

ASX Disciplinary Matter – FinClear Services Pty Ltd

ASX's Chief Compliance Officer ('CCO') has determined that FinClear Services Pty Ltd ("FinClear Services") did not comply with:

- (a) ASX Settlement Operating Rule ('ASX SR') 6.8A.5(b) and its related procedure, being its obligation to report its Securities Borrowed Position by the prescribed time; and
- (b) ASX SR 6.1.1(a), being its obligation to at all times continue to satisfy the admission requirements set out under ASX SR 4.3.1(h) and ASX SR 4.18.1, being to ensure that FinClear Services maintained adequate resources and processes to comply with its reporting obligations set out under ASX SR 6.8A.5,

together, the 'Contraventions'.

The CCO imposed a total fine of \$25,000 (plus GST) for the Contraventions.

ASX notes that ASX SR 6.8A.5(b) forms part of current considerations to amend the ASX Settlement Operating Rules by removing the securities lending reporting regime. In May 2025, the proposed modifications to the securities lending reporting regime received no formal objection from the RBA but remain subject to regulatory clearance from ASIC. Until (i) this regulatory clearance is received, (ii) the final terms of the proposed modifications are confirmed, and (iii) the date any proposed modifications take effect is indicated, the securities lending reporting requirements remain in effect and securities lending participants must continue to comply with these requirements.

The circumstances of this matter are:

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

As from that time under this 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 or about February 2024, ASX initiated a review into the securities lending reporting practices of participants. Relevantly, ASX's review identified that FinClear Services' non-compliant reporting throughout the relevant period, being from 1 July 2021 through to 21 May 2024, arose from its:

- (a) failure to implement an appropriate change management review and an adequate compliance program following the acquisition of Pershing in July 2021; and
- (b) an incorrect assessment of its relevant Securities Borrowed Positions reporting obligations.

ASX considers that FinClear Services was additionally non-compliant with ASX SR 6.1.1(a), which required that FinClear Services at all relevant times continue to satisfy the admission requirements set out under ASX SR 4.3.1(h) and ASX SR 4.18.1, to have adequate processes in place to comply with its obligations under the ASX SRs.

FinClear Services has subsequently remedied these Contraventions.

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

- (a) The Contraventions could have materially 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; and

- 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 to achieve compliance with such FSS obligations.
- (c) The extended period, systemic nature and failure to identify the Contraventions.
- (d) That the three-year period throughout which the Contraventions occurred pre-dated the proposed modifications to the securities lending reporting regime.
- (e) The importance for sanctions to be consistently applied in comparable circumstances, with the relevant period of the Contraventions by FinClear Services being a comparable period for related enforcement determinations made by ASX against some other securities lending participants.
- (f) That while the current securities lending reporting regime remains in effect, it is necessary and appropriate to ensure that identified material non-compliance continues to be enforced.
- (g) The Contraventions were inadvertent and unintentional.
- (h) FinClear Services did not derive a financial benefit or other commercial advantage from the Contraventions.
- (i) FinClear Services did not act unconscionably towards, or otherwise unfairly take advantage of, clients or counterparties.
- (j) FinClear Services has a good history of complying with ASX's operating rules.
- (k) Having regard to the "totality principle" ASX considers it appropriate to apply an overall penalty across the Contraventions, notwithstanding that an aggregation of penalties for each individual contravention may be higher.

Sanction Guidelines

The CCO determined that, given the circumstances in this matter, a fine of \$25,000 (plus GST) was an appropriate sanction.