relocate its Adelaide listings office to a serviced office environment, while retaining one representative in the Adelaide office. ASX Group had four staff in Adelaide previously, comprising two listings advisers, a technology staff member and an administrative staff member. However, there is not the critical mass of business in Adelaide to justify having an office of that size. ASX Group has established practices around how the remaining staff member is supported, and has in place appropriate contingency measures to cover times of leave.
- 222 To ensure sufficient resources are available to properly operate ASX Group's clearing and settlement facilities, in compliance with the relevant regulatory and licence requirements, controls are in place to provide a valid dynamic assessment of the resource requirements. These include a robust recruitment

- process, a detailed and collaborative objective-setting and performance review process, structured cross-training programs and a skills matrix tool.
- 223 The skills matrix tool defines a list of core individual tasks for which ASX Group's Clearing and Settlement Operations unit is responsible, and applies a rating scale to each individual team member in relation to their ability not only to complete the tasks but also to understand the business and rules that encompass the process, and autonomously manage exceptions that may arise.
- 224 An additional measure has been agreed with the ASX Group to deal with the adequacy of resources for ASX Compliance. This involves the Chief Compliance Officer (previously called the ASX Compliance Chief Supervision Officer) providing an annual certification to the board of ASX Compliance that:
- the budget for the relevant financial year and indicative budget for the following two financial years provide adequate funding for ASX Compliance to perform its services;
 - the budget submitted by the ASX Compliance board as its annual budget was approved by the ASX board; and
 - all funds expended were either direct costs associated with performing ASX Group supervisory activities or a reasonable allocation to reflect the costs of providing services to support these activities.
- 225 ASX Group has agreed to provide future certifications of this nature on an annual basis. These future certifications are likely to take account of the changes in market supervision arrangements following 1 August 2010.
- 226 ASX Group's resourcing levels are also subject to review by internal assurance units and ASX Group's internal certification processes. This is discussed under 'Monitoring of licence obligations', at paragraph 232.

ASX Group activities in 2010

- 227 Some of the other ASX Group activities that occurred during the assessment period that are worthy of noting include changes to the ASX Compliance board, changes to reporting within ASX Compliance and changes to ASX Group's arrangements for monitoring compliance with its licence obligations. We will review the way these arrangements are working in practice during our next assessment.

ASX Compliance board changes

- 228 There were a number of board changes at ASX Compliance during the assessment period. Two of the previous five ASX Compliance directors retired during the period, and ASX Compliance recently appointed a fourth

director. These changes were made as part of the normal board renewal process but also to reflect the reduced role of the ASX Compliance function following the transfer of supervision on 1 August 2010.

ASX Compliance reporting

ASX Compliance board reporting

229 During the assessment period, ASX Compliance's Chief Compliance Officer made changes to the reporting structures within ASX Compliance. The previous reporting structure consisted of weekly, monthly and quarterly reports to the ASX Compliance board.

230 The reporting structures were moved to a regularised monthly reporting schedule, supplemented with a protocol that requires any material incidents to be reported to the ASX Compliance board immediately. Under that protocol, there are certain criteria that, if met, require an immediate email report. Our discussions with both the Chairman of the ASX Compliance board and the Chief Compliance Officer noted that they were both comfortable with how the new reporting structures were working in practice.

ASX Compliance reporting

231 A number of changes have also been made to business unit names and reporting structures within ASX Compliance following the transfer of supervision to ASIC on 1 August 2010. These include the following:

- the title of the Issuers group has changed to 'Listings'. This is intended to recognise and reinforce the important service role the group plays in the listing process, as well as in monitoring and enforcing compliance by issuers with their obligations under the listing rules;
- the Surveillance unit has been transferred into the Listings unit, effective from 1 December 2010. Moving Surveillance into Listings is intended to help cement the already close working relationship that exists between the two groups, and facilitate the performance of their shared responsibilities in monitoring and enforcing the continuous disclosure obligations of listed entities; and
- the Capital Monitoring unit has been transferred from the Participants group to Clearing Risk Management, effective from 1 December 2010. This accords with a suggestion in a previous ASIC assessment that the Capital Monitoring group ought to be part of the Risk team. (REP 168, August 2009, paragraph 79).

Monitoring of licence obligations

Background

232 ASX Group's oversight of licence activities is underpinned by a risk management and compliance framework, which ensures continuous monitoring of compliance with its licence obligations. This is supported by the following ASX Group business units:

- ASX Compliance;
- Regulatory Assurance (previously known as Licence Compliance);
- Internal Audit; and
- the Audit and Risk Committee.

233 There has been an evolution in how ASX Group monitors compliance with its statutory obligations, including its licence obligations. Before ASX's merger with SFE, SFE undertook its compliance and risk in a way that included a six-monthly self-certification process that, post merger, was absorbed by the ASX Group. This was run by the ASX Group's Enterprise Risk and Compliance unit up until January 2011.

234 Post merger, ASX's Licence Compliance unit, as it then was, also played a role in this process—in particular, with monitoring and certifying ASX Group's conflict handling arrangements.

235 Since then, ASX Group has tried to avoid duplication by aiming to have just one framework to manage its key obligations, including its licence obligations. From January 2011, the enterprise compliance components have moved across into Regulatory Assurance, which includes the transfer of a staff member from ASX Group's Enterprise Risk unit into its Regulatory Assurance unit.

236 ASX Group places the onus on each of the ASX Group General Managers and Group Executives to sign off and certify, on a six-monthly basis, that there has been compliance with all key obligations, policies and procedures, including ASX Group's licence obligations.

ASX Compliance

237 ASX Compliance is an external compliance group, focusing on compliance by ASX Group's customers—that is, listed entities and participants—with its listing rules and operating rules.

238 Before the transfer of supervision on 1 August 2010, the role of ASX Markets Supervision was to have a robust independent process around complying with one particular licence obligation, which was its supervisory obligation. This obligation has now changed into an obligation to monitor and enforce compliance with ASX Group's operating rules.

239 ASX Compliance still plays an unchanged key role with regard to listed entities, including continuous disclosure monitoring, and in respect of ASX Group's remaining operating rules.

240 The ASX Compliance board also has a separate role in terms of approving the conflict handling arrangements.

241 ASX Group has recently advised ASIC that, to provide clarity over its compliance responsibilities, ASX Compliance is developing a compliance map and framework to clearly articulate responsibilities in the organisation dealing with monitoring and enforcing compliance with ASX Group's operating rules, following the transfer of market supervision to ASIC.

Regulatory Assurance

242 Previously known as Licence Compliance, Regulatory Assurance is an internal compliance group, which concentrates on ensuring that ASX Group is complying with its policies and procedures, and meeting its obligations, including its licence obligations.

243 Regulatory Assurance operates to an annual work plan, which lists the area of review, the review activity, the time the review is to be completed, and the number of minor and substantial issues identified during these reviews.

244 Regulatory Assurance obtains six-monthly compliance self-certifications from each of the ASX Group General Managers and Group Executives, as well as conducting additional work in terms of evaluating the processes through spot checks. The six-monthly self-certification covers all licence obligations, and statutory, contractual, third-party and internal policy obligations.

245 The six-monthly self-certification from ASX Group General Managers and Group Executives is obtained to ensure that relevant risks have been identified, documented and analysed, controls have been implemented as appropriate, and that action plans have been developed and will be progressed for those risks that are assessed to be at the boundary of, or beyond, the ASX Group's risk appetite.

246 Enterprise Risk obtains a consolidated summary of ASX Group's risk profile across strategic, economic, legal and regulatory, and operational risk categories. The assessment is ratified by the Group Executives, the Enterprise Risk Management Committee and the Managing Director before its presentation to the Audit and Risk Committee on a six-monthly basis as part of ASX's Corporate Governance Principles and Recommendations, Principle 7, on risk certification.

247 Regulatory Assurance also partners with ASX's Internal Audit unit and, to that extent, may second an employee to assist internal audit in a particular review. It may also look at Internal Audit's work plan when planning its work to avoid duplication.

248 Regulatory Assurance is accountable to ASX's General Counsel, but also reports to the ASX Compliance board, in particular on conflicts matters. The General Manager of Regulatory Assurance is also able to directly approach the Managing Director's office, the Chief Compliance Officer's office and the Chair of the Audit and Risk Committee if there are any issues or concerns.

249 Regulatory Assurance prepares a quarterly report, which goes to the Enterprise Risk Committee and the Audit and Risk Committee. This provides the necessary visibility about whether ASX Group is meeting its statutory obligations, including its licence obligations.

Internal Audit

250 The scope of Internal Audit's work covers all companies, business units, processes and systems within the ASX Group. Internal Audit, like Regulatory Assurance, operates to an annual audit plan. Implementation of the plan provides ASX Group's management and the Audit and Risk Committee with a satisfactory level of comfort that the overall control environment is being adequately assessed and that key processes, systems, risks and controls are subject to an appropriate degree of independent assurance.

251 The scope may also exist to partner with Regulatory Assurance in performing some reviews to combine expertise where, for example, they may be focused on ASX Group's licence obligations.

Audit and Risk Committee

252 The Audit and Risk Committee is responsible for considering ASX Group management's reports regarding the effectiveness of ASX Group's risk management framework and processes.

253 The Audit and Risk Committee is assisted in this area by ASX Group's Internal Audit, Enterprise Risk and Regulatory Assurance units, whose function it is to provide objective assessments of the internal controls and compliance framework.

254 The Audit and Risk Committee considers reports from these units regarding the appropriateness and effectiveness of internal controls, and actions taken or proposed resulting from assessment recommendations and agreed actions.

D Market conditions

Key points

A discussion of the market conditions and various market events for the assessment period is contained below. Some key features of the market conditions included:

- Overall, the S&P/ASX 200 index (ASX 200) increased by 9% over the 2009–10 financial year. The ASX 200 continued to perform well throughout the 2010–11 financial year, rising by 7% to finish at 4,608 points. However, the first quarter of the 2011–12 financial year saw the ASX 200 fall 12.7%.
- Volatility levels, as depicted by the 30-day volatility indicator, tracked downwards over the first three quarters of the 2009–10 financial year, and in the second half of 2010, volatility again rose. Volatility continued to trend downwards over the course of the 2010–11 financial year to finish the financial year 7% lower at 15.9%. After remaining steady in the first month of the 2011–12 financial year, volatility levels rose dramatically in the second and third months on the back of a range of weaker than expected economic indicators.
- Average daily trading volumes were 1.1 billion in the 2009–10 financial year, falling to 952.7 million in the 2010–11 financial year. The value of average daily turnover on the ASX 200 was \$5.1 billion in the 2009–10 financial year, declining slightly to \$5.0 billion in the 2010–11 financial year.

Market performance

- 255 The S&P/ASX 200 index (ASX 200) is the most common benchmark index of the Australian equities market.
- 256 The collapse of Lehman Brothers in September 2008 saw a sharp flow-on effect through the Australian equity market, with the ASX 200 plunging 30% over the first three quarters of the 2008–09 financial year: see Figure 1. The last quarter of the 2008–09 financial year saw investor confidence return (both retail and institutional), which was reflected in the increase in the ASX 200. After reaching a low of 3,146 points on 6 March, the index rose by 26% over the following four months to finish the year at 4,833 points.
- 257 The upward momentum carried through the first three quarters of the 2009–10 financial year, with the ASX 200 reaching a high of 5,002 points in mid-April. The index subsequently retreated in the final quarter, as investors became increasingly concerned about the European debt crisis. Overall, the ASX 200 increased by 11% over the 2009–10 financial year, although from trough to year end, the market was up 38%.
- 258 After increasing by 11% during the 2009–10 financial year, the ASX 200 continued to perform well through 2010–11, rising by 8.7% to finish the year at 4,608 points. However, the first quarter of the 2011–12 financial year has

seen widespread declines across share markets around the world, as investors reacted to:

- a succession of weak global economic indicators (sparking fears of a renewed global recession);
- the drawn-out saga surrounding the raising of the US debt ceiling (and subsequent downgrade of the US sovereign credit rating by Standard & Poor's); and
- the deteriorating sovereign debt situation in Europe.

As a result, the ASX 200 has fallen by 12.7% over this period.

Figure 1: S&P/ASX 200: July 2008–September 2011



Source: Bloomberg

Volatility of the market

- 259 The evolution of risk in the ASX 200 is depicted by the 30-day volatility indicator: see Figure 2.
- 260 The evolution of the 30-day volatility over the first half of the 2008–09 financial year was highlighted by the 15.4 percentage point rise over the course of five days from 9 October 2008. At that time, investors grew concerned that the failure of Lehman Brothers meant that the US Government would no longer bail out institutions in financial difficulties. As a result, volatility peaked at 60.3% in mid-November 2008. This led to drastic measures, such as large-scale fiscal stimulus packages and bank deposit guarantees being introduced by governments around the world. Following the implementation of these measures, markets began to stabilise in the second half of the 2008–09 financial year, with 30-day volatility declining by 40 percentage points from its November peak to finish the financial year at 21.7%.
- 261 Volatility levels continued to track downwards over the first three quarters of the 2009–10 financial year, as investors became increasingly confident that

- strong growth in Asia would support the Australian economy. In the second half of 2010, volatility again rose, reflecting concerns over the European debt crisis.
- 262 Volatility continued to trend downwards over the course of the 2010–11 financial year, to finish the year 7 percentage points lower at 15.9%. After remaining steady throughout the first month of the 2011–12 financial year, volatility levels rose dramatically in August and September on the back of a range of weaker than expected economic indicators, as well as concerns about the downgrading of the US sovereign credit rating and the need for a further bailout package to prevent a sovereign default in Greece.
- 263 In addition to more recent volatility levels, the US market experienced the ‘flash crash’ on 6 May 2010 where, by 2.42 pm on that day, the Dow Jones Industrial Average (DJIA) had declined 245 points, or –3.90%, from the opening. It then dropped a further 573 points, or –5.49%, in the next five minutes, for a total intraday drop of 9.16%. By 3.00 pm the daily decline was back to 463 points, or –4.26%. It closed the day down 347 points, or –3.20%.
- 264 The ASX cash market was closed during the disruption in the United States, so there was no immediate impact. When the ASX cash market opened, it took a strong signal from the end-of-day close in US markets, as usual, rather than from the intraday trading. The ASX 24’s S&P/ASX 200 Futures contract was available for trade and reacted similarly to the US equity markets, falling 10.06% before swiftly recovering to 3.5% down from the session open. No trades were cancelled.
- 265 Partly to address the risk of an event like the flash crash occurring in Australia, ASIC has created rules that took effect on 31 October 2011, requiring market operators to have order entry controls and extreme cancellation arrangements. On 20 October 2011, ASIC also commenced consultation on a range of further initiatives, including requiring market operators to put in place automated volatility controls.

Figure 2: S&P/ASX 200 30-day volatility: July 2008–September 2011

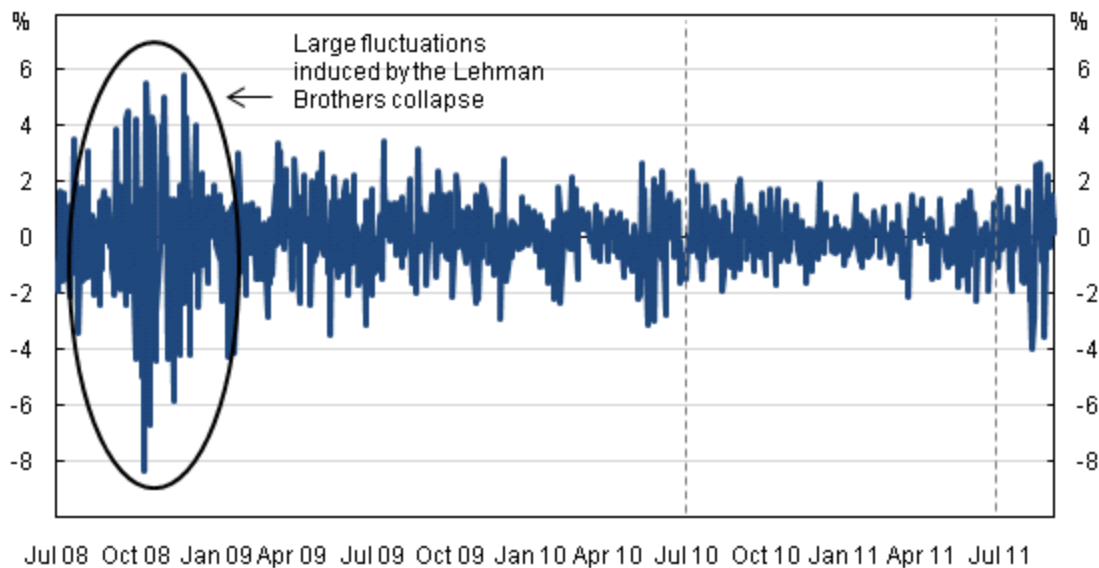


Source: Bloomberg

Daily growth rates

- 266 The daily movement of the ASX 200 over the 2008–09 and 2009–10 financial years are shown in Figure 3. During the first half of the 2008–09 financial year, daily changes in the level of the index were very high. Volatility peaked after the Lehman Brothers collapse in mid-September, with daily changes in the index fluctuating between +/- 5%, before stabilising in the second half of the year.
- 267 Daily growth rates were more stable for most of the 2009–10 financial year (although still volatile from a historical perspective), with changes in the index generally fluctuating between +/- 2%. Daily price changes became more volatile in the final quarter of the 2009–10 financial year, as investors reacted to the latest developments surrounding the sovereign debt crisis in Greece.
- 268 Daily changes were relatively stable throughout the 2010–11 financial year, generally fluctuating between +/- 2%. Daily price changes have fluctuated within a wider band during the first quarter of the 2011–12 financial year, as markets have become more volatile in recent months.

Figure 3: Daily changes in the closing price of the S&P/ASX200: July 2008–September 2011



Source: Bloomberg

Trading volumes

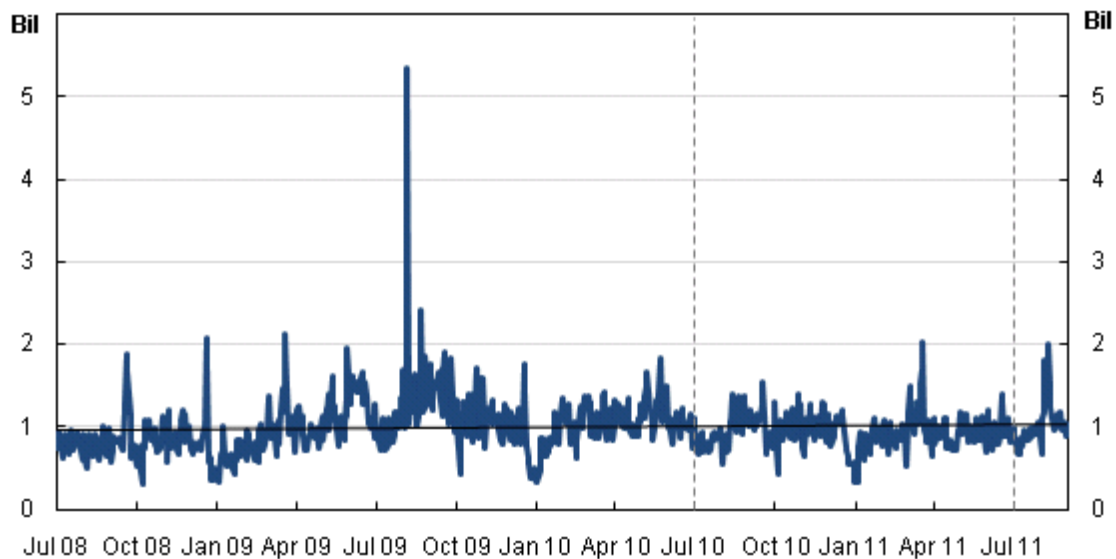
- 269 Trading volumes rose marginally through the two years to mid-2010: see Figure 4. This largely reflected improved confidence and increased activity in the second half of 2009, but the overall growth (as suggested by a statistical trend) broadly offset the strong seasonal characteristics of trading volumes, as follows:

- increased trading volumes in March, June, September and December due to the expiry of derivatives contracts priced off the S&P/ASX 200 index (i.e. SPI futures and exchange-traded options)—however, this seasonal pattern does not appear to have been as prevalent in the 2009–10 financial year as it was in 2008–09;
- volumes in June are also high due to the realignment of portfolio holdings in time for the end of the tax year; and
- decreased volumes in December–January as a result of the holiday period.

270 The spike on 5 August 2009, where trading volumes increased nearly fivefold in one day, reflects a single company-specific event.¹³

271 Average daily trading volumes were lower in the 2010–11 financial year, falling to 952.7 million from 1.1 billion in the 2009–10 financial year. During the first quarter of the 2011–12 financial year, average daily trading volumes have again risen to 1.03 billion.

Figure 4: Trading volumes of the S&P/ASX 200: July 2008–September 2011



Source: Bloomberg

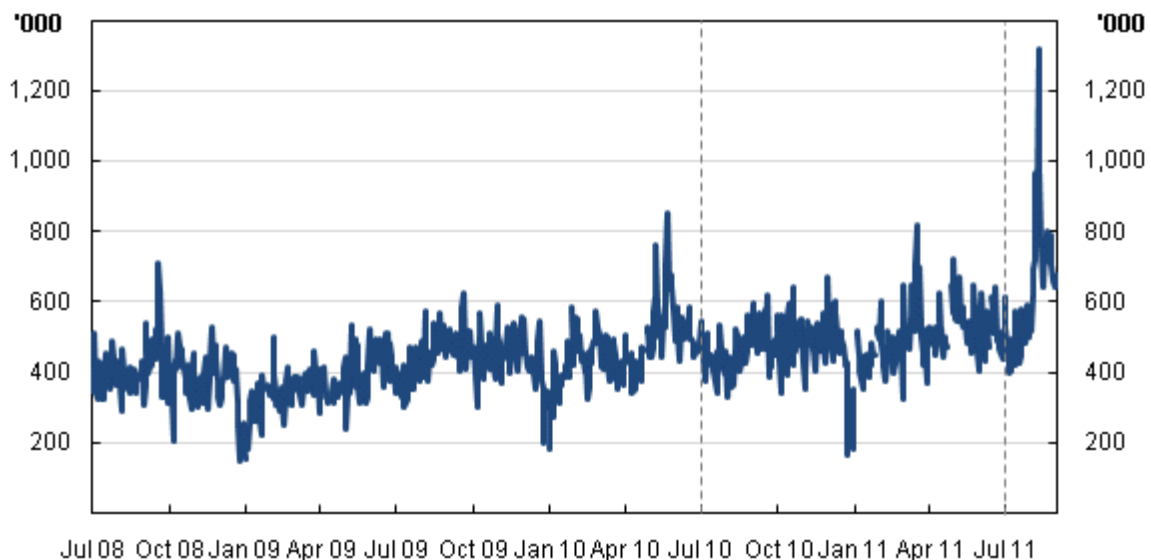
272 The daily number of executed trades in ASX 200 companies grew substantially in the two years to mid-2010: see Figure 5. The average daily number of executed trades increased to 459,768 in the 2009–10 financial year, with two significant spikes in volume in May 2010. The first instance

¹³ This was due to GPT Group's restructure of its overseas joint venture with Babcock & Brown, which forced a significant number of fund managers, who are mandated against holding unlisted overseas units, to enter into agreements with brokers prior to the ex-bonus date.

coincided with the ‘flash crash’ on 6 May in the United States, and the second spike followed in the wake of large-scale civil unrest in Greece.¹⁴

- 273 The daily number of executed trades in ASX 200 companies continued to grow in the 2010–11 financial year, increasing to 491,241. During the first quarter of the 2011–12 financial year, the average has again risen to 651,962.
- 274 There was a large spike in the number of executed trades on 9 August 2011, as markets around the world reacted to the news of the downgrade of the US sovereign credit rating by Standard & Poor’s. It is interesting to note that the number of trades executed on 9 August 2011 was almost twice as high as the number of daily trades executed at the peak of the crisis surrounding the collapse of Lehman Brothers in September 2008, and nearly three times as high as the average daily number of executed trades in the 2010–11 financial year.

Figure 5: Daily number of trades across the S&P/ASX 200: July 2008–September 2011



Source: Bloomberg

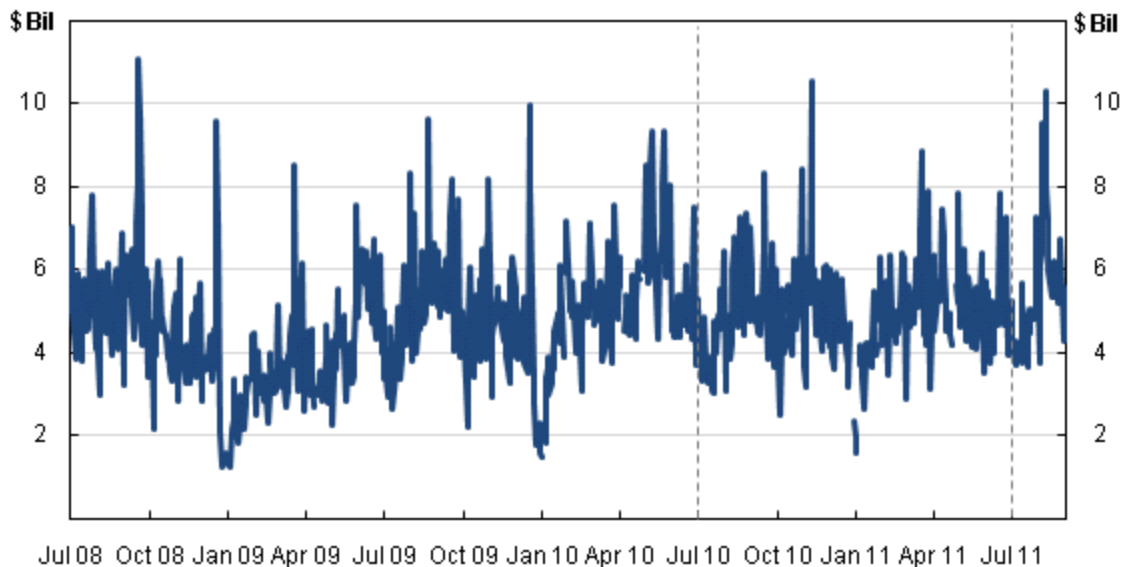
Trading values

- 275 Figure 6 shows the value of daily turnover on the ASX 200. During the first half of the 2008–09 financial year, the value of daily turnover trended downward as prices fell: see Figure 1. The value traded increased throughout the second half of the year and carried through to the 2009–10 financial year, in line with the significant improvement in equity values over this period. This was also aided by an improvement in the volume of securities traded in the 2009–10 financial year, as highlighted in Figure 4.

¹⁴ The average number of trades for 2008–09 and 2009–10 were statistically different at 95% confidence interval.

- 276 Overall, the increase in the frequency of trades and the volume traded suggest that liquidity improved in stocks that constitute the ASX 200 between 2008–09 and 2009–10. The improvement in liquidity in the domestic market may also have been driven by the growing presence of algorithmic and high-frequency trading. This growth is consistent with a decline in average trade size from over \$23,000 to under \$11,000, between 2007 and 2010, and an almost doubling in the number of trades to 116 million per year over this period. The average trade size was approximately \$10,247 for the 2010–11 financial year and has fallen even further to \$8,388 during the first quarter of the 2011–12 financial year. Market participants estimate that algorithmic trading contributed to 30–40% of volume traded in 2008, with high-frequency trading contributing around 10% of this figure (3–4% of total volume traded).
- 277 The value of average daily turnover on the ASX 200 declined slightly to \$5.0 billion in the 2010–11 financial year, down from \$5.1 billion in the 2009–10 financial year. The first quarter of the 2011–12 financial year has seen the value of average daily turnover increase to \$5.4 billion.

Figure 6: Value of daily turnover across the S&P/ASX 200: July 2008–September 2011



Source: Bloomberg

E Agreed actions from previous assessment

Key points

In November 2010, we published our most recent assessment report of the ASX Group, which included eight agreed actions. ASX Group has taken steps to comply with these—however, a number of them remain in progress.

278 Table 3 below lists ASX Group's progress against each agreed action arising from our previous assessment. Some matters remain to be addressed.

Table 3: Agreed actions from previous assessment of ASX Group

Agreed actions	Status
<p>Agreed Action 1: Issuer listing and quotation</p> <p>ASX Group agreed to work closely with ASIC by providing the necessary evidence and analysis to support any changes proposed to the admission criteria for listing.</p>	<p>To the extent that ASX Group has made changes, ASX Group has proposed introducing a 'good fame and character' requirement for directors of new listings. This is modelled on the ASIC process for granting Australian financial services (AFS) licences. This change has been effected by way of operating rule changes which have received Ministerial non-disallowance. The new rules will come into effect on 1 January 2012. ASX Group is also planning to publish updated versions of Listing Rule Guidance Notes 1, 4 and 12 reflecting the new requirements before that date.</p>
<p>Agreed Action 2: Disclosure</p> <p>ASX Group agreed to establish an ASX–ASIC working group for the purposes of advancing joint initiatives on better disclosure for investors, with a particular focus on reviewing ASX Guidance Note 8 to ensure it remains current in light of recent market conditions and disclosure practices.</p>	<p>The first meeting of the working group was held in April 2011 and ASIC detailed a number of changes proposed for the guidance note.</p> <p>ASIC understands that ASX Group is currently working on an updated version of Guidance Note 8 and expects to release a consultation draft of that document during the first quarter of calendar 2012, with a final guidance note by the end of the financial year. ASIC encourages ASX Group to advance this as a matter of priority.</p>
<p>Agreed Action 3: Information for investors</p> <p>ASX Group agreed to work with ASIC on the appropriateness and adequacy of the information it proposes to publish on its website, including providing to ASIC for comment draft text on educational material on contracts for difference (CFDs), AQUA products, partly paid shares, and any other complex or novel products available to retail investors before that information is published.</p>	<p>ASX Group has provided the documents to ASIC as agreed.</p>

Agreed actions	Status
<p>Agreed Action 4: Product development protocol</p> <p>ASX Group agreed to work with ASIC to finalise a protocol in respect of any ASX Group initiatives that are relevant to ASIC's supervision of the markets operated by ASX and Australian Securities Exchange.</p>	<p>An ASX Group internal working group (IT, PMO, Legal, and Compliance) was set up in January 2010 and met to formulate ASX Group's position on the protocol.</p> <p>ASX Group has been in discussions with ASIC about the content of the protocol, which will be approved by ASX Group governance bodies and will subsequently be tabled at the ASIC/ASX Compliance Liaison Committee.</p> <p>ASX Group has indicated that the protocol will be finalised during the 2012 financial year. Notwithstanding this timeframe proposed by ASX Group, ASIC strongly encourages ASX Group to advance this as a matter of priority.</p>
<p>Agreed Action 5: Capital Monitoring Program</p> <p>ASX Group agreed to continue to advance the initiatives it has undertaken until the time at which the responsibility is transferred to ASIC, and to consult with ASIC on an ongoing basis to facilitate the transfer.</p>	<p>This was addressed as a standing item of business at the ASIC/ASX Compliance Liaison Committee. The transfer took place on 1 August 2011.</p>
<p>Agreed Action 6: JORC and Valmin Codes</p> <p>ASX Group agreed to continue to work with ASIC to ensure the market is adequately informed in respect of exploration activities, and resource and reserves estimates by listed resource companies and any associated production forecasts. In addition to joint considerations on the ongoing application of the JORC Code, ASX Group agreed that these discussions should widen to give due consideration to the requirements of the Valmin Code where it interacts with the JORC Code.</p>	<p>ASX released a consultation paper on the listing rules reporting requirements applicable to exploration activities, mineral resources and ore reserves on 5 October 2011. Although this was to be done jointly with JORC, JORC has now released its own consultation paper.</p>
<p>Agreed Action 7: Trading halts and suspensions</p> <p>ASX Group agreed to continue to work with ASIC to:</p> <ul style="list-style-type: none"> • determine the most appropriate approach for the Australian marketplace; and • assist and facilitate its implementation. 	<p>ASX Group released an updated version of Guidance Note 16—Trading halts and voluntary suspensions, in March 2011. In the context of how trading halts and voluntary suspensions should work in a multimarket environment, ASX Group provided detailed comments to ASIC in response to Consultation Paper 145 <i>Australian equity market structure: Proposals</i> (CP 145). Following on from that consultation, ASIC created market integrity rules that facilitate the operation of trading halts in a multimarket environment.</p>

Agreed actions	Status
<p>Agreed Action 8: Algorithmic trading</p> <p>ASX Group agreed to continue its review and consideration of matters related to algorithmic trading, including the procedures governing removal of market access for brokers, with a view to identifying ways to streamline the decision-making process, including processes for preventing electronic access to the market in the event of a malfunctioning algorithm.</p>	<p>ASX Group provided detailed comments to ASIC in response to CP 145. Following on from this consultation, ASIC has implemented market integrity rules that took effect on 31 October 2011, requiring market operators to have order entry controls and extreme cancellation arrangements. ASX Group has made operating rule changes to comply with these new market integrity rule obligations.</p> <p>On 20 October 2011, ASIC issued Consultation Paper 168 <i>Australian equity market structure: Further proposals</i> (CP 168), which proposes a number of additional initiatives to deal with concerns around algorithmic trading including the pre-testing of algorithms, minimum requirements for electronic client access to the market, and market operator volatility controls to mitigate extreme price movements.</p>

Key terms

Term	Meaning in this document
AQUA	The ASX rules framework for the quotation of products, including managed funds and structured products
ASIC	Australian Securities and Investments Commission
ASIC Market Integrity Rules (ASX)	ASIC Market Integrity Rules (ASX Market) 2010—rules made by ASIC under s798G of the Corporations Act for trading on ASX
ASIC Market Integrity Rules (ASX 24)	ASIC Market Integrity Rules (ASX 24 Market) 2010—rules made by ASIC under s798G of the Corporations Act for trading on ASX 24
ASX	ASX Limited or the exchange market operated by ASX Limited
ASX 24	The exchange market operated by Australian Securities Exchange
ASX Clear	ASX Clear Pty Limited (formerly known as Australian Clearing House Pty Limited)
ASX Clear (Futures)	ASX Clear (Futures) Pty Limited (formerly known as SFE Clearing Corporation Pty Limited)
ASX Compliance	ASX Compliance Pty Limited (formerly known as ASX Markets Supervision Pty Limited)
ASX Group	ASX, Australian Securities Exchange, ASX Clear, ASX Clear (Futures), ASX Settlement and Austraclear
ASX Settlement	ASX Settlement Pty Limited (formerly known as ASX Settlement and Transfer Corporation Pty Limited)
Austraclear	Austraclear Limited
Australian market licence	Australian market licence under s795B of the Corporations Act that authorises a person to operate a financial market
Australian Securities Exchange	Australian Securities Exchange Limited (formerly known as Sydney Futures Exchange Limited) and the operator of the ASX 24 market
CEO	ASX Managing Director and ASX Chief Executive Officer
Ch 7 (for example)	A chapter in the Corporations Act (in this example numbered 7)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act

Term	Meaning in this document
Corporations Regulations	Corporations Regulations 2001
FTE	full-time equivalent
JORC Code	The Australasian Code for Reporting of Explorations Results, Mineral Resources and Ore Reserves
market licensee	Holder of an Australian market licence
s794C (for example)	A section of the Corporations Act (in this example, numbered 794C), unless otherwise specified
Valmin Code	The Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports
Valmin Committee	A joint committee of the Australasian Institute of Mining and Metallurgy, the Australian Institute of Geoscientists and the Mineral Industry Consulting Association and others