



ASX Outage		
November 2022		
Contact	Senior Executive Leader	Executive Director
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Key Messages

On Monday 16 November 2020, ASX went live with a new version of their equities market trading system (ASX Trade). Shortly after the go-live, an incident resulted in ASX closing its equities markets for the rest of that day.

ASIC, in conjunction with the RBA, informed ASX of their expectation that an independent review should be conducted into the outage. IBM Australia Limited was appointed and their final report was provided on 22 June 2021, along with 59 recommendations. ASIC also undertook an investigation as to whether ASX had breached its Australian market licence obligations.

On 24 November 2021, ASIC concluded its investigation and determined additional licence conditions should be imposed on ASX Limited. The licence conditions require the IBM recommendations to be fully implemented under the review of an independent expert (Ernst & Young). The licence conditions also assign accountability to the ASX board and senior executives for the implementation of the remedial actions and require attestations that adequate controls, procedures, skills, and resources are in place for designated future technological projects.

The licence conditions (like those imposed on ASX Clear and ASX Settlement for the CHES replacement program) provide an additional layer of assurance, including clear links to remuneration outcomes, and ASIC is confident this will mitigate risks for future system upgrades and major projects.

ASIC has called on industry to continue to improve resilience during market outages and released a report containing ASIC's expectations for industry on 24 November 2021 [REP 708]. In June 2022, ASIC provided an update on the work that market operators and participants had completed or were progressing to improve resilience during market outages. [22-159MR].

ASIC is continuing to engage with market operators and participants to provide guidance and feedback on the steps they are taking to address ASIC's expectations for market outages.

Background

On Monday 16 November 2020, ASX went live with its 'ASX Trade Refresh' project. Shortly after the go-live, an incident resulted in ASX closing its equities and equity options markets for the rest of that day [20-284MR]. Following the outage, ASIC commenced an investigation into whether ASX had met its obligations under its Australian market licence.

In conjunction with the RBA, ASIC informed ASX of their expectation that an independent review would be conducted in the first half of 2021 [20-334MR]. IBM Australia Limited was appointed and their final report was provided to ASX, ASIC and the RBA on 22 June 2021. ASX provided ASIC and the RBA with its high-level response to the independent review in August 2021 [21-220MR].

Ernst & Young (EY) was appointed as the independent expert to review the implementation of IBM's remediation plan. EY will report to ASIC every 3 months until the IBM remediation plan has been



implemented appropriately. In line with our expectations, ASX publishes the independent expert's reports (redacted to remove legally privileged and commercially sensitive material).

Given the problematic ability to suspend or cancel ASX's Australian market licence (under ss797B or 797C of the Corporations Act 2001) or the untested ability to prove breaches of licence obligations, additional licence conditions were seen as the superior regulatory outcome. These licence conditions also extend beyond the ASX Trade system and apply to other ASX designated technological projects (e.g. the CHESSE Replacement project).

ASIC has reviewed three reports produced by EY on ASX's response to the IBM report, the latest dated August 2022. According to EY, ASX has fully addressed 35 of the 59 recommendations stemming from the IBM review, and partially addressed 8 of the recommendations. To date, Ernst & Young has found that the ASX remediation program to be well run with the appropriate governance, staffing and oversight to deliver the ASX actions reported as closed to date. ASIC has previously issued Consultation Paper 314 which proposed market integrity rules for market operators and market participants to ensure the resilience of their critical business services. These market integrity rules were made on 10 March 2022, with a 12-month transition period [REP 719].

Separately, the ASX 24 futures market had a 4-hour market outage on 17 March 2022. A detailed incident report was provided to regulators on Tuesday 22 March, and a public incident report was issued by ASX 24 on Wednesday 23 March.

ASIC Action – Report 708 ASIC's expectation for industry responding to a market outage

ASIC expects market operators and participants to implement the measures set out in Report 708 to maintain compliance with their obligations under the law. Critically, these expectations require market participants to have the required certainty and ability to trade on alternative venues in the event of a future market outage.

ASIC is actively evaluating and monitoring the implementation of actions taken in response to this report to ensure market operators and participants are taking appropriate steps. Failure to implement measures to address the expectations set out in the report may lead to further action being taken under the Corporations Act 2001 and the ASIC Market Integrity Rules (Securities Markets) 2017.

Responses to ASIC's expectations of market operators and participants (representing 90% of equity market trading) were received from nominated parties by 2 March 2022. After receiving those responses, ASIC contacted the participants that were less advanced in making the necessary changes to discuss the work required to meet ASIC's expectations. All firms responded positively and were planning to meet these expectations.

To monitor progress, in September 2022, ASIC requested that participants planning to undertake significant development provide an update on their progress. Around 79% of market participants surveyed now either meet all of ASIC's expectations or are progressing the necessary changes. The remaining 21% are continuing to scope and implement the required changes, with varying timelines for completion mindful of future changes to the Cboe trading system and ASX CHESSE replacement.

ASIC is also engaging closely with ASX as it undertakes a series of three public consultations. The first consultation, on its current market outage incident management arrangements and capabilities, has closed and ASX has published a feedback report. The second consultation, on potential enhancements to capabilities and alternative arrangements was published on 31 October 2022. The third consultation, on participants' system testing requirements, is scheduled for early next year.