

ASX Disciplinary Matter – Share Investing Limited

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

- 6.3A.3, by failing to reconcile the holdings in its Accumulation Account in accordance with that rule between 1 December 2014 and 18 April 2016 (“Contravention 1”); and
- 6.3.5, by holding the same Financial Products in a Settlement or Accumulation Holding for greater than 2 Business Days or 3 Business Days (as the case may be) in circumstances that are not permitted under that rule on four individual occasions (“Contravention 2”),

(together, the “Contraventions”).

The CCO imposed a fine of:

- \$45,000 (plus GST) for Contravention 1; and
- \$5,000 (plus GST) for Contravention 2.

The circumstances of this matter are as follows:

Background

On 28 April 2014, ASX Settlement Operating Rule (“ASX SR”) 6.3A.3 commenced, so that from 29 April 2014 ANZSI was required to perform a daily reconciliation of the Accumulation Account in accordance with its terms. On 5 December 2014 ANZSI notified ASX of a breach of ASX SR 6.3A.3, being that it had not implemented a process to ensure that its Accumulation Account was reconciled since the requirement was introduced on 28 April 2014.

On 10 December 2014 ANZSI notified ASX of a breach of ASX SR 6.3.5, in that between 4 and 24 September 2014 it had held parcels of a Financial Product, Austex Oil Limited (ASX:AOK), on behalf of a client in its Settlement Holding Account for a period of 10 and 5 business days respectively beyond the prescribed maximum period of 3 business days.

Between 24 December 2014 and 17 February 2015, ASX conducted an investigation into the incidents reported by ANZSI which confirmed that:

- the breach of ASX SR 6.3A.3 occurred due to an internal oversight resulting in ANZSI failing to implement a manual reconciliation of the Accumulation Account in lieu of installing an out-of-cycle deployment for its settlement system (which included an automated Accumulation Account reconciliation report) in readiness for the introduction of ASX SR 6.3A.3. ANZSI commenced conducting Accumulation Account reconciliations from 1 December 2014; and
- the breach of ASX SR 6.3.5 was identified as a result of a client complaint received on 12 September 2014. ANZSI identified and rectified the breach on 23 September 2014 and implemented a new operations procedure to ensure future compliance with that rule from 1 December 2014.

ASX agreed to ANZSI’s proposed program of remediation activities which related to implementing enhancements to its management structure and supervisory procedures in accordance with ASX SR 4.18.1. On 28 April 2015, ANZSI provided ASX with confirmation that it had completed the required remediation activities and on 3 June 2015, ASX issued ANZSI with a “no escalation” decision with respect to the breaches of ASX SR 6.3A.3 and ASX SR 6.3.5 outlined above.

Contravention 1

On 1 December 2014 ANZSI began performing reconciliations of its Accumulation Account based on reports manually generated from its system between 2:00pm and 4:00pm on the relevant Business Day. On 21 February 2015, ANZSI implemented the 'Entrepot Detail Report' to perform the daily reconciliation of its Accumulation Account. The system automatically generated the relevant report at 2pm each Business Day.

On 18 April 2016, in the course of complying with an on-site review of ANZSI's compliance framework initiated by ASX in January 2016, ANZSI identified that ASX SR 6.3A.3 requires that the daily reconciliation of the Accumulation Account must be performed on the aggregate balance of Financial Products at the close of business on each Business Day. On 19 April 2016, ANZSI amended the scheduled generation time for the automated 'Entrepot Detail Report' to 7.15pm (CHESS end of day).

Therefore, from the period 1 December 2014 to 18 April 2016, during which time ANZSI was not conducting the reconciliation on the balance as at close of business, it was not in compliance with ASX SR 6.3A.3. If account is taken of the period prior to 1 December 2014 then from 28 April 2014 (being the date the requirement took effect) to 18 April 2016 ANZSI did not have a process to confirm that the stock in its Accumulation Account was being maintained beneficially for its clients at the close of business on each business day. This could have had a detrimental impact on ASX's ability to identify ANZSI's customer's positions and related collateral in the event of a default by ANZSI or another participant.

Contravention 2

On 28 June 2016, in response to an ASX request for information pursuant to ASX SR 12.1.1, ANZSI provided ASX with an extract of its incidents register relating to its compliance activity with respect to ASX SR 6.3.5. The extract showed two recorded breaches of ASX SR 6.3.5 in the following circumstances:

- between 9 February 2016 and 17 February 2016, 8372 NEN shares were held in ANZSI's Settlement Entrepot account for longer than 3 Business Days; and
- between 5 January 2016 and 8 January 2016, 189 TCL shares were held in ANZSI's Settlement Entrepot account for more than 3 Business Days.

These incidents were not reported to ASX at the time they occurred as they had been assessed by ANZSI as not significant for reporting purposes in accordance with ASX SR 12.18.1(j).

With respect to the NEN holding, the contravention was caused by a system issue leading to the CHESS sub-register being locked. ANZSI was thereby unable to allocate the securities to the client's HIN until the sub-register re-opened on 17 February 2016. The shares were therefore held in the settlement account for 7 business days in excess of the period allowed under the rule. During the excess period NEN was suspended from trading.

With respect to the TCL holding, TCLN ceased trading on 24 December 2015 and on 4 January 2016 the relevant client's holding converted to TCL. ANZSI held TCL in its settlement account for 1 day in excess of the period allowed under the rule.

On 14 July 2016 ANZSI notified ASX that it had contravened ASX SR 6.3.5 by holding 372,033 TV2U International Limited company options on behalf of 3 ANZSI clients in its Settlement Holding account for 1 business day in excess of the 2 business days permitted by the rule at the relevant time. The cause of the contravention was the receipt of an error message preventing one Chess MT138 (Scheduled Net Obligation) from processing.

On 21 July 2016 ANZSI provided notice to ASX that it had contravened ASX SR 6.3.5 by holding 20,000 Oventus Medical Limited securities on behalf of 1 ANZSI client in its Settlement Holding account for 1 business day in excess of the 2 business days permitted by the rule at the relevant time. By notice dated 30 August 2016 ASX was notified that securities were in fact held for a period of 3 business days in excess of the period allowed under the rule. The contravention was caused by the fact that the CHESS sub-register was closed at the time the client provided payment in full, delaying the delivery of the securities to the client's account.

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

- (a) Contravention 1 could have had a material impact on the integrity and reputation of the settlement facility ASX operates and ASX's compliance with the Reserve Bank of Australia (RBA)'s financial stability standards for that facility. ASX SR 6.3A.3 forms part of a collection of rules regarding client asset protection that are in place to provide more certainty and the ability for ASX to identify positions of a participant's customers and related collateral in the event of a default by the participant or another participant, and are designed to provide:
- that client stock in the Accumulation Account is maintained beneficially for the client (and requiring accurate records to allow daily reconciliation of stock in the Accumulation Account); and
 - that funds covering client purchases can only be withdrawn from the client trust account if the Participant has taken all steps required to register the stock into the client's name (subject to certain exceptions based on the Corporations Act).

ASX SR 6.3A.3 and the other Phase 1 rules are part of a group of related requirements in the ASX Clear and Settlement Operating Rules which form the basis of the protection of client assets including:

- the trust account reconciliation requirements under ASX Clear Operating Rule (**ASX CR**) 4.23, which also require a trust account reconciliation to be performed at the close of business by no later than 7pm on the next trading day (ASX CR 4.23.6 and its related Procedure); and
- the ASX Clear and Settlement Operating Rules introduced as part of Phase 2 of the client asset protection enhancements in May 2015 which implemented new processing and payment flows and require that funding be made to trust or paid out to a client on the same day that stock is transferred from the accumulation account to the settlement account (or directly into the settlement account).

The set of rules relating to client asset protection and client monies are complimentary and are designed to obtain a view of a participant's holdings of client assets and client monies at the same point in time, that is, close of business, once processing has been completed.

- (b) ANZSI's disciplinary history generally, having previously received several disciplinary sanctions.
- (c) ANZSI's initial contraventions of each ASX SR 6.3A.3 and 6.3.5, for which ANZSI received 'no-escalation' relief from ASX on the proviso that if further issues were raised of a similar nature then ASX could take the initial alleged contraventions into consideration to any future enforcement action. ASX considers it material that a process to ensure compliance with ASX SR 6.3A.3 was not developed following the initial breach of that rule identified in December 2014.
- (d) The Contraventions, while inadvertent, demonstrate a degree of negligence on the part of ANZSI.
- (e) The fact that the conduct took place over an extended period.
- (f) The Contraventions appear to have occurred because of shortcomings in ANZSI's otherwise effective risk management and compliance framework. ANZSI has agreed to implement a remediation program directed to the relevant aspects of its framework.
- (g) Contravention 1 was self-reported by ANZSI, however only during the course of complying with an investigation by ASX.
- (h) ANZSI did not receive a financial benefit from the Contraventions.
- (i) ANZSI did not act unconscionably or otherwise take unfair advantage of any clients.
- (j) The Contraventions did not result in any financial loss to ANZSI's clients, accepting that the potential to affect the integrity and stability of ASX's facilities has historically been taken

seriously by ASX and the former Disciplinary Tribunal, including where no actual loss has been shown.

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 total fine of \$50,000 (plus GST), comprising amounts of:

- \$45,000 for Contravention 1; and
- \$5,000 for Contravention 2,

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.