

## **ASX Disciplinary Matter – HSBC Custody Nominees (Australia) Limited**

ASX Limited's Chief Compliance Officer (the '**CCO**') has determined that HSBC Custody Nominees (Australia) Limited ('**HCNA**'), failed to comply with:

- (a) ASX Settlement Operating Rule ('**ASX SR**') 6.8A.4 and its related procedure, being its obligation to notify ASX if it is a Securities Lending Participant;
- (b) ASX SR 6.8A.5(a) and its related procedure, being its obligation to report its Securities On Loan Position;
- (c) ASX SR 6.8A.5(b) and its related procedure, being its obligation to report its Securities Borrowed Position;
- (d) ASX SR 6.8A.5(c) and its related procedure, being its obligation to report its Securities Committed Position; and
- (e) ASX SR 6.1.1(a), being its obligation to all times continue to satisfy the admission requirements in ASX SR 4.3.1(h) and 4.18.1 to have adequate processes to comply with its obligations under the rules.

together, the '**Contraventions**'.

The CCO imposed a total fine of \$40,000 (plus GST) for the Contraventions.

### The circumstances of this matter are:

On 14 December 2009, ASX introduced ASX SR 6.8A.4 and 6.8A.5.

As from that time under those rules:

- (i) a participant that engages in or intends to engage in, or has a related body corporate that is not itself a participant that engages in or intends to engage in, one or more securities lending transactions was required to notify ASX that it is a Securities Lending Participant; and
- (ii) 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 13 September 2019, HCNA requested ASX to provide clarity regarding its securities lending reporting requirements. HCNA held the view that notification and reporting under the ASX SR for securities lending and borrowing transactions of its non-participant related bodies corporate did not apply to HCNA but, prompted by ASX's publication of a relevant enforcement action against a separate market participant, sought confirmation from ASX that HCNA's view aligned with the ASX SR.

A subsequent investigation undertaken by ASX confirmed:

- (a) HCNA was never registered with ASX as a reporting participant and has never undertaken securities lending in Australia;
- (b) From December 2009 to July 2020, HCNA failed to notify ASX that it was a Securities Lending Participant in contravention of ASX SR 6.8A.4;
- (c) From December 2009 to July 2020, HCNA failed to report to ASX the securities on loan, securities borrowed and securities committed positions of its non-participant related bodies corporate, in contravention of ASX SR 6.8A.5(a), ASX SR 6.8A.5(b) and ASX SR 6.8A.5(c) respectively;
- (d) HCNA failed to develop and embed adequate policies and procedures governing the reporting of

its securities borrowing and lending transactions in compliance with the ASX SR; and

- (e) No waivers or other formal written relief were sought from, or provided by, ASX to HCNA in respect of their securities lending reporting obligations. On 28 February 2020, ASX notified HCNA of its view HCNA was in breach of its securities lending reporting obligations and was required to remediate its securities lending reporting processes and procedures in order to ensure compliance with these relevant obligations.

HCNA undertook prompt and effective action to correct the Contraventions.

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

- (a) The Contraventions could have materially impacted:
  - (i) ASX's compliance with the Reserve Bank of Australia'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 and 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. Accordingly, any errors by participants in reporting of securities lending information can negatively impact this promoted market transparency, ASX's reputation and ASX's compliance with the FSS.
- (c) The extended duration of the Contraventions.
- (d) The Contraventions were inadvertent and unintentional and HCNA never undertook securities lending in Australia.
- (e) HCNA did not derive a financial benefit or other commercial advantage from the Contraventions.
- (f) HCNA did not act unconscionably towards, or otherwise unfairly take advantage of, clients or counterparties.
- (g) HCNA undertook prompt and effective remedial action to correct the Contraventions.
- (h) That notwithstanding the above, HCNA's breaches ought to have been prevented or mitigated by appropriate existing arrangements for complying with its securities lending reporting requirements, which in turn should have incorporated existing guidance to participants, namely:
  - (i) that their processes for complying with the securities lending reporting requirements are key processes which the participant is expected to have documented for the purpose of complying with their obligations (refer to section 3.4 of ASX SR Guidance Note 1); and
  - (ii) to review their compliance measures when there are changes to their obligations and to identify changes that may impact their effectiveness (refer to section 6 of ASX SR Guidance Note 1).

In failing to do so, it demonstrates that HCNA did not have adequate processes to comply with its relevant obligations under the ASX SR.

- (i) HCNA self-reported the Contraventions, however it sought to do so on the basis that it held the genuine belief notification and reporting obligations under the ASX SR for securities lending and borrowing transactions of its non-participant related bodies corporate did not apply to HCNA.
- (j) HCNA demonstrated an overall cooperative stance with ASX in its investigations of the breaches, and undertook prompt and effective remedial action.
- (k) HCNA has a good history of complying with ASX's operating rules.
- (l) 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 \$40,000 (plus GST) was an appropriate sanction.