

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: VID514/2015  
File Title: In the matter of Avestra Asset Management Ltd (in liquidation) (ACN 119 227 440)  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 2/05/2016 4:37:19 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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## CONCISE STATEMENT

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: VICTORIA  
DIVISION: GENERAL**

**NO VID514/2015**

**IN THE MATTER OF AVESTRA ASSET MANAGEMENT LTD (IN LIQUIDATION) (ACN 119 227 440)**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**AVESTRA ASSET MANAGEMENT LIMITED (IN LIQUIDATION) (ACN 119 227 440) (and others named in the Schedule)**

Defendants

### **I. INTRODUCTION**

1. This proceeding relates to conduct engaged in by Avestra Asset Management Ltd (**AAM**), and to a limited extent by Bridge Global Securities Pty Ltd (**BGS**), between March 2013 and February 2015, and to Rowles and Dempsey's involvement in, and/or responsibility for, that conduct.
2. In broad terms, that conduct involved the investment of scheme property of registered MISs, through AAM-managed or offshore unregistered schemes, in ways that:
  - 2.1 involved the giving of financial benefits to related parties without member approval, contrary to s 208/601LC of the Corporations Act;
  - 2.2 were not made in the best interests of members of the registered MISs, and involving conflicts of interest where AAM did not give priority to members' interests (s 601FC(1)(c)); and
  - 2.3 did not meet AAM's obligation to do all things necessary to ensure that it provided financial services efficiently, fairly and honestly (s 912A(1)(a)).
3. ASIC seeks declarations of contravention against AAM, Rowles and Dempsey. ASIC also seeks disqualification orders and financial services banning injunctions against Rowles and Dempsey.

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Filed on behalf of  
Prepared by  
Tel  
Email  
**Address for service**

Plaintiff  
Savas Miriklis  
+61 3 9280 3200                      Fax    +61 3 9280 3444  
savas.miriklis@asic.gov.au  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, Victoria 3000

## II. FACTUAL OVERVIEW

4. ASIC has previously obtained orders appointing provisional liquidators to AAM, and winding it up on the just and equitable ground. ASIC will rely substantially on the evidence filed in support of those applications. As outlined in the 1<sup>st</sup> affidavit of Glenn Childs dated 11 September 2015, the conduct of concern falls broadly into 3 episodes.

### A. **AAM's takeover of AG Financial Ltd (AG Financial) and cross-investment of the AG Schemes in AAM's wholesale schemes**

5. AG Financial was a listed funds management business whose subsidiary, AGF Funds Management Pty Ltd (**AGF Funds Management**), was the fund manager of the Accelerator, Emergent, Generator and Maximiser retail MISs (the **AG Schemes**). Until 30 January 2014, the AG Schemes had an independent RE, Fundhost Ltd. At all relevant times, AG Financial was in financial difficulty.
6. In around March 2013, Rowles and Dempsey resolved to effect a merger of AAM and AG Financial, and thereby to achieve a "back-door listing" of AAM.
7. On around 20 March 2013, AAM purchased a 22% shareholding in AG Financial by using scheme property of the Advantage Fund (a registered MIS) and trust property of the Canton and Worberg Global Funds (unregistered schemes). No approval was given by members of the Advantage Fund.
8. On 1 April 2013, AGF Funds Management delegated its fund manager role for the AG Schemes to BGS, of which Rowles and Dempsey were the directors and indirectly the shareholders.
9. From 1 May 2013, BGS invested scheme property of the AG Schemes into the Advantage and Worberg Global Funds. No approval was given by members of the AG Schemes. Fundhost, as RE of the AG Schemes, immediately objected to those investments having been made into related party funds without disclosure to members. Rowles responded intemperately, and indicated that AAM wished to remove Fundhost as RE of the AG Schemes.
10. Between 30 May and 2 August 2013:
  - 10.1 BGS continued to invest scheme property of the AG Schemes into the Advantage, Worberg Global, Canton and Safecrest Funds, without obtaining approval of the members of the AG Schemes; and
  - 10.2 AAM continued to use scheme and trust property of the Advantage, Worberg Global, Canton and Safecrest Funds (and indirectly the scheme property of the AG Schemes) to increase its holdings in AG Financial to 56%.
11. Dempsey was appointed as a director of AG Financial and AGF Funds Management on 12 July 2013.

12. Between 1 July and 31 December 2013, the Safecrest Fund had only one investor (the Generator Fund) and invested solely in shares in AG Financial. As such, the Safecrest Fund was used solely as a conduit to invest scheme property of the Generator Fund into AG Financial.
13. In April and August 2013, AAM filed substantial shareholder notices that did not disclose the interests that AAM had acquired in AG Financial. AAM has since been convicted of contraventions of ss 606 and 671B.
14. Between July and September 2013, meetings of the AG Schemes were held, at which the members voted to appoint AAM as RE of the AG Schemes, in place of Fundhost. AAM's appointment as RE of the AG Schemes took effect on 30 January 2014.
15. Following ASIC's investigation of AAM's majority shareholding in AG Financial, AAM divested its shareholding in AG Financial through a sequence of off-market transactions during 2014.
16. The purchases of a majority shareholding AG Financial that AAM made through the Advantage, Worberg Global, Canton and Safecrest Funds were made primarily to advance AAM's commercial interests, including attempting to achieve a merger and back-door listing through AG Financial, and acquiring control over the AG Schemes.
17. ASIC alleges that:
  - 17.1 AAM and BGS gave financial benefits, directly or indirectly out of scheme property of the Advantage Fund and the AG Schemes, to related parties without obtaining approval of members of those Funds, in breach of s 208/601LC;
  - 17.2 AAM failed to act in the best interests of, and to give priority to, the interests of the members of the Advantage Funds, in breach of s 601FC(1)(c);
  - 17.3 AAM failed to do all things necessary to ensure that it provided financial services efficiently, fairly and honestly, in breach of s 912A(1)(a); and
  - 17.4 AAM committed the contraventions of s 606 and 671B of which it has previously been convicted.
18. ASIC alleges that Rowles and Dempsey were involved in and/or failed to take reasonable steps to prevent those contraventions by AAM and BGS, breached their duties as officers of AAM imposed by ss 180(1) and 601FD(1), and each contravened s 1308 by authorising the filing of misleading substantial shareholder notices.

## **B. Investments of the Avestra Credit Fund**

19. The Avestra Credit Fund was an unregistered scheme set up by AAM in January 2014.

20. Investments into the scheme were primarily made by the Worberg Global and Canton Funds. Scheme property of the Advantage, Emergent and Maximiser Funds was invested in those unregistered schemes at the time.
21. On 27 February and 4 March 2014, AAM loaned a total of \$745,000 out of the Avestra Credit Fund to itself, without security, to provide funds for the purchase of commercial properties that it had been unable to borrow from its bank.
22. Between 7 February and 26 June 2014, AAM loaned a total of \$545,000 out of the Avestra Credit Fund to AG Financial, without security, to provide AG Financial with working capital. As at 30 June 2014, AG Financial's directors acknowledged that there was a material question as to whether it was a going concern.
23. On or around 6 May 2014, AAM loaned US\$5.4 million (being 75% of the assets of the Avestra Credit Fund) to Zenith City Investments Ltd, a Seychelles-incorporated company, without undertaking any, or adequate, due diligence, and without obtaining adequate security.
24. On 1 June and 1 July 2014, AAM made investments totalling \$1.04 million out of the Accelerator Fund into the Avestra Credit Fund, but immediately transferred the Accelerator Fund's unitholdings to the Bridge Global CMC Fund, in exchange for the Accelerator Fund being issued units in the Bridge Global CMC Fund. The investment by the Accelerator Fund into the Avestra Credit Fund was never disclosed in the Accelerator Fund's ledger of securities transactions.
25. On 27 November 2014, in response to a statutory direction served by ASIC, AAM failed to disclose the existence of, and information about, the Avestra Credit Fund to ASIC.
26. ASIC alleges that AAM:
  - 26.1 gave financial benefits directly out of scheme property of the Accelerator Fund to a related party (namely itself, as trustee of the Avestra Credit Fund) without obtaining approval of the members of that fund, in breach of s 208/601LC;
  - 26.2 failed to act in the best interests of, and to give priority to, the interests of the members of the Accelerator Fund, in breach of s 601FC(1)(c);
  - 26.3 gave financial benefits indirectly out of scheme property of the Advantage, Emergent and Maximiser Funds, to related parties (namely itself and AG Financial) without obtaining approval of members of those funds, in breach of s 208/601LC; and
  - 26.4 failed to do all things necessary to ensure that it provided financial services efficiently, fairly and honestly, in breach of s 912A(1)(a).

27. ASIC alleges that Rowles and Dempsey were involved in and/or failed to take reasonable steps to prevent those contraventions by AAM, and themselves breached their duties as officers of AAM imposed by ss 180(1) and 601FD(1). ASIC also alleges that Dempsey contravened s 1308(2) in that he knowingly provided an incorrect or misleading response to ASIC on 27 November 2014.

**C. Inter-fund transfers and the offshoring of the Canton and Worberg Global Funds**

28. Shortly after AAM's appointment as RE of the AG Schemes, on 7 February 2014, AGF Funds Management sent a letter to members of those schemes, notifying changes to the investment mandates of those schemes. ASIC alleges that, in breach of s 1017B, AAM did not notify members of the material increase in investment risk of those schemes that had occurred, or would subsequently occur, through those schemes becoming substantially exposed to Malaysian shares and equity warrants, including a significant portion of companies listed on the second-board ACE market of Bursa Malaysia.
29. The Bridge Global CMC Fund was a segregated portfolio set up in the Cayman Islands in April 2014. The operator of the fund was Bridge Global Absolute Return Fund SPC, and its fund manager was Bridge Global Asset Management Ltd (**BGAM**). BGAM was 40% owned by AAM, and Bridge Global SPC was wholly-owned by BGAM. Rowles is a director of both companies.
30. Between 30 April and 1 June 2014, AAM closed the Canton Fund, transferred the investments of the Canton Fund to the Bridge Global CMC Fund, and issued units in the Bridge Global CMC Fund to unitholders in the former Canton Fund (which included the Maximiser Fund). In effect, the Canton Fund was simply re-established in the Cayman Islands as the Bridge Global CMC Fund. AAM did not obtain approval of the members of the Maximiser Fund, or the other registered MISs that were invested indirectly in the Canton Fund.
31. Between 2 June and 1 October 2014, AAM made further investments of scheme property of the AG Schemes into the Bridge Global CMC Fund, without obtaining the approval of the members of the AG Schemes.
32. Between 3 March and 8 September 2014, by a similar but more involved process, AAM closed the Worberg Global Fund and transferred the investments of, and investments in, that Fund to the Hanhong High-Yield Fund, another Cayman Islands segregated portfolio operated by Hanhong (Management) Cayman Ltd. Malaysian shares and warrants held by the Worberg Global Fund were distributed *in specie* to that fund's unitholders (including the Advantage, Emergent and Maximiser Funds). Those assets were later substantially reinvested *in specie* by those unitholders into the Hanhong High-Yield Fund.

33. Between 31 October 2015 and 1 February 2015, the investments of the AG Schemes in the Bridge Global CMC Fund and the Hanhong High-Yield Fund were redeemed for *in specie* distributions of Malaysian shares and equity warrants.
34. Following those distributions, the Accelerator, Emergent and Maximiser Funds had direct holdings of Malaysian shares and equity warrants representing approximately 50%, 80% and 87% of those Funds' net assets, respectively.
35. In addition to the breaches of s 1017B, ASIC alleges that AAM:
  - 35.1 gave financial benefits directly out of scheme property of each of the AG Schemes, to a related party, namely Bridge Global SPC, without obtaining approval of members of those Funds, in breach of s 208/601LC;
  - 35.2 failed to exercise reasonable care and diligence, in breach of s 601FC(1)(b); and
  - 35.3 failed to do all things necessary to ensure that it provided financial services efficiently, fairly and honestly, in breach of s 912A(1)(a).
36. ASIC alleges that Rowles and Dempsey were involved in and/or failed to take reasonable steps to prevent those contraventions by AAM, and themselves breached their duties as officers of AAM imposed by ss 180(1), and 601FD(1).

**D. Conflicts of interest and Dempsey's role on the compliance committee**

37. ASIC alleges that AAM did not have in place adequate arrangements for the management of conflicts of interest, in breach of s 912A(1)(aa). ASIC alleges that Rowles and Dempsey failed to take reasonable steps to prevent that contravention by AAM, and themselves contravened s 601FD(1).
38. Further, ASIC alleges that, in his role as a member of AAM's compliance committee, Dempsey failed to exercise reasonable care and diligence, in breach of s 601JD(1)(b).

**E. Declarations, disqualification and financial services injunctions sought**

39. ASIC seeks declarations of contravention against AAM, Rowles and Dempsey in respect of each contravention found against them.
40. As against Rowles and Dempsey, ASIC also applies for:
  - 40.1 disqualification orders under s 206C and 206E; and
  - 40.2 financial services banning injunctions under s 1324,

for such periods as the Court considers appropriate, having regard to the contraventions committed, Rowles and Dempsey's respective involvement in, or

responsibility for, those contraventions, and their conduct generally in relation to the affairs of AAM.

Date: 2 May 2016

A handwritten signature in blue ink, appearing to read 'Savas Miriklis', is written over a horizontal dotted line.

Savas Miriklis

Lawyer for the Plaintiff



## **SCHEDULE**

Federal Court of Australia

No. VID 514/2015

District Registry: Victoria

Division: General

**AVESTRA ASSET MANAGEMENT LIMITED (IN LIQUIDATION) (ACN 119 227 440)**

First Defendant

**PAUL JOHN ROWLES**

Second Defendant

**CLAYTON DEMPSEY**

Third Defendant