

Ashurst Risk Advisory

Openmarkets Australia Limited

Independent Expert Review

First Summary Report

24 January 2024



Context and scope

Context

Openmarkets Australia Limited (**Openmarkets**) entered into an Enforceable Undertaking with the Australian Securities and Investments Commission (**ASIC**) on 30 June 2023. The Enforceable Undertaking required the appointment of an Independent Expert to conduct two independent reviews: the Openmarkets Review and the Openmarkets Remedial Action Review.

Ashurst Risk Advisory was approved by ASIC and engaged by Openmarkets as the Independent Expert on 14 September 2023.

This Summary Report outlines the summary results and recommendations of Ashurst Risk Advisory's initial review conducted between 20 September 2023 and 14 December 2023.

Over the course of Ashurst Risk Advisory's review, Openmarkets demonstrated commitment to continuous improvement of its compliance arrangements and control environment, including to address concerns raised by ASIC in paragraph 2.10 of the Enforceable Undertaking.

The Board and senior management remain focused on developing and uplifting fit-for-purpose, sustainable systems, processes, policies, procedures and controls covering Client Onboarding, Client Money, Trade Surveillance, as well as resource adequacy and operational and technological resilience in these areas. This focus will be necessary to address deficiencies identified by Ashurst Risk Advisory effectively.

Scope

In accordance with paragraph 3.4 of the Enforceable Undertaking, Ashurst Risk Advisory conducted a review to:

- i. assess the adequacy of Openmarkets' organisational and technological resources for Client Onboarding, Client Money and Trade Surveillance – including a framework level review of Openmarkets' operational and technological resilience
- ii. assess the design effectiveness and test the operational effectiveness of Openmarkets' arrangements related to Client Onboarding, Client Money and Trade Surveillance, including but not limited to –
 - a) policies, processes and controls
 - b) risk and compliance framework
 - c) monitoring and supervision (including management oversight), and
 - d) governance framework, and
- iii. identify any deficiencies in the matters assessed in items (i) and (ii) above.

As a result of the assessment, Ashurst Risk Advisory identified what remedial actions are recommended to effectively address identified deficiencies.

Approach

Approach

In conducting the review, Ashurst Risk Advisory:

- identified relevant Market Integrity Rule and *Corporations Act* obligations related to Client Onboarding, Client Money and Trade Surveillance, as well as the adequacy of organisational and technological resources in each of these areas, as applicable to Openmarkets' operations
- requested relevant documents against legal obligations and regulatory expectations, recognising 59 as the most relevant to the assessment
- conducted stakeholder workshops and interviews with 14 key persons involved in Client Onboarding, Client Money and Trade Surveillance
- mapped high-level processes for Client Onboarding, Client Money and Trade Surveillance, and performed process walkthroughs with key stakeholders
- identified compliance arrangements, including documented controls, to mitigate risks of non-compliance
- tested compliance arrangements, including documented controls associated with Client Money, for design and operating effectiveness against legal obligations and regulatory expectations – note that there were no documented controls for Client Onboarding and Trade Surveillance, and
- undertook a framework level review of Openmarkets' operational and technological resilience.

Ashurst Risk Advisory made all enquiries in connection with the assessments that it believed to be desirable and appropriate, and delivered the First Report to Openmarkets and ASIC in accordance with paragraph 3.4(c) and (d) of the Enforceable Undertaking.

Ashurst Risk Advisory is not aware of any material information that has been withheld, which it regards as relevant to the assessments.

Ashurst Risk Advisory acknowledges the responsiveness and cooperation of Openmarkets in conducting the review.

Results, recommendations and next steps

Results and recommendations

While there have been improvements in Openmarkets' governance and oversight since ASIC's concerns were initially raised, and some capability uplift, there remains opportunity to enhance compliance arrangements for Client Onboarding, Client Money and Trade Surveillance and their associated control environments.

Adequacy of organisational and technological resources, including operational and technological resilience

Openmarkets' governance arrangements, decision-making protocols and roles, responsibilities and accountabilities should be clarified and improved. Controls need to be identified with clear owners and documented against a complete set of relevant obligations.

Openmarkets is adequately resourced organisationally and technologically with additional capacity in the areas of Client Onboarding, Client Money and Trade Surveillance to accommodate projected growth. Strategic planning and budgeting processes are in place to forecast up to three years in advance to ensure adequacy of resources.

Recommendations have been made for uplift of Openmarkets' operational and technological resilience arrangements.

Client Onboarding

Openmarkets has foundational elements of the Client Onboarding process in place, particularly for intermediary clients. However, a client risk profile for assessment, together with clear criteria for client approval, need to be designed and implemented for enhanced governance and decision-making. Significant uplift is also required to ensure end-to-end practice and accountabilities for both direct and intermediary clients (including how information gathered is leveraged for trade surveillance) align with documented processes.

Client Money

Openmarkets has processes in place for dealings with client monies, including daily reconciliations. There is room for improvement in monitoring withdrawals from trust accounts to confirm that they are permitted, and clarifying the purpose and operation of multiple trust accounts.

Trade Surveillance

Openmarkets undertakes pre and post-Trade Surveillance through IRESS's automated order processing filters and Nasdaq's SMARTS alerts respectively. These practices are not well documented, and controls are not documented. Record retention (including of trading records) and staff training also require uplift.

Next steps

In accordance with the Enforceable Undertaking, Openmarkets has undertaken to consider the recommended remedial actions in Ashurst Risk Advisory's First Report, and determine which of these to implement, outline the specific actions to be taken to implement them and a timetable for their implementation, and allocate sufficiently qualified and skilled staff to implement the remedial actions together with accountable individuals.

Following completion of Openmarkets' Remedial Action Plan, Ashurst Risk Advisory will conduct the second review.

Use of the Report

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