



**ASIC**

Australian Securities & Investments Commission

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18 December 2015

Australia Samly Holdings Group Limited  
C/O- Baker & McKenzie  
AMP Centre  
Level 27  
50 Bridge Street  
SYDNEY NSW 2000

**Attention: Ms Jiajun Li**

Dear Madam

**INFRINGEMENT NOTICE FOR CONTRAVENTION OF SECTION 674 OF  
THE CORPORATIONS ACT 2001**

Having carefully considered the material before me, including the written submissions on behalf of Australia Samly Holdings Group Limited, I find that the Australian Securities & Investments Commission (ASIC) has reasonable grounds to believe that Australia Samly Holdings Group Limited has contravened section 674(2) of the *Corporations Act 2001* (the Act) and that it is appropriate that an infringement notice issue to Australia Samly Holdings Group Limited.

Enclosed is the infringement notice issued by the ASIC under section 1317DAC of the Act in relation to a contravention of section 674(2) of the Act by Australia Samly Holdings Group Limited.

The infringement notice requires that Australia Samly Holdings Group Limited pay a financial penalty in the amount of \$33,000.

Australia Samly Holdings Group Limited may choose whether to comply with the infringement notice.

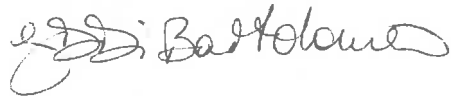
To comply with the infringement notice Australia Samly Holdings Group Limited must pay the financial penalty by bank cheque to the order of the "Australian Securities and Investments Commission" by 22 January 2016. The bank cheque should be forwarded

to Rachel Howitt, ASIC, GPO Box 9827 Sydney NSW 2001. This is an extension, under s1317DAH of the Act, of the compliance period from 28 days to 35 days.

Please note that section 1317C of the Act provides that ASIC's decision to the issue of the infringement notice is excluded from review by the Administrative Appeals Tribunal.

If you wish to discuss any issue concerning the infringement notice please contact me on 9911 2165, or Rachel Howitt on 9911 5919.

Yours sincerely

A handwritten signature in cursive script that reads "Gai Di Bartolomeo". The signature is written in dark ink and is positioned above the printed name.

Gai Di Bartolomeo  
Delegate  
Australian Securities and Investments Commission

**In Confidence**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

**PART 9.4AA OF THE CORPORATIONS ACT  
INFRINGEMENT NOTICE**

**To:**

Australia Samly Holdings Group Limited  
ACN 164 307 975  
C/O- Baker & McKenzie  
AMP Centre  
Level 27, 50 Bridge Street  
SYDNEY NSW 2000

**TAKE NOTICE:** The Australian Securities and Investments Commission (ASIC) hereby issues an Infringement Notice to Australia Samly Holdings Group Limited ACN 164 155 426 (**Samly**) under subsection 1317DAC(1) of the *Corporations Act 2001 (the Act)*. This Infringement Notice requires **Samly** to:

- (i) pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of \$33,000 (**the Penalty**).

This Infringement Notice is issued on **18 December 2015**.

**DETAILS OF THE ALLEGED CONTRAVENTION**

**The Facts**

The Samly corporate group is involved in the development, manufacture and sale of health products and dietary supplements, primarily in mainland China. Samly is a non-operating Australian holding company that has direct and indirect subsidiaries located in Hong Kong and mainland China.

BDO East Coast Partnership (**BDO Australia**) is the Samly's appointed auditor. BDO Shenzhen Dahua Tiancheng (**BDO China**) is the auditor of the subsidiaries of Samly that are based in mainland China. BDO Australia and BDO China are affiliate audit firms.

On 2 February 2014, Samly's mainland China-based subsidiaries provided internal accounting records (**Operating Management Accounts**) for the period 1 July 2014 to 31 December 2014 to BDO China for the purpose of an audit review. The Operating Management Accounts were forwarded by BDO China to BDO Australia on the same day.

The Operating Management Accounts prepared by Samly's subsidiaries and sent to BDO China on 2 February 2015 showed a consolidated loss for the mainland China subsidiaries (i.e. excluding the Hong Kong and Australian holding companies) of RMB 5,562,991.63 or approximately a loss of \$1,016,071.53.

Samly and its Hong Kong subsidiary are non-operating holding companies that do not earn any significant revenue but incur some expenses. The results of these non-operating companies do not materially affect the consolidated profit/loss position of the group. Accordingly, the Operating Management Accounts are indicative of the group's consolidated profit/loss.

By 2 February 2015 Samly was aware that its operating profit/loss for the period 1 July 2014 to 31 December 2014 (the **Half Year**) would be materially less than its operating profit from the previous corresponding period, being the period 1 July 2013 to 31 December 2013 (the **Previous Period**) (the **Information**).

The auditor reviewed results for the Half Year were released to the market on 17 March 2015.

### **The Contravention**

This Infringement Notice has been issued because ASIC has reasonable grounds to believe that Samly contravened subsection 674(2) of the Act in the period from or about from 2 February 2015 to 16 March 2015 inclusive in that:

- (a) Samly is an entity to which s674(2) of the Act applies.
- (b) On 2 February 2015 Samly was aware of the Information.
- (c) The Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of securities of Samly because there was a significant and adverse decline in Samly's results when comparing to the corresponding previous period. Samly's net profit for the Half Year decreased 365% from the Previous Period, i.e. from a profit of \$402,135 to a loss of \$1,064,548. The Information is information which would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of Samly shares.
- (d) APX Listing Rule 11.1 required Samly to tell APX of the Information on 2 February 2015.
- (e) APX Listing Rule 11.3 (the exception to APX Listing Rule 11.1) did not apply to the Information because:
  - (i) the information did not relate to an incomplete matter or negotiation. By 2 February 2014 when it sent its accounting records to BDO China, Samly knew its operating financial performance for the Half Year would be materially lower than the Previous Period;
  - (ii) disclosure of the information would not have been a breach of a law or in contempt of court;
  - (iii) the information did not comprise matters of supposition or was insufficiently certain or definite for it to be disclosed. Samly's management was aware of the significant decline in results by 2 February 2014;
  - (iv) the information had not been created for internal management purposes. The Information was provided to Samly's auditors for the

- preparation and review of Samly's half year financial report which is required to be disclosed to the market under APX Listing Rules;
- (v) the Information was not a trade secret; and
- (vi) a reasonable person would have expected the Information to be disclosed to APX.

(f) The Information was not generally available prior to 17 March 2015.

### **Compliance with the Infringement Notice**

Samly may choose to comply with this Infringement Notice by paying the Penalty within the compliance period.

The compliance period for this Infringement Notice begins on 19 December 2015 and expires on 15 January 2016: s1317DAH(1) of the Act. ASIC may extend the compliance period for this Infringement Notice once, by up to 28 days: s1317DAH(3) of the Act. If this occurs ASIC will notify Samly in writing.

### **Effect of issue and compliance with the Infringement Notice**

The issue of this Infringement Notice, and subsequent compliance with it, is not an admission of liability by Samly and cannot be regarded as a finding that Samly has contravened s674(2) of the Act for any other purpose: s1317DAF(4) of the Act.

ASIC cannot take civil or criminal proceedings against Samly for the alleged contravention specified in this Infringement Notice, either during the compliance period or after the Infringement Notice is complied with: s1317DAF(5) of the Act. However, certain proceedings may be commenced or continued against Samly by third parties or by ASIC on behalf of third parties: s1317DAF(6) of the Act.

### **Effect of failure to comply with the Infringement Notice**

ASIC cannot enforce compliance with this Infringement Notice: s1317DAF of the Act. However, if this Infringement Notice is not withdrawn in accordance with s1317DAI of the Act, it is open to ASIC to take the following action against Samly:

- (a) ASIC may begin civil penalty proceedings against the entity under Part 9.4B of the Act seeking a declaration that Samly breached the provision specified in this Infringement Notice and a pecuniary penalty order. The size of the pecuniary penalty is not limited to the amount specified in the Infringement Notice. The Court may under Part 9.4B impose a maximum penalty in relation to the alleged contravention of up to \$1 million;
- (b) ASIC may (if applicable) begin proceedings under s1324B of the Act seeking an order that specified information be disclosed in the manner required by this Infringement Notice;
- (c) ASIC may (if applicable) make an order under s91 of the *Australian Securities and Investments Commission Act (the ASIC Act)* for recovery of expenses of its investigation into the breach specified in this Infringement Notice. ASIC can also bring proceedings to enforce that order; and

- (d) ASIC can make a determination under ss708A(2), 713(6), 1012DA(2) or 1013FA(3) of the Act, or accept an enforceable undertaking under s93AA of the ASIC Act and bring proceedings to enforce the undertaking: s1317DAG of the Act.

Certain other proceedings may also be commenced or continued against Samly by third parties or by ASIC on behalf of third parties: s1317DAG(4) of the Act.

**Withdrawal of infringement notice**

ASIC may withdraw this Infringement Notice at any time prior to compliance if it considers it appropriate to do so. If this Infringement Notice is withdrawn, any enforcement action may be taken by ASIC against Samly, including:

- (a) civil proceedings under Part 9.4B of the Act; or
- (b) a prosecution for an offence based on the provision specified in the notice.

Samly may seek the withdrawal of this Infringement Notice by making a written representation to ASIC: s1317DAI(1) of the Act. Material provided to ASIC in such a representation is not admissible in evidence in proceedings against Samly or a representative of the company: s1317DAI(2) of the Act.

**Publication**

If Samly complies with this Infringement Notice ASIC may publish details of Samly's compliance in the manner set out in s1317DAJ(2) or (3) of the Act: s1317DAJ(1) of the Act.

The provisions contained in Part 9.4AA of the Act are attached hereto as Annexure 1.



Gai Di Bartolomeo  
Delegate  
Australian Securities and Investments Commission

## Annexure 1

### CORPORATIONS ACT 2001

#### SECT 1317DAA

##### Definitions

(1) In this Part:

**"compensation proceedings"** means:

- (a) proceedings under section 1317HA; and
- (b) proceedings under section 12GF of the ASIC Act in relation to a contravention of section 12DA of that Act; and
- (c) any other proceedings by a person for compensation for loss or damage suffered by the person.

**"compliance period"** for an infringement notice has the meaning affected by section 1317DAH.

**"contravention proceedings"** means proceedings under section 1101B by a person referred to in paragraph 1101B(1)(b) or (d).

**"enforcement proceedings"** means proceedings under section 793C by a person referred to in paragraph 793C(1)(b), (c) or (d).

**"infringement notice"** means an infringement notice issued under section 1317DAC.

**"penalty and disclosure proceedings"** means the proceedings referred to in column 3 of the table in subsection 1317DAG(2).

**"public interest proceedings"** means proceedings under section 50 of the ASIC Act.

(2) For the purposes of applying this Part to a disclosing entity that is an undertaking to which interests in a registered scheme relate:

- (a) references to the disclosing entity are taken to be references to the responsible entity for the registered scheme; and
- (b) references to a financial report for a financial year being lodged by a disclosing entity are taken to be references to such a report being lodged by the responsible entity in relation to the scheme; and
- (c) references to securities of a disclosing entity are taken to be references to interests in the registered scheme; and
- (d) references to a disclosing entity being convicted of an offence based on subsection 674(2) or 675(2) are taken to be references to the responsible entity being convicted of such an offence in relation to the registered scheme; and
- (e) references to a civil penalty order under Part 9.4B being made against a disclosing entity in relation to a contravention of subsection 674(2) or 675(2) are taken to be references to such an order being made against the responsible entity in relation to the registered scheme; and
- (f) references to a disclosing entity having breached an enforceable undertaking given to ASIC under section 93AA of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2) are taken to be references to the responsible entity having breached such an undertaking given in relation to the registered scheme.

## **SECT 1317DAB**

### **Purpose and effect of this Part**

(1) The purpose of this Part is to provide for the issue of an infringement notice to a disclosing entity for an alleged contravention of subsection 674(2) or 675(2) as an alternative to proceedings for civil penalties under Part 9.4B.

(2) This Part does not:

(a) require an infringement notice to be issued to the disclosing entity for the alleged contravention of subsection 674(2) or 675(2); or

(b) affect the liability of the disclosing entity to civil or criminal proceedings in relation to the alleged contravention of subsection 674(2) or 675(2) if:

(i) an infringement notice is not issued to the disclosing entity for the alleged contravention; or

(ii) an infringement notice issued to the disclosing entity for the alleged contravention is withdrawn under section 1317DAI; or

(c) prevent a Court from imposing a higher penalty than the penalty specified in the infringement notice if the disclosing entity does not comply with the infringement notice.

## **SECT 1317DAC**

### **Issue of infringement notice**

#### **Issue of infringement notice**

(1) Subject to section 1317DAD, if ASIC has reasonable grounds to believe that a disclosing entity has contravened subsection 674(2) or 675(2), ASIC may issue an infringement notice to the disclosing entity.

(2) ASIC issues the infringement notice to the disclosing entity by serving it on the disclosing entity.

(3) ASIC must not issue more than one infringement notice to the disclosing entity for the same alleged contravention of subsection 674(2) or 675(2).

ASIC must have regard to certain matters

(4) In determining whether to issue an infringement notice to a listed disclosing entity for an alleged contravention of subsection 674(2), ASIC must have regard to:

(a) any guidelines issued by the relevant market operator for the listed disclosing entity that relate to the provisions of the listing rules referred to in subsection 674(1); and

(b) any other relevant matter.

#### **Infringement notice does not have effect**

(5) The infringement notice does not have any effect if the infringement notice:

(a) is issued more than 12 months after the day on which the contravention of subsection 674(2) or 675(2) is alleged to have occurred; or

(b) relates to more than one alleged contravention of subsection 674(2) or 675(2) by the disclosing entity.



## **SECT 1317DAD**

### **Statement of reasons must be given**

#### Statement of reasons

- (1) Before issuing the infringement notice, ASIC must:
    - (a) give the disclosing entity a written statement that sets out ASIC's reasons for believing that the disclosing entity has contravened subsection 674(2) or 675(2); and
    - (b) give a representative of the disclosing entity an opportunity to:
      - (i) appear at a private hearing before ASIC; and
      - (ii) give evidence to ASIC; and
      - (iii) make submissions to ASIC;in relation to the alleged contravention of subsection 674(2) or 675(2).
  - (2) If the disclosing entity is a listed disclosing entity, ASIC must consult with the relevant market operator for the disclosing entity before giving the disclosing entity the statement under this subsection.
  - (3) ASIC does not need to consult the relevant market operator under subsection (2) if:
    - (a) the disclosing entity is the relevant market operator; or
    - (b) the disclosing entity conducts a business in competition with a business conducted by the relevant market operator.
- Limit on the use of evidence or information given to ASIC
- (4) Evidence or information that a representative of the disclosing entity gives ASIC under paragraph (1)(b) in relation to the alleged contravention of subsection 674(2) or 675(2) is:
    - (a) not admissible in evidence against the disclosing entity in any proceedings; and
    - (b) not admissible in evidence against a representative of the disclosing entity in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

## **SECT 1317DAE**

### **Matters to be included in infringement notice**

- (1) The infringement notice:
  - (a) must state the day on which it is issued; and
  - (b) must state the name and address of the disclosing entity to whom it is issued; and
  - (c) must state that it is being issued by ASIC; and
  - (d) must state that ASIC may publish details of the disclosing entity's compliance with the infringement notice under section 1317DAJ if the disclosing entity complies with the notice; and
  - (e) must give details of the alleged contravention by the disclosing entity, including:
    - (i) the date of the alleged contravention; and
    - (ii) the particular provision that was contravened; and
  - (f) must state the maximum pecuniary penalty that a Court could impose under Part 9.4B in relation to the alleged contravention; and

(g) must specify the penalty that is payable in relation to the alleged contravention; and

(h) must state that the penalty is payable to ASIC on behalf of the Commonwealth; and

(i) if it is alleged that the disclosing entity contravened subsection 674(2)--may specify information that the disclosing entity must notify to the relevant market operator in accordance with the provisions of the listing rules referred to in subsection 674(1); and

(j) if it is alleged that the disclosing entity contravened subsection 675(2)--may require the disclosing entity to lodge a document with ASIC that contains specified information; and

(k) must explain the effect of sections 1317DAF, 1317DAG and 1317DAH; and

(l) must state that the disclosing entity may make written representations to ASIC seeking the withdrawal of the infringement notice; and

(m) must contain any other matters that are prescribed in the regulations.

(2) Subject to subsection (3), the penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 674(2) is:

(a) \$100,000 if the disclosing entity is a Tier 1 entity; or

(b) \$66,000 if the disclosing entity is a Tier 2 entity; or

(c) \$33,000 if the disclosing entity is a Tier 3 entity.

(3) The penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 674(2) is:

(a) \$100,000 if the disclosing entity is a Tier 2 entity; or

(b) \$66,000 if the disclosing entity is a Tier 3 entity;

if:

(c) the disclosing entity has at any time been convicted of an offence based on subsection 674(2) or 675(2); or

(d) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2); or

(e) the disclosing entity has at any time breached an enforceable undertaking given to ASIC under section 93AA of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2).

(4) Subject to subsection (5), the penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 675(2) is \$33,000.

(5) The penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 675(2) is \$66,000 if:

(a) the disclosing entity has at any time been convicted of an offence based on subsection 674(2) or 675(2); or

(b) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2); or

(c) the disclosing entity has at any time breached an enforceable undertaking given to ASIC under section 93AA of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2).

(6) For the purposes of this section:

(a) a disclosing entity is:

(i) a **Tier 1 entity** if its market capitalisation on the relevant day exceeds \$1,000 million; and

(ii) a **Tier 2 entity** if its market capitalisation on the relevant day exceeds \$100 million but does not exceed \$1,000 million; and

(iii) a **Tier 3 entity** if its market capitalisation on the relevant day does not exceed \$100 million or it is not possible to work out its market capitalisation on the relevant day because it has not lodged a financial report with ASIC before the relevant day; and

(b) the **relevant day** for an infringement notice is the last day of the financial year in relation to which the latest financial report by the disclosing entity has been lodged with ASIC before the infringement notice is issued.

(7) This is how to work out a disclosing entity's **market capitalisation** on the relevant day:

(a) for each class of security of the disclosing entity that is a quoted security:

(i) work out the closing price, on the relevant day, for securities in that class on the prescribed financial market on which the securities are quoted; and

(ii) multiply that price by the number of securities in that class on issue on the relevant day (as shown in the financial report lodged with ASIC for the period that ends on the relevant day); and

(b) add up the amounts obtained under paragraph (a): the result is the disclosing entity's market capitalisation on the relevant day.

Disregard quoted securities of the disclosing entity that are options.

## **SECT 1317DAF**

### **Effect of issue and compliance with infringement notice**

Circumstances in which this section applies

(1) This section applies if subsection (2) or (3) is satisfied.

(2) This subsection is satisfied if:

(a) the compliance period for the infringement notice has not ended; and

(b) the infringement notice is not withdrawn under section 1317DAI;

and

(c) subsection (3) has not been satisfied.

(3) This subsection is satisfied if, within the compliance period for the infringement notice, the disclosing entity:

(a) pays the penalty specified in the infringement notice; and

(b) either:

(i) if it is alleged in the infringement notice that the disclosing entity contravened subsection 674(2)--notifies the relevant market operator, in accordance with the provisions of the listing rules referred to in subsection 674(1), of any information specified in the infringement notice; or

(ii) if it is alleged in the infringement notice that the disclosing entity contravened subsection 675(2)--lodges any required document with ASIC that contains the information specified in the infringement notice.

Note: If this subsection is satisfied, ASIC must not withdraw the infringement notice, see section 1317DAI.

No contravention etc. by the disclosing entity

(4) The disclosing entity is not, by reason only of subsection (3) being satisfied, regarded as:

(a) having contravened the provision specified in the infringement notice; or

(b) having been convicted of an offence constituted by the same conduct that constituted the alleged contravention of the provision specified in the infringement notice.

No proceedings may be started etc.

(5) Subject to subsection (6), no proceedings (whether criminal or civil) may be started or continued against the disclosing entity in relation to:

(a) the alleged contravention of the provision specified in the infringement notice; or

(b) an offence constituted by the same conduct that constituted the alleged contravention.

(6) Subsection (5) does not apply to the following proceedings:

(a) compensation proceedings, contravention proceedings, enforcement proceedings and public interest proceedings that relate to the alleged contravention of the provision specified in the infringement notice;

(b) proceedings to enforce the following orders of a Court:

(i) an order made in relation to proceedings referred to in paragraph (a);

(ii) an order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings;

(c) any other proceedings in respect of a breach of an order referred to in paragraph (b);

(d) an appeal to a Court against the following decisions or orders of a Court:

(i) a decision or order made in relation to proceedings referred to in paragraph (a);

(ii) a decision or order made under subsection 1335(2) in relation to the proceedings referred to in paragraph (a) other than public interest proceedings.

(7) To avoid doubt, subsection (5) does not prevent ASIC from:

(a) making an order under section 91 of the ASIC Act; or

(b) bringing proceedings to enforce the order.

## **SECT 1317DAG**

### **Effect of failure to comply with infringement notice**

Circumstances in which this section applies

(1) This section applies if an infringement notice issued to a disclosing entity is not withdrawn under section 1317DAI.

Effect of failure to comply with infringement notice

(2) If the disclosing entity fails to do a thing specified in column 2 of the following table within the compliance period for the infringement notice, the disclosing entity is liable to the proceedings specified in column 3 of the following table:

<b>Effect of failure to comply with infringement notice</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>If the disclosing entity fails to:</b>	<b>the disclosing entity is liable to:</b>
1	pay the penalty specified in the infringement notice	proceedings under Part 9.4B for:

Effect of failure to comply with infringement notice		
Column 1	Column 2	Column 3
<b>Item</b>	<b>If the disclosing entity fails to:</b>	<b>the disclosing entity is liable to:</b>
		(a) a declaration of contravention; and (b) a pecuniary penalty order; in relation to the alleged contravention of the provision specified in the infringement notice.
2	notify the relevant market operator, in accordance with the provisions of the listing rules referred to in subsection 674(1), of any information specified in the infringement notice if it is alleged in the infringement notice that the disclosing entity contravened subsection 674(2)	proceedings for an order under section 1324B in relation to the alleged contravention of the provision specified in the infringement notice.
3	lodge any required document with ASIC that contains the information specified in the infringement notice if it is alleged in the infringement notice that the disclosing entity contravened subsection 675(2)	proceedings for an order under section 1324B in relation to the alleged contravention of the provision specified in the infringement notice.

No other proceedings may be started etc.

(3) Subject to subsection (4), no other proceedings (whether criminal or civil) may be started or continued against the disclosing entity in relation to:

(a) the alleged contravention of the provision specified in the infringement notice; or

(b) an offence constituted by the same conduct that constituted the alleged contravention.

(4) Subsection (3) does not apply to the following proceedings:

(a) compensation proceedings, contravention proceedings, enforcement proceedings and public interest proceedings that relate to the alleged contravention of the provision specified in the infringement notice;

(b) proceedings to enforce the following orders of a Court:

(i) an order made in relation to penalty and disclosure proceedings;

(ii) an order made in relation to proceedings referred to in

paragraph (a);

- (iii) an order made under subsection 1335(2) in relation to penalty and disclosure proceedings;
  - (iv) an order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings;
  - (c) any other proceedings in respect of a breach of an order referred to in paragraph (b);
  - (d) an appeal to a Court against the following decisions or orders of a Court:
    - (i) a decision or order made in relation to penalty and disclosure proceedings;
    - (ii) a decision or order made in relation to proceedings referred to in paragraph (a);
    - (iii) a decision or order made under subsection 1335(2) in relation to penalty and disclosure proceedings;
    - (iv) a decision or order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings.
- (5) To avoid doubt, subsection (3) does not prevent ASIC from:
- (a) making a determination under subsection 708AA(3), 708A(2), 713(6), 1012DAA(3), 1012DA(2) or 1013FA(3) of this Act; or
  - (b) making an order under section 91 of the ASIC Act; or
  - (c) accepting an undertaking under section 93AA of the ASIC Act; or
  - (d) bringing proceedings to enforce the determination, order or undertaking.

#### **SECT 1317DAH**

##### **Compliance period for infringement notice**

- (1) Subject to this section, the compliance period for an infringement notice is a period of 28 days beginning on the day after the day on which the infringement notice is issued.
- (2) ASIC may extend, by notice in writing, the compliance period for the infringement notice if ASIC is satisfied that it is appropriate to do so.
- (3) Only one extension may be given and the extension must not be for longer than 28 days.
- (4) Notice of the extension must be given to the disclosing entity that was issued with the infringement notice.
- (5) A failure to comply with subsection (4) does not affect the validity of the extension.
- (6) If ASIC extends the compliance period for an infringement notice, a reference in this Act to the compliance period for an infringement notice is taken to be a reference to the compliance period as so extended.

#### **SECT 1317DAI**

##### **Withdrawal of infringement notice**

Disclosing entity may seek withdrawal

- (1) If an infringement notice is issued to a disclosing entity, the disclosing entity may make written representations to ASIC seeking the withdrawal of the infringement notice.

(2) Evidence or information that a representative of the disclosing entity gives ASIC in the course of making representations under subsection (1) is:

- (a) not admissible in evidence against the disclosing entity in any proceedings; and
- (b) not admissible in evidence against a representative of the disclosing entity in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

Withdrawal

(3) Subject to subsection (4), ASIC may withdraw the infringement notice (whether or not the disclosing entity has made representations seeking the withdrawal) if ASIC is satisfied that it is appropriate to do so.

(4) ASIC must not withdraw the infringement notice if subsection 1317DAF(3) is satisfied.

Withdrawal notice

(5) The withdrawal must be made by notice in writing and must be given to the disclosing entity.

(6) The withdrawal notice must state:

- (a) the name and address of the disclosing entity; and
- (b) the day on which the infringement notice was issued to the disclosing entity; and
- (c) that the infringement notice is withdrawn; and
- (d) that civil proceedings under Part 9.4B may be brought against the disclosing entity for a contravention of the provision specified in the infringement notice; and
- (e) that a prosecution for an offence based on the provision specified in the infringement notice may be brought against the disclosing entity.

Refund of penalty

(7) If:

- (a) the disclosing entity pays the penalty specified in the infringement notice; and
  - (b) the infringement notice is withdrawn after the disclosing entity pays the penalty;
- ASIC must refund to the disclosing entity an amount equal to the amount paid.

## **SECT 1317DAJ**

### **Publication in relation to infringement notices**

(1) If:

- (a) ASIC issues an infringement notice to a disclosing entity; and
- (b) subsection 1317DAF(3) (compliance with the infringement notice) is satisfied;

ASIC may publish details of the disclosing entity's compliance with the infringement notice under subsection (2) or (3) or under both of those subsections.

(2) ASIC publishes details of the disclosing entity's compliance with the infringement notice under this subsection if it publishes a copy of the infringement notice in the *Gazette* together with the following statements:

- (a) a statement that the disclosing entity has complied with the infringement notice;

(b) a statement that compliance with the notice is not an admission of guilt or liability;

(c) a statement that the disclosing entity is not regarded as having contravened the provision specified in the notice.

(3) ASIC publishes details of the disclosing entity's compliance with the infringement notice under this subsection if:

(a) ASIC issues a statement (whether written or oral) about the disclosing entity's compliance with the infringement notice; and

(b) the statement is limited to an accurate summary of the infringement notice including:

(i) the name of the disclosing entity; and

(ii) the amount of the penalty payable under the notice in relation to the alleged contravention; and

(iii) the conduct specified in the notice as the conduct in relation to which the infringement notice was issued;

together with the following statements:

(iv) a statement that the disclosing entity has complied with the infringement notice;

(v) a statement that compliance with the notice is not an admission of guilt or liability;

(vi) a statement that the relevant disclosing entity is not regarded as having contravened the provision specified in the notice.

(4) ASIC must not otherwise publish details of:

(a) an infringement notice; or

(b) a disclosing entity's compliance with an infringement notice.

Failure to comply with this subsection is not an offence.