



ASIC

Australian Securities & Investments Commission

# Market integrity report: July to December 2017

March 2018

This is ASIC Report 569

**Disclaimer**

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.



## Market integrity

Financial markets fund the economy and, in turn, economic growth. But they can't do this without the trust and confidence of investors.

ASIC focuses on investor trust and confidence through its work to ensure Australia's financial markets are fair and efficient. We set standards and educate stakeholders, pursue behavioural change and take enforcement action to disrupt market misconduct.

This report highlights some of the activities we undertook between **1 July and 31 December 2017**, and outlines our priorities for 2018.



### CRIMINAL ACTIONS

1 person jailed

1 person pleaded guilty



### CIVIL OUTCOMES

4 enforceable undertakings

**\$40.08m** community benefit payments



### BANNINGS AND INFRINGEMENT NOTICES

**10** infringement notices issued

**\$1.403m** in infringement notices

**4** people disqualified from providing financial services

## Standards and education

At ASIC, we look closely at the effect of different behaviours on our markets. Our observations inform the standards we set and how we educate our stakeholders.

### Client money

To help ensure the standards for the protection of retail over-the-counter (OTC) derivatives client money are consistent with the protection of client money provided for other services, we [released final client money reporting rules](#) in October 2017. The rules impose record-keeping, reconciliation and reporting obligations on Australian financial services (AFS) licensees that hold derivative retail client money – ensuring greater transparency around licensees' use of client money.

They also apply more formal and consistent standards across the sector and make sure any discrepancies in an AFS licensee's client money account are notified to ASIC in a timely manner – allowing us to take appropriate action.

### Sell-side research

The integrity of sell-side research directly affects the integrity of financial markets, particularly during the capital raising process. Where inside information is mishandled or conflicts involving research are not properly managed there is a risk of information asymmetries developing in our markets – which can affect investor confidence and participation.

[To improve standards around sell-side research, in December 2017 we released guidance](#) on:

- managing conflicts of interest at each stage of a capital raising transaction
- identifying and handling inside information by research analysts
- the structure and funding of sell-side research teams.

'The timely flow of information and objective research analysis is vital to fair and efficient markets. Investors consider sell-side research when making investment decisions. It is critical that sell-side research represents the genuine, professional opinion of analysts.'

*Cathie Armour,  
ASIC Commissioner*

### NSX listing standards

Well-functioning listing standards are critical to the integrity and reputation of the Australian equity market and the trust and confidence investors have in it. As one of only a small number of domestic listing markets, National Stock Exchange of Australia Limited (NSX) has an important role to play in upholding standards expected of listing markets in Australia.

In August 2017 we published our [assessment of NSX's listing standards](#). The report found that NSX needed to make several changes to improve compliance with its statutory obligations and address serious concerns about the rationale for some foreign listings.

The assessment also identified listings with a disproportionately large amount of trades occurring off-market following very thin trading on NSX. It is unlikely this off-market activity is unique to NSX, so we are conducting a separate review across all Australian equity markets.

[Check out our good practice principles for listings standards.](#)

# Standards and education

## Market reform

We have also driven reforms and set clear and consistent standards aimed at supporting fair and efficient markets in Australia by:



[Consolidating ASIC's existing market integrity rule books](#) to reduce red tape for market participants trading on Australia's securities and futures exchanges.



Consulting on a new [financial benchmark regulatory regime](#) – designed to ensure Australia's financial benchmarks operate within a contemporary regulatory framework – and welcoming the introduction of the [ASX BBSW Trade and Trade Report Guidelines](#).



Issuing [new guidance for licensed exchanges seeking to admit exchange traded products](#) on their market.



Consulting on [reforms to the market licensing regime](#) to facilitate emerging and specialised markets.



## Behavioural change

Achieving behavioural change is an important part of our work. Through early intervention, we may be able to prevent risky conduct, potential breaches and investor losses, before they occur.

## Cyber resilience

Cyber resilience is widely regarded as one of the most significant concerns for the financial markets sector and the economy at large. Given the central role financial markets firms play in our economy, the cyber resilience of our regulated population is a key focus for ASIC.

In November 2017 we released a [report on the cyber resilience of firms operating in Australia's financial markets](#). [Report 555](#) collates and analyses the results of self-assessments from over 100 stockbrokers, investment banks, market operators, post-trade infrastructure providers and credit rating agencies.

While our findings show greater engagement by firms on the issue, there is disparity between firms and insufficient investment in cyber resilience measures.

Report 555 was designed to raise awareness of cyber risks and encourage behavioural change by highlighting good practices and areas for improvement. We also set out questions boards and management should be asking to better understand their organisation's cyber preparedness.

We encourage all firms to consider the information in this report as they develop or enhance their cyber resilience frameworks.

[For more information on how to improve your firm's cyber resilience, visit our website.](#)

'Cyber resilience is not just an IT issue but one that requires a whole-of-organisation response. The dynamic nature of cyber threats requires a comprehensive and long-term commitment to cyber resilience by all organisations operating in the Australian economy.'

*Cathie Armour,  
ASIC Commissioner*

## Systems and controls

Market participants should operate with a risk framework that supports the integrity of Australia's retail and wholesale markets. Having appropriate systems and controls is integral to making sure this happens.

In November 2017 we accepted an [enforceable undertaking from Foster Stockbroking Pty Limited](#) over the stockbroker's capital markets and research businesses.

The EU followed an ASIC investigation into Foster Stockbroking's management of conflicts of interest. We were concerned that conflicts between the commercial and personal interests of Foster Stockbroking (and its directors) and the interests of Foster Stockbroking's clients to receive independent and objective research were not appropriately managed by Foster Stockbroking.

Foster Stockbroking has undertaken to implement a number of changes to its systems and appoint an independent expert to assess and evaluate the adequacy and implementation of the policies and undertakings of Foster Stockbroking.

Foster Stockbroking will also make a community benefit payment of \$80,000 to The Ethics Centre.

## Disruption

Most people who manipulate the market do so for individual gain – to increase the value of their own or their clients' investment, to earn a bigger bonus, or to promote their reputation or career. We take action to make sure poor conduct is disrupted and dealt with.

## Financial benchmarks misconduct

Financial benchmarks are critical to market integrity because they are used as the reference price for a wide range of financial products. Manipulation of benchmarks can undermine their reliability and damage trust and confidence in Australia's financial markets.

In 2016 we brought civil penalty proceedings against Australia and New Zealand Banking Group Limited (ANZ) and National Australia Bank Limited (NAB) in relation to their role in setting the bank bill swap reference rate (BBSW), a key Australian interest rate benchmark.

Both ANZ and NAB agreed to settle proceedings and, on 10 November 2017, the Federal Court imposed penalties of \$10 million each for attempting to engage in unconscionable conduct by seeking to influence the BBSW.

On 20 November 2017 [we accepted enforceable undertakings from ANZ and NAB](#) requiring them to make changes to their BBSW businesses. These programs will be assessed by independent experts appointed by ASIC.

ANZ and NAB have also agreed to each make a community benefit payment of \$20 million to a financial consumer protection fund to be nominated by ASIC, and pay \$20 million each towards ASIC's investigations and other costs.

## Continuous disclosure

Compliance with continuous disclosure obligations is essential to fair and efficient markets and confident and informed investors. If an organisation becomes aware of market-sensitive information, it must disclose it to the market in a timely manner.

In December 2017 [MG Responsible Entity Limited was fined \\$650,000](#) for failing to notify ASX that Murray Goulburn Co-operative Co. Limited was unlikely to achieve the forecast in their ASX announcements dated 29 February 2016.

## Binary option trading apps

In August 2017 we published details of our [review into binary option trading apps](#). The review identified over 330 apps offered to Australians by entities and individuals that appeared to be unlicensed.

Many of the mobile app descriptions contained misleading statements about the profitability of trading and the amount of profit that could be made. And, while some investors made money in the demo mode, they lost money once they moved to a live trading system.

'In an age where technology can hide who is offering and controlling a product, buyer beware has never been so important. If something appears too good to be true, it probably is.'

*Cathie Armour,  
ASIC Commissioner*

After contacting Apple and Google with our concerns, both entities removed the apps identified in our review from their app stores.

## Markets Disciplinary Panel

The Markets Disciplinary Panel (MDP) is a peer-review body that exercises ASIC's power to issue infringement notices or accept enforceable undertakings for alleged breaches of the ASIC market integrity rules.

Between July and December, the MDP issued six infringement notices imposing total penalties of \$1,138,000.

Note: In addition to the MDP outcomes, we also issued four continuous disclosure notices between July and December 2017.

### *Bell Potter*

In November [Bell Potter Securities Limited paid a \\$358,000 infringement notice penalty](#) given to it by the MDP.

The penalty comes after the MDP found that Bell Potter, acting on its own behalf, made bids for DirectMoney Limited shares with the intention of supporting the price of the shares. Bell Potter had acted as lead manager and underwriter for DirectMoney's capital raising.

Note: Compliance with the infringement notice is not an admission of guilt or liability, and Bell Potter is not taken to have contravened subsection 798H(1) of the *Corporations Act 2001*.

## Insider trading

Insider trading is a serious threat to market integrity. Markets can only operate fairly when information is accurate and available to all. Leaks of information create false markets and harm investors' trust and confidence, discouraging participation. When we see this type of market misconduct, we will act.

In November [Jin Xi Li was charged with 88 insider trading offences](#). The charges follow an ASIC investigation into trading in contracts for difference and ordinary shares of PanAust Limited prior to the announcement of a receipt of takeover bid on 30 March 2015.

Each charge carries a maximum penalty of 10 years.

For regular updates on the markets work ASIC is doing, [subscribe to our monthly e-newsletter](#)

## What's next?

We will continue our focus on the following risks over the next few months:

- **Technology and cyber resilience:** We will continue to review the technology and operational risk of our stakeholders and focus on malicious cyber crime in the context of rapid technological developments.
- **Conduct:** We will continue our focus on conduct that enhances market integrity across all market-based activities. In particular, we are asking firms to consider whether their controls are appropriate.
- **Effective capital markets:** We will continue our review of market activity in the OTC sector, primarily fixed income, currencies and commodities (FICC), and equity derivatives. We are also:
  - using Report 525 in our surveillance of the FX market and, where appropriate, broader wholesale OTC markets
  - considering allocation processes in equities markets, and
  - building on our existing market surveillance capabilities.