



DECEMBER 2022

# Market operator obligations review

## Australian Securities Exchange Limited (ASX 24)

Findings from the FMA's review of how well ASX 24 is meeting its licensed market operator obligations, for the two-year period 1 July 2020 to 30 June 2022.

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# Executive summary

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## Purpose of the report

Australian Securities Exchange Limited (**ASX 24**) is based in Australia, and is licensed under section 317 of the FMC Act as an overseas regulated market. This licence allows ASX 24 to operate the ASX 24 derivatives market in New Zealand. The FMA is required to report at least once every two years<sup>1</sup> on how well ASX 24 is meeting its licensed market operator obligations<sup>2</sup>. This review covers the period 1 July 2020 to 30 June 2022 (the **review period**). This is our fourth review of ASX 24 since its licence came into effect on 1 December 2014.

The Australian Securities and Investments Commission (**ASIC**) is ASX 24's primary regulator. We based our review on whether ASIC was satisfied with ASX 24's compliance during the review period. See the Appendix for details about how we carried out our review.

## Assessment conclusions

We are satisfied that, during the review period, ASX 24 ensured, to the extent reasonably practicable, that its licensed market was fair, orderly and transparent.

ASX 24 had adequate arrangements for:

- notifying disclosures from participants in its market, and for continuing to make them available
- handling conflicts between its commercial interests, and the obligation to ensure its market operates in a fair, orderly and transparent manner
- monitoring the conduct of participants in its markets
- enforcing compliance with market rules.

We are also satisfied that ASX 24 had sufficient resources (including financial, technological and human resources) to operate its licensed market properly.

Our conclusion is based largely on ASIC's oversight of ASX 24 and its view of ASX 24's compliance, including previous assessments relevant to the operation of ASX 24 carried out under the Australian Corporations Act 2001 (**Corporations Act**).

ASIC has said that it has no reason to believe that ASX 24 was not compliant with its market operator obligations under the Corporations Act during the review period.

See the 'Findings' section of this report for details.

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<sup>1</sup> A condition of ASX 24's licence is a review every two years. The licence is available on our [website here](#).

<sup>2</sup> A market operator's full obligations are set out in the Appendix.

# About ASX 24

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## Overview

ASX 24 is part of a wider group of entities, controlled and operated by ASX Limited (**ASX**) in Australia (the **ASX Group**) that includes two licensed market operators and four licensed clearing and settlement systems. ASX operates the ASX securities market and ASX 24 operates the ASX 24 derivatives market. Products traded on the ASX 24 derivatives market include futures and options on indices, interest rates and energy.

## ASX 24's licence

ASX 24 was an authorised futures exchange under the Securities Markets Act 1988, which was a precursor to the Financial Markets Conduct Act 2013. Under the transitional provisions of the FMC Act, FMA granted it a financial product market licence from 1 December 2014 to operate the ASX 24 derivatives market. The conditions of ASX 24's licence were largely carried over from the authorised futures exchange notice. ASX 24's licence can be viewed on our website.<sup>3</sup>

ASX 24's home jurisdiction is Australia, and ASIC is the primary regulator of its market operations, which are contained in Australia's Corporations Act. ASX is also subject to the ASIC Market Integrity Rules (Futures Markets), [ASIC Market Integrity Rules \(Securities Markets and Futures Markets\) Amendment Instrument 2022/74](#), and [ASIC Market Integrity Rules \(Futures Markets\) 2017](#) (together Market Integrity Rules). The Market Integrity Rules have been reviewed and amended<sup>4</sup> since the FMA published our last obligations review of ASX 24 in January 2021.

A condition of ASX 24's FMC Act licence is that New Zealand investors must be informed that the ASX 24 derivatives market is regulated primarily under Australian law.

ASX 24 is required to give the FMA half-yearly information about trading participants who offer derivatives in New Zealand through the ASX 24 derivatives market.

ASX 24 must also notify us if it intends to make any material changes to the rules for the ASX 24 derivatives market. Under Australia's legislative framework, changes to the operating rules of a licensed market must first be either disallowed or not disallowed by ASIC as delegate of the Minister, or the Minister, Australia's Assistant Treasurer and Minister for Financial Services. The effect of disallowing Rule Changes is that the changes cease to have effect when ASIC notifies the licensee of the disallowance. In deciding whether to disallow all or a specified part of the change to the operating rules, the Minister must have regard to the consistency of the change with the licensee's obligations under Part 7.2<sup>5</sup> of Australia's Corporations Act.

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<sup>3</sup> <http://fma.govt.nz/assets/Market-Operators-Licences/ASX-Ltd-Financial-Product-Market-Licence-2014.pdf>

<sup>4</sup> [22-045MR ASIC amends market integrity rules and other ASIC-made rule books | ASIC](#)

<sup>5</sup> [Corporations Act 2001 \(legislation.gov.au\)](#)

## ASX Group and ASX Compliance

All policies, procedures, systems, governance, and other arrangements relevant to ASX 24's market operator obligations are designed and administered by the ASX Group. Examples include:

- financial, technological and human resources for all licensed entities are managed at a group level;
- a Market Operations division, which includes trading operations, surveillance and the market announcements office, carries out those services for both licensed markets;
- managing conflicts for listed entities and participants, and for monitoring and enforcing the rules of both the ASX 24 derivatives and ASX securities markets.

The ASX Group includes ASX Compliance<sup>6</sup> which is responsible for overseeing compliance with the ASX Group's listing rules. It also oversees the operating rules by participants of the various markets as well as the clearing and settlement facilities operated by the ASX Group. ASX Compliance has the delegated authority to make certain compliance and enforcement decisions on behalf of the ASX Group licensees. This includes ASX 24 as the licensed operator of the ASX 24 derivatives market.

ASX Compliance is comprised of three functional units:

- Listing compliance
- Participant's compliance
- Executive Office, which administers:
  - enforcement action against participants and listed entities;
  - the ASX Corporate Governance Council; and
  - the ASX Compliance Education and Research program.

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<sup>6</sup> ASX Compliance

# Findings

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As ASIC is ASX 24's primary regulator, our review focused on whether ASIC was satisfied with ASX 24's compliance during the review period. We also considered reports and information relevant to the operation of the ASX 24 derivatives market, including (but not limited to) group licence reports, incidents and response to those incidents, and selected processes. This, along with other monitoring of and engagement with ASX 24 throughout the period, provided sufficient detail for FMA to undertake this review.

## ASIC's oversight of ASX

The ASX Group must report to ASIC each year on whether it has complied with all of its market operator obligations for both the ASX 24 derivatives and ASX securities markets.

ASIC can elect to assess at any time whether the ASX Group complies with any or all of its market operator obligations. This allows ASIC to monitor the group's market operator arrangements on a risk basis, and to target compliance reviews against specific obligations.

To help identify risks, ASIC introduced a standard quarterly report for the ASX Group to complete. This report provides ASIC with a significant amount of data about all areas of the group's operations on a regular basis. This quarterly reporting also forms part of the group's annual self-assessment of its compliance. Furthermore, ASIC and ASX 24 meet on a quarterly basis as part of ASIC's planned monitoring and oversight program.

If ASIC has concerns or queries about market operations, from either this quarterly reporting, its own monitoring activities, or other sources of information such as complaints, it raises matters with the ASX Group as necessary.

ASIC's risk-based monitoring helps to determine if more detailed reviews are required. ASIC did not conduct a review of ASX 24's compliance in relation to the Corporations Act during the review period. However, ASIC received and reviewed the ASX Group Licence Reports reports<sup>7</sup> for its financial years ended 30 June 2021 and 30 June 2022 which explain how the ASX Group, including ASX 24, complied with its overall Australian market licence obligations and with the Corporations Act.

Monitoring the conduct of participants means monitoring all persons trading on licensed markets, including authorised participant firms and their clients. This includes surveillance of trading activity. Under the Corporations Act, ASX 24 must monitor and enforce compliance with its operating rules, which govern the behaviour of participant firms; while ASIC has responsibility for real-time market surveillance. We are satisfied this provides appropriate supervision of the conduct of participants in the ASX 24 derivatives market.

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<sup>7</sup> S792F (1) A market licensee must, within 3 months after the end of its financial year, give ASIC an annual report on the extent to which the licensee complied with its obligations as a market licensee under this Chapter. [Corporations Act 2001 \(legislation.gov.au\)](#)

As at 30 June 2022, 18 trading participants were authorised to transact New Zealand derivatives on the ASX 24 derivatives market. We do not require ASX 24 to monitor or report on the extent of trading in New Zealand derivatives by these participants, or the extent of trading by New Zealand investors.

## Matters arising during the review period

### **Technology disruptions – ASX Group**

On Monday 16 November 2020, the ASX Group experienced technology disruptions which caused the equity market to close for the day. This was of significant concern to ASIC<sup>8</sup>. While this did not impact the ASX 24 derivatives market, as part of its ongoing monitoring ASIC stated it would be closely monitoring the technology resources dedicated to servicing ASX's markets.

IBM Australia undertook an independent review of the incident and ASX's operational systems, and published a report which made recommendations in seven key categories: risk, governance, delivery, requirements, vendor management, testing and incident management.

ASX agreed to address the recommendations and apologised for the disruption to the market. ASX has not yet completed all the remedial actions necessary to fully address the IBM review recommendations, but ASX and ASIC maintain regular communication on the implementation.

After the IBM review was concluded, ASIC imposed additional licence conditions on ASX and issued expectations to improve market resilience.

The additional conditions imposed on ASX's Australian market licence required remediation of underlying issues with ASX's operations that led to the November 2020 market outage. The conditions assigned accountability to the ASX board and senior executives for the implementation of the remedial actions. The new conditions require attestations on behalf of the ASX board that adequate controls, procedures, skills, and resources are in place.

ASIC also published a report on its expectations for industry in responding to a market outage. The report outlines the findings from ASIC's review of the ASX market outage, on 16 November 2020, and sets expectations to support the resilience and robustness of the Australian equity market.

### **Technology disruptions – ASX 24 derivatives market**

On 17 March 2022, ASX 24 experienced technology disruptions which caused the ASX 24 derivatives market to be placed into a trading halt for approximately four hours. We were notified by ASX 24 pursuant to the terms of its licence. We took reasonable steps to assess the cause of the incident, which was triggered by a hardware-related issue. This included requesting and reviewing ASX 24's incident reporting and market suspension policies and processes, as well as engaging directly with ASIC on the outage.

After discussing the issue with ASIC, no further action was taken by FMA. ASIC and FMA will continue to liaise under the terms of our joint Memorandum of Understanding (MOU).

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<sup>8</sup> 21-220MR Update on the independent expert review of November's ASX Trade outage | ASIC



### **Financial Service Provider registration**

Recent legislative changes in New Zealand required operators of overseas-regulated markets licensed in New Zealand to be registered on the Financial Service Providers Register (**FSPR**). ASX 24 was impacted by these changes in respect to the following services: Operating a financial product market, and Licensed overseas-regulated market. On 14 December 2021, ASX 24 received FSPR registration confirmation.

## **ASX 24's compliance with its licence conditions**

Under ASX 24's licence,<sup>9</sup> it is required to provide a compliance report to the FMA every second financial year and within three months of ASX 24's financial year-end.

We acknowledge that this report (comprising both the 2021 and 2022 ASX Annual Group Licence Reports) was provided to the FMA on time.

ASX 24 also submitted the required half-yearly information reports regarding trading participants who offer derivatives in New Zealand through the derivatives market on time throughout this review period.

## **Support for conclusion**

We are satisfied that ASX 24 complied with its market operator obligations to operate the ASX 24 derivatives market during the review period.

We assessed ASX 24's assertion that it complied with obligations under Australia's Corporations Act (Australia) in the review period. The Corporations Act is comparable to New Zealand's FMC Act, as evidenced in ASX 24's self-assessment reports.

These reports were provided to FMA on time and in accordance with Condition 12 of the New Zealand Financial Product Market Licence (Australian Securities Exchange Limited) 2014, and for the purposes of section 337 of the FMC Act. These reports were also presented to Minister Clark, Minister for Commerce and Consumer Affairs.

ASIC has stated that for the period under review, it has no reason to believe that ASX 24 was not compliant with its obligations under the Corporations Act. Furthermore, ASIC does not currently have any regulatory concerns with ASX 24.

Having reviewed these responses, as well as the information requested and gathered during the review period, we are satisfied that ASX 24 complied with the market operator obligations, to operate the ASX 24 derivatives market, under the FMC Act during the review period.

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<sup>9</sup> At clause 12 of the licence

The reasons are:

- ASIC's risk-based monitoring has not led to reviews of ASX 24's compliance with any of its obligations;
- ASIC has said that it has no reason to believe that ASX 24 was not compliant with its market operator obligations in accordance the Corporations Act during the review period.
- We have not received any complaints about the operation of the ASX 24 derivatives market in New Zealand;
- The ASX Group Licence Reports reports provide no reason to believe that it was not compliant in all material respects with regard to its FMC Act market operator obligations.

# Appendix: How we conducted our review

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## Our role

Under the FMC Act, we are required to periodically review how well a licensed market operator is meeting its obligations, and to publish a written report.

## Market operator obligations

In the FMC Act, 'market operator obligations', for an overseas regulated entity such as ASX 24, means:

- the general obligations contained in section 314 of the FMC Act:
  - to ensure, to the extent reasonably practicable, that each of the licensed markets is fair, orderly and transparent
  - to have adequate arrangements for notifying disclosures from participants in its markets, and for continuing to make them available
  - to have adequate arrangements for handling conflicts between its commercial interests and the obligation to ensure its markets operate in a fair, orderly and transparent manner
  - to have adequate arrangements for monitoring the conduct of participants in its markets
  - to have adequate arrangements for enforcing compliance with market rules
  - to have sufficient resources (including financial, technological and human resources) to operate its licensed markets properly
- an obligation to provide notification of a rule change to the FMA together with the date of the change and an explanation of its purpose (section 334)
- an obligation to provide us with a self-assessment from the reporting period of how it complies with its obligations (section 337)
- an obligation to act on our, or the Minister's<sup>10</sup>, direction if it has failed to meet any of its obligations (sections 340 to 342)
- any obligation imposed as a condition of a market operator's licence.

## Approach

A market operator that is authorised and regulated in an overseas country may be licensed under section 317 of the FMC Act if certain conditions are met.

A key requirement is that the home jurisdiction responsible for regulating and supervising the market operator should provide a level of investor protection and market integrity that is comparable to the FMC

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<sup>10</sup> New Zealand Minister for Commerce and Consumer Affairs

Act.<sup>11</sup> This allows us to rely on the overseas regulator to assess and monitor the capability and compliance of the market operator.

ASX 24's market operator obligations in the Corporations Act are largely equivalent to its FMC Act obligations to operate the ASX 24 derivatives market. ASX 24 does not have an obligation in Australia to carry out surveillance of real-time trading activity. This function has been carried out by ASIC since 2010.

ASX must report to ASIC annually on how it complies with all of its market operator obligations. ASIC may assess, at any time, how well ASX is complying with any or all of the obligations. These provisions are also equivalent to those in the FMC Act.

### ***Information reviewed***

Our review included liaising with ASIC about:

- its ongoing oversight of ASX 24;
- any matters or concerns raised with ASX 24 during the review period;
- how ASX 24 addressed those matters; and
- ASIC's overall view of ASX 24's compliance with its market operator obligations.

We also looked at the following:

- Reports provided by ASX 24 on its compliance with its market operator obligations for the years ended 30 June 2021 and 2022 (as required under section 337). These were the same reports the ASX Group provided to ASIC under the Corporations Act
- Information on the ASX website about how ASX meets its market operator obligations for both the ASX securities market and ASX 24 derivatives markets. This included:
  - how ASX interprets its obligation to operate fair, orderly and transparent markets
  - how ASX meets its obligation to have adequate arrangements for monitoring and enforcing compliance with the operating rules of its markets
  - how ASX meets its obligation to manage conflicts between commercial and regulatory interests, and a summary of its conflict-handling arrangements
  - the ASX Compliance board charter, which sets out the roles and responsibilities of ASX Compliance
- Past reports by ASIC on ASX 24's compliance with its market operator obligations.<sup>12</sup>

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<sup>11</sup> The original authorisation of ASX 24 as a futures exchange was assessed under a similar requirement in the repealed Securities Markets Act 1988. ASX 24 was deemed to have a licence from 1 Dec 2014 as it moved to the FMC Act regime.

<sup>12</sup> These reports are available on ASIC's website at <https://asic.gov.au/regulatory-resources/markets/market-structure/licensed-market-and-clearing-and-settlement-facility-assessment-reports/>

