



ASX Disciplinary Matter – Mako Trading Australia Pty Ltd

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

- (a) ASX Operating Rule ('ASX OR') [3501], being its obligation to provide to ASX a short sale report setting out the information required in the Procedures by the time specified in the Procedures;
- (b) ASX OR [5000] and its related Procedure, being its obligation to notify ASX in writing immediately if it becomes aware that it has breached any of the Rules or the Procedures and that breach is significant; and
- (c) ASX OR [1400](a) being its obligation to at all times continue to satisfy the admission requirements set out under ASX OR [1000](d), being to ensure that Mako maintained adequate resources and processes to comply with its short sale reporting obligations set out under the ASX ORs,

together, the 'Contraventions'.

The CCO imposed a total fine of \$120,000 (plus GST) for the Contraventions.

The circumstances of this matter are:

Liquid Capital Australia Pty Ltd ('Liquid Capital') was admitted as an ASX Settlement Participant in 2003. On 5 April 2023, the Mako Group acquired Liquid Capital. On 5 September 2023, Liquid Capital changed its name to Mako.

Short Sale Reporting Obligations

On 12 June 2024, Mako lodged a self-report notifying ASX that Mako had identified that there were a number of instances where Mako had identified inaccuracies in its short sale transaction reports ('**Short Sale Transaction Reports**') which had been submitted daily to the ASX ('**Event**').

In response to a request for information, Mako submitted that the root cause of the Event was an incorrect legacy application of the regulatory requirements in relation to the calculations of short Sale Transaction Reports. This resulted in Liquid Capital's use of erroneous logic in designing and implementing their short sale reporting process, which remained in place from 2017 until the issue was corrected by Mako in May 2024.

ASX's analysis of Mako's submitted short sale data evidenced a material difference between the aggregate short sale data released to the market and the short sale data which should have been published. In light of this, ASX considers that Mako's misreporting appears to have materially adversely impacted the accuracy of ASX's published data throughout the relevant period.

Based on the information set out above, self-reported by Mako and identified in the course of ASX investigating these matters, Mako has conceded that during the period from at least 2017 to 28 May 2024, Mako failed to submit accurate short sale reports setting out the information required in the Procedures by the time specified in the Procedures, in contravention of ASX OR [3501].

Late Notification to ASX

The Event was identified by Mako on 16 May 2024 and remediated by Mako by 28 May 2024. Mako however failed to disclose the Event to ASX until 11 June 2024, reflecting a delay in reporting its short sale misreporting for 19 business days due to Mako's interpretation of the seriousness of the breach.

Under Standard 16 of the RBA Financial Stability Standards ('FSS'), ASX is expected to actively identify, monitor and manage the plausible sources of operational risk and establish clear policies and procedures to address them. To comply with its obligations, ASX requires participants, via ASX OR [5000], to notify ASX in writing immediately if any of the circumstances set out in the Procedures occur, including but not limited to the participant becoming aware that it has breached any of the Rules or the

Procedures and that the breach is significant. Mako had reviewed ASX OR [5000] and was under the incorrect belief that this was not a significant breach and therefore it was not required to report the breach immediately.

Based on the above ASX has determined that the delay of 19 business days by Mako in reporting its short sale misreporting to ASX, together with the significant nature of the misreporting over the relevant period, amounted to a breach of ASX OR [5000].

Inadequate resources and processes

While it appears that the Event was inadvertent and unintentional, where ASX is satisfied that a participant's breach of an operating rule is one which ought to have been prevented or mitigated by its arrangements for complying with the operating rules, ASX considers it appropriate to reach a finding that Mako did not have adequate resources and processes to comply with the relevant obligation.

ASX has formed the view in this instance, and the facts of this matter evidence, that Mako did not have an adequate framework for the ongoing monitoring and review of its compliance with its relevant daily short sale reporting obligations, in breach of ASX OR [1400](a).

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

- (a) The extended period and material volume of the Event demonstrate that Mako's short sale misreporting was significant and reflects a serious contravention of Mako's short sales reporting obligations. Importantly, ASX acknowledges that Mako only acquired Liquid Capital on 5 April 2023, ASX notes however:
 - i. that Mako appears to have failed to adequately review its daily reporting obligations and correct Liquid Capital's short sale reporting methodology when Mako first acquired the business; and
 - ii. that Liquid Capital's significant short sale misreporting appears to have continued for approximately 13 months following Mako's acquisition of Liquid Capital.
- (b) Mako's systemic non-compliance with its Short Sale Transaction Reports should have been identified upon acquisition of Liquid Capital or subsequently addressed shortly thereafter through the implementation of appropriate arrangements for complying with its short sale reporting obligations. The failure of Mako to do so evidences that during the period in question, Mako did not have adequate resources and processes in place to complete an appropriate assessment of its compliance with this obligation.
- (c) Mako did not derive a financial benefit from its short sale misreporting.
- (d) Mako did not act unconscionably towards, or otherwise unfairly take advantage of, clients or counterparties.
- (e) Mako only acquired Liquid Capital on 5 April 2023.
- (f) Mako has been fully cooperative with the ASX throughout its investigation into the matter.
- (g) Mako has implemented meaningful measures to prevent a recurrence of the Event, and no further non-compliance has been reported since Mako undertook this remediation.

Sanction Guidelines

The CCO determined that, given the circumstances in this matter, a fine of \$120,000 (plus GST) was an appropriate sanction.

In making this determination ASX reemphasises to Participants the critical importance of accurate short sale reporting to support transparency, market confidence and integrity in the market.

Likewise, ASX reminds Participants of their obligation to make timely notifications to ASX if they become aware of a significant breach of a ASX Operating Rule or Procedure.