



ASIC

Australian Securities & Investments Commission

REPORT 345

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

May 2013

About this report

This report relates to the period from 1 November 2011 to 30 June 2012 (assessment period) and also captures the outage in ASX Group's market announcements platform that occurred on 9 October 2012.

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 289	July 2012
Australian Securities Exchange,	REP 265	November 2011
ASX Clear (Futures), Austraclear	REP 222	November 2010

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A Summary of observations and conclusions

Key points

ASIC conducts annual assessments of market licensees and clearing and settlement facility licensees, such as those within ASX Group, because it is required to do so under s794C(2) and 823C(2) of the Corporations Act, respectively.

The scope of our assessment must always include the obligations found in s792A(c) and 821A(c), which require the licensee to have adequate arrangements for operating the facility, including adequate arrangements for handling conflicts of interest and for monitoring and enforcing the operating rules. We can also include other Ch 7 obligations.

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.

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 16. However, there are seven agreed actions that focus on aspects of ASX Group's activities. While important, these do not detract from our overall conclusion.

The assessment

ASIC's obligations

- 1 Under s794C(2) of the *Corporations Act 2001* (Corporations Act), the Australian Securities and Investments Commission (ASIC) is required 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 (CS facility licensee) is complying with its obligations under s821A(c) at least once a year.

Licensee's obligations

- 2 In line with our statutory obligations, we reviewed ASX Group's arrangements for the operation and supervision of its markets and clearing and settlement facilities (CS facilities) under s792A(c) and 821A(c). This includes its arrangements for handling conflicts of interest and its arrangements for monitoring and enforcing compliance with the relevant facilities' operating rules.

- 3 Under s794C(1), we are permitted to extend the scope of our assessment to review how well a licensee is complying with any or all of its obligations under Ch 7 of the Corporations Act. In keeping with our standard practice, we extended the scope of our 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 821A(d).

Reserve Bank of Australia's obligations

- 4 The Reserve Bank of Australia (RBA) also plays a critical role in monitoring and assessing CS facilities. Under s823, the RBA must assess, at least once a year, how well each CS facility is meeting its obligations under s821A(aa) to comply with the RBA's Financial Stability Standards and do all things necessary to reduce systemic risk.
- 5 The RBA's most recent assessment report on ASX Group was released in September 2012, and covered the period from 1 July 2011 to 30 June 2012. ASX Group's four CS facilities were found to have complied with their relevant obligations.¹

Assessment period

- 6 Our assessment covers the period from 1 November 2011 to 30 June 2012 (assessment period) and includes the outage in ASX Group's market announcements platform that occurred on 9 October 2012.
- 7 ASIC's assessment periods used to cover calendar years. We have used our previous two assessments to realign our assessment period with ASX Group's self-assessment period, which relates to the financial year. This means that we have published three assessment reports within 18 months, as follows:
- Report 265 *Market assessment report: ASX Group* (REP 265)—released in November 2011 (covering the period from 1 July 2009 to 30 June 2010);
 - Report 289 *Market assessment report: ASX Group* (REP 289)—released in July 2012 (covering the period from 1 July 2010 to 31 October 2011. Our assessment period was extended to capture the outage in ASX Group's equities trading platform, ASX Trade, on 27 October 2011); and

¹ Reserve Bank of Australia, *2011/12 Assessment of Clearing and Settlement Facilities in Australia*, assessment, RBA, September 2012, <http://www.rba.gov.au/payments-system/clearing-settlement/assessments/2011-2012/pdf/report-2011-2012.pdf>

- Report 345 *Market assessment report: ASX Group* (REP 345)—our current assessment, released in May 2013 (covering the period from 1 November 2011 to 30 June 2012).

8 Our assessments generally begin around September each year and only after ASX Group has submitted its annual regulatory report for the financial year, as required by the Corporations Act. While our assessments generally cover the financial year, we ensure that significant post financial year events are also reviewed, as was the case for our current assessment with ASX Group's market announcements platform outage on 9 October 2012.

Our approach to assessments

ASIC's strategic priorities

9 ASIC's current strategic framework focuses on three key priorities. These are to ensure:

- fair and efficient financial markets;
- confident and informed investors and financial consumers; and
- efficient registration and licensing.²

10 The first two of these are particularly important for licensed markets and CS facilities. For example, appropriate resourcing is fundamental to ensuring that markets operate in an efficient manner. The adequate management and transparency of matters such as conflict handling arrangements are important to the fairness of the market. 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.

Guiding principles

11 Our assessments are guided by certain principles that draw on the International Organization of Securities Commissions (IOSCO) *Objectives and principles of securities regulation*. The principles we use to guide assessments are that:

- admission standards for issuers and participants are robust and administered in a fair and transparent way;

² This key priority was not relevant to our assessment of ASX Group.

- post-admission standards are robust and effectively monitored and enforced in a fair and transparent manner;
 - operating rules promote transparency to market users of material price and trading information;
 - the deterrence of unfair trading practices is supported by robust arrangements for detection and prompt referral to ASIC of significant contraventions of the operating rules, Corporations Act and ASIC market integrity rules;
 - conflicts of interest are adequately managed;
 - systemic risk and market disruption are reduced through the proper management of large exposures and default risk; and
 - sufficient resources (including technological resources) are deployed to operate the market and CS facility in a proper and reliable manner.
- 12 In response to recent developments in international regulation, our future assessments of CS facilities will be guided by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of IOSCO's *Disclosure framework and assessment methodology* (CPSS-IOSCO Disclosure framework and assessment methodology), which provides a framework for assessing and monitoring observance of the CPSS-IOSCO *Principles for financial market infrastructures* (CPSS-IOSCO Principles) and the responsibilities of authorities.
- 13 We will work closely with the RBA to find the best way of efficiently assessing CS facilities against these new standards in the future.
- 14 From time to time, ASIC and the RBA's future annual assessments of CS facilities may be subject to external scrutiny, through the assessment programs of international financial institutions, such as the International Monetary Fund and the World Bank. It is expected that these institutions will use the CPSS-IOSCO Disclosure framework and assessment methodology as part of their Financial Sector Assessment Programs, to assess the observance by financial market infrastructures and authorities.

Methodology

- 15 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 16 August 2012, as required under s792F and 821E;

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

Focus areas for this assessment

16 For this assessment, in considering ASX Group's compliance with its statutory obligations, we paid particular attention to how ASX Group dealt with a number of specific issues outlined below:

- the sufficiency of ASX Group's technological resources, focusing on the recent outage in its market announcements platform (MAP) on 9 October 2012, the management of access to its market through its Australian Liquidity Centre (ALC) and its preparedness for cyber attack;
- the sufficiency of ASX Group's human and financial resources devoted to operating its facilities;
- ASX Group's processes for assessing and following up instances where there may be a false market in an entity's securities under ASX Listing Rule 3.1(B);
- ASX Group's approach to dealing with long term suspended and dual-listed entities;
- ASX Group's processes for reviewing prospectuses; and
- ASX Group's progress against the agreed actions from our previous assessments.

Focus areas for next assessment

17 For our next assessment, which we anticipate will commence towards the end of 2013, in addition to our standard focus areas of reviewing ASX Group's arrangements for handling conflicts of interest, its arrangements for monitoring and enforcing compliance with its operating rules and the sufficiency of the financial, technological and human resources devoted to operating its facilities, we aim to focus on:

- the operation and monitoring of ASX Group's ASX 24 futures market;
- ASX Group's arrangements for ensuring that fraudulent, misleading or unauthorised statements are not made to the market, in particular through the ASX Group's MAP;

- reviewing ASX Group's arrangements for ensuring compliance with its recently introduced capital raising initiatives for small to medium enterprises; and
- the operation and supervision of ASX Group's CS facilities, working closely with the RBA.

Nature of licence obligations

- 18 A market licensee (such as ASX Limited or Australian Securities Exchange Limited) must meet a number of licence obligations, including:
- having adequate arrangements for operating the market, including the requirement that it have adequate arrangements for monitoring and enforcing compliance with its operating rules and handling conflicts of interest; and
 - having sufficient financial, technological and human resources to properly operate the markets.
- 19 The market licensee must also, to the extent reasonably practicable, meet its obligation to operate a market that is fair, orderly and transparent. As this obligation underlies all the other licensee obligations, a market licensee that is not meeting one of its other licensee obligations is also likely not to be meeting this obligation.
- 20 A CS facility licensee (such as ASX Clear Pty Limited) must also meet a number of licence obligations, including:
- having adequate arrangements for supervising the CS facility, including arrangements for handling conflicts of interest and enforcing compliance with its operating rules; and
 - having sufficient financial, technological and human resources to properly operate its CS facility.
- 21 The CS facility licensee must also, to the extent reasonably practicable, meet its obligation to operate its CS facility in a fair and effective manner. As this obligation underlies all the other licensee obligations, a CS facility licensee that is not meeting one of its other licensee obligations is also unlikely to be meeting this obligation.
- 22 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. 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 821A(c) at the time of the assessment;

- the sufficiency of a licensee's resources to ensure the proper operation of its facility; and
- identify issues, which in our view need, or may need, to be addressed to ensure ongoing compliance.

Adequate arrangements

- 23 In assessing how well a licensee is complying with its statutory obligations to have adequate arrangements in place to operate its markets and supervise its CS facilities, 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

- 24 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 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 CS facilities.

Arrangements for handling conflicts of interest

- 25 ASX Group is a commercial organisation with a range of activities that support and facilitate capital raising, investment, trading and risk management and clearing and settlement. ASX Group also holds licences granted by the Minister to operate markets and CS facilities.
- 26 These licences require ASX Group to comply with a range of obligations and responsibilities. An important obligation of ASX Group is to ensure that it has adequate arrangements in place to handle conflicts of interest. While these obligations do not preclude the existence of conflicts, ASX Group must manage these so as not to allow its commercial interests to prevail over its statutory obligations.

- 27 Conflicts of interest may arise in any area where a market or CS facility licensee makes decisions with respect to monitoring and enforcing its operating rules. For example, conflicts of interest may arise in connection with decisions about:
- admitting a person as either a participant or a listed entity;
 - monitoring a listed entity or participant;
 - investigative or disciplinary action;
 - exercising discretions, such as granting waivers from the operating rules;
 - determining the fees schedule of a financial market, including any trading incentive programs and/or relevant shareholder rebates; or
 - participating in CS facilities operated by the market licensee or a related entity.
- 28 In assessing a market and CS facility 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;
 - whether there is a sufficient level of disclosure to the market about the nature and existence of any actual or perceived conflict of interest, and the steps taken to adequately manage it; and
 - whether the licensee's organisational and reporting structures separate its commercial activities from its monitoring activities to a significant degree.
- 29 For example, a suitable organisational and reporting structure is one where employees who are responsible for assessing the market or CS facility licensee's compliance with its monitoring obligations report to a person who is not responsible for making commercial decisions.

Sufficient resources

- 30 In assessing how well a licensee is complying with its obligation, under s792A(d) or 821A(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 and CS facility will operate in a reliable manner.

Assessment findings

- 31 ASIC is satisfied that, in terms of the standards set out in the Corporations Act, during the assessment period, and in respect of the other specific matters reviewed that are noted in paragraph 16 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

- 32 ASX Group has agreed to take action in seven areas. While important, these do not detract from our overall conclusion that ASX Group licensees met their statutory obligations in the assessment period.
- 33 Details of the agreed actions can be found in Section B of this report.

Market conditions

- 34 A discussion of the market conditions and various market events for the assessment period is contained in Section C of this report. Some key features of the market conditions and events for the 2011–12 financial year, and during the more recent period, were:
- The S&P/ASX 200 declined by 10.8% during 2011–12, as a result of events such as the downgrade of the US sovereign credit rating and the inability of European leaders to agree on a suitable solution to the sovereign debt crisis. The first three quarters of 2012–13 have seen the S&P/ASX 200 recover all of the ground it lost over the course of

2011–2012 with the index up by 20.2% between July 2012 and the end of March 2013. The improved performance has been in line with a general rebound in global equity markets over this period and has coincided with a new wave of monetary stimulus measures announced by the world’s largest central banks since the start of 2012–13.

- Volatility levels spiked during the first quarter of 2011–12 as investors worried about the drawn out negotiations surrounding the raising of the US debt ceiling and the subsequent downgrade of the US sovereign credit rating. Following this episode, volatility trended lower over the next two quarters before picking up again during the final quarter of 2011–12 as markets reacted to the uncertain outcome of the Greek elections and the possibility of Greece leaving the euro. Volatility trended downward throughout the first six months of 2012–13, however levels have risen dramatically since the end of February (and are now back where they were at the start of 2012–13) on the back of concerns about the impact of sequestration in the United States and the possibility of the Federal Reserve bringing an earlier than expected end to its bond buying program.

Agreed actions from our previous assessment

- 35 In July 2012, we published our most recent assessment report of the ASX Group, which included nine agreed actions.
- 36 Our current assessment follows a more compressed timeline than has historically been the case for the reasons outlined in paragraph 7, and we focused on more selective issues.
- 37 As a result of the current assessment following shortly after the previous one, a number of the ASX Group’s agreed actions from our previous assessment are still a work in progress. We will continue to work with ASX Group to ensure that the agreed actions are fully completed in the coming months.
- 38 An outstanding agreed action from our earlier assessments concerned the establishment of an ASX–ASIC working group for the purposes of advancing joint initiatives on better disclosure for investors. The intention was for the group to focus on reviewing ASX Guidance Note 8 *Continuous disclosure: Listing Rule 3.1–3.1B* (Guidance Note 8) to ensure it remains current in light of evolving market conditions and disclosure practices. As a result of this work, on 17 October 2012, Guidance Note 8 was released for public comment, and was broadly well received by industry. The extensive work to date on this initiative, is the product of considerable and constructive cooperation between ASX Group and ASIC.

- 39 Details on the status of ASX Group's agreed actions from our previous assessments are set out in Section D.

Consultation

- 40 Our findings and agreed actions are set out in Section B of this report. ASX Group has had the opportunity to view and comment on the factual accuracy of this report. Where appropriate, this report reflects ASX Group's comments.

B Agreed actions

Key points

We have considered the adequacy of ASX Group's arrangements and resources for the operation and supervision of its markets and CS facilities.

Our view is that ASX Group licensees complied with their statutory obligations as they existed at the time of the assessment period—however, there are seven areas where ASX Group has agreed that further action is warranted. These agreed actions relate to ASX Group's:

- technological resources (Agreed Action 1); and
- obligation to monitor and enforce compliance with its operating rules (Agreed Actions 2 to 7).

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.

Nature of agreed actions

- 41 Our agreed actions can be broken down into two categories:
- *technology*—the obligation for ASX Group licensees to have sufficient resources, including technological resources, to properly operate their markets and CS facilities; and
 - *monitoring and enforcing compliance*—ASX Group's obligation to have adequate arrangements for monitoring and enforcing compliance with its operating rules.

Technology

- 42 Technology is a fundamental driver for markets and, in the context of ASIC's strategic priorities, it is critical for the operation of efficient markets and for confident and informed investors. For this reason, technology is a key focus of our assessment of licensees. For this assessment, we focused on:
- the outage in ASX Group's MAP on 9 October 2012;
 - the management of access to ASX Group's ALC; and
 - ASX Group's preparedness for cyber attack.

Outage in market announcements platform

43 The processing and dissemination of market announcements is performed by ASX Group's MAP. MAP is facilitated by a third-party product which is used internationally by more than 80 organisations.

44 The system was implemented in June 2012, replacing the previous company announcements platform. ASX Group considers that the new platform brought significant improvements to the overall processing of market announcements through increased automation and a reduction of manual involvement.

Background

45 On Tuesday, 9 October 2012 the automated processing of market announcements was interrupted between 12.11 pm and 3.55 pm (three hours and 44 mins). Officers of the ASX Market Announcement Office (AMA) were unable to process or release any new announcements to the market.

46 There were 112 announcements submitted during the outage which were not released until after 4.03 pm.

47 In accordance with ASX Group's internal procedures, issuers that submitted price sensitive announcements (23 in total) were placed in PRE_NR (pre notice received) session state, so that their securities would not be available for trading until the announcements were processed and released. This meant that for the duration of the issue, investors holding these stocks could not sell, and those looking to acquire could not buy. All other trading continued as normal.

48 As part of our assessment, we reviewed the circumstances surrounding the outage, ASX Group's response to and management of the outage, and the steps ASX Group has taken in an attempt to reduce the risk of similar issues occurring in the future.

Initial response

49 Following the first interruption around 12.11 pm, ASX Group took some initial steps in an attempt to resolve the problems. These steps were unsuccessful and the MAP system vendor's international support team in India was engaged at around 12.45 pm.

50 Subsequent investigation determined that connectivity was not the root cause of the problem.

51 At 1.20 pm, ASX Group agreed to switch MAP processing to ASX Group's backup site in Bondi, while a separate team worked on the production fault. This did not provide processing capability and it was discovered that the

same problem was also present in the backup environment. Efforts were then redirected to find the root cause.

52 After further investigation—at around 3.00 pm—the MAP system vendor’s support team in India discovered that a similar error had occurred with another client nearly 12 months earlier, with the issue related to a suspected bug within another third-party provider’s database.

53 The issue was found to have been caused by a problem within a third-party provider’s database, which forms part of the MAP solution, causing a database memory failure.

Issue resolution

54 The support efforts determined the root cause was related to the other third-party provider’s database issue that could be resolved with the deployment of a database patch.

55 At around 3.20 pm, ASX Group’s database support team analysed the recommended third-party provider’s patch and prepared a workaround that provided a temporary resolution until the official patch was tested and applied to the production system. The workaround was successfully tested and recommended as the interim solution at around 3:40 pm.

56 The workaround was applied at approximately 3.55 pm. All outstanding announcements waiting in the processing queue (112 in total) were released by 4.40 pm following the resolution of the issue. The system continued to operate as normal for the remainder of the day. Our view is that ASX Group handled the operational response to this issue in a satisfactory manner.

Communication

57 ASX Group implemented its communication protocol following the MAP outage. This included:

- regular internal updates on issue resolution;
- AMA contacted each issuer that lodged an announcement during the outage (112 in total) advising that its announcement would not be released until the technical issue with MAP was resolved; and
- regular updates were provided to ASIC and Chi-X Australia Pty Limited (operator of the exchange market ‘Chi-X’) was also kept informed by telephone and email.

- 58 In keeping with its protocol, market participants were also advised of the issue. This initially occurred at 2.30 pm, through a Voiceline³ message to ASX Trade users, some two hours after the outage occurred. As not all market users subscribe to the Voiceline service, the asx.com.au website was also updated an hour later (at 3.30 pm) to advise other market users of the issue. We are uncertain as to the reason for the additional delay in announcing the system issues to the broader market.
- 59 While we are satisfied about ASX Group's operational response to this issue, we question the approach it took to keeping all market users adequately informed. We recognise that a market operator should be given an opportunity to address a system issue, including attempting to revert to a backup site. This needs to be balanced against advising the market of a system issue and the interim steps ASX Group has taken to manage the issue at the earliest possible time. Initiatives of this type are important to ensuring investors remain confident and informed.
- 60 We believe that these messages should be delivered to all affected market users at the same time. In this case, we would have expected ASX Group to provide details of the issue to all market users at the same time through its Voiceline service, system status and public website. This would have ensured that all participants and users were kept equally informed of issues that may have impacted their investment decisions. We also consider that this information could have been provided earlier to all market users. More than two hours had passed before ASX Group released a Voiceline message and more than three hours had passed before an update was made on asx.com.au and ASXOnline Companies webpage.
- 61 While ASX Group advises that no complaints were received relating to the outage, it did field a number of telephone inquiries. We recommend that ASX Group reviews its communication procedures to ensure that all market users are informed in an adequate and timely manner in the future.

Agreed Action 1: Communication following a system outage

ASX Group agrees to review its communication procedures, including the timing of future communications about system issues to market participants and other market users, with a view to providing the information in an appropriate timely manner.

³ The Voiceline service is provided by ASX's Information Services division. It is a public address service over which price-sensitive listed company announcements and ASX Market Control information is provided to market participants subscribing to the service.

Enhancements following MAP outage

- 62 Following the MAP outage, ASX Group performed a review of its internal procedures for application management and technology incident management to reduce the risk of issues recurring in the future.
- 63 It has implemented a number of process improvements for monitoring and escalating application management events in and around the MAP system. These improvements range from error logging and system monitoring in the MAP application to a detailed technical review workshop of current disaster recovery practices.
- 64 ASX Group's technology team has worked closely with ASX Group's Market Operations unit to train staff and improve the incident management processes with the aim of reducing the impact of outages in the future. This includes training in a recognised framework for root cause analysis, which is being adopted across both teams and will be implemented in early 2013.
- 65 In addition, ASX Group has reviewed and implemented changes to the vendor management operational support practices with its MAP application vendor, including tightening up the release and patch management processes which are now reflected in the support arrangements between the two companies.
- 66 This includes ASX Group reaching an agreement with its vendor to have ongoing support staff in Sydney. This initiative mirrors similar action ASX Group took following the ASX Trade outage on 27 October 2011. ASX Group will also look at isolating the infrastructure surrounding the MAP application, given its critical function and relevance to the transparency of ASX Group's markets. This infrastructure will be isolated in much the same way as its trading systems are isolated, so that it doesn't affect any other environments.
- 67 These measures are designed to assist in reducing the risk of similar issues in the future. ASIC will continue to monitor ASX Group's progress.

Access to the Australian Liquidity Centre

Background

- 68 ASX Group's ALC is a data centre, located in Gore Hill in Sydney. It offers the opportunity for market participants to pay a fee to locate technology in the same data centre as ASX Group's trading engines, thereby providing the market participants with lower latency. The ALC also offers co-location and connectivity for a very wide variety of Australian market firms, including high-frequency traders.

- 69 ASIC reviewed high-frequency trading in Australia and released a report on its activities on 18 March 2013.⁴ ASIC does not regard the fact that market participants can co-locate at the ALC to obtain a speed advantage as inherently unfair for the market. Speed of access to the market has always been contestable, from the days of physical proximity on the floor when an open outcry system operated.
- 70 We recognise that not all market users choose to operate at the co-location site with lowest latency, but for those who do, ASIC's concern is to ensure that the facilities for doing so, are made available to them on a fair basis and on transparent terms.
- 71 For that reason, our assessment focused on whether the dissemination and receipt of market data for those market users that choose to locate within the ALC:
- occurs on an equal basis for users within each of ASX Group's service sub-offerings; and
 - whether that service is delivered in accordance with published specifications.

Access

- 72 Our assessment found that data was disseminated to customers in accordance with the published specifications and was available on an equal basis. Access to market data for ASX Trade is available to all users at the ALC through three different services. Each has a different latency profile, with cable length and network infrastructure provided the same way for all users within each service.
- 73 Access to market data for ASX 24 is available through two services. Each service has a different latency profile, with cable length and network infrastructure provided the same way for all users within each service.
- 74 Participants make their own assessment as to which market data service they require, including the market data they wish to receive through that service. ASX Group advises that no market participant has been refused access to the ALC.

Transparency

- 75 ASX Group considers that the provision of market information and services to customers of the ALC is fully transparent and available to all participants and other customers on a non discriminatory basis, and on reasonable commercial terms. The ALC services are provided to its customers in accordance with standard conditions and specifications, which are set out on

⁴ Report 331 *Dark liquidity and high-frequency trading* (REP 331).

the ASX Group website. These standard conditions and specifications were determined in accordance with ASX Group's governance framework and in line with the principles of the Charter appearing on page 6 of its 2012 annual report and on its website.⁵

- 76 Our review found that the methods used to disseminate market data to customers is in accordance with the published specifications which includes that the provision of data to participants is on an equal basis.
- 77 Participants and customers are involved in the process of on-boarding at the ALC, and together with ASX Group, sign off on the provision of the services in accordance with the specifications. ASX Group's Markets Technology unit monitors the technology on a real time and ongoing basis and utilises an internally developed tool to monitor ALC latency. ASX Group is also currently reviewing externally developed monitoring tools for potential implementation.
- 78 Neither ASIC or the ASX Group have received any complaints from participants about latency related issues associated with the dissemination of market data from the ALC.
- 79 In addition, the board of ASX Compliance has oversight of the reviews performed by ASX Group's Regulatory Assurance team, in respect of conflict handling arrangements under the Corporations Act. As part of ASX Group's conflict handling arrangements, Regulatory Assurance will include, in its quarterly review of conflicts handling, a review of activities relating to co-location customers (from the second quarter of the 2012–13 financial year, to be undertaken in the third quarter of the 2012–13 financial year).

Preparedness for cyber-attack

- 80 ASIC reviewed ASX Group's preparedness against cyber attack. ASX Group complies with key recommendations from the Department of Defence *Strategies to Mitigate Targeted Cyber Intrusions*. Regular reviews are also conducted by independent parties to assess ASX Group's preparedness for cyber attack, and where necessary, ASX Group implements recommendations from these third-party reviews.
- 81 More broadly, ASX Group's preparedness is supported by extensive practices and procedures.

⁵ <http://www.asxgroup.com.au/asx-customer-charter.htm>

Monitoring and enforcing compliance

- 82 The second category of agreed actions relate to ASX Group's obligation to have adequate arrangements for monitoring and enforcing compliance with its operating rules. For this review, we focused on ASX Group's monitoring and management of its listing rules.
- 83 The effective monitoring and enforcement by a market operator of its listing rules is critical for ensuring that investors are confident and make informed decisions.
- 84 Day-to-day oversight of listed entities' compliance with the ASX listing rules is undertaken by ASX Group's Listings unit (ASX Listings), a division of ASX Compliance.
- 85 For this assessment, we paid particular attention to ASX Group's processes for:
- assessing instances where there may be a false market in an entity's securities under ASX Listing Rule 3.1B (False market);
 - dealing with long-term suspended entities;
 - dealing with dual-listed entities;⁶ and
 - reviewing prospectuses and other disclosure documents.

False market: Listing rule 3.1B

- 86 The continuous disclosure rules, which include ASX Listing Rules 3.1 (Immediate notice of material information) and 3.1B (False market), are among the most important in the ASX listing rules. They are critical to the integrity and efficiency of the ASX market, and other markets that trade in ASX-quoted securities or derivatives of those securities. When properly administered, they also support ASIC strategic priorities of fair and efficient markets, and confident and informed investors.
- 87 In assessing ASX Group's arrangements for administering ASX Listing Rule 3.1B, we reviewed its policies and procedures, as well as some practical examples demonstrating ASX Group's action. As a result of our review, we believe ASX Group's arrangements for dealing with ASX Listing Rule 3.1B matters are adequate. We have formed this view based on our assessment of the practice and procedures ASX Group has in place, which are designed to proactively identify and manage false market issues and appropriately record its activities. We have also reviewed the practical application of these practices and procedures, using some instances where 'false market' considerations arose.

⁶ For the purposes of our review, 'dual-listed entities' refers to entities that have a simultaneous listing on ASX and overseas markets.

88 We have, however, made a recommendation, to which ASX Group has agreed, that ASX Group continue to meet with ASIC to explore further improvements to its processes, especially given the recently revised Guidance Note 8.⁷

What is a false market?

89 Currently, ASX Listing Rule 3.1 B states that:

...if ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must give ASX the information needed to correct or prevent the false market.

90 A 'false market' refers to a situation where there is material misinformation or materially incomplete information in the market that is compromising proper price discovery. This may arise, for example, where:

- a listed entity has made a false or misleading announcement;
- there is other false or misleading information, including a false rumour, circulating in the market; or
- a segment of the market is trading on the basis of market-sensitive information that is not available to the market as a whole.⁸

ASX Group processes

91 ASX Listings supervises the market for securities issued by listed entities, including monitoring compliance with ASX Listing Rule 3.1B.

92 Every listed entity is allocated a responsible Listing Adviser, whose responsibilities include monitoring the entity's continuous disclosure. This involves monitoring and reviewing all information released to ASX Group's MAP to determine whether additional or clarifying disclosure is required under ASX Listing Rule 3.1 and/or 3.1B, and whether other listing rules have been complied with.

93 It also involves monitoring all major state and national newspapers before the market opens each trading day to identify any articles about an ASX-listed entity that may raise continuous disclosure issues and compliance with ASX Listing Rule 3.1 and/or 3.1B.

94 ASX Listings liaises closely with ASX Group's Surveillance unit (ASX Surveillance), which uses sophisticated computer technology to monitor trading in quoted securities on a real-time basis seeking to identify abnormal trading which could indicate that there has been a leak of market-sensitive information yet to be announced under ASX Listing Rule 3.1 or that there is,

⁷ Released on 13 March 2013 and became effective on 1 May 2013.

⁸ Guidance Note 8, p. 39.

or may be, a false market in an entity's securities under ASX Listing Rule 3.1B. ASX Surveillance also reviews various news services, investor forums, chat sites and published broker research looking for similar indications.

ASX Group powers to correct and prevent a false market

- 95 ASX Group's revised Guidance Note 8 provides commentary on its powers to correct and prevent a false market.
- 96 Under ASX Listing Rule 3.1B, if ASX Group considers that there is or is likely to be a false market in an entity's securities, it may require the entity to give ASX any information it asks for to correct or prevent the false market.
- 97 To correct or prevent a false market, ASX may require an entity to disclose market-sensitive information, even if the entity considers that the information falls within ASX Listing Rule 3.1A and does not require immediate disclosure under ASX Listing Rule 3.1. It may also require an entity to disclose information that, in itself, is not market-sensitive and does not need to be disclosed under ASX Listing Rule 3.1 (e.g. to correct a false rumour that the entity is about to enter into a market sensitive transaction when it is not).
- 98 If ASX has a concern that there is, or may be, a false market in an entity's securities, it will usually try to contact the listed entity to discuss the situation and the steps that could be taken to correct or prevent the false market. This may include the entity making an announcement to correct any misinformation in the market. It may also include the entity requesting a trading halt to stop trading in the entity's securities on licensed markets in Australia until the market is properly informed.
- 99 If ASX is not able to contact the listed entity or the entity does not co-operate with ASX in making an announcement or requesting a trading halt, ASX may suspend trading in the entity's securities to prevent a false market from happening.
- 100 It will often be the case, however, that the entity is not able to identify any reason to explain the abnormal trading in its securities other than a possible leak of market sensitive information. In such cases, ASX assumes that the information in question is no longer confidential and will require an immediate announcement about the information under ASX Listing Rule 3.1 and/or 3.1B. Where this occurs, the adviser will endeavour to work with the entity to achieve an outcome that meets the entity's disclosure obligations under ASX Listing Rule 3.1 (and s674) or ASX Listing Rule 3.1B.⁹

⁹ Guidance Note 8, p. 51.

Recent developments

- 101 In October 2012, ASX Group released for comment a consultation paper, including a revised version of Guidance Note 8, to assist listed entities to understand and comply with their disclosure obligations under ASX Listing Rules 3.1–3.1B. ASIC worked with ASX Group in developing the document.
- 102 The revised Guidance Note 8, which was released on 13 March 2013 and became effective on 1 May 2013, expands and clarifies what constitutes a false market for the purposes of ASX Listing Rule 3.1B, and outlines how ASX deals with specific situations where that rule is commonly invoked (e.g. where there is comment or speculation in a media or analyst report, or a market rumour about a material matter involving a listed entity).
- 103 The expanded section of Guidance Note 8 on false markets addresses a perception that ASX Listing Rule 3.1B may not have had the same understanding attached to it by entities as ASX Listing Rule 3.1.
- 104 Events over the last six months have highlighted the increasing influence of social media, and the growing potential for false market issues to arise beyond the control of the issuer or the usual filters of traditional media outlets. This consultation into Guidance Note 8 was particularly important and allowed these issues to be fully considered.
- 105 As a result of our assessment, we believe that ASX Group’s arrangements for dealing with ASX Listing Rule 3.1B matters are adequate. We have formed this view based on our assessment of the practice and procedures ASX Group has in place, which are designed to proactively identify and manage false market issues and appropriately record its activities. However, the recently revised Guidance Note 8 provides an opportune time for ASX Group to consider its processes and as a result we recommend that ASX Group continues to meet with ASIC to explore further improvements to these processes.

Agreed Action 2: ASX Listing Rule 3.1B processes

The recent review of Guidance Note 8 provides an opportune time for ASX Group to consider its processes. ASX Group has agreed to continue to meet with ASIC to explore further improvements to these processes.

Long- term suspended entities

- 106 ASX Group is permitted under its listing rules to suspend an entity’s securities from quotation in certain instances. This includes where:
- the entity is unable or unwilling to comply with, or is in breach of, a listing rule;

- suspension is necessary to prevent a disorderly or uninformed market;
- suspension is appropriate for some other reason;
- the entity fails to lodge reports as required under the listing rules in Chapters 4 and 5; or
- the entity fails to pay the annual listing fees.

107 Each year, a number of entities are suspended on these grounds. At the time of our assessment, there were approximately 140 entities that were suspended from ASX's market. Some of these have been suspended for lengthy periods, including some that have been suspended for over 10 years.

108 There are many legitimate reasons why an entity may be suspended for lengthy periods, including:

- that it is exploring or undergoing a 'back-door' listing and has been suspended pending compliance with Chapters 1 and 2 of the listing rules; or
- that it is in administration, where there is a reasonable prospect of the entity being recapitalised and its securities being re-instated to trading.

109 ASX Group aims to strike a balance in these situations. Existing shareholders of a suspended entity would naturally prefer the capacity to conduct secondary trading of their interests on a recognised exchange, rather than having the entity formally delisted, causing trading and the provision of information to be comparatively reduced.

110 As part of our assessment, we reviewed ASX Group's policies and procedures for dealing with long-term suspended entities, as well as some practical examples demonstrating ASX Group's action.

111 Our review found that ASX Group's action and processes regarding long-term suspended entities are adequate. We have, however, recommended that ASX Group increases disclosure of its processes and the results of its reviews to provide greater transparency to the market.

ASX Group processes

112 ASX Listings conducts an annual review of all suspended entities. The purpose of the review is to determine which of those entities, as a result of their lack of operations and/or financial condition, (and consequent breach of listing rules), should be considered as potential candidates for removal under ASX Listing Rule 17.12. This review is carried out in January each year.

113 The focus of these reviews is on entities that have been suspended for a period of 12 months or more and have little prospect of re-instatement. This category is likely to include:

- an entity released from administration that has minimal assets and no business;
 - an entity that has failed to comply with periodic financial reporting requirements for the duration of its suspension; and
 - an entity that has not made any announcements since its suspension relevant to its potential reinstatement.
- 114 The last review was completed in January 2012 and ASX Group is currently in the process of conducting its 2013 review.
- 115 ASX Listings sends a letter to all entities in this category, asking that they show cause as to why ASX should not remove them from the official list under ASX Listing Rule 17.12.
- 116 If, after receiving the entity's response, ASX Listings considers that there are reasonable grounds why the entity should not be removed (e.g. the entity may be pursuing potential business opportunities or acquisitions), ASX Listings sends a subsequent letter to the entity. This subsequent letter advises that ASX will not remove the entity at this stage but will review the entity's circumstances again in its next annual review. This letter also confirms that:
- the entity will be required to make periodic disclosure (by providing quarterly updates) to the market about its progress. At a minimum, the entity will be required to tell the market that no progress has been made since the previous announcement; and
 - the entity, although suspended, must comply with ASX Listing Rule 18.6 (which requires an entity to comply with all listing rules despite the quotation of its securities being suspended).
- 117 If an entity does not respond to ASX's first letter, or the response does not contain any reasonable proposal for the entity's reinstatement, ASX management considers at its regular national management meetings whether to proceed with the entity's removal.
- 118 The proposed date of removal must be at least 15 days after the date on which the entity will be advised of the decision, to allow the entity sufficient time to lodge an appeal with the Listings Appeal Committee within the time limit applicable to national management meeting decisions.
- 119 ASX Listings also conducts periodic reviews to ensure that entities that have received a subsequent letter have been complying with its requirements. It is ASX Listings' view that, if no disclosures are made to the market, this will be considered in the next annual review and will have a negative impact on the entity's prospects. These periodic disclosures are best practice and assist suspended entities in building a case that they have a plan for reinstatement.

- 120 We examined some examples of ASX Group's reviews into long-term suspended entities, which revealed that ASX Group follows its policies and procedures and conducts periodic reviews as required.
- 121 We also examined the circumstances surrounding the few entities that have been suspended for over 10 years. These entities have been suspended for a range of reasons, including difficulties in meeting the shareholder spread requirements and the unsuccessful pursuit of numerous business proposals. We have discussed with ASX Group the rationale for the continued quotation of these entities and are satisfied with ASX Group's action.
- 122 We believe, however, that ASX Group should increase transparency to the market of its processes and the outcomes of its reviews. ASX Group is currently developing a new guidance note on ASX Group's processes for reviewing and removing long term suspended entities from the official list.

Agreed Action 3: Long term suspended entity reviews

ASX Group agrees to publish its processes for reviewing long-term suspended entities on its website. This will provide greater transparency to the market about its processes. ASX Group is also developing a proposal to impose a condition on long-term suspended entities requiring them to disclose if they have been the subject of review under ASX Group's long-term suspended entity policy and the result of the review.

Dual-listed entities

- 123 There are many listings of international entities on ASX Group's markets, many of which also maintain a listing on an overseas exchange. For the purposes of our review, dual-listed entities refer to those that have a simultaneous listing on ASX and overseas markets. As at 30 June 2012, there were over 200 entities in this category, with 58 of these entities being incorporated and listed in a foreign jurisdiction and also listed on ASX.
- 124 ASX Listing Rule 3.1 requires an entity that 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, to immediately tell ASX that information.
- 125 A note to ASX Listing Rule 3.1 lists examples of such information, including a copy of any document containing market-sensitive information that the entity lodges with an overseas stock exchange or other regulator which is available to the public.
- 126 We sought to understand and examine ASX Group's processes for dealing with dual-listed entities, with particular emphasis on how disclosure and trading halt requests are managed. This is set out in more detail below. Our review found that ASX Group had adequate arrangements in place to ensure

disclosures are made to the ASX market in a timely manner. We have made no recommendations.

ASX Group processes

- 127 The listing rules impose a contractual obligation on listed entities to comply with the rules. As a result, they are required to ensure that disclosure is actioned in a timely way. It is the responsibility of the listed entity to ensure that it coordinates any continuous disclosure releases and requests for a trading halt with ASX and its overseas exchanges, to ensure that all the markets on which the entity's securities are tradeable, are in the same trading session state.
- 128 Most entities that are dual-listed have listings in markets that do not overlap with ASX Group's operating hours. As a result, disclosure is typically provided to ASX before the start of trading on the next trading day.
- 129 There are however some markets where there is an overlap with ASX Group's operating hours, such as those in New Zealand, Singapore and Hong Kong and this will require greater scrutiny.
- 130 ASX Group's processes include its ASX Surveillance unit monitoring share price movements and newswires looking for evidence that may suggest that an entity has failed to update the ASX market at or around the same time as its overseas market.
- 131 If this situation was detected, ASX Surveillance would notify ASX Listings which would follow up with the relevant listed entity to rectify the disclosure.

Recent developments

- 132 As part of its ongoing review of Guidance Note 8, ASX Group is proposing to introduce a new listing rule (ASX Listing Rule 3.17B) that will require an entity to immediately give ASX a copy of any document it gives to an overseas stock exchange that is, or is to be, made public.
- 133 This proposal requires an entity to give to ASX a copy of any document it gives to an overseas stock exchange that is to be made public, regardless of the impact of that information on the price or value of an entity's securities. This will ensure informational parity between Australian investors and overseas investors.

Prospectus and disclosure document review

- 134 Under the Corporations Act, entities are required to lodge their prospectuses with ASIC and ASIC has certain powers in relation to these documents. Entities are also required to submit a prospectus to ASX Group as part of

their admission requirements under Chapter 1 of the listing rules, if they wish to apply for a ‘back door listing’ under Chapter 11, or if they wish to be reinstated to the official list after being suspended under Chapter 12.

135 When ASIC reviews a prospectus, we will analyse what information the Corporations Act requires in the context of the entity and the offer.¹⁰ ASX Group also reviews prospectuses as part of its assessment of whether entities meet the requirements of its listing rules.

136 ASIC and ASX Group both have a role in reviewing the content and quality of prospectus disclosure, as such, cooperation is important.

137 Our assessment sought to gain a better understanding of ASX Group’s approach to prospectus disclosure. We focused on reviewing ASX Group’s processes for considering these documents, including analysing a sample of ASX Group’s files relating to prospectuses.

ASX Group procedures for reviewing prospectuses

138 ASX Group’s procedures for reviewing prospectuses are contained in *Document MP01 Management Papers Document Kit* (Document MP01). This document lists the sections of a prospectus that a responsible Listings Adviser should review when considering a prospectus. These are:

- the directors’ and management section;
- any independent geologist report;
- the investigating accountant’s report;
- the risk factors; and
- the financial information.

139 Document MP01 also states that ASX Group’s Legal team will review any relevant solicitor’s report and the material contracts section.

140 During our assessment discussions, we were advised that, in practice, a Listing Adviser reads the entire prospectus. This is not expressly required by ASX Group’s procedures that we were given (namely Document MP01).

141 Document MP01 contained very limited guidance on what a Listing Adviser should be looking for when reviewing a prospectus. We consider that consistency could be improved, and Listing Advisers could be assisted in their task of reviewing prospectuses, if there were more detailed guidelines explaining what to look for in the relevant sections of the prospectus. The guidelines should also require the Listing Adviser to review the whole prospectus: see also Agreed Action 6.

¹⁰ Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228), paragraph 168.

142 We also think it would be beneficial for ASX Group to engage more with ASIC on prospectuses, in particular on related party issues and any areas of concern, given the important role that both organisations play in efficient capital raising and promoting good disclosure.

143 We recommend that ASX Group formulate more extensive procedures to guide Listing Advisers' reviews of prospectuses, including advocating close communication with ASIC.

Agreed Action 4: Prospectus review procedures

ASX Group agrees to formulate more extensive procedures to:

- guide Listings Advisers' prospectus reviews once the prospectus is received by ASX Group. In particular, these procedures will explain what to look for in different sections of the prospectus and confirm that the Listings Adviser should review the whole prospectus. Reviewing the whole prospectus enables the Listings Adviser to assess whether the entity's structure and operations are appropriate for a listed entity (ASX Listing Rule 1.1, Condition 1). Understanding the entity's business is also important for ASX Group's ongoing supervision of the entity (see also Agreed Action 6); and
- advocate close communication between ASX Group and ASIC on prospectuses in relation to any areas of concern.

Record keeping of ASX Group's review of prospectuses

144 We reviewed a sample of files relating to ASX Group's prospectus reviews. We noted that ASX Group's files included very limited documentation recording the ASX officer's review of the prospectus. In most cases, the only document we observed was a memorandum from the Listings Adviser (which we understand is the management paper that is submitted to the National Listings Committee for an admission decision).

145 These limited records made it difficult for ASIC to assess ASX Group's procedures for reviewing prospectuses. We recommend that ASX Group improves its record keeping for its review of prospectuses.

Agreed Action 5: Prospectus review record keeping

ASX Group agrees to update its procedures to require more detailed record keeping relating to its review of prospectuses. This includes Listings Advisers and ASX Legal accurately recording the extent of the review and any significant disclosure issues raised with the entity.

Focus areas: understanding the entity's business and monitoring the quality of disclosure

146 We analysed the areas ASX Group focuses on when it reviews prospectuses. ASX Group confirmed that it checks for compliance with the listing rules. It

appears to us that Listings Advisers check for specific listing rule related issues and the factual accuracy of information (e.g. the number of shares on issue). Our review did not find any indication that Listings Advisers review substantive information about the entity contained in the prospectus or the quality of prospectus disclosure.

Understanding the entity's business

147 Listings Advisers have an important role in preparing documents that will be used for an admissions management decision. We consider that Listings Advisers should take a broader approach to reviewing the substantive information in the prospectus.

148 This will enable the Listings Adviser to form an opinion on whether the entity has an appropriate structure and operations for listing as required by ASX Listing Rule 1.1, Condition 1. We also note that the Listing Adviser needs to understand the entity's business in order to monitor compliance with continuous disclosure and other listing rules after admission.

Monitoring the quality of prospectus disclosure

149 While recognising that responsibility for the preparation of a prospectus rests firmly with an entity's directors, and not ASIC or the ASX Group, we consider that Listings Advisers have a role in monitoring the quality of prospectus disclosure.

150 ASX Guidance Note 1 *Apply for admission—ASX listings* (Guidance Note 1) states that if ASX has concerns with the quality of the information in a prospectus, it will take those concerns into account when determining whether or not to list the entity. It also states that it may raise those concerns with ASIC, as the regulator responsible for administering the laws relating to prospectuses. The Listings Adviser needs to review the quality of information to enable ASX Group to implement this policy.

151 ASX Group's consideration of the quality of information in a prospectus will also assist to identify material misstatements or omissions, ensuring a better informed and more transparent secondary market in the securities. In reviewing the quality of information in a prospectus for this purpose, we would expect that Listings Advisers will consider whether the prospectus is sufficiently comprehensible, and whether it adequately details the nature of the issuer's business and associated risks. Any concerns it may identify in that regard should be raised with ASIC.

152 We recommend that ASX Group take a broader approach to reviewing the substantive information in prospectuses and also the quality of disclosures in a prospectus.

Agreed Action 6: Prospectus review focus areas

ASX Group agrees to take a broader approach to reviewing the substantive information in prospectuses, so that it can adequately form a view about whether the entity has a structure and operations that are appropriate for listing.

While recognising that responsibility for preparation of a prospectus rests firmly with an entity's directors, ASX Group also agrees to review the quality of the disclosures in a prospectus (rather than just compliance with the listing rules) and raise any concerns it may identify in that regard with ASIC. These concerns include whether the prospectus is sufficiently comprehensible, and whether it adequately details the nature of the issuer's business and associated risks. These issues should be reflected in ASX Group's procedures and documented during the Listing Advisers' review of the prospectus.

Time frame

- 153 We assessed ASX Group's time frame for reviewing prospectuses. ASX Group informed us that the Listings Adviser begins reviewing a prospectus as soon as it is lodged with ASX Group (which may be as late as day seven of the offer) and continues to review the document throughout the offer period. However, ASX Group does not have documented procedures requiring prospectus reviews to be conducted within a set time frame.
- 154 On some occasions where ASIC contacted a Listings Adviser with concerns during the offer period, we have found that they did not appear to have started reviewing the prospectus. There have also been occasions when the Listing Adviser informed ASIC that they required an entity to provide additional disclosure on listing due to deficiencies they had identified in a prospectus after the offer had closed. For these reasons, we formed the impression that ASX Group only begin their review of the prospectus in the very late stages of the offer (e.g. after the entity has met minimum subscription).
- 155 The time at which deficiencies are identified in a prospectus has implications for investors. For example, under s739 ASIC has the power to stop an entity from issuing securities if a prospectus is materially deficient. This usually results in the entity providing a supplementary or replacement prospectus to investors together with withdrawal rights pursuant to s724. Once the securities have been issued, the onus is on the investor to seek a refund from the entity pursuant to s737.
- 156 In our view, ASX Group should review prospectuses as early as possible in the offer period so that deficiencies can be remedied. This is important for investors applying under the prospectus and also for the transparency of the market. The prospectus is the foundation for the listed entity's continuous disclosure and if it is deficient, the transparency and efficiency of the market

are compromised. This is reflected in Guidance Note 1, which states that prospectuses are to be released before quotation to ensure that the market receives an adequate level of pre-quotation disclosure for there to be an informed market.

- 157 We recommend that ASX Group updates its procedures to ensure that Listings Advisers commence reviewing prospectuses early in the offer period.

Agreed Action 7: Prospectus review timing

ASX Group agrees to update its procedures to ensure that Listings Advisers commence reviewing prospectuses early in the offer period (as soon as possible after lodgement) so that deficiencies can be remedied before the offer is closed.

C 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 and events for the 2011–12 financial year, and during the more recent period, were:

- The S&P/ASX 200 declined by 10.8% during 2011–12, as a result of events such as the downgrade of the US sovereign credit rating and the inability of European leaders to agree on a suitable solution to the sovereign debt crisis. The first three quarters of 2012–13 have seen the S&P/ASX 200 recover all of the ground it lost over the course of 2011–12 with the index up by 20.2% between July 2012 and the end of March 2013. The improved performance has been in line with a general rebound in global equity markets over this period and has coincided with a new wave of monetary stimulus measures announced by the world's largest central banks since the start of 2012–13.
- Volatility levels spiked during the first quarter of 2011–12 as investors worried about the drawn out negotiations surrounding the raising of the US debt ceiling and the subsequent downgrade in the US sovereign credit rating. Following this episode volatility trended lower over the next two quarters before picking up again during the final quarter of 2011–12 as markets reacted to the uncertain outcome of the Greek elections and the possibility of Greece leaving the euro. Volatility trended downward throughout the first six months of 2012–13, however levels have risen dramatically since the end of February (and are now back where they were at the start of 2012–13) on the back of concerns about the impact of sequestration in the United States and the possibility of the Federal Reserve bringing an earlier than expected end to its bond buying program.

Market performance

- 158 Following an 11% increase during 2009–10, the S&P/ASX 200 continued its upward trajectory throughout the first three quarters of 2010–11, reaching a high of 4,971 points in early April 2011, before giving back a large proportion of its gains over the final quarter of the financial year. Despite the steady decline during the final quarter of 2010–11, the S&P/ASX 200 finished the year 8.7% higher: Figure 1.
- 159 The decline, which began during the final quarter of 2010–11, continued throughout 2011–12 with the S&P/ASX 200 falling by 10.8% between July 2011 and the end of June 2012. The double-digit decline was mainly the result of a large drop in the first half of 2011–12, with the Index falling by 11.6% between July and December. This decline was reflective of a wider

pattern of weak global equity market performance. Over that period, investors had been buffeted by a string of adverse outcomes, including the drawn out negotiations surrounding the raising of the US debt ceiling (and the subsequent downgrade of the US sovereign credit rating), the failure among the European leaders to arrive at a credible solution to the sovereign debt situation in Europe, and the ongoing political instability in Northern Africa and the Middle East.

- 160 Performance throughout the second half of 2011–12 was mixed, with a rebound in the third quarter giving way to a sharp drop during the final quarter as global markets reacted to renewed uncertainty surrounding Greece’s ongoing membership of the euro (following a large anti-austerity backlash in the Greek elections and the inability of a number of smaller parties to form a coalition government).
- 161 In contrast to the large decline over the course of 2011–12, the performance of the S&P/ASX 200 during the first three quarters of 2012–13 has seen it recover all of the ground it lost during the previous year. Between July 2012 and March 2013 the S&P/ASX 200 increased by 20.2%. The improved performance of the S&P/ASX 200 has been in line with a general rebound in global equity markets during this period. This has coincided with a new wave of monetary stimulus measures announced by the world’s largest central banks over this period including an expansion of the Bank of England’s asset purchase program, the announcement of a third round of quantitative easing by the Federal Reserve, and the announcement of the Outright Monetary Transactions program by the European Central Bank.

Figure 1: The S&P/ASX 200: July 2010–March 2013



Source: Bloomberg

Volatility of the market

- 162 The evolution of risk in the S&P/ASX 200 index is depicted by the 30-day volatility indicator: Figure 2. The indicator measures the standard deviation of the change in the closing price of the index for the 30 most recent trading days. The measure is then expressed as an annualised percentage. An increase in the volatility measure can be interpreted as an increase in the riskiness of the overall stock market.
- 163 Volatility levels were relatively subdued throughout 2010–11, trending downwards for the majority of the year to finish 7% lower (at 15.9%) in year-on-year terms.
- 164 After remaining relatively stable throughout 2010–11, volatility spiked again in the first quarter of 2011–12 on the back of concerns about whether or not the US Congress would reach a resolution on raising the debt ceiling, and the subsequent downgrading of the US sovereign credit rating by Standard and Poor's. Following this, volatility trended lower over the following two quarters, falling by over 20% between early October 2011 and late April 2012. Volatility ticked up again during the final quarter of 2011–12 (as markets reacted to the uncertain outcome of the Greek elections and the prospects of Greece leaving the euro), finishing the year at 15.1% (0.8% lower in year-on-year terms).
- 165 After declining by approximately 8.5% during the first two quarters of 2012–13, volatility rose sharply towards the end of February and continued to move upwards throughout March. The sudden increase in volatility coincided with the release of minutes from the January Federal Reserve meeting which implied that the Board may stop or slow its bond buying program earlier than expected, as well as increasing uncertainty surrounding the likely impact that the impending sequestration cuts would have on the United States economy.

Figure 2: S&P/ASX 200 30-day volatility: July 2010–March 2013

Source: Bloomberg

Market activity

- 166 Following an increase during the 2010–11 financial year, the daily number of executed trades in S&P/ASX 200 companies continued to grow during 2011–12, with the average daily number of executed trades increasing to 590,047 (up from 491,241 in 2010–11): Figure 3.
- 167 While the daily average number of trades appears to have risen substantially between 2010–11 and 2011–12, it should be noted that the magnitude of the increase was influenced by the events on 9 August 2011, when the number of executed trades increased to 1.32 million as markets reacted to the news of the downgrade to from AAA to AA+ of the US sovereign credit rating by Standard & Poor's. To put this figure in context, it 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.
- 168 Daily executed trades have averaged 571,935 over the first three quarters of 2012–13. While this is below the average level of the previous year (which was inflated by the spike on 9 August 2011), it is still noticeably higher than the average level recorded in 2010–11 which suggests that the average number of daily executed trades are still trending upwards.

Figure 3: Average daily number of trades across the S&P/ASX 200: July 2010–March 2013



Source: IRESS

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Average daily turnover in the S&P/ASX 200 declined to \$4.5 billion during 2011–12 (after averaging \$5 billion during 2010–11): Figure 4. Average daily turnover has continued to decline throughout the first three quarters of 2012–13, falling by \$0.8 billion to \$3.7 billion.

Figure 4: Value of average daily turnover across the S&P/ASX 200: July 2010–March 2013



Source: IRESS

D Agreed actions from previous assessment

Key points

In July 2012, we published our most recent assessment report of ASX Group, which included nine agreed actions. ASX Group has taken steps to comply with these—however, a number of them remain in progress.

- 170 In July 2012, we published our most recent assessment report of ASX Group, which included nine agreed actions. Our current assessment followed a more compressed timeline than has historically been the case. As a result, a number of ASX Group's agreed actions from our previous assessment are still a work in progress.
- 171 Table 1 lists ASX Group's progress against each agreed action arising from our previous assessment. Some matters remain to be addressed.

Table 1: Agreed actions from previous assessment of ASX Group

Agreed actions	Status
<p>Agreed Action 1: Technology enhancements</p> <p>ASX Group agreed to provide ASIC with a detailed report by 31 May 2012, outlining its progress in implementing enhancements with the aim of improving its arrangements.</p>	<p>ASX Group provided its report in accordance with this agreed action and in it confirmed that:</p> <ul style="list-style-type: none"> • new support arrangements from ASX's trading system provider commenced in the third quarter of the 2012 calendar year; • changes have been made to ASX Group's testing arrangements, including the appointment of an Enterprise Quality Assurance Analyst in April 2012; • ASX Group's legacy code review is well advanced and any future changes to its legacy code will be tested as part of the new testing framework before going in to production; and • feedback on its consultation about emergency processes for 'catastrophic events' has been received and was considered when finalising its policy, which was released on 26 February 2013.
<p>Agreed Action 2: Regular use of backup trading infrastructure</p> <p>ASX Group agreed that, for one weekend each quarter, commencing in the third quarter of this calendar year, it will run a backup test environment with a 'normal trading' environment and mandatory participant involvement. ASX Group has also agreed to publicly consult by the end of September 2012 with participants and other stakeholders on the potential benefits and impacts of using its backup site for normal trading during the 2012 Christmas to New Year period.</p>	<p>ASX Group first utilised a test of its back-up site for normal trading on a weekend in the last quarter of 2012, with mandatory participant involvement. ASX Group also consulted with relevant stakeholders (Australian Financial Markets Association (AFMA) and participants) in September 2012 about the potential benefits and impacts of using the backup site for normal trading during the Christmas to New Year period. ASX Group subsequently provided feedback to ASIC, suggesting that participants were hesitant to use it for normal trading during this period. ASIC recognises the arguments presented in some of the feedback and is in discussions with ASX on this issue.</p>

Agreed actions	Status
<p>Agreed Action 3: Decisions on 'review parties'</p> <p>ASX Group agreed to a range of actions, including that it will establish a section on its public website that clearly sets out how it manages its actual or perceived conflicts of interest, including the names of the various review parties, and the measures, framework and processes that ASX Group has put in place to manage its conflicts of interest. ASX Group has also agreed that ASX Regulatory Assurance will review its procedures and templates for making decisions on review parties, and will provide ASIC with a copy of the reviews on a quarterly basis.</p>	<p>ASX Group finalised the criteria for its review party list. Following ASX Group board approval, the list was published on ASX Group's website under the section on conflict handling arrangements in March 2013.</p>
<p>Agreed Action 4: CEO's arrangements</p> <p>ASX Group agreed to make public the nature of the potential considerations arising from the CEO's position on the board of another ASX-listed entity and the arrangements it has in place to manage these considerations. This information will be updated periodically on the ASX Group website, and the board of ASX Limited and ASX Compliance will approve the ongoing adequacy of the arrangements ASX Group has in place.</p>	<p>ASX Group made public the details of its conflict handling arrangements, including specific details of its arrangements to manage the conflict of its CEO. These are available on ASX Group's website under the section on conflict handling arrangements.</p>
<p>Agreed Action 5: Participant admission process</p> <p>ASX Group agreed to commence a review of its arrangements for participant admission and to implement improvements, including:</p> <ul style="list-style-type: none"> • applying its pre-validation of applications more rigorously to determine whether the applicant is in a position to have its application considered. If the application is deficient, it should be returned for re-lodgement at a time the applicant is in a position to provide the required information; • reviewing its procedures for accepting, assessing and approving an application to ensure that an applicant provides evidence that it has satisfied the requirements of the operating rules before admission being granted; • determining the date on which a participant's admission takes effect (rather than this being at the participant's discretion), after being satisfied that the participant is in a position to commence trading, clearing and/or settlement operations immediately upon admission. This should then be communicated to the market, only after respective ASX business units have confirmed 	<p>ASX Group completed its review into its participant admission process in April 2013. A number of issues continue to arise in this context, so this remains a priority for ASX Group. ASX Group will continue to meet with ASIC to discuss changes to its participant admission process.</p>

Agreed actions	Status
<p>they have no objections to the admission and the commencement of operations;</p> <ul style="list-style-type: none"> • amending its management paper submitted to the relevant decision maker to incorporate significantly more information about an applicant's proposed management structure, details of its proposed trading and/or clearing operations, the proposed access model and location of trading and clearing activities, and details of any outsourcing arrangements; and • before admission taking effect, preparing documentation which records the relevant business unit sign-off that all matters have been finalised and the applicant is in a position to commence trading, clearing and/or settlement operations upon admission. 	
<p>Agreed Action 6: Communication about participant admission</p> <p>ASX Group agreed to review its practices and procedures to improve its communication arrangements, and agreed to amend its procedures to ensure a more rigorous process is followed in its communication with participants, the market and ASIC.</p>	<p>ASX Group implemented changes to its processes in October 2012 whereby ASX Compliance is signing off on communications about participant admissions, providing an additional layer of oversight. While there were a few issues around the time of implementation, we are now satisfied that ASX Group is following a more rigorous process.</p>
<p>Agreed Action 7: Risk ratings review</p> <p>ASX Group agreed to discuss with ASIC in the coming months the appropriateness of some of the risk weightings assigned to respective operating rules.</p>	<p>ASX Compliance commenced discussions with ASIC on its risk ratings in the first quarter of the 2012–13 financial year. ASIC has requested further information and ASX is responding. ASIC will continue to work with ASX in the coming months with a view to discussing the appropriateness of its risk rating methodology.</p>
<p>Agreed Action 8: Rule monitoring outcomes</p> <p>ASX Group agreed that, in its monthly ASX Compliance report which is released to the market, it would include statistics on monitoring and enforcement outcomes for that period</p>	<p>ASX Compliance has included statistics on its monitoring activities in its monthly releases and has also implemented a system of quarterly reporting of enforcement outcomes.</p>
<p>Agreed Action 9: Waiver framework</p> <p>ASX Group agreed to enhance its complaints system to more efficiently and effectively capture complaints made about waivers. ASX Group has advised that changes to its complaints system are in progress to facilitate this, for inspection by ASIC. ASX Group has also agreed to include more comprehensive information on waivers in its annual regulatory report.</p>	<p>ASX Group has implemented changes to its complaints handling system to capture waiver related complaints and has also included more detailed waivers reporting in its annual regulatory report that it submits to ASIC.</p>

Key terms

Term	Meaning in this document
ALC	ASX Group's Australian Liquidity Centre
AMA	ASX Market Announcements office
ASIC	Australian Securities and Investments Commission
assessment period	1 November 2011 to 30 June 2012
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)
ASX Trade	ASX's equities trading platform
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 Group's Managing Director and Chief Executive Officer
Ch 7 (for example)	A chapter in the Corporations Act (in this example numbered 7)
Corporations Act	Corporations Act 2001, including regulations made for the purposes of that Act

Term	Meaning in this document
CPSS	Committee on Payment and Settlement Systems
CPSS–IOSCO Disclosure framework and assessment methodology	CPSS and Technical Committee of IOSCO's <i>Principles for financial market infrastructures: Disclosure framework and assessment methodology</i>
CPSS–IOSCO Principles	CPSS–IOSCO <i>Principles for financial market infrastructures</i>
CS facility/facilities	A clearing and settlement facility as defined by s768A of the Corporations Act
CS facility licence	An Australian CS facility licence under s824B of the Corporations Act that authorises a person to operate a CS facility in Australia
CS facility licensee	A person who holds a CS facility licence Note: This is a definition contained in s761A of the Corporations Act.
Guidance Note 1	ASX Guidance Note 1 <i>Applying for admission—ASX listings</i>
Guidance Note 8	ASX Guidance Note 8 <i>Continuous disclosure: Listing Rule 3.1–3.1B</i>
IOSCO	International Organization of Securities Commissions
IOSCO's <i>Objectives and principles of securities regulation</i>	The objectives and principles of securities regulation, originally adopted by IOSCO in September 1998, as amended from time to time
MAP	ASX Group's market announcements platform
market licensee	Holder of an Australian market licence
RBA	Reserve Bank of Australia
s794C (for example)	A section of the Corporations Act (in this example, numbered 794C), unless otherwise specified