

## **ASX Disciplinary Matter – Merrill Lynch Equities (Australia) Limited**

ASX Limited's Chief Compliance Officer (the '**CCO**') has determined that Merrill Lynch Equities (Australia) Limited ('**MLEAL**'), failed to comply with:

- (a) ASX Settlement Operating Rule ('**ASX SR**') 6.8A.5(a) and its related procedure, being its obligation to report its Securities On Loan Position by the prescribed time;
- (b) ASX SR 6.8A.5(b) and its related procedure, being its obligation to report its Securities Borrowed Position by the prescribed time; and
- (c) ASX SR 6.8A.5(c) and its related procedure, being its obligation to report its Securities Committed Position by the prescribed date and time,

together, the '**Contraventions**'.

The CCO imposed a total fine of \$20,000 (plus GST) for the Contraventions.

The circumstances of this matter are:

On 14 December 2009, ASX introduced ASX SR 6.8A.5.

As from that time under the rule, a Securities Lending Participant was required to provide certain reporting to ASX of securities on loan, securities borrowed and securities committed positions of the participant and of its related bodies corporate that are not themselves a participant, on a daily or quarterly basis (as applicable).

On 5 June 2019, MLEAL sought guidance from ASX on the practical interpretation of ASX 6.8A.5 and the securities lending reporting obligations which arose pursuant to this rule.

Following this engagement and MLEAL's subsequent internal review, MLEAL notified ASX:

- (i) that the identified breaches of ASX SR 6.8A.5 had been assessed by MLEAL as potentially significant;
- (ii) that MLEAL had been non-compliance with its securities lending reporting obligations since the reporting obligations were introduced in 2009;
- (iii) that the breaches had arisen due to MLEAL's misinterpretation of its securities lending reporting obligations and the implementation of incorrect reporting logic when MLEAL first established its program of compliance with ASX SR 6.8A.5 following the reporting obligations introduction in 2009; and
- (iv) of its proposed remediation plan.

On 12 August 2019, MLEAL notified ASX that it had completed its remediation of the Contraventions.

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

- (a) The Contraventions could have significantly impacted on:
  - (i) ASX's compliance with the Reserve Bank of Australia's (**RBA'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 or 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. Failures to report, or errors in reporting of securities lending information can negatively impact market transparency, ASX's reputation and the objectives of the FSS.

- (c) The extended duration of the Contraventions.
- (d) The Contraventions were inadvertent and unintentional.
- (e) MLEAL did not derive a financial benefit or other commercial advantage from the Contraventions.
- (f) MLEAL did not act unconscionably towards, or otherwise unfairly take advantage of, clients or counterparties.
- (g) MLEAL self-reported the Contraventions.
- (h) MLEAL accepted it committed the Contraventions and demonstrated a cooperative approach with ASX in its investigations.
- (i) MLEAL has a good history of complying with ASX's operating rules.
- (j) MLEAL undertook prompt and effective remedial action.
- (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 \$20,000 (plus GST) was an appropriate sanction.