

ASX Disciplinary Matter – OpenMarkets Australia Limited (‘OMA’)

ASX Limited’s Chief Compliance Officer (the ‘**CCO**’) has determined that OMA did not comply with:

- ASX Clear Operating Rule (‘**ASX CR**’) 4.1.1(b), which requires a participant to comply at all times with any condition imposed on its admission imposed by ASX Clear under ASX Clear Operating Rule 3.1.4; and
- ASX CR 3.5.1 and 4.11(a), which together require a participant to have adequate resources and processes to comply with its obligations as a participant under the rules, (together, the ‘**Contraventions**’).

The CCO imposed a fine of \$80,000 (plus GST) for the Contraventions.

The circumstances of this matter are:

1. ASX had imposed a variety of conditions on OMA’s admission as a clearing participant pursuant ASX CR 3.5.1. The effect of the conditions relevant to this matter were that OMA was not to:
 - a. make further loans to a related body corporate without ASX approval, and to have the outstanding balance repaid in accordance with a specific schedule;
 - b. allow its Cash Market Margin (‘**CMM**’) obligation exceed a specific threshold at any time without prior written approval from ASX; and
 - c. have Derivative Market Contracts registered in its name or receive an allocation / transfer of Derivative Market Contracts / Derivative CCP Contracts, unless to close out an open position in those contracts or Call Options that are fully covered with Specific Cover.
2. With respect to the condition referred to at paragraph 1.a:
 - a. OMA did not have all outstanding moneys repaid by the time stipulated, although it has since been reduced to nil.
 - b. OMA provided funds to its related body corporate to enable it to repay a debt owed by it to a third party financier, thereby increasing the quantum of the receivable, after ASX imposed the condition.
3. With respect to the condition referred to at paragraph 1.b, on an estimated 90 occasions over an 18-month period, OMA either did not obtain prior approval from ASX before breaching the designated daily CMM threshold, or obtained approval up to a new ad-hoc daily threshold and then breached that new limit.
4. With respect to the condition referred to at paragraph 1.c, on four occasions over a three-month period, OMA breached the condition by having Derivative Market Contracts registered in its name which did not have the required cover.

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

- (a) Clearing participants must comply with certain capital requirements (ASX CR section 5) and appropriately manage liquidity (ASX CR Guidance Note 13) so that they are reliably able to comply with their financial obligations under the ASX CR and so that ASX can appropriately manage credit risk from clearing counterparties in accordance with its obligations under the Financial Stability Standards.

ASX imposed the conditions, among other reasons, in the interest of ensuring that OMA had sufficient capital and that OMA's daily liquidity was adequate to fulfil its obligations as a clearing participant.

- (b) The extent of the breaches, including their frequency, are clear evidence that:
- OMA's resources and processes were not adequate to comply with its obligations under the CR; and
 - OMA failed to take appropriate measures to ensure compliance with those obligations.
- (c) The circumstances in which, and the frequency with which, the Contraventions occurred lead ASX to infer that:
- The Contraventions arose because of gross negligence or recklessness on the part of OMA.
 - OMA did not have an effective compliance program in place.
 - OMA's risk management framework and its financial, operational and technological processes exhibited serious weakness.
 - There was inadequate supervision of the employees involved.
 - OMA derived a financial benefit from the Contraventions, in that:
 - In the case of the breaches of the CMM limits, OMA was able to undertake business which it otherwise would not have been capable of undertaking had it abided by those limits.
 - In the case of the intercompany receivable, OMA was able to facilitate financial accommodation for a related party from which it presumably derived a direct or indirect financial benefit.
- (d) The Contraventions occurred over an extended period of time and were recurring.
- (e) OMA has had one previous successful ASX enforcement action against it.¹
- (f) ASX acknowledges that:
- OMA has demonstrated genuine contrition and sought to minimise the impact of the breaches as they occurred.
 - OMA restructured its financing and business arrangements so that it may comply with its obligations.
 - In relation to the CMM breaches, OMA satisfied each CMM call and the relevant conditions have since been removed.
- (g) In coming to the proposed penalty, ASX has applied the "totality principle", wherein the penalty and other sanction it considers should be imposed is calculated "overall" rather than representing the sum of separate sanctions for each individual contravention.
- (h) In light of the above, the CCO considered that the Contraventions should be rated at the upper end of a Level 2 (Material) Contravention.

¹ E2017001, dated 31 March 2017.

Sanction Guidelines

The CCO determined that, given the circumstances in this matter, a fine of \$80,000 (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.