

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Non-Prescribed Pleading  
File Number: WAD540/2016  
File Title: Australian Securities and Investment Commission v State One Stockbroking Limited ACN 092 989 083  
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A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 21/11/2016 10:27:46 AM AWST

Registrar

### Important Information

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## Concise Statement

No. WAD



Federal Court of Australia  
District Registry: Western Australia  
Division: General

### IN THE MATTER OF STATE ONE STOCKBROKING LIMITED ACN 092 989 083

#### Australian Securities and Investments Commission

Plaintiff

#### State One Stockbroking Limited ACN 092 989 083

Defendant

#### State One

1. In 2011 the Defendant (**State One**) held, and at all times since 2011, has held, an Australian Financial Services Licence and at all times during those periods it has been a “Market Participant” with trading permission on the ASX (the **Market**).
2. Since at least the beginning of 2011, State One has used the surveillance program known as SMARTS.broker (**SMARTS**) to conduct post-trade analysis. SMARTS provides alerts to State One of trading which may have contravened the market regulations, including the ASIC Market Integrity Rules (ASX Market) 2010 (**Market Integrity Rules**), and the internal risk policies of State One (**SMARTS Alerts**).

#### Tang

3. In the period from 7 February 2011 to 1 February 2012, Mr Thai Quoc Tang (**Tang**) was a client of State One and held a trading account with State One (the **Relevant Account**). Tang was authorised by State One to place orders into State One's IRESS Automated Order Processing System (**AOP**), for direct entry into the Market's trading platform.

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Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, the Plaintiff
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Reference 14-20050

**Tang's trading between 8 and 28 February 2011**

4. In the period between 8 and 28 February 2011, Tang placed 141 orders to buy ordinary shares in Tissue Therapies Limited (**TIS**) through the Relevant Account and multiple amendments to those orders (the **Initial Orders**). State One, through its AOP, entered corresponding bids for each of the Initial Orders into the Market resulting in the execution of 189 Market transactions for TIS.
5. The Initial Orders triggered 59 SMARTS Alerts for State One. The SMARTS Alerts were received on every trading day, except one, in the period between 8 and 28 February 2011, including alerts designated and labelled by SMARTS as "driving the price of TIS" and "creating a pattern of price driving" (the **Initial Trading Alerts**).
6. The Plaintiff (**ASIC**) contends that shortly after its receipt of the first of the Initial Trading Alerts and at least by the conclusion of trading on 11 February 2011, a reasonable Market Participant in the position of State One, would have suspected that Tang may have been placing orders with an intention of creating a false or misleading appearance with respect to the market for, or price of, TIS and would have commenced to analyse the activity on the Relevant Account and prior to the commencement of trading on 1 March 2011, would have identified that Tang's trading in TIS:
  - a. appeared inconsistent with the history of or prior recent trading in TIS;
  - b. materially altered the market for, or price of, TIS;
  - c. appeared to have been timed to restore or increase the price of TIS; and
  - d. generally exhibited the following patterns:
    - i. the entry of a low price bid which was later amended, shortly after a fall in the price for TIS, to the priority offer price at a reduced volume, resulting in a trade at the priority offer price;
    - ii. the entry of a low volume bid which was subsequently amended, shortly after a fall in the price for TIS, to the priority offer price with no change in volume, resulting in a trade at the priority offer price;
    - iii. the entry of a low price bid and then a subsequent amendment to the price of the bid to a price above the priority offer price at a sufficient volume to buy all the volume on offer at the priority offer price together with a small volume of TIS at the next higher priority offer price, resulting in a trade at the priority offer price;
    - iv. the entry of a bid at the priority offer price for TIS at a level that was higher than the last trade price for TIS, resulting in a trade at the priority offer price; and

v. setting the closing price for TIS,

(together **Trading Patterns**).

7. By reason of its identification of the matters specified in paragraphs 6(a) to (c), a reasonable Market Participant in the position of State One would have suspected by no later than the commencement of trading on 1 March 2011 that Tang had been placing the Initial Orders with an intention of creating a false or misleading appearance with respect to the market for, or price of, TIS.
8. Further, or in the alternative, by reason of its identification of the matters specified in paragraphs 6(a) to (d) above, a reasonable Market Participant in the position of State One would have suspected by no later than the commencement of trading on 1 March 2011 that Tang had been placing the Initial Orders with an intention of creating a false or misleading appearance with respect to the market for, or price of, TIS.
9. A reasonable Market Participant in the position of State One who had formed a suspicion as set out in paragraphs 7 or 8 above would have immediately suspended Tang's access to State One's AOP and required all his trades to be approved by a designated trading representative (**DTR**) of State One.
10. At no time prior to 1 March 2011, did State One identify the Trading Patterns or any of the other matters specified in paragraph 6 above.

#### **Tang's trading on 1 and 2 March 2011**

11. On 1 and 2 March 2011, Tang placed 3 amendments to the Initial Orders, 17 new orders to buy TIS and 13 amendments to those new orders (the **Relevant Orders**). State One, through its AOP, entered corresponding Bids for each of the Relevant Orders into the Market (the **Relevant Bids**).
12. During the period of the Relevant Orders, State One received a further 5 SMARTS Alerts (the **Relevant Trading Alerts**).
13. The Relevant Orders:
  - a. appeared to have been tailored to create a price impact for minimum cost and maximum effect;
  - b. were inconsistent with the history of or recent trading in TIS;
  - c. materially altered the market for TIS;
  - d. appeared to have been timed to restore or increase the price of TIS;
  - e. appeared to constitute an unusual series of orders; and
  - f. generally exhibited the Trading Patterns.

14. Further, State One ought reasonably have been aware at the time that each of the Relevant Orders was placed that Tang had an apparent interest in creating a false or misleading appearance with respect to the market for, or price of, TIS because of the size of his holding of TIS, which was 612,500 TIS at the commencement of trading on 1 March 2011.
15. By reason of the matters alleged in paragraphs 6(a) to (c), 13(a) to (e) and 14 above, State One ought reasonably have suspected that Tang had placed each of the Relevant Orders with the intention of creating a false or misleading appearance with respect to the market for, or price of, TIS.
16. Further, or in the alternative, by reason of the matters alleged in paragraphs 6(a) to (d), 13(a) to (f) and 14 above, State One ought reasonably have suspected that Tang had placed each of the Relevant Orders with the intention of creating a false or misleading appearance with respect to the market for, or price of, TIS.

#### **Tang's trading after 2 March 2011**

17. Tang continued to buy TIS through State One after 2 March 2011 until at least 9 May 2011 such that:
  - (a) in the period 3 March 2011 to 31 March 2011, Tang bought 335,000 TIS;
  - (b) during April 2011, Tang bought 158,500 TIS; and
  - (c) in the period 1 May 2011 to 9 May 2011, Tang bought 99,500 TIS.
18. State One continued to receive SMARTS Alerts about Tang's trading such that:
  - (a) during March 2011, State One received 88 SMARTS Alerts;
  - (b) during April 2011, State One received a further 67 SMARTS Alerts; and
  - (c) between 1 and 9 May 2011, State One received 21 SMARTS Alerts,

**(Subsequent Trading Alerts).**
19. A reasonable Market Participant in the position of State One would have established and maintained specific policies and procedures, particularly with respect to initial assessment, escalation, reporting and record keeping, that would provide clear guidance to appropriately trained, supervised and monitored employees responsible for reviewing post trade alerts on what steps to take in the event of receiving them.
20. ASIC contends that the policies and procedures documents maintained by State One in the period 10 February to 9 May 2011 did not provide clear guidance to State One's employees responsible for reviewing SMARTS Alerts on what steps to take in the event of receiving them.

21. At no time prior to 9 May 2011, notwithstanding the receipt of each of the Initial Trading Alerts, the Relevant Trading Alerts and the Subsequent Trading Alerts, did State One suspend Tang's access to its AOP System and require all his trades to be approved by a DTR.

#### **Alleged contraventions**

22. By reason of the matters alleged herein, ASIC contends that State One contravened section 798H(1) of the *Corporations Act 2001* (Cth) (the **Act**) by failing to comply with:
- a. Rule 5.7.1(b)(iii) of the Market Integrity Rules on 1 and 2 March 2011 by making the Relevant Bids where, taking into account the circumstances of the Relevant Orders, State One ought reasonably to have suspected that Tang had placed the Relevant Orders with the intention of creating a false or misleading appearance with respect to the market for, or the price of, TIS; and
  - b. Rule 5.5.2(b) of the Market Integrity Rules in the period between 10 February 2011 and 9 May 2011 by failing to maintain the necessary organisational and technical resources with respect to post-trade alert systems to ensure that it complied with rule 5.7.1(b)(iii) of the Market Integrity Rules.

#### **Alleged Harm**

23. A contravention of section 798H(1) of the Act by reason of a failure to comply with Rule 5.7.1(b)(iii) or Rule 5.5.2(b) of the Market Integrity Rules is likely to result in orders entering the trading platform of the Market that do not reflect genuine supply and demand, damage the efficiency and integrity of the Market by undermining public confidence in Market Participants and thereby damage the reputation and operation of Australian financial markets.

#### **Relief sought**

24. ASIC seeks declarations of contravention and civil penalty orders against State One.

Date: 18 November 2016



Signed by Kim Turner

Lawyer for the Applicant