

ASX Disciplinary Matter – Reconciliation of Trust Account

The Chief Compliance Officer (“CCO”) of ASX Compliance Pty Limited has determined that ABN AMRO Clearing Sydney Pty Ltd (“ABN AMRO”) did not comply with ASX Clear Operating Rule 4.23.6(b) by failing to perform a reconciliation that is accurate in all respects of the balance held by it at the close of business on the last Business Day of each week on trust in a trust account maintained pursuant to Rule 4.23.3 with respect to a particular client between 1 September 2014 and 31 March 2016 (the “Contravention”). The CCO imposed a fine of \$20,000 (plus GST) for the Contravention and a condition on ABN AMRO’s participation in the ASX Clear facility requiring ABN AMRO to implement relevant enhancements to its systems and processes (discussed further below under “Sanction Guidelines”).

The circumstances of this matter are as follows:

On 29 August 2014, a client of ABN AMRO requested a withdrawal of \$2,000 from ABN AMRO’s trust account (“Trust Account”) to be deposited in its bank account. The requested transaction was performed according to the client’s instructions on 29 August 2014. However, due to the functional parameters of ABN AMRO’s back-office system, corresponding journal entries for the cash withdrawal was not automatically processed to the requesting client’s account and the Trust Account at the time the withdrawal was made. ABN AMRO’s back-office system did not have the functionality to automatically update client balances or process any journal entries intra-day and the journal entries for withdrawals were typically entered manually on the same day as the instructions were actioned.

The payment of \$2,000 was manually recorded on the relevant sub-ledger on the day it was requested. However, the corresponding journal entry in ABN AMRO’s back-office system in the relevant client account was not made on that day due to an oversight by the relevant operative.

On 1 September 2014, a finance operative noticed that the required corresponding journal entry was missing from the client account during a reconciliation of the bank account from where the payment was made. When purporting to correct this, the accounting journal entry was inadvertently recorded against a different client in ABN AMRO’s accounting records instead of the requesting client, as it should have been.

On 16 March 2016 the erroneous journal entry was identified by an ABN AMRO operative when collating accounting statements of cash deposits and withdrawals in response to a regulatory request in a matter not involving ABN AMRO. The journal irregularity was confirmed on 31 March 2016.

Accordingly, for the period between 1 September 2014 and 31 March 2016 (the “Relevant Period”), the record of the corresponding balance held by ABN AMRO on trust for the relevant two clients in its Trust Account at the close of business each week was not accurate in all respects. However, at all times, the aggregate balance held on trust in the ABN AMRO’s Trust Account were accurate.

On 4 April 2016 ABN AMRO reported the matter to ASX.

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

- (a) ASX CR 4.23.6 is part of a group of related requirements in the ASX Clear and ASX Settlement Operating Rules which form the basis of a regime for the protection of client property. The ASX Clear Operating Rules relating to client monies are directed to ensuring that a participant complies with its client money obligations under Division 2, Part 7.8 of the Corporations Act 2001 (Cth).
- (b) At all times ABN AMRO had sufficient monies in the Trust Account and the funds were withdrawn in accordance with the correct client’s instructions. Notwithstanding this, and because the rules regarding reconciliation of client trust and segregated accounts form part of a larger system of regulation intended to enhance the identification and portability of client money and property

attributed to each client, the concern is not only the actual aggregated allocation of client property but the integrity of the participant's records and how client money and property is attributed to each client.

- (c) ABN AMRO has agreed to the implementation of an automated journaling system, supporting the condition imposed by ASX (described below).
- (d) ABN AMRO was unaware of the oversight comprising the Contravention from 1 September 2014 to 31 March 2016, a period of 19 months. ABN AMRO only became aware of the Contravention when responding to a regulatory request relating to another party. Accordingly, ASX considers that the Contravention demonstrated a material weakness in ABN AMRO's operational and technological processes regarding the recording and reconciliation of client balances.
- (e) Previous disciplinary decisions, taking into account:
 - a. The introduction of the amended Procedure 2.2.1 which increased the maximum penalty to \$1,000,000 for conduct occurring after 1 August 2010.
 - b. The heightened sensitivity to contraventions involving trust accounts, which are increasingly likely to be characterised as material or significant.
- (f) ABN AMRO provided evidence of appropriate escalation to senior management within the ABN AMRO group.
- (g) ABN AMRO's history of compliance with related rules, including two "no-escalation" decisions by ASX in relation to previous incidents.
- (h) ABN AMRO did not derive a financial benefit or other commercial advantage from the Contravention.
- (i) ABN AMRO did not act unconscionably towards, or otherwise unfairly take advantage of, its clients.
- (j) ABN AMRO reported the Contravention promptly and was co-operative with ASX's investigation.
- (k) ABN AMRO generally has a good history of complying with the Operating Rules.
- (l) The Contravention was inadvertent.

Sanction Guidelines

The CCO determined that, given the circumstances in this matter, a fine of \$20,000 (plus GST) was appropriate, as well as the imposition of a condition in accordance with Rule 2.2.1(g) of the Enforcement and Appeals Rulebook. The condition requires ABN AMRO to enhance its systems and processes to ensure journal entries for withdrawals and deposits of client monies are automatically posted to the relevant client accounts, the relevant client money accounts, the relevant internal ledgers and any other relevant system simultaneously. Pursuant to this, ABN AMRO is to provide:

- a remediation plan to address this requirement at a time to be agreed with ASX; and
- periodic updates on the implementation of its remediation at times to be agreed with ASX.

The CCO is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASX and its participants, including as to the ongoing compliance requirements of ABN AMRO.