

## ASX Disciplinary Matter – BNP Paribas

ASX Limited's Chief Compliance Officer (the '**CCO**') has determined that BNP Paribas ('**BNPP**'), in assuming the liabilities and obligations of BNP Paribas Securities Services ('**BPSS**') on 1 October 2022, failed to comply with:

- (a) ASX Settlement Operating Rule 6.8A.5(a) and its related procedure, being its obligation to report its Securities On Loan Position by the prescribed time;
- (b) ASX Settlement Operating Rule 6.8A.5(b) and its related procedure, being its obligation to report its Securities Borrowed Position by the prescribed time;
- (c) ASX Settlement Operating Rule 6.8A.5(c) and its related procedure, being its obligation to report its Securities Committed Position by the prescribed date and time;
- (d) ASX Settlement Operating Rule 6.2.2, being its obligation to ensure that all information given to ASX Settlement is complete, accurate and not misleading; and
- (e) ASX Settlement Operating Rule 6.1.1(a), being its obligation to at all times continue to satisfy the admission requirements under ASX Settlement Operating Rules 4.3.1(h) and 4.18.1, to have adequate processes to comply with its obligations under the rules,

together, the '**Contraventions**'.

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

### The circumstances of this matter are:

On 20 April 2021, BPSS provided written notification to ASX advising that following an internal review BPSS had identified that its required reporting of its Securities on Loan Positions, Securities Borrowed Positions and Securities Committed Positions had been inaccurate since ASX SR 6.8A.5 came into effect. Specifically, BPSS identified that it had failed to report on:

- (i) the securities lending activities of its offshore clients (contracting through the global branches of BPSS in France, London and Hong Kong);
- (ii) its principal securities lending activities; and
- (iii) the securities lending activities of its related bodies corporate,

for the whole of the relevant period between 2009 and 2021.

Subsequent enquiries made by ASX confirmed that:

- (i) prior to 2021, BPSS did not have adequate processes to facilitate compliance with its securities lending reporting obligations under ASX SR 6.8A.5; and
- (ii) BPSS had failed to identify ASX's published 2019 Disciplinary Circular issued against Citicorp Nominees Pty Ltd in respect of similar securities lending reporting breaches.

In the course of investigating the matters outlined above, ASX requested and interrogated revised data produced by BPSS. The revised data was intended by BPSS to incorporate the omitted data identified above with the previously reported securities lending data, and reflect BPSS' true securities lending activities for the sample period nominated by ASX. In testing this revised data however, ASX identified over-reporting of a number of BPSS' securities lending positions, and when this revised data was challenged by ASX, the explanation provided by BPSS for this over-reporting highlighted the use by BPSS of an incorrect data extract methodology.

Ultimately, when pressed for an explanation of the data extract methodology used, it was identified that the methodology involved:

- (i) BPSS' use of "point-in-time" data when the report was prepared at 9am Australian Eastern Standard Time, rather than positional data at the close of business of the relevant reporting date for Securities on Loan and Securities Committed Position reports; and
- (ii) BPSS' use of unsettled or provisionally settled positions in its reporting, rather than settled positions at the close of business of the relevant report date.

BPSS subsequently remedied this issue.

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

- (a) The Contraventions could have materially impacted:
  - (i) ASX's compliance with the Reserve Bank of Australia's financial stability standards ('FSS') for securities settlement facilities, which apply in relation to the clearing and settlement facility operated by ASX; as well as
  - (ii) the reputation of ASX and the clearing and settlement facility it operates.
- (b) The reporting provided for under ASX SR 6.8A is relied on by ASX to promote greater transparency as to the potential settlement risks inherent in securities lending positions and to achieve compliance with ASX's obligations under FSS 18.3 for securities settlement facilities. Accordingly, any errors by participants in reporting of securities lending information can negatively impact this promoted market transparency, ASX's reputation and ASX's compliance with the FSS.
- (c) The extended duration of the Contraventions.
- (d) The Contraventions were inadvertent and unintentional.
- (e) BPSS did not derive a financial benefit or other commercial advantage from the Contraventions.
- (f) BPSS did not act unconscionably towards, or otherwise unfairly take advantage of, clients or counterparties.
- (g) BPSS remediated the identified breaches. Namely, BPSS:
  - (i) implemented updated reporting processes to include the securities lending activity of its related bodies corporate and BPSS' principal and agency positions; and
  - (ii) took corrective action in relation to the identified data extraction issues.
- (h) That notwithstanding the above, BPSS' breaches ought to have been prevented or mitigated by appropriate existing arrangements for complying with its securities lending reporting requirements, which in turn should have incorporated existing guidance to participants, namely:
  - (i) that their processes for complying with the securities lending reporting requirements are key processes which the participant is expected to have documented for the purpose of complying with their obligations (refer to section 3.4 of ASX SR Guidance Note 1); and
  - (ii) to review their compliance measures when there are changes to their obligations and to identify changes that may impact their effectiveness (refer to section 6 of ASX SR Guidance Note 1).

In failing to do so it demonstrates that BPSS did not have adequate processes to comply with its relevant obligations.

- (i) BPSS was unaware of ASX's published 2019 Disciplinary Circular issued against Citicorp Nominees Pty Ltd in respect of similar securities lending reporting breaches.
- (j) The over-reporting in BPSS' revised securities lending sample data only came to light upon ASX's own investigations and enquiries and BPSS' subsequent explanation to ASX for that over-reporting was in the first instance incorrect.
- (k) The 'totality principle', as explained in Annexure A to the ASX Enforcement and Appeals Rulebook.

**Sanction Guidelines**

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.