



Federal Court of Australia  
District Registry: Victoria  
Division: General

No: VID514/2015

**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**  
Plaintiff

**AVESTRA ASSET MANAGEMENT LTD (IN LIQUIDATION) (ACN 119 227 440)**  
First Defendant

**PAUL JOHN ROWLES**  
Second Defendant

**CLAYTON DEMPSEY**  
Third Defendant

### **ORDER**

**JUDGE:** JUSTICE BEACH

**DATE OF ORDER:** 12 May 2017

**WHERE MADE:** Melbourne

#### **THE COURT DECLARES THAT:**

##### **DECLARATIONS OF CONTRAVENTION BY AVESTRA**

- (a) **Direct use of scheme property of the Advantage Fund to acquire shares in AG Financial**
1. Between 20 and 21 March 2013, by making an off-market purchase of 230,000 shares in Excelsa Ltd (referred to in these declarations as “AG Financial”) on behalf of the Advantage Fund, Avestra Asset Management Limited (in liquidation) (Avestra), as the responsible entity of the Advantage Fund, gave a financial benefit out of the scheme property of the Advantage Fund to itself without obtaining approval of the members of the Advantage Fund in accordance with ss 217-227 of the *Corporations Act 2001* (Cth) (the Act), and thereby contravened s 208(1) (as modified by s 601LC) of the Act.
  2. By acquiring:
    - (a) 4.2 million newly-issued shares in AG Financial on behalf of the Advantage Fund on or around 30 May 2013; and



(b) 16.7 million newly-issued shares in AG Financial on behalf of the Advantage Fund on or around 12 July 2013,

Avestra, as the responsible entity of the Advantage Fund, gave financial benefits out of the scheme property of the Advantage Fund to itself, and to AG Financial, being a related party of Avestra, without obtaining approval of the members of the Advantage Fund in accordance with ss 217-227 of the Act, and thereby contravened s 208(1) (as modified by s 601LC) of the Act on each occasion.

3. In making each of the purchases of shares in AG Financial on behalf of the Advantage Fund referred to in paragraphs 1 and 2, Avestra was in a position of conflict between:

- (a) Avestra's own interests in furthering its commercial objective of achieving a merger of the Avestra and AG Financial businesses; and
- (b) the interests of the members of the Advantage Fund in the sound and professional selection of investments appropriate for the fund, made solely with a view to realising the investment objectives disclosed to members of the fund,

and failed to give priority to the members' interests, and thereby contravened s 601FC(1)(c) of the Act between 20 March 2013 and 12 July 2013.

**(b) Indirect use of scheme property of the Advantage Fund to acquire shares in AG Financial**

4. Between 20 and 21 March 2013, by making an off-market purchase of 2.0 million shares in AG Financial on behalf of the Worberg Global Fund, at a time when the Advantage Fund held substantial unitholdings in the Worberg Global Fund, Avestra, as the responsible entity of the Advantage Fund, gave a financial benefit indirectly out of the scheme property of the Advantage Fund to itself without obtaining approval of the members of the Advantage Fund in accordance with ss 217-227 of the Act, and thereby contravened s 208(1) (as modified by s 601LC) of the Act.

5. By acquiring:

- (a) 8.5 million newly-issued shares in AG Financial on behalf of the Worberg Global Fund on or around 12 July 2013; and
- (b) 9 million newly-issued shares in AG Financial on behalf of the Worberg Global Fund on or around 19 July 2013,



when the Advantage Fund held substantial unitholdings in the Worberg Global Fund, Avestra, as the responsible entity of the Advantage Fund, gave financial benefits indirectly out of the scheme property of the Advantage Fund to itself, and to AG Financial, being a related party of Avestra, without obtaining approval of the members of the Advantage Fund in accordance with ss 217-227 of the Act, and thereby contravened s 208(1) (as modified by s 601LC) of the Act on each occasion.

**(c) Use of scheme and trust property of the Canton and Safecrest Funds to acquire shares in AG Financial**

6. Avestra acquired:

- (a) 4.4 million shares in AG Financial between 20 and 21 March 2013;
- (b) 17.76 million newly-issued shares in AG Financial on or around 12 July 2013;  
and
- (c) 21 million newly-issued shares in AG Financial on or around 19 July 2013,  
on behalf of the Canton Fund, when Avestra:
- (d) was in a position of conflict between:
  - (i) Avestra's own interests in furthering its commercial objective of achieving a merger of the Avestra and AG Financial businesses; and
  - (ii) the interests of the members of the Canton Fund in the sound and professional selection of investments appropriate for the fund, made solely with a view to realising the investment objectives disclosed to members of the fund; and
- (e) failed to disclose that conflict of interest to, or obtain informed consent to that conflict of interest from, members of the Canton Fund,

and thereby failed to do all things necessary to ensure that it provided the financial services covered by its AFS licence efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Act on each occasion.

7. Avestra acquired:

- (a) 500,000 shares in AG Financial on 3 July 2013;
- (b) 500,000 shares in AG Financial on 4 July 2013;
- (c) 7.5 million shares in AG Financial on or around 19 July 2013; and
- (d) 500,000 shares in AG Financial on 1 August 2013,



on behalf of the Safecrest Fund, in furtherance of Avestra's own commercial objective of achieving a merger of the Avestra and AG Financial businesses, and by doing so through the Safecrest Fund, concealed the use of scheme property of the Generator Fund to purchase shares in AG Financial from the books and records of the Generator Fund. Avestra thereby failed to do all things necessary to ensure that it provided the financial services covered by its AFS licence efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Act on each occasion.

**(d) The Avestra loans**

8. By advancing unsecured loans to itself from the Avestra Credit Fund:

- (a) of \$100,000 on 27 February 2014; and
- (b) of \$645,000 on 4 March 2014,

when scheme property of the Advantage, Emergent and Maximiser Funds was invested in the Avestra Credit Fund, Avestra, being the responsible entity of those funds, gave financial benefits indirectly out of the scheme property of those funds to itself, without obtaining approval of the members of those funds in accordance with ss 217-227 of the Act, and thereby contravened s 208(1) (as modified by s 601LC) of the Act on each occasion.

**(e) The AG Financial loans**

9. By advancing unsecured loans to AG Financial from the Avestra Credit Fund:

- (a) of \$250,000 between 20 and 25 February 2014;
- (b) of \$85,000 on 28 March 2014;
- (c) of \$90,000 on 24 April 2014;
- (d) of \$20,000 on 2 May 2014;

when scheme property of the Advantage, Emergent and Maximiser Funds was invested in the Avestra Credit Fund, Avestra, being the responsible entity of those funds, gave financial benefits indirectly out of the scheme property of those funds to AG Financial, being a related party of Avestra, without obtaining approval of the members of those funds in accordance with ss 217-227 of the Act, and thereby contravened s 208(1) (as modified by s 601LC) of the Act on each occasion.

10. By advancing an unsecured loan of \$100,000 to AG Financial from the Avestra Credit Fund on 26 June 2014, at a time when scheme property of the Advantage,



Accelerator, Emergent and Maximiser Funds was invested in the Avestra Credit Fund, Avestra, being the responsible entity of those funds, gave a financial benefit indirectly out of the scheme property of those funds to AG Financial, being a related party of Avestra, without obtaining approval of the members of those funds in accordance with ss 217-227 of the Act, in contravention of s 208(1) (as modified by s 601LC) of the Act.

**(f) Investments of scheme property of the Accelerator Fund into the Avestra Credit Fund**

11. By making cash investments from the Accelerator Fund into the Avestra Credit Fund:

- (a) of \$801,000 on or around 2 June 2014; and
- (b) of \$240,000 on 1 July 2014,

Avestra, being the responsible entity of the Accelerator Fund, gave financial benefits out of the scheme property of the Accelerator Fund to itself, in its capacity as trustee of the Avestra Credit Fund, without obtaining approval of the members of the Accelerator Fund in accordance with ss 217-227 of the Act, and thereby contravened s 208(1) (as modified by s 601LC) of the Act on each occasion.

12. Between 2 June 2014 and 1 July 2014, by making the cash investments referred to in paragraph 11 from the Accelerator Fund into the Avestra Credit Fund, Avestra failed to act in the best interests of the members of the Accelerator Fund, and thereby contravened s 601FC(1)(c) of the Act.

**(g) Failure to provide monthly reports for the AG Schemes**

13. After becoming appointed as responsible entity of each of the Accelerator, Emergent, Generator and Maximiser Funds from 30 January 2014, Avestra failed to provide regular investment reports to members, as had been the practice prior to Bridge Global Securities' appointment as fund manager of those schemes in April 2013, and thereby Avestra failed to do all things necessary to ensure that it provided financial services covered by its AFS licence efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Act.

**(h) Non-disclosure, or inadequate disclosure, of change of investment mandate of the AG Schemes**

14. Avestra failed to notify members of the Maximiser, Accelerator and Generator Funds of the material change to the investment risk, and to provide them with the information reasonably necessary to understand the nature and effect of that change in



risk, as a consequence of those funds having become substantially exposed to Malaysian shares and equity derivatives, and thereby contravened s 1017B(1) of the Act on or around 7 February 2014 in respect of the Maximiser Fund, and from no later than 2 September 2014 in respect of each of the Accelerator and Generator Funds.

- (i) **Offshoring of the Canton Fund as the Bridge Global CMC Fund and cross-investments into the Canton Fund**
15. Between 30 April and 1 June 2014, by transferring investments held by the Canton Fund directly to the Bridge Global CMC Fund, and redeeming units held by investors (including by Avestra on behalf of the Maximiser Fund) in the Canton Fund in exchange for units in the Bridge Global CMC Fund, Avestra, being the responsible entity of the Maximiser Fund, gave a financial benefit out of the scheme property of the Maximiser Fund, to Bridge Global SPC (as operator of the Bridge Global CMC Fund), being a related party of Avestra, without obtaining approval of the members of the Maximiser Fund in accordance with ss 217-227 of the Act in contravention of s 208(1) (as modified by s 601LC) of the Act.
16. By making investments into the Bridge Global CMC Fund:
- (a) of US\$745,879.50 on behalf of the Accelerator Fund on 2 June 2014;
  - (b) of US\$207,527.59 on behalf of the Generator Fund on 2 June 2014;
  - (c) of US\$227,816.66 on behalf of the Accelerator Fund on 1 July 2014;
  - (d) of US\$73,477.99 on behalf of the Emergent Fund on 1 October 2014; and
  - (e) of US\$317,529.89 on behalf of the Maximiser Fund on 1 October 2014,
- Avestra, being the responsible entity of the Accelerator, Generator, Emergent and Maximiser Funds, gave financial benefits out of the scheme property of those funds to Bridge Global SPC (as operator of the Bridge Global CMC Fund), being a related party of Avestra, without obtaining approval of the members of those funds in accordance with ss 217-227 of the Act, and thereby contravened s 208(1) (as modified by s 601LC) of the Act on each occasion.



- (j) **In specie redemptions from the Worberg Global Fund and reinvestment of scheme property of the Emergent and Maximiser Funds into the Hanhong High-Yield Fund**
17. Between 1 April 2014 and 1 February 2015, by making in specie redemptions of investments held by the Emergent and Maximiser Funds in the Worberg Global Fund, and substantially reinvesting the Malaysian shares and equity derivatives received by those redemptions into the Hanhong High-Yield Fund and then making in specie redemptions from the Hanhong High-Yield Fund to the Emergent and Maximiser Funds, with the result that the Emergent and Maximiser Funds were left holding extremely high weightings of shares and equity derivatives in a limited number of Malaysian-listed companies, Avestra failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Avestra's position as responsible entity of those funds, in contravention of s 601FC(1)(b) of the Act.
- (k) **Management of conflicts of interest**
18. At all times from 20 March 2013 until 1 February 2015, Avestra did not have in place adequate arrangements for the management of conflicts of interest arising wholly, or partially, in the provision of financial services by Avestra as part of its financial services business, in contravention of s 912A(1)(aa) of the Act.

#### **DECLARATIONS OF CONTRAVENTION BY ROWLES**

- (a) **Direct use of scheme property of the Advantage Fund to acquire shares in AG Financial**
19. Paul John Rowles (Rowles) authorised each of the acquisitions of shares referred to in paragraphs 1 and 2, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.
20. Rowles authorised the acquisitions of shares referred to in paragraph 3, and was thereby involved in Avestra's contravention of s 601FC(1)(c) of the Act, in contravention of s 601FC(5) of the Act.
- (b) **Indirect use of scheme property of the Advantage Fund to acquire shares in AG Financial**
21. Rowles authorised each of the acquisitions of shares referred to in paragraphs 4 and 5, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.



**(c) Use of scheme and trust property of the Canton and Safecrest Funds to acquire shares in AG Financial**

22. Rowles authorised each of the transactions on behalf of the Canton and Safecrest Funds referred to in paragraphs 6 and 7, and in so doing failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in Avestra's circumstances and occupied the office held by Rowles, and had the same responsibilities within the corporation as Rowles, in contravention of s 180(1) of the Act.

**(d) Investment of scheme property of the Emergent, Generator and Maximiser Funds into the Advantage, Canton, Worberg Global and Safecrest Funds**

23. Rowles authorised Bridge Global Securities, as an agent of the responsible entity of the Emergent and Maximiser Funds, to give financial benefits, namely cash investments:

- (a) of \$600,000, out of the scheme property of the Emergent Fund into the Advantage Fund on 1 May 2013;
- (b) of \$1.6 million, out of the scheme property of the Maximiser Fund into the Advantage Fund on 1 May 2013; and
- (c) of \$400,000, out of the scheme property of the Maximiser Fund into the Advantage Fund between 1 and 2 July 2013,

to Avestra in its capacity as responsible entity of the Advantage Fund, a related party of Bridge Global Securities, without obtaining approval of the members of the Emergent and Maximiser Funds in accordance with ss 217-227 of the Act. Rowles was thereby involved in contraventions by Bridge Global Securities of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

24. Rowles authorised Bridge Global Securities, as an agent of the responsible entity of the Maximiser Fund, to give a financial benefit, namely a cash investment of \$380,000, out of the scheme property of the Maximiser Fund into the Canton Fund on 1 August 2013, to Avestra in its capacity as trustee of the Canton Fund, a related party of Bridge Global Securities, without obtaining approval of the members of the Maximiser Fund in accordance with ss 217-227 of the Act. Rowles was thereby





involved in Bridge Global Securities' contravention of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act.

25. Rowles authorised Bridge Global Securities, as an agent of the responsible entity of the Emergent and Maximiser Funds to give financial benefits, namely cash investments:

- (a) of \$616,560, out of the scheme property of the Emergent Fund into the Worberg Global Fund on 1 May 2013;
- (b) of \$1.64 million, out of the scheme property of the Maximiser Fund into the Worberg Global Fund on 1 May 2013; and
- (c) of \$383,520, out of the scheme property of the Maximiser Fund into the Worberg Global Fund between 1 and 2 July 2013,

to Avestra in its capacity as trustee of the Worberg Global Fund, a related party of Bridge Global Securities, without obtaining approval of the members of the Emergent and Maximiser Funds in accordance with ss 217-227 of the Act. Rowles was thereby involved in contraventions by Bridge Global Securities of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

26. Rowles authorised Bridge Global Securities, as an agent of the responsible entity of the Generator Fund, to give financial benefits, namely cash investments:

- (a) of \$300,000, out of the scheme property of the Generator Fund into the Safecrest Fund between 1 and 2 July 2013; and
- (b) of \$125,000, out of the scheme property of the Generator Fund into the Safecrest Fund on 2 August 2013,

to Avestra in its capacity as trustee of the Safecrest Fund, a related party of Bridge Global Securities, without obtaining approval of the members of the Generator Fund in accordance with ss 217-227 of the Act. Rowles was thereby involved in contraventions by Bridge Global Securities of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.



**(e) Substantial shareholder notice contraventions**

27. Rowles made, or authorised the making of, statements contained in substantial shareholder notices that Avestra gave to the ASX Limited on 5 April 2013, that were to Rowles's knowledge misleading in a material respect, in that the notices disclosed only the voting power obtained by the Canton Fund and the Worberg Global Fund in AG Financial, and omitted to disclose the voting power in AG Financial that Avestra had obtained through the share purchases it made on 20 and 21 March 2013, in contravention of s 1308(2) of the Act.
28. Rowles failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that Avestra did not acquire relevant interests in AG Financial in contravention of s 606(1) of the Act:
- (a) between 20 and 21 March 2013;
  - (b) on 30 May 2013; and
  - (c) between 24 June 2013 and 2 August 2013;
- and Rowles thereby contravened s 601FD(1)(f)(i) of the Act on each occasion.
29. Rowles failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that Avestra did not fail:
- (a) to give the required information about a substantial holding in AG Financial between 26 March 2013 and 5 April 2013;
  - (b) to lodge a substantial shareholding notice in respect of AG Financial on or around 3 June 2013; and
  - (c) to give the required information about a substantial holding in AG Financial between 6 July 2013 and 6 August 2013,
- in contravention of s 671B(1) of the Act, and Rowles thereby contravened s 601FD(1)(f)(i) of the Act on each occasion.

**(f) The Avestra loans**

30. Rowles authorised the advancement of each of the loans by Avestra from the Avestra Credit Fund to itself referred to in paragraph 8, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.



**(g) The AG Financial loans**

31. Rowles authorised the advancement of each of the loans by Avestra from the Avestra Credit Fund to AG Financial referred to in paragraphs 9 and 10, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

**(h) Investments of scheme property of the Accelerator Fund into the Avestra Credit Fund**

32. Rowles authorised the making of each of the investments by Avestra from the Accelerator Fund to the Avestra Credit Fund referred to in paragraph 11, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

33. Rowles authorised the cash investments from the Accelerator Fund into the Avestra Credit Fund referred to in paragraph 12, and was thereby involved in Avestra's contravention of s 601FC(1)(c) of the Act, in contravention of s 601FC(5) of the Act.

**(i) The Zenith loan agreement**

34. Rowles authorised Avestra's entry into a loan agreement with, and advancing US\$6.0 million to, Zenith City Investments Ltd out of the Avestra Credit Fund on or around 6 May 2014, without having taken reasonable steps to ensure that Avestra had carried out adequate due diligence and obtained adequate security in respect of the loan, and in so doing failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in Avestra's circumstances and occupied the office held by Rowles, and had the same responsibilities within the corporation as Rowles, in contravention of s 180(1) of the Act.

**(j) Failure to provide monthly reports for the AG Schemes**

35. Rowles failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that Avestra complied with s 912A(1)(a) of the Act by providing regular investor reports to members of the Accelerator, Emergent, Generator and Maximiser Funds, and thereby contravened s 601FD(1)(f)(i) of the Act from 30 January 2014.



**(k) Non-disclosure, or inadequate disclosure, of change of investment mandate of the AG Schemes**

36. Rowles failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that Avestra complied with s 1017B(1) of the Act with regard to the changed investment risk of the Maximiser, Accelerator and Generator Funds, and thereby contravened s 601FD(1)(f)(i) of the Act from 30 January 2014 in respect of the Maximiser Fund, and from no later than 2 September 2014 in respect of each of the Accelerator and Generator Funds.

**(l) Offshoring of the Canton Fund as the Bridge Global CMC Fund and cross-investments into the Canton Fund**

37. Rowles authorised the making of the transfers and redemptions referred to in paragraph 15, and was thereby involved in Avestra's contravention of s 208(1) (as modified by s 601LC) of the Act, in contravention of s 209(2) (as modified by s 601LA) of the Act.

38. Rowles authorised the making of each of the investments referred to in paragraph 16, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

**(m) In specie redemptions from the Worberg Global Fund and reinvestment of scheme property of the Emergent and Maximiser Funds into the Hanhong High-Yield Fund**

39. Rowles authorised the redemptions and investments referred to in paragraph 17, and was thereby involved in Avestra's contravention of s 601FC(1)(b), in contravention of s 601FC(5) of the Act.

**(n) Management of conflicts of interest**

40. Rowles failed to take all steps that a reasonable person in Rowles's position would have taken to ensure that Avestra did not contravene s 912A(1)(aa) of the Act, and thereby contravened s 601FD(1)(f)(i) of the Act between 20 March 2013 and 6 January 2015.



## DECLARATIONS OF CONTRAVENTION BY DEMPSEY

- (a) **Direct use of scheme property of the Advantage Fund to acquire shares in AG Financial**
41. Clayton Dempsey (Dempsey) was knowingly concerned in each of the acquisitions of shares referred to in paragraphs 1 and 2, and was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.
42. Dempsey was knowingly concerned in the acquisitions of shares referred to in paragraph 3, and was thereby involved in Avestra's contravention of s 601FC(1)(c) of the Act, in contravention of s 601FC(5) of the Act.
- (b) **Indirect use of scheme property of the Advantage Fund to acquire shares in AG Financial**
43. Dempsey was knowingly concerned in each of the acquisitions of shares referred to in paragraphs 4 and 5, and was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.
- (c) **Use of scheme and trust property of the Canton and Safecrest Funds to acquire shares in AG Financial**
44. Dempsey was knowingly concerned in each of the transactions on behalf of the Canton and Safecrest Funds referred to in paragraphs 6 and 7, and in so doing failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in Avestra's circumstances and occupied the office held by Dempsey, and had the same responsibilities within the corporation as Dempsey, in contravention of s 180(1) of the Act.
- (d) **Investment of scheme property of the Emergent, Generator and Maximiser Funds into the Advantage, Canton, Worberg Global and Safecrest Funds**
45. Dempsey was knowingly concerned in Bridge Global Securities, as an agent of the responsible entity of the Emergent and Maximiser Funds, giving financial benefits, namely cash investments:
- (a) of \$600,000 cash, out of the scheme property of the Emergent Fund into the Advantage Fund on 1 May 2013;



(b) of \$1.6 million, out of the scheme property of the Maximiser Fund into the Advantage Fund on 1 May 2013; and

(c) of \$400,000, out of the scheme property of the Maximiser Fund into the Advantage Fund between 1 and 2 July 2013,

to Avestra in its capacity as responsible entity of the Advantage Fund, a related party of Bridge Global Securities, without obtaining approval of the members of the Emergent and Maximiser Funds in accordance with ss 217-227 of the Act. Dempsey was thereby involved in contraventions by Bridge Global Securities of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

46. Dempsey was knowingly concerned in Bridge Global Securities, as an agent of the responsible entity of the Maximiser Fund, giving a financial benefit, namely a cash investment of \$380,000, out of the scheme property of the Maximiser Fund into the Canton Fund on 1 August 2013, to Avestra, in its capacity as trustee of the Canton Fund, a related party of Bridge Global Securities, without obtaining approval of the members of the Maximiser Fund in accordance with ss 217-227 of the Act. Dempsey was thereby involved in Bridge Global Securities' contravention of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act.

47. Dempsey was knowingly concerned in Bridge Global Securities, as an agent of the responsible entity of the Emergent and Maximiser Funds, giving financial benefits, namely cash investments:

(a) of \$616,560, out of the scheme property of the Emergent Fund into the Worberg Global Fund on 1 May 2013;

(b) of \$1.64 million, out of the scheme property of the Maximiser Fund into the Worberg Global Fund on 1 May 2013; and

(c) of \$383,520, out of the scheme property of the Maximiser Fund into the Worberg Global Fund between 1 and 2 July 2013,

to Avestra, in its capacity as trustee of the Worberg Global Fund, a related party of Bridge Global Securities, without obtaining approval of the members of the Emergent and Maximiser Funds in accordance with ss 217-227 of the Act. Dempsey was



thereby involved in contraventions by Bridge Global Securities of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

48. Dempsey was knowingly concerned in Bridge Global Securities, as an agent of the responsible entity of the Generator Fund, giving financial benefits, namely cash investments:

- (a) of \$300,000, out of the scheme property of the Generator Fund into the Safecrest Fund between 1 and 2 July 2013; and
- (b) of \$125,000, out of the scheme property of the Generator Fund into the Safecrest Fund on 2 August 2013,

to Avestra, in its capacity as trustee of the Safecrest Fund, a related party of Bridge Global Securities, without obtaining approval of the members of the Generator Fund in accordance with ss 217-227 of the Act. Dempsey was thereby involved in contraventions by Bridge Global Securities of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

(e) **Substantial shareholder notice contraventions**

49. Dempsey failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that Avestra did not acquire relevant interests in AG Financial in contravention of s 606(1) of the Act:

- (a) between 20 and 21 March 2013;
- (b) on 30 May 2013; and
- (c) between 24 June 2013 and 2 August 2013,

and thereby contravened s 601FD(1)(f)(i) of the Act on each occasion.

50. Dempsey failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that Avestra did not fail:

- (a) to give the required information about a substantial holding in AG Financial between 26 March 2013 and 5 April 2013;
- (b) to lodge a substantial shareholding notice in respect of AG Financial on or around 3 June 2013; and



(c) to give the required information about a substantial holding in AG Financial between 6 July 2013 and 6 August 2013,

in contravention of s 671B(1) of the Act, and thereby contravened s 601FD(1)(f)(i) of the Act on each occasion.

**(f) The Avestra loans**

51. Dempsey authorised the advancement of each of the loans by Avestra from the Avestra Credit Fund to itself referred to in paragraph 8, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

**(g) The AG Financial loans**

52. Dempsey authorised the advancement of each of the loans by Avestra from the Avestra Credit Fund to AG Financial referred to in paragraphs 9 and 10, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

**(h) Investments of scheme property of the Accelerator Fund into the Avestra Credit Fund**

53. Dempsey authorised the making of each of the investments by Avestra from the Accelerator Fund to the Avestra Credit Fund referred to in paragraph 11, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

54. Dempsey authorised the cash investments from the Accelerator Fund into the Avestra Credit Fund referred to in paragraph 12, and was thereby involved in Avestra's contravention of s 601FC(1)(c) of the Act, in contravention of s 601FC(5) of the Act.

**(i) The Zenith loan agreement**

55. Dempsey authorised Avestra's entry into a loan agreement with, and advancing US\$6.0 million to, Zenith City Investments Ltd out of the Avestra Credit Fund on or around 6 May 2014, without having taken reasonable steps to ensure that Avestra had carried out adequate due diligence and obtained adequate security in respect of the loan, and in so doing failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in Avestra's circumstances and occupied the office





held by Dempsey, and had the same responsibilities within the corporation as Dempsey, in contravention of s 180(1) of the Act.

**(j) Failure to provide monthly reports for the AG Schemes**

56. Dempsey failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that Avestra complied with s 912A(1)(a) of the Act by providing regular investor reports to members of the Accelerator, Emergent, Generator and Maximiser Funds, and thereby contravened s 601FD(1)(f)(i) of the Act from 30 January 2014.

**(k) Non-disclosure, or inadequate disclosure, of change of investment mandate of the AG Schemes**

57. Dempsey failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that Avestra complied with s 1017B(1) of the Act with regard to the changed investment risk of the Maximiser, Accelerator and Generator Funds, and thereby contravened s 601FD(1)(f)(i) of the Act from 7 February 2014 in respect of the Maximiser Fund, and from no later than 2 September 2014 in respect of each of the Accelerator and Generator Funds.

**(l) Offshoring of the Canton Fund as the Bridge Global CMC Fund and cross-investments into the Canton Fund**

58. Dempsey authorised the making of the transfers and redemptions referred to in paragraph 15, and was thereby involved in Avestra's contravention of s 208(1) (as modified by s 601LC) of the Act, in contravention of s 209(2) (as modified by s 601LA) of the Act.

59. Dempsey was knowingly concerned in the making of each of the investments referred to in paragraph 16, was thereby involved in Avestra's contraventions of s 208(1) (as modified by s 601LC) of the Act, and thereby contravened s 209(2) (as modified by s 601LA) of the Act on each occasion.

**(m) In specie redemptions from the Worberg Global Fund and reinvestment of scheme property of the Emergent and Maximiser Funds into the Hanhong High-Yield Fund**

60. Dempsey authorised the redemptions and investments referred to in paragraph 17, and was thereby involved in Avestra's contravention of s 601FC(1)(b), in contravention of s 601FC(5) of the Act.



**(n) Management of conflicts of interest and Dempsey's conduct as a member of the compliance committee**

61. In his role as the sole executive member of Avestra's compliance committee for the Advantage Fund and for the AG Schemes (from 30 January 2014), Dempsey failed to inform the compliance committee of numerous conflicts of interest and potential contraventions of the Act arising in connection with Avestra's operation of the Advantage Fund and the AG Schemes, and thereby failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position, in contravention of s 601JD(1)(b) of the Act between 20 March 2013 and 1 February 2015.

**AND THE COURT ORDERS THAT:**

62. Pursuant to s 1324(1) of the Act, Rowles be restrained, whether by himself, his servants, agents and employees or otherwise, from:

- (a) carrying on a business related to, concerning or directed to financial products or financial services within the meaning of s 761A of the Act;
- (b) providing financial product advice within the meaning of s 761A of the Act; or
- (c) dealing in financial products within the meaning of s 761A of the Act,

for ten years from the date of this order.

63. Pursuant to ss 206C(1) and/or 206E(1) of the Act, Rowles be disqualified from managing corporations for ten years from the date of this order.

64. Pursuant to s 1324(1) of the Act, Dempsey be restrained, whether by himself, his servants, agents and employees or otherwise, from:

- (a) carrying on a business related to, concerning or directed to financial products or financial services within the meaning of s 761A of the Act;
- (b) providing financial product advice within the meaning of s 761A of the Act; or
- (c) dealing in financial products within the meaning of s 761A of the Act,

for ten years from the date of this order.

65. Pursuant to ss 206C(1) and/or 206E(1) of the Act, Dempsey be disqualified from managing corporations for ten years from the date of this order.

66. There be no order for costs as between ASIC and Avestra and Rowles.



67. Dempsey pay ASIC's costs of the proceeding fixed in the sum of \$25,000.

Date that entry is stamped: 12 May 2017

*Warrick Soden*  
Registrar