



ASTC Bulletin

Date: 1 March, 2010

Key topics

1. ANZ Trustees Limited

Reading List

Compliance Managers
 Managing Directors
 ASTC Participants
 Office Managers
 Share Registries

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PARTICIPANT BULLETIN

DISCIPLINARY MATTERS

The ASX Disciplinary Tribunal has determined the following:

ANZ Trustees Limited contravened the following ASTC Rules:

- a) ASTC Settlement Rule 6.1.1 between July 2005 and 19 June 2009, in that it did not at all times continue to satisfy the technical and performance requirements prescribed by ASTC Settlement Rule 4.7.1(b); and
- b) ASTC Settlement Rule 6.3.1 between July 2005 and 19 June 2009, by establishing and maintaining 194 Participant Sponsored Holdings which were not in fact Participant Sponsored Holdings and, in respect of which, ANZ Trustees was not in fact a Sponsoring Participant and had not entered into a Sponsorship Agreement in accordance with Section 7 of the ASTC Settlement Rules.

ANZ Trustees did not contest the contraventions before the Tribunal.

For these contraventions the Tribunal imposed a fine of \$20,000 (plus GST).

The circumstances of this matter are detailed as follows:

Between July 2005 and 19 June 2009 ('the relevant period'), ANZ Trustees had a mix of Direct CHESS Holdings and Participant Sponsored CHESS Holdings under its control. This necessitated ANZ Trustees having a recording and reporting system that could establish and maintain both Direct Holdings and Participant Sponsored Holdings in the CHESS Subregister.

The recording and reporting system used by ANZ Trustees defaulted the Holder Type to 'Participant Sponsored' for all Holdings established and maintained in the CHESS Subregister by ANZ Trustees and would not allow the Holder Type field to be amended.

By reason of ANZ Trustees' failure to have a system capable of establishing a Direct Holding in the CHESS Subregister during the relevant period:

- a) ANZ Trustees did not have the recording and reporting systems necessary for the purposes of its existing and anticipated operations (Contravention 1); and
- b) 194 Direct Holdings established and maintained by ANZ Trustees in the CHESS Subregister were incorrectly established as Participant Sponsored Holdings (Contravention 2).

In determining sanction the Tribunal took into account a number of matters including the following:

- The misconduct was systemic in nature;
- Although ANZ Trustees initially self-reported to ASX that a Participant Sponsored Holder under its control had a Sponsorship Agreement in place that had not been executed by all parties to the Agreement, it was ASX Compliance that subsequently identified that the HIN for the above Holder was wrongly established in the CHESS Subregister as Participant Sponsored rather than Direct. However there was no attempt by ANZ Trustees to conceal the misconduct;

- Due to technical constraints, ANZ Trustees did not take immediate steps or measures to prevent a reoccurrence of the contravening conduct and the Tribunal considered this an inadequate attempt to prevent recurrence of the contravening conduct;
- ANZ Trustees has a good disciplinary history and has had no disciplinary sanctions recorded against it by the Tribunal;
- ANZ Trustees cooperated with ASX in relation to the conduct of its investigation into the matter and agreed at an early stage not to contest the contraventions brought against it, thereby saving time and costs;
- There was no commercial advantage obtained as a result of the misconduct; and
- The misconduct did not result in loss or injury to other parties.

Disciplinary Tribunal Sanction Guidelines

The Tribunal sanction guidelines for contraventions of the ASTC Settlement Rules which were in force at the time the misconduct commenced were contained in ASTC Settlement Rules Guidance Note No. 8 (ASTC GN 8). However, a significant proportion of the misconduct occurred after 31 March 2008, being the Effective Time under the ASX Disciplinary Processes and Appeals Rulebook ('the Rulebook'). Annexure A of the Rulebook contains guidelines on sanction which are binding on the Tribunal in respect of misconduct after the Effective Time. Accordingly ASTC GN 8 and Annexure A were both taken into consideration by the Tribunal in its determination on penalty.

Given the mitigating circumstances in this matter the Tribunal determined that a fine of \$20,000 was an appropriate sanction. The Tribunal is of the opinion that this sanction will act as a deterrent and appropriately serves the interests of ASTC and Settlement Participants.