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What's this about?

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Disciplinary Matter – Commonwealth Securities Limited

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ASX Disciplinary Matter – Commonwealth Securities Limited

The Chief Compliance Officer (“CCO”) of ASX Compliance Pty Ltd (“ASX”) has determined that Commonwealth Securities Limited (“CommSec”) did not comply with ASX Settlement Operating Rules:

- 8.15.8 on at least 231 occasions between about 30 December 2013 and 10 March 2015 in that it, as Controlling Participant, failed, within 1 Business Day of receiving a Notice of Death of the relevant Holder, to Transmit a Valid Originating Message requesting ASX Settlement to apply a Holder Record Lock to all Holdings under that Holder Record; and

(Contravention 1)

- 8.15.9 on at least 7 occasions between about 23 June 2014 and 20 February 2015 in that it, as Controlling Participant for joint Holdings under a Holder Record, failed, within 1 Business Day of receiving a Notice of Death of one of the relevant Holders, to establish a new Holder Record in respect of the surviving Participant Sponsored Holder and Transfer the Holdings into new Holdings under the new Holder Record.

(Contravention 2)

(collectively Contravention 1 and Contravention 2 are referred to as the “Contraventions”).

CommSec did not contest the Contraventions.

The CCO imposed a fine of \$50,000 (plus GST).

The circumstances of this matter are as follows:

Incidents 1 to 2

On 25 March 2014 CommSec received a Notice of Death of a client (the “Client”). Two of the Client’s accounts had holdings as at the date of the Client’s death. Due to a breakdown in procedures, a Holder Record Lock was not applied on one of the accounts until 6 March 2015. A Holder Record Lock was applied on the other account on 8 October 2014. Approximately 59 transactions occurred on these two accounts between 25 March 2014 and 6 March 2015.

The failure to lock the two active accounts with HINs on 25 March 2014 was an oversight by a CommSec employee. The relevant employee did not search for all accounts held by the Client (who held 5 accounts with CommSec at the time of his death) and as a result a Valid Originating Message to apply a Holder Record Lock was not sent to ASX Settlement for all accounts within 1 Business Day of receiving the Notice of Death.

Following the discovery of Incidents 1 and 2, CommSec conducted further investigation of its deceased estate procedures and uncovered the following further incidents.

Incidents 3 to 54

On 46 occasions between 15 April 2014 and 11 December 2014 CommSec failed to send a Valid Originating Message to apply a Holder Record Lock to ASX Settlement within 1 Business Day of receiving a Notice of Death. The number of days it took CommSec between receiving the Notice of Death of the relevant Holder and Transmitting a Valid Originating Message requesting ASX Settlement to apply a Holder Record Lock to all Holdings under that Holder Record for these 46 accounts ranged between approximately 3 and 50 days.

On 6 occasions between 23 June 2014 and 10 December 2014, CommSec failed to establish a new Holder Record within 1 Business Day of receiving a Notice of Death with respect to joint accounts. The number of days it took CommSec between receiving the Notice of Death of the

relevant Holder and establishing a new Holder Record for these 6 accounts ranged between approximately 2 and 123 days.

Incidents 55 to 59

On 4 occasions between 9 October 2014 and 10 March 2015 CommSec failed to send a Valid Originating Message to apply a Holder Record Lock to ASX Settlement within 1 Business Day of receiving a Notice of Death. The number of days it took CommSec between receiving the Notice of Death of the relevant Holder and Transmitting a Valid Originating Message requesting ASX Settlement to apply a Holder Record Lock to all Holdings under that Holder Record for these 4 accounts ranged between approximately 2 days and approximately 14 months.

On 1 occasion, CommSec failed to establish a new Holder Record within 1 Business Day of receiving a Notice of Death with respect to joint accounts. It took CommSec 3 Business Days between 17 February 2015 (the date the Notice of Death of the relevant Holder was received) to establish a new Holder Record on 20 February 2015.

Incidents 60 to 238

CommSec confirmed to ASX that after an extensive review it had identified a further 179 incidents between 15 April 2014 and 7 November 2014 when it failed to send a Valid Originating Message to apply a Holder Record Lock to ASX Settlement within 1 Business Day of receiving a Notice of Death.

In relation to Incidents 3 to 54, Incidents 55 to 59 and Incidents 60 to 238, there appears to have been approximately 7 accounts on which transactions occurred during the period in which CommSec failed to send a Valid Originating Message to apply a Holder Record Lock to ASX Settlement within 1 Business Day of receiving a Notice of Death. These transactions were as follows:

- 1 account where an error was made and the holdings were sold and then bought back within the same day;
- 5 accounts where valid holding transfer instructions were received from the executor; and
- 1 account where valid sale instructions were received from the executor.

In determining penalty, the CCO, among other things, took into account the following matters:

- (a) The Contraventions could have had a material impact on the integrity of the markets ASX operates. It is known with respect to Incident 1 and 2 that there were potentially 59 unauthorised transactions on the two active accounts held by the Client between 25 March 2014 and 6 March 2015. At least 1 unauthorised transaction appears to have occurred with respect to the accounts that are the subject of Incidents 3 - 238. By failing to lock accounts within 1 Business Day of receiving a Notice of Death, there is always the potential for unauthorised transactions to occur.
- (b) The Contraventions were self-reported (as CommSec is conducting an ongoing investigation it is likely further self-reports will be provided to ASX).
- (c) The Contraventions, although inadvertent, demonstrate negligence by CommSec by not appropriately training staff of the procedures relevant to deceased estates.
- (d) The Contraventions appear to have occurred because of weaknesses in operational and technological processes.
- (e) The Contraventions were not isolated in that numerous accounts were not locked in accordance with the ASX Settlement Operating Rules over a significant period of time.
- (f) CommSec has introduced additional controls, provided supplementary training to staff in the relevant teams, allocated extra resources (to clear the backlog of deceased estates work), implemented an ongoing program of training and education, and has existing regular compliance reviews to test the robustness of its procedures and controls.
- (g) CommSec's disciplinary history.

Sanction Guidelines

As the contravening conduct occurred after 1 August 2010, that being the effective time under the ASX Enforcement and Appeals Rulebook, the CCO was bound by the sanction guidelines (Annexure A to the Rulebook) in making his determination as to appropriate sanction in this matter.

The CCO determined that given the circumstances in this matter a fine of \$50,000 (plus GST) was an appropriate sanction.

The CCO is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and its Participants.