



ASIC

Australian Securities & Investments Commission

REPORT 222

Market assessment report: ASX group

ASX Limited, ACN 008 624 691

ASX Clear Pty Limited (formerly known as Australian Clearing House Pty Limited), ACN 001 314 503

ASX Settlement Pty Limited (formerly known as ASX Settlement and Transfer Corporation Pty Limited), ACN 008 504 532

Australian Securities Exchange Limited (formerly known as Sydney Futures Exchange Limited), ACN 000 943 377

ASX Clear (Futures) Pty Limited (formerly known as SFE Clearing Corporation Pty Limited), ACN 050 615 864

Austraclear Limited, ACN 002 060 773

November 2010

About this report

This report summarises ASIC's:

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

This report relates to the period 1 January 2009 to 31 December 2009.

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.

Summary of recent assessment reports for ASX group licensees

Entity	Report number	Date released
ASX	REP 168	September 2009
	REP 135	August 2008
	REP 94	May 2007
ASX Clear	REP 168	September 2009
	REP 135	August 2008
	REP 94	May 2007
ASX Settlement	REP 168	September 2009
	REP 135	August 2008
	REP 94	May 2007
Australian Securities Exchange	REP 168	September 2009
	REP 135	August 2008
	REP 99	November 2007
ASX Clear (Futures)	REP 168	September 2009
	REP 135	August 2008
	REP 99	November 2007
Austraclear	REP 168	September 2009
	REP 135	August 2008
	REP 99	November 2007

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A About this report

Scope of these assessments

Period of review

- 1 This is the report of our assessment of ASX group's compliance with its supervisory obligations during the period from 1 January 2009 to 31 December 2009 (assessment period).
- 2 Where relevant, it takes into account ASX group's activities relevant to the 'flash crash' in the United States on 6 May 2010 and the transfer of supervision to ASIC which occurred on 1 August 2010. This report does not deal with more recent matters such as the proposed transaction between ASX and the Singapore Stock Exchange or ASIC's consultation on the structure of Australia's equity markets: see Consultation Paper 145 *Australian equity market structure: Proposals* (CP 145).

Statutory obligations

- 3 Under the *Corporations Act 2001* (Corporations Act), ASIC is required to annually assess the extent to which ASX group licensees have complied with their obligations under s792A(c) and s821A(c) of the Corporations Act. These obligations for the markets operated by ASX and Australian Securities Exchange (being the market previously known as the SFE market and now known as the ASX 24 market) have changed following the transfer of supervision to ASIC. Those market operators are now required to have adequate arrangements to operate their markets, including the requirement to 'monitor and enforce compliance with their operating rules'. However, for the assessment period, these obligations were to have adequate supervisory arrangements, including arrangements (which are ongoing) to manage conflicts of interest.
- 4 Under the Corporations Act, ASIC may also assess ASX group for compliance with other obligations. In light of the volatile market conditions in 2008, our last assessment reviewed the extent to which ASX group had complied with a broader set of obligations—including the obligation, to the extent it is reasonably practicable to do so, to do all things necessary to ensure the markets operated by ASX group licensees are fair, orderly and transparent.
- 5 The last assessment report also took account of certain events in the first half of 2009. Given the more measured market conditions since that time, this

review does not focus on other obligations aside from ASX group's compliance with its supervisory obligations and the obligations (which were also in place during the assessment period) to ensure that its supervisory arrangements were adequately resourced: see s792A(d) and 821A(d) of the Corporations Act.

Name changes

- 6 To coincide with the transfer of supervision on 1 August 2010, ASX group changed the names of a number of entities within its corporate structure. This report refers to the entities by their new names. The name changes are detailed in Table 1.

Table 1: ASX group entity name changes

Old names	New Names (from 1 August 2010)	Reference in report	Status
ASX Limited	No change	ASX	Market licensee
Sydney Futures Exchange Limited	Australian Securities Exchange Limited	Australian Securities Exchange which operates the market known as ASX 24	Market licensee
Australian Clearing House Pty Limited	ASX Clear Pty Limited	ASX Clear	CS facility
SFE Clearing Corporation Pty Limited	ASX Clear (Futures) Pty Limited	ASX Clear (Futures)	CS facility
ASX Settlement and Transfer Corporation Pty Limited	ASX Settlement Pty Limited	ASX Settlement	CS facility
Austraclear	No change	Austraclear	CS facility
ASX Markets Supervision Pty Limited	ASX Compliance Pty Limited	ASX Compliance	Supervisory /compliance function

Structure of the report

- 7 This report is divided into the following sections:
- Section B contains the executive summary;
 - Section C contains our observations and the ASX group's agreed actions;
 - Section D discusses market conditions and the ASX group's activities during 2009; and
 - Section E outlines the ways in which ASX group has complied with the agreed actions and recommendations from the last assessment.

B Executive summary

Key findings and agreed actions

Compliance with statutory obligations

- 8 ASIC is satisfied that, in terms of the standards set out in the Corporations Act, during the period from 1 January 2009 to 31 December 2009 (assessment period):
- the operators of the ASX market and ASX 24 market (previously known as the SFE market) had adequate arrangements to supervise their respective markets under s792A(c) of the Corporations Act and the provision of supervisory services was adequately resourced under s792A(d); and
 - ASX Clear, ASX Settlement, ASX Clear (Futures) and Austraclear had adequate arrangements to supervise their respective clearing and settlement facilities under s821A(c) of the Corporations Act and the provision of supervisory services was adequately resourced under s821A(d).

Methodology

- 9 In conducting our assessment, we undertook:
- discussions with senior ASX group personnel;
 - a review of internal ASX group documentation obtained under notices issued pursuant to s30 of the *Australian Securities and Investments Commission Act 2001*; and
 - a review of:
 - various detailed reports prepared by ASX group covering topic areas that ASIC had foreshadowed for this assessment;
 - the annual regulatory report given to ASIC, covering all ASX group licensees, dated 30 September 2009 (as required under s792F and 821E of the Corporations Act);
 - information received from and about ASX group licensees in the ordinary course of ASIC's dealings;
 - information from external sources, including media and industry commentary; and
 - the operation of the market throughout the assessment period.

Areas of review

- 10 In assessing ASX group's compliance with its supervisory obligations as they existed during the assessment period, ASIC also reviewed the subject areas it nominated in its last report for this assessment. These were:
- ASX group's approach to considering the appropriateness of issuer listing or product quotation;
 - ASX group's practices in relation to its product development;
 - ASX group's approach to pre-emptively address potential 'at risk' areas of the market;
 - the need to impose additional requirements on ASX issuers in respect of the frequency and effectiveness of asset-related disclosures and valuations in the resourcing and mining sector;
 - the development and supervisory experience of ASX group's contracts for difference (CFDs) and AQUA markets;
 - the effectiveness of ASX group's changed practices for supervision of market participants;
 - ASX group's approach to secondary capital raisings;
 - ASX group's approach to the review of financial reports by listed entities;
 - the adequacy of resourcing of ASX group's Enforcement and Tribunal functions; and
 - ASX group's compliance with the agreed actions and our recommendations from the last assessment report.

Key findings

- 11 ASIC's view is that ASX group licensees complied with their supervisory obligations as they existed at the time of the assessment period, and that during that period, ASX group continuously monitored and improved the performance of its supervisory activities. However, there are eight areas for attention that ASX group has agreed to address. A number of these relate to work that ASX group has already initiated.
- 12 These agreed actions, while important, do not cause us to qualify our conclusion that ASX group licensees met their supervisory obligations during the assessment period. In reaching this view, ASIC had regard to:
- ASX group's supervisory performance in 2009 when compared with previous assessment periods;
 - our general understanding of supervisory approaches taken in a range of major overseas markets;

- the arrangements in existence during the assessment period for the ASX group and ASX Compliance board's ongoing review of market events and conditions;
- the demonstrated efficiency and soundness of ASX group's clearing and settlement facilities during 2009; and
- ASX group's implementation of previous assessment findings and recommendations, including ASX group's implementation of agreed actions and recommendations from last year's assessment.

13 Set out below is a summary of the eight actions agreed between ASIC and the ASX group.

Agreed Action 1: Issuer listing and quotation

14 In ASIC's last assessment, and in light of the volatile market conditions of 2008, ASX group was encouraged to review at-risk aspects of the market. This was to ensure that, in the context of its obligations to operate markets that are fair, orderly and transparent, ASX group is well placed to pre-emptively address market, operational and supervisory concerns that may arise. In part, this review involved an analysis of the ASX listing rule framework, with particular focus on admission criteria for entities seeking to list. The review indicated some relationship between entities that encountered problems in the years shortly after listing and those that were admitted on the basis of certain admission criteria.

15 Following this, ASX considered it appropriate to re-examine some of the existing criteria for admission. The admission criteria are designed to ensure that:

- the securities that are able to be traded on ASX's market (including by retail investors) are those of entities that have suitable structures and operations; and
- the listing of those entities will contribute to the development of the Australian economy and capital market and provide a range of assets for investors to consider as part of a well balanced investment portfolio.

16 Any initiatives proposed by ASX group may well require operating rule changes, on which ASIC will advise the Minister. Before advising the Minister, we will need to be satisfied in respect of the changes proposed, including that they are likely to have the intended market impact. Conclusions of this type typically require detailed consideration and the ASX group has agreed to work closely with ASIC by providing the necessary evidence and analysis to support any proposed changes.

Agreed Action 2: Disclosure

- 17 In the last assessment, and as part of its review of at-risk aspects of the market, ASX group was also encouraged to review disclosure issues related to complex corporate structures, as well as gearing ratios of particular sectors and the aptness of particular disclosure models for certain types of issuers. An appropriate market disclosure framework better enables investors to make informed investment decisions by ensuring all material information is available to them.
- 18 The ASX group has initiated a review of its guidance on continuous disclosure (Guidance Note 8) to ensure it remains current in light of recent market conditions and disclosure practices.
- 19 Continuous disclosure obligations under the ASX listing rules have the statutory backing of the Corporations Act and any relevant ASX guidance is fundamentally important to the way we administer potential breaches of the corresponding statutory provisions. We therefore have a critical interest in the outcome of any considerations and review of continuous disclosure by ASX. ASX has 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 Guidance Note 8 to ensure it remains current in light of recent market conditions and disclosure practices.

Agreed Action 3: Information for retail investors

- 20 In the last assessment report, we encouraged ASX group to review the way its website provides important market-related information to retail investors, with a view to maximising its usefulness, completeness and currency, including the coding it applies to different categories of financial products. Better information will particularly aid retail investors in their investment decisions.
- 21 In September 2009, ASX group undertook a broad review of its website to ensure that it contains current and appropriate information for users. The outcomes of this review are due to be implemented later in 2010.
- 22 The ASX group has agreed to work with ASIC on the appropriateness and adequacy of the information it proposes to publish on its website, including ASX group providing to ASIC, for comment, draft text on educational material on CFDs, AQUA products, partly paid shares and any other complex or novel products available to retail investors, prior to that information being published.

Agreed Action 4: Product development

- 23 Following the last assessment, ASX group instituted the ‘sign-off from supervision’. During the assessment period, this process required senior officers from ASX Compliance to attest (at each stage of a project) that appropriate supervisory consideration had been given to the development of (for example) a particular product for quotation. This process has contributed to an increased awareness at the ASX Compliance board level of risks and supervisory considerations attaching to product and market structure initiatives.
- 24 Following the transfer of supervision to ASIC on 1 August 2010, ASIC is now responsible for supervising trading activities on ASX group markets. ASX group has 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 ASX and ASX 24 markets. This protocol is intended to ensure that we are best positioned to take early account of appropriate supervisory considerations—particularly for the development, and subsequent supervision and orderliness, of trading in novel and complex products accessible to the retail sector.

Agreed Action 5: Capital monitoring

- 25 In the last assessment, we had concerns about the resourcing levels within the ASX Capital Monitoring function. This was of particular interest given the uncertain financial circumstances at that time. During 2008, ASX increased the resourcing of this function and also initiated or proposed a number of changed practices that were necessary to obtain a more robust assessment of the capital position of participants (such as the introduction of spot checks of participants).
- 26 ASX group has progressed most of these initiatives. From August 2011, the capital requirements under the ASX and ASX 24 operating rules will no longer apply to market-only participants.¹ After August 2011, ASX group will continue its current responsibility for the capital monitoring of market participants that are also participants in the clearing house.² Notwithstanding that ASIC will take responsibility for the capital monitoring of market-only participants in August 2011, ASX group has agreed to continue to advance the initiatives it has undertaken until the time at which the responsibility is transferred and to consult with us on an ongoing basis to support the transfer.

¹ At the time of publication, there were 29 ASX participants and 10 ASX 24 (formerly SFE) participants with this business model.

² At the time of publication, there were 20 ASX participants and 14 ASX 24 (formerly SFE) participants with this business model.

Agreed Action 6: Disclosure and JORC Code

- 27 In ASIC's last assessment, and as part of ASX group's review of potential at-risk aspects of the market, ASIC encouraged ASX group to review current requirements in relation to asset-related disclosures for the mining and resources sector (particularly with respect to the minimum reporting guidelines set out in the JORC Code).
- 28 ASX and ASIC's discussions with and guidance from stakeholders and resource industry professional bodies are ongoing. Matters of this nature are often technically complex and necessitate detailed consideration. ASX group has agreed to continue to work with us to ensure the market is adequately informed in respect of the valuation and disclosure of exploration activities and resource and reserve estimates by listed resource companies and any associated production forecast.
- 29 Recent discussions between ASIC and the ASX group as to disclosure requirements have been largely confined to the JORC Code, but with the reactivation of the Valmin Committee, ASX agrees that these discussions should widen to also give due consideration to the requirements of the Valmin Code where it interacts with the JORC Code.

Agreed Action 7: Trading halts and suspensions

- 30 In the last assessment we recommended that ASX group undertake further consideration of the way in which it approaches decisions to administer trading halts and suspensions to ensure these decisions continue to promote compliance by ASX with its licence obligations.
- 31 ASX group undertook this review and concluded that:
- its current processes for trading halts and suspensions, and its administration of these processes, were appropriate; and
 - it was not convinced that the introduction of individual security volatility based trading halts would improve market quality or reduce volatility.
- 32 ASX group did also conclude that if competition in trading services is introduced for ASX-listed securities or if so-called 'momentum' algorithmic trading was to result in trade error on the ASX cash-market, ASX would consult on the viability of introducing stock-specific circuit breakers.
- 33 The 'flash crash' of 6 May 2010 in the United States has brought this issue in to sharp focus. In response, we initiated a detailed review of considerations around trade cancellation policies and trading halts more generally, including consideration of both pre-trade (price and volume) and post-trade (order matching and halt) controls. ASX has also initiated a review of its operating rules on trade cancellations and released a

consultation paper in early October 2010. ASX group has agreed to continue to work with us to:

- determine the most appropriate approach for the Australian marketplace; and
- assist and facilitate its implementation.

Agreed Action 8: Joint work on algorithmic trading

34 During the assessment period, there was ongoing evidence of the sustained growth in algorithmic trading on the ASX group markets. In July 2009, ASX group initiated a review of any related consequences for the orderly operation of its market, and as part of our last assessment we recommended that ASX group provide a report on that review to ASIC.

35 The report identified areas for ongoing consideration by both ASX group and ASIC, such as suitable models for electronic access to the market, processes for terminating the operation of certain algorithms, and the education of retail investors, listed entities and other stakeholders. We are reviewing a number of these matters as part of our ongoing efforts to ensure overall market integrity.

36 ASX group has agreed that it will continue its consideration of related matters, including its review of procedures governing removal of market access for brokers, with a view to identifying ways to streamline decision-making processes, including processes for preventing electronic access to the market in the event of a malfunctioning algorithm.

Compliance with agreed actions and recommendations from last year's assessment

37 In September 2009, we published our most recent assessment report of the ASX group, which included nine agreed actions and four recommendations. ASX group has complied with these agreed actions and recommendations. More detail on these matters is set out Section E.

38 A number of these relate to areas that, following 1 August 2010, are now ASIC's responsibility, such as the real-time surveillance of the ASX and ASX 24 markets and participant supervision. In this context, the reports that ASX group has prepared for the purposes of complying with these agreed actions and recommendations (and the improvements it has made) were valuable in assisting the transfer of supervision to ASIC.

Transfer of supervision

39 In addition to conferring on ASIC the responsibility for supervising trading activities on the ASX and ASX 24 markets, as of 1 August 2010, the

Corporations Amendment (Financial Market Supervision) Act 2010 also changed the supervisory obligations that previously applied to the operators of the ASX and ASX 24 markets. As a result, these obligations are now different from those that existed during the assessment period. The obligations on ASX group for its clearing and settlement functions are unchanged.

Market conditions for 2009

- 40 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 2009 were:
- There was a rise of 31% in the ASX/S&P 200 index compared with a fall of 41% in 2008 (in local currency terms) (source: Bloomberg).
 - While the market reached its lowest point in two years in March 2009, it rose 54.5% from that point to the end of 2009 (source: Bloomberg).
 - In 2009, volatility retreated substantially. From its high of over 60% in late 2008, 30-day volatility trended downward from over 30% to less than 20% by year end (source: Bloomberg).
 - Bid–ask spreads improved considerably through 2009. Following the failure of Lehman Brothers, spreads for stocks in the S&P/ASX 200 averaged between 2.5% and 3.5%. The last half of 2009 saw the average spread fall to 1% of the share price (source: Bloomberg).
 - Household wealth increased by 12.6% over 2009 and the value of superannuation increased by 22% in the same period. Between 30 September 2007 and 31 December 2008, household wealth fell 42.6% and the value of superannuation fell 22% (source: Australian Bureau of Statistics).
- 41 Section D also includes a discussion of ASX group’s activities in 2009 and its responses to the market conditions and events.

C ASIC's observations and agreed actions

Issuer listing and quotation

- 42 In the last assessment and in light of the volatile market conditions of 2008, ASX group was encouraged to review at-risk aspects of the market. This was to ensure that, in the context of its obligations to do all things necessary to operate markets that are fair, orderly and transparent, ASX group is well placed to pre-emptively address market, operational and supervisory concerns that may arise.
- 43 In part, this review involved an analysis of the ASX listing rule framework, with particular focus on admission criteria for entities seeking to list. These criteria have not substantively changed since 1999.
- 44 Appropriate admission criteria better ensure that:
- the securities that are able to be traded on ASX's market (including by retail investors) are those of entities that have suitable operations and structures; and
 - the listing of those entities will contribute to the development of the Australian economy and capital market and provide a range of assets for investors to consider as part of a well-balanced investment portfolio.
- 45 To support its review, ASX Compliance considered data for all equity listings from 1 January 2006 to 31 December 2009, of which there were 209 listings in calendar year 2006, 273 in 2007, 75 listings in 2008 and 61 in calendar year 2009. The review indicated a number of reasons for corporate failure of the entities in question, the most common of which were the impact of the global financial crisis and/or significant debt exposure. The review also found that, in several instances, the nature of the entity's business structure appeared to have a knock-on effect when a key entity failed.
- 46 In addition, some relationship between entities that encountered problems in the years shortly after listing and those that were admitted on the basis of certain admission criteria was also apparent. Following this, ASX considers it appropriate to re-examine some of the existing criteria for admission.

- 47 Any initiatives proposed by ASX group may well require operating rule changes, on which ASIC will advise the Minister. In order to do so, we will need to be satisfied in respect of the proposed changes, including that they are likely to have the intended market impact. Conclusions as to the appropriateness of listing criteria are likely to require detailed consideration and ASX group has agreed to work closely with us by providing the necessary evidence and analysis to support any changes proposed.

Agreed Action 1: Issuer listing and quotation

ASX group has agreed to work closely with us by providing the necessary evidence and analysis to support any changes proposed to the admission criteria for listing.

Disclosure

- 48 In our last assessment, and as part of its review of at-risk aspects of the market, ASX group was also encouraged to review disclosure issues related to complex corporate structures, as well as gearing ratios of particular sectors and the aptness of particular disclosure models for certain types of issuers. An appropriate market disclosure framework enables investors to make informed investment decisions by ensuring all material information is available to them.
- 49 ASX has initiated a review of its guidance on continuous disclosure (Guidance Note 8). This guidance note supports ASX listing rule 3.1, which imposes on a listed entity the obligation to immediately tell ASX if it becomes aware of any information that a reasonable person would expect to have a material effect on the price or value of the entity's securities. Continuous disclosure obligations under the ASX listing rules have the statutory backing of the Corporations Act (s674) and any relevant ASX guidance is fundamentally important to the way ASIC administers potential breaches of the corresponding statutory provisions.
- 50 In a related context and following on from concerns as to trading in BrisConnections and other partly paid securities during late 2008 and early 2009, ASX is also proposing a new obligation on entities with this type of financing structure, to make appropriate disclosure (via announcements to ASX) if the relevant share price falls through specified trigger points.

- 51 More broadly, for the purposes of advancing initiatives on better disclosure for investors, ASX group has agreed to establish a joint working group with ASIC, with a particular focus on reviewing ASX Guidance Note 8 to ensure it remains current in light of recent market conditions and disclosure practices.

Agreed Action 2: Disclosure

ASX group has 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.

Information for retail investors

- 52 In our last assessment report, we encouraged ASX group to review the way its website provides important market-related information to retail investors, with a view to maximising its usefulness, completeness and currency, including the coding it applies to different categories of financial products. Better information will particularly aid retail investors in their investment decisions.
- 53 In September 2009, ASX group undertook a broad review of its website to ensure that it contains current and appropriate educational information for users. The outcomes of this review are due to be implemented later in 2010.
- 54 As part of our ongoing work to promote the confident and informed participation of investors and consumers in the financial system, we have recently published a number of documents designed to assist retail investors to better understand the nature and consequences of their investment decisions. These include the guide *Investing between the flags*³ and the report *Contracts for difference and retail investors (REP 205)*.⁴ These publications can be found on our website.
- 55 In order to better ensure that retail investors understand the nature and consequences of investing in ASX group quoted products, ASX group has agreed to work with us on the appropriateness and adequacy of the information it proposes to publish on its website including ASX group providing to ASIC, for comment, draft text on educational material on

³ See ASIC Media Release (09-244MR) *Investing between the flags* (8 December 2009).

⁴ See ASIC Media Release (10-153MR) *Providers need to do more to ensure investors understand the risks of CFD trading* (12 July 2010).

CFDs, AQUA products, partly paid shares and any other complex or novel products available to retail investors, prior to that information being published.

Agreed Action 3: Information for investors

The ASX group has agreed to work with us 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 CFDs, AQUA products, partly paid shares and any other complex or novel products available to retail investors, prior to that information being published.

Product development

- 56 Following ASIC's last assessment, ASX group instituted the 'sign-off from supervision'. During the assessment period, this process required senior officers from ASX Compliance to attest (at each stage of a project) that appropriate supervisory consideration had been given to the development of (for example) a particular product for quotation.
- 57 ASX considers that the benefits of this process to date have included:
- increased awareness by ASX Compliance of projects that originate outside supervision;
 - greater awareness in ASX Business Development (and other areas) of the need to involve ASX Compliance early in the product development process; and
 - improved focus on risk analysis of new products and projects.
- 58 The process has also increased awareness at the ASX Compliance board level of supervisory considerations attaching to product development—the ASX Compliance board has requested and received reports of the matters subject to the 'sign-off from supervision' since April 2009.
- 59 Following the transfer of supervision to ASIC on 1 August 2010, ASX group will now embed a compliance sign-off process into its ASX group Project Management Office process. More broadly, and as a result of the transfer of supervision, ASIC is now responsible for supervising trading activity on the ASX group markets.
- 60 The ASX group has agreed to work with us 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. This protocol is intended to ensure that we are best positioned to take early account of

appropriate supervisory considerations—particularly for the development and subsequent supervision and orderliness of trading in novel and complex products accessible to the retail sector.

Agreed Action 4: Product development protocol

ASX group has agreed to work with us 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.

Capital monitoring

- 61 Capital monitoring of participants across the ASX group is undertaken by the ASX Compliance Capital Monitoring team, and during the assessment period the Futures Supervision & Capital Monitoring team performed this function with respect to the rules of the ASX 24 market and clearing and settlement facilities.
- 62 In its last assessment, we expressed concerns about the resourcing levels within the ASX Capital Monitoring function during 2008. This was of particular interest given the uncertain financial circumstances at that time. As of 30 June 2010, ASX Compliance has increased the full-time equivalent (FTE) staff in ASX Capital Monitoring to 6.8 (with an additional 0.6 for administrative support). This compares with an average of 3.3 FTEs in 2007–08.
- 63 In addition to increasing its resources, at the time of our last assessment ASX group also initiated or proposed a number of changed practices that were necessary to obtain a more robust assessment of the capital position of participants. ASX group has progressed most of these initiatives. These included initiatives to implement a more streamlined process for reviewing and analysing participant returns, the introduction of participant spot checks and a wider review of the risk-based capital requirements, particularly in light of overseas developments.
- 64 From August 2011, ASIC will be assuming responsibility for capital monitoring of market-only participants⁵—while ASX group will continue its current responsibility for the capital monitoring of market participants that are also participants in the clearing house.⁶ Notwithstanding that we will take responsibility for the capital monitoring of market-only participants in

⁵ At the time of publication, there were 29 ASX participants and 10 ASX 24 (formerly, SFE) participants with this business model.

⁶ At the time of publication, there were 20 ASX participants and 14 ASX 24 (formerly, SFE) participants with this business model.

August 2011, ASX group has 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.

Agreed Action 5: Capital Monitoring Program

ASX group has 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.

Disclosure and JORC Code

- 65 In our last assessment, and as part of ASX group's review of potential at-risk aspects of the market, we encouraged ASX group to review current requirements for asset-related disclosures for the mining and resources sector (particularly with respect to the minimum reporting requirements set out in the JORC Code).
- 66 The JORC Code provides a classification system and minimum standards for the public reporting of exploration results, mineral resources and ore reserves in Australia. The sponsoring bodies of JORC are the Australian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and the Mineral Council of Australia. Compliance with the JORC Code is compulsory for the members of these organisations. ASX incorporated the JORC Code into its listing rules in 1989, with the effect of making it mandatory for listed mining exploration and production companies to publicly report their exploration results, mineral resources and ore reserves in accordance with the JORC Code. Accordingly, ASX Compliance is responsible for monitoring compliance with JORC Code as part of its listing rules.
- 67 As part of its ongoing work in this area, on 14 May 2009 ASX Compliance released its inaugural review of compliance with the JORC Code. The review was conducted by ASX Compliance for the six months to 31 March 2009 and involved the review of an estimated 5,200 announcements for compliance with the JORC Code during the six-month period of the review. The findings were released which concluded that 312 (6.0%) of those announcements were found to contain a total of 333 instances of material non-compliant reporting by 246 entities. The most common breach was a deficient or missing Competent Person Statement (176 instances or 52.9% of total breaches).
- 68 ASX group and ASIC discussions with, and guidance from, stakeholders and resource industry professional bodies are ongoing. Matters of this nature are often technically complex and necessitate detailed consideration. ASX group

has agreed to continue to work with ASIC to ensure the market is adequately informed in respect of exploration activities and resource and reserve estimates by listed resource companies and any associated production forecasts.

- 69 Recent discussions between ASIC and ASX group as to disclosure requirements have been largely confined to the JORC Code, but with the reactivation of the Valmin Committee, ASIC and ASX group have agreed that these discussions should widen to also give due consideration to the requirements of the Valmin Code where it interacts with the JORC Code.
- 70 The Valmin Code is a set of fundamental principles and supporting recommendations for good professional practice, to assist those involved in the preparation of independent expert reports that are public and required for the technical assessment or valuation of mineral and petroleum assets. Experts reporting under the Valmin Code must comment on the quality and reasonableness of the mineral resource and/or ore reserves estimates made by competent persons under the JORC Code.⁷ The ASX listing rules do not incorporate the Valmin Code for reporting purposes

Agreed Action 6: JORC and Valmin Codes

ASX group has 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 has agreed that these discussions should widen to also give due consideration to the requirements of the Valmin Code, where it interacts with the JORC Code.

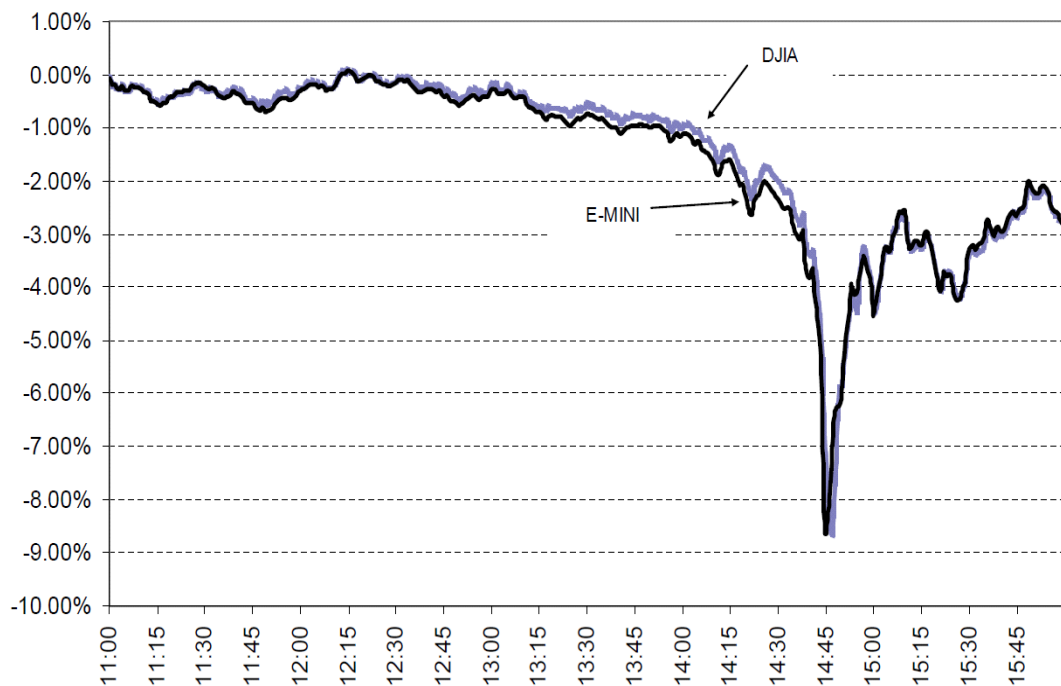
Trading halts and suspensions

- 71 In our last assessment, we recommended that ASX group undertakes further consideration of the way in which it approaches decisions to administer trading halts and suspensions, to ensure these decisions continue to promote the delivery of fair, orderly and transparent markets.
- 72 ASX group undertook this review and concluded that:
- its current processes for trading halts and suspensions, and its administration of these processes, were appropriate; and
 - it was not convinced that the introduction of individual security volatility based trading halts would improve market quality or reduce volatility.

⁷ See Valmin Code, paragraph. 74.

- 73 ASX group did also conclude that if competition in trading services is introduced for ASX-listed securities, or if so-called ‘momentum’ algorithmic trading was to result in trade error on the ASX cash-market, ASX group would consult on the viability of introducing stock-specific circuit breakers.
- 74 The ‘flash crash’ of 6 May 2010 in the United States brought this issue in to sharp focus. 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%: see Figure 1.
- 75 On that day, 326 US securities fell more than 60%. One stock (Accenture) traded from \$41.01 down to \$0.01, closing at \$41.09. Another traded down –28% and back in 90 seconds. Of the 326 securities, 227 were exchange-traded funds (ETFs), 10 were other exchange-traded products (ETPs), and 89 were stocks of a wide variety of issuers.

Figure 1: Decline of E-MINI and DJIA based on 11 am prices



Source: Bloomberg

- 76 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.
- 77 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.
- 78 The US Securities and Exchange Commission (SEC) undertook two immediate policy responses to the events of 6 May 2010. The first was to work with the exchanges and the Financial Industry Regulatory Authority (FINRA) to introduce new single-stock circuit breaker (SSCB) rules, currently applied on a pilot basis. Since 17 June 2010, the exchanges and FINRA have been required to pause trading in any S&P 500 stock across US equity markets, when it experiences a 10% change in price over a five-minute period.
- 79 The rationale for the SSCBs is to give the markets the opportunity to attract new trading interest in a stock, establish a reasonable market price, and resume trading in a fair and orderly fashion.
- 80 The SEC's second policy response was to work with the exchanges on amending their rules for breaking clearly erroneous trades. After 6 May 2010, the exchanges and FINRA exercised their existing authority to break clearly erroneous trades that were effected that day at prices 60% or more away from pre-decline prices. The SEC has undertaken ongoing work to ensure that guidelines for dealing with clearly erroneous transactions, and the process for deciding to break certain trades, are clear and transparent to investors.
- 81 We have also initiated a detailed review of considerations around trade cancellation policies and trading halts more generally, including consideration of both pre-trade (price and volume) and post-trade (order matching and halt) controls. This review is ongoing and is taking close account of unfolding considerations in the international context, such as the SEC and Commodity Futures Trading Commission (CFTC) hearings into the matter and the final SEC–CFTC report released in late September 2010. We are also giving detailed consideration to the nature of the domestic market structure and its participants, to determine the most appropriate application of these types of initiatives to the Australian market environment. ASX group has commenced a review of its operating rules on trade cancellations with a consultation paper released to the market in October 2010.

- 82 ASX group has agreed to continue to work with ASIC to:
- determine the most appropriate approach for the Australian market place; and
 - assist and facilitate its implementation.

Agreed Action 7: Trading halts and suspensions

- ASX group has agreed to continue to work with ASIC to:
- determine the most appropriate approach for the Australian market place; and
 - assist and facilitate its implementation.

Algorithmic trading

- 83 Algorithmic trading can be defined as computer-generated trading activity where trading parameters are determined by strict adherence to a predetermined set of rules, aimed at delivering specific execution outcomes. Although algorithmic trading is not specifically identifiable through ASX group trade data, during the assessment period there was ongoing evidence of the sustained growth in this form of trading on the ASX group markets. Currently, ASX participants estimate their levels of algorithmic trading at 30–40% of total volumes traded.
- 84 In July 2009, ASX group initiated a review of any related consequences for the orderly operation of its market. Among other things, this review involved face-to-face discussions with market operators, users and technology providers in North America and Europe, where the use of algorithmic trading appears to be more widely utilised.
- 85 As part of the last assessment, we recommended that the ASX group provide a report on that review to ASIC. This report identified areas for ongoing consideration by both ASX group and ASIC, such as suitable models for electronic access to the market, processes for terminating the operation of certain algorithms and education of retail investors, listed entities and other stakeholders.
- 86 We are reviewing a number of these matters as part of our ongoing efforts to ensure overall market integrity and robust market infrastructure. ASX group has agreed to continue to review related matters, 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.

Agreed Action 8: Algorithmic trading

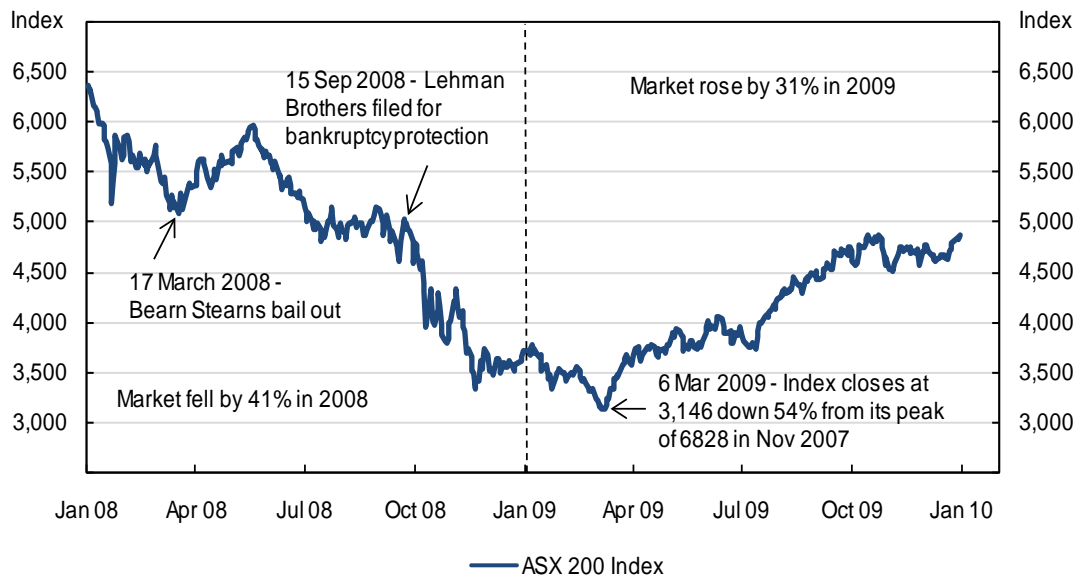
ASX group has agreed to continue its review and consideration of matters related to algorithmic trading, including the procedures governing removal of market access for brokers, with a view to identifying ways to streamline the decision-making process, including processes for preventing electronic access to the market in the event of a malfunctioning algorithm.

D Market conditions and ASX group activities in 2009

Market conditions in 2009

87 By a number of measures, the conditions for equity markets improved in 2009 when compared with 2008. The S&P/ASX 200 index was up 31% in 2009, and 54.5% from trough to year end.⁸

Figure 2: ASX 200 index—January 2008 to January 2010

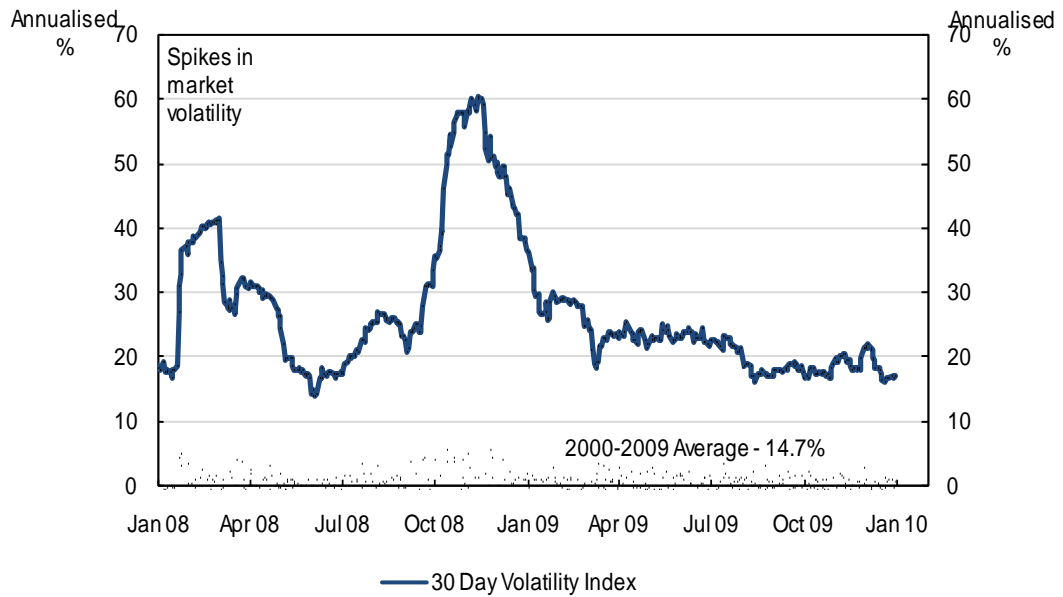


Source: Bloomberg

88 Volatility in equity markets in 2009 also retreated from 2008 levels. From its high of over 60% in late 2008, 30-day volatility trended downward from over 30% to less than 20% by year end. The reduction in volatility was also evident in the daily changes in the index, which declined from over $\pm 5\%$ after the Lehman Brothers' collapse in September 2008 to primarily within the $\pm 2\%$ range in 2009.

⁸ In 2008, the S&P/ASX 200 index fell 41%.

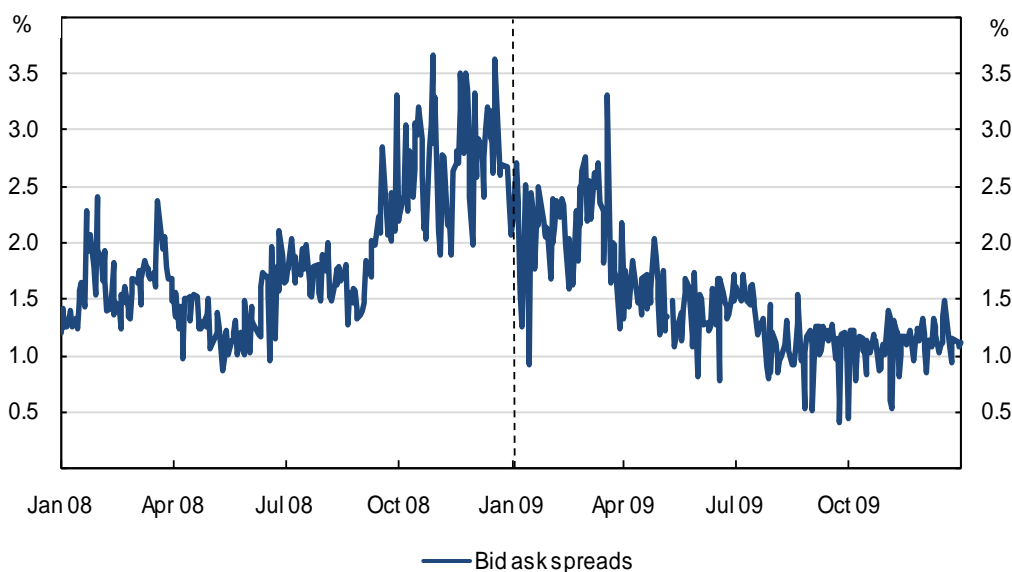
Figure 3: 30-day volatility index—January 2008 to January 2010



Source: Bloomberg

- 89 Market liquidity also improved in 2009. The volume of shares, number of trades and value of turnover all increased from 2008 levels.
- 90 Finally, bid-ask spreads improved considerably through 2009. Following the failure of Lehman Brothers, spreads for stocks in the S&P/ASX 200 averaged between 2.5% and 3.5%. The last half of 2009 saw the average spread fall to one percent of the share price.

Figure 4: Bid-ask spreads—January 2008 to January 2010



Source: Bloomberg

BrisConnections and partly paid shares

- 91 BrisConnections was admitted to ASX's official list on 30 July 2008 and its finance structure consisted of issued partly paid stapled units with \$1 paid up initially, with a \$2 unpaid liability attached.
- 92 In the months following quotation, the price at which trading took place in units in BrisConnections on ASX fell, so that by late October the traded price was \$0.001, the lowest price at which a buy or sell order can be placed on ASX's market.
- 93 There were allegations by retail investors that they acquired units in BrisConnections during October and November 2008 without understanding the nature of the liability attached. By March 2009, a number of online brokers had stopped straight-through processing of buy orders for units in BrisConnections and, in May 2009, ASX amended its market rules to require market participants to obtain a written acknowledgement from retail investors before they acquire partly paid securities.
- 94 BrisConnections was the subject of significant consideration in the last assessment report: see Recommendation 4 in Section E.

Short selling

- 95 The ban on covered short selling of financial securities was lifted on 25 May 2009. The ban on covered short selling of non-financial securities was lifted earlier, on 19 November 2008.
- 96 The Australian Government introduced new legislative requirements to regulate the use of short selling in Australia in December 2008 and December 2009, under the *Corporations Amendment (Short Selling) Act 2008* and the *Corporations Amendment Regulations 2009* (No. 8). These requirements include further restriction of naked short selling and also confer on ASIC the power to grant appropriate exemptions from the naked short selling prohibition. To date, we have exercised this power to grant a number of exemptions to facilitate the orderly operation of markets (such as hedging risk from market making activities). Further examples of exemptions provided by ASIC and the basis for doing so, are set out in Section C of Regulatory Guide 196 *Short selling* (RG 196).
- 97 The legislative requirements also impose specific obligations, requiring reporting of:
- covered short sale transactions made on a licensed market (formalising ASIC's interim reporting regime)—in general, covered sale transactions must be reported to ASX; and
 - short positions in specified listed financial products—short positions above a threshold must be reported to ASIC.

98 More detail of these requirements is also set out in RG 196.

ASX group activities in 2009

Resources

99 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 Supervisory Services Agreement between ASX Compliance and the ASX group licensees, ASX Compliance provided specified supervisory services to the licensees for the purposes of ensuring that the licensees met relevant licence obligations. In return, ASX group was required to provide sufficient funding and resources (such as staff, equipment and software) to ASX Compliance to enable it to perform its functions.

100 Between January and December 2009, ASX Compliance slightly increased its number of FTEs to 106.5 (from 105.5). Taking a broader timeline, the number of FTEs within ASX Compliance has risen around 30% from 30 June 2007 to 31 December 2009.

101 An added measure dealing with resources has also been agreed by ASX group—by which the ASX Compliance Chief Supervision Officer (now called the Chief Compliance Officer) provided for the 2009–10 financial year a certification to ASIC that:

- the budget for the 2009–10 year and indicative budget for the following two years provides adequate funding for ASX Compliance to perform its services; and
- the budget submitted by the ASX Compliance board as its annual budget was approved by the ASX board.

102 ASX group has agreed to provide future certifications of this nature on an annual basis. These futures certifications are likely to take account of the changes in market supervision arrangements following 1 August 2010.

Conflicts

103 As part of its statutory obligations, ASX group must also have adequate arrangements to handle its conflicts of interest. During the assessment period, the Supervisory Services Agreement that was in place between the ASX group licensees and ASX Compliance also required ASX Compliance to provide specified services to the licensees for the purposes of ensuring that they met their statutory obligations to have adequate conflict handling arrangements.

104 In addition, during the assessment period the ASX Compliance board was informed of supervisory activity within non ASX Compliance business units through monitoring activity conducted by ASX Licence Compliance (now called ASX Regulatory Assurance) and also through a quarterly report from ASX Operations to ASX Compliance.

105 During the assessment period, ASX Licence Compliance performed an internal assurance function, focusing on ASX group licence obligations. Licence Compliance's specific responsibilities included monitoring and advising on the adequacy of the ASX group's arrangements for handling conflicts of interest and how those arrangements were operating in practice. Licence Compliance reported directly to the Managing Director and CEO of ASX and indirectly to the Chief Compliance Officer of ASX Compliance.

Supervisory activities

106 ASIC considers that ASX group's resourcing and conflict handling arrangements were adequate to meet its supervisory obligations in 2009. In forming this view, ASIC also reviewed a number of areas in which those resources and arrangements were deployed during that year.

Real-time surveillance

107 In line with recommendations from our last assessment report, ASX Compliance increased resourcing for its real-time surveillance of the ASX market and also reviewed its existing practices to ensure greater consistency of decision making in respect of surveillance matters as they arise.

108 From 1 July 2009, ASX Compliance appointed a Senior Analyst to the ASX Compliance Surveillance team (taking total ASX surveillance FTEs to 10). Among their responsibilities, the Senior Analyst's role requires them to review more significant alerts throughout the day and ensure that they are escalated as appropriate. Following the transfer to ASIC of real-time supervision of trading, ASX group will continue to perform this function in the context of continuous disclosure only.

Supervision of market participants

109 During the assessment period, ASX group also continued to focus on enhancing its practices and resourcing for supervising market participants. As of 31 December 2009, ASX Compliance function had 16.8 FTEs—this was an increase from 14.4 at 31 December 2008.

110 As part of its ongoing work program, ASX Compliance continued to focus on internal participant supervision and a number of Management Plan Enhancement Programs were initiated for several participants where ASX Compliance believed there were significant risk, compliance and control

areas that needed improvement. Ordinarily, ASX Compliance expects the 'change process' within one participant to take up to three years to implement.

- 111 In related activities during the assessment period, ASX Compliance and the Australasian Compliance Institute developed a compliance and risk workshop for ASX, ASX Clear and ASX Settlement participants. The workshop examines elements of a supervisory, risk and compliance framework and provides an overview of the participants' obligations under the ASX group operating rules. ASX group offered 14 workshops nationally prior to 30 June 2010.
- 112 Following the transfer of supervision to ASIC on 1 August 2010, various functions previously performed by ASX Compliance (such as administering the process for appointment of Responsible Executives) are now the responsibility of ASIC. ASX group still retains responsibility for entities that are also clearing and settlement participants, and ASIC and ASX group are continuing to work together to manage any prospect of regulatory overlap on participants that have these broader (market, clearing and settlement) business models.

CFD and AQUA markets

- 113 For the assessment period, ASX group continued its supervision of the CFD and AQUA markets. The first listing on the AQUA market occurred in February 2009 and, to date, the market has only had a limited number of applications. There were (as at 30 June 2010) four issuers admitted to the market and 15 products, mostly exchange-traded funds over equity indices, but also some exchange-traded commodity products.
- 114 As part of its 12-month review of the AQUA market, the ASX group released an industry consultation paper on a range of topics and issues. The topics below are those on which ASX group consulted. ASIC has worked with ASX group in determining these as appropriate areas for further industry feedback:
- information about the AQUA market structure (i.e. the trading market and quote display board);
 - the AQUA framework (i.e. appropriate underlying assets and what can't be quoted under the AQUA rules);
 - comparison to the ASX listing rules (i.e. continuous disclosure, periodic disclosure, governance and auditor rotation obligations);
 - proposed rule amendments (i.e. threshold issuer requirements, use of indices for ETFs and requirements for AQUA-structured products); and
 - notification of AQUA rule amendments (i.e. enable unquoted debt securities and their derivatives to be underlying instruments of AQUA-

quoted products, expansion of ETF definition to capture actively managed ETFs and other miscellaneous changes).

115 In September 2009, a broad website and communications review was commenced by ASX group to ensure that the ASX web pages contain current and appropriate information—available to investors, participants and issuers—which includes AQUA products and CFDs.

116 CFDs started trading on the ASX 24 market (formerly known as the SFE market) on 5 November 2007, making the ASX 24 market the first exchange in the world to quote these products. The turnover in CFDs during the assessment period continued to be lower than anticipated and the product is currently traded mainly by approved market makers. There are currently 50 equity CFDs and 11 CFDs over other products, such as commodities.

117 As of 1 August 2010, ASIC assumed responsibility for the real-time supervision of trading in CFDs on ASX group markets. Insider trading will continue to be a surveillance focus, particularly the potential use of the CFD market as a vehicle to undertake insider trading.

Enforcement and Tribunals

118 In the last assessment report, ASX group agreed to provide ASIC with a report on the ongoing adequacy of the resourcing of ASX Enforcement and Tribunals.

119 At that time, ASX group and ASIC had identified a number of reasons to anticipate that existing resourcing pressures on both the Enforcement function and the Tribunal could be expected to continue in the foreseeable term, including:

- integration of ASX and ASX 24 Enforcement and Tribunals—the integration was expected to give rise to increases in work of the Enforcement function, because breaches of the ASX 24 operating rules will also be reviewed by this business unit prior to lodgement with the Tribunal and the single Tribunal will now be required to deal with both ASX and ASX 24 matters;
- complexity of matters—it was expected that both the Enforcement function and the Tribunal may be required to deal with more complex market manipulation matters, which are an inevitable corollary of a market downturn; and
- increase in contested matters—given the inevitable increase in market manipulation matters, there was also an expectation that more of these types of matters would be contested by participants who fear the greater reputational risks that these matters bring.

120 To an extent, the concerns as to increased numbers of matters for Enforcement and Tribunals did not materialise during the assessment period.

This was in part due to the recovery in market conditions. Total matters on hand in Enforcement actually fell during the assessment period and as at 28 February 2010 there were 38 matters on hand, compared to 41 at the end of December 2009 and 46 at the end of September 2009.

- 121 Since October 2009, Enforcement has had five staff—four lawyers and one paralegal (compared with four staff as at 30 June 2008). Around the same time, caseload average at the end of the February 2010 was 9.5 matters per FTE (which was less than the previous three quarters).
- 122 A notable matter during the assessment period occurred in July 2009: ASX announced it had fined Tricom Equities Limited (now known as Stonebridge Securities Limited) a total of \$1.35 million for 10 breaches of its operating rules. In doing so, the ASX Tribunal found that some of the contraventions were so significant and serious that they deserved the imposition of the highest financial penalty available at the time the contraventions occurred. The breaches ranged from Tricom’s inability to meet its payment obligations within the time required through to ‘blatant and unmistakable’ market manipulation.
- 123 While the number of matters on hand for Enforcement and Tribunals did fall during the assessment period, as expected there was an increase in the number of complex (typically, market manipulation type) matters and contested matters—six market manipulation matters in the last half of 2009 as compared with two in the last half of 2008, and five contested matters between April 2009 and February 2010 as compared with zero for the same period in the previous year.
- 124 Following the transfer of supervision to ASIC on 1 August 2010, ASIC has primary responsibility for enforcement of market manipulation matters that occur after that date. All market manipulation matters under the ASX group operating rules that occurred before that date (irrespective of when they are detected) will continue to be enforceable by ASX group.
- 125 ASX group acknowledges the potential for these dynamics to impose resourcing pressures in the coming period on the Enforcement and Tribunal functions but considers that the revised practices and processes in Enforcement, as well as additional staff employed during the assessment period and the use of external counsel as required, will support its ongoing performance.

Issuer related activities

- 126 ASX group was active during 2009 in supervising its 2198⁹ listed entities by seeking to promote compliance with continuous and periodic disclosure obligations.
- 127 Key ways in which ASX group sought to promote a fair, orderly and transparent market in a range of listed entities were:
- timely price queries and follow up (including, in appropriate instances, referrals to ASIC for further investigation);
 - active discussion with listed entities of the need for (and the use of) trading halts and suspensions from trading; and
 - assistance of listed entities with more general compliance with the listing rules.

Capital raisings

- 128 The number of new listing applications was lower in 2009 (61) than 2008—and 2008 was significantly lower than 2007 (75 in 2008 compared with 273 in 2007). By contrast, 2009 was a record year for secondary capital raisings with \$98.6 billion being raised (58% above the previous record year of 2007). In January 2010, ASX published a report on its review of capital raising practices in Australia.¹⁰ ASIC is monitoring the current debate regarding competing interests that may arise in the course of secondary capital raisings, whereby the need for the company to raise funds may at times arguably affect some existing shareholders. See, for example, the speech on facilitating capital raising for corporate Australia, given by the ASIC Deputy Chair, Belinda Gibson, at the Corporate Finance World Australia 2009 conference.¹¹
- 129 For the purposes of this assessment, we reviewed a sample of the rule waivers granted in 2009 by ASX to facilitate companies seeking secondary capital raisings. We were satisfied that the waivers granted (and the policy basis for doing so) were consistent with those granted in previous years. ASIC continues to take an active interest in considerations regarding the broader capital-raising framework.

Financial reports

- 130 As part of this assessment, we also considered the approach that ASX group takes to the review of financial reports of listed entities. To support its work

⁹ This was the number of listed entities, including stapled entities, on ASX as at 30 June 2009.

¹⁰ ASX Information Paper, *Capital raising in Australia: Experiences and lessons from the global financial crisis*, 29 January 2010.

¹¹ Belinda Gibson, *Facilitating capital raising for corporate Australia*, speech given at the Corporate Finance World Australia conference, 10 November 2009.

generally in this area, the ASX group formed the National Accounting Group (NAG) in December 2008. The NAG is a technical review group designed for the purpose of formalising and centralising the ASX group knowledge base for accounting and audit issues as they arise. The intention is to facilitate and enhance knowledge sharing amongst Issuer Advisers and Managers across different states for accounting related issues.

- 131 ASX Compliance's approach to monitoring of Appendix 4D/E financial reports focuses on compliance with the relevant listing rule requirements in Chapters 4 and 12 and completeness of information provided by the entity.
- 132 In addition to other activities, Issuer Advisers also conduct real-time monitoring of Appendices 4C (Quarterly Cash Flow reporting) and 5B (Quarterly Cash Flow reporting for Mining Companies) to ensure entities have sufficient cash levels. If the Appendix indicates that the entity has low levels of cash for the next two quarters (typically less than two quarters for Appendix 4C or less than one quarter for Appendix 5B), the Issuer Adviser may send that entity a pro forma letter asking for information to demonstrate the adequacy of the entity's financial condition to warrant continual quotation, and detail of any strategies to improve its financial condition.
- 133 Each financial report is reviewed initially by an Issuer Adviser and then is reviewed again by a Financial Review Analyst. In both cases, the Issuer Adviser and the Financial Review Analyst perform the review of the Appendix 4D/E following checklists prepared by the NAG.
- 134 The Appendices lodged with ASX are reviewed for compliance with the relevant listing rules only. ASX listing rules require that accounts must be prepared to Australian accounting standards. In monitoring compliance with this requirement, ASX does not carry out a separate technical analysis but relies on the sign-off provided by the entity's auditor as to the accounts' compliance with the Australian accounting standards and the Corporations Regulations 2001 (Corporations Regulations). ASX group also takes comfort from the deterrent effect of s1309 of the Corporations Act which makes it an offence to give false or misleading information to ASX.

Settlement failure rates

- 135 In the last assessment report, it was noted that less than 1% of transactions in Australia reportedly fail to settle on T+3 due to a participant's failure to deliver securities. For this assessment period, equity settlement performance continued to improve, with delivery failure rates averaging well below the 1% daily historical benchmark, which itself is low by global standards for developed equity settlement systems. A record low rescheduled rate of 0.231% and an initial fail rate of 0.074% was recorded on 3 April 2009.

Technology and system uptimes

136 All ASX group information technology systems operated with ‘uptimes’ of over 99.8%.

E Agreed actions from last assessment

137 There were a number of agreed actions and recommendations arising from last year's assessment. ASX group has complied with those agreed actions and recommendations as set out in Table 2.

Table 2: Agreed actions and recommendations from last assessment of ASX group

Agreed action/recommendation	Status
<p>Agreed Action 1: Capital monitoring—report on resourcing and enhancements to be received by 31 March 2010.</p>	<p>Report received: see Agreed Action 5.</p>
<p>Agreed Action 2: Participant compliance services—report on resourcing and enhancements to be received by 31 March 2010.</p>	<p>Report received: see paragraph 109.</p>
<p>Agreed Action 3: Enforcement and Tribunal—report on resourcing and enhancements to be received by 31 March 2010.</p>	<p>Report received: see paragraph 118.</p>
<p>Agreed Action 4: ASX group agreed to report by 31 March 2010 on the effectiveness of changes it has made to:</p> <ul style="list-style-type: none"> • practices for handling complaints in relation to trading activities and • the effectiveness of changes it has made to implement more structured oversight of analysts' reviews of the need for price queries. 	<p>Report received. Changes were implemented in both ASX Customer Service and ASX Compliance Surveillance.</p>
<p>Agreed Action 5: ASX group has agreed, in consultation with ASIC, to give consideration to requesting, on a more regular basis, insider lists from listed entities, to assist in insider trading investigations.</p>	<p>ASX Compliance introduced its Issuers—Surveillance Insider Trading Policy in August 2007 which is, together with all policies and procedures, reviewed annually and updated as necessary. The policy was reviewed and updated during November 2009 to make clearer that the insider lists may be requested in any number of circumstances where Surveillance regards it as necessary in the course of examining trading.</p>
<p>Agreed Action 6: ASX group agreed to report by 31 March 2010 on the effectiveness of recent changes to the resourcing and procedures of ASX's real-time surveillance function.</p>	<p>Report received: see paragraph 107.</p>

Agreed action/recommendation	Status
Agreed Action 7: During 2008, three entities were admitted to the list without meeting the spread requirements. ASX has responded by changing its admission certification requirements. ASX agreed to report to ASIC by 31 March 2010 reviewing the effectiveness of these new procedures and identifying whether any further changes are warranted.	Report received.
Agreed Action 8: ASX group agreed to report to ASIC by 31 March 2010 on a review of the effectiveness of ASX group's measures to monitor and deal with software capacity issues on an ongoing basis. This followed two technology outages during 2008, caused by software error.	Report received. In February 2009, a software patch was developed, tested and implemented to address the software issue.
Agreed Action 9: ASX group agreed that, on invocation of the Error Resolution Policy by ASX group, ASX group will ensure the basis for determination of the Fair Price Value (FPV) is fully documented and that ASX group will report to ASIC as soon as possible after the Error Resolution Policy is invoked (and prior to the submission to ASIC of the ASX Market Operations Incident Report), on the basis of the rationale for the FPV determination.	These procedures were updated on 24 September 2009 (and provided to ASIC).
Recommendation 1: ASX group should report to ASIC on its review of algorithmic trading and direct market access by 31 March 2010.	Report received: see Agreed Action 8.
Recommendation 2: ASIC recommends that ASX group includes in its report, for the purposes of Agreed Action 6, analysis of the impact of the market conditions on real-time surveillance and commentary on the effectiveness of this function.	Report received.
Recommendation 3: ASIC recommends ASX reviews the way in which it approaches decisions to administer trading halts and suspensions and provides a report by 31 March 2010	Report received: see paragraph 71.
Recommendation 4: ASIC recommends that ASX group conducts a further review of the circumstances surrounding BrisConnections and any other partly paid securities issued by entities other than no-liability companies. The results of this review should be reported to ASIC by 30 November 2009.	Report received. Following its review, ASX will impose a new obligation on a listed company seeking to issue partly paid securities, to make appropriate CAP announcements if the share price falls through specified trigger points, and amend the general description of partly paid securities on the ASX website to provide more information and introduce security codes to separately identify partly paid securities where future calls/instalments represent a legal liability to make the payment.

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
ASX	ASX Limited
ASX 24	The 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, ASX Clear, ASX Securities, 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 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
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
CS facility	clearing and settlement facility
JORC Code	The Australasian Code for Reporting of Explorations Results, Mineral Resources and Ore Reserves
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