**ASX Disciplinary Matter – Openmarkets Australia Limited**

The Group Executive, ASX Supervision, has determined that Openmarkets Australia Limited (**OMAL**) did not comply with:

(a) ASX Clear Operating Rule (**ASXCR**) 4.23.2, being its obligation to hold on trust client money received in relation to market transactions, unless a permitted withdrawal applies under section 981B of the *Corporations Act 2001* (Cth) (the **Act**) and 7.8.02 of the *Corporations Regulations 2001* (Cth) (the **Corporations Regulations**).

(b) ASXCR 4.23.6, being its obligation to perform a reconciliation, in the time, form and manner set out in the Procedures and that is accurate in all respects of the balance held by it at the close of business on each Business Day for each client in a trust account maintained pursuant to Rule 4.23.3 and the corresponding balance as recorded in the Participant's accounting records.

(c) ASXCR 4.23.7(b), being its obligation to notify ASX within 2 Business Days in the manner set out in the Procedures if according to a reconciliation performed pursuant to Rule 4.23.6, there is a deficiency of funds held in its trust accounts in respect of any particular client (regardless of the amount of the deficiency).

(d) ASXCR 4.24.1, being the prohibition on withdrawing from a client trust account monies received by a participant in connection with the purchase of Financial Products under a Cash Market Transaction unless all steps required under ASXCR 4.24.1 have been taken.

(e) ASXCR 4.25.1(a), being its obligation, if the participant settles its Cash CCP Transactions through the Approved Settlement Facility in its capacity as a Settlement Participant, to do all things in its capacity as a Participant to enable compliance by it as a Settlement Participant with its obligations under those Rules.

(f) ASXCR 4.1.1(a), being its obligation to at all times continue to satisfy the admission requirements set out under ASXCR 3.2.1(e) and ASXCR 3.5.1 to have adequate resources and processes to comply with its obligations under the ASXCRs.

(g) ASXCR 5.1.1, being its obligation to comply with the 'Risk Based Capital Requirements' set out at S1.2.10(1)(b), S1.2.1(1A)(a) and S1.2.7(1) of ASXCR Schedule 1.

(h) ASX Settlement Operating Rule (**ASXSR**) 6.3B.5(a), being its obligation to ensure for any Financial Products held in its Accumulation Account, that where those Financial Products are Transferred to its Settlement Account in connection with the sale of those Financial Products under a Cash Market Transaction, that the Client Trust Receivable Amount in respect of those Financial Products under Rule 6.3B.2 is paid to the Client Trust Account concurrent with Batch Settlement on the day of the Transfer (and by no later than the completion of Batch Settlement on that day) in accordance with Rule 10.10A.

(i) ASXSR 6.3B.6, being its obligation to ensure for any Financial Products held in its Accumulation Account, that where those Financial Products are Transferred to a Holding (other than the Settlement Account) in connection with the sale of those Financial Products under a Cash Market Transaction, that the Client Trust Receivable Amount in respect of those Financial Products is paid to the Client Trust Account on the day of the Transfer.

(j) ASXSR 10.10A.2, following payments made by OMAL from its trust account to its general account during Batch Settlement where ASX notified OMAL of a net obligation to make a payment to the trust account under ASXSR 10.10A.2 or a net entitlement to receive payment from the trust account under ASXSR 10.10A.2 and the payment made from the trust account to the general account is in excess of the amount OMAL was entitled to receive under that notification.

(k) ASXSR 6.1.1(a), being its obligation to at all times continue to satisfy the admission requirements set out under ASXSR 4.3.1(h) and ASXSR 4.18.1, being to ensure that OMAL maintained adequate resources and processes to comply with its obligations set out under ASXSR 6.8A.5.

(l) ASX Operating Rule (**ASXOR**) [3501], being its obligation to provide to ASX a short sale report which sets out all the information as required in the Procedures. The short sale report must be provided to ASX by the time specified in the Procedures.

(m) ASXOR [1400](a), being its obligation to at all times continue to satisfy the admission requirements set out under ASXOR 1000, being to ensure that OMAL maintained adequate resources and processes to comply with its obligations under these ASXORs.

Together, the '**Contraventions**'.

The Group Executive, ASX Supervision, imposed a total fine of $775,000 (plus GST) for the Contraventions.

The circumstances of this matter are as follows:

**Event 1**

*Facts and Contraventions*

On 16 August 2021, OMAL transitioned its back-office processing system from NRI to GBST Shares (**Migration**). Following the Migration, OMAL experienced a number of failed transactions and, as a consequence, ceased applying MT107 messages in respect of buy transactions.

This, in turn, resulted in OMAL's corresponding trust account payment obligations arising during Batch Settlement being significantly higher than would otherwise have been the case. Owing to OMAL's insufficient liquidity, or the absence of a suitable bank facility that would have enabled OMAL to fund the increase in these specific payment obligations, OMAL adopted a practice of pre-emptively withdrawing funds from its trust account each day in order to facilitate Batch Settlement.

In this manner, as a daily occurrence during the period from 14 August 2021 to 9 June 2022, OMAL made withdrawals from its trust account into its general account during Batch Settlement in order to fund its client trust payment obligations pursuant to ASXSR 10.10A and its Batch Settlement obligations pursuant to ASXCR 4.20 and ASXSR 10.10.4.

As a consequence, OMAL did not, for a short period during Batch Settlement each day, have assets or funds held on trust for specific clients. This daily process employed by OMAL during this period led to significant short-term discrepancies in OMAL's trust accounts, ranging from approximately $20,000,000 to as high as $59,000,000. This conduct represented contraventions of ASXCR 4.23.2, ASXCR 4.24.1, ASXCR 4.25.1(a), ASXSR 6.3B.5(a), ASXSR 6.3B.6 and ASXSR 10.10A.2. Specifically:

(a) Payments by OMAL from the trust account to the general account during Batch Settlement to fund:

 (i) client trust account payment obligations in respect of client sales under ASXSR 10.10A.2; or

 (ii) Batch Settlement payment obligations under ASXCR 4.20 and ASXSR 10.10.4,

 using funds received in connection with client purchases, where there is no corresponding delivery of the purchased securities to the buyer in Batch Settlement on the day, pursuant to an MT107 message transmitted by OMAL under ASXSR 6.3B.4, are not permitted withdrawals under s981B of the Act and Regulation 7.8.02 of the Corporations Regulations and therefore represent contraventions by OMAL of ASXCR 4.23.2.

(b) Likewise, payments from the trust account to the general account during Batch Settlement to fund Batch Settlement payment obligations under ASXCR 4.20 and ASXSR 10.10.4 using monies received in connection with client sales, also represented contraventions of ASXCR 4.23.2 unless those payments were a permitted withdrawal under s981B of the Act and Regulation 7.8.02 of the Corporations Regulations.

(c) Payments from the trust account to the general account during Batch Settlement to fund:

 (i) client trust account payment obligations in respect of client sales under ASXSR 10.10A.2; or

 (ii) Batch Settlement payment obligations under ASXCR 4.20 and ASXSR 10.10.4,

 using funds received in connection with client purchases where there is no corresponding delivery of the purchased securities to the buyer in Batch Settlement on the day, pursuant to an MT107 message transmitted by OMAL under ASXSR 6.3B.4, are not permitted withdrawals under ASXCR 4.24.1 or ASXCR 4.24.2 and therefore represent contraventions by OMAL of ASXCR 4.24.1.

(d) Payments from the trust account to the general account during Batch Settlement where ASX Settlement has notified OMAL of a:

    (i) net obligation to make a payment to the trust account under ASXSR 10.10A.2; or

    (ii) net entitlement to receive payment from the trust account under ASXSR 10.10A.2, and the payment made from the trust account to the general account is in excess of the amount OMAL is entitled to receive under that notification,

represented contraventions of ASXCR 4.25.1(a), ASXSR 6.3B.5(a), ASXSR 6.3B.6 and ASXSR 10.10A.2.

*Inadequate resources and processes*

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 a participant did not have adequate resources and processes to comply with that obligation. When undertaking significant system changes Participants should consider ASXSR Guidance Note 10, specifically section 4.14 – Change Management, including ASX's guidance that changes made to its ASX Settlement operations are thoroughly assessed, tested and authorised.

Relevantly, ASX considers that:

(a) The extended duration of the non-compliance in respect of Event 1;

(b) OMAL's failure to adequately review its changes when actioning the Migration, in order to ensure that its compliance program remained effective;

(c) The quantum of the trust discrepancies, ranging from $20,000,000 to $59,000,000;

(d) OMAL's failure to have adequately reviewed and understood its client money obligations;

(e) The lack of adequate liquidity arrangements in place to meet OMAL's funding requirements for Batch Settlement; and

(f) OMAL's failure to use MT107 messages and a structured sequencing of payments into and out of its general and trust accounts, in order to reduce or better manage its funding requirements in connection with Batch Settlement,

all support a finding that OMAL did not have adequate resources and processes, including adequate change management arrangements, financial resources, and management supervision processes, to comply with its relevant obligations under the ASXCR and ASXSR, in breach of:

(a) ASXCR 4.1.1(a), being OMAL's obligation to at all times continue to satisfy the admission requirements set out under ASXCR 3.2.1(e) and ASXCR 3.5.1; and

(b) ASXSR 6.1.1(a), being OMAL's obligation to at all times continue to satisfy the admission requirements set out under ASXSR 4.3.1(h) and ASXSR 4.18.1.

**Event 2**

*Overview*

ASX is required to collate the volume of short sales in each Financial Product (including securities) quoted on its markets for every trading day. This information is collected from each trading participant, and the aggregated volumes are published by ASX, which informs the market of the total number of short sales in each security as well as the proportion of trades in the security that are short sales. This information assists investors and companies in explaining share price movements, making investment decisions, and providing greater transparency on short-selling activity.

The Australian Securities and Investments Commission (**ASIC**) uses short-selling data to carry out its functions, including market surveillance, detecting market misconduct, monitoring market orderliness and integrity and analysing market structure, trends and confidence.

*Facts and Contraventions*

On 5 November 2021, OMAL submitted a significant breach notification (**Short-Selling Breach Notification**) to ASX reporting that OMAL breached its short sale reporting obligations. Relevantly, the Short-Selling Breach Notification stated that, between 2017 and 22 October 2021, OMAL's daily reporting of cash market short sale transactions had been identified by OMAL as being deficient throughout the relevant period (**Short Sales Breach**).

The deficiency in reporting arose from a misunderstanding of OMAL's reporting obligations under ASXOR [3501]. OMAL's employees incorrectly interpreted ASX's reporting requirement to mirror the reporting requirements outlined by ASIC in its Regulatory Guide 196 - Short-Selling. This misinterpretation led OMAL to believe that participants were only required to report net short sale positions exceeding $100,000, rather than all short sales.

As a consequence of the above, OMAL conceded in its Short-Selling Breach Notification that throughout the relevant period, OMAL was non-compliant with ASXOR [3501] and the related Procedure 3501, which requires that trading participants must provide to ASX a daily short sale report setting out all the information stipulated in the relevant procedure.

*Inadequate resources and processes*

Again, 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 a participant did not have adequate resources and processes to comply with that obligation. Relevantly, ASX considers that:

(a) the recurring nature of OMAL's Short Sales Breach;

(b) the extended duration of OMAL's failure to identify and correct its Short Sales Breach;

(c) OMAL's failure to form a proper understanding of, or an adequate process to embed, its obligations under ASXOR [3501]; and

(d) OMAL's failure to correct its short sale reporting processes in response to ASX's publication on 27 December 2019 of the disciplinary circular addressing non-compliance by J.P. Morgan Securities Australia Limited with its own short sale reporting obligation,

all support a finding that OMAL did not have adequate resources and processes to comply with its relevant obligations under ASXOR [1400] and ASXOR [1000(d)].

**Event 3**

*Overview*

Under ASXCR 5.1.1, a participant must comply with the 'Risk Based Capital Requirements' set out at S1.2.10(1)(b) in Schedule 1 of ASXCR, which require a participant to ensure that, amongst other things, it prepares returns that accurately reflect its accounts, financial position and business activities, as appropriate.

The current policy framework and reporting mechanisms are designed to ensure that the financial strength of participants is monitored on a regular basis, and to allow ASX to assess participants' compliance with the relevant capital requirements to ensure participants adhere to the specified minimum capital and liquidity standards.

Adherence to these minimum capital and liquidity standards in turn promotes confidence in the integrity of ASX's markets and facilities. In order to assess the ongoing financial stability of a participant and to ensure that the participant satisfies the prescribed capital and liquidity standards, ASX relies on the submission of accurate financial reports in accordance with S1.2.10(1)(b) in Schedule 1 of ASXCR.

*Facts and Contraventions*

ASX Credit Risk Assessment team's review of OMAL's Capital Liquidity Returns (**CLRs**) identified that OMAL reported specific financial assets on its balance sheet but had calculated the Counterparty Risk Requirement rather than the Position Risk Requirement for these financial assets, resulting in an understatement of OMAL's total risk requirement (**TRR**). OMAL, in turn, submitted that a 'change of staff' and incorrect system configuration in OMAL's back-office software were the root cause of the error.

As OMAL's TRR value was incorrect, this affected OMAL's ratio of liquid capital to TRR and resulted in OMAL lodging an inaccurate CLR in breach of ASXCR 5.1.1. Additionally, by excluding a liability equal to the drawn amount in its Rule S1 calculations, OMAL's liquid capital was less than the TRR reported by OMAL in its January 2022 and February 2022 CLRs, rendering the CLRs inaccurate in breach of ASXCR S1.2.10(1A)(a) of ASXCR Schedule 1.

**Event 4**

*Facts and Contraventions*

On 16 December 2022, ASX sent OMAL a request for information in which ASX noted that on 25 November 2022 OMAL received $8,464,609.63 from ASX Settlement as part of its MT170 and had a trust obligation of $17,527,912.47 for its Batch Settlement, as part of its MT186 CHESS message. This meant that in order to facilitate the trust amount transfer of $17,527,912.47, OMAL was required to fund $9,063,302.84.

In response to ASX's requests for information, OMAL submitted that it was not able to fund the $9,063,302.84 required and consequently was not able to process its relevant messages, as OMAL did not have sufficient funds in its general account to facilitate the movement of $17,527,912.47.

OMAL confirmed that this issue had arisen owing to the fact that on 25 November 2022, ANZ experienced a database connection issue, which prevented OMAL from accessing its client account and performing start of day reconciliation procedures, viewing balances, and creating, approving or releasing payments (**ANZ Outage**).

Whilst ASX acknowledges that this event arose from the ANZ Outage and that this represents a material mitigating factor for OMAL, OMAL conceded that its failure to transfer the required funds from its general account to its trust account concurrent with Batch Settlement represented contraventions of ASXCR 4.25.1(a), ASXSR 6.3B.5(a), ASXSR 6.3B.6, and ASXSR 10.10A.2.

*Inadequate resources and processes*

While the ANZ Outage was the catalyst for Event 4 and directly resulted in the contraventions identified above, these contraventions would have been prevented had OMAL ensured that it had adequate financial resources in place, namely appropriate liquidity arrangements in the form of an adequate intraday facility, or sufficient accessible funds of its own, commensurate with the nature and scale of the business OMAL was operating. Noting this, ASX has determined that OMAL did not have adequate resources and processes to comply with its relevant obligations, in breach of:

(a) ASXCR 4.1.1(a), being OMAL's obligation to at all times continue to satisfy the admission requirements set out under ASXCR 3.2.1(e) and ASXCR 3.5.1; and

(b) ASXSR 6.1.1(a), being OMAL's obligation to at all times continue to satisfy the admission requirements set out under ASXSR 4.3.1(h) and ASXSR 4.18.1.

**Event 5**

*Facts and Contraventions*

On 23 September 2022, OMAL notified ASX that on 20 September 2022 OMAL identified a discrepancy in one of its ANZ Trust Accounts where the total balance held in six accounts did not reflect the actual sum of the individual client ledgers for those accounts (**Trust Deficiency**).

Relevantly, the facts of Event 5 establish that from 20 August 2021 to 20 September 2022, the amount of $1,502,748.72 was transferred from OMAL's trust account into OMAL's general account. As this was not a permitted withdrawal under section 981B of the Act and Regulation 7.8.02 of the Corporations Regulations, it represents a contravention of ASXCR 4.23.2. Additionally, ASX notes OMAL's failure to identify the Trust Deficiency, which existed between 19 August 2021 and 20 September 2022, resulting from OMAL's operations team inadequately performing the required daily reconciliations, namely by failing to reconcile the ANZ Natural Trust Account against the ANZ Client sub-ledgers, in contravention of ASXCR 4.23.6.

As to the root cause of the error, OMAL submitted that it could not identify the cause of the Trust Deficiency as key staff members no longer worked at OMAL. OMAL submitted, however, that the Trust Deficiency was likely the result of human error, following the Migration. OMAL further conceded that whilst a policy titled 'Cash Settlement – Trust Reconciliation Procedures' was in place during the relevant period, this policy did not provide sufficiently detailed operational procedures addressing how appropriate reconciliation was to be undertaken in order to comply with OMAL's trust reconciliation obligations.

Further, ASX has assessed that the risk associated with the contraventions the subject of Event 5 was heightened on 26 occasions during the period between 19 August 2021 and 20 September 2022, when the funds held in OMAL's general bank account fell below $1,502,748.72. ASX has determined this to be a material aggravating factor in evaluating the penalty.

*Inadequate resources and processes*

As stated above, 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 a participant did not have adequate resources and processes to comply with that obligation. Relevantly, ASX considers that:

(a) the duration of the non-compliance in respect of Event 5;

(b) the fact that multiple unsuccessful investigations were undertaken by OMAL's employees, in an attempt to identify the origin of the $1,502,748.72 held in the suspense account, including by OMAL's CEO, COO, and CFO at the time;

(c) the quantum of the amount transferred;

(d) the lack of necessary detail included in OMAL's trust reconciliation procedures;

(e) the likelihood that OMAL's operations team was not recording and reconciling each sub-ledger account balance as part of its reconciliation processes prior to 19 August 2021;

(f) inadequate record-keeping in not accurately outlining the extent of its non-compliance or the root cause of its initial breach; and

(g) OMAL's concession that had the appropriate reconciliation process been in place during the relevant period the trust discrepancy would have been immediately identified,

all support a finding that OMAL did not have adequate resources and processes to comply with its relevant obligations under ASXCR 4.23.6, and was therefore in breach of ASXCR 4.1.1(a), being OMAL's obligation to at all times continue to satisfy the admission requirements set out under ASXCR 3.2.1(e) and ASXCR 3.5.1.

**Event 6**

*Facts and Contraventions*

On 8 May 2023, there was a requirement to transfer the amount of $12,819,491.41 from OMAL's general account to its trust account and to make a concurrent payment of $8,940,033.21 to Batch Settlement (by OMAL's bank). ASX's subsequent investigation identified that on the same day OMAL mistakenly transferred $12,819,491.41 from OMAL's trust account to its general account. This action left OMAL's trust account in deficit for approximately 2.5 hours.

Through the mistaken transfer, OMAL contravened ASXSR 6.3B.5(a), ASXSR 6.3B.6 and ASXSR 10.10A.2(a) and ASXCR 4.25.1(a). Additionally, as the transfer that was made was not a permitted withdrawal under:

(a) section 981B of the Act and Regulation 7.8.02 of the Corporations Regulations, it represents a contravention of ASXCR 4.23.2; and

(b) ASXCR 4.24.1 or ASXCR 4.24.2, it represents a contravention of ASXCR 4.24.1.

OMAL submitted that the cause of the error was that whilst OMAL tracks the messages associated with Batch Settlement daily, on 8 May 2023, the message was misread by OMAL's Cash Settlement Officer and then processed incorrectly by OMAL's Operations Manager. OMAL confirmed that the message was manually processed by OMAL and that the decision to process the transfer of $12,819,491.41 was discussed between senior employees.

*Inadequate resources and processes*

As detailed above, 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 a participant did not have adequate resources and processes to comply with that obligation. The obligation to have adequate resources and processes includes ensuring that employees involved in critical functions are suitably supervised by management and have the necessary experience and/or training to competently perform those functions. Relevantly, ASX considers that:

(a) the seniority of the employees involved in the contraventions; and

(b) the significant amount moved from OMAL's trust account to its general account, being $12,819,491.41,

support a finding that OMAL did not have adequate resources and processes, including adequate management supervision processes, to comply with its relevant obligations under ASXCR and ASXSR, in breach of ASXCR 4.1.1(a) and ASXSR 6.1.1(a).

**Event 7**

*Overview*

Under Standard 16 of the Reserve Bank of Australia (**RBA**) Financial Stability Standards (**FSS**)**,** a central counterparty should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Accordingly, ASX is required under the FSS to actively identify, monitor, and manage the plausible sources of operational risk and establish clear policies and procedures to address such risks, as the RBA considers that operational failures can damage a central counterparty's reputation or perceived reliability, lead to legal consequences, and result in financial losses incurred by the central counterparty, participants, and other parties.

*Facts and Contraventions*

On 27 March 2023, ASX required OMAL to produce, amongst other things, a copy of its Rule S1 procedures manual and all supporting documents for OMAL's February 2023 CLR, including all source data used to calculate counterparty risk amounts for each method (**Rule S1 Audit Report**).

In response to ASX's request, OMAL submitted that it did not store the FNZ system generated spreadsheet with the required underlying data (being the Rule S1 Audit Report) and that the required data could not be reproduced.

Due to OMAL's inability to produce the underlying data for the February 2023 and March 2023 CLR counterparty risk amounts, ASX was unable to verify whether the counterparty risk amounts reported in the CLRs were correct and OMAL was therefore non-compliant with ASXCR S1.2.7(1) and ASXCR S1.2.7(3).

Despite initially contesting ASX's findings and submitting that the level of detail provided in the Summary Report satisfied the requirements of ASX Clear Rule S1.2.7(1), when pressed by ASX, OMAL subsequently conceded that its Summary Reports do not satisfy the requirements set out under Rule S1.2.7(1) as the Summary Reports do not provide the details of all underlying contracts as required under Rule S1.2.7(1). OMAL further confirmed that, since 17 April 2023, all Rule S1 Audit Reports are now saved daily.

The facts of this event demonstrate that OMAL's Rule S1 Audit Reports did not contain sufficient detail to show continuous compliance with Rule S1.2.1 and therefore contravened ASXCR 5.1.1 and specifically ASXCR S1.2.7(1).

<u>In determining the penalty, the Group Executive, ASX Supervision, among other factors, took the following into account:</u>

(a) Events 1, 2, 3, 5, 6 and 7 involved serious or material contraventions. These contraventions have had, or could have had, a serious impact on ASX's compliance with the RBA's FSS, the reputation of ASX, or the clearing and settlement facility it operates.

**Event 1**

(a) This event concerned breaches of the client money provisions, which carried a risk of undermining investor confidence in the provision of Financial Products and services by participants, and the reputation of ASX and the markets it operates.

(b) The circumstances in which, and frequency with which, the contraventions occurred are indicative of serious weaknesses in OMAL's risk management framework and its financial, operational, and technological processes.

(c) The prolonged period, systemic nature, and failure to initially identify the contraventions.

(d) The quantum of the trust discrepancies, ranging from $20,000,000 to $59,000,000.

(e) The lack of adequate liquidity arrangements to meet OMAL's funding requirements for Batch Settlement.

(f) OMAL did not derive a financial benefit or other commercial advantage from the contraventions.

(g) There was no evidence of any losses suffered by clients.

(h) While OMAL self-reported the non-compliance to ASX, ASX considers that OMAL's initial notification did not set out all material facts concerning the non-compliance.

(i) OMAL assisted and cooperated with ASX in its investigation.

(j) The subsequent contraventions of OMAL's trust obligations set out under Events 5 and 6 demonstrated OMAL's ineffective remediation of its compliance with the contraventions.

**Event 2**

(a) The total short-selling activity that OMAL failed to report is assessed by ASX to have been a material volume.

(b) OMAL's failure to form a proper understanding of, or an adequate process to embed, its obligations under ASXOR [3501].

(c) OMAL did not derive a financial benefit from the contraventions.

(d) OMAL did not act unconscionably towards, or otherwise unfairly take advantage of, clients or counterparties.

(e) OMAL cooperated with ASX in its investigation.

(f) OMAL has implemented meaningful measures to prevent a recurrence of the contraventions, and no further breaches in respect of OMAL's short-selling activity have been reported since OMAL undertook this remediation.

**Event 3**

(a) The repeated nature of the contraventions, together with OMAL's own explanation for the contraventions as arising from staff and back-office software changes, is indicative of weaknesses in OMAL's financial, operational, or technological processes and OMAL's deficient understanding of its Risk Based Capital Requirements.

(b) OMAL's misconfiguration of its back-office systems and exclusion of liabilities in its Rule S1 calculations resulted in inaccurate CLRs and an overstated capital position. This misreporting meant that OMAL's CLRs did not reflect that OMAL's liquid capital was, at times, below its TRR, indicating that OMAL lacked adequate liquidity arrangements.

(c) OMAL has implemented meaningful measures to prevent a recurrence of the contraventions.

(d) OMAL did not derive a financial benefit or other commercial advantage from the contraventions.

(e) The contraventions did not involve OMAL acting unconscionably towards, or otherwise unfairly taking advantage of, clients or counterparties.

(f) OMAL assisted and cooperated with ASX in its investigation.

**Event 4**

(a) The ANZ Outage was a one-off external event which appears to have directly caused OMAL's contraventions of ASXCR 4.25.1(a), ASXSR 6.3B.5(a), ASXSR 6.3B.6, and ASXSR 10.10A.2 and has therefore been assessed as a significant mitigating factor.

(b) An aggravating factor for the contraventions by OMAL was the lack of appropriate liquidity arrangements OMAL had in place during the relevant period, contrary to the expectations set out under FSS 16.6.

(c) The contraventions occurred because of, or are indicative of, weaknesses in OMAL's risk management framework and financial resources. While the ANZ Outage was the catalyst for Event 4 and resulted in the contraventions, the contraventions would have been prevented had OMAL ensured that it had adequate financial resources in place, namely appropriate liquidity arrangements in the form of an adequate intraday facility, or sufficient accessible funds of its own, commensurate with the nature and scale of the business OMAL was operating.

(d) The contraventions were unintentional.

(e) OMAL cooperated with ASX in its investigation.

**Event 5**

(a) The duration and quantum of the contraventions.

(b) The fact that multiple unsuccessful investigations were undertaken by OMAL's employees attempting to identify the origin of the $1,502,748.72 held in the suspense account.

(c) OMAL's inadequate record-keeping, including its failure to accurately outline the extent of its non-compliance or the root cause of its initial apparent breach.

(d) The contraventions were inadvertent and unintentional.

(e) At the time of the contraventions, OMAL did not appear to have an effective compliance program in place.

(f) The contraventions occurred because of, or are indicative of, serious weaknesses in OMAL's risk management framework or in its financial and operational processes.

(g) OMAL did not derive a financial benefit or other commercial advantage from the contraventions.

(h) The contraventions did not involve OMAL acting unconscionably towards, or otherwise unfairly taking advantage of, clients or counterparties.

(i) While OMAL self-reported the contraventions to ASX, OMAL failed to notify ASX within two business days as required under ASXCR 4.23.7.

(j) OMAL assisted and cooperated with ASX in its investigation.

(k) OMAL confirmed that it has undertaken an internal review of its processes.

**Event 6**

(a) The significant nature of the amount moved out of OMAL's trust account to OMAL's general account, being $12,819,491.41.

(b) OMAL failed to report the contraventions to ASX.

(c) The contraventions were unintentional and/or inadvertent.

(d) At the time of the contraventions, OMAL did not have an effective compliance program in place, as it failed to identify the contraventions.

(e) The contraventions occurred because of, or are indicative of, serious weaknesses in OMAL's risk management framework or in its financial, operational, or technological processes.

(f) The employees involved in the contraventions were not subject to an appropriate level of supervision, and the employees involved in the contraventions were directors or senior managers.

(g) OMAL did not derive a financial benefit or other commercial advantage from the contraventions.

(h) The contraventions did not involve OMAL acting unconscionably towards, or otherwise unfairly taking advantage of, clients or counterparties.

**Event 7**

(a) The contravention was unintentional and inadvertent.

(b) The ASX Capital Liquidity Handbook provides participants with relevant guidance regarding what records should, at a minimum, be maintained to evidence a participant's compliance with the Risk Based Capital Requirements.

(c) The contravention occurred because of, or was indicative of, weaknesses in OMAL's risk management framework.

(d) OMAL did not derive a financial benefit or other commercial advantage from the contravention.

(e) The contravention did not involve OMAL acting unconscionably towards, or otherwise unfairly taking advantage of, clients or counterparties.

(f) OMAL failed to report the contravention to ASX.

(g) Once raised by ASX, OMAL admitted its non-compliance with ASXCR S1.2.7(1) in its RFI response to ASX dated 24 July 2023. OMAL has a poor history of complying with the Operating Rules.

(h) OMAL immediately remedied the contravention.

**Additional Factors**

In considering the appropriate penalty applicable to this matter, ASX has considered the following mitigating factors:

(a) On 6 July 2023, OMAL was the subject of a regulatory penalty and an enforceable undertaking issued by ASIC. This enforceable undertaking included the appointment of an independent expert to recommend remedial actions targeting, amongst other uplift measures, OMAL’s client money arrangements;

(b) Following OMAL’s review by the appointed independent expert, OMAL satisfactorily implemented the expert’s 58 recommendations for remediation and uplift of OMAL’s compliance framework, and OMAL’s client money arrangements were assessed by the expert as ‘fit for purpose for an entity of [OMAL’s] nature, scale and complexity’ (**Expert Report**);

(c) OMAL has seen a substantive change in its management team since the events the subject of this enforcement action occurred; and

(d) Following the release of the Expert Report, OMAL has not reported any significant contraventions of its obligations relevant to the matters set out in this document.

**Sanction Guidelines**

The Group Executive, ASX Supervision determined that, given the circumstances in this matter, a fine of $775,000 (plus GST) was an appropriate sanction.